

Legislative Oversight Committee

South Carolina House of Representatives

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Program Evaluation Report

April 6, 2018

PROGRAM EVALUATION REPORT

JANUARY 2018

The contents of this report are considered sworn testimony from the Agency Director.

S.C. Commission on Prosecution Coordination

Date of Submission: *April 6, 2018*

Agency Director

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Start Date: January 4, 2011

Number of Years as Agency Head:

Number of Years at Agency: 7 years, 2months

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Agency Online Resources

Website address: <http://www.prosecution.state.sc.us>

Online Quick Links:

Please provide any links to the agency website agency representatives would like listed in the report for the benefit of the public.

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I. Agency Snapshot

A. Successes and Issues

1) What are 3-4 agency successes?

- a) Creation of the South Carolina Commission on Prosecution Coordination (1990 Act No. 485 Section 1, S.C. Code of Laws, Section 1-7-910 et al.)

In 1990, the General Assembly created the South Carolina Commission on Prosecution Coordination (SCCPC) to provide for a more uniform and efficient administration of justice through the prosecution of criminal cases. The SCCPC provides a way for administrative functions to be handled in a centralized manner; uniform legal updates, technical assistance, and training to be provided for prosecutors, diversion program staff, victim advocates, investigators and other support staff; and a better informed and efficient process for requesting and administering the State budget for the Circuit Solicitors. This has resulted in more uniformity among the Circuits, a much higher level of training and dissemination of information, and the ability to resolve common issues much more effectively.

- b) Caseload Equalization and Domestic Violence Prosecution Funding

Beginning in 2014, the SCCPC requested increased State funding based upon an analysis of the number of General Sessions incoming cases (warrants) compared to the number of prosecutors handling those cases (caseload equalization). This analysis considered the high per-capita violent crime rate, as well as the high rate of women killed by men. This study was broken down to the county level and included the poverty level of each county so that a full picture of the available resources and the disparity in those resources could be examined. This analysis showed that the average caseload for South Carolina prosecutors was well above objective standards, and prosecutors in poorer counties carried caseloads that were 27 percent higher than prosecutors in more affluent counties. It also showed there were three counties that did not have a dedicated prosecutor at all.

As a result of Governor Haley's Domestic Violence Task Force, it came to light that South Carolina was one of only three states that allowed law enforcement officers to prosecute domestic violence cases, and these cases were being handled by law enforcement officers on a routine basis in Summary Courts (magistrate and municipal courts) throughout the State.

After reviewing the study, the need for prosecutors to handle Domestic Violence cases, and the budget request for increased funding, the General Assembly significantly increased funding so that additional prosecutors could be hired. In FY16/2017 the General Assembly allocated \$7,826,872 for hiring additional prosecutors to reduce the average caseload for prosecutors in the Solicitors' Offices and an additional \$2,980,117 to allow for all domestic violence cases to be handled by a prosecutor instead of a law enforcement officer. Based upon information received from the Circuit Solicitors, the Circuits have added approximately 60 prosecutors since the increased funding began. There are still a few municipalities where officers are prosecuting their own cases but that practice should be resolved soon. (A copy of the Caseload Equalization Study is attached)

c) Quality of Trainings, Legal Updates, and Technical Assistance

- *Trainings*

The education programs offered by the SCCPC strive to provide intensive training and education that is relevant, practical, and focused on the requirements placed upon, and the day-to-day responsibilities of, South Carolina's prosecutors, prosecution staff, and affiliate services to ensure the fair and just administration of justice in South Carolina. The trainings include extensive written materials (including outlines, articles, PowerPoint™ slide presentations, forms, and samples) and presentations from experienced speakers and experts. Attendees are requested to provide feedback, which is considered by the SCCPC in planning future trainings. The SCCPC conducts, on average, at least one training each month, with trainings ranging in length from one hour to five days.

Among the myriad of education programs offered by the SCCPC each year is a five-day "Prosecution Bootcamp" program designed to train new Circuit prosecutors with less than two years' experience. The program has been developed to not only afford new prosecutors with the opportunity to improve their trial advocacy skills, but to also enhance their understanding of basic South Carolina criminal law and procedure and their ethics obligations. The program includes lectures, discussion workshops, and performance workshops during which the prosecutor-students perform trial advocacy exercises (opening statements, direct examination, cross-examination, and closing arguments) and are critiqued by faculty consisting mostly of senior, experienced prosecutors. (*A copy of the most recent Bootcamp agenda is attached.*) The "Prosecution Bootcamp" program is co-sponsored by the Solicitors' Association of South Carolina, Inc. (SCSA), with the SCCPC being responsible for the training (planning agenda, updating, creating, and assembling materials, and on-site management of the training) and the SCSA being responsible for collecting the registration fees, which cover the hotel costs, any meals or breaks provided, supplies, and non-Solicitor speaker expenses.

The largest program the SCCPC is involved in each year is the SCSA annual conference. The SCCPC co-sponsors the conference and is primarily responsible for the training aspect of it, both prior to the conference, on-site during the conference, and after the conference. This conference provides an average of 14 hours of training for all members of the Solicitors' Offices – prosecutors, investigators, victim advocates, paralegals, diversion staff, and administrative staff – as well as members of the Attorney General's Office, some city and county prosecutors, and others. (*A copy of the 2017 conference agenda is attached.*)

Among the specialized training that the SCCPC offers is training related to the investigation and prosecution of domestic violence and driving under the influence.

- o *Domestic Violence Training*

After the enactment of 2016 Act No. 147 (R151, H4666) (creating the Circuit Solicitor Domestic Violence Fatality Review Committees), the SCCPC conducted two trainings to coordinate the processes and procedures required by the Circuit Committees. The SCCPC developed protocols to assist the Committees with fulfilling their duties pursuant to the Act.

The SCCPC conducted a "Domestic Violence Prosecution Bootcamp" in December 2016, designed to train new domestic violence prosecutors hired by the Solicitors following the provision of funding for domestic violence prosecutors by the General Assembly. The program was a shortened version (four days) of the "Prosecution Bootcamp" program with a focus on domestic violence crimes and issues.

The SCCPC has offered numerous trainings addressing the investigation and prosecution of domestic violence that are open to prosecutors, victim advocates, and law enforcement.

- *Driving Under the Influence (DUI) Training*

Pursuant to the objectives of a continuously-funded Traffic Safety Resource Prosecutor (TSRP) grant from the South Carolina Department of Public Safety Office of Highway Safety and Justice Programs, the SCCPC conducts trainings on traffic safety enforcement, prosecution, and adjudication, with a specific focus on DUI cases. Since 1998, the SCCPC has provided at least four one- or two-day DUI-specific trainings each year to prosecutors, law enforcement, and/or summary court judges on DUI and related traffic prosecution.

In addition to the trainings, the SCCPC assists other agencies in their trainings by either providing speakers or identifying potential speakers.

A chart showing trainings and other educational programs conducted during the current fiscal year and the past five fiscal years is attached, along with training materials from two programs conducted in 2017.

- ***Legal Updates***

The SCCPC provides case law and legislative updates to the Solicitors and their staff, and other prosecutors and law enforcement as appropriate, covering legal (substantive, procedural, and ethics), practical, and strategic matters. Copies of the following updates provided in relation to legislative action or appellate court decisions are attached as examples of the information provided.

- *Analysis of S.C. Code Section 56-5-2953 (DUI Video Recording Requirement – Incident Site)*, which was last updated in 2014 to reflect a decision from the South Carolina Court of Appeals;
- *Summary of 2017 Act No. 95 (Limited Immunity for Persons Seeking Medical Treatment for Another Person Experiencing Drug or Alcohol-Related Overdoses)*, which was issued immediately after the enactment of the legislation;
- *Summary of Impact of 2015 Act No. 22* on the expungement of records and the expungement of juvenile records; *and*
- a two-sided *Domestic Violence Chart* outlining the domestic violence crimes, the crime of unlawful shipping, transport, receipt or possession of a firearm or ammunition, and domestic violence-related restraining orders, which was initially created immediately after the passage of the Domestic Violence Reform Act in 2015 (that substantially changed the domestic violence crimes and created the firearms crime and new restraining orders) and distributed to prosecution offices and shared with others, including the Bar, summary court judges, and law enforcement officers; and it is updated and re-distributed as needed. *(A copy of the December 13, 2017, version of the chart is attached.)*

The SCCPC also publishes two manuals, the *Prosecutor’s Deskbook* and the *Prosecution Bootcamp Manual*, solely intended for and provided only to prosecutors (primarily only those in Solicitors’ Offices). These publications provide an overview of the evidentiary and criminal laws in South Carolina for prosecutors and provides guidance in their strategic, practical application.

- ***Technical (Legal) Assistance***

The SCCPC frequently receives requests for assistance that are both general (such as questions about the meaning and/or application of laws, requests for assistance with general legal research, etc.) and specific (regarding particular criminal cases, including reviewing pleadings, analyzing issues and/or law, etc.). These requests come from prosecutors, victim advocates,

diversion staff, investigators, paralegals, other prosecution staff, and law enforcement (some of whom still prosecute criminal cases).

The terms of the TSRP grant also allows the TSRP to serve as second chair in General Sessions cases (serve as co-prosecutor in any traffic-related case).

The SCCPC works with other criminal justice-related agencies and victim advocacy groups on legislative and other matters related to the prosecution function and the administration of justice. In addition, as needed or requested, the SCCPC provides input to legislative working groups, subcommittees, committees and individual legislators.

2) What are 3-4 agency challenges? These may include things agency representatives already have a plan to improve.

a) Lack of Centralized Data to provide Reports, Trends and Performance Measures

Currently, the SCCPC is unable to provide any data or statistical information without requesting it from each of the 16 Circuits and then manually compiling the information. This is problematic in that it makes it very difficult to provide statewide data to the 16 Solicitors' Offices and to the General Assembly on a variety of issues. It is also difficult to report on any trends regarding criminal offenses and the prosecution of those offenses. For example, the General Assembly has mandated that certain information regarding Solicitor Diversion Programs be collected and reported annually, but the lack of a central database has made this an extremely cumbersome and time-consuming effort.

The SCCPC is seeking funding in its FY18/19 budget request for an IT/Data Specialist who would build and maintain a centralized database that the 16 Circuits could then tie into. This will allow reports and statistical information to be generated by the SCCPC. This is needed to provide information needed for accurate reporting on some of the Performance Measures, trends in criminal offenses and the prosecution of those offenses, answer inquiries from the General Assembly, as well as comply with mandated reporting and to be able to provide statistical data and reports to the 16 Solicitors' Offices.

b) Prosecution Case Management Systems/Cloud Storage

Over the past several years, Circuit Solicitors have faced increasing challenges in case management, as well as in processing and turning over discovery in a timely manner. The amount of material that is generated for each criminal case is increasing and, therefore, the file size is increasing. This is due to more thorough documentation by law enforcement, more photographs generated, more testing of evidence, and the increased use of body cameras. This has caused an increased need for processing this information in a timely manner. The increase in the use of video (dash cams and body-worn cameras) has greatly increased the need for data storage. Because of the increased need for cyber-security, Solicitors need the proper resources in place to ensure that their data is secure. The Circuit Solicitors also need IT upgrades to efficiently store and process (including copying and redaction) the video that is captured with body cameras. The Circuit Solicitors need an efficient case management system that enables prosecutors to efficiently interface with the evidence associated with a case, provide discovery in a manner that can be downloaded by defense attorneys and tracked as to time and date, and the ability to run reports regarding statistical information and performance measures.

c) Diversion Program Database

The SCCPC has been in the process over the past several years of upgrading its Pre-Trial Intervention Database. The SCCPC has partnered with SLED and made substantial progress on an upgrade, but it is not yet completed. It has been challenging to find and retain a software developer to work on the project all the way to completion. This new database will not only hold data on participants of Pre-Trial Intervention, but it also will hold data on participants who have gone through other diversion programs operated by the Solicitors to prevent an offender from going through diversion more than once contrary to legislative intent. The database will be able to interface with the prosecution case management systems of each Solicitor's Office and will be able to be expanded to include any new diversion programs established.

d) County Funding

There remains a great disparity in the level of funding given to Solicitors' Offices among the 46 counties. At the time of the Caseload Equalization Study, the county funding ranged from a low of \$58 to a high of \$819 (approximately) per incoming case (warrant), and ranged from a low of \$0.35 to a high of \$15.07 on a per capita basis (approximately). Many counties do not fund their respective Solicitor's Office at an adequate level, which leads to disparity in resources not only from Circuit to Circuit, but also from county to county within a Circuit. The South Carolina Supreme Court set a benchmark that 80% of pending cases should be less than 1 year old from the date of arrest. This benchmark is very difficult to achieve when adequate resources are not allocated by each county within the State.

3) What are 3-4 emerging issues agency representatives anticipate having an impact on agency operations in the upcoming five years?

a) Accountability and Oversight of Circuit Solicitor Funds

Accountability for the use of Solicitor funds needs to be studied. The SCCPC met on March 28, 2018, and it created a Committee to make recommendations on accountability for funding, transparency in the use of funding, and related best practice measures, as well as the role the SCCPC should play in the oversight of the funding received or collected by the Solicitors' Offices. The committee will be chaired by Commission member, Speaker *Pro Tempore* Tommy Pope, and Commission Member Senator Greg Hembree will be asked to participate in addition to other Commission Members and some Solicitors who do not serve on the Commission.

b) Increasing number and complexity of cases in General Session Court

There have been significant increases in the number of General Sessions incoming cases over the past two years, and that trend has continued at the time of this report. In 2015, there were 113,825 incoming cases; in 2016, there were 120,407; and in 2017, there were 127,108 cases. At the time of this report, the State is on track to have over 130,000 incoming General Sessions cases.

In addition to the increase in the number of incoming cases, the complexity of cases is increasing as technology is used more in both the commission and investigation of crimes. For example, if multiple law enforcement officers respond to a call and they are equipped with body cameras, the prosecutor will need to review all the footage from all the cameras, and then make copies available to the defense. It may be that, depending upon what is on the recordings, that the

recordings need to be redacted prior to disclosure and/or use at trial. The time needed thus impacts the time that prosecutors are able to work on other cases.

As this trend continues, it is more imperative to hire additional prosecutors and support staff to move these cases in a timely manner and to achieve the goals originally set out with the Caseload Equalization study.

B. Records Management

- 4) Is the agency current with transferring records, including electronic ones, to the Department of Archives and History? If not, why?

The SCCPC is in the process of complying with the South Carolina Public Records Act.

- 5) Please provide the Committee a copy of the agency's records management policy. If the agency does not have a records management policy, what is the agency's plan to create one?

The SCCPC will create an agency records policy over the next few months.

II. Agency Legal Directives, Plan & Resources (Study Step 1: Agency Legal Directives, Plan and Resources)

A. History

- 6) Please provide the major events history of the agency by year, from its origin to the present, in a bulleted list. Include the names of each director with the year the director started and major events (e.g., programs added, cut, departments/divisions changed, etc.).

- 1990
 - May – Creation of the South Carolina Commission on Prosecution Coordination (SCCPC) by 1990 Act No. 485 (S. 1411). Contains enabling statute, sets forth the SCCPC membership (amended in 1996), duties, election of Chairman and officers, Executive Director and staff positions, compensation, funding, and salaries of elected Circuit Solicitors. S.C. Code §§1-7-910 *et seq.*
 - September – First SCCPC meeting. Established positions of Executive Director and Administrative Assistant in the SCCPC.
- 1991
 - January – Appointment of William D. Bilton as Executive Director of the SCCPC; and creation of Administrative Assistant and Curriculum Developer position. Initial budget approved for remainder of fiscal year.
 - July – Transfer of elected Solicitors and administrative assistants as employees from Attorney General to the SCCPC.
- 1992
 - October – Exempted the SCCPC employees from State Employee Classification and State Employee Grievance Procedures.

- 1993
 - August – Authority granted by the SCCPC for hiring of Pre-Trial Intervention (PTI) State Office Coordinator. Approval and adoption of the *SCCPC Operations and Management Manual*.
- 1995
 - October – Adoption of PTI Training Standards.
- 1996
 - October – Approval by the SCCPC to request permanent state funding for Child Abuse Attorney Specialist and Victim-Witness Coordinator.
- 1997
 - September – The SCCPC received state funding for Child Abuse Attorney Specialist position.
- 1998
 - September – FY 1998-99 General Appropriations Act authorized position of State Victim-Witness Assistance Coordinator.
- 1999
 - October – Creation of grant-funded position of Victim-Witness Assistance Advocate.
- 2000
 - October – SCCPC awarded National Highway Traffic Safety Administration (NHTSA) grant for DUI Unit.
- 2001
 - July – Funding for Drug Treatment Courts provided as non-recurring State appropriation.
 - October – Creation of grant-funded positions of Child Victim Advocate, DUI Attorney Specialist & Support Secretary (replaced former DUI Unit position).
- 2003
 - September – The SCCPC established Alcohol Diversion Programs (later called Alcohol Education Programs) in certain circuits.
- 2006
 - October – Grant positions of Traffic Safety Resource Prosecutor (TSRP) and TSRP administrative assistant established (replaces former DUI Attorney & Support Secretary grant positions).
- 2007
 - September – Creation of Education Coordinator position.
- 2009
 - February – First “Prosecution Bootcamp” program held (three-day program).
- 2010
 - December – Elimination of Deputy Director position. Creation of Legislative Coordinator position (effective January 1, 2011). Elimination of Child Abuse Attorney Specialist and Child Victim Advocate positions.

- 2011
 - January – David M. Ross appointed Executive Director of the SCCPC.
 - February – “Prosecution Bootcamp” program extended to four days.
- 2012
 - January – Relocation of the SCCPC to Wade Hampton Building.
 - March – “Prosecution Bootcamp” program extended to five days.
- 2015
 - October – Administrative assistant position eliminated from the TSRP grant.

B. Governing Body

- 7) Please provide information about the body that governs the agency, if any, and to whom the agency head reports. Explain what the agency’s enabling statute outlines about the agency’s governing body (e.g., board, commission, etc.), including, but not limited to: total number of individuals in the body; whether the individuals are elected or appointed; who elects or appoints the individuals; the length of term for each individual; whether there are any limitations on the total number of terms an individual can serve; whether there are any limitations on the number of consecutive terms an individual can serve; the names of the individuals currently on the governing body, date elected/appointed, and term number; duties of the governing body and any other requirements or nuances about the body which the agency believes is relevant to understanding how it and the agency operate. If the governing body operates differently than outlined in statute, please describe the differences.

Pursuant to state statute, the activities involving the prosecution of criminal cases in South Carolina is to be coordinated by the SCCPC. The SCCPC is guided by a Commission comprised of the following 11 members, who serve without compensation:

- (1) Chairmen of the Senate and House Judiciary Committees for the terms for which they are elected or their legislative designees;
- (2) Chief of the South Carolina Law Enforcement Division (SLED) for the term for which he is appointed;
- (3) Director of the Department of Public Safety (SCDPS) for the term for which he is appointed;
- (4) a director of a Judicial Circuit Pre-Trial Intervention Program appointed by the Governor for a term of two years;
- (5) a Judicial Circuit Victim-Witness Assistance Advocate appointed by the Governor for a term of two years; and
- (6) five judicial circuit solicitors appointed by the Governor for a term of four years.

There are currently no term limits for members of the Commission as long as they meet the qualifications. If a vacancy arises, it must be filled in the same manner as the initial appointment (which, for all but the Senate, House, SLED and SCDPS seats, are by appointment by the Governor).

The Commission meets at least once per year. The Commission is governed by a Chair; the Chair, and any other officers needed, are elected by a majority vote of the Commission.

TERM OF PERSON CURRENTLY ON COMMISSION BEGAN ON COMMISSION	STATUTORY ROLE	INDIVIDUAL'S NAME
7/1/14 – 6/30/18	Solicitor-Appointed by the Governor	Solicitor Isaac McDuffie Stone III Fourteenth Judicial Circuit
7/1/16 - 6/30/18	Solicitor-Appointed by the Governor	Solicitor William W. Wilkins III Thirteenth Judicial Circuit
7/1/14 – 6/30/18	Solicitor-Appointed by the Governor	Solicitor Kevin S. Brackett Sixteenth Judicial Circuit
7/1/13 – 6/30/17	Solicitor-Appointed by the Governor	Solicitor J. Strom Thurmond Second Judicial Circuit
7/1/13 – 6/30/17	Solicitor-Appointed by the Governor	Solicitor Scarlett A. Wilson Ninth Judicial Circuit
N/A	Chairman of the Senate Judiciary Committee or his/her designee	Senator Greg Hembree
N/A	Chairman of the House Judiciary Committee or his/her designee	Representative Thomas E. Pope Speaker Pro Tem
N/A	Chief, S.C. Law Enforcement Division	Mark A. Keel
N/A	Director, S.C. Department of Public Safety	Leroy Smith
Currently Vacant	Director, Judicial Circuit Pretrial Intervention Program-Appointed by the Governor	Vacant since May 17, 2017 (former Commission member retired)
Currently Vacant	Judicial-Circuit Victim-Witness Assistance Advocate-Appointed by the Governor	Vacant since October 2, 2017 (former Commission member left the Solicitor's Office)

C. Internal Audit Process

- 8) Please provide information about the agency's internal audit process, including: whether the agency has internal auditors; a copy of the internal audit policy or charter; the date the agency first started performing audits; the positions of individuals to whom internal auditors report; the general subject matters audited; the position of the person who makes the decision of when an internal audit is conducted; whether internal auditors conduct an agency-wide risk assessment routinely; whether internal auditors routinely evaluate the agency's performance measurement and improvement systems; the total number of audits performed in the last five fiscal years; and the date of the most recent Peer Review or Self-Assessment by the SC State Internal Auditors Association or other entity (if other entity, name of that entity).

The SCCPC does not have internal audit staff or an internal audit process, but the Office of State Auditor conducts an audit annually (the last audit was conducted in FY 2016-2017).

D. Laws

- 9) Please complete the **Laws Chart** tab in the attached Excel document.

Completed Laws Chart is attached.

E. Deliverables

10) Please complete the **Deliverables Chart** tab in the attached Excel document.

Completed Deliverables Chart is attached.

11) Please complete the **Deliverables - Potential Harm Chart** tab in the attached Excel document.

Completed Deliverables – Potential Harm Chart is attached.

F. Organizational Units

12) Please complete the **Organizational Units Chart** tab in the attached Excel document.

Completed Organizational Units Chart is attached.

III. Agency Resources and Strategic Plan

13) Please complete the **Comprehensive Strategic Finances Chart** tab in the attached Excel document, to provide the Committee information on how the agency spent its funding in 2016-17.

Completed Comprehensive Strategic Finances Chart is attached.

14) Please provide the following information regarding the amount of funds remaining at the end of each year that the agency had available to use the next year (i.e., in 2011-12, insert the amount of money left over at the end of the year that the agency was able to carry forward and use in 2012-13), for each of the last five years.

Year	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>
Amount Remaining at end of year that agency could use the next year	State: \$256,784 Other: \$0 Federal: \$0	State: \$594,716 Other: \$0 Federal: \$0	State: \$754,833 Other: \$0 Federal: \$0	State: \$875,853 Other: \$0 Federal: \$0	State: \$934,634 Other: \$0 Federal: \$0

IV. Performance (Study Step 2: Performance)

15) Please complete the **Performance Measures Chart** tab in the attached Excel document.

Completed Performance Measures Chart is attached.

16) After completing the Performance Measure Chart, please pick three agency deliverables and provide the following information for each:

- What is the ideal benchmark outcome? How did the agency determine this to be the benchmark outcome?
- What, if any, entity (i.e., a local/state/federal government entity or a private entity in SC or another state) is the best at meeting that standard?
- Why does the agency consider that entity the best (most efficient, obtains best outcomes, efficient and obtains best outcomes, obtains best outcomes with limited resources, etc.)?
- Actions taken by the agency to obtain ideas on processes or best practices that will allow the agency to continually improve.

#1 - Encourage, develop, coordinate, and conduct legal research and other training

- Benchmarks: The benchmark for this deliverable is to ensure that criminal cases in South Carolina are handled by prosecutors effectively, efficiently, and ethically. By providing legal research, developing and coordinating monthly trainings for Solicitors' Offices, and offering legal assistance to offices the SCCPC is fulfilling its mission to promote the fair administration of justice in South Carolina.
- Entity that is the best at meeting the standard: None
- Why the agency considers that entity the best: N/A
- Actions taken by the agency to obtain ideas on processes or best practices that will allow the agency to continually improve: The SCCPC staff keeps current on issues and emerging trends impacting the investigation and prosecution of criminal cases. They also participate in organizations that examine issues of interest to the criminal justice system in general and prosecutors specifically. The SCCPC staff solicit recommendations from the SCCPC Commission, Circuit Solicitors, Solicitors' Offices staff, and training attendees regarding topics for future trainings, specific issues that need to be addressed in trainings, and new trends in criminal law. In addition, they evaluate trainings, including speakers and materials, to improve the content and relevance of the trainings. The SCCPC ensures that staff has access to the technology and resources to provide a first-rate training to Solicitors' Offices.

#2 - Provide State budget support to Solicitors

- Benchmarks: The SCCPC ensures the budgets of Solicitors' Offices are submitted to the Executive Budget Office and the General Assembly, and that the Solicitors' Offices are adequately funded.
- Entity that is the best at meeting the standard: None
- Why the agency considers that entity the best: N/A
- Actions taken by the agency to obtain ideas on processes or best practices that will allow the agency to continually improve: The SCCPC's Executive Director meets with the Executive Budget Office, the General Assembly, budget staff, the SCCPC Commission, and Circuit Solicitors to stay abreast of the needs of the Solicitors and changes in the budget process.

#3 - Develop Protocols related to the review of domestic violence fatalities

- Benchmarks: Following the passage of 2016 Act No. 147, the SCCPC was tasked with developing protocols for the Solicitors' Judicial Circuit Domestic Violence Fatality Review Committees. These protocols, which have been issued, are operational guidelines for the Committees to use to fulfill their obligations pursuant to the Act.
- Entity that is the best at meeting the standard: None
- Why the agency considers that entity the best: N/A
- Actions taken by the agency to obtain ideas on processes or best practices that will allow the agency to continually improve: The SCCPC conducted two trainings to coordinate the processes and procedures required by the Circuit Committees. The first training, which included presentations of experts from across the United States, introduced members of the Committees to their duties under the Act, provided working groups and sample case studies to familiarize the members with the processes and principles of the Committee tasks, and involved Committee members in the development of ideas for Committee protocols. The second training focused on the work of existing Committees, provided examples of Committee practices, and included discussion and explanation of the protocols issued by the SCCPC.

V. Strategic Plan Summary

17) Please complete the **Comprehensive Strategic Plan Summary Chart** tab in the attached Excel document.

Complete Comprehensive Strategic Plan Summary Chart is attached.

Continue to next page →

VI. Agency Ideas/Recommendations (Study Step 3: Recommendations)

A. Internal Changes

- 18) Please list any ideas agency representatives have for internal changes at the agency that may improve the agency's efficiency and outcomes. These can be ideas that are still forming, things agency representatives are analyzing the feasibility of implementing, or things agency representatives already have plans for implementing. For each, include as many of the following details as available:
- Stage of analysis;
 - Board/Commission approval;
 - Performance measures impacted and predicted impact;
 - Impact on amount spent to accomplish the objective(s); and
 - Anticipated implementation date.

Internal Change #1: Electronic transfer of state appropriations/funds to Circuit Solicitors' Offices

- Stage of analysis: SCCPC has been exploring the feasibility of implementing the electronic transfer of state appropriations and funds to the 16 Circuit Solicitors' Offices. Currently, SCCPC has checks printed on a quarterly basis for each of the various funds that must be distributed. Those checks are then manually put into envelopes and mailed to the 16 Solicitors' Offices.
- Board/Commission approval: The Commission has not been notified of SCCCP's plan as of yet.
- Performance measures impacted and predicted impact: SCCPC believes this change will make the distribution of funds much more efficient and will greatly reduce the time it takes SCCPC staff to process checks.
- Impact on amount spent to accomplish the objective(s): A reduction in operating cost by SCCPC and the Treasurer's Office will be realized due to the elimination of paper checks, envelopes and postage.
- Anticipated implementation date: July 15, 2018.

B. Law Changes

- 19) Please review the laws chart to determine ways agency operations may be less burdensome, or outcomes improved, from changes to any of the laws. Also, check if any of the laws are archaic or no longer reflect agency practices. Afterward, list any laws the agency recommends the Committee further evaluate. For each one, include the information below.
- Law number and title;
 - Summary of current law;
 - Recommendation (eliminate, modify, or add new law) and rationale for recommendation;
 - Law recommendation number;
 - Wording of law, with recommended change provided in strike through and underline;
 - Presented and approved by Board/Commission; and
 - Other agencies that may be impacted by revising, eliminating, or adding the law.

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-420
Summary of Current Law	Provides that the Solicitor of the First Judicial Circuit may appoint a Dorchester County attorney as an assistant solicitor in Dorchester County, upon the approval of the local legislative delegation, whose term of office shall be coterminous with the Solicitor's, and that the salary and other expenses shall be covered by Dorchester County.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	1
Agency's Recommended Language	<p>SECTION 1-7-420. Assistant solicitor for first judicial circuit. The solicitor of the first judicial circuit may, upon the approval of a majority of the Dorchester County legislative delegation, appoint an attorney who is a resident of Dorchester County as his assistant who shall perform any of the duties and functions imposed by law upon the circuit solicitor relating to Dorchester County. The term of the assistant solicitor shall be coterminous with that of the solicitor and he shall receive such compensation as may be provided by law. The compensation of the assistant solicitor and any other expenses incurred pursuant to the provisions of this section shall be borne by Dorchester County. In Dorchester County, appointments made pursuant to this section are governed by the provisions of Act 512 of 1996. HISTORY: 1962 Code Section 1-257.1:1; 1970 (56) 2073.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-430. Additional assistant solicitor for first judicial circuit.
Summary of Current Law	Provides the Solicitor of the First Judicial Circuit may appoint an attorney residing in the circuit to serve as an assistant solicitor at the pleasure of the solicitor, with the salary to be paid from funds provided by Public Law 90-351, The Omnibus Crime Control and Safe Streets Act of 1968, as amended.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	2
Agency's Recommended Language	<p>SECTION 1-7-430. The solicitor of the first judicial circuit may appoint an assistant solicitor, who shall be a licensed attorney at law residing in the circuit, to serve at the pleasure of the solicitor and have such responsibility as the solicitor shall direct. The salary to be paid such assistant solicitor shall be paid from funds provided by Public Law 90-351, The Omnibus Crime Control and Safe Streets Act of 1968, as amended.</p> <p>HISTORY: 1962 Code Section 1-257.1:2; 1974 (58) 2989.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-440. Assistant solicitor for third judicial circuit.
Summary of Current Law	Provides the Solicitor of the Third Judicial Circuit may appoint an attorney residing in the circuit to serve as an assistant solicitor at the pleasure of the solicitor, with the salary to be paid from funds provided by Public Law 90-351, The Omnibus Crime Control and Safe Streets Act of 1968, as amended.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	3
Agency's Recommended Language	<p>SECTION 1-7-440. Assistant solicitor for third judicial circuit. The solicitor of the third judicial circuit may appoint an assistant solicitor, who shall be a licensed attorney at law residing in the circuit, to serve at the pleasure of the solicitor and have such responsibility as the solicitor shall direct. The solicitor shall also determine the salary to be paid such assistant solicitor and such salary shall be paid from funds provided by Public Law 90-351, The Omnibus Crime Control and Safe Streets Act of 1968, as amended.</p> <p>HISTORY: 1962 Code Section 1-257.1:3; 1971 (57) 24.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-450. Assistant solicitor for fourth judicial circuit.
Summary of Current Law	Provides that the Solicitor of the Fourth Judicial Circuit may appoint an attorney residing in the circuit to serve as an assistant solicitor, whose term of office shall be coterminous with the Solicitor's, and who shall receive a salary as provided by the General Assembly, one fourth of which shall be paid by each county of the circuit.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	4
Agency's Recommended Language	<p>SECTION 1-7-450. Assistant solicitor for fourth judicial circuit. The solicitor of the fourth judicial circuit may appoint an attorney, who is a resident of the circuit, as an assistant solicitor, who shall perform such duties and functions as may be assigned him by the solicitor. His term shall be coterminous with that of the solicitor and he shall receive as compensation for his services such salary as may provided by the General Assembly, one fourth of which shall be paid by each county of the circuit.</p> <p>HISTORY: 1962 Code Section 1-257.2; 1966 (54) 2014.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-460. Assistant solicitors for fifth judicial circuit.
Summary of Current Law	Provides that the Solicitor of the Fifth Judicial Circuit may appoint competent attorneys residing in the circuit to serve as assistant solicitors, whose term of office shall be coterminous with the Solicitor's, and who shall receive a salary as provided by the respective county councils.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	5
Agency's Recommended Language	<p>SECTION 1-7-460. Assistant solicitors for fifth judicial circuit. The circuit solicitor of the fifth judicial circuit may appoint competent attorneys, who are residents of the circuit, as assistant solicitors who shall perform any and all of the duties and functions imposed by law upon the circuit solicitor as the solicitor shall authorize, designate and direct. The solicitor shall designate in which county of the circuit such assistant solicitors shall perform their duties. The assistant solicitors shall be appointed by the solicitor to serve for the same term as the solicitor. The assistant solicitors performing services in Kershaw County shall receive as compensation for their services such annual salary as may be provided by the Kershaw County Council and the assistant solicitors performing services in Richland County shall receive as compensation for their services such annual salary as may be provided by the Richland County Council.</p> <p>HISTORY: 1962 Code Section 1-258; 1959 (48) 139; 1975 (59) 819.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-470. Assistant solicitor for seventh judicial circuit.
Summary of Current Law	Provides that the Solicitor of the Seventh Judicial Circuit may appoint a competent attorney residing in Spartanburg County to serve as assistant solicitor in Spartanburg County (and thereafter commissioned by the Governor), whose term of office shall be coterminous with the Solicitor's, and who shall receive a salary from Spartanburg County as provided by the General Assembly and \$800 per year for travel; the assistant solicitor shall appear and represent the State in magistrates' courts when requested by the sheriff's department or highway patrol located in Spartanburg County, and he shall prosecute appeals from magistrates' courts in that county.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	6
Agency's Recommended Language	<p>SECTION 1-7-470. Assistant solicitor for seventh judicial circuit. The circuit solicitor of the seventh judicial circuit may appoint a competent attorney, who is a resident of Spartanburg County, as assistant solicitor. He shall perform any and all of the duties and functions now or hereafter imposed by law upon the circuit solicitor in Spartanburg County, as the solicitor of the circuit shall authorize, designate and direct. The assistant solicitor shall be appointed by the solicitor of the seventh judicial circuit and shall after appointment be commissioned by the Governor; provided, however, the solicitor of the seventh judicial circuit shall have the right to remove the assistant solicitor from office at his pleasure, and in no event can the assistant solicitor be appointed for a period beyond the term of office of the circuit solicitor. The assistant solicitor shall receive from Spartanburg County as compensation for his services such sum per year as may be provided by the General Assembly, payable the first and fifteenth of each month, and eight hundred dollars per year for travel. The assistant solicitor shall appear and represent the State in magistrates' courts when requested by the sheriff's department or the highway patrol located in Spartanburg County. He shall further prosecute appeals from magistrates' courts in that county.</p> <p>HISTORY: 1962 Code Section 1-260; 1953 (48) 401.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-480. Assistant solicitor for eighth judicial circuit.
Summary of Current Law	Creates in the Eighth Judicial Circuit Solicitor's Office an assistant solicitor position, with a salary equal to one half of that received by the solicitor and the same amount for expenses as the Solicitor, with each county in the circuit to pay its pro rata share of such salary and expense allowance.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	7
Agency's Recommended Language	<p>SECTION 1-7-480. Assistant solicitor for eighth judicial circuit.</p> <p>There is hereby created the office of assistant solicitor for the eighth judicial circuit, the qualifications for which shall be the same as those of a solicitor. The assistant solicitor shall be appointed by and serve at the pleasure of the circuit solicitor and shall perform such duties as may be assigned to him by the solicitor.</p> <p>The assistant solicitor shall receive an annual salary equal to one half of that received by the solicitor. He shall also receive the same amount for expenses as received by the solicitor. Each county in the circuit shall pay its pro rata share of such salary and expense allowance based upon population according to the latest official United States census. Such amounts shall be paid monthly in equal payments by the treasurer of each county in the circuit from the general fund of the county.</p> <p>HISTORY: 1962 Code Section 1-260.01; 1970 (56) 2276.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-490. Assistant solicitors for ninth judicial circuit.
Summary of Current Law	Provides that the Solicitor of the Ninth Judicial Circuit may appoint seven competent attorneys residing in the circuit as assistant solicitors, six in Charleston County (two upon the approval of the local legislative delegation) and one in Berkeley County (upon the approval of the local legislative delegation); and provides for salaries to be paid by the respective counties.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	8
Agency's Recommended Language	<p>SECTION 1-7-490. Assistant solicitors for ninth judicial circuit. The Circuit Solicitor for the Ninth Judicial Circuit may appoint seven competent attorneys, each of whom are residents of the circuit, as his assistants who shall perform any and all of the duties and functions now or hereafter imposed by law upon the circuit solicitor as the solicitor of the circuit shall authorize, designate and direct. The assistant circuit solicitors shall be designated in their appointment as first, second, third, fourth, fifth and sixth assistants for Charleston County and assistant circuit solicitor for Berkeley County. The first and second assistants shall enter upon their duties upon the approval of the majority of the Charleston County Legislative Delegation. The first assistant shall receive such compensation for his services as may be provided by law and the second assistant such compensation as may be provided by law to be paid by the County of Charleston. The third assistant shall receive such compensation for his services as may be provided by law, such compensation to be paid from federal funds or from funds appropriated by the Governing Body of Charleston County. The fourth assistant shall devote full time to his duties as assistant solicitor and shall receive such compensation for his services as may be provided by law to be paid from funds appropriated by the Governing Body of Charleston County. The fifth assistant shall receive such compensation for his services as may be provided by law to be paid from funds appropriated by the Governing Body of Charleston County. The sixth assistant shall devote full time to his duties as assistant solicitor and shall receive such compensation for his services as may be provided by law to be paid from funds appropriated by the Governing Body of Charleston County or from federal funds made available to the Governing Body of Charleston County for such purpose. The assistant circuit solicitor for Berkeley County shall enter upon his duties upon the approval of the majority of the Berkeley County Legislative Delegation and shall receive such compensation for his services as may be provided by law to be paid by the County of Berkeley.</p> <p>HISTORY: 1962 Code Section 1-260.1; 1952 (47) 2076; 1966 (54) 2154; 1969 (56) 2; 1975 (59) 74; 1975 (59) 574; 1976 Act No. 480, Section 1; 1976 Act No. 660, Section 1.</p>

Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-500. Assistant solicitor for tenth judicial circuit.
Summary of Current Law	Provides that the Solicitor of the Tenth Judicial Circuit may appoint an attorney residing in the circuit as an assistant solicitor, upon the approval of the legislative delegation from Anderson and Oconee Counties, whose term of office shall not exceed that of the Solicitor; and provides for the salary and other compensation and how it is to be distributed between the two counties.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	9
Agency's Recommended Language	<p>SECTION 1-7-500. Assistant solicitor for tenth judicial circuit. The solicitor of the tenth judicial circuit may employ a lawyer residing in his circuit to assist in performing the duties of his office. The term of office shall be at the pleasure of the solicitor; however, such term shall not extend beyond the term of office of the employing solicitor; provided, that the person named by the solicitor shall be confirmed by a majority of the members of the Anderson and Oconee delegations. The salary for the person provided by this section shall be such sum annually as may be provided by the General Assembly, to be paid as follows: Seventy per cent shall be paid by Anderson County and thirty per cent shall be paid by Oconee County and such sum shall be paid by the two counties in the same manner that county officers are paid by such counties. The assistant solicitor may receive from time to time such further compensation as the General Assembly may provide.</p> <p>HISTORY: 1962 Code Section 1-260.2; 1957 (50) 325.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-510. Assistant solicitor for thirteenth judicial circuit.
Summary of Current Law	Provides that the Solicitor of the Thirteenth Judicial Circuit may appoint a Greenville County attorney as a full-time assistant solicitor in Greenville County, whose term of office shall be coterminous with the Solicitor's, and that the salary and other expenses shall be covered by Greenville County.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	10
Agency's Recommended Language	<p>SECTION 1-7-510. Assistant solicitor for thirteenth judicial circuit. The solicitor of the thirteenth judicial circuit may appoint an attorney who is a resident of Greenville County as his full time assistant who shall perform any of the duties and functions imposed by law upon the circuit solicitor relating to Greenville County. The term of the assistant solicitor shall be coterminous with that of the solicitor and he shall receive such compensation as may be provided by the county council for Greenville County. The compensation of the assistant solicitor and any other expenses incurred pursuant to the provisions of this section shall be borne by Greenville County.</p> <p>HISTORY: 1962 Code Section 1-260.6; 1973 (58) 219.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-520. Assistant solicitor for fourteenth judicial circuit.
Summary of Current Law	Creates in the Fourteenth Judicial Circuit Solicitor's Office an assistant solicitor position, with a salary equal to one half of that received by the solicitor and the same amount for expenses as the Solicitor, with each county in the circuit to pay its pro rata share of such salary and expense allowance.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	11
Agency's Recommended Language	<p>SECTION 1-7-520. Assistant solicitor for fourteenth judicial circuit. There is hereby created the office of assistant solicitor for the fourteenth circuit, the qualifications for which shall be the same as those of a solicitor. The assistant solicitor shall be appointed by and serve at the pleasure of the circuit solicitor and shall perform such duties as may be assigned to him by the solicitor. The assistant solicitor shall receive an annual salary equal to one half of that received by the solicitor. He shall also receive the same amount for expenses as received by the solicitor. Each county in the circuit shall pay its pro rata share of such salary and expense allowance based upon population according to the latest official United States census. Such amounts shall be paid monthly in equal payments by the treasurer of each county in the circuit from the general fund of the county.</p> <p>HISTORY: 1962 Code Section 1-260.7; 1969 (56) 716.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-530. Assistant solicitor for sixteenth judicial circuit.
Summary of Current Law	Provides that the Solicitor of the Thirteenth Judicial Circuit may appoint an attorney residing in the circuit as a full-time assistant solicitor for a term of one year, and the salary and other expenses shall be covered by Union and York Counties.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	12
Agency's Recommended Language	<p>SECTION 1-7-530. Assistant solicitor for sixteenth judicial circuit. The solicitor of the sixteenth judicial circuit may appoint an attorney who is a resident of the circuit as an assistant solicitor who shall perform such duties and functions as may be assigned to him by the solicitor. The term of office shall be for a period of one year and the assistant solicitor shall receive for his services such compensation as is provided for in the appropriations acts of Union and York Counties.</p> <p>HISTORY: 1962 Code Section 1-260.9; 1971 (57) 26.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-533. Special investigator for third judicial circuit.
Summary of Current Law	Provides that the Solicitor of the Third Judicial Circuit may appoint a special investigator, who may carry a handgun while engaged in official duties, who is required to post a bond and who will be commissioned by the Governor; he shall have the powers and duties as constables.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	13
Agency's Recommended Language	<p>SECTION 1-7-533. Special investigator for third judicial circuit. The solicitor of the third judicial circuit may appoint a special investigator to serve at the pleasure of the solicitor and have such responsibility as the solicitor shall direct. The solicitor shall determine the salary to be paid the investigator which shall be paid from such funds as may be provided by law. The investigator, while engaged in official duties of his office, is authorized to carry a pistol or other handgun. He shall give a bond in the sum of two thousand dollars which shall be in the same form and under the same conditions as required for police officers. He shall be commissioned by the Governor and shall have all the powers and duties provided for constables in Section 23-1-60, Code of Laws of South Carolina, 1976, and shall be a "police officer" as defined in Section 9-11-10.</p> <p>HISTORY: 1976 Act No. 491, Section 1.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-540. Special investigator and assistant special investigator for ninth judicial circuit.
Summary of Current Law	Provides that the Solicitor of the Ninth Judicial Circuit may appoint two competent circuit residents to serve as special investigator and assistant special investigator, whose term shall not exceed that of the Solicitor; they may carry a handgun while engaged in official duties, must post a bond and be commissioned by the Governor, and shall have the powers and duties as constables; their salaries shall be covered by Charleston County and the special investigator shall receive a spending allowance of not less than \$1,500.
Agency's Rationale for Revision	<p>Eliminate; unnecessary in light of the General Appropriations Act and S.C. Code Ann. Sections 1-7-405 and 1-7-406.</p> <p>SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries. Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs. HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.</p> <p>SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit. Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds. HISTORY: 1979 Act No. 191, Section 1.</p>
Agency's Law Recommendation Number from PER	14
Agency's Recommended Language	<p>SECTION 1-7-540. Special investigator and assistant special investigator for ninth judicial circuit. The circuit solicitor for the ninth judicial circuit may appoint two competent residents of the circuit who shall be designated as special investigator and assistant special investigator for his office. The special investigator and assistant special investigator shall work under the direction of the solicitor as full-time employees. Their appointment shall be for a period not exceeding the term for which the solicitor was elected. The special investigator and assistant special investigator shall each give a bond in the sum of two thousand dollars, which shall be in the same form and provide the same conditions as required by law of peace officers. The special investigator and assistant special investigator shall be commissioned by the Governor and shall have all the powers, rights and duties, within the ninth judicial circuit, as any State constable, as provided in Section 23-1-60. The special investigator and assistant special investigator shall be "police officers," as defined in Section 9-11-10. The special investigator shall receive such salary as may be provided by law, and an expense allowance of not less than fifteen hundred dollars, such sums to be paid by the Governing Body of Charleston County. The assistant special investigator shall receive such compensation for his services as may be provided by law, such compensation to be paid from federal funds or from funds appropriated by the Governing Body of Charleston County.</p> <p>HISTORY: 1962 Code Section 1-260.3; 1966 (54) 2155; 1969 (56) 656; 1975 (59) 74.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).

Other agencies potentially impacted	None
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Law Change Recommendation	
Law	S.C. Code Ann. Section 1-7-940. Duties.
Summary of Current Law	Outlines the duties of SCCPC: (1) coordinate all administrative functions of the Solicitors' offices and any affiliate services; (2) submit the budgets of the Solicitors and their affiliate services to the General Assembly; (3) encourage and develop legal education programs and training programs for solicitors and their affiliate services, organize and provide seminars to help increase the effectiveness and efficiency of the prosecution of criminal cases in this State, act as a clearinghouse and distribution source for publications involving solicitors and their affiliate services, and provide legal updates on matters of law affecting prosecution of criminal cases; and (4) provide blank indictments for the Solicitors.
Agency's Rationale for Revision	Modify to delete (A)(4); unnecessary because the Offices of Solicitor do not use preprinted forms, but instead generate indictments on their computers.
Agency's Law Recommendation Number from PER	15
Agency's Recommended Language	<p>SECTION 1-7-940. Duties.</p> <p>(A) The commission has the following duties:</p> <p>(1) coordinate all administrative functions of the offices of the solicitors and any affiliate services operating in conjunction with the solicitors' offices;</p> <p>(2) submit the budgets of the solicitors and their affiliate services to the General Assembly; <u>and</u></p> <p>(3) encourage and develop legal education programs and training programs for solicitors and their affiliate services, organize and provide seminars to help increase the effectiveness and efficiency of the prosecution of criminal cases in this State, and act as a clearinghouse and distribution source for publications involving solicitors and their affiliate services and provide legal updates on matters of law affecting the prosecution of cases in this State;</p> <p>(4) provide blank indictments for the circuit solicitors.</p> <p>(B) Nothing in this section may be construed to displace or otherwise affect the functions and responsibilities of the State Victim/Witness Assistance Program as established in Section 16-3-1410.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

Law Change Recommendation	
Law	S.C. Code Ann. Section 22-3-546. Establishment of program for prosecution of first offense misdemeanor criminal domestic violence offenses.
Summary of Current Law	Provides that Solicitors with five or more counties may establish program for first offense CDV charges so that they may be tried in General Sessions Court instead of the summary courts, and requires that the results of any such programs be submitted to SCCPC.
Agency's Rationale for Revision	<p>Eliminate; statute only applies to first offense CDV (which carried 30 days and was triable in the Summary Court) and to only one judicial circuit; unnecessary in light of replacement of crime of CDV with tiered crimes of DV, and S.C. Code Section 16-22-25(D)(1), which increased the penalty such that the lowest degree of DV (3rd degree) must be prosecuted in General Sessions Court unless the Solicitor decides to prosecute them in the Summary Court.</p> <p>SECTION 16-25-20. Acts prohibited; penalties. (D) A person commits the offense of domestic violence in the third degree if the person violates subsection (A). (1) A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars nor more than two thousand five hundred dollars or imprisoned not more than ninety days, or both. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, and 22-3-550, an offense pursuant to the provisions of this subsection may be tried in summary court.</p>
Agency's Law Recommendation Number from PER	16
Agency's Recommended Language	<p>Title 22 - Magistrates and Constables</p> <p>Article 5 - Criminal Jurisdiction</p> <p>SECTION 22-3-546. Establishment of program for prosecution of first offense misdemeanor criminal domestic violence offenses.</p> <p>A circuit solicitor, in a circuit with five or more counties, may establish a program under his discretion and control, to prosecute first offense misdemeanor criminal domestic violence offenses, as defined in Section 16-25-20, in general sessions court. Whether to establish a program, and which cases may be prosecuted in general sessions court, are within the sole discretion of the solicitor. A solicitor shall report the results of the program to the Prosecution Coordination Commission.</p> <p>HISTORY: 2006 Act No. 366, Section 2, eff June 9, 2006.</p>
Presented and Approved by Board/Commission	Not approved (Commission met to discuss draft report, but will not meet again until after deadline for submission of report).
Other agencies potentially impacted	None

VII. Additional Documents to Submit

A. Reports

- 20) Please provide an updated version of the Reports Template from the Accountability Report. In the updated version, please do the following:
- a) Add any reports necessary so the chart is current as of the date of submission of the Program Evaluation Report and include:
 - i) Audits performed on the agency by external entities, other than Legislative Audit Council, State Inspector General, or State Auditor's Office, during the last five years;
 - ii) Audits performed by internal auditors at the agency during the last five years;
 - iii) Other reports, reviews or publications of the agency, during the last five years, including fact sheets, reports required by provisos, reports required by the federal government, etc.; and
 - b) Include the website link for each document in the "Method to Access the Report" column, if website link is available. If website link is not available, enter the method by which someone from the public could access the report. If the method is to call or send a request to the agency, please specify to whom the request must be sent and any details the individual must include in the request.
 - c) Submit an electronic copy of any internal audits that are not posted online.

Completed Reports Template is attached.

B. Organizational Charts

- 21) Please submit electronic copies of the agency's organizational chart for the current year and as many years back as the agency has readily available.

Copies of all readily available organizational charts for the agency are attached.

C. Glossary of Terms

- 22) Please submit a Word document that includes a glossary of terms, including, but not limited to, acronyms used by the agency.

A Glossary of Terms is attached.

VIII. Feedback (Optional)

After completing the Program Evaluation, please provide feedback to the Committee by answering the following questions:

- 23) What other questions may help the Committee and public understand how the agency operates, budgets, and performs?
- 24) What are the best ways for the Committee to compare the specific results the agency obtained with the resources the agency invested?
- 25) What changes to the report questions, format, etc., would agency representatives recommend?
- 26) What benefits do agency representatives see in the public having access to the information in the report?
- 27) What are two-three things agency representatives could do differently next time (or it could advise other agencies to do) to complete the report in less time and at a lower cost to the agency?
- 28) Please provide any other comments or suggestions the agency would like to provide.

Laws
(Study Step 1: Agency Legal Directives, Plan and Resources)

Agency Responding	Commission on Prosecution Coordination
Date of Submission	April 6, 2018

Item #	Law Number	Jurisdiction	Type of Law	Statutory Requirement and/or Authority Granted	Customer/Client		Deliverable
					Does this law specify who (customer) the agency must or may serve? (Y/N)	If yes, who is/are the customer(s)?	Does the law specify a deliverable (service or product) the agency must or may provide? (Y/N)
<p>PROSECUTION COORDINATION LAWS</p> <p><i>Below are laws that apply to the S.C. Commission on Prosecution Coordination (SCCPC). There are two other sections as well, one which includes laws related to funds that pass through from SCCPC to Solicitor's Offices and one that includes laws which expressly impose a duty or obligation on the Solicitors (but not on SCCPC).</i></p>							
1	1-5-40	State	Statute	Provides that the Secretary of State is to monitor positions on SCCPC's Commission.	No	N/A	No
2	1-7-910	State	Statute	Creates SCCPC.	No	N/A	No
3	1-7-920	State	Statute	Sets out the Commission membership for SCCPC.	No	N/A	No
4	1-7-930	State	Statute	Sets out process of filling vacancies on SCCPC Commission.	No	N/A	No
5	1-7-940	State	Statute	Outlines the duties of SCCPC: (1) coordinate all administrative functions of the Solicitors' offices and any affiliate services; (2) submit the budgets of the Solicitors and their affiliate services to the General Assembly; (3) encourage and develop legal education programs and training programs for solicitors and their affiliate services, organize and provide seminars to help increase the effectiveness and efficiency of the prosecution of criminal cases in this State, act as a clearinghouse and distribution source for publications involving solicitors and their affiliate services, and provide legal updates on matters of law affecting prosecution of criminal cases; and (4) provide blank indictments for the Solicitors.	Yes	Solicitors' Offices; other prosecutors and prosecution staff (state and local); law enforcement	Yes - Other service or product
6	1-7-950	State	Statute	Provides process for electing Chair and any other officers and determining quorum for SCCPC Commission	No	N/A	No
7	1-7-960	State	Statute	Provides for the hiring of an Executive Director and other staff as needed.	No	N/A	No
8	1-7-970	State	Statute	Provides that members of SCCPC Commission shall serve without pay, but are allowed expenses and Executive Director to approve any vouchers for such to be paid out of appropriations for SCCPC operating expenses.	No	N/A	No
9	1-7-980	State	Statute	Provides that SCCPC operating funds must be derived from the per capita funding for State services for Solicitors based upon a formula to be determined by the Commission.	No	N/A	No
10	1-7-990	State	Statute	Provides that SCCPC may promulgate regulations necessary to perform its required duties.	No	N/A	No
11	8-11-260	State	Statute	Provides that SCCPC employees are exempt from Article 3, Chapter 11, Title 8 (personnel administration and grievance procedure).	No	N/A	No
12	8-13-770	State	Statute	Provides that members of the General Assembly are allowed to serve on SCCPC Commission.	No	N/A	No
13	8-17-370	State	Statute	Provides that SCCPC employees are exempt from Article 5, Chapter 17, Title 8 (State employee grievance procedure).	No	N/A	No

Laws
(Study Step 1: Agency Legal Directives, Plan and Resources)

Agency Responding	Commission on Prosecution Coordination
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					Does this law specify who (customer) the agency must or may serve? (Y/N)	If yes, who is/are the customer(s)?	Does the law specify a deliverable (service or product) the agency must or may provide? (Y/N)
14	14-1-204 (B)(1)	State	Statute	Provides that a portion (4.37%) of \$50 filing fee paid for filing complaints or petitions in common pleas and family court to be distributed to SCCPC to be retained, expended, and carried forward (other distributions are 67.96% to Judicial Department; 11.30% to SCPPP; and 16.37% to SCCID - 14.56% to Defense of Indigents per capita and 1.81% to Division of Appellate Defense.	No	N/A	No
15	16-1-130	State	Statute	Exempts diversion programs operated by SCCPC and Solicitors from statutory eligibility guidelines.	No	N/A	No
16	16-3-1430	State	Statute	Provides that SCCPC Executive Director or his designee is to serve on the Victim Services Coordinating Council.	Yes	Attorney General; Victim Services Coordinating Council	Yes - Serving on board, commission, or committee
17	16-3-1525	State	Statute	While imposing obligations on prosecuting agencies to notify victims of bond and juvenile detention hearings, exempts SCCPC and the Solicitors' Offices from requirement that a victim must be notified before a defendant released from diversion programs administered by SCCPC or the Solicitor's Office.	No	N/A	No
18	16-3-2050	State	Statute	Provides that a representative from SCCPC is to serve on the South Carolina Attorney General's interagency task force on the prevention of trafficking in persons.	Yes	Attorney General	Yes - Serving on board, commission, or committee
19	16-25-720	State	Statute	In addition to requiring the Solicitors to each create a Circuit Domestic Violence Fatality Review Committee, and addressing membership and process, requires SCCPC to develop protocols for use by those Committees and by coroners and others conducting autopsies of persons who either died from or were a victim of domestic violence prior to death.	Yes	Solicitors' Offices; Solicitors' Judicial Circuit Domestic Violence Fatality Review Committees; and coroners, and those performing autopsies	Yes - Other service or product
20	17-22-30	State	Statute	Provides authority for the Solicitors to establish pre-trial intervention program, and requires SCCPC to oversee administrative procedures for such programs.	Yes	Solicitors' Offices	Yes - Other service or product
21	17-22-40	State	Statute	Creates the office of pretrial intervention coordinator within SCCPC to assist in establishing and maintaining the Solicitors' pre-trial intervention program, and requires that such be funded by an appropriation to SCCPC in the general appropriation act.	Yes	Solicitors' Offices	Yes - Other service or product
22	17-22-130	State	Statute	Provides for creation and retention of intervention records by the Solicitors; provision of information to SLED, and sharing of information with SCCPC for its compilation of annual reports.	Yes	Solicitors' Offices	Yes - Other service or product
23	17-22-310	State	Statute	Provides authority for the Solicitors to establish traffic education programs, requires each program to include a community service and educational component, and requires SCCPC to oversee administrative procedures for such programs.	Yes	Solicitors' Offices	Yes - Other service or product
24	17-22-360	State	Statute	Requires that each Solicitor with a traffic education program submit an annual report to the Treasurer and SCCPC, with SCCPC charged with making the reports available for public inspection.	Yes	Solicitors; public	Yes - Providing report

Laws
(Study Step 1: Agency Legal Directives, Plan and Resources)

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					Does this law specify who (customer) the agency must or may serve? (Y/N)	If yes, who is/are the customer(s)?	Does the law specify a deliverable (service or product) the agency must or may provide? (Y/N)
25	17-22-370	State	Statute	Requires the Solicitors to provide identifying information on all participants in the traffic education programs to SCCPC for use in determining eligibility for a traffic education program.	Yes	Solicitors' Offices	Yes - Other service or product
26	17-22-510	State	Statute	Provides authority for the Solicitors to establish alcohol education program, requires each program to include a community service and educational component, and requires SCCPC to oversee administrative procedures for such programs and consult with DAODAS before approving such.	Yes	Solicitors' Offices	Yes - Other service or product
27	17-22-530	State	Statute	Provides for disposition of cases of successful and unsuccessful completion of an alcohol education program, and retention of records by SCCPC to ensure that a person does not benefit from the provisions of this article more than once.	Yes	Solicitors' Offices	Yes - Other service or product
28	17-22-560	State	Statute	Requires the Solicitors to provide identifying information on all participants in the alcohol education programs to SCCPC for use in determining eligibility for an alcohol education program.	Yes	Solicitors' Offices	Yes - Other service or product
29	17-22-1120	State	Statute	Requires SCCPC to collect data on all programs administered by a circuit solicitor, SCCPC, or a court, which divert offenders from prosecution to an alternative program or treatment, to provide an annual report to the Sentencing Reform Oversight Committee, and to make the annual report available for public inspection.	Yes	Solicitors; Sentencing Reform Oversight Committee; public	Yes - Providing report
30	43-35-310	State	Statute	Provides that SCCPC Executive Director or his designee is to serve on the Adult Protection Coordinating Council.	Yes	Adult Protection Coordinating Council	Yes - Serving on board, commission, or committee
31	Proviso 60.7, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, that the amount appropriated and authorized in this section for criminal domestic violence prosecution shall be apportioned among the circuits on a pro-rata basis; and requires SCCPC to collect and retain non-privileged information and data regarding criminal domestic violence prosecution and provide the General Assembly with an annual report. (This proviso is included twice in the Laws Chart because it imposes two deliverables - it is here for the deliverable of providing an annual report to the General Assembly.)	Yes	General Assembly	Yes - Providing report
32	Proviso 60.9, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, that the amount appropriated and authorized in this section for driving under the influence prosecution shall be apportioned among the circuits on a pro-rata basis; and requires SCCPC to collect and retain non-privileged information and data regarding driving under the influence prosecution and provide the General Assembly with an annual report. (This proviso is included twice in the Laws Chart because it imposes two deliverables - it is here for the deliverable of providing an annual report to the General Assembly.)	Yes	General Assembly	Yes - Providing report
33	Proviso 117.62, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides that hiring salaries and salary increases for the agency heads of SCCPC and SCCID shall be subject to all provisions related to agency heads covered by the Agency Head Salary Commission.	No	N/A	No

Laws
(Study Step 1: Agency Legal Directives, Plan and Resources)

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					Does this law specify who (customer) the agency must or may serve? (Y/N)	If yes, who is/are the customer(s)?	Does the law specify a deliverable (service or product) the agency must or may provide? (Y/N)
34	Proviso 117.63, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Creates the Prosecutors and Defenders Public Service Incentive Program, which allows up to \$5,000 reimbursement per year (not to exceed \$40,000 total) for law school student loan payments based upon years of service and student loan. *This program is not currently funded.	Yes	Attorneys employed by the Office of Attorney General, SCCPC, the Commission on Indigent Defense, a Circuit Solicitors Office or a county Public Defenders Office	Yes - Other service or product
35	Proviso 117.109, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Requires SCCPC and SCCID to provide detailed expenditure reports and associated revenue streams for each individual circuit, revenue streams shall include, but not be limited to, state funds, local funds, federal funds, and also nongovernmental sources of funds, by no later than September first, on the prior fiscal year, to the appropriate commission, and then provide the Chairman of the House Ways and Means Committee and Chairman of the Senate Finance Committee with a combined report by September fifteenth of the current fiscal year.	Yes	Chairman of the House Ways and Means Committee; Chairman of the Senate Finance Committee	Yes - Providing report
36	S.C. Constitution Article V, Section 24	State	Statute	Provides for, among other things, the office and election of the 16 Circuit Solicitors, their term of office, gives the General Assembly the authority to establish the requirements for the office of Solicitor, and designates the Attorney General as the chief prosecuting office of the state with the authority to supervise the prosecution of all criminal cases in courts of record.	No	N/A	No
PASS THROUGH FUNDS TO SOLICITOR'S OFFICES <i>The below statutory provisions and budget provisos relate to funds received by the Solicitors' Offices that pass through SCCPC.</i>							
37	Proviso 60.1, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, for the salary of the Solicitors (not less than a full-time circuit court judge).	Yes	N/A	Yes - Other service or product
38	Proviso 60.2, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, for a \$500 monthly expense allowance for each Circuit Solicitor.	Yes	N/A	Yes - Other service or product
39	Proviso 60.3, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, how the money appropriated for the Judicial Circuits (16) State Support is to be apportioned among the circuits.	Yes	N/A	Yes - Other service or product
40	Proviso 60.4, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Authorizes, in the SCCPC appropriations, for the carrying forward, of any unexpended balance in the Judicial Circuits (16) State Support funds, for the operation of the solicitors office relating to operational expenses	Yes	N/A	Yes - Other service or product

Laws
(Study Step 1: Agency Legal Directives, Plan and Resources)

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					Does this law specify who (customer) the agency must or may serve? (Y/N)	If yes, who is/are the customer(s)?	Does the law specify a deliverable (service or product) the agency must or may provide? (Y/N)
41	Proviso 60.5, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, that the amounts appropriated by the General Assembly for solicitors offices shall be in addition to any amounts presently being provided by the county for these services and may not be used to supplant funding already allocated for such services without any additional charges, and requires the Solicitors to notify the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee if a county reduces the amount of support provided to the solicitors office below the level provided in the prior fiscal year.	No	N/A	No
42	Proviso 60.6, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, that, when funds are available, the amount appropriated and authorized in Part IA, Section 60 for Solicitors Victim/Witness Assistance Programs shall be apportioned among the circuits and sets out the manner of apportionment.	Yes	N/A	Yes - Other service or product
43	Proviso 60.7, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, that the amount appropriated and authorized in this section for criminal domestic violence prosecution shall be apportioned among the circuits on a pro-rata basis; and requires SCCPC to collect and retain non-privileged information and data regarding criminal domestic violence prosecution and provide the General Assembly with an annual report. (This proviso is included twice in the Laws Chart because it imposes two deliverables - it is here for the deliverable of disbursing funds to the Solicitors' Offices.)	Yes	General Assembly	Yes - Other service or product
44	Proviso 60.8, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, how funds appropriated for victim/witness Programs must be divided among the judicial circuits; requires that such funds must be used only for the purpose of establishing a Victim/Witness Program; sets out minimum services to be provided by a Victim/Witness Program; provides that the amounts appropriated by the General Assembly for solicitors offices shall be in addition to any amounts presently being provided by the county for these services and may not be used to supplant funding already allocated for such services; provides that any reduction by any county in funding for victim assistance programs in solicitors offices shall result in a corresponding decrease of state funds provided to the solicitors office in that county for victim assistance services; and requires that each Solicitor submit an annual financial and programmatic report describing the use of these funds to the Governor, the Attorney General, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee.	Yes	N/A	Yes - Other service or product
45	Proviso 60.9, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, that the amount appropriated and authorized in this section for driving under the influence prosecution shall be apportioned among the circuits on a pro-rata basis; and requires SCCPC to collect and retain non-privileged information and data regarding driving under the influence prosecution and provide the General Assembly with an annual report. (This proviso is included twice in the Laws Chart because it imposes two deliverables - it is here for the deliverable of disbursing funds to the Solicitors' Offices.)	Yes	General Assembly	Yes - Providing report

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46	Proviso 60.10, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, that the amount appropriated and authorized in this section for violent crime prosecution shall be apportioned among the circuits on a pro-rata basis	Yes	N/A	Yes - Other service or product
47	Proviso 60.11, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, for the distribution of the amount appropriated in this Act and authorized for Solicitors' caseload equalization.	Yes	N/A	Yes - Other service or product
48	Proviso 60.12, 2017-18 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCCPC appropriations, for the distribution of the summary court domestic violence prosecution funding.	Yes	N/A	Yes - Other service or product
49	Proviso 67.6, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides, in the SCDJJ appropriations, for the funding of juvenile arbitration programs in the circuits and a community advocacy program in the First Judicial Circuit, that SCDJJ shall contract with the Solicitors' Offices to provide.	No	N/A	No
50	Proviso 93.4, 2017-2018 S.C. Appropriation Act, Part 1B	State	Proviso	Provides that, if funds in the South Carolina Victims' Compensation Fund exceed the amount required to operate the State Office of Victims Assistance and pay claims of crime victims, the first \$650,000 of such excess must be used for Victim/Witness programs by distribution to Judicial Circuits based on a formula and criteria developed by the policy committee.	No	N/A	No
51	8-21-320	State	Statute	Provides that a portion of fees assessed on motions filed in common pleas and family courts (the first \$450,000 of fees collected) are to be used to fund drug court in the Third, Fourth, and Eleventh Judicial Circuits (funds are to pass through SCCPC)	Yes	Solicitors' Offices in the Third, Fourth, and Eleventh Judicial Circuits	Yes - Other service or product
52	44-53-450(C)	State	Statute	Provides that conditional discharge fee (\$350 in General Sessions Court and \$150 in summary court) are to be distributed to solicitors per capita to be used only for drug courts (pass through SCCPC)	Yes	Solicitors' Offices	Yes - Other service or product
53	14-1-212	State	Statute	Provides that a portion (18.50%) of \$25 surcharge imposed on all fines, forfeitures, escheatments, or other monetary penalties imposed on all misdemeanor traffic offenses or non-traffic violations are distributed to Solicitors (pass through SCCPC)	Yes	Solicitors' Offices	Yes - Other service or product
54	14-1-213	State	Statute	\$150 surcharge on all drug convictions distributed to solicitors to be used only for drug courts (pass through SCCPC)	Yes	Solicitors' Offices	Yes - Other service or product
55	Part 1A, Section 60, 2017-2018 S.C. Appropriation Act	State	Statute	State funds provided for Solicitors' Offices	Yes	Solicitors' Offices	Yes - Other service or product
56	17-15-260	State	Statute	Provides that 25% of funds collected under Chapter 15, title 17 (bond forfeitures), are to be remitted to the Solicitor's Office in the county in which the forfeiture was ordered.	No	N/A	No
57	44-53-530(e)	State	Statute	Provides that 20% of the proceeds of forfeited property (from drug offenses - 44-53-520 and 530; retail theft - 16-13-135; animal fighting - 16-27-55; and counterfeit goods - 39-15-1195) are to be distributed to the prosecuting agency (does NOT pass through SCCPC)	No	N/A	No

The contents of this chart are considered sworn testimony from the Agency Director.

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58	17-22-350(B) & (C)	State	Statute	Provides that Traffic Education Programs \$140 application fee for Summary Court level offenses - after 9.17% is paid to county government the balance is paid to treasurer and 6.74% distributed to solicitors per capita	Yes	Solicitors' Offices	Yes - Other service or product
<p><u>SOLICITOR DUTY OR OBLIGATION</u></p> <p><i>Below are statutes that expressly impose a duty or obligation (mandatory) on Solicitors; because they do not impose duties on SCCPC the last columns regarding deliverables and customers reflect that.</i></p>							
59	1-7-50	State	Statute	Provides that in the event that any officer or employee of the State, or of any political subdivision thereof, be prosecuted in any action, civil or criminal, or special proceeding in the courts of this State, or of the United States, by reason of any act done or omitted in good faith in the course of his employment, the Attorney General, when requested in writing by any such officer or employee, to appear and defend the action or proceeding in his behalf through a member of his staff or by any Solicitor or assistant solicitor he directs to do so.	No	N/A	No
60	1-7-55	State	Statute	Provides that the Attorney General or his designee who defends a civil action or proceeding on behalf of any officer or employee of the State, or of any political subdivision of the State, may, in his discretion, upon the request of the officer or employee, enter and prosecute a counter-claim, cross-action, or any other appropriate action in the suit on behalf of the officer or employee.	No	N/A	No
61	1-7-60	State	Statute	Provides that, before a defense under 1-7-50 is undertaken, an investigation must be made by the Attorney General or his designee to determine whether the officer or employee was acting in good faith, without malice, and in the course of his employment.	No	N/A	No
62	1-7-80	State	Statute	Provides that the Attorney General shall, out of the annual appropriation for the Attorney General for the expenses of litigation, pay for dockets for the several circuit solicitors and those other expenses as he may deem advisable.	No	N/A	No
63	1-7-100	State	Statute	Provides that the Attorney General shall consult with and advise the solicitors in matters relating to the duties of their offices and, when he determines the interest of the State requires it, he shall: (1) assist the solicitors by attending the grand jury in the examination of any case in which the party accused is charged with a capital offense; and (2) be present at the trial of any case in which the State is a party or interested and, when so present, shall have the direction and management of such prosecution or suit.	No	N/A	No
64	1-7-310	State	Statute	Provides for the Office of Solicitor, the qualifications for such, the term of office, and when such term begins and ends.	No	N/A	No

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65	1-7-320	State	Statute	Sets out the duties of the office of Solicitor: Solicitors shall perform the duty of the Attorney General and give their counsel and advice to the Governor and other State officers, in matters of public concern, whenever they shall be, by them, required to do so; and they shall assist the Attorney General, or each other, in all suits of prosecution on behalf of this State when directed so to do by the Governor or called upon by the Attorney General.	No	N/A	No
66	1-7-325	State	Statute	Provides that elected Solicitors shall be full-time state employees, have a salary provided by the General Assembly, the same subsistence and mileage as circuit court judges, and one full-time secretary whose salary shall be provided by the General Assembly.	No	N/A	No
67	1-7-330	State	Statute	Places duties on the Solicitors in regard to the dockets for general sessions court.	No	N/A	No
68	1-7-340	State	Statute	Requires Solicitors to attend inquests and preliminary hearings in capital cases upon request of coroner or sheriff.	No	N/A	No
69	1-7-350	State	Statute	Requires Solicitors, as assigned by Attorney General, to represent in both civil and criminal matters, all institutions, departments, and agencies of the State within their respective circuits, and to represent the state in in extradition proceedings in other states and in criminal matters outside their circuits in case of the incapacity of the local solicitor or otherwise.	No	N/A	No
70	1-7-360	State	Statute	Provides for salary and expenses of Solicitors, and prohibits additional compensation other than expenses as allowed; also requires that all costs from defendants be remitted to the county treasurer for the use of the State.	No	N/A	No
71	1-7-370	State	Statute	Allows Solicitors to defend accused persons when their duty does not require them to prosecute them.	No	N/A	No
72	1-7-380	State	Statute	Prohibits Solicitors from engaging in litigation against the State or any of its departments.	No	N/A	No
73	1-7-390	State	Statute	Provides for the filling of any vacancy in the office of Solicitor.	No	N/A	No
74	1-7-396	State	Statute	Provides that full-time investigators shall have police powers of a deputy sheriff and must post bond and take the oath required of constables.	No	N/A	No
75	1-7-400	State	Statute	Makes it a misdemeanor crime (to be prosecuted by the Attorney General) for a Solicitor, in the public discharge of his duties, to be drunk, intoxicated, or in any extent disabled by the use of intoxicating liquors, and requires that a Solicitor who engages in such behavior to be dismissed from office.	No	N/A	No
76	1-7-405	State	Statute	Provides that the Solicitors may appoint as many assistant solicitors, investigators and secretaries as deemed necessary, that their salaries are to be provided by the counties, and that they shall serve at the pleasure of the Solicitors.	No	N/A	No
77	1-7-406	State	Statute	Provides that each Judicial Circuit shall have one assistant solicitor and one investigator who are full-time employees who shall serve at the pleasure of the Solicitor and be paid by funds provided by the General Assembly; allows for the state funds provided to be utilized with local and federal funds.	No	N/A	No

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78	1-7-407	State	Statute	Requires each Solicitor to enter into an agreement with a county within his/her circuit to administer the funds provided by the state and the funds shall be directed to that administering county, which shall account for the receipt and disbursement of the funds separately from any other funds administered by the county. Also provides that funds may be used to cover salary, fringe, and travel of additional staff, and that staff employed under 1-7-406 and 407 shall be employees of the administering county.	No	N/A	No
79	1-7-410	State	Statute	Requires Solicitor of the Fourteenth Judicial Circuit to advise with and aid the grand jury of Colleton County in its duties and the coroner or magistrate of Colleton County in inquisitions.	No	N/A	No
80	1-7-420	State	Statute	Provides that the Solicitor of the First Judicial Circuit may appoint a Dorchester County attorney as an assistant solicitor in Dorchester County, upon the approval of the local legislative delegation, whose term of office shall be coterminous with the Solicitor, and that the salary and other expenses shall be covered by Dorchester County.	No	N/A	No
81	1-7-430	State	Statute	Provides the Solicitor of the First Judicial Circuit may appoint an attorney residing in the circuit to serve as an assistant solicitor at the pleasure of the solicitor, with the salary to be paid from funds provided by Public Law 90-351, The Omnibus Crime Control and Safe Streets Act of 1968, as amended.	No	N/A	No
82	1-7-440	State	Statute	Provides the Solicitor of the Third Judicial Circuit may appoint an attorney residing in the circuit to serve as an assistant solicitor at the pleasure of the solicitor, with the salary to be paid from funds provided by Public Law 90-351, The Omnibus Crime Control and Safe Streets Act of 1968, as amended.	No	N/A	No
83	1-7-450	State	Statute	Provides that the Solicitor of the Fourth Judicial Circuit may appoint an attorney residing in the circuit to serve as an assistant solicitor, whose term of office shall be coterminous with the Solicitor, and who shall receive a salary as provided by the General Assembly, one fourth of which shall be paid by each county of the circuit.	No	N/A	No
84	1-7-460	State	Statute	Provides that the Solicitor of the Fifth Judicial Circuit may appoint competent attorneys residing in the circuit to serve as assistant solicitors, whose term of office shall be coterminous with the Solicitor, and who shall receive a salary as provided by the respective county councils.	No	N/A	No
85	1-7-470	State	Statute	Provides that the Solicitor of the Seventh Judicial Circuit may appoint a competent attorney residing in Spartanburg County to serve as assistant solicitor in Spartanburg County (and thereafter commissioned by the Governor), whose term of office shall be coterminous with the Solicitor, and who shall receive a salary from Spartanburg County as provided by the General Assembly and \$800 per year for travel; the assistant solicitor shall appear and represent the State in magistrates' courts when requested by the sheriff's department or highway patrol located in Spartanburg County, and he shall prosecute appeals from magistrates' courts in that county.	No	N/A	No

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86	1-7-480	State	Statute	Creates in the Eighth Judicial Circuit Solicitor's Office an assistant solicitor position, with a salary equal to one half of that received by the solicitor and the same amount for expenses as the Solicitor, with each county in the circuit to pay its pro rata share of such salary and expense allowance.	No	N/A	No
87	1-7-490	State	Statute	Provides that the Solicitor of the Ninth Judicial Circuit may appoint seven competent attorneys residing in the circuit as assistant solicitors, six in Charleston County (two upon the approval of the local legislative delegation) and one in Berkeley County (upon the approval of the local legislative delegation); and provides for salaries to be paid by the respective counties.	No	N/A	No
88	1-7-500	State	Statute	Provides that the Solicitor of the Tenth Judicial Circuit may appoint an attorney residing in the circuit as an assistant solicitor, upon the approval of the legislative delegation from Anderson and Oconee Counties, whose term of office shall not exceed that of the Solicitor; and provides for the salary and other compensation and how it is to be distributed between the two counties.	No	N/A	No
89	1-7-510	State	Statute	Provides that the Solicitor of the Thirteenth Judicial Circuit may appoint a Greenville County attorney as a full-time assistant solicitor in Greenville County, whose term of office shall be coterminous with the Solicitor's, and that the salary and other expenses shall be covered by Greenville County.	No	N/A	No
90	1-7-520	State	Statute	Creates in the Fourteenth Judicial Circuit Solicitor's Office an assistant solicitor position, with a salary equal to one half of that received by the solicitor and the same amount for expenses as the Solicitor, with each county in the circuit to pay its pro rata share of such salary and expense allowance.	No	N/A	No
91	1-7-530	State	Statute	Provides that the Solicitor of the Thirteenth Judicial Circuit may appoint an attorney residing in the circuit as a full-time assistant solicitor for a term of one year, and the salary and other expenses shall be covered by Union and York Counties.	No	N/A	No
92	1-7-533	State	Statute	Provides that the Solicitor of the Third Judicial Circuit may appoint a special investigator, who may carry a handgun while engaged in official duties, who is required to post a bond and who will be commissioned by the Governor; he shall have the powers and duties of a constable.	No	N/A	No
93	1-7-540	State	Statute	Provides that the Solicitor of the Ninth Judicial Circuit may appoint two competent circuit residents to serve as special investigator and assistant special investigator, whose term shall not exceed that of the Solicitor; they may carry a handgun while engaged in official duties, must post a bond and be commissioned by the Governor, and shall have the powers and duties as constables; their salaries shall be covered by Charleston County and the special investigator shall receive a spending allowance of not less than \$1,500.	No	N/A	No
94	1-7-710	State	Statute	Provides that, in cases in which the right of the State may be involved, persons claiming under the State shall call on the Attorney General, or on the solicitors in their respective circuits, to defend the right of the State.	No	N/A	No
95	1-7-720	State	Statute	Requires that the Attorney General and solicitors shall sue for the penalties incurred by any public officer or board of public officers.	No	N/A	No

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96	1-7-730	State	Statute	Requires the Attorney General and solicitors to conduct annual examinations to determine if the county clerks of the court, sheriff, and register of deeds have discharged their duties; and make a report to the circuit court in each county at the fall term in each year and also to the General Assembly at its annual session.	No	N/A	No
97	1-7-750	State	Statute	Authorizes a Solicitor to employ outside counsel, in his discretion, without approval of the Attorney General, for civil forfeiture proceedings arising from criminal activity or from estreatment of bail bonds; in other matters, the circuit solicitor must obtain written approval of the Attorney General prior to retaining counsel to or filing a civil cause of action.	No	N/A	No
98	1-7-1000	State	Statute	Provides that Solicitors are to be paid a salary provided by the General Assembly in the annual appropriations act.	No	N/A	No
99	7-17-10	State	Statute	Provides that a Solicitor is to serve on the county board of canvassers	No	N/A	
100	7-25-200	State	Statute	Requires the Attorney General or a Solicitor to immediately prosecute a person violating Section 7-25-200 (unlawful inducement to file for or withdraw from candidacy for election).	No	N/A	No
101	12-21-2930	State	Statute	Requires Solicitors to prosecute the forfeiture of goods, wares, merchandise, or other property seized under Chapter 21, Title 12 (stamp and business license tax).	No	N/A	No
102	14-29-30	State	Statute	Authorizes Solicitors to establish and administer veterans treatment court programs, and sets out a deadline if a Solicitor accepts funding from the General Assembly for implementation of the program.	No	N/A	No
103	14-31-40	State	Statute	Authorizes Solicitors to establish and administer mental health court programs, sets out a deadline if a Solicitor accepts funding from the General Assembly for implementation of the program, and requires that notice of referral of an offender into the program must be given to the victim(s).	No	N/A	No
104	16-3-26	State	Statute	Requires Solicitors to provide notice to the defense of an intention to seek the death penalty.	No	N/A	No
105	16-3-210	State	Statute	Requires Solicitors to act as speedily as possible to apprehend and identify members of a mob and bring them to trial; and authorizes a Solicitor to conduct any investigation deemed necessary by him in order to apprehend the members of a mob and may subpoena witnesses and take testimony under oath.	No	N/A	No
106	16-3-450	State	Statute	Authorizes the Attorney General or Solicitor, if using a person indicted for fighting a duel as a witness, to have the witness' name stricken from the indictment.	No	N/A	No
107	16-3-655	State	Statute	Requires Solicitors to provide notice to the defense of an intention to seek the death penalty on a charge of criminal sexual conduct with a minor.	No	N/A	No
108	16-3-740	State	Statute	Requires Solicitors, after an offender has been charged and upon the request of a person who is the victim or a victim's legal guardian, of a criminal offense that involved the sexual penetration of the victim's body or who has been exposed to body fluids during the commission of a criminal offense, to petition the court for an order to have the offender tested for Hepatitis B and HIV, and, once the results are received, to notify the victim/victim's guardian, victim's attorney, offender, juvenile offender's parent or guardian, offender's attorney, and the detention/prison facility where the offender is incarcerated.	No	N/A	No

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109	16-3-750	State	Statute	Authorizes a prosecuting officer, law enforcement officer, or other government official to request a victim of an alleged criminal sexual conduct offense submit to a polygraph examination or other truth telling device as part of the investigation, charging, or prosecution of the offense if the credibility of the victim is at issue, but such a request cannot be a condition for proceeding with the investigation, charging, or prosecution of the offense.	No	N/A	No
110	16-3-1515	State	Statute	Sets out requirements and allowances for a victim seeking restitution, and authorizes the prosecuting agency to set time limits for victims to provide information necessary to requesting and determining restitution.	No	N/A	No
111	16-3-1545	State	Statute	Sets out obligations of a prosecuting agency to notify, inform, and assist victims in all criminal cases.	No		No
112	16-3-1550	State	Statute	Requires prosecuting agencies to make victim impact statements available to the defense prior to sentencing, notify a court when a victim or witness deserves special consideration, and make reasonable efforts to provide victims and witnesses with a waiting area that is separate from those used by the defense.	No	N/A	No
113	16-3-1555	State	Statute	Requires prosecuting agencies to retain victim impact statements; not to provide to the defense until after a defendant has been adjudicated or convicted; forward a copy with victim contact information to SCDOC, SCPPP or SCDJJ as appropriate; inform the victim and witnesses of their responsibility to provide and update it with SCDOC, SCPPP or SCDJJ as appropriate with their contact information; and inform victims about the collection of restitution, fees, and expenses, the recovery of property used as evidence, and how to contact SCDOC, SCDJJ, SCPPP, and the Attorney General, as appropriate.	No	N/A	No
114	16-3-1840	State	Statute	Requires the Solicitor, summary court judge, or other law enforcement agency to arrange for a bond hearing before a circuit court judge or summary court judge for a defendant charged with harassment in the first or second degree or stalking, who was ordered by a summary court judge to undergo a mental health evaluation prior to setting bail.	No	N/A	No
115	16-3-2090	State	Statute	Authorizes the Attorney General or Solicitors to pursue forfeiture of property seized in relation to trafficking in persons, and set outs procedure and process.	No	N/A	No
116	16-8-260	State	Statute	Requires the Solicitor or another prosecuting attorney to initiate forfeiture proceedings regarding: firearms, ammunition to be used in a firearm, or dangerous weapons in the possession of a member of a criminal gang; money, negotiable instruments or valuables used in a pattern of criminal gang activity or for the purpose of benefiting, promoting or furthering the interests of a criminal gang; and any contraband, as defined in Section 16-8-230, or other asset owned or titled in the name of the gang or an individual gang member when the contraband or asset has been used in a pattern of criminal gang activity or has been used for the purpose of benefiting, promoting, or furthering the interests of a criminal gang; and provides other requirements and procedure.	No	N/A	No

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117	16-9-450	State	Statute	Imposes duty on prosecuting attorney within whose circuit or county a violation of Section 16-9-440 (officer permitting prisoner to be taken by a mob or other unlawful assemblage of persons) occurs to forthwith institute a prosecution against such officer	No	N/A	No
118	16-25-320	State	Statute	Provides that a Solicitor shall serve on the Multidisciplinary Domestic Violence Advisory Committee.	No	N/A	No
119	16-25-510	State	Statute	Requires the Solicitors, in each county or circuit, to facilitate the development of community domestic violence coordinating councils based on public-private sector collaboration.	No	N/A	No
120	16-25-520	State	Statute	Sets out the purpose of a community domestic violence coordinating council: increase the awareness and understanding of domestic violence and its consequences; reduce the incidence of domestic violence; and enhance and ensure the safety of battered individuals and their children.	No	N/A	No
121	16-25-530	State	Statute	Sets out the minimum duties and responsibilities of a community domestic violence coordinating council: (1) promoting effective strategies of intervention for identifying the existence of domestic violence and for intervention by public and private agencies; (2) establishing interdisciplinary and interagency protocols for intervention with survivors of domestic violence; (3) facilitating communication and cooperation among agencies and organizations that are responsible for addressing domestic violence; (4) monitoring, evaluating, and improving the quality and effectiveness of domestic violence services and protections in the community; (5) providing public education and prevention activities; and (6) providing professional training and continuing education activities	No	N/A	No
122	16-25-540	State	Statute	Sets out suggestions for membership of a community domestic violence coordinating council, and provides that members shall develop memoranda of agreement among and between themselves to ensure clarity of roles and responsibilities in providing services to victims of domestic violence.	No	N/A	No
123	16-25-540	State	Statute	Provides that each community domestic violence coordinating council is responsible for generating revenue for its operation and administration.	No	N/A	No
124	16-25-710	State	Statute	Domestic Violence Fatality Review Committees (title statute)	No	N/A	No
125	16-25-730	State	Statute	Provides that, when a Domestic Violence Fatality Review Committee is discussing an individual case, the meeting is closed to the public and not subject to FOIA; a violation of this provision is a misdemeanor.	No	N/A	No
126	16-25-740	State	Statute	Sets out detailed restrictions on discussing or sharing information received by, discussions of, and the work of a Domestic Violence Fatality Review Committee; exempts information, documents, and records from disclosure under FOIA, discovery rules, or subpoena unless they are otherwise available from other sources; and makes violation of the statutory provisions a misdemeanor.	No	N/A	No

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127	16-25-750	State	Statute	Requires a Domestic Violence Fatality Review Committee to make recommendations when appropriate regarding training, statutory changes, public education, training for first responders and others, and the development and implementation of policies and procedures for its own governance.	No	N/A	No
128	17-1-40	State	Statute	Sets out retention and expungement requirements for records, permissible uses of such, and disclosure restrictions related to a charge against a person that has been expunged.			
129	17-7-10	State	Statute	Requires the Solicitor or coroner to order an autopsy or post-mortem examination of dead bodies to ascertain the cause of death.	No	N/A	No
130	17-7-15	State	Statute	Requires the law enforcement agency, coroner, or Solicitor who transports a human body for autopsy or other post-mortem examination to provide for return transportation to the next of kin if they reside in South Carolina.	No	N/A	No
131	17-15-55	State	Statute	Requires the Solicitors to provide proof to the court at a bond revocation or modification hearing that reasonable efforts were made to notify the defense attorney and bond surety of the time and date of the hearing; and, when a person commits a violent crime while out on bond from the commission of another violent crime, the prosecuting agency must notify the victims of both the initial and subsequent crimes of any hearings related to bond.	No	N/A	No
132	17-15-170	State	Statute	Requires the Solicitor or other person acting for the Attorney General when bond is forfeited by noncompliance with its conditions, to immediately issue a notice to summon every party bound in the forfeited recognizance to appear at the next ensuing court to show cause, if he has any, why judgment should not be confirmed against him.	No	N/A	No
133	17-19-70	State	Statute	Provides Solicitors' responsibilities in regard to indictment of corporations.	No	N/A	No
134	17-22-10	State	Statute	Pretrial Intervention (Act title)	No	N/A	No
135	17-22-20	State	Statute	Sets out definitions for the Pretrial Intervention Act	No	N/A	No
136	17-22-50	State	Statute	Sets out who is not eligible for a pretrial intervention: (1) a person who has previously been accepted into an intervention program, or (2) a person charged with one of the following offenses, unless the Solicitor determines the elements of the crime do not fit the crime: (a) blackmail; (b) driving under the influence or driving with an unlawful alcohol concentration; (c) a traffic-related offense which is punishable only by fine or loss of points; (d) a fish, game, wildlife, or commercial fishery-related offense which is punishable by a loss of eighteen points as provided in Section 50-9-1120; (e) a crime of violence as defined in Section 16-1-60; or (f) an offense contained in Chapter 25 of Title 16 if the offender has been convicted previously of a violation of that chapter or a similar offense in another jurisdiction.	No	N/A	No
137	17-22-55	State	Statute	Provides for an additional charge and forfeiture of any seized and confiscated property as a condition of admission to the pretrial intervention program of a person charged with a fish, game, wildlife, or commercial fishery-related offense, which does not disqualify the person for intervention.	No	N/A	No

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138	17-22-60	State	Statute	Sets out the standards of eligibility for a pretrial intervention program: (1) there is substantial likelihood that justice will be served if the offender is placed in an intervention program; (2) it is determined that the needs of the offender and the State can better be met outside the traditional criminal justice process; (3) it is apparent that the offender poses no threat to the community; (4) it appears that the offender is unlikely to be involved in further criminal activity; (5) the offender, in those cases where it is required, is likely to respond quickly to rehabilitative treatment; (6) the offender has no significant history of prior delinquency or criminal activity; and (7) the offender has not previously been accepted in a pretrial intervention program.	No	N/A	No
139	17-22-70	State	Statute	Sets out information that the Solicitor may require an offender to furnish prior to admission to a pretrial intervention program, and which must abide by laws regarding confidentiality.	No	N/A	No
140	17-22-80	State	Statute	Requires the Solicitor to ask the law enforcement agency employing the arresting officer and any victim to comment in writing as to whether the defendant should be allowed to enter a pretrial intervention program and consider any recommendations made.	No	N/A	No
141	17-22-90	State	Statute	Provides that if a domestic violence offender in a pretrial intervention program moves to a different circuit, the Solicitor of the circuit to which the offender has moved has the authority to select and approve the batterer's treatment program for the offender.	No		No
142	17-22-100	State	Statute	Provides for a time period (no later than 75 days after service of an arrest warrant or 10 days following appointment of counsel) for application for an intervention, but gives the Solicitor the discretion to waive it.	No	N/A	No
143	17-22-110	State	Statute	Provides for a \$350 fee for participation in a pretrial intervention program pursuant to 17-22-100 (nonrefundable \$100 application fee and, if accepted, a nonrefundable \$250 participation fee); Solicitor has discretion to allow fees to be paid in installments or waived in cases of indigency; all fees are to be deposited into a special account and used for operation of the pretrial intervention program; and, while aggregate fees for application and participation shall not exceed \$350, where the solicitor determines that referral to another agency or program is needed to achieve rehabilitation for a problem directly related to the charge, the defendant may be required to pay his participation in that special program, except that no services may be denied due to inability to pay.	No	N/A	No
144	17-22-120	State	Statute	Requires that a specific written agreement, to be signed by both parties, be made between the Solicitor and each defendant entering a pretrial intervention program, with the agreement to include the terms of the program and the length of the program (including the period of time after which the prosecutor will either dismiss the charge or seek a conviction based upon that charge); and provides that the Commission on Alcohol and Drug Abuse shall provide training, if requested, to counsel employees of the intervention programs, on the recognition of alcohol and drug abuse and the local agency authorized by Section 61-12-20 shall provide services to alcohol and drug abusers if referred by pretrial intervention programs (no services may be denied due to an offender's inability to pay)	No	N/A	No

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145	17-22-140	State	Statute	Requires the offender to make restitution, as determined by the solicitor, prior to the completion of the pretrial intervention program.	No	N/A	No
146	17-22-150	State	Statute	Provides for the disposition of charges against offenders upon either successful or unsuccessful completion of a pretrial intervention program.	No	N/A	No
147	17-22-170	State	Statute	Makes it a misdemeanor crime for any municipal, county, or state entity or any individual to unlawfully retain or release information on a person's participation in a pretrial intervention program; and exempts circuit solicitors or their staff in the performance of their official duties.	No	N/A	No
148	17-22-300	State	Statute	Traffic Education Program (Act title)	No	N/A	No
149	17-22-320	State	Statute	Provides that a person may be considered for a traffic education program if he has no significant history of traffic violations, but that a person may not participate in a traffic education program more than once; and provides that a person's participation in a traffic education program does not prevent his participation in a pretrial intervention program pursuant Article 1, Chapter 22, Title 17.	No	N/A	No
150	17-22-330	State	Statute	Provides for the disposition of charges against offenders upon either successful or unsuccessful completion of a traffic education program; and provides for termination from a program of a person who receives a subsequent traffic violation during the six months following the issuance of the ticket for which he entered the program.	No	N/A	No
151	17-22-340	State	Statute	Provides that each Solicitor may establish an Office of Traffic Education Program Coordinator whose responsibility is to assist in the establishment and maintenance of the traffic education program.	No	N/A	No
152	17-22-350	State	Statute	Provides for a nonrefundable fee or not more than \$280 fee to participate in a traffic education program (nonrefundable \$140 application fee and, if accepted, a nonrefundable participation fee of no more than \$140), that may not be reduced or suspended, but, in cases where a person is deemed unable to pay, both fees must be waived; statute provides for distribution of the fees collected: (1) for magistrate court offenses, 9.17% goes to the county for provision of services to victims of crime (as provided in 14-1-207(D)) and 6.74% goes to the Solicitors (the remainder is divided pursuant to a formula between other criminal justice related state agencies, including 23.62% to SCPPP, 15.12% to SCCJA, 13.73% to SCAG, and 10.97% to SCCID); and (2) for municipal court offenses 9.17% goes to the county for provision of services to victims of crime (as provided in 14-1-208(D)) and 6.74% goes to the Solicitors (the remainder is divided pursuant to a formula between the state's general fund and other agencies, including 10.25% to SCPPP, 10.13% to SCCJA, 7.57% to SCAG, and 11.02% to SCCID).	No	N/A	No
153	17-22-500	State	Statute	Alcohol Education Program Act (title statute).	No	N/A	No
154	17-22-520	State	Statute	Provides the eligibility requirements for the Solicitors' alcohol education program; and provides that a person's participation in an alcohol education program does not prevent his participation in a pretrial intervention program pursuant to the provisions and conditions of Article 1 of Chapter 22, Title 17.	No	N/A	No

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155	17-22-540	State	Statute	Provides that each Solicitor may establish an Office of Alcohol Education Program Coordinator whose responsibility is to assist in the establishment and maintenance of the alcohol education program.	No	N/A	
156	17-22-550	State	Statute	Provides for a \$250 fee for participation in an alcohol education program, except that, when the solicitor contracts with education and supervision providers, the person also may be subject to additional fees payable to the provider of these services; the Solicitor has discretion to reduce or waive fees in cases of indigency (participation in an alcohol education program cannot be denied due to an inability to pay fees); and all fees must be deposited into a special account and used for operation of the alcohol education program.	No	N/A	No
157	17-22-710	State	Statute	Authorizes a Solicitor to establish, under his direction and control and with the agreement of the county governing body, a Worthless Check Unit for the purpose of processing worthless checks and to assist the victims of these cases in the collection of restitution; provides a fee schedule for such a program and provides that an amount equal to the allowable administrative costs contained in Section 34-11-70(c) must be added to the fee; provides that all fees collected by the Worthless Check Unit in accordance with the fee schedule promulgated pursuant to this section must be deposited into a fund known as the Worthless Check Fund maintained by the county treasurers of the counties comprising the circuit, other than court costs and an amount equal to the allowable administrative costs contained in Section 34-11-70(c) which must be remitted to the treasurer for deposit in the county general fund, and that funds collected and deposited into this fund must be applied first to defray the costs of operating the Worthless Check Unit with the balance to be used by the Solicitor to pay the normal operating expenses of his office; provides that funds generated pursuant to this section may not be used to reduce the amount budgeted by the county to the solicitor's office; and provides that unclaimed victim restitution must be transferred to the general fund of the county.	No	N/A	No
158	17-22-910	State	Statute	Provides that all expungements of criminal records are to be administered by the Solicitors' Offices, and that a person's eligibility for expungement of an offense contained in this section, or authorized by any other provision of law, must be based on the offense that the person pled guilty to or was convicted of committing and not on an offense for which the person may have been charged.	No	N/A	No
159	17-22-920	State	Statute	Requires the clerks of court to direct all inquiries about expungements to the Solicitors' Offices.	No	N/A	No
160	17-22-930	State	Statute	Requires that a person applying for an expungement use forms from the Solicitor's Office in the circuit where the charge originated.	No	N/A	No

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161	17-22-940	State	Statute	Provides for a \$250 administrative fee payable to the Solicitor's Office for the expungement service, except where a person was found not guilty or the charge was dismissed other than as part of a plea agreement; provides for the Solicitors' Offices to implement policies and procedures to ensure a properly conducted process; impose duties related to signatures and providing copies; requires SLED to verify and document that charges are appropriate for expungement before expungement signed and to receive \$25 fee for this service; generally limits each expungement order to one charge; allows Solicitor to waive fees for persons who, as victims of identity theft, have been falsely accused of a crime; and requires each Solicitor to maintain a record of all fees collected which are to remain confidential, except that they are to be made available to the Chairmen of the House and Senate Judiciary Committees.	No	N/A	No
162	17-22-950	State	Statute	Provides for the expungement of summary court charges by the summary court if a person is found not guilty or the charges are dismissed or nolle prossed at no cost to the person, and sets out process and timeline for such; and provides that a prosecution or law enforcement agency may file an objection, which must be heard by the court of general sessions.	No	N/A	No
163	17-24-80	State	Statute	Requires the Solicitors to immediately notify the local probation office when a defendant is released pursuant to Sections 17-24-40(C)(2)(a), 17-24-40(C)(2)(c), or 17-24-70(B).	No	N/A	No
164	17-25-45	State	Statute	Requires Solicitors to provide notice to the defense of an intention to seek life without parole not less than 10 days before trial.	No	N/A	No
165	17-25-560	State	Statute	Requires those in Solicitors' offices, other state agencies, and law enforcement to report to the Office of the Attorney General, South Carolina Crime Victim Services Division, any knowledge they have of an offender's profit from a crime.	No	N/A	No
166	17-28-50	State	Statute	Requires Solicitors (or Attorney General if prosecuted the case) to respond to an application for post conviction DNA testing	No	N/A	No
167	17-29-30	State	Statute	Authorizes the Attorney General, Solicitors, and their assistants to apply for an order to approve installation and use of pen register or trace devices, and sets out required contents of an application.	No	N/A	No
168	22-3-545	State	Statute	Requires the Solicitors' Offices to prosecute cases transferred from the general sessions court docket to the summary courts and provide for an adequate record to be made of such cases.	No	N/A	No
169	22-3-546	State	Statute	Provides that Solicitors with five or more counties may establish a program for the prosecution of persons charged with first offense criminal domestic violence so as to allow those charges to be handled in General Sessions Court (rather than Summary Court), and requires that the results of any such programs be submitted to SCCPC.	Yes	N/A	Yes - Other service or product
170	23-3-660	State	Statute	Requires the Solicitors to notify SLED when a person whose DNA was included in the State DNA Database upon arrest, issuance of courtesy summons, or indictment is eligible to have his DNA record and profile expunged.	No	N/A	No
171	23-39-80	State	Statute	Requires the Solicitors to institute proceedings against person(s) who misbrand hazardous materials, upon receipt of a report of a violation by the Commissioner of Agriculture.	No	N/A	No
172	24-26-10	State	Statute	Provides that a Solicitor shall serve on the Sentencing Guidelines Commission	No	N/A	No

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173	25-1-3115	State	Statute	Requires Solicitors, when called upon by presidents of courts-martial and summary court officers, to assist with the issuance of any writ, warrant, subpoena, or other process.	No	N/A	No
174	29-3-350	State	Statute	Requires Solicitors to ensure that all registers of deeds and clerks of court comply with Section 29-3-350 (entry of cancellation on indexes) and prosecute violators.	No	N/A	No
175	39-3-190	State	Statute	Requires the Solicitors to enforce the provisions of Article, Chapter 3, Title 39 (Monopolies, Conspiracies in Restraint of Trade, Boycotts and Sales at Less Than Cost).	No	N/A	No
176	39-5-130	State	Statute	Requires the Solicitors, if requested, to assist the Attorney General with the prosecution of offenses under Article 1, Chapter 5, Title 39 (unfair trade practices) or, if a Solicitor is prosecuting such violations himself with the approval of the Attorney General, provide a full report to the Attorney General at the conclusion of the prosecution.	No	N/A	No
177	39-15-1190	State	Statute	Authorizes the Solicitors to institute criminal proceedings against persons who knowingly and willfully transport, transfer, distribute, sell, or otherwise dispose of, or possess with intent to transfer, transport, distribute, sell, or otherwise dispose of, an item having a counterfeit mark on it or in connection with it.	No	N/A	No
178	39-25-70	State	Statute	Requires Solicitors to prosecute person(s) manufacturing, selling, or offering for sale adulterated or misbranded foods, upon report by the Commissioner of Agriculture	No	N/A	No
179	41-3-130	State	Statute	Requires Solicitors to prosecute violations of laws and regulations of the Department of Labor, Licensing and Regulation upon request.	Yes	N/A	No
180	41-25-110	State	Statute	Authorizes Solicitors and others to enforce the provisions of Chapter 25, Title 40 (Private Personnel Placement Services).	No	N/A	No
181	41-27-590	State	Statute	Requires the Attorney General or, at the request and direction of the Attorney General, a Solicitor to prosecute violations of Chapters 27 through 41, Title 41 and any rules and regulations issued pursuant thereto.	No	N/A	No
182	43-35-560	State	Statute	Provides that a Solicitor shall serve on the Vulnerable Adults Fatalities Review Committee.	No	N/A	No
183	44-23-430	State	Statute	Requires Solicitors -- either (a) upon a judicial determination that a defendant is unfit to stand trial for the reasons set forth in Section 44-23-410 and is unlikely to become fit to stand trial in the foreseeable future or (b) upon a judicial determination that a defendant is unfit to stand trial but likely to become fit in the foreseeable future and hospitalization for up to an additional 60 days, the defendant is still unfit to stand trial -- to initiate judicial admission proceedings in the probate court pursuant to Sections 44-17-510 through 44-17-610 or Section 44-20-450 within fourteen days.	No	N/A	No
184	44-48-60	State	Statute	Provides that a Solicitor is to serve on the Attorney General's prosecutor's review committee (sexually violent predator).	No	N/A	No
185	44-53-460	State	Statute	Authorizes the prosecution to present evidence at a hearing, for one convicted of a violation of Section 44-53-370(a) or (c), for a reduced sentence for an accommodation offense.	No	N/A	No

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186	44-53-530	State	Statute	Authorizes the Attorney General or Solicitors to pursue and sets out process for forfeiture of property seized in relation to drug and counterfeit mark offenses (Sections 44-53-520 and 39-15-1195); provides for the disposition of forfeited property; requires that prosecution agencies must keep forfeited monies and proceeds from the sale of forfeited property in a separate, special account and use only for expenses related to the prosecution of drug offenses and litigation of drug-related matters; and provides that these monies cannot be used to supplant operating funds in the <u>current or future budgets.</u>	No	N/A	No
187	46-27-870	State	Statute	Requires Solicitors to prosecute violations of stock and poultry preparation laws, upon report by the Commissioner of Agriculture	Yes	South Carolina Department of Agriculture	Yes - Other service or product
188	46-35-20	State	Statute	Requires Solicitors to petition the circuit courts for an order removing or destroying neglected or abandoned trees upon receipt of report from the Commissioner of Agriculture.	Yes	South Carolina Department of Agriculture	Yes - Other service or product
189	56-5-2910	State	Statute	Requires the Solicitors to notify the representative of a victim of the reckless vehicular homicide of the <u>defendant's intent to seek reinstatement of his driver's license.</u>	No	N/A	No
190	56-5-2970	State	Statute	Requires the Attorney General, or the Solicitors as directed by the Attorney General, to collect the \$25 fine imposed upon clerks of court, magistrates, city recorders, and other public officers who fail to report convictions, pleas and bond forfeitures as required by the statute (violations of 56-5-2930, 56-5-2933, and any other laws or ordinances of this State that prohibit any person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics), and deposit such <u>into the general fund of the State.</u>	No	N/A	No
191	56-29-50	State	Statute	Requires the Solicitors to give notice of forfeiture proceedings for property used or possessed in violation of or to promote or facilitate a violation of Section 56-29-30 (chop shop).	No	N/A	No
192	58-17-4140	State	Statute	Imposes an obligation on the Office of Regulatory Staff or the Solicitors to file suit to collect all fines and forfeitures provided for in the General Railroad Law, unless otherwise expressed provided.	No	N/A	No
193	61-6-4240	State	Statute	Requires the Attorney General, or the Solicitors as directed by the Attorney General, to collect the \$25 fine imposed upon clerks of court, magistrates, city recorders, and other public officers who fail to report convictions, pleas and bond forfeitures as required by the statute, and deposit such into the <u>general fund of the State.</u>	No	N/A	No
194	61-6-4390	State	Statute	Requires the Solicitors to defend all suits brought, before sales of chattel under Section 61-6-4370, by persons claiming an interest in or right to the chattel.	No	N/A	No
195	61-10-270	State	Statute	Requires Solicitors to bring an action against a person who violates provisions for manufacturing ethyl or methyl alcohol.	No	N/A	No
196	63-11-1930	State	Statute	Provides that a Solicitor is to serve on the State Child Fatality Advisory Committee.	No	N/A	No
197	63-19-1010	State	Statute	Requires the Solicitors' Offices to review recommendations by SCDSS as to intake of juveniles and make the final determination as to whether or not the juvenile is to be prosecuted in the family court.	No	N/A	No
198	63-19-2050	State	Statute	Requires a prosecution agency, that is objecting to an expungement of juvenile records, to provide notice to the juvenile.	No	N/A	No

Deliverables

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Item #	Deliverable	Applicable Laws	Is deliverable provided because...	Optional - Service or Product component(s) (If deliverable is too broad to complete the remaining columns, list each product/service associated with the deliverable, and complete the remaining columns)	Associated Organizational Unit	Does the agency evaluate the outcome obtained by customers / individuals who receive the service or product (on an individual or aggregate basis?)	Does the agency know the annual # of potential customers?	Does the agency know the annual # of customers served?	Does the agency evaluate customer satisfaction?	Does the agency know the cost it incurs, per unit, to provide the service or product?	Does the law allow the agency to charge for the service or product?	Additional comments from agency (Optional)
1A	Coordinate administrative functions of the Solicitors' Offices	S.C. Code Ann. §1-7-940(A)(1)	Require	Provides human resources assistance for the Solicitor and one administrative assistant in each Circuit.	Administrative Assistant	Yes	Yes	Yes	No	Yes	No	SCCPC does not formally evaluate the outcome obtained by customers, but is informed if there is a problem.
1B			Require	Coordinates and provides support for diversion programs in the Solicitors' offices.	Executive Director and Pre-Trial Intervention & Grants Coordinator	Yes	Yes	Yes	No	Yes	No	SCCPC does not formally evaluate the outcome obtained by customers, but is informed if there is a problem.
2	Provide state budget support to Solicitors	S.C. Code Ann. §1-7-940(A)(2)	Require	Prepares and submits budgets of Judicial Circuit Solicitors to General Assembly.	Executive Director and Administrative Assistant	Yes	Yes	Yes	Yes	No	No	
3	Collect Judicial Circuit Solicitors' expenditure reports and submit to Legislature	Proviso 117.109, 2017-2018 S.C. Appropriation Act Part 1B	Require	Provides expenditure reports and revenue streams for each Judicial Circuit Solicitor to Chairmen of Senate Finance Committee and House Ways and Means Committee	Executive Director and Administrative Assistant	Yes	Yes	Yes	Yes	Yes	No	
4	Encourage, develop, coordinate, and conduct legal education and other training	S.C. Code Ann. §1-7-940(A)(3)	Require	Provides legal education and training for Solicitors' offices and affiliate services, other prosecution offices, and law enforcement.	Education Coordinator/Senior Staff Attorney, Staff Attorney, and Traffic Safety Resource Prosecutor (traffic-related)	Yes	Yes	Yes	Yes	No	No	See Note A at the bottom of the chart.
5	Provide legal updates	S.C. Code Ann. §1-7-940(A)(3)	Require	Provides case law updates, legislative summaries, and other legal updates to Solicitors' Offices and, as applicable, other prosecution offices.	Education Coordinator/Senior Staff Attorney, Staff Attorney, and Traffic Safety Resource Prosecutor (traffic-related)	Yes	Yes	Yes	Yes	No	No	See Note B and C at the bottom of the chart.
6	Monitor legislation	S.C. Code Ann. §1-7-940(A)(3)	Not specifically mentioned in law, but provided to achieve the requirements of the applicable law	Monitors legislation related to criminal justice system, juvenile justice system, evidence, court procedure, law enforcement, and other matters related to prosecutors and prosecution, and prepares legislative summaries for the staff.	Executive Director, Education Coordinator/Senior Staff Attorney, Staff Attorney, and Traffic Safety Resource Prosecutor (traffic-related)	Yes	Yes	Yes	Yes	No	No	See Note B and D at the bottom of the chart.
7	Monitor changes to court rules affecting prosecutors and prosecution	S.C. Code Ann. §1-7-940(A)(3)	Not specifically mentioned in law, but provided to achieve the requirements of the applicable law	Provides announcements and summaries of potential and actual changes to court rules for Solicitors' Offices and, as applicable, and other prosecution offices.	Education Coordinator/Senior Staff Attorney and Staff Attorney	Yes	Yes	Yes	Yes	No	No	See Note B and E at the bottom of the chart.
8	Act as clearinghouse for information and distribution of publications and other information	S.C. Code Ann. §1-7-940(A)(3)	Require	Provides prosecution handbooks and other information related to the prosecution of criminal cases and affiliate services.	Education Coordinator/Senior Staff Attorney, Staff Attorney, and Traffic Safety Resource Prosecutor (traffic-related)	Yes	Yes	Yes	Yes	No	No	See Note B and F at the bottom of the chart.

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Item #	Deliverable	Applicable Laws	Is deliverable provided because...	Optional - Service or Product component(s) (If deliverable is too broad to complete the remaining columns, list each product/service associated with the deliverable, and complete the remaining columns)	Associated Organizational Unit	Does the agency evaluate the outcome obtained by customers / individuals who receive the service or product (on an individual or aggregate basis?)	Does the agency know the annual # of potential customers?	Does the agency know the annual # of customers served?	Does the agency evaluate customer satisfaction?	Does the agency know the cost it incurs, per unit, to provide the service or product?	Does the law allow the agency to charge for the service or product?	Additional comments from agency (Optional)
9	Provide technical service (legal assistance) and support	S.C. Code Ann. §1-7-940(A)(3)	Require	Responds to requests for assistance from prosecutors (including law enforcement officers who prosecute their own cases) with substantive and practical questions related to specific criminal prosecutions.	Education Coordinator/Senior Staff Attorney, Staff Attorney, and Traffic Safety Resource Prosecutor (traffic-related)	Yes	Yes	Yes	Yes	No	No	See Note B at the bottom of the chart.
10	Provide general legal research and assistance	S.C. Code Ann. §1-7-940(A)(3)	Not specifically mentioned in law, but provided to achieve the requirements of the applicable law	Responds to requests for assistance with general legal research and questions for prosecutors, victim advocates, diversion staff, investigators, paralegals, other prosecution staff and, as appropriate, law enforcement.	Education Coordinator/Senior Staff Attorney, Staff Attorney, and Traffic Safety Resource Prosecutor (traffic-related)	Yes	Yes	Yes	Yes	No	No	See Note B at the bottom of the chart.
11	Provide blank indictments to the Solicitors' Offices	S.C. Code Ann. §1-7-940(A)(3)	Require	Blank indictments are no longer printed and provided to the Solicitors' Offices because the indictments are now generated on computers and printed.	None (this service is no longer provided)	No	No	No	No	No	No	Indictments are now computer generated and SCCPC no longer provides printed blank indictments. (See proposed law change.)
12	Develop protocols related to the review of domestic violence fatalities	S.C. Code Ann. §16-25-720	Require	Develops protocols for use of Judicial Circuit Domestic Violence Fatality Review Committees, and by coroners and others conducting autopsies	Executive Director, Education Coordinator/Senior Staff Attorney, and Staff Attorney	Yes	Yes	Yes	Yes	No	No	In the protocol SCCPC developed for the Committees, a two-year review process was included so that changes could be made to address issues identified by the Committees and SCCPC.
13	Collect and maintain reports from the Solicitors' Judicial Circuit's Domestic Violence Fatality Review Committees	S.C. Code Ann. §16-25-720	Not specifically mentioned in law, but provided to achieve the requirements of the applicable law	Collects and maintains annual reports from the Solicitors' Judicial Circuit's Domestic Violence Fatality Review Committees	Education Coordinator/Senior Staff Attorney and Staff Attorney	Yes	Yes	Yes	Yes	No	No	
14	Collect reports on first-time domestic violence offender programs	S.C. Code Ann. §22-3-546	Require	Collects reports from Judicial Circuit Solicitors with 5 or more counties regarding programs for first offense domestic violence offenders	Executive Director and Pretrial Intervention & Grants Coordinator	Yes	Yes	Yes	Yes	Yes	No	
15	Collect and maintain non-privileged data, and prepare and submit annual report, on domestic violence prosecutions	Proviso 60.7, 2017-2018 S.C. Appropriation Act, Part 1B	Require	Collects and retains non-privileged information and data regarding domestic violence prosecutions and provides annual report to General Assembly (this proviso is included twice in the Laws Chart because it imposes two deliverables -the other deliverable is disbursing appropriated funds to the Solicitors' Offices)	Executive Director and Pretrial Intervention & Grants Coordinator	Yes	Yes	Yes	Yes	Yes	No	
16	Collect and maintain information, and prepare and submit annual report, on driving under the influence prosecutions	Proviso 60.9, 2017-2018 S.C. Appropriation Act, Part 1B	Require	Collects and retains non-privileged information and data regarding driving under the influence prosecutions and provides annual report to General Assembly	Executive Director and Pretrial Intervention & Grants Coordinator	Yes	Yes	Yes	Yes	Yes	No	

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17	Oversee administration of procedures for traffic education programs	S.C. Code Ann. §17-22-310	Require	Oversees administration of procedures for traffic education programs established by Judicial Circuit Solicitors	Executive Director and Pretrial Intervention & Grants Coordinator	Yes	Yes	Yes	Yes	Yes	No	
18	Collect reports of Judicial Circuit Solicitors' traffic education programs	S.C. Code Ann. §17-22-360	Require	Makes annual traffic education programs reports prepared by Judicial Circuit Solicitors available to the public	Executive Director and Pretrial Intervention & Grants Coordinator	Yes	Yes	Yes	Yes	Yes	No	
19	Maintain identifying information for traffic education programs	S.C. Code Ann. §17-22-370	Require	Maintains identifying information on all participants in traffic education program	Pretrial Intervention & Grants Coordinator	Yes	Yes	Yes	Yes	Yes	No	
20	Oversee administration of procedures for alcohol education programs	S.C. Code Ann. §17-22-510	Require	Oversees administration of procedures for alcohol education programs established by Judicial Circuit Solicitors	Executive Director and Pretrial Intervention & Grants Coordinator	No	Yes	Yes	No	Yes	No	
21	Maintain records of enrollment in and completion of alcohol education programs	S.C. Code Ann. §17-22-530	Require	Maintains records of disposition of cases of successful and unsuccessful completion of alcohol education program so a person cannot benefit from the program more than once	Pretrial Intervention & Grants Coordinator	Yes	Yes	Yes	Yes	Yes	No	
22	Maintain identifying information for alcohol education programs	S.C. Code Ann. §17-22-560	Require	Maintain identifying information on all participants in alcohol education program	Pretrial Intervention & Grants Coordinator	Yes	Yes	Yes	Yes	Yes	No	
23	Oversee administration of procedures for pre-trial intervention programs	S.C. Code Ann. §17-22-30	Require	Oversees administration of procedures for pre-trial intervention programs established by Judicial Circuit Solicitors	Executive Director	Yes	Yes	Yes	Yes	Yes	No	
24	Create and maintain the office of Pre-Trial Intervention Coordinator	S.C. Code Ann. §17-22-40	Require	Creates the office of Pre-Trial Intervention Coordinator to assist in establishing and maintaining pre-trial intervention program	Executive Director	Yes	Yes	Yes	Yes	Yes	No	
25	Respond to Solicitors' inquiries regarding intervention eligibility	S.C. Code Ann. §17-22-130	Require	Respond to Solicitors' inquiries re intervention eligibility	Pretrial Intervention & Grants Coordinator	Yes	Yes	Yes	Yes	Yes	No	
26	Collect and report data on all diversion programs (including pre-trial intervention, traffic education, and alcohol education)	S.C. Code Ann. §17-22-1120	Require	Collects data on all diversion programs of Judicial Circuit Solicitors and provides annual report to Sentencing Reform Oversight Committee	Executive Director and Pretrial Intervention & Grants Coordinator	Yes	Yes	Yes	Yes	Yes	No	
27	Develop, implement, and administer Prosecutors and Defenders Public Service Incentive Program	Proviso 117.63, 2017-2018 S.C. Appropriation Act, Part 1B	Require	Develop, implement, and administer Prosecutors and Defenders Public Service Incentive Program, and submit report of number of applicants and impact of program to Senate Finance Committee or House Ways and Means Committee	Executive Director, Administrative Assistant, and Pretrial Intervention & Grants Coordinator	No	Yes	No	No	Yes	No	Program is suspended because it is not funded by the General Assembly

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28	Serve on Adult Protection Coordinating Council	S.C. Code Ann. §43-35-310	Require	Provide representative to serve on Adult Protection Coordinating Council	Executive Director	No	No	No	No	Yes	No	
29	Serve on Victim Services Coordinating Council	S.C. Code Ann. §16-3-1430(B)(5)	Require	Provides representative to serve on Victim Services Coordinating Council	Executive Director	No	No	No	No	Yes	No	
30	Serve on the Attorney General's Interagency Task Force on Human Trafficking	S.C. Code Ann. §16-3-2050	Require	Provides representative to serve on Interagency Task Force on Human Trafficking	Executive Director	No	No	No	No	No	No	
31	Disburse funds within the SCCPC budget appropriated for the South Carolina Center for Fathers and Families	Part 1A, Section 60, 2017-2018 S.C. Appropriation Act	Require	Disburses funds within the SCCPC budget appropriated for the South Carolina Center for Fathers and Families	Administrative Assistant	No	No	No	No	No	No	This is simply pass-thru funding to a non-profit agency. These funds are not connected to SCCPC or the Solicitors' Offices.
32	Disburse funds within the SCCPC budget appropriated for the operation of the Solicitors' Offices to the Solicitors' Offices	Part 1A, Section 60, 2017-2018 S.C. Appropriation Act, Part 1A, and Provisos 60.1 through 60.4 and 60.6 through 60.12, 2017-2018 S.C. Appropriation Act, Part 1B	Require	Disburses funds within the SCCPC budget appropriated for the operation of the Solicitors' Offices to the Solicitors' Offices (Provisos 60.7 and 60.9 are included twice in the Laws Chart because they each impose two deliverables - here, because they require disbursement of funds and the other deliverable is providing an annual report to the General Assembly)	Administrative Assistant	No	Yes	Yes	No	Yes	No	
33	Disburse funds from from Traffic Education Programs \$140 application fee for Summary Court level offenses (6.74%) to Solicitors' Offices	17-22-350(B) & (C)	Require	Disburses funds from from Traffic Education Programs \$140 application fee for Summary Court level offenses (6.74%) to Solicitors' Offices	Administrative Assistant	No	Yes	Yes	No	Yes	No	
34	Disburse funds collected from filing fees on civil court motions to Solicitors' Offices	8-21-320	Require	Disburses funds collected on motions filed in common pleas and family courts (the first \$450,000 of fees collected) to fund drug court in the Third, Fourth, and Eleventh Judicial Circuits (funds pass through SCCPC).	Administrative Assistant	No	Yes	Yes	No	Yes	No	
35	Disburse funds collected from conditional discharge fees to Solicitors' Offices	44-53-450(C)	Require	Provides that conditional discharge fee (\$350 in General Sessions Court and \$150 in summary court) are to be distributed to solicitors per capita to be used only for drug courts (funds pass through SCCPC)	Administrative Assistant	No	Yes	Yes	No	Yes	No	
36	Disburse funds collected from a portion of \$25 surcharge imposed on fines, forfeitures, escheatments or other monetary penalties to Solicitors' Offices	14-1-212	Require	Provides that a portion (18.50%) of \$25 surcharge imposed on all fines, forfeitures, escheatments, or other monetary penalties imposed on all misdemeanor traffic offenses or non-traffic violations are distributed to Solicitors (funds pass through SCCPC)	Administrative Assistant	No	Yes	Yes	No	Yes	No	

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37	Disburse funds collected from surcharge drug convictions to Solicitors' Offices	14-1-213	Require	Distributes \$150 surcharge on all drug convictions to Solicitors to be used only for drug courts (funds pass through SCCPC)	Administrative Assistant	No	Yes	Yes	No	Yes	No	

NOTES

Note A:

(1) Evaluation of outcome - Historically, SCCPC has not formally evaluated the outcome obtained by customers, but has relied upon the informal feedback from the 16 Solicitors; SCCPC has recently instituted a formalized process for evaluating the outcome of its training and legal services deliverables (survey to be conducted on at least an annual basis).

(2) Attendance - Attendance numbers change each year, but SCCPC keeps a record of such.

(3) Charging of Fees - SCCPC does not charge a registration fee for its educational and training programs; it does, however, co-sponsor some programs where the co-sponsor charges a registration fee to cover program costs (speaker expenses, meeting space, AV equipment, provided meals and refreshments, etc.), but none of the money is received by SCCPC (the annual conference of the Solicitors' Association of South Carolina, Inc. and the Prosecution Bootcamp are the two primary examples - SCCPC is either solely or primarily responsible for the educational and training aspects of the program, but the Association collects nominal registration fees and is responsible for all non-SCCPC expenses).

Note B: Historically, SCCPC has not formally evaluated the outcome obtained by customers, but has relied upon the informal feedback from the 16 Solicitors; SCCPC has recently instituted a formalized process for evaluating the outcome of its training and legal services deliverables (survey to be conducted on at least an annual basis).

Note C: Legal updates are forwarded to the Solicitors and the Deputy Solicitors for them to distribute to staff as appropriate; SCCPC distributes to other prosecutors and law enforcement as appropriate.

Note D: Legislative summaries are forwarded to the Solicitors and the Deputy Solicitors for them to distribute to staff as appropriate; SCCPC distributes to other prosecutors and law enforcement as appropriate.

Note E: Information on potential and actual rule changes are forwarded to the Solicitors and the Deputy Solicitors for them to distribute to staff as appropriate; SCCPC distributes to other prosecutors and law enforcement as appropriate.

Note F: SCCPC creates two handbooks/manuals for prosecutors in the Solicitors' Offices - one is distributed electronically through the Solicitors and Deputy Solicitors and the other is distributed in print at the annual Prosecution Bootcamp program; other information is distributed to prosecutors and prosecution staff electronically either through the Solicitors and Deputy Solicitors or directly.

Deliverables - Potential Harms
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1A	Coordinate administrative functions of the Solicitors' Offices	Require	Provides human resources assistance for the Solicitor and one administrative assistant in each Circuit.	The two state employees in each of the 16 Solicitors' Offices (the elected Solicitor and one administrative assistant) would be without human resources support and assistance.	1. Continued support of SCCPC and its mission.	None
1B		Require	Coordinates and provides support for diversion programs in the Solicitors' offices.	The Solicitors' Offices affiliate services would be without a coordinating state agency, negatively impacting consistency and efficiency.	1. Continued support of SCCPC and its mission.	None
2	Provide state budget support to Solicitors	Require	Prepares and submits budgets of Judicial Circuit Solicitors to General Assembly.	The Solicitors' Offices would be without a coordinating state agency, negatively impacting the preparation and submission of a budget, which serves all 16 Judicial Circuits and is cognizant of the special circumstances and needs of each, and receipt of state budgeted funds negatively impacting the ability of the Solicitors' Offices to prosecute cases.	1. Continued support of SCCPC and its mission.	None
3	Collect Judicial Circuit Solicitors' expenditure reports and submit to Legislature	Require	Provides expenditure reports and revenue streams for each Judicial Circuit Solicitor to Chairmen of Senate Finance Committee and House Ways and Means Committee.	The Chairmen of Senate Finance Committee and House Ways and Means Committee would be without information on expenditures and revenues for each circuit.	1. Continued support of SCCPC and its mission.	None
4	Encourage, develop, coordinate, and conduct legal education and other training	Require	Provides legal education and training for Solicitors' offices and affiliate services, other prosecution offices, and law enforcement.	Staff of the Solicitors' Offices would be inadequately prepared to perform their job responsibilities competently, efficiently, and properly resulting in the uneven and unfair administration of justice.	1. Enact legislation providing for state training facilities to be shared and used by state agencies with either no or only nominal fees. 2. Continued support of SCCPC and its mission.	None
5	Provide legal updates	Require	Provides case law updates, legislative summaries, and other legal updates to Solicitors' Offices and, as applicable, other prosecution offices.	Staff of the Solicitors' Offices would be inadequately prepared to perform their job responsibilities competently, efficiently, and properly resulting in the uneven and unfair administration of justice.	1. Continued support of SCCPC and its mission.	None
6	Monitor legislation	Not specifically mentioned in law, but provided to achieve the requirements of the applicable law	Monitors legislation related to criminal justice system, juvenile justice system, evidence, court procedure, law enforcement, and other matters related to prosecutors and prosecution, and prepares legislative summaries for Solicitors' Offices and, as applicable, other prosecution and law enforcement; and provides testimony, input, and assistance as requested by Solicitors, legislators, legislative staff, and criminal justice entities.	Staff of the Solicitors' Offices would be inadequately prepared to perform their job responsibilities competently, efficiently, and properly resulting in the uneven and unfair administration of justice.	1. Continued support of SCCPC and its mission.	None
7	Monitor changes to court rules affecting prosecutors and prosecution	Not specifically mentioned in law, but provided to achieve the requirements of the applicable law	Provides announcements and summaries of potential and actual changes to court rules for Solicitors' Offices and, as applicable, and other prosecution offices.	Staff of the Solicitors' Offices would be inadequately prepared to perform their job responsibilities competently, efficiently, and properly resulting in the uneven and unfair administration of justice.	1. Encourage state government to provide more assistance and options to state agencies for websites and secure distribution of materials and information via the Internet. 2. Continued support of SCCPC and its mission.	None
8	Act as clearinghouse for information and distribution of publications and other information	Require	Provides prosecution handbooks and other information related to the prosecution of criminal cases and affiliate services.	Staff of the Solicitors' Offices would be inadequately prepared to perform their job responsibilities competently, efficiently, and properly resulting in the uneven and unfair administration of justice.	1. Enact legislation allowing for the sharing of transcripts of court proceedings among criminal prosecutors and criminal defense attorneys without additional payment to or permission from a state-employed court reporter once a copy has been purchased by a state, county, or city prosecution or public defender office or agency. 2. Continued support of SCCPC and its mission.	None

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9	Provide technical service (legal assistance) and support	Require	Responds to requests for assistance from prosecutors (including law enforcement officers who prosecute their own cases) with substantive and practical questions related to specific criminal prosecutions.	Staff of the Solicitors' Offices and other attorney and law enforcement prosecutors would be inadequately prepared to perform their job responsibilities competently, efficiently, and properly resulting in the uneven and unfair administration of justice.	<ol style="list-style-type: none"> 1. Dependant upon state funding, statutorily require that prosecutions of all DUI cases be attorneys (prohibit the prosecution of any criminal charges by law enforcement) and provide additional resources to Solicitors' Offices to prosecute these cases in the summary courts. 2. Consider (a) creating statutory attorney-client privilege between lawyers at SCCPC and prosecutors and law enforcement officers who call for assistance with specific cases, and/or (b) extending prosecutorial immunity to the attorneys in SCCPC who provide assistance to state, county, and local prosecutors (lawyer and law enforcement). 3. Continued support of SCCPC and its mission. 	None
10	Provide general legal research and assistance	Not specifically mentioned in law, but provided to achieve the requirements of the applicable law	Responds to requests for assistance with general legal research and questions for prosecutors, victim advocates, diversion staff, investigators, paralegals, other prosecution staff and, as appropriate, law enforcement.	Staff of the Solicitors' Offices, other prosecutors, and law enforcement would be inadequately prepared to perform their job responsibilities competently, efficiently, and properly resulting in the uneven and unfair administration of justice.	<ol style="list-style-type: none"> 1. Continued support of SCCPC and its mission. 	None
11	Provide blank indictments to the Solicitors' Offices	Require	Blank indictments are no longer printed and provided to the Solicitors' Offices because the indictments are now generated on computers and printed.	None (see recommended law change - proposed deletion of this duty).	<ol style="list-style-type: none"> 1. Amend S.C. Code Ann. §1-7-940(A) to remove (4), because the Solicitors' Offices prepare indictments on their own (most, if not all, via computers without using preprinted forms). 	None
12	Develop protocols related to the review of domestic violence fatalities	Require	Develops protocols for use of Judicial Circuit Domestic Violence Fatality Review Committees, and by coroners and others conducting autopsies	The Solicitors' Committees would not have operational guidance and there would be no consistency in how the 16 different Committees operate, which could result in inadequate fatality reviews.	<ol style="list-style-type: none"> 1. Continued support of SCCPC and its mission. 	None
13	Collect and maintain reports from the Solicitors' Judicial Circuit's Domestic Violence Fatality Review Committees	Not specifically mentioned in law, but provided to achieve the requirements of the applicable law	Collects and maintains annual reports from the Solicitors' Judicial Circuit's Domestic Violence Fatality Review Committees	This information would not be centrally maintained and reviewed for purposes of determining what suggestions should be presented to the Solicitors for their joint consideration.	<ol style="list-style-type: none"> 1. Continued support of SCCPC and its mission. 	None
14	Collect reports on first-time domestic violence offender programs	Require	Collects reports from Judicial Circuit Solicitors with 5 or more counties regarding programs for first offense domestic violence offenders	There would be no reports from Judicial Circuit Solicitors with 5 or more counties regarding programs for first offense domestic violence offenders	<ol style="list-style-type: none"> 1. Continued support of SCCPC and its mission. 	None
15	Collect and maintain non-privileged data, and prepare and submit annual report, on domestic violence prosecutions	Require	Collects and retains non-privileged information and data regarding domestic violence prosecutions and provides annual report to General Assembly (this proviso is included twice in the Laws Chart because it imposes two deliverables -the other deliverable is disbursing appropriated funds to the Solicitors' Offices)	There would no central repository for this information or report, as required by Proviso 60.7, 2017-2018 S.C. Appropriations Act, and the General Assembly would be without information related to domestic violence prosecutions.	<ol style="list-style-type: none"> 1. Continued support of SCCPC and its mission. 	None

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16	Collect and maintain information, and prepare and submit annual report, on driving under the influence prosecutions	Require	Collects and retains non-privileged information and data regarding driving under the influence prosecutions and provides annual report to General Assembly	There would no central repository for this information, and the General Assembly would be without information related to driving under the influence prosecutions.	1. Continued support of SCCPC and its mission.	None
17	Oversee administration of procedures for traffic education programs	Require	Oversees administration of procedures for traffic education programs established by Judicial Circuit Solicitors	There would be no coordination of traffic education programs among the Solicitors' Offices.	1. Continued support of SCCPC and its mission.	None
18	Collect reports of Judicial Circuit Solicitors' traffic education programs	Require	Makes annual traffic education programs reports prepared by Judicial Circuit Solicitors available to the public	This information would not be compiled as required by Section 17-22-360.	1. Continued support of SCCPC and its mission.	None
19	Maintain identifying information for traffic education programs	Require	Maintains identifying information on all participants in traffic education program	There would no central repository for this information. Offenders would be able to participate in the program more than once (participation is limited to one time under Section 17-22-320).	1. Continued support of SCCPC and its mission.	None
20	Oversee administration of procedures for alcohol education programs	Require	Oversees administration of procedures for alcohol education programs established by Judicial Circuit Solicitors	There would be no coordination of alcohol education programs among the Solicitors' Offices.	1. Continued support of SCCPC and its mission.	None
21	Maintain records of enrollment in and completion of alcohol education programs	Require	Maintains records of disposition of cases of successful and unsuccessful completion of alcohol education program so a person cannot benefit from the program more than once	There would no central repository for this information and persons might be able to go through the program more than once (participation is limited to one time under Section 17-22-520).	1. Continued support of SCCPC and its mission.	None
22	Maintain identifying information for alcohol education programs	Require	Maintain identifying information on all participants in alcohol education program	There would no central repository for this information, which is necessary to ensure that a person does not participate in a program more than once (participation is limited to one time under Section 17-22-520)	1. Continued support of SCCPC and its mission.	None
23	Oversee administration of procedures for pre-trial intervention programs	Require	Oversees administration of procedures for pre-trial intervention programs established by Judicial Circuit Solicitors	There would be no coordination of pre-trial intervention programs among the Solicitors' Offices.	1. Continued support of SCCPC and its mission.	None
24	Create and maintain the office of Pre-Trial Intervention Coordinator	Require	Creates the office of Pre-Trial Intervention Coordinator to assist in establishing and maintaining pre-trial intervention program	There would be no coordination and support of pre-trial intervention programs among the Solicitors' Offices; and offices would be without some assistance in ensuring that offenders do not participate in pretrial intervention more than once contrary to legislative intent (participation is limited to one time under Section 17-22-50)	1. Continued support of SCCPC and its mission.	None
25	Respond to Solicitors' inquiries regarding intervention eligibility	Require	Respond to Solicitors' inquiries re intervention eligibility	Offenders would be able to participate in the program more than once, contrary to legislative intent, without this means of verifying past participation in an intervention program.	1. Continued support of SCCPC and its mission.	None
26	Collect and report data on all diversion programs (including pre-trial intervention, traffic education, and alcohol education)	Require	Collects data on all diversion programs of Judicial Circuit Solicitors and provides annual report to Sentencing Reform Oversight Committee	There would no central repository for this information, and the Sentencing Reform Oversight Committee would be without information related to diversion programs as required by 17-22-1120.	1. Include prosecution representatives in appointments to legislative oversight committees that include non-legislator members. 2. Continued support of SCCPC and its mission.	None

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Item #	Deliverable	Is deliverable provided because...	Optional - Service or Product component(s)	Greatest potential harm to the public if deliverable is not provided	1-3 recommendations to the General Assembly, other than \$ and providing the deliverable, for how the General Assembly can help avoid the greatest potential harm	Other state agencies whose mission the deliverable may fit within
27	Develop, implement, and administer Prosecutors and Defenders Public Service Incentive Program	Require	Develop, implement, and administer Prosecutors and Defenders Public Service Incentive Program, and submit report of number of applicants and impact of program to Senate Finance Committee or House Ways and Means Committee	Law students, who are incurring increasingly high student loan debt, will forego joining a prosecutor or public defender office upon graduation because of the low pay (when compared to private practice or even some other government positions).	1. Adopt tax incentives for lawyers who serve as full-time state and county prosecutors and public defenders 2. Consider scholarships or grants for law students who, upon graduation and admission to the South Carolina Bar, work in county prosecutor and public defender offices for an agreed period of time	None
28	Serve on Adult Protection Coordinating Council	Require	Provide representative to serve on Adult Protection Coordinating Council	The Task Force would not receive input from SCCPC (the collective, statewide perspective of the trial prosecutors who prosecute cases related to the emotional, physical, and financial abuse and exploitation of, as well as other crimes committed against, vulnerable adults and, as a result, can provide the Council with problems identified within the criminal justice system impacting them)	1. Continued support of SCCPC and its mission.	None
29	Serve on Victim Services Coordinating Council	Require	Provides representative to serve on Victim Services Coordinating Council	The Task Force would not receive input from SCCPC (the collective, statewide perspective of the trial prosecutors and victim/witness advocates who interact with victims and the agencies and groups who provide services to victims and, as a result, can assist the Council with identifying coordination, policy, and procedural issues that need to be addressed to improve victim services).	1. Continued support of SCCPC and its mission.	None
30	Serve on the Attorney General's Interagency Task Force on Human Trafficking	Require	Provides representative to serve on Interagency Task Force on Human Trafficking	The Task Force would not receive input from SCCPC (the collective, statewide perspective of the trial prosecutors who encounter victims of human trafficking, prosecute cases related to human trafficking, and work with other agencies and groups involved in prosecution, provision of services to, and public education on trafficking; and, as a result, can assist the Task Force with identifying coordination, policy, and procedural issues that need to be addressed to better address the issue of human trafficking and the needs of its victims)	1. Continued support of SCCPC and its mission.	None
31	Disburse funds within the SCCPC budget appropriated for the South Carolina Center for Fathers and Families	Require	Disburses funds within the SCCPC budget appropriated for the South Carolina Center for Fathers and Families	Unknown	Unknown	Unknown - This is simply pass-thru funding to a non-profit agency. These funds are not connected to SCCPC or the Solicitors' Offices.
32	Disburse funds within the SCCPC budget appropriated for the operation of the Solicitors' Offices to the Solicitors' Offices	Require	Disburses funds within the SCCPC budget appropriated for the operation of the Solicitors' Offices to the Solicitors' Offices (Provisos 60.7 and 60.9 are included twice in the Laws Chart because they each impose two deliverables - here, because they require disbursement of funds and the other deliverable is providing an annual report to the General Assembly)	The Solicitors' Offices would not have access to state funding, which is essential to their ability to prosecute.	1. Continued support of SCCPC and its mission.	None

Deliverables - Potential Harms

(Study Step 1: Agency Legal Directives, Plan and Resources)

Agency Responding	Commission on Prosecution Coordination
Date of Submission	April 6, 2018

Item #	Deliverable	Is deliverable provided because...	Optional - Service or Product component(s)	Greatest potential harm to the public if deliverable is not provided	1-3 recommendations to the General Assembly, other than \$ and providing the deliverable, for how the General Assembly can help avoid the greatest potential harm	Other state agencies whose mission the deliverable may fit within
33	Disburse funds from from Traffic Education Programs \$140 application fee for Summary Court level offenses (6.74%) to Solicitors' Offices	Require	Disburses funds from from Traffic Education Programs \$140 application fee for Summary Court level offenses (6.74%) to Solicitors' Offices	The Solicitors' Offices would not have access to state funding for the operation of the Traffic Education Program	1. Continued support of SCCPC and its mission.	None
34	Disburse funds collected from filing fees on civil court motions to Solicitors' Offices	Require	Disburses funds collected on motions filed in common pleas and family courts (the first \$450,000 of fees collected) to fund drug court in the Third, Fourth, and Eleventh Judicial Circuits (funds pass through SCCPC).	The Solicitors' Offices would not have access to state funding, for the operation of Drug Courts.	1. Continued support of SCCPC and its mission.	None
35	Disburse funds collected from conditional discharge fees to Solicitors' Offices	Require	Provides that conditional discharge fee (\$350 in General Sessions Court and \$150 in summary court) are to be distributed to solicitors per capita to be used only for drug courts (funds pass through SCCPC)	The Solicitors' Offices would not have access to state funding, for the operation of Drug Courts.	1. Continued support of SCCPC and its mission.	None
36	Disburse funds collected from a portion of \$25 surcharge imposed on fines, forfeitures, escheatments or other monetary penalties to Solicitors' Offices	Require	Provides that a portion (18.50%) of \$25 surcharge imposed on all fines, forfeitures, escheatments, or other monetary penalties imposed on all misdemeanor traffic offenses or non-traffic violations are distributed to Solicitors (funds pass through SCCPC)	The Solicitors' Offices would not have access to state funding, which is essential to their ability to prosecute.	1. Continued support of SCCPC and its mission.	None
37	Disburse funds collected from surcharge drug convictions to Solicitors' Offices	Require	Distributes \$150 surcharge on all drug convictions to Solicitors to be used only for drug courts (funds pass through SCCPC)	The Solicitors' Offices would not have access to state funding, for the operation of Drug Courts.	1. Continued support of SCCPC and its mission.	None

Organizational Units

(Study Step 1: Agency Legal Directives, Plan and Resources)

Agency Responding	Commission on Prosecution Coordination
Date of Submission	April 6, 2018

Did the agency make efforts to obtain information from employees leaving the agency (e.g., exit interview, survey, evaluation, etc.) in 2014-15; 2015-16; or 2016-17? (Y/N)	2014-15: No* 2015-16: No* 2016-17: No*
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Organizational Unit (Since the agency only has seven employees, outside of the Solicitors and their administrative assistants, the agency is utilizing job descriptions as its organizational units)	Purpose of Organizational Unit	Year	Turnover Rate in the organizational unit	Did the agency evaluate and track employee satisfaction in the organizational unit?	Did the agency allow for anonymous feedback from employees in the organizational unit?	Did any of the jobs in the organizational unit require a certification (e.g., teaching, medical, accounting, etc.)?	If yes, in the previous column, did the agency pay for, or provide in-house, classes/instruction/etc. needed to maintain all, some, or none of the required certifications?
Executive Director	Oversees overall management of agency; coordinates and develops agency activities; monitors legislation and provides input as needed; and works with Solicitors.	2014-15:	0.00%	No*	No*	Yes	All
		2015-16:	0.00%	No*	No*	Yes	All
		2016-17:	0.00%	No*	No*	Yes	All
Administrative Assistant	Performs human resources functions and assists Executive Director in preparation of budget and financial management of agency.	2014-15:	0.00%	No*	No*	No	DNE
		2015-16:	0.00%	No*	No*	No	DNE
		2016-17:	0.00%	No*	No*	No	DNE
Administrative Assistant (Vacant)	Prepares correspondence, organizes files, maintains records, and performs other administrative duties for Executive Director and staff.	2014-15:	0.00%	No*	No*	No	DNE
		2015-16:	0.00%	No*	No*	No	DNE
		2016-17:	14.00%	No*	No*	No	DNE
Pretrial Intervention & Grants Coordinator	Support and coordinate the activities of Circuit Solicitor Diversion programs and ensures grant and legislative reports are completed in a timely manner.	2014-15:	0.00%	No*	No*	No	DNE
		2015-16:	14.00%	No*	No*	No	DNE
		2016-17:	0.00%	No*	No*	No	DNE
Education Coordinator/Senior Staff Attorney	Under limited supervision, develops and conducts trainings for Solicitors' staff; prepares legal updates; and assists prosecutors.	2014-15:	0.00%	No*	No*	Yes	All
		2015-16:	0.00%	No*	No*	Yes	All
		2016-17:	0.00%	No*	No*	Yes	All
Staff Attorney	Under limited supervision, assists in providing trainings for Solicitors' staff, preparing legal updates, and providing assistance to prosecutors.	2014-15:	0.00%	No*	No*	Yes	All
		2015-16:	0.00%	No*	No*	Yes	All
		2016-17:	0.00%	No*	No*	Yes	All
Traffic Safety Resource Prosecutor	Under limited supervision, pursuant to a grant from the National Highway Traffic Safety Administration, acts as resource on, and conducts training for, prosecutors for traffic-related criminal cases.	2014-15:	0.00%	No*	No*	Yes	All
		2015-16:	0.00%	No*	No*	Yes	All
		2016-17:	0.00%	No*	No*	Yes	All

***NOTE:** The agency does not have a formal system for receiving feedback, anonymous or otherwise, from its employees. While the agency has 39 FTE positions, 32 of those are the 16 elected Circuit Solicitors and 16 administrative assistants (one in each of the Offices of Solicitors, who are managed by and report to their respective Solicitor); only 7 positions are physically located within the SCCPC, and only 6 of those are currently filled. The agency is very small and the Executive Director has an open door policy.

Performance Measures
(Study Step 2: Performance)

Agency Responding	Commission on Prosecution Coordination
Date of Submission	April 6, 2018

Types of Performance Measures:

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

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

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

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

Performance Measure	Type of Measure:	Agency selected; Required by State; or Required by Federal:	Time Applicable	Target and Actual row labels	Target and Actual Results Time Period #1 (FY2012-2013)	Target and Actual Results Time Period #2 (FY2013-2014)	Target and Actual Results Time Period #3 (FY2014-2015)	Target and Actual Results Time Period #4 (FY2015-2016)	Target and Actual Results Time Period #5 (FY2016-2017)	Target Results Time Period #6: (FY2017-2018)	Currently using, considering using in future, no longer using
Number of trainings held	Output Measure	Agency Selected	July - June	Target:	DNE	15-20	15-20	15-20	15-20	15-20	Currently using
				Actual:	21	21	22	26	24	16	
Number of persons trained	Output Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	1000	1000	1000	Currently using
				Actual:	1412	1434	2014	1784	1931	1338	
Number of continuing education hours provided	Output Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	100	100	100	Currently using
				Actual:	143.17	159.4	151.75	142.75	184.65	106.83	
Number of General Sessions cases added	Input/Activity Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	DNE	DNE	DNE	Currently using
				Actual:	DNE	113,771	113,711	120,407	127,017	87,598 (thru Feb. 28)	
Number of General Sessions cases disposed of	Output Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	More than 114,891	More than 114,891	More than 114,981	Currently using
				Actual:	DNE	115,763	117,281	114,891	123,915	83,711 (thru Feb. 28)	
Number of cases pending in General Sessions	Input/Activity Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	Less than 113,168	Less than 113,168	Less than 113,168	Currently using
				Actual:	DNE	105,933	104,947	113,168	118,860	123,139 (thru Feb. 28)	
3 year average of General Sessions cases added	Input/Activity Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	DNE	DNE	DNE	Currently using
				Actual:	DNE	DNE	114,198	115,930	120,378	Not available until July 2018	
Number of pending General Sessions cases over 541 or 545 days old	Output Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	Less than 19,486	Less than 19,486	Less than 19,486	Currently using
				Actual:	DNE	DNE	20,590	19,486	18,897	20,409	
Average number of General Sessions incoming cases assigned to a prosecutor during the previous three years	Input/Activity Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	281	281	281	Currently using
				Actual:	DNE	DNE	377	383	331	Not available until July 2018	

Performance Measures
(Study Step 2: Performance)

Performance Measure	Type of Measure:	Agency selected; Required by State; or Required by Federal:	Time Applicable	Target and Actual row labels	Target and Actual Results Time Period #1 (FY2012- 2013)	Target and Actual Results Time Period #2 (FY2013- 2014)	Target and Actual Results Time Period #3 (FY2014-2015)	Target and Actual Results Time Period #4 (FY2015-2016)	Target and Actual Results Time Period #5 (FY2016-2017)	Target Results Time Period #6: (FY2017- 2018)	Currently using, considering using in future, no longer using
Average number of days, from arrest to disposition (resolution of a criminal charge, which may be either conviction, not guilty verdict, or dismissal), of a General Sessions case	Output Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	Less than 365	Less than 365	Less than 365	Currently using
				Actual:	DNE	DNE	416	398	400	Not available until July 2018	
Number of counties without an assigned prosecutor	Input/Activity Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	0	0	0	Currently using
				Actual:	DNE	DNE	DNE	3	0	0	
Number of full-time General Sessions prosecutors	Input/Activity Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	408	408	408	Currently using
				Actual:	DNE	DNE	303	303	364 or less (some are part-time)	364 (some are part-time)	
Number of circuits with secure, cloud based, prosecution case management system, data storage and e-discovery platform	Input/Activity Measure	Agency Selected	July - June	Target:	DNE	DNE	DNE	DNE	DNE	16	Currently using
				Actual:	No Data	No Data	No Data	No Data	No Data	0	

Note: "DNE" means did not exist. Also, In the course of preparing this Oversight Report, the SCCPC recounted continuing education hours, persons trained, and number of trainings, and discovered that there were inadvertent errors in some of the figures included in the Accountability Reports; the numbers in this report are correct.

Comprehensive Strategic Plan Summary

(Study Step 1: Agency Legal Directives, Plan and Resources; and Study Step 2: Performance)

Agency Responding	Commission on Prosecution Coordination
Date of Submission	April 6, 2018

Mission: The mission of the South Carolina Commission on Prosecution Coordination is to enhance the professionalism and effectiveness of South Carolina's Solicitors and their staff. We do this by providing legal education and publications, providing technical assistance, coordinating with other state, local, and federal agencies involved in the criminal justice system, providing administrative functions for the solicitors at the state level, as well as being a resource for the General Assembly on a range of issues. Legal Basis: S.C. Code Section 1-7-940	2016-17	
	Total # of FTEs available / Total # filled at start of year	Total amount Appropriated and Authorized to Spend
Vision: To enhance the ability of South Carolina's state prosecutors to seek justice. Legal Basis: S.C. Code Section 1-7-940, Rule 3.8, Comment 1, S.C. Rules of Professional Conduct (Rule 407, SCACR).	Available FTEs: 39 Filled FTEs: 37.625 Temp/Grant: 1	\$ 36,789,759
	Amount remaining	\$ 0

Mission: The mission of the South Carolina Commission on Prosecution Coordination is to enhance the professionalism and effectiveness of South Carolina's Solicitors and their staff. We do this by providing legal education and publications, providing technical assistance, coordinating with other state, local, and federal agencies involved in the criminal justice system, providing administrative functions for the solicitors at the state level, as well as being a resource for the General Assembly on a range of issues. Legal Basis: S.C. Code Section 1-7-940	2017-18	
	Total # of FTEs available / Total # filled at start of year	Total amount Appropriated and Authorized to Spend
Vision: To enhance the ability of South Carolina's state prosecutors to seek justice. Legal Basis: S.C. Code Section 1-7-940, Rule 3.8, Comment 1, S.C. Rules of Professional Conduct (Rule 407, SCACR).	Available FTEs: 39 Filled FTEs: 37.625 Temp/Grant: 1	\$ 36,808,856
	Amount remaining	\$ 0

2017-18 Comprehensive Strategic Plan Part and Description (e.g., Goal 1 - Insert Goal 1; Strategy 1.1 - Insert Strategy 1.1; Objective 1.1.1 - Insert Objective 1.1.1)	Intended Public Benefit/Outcome: (Ex. Outcome = incidents decrease and public perceives that the road is safer)	2016-17				2017-18				Associated Performance Measures	Associated Organizational Unit(s)	Responsible Employee Name & Time staff member has been responsible for the goal or objective	Does this person have input into the budget for this goal, strategy or objective?	Partner(s), by segment, the agency works with to achieve the objective (Federal Government; State Government; Local Government; Higher Education Institution; K-12 Education Institution; Private Business; Non-Profit Entity; Individual; or Other)
		# of FTE equivalents utilized	Amount Spent (including employee salaries/wages and benefits)	% of Total Available to Spend	Associated General Appropriations Act Program(s)	# of FTE equivalents planned to utilize	Amount budgeted (including employee salaries/wages and benefits)	% of Total Available to Budget	Associated General Appropriations Act Program(s)					
Goal 1 - Protect the community by vigorously but fairly prosecuting those who violate the law (Note: All state funding provided for the Accomplishment of Goal 1 is received by the SCCPC as pass-through funds to the Solicitors' Offices, and the SCCPC has no control over how that money is spent. None of the 6 SCCPC FTEs spend time on this goal (it is accomplished by the Solicitors and their staff))	Determined by each individual Circuit Solicitor	32 (1 Solicitor and Administrative Assistant in each Circuit authorized in state budget, Solicitor then hires additional staff)	\$35,771,567	97.23%	II. Offices of Circuit Solicitors, III. Employee Benefits	32 (1 Solicitor and Administrative Assistant in each Circuit authorized in state budget, Solicitor then hires additional staff)	\$29,856,497	81.15%	I. Administration; II. Offices of Circuit Solicitors, III. Employee Benefits	Determined and tracked by each individual Circuit Solicitor (none required in state law)	Determined by each individual Circuit Solicitor	Each individual Circuit Solicitor	Yes	Determined by each individual Circuit Solicitor
Strategy 1.1 - Reduce the average time it takes to dispose of General Sessions cases.	See Goal 1													
Objective 1.1.1 - Circuit Solicitors will continue to hire additional General Session prosecutors with the additional funding that was provided in the FY2016/17 budget and continued in the FY2017/18 budget.	See Goal 1						\$5,928,438	16.11%	II. Offices of Circuit Solicitors					
Objective 1.1.2 - Reduce the average time it takes to dispose of General Sessions cases.	See Goal 1													
Objective 1.1.3 - Reduce the number of cases that have been pending for over 541 days.	See Goal 1													
Strategy 1.2 - Upgrade the 16 Circuit Solicitors' Offices Prosecution Case Management Systems, IT Storage and E-Discovery.	See Goal 1													
Objective 1.2.1 - Enable each Circuit Solicitors' Office to have a secure, cloud based, Prosecution Case Management System, Data Storage and E-Discovery Platform	See Goal 1													
Strategy 1.3 - Eliminate the practice of law enforcement officers prosecuting their own cases in Summary Court (Magistrates or Municipal Court)	See Goal 1													
Objective 1.3.1 - Hire additional prosecutors with the additional funding that was provided in the FY16/17 and FY17/18 budget so that all Domestic Violence cases are handled by a prosecutor whether the cases are in General Sessions Court or Summary Court	See Goal 1													
Goal 2 - Provide quality support services to the Offices of Solicitor.														
Strategy 2.1 - Provide administrative support to the Offices of Solicitor.	Enable Circuit Solicitors and their staff to effectively and fairly administer justice, and to ensure the rights of crime victims are protected.													
Objective 2.1.1 - Provide human resources assistance to the 16 Solicitors and 16 administrative assistants (one in each of the Offices of Solicitor).	See Strategy 2.1	3	\$191,560	0.52%	I. Administration; III. Employee Benefits	3	\$193,093	0.52%	I. Administration; II. Offices of Circuit Solicitors, III. Employee Benefits	None	Executive Director Administrative Assistant Pre-Trial Intervention Coordinator	David M. Ross (responsible for more than 3 years) Tina Thompson (responsible for more than 3 years)	Yes	Attorney General; Criminal Justice Academy; Judicial Department; SLED; Commission on Indigent Defense; Department of Public Safety; Department of Juvenile Justice; Department of Mental Health; Law Enforcement agencies; county and local governments
Objective 2.1.2 - Provide State budget support for the Offices of Solicitor.	See Strategy 2.1											Ellen Dubois (responsible less than 3 years)		
Objective 2.1.3 - Coordinate administrative functions of the diversion programs of the Offices of Solicitor.	See Strategy 2.1													
Strategy 2.2 - Enhance the professionalism and effectiveness of South Carolina's Solicitors and their staff.	Enable Circuit Solicitors and their staff to effectively and fairly administer justice, and to ensure the rights of crime victims are protected.													
Objective 2.2.1 - Conduct regular training for prosecutors and staff on a wide variety of topics.	See Strategy 2.2	4	\$490,368	1.33%	I. Administration; III. Employee Benefits	4	\$493,584	1.34%	I. Administration; II. Offices of Circuit Solicitors, III. Employee Benefits	Number of Trainings Held Number of Persons Trained Continuing Education Hours Provided	Executive Director Education Coordinator/Senior Staff Attorney Staff Attorney Traffic Safety Resource Prosecutor	Amie Clifford (responsible for more than 3 years) Mark Rapoport (responsible for more than 3 years)	Yes	See Strategy 2.1.
Objective 2.2.2 - Provide technical assistance to prosecutors and staff.	See Strategy 2.2													
Objective 2.2.3 - Provide timely legislative updates.	See Strategy 2.2													
Objective 2.2.4 - Provide regular case law updates.	See Strategy 2.2													
Strategy 2.3 - Work with SLED to write a new computer program that will modernize the Pre-Trial Intervention Database as well as add additional Diversion Databases.	Enable Circuit Solicitors and their staff to effectively and fairly administer justice, and to ensure the rights of crime victims are protected.													
Objective 2.3.1 - Complete the final stage of writing the computer program.	See Strategy 2.3	1	\$215,169	0.58%	I. Administration; III. Employee Benefits	4	\$215,204	0.58%	I. Administration; II. Offices of Circuit Solicitors, III. Employee Benefits	None	Executive Director	David M. Ross (responsible for more than 3 years)	Yes	See Strategy 2.1.
Objective 2.3.2 - Have users test the new Databases once they are built and resolve any unforeseen issues.	See Strategy 2.3													
Objective 2.3.3 - Migrate existing data into the new Database.	See Strategy 2.3													
Goal 3 - Operate in an effective and efficient manner to enable staff to accomplish the mission of the agency.														
Strategy 3.1 - Enable staff to perform job duties.	Enable the SCCPC to assist the Circuit Solicitors so they are able to effectively perform their duties set forth in Goal 2													
Objective 3.1.1 - Obtain sufficient funding for agency to operate.	See Strategy 3.1	2	\$37,792	0.10%	I. Administration; III. Employee Benefits	2	\$38,002	0.10%	I. Administration; II. Offices of Circuit Solicitors, III. Employee Benefits	None	Executive Director Administrative Assistant	David M. Ross (responsible for more than 3 years) Tina Thompson (responsible for more than 3 years)	Yes	See Strategy 2.1.
Objective 3.1.2 - Provide administrative services.	See Strategy 3.1													
Objective 3.1.3 - Provide sufficient resources for staff.	See Strategy 3.1													
Strategy 3.2 - Respond to inquiries and requests for assistance from the public (persons other than those covered by Goal 2).	Assisting the public													

Comprehensive Strategic Plan Summary
 (Study Step 1: Agency Legal Directives, Plan and Resources; and Study Step 2: Performance)

2017-18 Comprehensive Strategic Plan Part and Description (e.g., Goal 1 - Insert Goal 1; Strategy 1.1 - Insert Strategy 1.1; Objective 1.1.1 - Insert Objective 1.1.1)	Intended Public Benefit/Outcome: (Ex. Outcome = incidents decrease and public perceives that the road is safer)	2016-17				2017-18				Associated Performance Measures	Associated Organizational Unit(s)	Responsible Employee Name & Time staff member has been responsible for the goal or objective	Does this person have input into the budget for this goal, strategy or objective?	Partner(s), by segment, the agency works with to achieve the objective (Federal Government; State Government; Local Government; Higher Education Institution; K-12 Education Institution; Private Business; Non-Profit Entity; Individual; or Other)
		# of FTE equivalents utilized	Amount Spent (including employee salaries/wages and benefits)	% of Total Available to Spend	Associated General Appropriations Act Program(s)	# of FTE equivalents planned to utilize	Amount budgeted (including employee salaries/wages and benefits)	% of Total Available to Budget	Associated General Appropriations Act Program(s)					
Objective 3.2.1 - Timely and efficiently respond to requests from members of the public for documents (including subpoenas and Freedom of Information Requests). Objective 3.2.2 - Timely and efficiently respond to inquiries and requests for assistance from the General Assembly. Objective 3.2.3 - Timely and efficiently respond to inquiries and requests for assistance from state, county, and local government agencies. Objective 3.2.4 - Timely and efficiently respond to inquiries and requests for assistance from criminal justice-related non-governmental entities.	Government accountability and openness Enable requesting agency/party to effectively fulfill duties to serve the public Enable requesting agency/party to effectively fulfill duties to serve the public Enable requesting agency/party to effectively fulfill duties to serve the public	4	\$83,303	0.23%	I. Administration; III. Employee Benefits	4	\$84,038	0.23%	I. Administration; II. Offices of Circuit Solicitors, III. Employee Benefits	None	Executive Director Education Coordinator/Senior Staff Attorney Staff Attorney Traffic Safety Resource Prosecutor	Amie Clifford (responsible for more than 3 years) Mark Rapoport (responsible for more than 3 years) Mattison Gamble (responsible for more than 3 years)	Yes	See Strategy 2.1.
Spent/Transferred NOT toward Agency's Comprehensive Strategic Plan		None	\$0	0.00%		\$0	\$0	0.00%						

Agency Name: **S.C. Commission on Prosecution Coordination** Fiscal Year 2016-2017

Accountability Report

Agency Code: **E-21** Section: **060**

Report Template

Item	Report Name	Name of Entity Requesting the Report	Type of Entity	Reporting Frequency	Submission Date (MM/DD/YYYY)	Summary of Information Requested in the Report	Method to Access the Report
1	Restructuring Report	House Legislative Oversight Committee	State	Annually	March		Online
2	Restructuring Report and Cost Savings Plan	Senate Oversight Committee	State	Annually	January		Online
3	Accountability Report	Executive Budget Office	State	Annually	September	Agency must provide Governor and General Assembly with information that supports their analysis of the agency's budget and ensure that the Agency Head Salary Commission has a basis for its decision	South Carolina Legislature Website. Http://www.scstatehouse.gov/reports
4	Driving Under the Influence Prosecution Annual Report	General Assembly	State	Annually	August	To report prosecution statistics relating to DUI prosecution funding	Paper copy, South Carolina Commission on Prosecution. Requests for copies of this report should be submitted to the attention of David Ross, Executive Director
5	Criminal Domestic Violence Prosecution Annual Report	General Assembly	State	Annually	August	To report prosecution statistics relating to CDV prosecution funding	Paper copy, South Carolina Commission on Prosecution. Requests for copies of this report should be submitted to the attention of David Ross, Executive Director
6	Omnibus Report	General Assembly	State	Annually	October	To report statistics relating to Solicitors' Diversion Programs	Paper copy, South Carolina Commission on Prosecution. Requests for copies of this report should be submitted to the attention of David Ross, Executive Director
7	Victim/Witness Programs	General Assembly	State	Annually	October	To report use of funds	Paper copy, South Carolina Commission on Prosecution. Requests for copies of this report should be submitted to the attention of David Ross, Executive Director
8	Revenue/Expenditure Reports	General Assembly	State	Annually	September	To report funding sources	Paper copy, South Carolina Commission on Prosecution. Requests for copies of this report should be submitted to the attention of David Ross, Executive Director
9	Minority Business Employment (MBE) Utilization Plan	SC Department of Administration - OSMBCC	State	Annually	July 30, 2017	To emphasize the use of minority small businesses, express a commitment by the Agency to use MBE's in all aspects of procurement and establishing dollar goals to assist the agency in meeting this objective	Paper copy, South Carolina Commission on Prosecution. Requests for copies of this report should be submitted to the attention of Tina Thompson
10	Minority Business Employment (MBE) Progress Report	SC Department of Administration - OSMBCC	State	Quarterly	April 30 July 30 October 30 January 30	To emphasize the use of minority small businesses	Paper copy, South Carolina Commission on Prosecution. Requests for copies of this report should be submitted to the attention of Tina Thompson
11	Materials Management Quarterly Procurement Reports - Audit & Certification agency Quarterly Reporting	State Fiscal Accountability Authority - Procurement Services	State	Quarterly	April 30 July 30 October 30 January 30	State Statute 11-35-2440, 11-35-3830, 19-445.2015 and 11-35-1220 require all state agencies to report quarterly on Sole Source, Emergency, Trade-in Sales Procurements, (Illegal)Procurements, Preferences and 10% Rule	Paper copy, South Carolina Commission on Prosecution. Requests for copies of this report should be submitted to the attention of Tina Thompson
12	Schedule of Federal Financial Assistance - SFFA	State Fiscal Accountability Authority - State Auditors Office	State	Annually	August 14, 2017	Summary of all Federal Funds that were received by SCCPC	Paper copy, South Carolina Commission on Prosecution. Requests for copies of this report should be submitted to the attention of Tina Thompson
13	GAAP - Grants and Contribution Revenue Reporting (Packet 3.03)	SC Comptroller General	State	Annually	September 8, 2017	GAAP requires the analysis and recognition of receivables and deferred revenue in connection with grant awards and contributions	Paper copy, South Carolina Commission on Prosecution. Requests for copies of this report should be submitted to the attention of Tina Thompson

S.C. Commission on Prosecution Coordination

Date of Submission: *April 6, 2018*

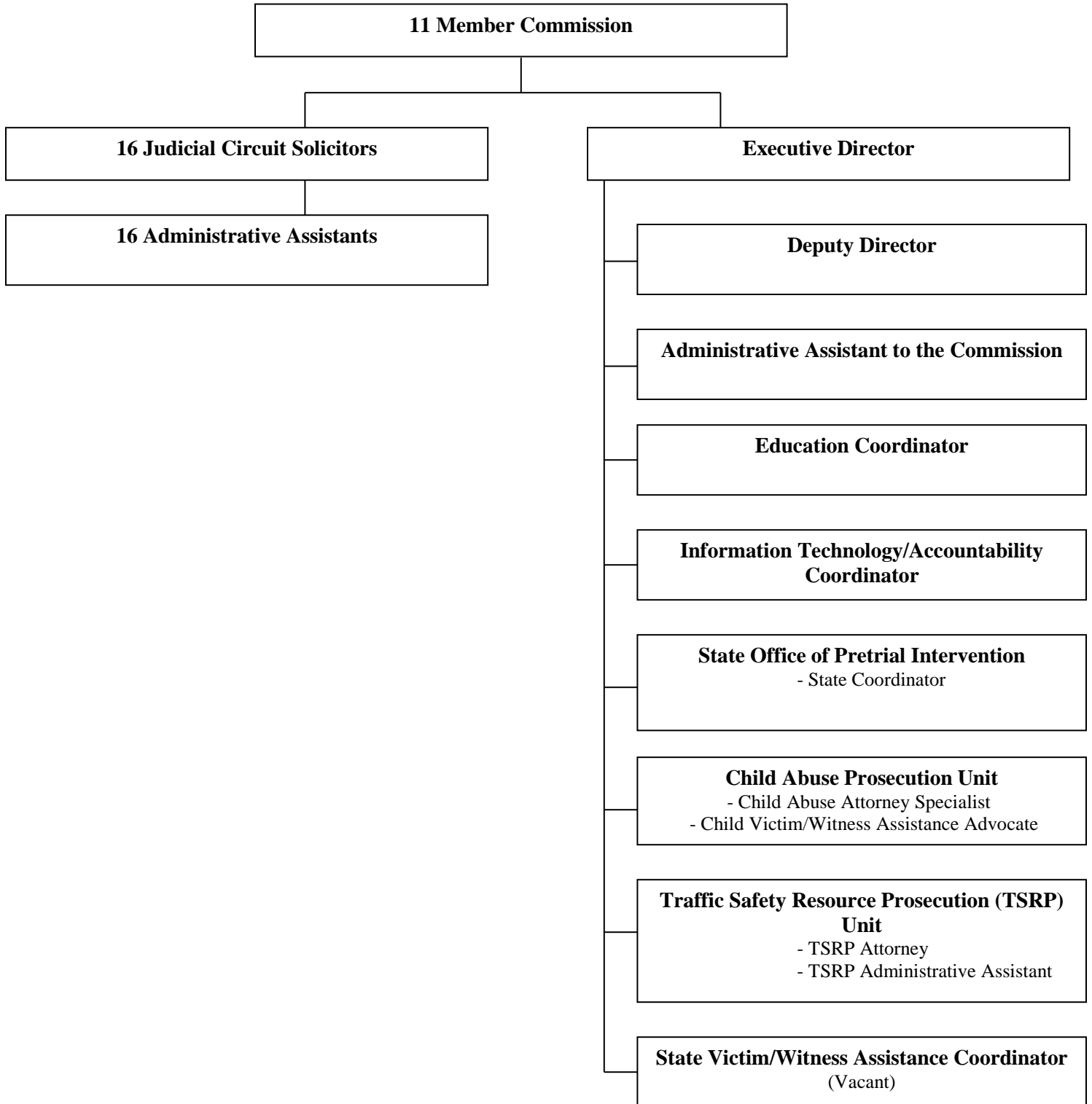
Glossary

Term, Phrase or Acronym	Meaning of the Term, Phrase or Acronym
Adjudication	Juveniles, charged with committing crimes or status offenses (an offense that would not be a crime for an adult, such as Runaway, Incurability, and Truancy), have their charges, subject to some exceptions, handled in the Family Court. If the prosecution establishes beyond a reasonable doubt that the juvenile committed the violation in question, the juvenile is adjudicated delinquent rather than found “guilty.” An adjudication of delinquency is not a criminal conviction but, for many practical purposes, is treated the same as a criminal conviction.
CDV	The crime of Criminal Domestic Violence. <i>See Criminal Domestic Violence.</i>
CLE	Continuing legal education. Attorneys are required to attend 14 hours of CLE each year, to include two hours of ethics; every three years, attorneys are required to attend one hour of substance abuse/mental health training.
Criminal Domestic Violence	Statutory crimes that involve, with or without aggravating circumstances, the causing of physical harm or injury to a person's own household member, or the offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril. This crime was repealed by the amendment of S.C. Code Sections 16-25-20 and 16-25-65 in 2015; covered conduct committed prior to June 4, 2015, is still prosecuted as Criminal Domestic Violence, while covered conduct committed on or after that date is punished as Domestic Violence (<i>See below</i>).
DAODAS	Department of Alcohol and Other Drug Abuse Services
DUI	The crime of Driving Under the Influence.
DV	The crime of Domestic Violence. <i>See Domestic Violence.</i>
Disposition	Resolution of a criminal charge, which may be either conviction (through trial or plea), not guilty verdict, adjudication (Family Court), or dismissal. Reasons for dismissals include lack of evidence, inability to proceed (for reasons including absence of witnesses, adverse rulings by the trial court, and a defendant’s inability to stand trial), and alternative resolution of case (successful completion of a pretrial intervention program, an alcohol education program, traffic education program, or some other diversion-type program operated by a Solicitor’s Office).

Diversion Program	Alternative means of resolving a criminal charge that usually do not result in a conviction or adjudication. Examples include Pre-Trial Intervention, Alcohol Education Program, Traffic Education Program, and Juvenile Arbitration.
Domestic Violence	A statutory crime of varying degrees, effective June 4, 2015, that involves the causing of physical harm or injury to a person's own household member, or the offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril. <i>See</i> S.C. Code Section 16-25-20.
E-Discovery	Electronic discovery (collection and disclosure of discovery materials by electronic means, rather than by and using paper).
General Sessions Court	The criminal “side” of the Circuit Court, and the highest level criminal trial court in the state unified court system.
Judicial Circuit	South Carolina’s 46 counties are divided into 16 Judicial Circuits, each represented by an elected Solicitor. Seven Judicial Circuits include two counties; three Judicial Circuits include three counties, 5 Judicial Circuits include four counties, and 1 Judicial Circuit includes five counties.
OVSEC	State of South Carolina Office of Victim Services Education and Certification; OVSEC certifies victim advocates and accredits trainings for them.
SCCJA	South Carolina Criminal Justice Academy; the Academy accredits trainings for law enforcement officers.
SCCPC	South Carolina Commission on Prosecution Coordination.
SCSA	Solicitors’ Association of South Carolina, Inc., a nonprofit South Carolina corporation.
SLED	South Carolina Law Enforcement Division.
Solicitor	In South Carolina, the position of "Circuit Solicitor" is comparable to that of State's Attorney or District Attorney in other jurisdictions – that is, the official who, either directly or through one of the assistant Solicitors, represents the government in the prosecution of criminal offenses. The State Constitution establishes one Solicitor (elected for a four-year term) for each Judicial Circuit.
Summary Court	A term used to collectively refer to the magistrate and municipal courts, the lowest level trial courts in the state unified court system.
TSRP	Traffic Safety Resource Prosecutor, an attorney position within the SCCPC funded by a federal grant to conduct trainings for and assisting attorney and police officer prosecutors on traffic-related criminal cases.

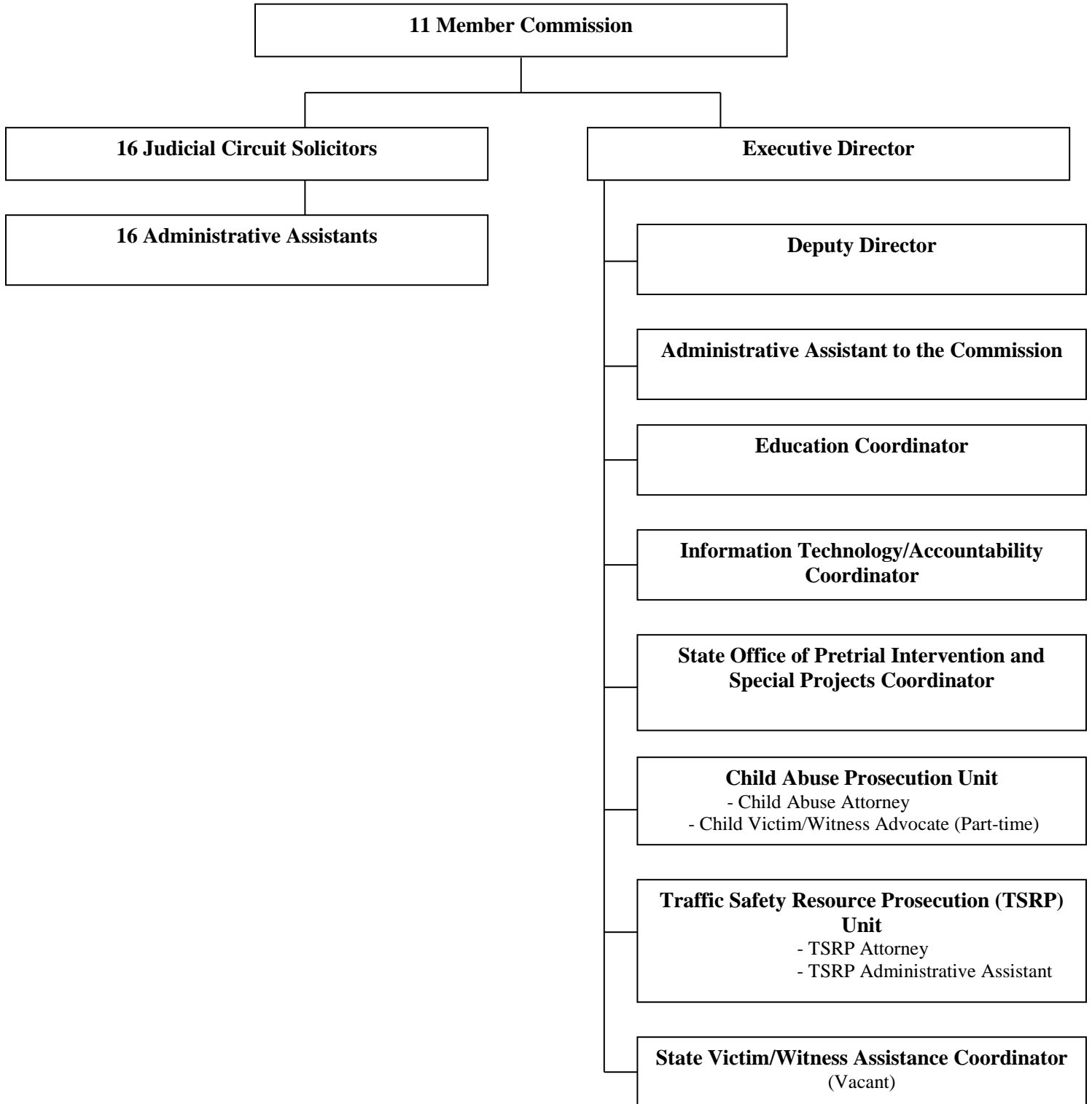
South Carolina Commission on Prosecution Coordination

Organizational Chart
FY 2007/08



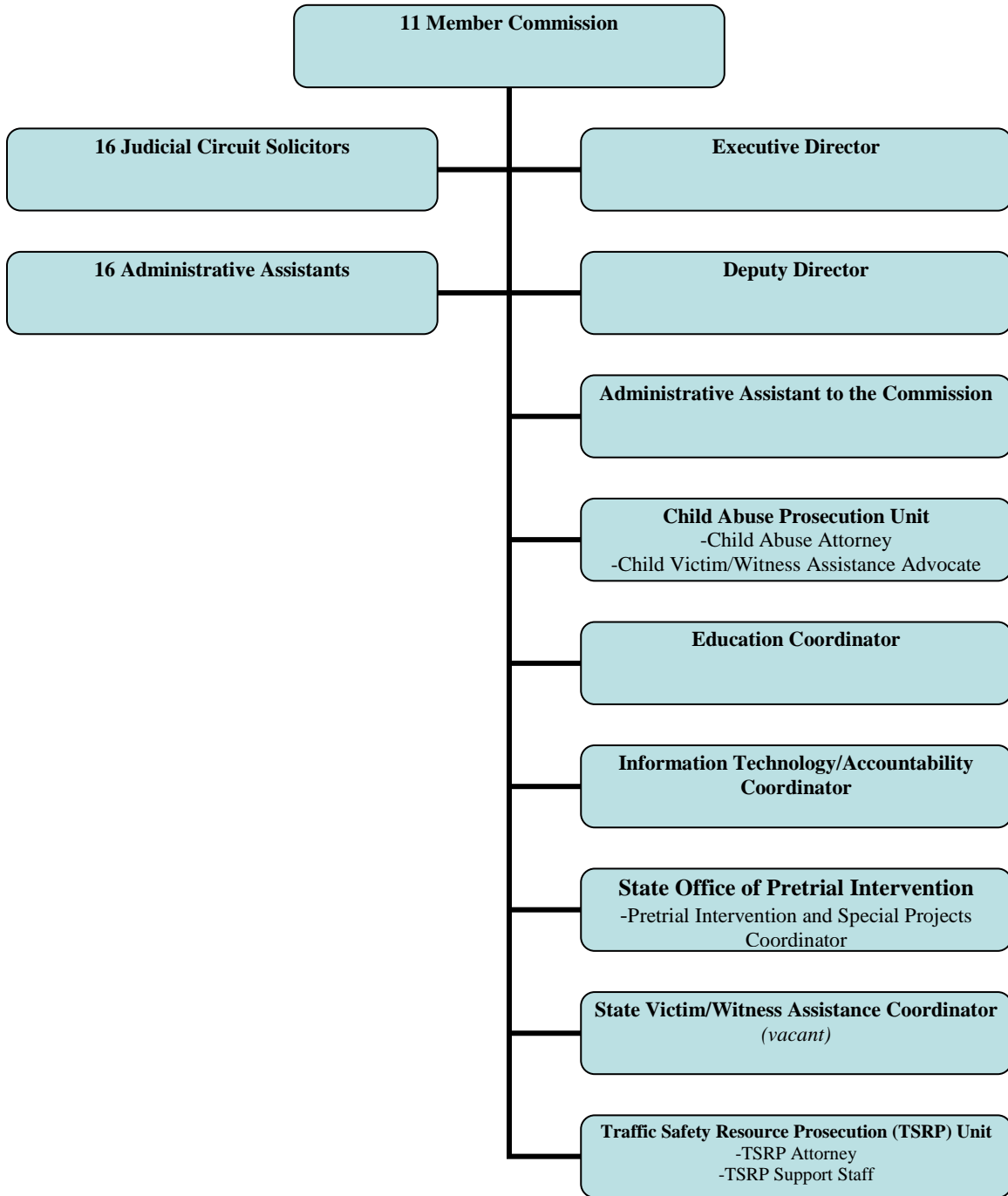
South Carolina Commission on Prosecution Coordination

Organizational Chart
FY 2008/09



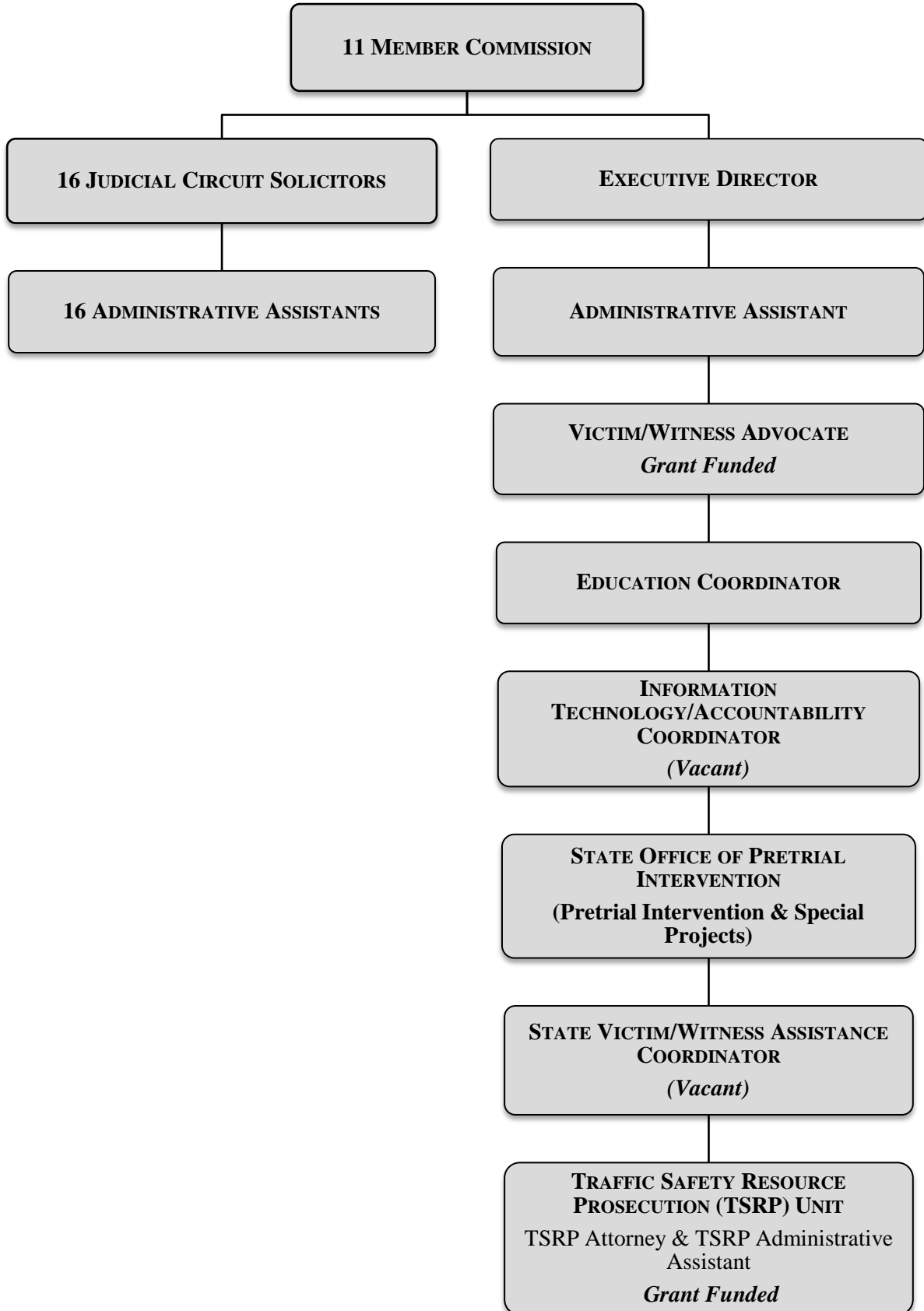
South Carolina Commission on Prosecution Coordination

Organizational Chart FY 09/10



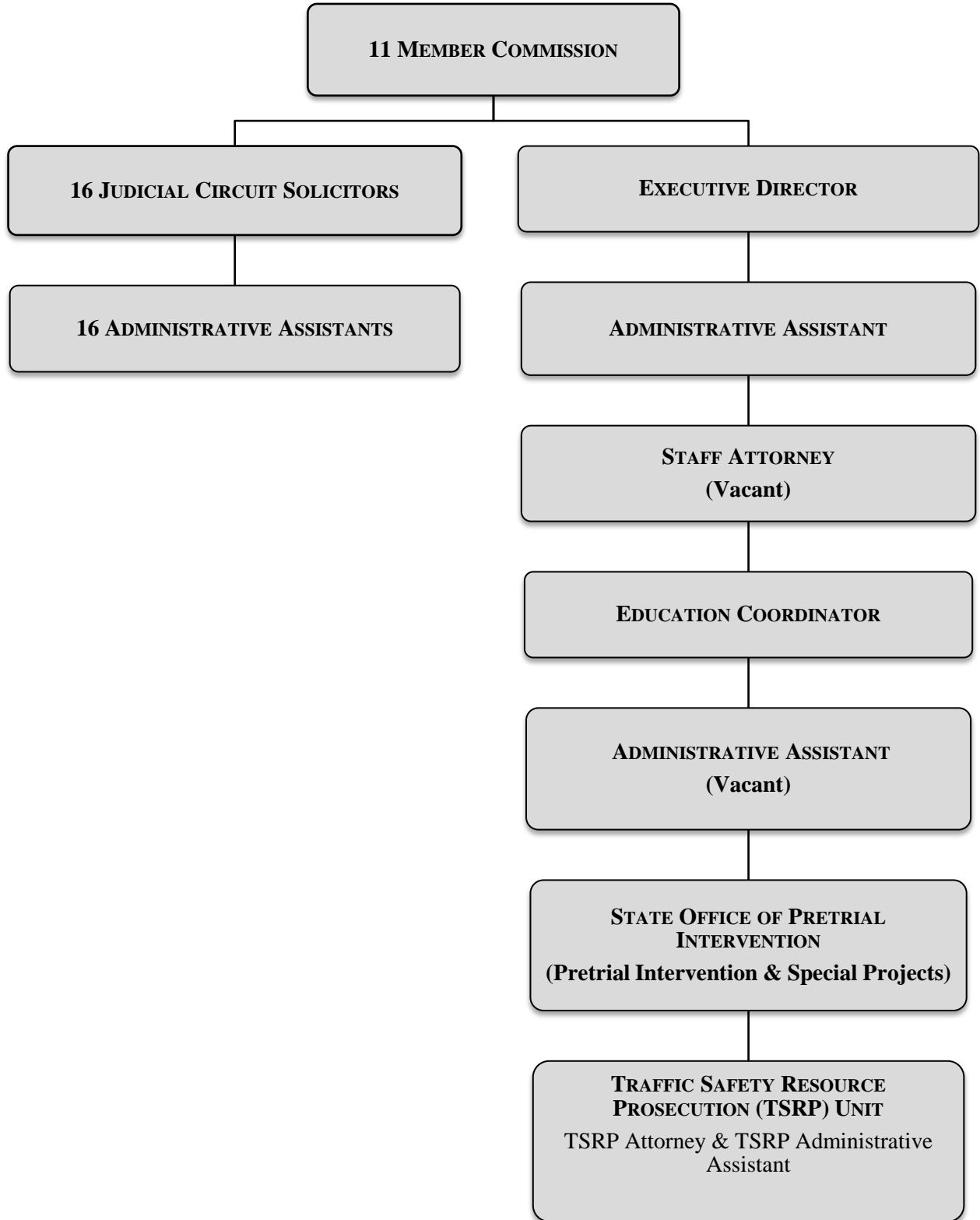
SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

FY 2011/12 Organizational Chart



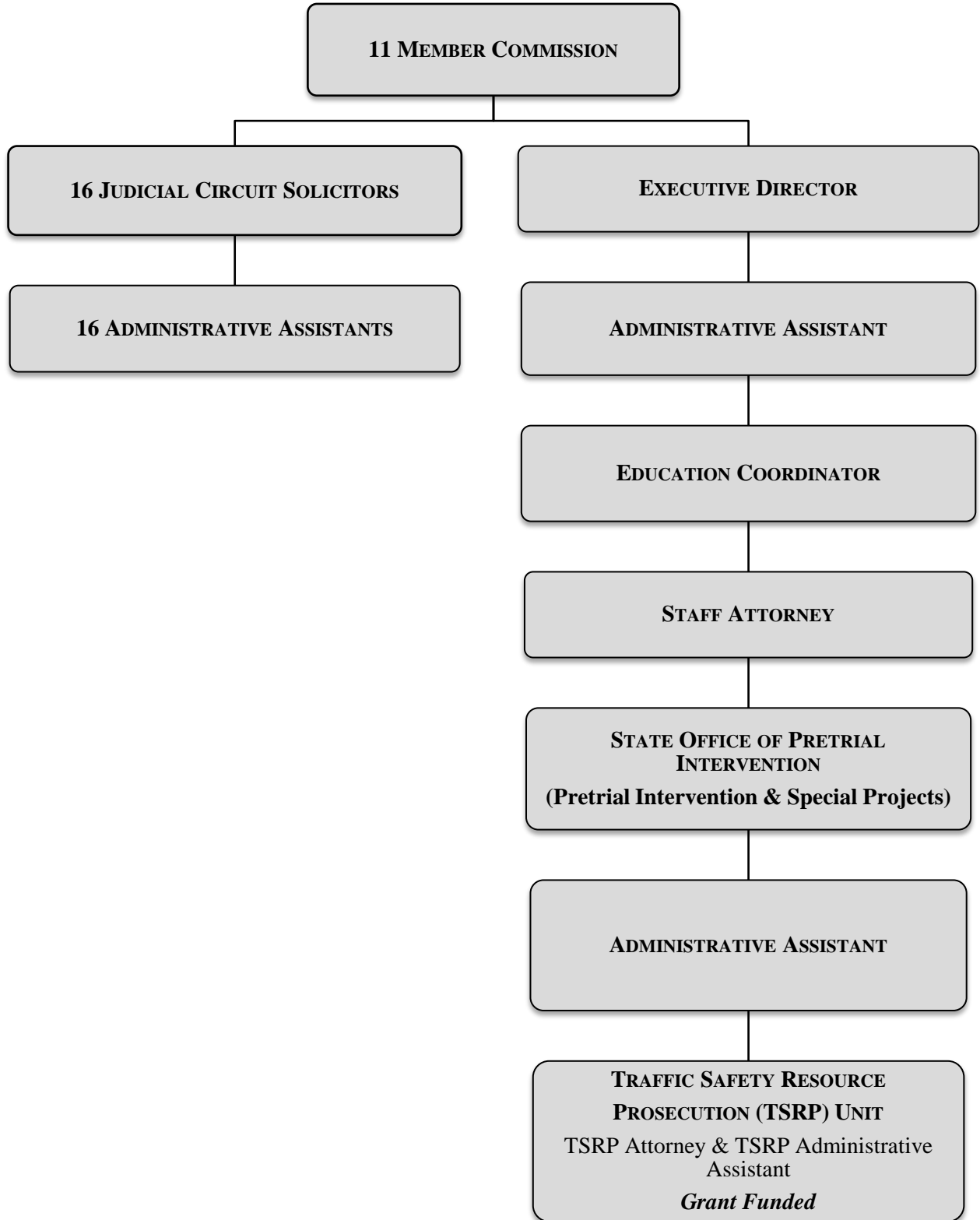
SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

FY 2011/12 Organizational Chart



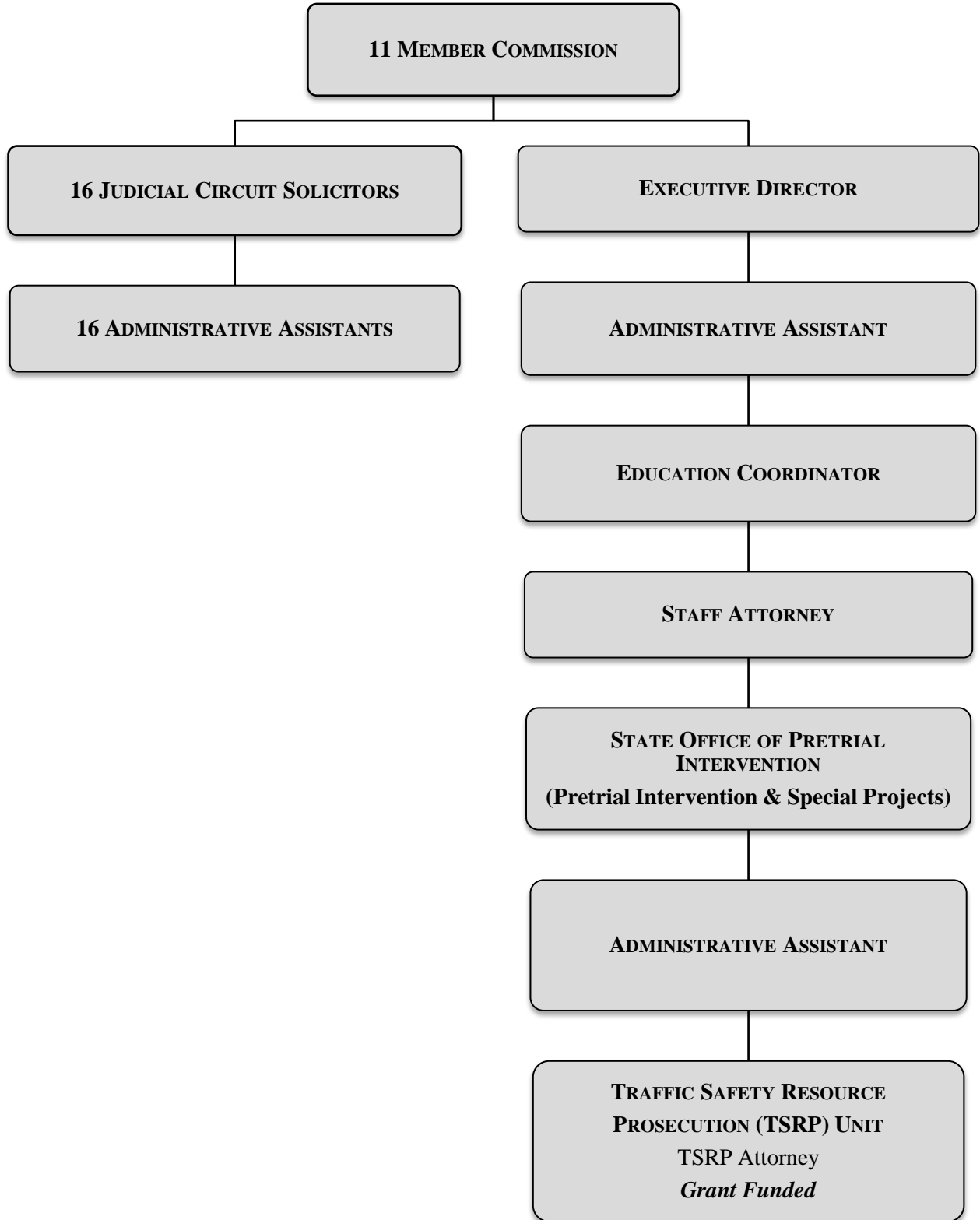
SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

FY 2012/13 Organizational Chart

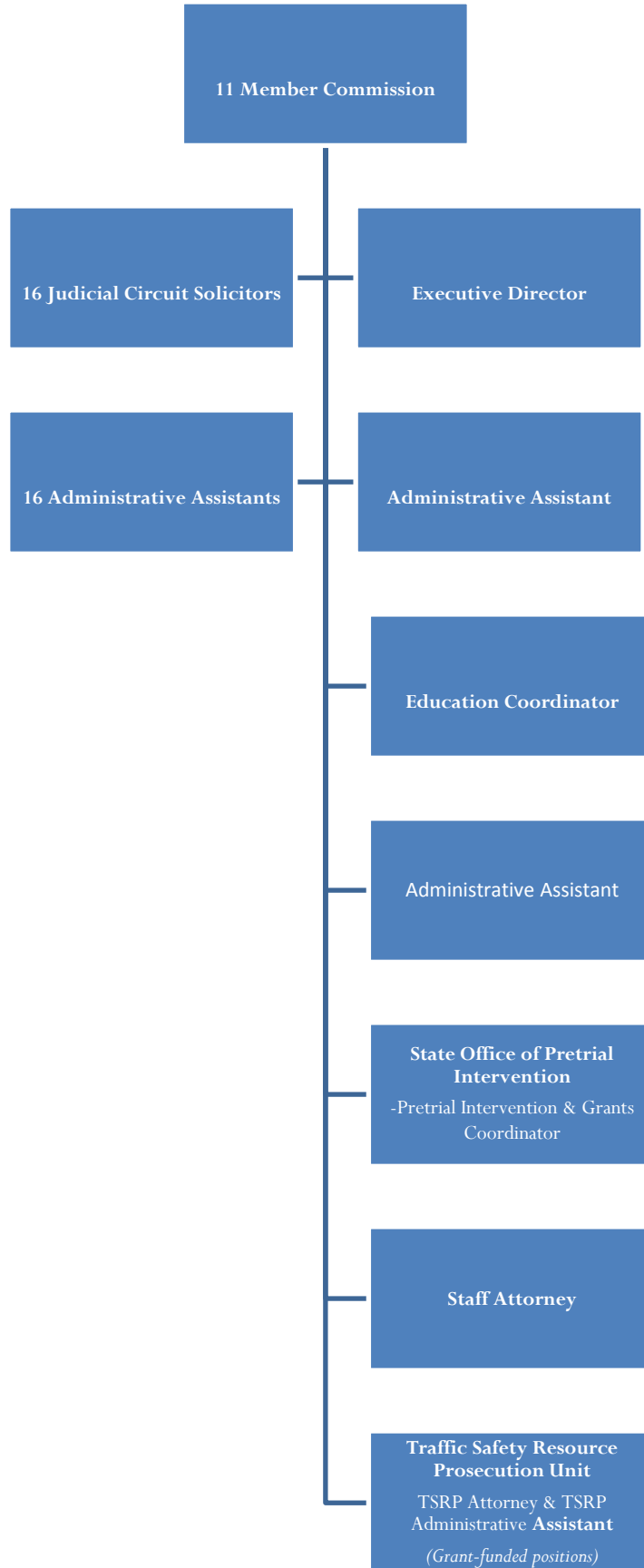


SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

FY 2013/14 Organizational Chart

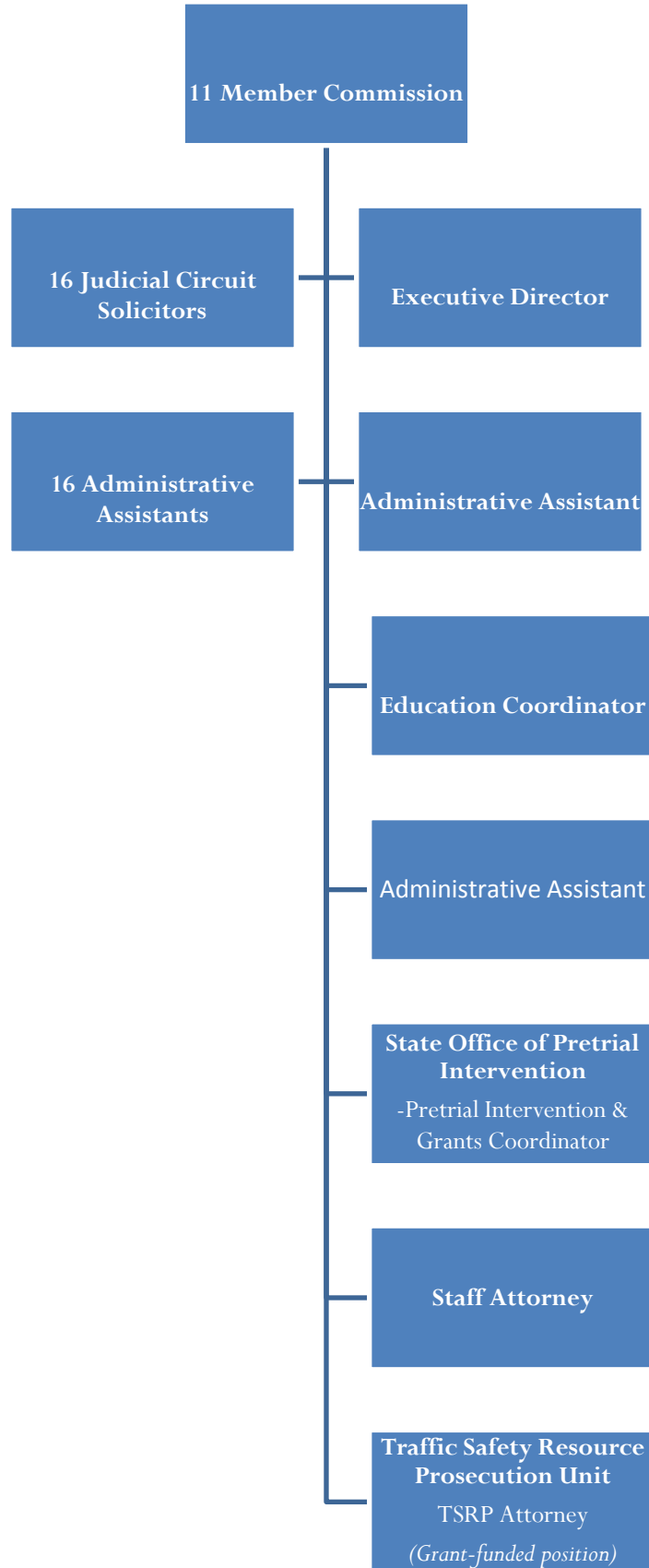


South Carolina Commission on Prosecution Coordination Organizational Chart

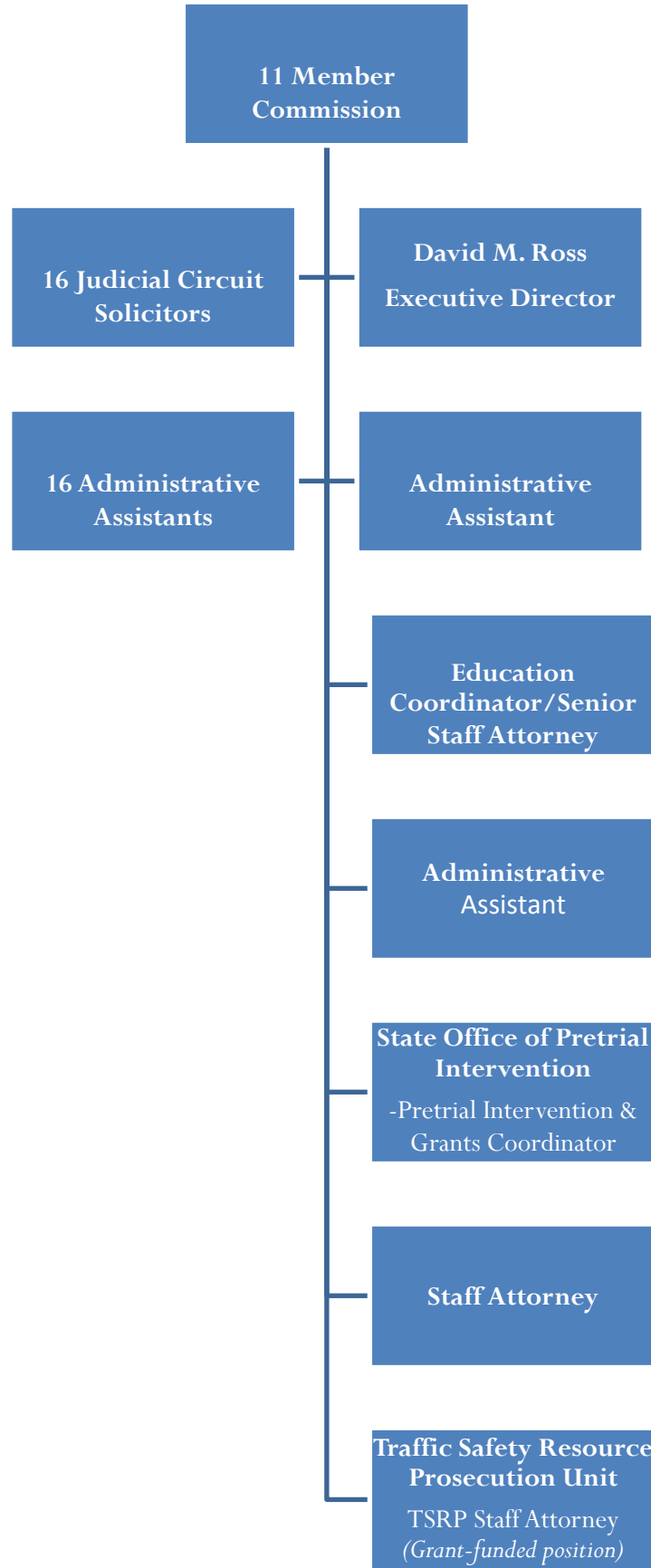


(March 2015)

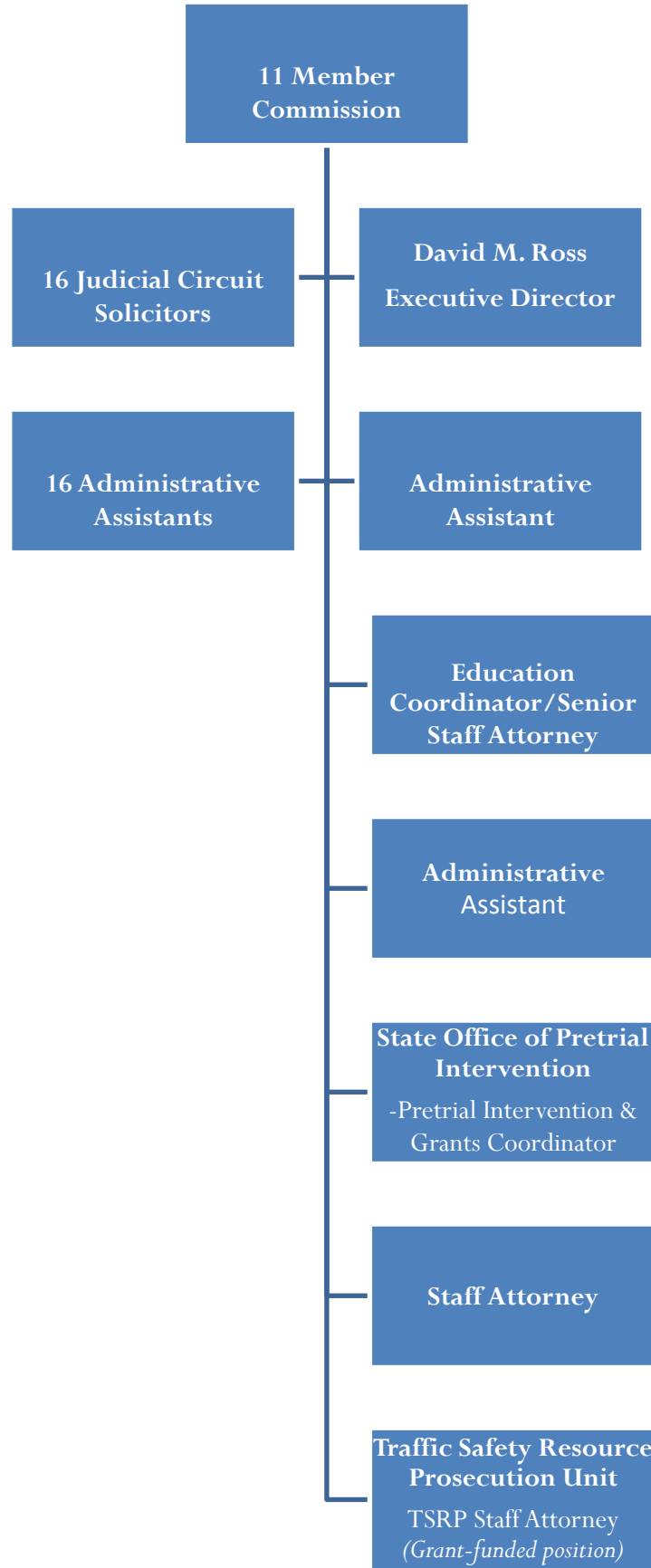
South Carolina Commission on Prosecution Coordination Organizational Chart
Organizational Chart - FY15-16



SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION
Organizational Chart - FY 16-17



SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION
Organizational Chart - FY17-18



PROGRAM EVALUATION REPORT

JANUARY 2018

S.C. Commission on Prosecution Coordination

Date of Submission: *April 6, 2018*

Sample Training Materials & Legal Updates

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* Page numbers are at the top of each page (original document page numbers may also be included on the pages).

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Caseload Equalization

Funding Request FY 2016-2017



S.C. Commission on Prosecution Coordination

Current conditions in South Carolina

- **First** in the number of women killed by men
- **Sixth** highest violent crime rate in the country
- Domestic Violence accounts for **42 percent** of all violent crime

South Carolina Exceeds National Crime Rates in All but One Category

(Rate per 100,000 residents)

	Violent Crime	Murder/ Manslaughter	Rape	Robbery	Aggravated Assault	Property Crime	Burglary	Theft	Motor vehicle theft
South Carolina	558.8	6.9	35.5	95	421.4	3822.2	954.5	2588.3	279.5
United States	386.9	4.7	26.9	112.9	242.3	2859.2	670.2	1959.3	229.7
	44%	47%	32%	-16%	74%	34%	42%	32%	22%

SOURCE: 2012 crime stats compiled by the Federal Bureau of Investigation

Public safety numbers

- 114,198** number of new criminal cases filed every year
- 303** number of prosecutors to handle those cases
- 376.8** average caseload of each prosecutor

Delays hurt public safety

- The older a case gets, the harder it is to prove
- Victims should have the right to a speedy trial along with defendants
- Criminals get out on bond and hurt more people

Domestic Violence Task Force Findings

62 percent of reporting SC law enforcement agencies require their officers to prosecute their own domestic violence cases. Only three other states allows this practice: New Hampshire, New Mexico and Virginia.

Strategy

To improve the crime rate in South Carolina we must confront the overwhelming caseloads and bring them in line with national standards and averages.

U.S. Department of Justice¹ No more than 150 felonies or 400 misdemeanors (per public defender)

U.S. Department of Justice² Average prosecutor prosecutes 94 felonies per year (range is 81-121 depending on size of jurisdiction)

¹ In 1973, the Task Force on the Courts of the National Advisory Commission on Criminal Justice Standards & Goals (created by the U.S. Department of Justice in 1968) studied the problem of excessive public defender caseloads and adopted a recommendation that defenders handle no more than 150 felonies or 400 misdemeanors in any year.

² U.S. Department of Justice, Bureau of Justice Statics, 2007 National Census of State Court Prosecutors: Prosecutors in State Courts, 2007 — Statistical Tables (December 2011) (NCJ

Our plan

Establish a state-funded **minimum** number of prosecutors based on 400 cases per attorney:

1. Each county gets one prosecutor
2. Each circuit gets additional prosecutors based on caseload
3. Solicitors to prosecute all domestic violence cases, ending the practice of officers handling DV cases

Benefits:

- State-funded prosecutors can be placed throughout circuits according to need
- Prosecutors will attack both violent and non-violent crime
- Reduction in the time it takes to get cases to court
 - ⇒ Cases will be stronger
 - ⇒ Criminals do not get out on bond and hurt someone else
 - ⇒ Victims get their day in court



S.C. Commission on Prosecution Coordination

Current Caseload

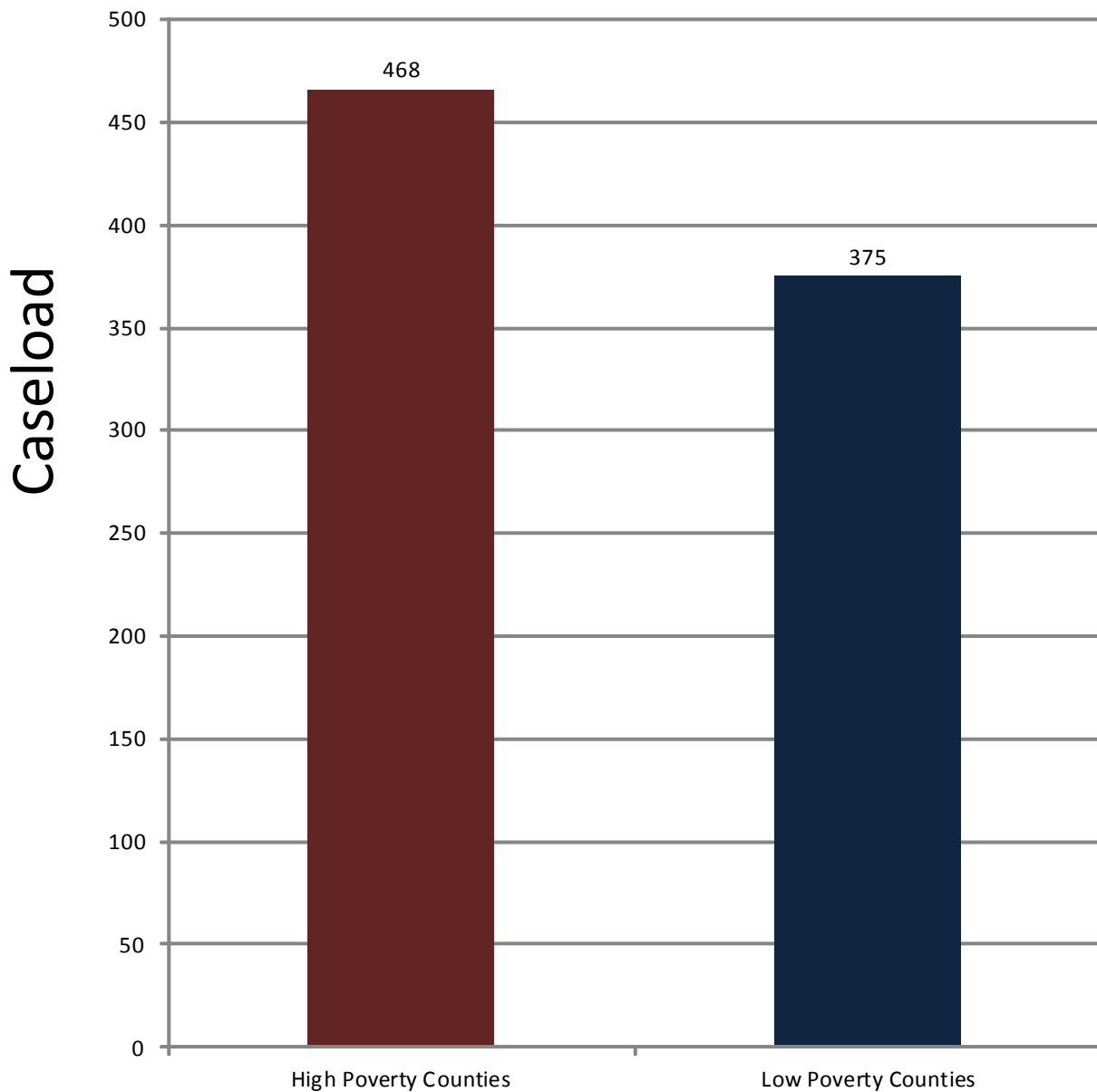
- An average of 114,198 new General Sessions cases were filed in FY 13, 14 and 15.
- The state's 16 judicial circuits employ 303 General Sessions prosecutors.
- The average caseload per prosecutor is 376.8 cases, but varies dramatically among counties.
- 3 counties do not currently have prosecutors; 24 counties have caseloads exceeding 400 cases per attorney

County	Poverty Rate	Average Case Intake	Current # of Prosecutors	Current Cases Per Prosecutors
Dorchester	11.4	1702.7	5	340.5
Beaufort	11.6	2113.7	8	264.2
Lexington	12.4	4902.0	18	272.3
York	13.2	5832.7	18	324.0
McCormick	14.1	167.3	0	0.0
Berkeley	14.3	2907.0	9	323.0
Greenville	15.2	14901.0	34	438.3
Kershaw	16.1	1551.7	3	517.2
Anderson	16.2	3549.3	8	443.7
Richland	16.4	8789.3	38	231.3
Newberry	16.7	976.3	1.5	650.9
Spartanburg	17	7713.0	24	321.4
Charleston	17.7	8261.0	32	258.2
Horry	18	8095.7	15	539.7
Saluda	18.1	468.3	0	0.0
Calhoun	18.2	318.0	1	318.0
Sumter	18.2	2624.3	6	437.4
Pickens	18.4	3722.3	6	620.4
Aiken	18.9	2806.0	6	467.7
Oconee	19.2	1899.3	3	633.1
Edgefield	19.8	571.7	2	285.8
Florence	19.9	3273.7	6	545.6
Laurens	20	2961.7	5	592.3
Georgetown	20.1	1455.3	3	485.1
Greenwood	20.7	2769.0	6	461.5
Abbeville	20.8	695.7	1.5	463.8
Lancaster	20.8	1801.7	5	360.3
Union	21.5	1185.0	2	592.5
Colleton	21.6	1024.7	3	341.6
Darlington	22.3	2447.3	4	611.8
Jasper	22.4	606.7	2	303.3
Cherokee	22.8	1475.0	3	491.7
Clarendon	22.8	849.0	2	424.5
Fairfield	23.2	440.7	2	220.3
Chester	24	684.0	1	684.0
Chesterfield	24.5	945.0	1	945.0
Orangeburg	24.5	1776.0	5	355.2
Hampton	24.7	420.0	1	420.0
Marion	25.2	933.0	1	933.0
Bamberg	26.8	443.0	2	221.5
Lee	27.5	382.0	2	191.0
Barnwell	28.7	723.0	2	361.5
Marlboro	29.2	913.0	2	456.5
Williamsburg	29.9	775.7	2	387.8
Dillon	32.8	1146.7	2	573.3
Allendale	36.3	199.0	0	0.0
Total	17	114198.3	303	376.8



Economic disparity in prosecution

- In South Carolina, 34 counties have poverty rates that exceed the state average of 17 percent.
- Of those counties, 32 have full-time prosecutors that carry an average caseload of 468 cases per attorney.
- Of the 12 counties with average or lower-than-average poverty rates, 11 have full-time prosecutors that carry an average of 375 cases per attorney.
- This means that prosecutors in poorer counties carry caseloads that are 27 percent higher than prosecutors in more affluent counties.

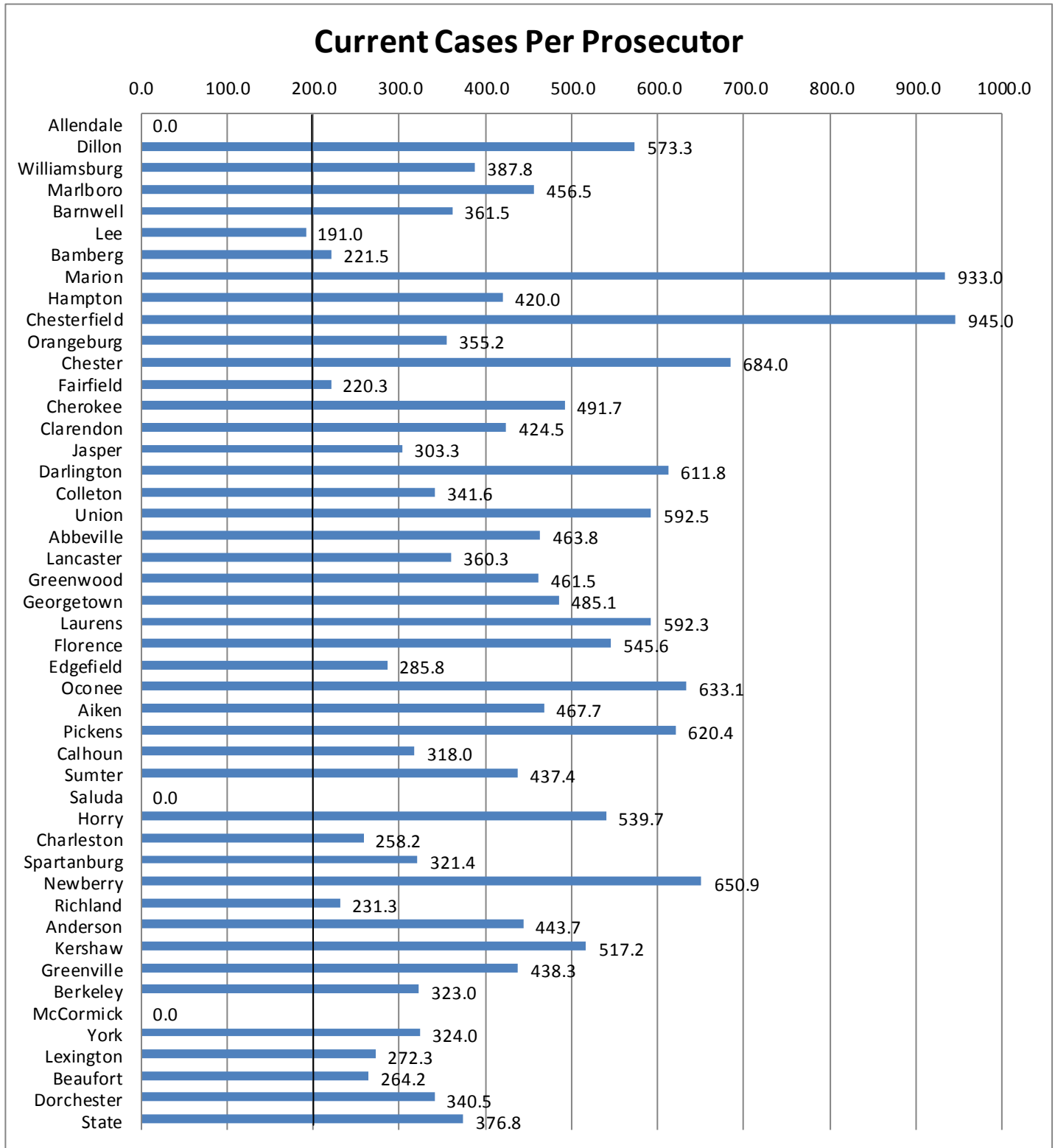




S.C. Commission on Prosecution Coordination

Current Caseload

- Counties with higher poverty rates tend to have the highest caseloads per prosecutor
- The blank counties have no caseload per attorney analysis because they have no dedicated prosecutors.






S.C. Commission on Prosecution Coordination

Current Funding

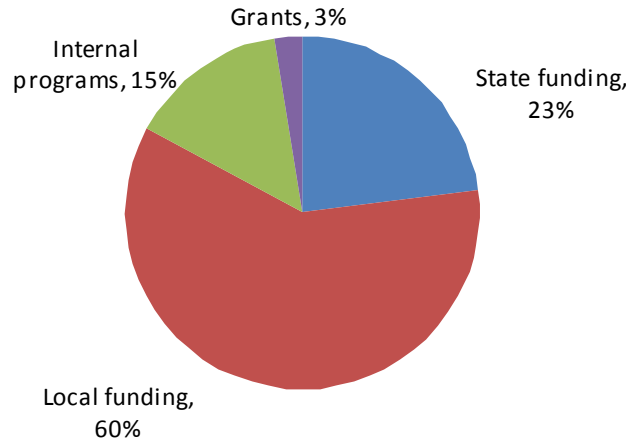
- The state accounts for only 23 percent of the funding for Solicitors’ Offices.
- Counties and municipalities make up 60 percent of the funding of prosecution.

Estimated State Funding

Judicial Circuit State Support	\$5,872,002
Law Enforcement Funding	\$3,170,752
Court Fee Funding	\$201,333
Violent Crime Prosecution	\$1,600,000
DUI Funding	\$1,179,041
CDV Funding	\$1,600,000
Victim Assistance	\$782,703
Traffic Education Program	\$21,136
Drug Court Funding	\$2,440,078
Conditional Discharge (Drug Court)	\$474,975
Drug Court Funding Direct Appropriations	\$747,401
Total	\$17,312,041
Total for Prosecution	\$13,623,128
Total for Drug Court/Victim Assistance	\$3,688,913

 Funding for prosecution

Current Funding Breakdown





S.C. Commission on Prosecution Coordination

National Caseload Standards

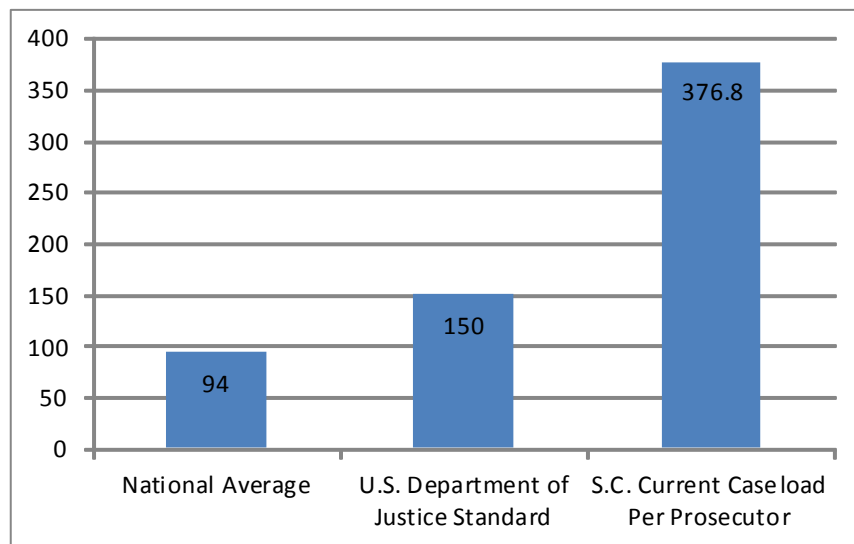
Every profession has a metric by which a capacity per employee is determined. This is done to ensure that a certain level of quality is maintained and that the organization is adequately staffed to handle its workload. In the case of teachers, it is the number of students per teacher.

Solicitors must follow a rigid set of standards for professional conduct. They must give every case the attention it deserves. Prosecutors must conduct a diligent and thorough review of each case to determine whether the facts warrant the charges and to ensure that the rights of the victim and defendant are not infringed upon. The implications of having overworked prosecutors can be dire.

A 2011 Northwestern University Law Review article notes that, in 1968, a national commission created by the Department of Justice studied the problem of excessive public defender caseloads and adopted a recommendation that defenders handle no more than 150 felonies *or* 400 misdemeanors in any year. The article goes on to say that in subsequent years, these guidelines have been widely endorsed by criminal justice organizations, the American Bar Association, and academic commentators. The article suggests that these standards should also apply to prosecutors.¹ South Carolina solicitors prosecute both felonies and misdemeanors. For instance, the Fourteenth Circuit Solicitor's caseload is made up of approximately 75 percent felonies and 25 percent misdemeanors.

In the most recent survey of all prosecutors offices throughout the country, the U.S. Department of Justice found that the average felony caseload per attorney was 94.²

Measuring S.C. by National Benchmarks and Averages



¹Adam M. Gershowitz & Laura R. Killinger, "The State Never Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants," 105 Northwestern University L Rev. 261, 262-267 (2011).

²2007 National Census of State Court Prosecutors: Prosecutors in State Courts, 2007 — Statistical Tables, *supra*.



S.C. Commission on Prosecution Coordination

Funding Request

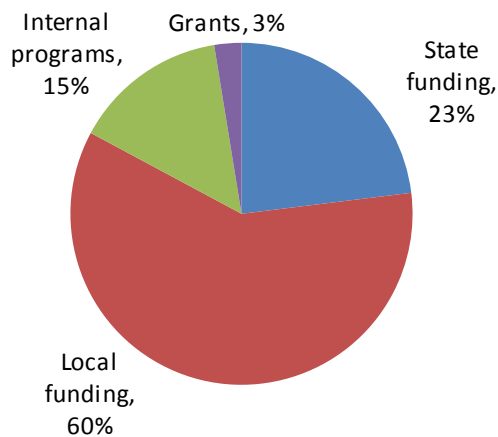
The South Carolina Commission on Prosecution Coordination is requesting an additional \$10,815,795 from the General Assembly to pay for half of the necessary prosecutors throughout the state.

- This approach gets us closer to the 200 cases per attorney benchmark when local funding is included.
- Counties that seek a higher level of service will continue to pay for enhancements.
- All counties will have at least one, full-time dedicated prosecutor.
- The state provides the foundation for professional prosecutorial services.
- Solicitors will ensure that attorneys will prosecute all domestic violence cases.

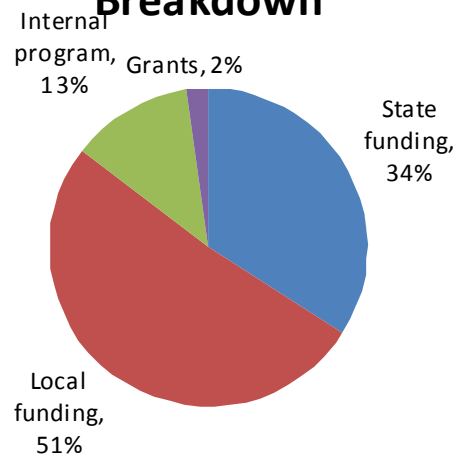
Calculation

Average case intake	114,198
Estimated domestic violence case increase	11,419
Total case intake	125,618
Prosecutors needed (200 cases per atty)	570.99
State-funded prosecutors (50% of total)	285.495
Cost @ \$75K per attorney (\$50K salary)	\$21,412,125
Current state funding for prosecution	\$13,623,128
Additional state funding needed	\$10,815,795

Current Funding Breakdown



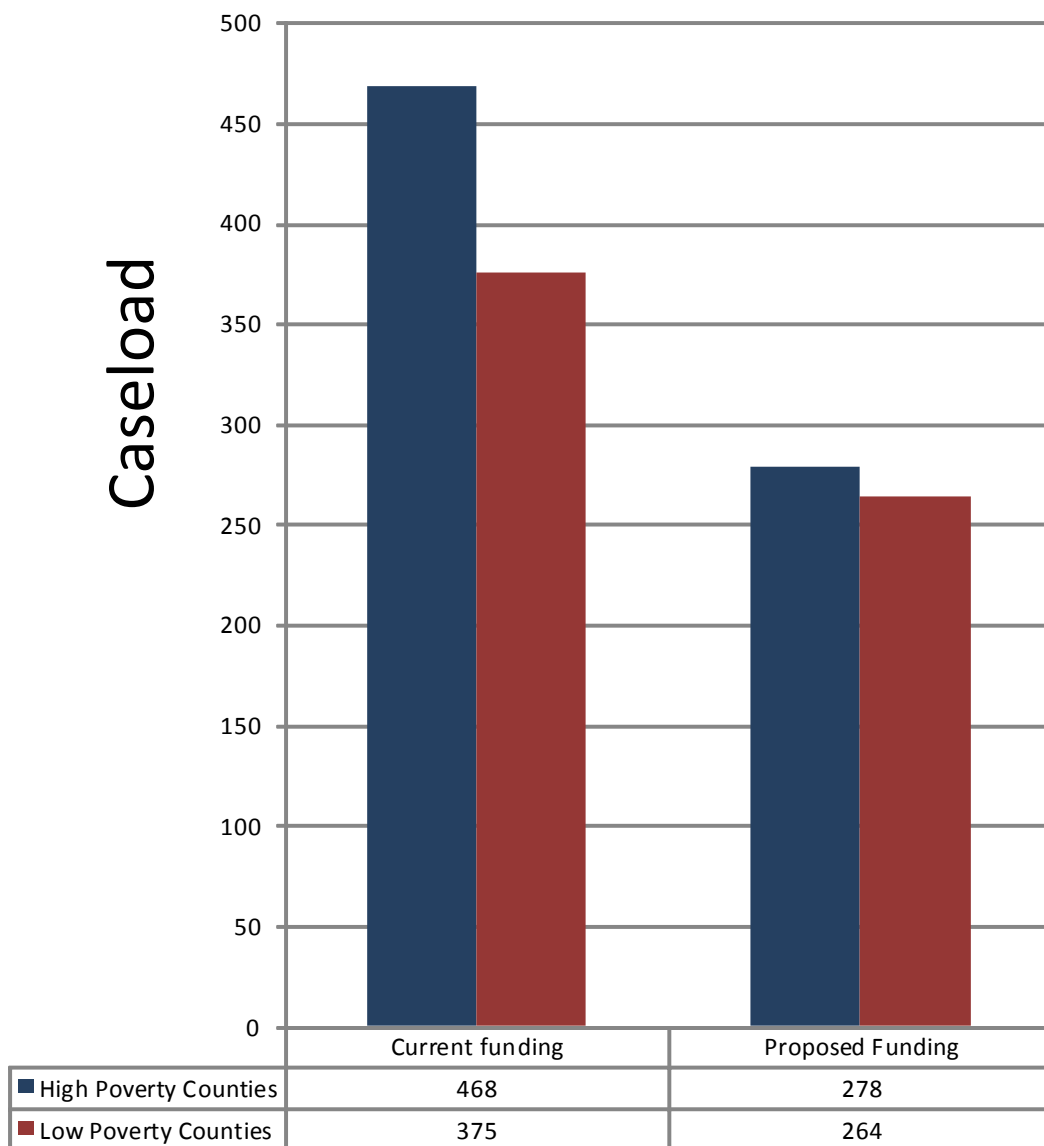
Proposed Funding Breakdown





Reducing economic disparity in prosecution

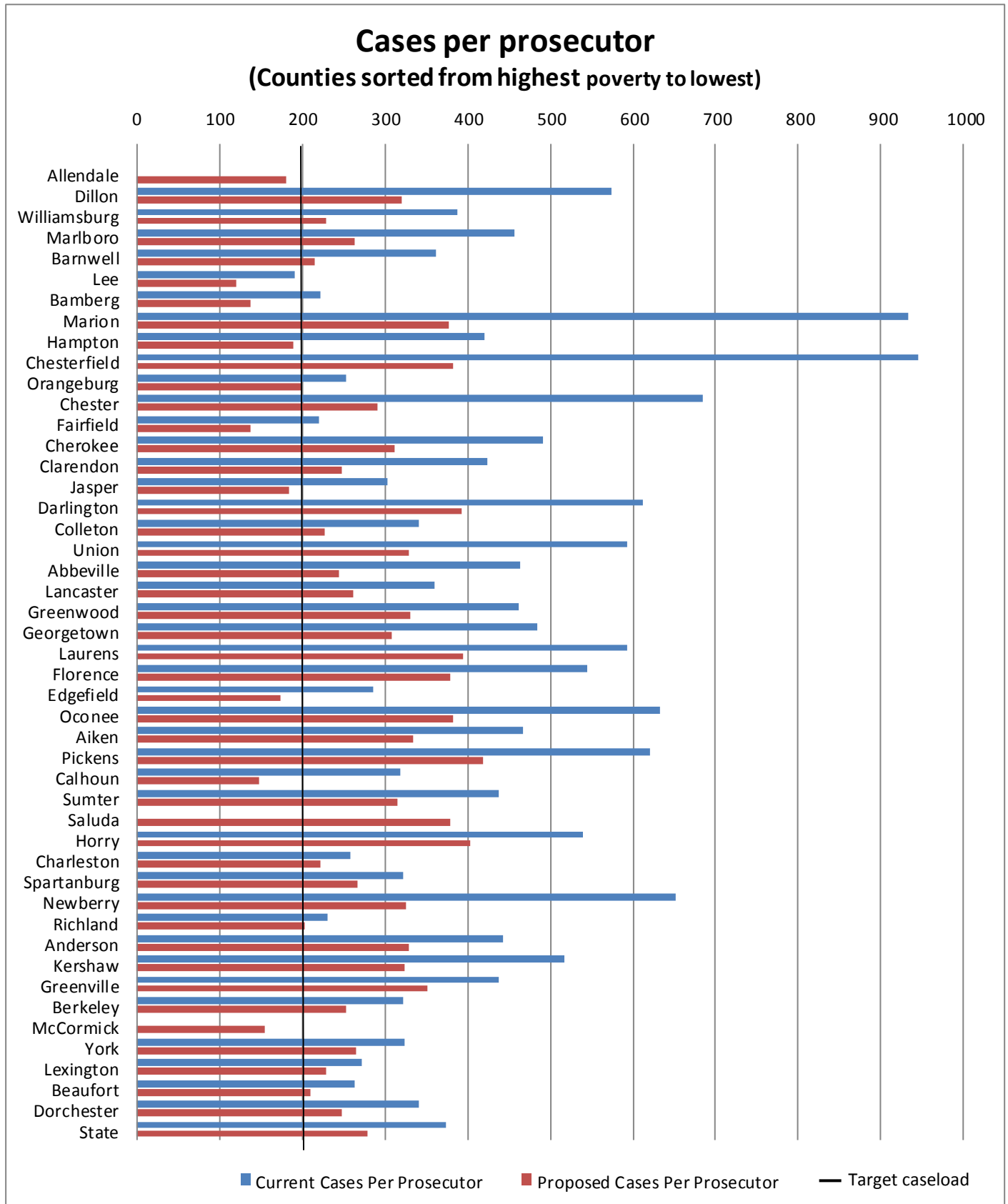
- This funding proposal would **equalize the caseload between high and low poverty counties** by providing the foundation for professional prosecutorial services throughout the state.
- Currently, counties with higher-than-average poverty levels carry prosecutor caseloads that are 27 percent higher than counties with average or lower-than-average poverty rates.
- With this proposal, higher-than-average poverty counties would only have 8 percent higher caseloads.





S.C. Commission on Prosecution Coordination

Results of Funding

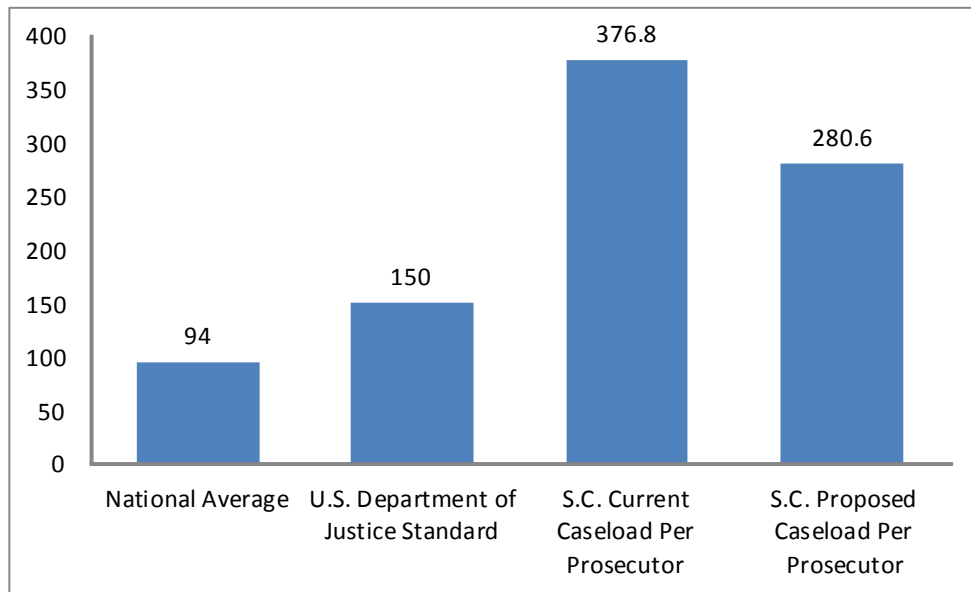




S.C. Commission on Prosecution Coordination

Results of Funding

<u>Before</u>	<u>After</u>
<ul style="list-style-type: none"> • 3 counties did not have full-time prosecutors • 24 counties had more than 400 cases per prosecutor • 2 counties in line with 200 cases per attorney target • Average caseload per prosecutor is 376.8 • Officers tried their own domestic violence cases 	<ul style="list-style-type: none"> • All counties have full-time prosecutors • 3 counties have more than 400 cases per prosecutor • 14 counties in line with 200 cases per attorney target • Average caseload per prosecutor is 280.8 • All domestic violence cases to be handled by solicitors





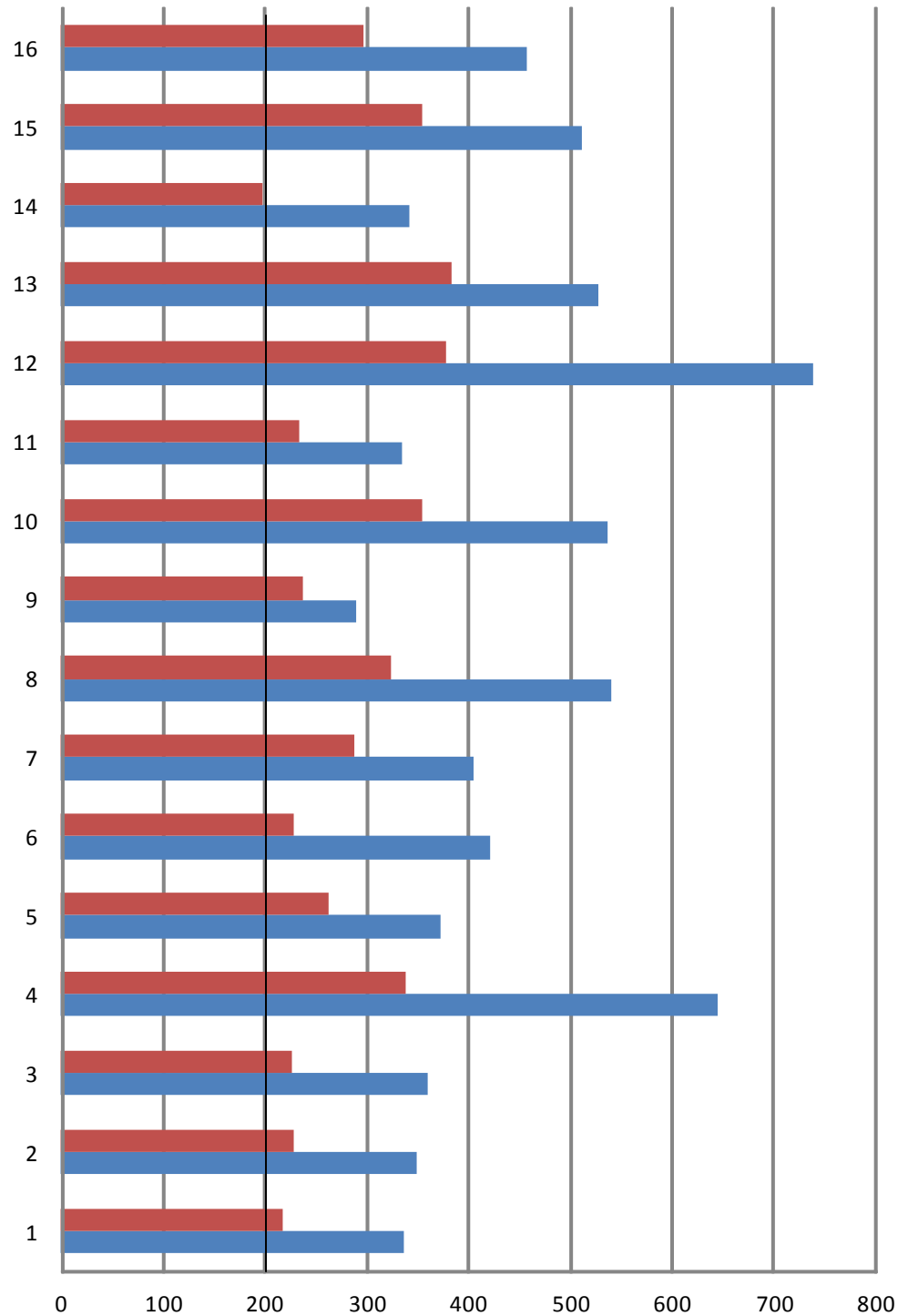
S.C. Commission on Prosecution Coordination

Results of Funding

Counties	Poverty rate	Average Intake	Current number of Prosecutors	Current Cases Per Prosecutor	Proposed number of Prosecutors	Proposed Cases Per Prosecutor
Allendale	36.3	218.9	0	0.0	1.1	180.9
Dillon	32.8	1261.3	2	573.3	3.6	320.6
Williamsburg	29.9	853.2	2	387.8	3.4	228.8
Marlboro	29.2	1004.3	2	456.5	3.5	264.0
Barnwell	28.7	795.3	2	361.5	3.4	215.0
Lee	27.5	420.2	2	191.0	3.2	119.7
Bamberg	26.8	487.3	2	221.5	3.2	137.5
Marion	25.2	1026.3	1	933.0	2.5	377.9
Hampton	24.7	462.0	1	420.0	2.2	189.9
Chesterfield	24.5	1039.5	1	945.0	2.5	381.8
Orangeburg	24.5	1953.6	5	355.2	7.5	259.54
Chester	24	752.4	1	684.0	2.3	291.8
Fairfield	23.2	484.7	2	220.3	3.2	136.8
Cherokee	22.8	1622.5	3	491.7	4.7	311.1
Clarendon	22.8	933.9	2	424.5	3.4	247.8
Jasper	22.4	667.3	2	303.3	3.3	183.6
Darlington	22.3	2692.1	4	611.8	6.2	392.8
Colleton	21.6	1127.1	3	341.6	4.5	226.9
Union	21.5	1303.5	2	592.5	3.6	329.6
Abbeville	20.8	765.2	1.5	463.8	2.8	244.1
Lancaster	20.8	1981.8	5	360.3	6.9	260.9
Greenwood	20.7	3045.9	6	461.5	8.4	330.0
Georgetown	20.1	1600.9	3	485.1	4.7	307.6
Laurens	20	3257.8	5	592.3	7.5	395.5
Florence	19.9	3601.0	6	545.6	8.6	378.6
Edgefield	19.8	628.8	2	285.8	3.3	173.9
Oconee	19.2	2089.3	3	633.1	5.0	383.3
Aiken	18.9	3086.6	6	467.7	8.4	333.6
Pickens	18.4	4094.6	6	620.4	8.9	419.6
Calhoun	18.2	349.8	1	318.0	2.2	147.2
Sumter	18.2	2886.8	6	437.4	8.3	315.5
Saluda	18.1	515.2	0	0.0	1.2	379.1
Horry	18	8905.2	15	539.7	20.1	403.4
Charleston	17.7	9087.1	32	258.2	37.2	222.4
Spartanburg	17	8484.3	24	321.4	28.9	267.1
Newberry	16.7	1074.0	1.5	650.9	3.0	326.4
Richland	16.4	9668.3	38	231.3	43.4	202.4
Anderson	16.2	3904.3	8	443.7	10.8	329.1
Kershaw	16.1	1706.8	3	517.2	4.8	324.6
Greenville	15.2	16391.1	34	438.3	42.5	350.7
Berkeley	14.3	3197.7	9	323.0	11.5	253.6
McCormick	14.1	184.1	0	0.0	1.1	154.3
York	13.2	6415.9	18	324.0	21.9	265.9
Lexington	12.4	5392.2	18	272.3	21.5	228.3
Beaufort	11.6	2325.0	8	264.2	10.1	210.0
Dorchester	11.4	1872.9	5	340.5	6.9	248.3
State	17	125618.2	303	376.8	447.2	280.8

Results of Funding

Cases per prosecutor



	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Proposed Caseload Per Prosecutor	218	229	228	340	264	230	289	324	238	356	234	378	385	198	355	298
Current Caseload Per Prosecutor	338	350	360	647	374	422	407	542	291	538	336	739	529	343	512	458

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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

Summary of 2017 Act No. 95 (R125, S179)

Limited Immunity for Persons Seeking Medical Treatment for Another Person Experiencing Drug or Alcohol-Related Overdoses

2017 Act No. 95, which was effective June 10, 2017, added Article 19 to Chapter 53 of Title 44 of the S.C. Code of Laws (§§44-53-1910 through 1970). The Article essentially provides as follows.

- **A PERSON WHO SEEKS MEDICAL ASSISTANCE** – by contacting the 911 system, a law enforcement officer, or emergency services personnel – **FOR ANOTHER PERSON WHO APPEARS TO BE EXPERIENCING A DRUG OR ALCOHOL-RELATED OVERDOSE** (defined in §44-53-1910(2) as an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from consumption or use of controlled substance, alcohol, or another substance combined with a controlled substance or alcohol, that a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance) (§44-53-1920(A)).
- **MAY NOT BE PROSECUTED FOR:**
 - (1) Dispensing or delivering a controlled substance under §44-53-370(a), *when the controlled substance is dispensed or delivered directly to the person who appears to be experiencing a drug-related overdose* (§44-53-1920(B)(1));
 - (2) possessing a controlled substance under §44-53-370(c) (§44-53-1920(B)(2));
 - (3) possessing less than 1 gram of methamphetamine or cocaine base under §44-53-375(A) (§44-53-1920(B)(3));
 - (4) dispensing/delivering methamphetamine/cocaine base under §44-53-375(B), *when the methamphetamine/cocaine base is dispensed/delivered directly to the person who appears to be experiencing a drug-related overdose* (§44-53-1920(B)(4));
 - (5) possessing paraphernalia under §44-53-391 (§44-53-1920(B)(5));
 - (6) selling or delivering paraphernalia under §44-53-391, *when the sale or delivery is to the person who appears to be experiencing a drug-related overdose* (§44-53-1920(B)(6));
 - (7) purchasing, attempting to purchase, consuming, or knowingly possessing alcohol under §63-19-2440 (§44-53-1920(B)(7));
 - (8) transferring/giving beer/wine to a person under 21 for consumption under §61-4-90 (§44-53-1920(B)(8)); **OR**
 - (9) contributing to the delinquency of a minor under §16-17-490 (§44-53-1920(B)(9)).
- **IF THE EVIDENCE WAS OBTAINED AS A RESULT OF THE PERSON SEEKING** medical assistance for the apparent overdose on the premises **OR IMMEDIATELY AFTER SEEKING SUCH** (§§44-53-1920(A) & 44-53-1930(A)); **AND**
- **THE PERSON:**
 - (1) **ACTED IN GOOD FAITH** when seeking medical assistance, **UPON A REASONABLE BELIEF THAT HE WAS THE FIRST PERSON TO CALL FOR ASSISTANCE** (§44-53-1920(A)(1)); **AND**
 - (2) **PROVIDED HIS OWN NAME** to the 911 system or LEO upon arrival (§§44-53-1920(A)(2) & (D), & 44-53-1930(B)); **AND**
 - (3) **FULLY COOPERATED** with LE and medical personnel (§§44-53-1920(D) & 44-53-1930(B)); **AND**
 - (4) **REMAINED WITH THE INDIVIDUAL** needing medical assistance **UNTIL HELP ARRIVED** (§44-53-1920(D)); **AND**
 - (5) **DID NOT SEEK MEDICAL ASSISTANCE DURING** the course of the **EXECUTION OF AN ARREST WARRANT, SEARCH WARRANT, OR OTHER LAWFUL SEARCH** (§44-53-1920(A)(3)).

Under §44-53-1950, a person immune from prosecution for the crimes listed in §44-53-1920(B), may be prosecuted for other crimes even if they arise from the same circumstances. And, under §44-53-1940, if the person is charged with other drug or alcohol-related offenses arising from the same circumstances, the person's decision to seek medical assistance, pursuant to §44-53-1920(A) or 44-53-1930, may be considered by the Court in mitigation at sentencing.

Moreover, under §44-53-1960, the provisions of Article 19 do **NOT** limit (1) the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for immunity or with regard to other crimes committed by a person who otherwise qualifies for immunity; (2) any seizure of evidence or contraband otherwise permitted by law; or (3) affect the authority of a LEO to detain a person in the course of an investigation or to effect an arrest for any offense, except as provided in §§44-53-1920(A) or 44-53-1930. (NOTE: In 44-53-1960, it says "Nothing in this section...", but it is clear from the context and content that the Legislature intended to say "this article," and to interpret it literally as written would defeat that intent and lead to an absurd result. See *Browning v. Hartvigsen*, 307 S.C. 122, 414 S.E.2d 115, 117 (1992); *Enos v. Doe*, 380 S.C. 295, 669 S.E.2d 619, 623 (Ct. App. 2008)).

Under §44-53-1970, a LEO who arrests a person for an offense listed in §44-53-1920(B) is not subject to criminal prosecution, or civil liability, for false arrest or false imprisonment if the arrest was based on probable cause.

**NOTE: THE LEGISLATION DOES NOT INCLUDE A SAVINGS CLAUSE SO IT IS RETROACTIVE
(WHICH MEANS THAT IT APPLIES TO CONDUCT OCCURRING AND CHARGES BROUGHT PRIOR TO JUNE 10, 2017).**

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**SUMMARY OF IMPACT OF S. 133 (2015 S.C. ACT NO. 22, EFFECTIVE DATE JUNE 1, 2015)
ON THE EXPUNGEMENT OF RECORDS & THE EXPUNGEMENT OF JUVENILE RECORDS**

Expungement of Records

Amended §17-22-910(A) to provide that a person's eligibility for expungement, including a juvenile's under §63-19-2050, or eligibility for expungement as authorized by any other provision of law, must be based on the offense that the person actually pled guilty to or was convicted of committing. Eligibility for expungement may not be based on an offense for which the person may have been charged.

Expungement of Juvenile Records

Amended §63-19-2050 to provide:

A. Judicial notice to person adjudicated.

At the time a person is adjudicated delinquent, the family court must notify the person of: (a) the ability to have the record expunged; (b) the conditions that must be met to expunge records; and (c) the process for receiving an expungement in that jurisdiction.

B. Petition for expungement.

A person taken into custody for, charged with, or adjudicated delinquent for committing a status offense, or a nonviolent offense as defined in §16-1-70, may petition for expungement. However, a person with a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed as an adult may not petition for expungement. For purposes of this section, a "prior adjudication" is an adjudication occurring prior to the date the subsequent offense was committed.

C. The prosecution or law enforcement may file an objection to the expungement.

- (1) The only available grounds for objection are that the person has other charges pending, or the charges are not eligible for expungement.
- (2) The prosecution or law enforcement must give written notice of the objection to the person at the most current address on file with the court or through the person's counsel of record.
- (3) Once the objection is made, the court must hold a hearing.

D. In order to grant an order of expungement for a person who has been taken into custody for, charged with, or adjudicated delinquent, the court must make the following findings.

- (1) The person is at least 17 years of age,
- (2) The person has successfully completed any dispositional sentence,
- (3) The person has not been subsequently adjudicated for or convicted of any criminal offense, and
- (4) The person does not have any criminal charges pending in family or general sessions court.

E. When a person is found not guilty of a charge, the court must grant an expungement order. The expungement order must be granted regardless of the person's age, and no fee may be charged. *NOTE: Fees for expungement of adjudications and for diversion programs still apply.*

F. Which offenses must/may/may not be expunged by the court.

- (1) An adjudication for a violent crime as defined in §16-1-60 **may not** be expunged.
- (2) A single status offense **must** be expunged.
- (3) Multiple status offenses **may** be expunged.
- (4) Nonviolent crimes as defined in §16-1-70 **may** be expunged.

G. When expungement is authorized, the following official records may be expunged.

- | | |
|--|---------------------------|
| (1) identity of person taken into custody, | (3) the adjudication, and |
| (2) the charges filed against the person, | (4) the disposition. |

H. When an expungement order is granted by the court, the records must be destroyed or retained by law enforcement, government agencies, or departments pursuant to §17-1-40.

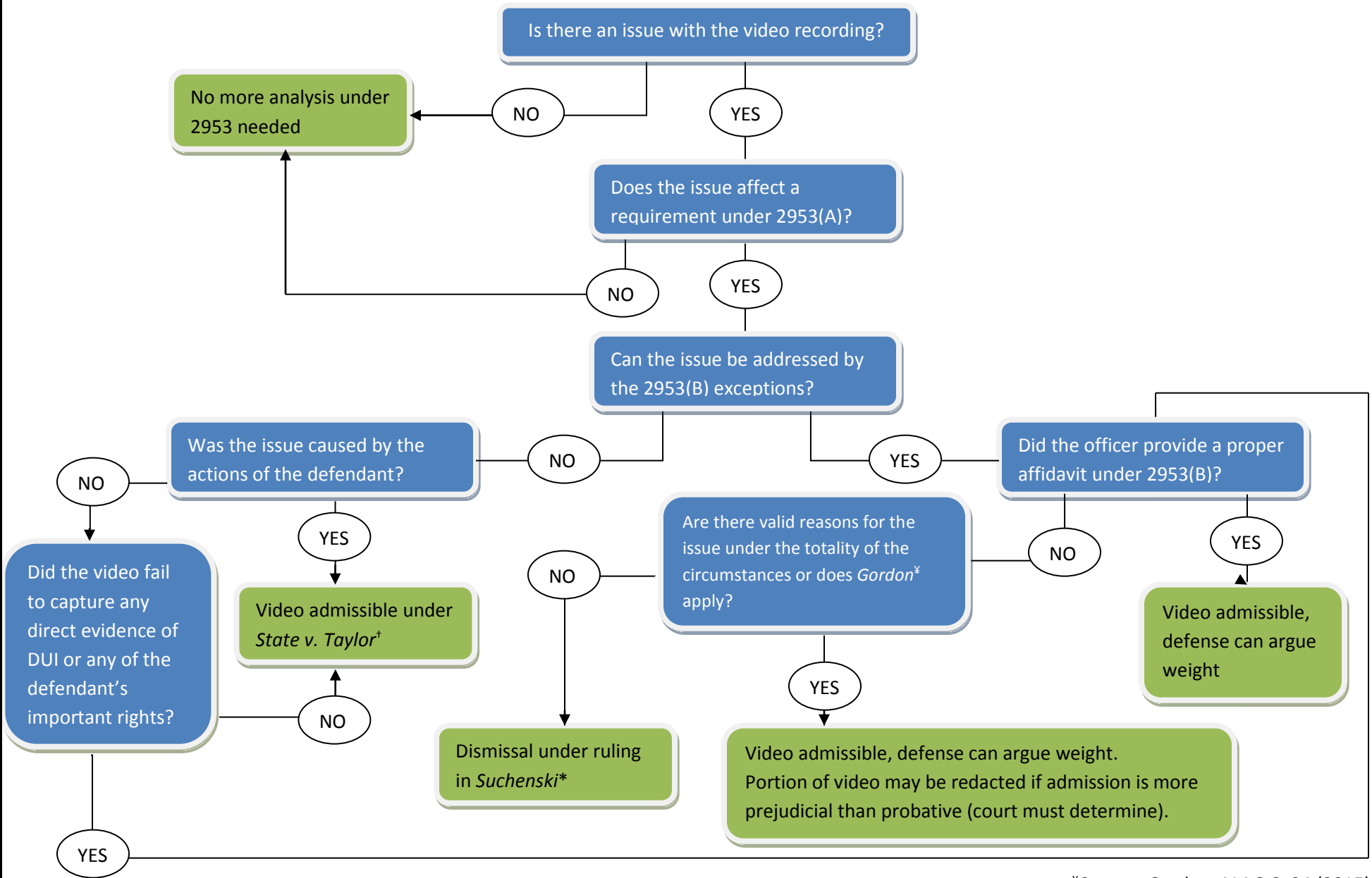
I. Legal effect of expungement.

- (1) The person is restored in the contemplation of the law to the status the person occupied before being taken into custody.
- (2) Person is not guilty of perjury or otherwise giving false statement by reason of failing to recite or acknowledge the charge or adjudication in response to an inquiry made of the person for any purpose.

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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

Analysis of SC Code Section 56-5-2953 (DUI Video Recording Requirement – Incident Site)



‡State v. Gordon, 414 S.C. 94 (2015)

†State v. Taylor, 411 S.C. 294 (Ct. App. 2014)

*City of Rock Hill v. Suchenski, 374 S.C. 12 (2007)

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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

DOMESTIC VIOLENCE CRIMES

CHANGES TO DV LAWS MADE BY DOMESTIC VIOLENCE REFORM ACT BECAME EFFECTIVE ON JUNE 4, 2015. BECAUSE OF THE ACT’S SAVINGS CLAUSE, VIOLATIONS OF REPEALED OR AMENDED STATUTES (SUCH AS THE OLD CDV AND CDVHAN CRIMES) ARE TO BE CHARGED UNDER THE OLD STATUTES AND THE PUNISHMENTS PROVIDED THEREIN ARE TO CONTROL.

DEFINITIONS (§16-25-10) (see other side for more definitions):

Great bodily injury (GBI): Bodily injury that causes substantial risk of death or serious, permanent disfigurement or protracted loss or impairment.

Household member: Spouse, former spouse, persons who have a child in common, or male and female who are living together or have cohabitated. *NOTES: (1) Definition of household member includes persons of the same sex who are married, who are divorced, or who have a child in common. (2) “Child” (for purposes of the “persons who have a child in common” definition) may include viable fetuses (see State v. McKnight, 352 S.C. 635, 576 S.E.2d 168 (2003); Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (1997)). (3) Looking to Boozer v. Boozer, 242 S.C. 292, 296, 130 S.E.2d 903, 905 (1963), “cohabitate” most likely means living together in an intimate relationship involving sexual relations or other “marital duties.” (4) In Doe v. State, Op. 27728 (S.C.S. Ct. November 17, 2017), Court held “male and female who are cohabiting or formerly have cohabited” definition must be read to include same-sex relationships.*

Moderate bodily injury (MBI): Physical injury that either involves prolonged loss of consciousness, causes temporary/moderate disfigurement, causes temporary loss of function of bodily member or organ, results in need for medical treatment requiring use of regional or general anesthesia, results in fracture or dislocation. Does NOT include 1-time treatment and subsequent observation of scratches, cuts, bruises, burns, or other minor injuries not requiring extensive medical care.

Prior conviction of domestic violence: Includes conviction of any crime, in any state, containing among its elements those in, or substantially similar to those in, Section 16-25-20(A) committed against a household member within 10 years prior to the incident date of the current offense. *NOTE: Elements of the base offense found in 16-25-20(A) are the same as those for the “old” crimes of CDV and CDVHAN; thus, convictions for those offenses are prior convictions of DV (unless statute requires prior conviction of specific DV crime by name or statute).*

Protection Order (PO): Includes order of protection, restraining order, condition of bond, or any other similar order issued in South Carolina or another state to protect a household member.

THREE DEGREES OF DOMESTIC VIOLENCE

Base Offense (BO) for ALL degree of Domestic Violence (1st, 2nd, and 3rd Degree) (16-25-20(A)): Defendant inflicted physical harm/injury to a household member **OR** offered/attempted to cause such with apparent present ability under circumstances reasonably creating fear of imminent peril.

Third Degree §16-25-20(D)	Second Degree §16-25-20(C)	First Degree §16-25-20(B)	DV of a High and Aggravated Nature (DVHAN) §16-25-65
Defendant committed the BO. In other words, the defendant either: <ul style="list-style-type: none"> • actually inflicted physical harm or injury to a household member or • offered or attempted to cause such harm or injury with the apparent present ability under circumstances reasonably creating fear of imminent peril. 	Defendant committed BO and either: <ul style="list-style-type: none"> • Inflicted MBI or actions were accomplished by means likely to result in MBI; OR • Committed BO and has 1 prior DV conviction within past 10 years; OR • Committed 3rd degree DV and either: <ul style="list-style-type: none"> ○ was in the process of violating a PO; or ○ knew or should have known the victim is pregnant; or ○ minor was present or perceived the event; or ○ offense committed during a robbery, burglary, kidnapping, or theft; or ○ offense committed by impeding victim’s breathing or air flow; or ○ offense committed using physical force/threat of such force to block person’s access to phone or electronic communication device for purpose of preventing, obstructing, or interfering with report to law enforcement or request for assistance from emergency medical assistance (hereafter “TUPPARA”). 	Defendant committed BO and either: <ul style="list-style-type: none"> • Committed BO and has 2 or more prior DV convictions within past 10 years; OR • Inflicted GBI or actions accomplished by means likely to result in GBI; OR • Used firearm while committing BE; OR • Committed 2nd degree DV and either: <ul style="list-style-type: none"> ○ was in the process of violating a PO; or ○ defendant knew/should have known victim pregnant; or ○ minor was present or perceived the event; or ○ offense committed during a robbery, burglary, kidnapping, or theft; or ○ offense committed by impeding victim’s breathing or air flow; or ○ TUPPARA. 	Defendant either: <ul style="list-style-type: none"> • Committed BO under circumstances manifesting extreme indifference to the value of human life and GBI results; OR • Committed BO, with or without an accompanying battery, under circumstances manifesting extreme indifference to value of the human life and would reasonably cause a person to fear either GBI or death; OR • Violated a PO and, in the process, committed 1st degree DV. Circumstances manifesting extreme indifference to value of human life include, but are not limited to , use of deadly weapon; DV against pregnant victim; in presence of minor; during commission of robbery, burglary, kidnapping, or theft; offense committed by impeding victim’s normal breathing or blood circulation by applying pressure to throat/neck or obstructing nose/mouth causing stupor/loss of consciousness for any period of time; and TUPPARA.
How to Charge: UTT or arrest warrant		How to Charge: Arrest warrant	
Court Summary or General Sessions	Court: General Sessions (not eligible for transfer court)	Court: General Sessions (not eligible for transfer court)	Court: General Sessions (not eligible for transfer court)
Classification: Misdemeanor		Classification: Felony (also: Violent Crime, and Serious Offense)	
Penalties: 0–90 days and/or \$1000-2500	Penalties: 0–3 yrs and/or \$2500-\$5000	Penalties: 0–10 years	Penalties: 0–20 years

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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

OTHER DOMESTIC VIOLENCE-RELATED CRIMES

ADDITIONAL DEFINITIONS (§16-25-10) (see other side for more definitions):

Firearm: pistol, revolver, rifle, shotgun, machine gun, submachine gun, or assault rifle designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive, but does not include an antique firearm as defined in 18 U.S.C. 921(a)(16).

Deadly weapon: any pistol, dirk, slingshot, metal knuckles, razor, or other instrument which can be used to inflict deadly force.

Unlawful Shipping, Transport, Receipt or Possession of a Firearm of Ammunition (STROPFA) – §16-25-30

Unlawful for person to ship, transport, receive or possess firearm or ammunition **IF** (with controlling statutory subsection):

<p align="center">§16-25-30(A)(1)</p> <p>Defendant has either:</p> <ul style="list-style-type: none"> • EVER been convicted of DVHAN, OR • been convicted of 1st Degree DV, or an equivalent offense in another state, and the STROPFA occurred within 10 years from the later of the date of the conviction or release from imprisonment on the 1st Degree DV (or its out-of-state equivalent). 	<p align="center">§16-25-30(A)(2)</p> <p>Defendant:</p> <ul style="list-style-type: none"> • convicted of 2nd Degree DV or an equivalent offense in another state, AND • the STROPFA occurred within 3 years from the later of the date of the conviction or release from imprisonment on the 2nd Degree DV (or its out-of-state equivalent), AND • trial court made specific findings and concluded the defendant caused MBI. 	<p align="center">§16-25-30(A)(3)</p> <p>Trial court, when sentencing defendant for one of the following offenses, specifically ordered that defendant could not ship, transport, receive or possess firearm or ammunition:</p> <ul style="list-style-type: none"> • 2nd or 3rd Degree DV; or • DV in another state containing the elements of 2nd or 3rd Degree DV; <p>AND Defendant STROPFA'd within 3 years from the later of the date of conviction or release from imprisonment on 2nd or 3rd Degree DV (or its out-of-state equivalent).</p>	<p align="center">§16-25-30(A)(4)</p> <p>Defendant, who is subject to valid protection order issued by family court or court of another state (<i>protection order for purposes of §16-25-30 does NOT include permanent or emergency restraining orders issued under §16-3-1910</i>), STROPFA'd AND</p> <ul style="list-style-type: none"> • Order contains specific findings of physical harm, BI, assault or that defendant offered/attempted to cause physical harm/injury to household member with present ability under circumstances reasonable creating fear of imminent peril, AND • court specifically ordered that defendant could not STROPFA. 	<p align="center">§16-25-30(A)(5)</p> <p>Same as (A)(4) except valid protection order issued by court of another state, tribe or territory (rather than a S.C. court).</p>
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NOTE: Because of the wording of the statute, it does **NOT** appear that a charge under §16-25-30 can be based on a prior conviction of CDV or CDVHAN (convictions under the prior versions of §§16-25-20 and 16-25-65); however, the appellate courts have not yet addressed this issue.

Classification: Felony	Classification: Misdemeanor	Classification: Misdemeanor
Penalties: 0–5 years and/or \$0–2000	Penalties: 0–3 years and/or \$0–1000	Penalties: 0–30 days and/or \$0–500

Violation of New Types of Restraining Orders – Permanent Restraining Orders (PROs) and Emergency Restraining Orders (EROs)

Under §§16-3-1910 and 16-3-1920, PROs and EROs may be issued by the courts for the purpose of protecting a victim of or witness to a crime from a defendant. They can **only** be issued if there is a defendant is **convicted** of a qualifying offense, which is defined in §16-3-1900(3) as “an offense against the person of an individual when physical or psychological harm occurs, including both common law and statutory offenses contained in [§§]16-3-1700, 16-3-1710, 16-3-1720, 16-3-1730, 16-25-20, 16-25-30, 16-25-65 and 23-3-430; [CSC]offenses pled down to [ABHAN]; [DV] offenses pled down to [ABHAN]; and the common law offense of attempt, punishable pursuant to §16-1-80.” *Because of the wording of §16-3-1900(3), it appears that a PRO or ERO CAN BE issued based upon a conviction of CDV or CDVHAN (convictions under prior versions of §§16-25-20 and 16-25-65); the appellate courts, however, have not yet addressed this issue.*

<p align="center">Violation of Permanent Restraining Order (PRO): §16-3-1910</p> <p>What: new type of restraining order that may be issued either by general sessions or family court at time defendant is convicted of offense or by common pleas court in county where defendant committed crime.</p> <p>Duration: a PRO remains in effect for time period judge specifies.</p> <p>Arrest: LE shall arrest a defendant who violates PRO after service and notice of the PRO is provided to defendant.</p> <p>Penalty: depends upon the underlying criminal offense. If it was a felony, then the violation is a felony (0–5 years); if a misdemeanor, then the violation is a misdemeanor (0–3 years and/or \$0–2000).</p>	<p align="center">Violation of Emergency Restraining Order (ERO): §16-3-1920</p> <p>What: new type of restraining order that may be issued by a magistrate in the county where either defendant committed the crime, defendant lives when the application is filed, or, if defendant is not a resident of South Carolina or cannot be found, where complainant lives. The magistrate is to provide a copy of any ERO issued to LEAs having jurisdiction over the area where the complainant and defendant live.</p> <p>Duration: an ERO remains in effect until a hearing on a PRO. If complainant does not seek a PRO within 45 days of issuance of ERO, the ERO no longer remains in effect.</p> <p>Arrest: LE shall arrest a defendant who violates an ERO after service and notice of the ERO is provided to defendant. <i>An arrest warrant is NOT required at time of arrest (but will eventually be needed).</i></p> <p>Penalty: depends upon underlying criminal offense. If it was a felony, then the violation is a felony (0–5 years) if a misdemeanor, then the violation is a misdemeanor (0–3 years and/or \$0–2000).</p>
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Violation of Order of Protection (§16-25-20(H)) (not a new crime)

Defendant who violates valid S.C. order of protection issued pursuant to Chapter 4, Title 20, or valid PO issued in another state/tribe/territory is guilty of a misdemeanor (0–30 days and \$0–500).

Sample Training Materials & Legal Updates - SC Commission on Prosecution Coordination (April 6, 2018) Page 22 of 34

SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION (SCCPC)			
July 2012 – March 2018 Training Schedule			
<i>(with information on dates, location, training hours offered, and attendant numbers)</i>			
Date (Location)	Training	Total Number of Hours Offered by Accrediting Agency (Course Number)	Attendance
2018			
January 5, 2018 (Columbia)	“Ethics for Government Attorneys”	2.50 CLE (#181411)	28
January 5, 2018 (Columbia)	“FOIA Law and Issues for Prosecutors”	2.75 CLE (#181322)	30
February 9, 2018 (Columbia)	“Diversity Awareness and Communication”	2.50 CLE (#182665) SCCJA (#5636)	18
February 9, 2018 (Columbia)	“Understanding Sentences, Probation, and Parole for Adults and Juveniles”	2.50 CLE (#182664) SCCJA (#5635)	28
February 16, 2018 (Lexington, SC)	“Victim Advocate Forum Training: Managing Strong Emotions in Others” *	1.5 OVSEC (#0144)	16
March 5-9, 2018 (Isle of Palms, SC)	“2018 Prosecution Bootcamp” **	26.08 CLE (#183294)	63
March 14-15, 2018 (Columbia)	“Child Sexual Abuse Prosecution: Beyond A-Z” ***	11.00 CLE (#183735) OVSEC (#5665)	43
TOTAL:		48.83	226
<p>*The SCCPC co-sponsored this training with the South Carolina Solicitors’ Victim Advocates Forum, assembled training materials, coordinated registration, and managed OVSEC accreditation.</p> <p>**The Prosecution Bootcamp is a program co-sponsored by the Solicitors’ Association of South Carolina, Inc. (SCSA), but the SCCPC is solely responsible for the training aspect of it (development of the training agenda and materials, registration, speaker selection, on-site management, etc.).</p> <p>***The SCCPC co-sponsored this training with the University of South Carolina School of Law Children’s Law Center, assisted with speaker selection, and assembled training materials.</p>			
2017			
January 13, 2017 (Columbia)	“Ethics for Government Attorneys”	2.50 CLE (#172009)	25
January 13, 2017 (Columbia)	“FOIA Law and Issues for Prosecutors and Law Enforcement”	2.75 CLE (#171672) SCCJA (#5346)	56
February 17, 2017 (Columbia)	“Family Court Prosecutors’ Workshop”	3.50 CLE (#172974)	19
March 6 – 10, 2017 (N. Charleston)	“2017 Prosecution Bootcamp” *	28.0 CLE (#173408)	57
March 30-31, 2017 (Columbia)	“Child Sexual Assault Investigation and Prosecution from A – Z” **	12.41 CLE (#174366)	50
April 21, 2017 (Columbia)	“Forensic Science Series for Prosecutors and Law Enforcement (Part II): Drug Analysis, Questioned Documents, New	3.75 CLE (#174891) SCCJA (#5445)	39

	Technologies, and Expert Witnesses”		
April 28, 2017 (Columbia)	“South Carolina Association of Pre-Trial Intervention Programs Spring Conference 2017 – Mental Health Awareness and Education”	N/A	52
May 19, 2017 (Columbia)	“Core Training for Victim Advocates on Crime Victims’ Rights, Communication, Case Management, and Ethics”	6.50 OVSEC (#0222)	19
June 13, 2017 (Columbia)	“Summary Court Judges’ DUI Training”	5.0 CLE (#175799)	50
June 23, 2017 (Columbia)	“S.C. Preservation of Evidence Act: Duties of and Liabilities for Evidence Custodians”	2.75 CLE (#176038) SCCJA (#5489)	53
June 23, 2017 (Columbia)	“The New FOIA Law and Issues for Prosecutors and Law Enforcement”	2.50 CLE (#175942) SCCJA (#5483)	27
June 29, 2017 (A.M.) (West Columbia)	“The New FOIA Law and Issues for Prosecutors and Law Enforcement”	2.50 CLE (#175942) SCCJA (#5483)	42
June 29, 2017 (P.M.) (West Columbia)	“The New FOIA Law and Issues for Prosecutors and Law Enforcement”	2.50 CLE (#175942) SCCJA (#5483)	21
July 24, 2017 (A.M.) (Florence)	“The South Carolina Freedom of Information Act: Legal & Practical Considerations.”	3.0 CLE (#176491) SCCJA (#5519)	59
July 24, 2017 (P.M.) (Florence)	“Getting, Storing, Retaining, and Releasing Evidence: Legal and Practical Considerations”	3.0 CLE (#176491) SCCJA (#5519)	47
August 21-22, 2017 (Columbia)	“2017 Magistrates Advisory Council Intensive Training Seminar” ***	14.75 JCLE (#176978)	85
August 24, 2017 (Columbia)	“Prosecuting the Impaired Driver”	5.5 SCCJA (#5539)	42
September 21, 2017 (Mt. Pleasant)	“Prosecuting the Impaired Driver”	3.75 CLE (#177721) SCCJA (#5562)	20
September 24-27, 2017 (Myrtle Beach)	“2017 South Carolina Solicitors’ Association Annual Conference” ****	15.25 CLE (#177663) 15.75 SCCJA (#5559) OVSEC (#0817)	784
October 26, 2017 (Columbia)	“Introduction to Immigration & Customs Enforcement: Enforcement and Removal Operations” *****	2.0 CLE (#178240) SCCJA (#5584) OVSEC (#998)	22
November 3, 2017 (West Columbia)	“The Solicitor’s Domestic Violence Fatality Review Committee: Workshop for Solicitor Office Staff” *****	3.75 CLE (#178504) SCCJA (#5592) OVSEC (#0427)	37
December 1, 2017 (Columbia)	“Core Training for Victim Advocates on Crime Victims’ Rights, Compensation and SOVA Criminal Justice System and Court Procedures, and Specialized Training.”	6.5 OVSEC (#0253)	16
TOTAL:		132.66	1622
<p><i>*The Prosecution Bootcamp is a program co-sponsored by the SCSA, but the SCCPC is solely responsible for the training aspect of it (development of the training agenda and materials, registration, speaker selection, on-site management, etc.).</i></p>			

***The SCCPC co-sponsored this training with the University of South Carolina School of Law Children’s Law Center, assisted with speaker selection, and assembled training materials.*

****The SCCPC co-sponsored (and coordinated the planning and creation of materials for) the two criminal law days of the Magistrate Advisory Council Intensive Training Seminar conducted by the South Carolina Judicial Department.*

*****The annual Solicitors’ Conference is conducted by the SCSA, but the SCCPC provides support for the Association in advance of the Conference and managed the training component of the Conference on-site, is financially responsible for the training, creating and assembling conference materials, speaker selection, and managing program registration.*

******The SCCPC co-sponsored this training with the Sixth Judicial Circuit Solicitor’s Office, and was responsible for training materials, registration, and accreditation.*

******The SCCPC co-sponsored the training with the SCSA, but the SCCPC was responsible for the planning and creation of materials, speaker selection, registration, and managing registration.*

2016			
Jan. 15, 2016 <i>(West Columbia)</i>	“FOIA Law and Issues for Prosecutors and Law Enforcement”	3.75 CLE (#161368) SCCJA (#4922)	141
Jan. 15, 2016 <i>(West Columbia)</i>	“Ethics for Government Attorneys”	2.75 CLE (#161620)	34
Feb. 5, 2016 <i>(Columbia)</i>	“Ethics for Government Attorneys”	2.00 CLE (#162115)	9
Feb. 18, 2016 <i>(Florence)</i>	“FOIA Law and Issues for Prosecutors and Law Enforcement”	2.25 CLE (#162063) SCCJA (#5152)	55
Feb. 18, 2016 <i>(Florence)</i>	“The South Carolina Preservation of Evidence Act: Duties of and Liability for Evidence Custodian”	2.50 CLE (#162226) SCCJA (#5155)	69
Feb. 19, 2016 <i>(Columbia)</i>	“The South Carolina Preservation of Evidence Act: Duties of and Liability for Evidence Custodian”	3.25 CLE (#162483) SCCJA (#5160)	56
March 11, 2016 <i>(Columbia)</i>	“Boating Under the Influence Prosecution”	5.0 SCCJA (#5158)	48
March 28, 2016 <i>(Columbia)</i>	“DNA Expungement: Solicitor’s Obligation Under, and Policies to Ensure Compliance with, the DNA Identification Record Database Act”	3.50 CLE (#163081)	32
March 28 – April 1, 2016 <i>(Myrtle Beach)</i>	“2016 Prosecution Bootcamp” *	28.25 CLE (#163766)	60
April 15, 2016 <i>(Columbia)</i>	“Expungement Update: What the New Laws Mean to Expungements in South Carolina”	2.0 CLE (#163868)	45
April 15, 2016 <i>(Columbia)</i>	“Basics for Prosecution Paralegals”	N/A	31
April 21, 2016 <i>(Orangeburg)</i>	“The Officer-Prosecutor: How to Effectively Present Yourself, Your Case, and Your Evidence”	N/A	25

April 22, 2016 (Columbia)	“2016 South Carolina Association of Pretrial Intervention Program Spring Conference”	N/A	55
April 27, 2016 (Orangeburg)	“The Officer-Prosecutor: How to Effectively Present Yourself, Your Case, and Your Evidence”	N/A	25
May 25-26, 2016 (Columbia)	“Prosecuting the Impaired Driver”	10.5 CLE (#165087) SCCJA (#5220)	51
June 22-23, 2016 (Greenville)	“Prosecuting the Impaired Driver”	10.5 CLE (#165609) SCCJA (#5232)	35
June 24, 2016 (Columbia)	“Core Training for Victim Advocates on Crime Victims’ Rights, Communication, Case Management, and Ethics”	6.5 OVSEC (#0222)	19
July 20-21, 2016 (N. Charleston)	“Prosecuting the Impaired Driver”	10.5 CLE (#166102) SCCJA (#5246)	54
July 29, 2016 (Columbia)	“Forensic Science Series for Prosecutors and Law Enforcement (Part I): Firearms, DNA, Trace Evidence, and New Technologies”	3.0 CLE (#166243) SCCJA (#5250)	152
August 15-16, 2016 (Columbia)	“2016 Magistrates Advisory Council Intensive Training Seminar” **	18.5 JCLE (#165948)	102
August 24-25, 2016 (Columbia)	“Prosecuting the Impaired Driver”	10.5 CLE (#166713) SCCJA (#5270)	49
September 9, 2016 (Columbia)	“ <i>Aiken v. Byars</i> : Issues and Creation of a Uniform Procedure”	2.16 CLE (#167142)	25
September 25-28, 2016 (N. Myrtle Beach)	“2016 South Carolina Solicitors’ Association Annual Conference” ***	14.0 CLE (#167247) 14.50 SCCJA (#5295) OVSEC (#805447)	726
October 17-18, 2016 (Columbia)	“Circuit Solicitor Domestic Violence Fatality Review Committee Workshop”	13.33 CLE (#167714) 13.25 SCCJA (#5307) OVSEC (#0428)	154
November 28, 2016 (Richburg)	“Domestic Violence Crimes: What You Need to Know”	2.75 CLE (#168293) SCCJA (#5340)	50
December 9, 2016 (Lancaster)	“Domestic Violence Crimes: What You Need to Know”	2.75 CLE (#168416) OVSEC (#2752)	63
December 12-15, 2016 (Columbia)	“2016 Domestic Violence Prosecution Bootcamp” ****	25.50 CLE (#168476)	37
December 16, 2016 (Columbia)	“Core Training for Victim Advocates on Crime Victims’ Rights, Compensation and SOVA, Criminal Justice System and Court Procedures, and Specialized Training”	6.5 OVSEC (#0222)	9
TOTAL:		203.24	2211

**The Prosecution Bootcamp is a program co-sponsored by the SCSA, but the SCCPC is solely responsible for the training aspect of it (development of the training agenda and materials, registration, speaker selection, on-site management, etc.).*

***The SCCPC co-sponsored (and coordinated the planning and creation of materials for) the two criminal law days of the Magistrate Advisory Council Intensive Training Seminar conducted by the South Carolina Judicial Department.*

****The annual Solicitors' Conference is conducted by the SCSA, but the SCCPC provides support for the Association in advance of the Conference and managed the training component of the Conference on-site, is financially responsible for the training, creating and assembling conference materials, speaker selection, and managing program registration.*

*****The Domestic Violence Prosecution Bootcamp was a program co-sponsored by the SCSA and designed to train new domestic violence prosecutors hired by Solicitors following passage of the Domestic Violence Reform Act, but the SCCPC was solely responsible for the training aspect of it (development of the training agenda and materials, registration, speaker selection, on-site management, etc.).*

2015			
January 23, 2015 (Columbia)	“Hearsay: What It Is, and When and How To Use It at Trial”	3.5 CLE (#151030) SCCJA (#4917)	123
February 6, 2015 (Columbia)	“FOIA Law and Issues for Prosecutors and Law Enforcement”	3.0 CLE (#151031) SCCJA (#4922)	174
February 6, 2015 (Columbia)	“Ethics for Government Attorneys”	2.75 CLE (#150963)	41
February 27, 2015 (Columbia)	“Boating under the Influence”	4.5 SCCJA (#4948)	40
March 2-6, 2015 (Isle of Palms)	“2015 Prosecution Bootcamp” *	26.75 CLE (#152144)	56
April 17, 2015 (Columbia)	“Core Training for Prosecution Victim Advocates on Crime Victims’ Rights, Communication, Case Management, Ethics, and Confidentiality”	6.5 OVSEC (#222D)	12
April 22-23, 2015 (Columbia)	“Prosecuting the Impaired Driver”	10.5 CLE (#153600) SCCJA (#4985)	45
May 18, 2015 (Columbia)	“Prosecuting in Family Court: Issues and Best Practices”	3.75 CLE (#154322)	21
May 27-28, 2015 (Anderson)	“Prosecuting the Impaired Driver”	10.5 CLE (#54407) SCCJA (#5009)	41
June 12, 2015 (Columbia)	“Human Trafficking: What, Where, and How to Stop It”	5.0 CLE (#154663) SCCJA (#5016) OVSEC (#787)	72
June 17-18, 2015 (Columbia)	“Prosecuting the Impaired Driver”	10.5 CLE (#53600) SCCJA (#4985)	43
June 19, 2015 (AM) (Columbia)	“2015 Domestic Violence Reform Act: What Law Enforcement Officers and Prosecutors Need to Know about New Crimes”	2.5 CLE (#154744) SCCJA (#5020) OVSEC (#791A)	122
June 19, 2015 (PM) (Columbia)	“2015 Domestic Violence Reform Act: What Law Enforcement Officers and	2.5 CLE (#154744) SCCJA (#5020) OVSEC (#791B)	55

	Prosecutors Need to Know about New Crimes”		
June 25, 2015 (AM) (Columbia)	“2015 Domestic Violence Reform Act: What Law Enforcement Officers and Prosecutors Need to Know about New Crimes”	2.5 CLE (#154744) SCCJA (#5020) OVSEC (#791C)	63
June 25, 2015 (PM) (Columbia)	“2015 Domestic Violence Reform Act: What Law Enforcement Officers and Prosecutors Need to Know about New Crimes”	2.5 CLE (#154744) SCCJA (#5020) OVSEC (#791D)	166
July 29-30, 2015 (N. Charleston)	“Prosecuting the Impaired Driver”	10.5 CLE (#55503) CJA (#5037)	56
August 7, 2015 (Williamston)	“Domestic Violence Reform Act of 2015: A Review of the New Crimes and Statutory Requirements”	2.25 CLE (#155420) SCCJA (#5035) OVSEC (#802A)	36
August 15-16, 2015 (Columbia)	“2015 Magistrates Advisory Council Intensive Training Seminar” **	15.75 JCLE (#156162)	86
August 20, 2015 (N. Charleston)	“Domestic Violence Reform Act of 2015: A Review of the New Crimes and Statutory Requirements”	2.25 CLE (#155420) SCCJA (#5035) OVSEC (#802B)	103
August 21, 2015 (Florence)	“Domestic Violence Reform Act of 2015: A Review of the New Crimes and Statutory Requirements”	2.25 CLE (#155420) SCCJA (#5035) OVSEC (#802C)	50
August 26, 2015 (Florence)	“Domestic Violence Reform Act of 2015: A Review of the New Crimes and Statutory Requirements”	2.25 CLE (#155420) SCCJA (#5035) OVSEC (#802D)	58
September 20-23, 2015 (Myrtle Beach)	“2015 South Carolina Solicitors’ Association Annual Conference” ***	14.0 CLE (#156566) 14.25 CJA (#5095) 13.0 OVSEC (#817)	549
November 20, 2015 (Columbia)	“You Don’t Know What You Don’t Know... Until You Do”	4.0 CLE (#157541)	51
December 4, 2015 (Columbia)	“Core Training for Victim Advocates on Crime Victim’s Rights, Compensation and SOVA, Criminal Justice System and Court Procedures, and Specialized Training”	6.5 OVSEC (#253E)	5
TOTAL:		156	2068
<p><i>*The Prosecution Bootcamp is a program co-sponsored by the SCSA, but the SCCPC is solely responsible for the training aspect of it (development of the training agenda and materials, registration, speaker selection, on-site management, etc.).</i></p> <p><i>**The SCCPC co-sponsored (and coordinated the planning and creation of materials for) the two criminal law days of the Magistrate Advisory Council Intensive Training Seminar conducted by the South Carolina Judicial Department.</i></p> <p><i>***The annual Solicitors’ Conference is conducted by the SCSA, but the SCCPC provides support for the Association in advance of the Conference and managed the training component of the Conference on-site, is financially responsible for the training, creating and assembling conference materials, speaker selection, and managing program registration.</i></p>			
2014			
February 7, 2014 (Columbia)	“Ethics for Government Attorneys”	2.75 CLE (#141964)	33

March 10-14, 2014 (Isle of Palms)	“2014 Prosecution Bootcamp” *	25.15 CLE (#142668)	57
March 14, 2014 (Isle of Palms)	“Substance Abuse and Lawyers”	1.0 CLE (#142707)	15
April 11, 2014 (Columbia)	“Expungements in South Carolina”	5.0 CLE (#143509) SCCJA (#4740)	97
April 14-15, 2014 (Columbia)	“Prosecuting the Impaired Driver”	10.5 CLE (#143048) CJA (#4738)	78
May 16, 2014 (Lexington)	“Investigating and Prosecuting Organized Retail Crime”	4.0 CLE (#144198) SCCJA (#4761)	28
May 21-22, 2014 (Columbia)	“Prosecuting the Impaired Driver”	10.5 CLE (#143292) SCCJA (#4763)	65
June 18-19, 2014 (Columbia)	“Prosecuting the Impaired Driver”	10.5 CLE (#143292) SCCJA (#4786)	75
June 20, 2014 (Columbia)	“Prosecuting Sex Crimes and Crimes against Children: Hot Issues”	4.0 CLE (#144699)	40
July 18, 2014 (Lexington)	“Meth: The <i>Real</i> ‘Breaking Bad’ in South Carolina”	5.0 CLE (#145140) SCCJA (#4800)	115
July 22-23, 2014 (N. Charleston)	“Prosecuting the Impaired Driver”	10.5 CLE (#143292) SCCJA (#4799)	95
August 18-19, 2014 (Columbia)	“2014 Magistrates Advisory Council Intensive Training Seminar” **	12.0 JCLE (#144372)	87
August 22, 2014 (Columbia)	“Extradition in South Carolina: A Step-by-Step Guide”	1.5 CLE (#145749) SCCJA (#4824)	127
September 21-24, 2014 (Hilton Head)	“2014 Annual Conference” ***	13.0 CLE (#146270) 12.92 SCCJA (#4843) 13.0 OVSEC (#0698)	455
November 21, 2014 (Columbia)	“Immigration: What YOU Need to Know”	6.0 CLE (#147312) SCCJA (#4883)	48
December 12, 2014 (Columbia)	“Core Training for Prosecution Victim Advocates on Crime Victim rights, Compensation and SOVA, Criminal Justice System and Court Procedures, and Specialized Training”	6.5 OVSEC (#253D)	13
TOTAL:		127.9	1428
<p>*The Prosecution Bootcamp is a program co-sponsored by the SCSA, but the SCCPC is solely responsible for the training aspect of it (development of the training agenda and materials, registration, speaker selection, on-site management, etc.).</p> <p>**The SCCPC co-sponsored (and coordinated the planning and creation of materials for) the two criminal law days of the Magistrate Advisory Council Intensive Training Seminar conducted by the South Carolina Judicial Department.</p> <p>***The annual Solicitors’ Conference is conducted by the SCSA, but the SCCPC provides support for the Association in advance of the Conference and managed the training component of the Conference on-site, is financially responsible for the training, creating and assembling conference materials, speaker selection, and managing program registration.</p>			
2013			
January 11, 2013 (Columbia)	“Constitutional Limitations on Police Searches: Checkpoints, Traffic Stops,	4.0 CLE (#130598) SCCJA (#4436)	126

	Other Warrantless Searches, and Search Warrants”		
February 13, 2013 (Columbia)	“Family Court Prosecutor’s Workshop”	3.50 CLE (#131738)	29
February 15, 2013 (A.M.) (Columbia)	“Trial Advocacy for Prosecutors: Concession-Based Cross-Examination”	2.5 CLE (#131739)	4
February 15, 2013 (P.M.) (Columbia)	“Ethics for Prosecutors”	1.50 CLE (#131737)	19
April 10-11, 2013 (Columbia)	“Prosecuting the Impaired Driver”	10.5 CLE (#132583) SCCJA (#4540)	65
April 15-19, 2013 (Myrtle Beach)	“2013 Prosecution Bootcamp” *	25.42 CLE (#135986)	54
May 8-9, 2013 (Anderson)	“Prosecuting the Impaired Driver”	10.5 CLE (#132583) SCCJA (#4540)	45
May 16, 2013 (Columbia)	“The South Carolina Preservation of Evidence Act: Duties and Liability for Evidence Custodians”	3.25 CLE (#133642) SCCJA (#4563)	176
May 17, 2013 (Columbia)	“Core Training for Victim Advocates on Crime Victims’ Rights, Compensation and SOVA, Criminal Justice System and Court Procedures, and Specialized Training”	6.5 OVSEC (#0253C)	18
June 12-13, 2013 (Columbia)	“Prosecuting the Impaired Driver”	10.5 CLE (#132583) SCCJA (#4540)	57
June 14, 2013 (Columbia)	“Investigating and Prosecuting Child Homicides”	6.0 CLE (#136100) SCCJA (#4595)	82
July 17-18, 2013 (N. Charleston)	“Prosecuting the Impaired Driver”	10.5 CLE (#132583) SCCJA (#4540)	55
July 26, 2013 (Columbia)	“Investigating and Prosecuting Sex Crimes”	6.0 CLE (# 135103) SCCJA (#4615)	61
August 19-20, 2013 (Columbia)	“2013 Magistrates Advisory Council Intensive Training Seminar” **	12.0 JCLE (#133973)	79
August 23, 2013 (Columbia)	“Criminal Law Review”	3.0 CLE (#135391) SCCJA (#4630)	32
August 23, 2013 (Columbia)	“Prosecuting in Family Court: Issues and Best Practices”	3.5 CLE (#136351)	27
September 6, 2013 (Mullins)	“The Investigation & Prosecution of CDV & CSC Crimes)	6.0 CLE (#135687) 6.0 SCCJA (#4633)	21
September 16-17, 2013 (Columbia)	“Capital Litigation for Prosecutors: Mental Health Issues and the DSM-V”	9.0 CLE (#136141)	23
September. 22-25, 2013 (Myrtle Beach)	“2012 South Carolina Solicitors’ Association Annual Fall Conference” ***	14.0 CLE (#135847) 13.5 SCCJA (#4643) 12.25 OVSEC (#0558)	577
October 25, 2013 (Columbia)	“Understanding Prison Sentences, Probation, and Parole”	2.75 CLE (#136350) SCCJA (#4660)	22
November 15, 2013 (Columbia)	“Gangs in South Carolina: What YOU Need to Know”	6.0 CLE (#136989) SCCJA (#4668)	24
November 8, 2013 (Orangeburg)	“Animal Cruelty and Fighting Investigations” ****	6.75 CLE (#136544)	9

December 13, 2013 (Columbia)	"Core Training for Victim Advocates on Crime Victims' Rights, Communication, Case Management, and Ethics"	6.5 OVSEC (#222C)	16
TOTAL:		170.17	1621
<p><i>*The Prosecution Bootcamp is a program co-sponsored by the SCSA, but the SCCPC is solely responsible for the training aspect of it (development of the training agenda and materials, registration, speaker selection, on-site management, etc.).</i></p> <p><i>**The SCCPC co-sponsored (and coordinated the planning and creation of materials for) the two criminal law days of the Magistrate Advisory Council Intensive Training Seminar conducted by the South Carolina Judicial Department.</i></p> <p><i>***The annual Solicitors' Conference is conducted by the SCSA, but the SCCPC provides support for the Association in advance of the Conference and managed the training component of the Conference on-site, is financially responsible for the training, creating and assembling conference materials, speaker selection, and managing program registration.</i></p> <p><i>****This was a program of The Humane Society of the United States; the SCCPC co-sponsored it for the purposes of obtaining CLE accreditation and the SCCPC assisted in marketing to state prosecutors and law enforcement.</i></p>			
2012			
January 13, 2012 (Columbia)	"Guilty Pleas: Negotiations, Conditions, and Plea Hearings"	3.0 CLE (#121833)	25
February 10, 2012 (Columbia)	"What Prosecutors Need to Know about the South Carolina Department of Corrections"	4.25 CLE (#122525)	32
March 14-15, 2012 (Columbia)	"Prosecuting the Impaired Driver"	11.25 CLE (#121644) SCCJA (#4229)	75
March 26-30, 2012 (Isle of Palms)	"Prosecution Bootcamp" *	22.0 CLE (#123283)	55
April 20, 2012 (Columbia)	"Core Training for Victim Advocates on Crime Victims' Rights, Compensation and SOVA, Criminal Justice System and Court Procedures, and Specialized Training"	6.5 OVSEC	17
April 11-12, 2012 (Greenville)	"Prosecuting the Impaired Driver"	11.25 CLE (#121644) SCCJA (#4229)	62
May 21-23, 2012 (Charleston)	"Capital Litigation for Prosecutors: Basic Issues"	13.75 CLE (#125463)	52
May 30-31, 2012 (North Charleston)	"Prosecuting the Impaired Driver"	11.25 CLE (121644) SCCJA (No. 4229)	72
June 20-21, 2012 (Columbia)	"Prosecuting the Impaired Driver"	11.25 CLE (121644) SCCJA (No. 4229)	57
June 21, 2012 (Greenville)	"Get Informed! Get Inspired! Domestic Violence Investigation and Intervention Training" **	6.17 CLE (125599) 6.25 SCCJA (#4330)	42
June 22, 2012 (Anderson)	"Get Informed! Get Inspired! Domestic Violence Investigation and Intervention Training" **	6.17 CLE (#125599) 6.25 SCCJA (#4330)	20
June 29, 2012 (Columbia)	"Trial Advocacy for Prosecutors: Concession-Based Cross-Examination"	4.5 CLE (#125600)	8
July 20, 2012 (Columbia)	"Sexual Assault Prosecutions: Special Considerations"	6.0 CLE (#126030) SCCJA (#4349)	48

August 20-21, 2012 (Columbia)	"2012 Magistrates Advisory Council Intensive Training Seminar" ***	12.0 JCLE (#125951)	61
August 24, 2012 (Columbia)	"Prosecuting Cases in Family Court"	6.25 CLE (#127803)	32
September 23-26, 2012 (Myrtle Beach)	"2012 South Carolina Solicitors' Association Annual Fall Conference" ****	14.25 CLE (#127017) SCCJA (# 4382) 12.0 OVSEC (#0428)	446
October 19, 2012 (Columbia)	"Human Trafficking in SC: Break the Invisible Chains: Help Victims of Human Trafficking" *****	6.25 CLE (#127188) SCCJA (#4403)	15
October 26, 2012 (Columbia)	"Competency to Stand Trial and the Intellectually Disabled"	3.0 CLE (#127376)	23
November 30, 2012 (Columbia)	"Appeals: What YOU Need to Know"	2.5 CLE (#127904) SCCJA (# 4441)	18
November 30, 2012 (Columbia)	"Bond Estreatments: Law and Practice"	3.0 CLE (#127907)	35
December 12, 2012 (Columbia)	"FOIA Law and Issues for Government Attorneys"	3.0 CLE (#127954)	36
December 14, 2012 (Columbia)	"Ethics for Government Attorneys"	2.75 CLE (#127953)	23
TOTAL:		170.75	1254

**The Prosecution Bootcamp is a program co-sponsored by the SCSA, but the SCCPC is solely responsible for the training aspect of it (development of the training agenda and materials, registration, speaker selection, on-site management, etc.).*

***The SCCPC co-sponsored these trainings with the Tenth and Thirteenth Judicial Circuit Solicitors' Offices, respectively, including the creation of material and maintains SCCCLE mandated records.*

****The SCCPC co-sponsored (and coordinated the planning and creation of materials for) the two criminal law days of the Magistrate Advisory Council Intensive Training Seminar conducted by the South Carolina Judicial Department.*

*****The annual Solicitors' Conference is conducted by the SCSA, but the SCCPC provides support for the Association in advance of the Conference and managed the training component of the Conference on-site, is financially responsible for the training, creating and assembling conference materials, speaker selection, and managing program registration.*

******The SCCPC co-sponsored this training with the National Association of Social Workers (the SCCPC requested accreditation and maintains SCCCLE mandated records).*

SOUTH CAROLINA SOLICITORS' ASSOCIATION
and
SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION
present

2017 South Carolina Solicitors' Association Annual Conference

September 24 – 27, 2017

AGENDA (ALL Training)

SUNDAY, September 24, 2017

(Kensington Ballroom unless indicated otherwise)

5:15 p.m. - 7:15 p.m.:	ANATOMY OF A MASS HOMICIDE: THE PROSECUTION OF JAMES HOLMES FOR THE MURDER OF TWELVE PERSONS IN THE MOVIE THEATER IN AURORA, COLORADO George Brauchler District Attorney, 18 th Judicial District Colorado
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7:15 p.m.: Adjourn for Day

MONDAY, September 25, 2017

(Kensington Ballroom unless otherwise noted)

8:30 a.m. – 9:30 a.m.: Understanding and Respecting Victims (TENTATIVE TITLE)
Allison Black Cornelius
Blackship Strategies LLC
Birmingham, Alabama

10:45 a.m. – 12:15 p.m.:

Main Track <i>(TBD)</i>	Diversion <i>(TBD)</i>	Investigators <i>(TBD)</i>
<p>LEGAL DECISIONS, PRACTICAL TIPS & COURTROOM OBSERVATIONS FROM A JUDICIAL PERSPECTIVE</p> <p>Moderator: <i>Hon. John C. Few, Justice S.C. Supreme Court</i></p> <p>Panelists: <i>Hon. Robert F. Addy, Jr.</i> <i>Hon. Clifton Newman</i> <i>Hon. Letitia H. Verdin</i> <i>Judges, Circuit Court</i></p>	<p>LIGHTHOUSE FOR LIFE: SEX TRAFFICKING AND EXPLOITATION</p> <p><i>Jen Thompson</i> <i>Lighthouse for Life</i></p> <p><i>Kathryn Morehead</i> <i>S.C. Attorney General's Office</i></p>	<p>Legal Update</p> <p><i>James M. Fennell</i> <i>General Counsel</i> <i>S.C. Criminal Justice Academy</i></p> <p>* Continues until 12:45 p.m.</p>

10:45 a.m. – 12:15 p.m.

Victim Advocates <i>(TBD)</i>
<p>Bikers Against Child Abuse, Inc.</p> <p><i>"Slim"</i> <i>BACA, Inc.</i></p>
<p>LEGISLATIVE UPDATE</p> <p><i>David M. Ross</i> <i>Executive Director</i> <i>S.C. Commission on Prosecution Coordination</i></p>

10:45 a.m. – 11:45 p.m.:

11:45 a.m. – 12:15 p.m.

1:45 p.m. – 3:15 p.m.:

Main Track <i>(TBD)</i>	Diversion <i>(TBD)</i>	Victim Advocates <i>(TBD)</i>
<p>UNDERSTANDING THE MOST COMMON MENTAL ILLNESSES OF CRIMINAL DEFENDANTS</p> <p><i>Richard L. Frierson, M.D.</i> <i>Professor of Clinical Psychiatry</i> <i>Department of Neuropsychiatry and Behavioral Science</i> <i>U.S.C. School of Medicine</i></p>	<p>RECOGNIZING DRUGS AND PARAPHERNALIA</p> <p><i>Major Frank O'Neal</i> <i>S.C. Law Enforcement Division</i></p>	<p>THE ROLE OF DSS IN ADDRESSING CRIMINAL CONDUCT</p> <p><i>Amanda F. Whittle</i> <i>Assistant General Counsel</i> <i>S.C. Department of Social Services</i></p>

1:45 p.m. – 3:15 p.m.:

Juvenile Arbitration <i>(TBD)</i>
<p>SUPERVISING VOLUNTEERS</p> <p><i>Tony Prince</i> <i>Jay Rowe</i></p> <p><i>Brookgreen Gardens</i> <i>Murrells Inlet, South Carolina</i></p>
<p>ONLINE AND OTHER RESOURCES</p> <p><i>Stacey Bryant</i> <i>Juvenile Arbitration & Restitution Specialist</i> <i>S.C. Department of Juvenile Justice</i></p>

1:15 p.m. – 2:15 p.m.:

2:15 p.m. – 3:15 p.m.

3:30 p.m. – 5:30 p.m.: **Ethics: The Movie II**
Honorable Thomas Lockridge
Commonwealth Attorney, Thirteenth Judicial Circuit
Nicholasville, Kentucky

Honorable Steve Wilson
Judge, Eighth Judicial Circuit
Warren County, Kentucky

5:30 p.m.: Adjourn for the Day

TUESDAY, September 26, 2017

Choose one presentation to attend during each time period (you do not need to remain in the same track or room all day).

8:30 a.m. – 9:30 a.m.:

A (TBD)	B (TBD)	C (TBD)	D (TBD)	E (TBD)
SEARCH & SEIZURE BASICS: WARRANTS & EXCEPTIONS	UNDERSTANDING AND RESPONDING TO MENTAL HEALTH DEFENSES	MANAGING CONFLICT & DIFFUSING ANGER <i>(*SA/MH CLE Eligible – Separate Sign-In Sheet in Room)</i>	STORYTELLING FOR PROSECUTORS	JUVENILE JUSTICE ROUNDTABLE
<i>James Fennell</i> <i>Mark Farthing</i> <i>Assistant Attorney General</i> <i>William Blich</i> <i>Assistant Attorney General</i> <i>S.C. Attorney General’s Office</i>	<i>Hon. Barry J. Barnette</i> <i>Solicitor</i> <i>Seventh Judicial Circuit</i>	<i>Tony Roman, LISW-CP-S</i> <i>Roman Clinical Consulting, LLC</i> <i>Myrtle Beach</i>	<i>Hon. Thomas Lockridge</i>	<i>Ouida Dest</i> <i>Deputy Solicitor</i> <i>Sixteenth Judicial Circuit</i> <i>Caroline Fox</i> <i>Assistant Solicitor</i> <i>Fifteenth Judicial Circuit</i> <i>Freddie Pough</i> <i>Interim Director</i> <i>S.C. Department of Juvenile Justice</i>

9:40 a.m. – 10:40 a.m.:

A <i>(TBD)</i>	B <i>(TBD)</i>	C <i>(TBD)</i>	D <i>(TBD)</i>	E <i>(TBD)</i>
SEARCH & SEIZURE: SPECIALIZED SEARCHES	COMPETENCY EXAMINATIONS	ACTIVE SHOOTER	FACILITY DOGS: USE WITH VICTIMS BEFORE & DURING TRIAL	DOMESTIC VIOLENCE TREATMENT STANDARDS
<i>Scott Rowland First Assistant District Attorney Oklahoma City, Oklahoma</i>	<i>Monique M. Lee Staff Attorney S.C. Depart. of Mental Health Tana A Vanderbilt General Counsel S.C. DDSN</i>	<i>Lt. Eric DiLorenzo Training and Regulatory City of Myrtle Beach Police Dept.</i>	<i>Chelsey Moore Assistant Solicitor & Canine Facilitator Lauren Price Assistant Solicitor Tenth Judicial Circuit</i>	<i>Sara Barber Executive Director SCVADSA</i>

10:50 a.m. – 11:50 a.m.:

A <i>(TBD)</i>	B <i>(TBD)</i>	C <i>(TBD)</i>	D <i>(TBD)</i>	E <i>(TBD)</i>
CELL PHONE RECORDS: GETTING & USING	COMPETENCY HEARINGS & THE PROBATE COURT COMMITMENT PROCESS	FIREARMS 101	UNDERSTANDING DRUG ENHANCEMENTS & SENTENCING	SELF CARE <i>(*SA/MH CLE Eligible – Separate Sign-In Sheet in Room)</i>
<i>Scott Rowland</i>	<i>Tana A Vanderbilt Warren Mowry Deputy Solicitor Eighth Judicial Circuit Sam Grimes Assistant Solicitor Second Judicial Circuit</i>	<i>Tracey Thrower SLED</i>	<i>John Jepertinger Deputy Solicitor Twelfth Judicial Circuit Joseph Shenkar Assistant Solicitor Fifth Judicial Circuit</i>	<i>Ellen C King Counselor, MEd, LPC, RPT, NCC TLC Counseling Center</i>

12:00 p.m. – 1:00 p.m.:

A (TBD)	B (TBD)	C (TBD)	D (TBD)	E (TBD)
PROBLEMATIC EVIDENCE: EXPERTS, PRIOR BAD ACTS, & OTHER ISSUES	MUTUAL COMBAT	UNDERSTANDING PROBATION AND PAROLE	WHAT WOULD YOU DO?: INTERACTIVE CASE STUDY WITH LAW ENFORCEMENT	ACTIVE SHOOTER
<i>David W. Miller Deputy Solicitor Second Judicial Circuit Donald J. Zelenka Deputy Attorney General S.C. Attorney General's Office</i>	<i>Hon. Duffie Stone Solicitor Fourteenth Judicial Circuit</i>	<i>Debbie Depra Curtis Director of Victim Services Matthew Buchanan General Counsel SC Dept. of Probation, Parole and Pardon Services</i>	<i>Shannon Piller Investigator / Task Force Officer Greenville County Sheriff's Office</i>	<i>Lt. Eric DiLorenzo</i>

1:00 p.m.:

Adjourn for Day

WEDNESDAY, September 27, 2017

Main Track (Kensington Ballroom A, B, C & G)		Diversion (Location TBD)		Victim Advocates (Location TBD)	
8:30 a.m. – 10:15 a.m.:	DRUGS: SHOW US THE MONEY <i>Craig Hammer John Eadie National Emerging Threats Initiative</i>	8:30 a.m. – 9:00 a.m.:	LEGISLATIVE UPDATE <i>David M. Ross Executive Director SC Commission on Prosecution Coordination</i>	8:30 a.m. – 9:30 a.m.:	S.C. SOLICITORS' VICTIM ADVOCATES FORUM MEETING
10:15 a.m. – 10:30 a.m.:	Break			9:30 a.m. – 10:15 a.m.:	STATE OFFICE OF VICTIM ASSISTANCE: UPDATE <i>Ethel Ford, CPM [title] Crime Victim Services Division South Carolina Attorney General's Office</i>
10:30 a.m. – 12:00	THE AFTERMATH OF MASS	9:00 a.m. – 10:15 a.m.:	EPIC: EDUCATING	10:15 a.m. – 10:30 a.m.:	Break

p.m.:	HOMICIDES <i>Connie Best, Ph.D.</i> <i>National Crime Victims</i> <i>Research and Treatment Center</i> <i>Medical University of South</i> <i>Carolina</i>		PEOPLE IN CHOICES <i>Don Causey</i> <i>Inspector</i> <i>Horry County Police</i> <i>Department</i>	 10:30 a.m. – 12:00 p.m.:	MOVEMENT OF VICTIMS’ SERVICES AGENCIES TO THE ATTORNEY GENERAL’S OFFICE: WHAT’S THE IMPACT ON VICTIM SERVICES? <i>Burke Fitzpatrick, Director</i> <i>Crime Victim Services Division</i> <i>Ethel Ford, CPM</i> <i>Veronica Swain Kunz</i> <i>Head, Crime Victim’s Ombudsman</i> <i>Barbara Jean Nelson</i> <i>[need title]</i> <i>All with the South Carolina Attorney</i> <i>General’s Office</i>
		10:15 a.m. – 10:30 a.m.:	Break		
		10:30 a.m. – 12:00 p.m.:	EPIC: EDUCATING PEOPLE IN CHOICES <i>(continued)</i>		

12:00 p.m.:

Conference Adjourns

SOUTH CAROLINA SOLICITORS' ASSOCIATION

and

SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

present

“2018 Prosecution Bootcamp”

Isle of Palms, South Carolina
March 5-9, 2018

AGENDA

All General Sessions events will be in Tides AB (Monday through Thursday) and Palms 1, 2, & 3 (Friday).

Workshop Sessions will be held where indicated on the Agenda.

MONDAY, MARCH 5, 2018

(Continental breakfast buffet will be available 8:15 a.m. – 9:15 a.m. in the Tides Foyer)

7:45 a.m. – 9:00 a.m. Faculty Meeting (Mandatory) (Breakfast Provided)
(Palms 4 and 5)

- 9:00 a.m. – 9:15 a.m. On-site Registration
(Tides AB)
The registration table will be set up just inside Tides AB; please sign in and pick up your notebook, one legal pad, and an evaluation form. Please do not sit on the back two rows where tent cards for faculty are located.
- 9:15 a.m. – 9:30 a.m. Welcome and Program Overview
- 9:30 a.m. – 10:30 a.m. Case Analysis: File Development and Review, and Charging Decisions
Sean Thornton, Deputy Solicitor
Fourteenth Judicial Circuit Solicitor's Office
- 10:30 a.m. – 10:45 a.m. Break
- 10:45 p.m. – 12:15 p.m. Performance Workshop: Closing Argument #1
During this workshop, students will use their previously assigned fact pattern to make a closing argument. They will be critiqued by faculty both on advocacy skills and their ability to comply with law (substantive and procedural criminal and evidentiary law, as well as the Rules of Professional Conduct).

Locations of this Workshop:

Group A – <i>Tides AB</i>	Group D – <i>Palms 2</i>
Group B – <i>Tides C</i>	Group E – <i>Palms 3</i>
Group C – <i>Palms 1</i>	Group F – <i>Sea Oats</i>

At conclusion of workshop, please go *Palms 4 and 5* for lunch.

- 12:15 p.m. – 1:30 p.m. Group Lunch (*Provided*)
(Palms 4 and 5)
- 1:30 p.m. – 2:00 p.m. Theme, Theory, and Storytelling
Todd Tucker, Deputy Solicitor
Twelfth Judicial Circuit Solicitor’s Office
- 2:00 p.m. – 4:00 p.m. Discussion Workshop: Case Analysis
During this workshop, students will be led through an analysis of the fact patterns by the faculty. They will discuss the charge(s) supported by the evidence, potential prosecution and defense objections and motions, any discovery and evidentiary issues, and the defense(s) that might be raised by the defendant.

Locations of this Workshop:

Case 1 (Healy) – <i>Tides AB</i>	Case 2 (Stevens) – <i>Palms 1</i>
Case 3 (Jones) – <i>Tides C</i>	Case 4 (Maxwell/Williams) – <i>Palms 2</i>
Case 5 (Martinez/Ogden) – <i>Palms 3</i>	

At conclusion of workshop, go to *Tides AB* for next session.

- 4:00 p.m. – 4:15 p.m. Break
- 4:15 a.m. – 4:45 p.m. Opening Statements Overview
Christopher W. Epting, Senior Assistant Solicitor
Sixteenth Judicial Circuit Solicitor’s Office
- 4:45 p.m. – 5:30 p.m. General Principles of Cross-Examination
Jason Corbett, Assistant Solicitor
Third Judicial Circuit Solicitor’s Office
Todd Tucker, Deputy Solicitor
Twelfth Judicial Circuit Solicitor’s Office

5:30 p.m. Adjourn for the Day

5:30 p.m. – 5:45 p.m. Faculty Meeting (Mandatory)

TUESDAY, MARCH 6, 2018

(Continental breakfast buffet will be available 7:45 a.m. – 8:45 a.m. in the Tides Foyer)

8:30 a.m. – 10:00 a.m. Performance Workshop: Opening Statements
During this workshop, students will use their previously assigned fact pattern to deliver an opening statement. They will be critiqued by faculty both on advocacy skills and their ability to comply with law (substantive and procedural criminal and evidentiary law as well as the Rules of Professional Conduct).

Locations of this Workshop:

Group A – <i>Tides AB</i>	Group D – <i>Palms 2</i>
Group B – <i>Tides C</i>	Group E – <i>Palms 3</i>
Group C – <i>Palms 1</i>	Group F – <i>Sea Oats</i>

At conclusion of workshop, go to *Tides AB* for next session.

10:00 a.m. – 10:15 a.m. Break

10:15 a.m. – 10:45 a.m. Introduction of Evidence Fundamentals
*Warren Mowry, Deputy Solicitor
 Eighth Judicial Circuit Solicitor's Office*

10:45 a.m. – 11:15 a.m. Direct Examination Overview
*Carter Potts, Assistant Solicitor
 Fifth Judicial Circuit Solicitor's Office*

11:15 a.m. – 12:00 p.m. Understanding and Anticipating Common Defenses
*Bryan Alfaro, Deputy Solicitor
 Ninth Judicial Circuit Solicitor's Office
 Ivy Justice, Assistant Solicitor
 Fifth Judicial Circuit Solicitor's Office
 Matthew Shelton, Senior Assistant Solicitor
 Sixteenth Judicial Circuit Solicitor's Office*

12:00 p.m. – 1:30 p.m. Lunch (*On your own*)

WEDNESDAY, MARCH 7, 2018

(Continental breakfast buffet will be available 7:45 a.m. – 8:45 a.m. in the Tides Foyer)

8:30 a.m. – 10:30 a.m. Discussion Workshop: Cross-Examination
During this workshop, students will discuss and begin planning the cross-examination of the witnesses in their assigned fact patterns. Using the methods discussed during the Cross-Examination presentation, they will discuss the goal of cross-examining each, concessions that can be obtained, and how to organize a cross-examination.

Locations of this Workshop:

Case 1 (Healy) – <i>Tides AB</i>	Case 2 (Stevens) – <i>Palms 1</i>
Case 3 (Jones) – <i>Tides C</i>	Case 4 (Maxwell/Williams) – <i>Palms 2</i>
Case 5 (Martinez/Ogden) – <i>Palms 3</i>	

At conclusion of workshop, go to *Tides AB* for next session.

10:30 a.m. – 10:45 a.m. Break

10:45 a.m. – 11:45 a.m. Closing Argument: Legal, Ethical, and Practical Considerations
*Honorable David M. Stumbo, Solicitor
Eighth Judicial Circuit Solicitor's Office*

11:45 a.m. – 12:00 p.m. Break

12:00 p.m. – 12:45 p.m. Sentencing Fundamentals: Classification of Crimes, Restitution, and Sentencing Sheets
*Christina Bigelow, Deputy General Counsel
South Carolina Department of Corrections
David P. Caraker, Jr., Senior Assistant Solicitor
Fifteenth Judicial Circuit Solicitor's Office*

12:45 p.m. – 1:30 p.m. Understanding Prison Sentences
*Christina Bigelow, Deputy General Counsel
South Carolina Department of Corrections*

1:30 p.m. Adjourn for the Day

1:30 p.m. – 1:45 p.m. Faculty Meeting (Mandatory)

- 3:30 p.m. – 3:45 p.m. Break
- 3:45 p.m. – 4:30 p.m. Motions and Objections: Preparing and Anticipating
*John W. “Bill” Weeks, Deputy Solicitor
Second Judicial Circuit Solicitor’s Office*
- 4:30 p.m. – 5:15 p.m. Protecting Your Convictions
*Ben Aplin, Senior Assistant Deputy Attorney General
S.C. Attorney General’s Office*
- 5:15 p.m. Adjourn for the Day

5:15 p.m. – 5:30 p.m. Faculty Meeting (Mandatory)

FRIDAY, MARCH 9, 2018

(Continental breakfast buffet will be available 8:15 a.m. – 9:15 a.m. in Palms 1, 2, & 3)

NOTE: We start later this morning to allow everyone time to check out before 9:00 a.m. (check out time is 11:00 a.m.).

- 9:00 a.m. – 10:00 a.m. Guilty Pleas: Negotiations, Agreements, and Procedure
*Jenny Desch, Senior Assistant Solicitor
Sixteenth Judicial Circuit Solicitor’s Office*
*David W. Miller, Deputy Solicitor
Second Judicial Circuit Solicitor’s Office*
- 10:00 a.m. – 10:30 a.m. Jury Qualification and Selection
*Elizabeth A. Young, Deputy Solicitor
Second Judicial Circuit Solicitor’s Office*
- 10:30 a.m. – 10:45 a.m. Break
- 10:45 a.m. – 11:15 a.m. Crime Victims: Rights, Needs, and Communication
*Dale Scott, Deputy Solicitor
Eighth Judicial Circuit Solicitor’s Office*
- 11:15 a.m. – 12:00 p.m. Impeachment
*Jennifer Jordan, Assistant Solicitor
Second Judicial Circuit Solicitor’s Office*

12:00 p.m. – 1:00 p.m. Prosecutor Ethics and Professionalism
Amie L. Clifford, Education Coordinator
S.C. Commission on Prosecution Coordination

1:00 p.m. Adjourn

CLE ACCREDITATION INFORMATION

South Carolina Supreme Court
 Commission on CLE and Specialization

Course Sponsor: South Carolina Commission on Prosecution Coordination (SCCPC)

COURSE #	COURSE NAME	CREDITS	ETHICS	SA/MH
183294	2018 Prosecution Bootcamp	26.08	1.5	0.0

Isle of Palms SC

Date: 3/5-9/2018

The total maximum minutes calculated for the training is 1565 minutes (26.08 hours). This total includes 120 minutes (1.50 hours) that have been approved by the CLE Commission as ethics: 60 minutes for Event 27 (Prosecutor Ethics and Professionalism) and 30 minutes for Event 19 (Discovery). You may wish to note on the agenda the hours approved by the CLE Commission for each session as indicated on the evaluation form.

South Carolina Commission on Prosecution Coordination

Room 112
Blatt Building
Columbia, South Carolina
Friday, January 13, 2017



Prosecution CLE Series™

“Ethics for Government Attorneys”

SCCCLE No. 172009
(up to 2.5 hours MCLE, including 2.0 hours of ethics of which
1.0 hour will satisfy the substance abuse/mental health requirement)

For more information on the South Carolina Commission on Prosecution Coordination, please contact the Commission at:

**South Carolina Commission on Prosecution Coordination
Wade Hampton Building
1200 Senate Street, Suite B-03
Post Office Box 11561
Columbia, South Carolina 29211-1561
(803) 343-0765**

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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

“Ethics for Government Attorneys”

Room 112, Blatt Building
Columbia, South Carolina
Friday, January 13, 2017

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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

“Ethics for Government Attorneys”

Room 112, Blatt Building
Columbia, South Carolina
Friday, January 13, 2017

AGENDA

- 9:00 a.m. – 9:25 a.m. Registration
- 9:25 a.m. – 9:30 a.m. Welcome and Program Overview
- 9:30 a.m. – 10:00 a.m. The South Carolina Ethics Act: Who It Applies to and What It Requires
*Michael R. Burchstead, General Counsel
South Carolina State Ethics Commission
Columbia, South Carolina*
- 10:00 a.m. – 11:00 a.m. Current Issues in Attorney Ethics for Government Attorneys
- A. Issues for Non-Prosecutors
*C. Tex Davis, Jr., Senior Assistant Disciplinary Counsel
Office of Disciplinary Counsel, Supreme Court of South
Carolina
Columbia, South Carolina*
- B. Issues for Prosecutors
*Amie L. Clifford, Education Coordinator
South Carolina Commission on Prosecution Coordination
Columbia, South Carolina*
- 11:00 a.m. – 11:15 a.m. Break
- 11:15 a.m. – 12:15 p.m. Substance Misuse
*Julie S. Cole, LMSW, CACII, MAC, Recovery/SBIRT Project
Coordinator
DAODAS
Columbia, South Carolina*
- 12:15 p.m. Adjourn



SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

“Ethics for Government Attorneys”

Columbia, South Carolina
Friday, January 13, 2017

FACULTY ROSTER

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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

MICHAEL R. BURCHSTEAD

General Counsel

State Ethics Commission

5000 Thurmond Mall, Ste. 250

Columbia, South Carolina 29201

EDUCATION:

B.A., College of Charleston, Charleston, South Carolina (1999).

J.D., University of South Carolina School of Law, Columbia, South Carolina (2005).

BAR ADMISSION:

South Carolina (2005); U.S. District Court for the District of South Carolina (2008).

PROFESSIONAL EXPERIENCE:

Staff Attorney, Constantine Cannon, Washington, D.C (2006 – 2008); Associate, Willoughby & Hoefler, Columbia, South Carolina (2008 – 2011); Assistant Attorney General, South Carolina Attorney General's Office, Columbia, South Carolina (2011 – 2015); General Counsel, State Ethics Commission, Columbia, South Carolina (2015 – Present).

TEACHING EXPERIENCE:

Has presented state-wide on the South Carolina Ethics Act to numerous associations, elected officials, lobbyists, and governmental entities.



SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

AMIE L. CLIFFORD

Education Coordinator

South Carolina Commission on Prosecution Coordination

Post Office Box 11561

Columbia, South Carolina 29211-1561

EDUCATION:

B.A. (French), Northwestern State Univ. of Louisiana, Natchitoches, Louisiana (1979).
J.D., University of South Carolina School of Law, Columbia, South Carolina (1982).

BAR ADMISSIONS:

South Carolina (1982); U.S. Court of Appeals for the Fourth Circuit (1982); U.S. District Court for the District of South Carolina (1983); and United States Supreme Court (1986).

PROFESSIONAL EXPERIENCE:

Staff Attorney, Piedmont Legal Services, Inc., Spartanburg, South Carolina (1983 – 1984); Assistant Attorney General, Criminal Appeals Section, South Carolina Attorney General’s Office (1984 – 1991); Assistant Solicitor, Charleston County Solicitor’s Office, Charleston, South Carolina (1991 – 1999); Supreme Court Fellow, U.S. Sentencing Commission, Washington, D.C. (1999 – 2000); National District Attorneys Association, Columbia, South Carolina: Assistant Director, National College of District Attorneys, (2000 – 2007), and Director, National Center for Prosecution Ethics (2003 – 2007); and Education Coordinator, S.C. Commission on Prosecution Coordination (2007 – Present).

HONORS:

Fellow of the National Institute for the Teaching of Ethics and Professionalism (Inaugural Group) (2005); Tom C. Clark Fellow Award (U.S. Supreme Court Fellows Program June 2000); and Service Award, Fraternal Order of Police Charleston Metro Lodge #5 (1999).

PUBLICATIONS:

Author of materials for over 75 CLE programs (conducted by national, state and local bar organizations as well as governmental and private offices) (1985 – Present); and contributing author for numerous publications and editor or co-editor for two publications (South Carolina Bar, ABA, and National District Attorneys Association).

TEACHING EXPERIENCE:

Faculty member for over 100 CLE programs (programs conducted by national, state and local bar organizations as well as governmental and private offices) (1985 – Present).

CURRENT PROFESSIONAL ACTIVITIES:

Member, South Carolina Bar House of Delegates (1992 – 1999; 2002 – 2007; 2008 – Present); Member, South Carolina Bar Ethics Advisory Committee (1997 – 1998; 2013 – Present); Board Member, South Carolina Women Lawyers Association (2008 – Present); and Special Assistant Attorney General (*pro bono*), South Carolina Attorney General’s Office (2006 – 2010; 2013 – Present).



SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

JULIE S. COLE, LMSW, CACII, MAC
Recovery/SBIRT Project Coordinator
South Carolina Department of Alcohol and Other Drug Abuse Services (DAODAS)
1801 Main Street, 4th Floor
Columbia, South Carolina 29201

EDUCATION:

Master of Social Work (MSW), University of South Carolina College of Social Work, Columbia, South Carolina (2005).
Bachelor of Social Work, Limestone College, Gaffney, South Carolina (2004).

PROFESSIONAL CERTIFICATIONS:

Licensed Master Social Worker (LMSW), License #8452, South Carolina Board of SW Examiners; Certified Addictions Counselor II (CACII), Certification #1003313, South Carolina Association of Alcoholism and Drug Abuse Counselors (SCAADAC); and Master Addiction Counselor (MAC), National Association of Alcoholism and Drug Abuse Counselors (NAADAC).

PROFESSIONAL EXPERIENCE:

Clinical Counselor, LRADAC (2004 – 2006); Recovery Specialist, SC Recovering Professional Program (2006 – 2014); and Project Coordinator, South Carolina DAODAS (2014 – Present).

TEACHING EXPERIENCE:

Conducts trainings and presentations on local, regional and state levels on a variety of topics related to substance use disorders, addiction and recovery. Service as a Trainer, FAVOR (Faces and Voices of Recovery) South Carolina Training Academy; and Adjunct Professor, University of South Carolina, College of Social Work (Social Work Interventions in Substance Abuse, and Advance Practice with Groups).



SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

C. TEX DAVIS, JR.
Senior Assistant Disciplinary Counsel
Office of Disciplinary Counsel
Post Office Box 12159
Columbia, South Carolina 29211

EDUCATION:

B.A. (Political Science), University of South Carolina, Columbia, South Carolina (1991).
J.D., University of South Carolina School of Law, Columbia, South Carolina (1994).

BAR ADMISSIONS:

South Carolina (1998).

PROFESSIONAL EXPERIENCE:

Staff Attorney, Richland County Department of Social Services (1998 – 2002);
and Assistant Disciplinary Counsel, Office of Disciplinary Counsel (2002 – Present).

TEACHING EXPERIENCE:

Presented to numerous groups, including law firms, state agencies, and South Carolina Bar organizations on the topics of ethics and professional responsibilities.

South Carolina Commission on Prosecution Coordination

Prosecution CLE Series™

“Ethics for Government Attorneys”

Columbia, South Carolina

January 13, 2017



“The South Carolina Ethics Act: Who It Applies to and What It Requires”

Michael R. Burchstead

General Counsel

South Carolina State Ethics Commission

Columbia, South Carolina

State Ethics Act: Issues for Public Employees

Michael R. Burchstead
General Counsel, S.C. State Ethics Commission
January 13, 2017

The Ethics Act

The Ethics Commission

- The Ethics Commission itself – came into being in 1976
- The relevant law is the Ethics, Government Accountability, and Campaign Reform Act of 1991, which was passed in the wake of Operation Lost Trust.
 - Lost Trust: Federal sting at the South Carolina State House. Ended with 27 convictions or guilty pleas -- 17 of them from state legislators, one of whom had become a judge.
- Ethics Act of 1991 amended in 1995, 2003, 2008, 2011, and 2016. Regulations went into effect in 1997.

Ethics Commission Jurisdiction

- Four subject areas of Ethics Act
 - **Rules of Conduct (§ 8-13-700 through 8-13-795)**
 - **Financial Disclosure (§ 8-13-1110 through 8-13-1180)**
 - Campaign practices (§ 8-13-1300 through 8-13-1374)
 - Lobbyist/Lobbyist's Principals (§ 2-17-5 through 2-17-150)

Recent Legislation

H.3184

- Key provisions:
 - Ethics Commission now investigates allegations of misconduct against members of the General Assembly
 - Ethics Commission makes probable cause finding.
 - Six votes needed for probable cause.
 - The House or Senate Ethics Committees can still reject the findings.
 - Hearings now open to the public.
 - The Commission is reconstituted as of April 1, 2017.
 - Current Commission makeup: 9 members, all appointed by the Governor.
 - New Commission: 8 members, 4 by the Governor, 2 by the House (majority and minority), 2 by the Senate (majority and minority).

H.3186

- **Contents of statement of economic interests**
- SECTION 1. Section [8-13-1120](#)(A) of the 1976 Code, as last amended by Act 6 of 1995, is further amended by adding:
- "(10) a listing of the private source and type of any income received in the previous year by the filer or a member of his immediate family. This item does not include income received pursuant to:
 - (a) a court order;
 - (b) a savings, checking, or brokerage account with a bank, savings and loan, or other licensed financial institution which offers savings, checking, or brokerage accounts in the ordinary course of its business and on terms and interest rates generally available to a member of the general public without regard to status as a public official, public member, or public employee;
 - (c) a mutual fund or similar fund in which an investment company invests its shareholders' money in a diversified selection of securities."
- **Income defined, exclusions**
- SECTION 2. Section [8-13-1120](#) of the 1976 Code, as last amended by Act 6 of 1995, is further amended by adding:
- "(C) For purposes of this section, income means anything of value received, which must be reported on a form used by the Internal Revenue Service for the reporting or disclosure of income received by an individual or a business. Income does not include retirement, annuity, pension, IRA, disability, or deferred compensation payments received by the filer or filer's immediate family member."

Financial Disclosure

Statements of Economic Interests

- Section 8-13-1110
 - Statement of Economic Interests to be filed upon entering official responsibilities and then on or before March 30th by noon of each year of service.
- Section 8-13-1120
 - In general, income received from the government is required – not income received from private sources.
 - (2) “the source, type, and amount of value of income, not to include tax refunds, of substantial monetary value received from a governmental entity by the filer or a member of the filer’s immediate family...”
 - (7) Any associations with lobbyists
 - (8) “if a public official...receives compensation from an individual or business which contracts with the governmental entity with which the public official...serves..., the public official must report the name and address of that individual or business and the amount of compensation paid to the public official...by that individual or business.”
 - (9) source and description of any gifts received during the previous calendar year (Note conflict with 710)

Rules of Conduct

Definitions

- **“Economic interest”** (Section 8-13-100(11))
 - Interest distinct from that of the general public.
 - Large class exception. If the only economic interest realized is that which would be realized as a member of a “profession, occupation, or large class,” then the public official, public member, or public employee may participate in the decision.
- **“Family member”** (Section 8-13-100(15))
 - Includes a member of the person's immediate family, also: spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild.
 - Amended in 2011 to include in-laws.
- **“Individual with whom he is associated.”** (Section 8-13-100(21))
 - “Individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.”
- **“Business with which he is associated.”** Section 8-13-100(4)
 - “Business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.”
 - If you or your spouse is employed by a company, that is a business with which you are associated.
 - “Governmental entity” not a business.

700 violations

- Section 8-13-700(A)
 - “No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated.”
 - Exception for incidental use not resulting in additional public expense.
- Section 8-13-700(B)
 - “No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest.” “

Recusal provision of 700(B)

- Section 8-13-700(B)(continued)
 - "A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
 - (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
 - ...
 - (3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;
 - (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

Other Rules of Conduct provisions

- **Section 8-13-705**
 - May not receive or give anything of value with intent to influence.
 - "Anything of value is defined in Section 8-13-100(1) (laundry list)
- **Section 8-13-100:**
 - (b) "Anything of value" or "thing of value" does not mean:
 - (i) printed informational or promotional material, not to exceed ten dollars in monetary value;
 - (ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;
 - (iii) a personalized plaque or trophy with a value that does not exceed one hundred fifty dollars;
 - (iv) educational material of a nominal value directly related to the public official's, public member's, or public employee's official responsibilities;
 - (v) an honorary degree bestowed upon a public official, public member, or public employee by a public or private university or college;
 - (vi) promotional or marketing items offered to the general public on the same terms and conditions without regard to status as a public official or public employee; or
 - (vii) a campaign contribution properly received and reported under the provisions of this chapter.

Other Rules of Conduct provisions

- **Section 8-13-715**
 - May not accept an honorarium for speaking engagements in one's official capacity. May accept payment for actual expenses.
- **Section 8-13-720**
 - May not accept additional money for assistance given while performing one's duty.
- **Section 8-13-725**
 - May not use confidential information gained through employment for personal gain.
- **Section 8-13-740**
 - Prohibition on representation
- **Section 8-13-750**
 - May not cause the employment, promotion, or transfer of a family member to a position in which one supervises. Prohibits discipline of one's family member.
- **Section 8-13-755 and 760**
 - Post employment restrictions

Campaign Practices

Public Resources and Elections

- Public employees or officials may not engage in any activity on public time or using public resources to promote or oppose a certain vote.
- Section 8-13-1346
 - (A) A person may not use or authorize the use of public funds, property, or time to influence the outcome of an election.
 - (B) This section does not prohibit the incidental use of time and materials for preparation of a newsletter reporting activities of the body of which a public official is a member.
 - (C) This section does not prohibit the expenditure of public resources by a governmental entity to prepare informational materials, conduct public meetings, or respond to news media or citizens' inquiries concerning a ballot measure affecting that governmental entity; however, a governmental entity may not use public funds, property, or time in an attempt to influence the outcome of a ballot measure.
- See also: Section 8-13-765
 - (A) No person may use government personnel, equipment, materials, or an office building in an election campaign. The provisions of this subsection do not apply to a public official's use of an official residence.

Confidentiality

Confidentiality

- S.C. Code Ann. 8-13-320(10)(g):
 - All investigations, inquiries, hearings, and accompanying documents must remain confidential until a finding of probable cause or dismissal unless the respondent waives the right to confidentiality. The wilful release of confidential information is a misdemeanor, and any person releasing confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year.
- S.C. Code Ann. Regs. 52-718
 - (A) No person associated with a complaint...shall mention the existence of the proceedings or disclose any information pertaining thereto except to persons directly involved including witness and potential witnesses, and then only to the extent necessary for investigation and disposition of the complaint. Witnesses and potential witnesses shall be bound by these confidentiality provisions.
 - (B)The Respondent may waive the confidentiality of the proceeding in writing filed with the Commission.

Penalties

Penalties for Violation of Ethics Act

- Late filing penalties for Statements of Economic Interests and Campaign Disclosure forms set by statute. Section 8-13-1510
 - Penalties are per late form – penalties can build up quickly
 - \$100 if not filed within five days.
 - If compliance not met, after the Ethics Commission provides notice by certified mail:
 - \$10 a day for 10 days
 - \$100 a day after that until compliance met or maximum penalty of \$5,000 reached.
 - Previously there was no maximum
- Penalty set at \$2,000 for violations that are not categorized as non-compliance.
- In addition to penalties set by statute, the Commission may levy fines and administrative fees, and may issue a public reprimand

Conclusion

- If you have any doubt as to whether a course of conduct will be a problem, you may seek an advisory opinion from the Commission.
- Anyone subject to the Act may request the opinion
- Email: mburchstead@ethics.sc.gov
- Direct line: (803) 929-2503

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South Carolina Commission on Prosecution Coordination

Prosecution CLE Series™

“Ethics for Government Attorneys”

Columbia, South Carolina
January 13, 2017



“Current Issues in Attorney Ethics for Government Attorneys”

Amie L. Clifford
Education Coordinator
S.C. Commission on Prosecution Coordination
Columbia, South Carolina

C. Tex Davis, Jr.
Senior Assistant Disciplinary Counsel
Office of Disciplinary Counsel
Columbia, South Carolina

2016 Ethics and Discipline Update
Barbara M. Seymour
Jaclyn Nichols
Office of Disciplinary Counsel

- I. Opinion Summaries**
 - II. Recent Rule Revisions & Proposals**
 - III. 2015-2016 Annual Report on Lawyer Discipline**
-

I. Opinion Summaries

Criminal Conduct

- (1) Matter of Breibart. Lawyer pled guilty to mail fraud in connection with a scheme to steal money from clients by falsely stating that they were subject to ongoing criminal investigations and inducing them into liquidating their assets and depositing their money with him. Lawyer was sentenced to 63 months in federal prison, three years of supervised release, and restitution of \$2.4 million dollars. Lawyer also bilked 33 clients of hundreds of thousands of dollars by accepting retainers, failing to do the work, then spending the money. The Lawyers' Fund for Client Protection received more than \$5.6 million in claims. The Fund paid its cap of a total of \$200,000.00. Disbarred, plus restitution, by agreement. (Op.#27592, November 25, 2015)
- (2) Matter of Hammer. A process server was attempting to serve documents on Lawyer in connection with Lawyer's personal domestic case. Lawyer struck the process server's vehicle, twice, while backing out of a parking space. Lawyer's two sons were in his vehicle. Lawyer was charged with first degree assault and battery, malicious injury to property, hit and run/leaving the scene, and unlawful conduct towards a child. Lawyer pled guilty to leaving the scene with property damage and was sentenced to 364 days in prison, suspended on six months' probation. Definite suspension for one year, plus costs, and LEAPP Ethics School, by agreement. (Op.#27618, March 30, 2016)
- (3) Matter of Viers. Lawyer pled guilty to Harassment 2nd degree involving his conduct and interactions with his ex-girlfriend. Lawyer was sentenced to 60 days in jail (to be served on weekends), one year of probation, required mental health counseling, fees/fines in the amount of \$133.90. Lawyer also pled guilty to engaging in a monetary transaction in property derived from unlawful activity, which had some effect on interstate or foreign commerce, that Lawyer knew were proceeds of mail fraud. Lawyer was sentenced to 37 months in prison, three years' probation, and restitution of \$875,000. Disbarred, by agreement. (Op.#27651, July 20, 2016)
- (4) Matter of Chaplin. While under federal investigation for money laundering for criminal defense clients, Lawyer gave false statements regarding his receipt of cash payments in excess of \$10,000 and failing to file required forms. Lawyer was sentenced to three years of probation after pleading guilty to willfully making a material false statement to the federal government. In two client matters, Lawyer included language in his fee agreement providing that he could garnish the clients' wages or tax refunds if the fee was not paid. Lawyer had no legal authority to garnish wages or tax refunds. Definite suspension for one year (retroactive) plus costs, LEAPP Ethics School, Trust Account School, and Law Office Management School, by agreement. (Op.#27658, August 24, 2016)

Neglect of Client Matters

- (5) Matter of Fitzharris. Lawyer represented client in negligence action and failed to reach a settlement agreement with the insurance carrier. Lawyer misrepresented to the client that

- the case had settled and delivered an advanced check from the operating account. Lawyer neglected the file and later learned there was no settlement check or signed statement, the Medicare lien was outstanding, and that the case had been dismissed because the statute of limitations had expired. The Court considered Lawyer's issues related to physical disabilities and depression. Definite suspension for three months, LEAPP Ethics School, Trust Account School, and Law Office Management School, by agreement. (Op.#27604, February 17, 2016)
- (6) Matter of Sample. Lawyer neglected five separate client matters by failing to respond to communications, failing to keep clients reasonably informed, and failing take further steps to protect clients' interests. Lawyer's misconduct also included: misrepresentations to clients that a meeting had been rescheduled when the meeting had never been scheduled; failure to timely refund unused retainer; failure to timely file briefs for an appeal resulting in dismissal; failure to keep funds separate until disputes over claimed interests had been resolved by disbursing an estate settlement to pay attorney's fees and personal representative's expenses; and, failure to pay three awards of the Resolution of Fee Disputes Board resulting in certificates of noncompliance. Lawyer failed to cooperate with the disciplinary investigation. Definite suspension for nine months, plus costs, LEAPP, and two years of medical treatment monitoring, by agreement. (Op.#27605, February 17, 2016)
- (7) Matter Of Davis. From December 2011 to May 2013, Lawyer was retained to represent ten different clients for whom she failed to timely file the appropriate motions, appeals, and pleadings; failed to communicate or keep clients reasonably informed; failed to withdraw from representation when her physical and/or mental condition materially impaired her ability to represent them; failed to refund or retain unearned fees in her trust account; and, failed to pay fee dispute awards. Lawyer failed to file respond to disciplinary inquiries. Definite suspension for two years, plus costs, restitution, and LEAPP Ethics School, by agreement. (Op.#27611, March 9, 2016)
- (8) Matter of Houston. Lawyer failed to timely file the initial brief and designation in a client's appeal, resulting dismissal. The client's appeal was reinstated twice, but dismissed a third time after the court granted all possible extensions. In unrelated cases, Lawyer failed to pay a videographer and a court reporting service for two years. Lawyer failed to cooperate with disciplinary investigations. Lawyer had extensive disciplinary history. Definite suspension for nine months, plus costs, LEAPP Ethics School and Law Office Management School. (Op.#27616, March 30, 2016)
- (9) Matter of Stockholm. Lawyer neglected client matters in three separate matters by failing to timely serve pleadings resulting in dismissal because the statute of limitations expired. Lawyer then misled those clients about settlements by fabricating documents. In two other cases, Lawyer failed to meet the deadlines for restoring cases to the docket. Disbarred, plus costs, by agreement. If seeking readmission, LEAPP Ethics School, Trust Account School, Law Office Management School, and law office management monitoring for two years. (Op.#27624, April 20, 2016)
- (10) Matter of Herlong. Lawyer was arrested on four separate occasions for shoplifting, possession of cocaine and multiple driving offenses, open container, and public disorderly conduct. Lawyer was also indicted for possession with intent to distribute crack cocaine, possession of cocaine, and contributing to the delinquency of a minor. Lawyer was incarcerated for 120 days for failure to pay court-ordered spousal support. Upon his release, the felony charges were resolved with a sentence of time served. Lawyer failed to notify Commission on Lawyer Conduct of his felony indictment. Lawyer also represented a client in court while on administrative suspension and he misrepresented to the judge that his Bar status was inactive (rather than suspended) and that he was in the process of

- reactivating (which was not true). Public reprimand, 2 year monitoring contract with Lawyers Helping Lawyers, by agreement. (Op.#27634, May 11, 2016)
- (11) Matter of Moak. Lawyer neglected several client matters. In a divorce case, Lawyer filed a complaint for the client, but failed to seek to have a hearing scheduled. He failed to respond to the client's requests for information or notify the client that the case was dismissed for failure to proceed. In a visitation case, Lawyer failed to take any action on the client's behalf after being paid his retainer in full. Lawyer did not place unearned fees into a trust account. After the grievance was filed, Lawyer refunded the retainer. In a PCR case, Lawyer failed to communicate with his client; appeared at the hearing notifying his client or securing his attendance; and, failed to present evidence in support of the client's primary complaint. Public reprimand, plus costs, and LEAPP Ethics School, Trust Account School, and Law Office Management School, by agreement. (Op.#27649, July 20, 2016)

Misappropriation and Other Trust Account Violations

- (12) Matter of Carter. Lawyer received \$250,000.00 to hold in escrow as an earnest money deposit for a business transaction between his client and another party. Lawyer properly disbursed \$150,000.00 to the client. He then misappropriated the remaining funds over the next nine months. A dispute arose between the parties and litigation ensued. Lawyer was ordered to deliver the escrowed funds to the clerk of court. Lawyer did not comply and was held in contempt of court. Lawyer had been the subject of a previous disciplinary investigation in which he neglected litigation in a civil case. That matter resulted in a deferred discipline agreement in which Lawyer consented to attending Ethics School and Law Office Management School, seeking psychological treatment, and entering into a Lawyers Helping Lawyers. Lawyer did not comply and the DDA was revoked. Lawyer also self-reported failing to act with diligence and competence in two other litigation matters. Disbarred, plus costs, restitution, and LEAPP, by agreement. (Op.#27589, November 12, 2015)
- (13) Matter of Breckenridge. Lawyer was hired by a nonlawyer closing company to conduct a residential real estate refinance transaction in 2012. The closing company was contracted by a title company, which prepared the documents and processed the funds. The title company disbursed the loan proceeds prior to deposit of funds for that purpose, resulting in an overdraft that was reported to the Commission on Lawyer Conduct. The ensuing ODC investigation revealed that Lawyer failed to disclose to the clients the disbursement of their loan proceeds including his sharing of legal fees with the nonlawyer closing company. Further, Lawyer failed to properly supervise the disbursement of funds and ensure that the HUD-1 settlement statement matched the actual disbursements of loan proceeds. Lawyer also failed to maintain proper records of the transaction. The majority held that a closing attorney's duty to oversee the disbursement of loan proceeds requires that he has control over the disbursement or, if a third party disburses the proceeds, the attorney receives detailed verification that the disbursement was done correctly. Public reprimand, plus costs, LEAPP Ethics School and Trust Account School. (Op.#27625, April 20, 2016) (motion for reconsideration denied)
- (14) Matter of Moses. Lawyer was employed by a law firm. Lawyer billed a client directly and sought the payment for himself rather than the firm. When the firm found out, Lawyer agreed to repay the money. The firm's ensuing investigation revealed that, from August 2009 through September 2011, Lawyer misappropriated approximately \$77,000 by invoicing clients directly. Ultimately, Lawyer admitted to the theft and repaid the firm the amount of improper invoices and the cost of the computer forensics expert hired by the firm to conduct the investigation. Disbarred, plus costs. (Op.#27626, April 20, 2016)

- (15) Matter of Cox. Lawyer failed to make reasonable efforts to ensure that nonlawyer employee conduct was compatible with professional obligations of a lawyer when a paralegal under his supervision was found misappropriating \$349,227.34 through issuing and negotiating checks. Also, Lawyer failed to pay a court reporter after five invoices were received for the same service and paid only after a complaint was filed. In an estate representation and a custody representation, Lawyer failed to keep his clients informed of the status of their matters. In the custody case, Lawyer failed to establish the scope of representation or pursue the goals of the client to secure visitation with the client's children. Lawyer represented another client seeking custody and failed to seek a court order for temporary or permanent change of custody after the relative with custody agreed to allow the child to live with the client. Public Reprimand, plus costs, LEAPP Ethics School, Trust Account School, and Law Office Management School, by agreement. (Op.#27642, June 22, 2016)
- (16) Matter of Warren. Lawyer misappropriated over \$171,392.00 from three trust funds while serving as trustee. In another case, Lawyer was paid \$40,000.00 in fees for a client, but failed to perform work or reimburse unearned fees. In a third matter, Lawyer mismanaged and failed to perform work after accepting \$20,000.00 in fees for estate planning and corporate work, resulting in the client incurring \$1,700.00 in penalties and \$13,000.00 in attorney's fees for new counsel to reinstate his corporate charter and correct the estate plan. After his interim suspension, the court-appointed receiver reported three additional client matters in which Lawyer converted \$18,000.00 of client funds that were to be held in trust and failed to file numerous original documents, mostly deeds, after collecting fees. Lawyer failed to respond to disciplinary investigation. Disbarred, by default, plus costs and restitution. (Op.#27643, June 29, 2016)
- (17) Matter of Kerestes. Lawyer commingled funds by leaving earned fees in his trust account. Upon receipt of a notice of an overdraft on his trust account, Lawyer discovered that an employee had misappropriated in excess of \$23,000 by transferring funds to a personal account over a two-year period. Lawyer failed to discover the theft because he was not conducting required monthly reconciliations. Public Reprimand, by agreement. (Op.#27656, August 24, 2016)
- (18) Matter of Lester. Lawyer was disbarred in North Carolina for misappropriation of client funds. The Supreme Court of South Carolina imposed reciprocal discipline, uncontested by Lawyer. Disbarment. (Op.#27661, August 24, 2016)

Litigation Misconduct

- (19) Matter of Schmidt. Lawyer represented clients in claims against Norfolk Southern following the deadly derailment in January 2005. More than one hundred of his client had signed releases in exchange for payment from the railroad prior to his representation. Lawyer opted his clients out of the class settlement and filed individual lawsuits. The railroad moved for summary judgment based on the releases. Upon learning of the existence of the releases from the answers and discovery, Lawyer failed to advise the clients that tender of the funds was required until after the summary judgment hearing. In a letter to the clients, Lawyer gave them five days to deliver the funds received from the railroad years earlier. The letter falsely stated that by returning the funds the clients would be able to negotiate higher settlements. A client sent a copy of the letter to the media. Lawyer gave an interview to a television station and addressed the merits of the case, stating that the releases had been signed under duress. He also falsely asserted that the railroad had asked for the return of the money. The judge had previously admonished Lawyer for speaking to the press and Lawyer had agreed to refrain. As a result of the media interview about the releases, Lawyer was ordered to pay the railroad's fees and costs

and to refrain from future public comments. Public reprimand, by agreement. (Op. # 27582, October 14, 2015).

- (20) Matter of Owen. Lawyer was sanctioned and assessed a fine of \$5,000 as a result of conduct in a Bankruptcy Court hearing in which he improperly raised an argument that had been presented and was pending in binding arbitration proceedings. As a result of Lawyer's improper filing, the Court and the opposing party had to deal with groundless and unnecessary proceedings. Lawyer misrepresented to the Court that he was proceeding at the direction of the Bankruptcy Trustee, when Lawyer was actually responsible for the argument. Lawyer later wrote a letter to the Court calling attention to his misstatement and apologized to all concerned. Public reprimand, plus costs, and LEAPP Ethics School, by agreement. (Op.#27650, July 20, 2016)

Dishonesty and False Swearing

- (21) Matter of Samaha. Lawyer signed as witness and notary to a false signature on an assignment of a mortgage. The signature was purportedly that of Lawyer's client's wife, who had been dead for seven years. In another case, Lawyer prepared, witnessed, and notarized a revocation of a power of attorney for a cognitively impaired client. Additionally, Lawyer's staff forged and altered insured closing protection letters, title insurance binders, and title insurance policies and provided them to lenders in connection with Lawyer's real estate closings. Prior to being suspended in an unrelated disciplinary investigation, Lawyer failed to payoff prior mortgages in four closings. His trust account was approximately \$239,000 short. Disbarment, plus costs, by agreement, (Op.#27660, August 24, 2016)
- (22) Matter of Fosmire. Lawyer represented the insured in a car wreck case. He neglected the matter for about a year and failed to communicate with the insurance company. He settled the claim for \$200,000 without the insurance company's knowledge or consent. When no settlement check was produced, Lawyer gave false information to opposing counsel to cover for the fact that he had no authority to make the offer. The insurance company did not learn about the settlement until they were served with pleadings in a lawsuit filed by opposing counsel to enforce it. Public Reprimand, plus LEAPP Ethics School, by agreement. (Op.#27657, August 24, 2016)

Advertising and Solicitation

- (23) Matter of Naert. Lawyer represented clients in lawsuits against a timeshare company. In the firm's Internet marketing campaign, Lawyer bid on keywords including the name of the timeshare company and the names of the company's attorneys. This resulted in Lawyer's firm's advertisement appearing prominently in search results generated by those names. Lawyer's ads associated with searches of those names included language such as "Timeshare Attorney in SC - Ripped Off? Lied to? Scammed?" Further, the ad included a link to the law firm website, but did not contain the firm's name or the name of a lawyer responsible for the advertisement's content. Public reprimand, by agreement, plus costs, Advertising School. (Op. # 27574, September 30, 2015).

Unauthorized Practice of Law

- (24) Matter of Allocco. About seven years ago, Lawyer received a letter of caution from the North Carolina State Bar for practicing law in that state without a license. She received reciprocal discipline in South Carolina in the form of a confidential admonition. In 2014, Lawyer conducted a real estate loan closing in North Carolina. During the course of that representation, Lawyer held herself out as licensed in North Carolina. The client filed grievances in both states when Lawyer failed to obtain title insurance as required. Lawyer

did not respond to the ensuing investigation by the North Carolina State Bar. Definite suspension of nine months, by agreement, plus costs and LEAPP Law Office Management School, by agreement. (Op.#27659, August 24, 2016)

II. Recent Rule Revisions & Proposals

1. Duty of Partners, Managers, and Judges to Take Action on Suspicion of Impairment of a Colleague - Rule 5.1, RPC; Canon 3, CJC; and Rule 428, SCACR (8/24/15)

The Supreme Court has amended RPC Rule 5.1 to include additional duties of partners and managers in law firms to take action when impairment of a lawyer in the firm is suspected. CJC Canon 3 has also been amended to impose a similar duty on a judge who believes that a lawyer or another judge is impaired. The duty to take action is mandatory, but not specified. One option is to seek assistance of the South Carolina Bar through a new process set forth in Rule 428, SCACR. That process requires the Bar to appoint an Attorney to Intervene when a lawyer or judge elects to report the cognitive impairment of another lawyer. This rule is designed to create a system similar to Lawyers Helping Lawyers in order protect an impaired lawyer or judge from the disciplinary process in cases where misconduct has not occurred.

3. Expansion of permissible use of "certified" in advertising - Rule 7.4, RPC (10/28/15)

The Supreme Court has amended RPC Rule 7.4 to expand circumstances under which lawyers can refer to themselves as "certified" "specialist" "expert" or "authority." Previously, only lawyers certified by the Commission on CLE and Specialization could use such designations. Under the new version of the Rule, lawyers certified by an independent certifying organization (ICO) that is approved by the Commission may also use those designations, as long as the ICO is clearly identified. The new version of the Rule also permits a lawyer who is certified by the SC Supreme Court Board of Arbitrator and Mediator Certification to designate himself as a "certified arbitrator" or "certified mediator." For more information about certified specialties in South Carolina or for a list of approved ICO's, go to www.commcle.org or call the Commission at (803) 799-5578.

4. Certification of Paralegals - NEW Rule 429, SCACR (11/12/15)

The Supreme Court has adopted a recommendation from the Commission on the Profession to create a program for the voluntary certification of paralegals who meet minimum standards and qualifications. The paralegal certification program will be governed by the newly created Board of Paralegal Certification and administered with the assistance of staff at the South Carolina Bar. Paralegals may still work in South Carolina without certification. The work of paralegals remains restricted to that which is directly supervised by a licensed attorney.

5. Adoption of the Uniform Bar Examination (UBE) (01/21/16)

The Supreme Court will replace the South Carolina Bar Examination with the Uniform Bar Examination (UBE) as of February 2017. Information about the UBE can be found at the National Conference of Bar Examiners website at www.ncbex.org.

ANNUAL REPORT OF LAWYER DISCIPLINE IN SOUTH CAROLINA 2015- 2016

COMPLAINTS PENDING & RECEIVED:

Complaints Pending June 30, 2015	1019	
Complaints Received July 1, 2015 - June 30, 2016	<u>1542</u>	
Total Complaints Pending and Received		<u>2561</u>

DISPOSITION OF COMPLAINTS:

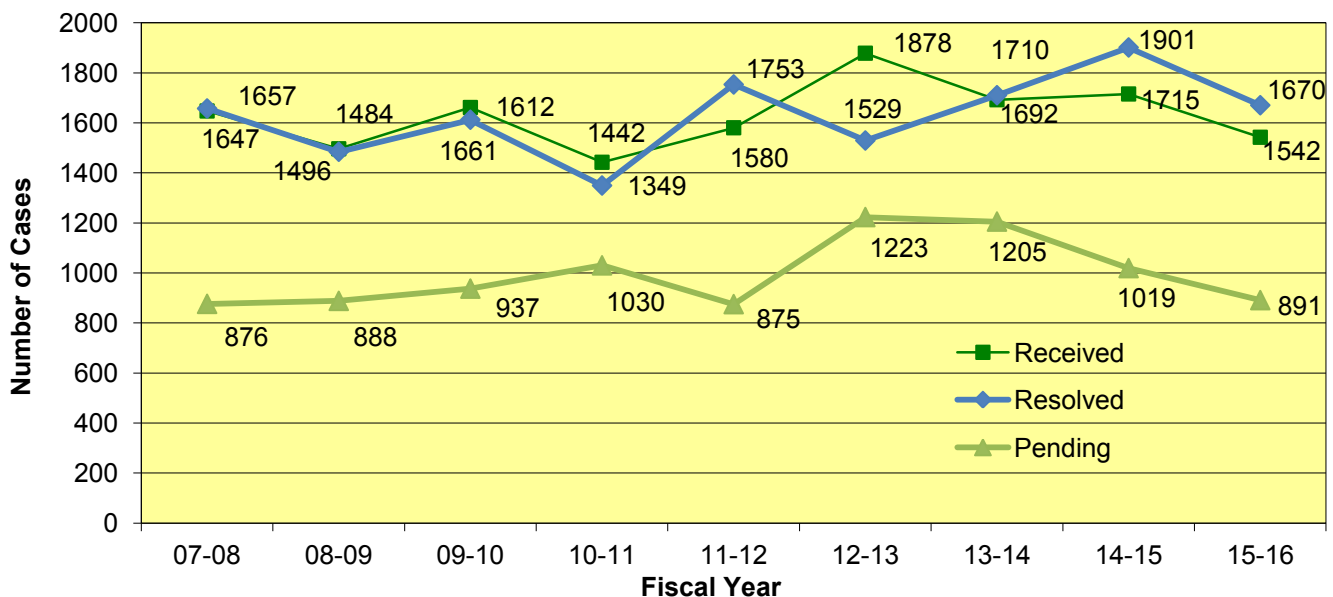
Dismissed:

By Disciplinary Counsel after initial review	413	
By Disciplinary Counsel after investigation	918	
By Investigative Panel	43	
By Supreme Court	<u>1</u>	
Total Dismissed		<u>1375</u>

Not Dismissed:

Referred to Other Agency	8	
Closed But Not Dismissed	3	
Closed Due to Death of Lawyer	18	
Deferred Discipline Agreement	0	
Letter of Caution	151	
Admonition	15	
Public Reprimand	10	
Suspension	33	
Disbarment	55	
Bar to Future Admission (out-of-state lawyer)	0	
Permanent Resignation in Lieu of Discipline	<u>2</u>	
Total Not Dismissed		<u>295</u>

Total Complaints Resolved (1670)
Total Complaints Pending as of June 30, 2016 891



Practice Type

Law firm	48.19%	Less than 1%:
Solo practice	23.52%	Corporate/general counsel
Public defender	19.48%	Guardian <i>ad litem</i>
Prosecutor	5.54%	Mediator/arbitrator/commissioner
Other government	2.05%	Not practicing

Sources of Complaints

Client	58.92%	Less than 1%:
Opposing Party	18.58%	Public Official/Agency/Law Enforcement
Bank	4.87%	Fee Disputes Board
Attorney	4.81%	Litigation Witness/Victim/Ward
Family/Friend of Client	3.00%	Family/Friend of Witness/Victim/Ward
Court Rptr./Med.Prov./3d Party Payee	1.62%	Disciplinary Counsel
Citizen	1.32%	Anonymous
Judge	1.20%	Family/Friend of Opposing Party
Self-Report	1.02%	Family/Friend/Business Assoc. of Lawyer
		Employee of Lawyer

Case Type

Criminal	39.93%	Less than 1%:
Domestic	14.32%	Professional Malpractice
Real Estate	7.49%	Corporate/Commercial/Business
Personal Injury	6.23%	Immigration
Probate	5.87%	Homeowners' Assn Dispute
General Civil	5.40%	Landlord/Tenant
Post-Conviction Relief	3.90%	Regulatory/Zoning/Licensing
Debt Collection/Foreclosure	3.42%	Tax
Not Client Related	3.18%	Intellectual Property
Workers Compensation	2.16%	Social Security/Federal Benefits
Bankruptcy	2.04%	
Employment	1.14%	
Property/Contract Dispute	1.02%	

Alleged Misconduct

Neglect/Lack of Diligence	27.31%	Less than 1%:
Dishonesty/Deceit/Misrepresentation	25.57%	Scope of Representation
Inadequate Communication	14.44%	Inadequate Nonlawyer Supervision
Trust Account Misconduct	7.88%	Failure to Pay Fee Dispute
Conflict of Interest	3.31%	Personal Conduct (not client-related):
Improper Fees	3.00%	Real Estate Misconduct
Lack of Competence	2.88%	
Failure to Deliver Client File	2.82%	
Discovery Abuse/Litigation	1.81%	
Misconduct		
Incivility	1.62%	Probate Misconduct
Failure to Pay Third Party	1.62%	Business Transaction Misconduct
Advertising Misconduct	1.38%	Bar Admissions/Disciplinary Matter
Unauthorized Practice	1.26%	
Criminal Conduct (personal)	1.08%	
Declining/Terminating Representation	1.08%	

SUBSTANCE ABUSE/MENTAL HEALTH:

In the 2015-2016 fiscal year, ODC concluded 81 complaints in which substance abuse or mental health issues were brought to the attention of ODC. This represents a 311.54% increase from the previous year. However, those complaints represented a total of 18 lawyers (compared to 16 in 2014-2015). Of the complaints concluded that involved substance abuse or mental health issues, 87.5% resulted in some form of discipline against the lawyer. This is compared to an overall discipline rate of 15.93%. Issues included:

Depression:	13 lawyers
Alcohol Addiction:	3 lawyers
Aging/Dementia:	1 lawyer
Illegal Drug Addiction:	1 lawyer

YEARS IN PRACTICE*:

In the 2015-2016 fiscal year, complaints were filed against 1066 lawyers. Of those lawyers, 15.48% were in their first six years of practice. A total of 32.27% of lawyers complained about were in their first twelve years of practice.

<u>Years in Practice</u>	<u>Number of Lawyers</u>
up to 6:	165
7 - 12:	179
13 - 18:	168
19 - 24:	155
25 - 30:	137
31 - 36:	107
37 - 42:	97
43 - 48:	37
49 - 54:	15
55 - 60:	4
61 and up:	2

*The statistical significance of this data is dependent on the number of lawyers in active practice in each category. Information about the demographics of practicing lawyers can be obtained from the South Carolina Bar.

PRIOR DISCIPLINE

In the 2015-2016 fiscal year, 41.17% of concluded complaints involved lawyers who had some form of previous disciplinary caution or sanction. Of those complaints involving lawyers with prior discipline, 32.19% resulted in subsequent discipline.

UNLICENSED* LAWYER COMPLAINTS

In the 2015-2016 fiscal year, ODC concluded 18 complaints against unlicensed lawyers. This equivalent to the previous year. Of the complaints concluded involving unlicensed lawyers, 33.33% resulted in some form of discipline against the lawyer. This is compared to an overall discipline rate of 15.93%. Home jurisdictions of unlicensed lawyers included:

Georgia	4	Kentucky	1	Pennsylvania	1
Florida	3	Minnesota	1	Texas	1
North Carolina	2	Mississippi	1	Virginia	1
Arizona	1	New York	1	Washington	1

*An unlicensed lawyer is a lawyer who is not licensed in South Carolina, but is admitted in another jurisdiction.

OFFICE OF DISCIPLINARY COUNSEL

ATTORNEY TO ASSIST ASSIGNMENTS:

Complaints Assigned to ATAs	8
Reports Filed by ATAs	3
Outstanding ATA Reports	2

COMMISSION ON LAWYER CONDUCT

COMMISSION PROCEEDINGS:

Meetings of Investigative Panels	6
Formal Charges Filed	10
Formal Charges Hearings	4
Incapacity Proceedings	0
Meetings of Full Commission	1

REQUESTS FOR DISMISSAL REVIEW:

Requests for Review by Complainant	89
Dismissal Affirmed by Panel	(83)
Letters of Caution Issued by Panel	(0)
Case Remanded for Further Investigation	<u>(1)</u>
Dismissal Review Pending	<u><u>5</u></u>

RECEIVER APPOINTMENTS:

Pending as of June 30, 2015	22
New Appointments	+ 15
Appointments Terminated	<u>(22)</u>
Pending as of June 30, 2016	<u>15</u>

ATTORNEYS TO PROTECT CLIENTS' INTERESTS:

Serving as of June 30, 2015	2
Appointed	+ 1
Discharged	<u>(2)</u>
Serving as of June 30, 2016	<u><u>1</u></u>

LAWYERS BEING MONITORED:

New Monitor Files Opened	45*
Lawyers Currently Monitored	113

*includes 7 conditional admissions

SUPREME COURT OF SOUTH CAROLINA

DISCIPLINARY ORDERS*:

Dismissal	1
Letter of Caution	3
Admonition	2
Public Reprimand	5
Definite Suspension	6
Disbarment	9
Bar to Future Admission	0
Transfer to Incapacity Inactive	4
Interim Suspension	10

*These figures represent the number of orders issued by the Supreme Court, not the number of complaints. Some orders conclude multiple complaints.

COMPLAINTS REFERRED TO SUPREME COURT:

Complaints resolved	106
Pending as of June 30, 2016	19

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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

Presentation on

“The Ongoing Issue with Criminal Discovery: The Prosecution’s Duty of Disclosure under the South Carolina Rules of Professional Conduct”

Outline and Presentation by

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DISCUSSION NOTES AND DETAILED OUTLINE

This outline addresses the discovery obligations of the prosecution under the South Carolina Rules of Professional Conduct, and discuss the differences from and relation to the obligations imposed by the Constitution and South Carolina Rules of Criminal Procedure.

I. GENERAL

A. Role of the Prosecutor

1. South Carolina Rules of Professional Conduct, Rule 3.8, Comment [1]:

“A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.”

2. ABA Standards for Criminal Justice, Standard 3-1.2 (b) and (c):

(b) The prosecutor is an administrator of justice, an advocate, and an officer of the court; the prosecutor must exercise sound discretion in the performance of his or her functions.

(c) The duty of the prosecutor is to seek justice, not merely to convict.

3. NDAA National Prosecution Standards, 3rd ed.,¹ 1-1.1:

¹ The third edition of the National District Attorney’s National Prosecution Standards may be found online at <http://www.ndaa.org/pdf/NDAA%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>.

“The prosecutor is an independent administrator of justice in the criminal justice system, which can only be accomplished through the representation and presentation of the truth. The primary responsibility of a prosecutor is to seek justice.”

4. *Berger v. U.S.*, 295 U.S. 78, 88 (1935).

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape nor innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

5. *State v. Bealin*, 201 S.C. 490, 23 S.E.2d 746, 758-759 (1943).

Quoting from 23 C.J.S. 519 §1081, the Supreme Court of South Carolina stated that,

with reference to the conduct of the prosecuting attorney:
 "...he should bear in mind that he is an officer of the court, who represents all the people, including accused, and occupies a quasi-judicial position, whose sanctions and traditions he should preserve. It is his duty to see that justice is done. He must see that no conviction takes place except in strict conformity with the law, and that accused is not deprived of any constitutional rights or privileges. However strong the prosecuting attorney's belief may be of the prisoner's guilt, it is his duty to conduct the trial in such a manner as will be fair and impartial to the rights of accused, ...and not say or do anything which might improperly affect or influence the jury or accused's counsel. He should not abuse or make any unseemly demonstration toward accused; abuse or make baseless insinuations against his witnesses; make remarks or insinuations calculated to impress the jury against accused...."

II. Discovery Obligations

A. Constitution

1. United States Constitution – *Brady v. Maryland*

a. Applicable to the States

The federal constitutional disclosure obligation – the *Brady* disclosure rule – is grounded in the Fifth Amendment’s Due Process Clause and made applicable to the states through the Fourteenth Amendment. *State v. Kennerly*, 331 S.C. 442, 503 S.E.2d 442 (Ct. App. 1998).

b. What is the Duty?

(1) The prosecution’s obligation to disclose evidence under the federal constitution is to disclose evidence that is material to either guilt or punishment, including impeachment evidence. See *U.S. v. Bagley*, 473 U.S. 667 (1985); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Giglio v. U.S.*, 405 U.S. 150 (1972); *Brady v. Maryland*, 373 U.S. 83 (1963).

- “[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome.” *U.S. v. Bagley*, 473 U.S. at 682.
 - “[T]he mere possibility that an item of undisclosed information might have helped the defense... does not establish ‘materiality’ in the constitutional sense.” *United States v. Agurs*, 427 U.S. at 109–110.
- Because it is not always “easy” to determine materiality until after the fact, prosecutors **should always err on the side of disclosure**. See *U.S. v. Agurs*, 427 U.S. 97, 108 (“because the significance of an item of evidence can seldom be predicted accurately until the entire record is complete, the prudent prosecutor will resolve doubtful questions in favor of disclosure.”)

(2) Prosecution's duty to disclose is not limited to evidence within the actual knowledge or possession of the prosecutor. *Kyles v. Whitley*, 514 U.S. 419 (1995).

- A prosecutor has a duty to learn of and disclose

information known to the others acting on the government's behalf. *Kyles v. Whitley*, 514 U.S. at 437.

- c. A reversal is required if the prosecution violates *Brady* if the failure to disclose deprived the defendant of a fair trial, *i.e.*, nondisclosed information puts the whole case in such a different light as to undermine confidence in the verdict. *Youngblood v. West Virginia*, 547 U.S. 867, 870 (2006); *U.S. v. Bagley*, *supra*; *State v. Gathers*, 295 S.C. 476, 481, 369 S.E.2d 140, 143 (1988).

B. Rules

1. South Carolina Rules of Criminal Procedure

The prosecution's obligation to disclose information and evidence under the South Carolina Rules of Criminal Procedure is found in Rule 5.

(a) Disclosure of Evidence by the Prosecution.

(1) Information Subject to Disclosure.

(A) Statement of Defendant. Upon request by a defendant, the prosecution shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a prosecution agent.

(B) Defendant's Prior Record. Upon request of the defendant, the prosecution shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

(C) Documents and Tangible Objects. Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) Reports of Examinations and Tests. Upon request of a defendant the prosecution shall permit the defendant to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

(2) Information Not Subject to Disclosure. Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal prosecution documents made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case, or of statements made by prosecution witnesses or prospective prosecution witnesses provided that after a prosecution witness has testified on direct examination, the court shall, on motion of the defendant, order the prosecution to produce any statement of the witness in the possession of the prosecution which relates to the subject matter as to which the witness has testified; and provided further that the court may upon a sufficient showing require the production of any statement of any prospective witness prior to the

time such witness testifies.

(3) Time for Disclosure. The prosecution shall respond to the defendant's request for disclosure no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court.

(b) Disclosure of Evidence by the Defendant.

(1) Information Subject to Disclosure.

(A) Documents and Tangible Objects. If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the prosecution, the defendant, on request of the prosecution, shall permit the prosecution to inspect and copy books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

(B) Reports of Examinations and Tests. If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the prosecution, the defendant, on request of the prosecution, shall permit the prosecution to inspect and copy any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at trial when the results or reports relate to his testimony.

(2) Information Not Subject to Disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the

defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, his agents or attorneys.

(c) Continuing Duty to Disclose. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

(d) Regulation of Discovery.

(1) Protective and Modifying Orders. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Failure to Comply With a Request. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) Notice of Alibi.

(1) Notice of Alibi by Defendant. Upon written request of the prosecution stating the time, date and place at which the alleged offense occurred, the defendant shall serve within ten days, or at such time as the court may direct, upon the prosecution a written notice of his intention to

offer an alibi defense. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

(2) Disclosure by Prosecution. Within ten days after defendant serves his notice, but in no event less than ten days before trial, or as the court may otherwise direct, the prosecution shall serve upon the defendant or his attorney the names and addresses of witnesses upon whom the State intends to rely to establish defendant's presence at the scene of the alleged crime.

(3) Continuing Duty to Disclose. Both parties shall be under a continuing duty to promptly disclose Insanity under subdivisions (1) or (2).

(4) Failure to Disclose. If either party fails to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by either party. Nothing in this rule shall limit the right of the defendant to testify on his own behalf.

(f) Notice of Insanity Defense or Plea of Guilty but Mentally Ill. Upon written request of the prosecution, the defendant shall within ten days or at such time as the court may direct, notify the prosecution in writing of the defendant's intention to rely upon the defense of insanity at the time of the crime or to enter a plea of guilty but mentally ill. If the defendant fails to comply with the requirements of the subdivision, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental state. The court may, for good cause shown, allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as is appropriate.

(g) Waiver. The court may, for good cause shown, waive the requirements of this rule.

2. South Carolina Rules of Professional Conduct

There are several rules in the South Carolina Rules of Professional Conduct (a/k/a the ethics rules) that either address or relate to a

prosecutor's obligation in regard to discovery.

a. Rule 3.4

Rule 3.4, which applies to all lawyers, requires that lawyers should be fair to both the opposing party and the opposing lawyer(s). It provides as follows.

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client² to

² It is important to understand that the prosecutor's client is the state. Law enforcement officers and other witnesses, including retained experts, are not clients of the prosecutor and no attorney-client privilege exists between them. See *Smith v. State*, 465 N.E.2d 1105, 1119 (Ind. 1984). Therefore, Rule 3.4(f) does not allow a prosecutor to tell a witness not to talk to the defense. See also S.C. Eth. Adv. Op. 99-14 (In criminal matters,

refrain from voluntarily giving relevant information to another party unless:

- (1) the person is a relative or an employee or other agent of a client; and
- (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Comment

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purposes of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. A lawyer may take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence or in any other manner alter or destroy the value of

the city prosecutor represents the city and the people of the city, not the law enforcement officers *per se*. Rule 3.4 does not authorize a prosecutor to either direct law enforcement officers not to talk to the defense or direct a defense attorney not to talk to law enforcement officers.)

the evidence for possible use by the prosecution. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 4.2.

b. Rule 3.8

Rule 3.8 only applies to lawyers who are prosecutors. In subsection (d) and the comments, it provides as follows in regard to disclosure of information and evidence.

The prosecutor in a criminal case shall

...(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal....

Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the

prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

* * *

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest....

The obligation to disclose under Rule 3.8(d) is an ongoing obligation – it survives a conviction. *See Imbler v. Pachtman* (1976) 424 U.S. 409, 427, fn. 25.

C. Other

The Differentiated Case Management Orders for each county also provide deadlines for the prosecution to turn evidence over to the defense.

D. Understanding the Difference between “Legal” and “Ethics” Discovery Requirements

It is important that prosecutors, as well as non-lawyers in the prosecutors’ office who assist with respondent to discovery requests, understand the differences between the constitutional, statutory/rule, and ethics obligations in regard to discovery.

1. Federal Constitution.

Under the U.S. Constitution (commonly referred to as the *Brady* obligation), the prosecution is required to disclose material, exculpatory evidence (including impeachment evidence). This

obligation is not dependent upon any request by the defense. It exists regardless of whether a request for exculpatory information is made. See *U.S. v. Bagley, supra*; *U.S. v. Agurs, supra*.

2. Rule 5, SCRCrimP

The prosecutor's obligation to disclose evidence under Rule 5, SCRCrimP, is defined by the language of the rule itself. (See Rule 5 set out at II.B above.) Rule 5 generally provides for the disclosure of exculpatory evidence and some other specific types of evidence such as scientific reports, the defendant's statements, witness statements, police reports, etc.

The obligation to disclose under Rule 5 (that is, that information not falling under *Brady* or Rule 3.8, SCRPC, *infra*) is dependent upon a request filed by the defense .

3. Ethics Obligation

- Prosecutor-Specific Obligation

The prosecutor-specific obligation to disclose evidence under the South Carolina Rules of Professional Conduct is governed by Rule 3.8 (d) (set forth under II.B.2.b. above). It requires that prosecutors turn over all evidence that is exculpatory, all evidence that tends to "mitigate the offense" and, in regard to sentencing, all unprivileged mitigating evidence known to the prosecutor. Because the obligation to disclose under the Rule extends beyond exculpatory evidence, the ethics obligation is broader than that under the Constitution/*Brady*. And because it extends beyond the parameters of Rule 5, the ethics obligation is also broader than that under the Rule.

Please note that Rule 3.8(d) requires "timely disclosure." While the Supreme Court of South Carolina has not defined this term, it has been defined elsewhere.

Rule 3.8(d) requires earlier disclosure than the *Brady* standard.... In general, "timely" is defined as "occurring at a suitable or opportune time" or "coming early or at the right time." Thus, a timely disclosure is one that is made as soon as practicable considering all the facts and circumstances of the case. On the other hand, the duty to make a timely disclosure is violated when a prosecutor intentionally delays making the disclosure without

lawful justification or good cause.

Va. Legal Eth. Op. 1862 (July 23, 2012). See also ABA Formal Op. 09-454 (hereafter at II.A.6.b.xiii).

Rule 3.8(d) only contains one exception to its disclosure requirement – *i.e.*, when the prosecutor is relieved of the responsibility by a protective order issued by a court.³ Therefore, prosecutors, who have *legitimate* concerns about the disclosure of information or material because of the privacy concerns of a third party (for example, with school or health records of a victim or personnel records of a law enforcement officer), should, with notice to the defense, ask the judge to conduct an *ex parte*, in camera review and rule upon disclosure. If there is a *legitimate* reason for a delay in disclosure (for example, when there is a reasonable basis for believing harm will befall someone if information is disclosed) prosecutors should seek a protective order from the judge allowing such delay.

South Carolina's Rule 3.8 (d) is based upon Rule 3.8(d) of the ABA Model Rules of Professional Conduct. Therefore, South Carolina prosecutors should take to heart the following comments about the Model Rule made by the United States Supreme Court.

We have never held that the Constitution demands an open file policy ...and the rule in *Bagley* (and, hence, in *Brady*) requires *less* of the prosecution than the ABA Standards for Criminal Justice, which call generally for prosecutorial disclosures of any evidence tending to exculpate or mitigate. See ABA Standards for Criminal Justice, Prosecution Function and Defense Function 3-3.11(a) (3d ed. 1993) ("A prosecutor should not intentionally fail to make timely disclosure to the defense, at the earliest feasible opportunity, of the existence of all evidence or information which tends to negate the guilt of the accused or mitigate the offense charged or which would tend to reduce the punishment of the accused"); ABA Model Rule of Professional Conduct 3.8(d) (1984)...

(emphasis added). *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

³ While the Supreme Court of South Carolina has not addressed whether a prosecutors obligation to disclose under Rule 3.8(d) may be waived by a defendant, the ABA Standing Committee on Ethics and Professional Responsibility has issue an opinion that it **cannot** be. See ABA Formal Op. 09-454.

While this is clearly just *dictum*, it does provide insight to the United States Supreme Court’s assessment of the ethics obligation to disclose.

The above language in *Kyles v. Whitley, supra*, led those drafting the annotations to the ABA Model Rules of Professional Conduct to note as follows.

The prosecutor’s constitutional obligation has a materiality threshold; the ethics rules have an intent requirement but no materiality test. *See Kyles v. Whitley*, 514 U.S. 419 (1995) (noting that *Brady* “requires less of the prosecution” than Rule 3.8(d) or the ABA Standards for Criminal Justice); *see also Mastracchio v. Vose*, No. CA 98-372T, 2000 WL 303307 (D.R.I. Nov. 20, 2000) (prosecution’s failure to disclose nonmaterial information about witness did not violate defendant’s Fourteenth Amendment rights, but came “exceedingly close to violating [Rule 3.8]”); Joy & McMunigal, *Disclosing Exculpatory Material in Plea Negotiations*, 16 *Crim. Just.* 41 (2001).

Annotated Model Rules of Professional Conduct (5th ed.) (ABA Center for Professional Responsibility 2003) at 400.

The ethics obligation to disclose under Rule 3.8(d) is **not** dependent upon any request by the defense.

- Non Prosecutor-Specific Obligation

The South Carolina Rules of Professional Conduct also contain another rule which imposes ethics duties in regard to discovery. It is Rule 3.4, but it applies to all lawyers. (See Rule 3.4 set out at II.B.2.a above.)

It is clear that Rule 3.4, *inter alia*, provides an ethics means of enforcing the obligation that exists under *Brady* and Rule 5.

III. Responsibilities of and for Non-Lawyers Working with the Prosecution

Under Rule 5.1, prosecutors who – either individually or collectively with others – have managerial authority in the office are *required to make reasonable efforts* to ensure the office has in place measures to ensure that all lawyers in the office conform to the Rules of Professional Conduct. In addition, a prosecutor who has direct supervisory authority over a lawyer *is required to make reasonable efforts* to ensure that that lawyer complies with the Rules of Professional Conduct.

Rule 5.1 (a) and (b) provides that

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

The comments to Rule 5.1 provide, in part, as follows.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

Rule 5.3 imposes similar obligations upon prosecutors for the conduct of nonlawyers employed by, retained by, or associated with the Solicitor's Office.

Rule 5.1(c) and 5.3(c) make a lawyer responsible for another lawyer's or nonlawyer's conduct that violates the Rules of Professional Conduct if the lawyer either

- orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
- the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

The Supreme Court of South Carolina has held that, for purposes of Rule 5.1, a prosecutor's office is a law office where complex ethical questions arise. *In the Matter of Myers*, 355 at 8, 584 S.E.2d at 361. That means that informal supervision and occasional admonition will not satisfy the obligations imposed by Rule 5.1 (a) and (b). Instead, the elected Solicitor and other lawyers within the office who manage or supervise are required to do more. A prosecutor's office *must* have in place a more elaborate system, *i.e.*, must establish internal policies and procedures to ensure that:

- all employees are aware of the Rules and conform their conduct to comply with them;
- any conduct that violates the Rules will be known by or brought to the attention of the managing and supervising attorneys;
- any conduct that violates the Rules is addressed immediately and appropriately; and,
- if necessary, remedial action is taken to avoid or mitigate the consequences of the conduct resulting in the violation.

See In the Matter of Myers, supra. See also ABA Formal Op. 14-467 (2014) ("Prosecutors with managerial authority and supervisory lawyers must make 'reasonable efforts to ensure' that all lawyers and nonlawyers in their offices conform to the Rules of Professional Conduct. Prosecutors with managerial authority must adopt reasonable policies and procedures to achieve these goals. Prosecutors with direct supervisory authority must make reasonable efforts to insure that the lawyers and nonlawyers they supervise comply with the Rules. Where prosecutors have both managerial and direct supervisory authority, they may, depending on the circumstances, be required to fulfill both sets of obligations. The particular measures that managerial and supervisory prosecutors must implement to comply with these rules will depend on a variety of factors, including the size and structure of their offices, as set forth in this opinion.")

The ABA Standing Committee on Ethics and Professional Responsibility suggests that prosecutors' offices

- establish office-wide policies addressing ethics obligations, including discovery, conflicts of interest, confidentiality, dealing with the media, communication with defendants and witnesses, competence, and diligence;
- provide access to training on both ethical and legal obligations;
- require supervisors to keep themselves informed of the status and developments in cases;
- consider having supervising prosecutors participate in all major decisions in cases;
- establish a system of individual oversight of line prosecutors;
- pair new prosecutors with more experienced prosecutors;
- designate a specific prosecutor to oversee the review of files for Brady purposes;
- hold prosecutors with Rule 5.1 and 5.3 obligations accountable for the conduct of their subordinates;
- enforce the obligation to report conduct by other office employees that violates the Rules of Professional Conduct to supervisors or others within the office.

ABA Formal Op. 14-467 at 8-12.

A. Disclosure Obligation of a Prosecutor for the “Prosecution Team”

As a matter of constitutional law, knowledge and possession of evidence by members of the prosecution team are imputed to the prosecutor even if the prosecutor himself has no personal knowledge. *See Kyles v. Whitley, supra.*

1. Who is on the prosecution “team”?

a. Police and Other Non-lawyer investigators.

See Id.; U.S. v. Berryman, 322 Fed. Appx. 216, 222 (3rd Cir. 2009) (The prosecution violates *Brady* where it suppresses evidence that is favorable to the defendant and material to the outcome of the case. Evidence is deemed ‘suppressed’ if the prosecution actually knows about it but does not disclose it, but evidence is also deemed ‘suppressed’ if the prosecution constructively knows about it — for example, if a member of the wider ‘prosecution team,’ including non-lawyer investigators, knows about it — but does not disclose it.”)

b. Prosecution victim advocates.

See State v. Blackmer, 137 N.M. 258, 263, 110 P.3d 66, 71 (2005) (“[G]iven that the victim advocate is employed by the district attorney, and works with prosecutors, it seems reasonable that the victim advocate would communicate details and opinions to prosecutors. Because victim advocates perform many tasks similar to those of other members of the prosecution team, even if some of their duties differ, we conclude that victim advocates are part of the prosecution team and that the relevant rules of attorney-client confidentiality and State disclosure are applicable.”).

c. Prosecution paralegals and other non-lawyer assistants.

U.S. v. Bin Laden, 397 F. Supp. 2d 465, 484 n. 22 (S.D. N.Y. 2005) (“I have no doubt that a paralegal, translator, or other non-lawyer assistant facilitating the prosecutors' work would be a member of the prosecution team, regardless of the fact that they were not investigating the case or making charging decisions.”).

IV. South Carolina Opinions on Ethics Violations related to Discovery

- A. *In Matter of Humphries*, 354 S.C. 567, 582 S.E.2d 728 (2003). Prosecutor walked in as police officers were, unbeknownst to either the defendant in a capital case or his lawyer, listening to a confidential conversation between the pair. Telling the police officers to stop, the prosecutor left without verifying that they did in fact stop listening to the conversation. Later the prosecutor heard that a tape had been made of the conversation. He received discovery request for statements made by the defendant. The prosecutor’s failure to respond to defense counsel's discovery requests by reporting the rumored existence of the videotape recording of the meeting of defendant and his former attorney, determining whether the rumored existence of the tape was correct, and promptly providing defense counsel with a copy of the tape once its existence was verified was found to have violated Rule 3.4(c)(lawyer shall not knowingly disobey obligation under rules of tribunal except for open refusal based on assertion that no valid obligation exists), Rule 3.4(d)(lawyer shall not, in pretrial procedure, fail to make reasonably diligent effort to comply with legally proper discovery request by opposing party), Rule 8.4(a) (it is professional misconduct for lawyer to violate the Rules of Professional Conduct); and Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct that is prejudicial to administration of justice). The Court ordered that the prosecutor be suspended for one year.

See also In the Matter of Myers, 355 S.C. 1, 584 S.E.2d 357 (2003) (elected Solicitor disciplined for failure to supervise prosecutor in

Humphries to ensure that information was disclosed to defense counsel).

- B. *In re Grant*, 343 S.C. 528, 541 S.E.2d 540 (2001). Supreme Court held that a prosecutor's violation of the discovery requirements set out in *Brady v. Maryland*, 373 U.S. 83 (1963) – he failed to fully disclose exculpatory material and impeachment evidence regarding statements given by prosecution's key witness in murder case – violated Rules 3.4(d)(failing to make diligent effort to comply with discovery request of opposing party); Rule 3.8(d)(failing to make timely disclosure to defense of known evidence or information that tends to negate guilt of accused or mitigate offense); Rule 8.4(a)(violating Rules of Professional Conduct); and Rule 8.4(e)(engaging in conduct that is prejudicial to administration of justice).
 - C. S.C. Eth. Adv. Op. 03-1. Pursuant to Rule 3.8(d), the fact that a police officer has failed to disclose the truth to his superior officer during an official department investigation must be disclosed to the defense in unrelated criminal investigations involving the officer.
 - D. Opinions from Other States (will be discussed during presentation).
- V. Special Considerations for Privileged or Confidential Information, and Information related to Safety of a Witness

If a prosecutor has information that should be disclosed, but there is concern that disclosure may result in harm to or the death of a witness, the prosecutor should seek a protective order from the applicable court.

AMIE'S PRACTICE TIPS ON DISCOVERY

If you have or know of information or evidence and do not want to disclose such to the defense, you need to ask yourself why you do not want to disclose.

- If you think the information or evidence is not subject to disclosure, seek a ruling of the court. If the prosecution wants the court to pass upon it, the court *may* conduct *ex parte* review of the evidence and issue a ruling. If the defense “has established a basis for a claim that the information or evidence contains materials exculpatory or impeachment evidence,” the court *must* conduct an *in camera* review and make a ruling. *State v. Bryant*, 307 S.C. 458, 461-462, 415 S.E.2d 806, 808-809 (1992).
- If it is because you think – and such is reasonable under the particular circumstances of your case – disclosure will expose a witness to harm or death, you may seek a protective order from the court. Please be aware that, even if a protective order is issued, disclosure most likely will, *at some point*, be required.
- On the other hand, if you do not want to disclose because the information or evidence will hurt your case or help the defense, then it unquestionably should be disclosed.

Remember, just because you are required to disclose to the defense, it does not mean that the defense will be able to use the evidence at trial. You should be prepared to make any appropriate objections, including objections based on Rules 401 (relevancy) and 403 (danger of unfair prejudice substantially outweighing the probative value of the evidence) of the South Carolina Rules of Evidence.

In order to prevent the defense from mentioning potentially inadmissible evidence before the jury, you should move *in limine* to exclude or limit the evidence. Such motions are best made and ruled upon before jeopardy attaches (which is, in a case tried without a jury, when the first witness is sworn and, in a case tried by jury, when the jury is sworn).

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South Carolina Commission on Prosecution Coordination

Prosecution CLE Series™

“Ethics for Government Attorneys”

Columbia, South Carolina
January 13, 2017



“Substance Misuse”

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Alcohol Use Disorders

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SC DAODAS

Objectives

- Define standard drink
- Identify low risk guidelines
- Identify issues related to alcohol misuse
- Identify how to seek or offer assistance

Why do people use alcohol?

Why do people use alcohol?

- Create/Intensify:
 - Feelings
 - Sensations
 - Experiences

Why do people use alcohol?

- Remove/Lessen:
 - Anxiety
 - Stress
 - Fear
 - Isolation
 - Inhibition
 - Depression
 - Hopelessness

What is a standard drink?

12 fl oz of
regular beer



about 5%
alcohol

=

8–9 fl oz of
malt liquor
(shown in a
12 oz glass)



about 7%
alcohol

=

5 fl oz of
table wine



about 12%
alcohol

=

1.5 fl oz shot
of 80-proof
distilled spirits
(gin, rum, tequila,
vodka, whiskey, etc.)



40% alcohol

The percent of "pure" alcohol, expressed here as alcohol by volume (alc/vol), varies by beverage.

Source: National Institutes of Health

Beyond a standard drink...

How many drinks are in common containers?

Below is the approximate number of standard drinks in different sized containers of

regular beer	malt liquor	table wine	80-proof distilled spirits
12 fl oz = 1	12 fl oz = 1½	750 ml (a regular wine bottle) = 5	a shot (1.5 oz glass/50 ml bottle) = 1
16 fl oz = 1½	16 fl oz = 2		a mixed drink or cocktail = 1 or more
22 fl oz = 2	22 fl oz = 2½		200 ml (a "half pint") = 4½
40 fl oz = 3½	40 fl oz = 4½		375 ml (a "pint" or "half bottle") = 8½
			750 ml (a "fifth") = 17

Source: NIH







What's your drinking pattern?

On **any day** in the past year, have you ever had:

MEN: more than 4 drinks? Yes or No

WOMEN: more than 3 drinks? Yes or No

12 fl oz of regular beer	=	8-9 fl oz of malt liquor (shown in a 12 oz glass)	=	5 fl oz of table wine	=	1.5 fl oz shot of 80-proof distilled spirits (gin, rum, tequila, vodka, whiskey, etc.)
						
about 5% alcohol		about 7% alcohol		about 12% alcohol		40% alcohol
The percent of "pure" alcohol, expressed here as alcohol by volume (alc/vol), varies by beverage.						

Source: National Institutes of Health

What's your drinking pattern?

Think about a typical week:

On average, how many days a week do you drink alcohol?

On a typical day, how many drinks do you have?

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday

Source: National Institutes of Health

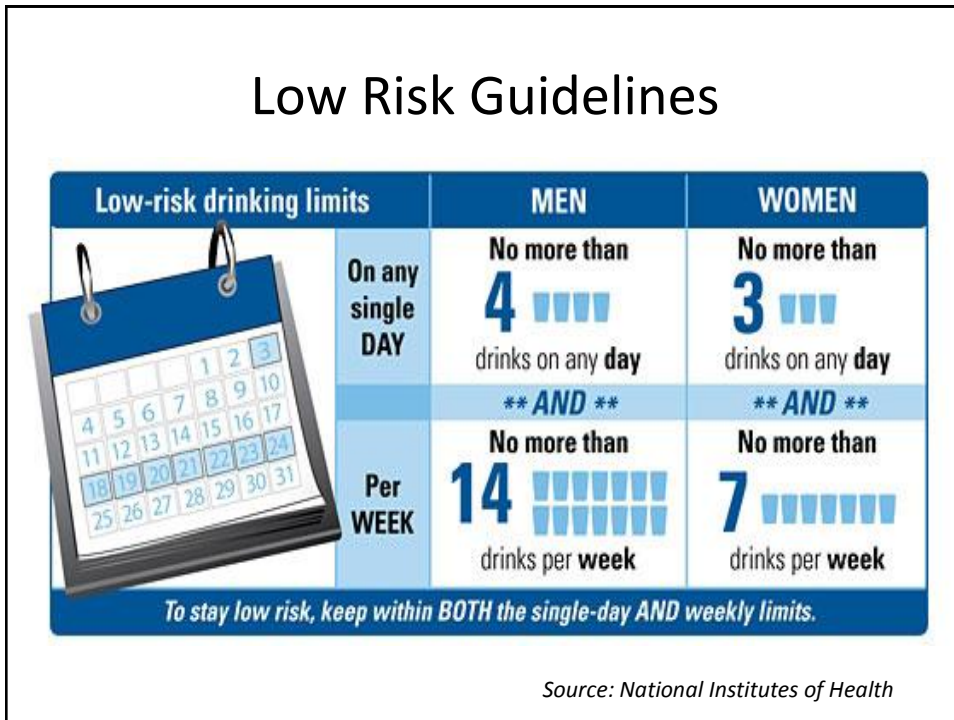
When is it not safe to use alcohol?

- When planning to drive
- When taking certain medications
- When managing a medical condition that can be worsened by consuming alcohol
- When pregnant or trying to become pregnant



Source: National Institutes of Health

Low Risk Guidelines



Heavy or At Risk Alcohol Use

Alcohol use above the low risk guidelines, including:

- Men: More than 4 drinks on any day or 14 per week
- Women: More than 3 drinks on any day or 7 per week

Source: National Institutes of Health

Short-Term Health Risks

Excessive alcohol use has immediate effects that increase the risk of many harmful health conditions. These are most often the result of binge drinking and include the following:

- Injuries, such as motor vehicle crashes, falls, drowning, and burns.
- Violence, including homicide, suicide, sexual assault, and intimate partner violence.
- Alcohol poisoning, a medical emergency that results from high blood alcohol levels.
- Risky sexual behaviors, including unprotected sex or sex with multiple partners. These behaviors can result in unintended pregnancy or sexually transmitted diseases, including HIV.
- Miscarriage and stillbirth or fetal alcohol spectrum disorders (FASDs) among pregnant women.

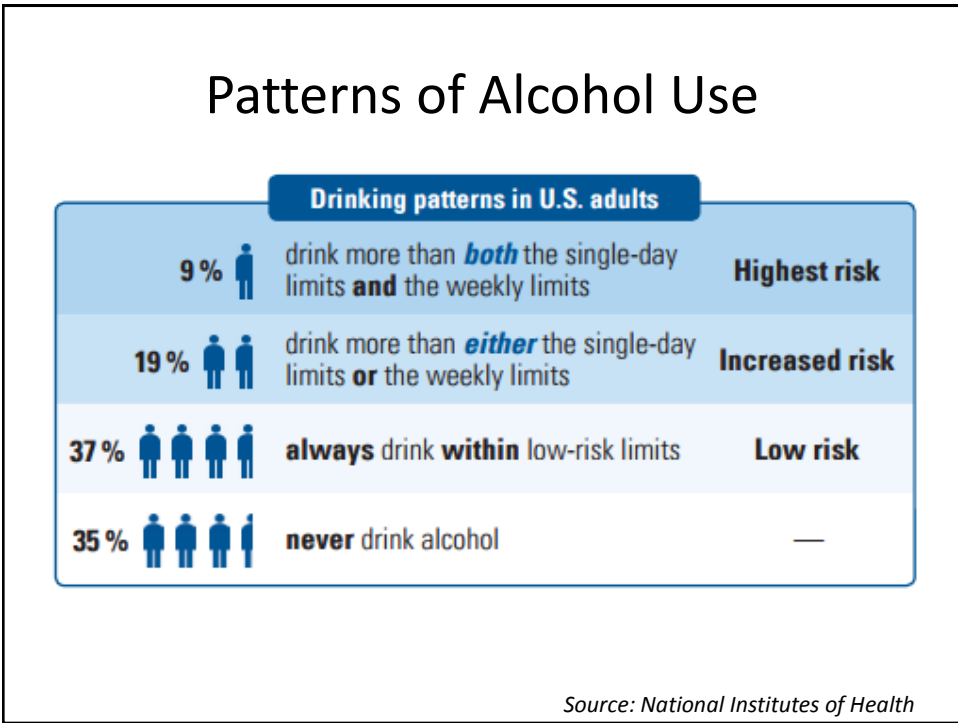
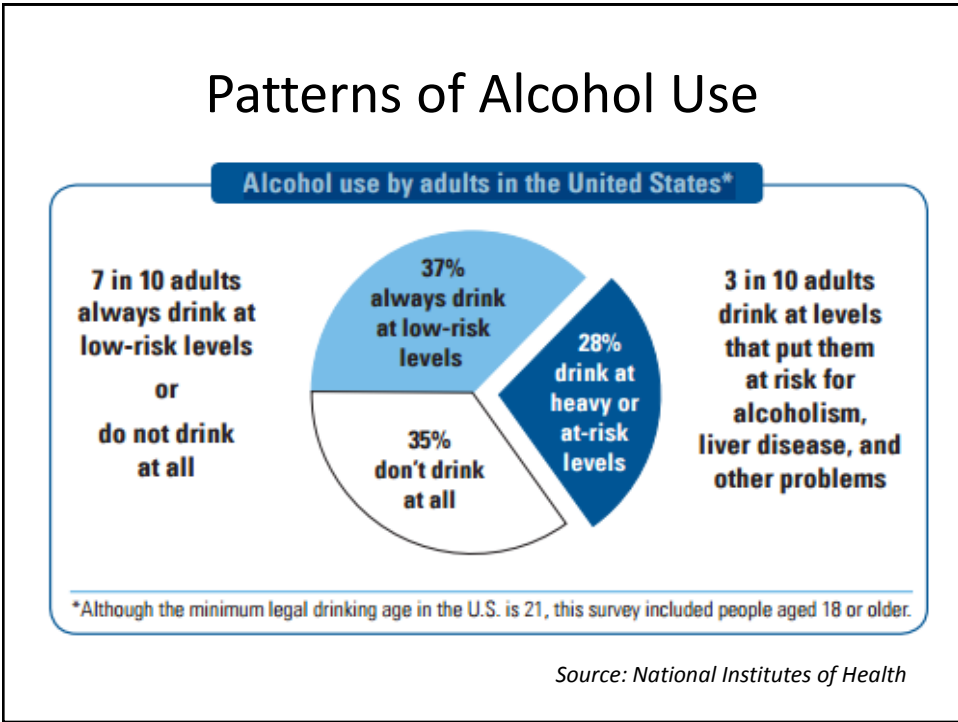
Source: CDC

Long-Term Health Risks

Over time, excessive alcohol use can lead to the development of chronic diseases and other serious problems including:

- High blood pressure, heart disease, stroke, liver disease, and digestive problems.
- Cancer of the breast, mouth, throat, esophagus, liver, and colon.
- Learning and memory problems, including dementia and poor school performance.
- Mental health problems, including depression and anxiety.
- Social problems, including lost productivity, family problems, and unemployment.
- Alcohol use disorder.

Source: CDC



Alcohol Use Disorder (AUD)

In the past year, have you:

- Had times when you ended up drinking more, or longer than you intended?
- More than once wanted to cut down or stop drinking, or tried to, but couldn't?
- Spent a lot of time drinking? Or being sick or getting over the aftereffects?
- Experienced craving — a strong need, or urge, to drink?

Source: National Institutes of Health

Alcohol Use Disorder (AUD)

- Found that drinking — or being sick from drinking — often interfered with taking care of your home or family? Or caused job troubles? Or school problems?
- Continued to drink even though it was causing trouble with your family or friends?
- Given up or cut back on activities that were important or interesting to you, or gave you pleasure, in order to drink?
- More than once gotten into situations while or after drinking that increased your chances of getting hurt (such as driving, swimming, using machinery, walking in a dangerous area, or having unsafe sex)?

Source: National Institutes of Health

Alcohol Use Disorder (AUD)

- Continued to drink even though it was making you feel depressed or anxious or adding to another health problem? Or after having had a memory blackout?
- Had to drink much more than you once did to get the effect you want? Or found that your usual number of drinks had much less effect than before?
- Found that when the effects of alcohol were wearing off, you had withdrawal symptoms, such as trouble sleeping, shakiness, irritability, anxiety, depression, restlessness, nausea, or sweating? Or sensed things that were not there?

Source: National Institutes of Health

Alcohol Use Disorder (AUD)

- Reviewing the criteria:
 - Presence of any of the criteria is cause for concern
 - Mild: Presence of 2-3 criteria
 - Moderate: Presence of 4-5 criteria
 - Severe: Presence of 6 or more

Thinking About Change?

- Whether to change drinking is a personal decision.
- For some, weighing pros and cons can help.
 - What are some of the reasons you may want to make a change?
 - What are some of the reasons you may not want to make a change?

Source: National Institutes of Health

Ambivalent?

If you're not sure you are ready to change yet, consider these suggestions in the meantime:

- Keep track of how often and how much you're drinking.
- Notice how drinking affects you.
- Make or re-make a list of pros and cons about changing.
- Deal with other priorities that may be in the way of changing.
- Ask for support from your doctor, a friend, or someone else you trust.

Source: National Institutes of Health

To cut down or to quit . . .

Strategies for cutting down:

- Keep track
- Count and measure
- Set goals
- Pace and space
- Include food
- Find alternatives
- Avoid “triggers.”
- Plan to handle urges
- Know your “no”

Source: National Institutes of Health

To cut down or to quit . . .

Quitting is strongly advised if you:

- try cutting down but cannot stay within the limits you set
- have had an alcohol use disorder or now have symptoms
- have a physical or mental condition that is caused or worsened by drinking
- are taking a medication that interacts with alcohol
- are or may become pregnant

To cut down or to quit . . .

Other factors to consider:

- family history of alcohol problems
- your age
- whether you've had drinking-related injuries
- symptoms such as sleep disorders and sexual dysfunction

To cut down or to quit . . .

AUD criteria showing loss of control:

- More than once wanted to cut down or stop drinking, or tried to, but couldn't?
- Experienced craving — a strong need, or urge, to drink.
- Found that drinking — or being sick from drinking — often interfered with taking care of your home or family? Or caused job troubles? Or school problems?
- Given up or cut back on activities that were important or interesting to you, or gave you pleasure, in order to drink?
- Found that when the effects of alcohol were wearing off, you had withdrawal symptoms, such as trouble sleeping, shakiness, irritability, anxiety, depression, restlessness, nausea, or sweating? Or sensed things that were not there?

Professional Concerns

“Self-Regulating Profession”

Important points:

- Do not diagnose.
- Document only that which you have first hand knowledge of.

Documenting Issues

- Note changes in appearance, behavior and overall functioning.
- Document specific instances of misconduct.
- Focus on individual performance, rather than the perceived cause.
- Utilize resources, such as Lawyers Helping Lawyers

Other Important Points

- Do not have to observe substance use directly
- Warning signs can be attributable to other issues, such as mental health disorders, health issues, caretaker stress, etc. (i.e., avoid labeling)
- The pattern of behavior can emerge, disappear, and reemerge
- There is cause for concern if any pattern of behavior could lead to ethics violations and malpractice

Common Warning Signs

Attendance

- late to meetings, conferences, hearings or other court functions
- last-minute cancellations
- failure to appear
- taking “long lunches”
- not returning after lunch
- unable to be located
- improbable excuses for absences
- ill with vague ailments
- frequent restroom breaks

Common Warning Signs

Performance

- misses deadlines
- routinely requests continuances or rescheduling
- fails to follow local court rules, policies and procedures
- unprepared or poorly prepared disorganized
- lack of attention to details
- inadequate follow-through with assigned duties or tasks
- poor judgment
- inability to concentrate
- difficulty remembering details or directions
- general difficulty with recall
- blaming or making excuses for poor performance
- decreased efficiency
- decreased performance after long lunches

Common Warning Signs

Behavioral

- complaints from clients, lawyers, etc.
- problems with court personnel
- difficulty working with colleagues
- avoidance of others (isolating)
- irritable, impatient
- angry outbursts
- hostile attitude
- overreacts to criticism
- inconsistency or discrepancy in describing events
- unpredictable, rapid mood swings
- poor hygiene, disheveled or unkempt appearance

Common Warning Signs

Personal

- legal separation or divorce
- relationship problems
- credit problems, judgments, tax liens, bankruptcies
- frequent illnesses or accidents
- arrests or warnings
- isolating from friends, family and social activities
- objective indicators of a potential drug or alcohol or gambling problem

Common Warning Signs

Miscellaneous

- non-responsive to a judge's requests or orders
- non-responsive to a disciplinary agency's inquiry
- noncompliance with CLE requirements
- failure to renew law license
- lapsed insurance policies
- failure to file tax returns
- failure to pay taxes

Common Warning Signs

Trust Account

- checks not deposited
- debit card withdrawals
- incomplete or irregular records
- missing or altered bank statements
- pay office expenses from trust
- pay personal expenses from trust
- "borrowing" from trust
- failure to timely disburse client's funds or other payments
- incomplete accounting for receipts and disbursements

Deciding whether to help...

- What is at stake?
 - Individual life, marriage, family, career
 - The earlier the intervention, the better the outcome
- Personal and Professional Ethics
 - Moral obligation to individuals
 - Professional responsibility to protect profession & the public
- When in doubt, seek counsel.
 - Lawyers Helping Lawyers

How to help

- Have a person to person conversation
 - Be factual
 - Outline specific concerns
 - Do not shame, threaten
- If supervising, utilize supervision planning
 - Again, be factual
 - Outline specific concerns/Be clear about expectations
 - Again, focus on performance, not what you think is the cause for issues with performance
- Utilize professional help
 - For planning in addressing the issue
 - As referral for individual assistance

Lawyers Helping Lawyers

Rule 8.3 Reporting Professional Misconduct

(d) Inquiries or information received by the South Carolina Bar Lawyers Helping Lawyers Committee or an equivalent county bar association committee regarding the need for treatment for alcohol, drug abuse or depression, or by the South Carolina Bar law office management assistance program or an equivalent county bar association program regarding a lawyer seeking the program assistance, shall not be disclosed to the disciplinary authority without written permission of the lawyer receiving assistance. Any such inquiry or information shall enjoy the same confidence as information protected by the attorney-client privilege under applicable law.

Resources to Help

- Natural Supports – family, friends
- Social Supports – faith community, social network, community groups
- Mutual Aid Groups – AA, Celebrate Recovery, SMART Recovery, etc.

Resources to Help

- Professional Support:
 - Recovery Support Services (ex: FAVOR Greenville)
 - Counseling (Community-based, not in a treatment center)
 - Specialized treatment services
 - Includes outpatient, intensive outpatient, residential, inpatient, withdrawal management
 - DAODAS Providers by County:
<http://www.daodas.state.sc.us/LocalResources.asp>
 - Medication Assistance – Vivitrol, Campral

Lawyers Helping Lawyers

- Helpline
 - Call to speak to LHL - 866-545-9590
- Free counseling services
 - Member of SC Bar are eligible for 5 free hours of intervention counseling through CorpCare
 - Contact CorpCare at 855-321-4384
 - Service is completely anonymous

As a recap...

- 7 out of 10 adults either do not drink at all or drink within the low-risk guidelines
- 3 of 10 adults drink at a level that puts them at risk for an alcohol use disorder (AUD)
- Many of those who drink at heavy levels will be able to moderate or discontinue use with minimal support

A change in perspective

- People benefit from a focus on developing recovery support
- Either way, the earlier the intervention, the less resources needed to initiate and sustain recovery, and better the success at sustaining long-term recovery
- The more criteria identify a loss of control, the more likely the need for additional and complex supports, and abstinence may be warranted to initiate and sustain recovery

What does “recovery” mean?

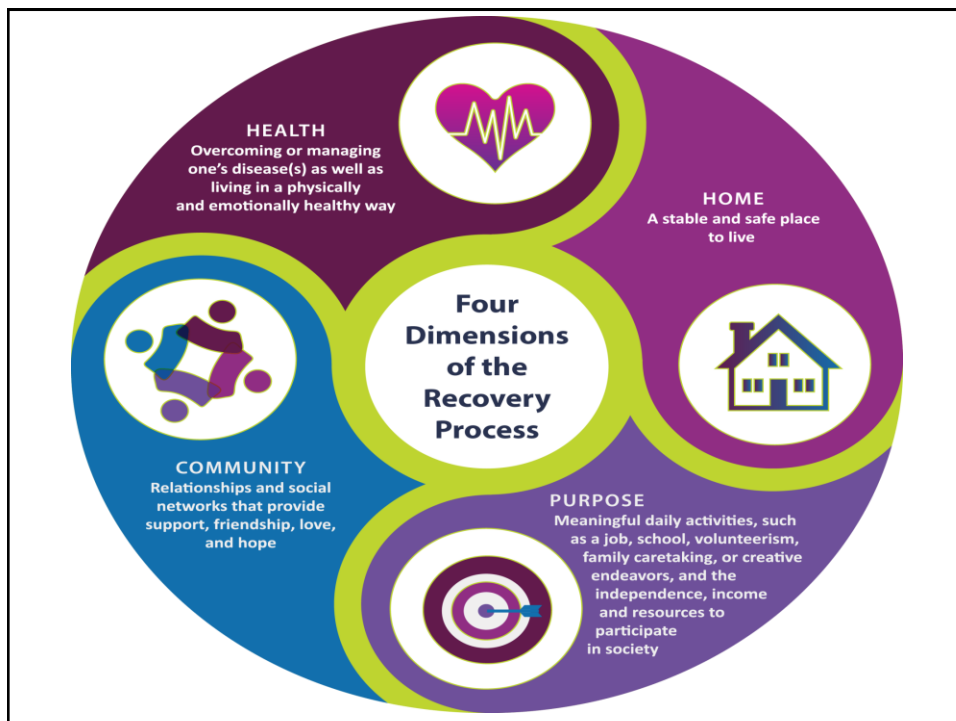
RECOVERY

“Recovery is a process of change whereby individuals improve their health and wellness, to live a self-directed life, and strive to reach their full potential.”

SAMHSA/CSAT 2011

Levels of Recovery

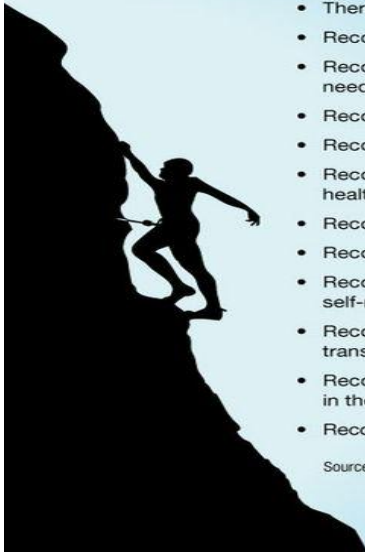
Levels of Recovery



Scope & Depth

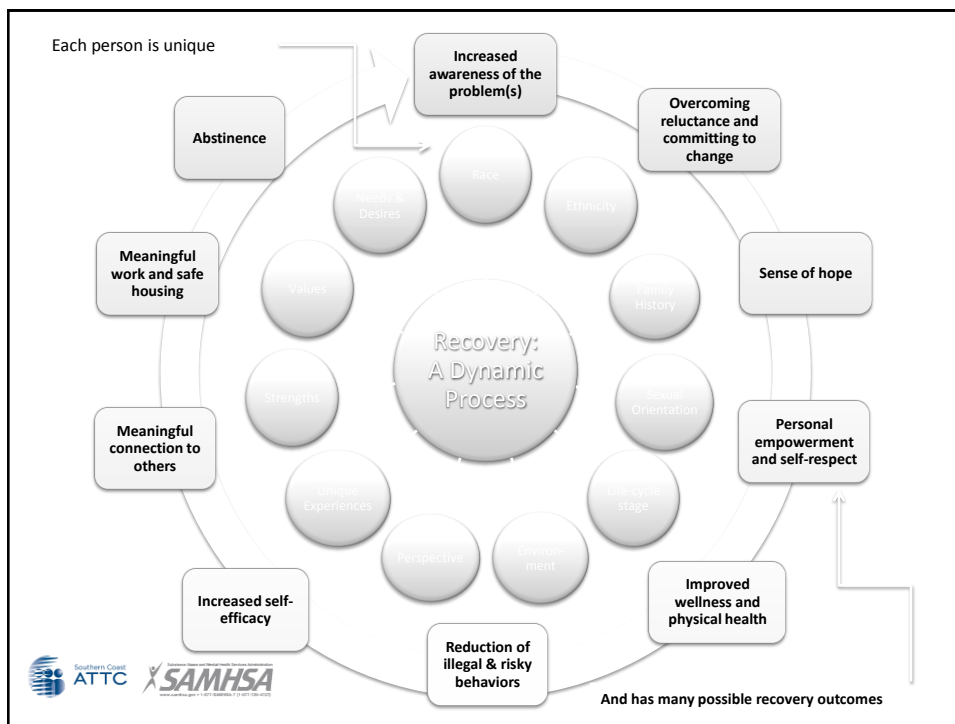
- It is important to note that recovery can differ in:
 - Scope – range of measurable changes
 - Depth – degree of change within a measured dimension

Guiding Principles of Recovery



- There are many pathways to recovery.
- Recovery is self-directed and empowering.
- Recovery involves a personal recognition of the need for change and transformation.
- Recovery is holistic.
- Recovery has cultural dimensions.
- Recovery exists on a continuum of improved health and wellness.
- Recovery is supported by peers and allies.
- Recovery emerges from hope and gratitude.
- Recovery involves a process of healing and self-redefinition.
- Recovery involves addressing discrimination and transcending shame and stigma.
- Recovery involves (re)joining and (re)building a life in the community.
- Recovery is a reality. It can, will, and does happen.

Source: CSAT White Paper: *Guiding Principles and Elements of Recovery-Oriented Systems of Care.*



Reality of Recovery

- 23.5 million people in recovery in the United States
- Estimated 480, 000 people in recovery in South Carolina

Resources – Specific to Law Profession

- South Carolina Lawyers Helping Lawyers
 - <https://www.scbar.org/lawyers/member-benefits-assistance/lawyers-helping-lawyers/>
- Pennsylvania Lawyers Concerned for Lawyers
 - <http://www.lclpa.org/>
- Texas Lawyer’s Assistance Program
 - https://www.texasbar.com/AM/Template.cfm?Section=Texas_Lawyers_Assistance_Program1&Template=/CM/HTMLDisplay.cfm&ContentID=35430

Additional Resources

- NIAAA: Rethinking Drinking
 - <https://www.rethinkingdrinking.niaaa.nih.gov/>
- DAODAS Treatment Provider Locator
 - <http://www.daodas.state.sc.us/LocalResources.asp>
- SAMHSA Treatment Locator
 - <https://findtreatment.samhsa.gov/>
- Faces and Voices of Recovery Guide to Mutual Aid Resources
 - <http://facesandvoicesofrecovery.org/resources/mutual-aid-resources/mutual-aid-resources.html>

Additional Resources

- Alcoholics Anonymous – South Carolina
– <http://area62.org/>
- Narcotics Anonymous – Central Region
– <http://www.crna.org/>
- Alanon/Alateen of South Carolina
– <http://www.al-anon-sc.org/>
- Celebrate Recovery
– <http://locator.crgroups.info/>
- SMART Recovery
– <http://www.smartrecovery.org/>

Questions??

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South Carolina Commission on Prosecution Coordination

Luther F. Carter Center for Health Sciences
Francis Marion University
200 West Evans Street
Florence, South Carolina

Monday, July 24, 2017



Prosecution CLE Series™

**“Getting, Storing, Retaining and Releasing
Evidence: Legal and Practical Considerations”**

SCCCLE Course No. 176491 (3.0 hours)
SCCJA Lesson Plan No. 5519 (3.0 hours)

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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

**“Getting, Storing, Retaining and Releasing Evidence:
Legal and Practical Considerations”**

Florence, South Carolina
July 24, 2017

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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

**“Getting, Storing, Retaining and Releasing Evidence:
Legal and Practical Considerations”**

Francis Marion University
Florence, South Carolina

Monday, July 24, 2017

AGENDA

- | | |
|-------------------------|---|
| 12:30 p.m. – 12:55 p.m. | Registration |
| 12:55 p.m. – 1:00 p.m. | Program Overview and Welcome |
| 1:00 p.m. – 2:15 p.m. | Getting Evidence: When to Use Search Warrants, Court Orders, and Subpoenas, and How to Obtain Them
<i>Amie L. Clifford, Education Coordinator
South Carolina Commission on Prosecution Coordination
Columbia, South Carolina</i> |
| 2:15 p.m. – 2:30 p.m. | Break |
| 2:30 p.m. – 3:30 p.m. | Storing Evidence: Practical Considerations
<i>Amy Stephens, Evidence Control Technician
South Carolina Law Enforcement Division
Columbia, South Carolina</i> |
| 3:30 p.m. – 4:15 p.m. | Retaining and Disposing of Evidence: Obligations and Restrictions Imposed on the Keeping, Releasing, and Destroying of Evidence by the South Carolina Preservation of Evidence Act (and Penalties and Liability for Noncompliance)
<i>Amie L. Clifford, Education Coordinator
South Carolina Commission on Prosecution Coordination
Columbia, South Carolina</i> |
| 4:15 p.m. | Adjourn |



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South Carolina Commission on Prosecution Coordination

Prosecution CLE Series™

“Getting, Storing, Retaining and Releasing Evidence: Legal and Practical Considerations”

Florence, South Carolina
July 24, 2017



SECTION 1

“Getting Evidence: When to Use Search Warrants, Court Orders, and Subpoenas, and How to Obtain Them”

Amie L. Clifford
Education Coordinator
S.C. Commission on Prosecution Coordination
Columbia, South Carolina

SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

Presentation on

“Obtaining Evidence Lawfully with Search Warrants, Court Orders, and Subpoenas”

Outline and Presentation by

Amie L. Clifford

Education Coordinator

South Carolina Commission on Prosecution Coordination

Columbia, South Carolina

DISCUSSION NOTES AND DETAILED OUTLINE

This presentation and outline will provide an overview of three means by which evidence may be lawfully obtained by law enforcement and prosecutors for use in criminal investigations and prosecutions – search warrants, court orders, and subpoenas. This outline reflects the status of the law through July 21, 2017.

I. SEARCH WARRANTS

A. Background: When is a Search Warrant Needed?

1. United States Constitution – Fourth Amendment

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend IV.

- a. The Fourth Amendment does not prohibit searches and seizures – just unreasonable searches and seizures. *See, e.g., Illinois v. McArthur*, 531 U.S. 326 (2001).
 - A search conducted pursuant to a valid search warrant is constitutionally reasonable. Searches conducted without a warrant are presumptively unreasonable and, thus, invalid unless the search falls within one of the “narrow and well-delineated” exceptions to the warrant requirement. *See, e.g., Flippo v. West Virginia*, 528 U.S. 11 (1999); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971);

Katz v. United States, 389 U.S. 347 (1967); *State v. Bultron*, 318 S.C. 323, 457 S.E.2d 616 (1995); *State v. Brown*, 289 S.C. 581, 347 S.E.2d 882 (1986).

NOTE: Exceptions to the search warrant requirement are NOT covered by this outline and presentation.

b. The Fourth Amendment does not apply in the absence of an expectation of privacy. *See, e.g., Minnesota v. Carter*, 525 U.S. 83 (1998); *Katz v. United States, supra*.

- TEST: A Fourth Amendment expectation of privacy exists only when

(1) a person, by his conduct, exhibits an actual (*i.e.*, subjective) expectation of privacy,

- In other words, did the person, at the time, by his actions or words, demonstrate that he sought to preserve something as private?

(2) AND, if so, is that subjective expectation of privacy one that society is prepared to recognize as reasonable?

Smith v. Maryland, 442 U.S. 735, 740 (1979).

- EXAMPLES:

- No expectation of privacy (and, thus, no Fourth Amendment protection):

- Fourth Amendment prohibition against unreasonable searches does not apply within a prison cell because society is not willing to accept as legitimate any subjective expectation of privacy a prisoner may have in his cell. *Hudson v. Palmer*, 468 U.S. 517 (1984).

- There is no legitimate privacy interest in the possession of contraband. *Illinois v. Caballes*, 543 U.S. 405, 408-409, quoting *U.S. v. Jacobsen*, 466 U.S. 109, 123 (1984).

- An individual does not have a reasonable expectation of privacy while being held in a police vehicle. *State v. Turner*, 371 S.C. 595, 641 S.E.2d 436 (2007).

- “While an overnight guest may have a reasonable expectation of privacy in the host's property, ‘a person present only intermittently or for a purely commercial purpose does not have a reasonable expectation of privacy.’” *State v. Robinson*, 396 S.C. 577, 584, 722 S.E.2d 820, 823 (Ct. App. 2012), *affirmed as modified (on other grounds)*, 410 S.C. 519, 765 S.E.2d 564 (2014).
- An individual does not have a reasonable expectation of privacy in abandoned property, including garbage left at the curb outside an individual’s house. *California v. Greenwood*, 486 U.S. 35 (1988).
- Law enforcement need not obtain a search warrant before surveilling a person’s backyard from a private plane at 1,000 feet because there was no reasonable expectation of privacy since any member of the public, who was flying above, could have seen what the officers saw with their naked eye. *California v. Ciraolo*, 476 U.S. 207, 213-215 (1986).
- Possible expectation of privacy – dependent on facts
 - “A reasonable expectation of privacy exists in property being searched when the defendant has a relationship with the property or property owner.” *State v. Flowers*, 360 S.C. 1, 5, 598 S.E.2d 725, 728 (Ct. App. 2004).
 - A person challenging a search bears the burden of establishing that he had an expectation of privacy in the area searched. *State v. Robinson*, 410 S.C. 519, 765 S.E.2d 564 (2014). In *Robinson*, the Court set out some of the types of factors a trial court may consider when determining if a defendant has met this burden.
 - a. whether the defendant owned the home or had property rights to it;
 - b. whether he was an overnight guest at the home;
 - c. whether he kept a change of clothes at the home;
 - d. whether he had a key to the home;
 - e. whether he had dominion and control over the home and could exclude others from the home;
 - f. how long he had known the owner of the

- home;
- g. how long he had been at the home;
- h. whether he attempted to keep his activities in the home private;
- i. whether he engaged in typical domestic activities at the home, or whether he treated it as a commercial establishment;
- j. whether he alleged a proprietary or possessory interest in the premises and property seized (even if only at a motion to suppress, where that admission cannot be used against him to determine his guilt); and
- k. whether he paid rent at the home.

(Footnotes omitted.) *Id.*, 410 S.C. 528-530, 765 S.E.2d 569-570.

- Even if the ultimate Fourth Amendment violation a defendant seeks to vindicate is a trespass by law enforcement (under *U.S. v. Jones*, 565 U.S. 400 (2012)) the defendant must still demonstrate that he had an actual and reasonable expectation of privacy in the area illegally trespassed upon. *State v. Robinson*, 410 S.C. at 532, 765 S.E.2d at 571.

PRACTICE TIP

Because the determination of whether a defendant had an expectation of privacy recognized under the Fourth Amendment is a judicial determination, it is always better to obtain a search warrant if time permits and probable cause exists (particularly in those instances where the absence of a reasonable expectation of privacy is unclear or unsettled).

3. The Fourth Amendment protects people and not places. *See, e.g., Katz v. U.S., supra.*

B. AUTHORITY AND GENERAL REQUIREMENTS FOR SEARCH WARRANTS

1. Constitutional Authority

- a. U.S. Const. amend IV

“...no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be

searched, and the persons or things to be seized.”

b. S.C. Const. art. I, Section 10

“...no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.”

- While the South Carolina Supreme Court has long noted that the South Carolina Constitution “favors an interpretation offering a higher level of privacy protection than the Fourth Amendment,” (*State v. Weaver*, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007); *State v. Houey*, 375 S.C. 106, 651 S.E.2d 314 (2007); *State v. Forrester*, 343 S.C. 637, 541 S.E.2d 837 (2001)), it was not until recently in *State v. Counts*, 413 S.C. 153, 776 S.E.2d 59 (2015), that the Supreme Court of South Carolina identified a requirement existing under the South Carolina Constitution, but not under the federal constitution. In *State v. Counts*, 413 S.C. at 172, 776 S.E.2d at 70, the Court held that “law enforcement must have reasonable suspicion of illegal activity at a targeted residence prior to approaching the residence and knocking on the door.”

2. South Carolina Statutory Authority/Requirements

(1) S.C. Code Ann. Section 17-13-140

“Any magistrate or recorder or city judge having the powers of magistrates, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant to search for and seize (1) stolen or embezzled property; (2) property, the possession of which is unlawful; (3) property which is being used or has been used in the commission of a criminal offense or is possessed with the intent to be used as the means for committing a criminal offense or is concealed to prevent a criminal offense from being discovered; (4) property constituting evidence of crime or tending to show that a particular person committed a criminal offense; (5) any narcotic drugs, barbiturates, amphetamines or other drugs restricted to sale, possession, or use on prescription only, which are manufactured, possessed, controlled, sold, prescribed, administered, dispensed or compounded in violation of any of the laws of this State or of the United States. Narcotics, barbiturates or other drugs seized hereunder shall be disposed of as provided by Section 44-53-520.

The property described in this section, or any part thereof, may be seized from any place where such property may be located, or from

the person, possession or control of any person who shall be found to have such property in his possession or under his control.

A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant. If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. In the case of a warrant issued by a magistrate or a judge of a court of record, it shall be directed to any peace officer having jurisdiction in the county where issued, including members of the South Carolina Law Enforcement Division, and shall be returnable to the issuing magistrate. In case of a warrant issued by a judge of a court of record, it shall be returnable to a magistrate having jurisdiction of the area where the property is located or the person to be searched is found. If any warrant is issued by any municipal judicial officer to municipal police officers, the return shall be made to the issuing municipal judicial officer. Any warrant issued shall command the officer to whom it is directed to forthwith search the person or place named for the property specified.

Any warrant issued hereunder shall be executed and return made only within ten days after it is dated. The officer executing the warrant shall make and deliver a signed inventory of any articles seized by virtue of the warrant, which shall be delivered to the judicial officer to whom the return is to be made, and if a copy of the inventory is demanded by the person from whose person or premises the property is taken, a copy of the inventory shall be delivered to him.

This section is not intended to and does not either modify or limit any statute or other law regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.”

- (2) South Carolina’s search warrant statute, Section 17-13-140, imposes stricter requirements than does either the state or federal constitutions. *State v. McKnight*, 291 S.C. 110, 113, 352 S.E.2d 471, 473 (1987). Therefore, it is possible for a warrant to satisfy all constitutional requirements yet still be defective under the statute.
- (3) When any person is served with a search warrant, law enforcement must give him/her a copy of the warrant along with the supporting affidavit. Section 17-13-150.

(4) In addition to the 10-day return and inventory requirement in Section 17-13-140 above (which requires the officer executing the warrant to provide a signed inventory of any articles seized under the warrant to the judicial officer to whom the return is made, and, if the person from whose person or premises the property is taken requests an inventory, a copy of the inventory must be provided to him), law enforcement is also subject to a records retention requirement under Section 17-13-141. NOTE: The records retention policy in Section 17-13-141 is in addition to any other retention policies that may be applicable.

3. Requirements and Considerations in the Issuance of Search Warrants

a. Neutral and Detached Judge

The judge issuing a search warrant must be neutral and detached. *See Coolidge v. New Hampshire*, 403 U.S. 443, 91 S. Ct. 2022 (1971).

b. Sworn Affidavit

- Section 17-13-140 requires that search warrants are to be issued only upon affidavit *sworn to before the judge* establishing the grounds for the warrant.
 - Statute does not require affidavit must be sworn in person, only that it be sworn. *State v. Herring*, 387 S.C. 201, 214, 692 S.E.2d 490, 497 (2009).

In *State v. Herring, supra*, the Supreme Court upheld a search warrant issued by FAX against a defense challenge to the failure of the officer who prepared the supporting affidavit to appear in person before the magistrate and be sworn. The Court held that the magistrate's swearing of the officer over the telephone complied with the literal terms of the statute and the search warrant was upheld. *However*, the Court went on to note that the police acted in good faith upon the warrant they believed to be valid and that even if there were error it was harmless because of the overwhelming evidence of Herring's guilt.

c. Definition of Probable Cause.

Probable Cause has been defined as:

- "a fair probability that contraband or evidence of a crime will be

found,” *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

- a reason to believe that contraband or evidence of a crime will be found in the place to be search. See *Ornelas v. Ruiz*, 161 U.S. 502, 512 (1896) (in context of probable cause to arrest, probable cause defined as reason to believe that defendant committed crime with which he was charged). See also *State v. Frank*, 262 S.C. 526, 205 S.E.2d 827 (1974).
- “Articulating precisely what probable cause means is not possible. Probable cause is a commonsense, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Probable cause to search exists where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found in a particular place. The principal components of the determination of probable cause will be whether the events which occurred leading up to the search, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.” (Citations omitted.) *State v. Brown*, 389 S.C. 473, 482, 698 S.E.2d 811, 816 (Ct. App. 2010).

d. Probable Cause – Knowledge Component (Officer’s):

“Perhaps the best that can be said generally about the required knowledge component of probable cause for a law enforcement officer's evidence search is that it raises a “fair probability” or a “substantial chance” of discovering evidence of criminal activity.” (Citations omitted.) *Safford Unified School Dist. No. 1 v. Redding*, 557 U.S. 364, 371 (2009).

e. Probable Cause Determination

- A judge may only issue a search warrant upon a finding of probable cause, and this determination requires the judge to make a practical, common-sense decision of whether there is probably cause (*i.e.*, a reason to believe) that contraband or evidence of a crime will be found in the place to be searched. See *State v. Tench*, 353 S.C. 531, 579 S.E.2d 314 (2003); *State v. Spears*, 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011); *State v. Dupree*, 354 S.C. 676, 685, 583 S.E.2d 437, 442 (Ct. App. 2003).
 - Applications for and affidavits for search warrants may include hearsay evidence. *State v. Dunbar*, 361 S.C. 240, 603 S.E.2d 615 (Ct. App. 2004), citing *State v. Sullivan*, 267 S.C. 610,

614-15, 230 S.E.2d 621, 623 (1976), and *U.S. v. Ventresca*, 380 U.S. 102, 108 (1965).

- Judge is to make a probable cause determination using the “totality of the circumstances” standard looking to the information set forth in the affidavit and any supplemental information provided orally under oath. *Id.* See also *Illinois v. Gates*, 462 U.S. 213 (1983).
 - The totality of the circumstances includes the veracity, reliability, and basis of knowledge of persons supplying the information. *Id.*
 - “[E]vidence of past reliability is not usually required when information is provided by an eyewitness because, unlike the paid informer, the eyewitness does not ordinarily have the opportunity to establish a record of previous reliability. *State v. Northness*, 20 Wash. App. 551, 582 P.2d 546 (1978); see also *Saunders v. Commonwealth*, 218 Va. 294, 237 S.E.2d 150 (1977) (a magistrate may infer the reliability of a search warrant affidavit, which discloses information from an eyewitness to the fact related, because the affidavit is based on first-hand knowledge); *Sullivan*, 267 S.C. 610, 230 S.E.2d 621 (acknowledging courts have distinguished between affidavits relying on eyewitness or victim informers and those relying on paid informers in that the former may be sufficient to establish probable cause even if the affidavits do not independently establish the credibility of the informant when other circumstances show the information is likely to be reliable).” *State v. Driggers*, 322 S.C. 506, 510-511, 473 S.E.2d 57, 59.
 - “A deficiency in one of the elements of veracity and reliability may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.” *Id.*, citing *Illinois v. Gates*, 462 U.S. at 233-234 (“If, for example, a particular informant is known for the unusual reliability of his predictions of certain types of criminal activities in a locality, his failure, in a particular case, to thoroughly set forth the basis of his knowledge surely should not serve as an absolute bar to a finding of probable cause based on his tip. Likewise, if an unquestionably honest citizen comes forward with a report of criminal activity-which if fabricated would subject him to criminal liability-we have found rigorous scrutiny of the basis of his knowledge unnecessary. Conversely, even if we entertain some doubt

as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case.” (Citations omitted.)

- “Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.” *Illinois v. Gates*, 462 U.S. 213, 239 (1983).
- f. Particularity of the place to be searched and things to be seized.
- Both the federal and state constitutions require that search warrants particularly describe the place to be searched and the person or thing(s) to be seized. U.S. Const. amend. IV; S.C. Const. art. I, § 10.
 - The South Carolina appellate courts have held that a warrant may be read in connection with the supporting affidavit to satisfy constitutional and statutory requirements of particularity in the description of the place to be searched provided the affidavit is attached to the warrant and the warrant cross-references or incorporates the affidavit. *State v. Williams*, 297 S.C. 404, 406, 377 S.E.2d 308, 309 (1989); *State v. Cheeks*, 400 S.C. 329, 733 S.E.2d 611 (Ct. App. 2012). See also *Groh v. Ramirez*, 540 U.S. 551 (2004).
- g. Veracity of affidavits supporting search warrants
- Affidavits supporting search warrants are presumed to be valid. *Franks v. Delaware*, 438 U.S. 154 (1978).
 - In order to be constitutionally entitled to a hearing on a veracity challenge to the statements of an affiant, the defendant’s argument “must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. [The defense] should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient.” *Id.*, at 171.

- If the defendant meets the requirements for a hearing, but the judge determines that, even without the challenged portions of the affidavit, the affidavit is still sufficient to support a determination of probable cause, no hearing is required. *Id.*, at 171-172. See also *State v. Davis*, 354 S.C. 348, 359-60, 580 S.E.2d 778, 784 (Ct. App. 2003).
- If the defendant meets the requirements for a hearing and the judge determines that, without the challenged portions of the affidavit, the affidavit is insufficient to support a determination of probable cause, the hearing must be conducted. *Franks v. Delaware, supra*.

h. Supplementing Written Affidavit

“A search warrant affidavit which itself is insufficient to establish probable cause may be *supplemented* before the magistrate by sworn oral testimony.” *State v. McKnight*, 291 S.C. 110, 352 S.E.2d 471, 472 (1987). However, sworn oral testimony alone will not satisfy the statutory requirements. *Id.*, 352 S.E.2d at 473.

i. Signing of Search Warrants

Search warrants must be signed by a judge to be valid.

- “[T]he lack of the issuing [judicial] officer’s signature is not excusable as merely procedural or ministerial, but rather negates the existence of a warrant, creating instead ‘an unfinished paper.’” *State v. Covert (#2)*, 382 S.C. 205, 208-209, 675 S.E.2d 740, 742 (2009).
- “The *Davis* requirement that a warrant must be signed by the issuing judicial officer in order to be complete is a common law decision predicated on public policy considerations. The signature is the assurance that a judicial officer has found that law enforcement has made the requisite probable cause showing, and serves as notice to the citizen upon whom the warrant is served that it is a validly issued warrant.” *Id.*

j. Anticipatory Search Warrants

- “An anticipatory warrant is ‘a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place.’” *U.S. v. Grubbs*, 547 U.S. 90, 94, 126 S. Ct. 1494, 1498 (2006), quoting 2 W. LaFare, *Search and Seizure* § 3.7(c), p. 398 (4th ed.

2004).

- Most anticipatory warrants subject their execution to some condition precedent, a “triggering condition.” *U.S. v. Grubbs, supra.*
- Standard for issuance of an anticipatory warrant.

Anticipatory warrants are... no different in principle from ordinary warrants. They require the magistrate to determine (1) that it is *now probable* that (2) contraband, evidence of a crime, or a fugitive *will be* on the described premises (3) when the warrant is executed. It should be noted, however, that where the anticipatory warrant places a condition (other than the mere passage of time) upon its execution, the first of these determinations goes not merely to what will probably be found *if* the condition is met. (If that were the extent of the probability determination, an anticipatory warrant could be issued for every house in the country, authorizing search and seizure *if* contraband should be delivered-though for any single location there is no likelihood that contraband will be delivered.) Rather, the probability determination for a conditioned anticipatory warrant looks also to the likelihood that the condition will occur, and thus that a proper object of seizure will be on the described premises. In other words, for a conditioned anticipatory warrant to comply with the Fourth Amendment's requirement of probable cause, two prerequisites of probability must be satisfied. It must be true not only that *if* the triggering condition occurs “there is a fair probability that contraband or evidence of a crime will be found in a particular place,” but also that there is probable cause to believe the triggering condition *will occur*. The supporting affidavit must provide the magistrate with sufficient information to evaluate both aspects of the probable-cause determination.

Id., 547 U.S. at 96-97, 126 S. Ct. at 1500.

k. Knock and Announce

The Fourth Amendment includes a “knock and announce” rule for

search warrants – *i.e.*, it requires that law enforcement officers announce their presence and provide residents with an opportunity to open the door. *Hudson v. Michigan*, 547 U.S. 586 (2006); *Wilson v. Arkansas*, 514 U.S. 927 (1995).

- There are exceptions to the knock and announce rule that include the following (this is not an exhaustive list):
 - when “circumstances [present] a threat of physical violence,” *Wilson v. Arkansas*, 514 U.S. at 936; or
 - when a prisoner escapes from a law enforcement officer and retreats into his dwelling, *Id.*; or
 - when officers are “in pursuit of a recently escaped arrestee,” *Id.*; or
 - when “officers have reason to believe that evidence would likely be destroyed if advance notice were given,” *Id.*; *Ker v. California*, 374 U.S. 23, 40 (1963); or
 - when officers “have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be ...futile.” *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997).
- The Fourth Amendment requires “only that police ‘have a reasonable suspicion ... under the particular circumstances’ that one of these grounds for failing to knock and announce exists, and [the United States Supreme Court has] acknowledged that ‘[t]his showing is not high.’” *Hudson v. Michigan*, 547 U.S. at 590, *citing Richards v. Wisconsin*, 520 U.S. at 394.
- The exclusionary rule is inapplicable to violations of the knock and announce rule. *Hudson v. Michigan*, *supra*.

4. Search Warrants for Particular “Things”

a. Search Warrant for Bodily Samples

“A court order that allows the government to procure evidence from a person's body constitutes a search and seizure under the Fourth Amendment.” *State v. Sanders*, 388 S.C. 292, 297, 696 S.E.2d 592 (Ct. App. 2009), *citing Schmerber v. California*, 384 U.S. 757, 767-70 (1966).

- (1) An order or search warrant for bodily samples from suspects and others may be issued *provided* the requirements of Section 17-13-140 are met. *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216 (2006); *State v. Chisolm*, 395 S.C. 259, 717 S.E.2d 614 (2011); *State v. Jenkins*, 398 S.C. 215, 727 S.E.2d 761 (Ct. App. 2012), *reversed on other grounds*, 412 S.C. 463, 773 S.E.2d 906 (2015).

NOTE: Regardless of whether law enforcement or the prosecutor’s office requests a search warrant or a court order for a bodily sample, the request **must** be supported by a written affidavit sworn to or affirmed before the judge setting forth the facts giving rise to probable cause for the issuance of the warrant or order. *State v. Baccus*, 367 S.C. 41, 53-55, 625 S.E.2d 216, 222-223 (2006). This requirement, imposed by Section 17-13-140 and made applicable to these types of requests by the South Carolina appellate court decisions, must be satisfied even if there is sworn oral testimony presented at a hearing on a motion or petition for a bodily sample.

- Please note that the affidavit must be attested to and signed in the presence of the judge.

- (2) The probable cause determination for an order or warrant for bodily samples includes a clear indication that

- “relevant material” evidence will be found,
 - This requirement may be satisfied by an inclusion in the supporting affidavit that there exists DNA evidence to which the individual’s DNA profile could be compared. *State v. Jenkins*, 398 S.C. at 224-225, 727 S.E.2d at 766 (Ct. App. 2012)
- a safe and reliable method will be used to secure the sample, and,
- in cases involving suspects, probable cause to believe the suspect has committed the crime.

State v. Baccus, supra; In re Snyder, 308 S.C. 192, 195, 417 S.E.2d 572, 574 (1992); *State v. Register*, 308 S.C. 534, 419 S.E.2d 771 (1992); *State v. Jenkins, supra*.

- “Additional factors to be weighed are the seriousness of the crime and the importance of the evidence to the investigation. The judge is required to balance the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures.” *State v. Baccus*, 367 S.C. at 54, 625 S.E.2d at 223.

See also In re Snyder, supra; State v. Register, supra; State v. Sanders, supra; State v. Jenkins, supra.

- A bodily sample validly obtained in connection with one case or crime may be used in a subsequent unrelated case. See *State v. Sanders, supra*, and cases cited therein.
- b. Search Warrant for Wire Taps, Pen Registers, and other Electronic Communications Information

While a search warrant may be used for pen registers, trap and trace, and interception of wire or electronic communications, law enforcement and prosecutors must ensure that the affidavits and warrants comply not only with the constitutional and statutory requirements above, but also with the state and federal statutes that authorize access to this type of information because a generic warrant will not comply with the additional requirements imposed by statute. See, e.g., 18 U.S.C. §3122; S.C. Code §17-30-25 (process for order set out in §§17-30-70 through 120).

It is also important to note that state search warrants have jurisdictional limitations that prevent their use outside of South Carolina. (That is, a South Carolina judge cannot issue a search warrant to search someone or someplace that is located outside of South Carolina/the court's jurisdiction.)

- c. Search Warrant for Medical Records (HIPAA)

There is an exception to HIPAA through which law enforcement/prosecution may obtain access to health records – it is found in 45 C.F.R 164.512 (f). The LE exception allows for disclosure under a number of circumstances, but because South Carolina does not have either subpoenas issued by judicial officers or, except for limited circumstances not applicable to most cases, investigative subpoenas, law enforcement and prosecutors in South Carolina are limited to the court order or court issued warrant mechanism (45 C.F.R 164.512 (f)(1)(ii)(A)). Using this mechanism, the law enforcement investigator can request a search warrant, with the supporting affidavit setting forth the probable cause to believe the defendant committed the crime he is charged with and the probable cause for believing that relevant evidence will be found through obtaining the medical records being sought.

When using a search warrant to obtain medical records under this exception to HIPAA, all requirements of the search warrant statutes must be satisfied.

C. Considerations When Search Warrants are Ultimately Determined to be “BAD” – the Exclusionary Rule and Exemptions to It

The exclusionary rule exists to deter misconduct by law enforcement (which has been defined as deliberate, reckless, or grossly negligent conduct, or, in some circumstances, recurring or systemic negligence by law enforcement). The rule results in the exclusion of evidence at trial that was unlawfully seized in violation of the Fourth Amendment. *Herring v. U.S.*, 555 U.S. 135 (2009); *Massachusetts v. Sheppard*, 468 U.S. 981, 990 (1984), citing *Illinois v. Gates*, 462 U.S. 213, 263 (1983) (White, J., concurring in judgment); *Weeks v. U.S.*, 232 U.S. 383, 398 (1914), *overruled on other grounds by Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

There are three doctrines which are commonly referred to as exceptions to the search warrant requirement, but they are actually exceptions to the exclusionary rule in the Fourth Amendment context. They are the:

- **Good Faith Doctrine**, which applies when a law enforcement officer conducts a search in objectively reasonable reliance on the validity of a search warrant that is subsequently determined to be defective on Fourth Amendment grounds. The South Carolina Supreme Court has held the “good faith” exception applies both where officers have made a good faith attempt to comply with the statute’s affidavit procedures, and where officers reasonably believed a warrant was valid when a search pursuant to that warrant was conducted. See *U.S. v. Leon*, 468 U.S. 897 (1984); *Massachusetts v. Sheppard*, *supra*; *State v. Covert (#2)*, 382 S.C. 205, 675 S.E.2d 740 (2009); *State v. Herring*, 387 S.C. 201, 215, 692 S.E.2d 490, 497 (2009);
- **Inevitable Discovery Doctrine**, which provides for the admission of evidence obtained in violation of the Fourth Amendment if the prosecution can establish that the evidence would inevitably have been discovered by lawful means and that law enforcement would have done so through obtaining a search warrant or some other means. See *Nix v. Williams*, 467 U.S. 431 (1984); *State v. Jenkins*, *supra*; *State v. McCord*, 349 S.C. 477, 562 S.E.2d 689 at fn. 2 (Ct. App. 2002); and
- **Independent Source Rule Doctrine**, which provides for the admission of evidence initially discovered during, or as the result of, an unlawful search, but later obtained independently as the result of lawful activities “untainted by initial illegality.” (*Murray v. U.S.*, 487 U.S. 533 (1988); *Segura v. U.S.*, 468 U.S. 796 (1984)).

The rationale for these doctrines or exceptions is that the exclusion of the evidence would not serve the deterrent function the exclusionary rule was

designed to achieve and would add nothing to the fairness or integrity of the proceeding.

II. COURT ORDERS

There are very few circumstances under which a court order *must* be used instead of a search warrant to obtain documents or other items.

A. Court Order Required – Some Examples

1. Obtaining Sexually Transmitted Disease Test Results from DHEC

S.C. Code Section 44-29-136 requires that, in order to obtain a person's sexually transmitted disease test results from DHEC, law enforcement/Solicitor must file a motion/petition showing a compelling need for the information and that motion/petition must be supported by a sworn affidavit in which the LEO sets forth the facts upon which he/she bases his/her allegations. *See also Ex parte DHEC*, 350 S.C. 243, 248, 565 S.E.2d 293, 296 (2002). The affiant cannot rely solely upon anonymous tips, and must appear at the hearing on the motion/petition and be subject to examination and cross-examination. Section 44-29-136.

The statute also imposes pleading restrictions (must substitute a pseudonym for the real name of person's whose test results are sought; disclosure of the true name must be communicated in documents that the Court must seal) and, unless waived by the subject, requires closed court proceedings.

2. 18 U.S.C. 2703(d) Order for Customer or Subscriber Records

An order may issue under 18 U.S.C. 2703(d) upon a specific and articulable showing that there are "reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation."

In *State v. Odom*, 382 S.C. 144, 676 S.E.2d 124 (2009), the Supreme Court held that the circuit courts of our state are courts of competent jurisdiction for purposes of §2703. In that opinion, the Court also distinguished between the information captured under a §2703(d) order and an order authorizing a pen register or trap and trace device, and the showing required for the issuance of a §2703(d) order.

NOTE: Law enforcement officers and prosecutors who would like to obtain information and records related to electronic communications (such

as telephone and Internet) are encouraged to contact William Blicht in the South Carolina Attorney General's Office (wblitch@scag.gov or 803-734-3372). He has vast experience in not only accessing this type of evidence, but also in addressing the legal issues related to the seizure and use of such information.

B. Orders MAY be Used

Law enforcement/prosecution may use orders in a number of situations, but because of the additional requirements (hearing and, under some circumstances, notice and an adversarial hearing) it is not clear how such would benefit an investigation. See, *e.g.*, discussion under IB4a herein (search warrant for bodily sample).

III. SUBPOENAS

A. Court of General Sessions – Rule 13, SCRCrimP.

1. The Rule

The use of subpoenas in criminal cases in the Court of General Sessions is controlled by Rule 13. That Rule provides for the use of subpoenas to compel the attendance of witnesses and to compel witnesses to bring documentary evidence with them to court. The Rule says:

(a) Issuance of Subpoenas. Upon the request of any party, the clerk of court shall issue subpoenas or subpoenas duces tecum for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court. The subpoena shall state the name of the court, the title of the action, and shall command each person to whom it is directed to attend and give testimony, or otherwise produce documentary evidence at time and place therein specified. The subpoena shall also set forth the name of the party requesting the appearance of such witness and the name of counsel for the party, if any.

(b) Service. A subpoena may be served by the sheriff of any county in which the witness may be found, by his deputy or by any other person who is not a party and is not less than eighteen years of age. Service of a subpoena upon an individual may be made by delivering a copy to him personally, or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to

receive service. Service may be made on any day of the week.

2. What Does the Rule Allow in Terms of Subpoenaing Documentary Evidence?

Because our appellate courts have not specifically addressed when and for what purpose you can use a subpoena *duces tecum* (a subpoena for the production of documents) under Rule 13, it is necessary to look at the Rule itself. The portion of Rule 13 addressing the issuance of subpoenas is set out below, next to the portion of the rule governing the issuance of subpoenas in civil matters. The provisions in each relating to subpoenas *duces tecum* are highlighted by underlining.

<p align="center">Rule 13 S.C. Rules of Criminal Procedure</p>	<p align="center">Rule 45 S.C. Rules of Civil Procedure</p>
<p>(a) Issuance of Subpoenas.</p> <p>Upon the request of any party, the clerk of court shall issue subpoenas or <u>subpoenas duces tecum for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court. The subpoena shall state the name of the court, the title of the action, and shall command each person to whom it is directed to attend and give testimony, or otherwise produce documentary evidence at time and place therein specified.</u> The subpoena shall also set forth the name of the party requesting the appearance of such witness and the name of counsel for the party, if any.</p> <p>NOTE: A complete copy of rule 13 is included in the appendix to this outline.</p>	<p>a) Form; Issuance.</p> <p>(1) Every subpoena shall:</p> <p>(A) state the name of the court from which it is issued; and</p> <p>(B) state the title of the action, the name of the court in which it is pending, and its civil action number; and</p> <p>(C) command each person to whom it is directed to attend and give testimony <u>or produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified;</u> and</p> <p>(D) set forth the text of subdivisions (c) and (d) of this rule.</p> <p><u>A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.</u></p> <p>(2) <u>If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court for the county in which production or inspection is to be made. Provided, however, that a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person.</u></p> <p>(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of a court in which the attorney is authorized to practice.</p>

A comparison of the two rules reveals very distinctive differences between the two, with Rule 45 clearly providing for the use of subpoenas *duces tecum* to command the production of documentary and other tangible items separate and apart from any trial, hearing or other court proceeding. On the other hand, Rule 13 provides for the use of subpoenas *duces tecum* only for the production of documentary evidence and only when attending as a witness.

In the absence of express statutory authority¹, it is improper for prosecutors and law enforcement to use subpoenas and subpoenas *duces tecum* for investigative purposes, *i.e.*, before an indictment has been issued and without a court proceeding being scheduled. *See* Rule 13, SCRCrimP; *State v. Williams*, 301 S.C. 369, 370-371, 392 S.E.2d 181, 182 (1990) (state conceded that subpoena *duces tecum* used by law enforcement to obtain Williams' blood alcohol test results from hospital before Williams was arrested was defective). *See also Op. S.C. Atty. Gen.* (April 5, 2005) (Opinion discussing authority of magistrate to issue a subpoena *duces tecum* in which the South Carolina Attorney General concluded the lack of the specific authority to issue a subpoena *duces tecum* means that a summary court judge is not authorized to issue one.) There is no statute that provides for the use of investigatory subpoenas in non-State Grand Jury cases. **Therefore, looking to Rule 13 (especially in comparison to Rule 45), it would appear that subpoenas *duces tecum* can only be used once a case has been initiated and only to require documentary evidence to be produced in court.**

¹ While the legislature has provided for investigatory subpoenas in a number of non-criminal investigation settings, it has authorized the use of such in very few instances where the investigation is conducted by law enforcement and/or prosecutors. Such limited instances include the following.

- In the discharge of its statutory duties to investigate child deaths in South Carolina, SLED's Department of Child Fatalities has statutory authority to obtain investigatory subpoenas for testimony and production of documents, books, papers, correspondence, memoranda, and other relevant records. Section 63-11-1970 (see also Section 63-11-1960).
- In the discharge of the duties of its Vulnerable Adults Investigation Unit, SLED has statutory authority to obtain from "the clerks of court shall issue a subpoena or subpoena *duces tecum* to any state, county, or local agency, board, or commission or to any representative of any state, county, or local agency, board, or commission or to a provider of medical care to compel the attendance of witnesses and production of documents, books, papers, correspondence, memoranda, and other relevant records to the discharge of the unit's duties." Section 43-35-550.
- The Clerk of the State Grand Jury, upon request of the Attorney General or his designee, has the authority to issue subpoenas and subpoenas *duces tecum* for investigative purposes. Section 14-7-1680.

Moreover, the improper use of subpoenas may also result in a violation of the South Carolina Rules of Professional Conduct by a lawyer who improperly uses a subpoena or who directs or assists another in doing so, and by a lawyer who knowingly uses information obtained through another's improper use of a subpoena. *See In the Matter of Fabri*, 418 S.C. 384, 793 S.E.2d 306 (2016) (Fabri's failure to comply with civil and family court rules governing the use of subpoenas in family court matters constituted conduct prejudicial to the administration of justice in violation of Rule 8.4(e), SCRProfC); S.C. Bar Eth. Adv. Comm. Op. 01-05 (efforts to obtain or serve improper subpoena may violate Rule 8.4(g), SCRProfC, and another prosecutor's knowing use of information obtained by another's improper subpoena would result in violation of Rules 5.1(c)(1) and 8.4(a)).

B. Summary Court – Rules 23 and 13, SCRMC.

1. Statute and Rules

The use of subpoenas in criminal cases in the Summary Courts (municipal and magistrate courts) is authorized and governed by Section 22-3-930 and Rules 13 and 23, SCMCR.²

Section 22-3-930 provides as follows.

Any magistrate, on the application of a party to a cause pending before the magistrate, must issue a summons citing any person whose testimony may be required in the cause and who resides in the county to appear before the magistrate at a certain time and place to give evidence. This summons must be served in a manner such that it is received by the witness at least one day before his attendance is required. If the witness fails or refuses to attend, the magistrate may issue a rule to show cause commanding the witness to be brought before the magistrate or, if any witness attending refuses to give evidence without good cause shown, the magistrate may punish the witness for contempt by imposition of a sentence up to the limits imposed on magistrates' courts in Section

² Under S.C. Code Sections 14-25-45 and 14-25-115, municipal judges and ministerial recorders have the same authority to issue subpoenas in criminal cases as magistrates.

22-3-550.

Rules 13 and 25 say:

**RULE 13
CONDUCT OF TRIAL; JURY TRIALS;
WITNESSES; SUBPOENAS**

(a) Trials should be conducted in an informal manner and the South Carolina Rules of Evidence shall apply but shall be relaxed in the interest of justice. In the trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order to assure that all claims and defenses are fully presented.

(b) Notice of the fact that court personnel will explain to all parties the procedure of the magistrates court and will assist them, if such assistance is required, to fill out all forms that may be necessary or appropriate shall be conspicuously posted in the magistrates office in the following form:

**NOTICE TO ALL PARTIES IN
CIVIL ACTIONS**

**THIS OFFICE WILL EXPLAIN
THE PROCEDURE OF THE
COURT, AND WILL HELP YOU
PREPARE PAPERS RELATED
TO YOUR ACTION, IF THE
COURT DETERMINES SUCH
HELP IS REQUIRED.**

(c) If either party wants a jury trial, it must be requested in writing at least five (5) working days prior to the original date set for trial.

(d) All testimony shall be given under oath or affirmation.

(e) The court shall have the power to issue subpoenas to compel the attendance of witnesses. The court may issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on

behalf of a court in which the attorney is authorized to practice.

RULE 23
SUBPOENAS

(a) Any magistrate, on the application of any party to a cause pending in the magistrates court, shall issue a subpoena citing any person whose testimony may be required in the cause to appear and give evidence. The Court may issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of a court in which the attorney is authorized to practice. Every subpoena shall state the name of the court, and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place specified.

(b) A subpoena may be served by the sheriff of any county in which the witness may be found, by the sheriff's deputy, by a constable of the court, or by any other person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named in the subpoena shall be made as provided by Rule 6 and Rule 8 (c).

(c) No subpoena shall require a witness to appear in any proceeding not held within the county where that witness resides.

(d) Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed in contempt of court from which the subpoena issued.

(e) A witness subpoenaed to attend a proceeding under these rules shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the proceeding \$25.00 per day and mileage in the same amount as provided by law for official travel of State officers and employees.

(f) In case it shall appear to the satisfaction

of any magistrate that the attendance of any witness whose testimony may be required in any case pending before the magistrate cannot be had because of just cause for the witness' absence, extreme age, sickness or infirmity, or when the witness does not reside in the county of the court's jurisdiction, the magistrate may take the examination of such witness or cause it to be done by another magistrate or other officer authorized by law to administer oaths, to be used in evidence on the trial of the case. All parties to the cause shall have notice of the examination so that they may examine or cross-examine the witness. When the examination is made by another, it shall be recorded and sealed, with the title of the case endorsed, and conveyed by a disinterested person to the magistrate authorizing it or mailed postage prepaid to that magistrate.

2. What Do the Rules Allow in Terms of Subpoenaing Documentary Evidence?

While specifically providing for the issuance of subpoenas to compel a witness to appear, the Rules do not provide for the issuance of subpoenas to compel witnesses to bring documents with them to court. The South Carolina Attorney General has issued an opinion stating that the lack of the specific authority to issue a subpoena *duces tecum* means that a summary court judge is not authorized to issue one. *Op. S.C. Atty. Gen.* (April 5, 2005) (Opinion discussing authority of magistrate to issue a subpoena *duces tecum*).

Moreover, lawyers should be mindful of the fact that an attorney who issues a subpoena *duces tecum* in summary court when the court does not actually have the authority to legally issue one would violate Rules 3.1 and 3.3, SCRProfC. S.C. Bar Eth. Adv. Comm. Op. 00-01 (“an attorney would violate the Rules of Professional Conduct by representing to the Court or to other parties that authority exists under a Magistrate Court subpoena *duces tecum* to compel disclosure of information if the attorney determines that the court lacks such legal authority”).

C. Use of Subpoenas to Obtain Records Protected by Federal Law

Please be aware that while federal statutes, such as HIPAA, often provide

that subpoenas may be used, South Carolina subpoenas most probably are **NOT** sufficient because they are not issued by judicial officers and no showing is necessary.

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Code of Federal Regulations
Title 45. Public Welfare
Subtitle A. Department of Health and Human Services
Subchapter C. Administrative Data Standards and Related Requirements
Part 164. Security and Privacy
Subpart E. Privacy of Individually Identifiable Health Information
45 C.F.R. § 164.512

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) Standard: Uses and disclosures required by law.

(1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.

(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

(b) Standard: Uses and disclosures for public health activities.

(1) Permitted uses and disclosures. A covered entity may use or disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

(ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

(iii) A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

(A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;

(B) To track FDA-regulated products;

(C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or

(D) To conduct post marketing surveillance;

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or

(v) An employer, about an individual who is a member of the workforce of the employer, if:

(A) The covered entity is a covered health care provider who provides health care to the individual at the request of the employer:

(1) To conduct an evaluation relating to medical surveillance of the workplace; or

(2) To evaluate whether the individual has a work-related illness or injury;

(B) The protected health information that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;

(C) The employer needs such findings in order to comply with its obligations, under 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and

(D) The covered health care provider provides written notice to the individual that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:

(1) By giving a copy of the notice to the individual at the time the health care is provided; or

(2) If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.

(vi) A school, about an individual who is a student or prospective student of the school, if:

(A) The protected health information that is disclosed is limited to proof of immunization;

(B) The school is required by State or other law to have such proof of immunization prior to admitting the individual; and

(C) The covered entity obtains and documents the agreement to the disclosure from either:

(1) A parent, guardian, or other person acting in loco parentis of the individual, if the individual is an unemancipated minor; or

(2) The individual, if the individual is an adult or emancipated minor.

(2) Permitted uses. If the covered entity also is a public health authority, the covered entity is permitted to use protected health information in all cases in which it is permitted to disclose such information for public health activities under paragraph (b)(1) of this section.

(c) Standard: Disclosures about victims of abuse, neglect or domestic violence.

(1) Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

(i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;

(ii) If the individual agrees to the disclosure; or

(iii) To the extent the disclosure is expressly authorized by statute or regulation and:

(A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or

(B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

(2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:

(i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or

(ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(d) Standard: Uses and disclosures for health oversight activities.

(1) Permitted disclosures. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

(i) The health care system;

(ii) Government benefit programs for which health information is relevant to beneficiary eligibility;

(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or

(iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.

(2) Exception to health oversight activities. For the purpose of the disclosures permitted by paragraph (d)(1) of this section, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

(i) The receipt of health care;

(ii) A claim for public benefits related to health; or

(iii) Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

(3) Joint activities or investigations. Notwithstanding paragraph (d)(2) of this section, if a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity for purposes of paragraph (d) of this section.

(4) Permitted uses. If a covered entity also is a health oversight agency, the covered entity may use protected health information for health oversight activities as permitted by paragraph (d) of this section.

(e) Standard: Disclosures for judicial and administrative proceedings.

(1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

(i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or

(ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:

(A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or

(B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

(iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

(B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and

(C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:

(1) No objections were filed; or

(2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

(iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or

(B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.

(v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

(A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and

(B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

(vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(v) of this section.

(2) Other uses and disclosures under this section. The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.

(f) Standard: Disclosures for law enforcement purposes. A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.

(1) Permitted disclosures: Pursuant to process and as otherwise required by law. A covered entity may disclose protected health information:

(i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or

(ii) In compliance with and as limited by the relevant requirements of:

(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;

(B) A grand jury subpoena; or

(C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

(1) The information sought is relevant and material to a legitimate law enforcement inquiry;

(2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and

(3) De-identified information could not reasonably be used.

(2) Permitted disclosures: Limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

(i) The covered entity may disclose only the following information:

(A) Name and address;

(B) Date and place of birth;

(C) Social security number;

(D) ABO blood type and rh factor;

(E) Type of injury;

(F) Date and time of treatment;

(G) Date and time of death, if applicable; and

(H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

(3) Permitted disclosure: Victims of a crime. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:

(i) The individual agrees to the disclosure; or

(ii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:

(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;

(B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and

(C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(4) Permitted disclosure: Decedents. A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.

(5) Permitted disclosure: Crime on premises. A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

(6) Permitted disclosure: Reporting crime in emergencies.

(i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

(A) The commission and nature of a crime;

(B) The location of such crime or of the victim(s) of such crime; and

(C) The identity, description, and location of the perpetrator of such crime.

(ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.

(g) Standard: Uses and disclosures about decedents.

(1) Coroners and medical examiners. A covered entity may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A covered entity that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph.

(2) Funeral directors. A covered entity may disclose protected health information to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, the covered entity may disclose the protected health information prior to, and in reasonable anticipation of, the individual's death.

(h) Standard: Uses and disclosures for cadaveric organ, eye or tissue donation purposes. A covered entity may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement,

banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.

(i) Standard: Uses and disclosures for research purposes.

(1) Permitted uses and disclosures. A covered entity may use or disclose protected health information for research, regardless of the source of funding of the research, provided that:

(i) Board approval of a waiver of authorization. The covered entity obtains documentation that an alteration to or waiver, in whole or in part, of the individual authorization required by § 164.508 for use or disclosure of protected health information has been approved by either:

(A) An Institutional Review Board (IRB), established in accordance with 7 CFR 1c.107, 10 CFR 745.107, 14 CFR 1230.107, 15 CFR 27.107, 16 CFR 1028.107, 21 CFR 56.107, 22 CFR 225.107, 24 CFR 60.107, 28 CFR 46.107, 32 CFR 219.107, 34 CFR 97.107, 38 CFR 16.107, 40 CFR 26.107, 45 CFR 46.107, 45 CFR 690.107, or 49 CFR 11.107; or

(B) A privacy board that:

(1) Has members with varying backgrounds and appropriate professional competency as necessary to review the effect of the research protocol on the individual's privacy rights and related interests;

(2) Includes at least one member who is not affiliated with the covered entity, not affiliated with any entity conducting or sponsoring the research, and not related to any person who is affiliated with any of such entities; and

(3) Does not have any member participating in a review of any project in which the member has a conflict of interest.

(ii) Reviews preparatory to research. The covered entity obtains from the researcher representations that:

(A) Use or disclosure is sought solely to review protected health information as necessary to prepare a research protocol or for similar purposes preparatory to research;

(B) No protected health information is to be removed from the covered entity by the researcher in the course of the review; and

(C) The protected health information for which use or access is sought is necessary for the research purposes.

(iii) Research on decedent's information. The covered entity obtains from the researcher:

(A) Representation that the use or disclosure sought is solely for research on the protected health information of decedents;

(B) Documentation, at the request of the covered entity, of the death of such individuals; and

(C) Representation that the protected health information for which use or disclosure is sought is necessary for the research purposes.

(2) Documentation of waiver approval. For a use or disclosure to be permitted based on documentation of approval of an alteration or waiver, under paragraph (i)(1)(i) of this section, the documentation must include all of the following:

(i) Identification and date of action. A statement identifying the IRB or privacy board and the date on which the alteration or waiver of authorization was approved;

(ii) Waiver criteria. A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:

(A) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements;

(1) An adequate plan to protect the identifiers from improper use and disclosure;

(2) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(3) Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(B) The research could not practicably be conducted without the waiver or alteration; and

(C) The research could not practicably be conducted without access to and use of the protected health information.

(iii) Protected health information needed. A brief description of the protected health information for which use or access has been determined to be necessary by the institutional review board or privacy board, pursuant to paragraph (i)(2)(ii)(C) of this section;

(iv) Review and approval procedures. A statement that the alteration or waiver of authorization has been reviewed and approved under either normal or expedited review procedures, as follows:

(A) An IRB must follow the requirements of the Common Rule, including the normal review procedures (7 CFR 1c.108(b), 10 CFR 745.108(b), 14 CFR 1230.108(b), 15 CFR 27.108(b), 16 CFR 1028.108(b), 21 CFR 56.108(b), 22 CFR 225.108(b), 24 CFR 60.108(b), 28 CFR 46.108(b), 32 CFR 219.108(b), 34 CFR 97.108(b), 38 CFR 16.108(b), 40 CFR 26.108(b), 45 CFR 46.108(b), 45 CFR 690.108(b), or 49 CFR 11.108(b)) or the expedited review procedures (7 CFR 1c.110, 10 CFR 745.110, 14 CFR 1230.110, 15 CFR 27.110, 16 CFR 1028.110, 21 CFR 56.110, 22 CFR 225.110, 24 CFR 60.110, 28 CFR 46.110, 32 CFR 219.110, 34 CFR 97.110, 38 CFR 16.110, 40 CFR 26.110, 45 CFR 46.110, 45 CFR 690.110, or 49 CFR 11.110);

(B) A privacy board must review the proposed research at convened meetings at which a majority of the privacy board members are present, including at least one member who satisfies the criterion stated in paragraph (i)(1)(i)(B)(2) of this section, and the alteration or waiver of authorization must be approved by the majority of the privacy board members present at the meeting, unless the privacy board elects to use an expedited review procedure in accordance with paragraph (i)(2)(iv)(C) of this section;

(C) A privacy board may use an expedited review procedure if the research involves no more than minimal risk to the privacy of the individuals who are the subject of the protected health information for which use or disclosure is being sought. If the privacy board elects to use an expedited review procedure, the review and approval of the alteration or waiver of authorization may be carried out by the chair of the privacy board, or by one or more members of the privacy board as designated by the chair; and

(v) Required signature. The documentation of the alteration or waiver of authorization must be signed by the chair or other member, as designated by the chair, of the IRB or the privacy board, as applicable.

(j) Standard: Uses and disclosures to avert a serious threat to health or safety.

(1) Permitted disclosures. A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:

(i)(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

(ii) Is necessary for law enforcement authorities to identify or apprehend an individual:

(A) Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim; or

(B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in § 164.501.

(2) Use or disclosure not permitted. A use or disclosure pursuant to paragraph (j)(1)(ii)(A) of this section may not be made if the information described in paragraph (j)(1)(ii)(A) of this section is learned by the covered entity:

(i) In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure under paragraph (j)(1)(ii)(A) of this section, or counseling or therapy; or

(ii) Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in paragraph (j)(2)(i) of this section.

(3) Limit on information that may be disclosed. A disclosure made pursuant to paragraph (j)(1)(ii)(A) of this section shall contain only the statement described in paragraph (j)(1)(ii)(A) of this section and the protected health information described in paragraph (f)(2)(i) of this section.

(4) Presumption of good faith belief. A covered entity that uses or discloses protected health information pursuant to paragraph (j)(1) of this section is presumed to have acted in good faith with regard to a belief described in paragraph (j)(1)(i) or (ii) of this section, if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

(k) Standard: Uses and disclosures for specialized government functions.

(1) Military and veterans activities.

(i) Armed Forces personnel. A covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information:

(A) Appropriate military command authorities; and

(B) The purposes for which the protected health information may be used or disclosed.

(ii) Separation or discharge from military service. A covered entity that is a component of the Departments of Defense or Homeland Security may disclose to the Department of Veterans Affairs (DVA) the protected health

information of an individual who is a member of the Armed Forces upon the separation or discharge of the individual from military service for the purpose of a determination by DVA of the individual's eligibility for or entitlement to benefits under laws administered by the Secretary of Veterans Affairs.

(iii) Veterans. A covered entity that is a component of the Department of Veterans Affairs may use and disclose protected health information to components of the Department that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.

(iv) Foreign military personnel. A covered entity may use and disclose the protected health information of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register pursuant to paragraph (k)(1)(i) of this section.

(2) National security and intelligence activities. A covered entity may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333).

(3) Protective services for the President and others. A covered entity may disclose protected health information to authorized Federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056 or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879.

(4) Medical suitability determinations. A covered entity that is a component of the Department of State may use protected health information to make medical suitability determinations and may disclose whether or not the individual was determined to be medically suitable to the officials in the Department of State who need access to such information for the following purposes:

(i) For the purpose of a required security clearance conducted pursuant to Executive Orders 10450 and 12968;

(ii) As necessary to determine worldwide availability or availability for mandatory service abroad under sections 101(a)(4) and 504 of the Foreign Service Act; or

(iii) For a family to accompany a Foreign Service member abroad, consistent with section 101(b)(5) and 904 of the Foreign Service Act.

(5) Correctional institutions and other law enforcement custodial situations.

(i) Permitted disclosures. A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:

(A) The provision of health care to such individuals;

(B) The health and safety of such individual or other inmates;

(C) The health and safety of the officers or employees of or others at the correctional institution;

(D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;

(E) Law enforcement on the premises of the correctional institution; or

(F) The administration and maintenance of the safety, security, and good order of the correctional institution.

(ii) Permitted uses. A covered entity that is a correctional institution may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed.

(iii) No application after release. For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

(6) Covered entities that are government programs providing public benefits.

(i) A health plan that is a government program providing public benefits may disclose protected health information relating to eligibility for or enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.

(ii) A covered entity that is a government agency administering a government program providing public benefits may disclose protected health information relating to the program to another covered entity that is a government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

(7) National Instant Criminal Background Check System. A covered entity may use or disclose protected health information for purposes of reporting to the National Instant Criminal Background Check System the identity of an individual who is prohibited from possessing a firearm under 18 U.S.C. 922(g)(4), provided the covered entity:

(i) Is a State agency or other entity that is, or contains an entity that is:

(A) An entity designated by the State to report, or which collects information for purposes of reporting, on behalf of the State, to the National Instant Criminal Background Check System; or

(B) A court, board, commission, or other lawful authority that makes the commitment or adjudication that causes an individual to become subject to 18 U.S.C. 922(g)(4); and

(ii) Discloses the information only to:

(A) The National Instant Criminal Background Check System; or

(B) An entity designated by the State to report, or which collects information for purposes of reporting, on behalf of the State, to the National Instant Criminal Background Check System; and

(iii)(A) Discloses only the limited demographic and certain other information needed for purposes of reporting to the National Instant Criminal Background Check System; and

(B) Does not disclose diagnostic or clinical information for such purposes.

(l) Standard: Disclosures for workers' compensation. A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

Credits

[67 FR 53270, Aug. 14, 2002; 78 FR 5699, Jan. 25, 2013; 78 FR 34266, June 7, 2013; 81 FR 395, Jan. 6, 2016]

SOURCE: 65 FR 50365, Aug. 17, 2000; 65 FR 82802, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 68 FR 8374, Feb. 20, 2003; 71 FR 8433, Feb. 16, 2006; 74 FR 42767, Aug. 24, 2009; 78 FR 5692, Jan. 25, 2013; 78 FR 5695, Jan. 25, 2013, unless otherwise noted.

AUTHORITY: 42 U.S.C. 1302(a); 42 U.S.C. 1320d-1320d-9; sec. 264, Pub.L. 104-191, 110 Stat. 2033-2034 (42 U.S.C. 1320d-2(note)); and secs. 13400-13424, Pub.L. 111-5, 123 Stat. 258-279.; 42 U.S.C. 1320d-2, 1320d-4, and 1320d-9; sec. 264 of Pub.L. 104-191, 110 Stat. 2033-2034 (42 U.S.C. 1320d-2 (note)); and secs. 13400-13424, Pub.L. 111-5, 123 Stat. 258-279.

South Carolina Commission on Prosecution Coordination

Prosecution CLE Series™

“Getting, Storing, Retaining and Releasing Evidence: Legal and Practical Considerations”

Florence, South Carolina
July 24, 2017



SECTION 2

“Collecting, Preserving, and Storing Evidence”

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Columbia, South Carolina

Collection, Preservation, and Submission of Evidence

Amy Stephens
Forensic Technician
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SLED Forensic Services Laboratory

Purpose of the Laboratory

- To provide the criminal justice system in South Carolina with a full-service forensic laboratory
- To employ persons of the highest possible ethical and educational standards and furnish them with the necessary training
- To perform work with a high degree of accuracy, quality, and efficiency
- Composed of the following departments: Computer Crimes, Crime Scene, DNA Casework, DNA Database (CODIS), Drug Analysis, Evidence Control, Firearms, Latent Prints, Questioned Document, Toxicology and Trace Evidence

What is the role of the Evidence Control Department?

Evidence Control Department

- Login and transfer evidence for forensic analysis
- Provides information to law enforcement agencies regarding types of services provided by laboratory departments
- Assists law enforcement agencies with submission procedures
- Assists law enforcement agencies with questions regarding location of evidence/status of cases

Evidence Control Department

- Coordinates all evidence room operations
- Testifies in court regarding Chain of Custody

Importance of Evidence/Property Custodians

- Preserves the chain of custody for items of evidence located in an Evidence Room
- Ensures that evidence is maintained in a secure manner and maintains the integrity of evidence
- Manages the daily operations of an Evidence Room

Overview of SLED Evidence Room

SLED Evidence Room Stats

- Evidence Control is responsible for approximately 64,000 items of evidence
- The majority of evidence maintained by Evidence Control is controlled substances, DNA evidence, and SLED evidence
- In 2017, Evidence Control returned/released 35,000 items of evidence to submitting agencies

SLED Evidence Room – Prior to Renovation



SLED Evidence Room – After Renovation



Firearms Evidence Storage *Before and After*



Purpose of an Evidence Room

- An Evidence Room is a secure facility used to store/retain evidence in criminal cases and investigations
- Evidence Rooms may contain physical evidence, case files, or other documentation (Chains of Custody, Destruction Forms)


Characteristics of an Evidence Storage Area

- Design space according to types of evidence (box size or bag size)
- Consider level of security (drugs/weapons/jewelry/money)

Evidence Room Management

- Control access (document escorted entries via log book)
- Assign specific bin locations – barcode tracking or written labels
- Conduct routine inventories (physical vs. electronic)
- Conduct routine facility inspections (cleanliness, integrity being maintained, directives being followed, protection from damage/deterioration, proper evidence disposal)
- Separate locked area for Controlled Substances/Weapons/Jewelry/Money
- Always document the reason for the transfer of evidence (Returned to Agency/Owner, Transferred for court purposes)
- Documentation is IMPORTANT!!!
- Many of these are CALEA Standards

Example of Entry Log


EVIDENCE ROOM 150 LOG

NAME	DATE/TIME IN	DATE/TIME OUT	JUSTIFICATION FOR ENTRY	TECHNICIAN'S INITIALS
Deborah Cofer	5/14/16 10:00am	5:40:00	Issue with Pilot	AS
Scott Williams	5/12	12:00/12:00	RETRIC	AS
Scott Williams	5/12	4:00/4:30	RETRIC	AS
Scott Williams	5/16	5:00/10:30	RETRIC	AS
Scott Williams	5/17	11:11/1408	RETRIC	AS
Scott Williams	5/20/16	12:10/118	RETRIC	AS
Scott Williams	4/1/16	3:40/4:00	Refuge	AS
Deborah Cofer	6/3/16	10:00/12:00	Issue with Pilot	AS
Deborah Cofer	6/3/16 5:00	6:00/6:30	Issue with Pilot	AS
John B. Reed	4/27/16 14:10	6:00/11:00	ISSUE WITH PILOT	AS

SLED Forensics Form # EVC 004, December 2013
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Issuing Authority: Quality Manager

Evidence Room Organization

- Envelopes and Evidence Pouches can be filed in numerical order in bins/containers/boxes for easy retrieval – the use of bins enhances the organization of an Evidence Room
- Place bigger items in boxes (clothing) – easier to organize than paper bags, easier to stack if needed, protects the evidence
- If you do not have an electronic tracking system, create a folder for each case and file them in numerical order in a file cabinet – keeps all paperwork/documentation for that case in one place and easy to locate
- Each shelf containing evidence should be numbered for easy retrieval and chain of custody purposes

Evidence Room Organization

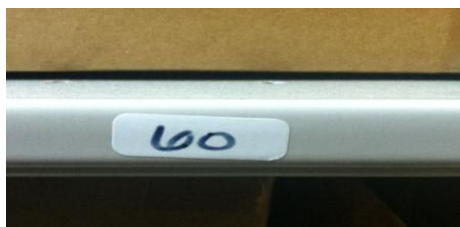
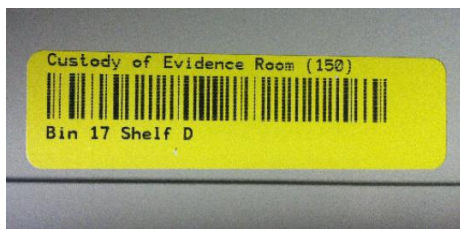
- Keep Evidence Room clear of clutter
- Consider special storage area for the 24 enumerated case types in the Preservation of Evidence Act (Section 17-28-320 (A)) as well as special labeling
- Each package containing evidence should be appropriately labeled with an agency case number and item description for easy identification
- Evidence Control relies on an item description for verification purposes when evidence is submitted for analysis
- Consider special labeling for items considered “valuable” – jewelry, money

Policy and Procedures

- Log-in procedures (tracking)
- Custody procedures (uninterrupted)
- Method of seizure/collection
- Item inventory/description
- Packaging/labeling procedures
- Security measures (varying levels)
- Establish/assign levels of authority
- Reconciliation/Corrective Actions
- Highly important to have policies and procedures in place and even more important to follow these policies and procedures on daily basis

Evidence Tracking

- Use barcode labels or regular labels with an identification number/letter written on the label to document specific bin/shelf locations
- Each time a transfer takes place, electronically or manually document the bin/shelf location – document the date/time of transfer
- By marking the bin/shelves with numbers or letters, evidence will be easily located
- Evidence packages should be marked with unique identifiers (agency case number, lab number)
- Each case must have an electronic or manual chain of custody



Evidence Room Security

- Evidence Room must be secure – lock and key, alarm system, key card
- Evidence Room access should be limited to authorized personnel (Evidence Custodian) – personnel responsible for the property and evidence room
- Keep a log book of all escorted entries in the Evidence Room
- Install security cameras
- Determine distribution of keys
- Establish order of emergency notifications (On-Call Schedule)
- Make provisions for storage of evidence should the property room be closed

Storage Lockers

- In the event the evidence room is closed, storage lockers can be utilized to deposit evidence
- Only an Evidence Custodian should have access to keys to open lockers
- Verify that evidence is sealed properly by officer that deposits evidence

Storage of Evidence


Preservation/Storage of DNA Evidence

- Avoid storing biological evidence in areas prone to high humidity
- Temperature and humidity controlled environments (room temperature) are acceptable for long-term storage of properly dried and packaged DNA evidence
- Long-term refrigeration without humidity control can introduce damp conditions from condensation and encourage mold
- Refrigerate Sexual Assault Kits prior to submission

Long-Term Storage of Evidence

- Evidence (Clothing, GSR Kits, Latent Lifts) must be stored at room temperature
- Toxicology Evidence:
 - Tissues (brain, liver) must be frozen
 - Liquids (blood, urine, bile) must be refrigerated
- DNA Evidence:
 - Liquid blood must be refrigerated
 - Bones/Food must be frozen
 - Swabs, Clothing can be maintained in the Evidence Room at room temperature
- CSC Kits – recommended that they are refrigerated prior to analysis – Toxicology evidence or a liquid blood standard may have been collected
 - After analysis, CSC kits can be stored at room temperature
- Ensure that evidence is dry (bloody clothing) before packaging for storage
- Recommend that a Temperature Log is maintained for the refrigerators and freezers containing evidence

Temperature Control Record



**Evidence Room 150
Temperature Control Record**

Equipment Type: _____ Range: 2°C – 6°C
 Month: _____

1	2	3	4	5	6	7	8	9	10	11
12	13	14	15	16	17	18	19	20	21	22
23	24	25	26	27	28	29	30	31		

Maintenance/Repair: _____

SLED Forensic Form # EVC 003, December 2013
Page 1 of 1

Issuing Authority: Quality Manager

Long-Term Evidence Storage

- Firearms Evidence:
 - Guns should be packaged in gun boxes if possible – envelopes, paper bags can tear and can pose a hazard for custodians
 - Cartridge cases/fired bullets can be packaged in an envelope/evidence bag
 - All weapons should be **unloaded** prior to placing into storage
- All evidence should be properly packaged prior to placing in Evidence Room for long-term storage – secure with packing tape and evidence tape

Secure Storage for Large Items

- Vehicles
- Bicycles
- Appliances
- External areas, such as impoundment lots, are vulnerable. When assessing the degree of security, weigh the importance of the property and consequences if it is stolen, damaged, or contaminated while in custody

Chain of Custody

Purpose of Chain of Custody

- Electronic or manual documentation of the descriptive inventory and physical location of evidence and/or biological material
- Generated and maintained by recording each physical transfer of evidence
 - Person to person
 - Person to storage location
- Important for court purposes
- Important for the Evidence Preservation Act – documentation that evidence was secure at all times

Chains of Custody

**South Carolina Law Enforcement Division
Forensic Services Laboratory
CHAIN OF CUSTODY**

Laboratory Case Number: _____
Agency of Origin: _____
Agency Case Number: _____

DESCRIPTION OF EVIDENCE

DATE	TIME	RECEIVED BY	RECEIVED BY	COMMENTS

Issuing Authority: Quality Manager Page 1 of 1 SLED Forensic Form #15A-098, January 2014

CERTIFICATION OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

This is to certify that I, _____, NRE# _____, am employed by _____ and that on _____ I seized from _____ pursuant to _____ at or near _____ The following substance(s) or container(s) _____

Signed: _____ Print Name: _____ Date: _____

Subsequent Chain of Custody Following Seizure:

DATE	TIME	RECEIVED BY	RECEIVED BY	COMMENTS

ISSUED BY: PPR02.2.16.0

Electronic Chain of Custody

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody
L09-12016

Item: SP - One (1) sealed envelope containing OIG. Eir described in Tiki's Hughes

Substation: _____

Date	Time	Container	Custody Of	Location / Person
5/15/13	14:37		Forensic Technician	Amy Stephens
5/15/13	14:37		Evidence Room (150)	Trace evidence intake storage
5/15/13	14:18		Forensic Technician	Dustin Yorknough
5/15/13	14:18		Forensic Technician	Amy Stephens
5/15/13	14:31		Evidence Disposition	Returned to Agency in person

Per Cooles - SLED

Per Cooles - SLED

Printed: 05/15/2013 14:39 Page 1 of 1

Evidence Inventory

Audit/Inventory

- An Annual Audit of all property/evidence should be conducted by a supervisor not routinely or directly connected with this function
- An Inventory of all evidentiary items should be performed if custodian responsibility transfers (conducted jointly with new custodian and other designee)

Facility Inspections

- Inspection for adherence to procedures
- Recommend semi-annual
- Characteristics to Inspect:
 - Cleanliness
 - Integrity being maintained
 - Directives being followed
 - Protection from damage/deterioration
 - Proper evidence disposal

Unannounced Inspections

- Conducted as directed by person of authority
- Can include:
 - Sealing and labeling of containers
 - Computer location vs. physical location
 - Inspection of log-book

Collection of Evidence

General Evidence Collection Tips

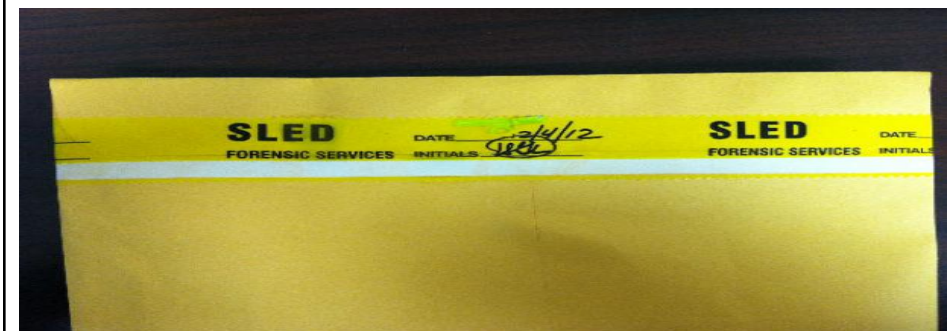
- Upon the collection of evidence, the following information should be written on the packaging:
 - Item Description
 - Name/Initials of individual collecting evidence
 - Date and time evidence was collected
- This information is used for identification purposes during inventory as well as court procedures
- Wear gloves when collecting evidence – helps prevent cross-contamination/transfer
- Do not breathe, talk, or sneeze on evidence if collecting for DNA purposes
- Drug evidence (powder, pills, rocks) should be placed in separate plastic bags prior to sealing in BEST Kit
- Hypodermic syringes must be placed in plastic safety tube

The image shows a yellow evidence processing form with the following handwritten and printed details:

- Handwritten:** AS, 12-4-2012, 1005
- Printed:** EVIDENCE PROCESSING, SLED LAB NO. 112-2012
- Form Fields:**
 - ITEM NO. 10
 - DESCRIPTION Swab from bed sheet
 - TYPE OF REQUEST:
 - BLOOD
 - SEMEN
 - _____
 - CONTROL
 - TYPE OF SAMPLE:
 - CUTTING(S)
 - SWAB(S)
 - _____
 - NOTE: _____

Sealing of Evidence

- Evidence that can be reasonably sealed should be sealed with evidence tape as soon as it is collected (Swabs, Latent Lifts, GSR Kits, Clothing)
- Evidence must be sealed in order to protect the integrity of the evidence and to ensure that the evidence remains secure during the transfer/storage process
- As an Evidence Custodian, if you receive evidence that is not sealed by the collecting officer, have them seal the evidence prior to accepting the evidence or document that you received the evidence unsealed
- The initials of the submitting/sealing officer and the date the evidence was sealed should be on the evidence tape



Collection of DNA Evidence

- Great care must be taken in the collection and preservation of DNA evidence due to potential for cross contamination and degradation
- Wear disposable gloves and change them often while collecting or handling evidence
- Instruments (scissors/tweezers) should be disposable or cleaned thoroughly before and after collection of each sample
- Avoid talking, sneezing, and coughing over evidence
- Avoid touching your face, nose, mouth, and hair when collecting and packaging evidence
- Care must be taken to minimize potential contamination
- Generally, items should be packaged separately (especially those items that may contain DNA from different sources) into new paper bags or envelopes

DNA Evidence

- If your agency closes a case for any reason, please notify SLED so the evidence can be returned

Packaging of Evidence

Packaging Recommendations

- Utilize packaging that preserves the integrity of the evidence:
 - Prevent alteration, contamination, destruction, tampering, deterioration, or loss of evidence
 - Types of packaging that should be used: boxes, gun boxes, envelopes, heat sealable pouches, knife boxes, sharps containers
 - Use appropriately sized packaging for evidence
 - Paper bags should be used for the collection of evidence - not for long-term storage of evidence
 - Drug evidence should be packaged in tamper-proof packaging (BEST Kits)
 - Conduct routine inspections of packaging to ensure seals/packaging are intact

How “NOT” to Package Evidence

- Do NOT use staples when packaging evidence
 - Staples can be biohazardous and harmful
 - Staples can potentially contaminate evidence

Packaging of Wet Evidence

- Always allow evidence to dry prior to placing in packaging
- Can cause deterioration or degradation of evidence (mold, mildew)
- Sample may not be suitable for analysis
- Do not blow on the evidence to speed up the drying process

Packaging of “Sharp” Evidence

- Do not package sharp objects in envelopes or bags – boxes or sharps containers should always be used
- Can be biohazardous
- Can be harmful to individual opening package
- Can contaminate evidence
- Examples of sharp evidence: knives, box cutters, scissors
- Boxes/sharps containers help keep the evidence safe and secure while protecting individual handling evidence
- Label packaging that contains sharp evidence

Sharps Label



Packaging of DNA Evidence

- Air-dry evidence thoroughly before packaging into paper bags or envelopes
- Avoid moisture and air-tight packaging – this allows mold to grow and may affect the ability to obtain DNA results – NO PLASTIC BAGS upon initial collection of evidence
- Avoid folding items while wet – may cause the transfer of stains from one area of the item to another
- Dry items out of direct sunlight in a manner that prevents cross-contamination
- Direct sunlight and extreme heat are harmful to DNA – avoid storing evidence in locations that may get hot such as a room with no air conditioning or trunk of a police car

Secure Packaging of Firearms Evidence

Unsafe Packaging of Firearms Evidence



Unsafe Packaging of Firearms Evidence



Unsafe Packaging of Firearms Evidence



Proper Way to Secure Firearms for Storage and Transportation



- Contact the Firearms Department if there are questions regarding proper packaging or proper way to secure a firearm

Submission of Evidence

New Submission Procedure- Evidence Submission Lockers



Evidence Submission Lockers

- New submission procedure went into effect on April 3rd, 2017
- All routine evidence is submitted through the Evidence Submission Lockers instead of an Evidence Control technician
- Large items of evidence (bicycle, bumpers) and cases with a large amount of evidence can be submitted through Evidence Control due to size
- All evidence must be packaged and sealed by submitting agency either prior to arrival or prior to placing evidence into a locker – responsibility of the agency to package evidence properly. Evidence Control will be available to assist if needed.
- All Evidence Locker submissions must be pre-logged through iLAB – choose “Evidence Submission Lockers” as the delivery type in iLAB
- Submission paperwork must be printed and deposited with evidence
- All submission paperwork must be fully completed – Chain of Custody submitted with BEST kits
- Individual physically placing evidence into the lockers must sign the submission paperwork
- An Incident Report should be submitted with all cases except drug cases

Evidence Submission Lockers

- Each package containing evidence submitted through the lockers should contain your agency's case number and a brief item description for identification purposes
- All current submission guidelines must be followed
- Notify Evidence Control Technician immediately if evidence is wet
- Notify Evidence Control Technician if submitting a loaded weapon – DO NOT BRING INTO LABORATORY UNTIL RENDERED SAFE!!!
- If resubmitting evidence, do not remove the evidence from the original SLED packaging
- Paper bags will not be accepted through the Evidence Submission Lockers – must be packaged in heat seal pouch, envelope, or box
- Contact Evidence Control if there are questions regarding packaging or submission of evidence through the Evidence Submission Lockers
- Step-by-Step instructions are located in the lobby area of the Evidence Submission Lockers
- An Evidence Control technician will be available to assist with packaging evidence and depositing evidence into the Evidence Submission Lockers

Evidence Submission Lockers

- "Said to Contain" Policy
- Original submission paperwork will be returned to submitting agency
- Evidence Submission Receipts are available for download on iLAB
- If submission paperwork is not signed, the submitting official will be contacted and must return to sign the paperwork before evidence will be logged in
- If evidence is received unsealed, photos will be taken of the condition of the evidence when received and a note will be made on the Chain of Custody that is provided to the courts regarding the condition of the evidence.
- Sexual Assault Cases: The CSC Kit box will be photo documented by Evidence Control which will capture case information and Chain of Custody information. After all evidence is removed and photos have been taken of the box, the box will be disposed of by Evidence Control.

How “NOT” to Submit Evidence

- Poses a biological hazard
- Evidence could be compromised
- There may not be enough sample available for analysis
- Potential concern if case goes to trial

Submission of Drug Evidence

- Verify that BEST Kit is sealed
- Verify that sealing official has printed, signed, and dated the BEST Kit
- New BEST Kits
- Verify that the Chain of Custody (Rule 6, Form B and/or C) is completed prior to arrival
- Only submit paraphernalia, non-evidentiary items, or sharp objects if they are absolutely essential to a case
- Sharps must be packaged in a sharps container prior to submission
- Do not submit wet powders, tablets, or other wet suspect materials in a BEST Kit – can affect weight of sample due to solvent that may be used
- Only a representative sample of liquid seized from clandestine laboratories will be accepted for analysis – seal samples in glass vials, secure the vials in plastic bottles, and then seal bottles in plastic bags to prevent leakage
- If submitting evidence that may contain hazardous substances, please document on the Drug Analysis Request Form as well as the outside of the BEST Kit/Packaging
- Be cautious when field-testing drug evidence

Submission of Drug Evidence

- Submissions containing whole plants should be packaged and labeled separately to prevent cross-contamination between plants
- In cases involving seizures of less than 100 plants, all plants should be photographically documented. The leaves and buds from each plant should then be removed from the stalks and packaged separately to prevent cross-contamination. This type of case will be based on weight.
- In cases involving 100 plants or more, all plants should be photographically documented. Once documentation is completed, a representative sample from each plant should be taken and packaged separately to prevent cross-contamination. This type of case will be based on the number of plants.

New BEST Kits



Submission of DNA Evidence

- Buccal swabs should always be packaged separately
- The Laboratory will accept 5 items of DNA evidence for Violent Crimes and 2 items of DNA evidence for Non-Violent Crimes
- Always submit a victim's known standard if applicable
- Attempt to obtain/submit subject's known standard

CODIS

- CODIS is an investigative tool
- Even though a sample for an individual may have been collected for CODIS, we must have a standard from the subject or a reason why one was not collected and submitted
- CODIS is regulated by the FBI with strict guidelines
- Adequate documentation of the crime must be submitted

SUBMISSION OF TOXICOLOGY EVIDENCE

■ Rapid Panel vs. Expanded Panel

Return of Evidence

- Please be prepared to receive evidence that is ready for return to your agency
- Toxicology evidence will be returned after analysis – evidence will have to be refrigerated/frozen upon return to your agency
- Blood tubes submitted for DNA will be returned after analysis – evidence will need to be refrigerated upon return to your agency
- Notify SLED if evidence no longer requires analysis
- Lists of evidence with open assignments are being sent to Judicial Circuits to determine status of cases as well as if all evidence submitted in a particular case requires analysis

iLAB

iLAB Capabilities

- Internet based program which allows agencies to pre-log evidence prior to submission
- Enter case information, victim/subject information, items of evidence, and forensic analysis requests
- Receive completed Forensic Services reports
- Track the status of evidence submitted
- Retrieve Evidence Submission Receipts
- Email ilabrequests@sled.sc.gov for password reset, new accounts

Preservation of Evidence Act Section 17-28-320 Is your Agency complying?

What is the Preservation of Evidence Act?

- There are 24 offenses in which the physical evidence or biological material must be preserved if they are related to the conviction or adjudication of a person
- The Evidence Act requires that all physical evidence and biological material related to the conviction or adjudication - obtained by trial or plea - be preserved
- "Biological material" means any blood, tissue, hair, saliva, bone, or semen from which DNA marker groupings may be obtained. This includes material catalogued separately on slides, swabs, or test tubes or present on other evidence including, but not limited to, clothing, ligatures, bedding, other household material, drinking cups, or cigarettes

Offenses

- Murder
- Killing by Poison
- Killing by stabbing or thrusting
- Voluntary manslaughter
- Homicide by child abuse
- Aiding and abetting a homicide by child abuse
- Lynching in the first degree
- Killing in a duel
- Spousal sexual battery
- CSC in the first degree
- CSC in the second degree
- CSC in the third degree
- CSC with a minor
- Arson in the first degree resulting in death
- Burglary in the first degree for which the person is sentenced to 10 years or more
- Armed robbery for which the person is sentenced to 10 years or more
- Damaging or destroying a building, vehicle, or property by means of an explosive incendiary resulting in death
- Abuse or neglect of a vulnerable adult resulting in death
- Sexual misconduct with an inmate, patient, or offender
- Unlawful removing or damaging of an airport facility or equipment resulting in death
- Interference with traffic-control devices or railroad signs or signals resulting in death
- Driving a motor vehicle under the influence of alcohol or drugs resulting in death
- Obstruction of railroad resulting in death
- Accessory before the fact

What does the Evidence Act mean for Evidence Custodians?

- In Section 17-18-310 of the Evidence Act, a Custodian of Evidence is described as an agency or political subdivision of the State including, but not limited to, a law enforcement agency, a solicitor's office, the Attorney General's Office, a county clerk of court, or a state grand jury that possess and is responsible for the control of evidence during a criminal investigation or proceeding, or a person ordered by a court to take custody of evidence during a criminal investigation or proceeding
- In short, an Evidence Custodian is an entity who has "control" of the evidence and is considered the responsible party during a criminal investigation or proceeding
- The Evidence Custodian has the following responsibilities:
 - Chain of Custody
 - Able to locate evidence
 - Security of evidence
 - Integrity of evidence

Complying with the Evidence Act

- Identify cases in which evidence must be preserved – complete an audit of your evidence room to determine which cases have evidence, type of evidence, location of evidence, and any documentation related to that case/evidence
- After identifying the cases, contact the Solicitor’s Office to determine the status of each case – the following questions should be asked:
 - Charges pending?
 - Charges pursued?
 - Has case been resolved? If so, how was the case resolved? – Conviction (trial or plea) or other dismissal (PTI)
 - Sentencing?

Length of Time Evidence Must be Preserved *Trial Convictions*

- Defendants convicted by bench or jury trial
- Physical evidence and biological material must be preserved until the person is:
 - Released from incarceration
 - Dies while incarcerated
 - Executed for the offense enumerated in Section 17-28-320 (A)

Length of Time Evidence Must be Preserved *Conviction by Plea*

- Defendants convicted or adjudicated on a guilty (nolo contendere) plea
- Physical evidence and biological material must be preserved for:
 - Seven years from the date of sentencing
 - Person is released from incarceration
 - Dies while incarcerated
 - Executed for the offense enumerated in Section 17-28-320 (A)

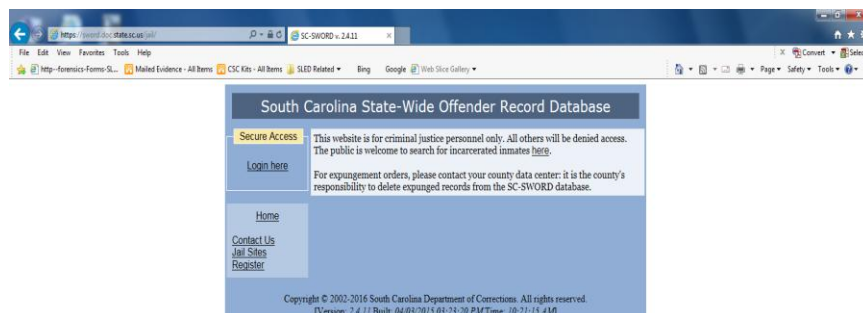
What if a defendant is released from confinement?

- Evidence must still be preserved if a defendant is released from confinement on probation, parole, or community supervision program
 - Defendant could have the above revoked and return to prison to complete remainder of sentence

Registration Requirements

- After a defendant has been convicted or adjudicated for an offense listed in Section 17-28-320 (A), the Evidence Custodian must register with SCDC or SCDJJ
- To register with SCDC, go to <https://sword.doc.state.sc.us/jail/>
- SCDC Registration can be completed on-line
- To register with SCDJJ, contact the Office of the SC Inspector General
- It is a requirement that SCDC or SCDJJ notify an Evidence Custodian if a defendant is released, dies, or is executed

SC State-Wide Offender Record Database



COE Registration Form

Where do we store the preserved evidence ?

- Choose a specific area to store evidence that should be preserved – easily accessed and easy to determine where this type of evidence is located in your Evidence Room
- Mark the evidence with a specific label (DNA ACT or EVIDENCE ACT) to ensure the evidence is easily identifiable
- If you do not have the facilities (smaller departments) or if the funds are not available to build a facility, contact your local Sheriff's Office to determine if they can help store evidence that must be preserved (conditions of storage would need to be contracted between departments)

Criminal Liability for Evidence Custodians

- Section 17-28-350 provides that it is a misdemeanor offense for a custodian of evidence to willfully and maliciously destroy, alter, conceal, or tamper with physical evidence or biological material that is required to be preserved under the Act with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding
- Important for an Evidence Custodian to be able to locate the physical evidence or biological material at any time
- Ensure that a Chain of Custody is maintained at all times
- Ensure that the evidence has been kept in a safe and secure manner

Destruction/Disposition Procedures

- Establish retention guidelines in accordance with the SC Preservation of Evidence Act (Section 17-28-320)
- Follow guidelines for Early Destruction or Release of Evidence (Section 17-28-340)
- Create Form – Authorization of Destruction
 - Investigating Officer should authorize destruction
 - Means of destruction should be documented
- Require witness to all destructions (2 Man Rule)
- Return property to owners
- If in doubt about destroying or returning evidence, contact proper legal authority

Forensics Services Destruction Form

- Individual authorizing destruction
- Case number and items authorized to be destroyed
- Notarized
- Means of Destruction
- Individuals destroying/witnessing destruction

**South Carolina Law Enforcement Division (SLED)
Forensic Services Laboratory
EVIDENCE DESTRUCTION FORM**

I, _____ (PRINT NAME), as a representative of _____ (EMPLOYING AGENCY), do hereby state that the evidence I am submitting to the South Carolina Law Enforcement Division ("SLED") for destruction has been thoroughly searched and has been deemed appropriate for destruction in accordance with the South Carolina Code of Laws of 1976 as amended, Title 17 Chapter 28 Articles 1 and 2. This evidence has been inventoried with the attached "audit to custody" inventory.

My employing Agency also swears that the evidence submitted for destruction does not need to be retained in its entirety, the items involving the item(s) has been adjudicated, and/or that the item(s) are not needed for any future civil or criminal proceedings related to any other case(s).

My accompanying signature also swears SLED that my Agency will take full and total responsibility should any subsequent legal action result from item(s) submitted for destruction in strict accordance with Title 17 Chapter 28 Article 1 and 2.

SLED Lab. Case No.: 1. _____ Agency Case No.: _____
 Item Number(s) and description (attach separate sheet if necessary): _____

Department: (PLEASE CHECK ALL THAT APPLY)
 DNA FIBER ANALYSIS FIREARMS
 LATENTS/SCIENCE SCENE PROTOLOGY QUESTIONED DOC.
 TOXICOLOGY TRACE

_____, (PRINT NAME) _____, (EMPLOYING AGENCY)
 _____, (SIGNATURE) _____, (DATE)

Notarized/affirmed to and subscribed before me on this _____ day of _____, 20____.

Personally known | or (Produce identification) | type of identification produced _____.

(Signature of Notary Public) _____
 (Printed name of Notary Public) _____
 Richard County, South Carolina
 My commission expires _____ (Notary Seal)

Means of Destruction: Incinerator Bulkhead Waste Precious Metals Shred Other _____
Individual performing destruction _____ (PRINT NAME) _____ (SIGNATURE) _____ (DATE)
Individual witnessing destruction _____ (PRINT NAME) _____ (SIGNATURE) _____ (DATE)

SLED Form 700 Rev. 01, April 2011

Early Disposition of Evidence

- Evidence custodian may petition General Sessions Court or Family Court in which the person was convicted or adjudicated for an order allowing physical evidence or biological material to be destroyed/disposed of prior to the required storage time only under the following circumstances:
 - The physical evidence/biological material must be returned to the rightful owner, size of item makes retention unfeasible, or required to be disposed of by law
 - DNA evidence was previously introduced at trial, was found to be inculpatory, and all appeals and post-conviction procedures have been exhausted

CAUTION!!!!

- If you have evidence in your evidence room in which the case is pending trial, on appeal, or if a defendant is pursuing post-conviction relief, **DO NOT DESTROY!!!!**
- If you are in doubt about returning/disposing of any evidence, contact your Solicitor's Office prior to disposing of the evidence
- Use **CAUTION** when determining if evidence should be destroyed!!!! – You could be held **LIABLE!!!**

Evidence Destructions

- Has your agency destroyed, disposed of, or returned to owner any evidence/records since October 8, 2008?
 - If evidence was destroyed/disposed of/returned to owner due to lack of knowledge about the Evidence Act:
 - A record should be made to document the case number, type of evidence, how the evidence was disposed of, the date evidence was disposed of, the individuals involved with the disposition, and why evidence was disposed of
 - The record should be forwarded to your Solicitor's Office
 - Policies/Procedures should be developed to prevent the unwilling disposal of evidence (Destruction Form)

Improper Destruction of Evidence

- What if an evidence custodian has been made aware of the Act and destroys/returns/disposes of the evidence covered by the Act?
 - The agency should conduct an investigation immediately to determine if destruction/disposition was willful misconduct or gross negligence
 - A record should be made documenting case number, type of evidence destroyed/disposed of, manner of disposal, date of disposal, individuals involved, and reason for disposal
 - Record should include result of investigation and response to the destruction of the evidence
 - A copy of the report should be forwarded to the Solicitor's Office

Improper Destruction of Evidence

- Consequences of willful misconduct:
 - Discipline/termination
 - Criminal liability for the responsible person
 - Civil liability for the responsible person and agency
- Consequences of gross negligence:
 - Discipline/termination
 - Civil liability for responsible person and agency

Additional Training

- International Association of Property and Evidence
- www.iape.org

Thank You

Amy Stephens
astephens@sled.sc.gov
803-896-7302

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South Carolina Commission on Prosecution Coordination

Prosecution CLE Series™

“Getting, Storing, Retaining and Releasing Evidence: Legal and Practical Considerations”

Florence, South Carolina
July 24, 2017



SECTION 3

“Retaining, Releasing, and Destroying Evidence: Obligations and Restrictions Imposed by the South Carolina Preservation of Evidence Act (and penalties sand Liability for Noncompliance)”

Amie L. Clifford
Education Coordinator
S.C. Commission on Prosecution Coordination
Columbia, South Carolina

SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

Presentation on

“The Preservation of Evidence Act”

Outline by

Amie L. Clifford*
Education Coordinator

N. Mark Rapoport
Staff Attorney

South Carolina Commission on Prosecution Coordination
Columbia, South Carolina

DISCUSSION NOTES AND DETAILED OUTLINE

This presentation and outline will provide an overview of the Preservation of Evidence Act enacted on October 8, 2008, along with some practical considerations for clerks of court, law enforcement agencies and officers, and prosecutors. One section of the Act, Section 17-28-350 (criminal liability for noncompliance), became effective on October 8, 2008, and the remainder became effective on January 1, 2009. This outline has been updated through February 17, 2016.

I. Review of the Act Itself

A. Section 17-28-310 – Definitions of Terms used in the Act;

(1) “Biological material” means any blood, tissue, hair, saliva, bone, or semen from which DNA marker groupings may be obtained. This includes material catalogued separately on slides, swabs, or test tubes or present on other evidence including, but not limited to, clothing, ligatures, bedding, other household material, drinking cups, or cigarettes.

(2) “Custodian of evidence” means an agency or political subdivision of the State including, but not limited to, a law enforcement agency, a solicitor’s office, the Attorney General’s Office, a county clerk of court, or a state grand jury that possesses and is responsible for the control of evidence during a criminal investigation or proceeding, or a person ordered by a court to take custody of evidence during a criminal investigation or proceeding.¹

* Outline originally written in 2010 by Amie L. Clifford. Outline updated by Amie L. Clifford and N. Mark Rapoport.

¹ In an opinion, the South Carolina Attorney General has concluded that a coroner falls under the definition of “custodian of evidence” for purposes of the Act. *S.C. Op. Att’y Gen* (September 15,

- (3) “DNA” means deoxyribonucleic acid.
- (4) “DNA profile” means the results of any testing performed on a DNA sample.
- (5) “DNA record” means the tissue or saliva samples and the results of the testing performed on the samples.
- (6) “DNA sample” means the tissue, saliva, blood, or any other bodily fluid taken at the time of arrest from which identifiable information can be obtained.
- (7) “Incarceration” means serving a term of confinement in the custody of the South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice and does not include a person on probation, parole, or under a community supervision program.
- (8) “Law enforcement agency” means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.
- (9) “Physical evidence” means an object, thing, or substance that is or is about to be produced or used or has been produced or used in a criminal proceeding related to an offense enumerated in Section 17-28-320, and that is in the possession of a custodian of evidence.

*At first blush, a literal reading of the words used to define “physical evidence” might lead the reader to conclude that, in the post-conviction context, it only includes evidence actually introduced or otherwise “used” in a criminal proceeding (such as marked for identification only; used for impeachment purposes, but not admitted; or offered for admission, but not admitted). However, that does NOT appear to be the definition actually intended by the Legislature.² **Instead, it can only be concluded that the term***

2010) (Addressed to Coroner Gary Watts). *See also S.C. Op. Att’y Gen* (October 12, 2010) (Addressed to Coroner Gary Watts). **Please note that all South Carolina Attorney General Opinions are found on the Attorney General’s website at www.scag.gov (Opinions Tab).**

² The “Preservation of Evidence Act” is relatively new legislation for which there has been no guidance, through appellate court opinions, from the courts. However, statutes must be interpreted so as to give effect to the Legislature’s intent in enacting them.

“All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.”

The Court should give words “their plain and ordinary

includes all evidence collected in a case, regardless of whether it was used in a criminal proceeding. See *S.C. Op. Att’y Gen (May 12, 2011) (Addressed to Chief Deputy Coroner Richard Carter)*.

There are at least two arguments that support the conclusion that the definition of “physical evidence” means all evidence collected in a case, regardless of whether it was used in a criminal proceeding.

*First, the “Preservation of Evidence Act” is part of larger piece of legislation, Act 413 of 2009, that included the “Access to Justice Post-Conviction DNA Testing Act” aimed at providing convicted defendants with the opportunity to have evidence – which was not previously subjected to DNA testing or not to the same type of DNA testing – tested to determine whether it possesses any exculpatory value. Items from which DNA or other forensic evidence has not been developed is not always introduced at trial. Therefore, it is often evidence that never played a part in a defendant’s trial that is the focus of a post-conviction DNA test or testing application. If “physical evidence” were interpreted to only include those items of evidence actually used in court, the testing provided for in the “Access to Justice Post-Conviction DNA Testing Act” could not be accomplished (because the evidence would not have been retained). See *State ex.rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778, 782 (1964) (“When the [legislature] has clearly expressed its intention in one or more parts of an act, it will be presumed that it had the same intention in another part unless a different intention clearly appears”).*

Second, the “Preservation of Evidence Act” requires that all “physical evidence” and “biological material” related to the conviction or adjudication – obtained by trial or plea – be preserved. Rarely is evidence used in a guilty plea proceeding. Therefore, there would be no need for the Legislature to have included convictions and adjudications obtained by guilty plea if “physical evidence” only included, in the post-conviction context, evidence used in a judicial proceeding.

meaning without resort to subtle or forced construction to limit or expand the statute's operation.” “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. “Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.”

Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.

State v. Sweat, 386 S.C. 339, 688 S.E.2d 569, 575 (2010).

B. Section 17-28-320: What Evidence must be Preserved, the Conditions for Preservation, and the Length of Time it Must be Preserved.

1. What Evidence must be Preserved?

In subsection (A) of Section 17-28-320, the legislature has provided that a custodian of evidence must preserve **ALL physical evidence and biological material** related to the conviction or adjudication of a person for at least one of the following offenses:

- (1) murder (Section 16-3-10);
- (2) killing by poison (Section 16-3-30);
- (3) killing by stabbing or thrusting (Section 16-3-40);
- (4) voluntary manslaughter (Section 16-3-50);
- (5) homicide by child abuse (Section 16-3-85(A)(1));
- (6) aiding and abetting a homicide by child abuse (Section 16-3-85(A)(2));
- (7) lynching in the first degree (Section 16-3-210);
- (8) killing in a duel (Section 16-3-430);
- (9) spousal sexual battery (Section 16-3-615);
- (10) criminal sexual conduct in the first degree (Section 16-3-652);
- (11) criminal sexual conduct in the second degree (Section 16-3-653);
- (12) criminal sexual conduct in the third degree (Section 16-3-654);
- (13) criminal sexual conduct with a minor (Section 16-3-655);
- (14) arson in the first degree resulting in death (Section 16-11-110(A));
- (15) burglary in the first degree for which the person is sentenced to ten years or more (Section 16-11-311(B));
- (16) armed robbery for which the person is sentenced to ten years or more (Section 16-11-330(A));

- (17) damaging or destroying a building, vehicle, or property by means of an explosive incendiary resulting in death (Section 16-11-540);
- (18) abuse or neglect of a vulnerable adult resulting in death (Section 43-35-85(F));
- (19) sexual misconduct with an inmate, patient, or offender (Section 44-23-1150);
- (20) unlawful removing or damaging of an airport facility or equipment resulting in death (Section 55-1-30(3));
- (21) interference with traffic-control devices or railroad signs or signals resulting in death (Section 56-5-1030(B)(3));
- (22) driving a motor vehicle under the influence of alcohol or drugs resulting in death (Section 56-5-2945);
- (23) obstruction of railroad resulting in death (Section 58-17-4090);
or
- (24) accessory before the fact (Section 16-1-40) to any offense enumerated above.

ALERT: The Preservation of Evidence Act *only* deals with and governs the preservation of evidence related to 24 specific crimes (and their related offenses) that are enumerated in S.C. Code Section 17-28-320 (A) (see pages 2-4 herein). Custodians need to be aware that physical and biological evidence in other cases still needs to be preserved while the cases are pending at the trial level, while on appeal, and while the defendant is pursuing or is able to pursue collateral relief (post-conviction relief or federal habeas relief). To avoid violating a defendant's constitutional rights (see, e.g., *Skinner v. Switzer*, 562 U.S. 521 (2011) (holding DNA tests sought by State prisoner in §1983 action might prove exculpatory) or depriving the State of the evidence it may need to re-prosecute someone, evidence in all other cases should still not be destroyed, returned, or otherwise disposed of without reasonable notification to and approval of the prosecutor's office or the South Carolina Attorney General's Office. See *S.C. Op. Att'y Gen* (June 17, 2015) (Addressed to Deputy Medical Examiner James Fulcher, M.D).

Non-prosecutor custodians of evidence should be encouraged to contact the Solicitor's Office and the South Carolina Attorney General's Office (Don Zelenka at agdzelenka@scag.gov or 803-734-3970 for capital cases, and Ben Aplin at baplin@scag.gov or 803-734-3727 for all other cases) to determine the status of all cases.

2. Conditions under which the evidence must be preserved

In subsection (B) of Section 17-28-320, the legislature has provided that the physical evidence and biological material must be preserved:

- (1) subject to a chain of custody as required by South Carolina law;
- (2) with sufficient documentation to locate the physical evidence and biological material; and
- (3) under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material.

a. Chain of Custody

i. General Review of Chain of Custody Requirements

(a) Fungible v. Nonfungible Items

Fungible items are items that are not readily identifiable and may be easily tampered with or altered, such as blood and drugs and other controlled substances.

Nonfungible items are items that are distinct physical objects that can be identified and differentiated by the senses of observation. They are unique and readily identifiable, such as a gun with a serial number.

Fungible items: A party offering fungible items as evidence must establish a chain of custody. *State v. Cribb*, 310 S.C. 518, 426 S.E.2d 306 (1992); *State v. Governor*, 362 S.C. 609, 608 S.E.2d 474 (Ct. App. 2005); *State v. Joseph*, 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct. App. 1997).

Where a fungible item has passed through several hands, the evidence must not leave to conjecture who had it and what was done with it between the seizure of the evidence and any analysis (and, perhaps, even through its presentation at any trial). Therefore, Law enforcement should take steps to ensure that **each** person in the chain of possession is identified – who had it, from where he or she got it, what they did with it, who they gave it to, and any notes or comments about the condition of the item.

At trial, the proof of chain of custody for fungible items need not negate all possibility of tampering, but only must establish

a complete chain of evidence *as far as practicable*. *Id.*; *State v. Williams*, 297 S.C. 290, 376 S.E.2d 773 (1989); *State v. Glenn*, 328 S.C. 300, 492 S.E.2d 393 (Ct. App. 2004).

- Rule 6, SCRCrimP: Additional Way of Establishing Chain of Custody for Drugs

The South Carolina Rules of Criminal Procedure provide an alternative way to establish a chain of custody for controlled substance or other substance regulated by Title 44, Chapter 53 of the Code of Laws or Rule 61-4 of the Department of Health and Environmental Control. Rule 6 provides that a certified or sworn statement signed by each person having custody of that he or she delivered it to the next person stated is sufficient to establish the chain of custody without the necessity of the person(s) who signed the statement being present in court provided: (1) the statement contains a sufficient description of the substance or its container to distinguish it; (2) the statement says the substance was delivered in substantially the same condition as when received; and the defendant does not demand that persons in the chain appear in court.

To take advantage of Rule 6(b), the “Chain of Physical Custody or Control” Forms B (for person who initially takes possession of substance) and C (for use when anyone else takes possession of the substance – even temporarily) should be used. These forms have been approved by the Supreme Court of South Carolina, and can be found in the forms appendix to the South Carolina Rules of Criminal Procedure (and included in the appendix to this outline; they can also be found online by going to <http://www.sccourts.org/forms> and inserting “custody” into the Search #2 box). See *State v. Sweet*, 374 S.C. 1, 647 S.E.2d 202, 206 (2007) (South Carolina Supreme Court held that chain of custody of drugs purchased from unknown informant was defective, because none of the witnesses in the chain of custody who monitored the audio of the purchase inside the motel room were able to identify the voice of the defendant, and there was an absence of testimony from the unknown informant which failed to establish the identity of each person who handled the evidence).

NOTE: While the forms for Rule 6 were approved by the Court for purposes of controlled substances, they provide a

good example of the information a good chain of custody form for any type of evidence must contain.

Non-Fungible items: The legal chain of custody requirement (what the prosecution is required to prove at trial to have evidence admitted) is not the same when non-fungible evidence is offered. With non-fungible evidence, all that is required is identification and a showing of relevance. However, law enforcement should still take steps to ensure that **each** person in the chain of possession is identified – who had it, from where he or she obtained it, what they did with it, who they gave it to, and any notes or comments about the condition of the item.

(b) Other Considerations

Criminal defendants have a constitutional right to confront the witnesses against them. This right extends to those persons involved in the chain of custody. For that reason, law enforcement agencies should ensure that their records not only establish a legally sufficient chain of custody, but that they also contain enough information to allow for the identification and location of an officer in the chain, even years after the evidence was collected or tested, or in the event the officer is no longer employed by the agency.

b. Sufficient Documentation Aimed at Assisting Others Locate the Evidence

By statutorily requiring sufficient documentation to locate the evidence, the legislature appears to be requiring more than just a simple evidence log listing items of evidence collected in a case and chain of custody forms. It would appear that each agency with an evidence custodian will need to ensure that its system for cataloging evidence in the evidence room readily identifies where the specific location of each piece of evidence is located within the evidence room (or, if not in the evidence room, where it is located and by whom it is possessed with information as to the time of any transfer of possession).

The system utilized by an agency should take into account the need to locate evidence under **all** circumstances. For example, if the system is entirely computer based (*e.g.*, a barcode system), there should be a “back-up plan” for locating the evidence in the case of a power outage.

NOTE: SLED and other law enforcement agencies may have

information to share about the most effective or efficient ways of cataloguing evidence, as well as document control and maintenance.

c. Under Conditions Reasonably Designed to Preserve the Forensic Value of the Physical Evidence and Biological Material

Each agency with a custodian of evidence will need to ensure that it stores the evidence under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material. This requirement includes the obligation to ensure that the materials are packaged appropriately (for example, does evidence need to be dried? Can it be stored in a plastic bag versus a paper bag?) and the storage environment is appropriate (for example, does the evidence need to be stored in a climate controlled or refrigerated environment?).

Agencies that possess evidence that must be stored in either a climate controlled or refrigerated environment should have a means of monitoring the environment to make sure the appropriate temperature is maintained, there is a mechanism for alerting someone if the appropriate temperature is not maintained, and a back-up generator or some other back-up system if there is a power outage.

NOTE: SLED should be contacted if custodians have questions about the conditions necessary for the different types of evidence.

3. Length of Time the Evidence must be Preserved

In subsection (C) of Section 17-28-320, the legislature has set out the length of time the evidence must be preserved.

- Trial Convictions. For defendants convicted by bench or jury trial, the physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A).
- Conviction by Plea. For defendants convicted or adjudicated on a guilty or *nolo contendere* plea, the physical evidence and biological material must be preserved for **seven years** from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first.

NOTE: The definitional section, “incarceration” only means actual confinement within either the Department of Corrections or Department of Juvenile Justice. It does not include probation,

parole, or community supervision programs. *See* S.C. Code Section 17-28-310 (7). However, a person who has been released from confinement on probation, on parole, or under a community supervision program is subject to having that revoked and being returned to prison to serve out the remainder of his sentence. For that reason, evidence custodians need to ensure that evidence is not destroyed on “stale” release notifications. If time has passed since the release notification was received, the best practice would be to inquire of the custodial agency from whom the release notification was received if the defendant has been returned to prison (and, thus, “incarcerated” for purposes of the Act). As always, this information should be obtained in writing.

C. Section 17-28-330 – Registration and Notification of Custodians of Evidence

1. Registration Requirement for Custodians of Evidence

a. Requirement

Section 17-28-330 (A) requires that, after a defendant has been convicted or adjudicated for an offense listed in Section 17-28-320, a custodian of evidence **shall** register with the South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice, as applicable, as a custodian of evidence for physical evidence or biological material related to the defendant’s conviction or adjudication.

b. Compliance

i. South Carolina Department of Corrections

The Department of Corrections has created and posted a form online for use by custodians of evidence to register with the agency. To access this form, please go to <https://sword.doc.state.sc.us/jail> and “click” where indicated to register as a custodian of evidence (COE). (A copy of that form is included in the appendix to this outline.) This form can be filled out online or printed and filled out; however, it cannot yet be submitted online. The form must be either mailed or scanned and emailed to the Department of Corrections (the mailing and email addresses are set out on the bottom of the form). Once a custodian is registered, personnel can go back into the website and register eligible cases for notification.

ii. South Carolina Department of Juvenile Justice

The Department of Juvenile Justice did not respond to our request for an update on their registration process. However, In 2016, they were requesting that those custodians who need to register with it do so by contacting the Inspector General's Office (803-896-9357) (someone in that office will either take the information over the telephone or fax/email a registration form that the agency can complete and return it by mail).

2. Notification Requirement for Department of Corrections and Department of Juvenile Justice

Section 17-28-330 (B) requires that the South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice, as applicable, **shall** notify a custodian of evidence registered pursuant to subsection (A) if a defendant is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in Section 17-28-320.

D. Section 17-28-340 – Early Destruction or Release of Evidence

1. Authorization for Early Destruction

Under Section 17-28-340 (A), a custodian of evidence may petition the general sessions court or family court in which the person was convicted or adjudicated for an order allowing it to destroy or otherwise dispose of the physical evidence or biological material prior to the period of time described in Section 17-28-320 if:

- (1) the physical evidence or biological material must be returned to its rightful owner, is of such size, bulk, or physical character as to make retention impracticable, or is otherwise required to be disposed of by law; or
- (2) DNA evidence was previously introduced at trial, was found to be inculpatory, and all appeals and post-conviction procedures have been exhausted.

2. Procedure for Early Destruction

a. Petition by Custodian of Evidence

Under Section 17-28-340 (B), a custodian of evidence seeking an order for the early destruction or release of evidence must file a petition with the general sessions court or family court in which the person was convicted or adjudicated. The petition must:

- (1) be made on such form as prescribed by the Supreme Court;

See the appendix for a copy of the “Petition for an Order Allowing for Disposition of the Physical Evidence or Biological Material” approved by the Supreme Court of South Carolina (and found on its website at <http://www.judicial.state.sc.us/forms/pdf/SCCADNA102.pdf>). Please note that a revised form – correctly the caption format and more clearly indicating that only an attorney may file a petition and represent the custodian in court – is currently under consideration by the Court.

- (2) identify the proceedings in which the person was convicted or adjudicated;
- (3) give the date of the entry of the judgment and sentence;
- (4) specifically set forth the physical evidence or biological material to be disposed of; and
- (5) specifically set forth the reason for the disposition.

CAUTION: Non-attorneys should **not** be preparing, without direct supervision by an attorney, or signing legal pleadings such as the petition or representing custodians of evidence in regard to petitions for early release or destruction because such would most likely constitute the unauthorized practice of law. See S.C. Code Section 40-5-310 (“No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina”). In S.C. *Op. Att’y Gen* (March 26, 2013) (Addressed to County Auditor Linda Mock), the Attorney General noted:

[t]he generally understood definition of the practice of law “embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts... [citing *State v. Despain*, 319 S.C. 317, 460 S.E.2d 576, 577 (1995)] ...The practice of law, however, “is not confined to litigation, but extends to activities in other fields which entail specialized legal knowledge and ability”... [citing *State v. Buyers Service Co., Inc.*, 292 S.C. 426,357

S.E.2d 15, 17 (1987)].

It was further noted that:

[t]he Court in *In re Lexington County Transfer Court*, 334 S.C. 47, 512 S.E.2d 791, 792-93 (1999) further stated that:

South Carolina, like other jurisdictions, limits the practice of law to licensed attorneys. S.C. Code Ann. §40-5-310 (1976). The protection of the public so demands. Beyond the compelling public policy considerations, courts have been historically hesitant in defining broadly what constitutes the practice of law. The 'practice of law' cases tend to be fact-intensive. Indeed, our Supreme Court exercises restraint in defining the practice of law, electing to judge each case in accordance with its own facts and circumstances. Recognizing the “unclear” line between proper and improper conduct of non-attorneys, the Supreme Court noted:

We are convinced, however, that it is neither practicable nor wise to attempt a comprehensive definition by way of a set of rules. Instead, we are convinced that the better course is to decide what is and what is not the unauthorized practice of law in the context of an actual case or controversy. [*In re Unauthorized Practice of Law Rules Proposed by the South Carolina Bar*, 422 S.E.2d at 124].

There are, nevertheless, some general and fundamental principles which give guidance in determining whether certain conduct constitutes the unauthorized practice of law.

It is too obvious for discussion that the practice of law is not limited to the conduct of cases in courts ... [I]t embraces ... the management of such actions and proceedings on behalf of clients before judges and courts ... An attorney at law is one who engages in any of these branches in the practice of law. The following is the concise definition given by the Supreme Court of the United States: 'Persons acting professionally in legal formalities, negotiations, or proceedings by the warrant or authority of their clients may be regarded as

attorneys at law within the meaning of that designation as employed in this country.' *In re Duncan*, 83 S.C. 186, 65 S.E. 210, 211 (S.C. 1909).

“It is the character of the services rendered, not where they are rendered, which determines whether the acts constitute the practice of law.” *Matter of Peebles*, 297 S.C. 36, 374 S.E.2d 674, 677 (S.C. 1988).

b. Clerk of Court’s Responsibilities upon Receipt of Petition

Section 17-28-340 (C) provides that the clerk of court shall file the petition upon its receipt and then promptly

- (1) bring it to the attention of the court, and
- (2) deliver a copy to the convicted or adjudicated person,
- (3) deliver a copy to the solicitor or Attorney General, as applicable, and

NOTE: It may be prudent for the Clerk of Court to deliver a copy to *both* the prosecuting Solicitor’s Office and the Attorney General’s Office because the case could have been prosecuted by the Solicitor but have an appeal or collateral attack pending in which the Attorney General’s Office is handling for the state.

- (4) notify the victim of the petition pursuant to Article 15, Chapter 3, Title 16.

The Clerks of Court may wish to work with the Solicitors’ Offices to ensure that there is a means by which they can access the victim’s contact information for purposes of the notification required by Section 17-28-340 (C). It is possible that a form could be created for purposes of requesting that information from the Solicitor’s Office when needed.

c. Response by Defendant, Prosecutor, and Victim

The statute provides that the convicted or adjudicated person and the prosecutor (solicitor or Attorney General, whichever prosecuted the case), *shall* have 180 days to respond to the petition. It also provides that the victim(s) may respond within that same time period. *See* Section 17-28-340 (D).

d. Hearing and Order

Under Section 17-28-340 (E), the court may, after a hearing, order that the custodian of evidence may dispose of the physical evidence or biological material if the court determines by preponderance of evidence that:

- (1) the physical evidence or biological material must be returned to its rightful owner, is of such size, bulk, or physical character as to make retention impracticable, or is otherwise required to be disposed of by law, or DNA evidence was previously introduced at trial, was found to be inculpatory, and all appeals and post-conviction procedures have been exhausted;
- (2) the convicted or adjudicated person, the solicitor or Attorney General, as applicable, and the victim have been notified of the petition for an order to dispose of the physical evidence or biological material;
- (3) the convicted or adjudicated person did not file an affidavit declaring, under penalty of perjury, the person's intent to file an application for post-conviction DNA testing of the physical evidence or biological material pursuant to Article 1, Chapter 28, Title 17 within ninety days followed by the actual filing of the application;
- (4) the solicitor or the Attorney General, as applicable, and the victim have not filed a response requesting that the physical evidence or biological material not be disposed of; and
- (5) no other provision of federal or state law, regulation, or court rule requires preservation of the physical evidence or biological material.

Section 17-28-340 (F) authorizes a court issuing an order for the disposition of the physical evidence or biological material to require a custodian of evidence to take reasonable measures to remove and preserve portions of the physical evidence or biological material in a quantity sufficient to:

- (1) permit future DNA testing or other scientific analysis; or
- (2) for other reasons, upon request and good cause shown, by the solicitor or Attorney General, as applicable, or the victim.

3. Miscellaneous Issues with Early Release Procedure

- a. The statute speaks in terms of “convicted” or “adjudicated” persons so it is arguable that the procedure for seeking permission from a court for the early release or destruction of evidence cannot even be utilized until such time as a case is ended.
 - b. However, *even if* the statute were to allow for a custodian to seek judicial approval for the early release or destruction of evidence prior to the disposition of a case, there would be an additional concern if the approval were sought prior to the arrest or indictment of a suspect because the statute clearly provides that a defendant is to have the opportunity to oppose the early release or destruction of evidence. Therefore, in instances, where a suspect has not been identified or arrested, a court may wish to appoint a defense attorney to act for the yet to be identified defendant(s), *i.e.*, “John Doe.” By doing such, the Court could ensure that someone would be there to look at the evidence and issue from the standpoint of the defendant(s).
4. South Carolina Attorney General Opinions on Release of Evidence Covered by the Act

The South Carolina Attorney General’s Office has issued 14 opinions addressing the release of bodies, bodily samples, and other items in light of the Preservation of Evidence Act. These Opinions, which are summarized below, may be found on the Attorney General’s website at <http://www.scattorneygeneral.org/opinions/index.html>.

- Release of vehicles confiscated upon service of claim and delivery or other repossession orders from the lienholder prior to the adjudication of criminal charges. *S.C. Op. Att’y Gen* (September 15, 2015) (Addressed to Chief Charles E. McNair, Cayce Dep’t of Public Safety).

Opinion concluded that If a confiscated vehicle that is otherwise subject to forfeiture in a claim and delivery action is also involved in any of the 24 offenses where preservation of “physical evidence” is mandated pursuant to §17-28-320(A), the vehicle, assuming it amounts to “physical evidence,” may not be released until the earliest of the circumstances outlined in §17-28-320(C) has occurred.

- The sale or auctioning of confiscated handguns for the purpose of using proceeds to buy law enforcement equipment. *S.C. Op. Att’y Gen* (August 27, 2015) (Addressed to Pickens County Sheriff Rick Clark).

The use of proceeds from the sale or auctioning of confiscated handguns to fund the law enforcement equipment must be considered

in light of the provisions of the Act requiring the custodian of evidence to preserve all physical evidence related to a conviction or adjudication until such time as the Act allows for its disposition.

- Preservation of toxicological, wet blood, and tissue samples (not subject to DNA testing). *S.C. Op. Att’y Gen* (June 17, 2015) (Addressed to Deputy Medical Examiner James Fulcher, M.D.).

The Post-Conviction DNA Testing Act and the Preservation of Evidence Act were intended to provide convicted defendants with the opportunity to have evidence not subject to DNA testing or to a particular type of DNA testing, available for testing to determine whether it possesses exculpatory value and to provide a procedure for preservation and delineate the offenses covered by the Act, to impose guidelines for the return of evidence prior to the specified retention periods, and to impose penalties for violations of the Act. The Opinion noted that, accordingly, the Legislature implemented a “blanket duty statute” that requires a custodian of evidence to preserve all physical evidence and biological material related to the conviction or adjudication of a person for the 24 specified offenses listed in S.C. Code Ann. §17-28-320(A).

The Opinion further stated that it is sufficient for custodians of evidence “to utilize normal, customary, and contemporary forensic science techniques in the investigation and retention of evidence gathered and/or used in a criminal prosecution in order to comply with the Act.” It was not the intent of the Legislature to impose more stringent standards on evidence custodians, but rather, it intended that custodians of evidence continue use of the best practices of forensic science methodology to preserve the evidence.

Finally, the Opinion reminded evidence custodians that:

S.C. Code Ann. §17-28-320(C) does not replace other considerations regarding the preservation of physical evidence and biological material for covered cases as well as for offenses not covered by the Act. Evidence custodians must be mindful of not violating a defendant's constitutional rights or depriving the State of evidence that it may later need to re-prosecute defendants at a later date.

- Release of Bodily Sample for Paternity Test pursuant to Court Order. *S.C. Op. Att’y Gen.* (August 11, 2010) (Addressed to Coroner Gary Watts).

The primary question submitted was whether, in light of the

Preservation of Evidence Act, the Coroner's Office is required to release a biological sample from a decedent to any outside party by order of any court for purposes of establishing paternity. The opinion states that a court order, even if clearly in violation of law, must be followed unless it is reversed, modified, or vacated by proper judicial proceedings. *S.C. Op. Att'y Gen* (August 11, 2010) (Addressed to Coroner Gary Watts)

- Release of Body for Cremation or Body Parts for Donation. *S.C. Op. Att'y Gen* (September 15, 2010) (Addressed to Coroner Gary Watts).

The questions submitted were whether, in light of the Preservation of Evidence Act, the Coroner's Office (1) can legally issue a cremation permit authorizing the cremation of a victim's body or must the body be released for burial only; and (2) can legally release a body to an organ or tissue procurement agency for organ or tissue donation.

In the Opinion, the Attorney General concluded that (1) the Coroner's Office is a custodian of evidence for purposes of the Preservation of Evidence Act; (2) a coroner should not issue a permit authorizing a cremation in the case of a deceased individual that is linked to an offense included in the list of offenses set forth in Section 17-28-320; and (3) release of a body to an organ or tissue procurement agency for organ or tissue donation would be lawful where the donated tissue or organ would be deemed to be of "absolutely no consequence" to the investigation of the cause of death of the victim (the opinion concludes with the following statement, "[i]f a coroner in his role as an investigator of the cause of death has a basis to object to organ or tissue donation, such should not be undertaken.").

- Clarification of August 11, 2010 Opinion on Compliance with Orders for Release of Bodily Sample for Paternity Test. *S.C. Op. Att'y Gen* (October 12, 2010) (Addressed to Coroner Gary Watts).

The Opinion responds to a request for clarification of the August 11, 2010, opinion stating that a coroner was required to comply with an order issued by a court with jurisdiction, compelling a bodily sample for paternity (see (a) above). This new opinion reiterated that, regardless of whether a coroner thinks an order for the release of a sample is in violation of the Preservation of Evidence Act, the coroner must comply with it unless it is reversed, modified, or vacated. The opinion goes on to state that the coroner should address concerns about his obligations under the Preservation of Evidence Act to the court that issued the order so that the court may determine if its order should stand.

- Compensation of Victim for Items that Cannot be Returned under the Preservation of Evidence Act. *S.C. Op. Att’y Gen* (October 12, 2010) (Addressed to Coroner Gary Watts).

The question addressed in this opinion was whether the coroner’s office is responsible for compensating the next of kin of a deceased individual if that individual’s possessions cannot be returned in a timely manner due to the provisions of the Preservation of Evidence Act. After a discussion of S.C. Code Section 16-3-1535 (E), which requires law enforcement to return a victim’s property as expeditiously as possible, it was concluded that the Preservation of Evidence Act – being more recent and specific – must prevail over Section 16-3-1535. Therefore, because the Preservation of Evidence Act required that the possessions be retained, the coroner’s office is not responsible for compensating a victim’s next of kin if the possessions cannot be returned more expeditiously than authorized by the Act.

- Clarification of September 15, 2010 Opinion on Issuance of Cremation Permit. *S.C. Op. Att’y Gen* (October 27, 2010) (Addressed to Coroner Gary Watts).

The Opinion responds to a request for clarification of the September 15, 2010, opinion stating that a coroner should not issue a permit authorizing a cremation in the case of a deceased individual that is linked to an offense included in the list of offenses set forth in Section 17-28-320; and (3) release of a body to an organ or tissue procurement agency for organ or tissue donation would be lawful where the donated tissue or organ would be deemed to be of “absolutely no consequence” to the investigation of the cause of death of the victim.

In this opinion, the Attorney General concluded that, as long as the coroner has fully complied with the Preservation of Evidence Act, he can authorize a cremation at any point following a death which has the potential of a criminal case, and it is the coroner’s duty to determine if the Act has been complied with. In the conclusion of the opinion, it is noted that “it does not appear that at any point was it the intention of the General Assembly that bodies be retained until all criminal proceedings have been accomplished.”

The opinion contains a discussion of cases from other jurisdictions addressing the need to retain bodies for evidentiary purposes.

- Release of Body that Falls under Category of Evidence for Purposes of Act to Funeral Home for Disposition. *S.C. Op. Att’y Gen* (November 9, 2010) (Addressed to Coroner Gary Watts).

The questions submitted were whether the body of a deceased that falls within the category of evidence under the Preservation of Evidence Act can be released to a funeral home for disposition and what must be done with the body to preserve the integrity of the evidence based on DNA preservation standards. The opinion provides that, until such time as the General Assembly clarifies the law, as long as the coroner has complied with the Act, his statutory obligations have been complied with and the body may be released. The coroner must make the decision as to whether he has complied with the statutory obligations imposed by the Act, and must balance his duties under the Act with his other statutory duties included those related to release of bodies.

The opinion also contains a discussion of cases from other jurisdictions addressing the need to retain bodies for evidentiary purposes.

- Return of Property related to or removed from Crime Scene by Law Enforcement. *S.C. Op. Att’y Gen* (November 9, 2010) (Addressed to Representative G. Murrell Smith, Jr.).

The question addressed was whether law enforcement would face civil or criminal liability under the Act if they returned a checkbook and cash removed from a business during a robbery that did not contain fingerprints.

After reviewing the Act – and concluding that police fall within the definition of “custodian of evidence,” statutes addressing the rights of crime victims and the return of property to victims, and the general law of statutory interpretation, the opinion concludes essentially that the answer depends upon the specific facts of a given case.

Whether a piece of evidence would be considered “physical evidence” in that it would be an object of thing “that is or is about to be produced or used or has been produced or used in a criminal proceeding” would be a matter for review by local authorities, including the prosecutor. Also, the exculpatory value, if any, would have to be considered as to any question regarding the return of such evidence. Consistent with the above, in the opinion of this office, it would be sufficient under the Act for law enforcement as a “custodian of evidence” as defined in the Act to utilize normal, customary, and contemporary forensic science techniques in the investigation and retention of evidence gathered and/or used in a criminal prosecution in order to comply with the Act. Moreover, in the opinion of this office, it would be permissible and consistent with the intent of the Act that the gathering and retention of

such evidence allows for the substitution and/or conversion of such original evidence later used as admissible evidence through the techniques of sampling, swabbing, photographing or the use of other forensic science techniques so long as care is taken to preserve the evidence in compliance with the rules of evidence and chain of custody. Finally, in the opinion of this office, the release of personal items would be permissible and in conformity with this Act so long as reasonable and customary forensic techniques are employed to collect and preserve evidence prior to the release of the personal items. Any and all such actions must be consistent with normal science methods and meet present State requirements for chain of custody and admissibility under Rules of Practice and case law.

- Forensic Processing of Evidence and Substitution of Evidence. *S.C. Op. Att’y Gen* (November 10, 2010) (Addressed to Coroner Gary Watts).

In this opinion, several questions were addressed – is it sufficient under the Act for coroners, law enforcement and other custodians of evidence to use normal, customary, and contemporary forensic science techniques in the investigation of crimes and retention of evidence; whether the Act allows for substitution and/or conversion of such evidence through sampling, swabbing, photographing or other technique provided a chain of custody is preserved; and is release/return of a crime scene, body and evidence authorized by the Act provided reasonable and customary forensic techniques are used to collect and retain evidence. After an extensive review of the Act, cases from South Carolina and other jurisdictions, and a discussion of prior opinions, the Attorney General answered each question affirmatively emphasizing the need to comply with the Act and other South Carolina law, including that governing chain of custody.

- Law Enforcement Authority to Remove and Retain Deceased Victim’s Belongings. *S.C. Op. Att’y Gen* (February 23, 2011) (Addressed to Chief Deputy Coroner Richard Carter).

In this opinion, which dealt primarily questions unrelated to the Act (questions concerning authority of coroners to investigate and authority of Fire Chief to photograph deceased victims), the Attorney General discussed the obligations under the Act to preserve and retain evidence related to one of the covered crimes.

- Law Enforcement Authority to Dispose of Evidence Seven Years after Entry of Guilty Plea. *S.C. Op. Att’y Gen* (May 12, 2011) (Addressed to Sergeant J. Thomas Clamp, Jr., Anderson County Sheriff’s Office).

In this opinion, the Attorney General responded to the question of whether a law enforcement agency in possession of evidence of a crime covered by the Preservation of Evidence Act can dispose of that evidence when the case was disposed of by a guilty plea and seven years (the retention period for guilty pleas under the Act) have passed since the guilty plea was entered. After an extensive review of the Act, prior Attorney General opinions, and a recent opinion from the Supreme Court of the United States involving a criminal defendant's ability to sue the government for deprivation of his civil rights, the Attorney General answered that evidence should *not* be disposed of automatically seven years after a guilty plea. Instead, custodians should inquire of the prosecuting Solicitor's Office **and** the Attorney General to determine if there are (1) any co-defendants for which the evidence would need to be retained; (2) any appeals or collateral attacks still open to the defendant; or (3) any case related to the evidence that is still be litigated or can still be litigated by the state.

- When does evidence become "physical evidence" or "biological material" under the Act? *S.C. Op. Att'y Gen* (July 15, 2011) (Addressed to Captain Garland Major, Jr., Anderson County Sheriff's Office).

After reviewing the provisions of the Act and considering legislative intent, the Attorney General concluded:

. . . the definition of "physical evidence" should not be limited to evidence actually "produced" or "used" in a criminal proceeding (such as evidence either marked for identification only, used for impeachment purposes but not admitted, or offered for admission but not admitted), because it is reasonable to conclude the Legislature intended "physical evidence" to include all evidence collected in a case, regardless of whether it was used in a criminal proceeding. . . . Items from which DNA or other forensic evidence has not been developed is not always introduced at trial. Therefore, it is often evidence that never played a part in a defendant's trial that is the focus of a post-conviction DNA test or testing application. If "physical evidence" were interpreted to only include those items of evidence actually used in court, the testing provided for in the "Access to Justice Post-Conviction DNA Testing Act" could not be accomplished (because the evidence would not have been retained). . . . Normally, evidence in a criminal case is retained in custody of law enforcement until such time as it is needed by the solicitor or other prosecuting officer for presentation in court. . . . In the opinion of this office, therefore, it would be consistent with the intent of the Act that

evidence for the crimes enumerated in §17-28-320(A), **once “collected” by law enforcement, i.e., gathered and retained for processing**, becomes either “physical evidence” or “biological material” for purposes of the Act. Such evidence must be preserved under the provisions of the Act for the period of retention set forth in §17-28-320(C) (based upon conviction). Such evidence may be disposed of only by way of a petition pursuant to procedures set forth in §17-28-340.

Significantly, the Attorney General reiterated that:

[w]hether a piece of evidence would be considered “physical evidence” or “biological material” under the Act would be a matter for review by local authorities, including the prosecutor. Also, the exculpatory value of evidence, if any, would have to be considered as to any question regarding the return of such evidence.

NOTE: See “Alert” box in Section IB of this outline for contact information for the South Carolina Attorney General’s Office.

E. Section 17-28-350 – Criminal Liability for Custodians of Evidence

Section 17-28-350 provides that it is a misdemeanor offense for a custodian of evidence to willfully and maliciously destroy, alter, conceal, or tamper with physical evidence or biological material that is required to be preserved under the Act with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding.

This portion of the act went into effect on October 8, 2008.

F. Section 17-28-360 – Civil Liability for Custodians of Evidence

Section 17-28-360 provides that (1) unless there is an act of gross negligence or intentional misconduct, the new law does not provide a basis for a civil lawsuit; and (2) failure of a custodian of evidence to preserve physical evidence or biological material pursuant to this article does not entitle a person to any relief from conviction or adjudication, but evidence of the failure may be presented at a subsequent hearing or trial.

II. Issues and Best Practices

Government bodies or agencies who meet the definition of custodians of evidence are faced with many challenges through the enactment of this Act. Some of the issues that they face and some of the “best practices” to address these issues are

set out below (each scenario presumes that the crime involved is a covered crime under the Act).

1. Issue: Identifying those cases within your agency for which the evidence must be preserved.

Best Practice: Custodians keep track of their cases in different ways – by suspect name, by OCA number, by indictment number, etc. In order to have a good starting point, it might be prudent to complete an audit of your evidence room to see for which cases you have evidence, what evidence you have, where the evidence is located, and what documentation exists in regard to the evidence. Then, once armed with that information, contact the Solicitor’s Office to determine the status of the cases.

- Are the charges still pending or has the case been resolved?
- What charge(s) was (were) pursued?
- If resolved, how was it resolved?
- By conviction (and, if by conviction, by trial or by plea) or other disposition (dismissal, PTI, etc.); and
- What was the sentence on each charge?

Do not forget to ask whether the case involves co-defendants.

- If so, what is the status of their cases?
 - **In a case involving multiple defendants, the Act requires that the evidence be retained long enough to cover the longest sentence received by any defendant.**

That will provide you, at least as of the date of the audit, with those cases for which you know you must preserve evidence and for how long the evidence must be preserved. Each agency should meet with the prosecutor’s office to determine how such information will be shared from that point forward (e.g., Is it available online? Will the prosecutor provide informational reports to law enforcement on cases covered by the Act as they are resolved? Etc.).

2. Issue: Choosing where to physically locate the evidence in cases covered by the Preservation of Evidence Act.

Best Practice: Some law enforcement agencies currently have special storage areas within their evidence rooms or departments where evidence in specific types of cases – such as death penalty or murder cases – is stored. It might be the better practice to similarly segregate the evidence in cases covered by the

Act so that it can be more readily accessed and monitored.

Another possibility is that smaller agencies that simply do not have a physical facility in which to store evidence (or the funds available to build such a facility) may be able to contract with their county's Sheriff's Office (or some other larger law enforcement agency) to take custody over and store the evidence once a defendant has been convicted and sentenced. Of course, a detailed contract or memorandum of understanding should be executed setting forth the obligations of each party (including the conditions under which the evidence is to be stored), and a detailed chain of custody should be maintained in these situations *by both agencies involved*.

3. Issue: What to do if, since October 8, 2008, a custodian has destroyed, returned, or otherwise disposed of evidence in a case covered by the Act due to lack of knowledge about the Act.

Best Practice: A record should immediately be made setting forth the case name, what evidence was destroyed or otherwise disposed of, the manner and date of destruction or disposition, the individuals involved, and the reason for the destruction or disposition. The agency should take immediate steps to ensure that the improper destruction of evidence does not occur again, *including* the creation of formal policies and conducting in-house training of all whose job responsibilities relate to the collection, testing, or maintenance of evidence so that all are aware of the Act and the obligations it imposes.

In addition to reporting this conduct internally, a report must be forwarded to the prosecutor's office.

NOTE: While this outline is not intended to address civil liability for noncompliance with the Act, custodians of evidence should understand that ignorance of the Act and its requirements is not a defense to civil liability for either individuals or agencies.

4. Issue: What to do if, after your agency has been made aware of the Act, a custodian untimely or otherwise improperly destroys, returns, or otherwise disposes of evidence in a case covered by the Act.

Best Practice: An agency should immediately conduct an investigation to see if the destruction or disposition was the result of either

- (1) willful misconduct with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding

The possible consequences of such willful misconduct include:

- the discipline or termination of the responsible person(s);
- criminal liability for the responsible person(s) (Section 17-28-350); and
- possible civil liability for the responsible person(s) and agency (Section 17-28-360).

or

(2) gross negligence

The possible consequences of such gross negligence include:

- the discipline or termination of the responsible person(s); and
- possible civil liability for the responsible person(s) and agency (Section 17-28-360).

As with the situation involving destruction of evidence due to lack of knowledge about the Act, a record should immediately be made setting forth the case name, what evidence was destroyed or otherwise disposed of, the manner and date of destruction or disposition, the individuals involved, and the reason for the destruction or disposition. The record should include the result of the agency's investigation into the matter and its immediate response to the destruction of the evidence (such as any disciplinary action taken upon those responsible) as well as any remedial steps that the agency will be taking to ensure long-term compliance (in other words, steps the agency is taking to ensure that untimely or otherwise improper destruction of evidence covered by the Act does not occur again in the future), such as instituting a review process of evidence pulled for destruction, etc. In addition to reporting this conduct internally, a report should be forwarded to the prosecutor's office.

If the destruction of, altering of, concealment of, or tampering with evidence may have been willful and malicious with the intent to (1) impair the integrity of the physical evidence or biological material, (2) prevent the physical evidence or biological material from being subjected to DNA testing, or (3) prevent the production or use of the physical evidence or biological material in an official proceeding, a criminal investigation should be instituted (which may require, in instances involving law enforcement agencies, the involvement of SLED or another law enforcement agency as protocol or policy dictates).

Agencies should not be complacent about the "accidental" destruction of evidence covered by the Act. If an employee or agency has a pattern of

“accidentally” destroying or disposing of evidence, a defendant’s lawyer can argue, and a court might find, that the agency is failing to appropriately supervise and train its staff and that those failures amount to gross negligence or worse.

5. Issue: A law enforcement agency towed a homicide victim’s car to its evidence compound for processing; it has been processed. No suspect has yet been identified. The agency does not have a facility within which to store the car, and wants to know if it can return the car to the victim’s family.

Best Practice: Once the car was “collected,” *i.e.*, taken to the evidence compound for processing, it became “physical evidence” for purposes of the Act. Therefore, it can only be returned prior to the conclusion of the controlling retention period (based upon conviction) by following the petition procedure set out in Section 17-28-340.

Section 17-28-340 allows for a custodian to petition for early destruction or release of evidence if the evidence is of such a size, bulk, or physical character as to make retention impracticable. To help its cause, the agency should thoroughly document the condition and any evidentiary value of the car and its contents — inventory the car, photograph it thoroughly, and report on any forensic examinations conducted and the results of such. Also, if the victim’s family wants the car returned, it might be helpful to include that information as well. The statute also provides for the possibility of the early release of evidence if it “must be returned to its rightful owner,” but there is no indication of what “must be returned” means or requires.

One complication in this scenario is the absence of an identified defendant (and disposition of the criminal case). It is not clear if the statute even allows for petitioning prior to a conviction (see Section II (D) (3) of this outline) or, if it does, what a court would do with a petition filed under these circumstances — request the public defender to stand in and respond to the petition; resolve it in the absence of a defendant or any representative for the defendant; or refuse to consider the matter until a defendant is identified and may respond to the petition.

Ex rel: _____) IN THE COURT OF (select one)
 Petitioner) GENERAL SESSIONS
) FAMILY COURT
 In re: _____) JUDICIAL CIRCUIT
)
 STATE OF SOUTH CAROLINA) PETITION FOR AN ORDER
 Vs.) ALLOWING FOR DISPOSITION OF
 _____) THE PHYSICAL EVIDENCE OR
 _____) BIOLOGICAL MATERIAL
 _____)
 Defendant(s)/Suspect(s)/Inmate Number) CASE/DOCKET NO. _____
)
 OR)
)
 IN THE INTEREST OF)
)
 _____)
 Juvenile)

PURSUANT TO S.C. Code Ann. §17-28-340:

A. The custodian of evidence petitions this Court to issue an order allowing for disposition of the physical evidence or biological material prior to the period of time stated in S.C. Code Ann. § 17-28-320 due to one or more of the following reasons.

The physical evidence or biological material must be returned to its rightful owner, is of such size, bulk, or physical character as to make retention impracticable, or is otherwise required to be disposed of by law.

DNA evidence was previously introduced at trial, was found to be inculpatory, and all appeals and post-conviction procedures have been exhausted.

Date(s) of entry of the judgment and sentence: _____

Proceedings in which the person was convicted or adjudicated: _____

B. Petitioner requests that the following physical evidence or biological material be disposed of :

C. Reason for the disposition of the above indicated physical evidence or biological material:

Petitioner (Custodian of Evidence)

Title/Agency

_____, South Carolina

Date: _____

Control No. _____
Print All Information Except Where Signature Is Required

FORM B (Rule 6)

**CERTIFICATE OF PROOF OF
CHAIN OF PHYSICAL CUSTODY OR CONTROL
(Initial Custody)**

This is to certify that I _____ am employed by
(Name) _____ and that on,

(Name of Agency or Department) _____
_____, I seized from _____
(Name)

pursuant to _____
(State Whether Subject to a Warrant, Lawful Arrest or Otherwise)

at or near _____
(Place Where Seized)

the following substance(s) of container(s):
(Describe substance or container with sufficient particularity to distinguish it.)

On _____, I made delivery of the above described substance(s) or
container(s) to _____ of
(Name)

_____ in substantially the same condition
(Law Enforcement Agency)
as when I received it.

(Signature)
(Place): _____
(Date): _____

Sworn before me this
_____ day of _____, 2_____

Notary Public for South Carolina

My Commission expires _____

Control No. _____
Print All Information Except Where Signature Is Required

FORM C (Rule 6)

**CERTIFICATE OF PROOF OF
CHAIN OF PHYSICAL CUSTODY OR CONTROL
(Subsequent Change of Custody)**

This is to certify that I _____ am employed by
(Name)

_____ as
(Name of Agency or Department)

_____ and that on _____, 2____
(Capacity of Employment) (Date)

I received _____
(Specify Whether by Mail or in Person)

from _____
(Name of Person)

of _____
(Law Enforcement Agency)

the following substance(s) of container(s) which were originally seized by

(Name of Person Making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

On _____ 2____, I made delivery of the above described substance(s) or
container(s) to _____ of
(Name)

_____ in substantially the same condition
(Law Enforcement Agency)
as when I received it.

(Signature)

(Place): _____

(Date): _____

Sworn before me this
_____ day of _____, 2____

Notary Public for South Carolina

My Commission expires _____

South Carolina Commission on Prosecution Coordination

Prosecution CLE Series™

“Getting, Storing, Retaining and Releasing Evidence: Legal and Practical Considerations”

Florence, South Carolina
July 24, 2017



APPENDIX

The following is a copy of the statutes of the larger S.C. Act No. 413 (effective January 1, 2009), of which the Preservation of Evidence Act is a part.

CHAPTER 28

Post-Conviction DNA Testing and Preservation of Evidence

ARTICLE 1

Access to Justice Post-Conviction DNA Testing Act

SECTION 17-28-10. Citation of Article.

This article may be cited as the “Access to Justice Post-Conviction DNA Testing Act”.

SECTION 17-28-20. Definitions.

For purposes of this article:

- (1) “Biological material” means any blood, tissue, hair, saliva, bone, or semen from which DNA marker groupings may be obtained. This includes material catalogued separately on slides, swabs, or test tubes or present on other evidence including, but not limited to, clothing, ligatures, bedding, other household material, drinking cups, or cigarettes.
- (2) “Custodian of evidence” means an agency or political subdivision of the State including, but not limited to, a law enforcement agency, a solicitor’s office, the Attorney General’s Office, a county clerk of court, or a state grand jury that possesses and is responsible for the control of evidence during a criminal investigation or proceeding, or a person ordered by a court to take custody of evidence during a criminal investigation or proceeding.
- (3) “DNA” means deoxyribonucleic acid.
- (4) “DNA profile” means the results of any testing performed on a DNA sample.
- (5) “DNA record” means the tissue or saliva samples and the results of the testing performed on the samples.
- (6) “DNA sample” means the tissue, saliva, blood, or any other bodily fluid taken at the time of arrest from which identifiable information can be obtained.
- (7) “Incarceration” means serving a term of confinement in the custody of the South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice and does not include a person on probation, parole, or under a community supervision program.
- (8) “Law enforcement agency” means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.

(9) “Physical evidence” means an object, thing, or substance that is or is about to be produced or used or has been produced or used in a criminal proceeding related to an offense enumerated in Section 17-28-30, and that is in the possession of a custodian of evidence.

SECTION 17-28-30. Offenses for which post-conviction DNA testing available.

(A) A person who pled not guilty to at least one of the following offenses, was subsequently convicted of or adjudicated delinquent for the offense, is currently incarcerated for the offense, and asserts he is innocent of the offense may apply for forensic DNA testing of his DNA and any physical evidence or biological material related to his conviction or adjudication:

- (1) murder (Section 16-3-10);
- (2) killing by poison (Section 16-3-30);
- (3) killing by stabbing or thrusting (Section 16-3-40);
- (4) voluntary manslaughter (Section 16-3-50);
- (5) homicide by child abuse (Section 16-3-85(A)(1));
- (6) aiding and abetting a homicide by child abuse (Section 16-3-85(A)(2));
- (7) lynching in the first degree (Section 16-3-210);
- (8) killing in a duel (Section 16-3-430);
- (9) spousal sexual battery (Section 16-3-615);
- (10) criminal sexual conduct in the first degree (Section 16-3-652);
- (11) criminal sexual conduct in the second degree (Section 16-3-653);
- (12) criminal sexual conduct in the third degree (Section 16-3-654);
- (13) criminal sexual conduct with a minor (Section 16-3-655);
- (14) arson in the first degree resulting in death (Section 16-11-110(A));
- (15) burglary in the first degree for which the person is sentenced to ten years or more (Section 16-11-311(B));
- (16) armed robbery for which the person is sentenced to ten years or more (Section 16-11-330(A));
- (17) damaging or destroying a building, vehicle, or property by means of an explosive incendiary resulting in death (Section 16-11-540);
- (18) abuse or neglect of a vulnerable adult resulting in death (Section 43-35-85(F));
- (19) sexual misconduct with an inmate, patient, or offender (Section 44-23-1150);
- (20) unlawful removing or damaging of an airport facility or equipment resulting in death (Section 55-1-30 (3));
- (21) interference with traffic-control devices or railroad signs or signals resulting in death (Section 56-5-1030(B)(3));

(22) driving a motor vehicle under the influence of alcohol or drugs resulting in death (Section 56-5-2945);

(23) obstruction of railroad resulting in death (Section 58-17-4090); or

(24) accessory before the fact (Section 16-1-40) to any offense enumerated in this subsection.

(B) A person who pled guilty or *nolo contendere* to at least one of the offenses enumerated in subsection (A), was subsequently convicted of or adjudicated delinquent for the offense, is currently incarcerated for the offense, and asserts he is innocent of the offense may apply for forensic DNA testing of his DNA and any physical evidence or biological material related to his conviction or adjudication no later than seven years from the date of sentencing.

SECTION 17-28-40. Form and contents of application.

(A) The application must be made on such form as prescribed by the Supreme Court.

(B) The application must be verified by the applicant and filed under the original indictment number or petition with the clerk of court of the general sessions court or family court in which the conviction or adjudication took place. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct.

(C) The application must, under penalty of perjury:

(1) identify the proceedings in which the applicant was convicted or adjudicated;

(2) give the date of the entry of the judgment and sentence and identify the applicant's current place of incarceration;

(3) identify all previous or ongoing proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or adjudication;

(4) make a reasonable attempt to identify the physical evidence or biological material that should be tested and the specific type of DNA testing that is sought;

(5) explain why the identity of the applicant was or should have been a significant issue during the original court proceedings, notwithstanding the fact that the applicant may have pled guilty or *nolo contendere* or made or is alleged to have made an incriminating statement or admission as to identity;

(6) explain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, provide the results of the testing and explain how the requested DNA test would provide a substantially more probative result;

(7) explain why if the DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching; and

(8) provide that the application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

SECTION 17-28-50. Application for testing; notification of prosecutor, custodian of evidence, and victim; dismissal; successive applications.

(A) The clerk shall file the application upon its receipt and promptly bring it to the attention of the court and deliver for docketing a copy to the solicitor of the circuit in which the applicant was convicted or adjudicated. The Attorney General and the appropriate custodian of evidence shall be notified by the solicitor. The victim shall be notified pursuant to the provisions of Article 15, Chapter 3, Title 16.

(B) Within ninety days after the forwarding of the application, or upon any further time the court may fix, the solicitor of the circuit in which the applicant was convicted or adjudicated, or the Attorney General if the Attorney General prosecuted the case, shall respond to the application. Within ninety days after the docketing of the application, or within any further time the court may fix, the victim may respond as provided in Article 15, Chapter 3, Title 16. The court may proceed with a hearing if the solicitor or Attorney General, as applicable, or the victim does not respond to the application.

(C) At any time prior to entry of judgment the court may, when appropriate, issue orders for amendment of the application and for any documents related to the application including, but not limited to, pleadings, motions, and requests for extensions of time. In considering the application and related documents, the court shall take account of substance, regardless of defects of form. When the court is satisfied, on the basis of the application, the responses, or the motion of the solicitor or Attorney General, as applicable, that the applicant is not entitled to DNA testing and no purpose would be served by any further proceedings, it may indicate to the applicant and the solicitor or Attorney General, as applicable, its intention to summarily dismiss the application and its reasons for so doing. The victim shall be notified of the proposed dismissal pursuant to the provisions of Article 15, Chapter 3, Title 16. The court shall make specific findings of fact and expressly state its conclusions of law. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed, grant leave to file an amended application, or direct that the proceedings otherwise continue.

(D) If the applicant has filed a previous application for DNA testing, the applicant may file a successive application, provided the applicant asserts grounds for DNA testing which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

SECTION 17-28-60. Costs and expenses; appointment of counsel for indigent applicant.

If the applicant is unable to pay court costs and expenses of counsel, these costs and expenses shall be made available to the applicant in amounts and to the extent provided pursuant to Section 17-27-60. The applicant must request counsel at the time he files his application. The court must appoint counsel for an indigent applicant after the court has determined that the application is sufficient to proceed to a hearing but prior to the actual hearing. If counsel has been appointed for the applicant in an ongoing post-conviction relief proceeding, then the counsel appointed in the post-conviction relief proceeding shall also serve as counsel for purposes of this article. The performance of counsel pursuant to this article shall not form the basis for relief in any post-conviction relief proceeding.

SECTION 17-28-70. Preservation and management of physical evidence and biological material; wilful destruction of evidence.

(A) The court shall order a custodian of evidence to preserve all physical evidence and biological material related to the applicant's conviction or adjudication pursuant to the provisions of Article 3, Chapter 28, Title 17.

(B) The custodian of evidence shall prepare an inventory of the physical evidence and biological material and issue a copy of the inventory to the applicant, the solicitor or Attorney General, as applicable, and the court.

(C) For physical evidence or biological material that the custodian of evidence asserts has been lost or destroyed, the court shall order a custodian of evidence to locate and provide the applicant and the solicitor or Attorney General, as applicable, with a copy of any document, note, log, or report relating to the physical evidence or biological material.

(D) If no physical evidence or biological material is discovered, the court may order a custodian of evidence, in collaboration with law enforcement, to search physical evidence and biological material in the custodian of evidence's possession that would reasonably be expected to produce relevant physical evidence or biological material. The order shall provide that any physical evidence and biological material subject to this search must be adequately protected by the custodian of evidence, in collaboration with law enforcement, from interference by a third party, including, but not limited to, alteration, contamination, destruction, or tampering with the physical evidence and biological material and any chain of custody related to the physical evidence and biological material.

(E) A person who wilfully and maliciously destroys, alters, conceals, or tampers with physical evidence or biological material that is required to be preserved pursuant to this section with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding, is subject to the provisions of Section 17-28-350.

SECTION 17-28-80. Preservation of test reports.

For any physical evidence or biological material previously subjected to DNA testing whether by the applicant or the solicitor or Attorney General, as applicable, the court shall order the production of all written reports and laboratory reports prepared in connection with the DNA testing, including the underlying data and laboratory notes.

SECTION 17-28-90. Hearing; factors to be proved; orders relating to DNA samples.

(A) The application must be heard in, and before a judge of, the general sessions court or family court in which the conviction or adjudication took place. A record of the proceedings must be made and preserved. All rules and statutes applicable in criminal proceedings are available to the applicant and the solicitor or Attorney General, as applicable.

(B) The court shall order DNA testing of the applicant's DNA and the physical evidence or biological material upon a finding that the applicant has established each of the following factors by a preponderance of the evidence:

- (1) the physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing;
- (2) the physical evidence or biological material to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect, or the testing itself may establish the integrity of the physical evidence or biological material;
- (3) the physical evidence or biological material sought to be tested is material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the applicant may have pled guilty or *nolo contendere* or made or is alleged to have made an incriminating statement or admission as to identity;
- (4) the DNA results of the physical evidence or biological material sought to be tested would be material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the applicant may have pled guilty or *nolo contendere* or made or is alleged to have made an incriminating statement or admission as to identity;
- (5) if the requested DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching;
- (6) the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, the requested DNA test would provide a substantially more probative result; and
- (7) the application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

(C) The court shall order that any sample taken of the applicant's DNA for purposes of DNA testing pursuant to this article or for submission to SLED pursuant to subsection (F) be taken by a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, or other appropriately trained health care worker. The applicant's counsel, if any, and the solicitor or Attorney General, as applicable, must be allowed to observe the taking of any sample.

(D) The court shall order that the applicant's DNA sample and the physical evidence or biological material be tested by SLED, a local Combined DNA Index System (CODIS) laboratory, or prior to any testing, any other laboratory approved by SLED, in an effort to ensure that the results may be entered into the State DNA Database and Combined DNA Index System. Any other type of DNA testing ordered by the court shall be conducted in consultation with SLED or a local CODIS laboratory.

(E) The court shall order that the applicant pay the costs of the DNA testing. If the applicant is indigent, the costs of the DNA testing shall be paid by the State.

(F) The court shall order that a sample of the applicant's DNA be submitted to SLED to compare with profiles in the State DNA Database and any federal or other law enforcement DNA database in compliance with National DNA Index System (NDIS) procedures. The sample must be submitted regardless of any previous samples submitted by the applicant. If the comparison matches a DNA profile for the offense for which the applicant was convicted or adjudicated, the

DNA profile may be retained in the State DNA Database. If the comparison does not match a DNA profile for the offense for which the applicant was convicted or adjudicated, but results in a match with a DNA profile for any other offense, the DNA profile may be retained in the State DNA Database. SLED shall notify the appropriate law enforcement agency. If the comparison does not match a DNA profile for any offense, the DNA record must be destroyed. Any previous profiles must be maintained by SLED subject to the State DNA Database Act. SLED shall report to the court, the applicant, and the solicitor or Attorney General, as applicable, the results of all DNA database comparisons. The victim must be notified of the results of all DNA database comparisons pursuant to Article 15, Chapter 3, Title 16.

(G) The applicant and the solicitor or Attorney General, as applicable, shall have the right to appeal a final order denying or granting DNA testing by a writ of certiorari to the Court of Appeals or the Supreme Court as provided by the South Carolina Appellate Court Rules.

SECTION 17-28-100. Disclosure and use of test results; motion for new trial.

(A) The results of the DNA test must be fully disclosed to the court, the applicant, and the solicitor or Attorney General, as applicable. The victim shall be notified of the results of the DNA test pursuant to Article 15, Chapter 3, Title 16. The court shall order the production of any written reports and laboratory reports prepared in connection with the DNA testing, including underlying data and notes.

(B) The results of the DNA test may be used by the applicant, solicitor, or Attorney General in any post-conviction proceeding or trial. If the results of the DNA test are exculpatory, the applicant may use the exculpatory results of the DNA test as grounds for filing a motion for new trial pursuant to the South Carolina Rules of Criminal Procedure. If the results of the DNA test are inconclusive, the court may allow for additional DNA testing or may dismiss the application. If the results of the DNA test are inculpatory, the court shall dismiss the application and shall, on motion of the solicitor or Attorney General, as applicable:

- (1) make a determination whether the applicant's assertion of actual innocence was intentionally false and, as a result, hold the applicant in contempt of court;
- (2) assess against the applicant the cost of any DNA testing not already paid by the applicant;
- (3) forward the findings to the South Carolina Department of Corrections, who may use such finding to deny good conduct credit; and
- (4) forward the findings to the Department of Probation, Parole and Pardon Services, who may use the findings to deny parole.

(C) Except as otherwise provided in this article, DNA records, results, and information taken from the applicant are exempt from any law requiring disclosure of information to the public.

SECTION 17-28-110. Consent to testing.

(A) Nothing in this article prohibits a person and a solicitor or the Attorney General, as applicable, from consenting to and conducting post-conviction DNA testing by agreement of the

parties. The person may use the exculpatory results of the DNA test as the grounds for filing a motion for new trial pursuant to the South Carolina Rules of Criminal Procedure.

(B) Nothing in this article prohibits a person from filing an application for post-conviction relief pursuant to Chapter 27, Title 17.

(C) Unless there is an act of gross negligence or intentional misconduct this article may not be construed to give rise to a claim for damages against the State of South Carolina, a political subdivision of the State, or an employee of the State or a political subdivision of the State. Failure of a custodian of evidence to preserve physical evidence or biological material pursuant to this article does not entitle the applicant to any relief from conviction or adjudication but does not prohibit a person from presenting this information at a subsequent hearing or trial.

SECTION 17-28-120. Administration expenditure limitation.

No more than one hundred fifty thousand dollars may be expended from the general fund in any fiscal year to administer the provisions of this article.

ARTICLE 3 Preservation of Evidence

SECTION 17-28-300. Citation of article.

This article shall be cited as the “Preservation of Evidence Act”.

SECTION 17-28-310. Definitions.

(1) “Biological material” means any blood, tissue, hair, saliva, bone, or semen from which DNA marker groupings may be obtained. This includes material catalogued separately on slides, swabs, or test tubes or present on other evidence including, but not limited to, clothing, ligatures, bedding, other household material, drinking cups, or cigarettes.

(2) “Custodian of evidence” means an agency or political subdivision of the State including, but not limited to, a law enforcement agency, a solicitor’s office, the Attorney General’s Office, a county clerk of court, or a state grand jury that possesses and is responsible for the control of evidence during a criminal investigation or proceeding, or a person ordered by a court to take custody of evidence during a criminal investigation or proceeding.

(3) “DNA” means deoxyribonucleic acid.

(4) “DNA profile” means the results of any testing performed on a DNA sample.

(5) “DNA record” means the tissue or saliva samples and the results of the testing performed on the samples.

(6) “DNA sample” means the tissue, saliva, blood, or any other bodily fluid taken at the time of arrest from which identifiable information can be obtained.

(7) “Incarceration” means serving a term of confinement in the custody of the South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice and does not include a person on probation, parole, or under a community supervision program.

(8) “Law enforcement agency” means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.

(9) “Physical evidence” means an object, thing, or substance that is or is about to be produced or used or has been produced or used in a criminal proceeding related to an offense enumerated in Section 17-28-320, and that is in the possession of a custodian of evidence.

SECTION 17-28-320. Offenses for which evidence preserved; conditions and duration of preservation.

(A) A custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for at least one of the following offenses:

- (1) murder (Section 16-3-10);
- (2) killing by poison (Section 16-3-30);
- (3) killing by stabbing or thrusting (Section 16-3-40);
- (4) voluntary manslaughter (Section 16-3-50);
- (5) homicide by child abuse (Section 16-3-85(A)(1));
- (6) aiding and abetting a homicide by child abuse (Section 16-3-85(A)(2));
- (7) lynching in the first degree (Section 16-3-210);
- (8) killing in a duel (Section 16-3-430);
- (9) spousal sexual battery (Section 16-3-615);
- (10) criminal sexual conduct in the first degree (Section 16-3-652);
- (11) criminal sexual conduct in the second degree (Section 16-3-653);
- (12) criminal sexual conduct in the third degree (Section 16-3-654);
- (13) criminal sexual conduct with a minor (Section 16-3-655);
- (14) arson in the first degree resulting in death (Section 16-11-110(A));
- (15) burglary in the first degree for which the person is sentenced to ten years or more (Section 16-11-311(B));
- (16) armed robbery for which the person is sentenced to ten years or more (Section 16-11-330(A));
- (17) damaging or destroying a building, vehicle, or property by means of an explosive incendiary resulting in death (Section 16-11-540);
- (18) abuse or neglect of a vulnerable adult resulting in death (Section 43-35-85(F));
- (19) sexual misconduct with an inmate, patient, or offender (Section 44-23-1150);
- (20) unlawful removing or damaging of an airport facility or equipment resulting in death (Section 55-1-30 (3));

(21) interference with traffic-control devices or railroad signs or signals resulting in death (Section 56-5-1030(B)(3));

(22) driving a motor vehicle under the influence of alcohol or drugs resulting in death (Section 56-5-2945);

(23) obstruction of railroad resulting in death (Section 58-17-4090); or

(24) accessory before the fact (Section 16-1-40) to any offense enumerated in this subsection.

(B) The physical evidence and biological material must be preserved:

(1) subject to a chain of custody as required by South Carolina law;

(2) with sufficient documentation to locate the physical evidence and biological material; and

(3) under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material.

(C) The physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or *nolo contendere* plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first.

SECTION 17-28-330. Registration as custodian of evidence.

(A) After a person is convicted or adjudicated for at least one of the offenses enumerated in Section 17-28-320, a custodian of evidence shall register with the South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice, as applicable, as a custodian of evidence for physical evidence or biological material related to the person's conviction or adjudication.

(B) The South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice, as applicable, shall notify a custodian of evidence registered pursuant to subsection (A) if the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in Section 17-28

SECTION 17-28-340. Petition for destruction of evidence prior to expiration of required time period.

(A) After a person is convicted or adjudicated for at least one of the offenses enumerated in Section 17-28-320, a custodian of evidence may petition the general sessions court or family court in which the person was convicted or adjudicated for an order allowing for disposition of the physical evidence or biological material prior to the period of time described in Section 17-28-320 if:

(1) the physical evidence or biological material must be returned to its rightful owner, is of such size, bulk, or physical character as to make retention impracticable, or is otherwise required to be disposed of by law; or

(2) DNA evidence was previously introduced at trial, was found to be inculpatory, and all appeals and post-conviction procedures have been exhausted.

(B) The petition must:

(1) be made on such form as prescribed by the Supreme Court;

(2) identify the proceedings in which the person was convicted or adjudicated;

(3) give the date of the entry of the judgment and sentence;

(4) specifically set forth the physical evidence or biological material to be disposed of; and

(5) specifically set forth the reason for the disposition.

(C) The clerk of court shall file the petition upon its receipt and promptly bring it to the attention of the court and deliver a copy to the convicted or adjudicated person and the solicitor or Attorney General, as applicable. The victim shall be notified of the petition pursuant to Article 15, Chapter 3, Title 16.

(D) The convicted or adjudicated person and the solicitor or Attorney General, as applicable, shall have one hundred and eighty days to respond to the petition. The victim may respond within one hundred and eighty days in accordance with the provisions of Article 15, Chapter 3, Title 16.

(E) After a hearing, the court may order that the custodian of evidence may dispose of the physical evidence or biological material if the court determines by preponderance of evidence that:

(1) the physical evidence or biological material must be returned to its rightful owner, is of such size, bulk, or physical character as to make retention impracticable, or is otherwise required to be disposed of by law, or DNA evidence was previously introduced at trial, was found to be inculpatory, and all appeals and post-conviction procedures have been exhausted;

(2) the convicted or adjudicated person, the solicitor or Attorney General, as applicable, and the victim have been notified of the petition for an order to dispose of the physical evidence or biological material;

(3) the convicted or adjudicated person did not file an affidavit declaring, under penalty of perjury, the person's intent to file an application for post-conviction DNA testing of the physical evidence or biological material pursuant to Article 1, Chapter 28, Title 17 within ninety days followed by the actual filing of the application;

(4) the solicitor or the Attorney General, as applicable, and the victim have not filed a response requesting that the physical evidence or biological material not be disposed of; and

(5) no other provision of federal or state law, regulation, or court rule requires preservation of the physical evidence or biological material.

(F) If the court issues an order for the disposition of the physical evidence or biological material, the court may require a custodian of evidence to take reasonable measures to remove and preserve portions of the physical evidence or biological material in a quantity sufficient to:

- (1) permit future DNA testing or other scientific analysis; or
- (2) for other reasons, upon request and good cause shown, by the solicitor or Attorney General, as applicable, or the victim.

SECTION 17-28-350. Wilful destruction.

A person who wilfully and maliciously destroys, alters, conceals, or tampers with physical evidence or biological material that is required to be preserved pursuant to this article with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars for a first offense, and not more than five thousand dollars or imprisoned for not more than one year, or both, for each subsequent violation.

SECTION 17-28-360. Failure to preserve; cause of action against responsible entity; right to release.

Unless there is an act of gross negligence or intentional misconduct this article may not be construed to give rise to a claim for damages against the State of South Carolina, a political subdivision of the State, an employee of the State, or a political subdivision of the State. Failure of a custodian of evidence to preserve physical evidence or biological material pursuant to this article does not entitle a person to any relief from conviction or adjudication but does not prohibit a person from presenting this information at a subsequent hearing or trial.

Office of the Attorney General
State of South Carolina

September 15, 2015

The Honorable Charles E. McNair
Chief
Cayce Department of Public Safety
2 Lavern Jumper Rd.
Cayce, SC 29171

Dear Chief McNair:

We are in receipt of your opinion request concerning the release of vehicles confiscated pursuant to Section 56-5-6240 “upon the service of ‘claim and delivery’ or other repossession orders from the lienholder prior to the adjudication of criminal charges.” (emphasis in original). Our response follows.

I. Law

As you are aware, Section 56-5-6240 of the South Carolina Code addresses, among other things, the “forfeiture, confiscation, and disposition of vehicles seized for conviction of [Driving Under Suspension (“DUS”) and Driving Under the Influence (“DUI”)].’D’ See S.C. Code Ann. §56-5-6240 (2006) (explaining, via legislative title, that the statute deals with “[f] orfeiture, confiscation, and disposition of vehicles seized for conviction of DUS and DUI”). Notably, the statute explains individuals “convicted of a fourth or subsequent” DUS “within the last five years ... or a third or subsequent DUI ... within the last ten years must have the motor vehicle he drove during the offense ... forfeited” S.C. Code Ann. §56-5-6240(A). The statute adds that the “vehicle must be confiscated ... at the time of the arrest.” requires the registered owner to be notified of the confiscation within seventy-two hours, and provides the registered owner with a ten day window to request a hearing disputing the confiscation of their vehicle. *Id.* Further, and particularly relevant to your question, subsection (A) requires that within the ten day window following confiscation of the vehicle. “[t]he sheriff or chief of police in possession of the vehicle must provide notice by certified mail... to all lienholders of record[.]” *Id.*

In slight contrast to Section 56-5-6240(A). which, from a procedural standpoint focuses on post-confiscation, pre-conviction procedures. Section 56-5-6240(B) of the Code touches on post-conviction forfeiture procedures. In particular. Section 56-5-6240(B) explains that where “a person fails to file an appeal within ten days after his conviction or pleas of guilty or *nolo contendere* to the offenses in subsection (A), the sheriff or chief of police shall initiate an action in the circuit court of the county in which the vehicle was confiscated to accomplish forfeiture” Also, and again relevant to your question, subsection (B) of 56-5-6240 mandates that “registered owners, lienholders of record, and other persons claiming an interest in the vehicle subject to forfeiture” receive notice of the forfeiture and be given “an opportunity to appear at a

hearing and show why the vehicle should not be forfeited[.]” S.C. Code Ann. §56-5-6240(B) (2006). Continuing, subsection (B) explains that despite the mandatory requirement that lienholders be notified of an impending forfeiture, “[t]he failure of the lienholder to appear at the hearing does not in any way alter or affect the claim of a lienholder of record” and adds that “[f]orfeiture of a vehicle is subordinate in priority to all valid liens and encumbrances.” *Id.*

II. Analysis

Understanding the relevant provisions of Section 56-5-6240, we now return to your question, whether your office may release a “confiscated vehicle upon the service of ‘claim and delivery’ or other repossession orders from the lienholder prior to the adjudication of criminal charges.” (emphasis in original). As explained below, we believe that it can.¹

In order to determine whether Section 56-5-6240 authorizes a sheriff or chief of police to release a confiscated vehicle subject to forfeiture under its terms prior to adjudication, we must first look to the statute's legislative intent. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.”). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will” and “courts are bound to give effect to the expressed intent of the legislature.” *Media General Communications, Inc. v. South Carolina Dept. of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); *Wade v. State*, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002).

When determining the effect of words utilized in a statute, a court looks to the “plain meaning” of the words. *City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). Nevertheless, courts do not focus on isolated portions of the language contained within a statute, but instead consider the statute's language as a whole. *See Mid-State Auto Action of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (“In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.”). This is because “[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent.” 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction*, §46.5 (7th ed. 2007).

A. Interpreting Section 56-5-6240(A)

Applying these concepts to Section 56-5-6240(A),² it becomes clear that while a driver's forfeiture of a motor vehicle is an additional consequence of a “fourth or subsequent” DUS conviction in five years, or a “third or subsequent” DUI conviction in ten years, the overarching intent of subsection (A) is to immediately take the vehicle away from the driver, regardless of whether they own the vehicle, even prior to adjudication. This is best illustrated by subsection (A)'s requirement that “[t]he vehicle must be confiscated by the arresting officer or other law enforcement officer of that agency at the time of the arrest” S.C. Code Ann. §56-5-6240 (emphasis added) and is further supported by subsection (A)'s innocent owner provision.

Specifically, subsection (A)'s innocent owner provision actually requires the registered owner to prove, by a preponderance of the evidence, that the driver's use of the confiscated vehicle was either (1) unauthorized; or (2) occurred only because the owner was unaware that the driver did not possess a valid license. *Id.* In fact, it is only upon satisfying such a standard that a vehicle confiscated pursuant to Section 56-5-6240(A) can be immediately released to a registered owner.³ Stated differently, only a registered owner who has affirmatively proven that they are an innocent owner is entitled to immediate release of a vehicle confiscated pursuant to Section 56-5-6240(A), while all other vehicle owners, regardless of whether they were the driver or not, are unable to secure the immediate release of a vehicle subject to forfeiture under Section 56-5-6240(A). In light of these provisions, we believe the Legislature, via Section 56-5-6240(A), not only intended to keep vehicles out of certain repeat offender's hands immediately after arrest (i.e. three DUS and a current DUS arrest in a five year period, or two DUI's and a current DUI arrest in a ten year period), but also intended to keep vehicles out of a non-driver owner's hands when the owner of the vehicle has provided the vehicle to the driver regardless of whether they are legally authorized to operate the vehicle.

1. Interpreting Section 56-5-6240(A)'s Post-confiscation, Pre-adjudication Provision

Understanding the overarching intent of Section 56-5-6240(A), we now look to Section 56-5-6240(A)'s post-confiscation, pre-adjudication notification provision. As noted above, Section 56-5-6240(A)'s post-confiscation, pre-adjudication notification provision states “[t]he sheriff or chief of police in possession of the vehicle must provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation.” In analyzing this provision, we note that we may not view this provision in isolation, but must instead view it against the balance of Section 56-5-6240(A)'s other language, as well as the entirety of Section 56-5-6240. *See Mid-State Auto Action of Lexington, Inc.*, 324 S.C. at 69, 476 S.E.2d at 692 (“In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.”). In other words, we must read Section 56-5-6240(A)'s post-confiscation, pre-adjudication notification provision in light of subsection (A)'s overriding intent - (1) to keep vehicles out of a repeat offender's hands immediately following an arrest that would qualify the vehicle for forfeiture; and (2) to keep vehicles out of a non-driver owner's hands when the owner of the vehicle has provided the vehicle to the driver regardless of whether they are legally authorized to operate the vehicle.

Utilizing this construction requirement, we believe subsection (A)'s post-confiscation, pre-adjudication notification provision should not be understood as merely requiring the notification of lienholders of a confiscation and potential forfeiture, but must also be viewed as a provision designed to encourage lienholders holding a claim and delivery or other repossession order to serve such an order and take possession of a vehicle that would otherwise be subject to forfeiture. Simply stated, we believe subsection (A)'s post-confiscation, pre-adjudication notification provision is not only designed for notification of lienholders, but also serves as an invitation to them. Accordingly, we believe this provision implicitly authorizes a law

enforcement agency to release a confiscated vehicle upon the service of ‘claim and delivery’ or other repossession orders from the lienholder prior to the adjudication of criminal charges.

In so finding we note that such a construction not only furthers Section 56-5-6240(A)'s goal of immediate confiscation, but also furthers Section 56-5-6240's broader legislative goal of forfeiture and does so without the need to adjudicate the offense triggering confiscation and forfeiture under the statute. Specifically, because service of a claim and delivery or other repossession order would in many instances, accomplish forfeiture without additional litigation⁴ as well as allow a lienholder with a superior claim⁵ to seek forfeiture of the property that is the subject of the lien, it appears pre-adjudication release of a vehicle subject to repossession would be a preferred method of disposing of a vehicle otherwise subject to forfeiture under Section 56-5-6240. Indeed, subsection (B) supports this conclusion by explaining that “[f]orfeiture of a vehicle is subordinate in priority to all valid liens and encumbrances,” meaning that preadjudication release of a vehicle for purposes of repossession would obviate the need for additional forfeiture litigation since the result of a subsequent forfeiture action under Section 56-5-6240 would be “subordinate in priority.”

Moreover, the structure of Section 56-5-6240(B), specifically its' post-adjudication, pre-forfeiture lienholder notification requirements, also support our conclusion that Section 56-5-6240(A) is designed to encourage lienholders holding a claim and delivery or other repossession order to serve such an order prior to adjudication. For instance, and as noted above, subsection (B)'s requirement that “lienholders and other persons claiming an interest in the vehicle subject to forfeiture” must be notified and given an opportunity to be heard regarding forfeiture, shows an obvious intent to encourage lienholders to serve any claim and delivery or repossession orders they may have regardless of whether it is before or after adjudication of the arresting offense. In fact, the next sentence of subsection (B) further supports this understanding since a lienholder who fails to appear at the hearing concerning forfeiture “does not in any way alter or affect the claim of a lienholder of record.” S.C. Code Ann. §56-5-6240(B). In other words, a review of subsection (B) of Section 56-5-6240 shows that the statute, when viewed as a whole, is obviously aimed at providing lienholders with every opportunity to recover a vehicle that would otherwise be subject to forfeiture pursuant to the terms of Section 56-5-6240.

III. Conclusion

In conclusion, it is the opinion of this Office that Section 56-5-6240(A)'s post-confiscation, pre-adjudication notification provision implicitly authorizes a law enforcement agency to release a confiscated vehicle upon the service of a claim and delivery or other repossession order. Specifically, as discussed in Section 11(A)(1) of our opinion, we believe that since the Legislature not only intended to keep vehicles out of certain repeat offender's hands immediately after arrest, but also intended to keep vehicles out of certain non-driver owner's hands when the owner of the vehicle has provided the vehicle to the driver and is not an innocent owner, pre-adjudication release of such a vehicle via a claim and delivery or other repossession

order is entirely consistent with the statute's overarching legislative intent—forfeiture of the vehicle. As detailed above, this conclusion is supported throughout Section 56-5-6240, particularly subsection (B), which explains that “[f]orfeiture of a vehicle is subordinate in priority to all valid liens and encumbrances[.]” As a result, absent the existence of circumstances outlined in footnote one of our opinion, we believe it is unnecessary for law enforcement to hold a vehicle subject to a claim and delivery or other repossession order through adjudication of the offense triggering confiscation and forfeiture under Section 56-5-6240(A).

Sincerely,

Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

Footnotes

¹ Despite our conclusion that a law enforcement agency may generally release a vehicle confiscated pursuant to Section 56-5-6420, “upon the service of ‘claim and delivery’ or other repossession orders from the lienholder prior to the adjudication of criminal charges” we note that this conclusion is not absolute. For instance, if a confiscated vehicle that is otherwise subject to forfeiture under Section 56-5-6420 is also involved in any of the 24 offenses where preservation of “physical evidence” is mandated pursuant to Section 17-28-320(A), part of the Preservation of Evidence Act, the vehicle, assuming it amounts to physical evidence, could not be released until the earliest of the circumstances outlined in Section 17-28-320(C) has occurred. See S.C. Code Ann. §17-28-320(A) (2014) (requiring a custodian of evidence to “preserve all physical evidence ... related to the conviction or adjudication” for any one of 24 different crimes); S.C. Code Ann. §17-28-320(C) (2014) (“The physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or nolo contendere plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first.”).

² Section 56-5-6240(A) of the South Carolina Code states:

In addition to the penalties for a person convicted of a fourth or subsequent violation within the last five years of operating a motor vehicle while his license is canceled, suspended, or revoked (DUS), or a third or subsequent

violation within the last ten years of operating a motor vehicle while under the influence of intoxicating liquor or drugs (DUI), the person must have the motor vehicle he drove during this offense forfeited as provided in subsections (B) and (C) if the person is the registered owner or a resident of the household of the registered owner. *The vehicle must be confiscated by the arresting officer or other law enforcement officer of that agency at the time of arrest. The officer shall deliver it immediately to the sheriff, chief of police, or the authorized agent of the sheriff or chief of police, in the jurisdiction where the motor vehicle was confiscated. The sheriff, chief of police, or the authorized agent of the sheriff or chief of police shall by certified mail notify the registered owner of the confiscation within seventy-two hours. Upon notification of the confiscation, the registered owner has ten days to request a hearing before the presiding judge of the judicial circuit or his designated hearing officer. The hearing must be held within ten days from the date of receipt of the request. The purpose of the hearing is to determine if there is a preponderance of the evidence that (1) the use of the vehicle on the occasion of the arrest was not expressly or impliedly authorized, or (2) the registered owner did not know that the driver did not possess a valid license.* If the requisite showing is made, the vehicle must be returned to the registered owner. The vehicle confiscated pursuant to this section may be returned to the registered owner upon petition to the court by the law enforcement agency confiscating the vehicle if the criminal charge has not been disposed of within twelve months of the date of confiscation. If the registered owner of the vehicle does not remove the vehicle from law enforcement's possession within ten days of service of the court order allowing the return, law enforcement may dispose of the vehicle as provided in subsection (C). The sheriff or chief of police in possession of the vehicle must provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation.

S.C. Code Ann. § 56-5-6240(A) (emphasis added).

³ While we recognize subsection (A) does permit a “vehicle confiscated pursuant to this section to be returned to the registered owner upon petition to the court by the law enforcement agency confiscating the vehicle if the criminal charge has not been disposed of within twelve months of the date of confiscation,” it seems clear this does not undermine the intent to immediately deprive registered owners of vehicles who do not otherwise meet subsection (A)' s innocent owner requirements.

⁴ See e.g., S.C. Bench Book for Summary Court Judges, Action of Claim and Delivery (“A common illustration of a proper claim and delivery action is where a security agreement, installment contract, or an installment has been signed for the purchase of an automobile and

there has been a default in payments by the purchaser. Provisions in the security agreement or installment contract that allow the seller or lender to take *immediate possession of an automobile* when the buyer defaults and wrongfully detains it *are enforced by an action of claim and delivery*”) (emphasis added).

⁵ See S.C. Code Ann. §56-5-6240.

Office of the Attorney General
State of South Carolina

June 17, 2015

James Fulcher, M.D.
Deputy Medical Examiner
Greenville County
1190 West Paris Road
Greenville, South Carolina 29605

Dear Dr. Fulcher:

As the Deputy Medical Examiner for Greenville County, you have requested the opinion of this Office regarding our State's Preservation of Evidence Act, S.C. Code Ann. §17-28-300 *et seq.* (hereinafter “the Act”), and how it pertains to toxicological, wet blood, and tissue samples. Specifically, you state that your “reading of the law is that we are required to preserve DNA evidence only, not toxicology evidence.” You also note that:

our office always keeps a dried blood DNA blood spot on all cases. This is part of the normal procedure and is good forensic medicine practice. In addition, we store and catalog paraffin wax tissue blocks and glass slides for each autopsy, these can also be used to obtain DNA. These DNA blood spots are stored with the case file in the medical examiner's office and the additional slides and wax tissue blocks are stored in a secure off-site location.

Should the Act require preservation of toxicology evidence, you list concerns, including space and refrigeration requirements, degradation of the evidence over time that would occur with “repeal” toxicology, interpretation of decreases in drug variable rates, and the impact of storage conditions on degradation. Our analysis of the requirements of the Act follows.

Law/Analysis

In nearly all of the opinions written on the Preservation of Evidence Act authored by our Office, we have begun with the duty imposed by the Constitution to disclose favorable evidence material to guilt or punishment to a criminal defendant. We discussed this right in one opinion as follows:

[i]n examining your questions, it must first be acknowledged that as stated by the United States Supreme Court in *California v. Trombetta et al.*, 467 U.S. 479 at 480 (1984), “[t]he Due Process Clause of the Fourteenth Amendment requires the State to disclose to criminal defendants favorable

evidence that is material either to guilt or to punishment.” The Court further stated that

[u]nder the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the Court has developed “what might loosely be called the area of constitutionally guaranteed access to evidence.” *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867, 102 S.Ct. 3440, 3447, 73 L.Ed.2d 1193 (1982). Taken together, this group of constitutional privileges delivers exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system ...A defendant has a constitutionally protected privilege to request and obtain from the prosecution evidence that is either material to the guilt of the defendant or relevant to the punishment to be imposed. *Brady v. Maryland*, 373 U.S., at 87, 83 S.Ct., at 1196. Even in the absence of a specific request, the prosecution has a constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt about the defendant's guilt. *United States v. Agurs*, 427 U.S., at 112, 96 S.Ct., at 2401

467 U.S. at 485. The Court further stated that

[w]hatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspects defense. To meet this standard of constitutional materiality, *see United States v. Agurs*, 427 U.S., at 109-110, 96 S.Ct., at 2400, evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.

467 U.S. at 488-489. Op. S.C. Att'y Gen., 2010 WL 3896175 (Sept. 15, 2010).

In *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333 (1988), the Supreme Court further discussed the constitutional obligation to preserve potentially exculpatory evidence. The Court stated that “the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant,” does not establish a due process violation unless the defendant can show bad faith on the part of the police in destroying the evidence. *Id.* at 57-58, 109 S.Ct. at 337-38.

In 2009, the Supreme Court clarified that a defendant's due process rights prior to trial do not continue to the same extent after conviction. See *District Attorney's Office for the Third Judicial Circuit v. Osborne*, 557 U.S. 52, 129 S.Ct. 2308 (2009). The Court specified that those convicted have only limited rights to due process, particularly in regard to postconviction relief. *Id.* at 69, 129 S.Ct. at 2320 (“Osborne's right to due process is not parallel to a trial right, but rather must be analyzed in light of the fact that he has already been found guilty at a fair trial, and has only a limited interest in postconviction relief). Osborne also provided that upon conviction, “the criminal defendant has been constitutionally deprived of his liberty.” *Id.* “The State accordingly has more flexibility in deciding what procedures are needed in the context of postconviction relief.” *Id.* As a result, an inmate's ability to gain access to DNA testing as a right largely depends on state legislatures and state courts through DNA postconviction access laws. However, subsequent to Osborne, the Court held that a state prisoner complaining of unconstitutional state action for failure to conduct DNA testing could enforce a civil rights action under 42 U.S.C. §1983 to challenge the constitutionality of a state postconviction relief DNA statute and that a writ of habeas corpus under 28 U.S.C. §2254 was not the prisoner's exclusive remedy. *Skinner v. Switzer*, 562 U.S. 521, 131 S.Ct. 1289 (2011). As we have previously concluded, “*Skinner* therefore demonstrates the importance of continuing to preserve physical evidence and biological material for the crimes enumerated in § 17-28-320(A).” Op. S.C. Att'y Gen., 2011 WL 2214060 (May 12, 2011).

“To date, all fifty states have enacted some type of postconviction DNA access law. The Innocence Project, Today, All 50 States Have DNA Access Laws, available at <http://www.innocenceproject.org/files/imported/dnainnocenceproiectwebsite.pdf> (showing the progression of enactment of postconviction DNA access laws among the fifty states from 1992 to 2013). South Carolina's postconviction DNA access law, titled the “Access to Justice Post-Conviction DNA Testing Act,” (hereinafter ““Post-Conviction DNA Testing Act”) was enacted in 2008 as part of Act Number 413. Act No. 413, 2008 S.C. Acts 4037. Also included in Act 413, and part of the same statutory scheme as the Post-Conviction DNA Testing Act, is the Preservation of Evidence Act from which your questions pertain. *Id.* Centering on whether toxicology evidence collected by your office would constitute “biological material” the Act requires a “custodian of evidence” to preserve, your question is one of statutory interpretation; accordingly we turn to the applicable rules for guidance.

It is well-established that the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Berkeley County Sch. Dist. v. South Carolina Dep't of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 913, 919 (2009) (citation omitted). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *State v. Jacobs*, 393 S.C. 584, 587, 713 S.E.2d 621, 622-23 (2011) (citation omitted). Put differently, “[w]ords in a statute must be given their plain and ordinary meaning without resorting to subtle

or forced construction to limit or expand the statute's application.” *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011) (citation omitted).

With these rules in mind, we are required to look to the plain language used in the Act itself. Section 17-28-320(A) of the South Carolina Code specifies what evidence must be preserved and by whom. Specifically, it provides that “[a] custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for at least one of the following offenses ... [the designated twenty-four offenses follow].” S.C. Code Ann. §17-28-320(A) (2014) (emphasis added). Subsection (B) of Section 17-28-320 provides the conditions for preservation, stating that:

[t]he physical evidence and biological material must be preserved:

- (1) subject to a chain of custody as required by South Carolina law;
- (2) with sufficient documentation to locate the physical evidence and biological material; and
- (3) under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material.

S.C. Code Ann. §17-28-320(B) (2014). Subsection (C) of the same section relates to the length of time physical evidence and biological material must be preserved, providing that:

[t]he physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or *nolo contendere* plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first.

S.C. Code Ann. §17-28-320(C) (2014).

Being that the Act applies to “custodians of evidence” for the preservation of all “physical evidence” and “biological material,” the definitions provided for these terms in the Act follow. S.C. Code Ann. §17-28-310(2) (2014) defines the term “custodian of evidence” as:

... an agency or political subdivision of the State including, but not limited to, a law enforcement agency, a solicitor's office, the Attorney General's office, a county clerk of court, or a state grand jury that possesses and is responsible for the control of evidence during a criminal investigation or

proceeding, or a person ordered by a court to take custody of evidence during a criminal investigation or proceeding.

“Biological material” is defined as “any blood, tissue, hair, saliva, bone, or semen from which DNA marker groupings may be obtained. This includes material catalogued separately on slides, swabs, or test tubes or present on other evidence including, but not limited to, clothing, ligatures, bedding, other household material, drinking cups, or cigarettes.” S.C. Code Ann. §17-28-310(1) (2014).

And, the term “physical evidence” is defined as “an object, thing, or substance that is or is about to be produced or used or has been produced or used in a criminal proceeding related to an offense enumerated in 17-28-320, and that that is in the possession of a custodian of evidence. S.C. Code Ann. §17-28-310(9) (2014).

In a July 15, 2011 opinion, we opined on the legislative intent in enactment of both the Post-Conviction DNA Testing Act and the Preservation of Evidence Act. *See Op. S.C. Att’y Gen.*, 2011 WL 3346426 (July 15, 2011). After addressing the rule of construction that the legislative intent should be found in the plain language of the statute itself, we commented as follows:

[t]he Act is part of 2008 S.C. Acts 413, that included the “Access to Justice Post-Conviction DNA Testing Act” aimed at providing convicted defendants with the opportunity to have evidence, which was not previously subjected to DNA testing or not the same type of DNA testing, tested to determine whether it possesses any exculpatory value. In the opinion of this office, the Legislature's intent upon passing the Act was twofold. That intent was, first, to provide procedures for the preservation of evidence and to delineate the offenses for which physical evidence and biological material must be preserved; and secondly, to establish guidelines for the return of evidence prior to the period of time set forth therein, and to provide for penalties for destroying or tampering with evidence covered by the Act.

Id. at * 2.

Applying the Act's terms to your specific questions, we first point out our belief that the Act extends to medical examiners as fitting within the definition of a “custodian of evidence.” In a prior opinion of this office, we concluded that “a coroner's office would be within the definition of a “custodian of evidence' for purposes of the Act.” *Op. S.C. Att’y Gen.*, 2010 WL 3896175 (Sept. 15, 2010). In reaching this conclusion, we relied on statutory provisions establishing a coroner's powers to conduct an investigation and inquest into the cause of death of a deceased person and prior opinions of this office establishing the similarity of a coroner's office to law enforcement being that an inquest is “essentially a criminal proceeding, although it is not a trial involving the merits, but rather a preliminary investigation.” *Id.* at *3-4 (discussing S.C.

Code Ann. §17-7-20, § 17-7-70, § 40-19-280(A), Op. S.C. Att'y Gen., 1976 WL 23100 (October 7, 1976)' Op. S.C. Att'y Gen., 1960 WL 8118 (April 20, 1960)).

Pursuant to S.C. Code Ann. §17-5-5 (2014), the term “medical examiner” is defined as “the licensed physician or pathologist designated by the county medical examiner's commission pursuant to Article 5 of this chapter for purposes of performing post-mortem examinations, autopsies, and examinations of other forms of evidence required by this chapter.” In a prior opinion of this Office, we have discussed the role of a medical examiner in investigations of violent or unexplained deaths in comparison to the duties of the coroner, and in particular, whether or not the medical examiner is limited in his investigation to a determination of the cause of death by means of laboratory examination only. Op. S.C. Att'y Gen., 1974 WL 27489 (Oct. 21, 1974). We noted statutory authority providing that “[w]ith respect to violent or unexplained deaths ... ‘The county medical examiner shall make immediate inquiry into the cause and manner [emphasis added] of death and shall reduce his findings to writing—.’” *Id.* at *1 (quoting Section 17-166, 1962 Code of Laws of South Carolina, (now S.C. Code Ann. §17-5-530(B))) (emphasis in original). In light of this duty, we explained that

[e]ven if the Medical Examiner can determine the cause of death by means of a laboratory post mortem examination, it is obviously impossible for him to determine the manner of death, as it is his statutory duty to do, by such means. For example, he could not make a factual finding of whether or not a gunshot wound causing death was the result of accident, homicide or suicide, without some investigation extending outside the laboratory.

Id. at *1. We therefore concluded that “the duties and powers of [] [the Coroner's] Office and those of the Medical Examiner of Charleston County overlap to a great degree, and, specifically, that the Medical Examiner is not limited to laboratory post mortem examinations to determine the cause of death. He may conduct reasonable investigation outside the laboratory to determine the manner of death.” *Id.*

While the coroner possesses the jurisdiction to conduct an inquest,¹ we believe the significant degree that the duties of the coroner and medical examiner overlap, see S.C. Code Ann. §17-5-510 et seq., which includes the statutory authority to determine both the cause and manner of violent and unexplained deaths, would categorize the office of the medical examiner within the definition of “custodian of evidence” for purposes of the Act. As a custodian of evidence, we believe the medical examiner must comply with the Act, including the duty to preserve all physical evidence and biological material related to the conviction or adjudication of a person for the twenty-four designated offences.

To further elaborate on this preservation requirement, we note that DNA preservation statutes enacted among the fifty states have been categorized by one scholar into three groups: (1) “no-duty statutes” that are silent with respect to the duty to preserve biological evidence for

post-conviction DNA analysis; (2) “qualified duty statutes” where the duty to preserve evidence is triggered when a petition for DNA testing is filed; and (3) “blanket duty statutes” - the standard that is most comprehensive - where the government has an obligation to preserve all biological evidence that was collected during the initial criminal investigation and properly retain the evidence until the prisoner is released from confinement. Cynthia E. Jones, *Evidence Destroyed. Innocence Lost: The Preservation of Biological Evidence Under Innocence Protection Statutes*, 42 Am. Crim. L. Rev. 1239, 1253-57 (2005). The so called “blanket duty statutes” were further described as follows:

[b]lanket-duty statutes also insulate biological evidence from the haphazard evidence management policies that have resulted in the discretionary disposal of valuable evidence solely to create additional storage space. Further, unlike the extremely narrow constitutional duty to preserve evidence, the blanket statutory duty mandates preservation regardless of good or bad faith and notwithstanding whether the evidence has an apparent exculpatory value. Thus, innocence protection statutes that impose a blanket duty to preserve evidence effectively close the gap between lawful evidence destruction pursuant to evidence management policies and the extremely limited constitutional duty to preserve evidence.

Id. at 1256; *see also* Krista A. Dolan, *Creating the Best Practices in DNA Preservation: Recommended Practices and Procedures*, 49 No. 2 Crim. Law Bulletin Art. 6, 1256 (2013) (“In addition to mandatory preservation under blanket statutes, these statutes also create a preservation duty that is a higher duty than what is required constitutionally—that is, the duty to preserve exists regardless of the subjective intent of police officers, and regardless of whether there is any apparent exculpatory value to the evidence”).

S.C. Code Ann. §17-28-320(A), again providing that “a custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for ... [the designated twenty-four offenses]” imposes a blanket statutory duty to preserve physical evidence and biological material without regard to subjective intent or whether there is any apparent exculpatory value to the evidence. In line with the intent of the legislature in providing this blanket statutory duty, we have previously provided our interpretation that this requirement extends to all evidence collected as part of the investigation of the crime. Specifically, we provided as follows:

[n]ormally, evidence in a criminal case is retained in custody of law enforcement until such time as it is needed by the solicitor or other prosecuting officer for presentation in court. Ops. S.C. Atty. Gen., March 16, 2011; August 7, 2000. *In the opinion of this office, therefore, it would be consistent with the intent of the Act that evidence for the crimes enumerated in § 17-28-320(A), once “collected” by law enforcement, i.e., gathered and*

retained for processing, becomes either “physical evidence” or “biological material” for purposes of the Act. Such evidence must be preserved under the provisions of the Act for a period of retention set forth in § 17-28-320(C) (based upon conviction). Such evidence may be disposed of only by way of petition pursuant to procedures set forth in §17-28-340.

Op. S.C. Att’y Gen., 2011 WL 3346426 (July 15, 2011) (emphasis added). As custodians of evidence, we believe the same standard would apply to your office. If evidence is collected, i.e., gathered and retained for processing, as specified above, we believe preservation would be required pursuant to the terms of the Act.

However, in regards to whether a particular piece of evidence would be covered by the Act, we are not permitted to make a conclusion in that regard. As we have stated before,

this office cannot comment specifically on the forensic value of any particular evidence. We can only set forth the requirements of the Act. Whether a piece of evidence would be considered “physical evidence” or “biological material” under the Act would be a matter for review by local authorities, including the prosecutor. Also, the exculpatory value of evidence, if any, would have to be considered as to any question regarding the return of evidence.

Op. S.C. Atty Gen., 2011 WL 3346426 (July 15, 2011).

Should evidence be considered “physical evidence” or “biological material” related to the conviction or adjudication of one of the twenty-four offenses named in the Act, we have commented on our interpretation of the Act's requirements as to how the evidence must be stored. Specifically, in an opinion dated November 10, 2010, we stated that: “it does not appear that the Act was intended to superimpose new or more stringent evidence collection or retention methods but rather anticipated the continuation of the ‘best practices’ of forensic science methodology already in use. Op. S.C. Att’y Gen., 2010 WL 4982627 (Nov. 10, 2010). We commented further in a subsequent opinion, noting that

[p]ursuant to §17-28-320(B), the Act requires the preservation of “biological material” and “physical evidence” as defined in the Act “under conditions reasonably designed to preserve the forensic value” of such material and evidence, and subject to a chain of custody required by State law. *See State v. Hatcher*, 392 S.C. 86, 708 S.E.2d 750 (2011) [holding that a complete chain of custody must be established once law enforcement officers take possession of the evidence].

Op. S.C. Att’y Gen., 2011 WL 3346426 (July 15, 2011).

Consistent with the above, it is our opinion that the Act's requirements of preserving evidence "under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material" does not require custodians of evidence to impose heightened standards; rather, it only requires a continuation of the best practices of forensic science methodology already in use.

Furthermore, in S.C. Code Ann. §17-28-320(C) the legislature has specified the length of time evidence covered by the Act must be preserved. For trial convictions, the Act specifies that for defendants convicted by bench or jury trial, "[t]he physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A)." For conviction by guilty or *nolo contendere* plea, the Act states "the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first." S.C. Code Ann. §17-28-320(C) (2014).

The Act does provide a means for a custodian of evidence to file a petition for the early destruction of evidence, prior to the retention periods described above, if:

- (1) the physical evidence or biological material must be returned to its rightful owner, is of such a size, bulk, or physical character as to make retention impracticable, or it otherwise required to be disposed by law; or
- (2) DNA evidence was previously introduced at trial, was found to be inculpatory, and all appeals and post-conviction procedures have been exhausted.

S.C. Code Ann. §17-28-340(A) (2014).

The procedures for petitioning the applicable court for authorization of early destruction of evidence is provided in S.C. Code Ann. § 17-28-340(B) (2014); however, as was cautioned in the course notebook from a training seminar conducted by the South Carolina Commission on Prosecution Coordination, "[n]on-attorneys should not be preparing, without direct supervision by an attorney, or signing legal pleadings such as the petition or representing custodians of evidence in regard to petitions for early release or destruction because such would most likely constitute the unauthorized practice of law." South Carolina Commission on Prosecution Coordination, *The South Carolina Preservation of Evidence Act: Duties of and Liability for Evidence Custodians*, May 16, 2013, at 28 (citing S.C. Code Ann. §40-5-310) (emphasis in original).

Finally, as was also summarized in the South Carolina Commission on Prosecution Coordination training notebook, we emphasize that

the Preservation of Evidence Act only deals with and governs the preservation of evidence related to 24 specific crimes (and their related offenses) that are enumerated in S.C. Code Section 17-28-320 (A) Custodians need to be aware that physical and biological evidence in other cases still needs to be preserved while the cases are pending at the trial level, while on appeal, and while the defendant is pursuing or is able to pursue collateral relief (post-conviction relief or habeas relief). To avoid violating a defendant's constitutional rights (see, e.g., *Skinner v. Switzer*, 562 U.S. 521, 131 S.Ct. 1289 (2011) (holding DNA tests sought by State prisoner in § 1983 action might prove exculpatory) or depriving the State of the evidence it may need to re-prosecute someone, evidence in all other cases should still not be destroyed, returned, or otherwise disposed of without reasonable notification to and approval of the prosecutor's office or the South Carolina Attorney General's Office.

Id. at 21.

Conclusion

We believe it was the intent of the Legislature in enacting the Post-Conviction DNA Testing Act and the Preservation of Evidence Act, respectively, to provide convicted defendants with the opportunity to have evidence not subject to DNA testing or not subject to a particular type of DNA testing, available for testing to determine whether it possesses exculpatory value and to provide a procedure for preservation and delineate the offenses covered by the Act, to impose guidelines for the return of evidence prior to the specified retention periods, and to impose penalties for violations of the Act. In accord with this intent, our Legislature has implemented a “blanket duty statute” that requires a custodian of evidence to preserve all physical evidence and biological material related to the conviction or adjudication of a person for the twenty-four specified offenses listed in S.C. Code Ann. §17-28-320(A). Previous opinions of this Office have concluded that all evidence “collected” by law enforcement i.e., gathered and retained for processing, becomes either “physical evidence” or “biological material” for purposes of the Act. As it is our belief a medical examiner would be considered a custodian of evidence, we believe he or she too must comply with this requirement.

Such evidence must be preserved under the period of retention set forth in § 17-28-320(C), based upon the manner in which the defendant was convicted. Evidence can only otherwise be disposed of by way of petition pursuant to the requirements set forth in §17-28-340.

Also noted in prior opinions of this Office, we believe it would be sufficient for custodians of evidence to utilize normal, customary, and contemporary forensic science techniques in the investigation and retention of evidence gathered and/or used in a criminal prosecution in order to comply with the Act. In other words, we do not believe that it was the

intent of the Legislature to impose more stringent standards, but rather it intended that custodians of evidence continue use of the best practices of forensic science methodology.

Finally, we remind evidence custodians that S.C. Code Ann. § 17-28-320(C) does not replace other considerations regarding the preservation of physical evidence and biological material for covered cases as well as for offenses not covered by the Act. Evidence custodians must be mindful of not violating a defendant's constitutional rights or depriving the State of evidence that it may later need to re-prosecute defendants at a later date.

Should you have any additional questions, please advise.

Very truly yours,

Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

Footnotes

¹ See S.C. Code Ann. §17-7-70 (2014).

Office of the Attorney General
State of South Carolina

July 15, 2011

Captain Garland Major, Jr.
Anderson County Sheriff's Department
305 Camson Road
Anderson, SC 29625

Dear Captain Major:

We received your letter regarding S.C. Code Ann. §§17-28-300 *et seq.*, the “Preservation of Evidence Act” (hereinafter “the Act”). Specifically, you request an opinion of this office addressing when evidence becomes “physical evidence” or “biological material” under the Act.

Law/Analysis

Before addressing your question, we refer to prior opinions of this office noting that, as stated by the United States Supreme Court in *California v. Trombetta*, 467 U.S. 479, 480 (1984), “[t]he Due Process Clause of the Fourteenth Amendment requires the State to disclose to criminal defendants favorable evidence that is material either to guilt or to punishment.” Ops. S.C. Atty. Gen., March 16, 2011; November 10, 2010; November 9, 2010; September 15, 2010. The *Trombetta* Court further stated:

[u]nder the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the Court has developed “what might loosely be called the area of constitutionally guaranteed access to evidence.” *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867, 102 S.Ct. 3440, 3447, 73 L.Ed.2d 1193 (1982). Taken together, this group of constitutional privileges delivers exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system. . . . A defendant has a constitutionally protected privilege to request and obtain from the prosecution evidence that is either material to the guilt of the defendant or relevant to the punishment to be imposed. *Brady v. Maryland*, 373 U.S. [83, 87 (1963)]. Even in the absence of a specific request, the prosecution has a constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt about the defendant's guilt. *United States v. Agurs*, 427 U.S. [97, 112 (1976)]. . .

Trombetta, 467 U.S. at 485. The Court emphasized that:

[w]hatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, see [*Agurs*,] 427 U.S. [at 109-110], evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.

Trombetta, 467 U.S. at 488-489. In other words, the duty of disclosure in a case is operative as a duty of preservation.

The Legislature enacted the Act in 2008. In order to interpret the Act, we employ the rules of statutory interpretation, the primary of which is to ascertain and effectuate the intent of the Legislature. *Berkeley County School Dist. v. South Carolina Dep't of Revenue*, 383 S.C. 334, 679 S.E.2d 913 (2009). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *McClanahan v. Richland County Council*, 350 S.C. 433, 567 S.E.2d 240, 242 (2002). Whenever possible, legislative intent should be found in the plain language of the statute itself. *State v. Gaines*, 380 S.C. 23, 667 S.E.2d 728 (2008).

The Act is part of 2008 S.C. Acts 413, that included the “Access to Justice Post-Conviction DNA Testing Act” aimed at providing convicted defendants with the opportunity to have evidence, which was not previously subjected to DNA testing or not to the same type of DNA testing, tested to determine whether it possesses any exculpatory value. In the opinion of this office, the Legislature's intent upon passing this Act was twofold. That intent was, first, to provide procedures for the preservation of evidence and to delineate the offenses for which physical evidence and biological material must be preserved; and secondly, to establish guidelines for the return of evidence prior to the period of time set forth therein, and to provide for penalties for destroying or tampering with evidence covered by the Act.

Pursuant to §17-28-320 (A), “a custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for . . . (the designated offenses) . . .”¹ Section 17-28-320 (B) states that:

[t]he physical evidence and biological material must be preserved: (1) subject to a chain of custody as required by South Carolina law; (2) with sufficient documentation to locate the physical evidence and biological material; and (3) under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material.

The term “biological material” is defined by subsection (1) of §17-28-310 as:

. . . any blood, tissue, hair, saliva, bone, or semen from which DNA marker groupings may be obtained. This includes material catalogued separately on slides, swabs, or test tubes or present on other evidence including, but not limited to, clothing, ligatures, bedding, other household material, drinking cups, or cigarettes.

Most relevant to your question, the term “physical evidence” is defined pursuant to subsection (9) of such provision as:

. . . an object, thing, or substance that is or is about to be produced or used or has been produced or used in a criminal proceeding related to an offense enumerated in Section 17-28-320, and that is in the possession of a custodian of evidence.

Section 17-28-310 (2) defines the term “custodian of evidence” as used in the Act as:

. . . an agency or political subdivision of the State including, but not limited to, a law enforcement agency, a solicitor's office, the Attorney General's office, a county clerk of court, or a state grand jury that possesses and is responsible for the control of evidence during a criminal investigation or proceeding, or a person ordered by a court to take custody of evidence during a criminal investigation or proceeding.

All physical evidence and biological material related to a criminal conviction, whether by trial or guilty plea, must be preserved as stated. Specifically, §17-28-320 (C) states:

[t]he physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or nolo contendere plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first.

Section 17-28-340 (A) through (F), however, authorizes a procedure, by petition to the general sessions or family court in which the person was convicted or adjudicated, for the destruction of evidence prior to the expiration of the required time period.

Otherwise, as provided in §17-28-350:

[a] person who wilfully and maliciously destroys, alters, conceals, or tampers with physical evidence or biological material that is required to be preserved pursuant to this article with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars for a first offense, and not more than five thousand dollars or imprisoned for not more than one year, or both, for each subsequent violation.

In an opinion dated November 10, 2010, we stated that “it does not appear that the Act was intended to superimpose new or more stringent evidence collection or retention methods but rather anticipated the continuation of the ‘best practices’ of forensic science methodology already in use.” Pursuant to §17-28-320 (B), the Act requires the preservation of “biological material” and “physical evidence” as defined in the Act “under conditions reasonably designed to preserve the forensic value” of such material and evidence, and subject to a chain of custody required by State law. *See State v. Hatcher*, 392 S.C. 86, 708 S.E.2d 750 (2011) [holding that a complete chain of custody must be established once law enforcement officers take possession of the evidence].

In an opinion dated May 12, 2011, we addressed whether evidence under the Act may be disposed of seven years after a guilty or nolo contendere plea. In considering the issue, we cited to the course notebook from a training seminar conducted by the South Carolina Commission on Prosecution Coordination, “The South Carolina Preservation of Evidence Act: Duties of and Liability for Evidence Custodian” (March 14, 2011), which noted:

the definition of “physical evidence” should not be limited to evidence actually “produced” or “used” in a criminal proceeding (such as evidence either marked for identification only, used for impeachment purposes but not admitted, or offered for admission but not admitted), because it is reasonable to conclude the Legislature intended “physical evidence” to include all evidence collected in a case, regardless of whether it was used in a criminal proceeding. . . . Items from which DNA or other forensic evidence has not been developed is not always introduced at trial. Therefore, it is often evidence that never played a part in a defendant's trial that is the focus of a post-conviction DNA test or testing application. If “physical evidence” were interpreted to only include those items of evidence actually used in court, the testing provided for in the “Access to Justice Post-Conviction DNA Testing Act” could not be accomplished (because the evidence would not have been retained).

We also note that South Carolina has enacted legislation detailing the rights of a victim as set forth in S.C. Code Ann. §§16-3-1505 *et seq.* Specifically, §16-3-1535(E) provides:

[a] law enforcement agency and the summary court must return to a victim personal property recovered or taken as evidence *as expeditiously as possible*, substituting photographs of the property and itemized lists of the property including serial numbers and unique identifying characteristics for use as evidence when possible. [Emphasis added].

However, we have consistently advised the mandate of §17-28-320 (C) clearly prevails over §16-3-1535(E), and that a “custodian of evidence” would not be responsible for compensating the victim or next of kin if the personal belongings cannot be returned more expeditiously than authorized by the Act. See Ops. S.C. Atty. Gen., February 23, 2011; November 10, 2010; November 9, 2010.

Conclusion

Consistent with the above, in the opinion of this office it would be sufficient under the Act for law enforcement as a “custodian of evidence” as defined in the Act to utilize normal, customary, and contemporary forensic science techniques in the investigation and retention of evidence gathered and/or used in a criminal prosecution in order to comply with the Act. See Op. S.C. Atty. Gen., November 9, 2010. Normally, evidence in a criminal case is retained in custody of law enforcement until such time as it is needed by the solicitor or other prosecuting officer for presentation in court. Ops. S.C. Atty. Gen., March 16, 2011; August 7, 2000. In the opinion of this office, therefore, it would be consistent with the intent of the Act that evidence for the crimes enumerated in §17-28-320 (A), once “collected” by law enforcement, *i.e.*, gathered and retained for processing, becomes either “physical evidence” or “biological material” for purposes of the Act. Such evidence must be preserved under the provisions of the Act for the period of retention set forth in §17-28-320 (C) (based upon conviction). Such evidence may be disposed of only by way of a petition pursuant to procedures set forth in §17-28-340.

Moreover, we advise that it would be permissible and consistent with the intent of the Act that the gathering and retention of such evidence allows for the substitution and/or conversion of such original evidence through the techniques of sampling, swabbing, photographing or the use of other forensic science techniques so long as care is taken to preserve the evidence in compliance with the rules of evidence and chain of custody. Further, the release of personal items would be permissible and in conformity with this Act so long as reasonable and customary forensic techniques are employed to collect and preserve evidence prior to the release of the personal items. Any and all such actions must be consistent with normal science methods, and meet present State requirements for chain of custody and admissibility under Rules of Practice and case law. Ops. S.C. Atty. Gen., November 10, 2010; November 9, 2010.

Finally, this office cannot comment specifically on the forensic value of any particular piece of evidence. We can only set forth the requirements of the Act. Whether a piece of evidence would be considered “physical evidence” or “biological material” under the Act would be a matter for review by local authorities, including the prosecutor. Also, the exculpatory value of evidence, if any, would have to be considered as to any question regarding the return of such evidence.

If you have any further questions, please advise.

Very Truly Yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

Footnotes

¹ The Act requires the preservation of physical evidence and biological material for the twenty-four offenses enumerated in §17-28-320 (A). We have previously noted that other criminal offenses would not be subject to the Act's provisions, and we advised that “evidence in these cases should not be destroyed, returned, or disposed of without reasonable notification to and approval of the Circuit Solicitor.” Op. S.C. Atty. Gen., May 12, 2011. The retention of evidence of these “other” crimes, however, is beyond the scope of your opinion request.

Office of the Attorney General
State of South Carolina

May 12, 2011

Sergeant J. Thomas Clamp, Jr.
Anderson County Sheriff's Office
303 Camson Road
Anderson, SC 29625

Dear Sergeant Clamp:

We received your letter requesting an opinion of this office concerning the “Preservation of Evidence Act” and “the length of time the evidence must be preserved pursuant to a Conviction by Plea.” You note that “[f]or defendants convicted or adjudicated on a guilty or nolo contendere plea, the physical evidence and biological material must be preserved for seven years from the date of sentencing.” Specifically, you ask whether, “[u]nder subsection (C) of Section 17-28-320, can we - the Anderson County Sheriff's Office - dispose of the Evidence without a court order after the seven years have expired?”

Law/Analysis

In examining your question, we note from prior opinions of this office that, as stated by the United States Supreme Court in *California v. Trombetta*, 467 U.S. 479, 480 (1984), “[t]he Due Process Clause of the Fourteenth Amendment requires the State to disclose to criminal defendants favorable evidence that is material either to guilt or to punishment.” Ops. S.C. Atty. Gen., November 10, 2010; November 9, 2010; September 15, 2010. The Court further stated:

[u]nder the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the Court has developed “what might loosely be called the area of constitutionally guaranteed access to evidence.” *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867, 102 S.Ct. 3440, 3447, 73 L.Ed.2d 1193 (1982). Taken together, this group of constitutional privileges delivers exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system. . . . A defendant has a constitutionally protected privilege to request and obtain from the prosecution evidence that is either material to the guilt of the defendant or relevant to the punishment to be imposed. *Brady v. Maryland*, 373 U.S. [83, 87 (1963)]. Even in the absence of a specific request, the prosecution has a

constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt about the defendant's guilt. *United States v. Agurs*, 427 U.S. [97, 112 (1976)]. . .

Trombetta, 467 U.S. at 485. The Court emphasized that:

[w]hatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, see [*Agurs*,] 427 U.S. [at 109-110], evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.

Trombetta, 467 U.S. at 488-489.

In 2008, the Legislature enacted the “Preservation of Evidence Act” (hereinafter “the Act”). S.C. Code Ann. §§17-28-300 *et seq.* Pursuant to §17-28-320(A), “a custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for . . . (the designated offenses). . . .” Subsection (B) of such provision states that:

[t]he physical evidence and biological material must be preserved: (1) subject to a chain of custody as required by South Carolina law; (2) with sufficient documentation to locate the physical evidence and biological material; and (3) under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material. [Emphasis added].

The term “biological material” is defined by subsection (1) of §17-28-310 as:

. . . any blood, tissue, hair, saliva, bone, or semen from which DNA marker groupings may be obtained. This includes material catalogued separately on slides, swabs, or test tubes or present on other evidence including, but not limited to, clothing, ligatures, bedding, other household material, drinking cups, or cigarettes.

The term “physical evidence” is defined pursuant to subsection (9) of such provision as:

. . . an object, thing, or substance that is or is about to be produced or used or has been produced or used in a criminal proceeding related to an offense enumerated in Section 17-28-320, and that is in the possession of a custodian of evidence.

Section 17-28-310(2) defines the term “custodian of evidence” as used in the Act as:

. . . an agency or political subdivision of the State including, but not limited to, a law enforcement agency, a solicitor's office, the Attorney General's office, a county clerk of court, or a state grand jury that possesses and is responsible for the control of evidence during a criminal investigation or proceeding, or a person ordered by a court to take custody of evidence during a criminal investigation or proceeding.

We have consistently advised that all physical evidence and biological material related to a criminal conviction, whether by trial or guilty plea, must be preserved as stated.¹ As set forth in §17-28-320(B)(3), such evidence must be preserved “under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material.” Ops. S.C. Atty. Gen., February 23, 2011; November 10, 2010; November 9, 2010; October 27, 2010; October 12, 2010; September 15, 2010.

Moreover, we have advised that §17-28-350 states:

[a] person who wilfully and maliciously destroys, alters, conceals, or tampers with physical evidence or biological material that is required to be preserved pursuant to this article with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars for a first offense, and not more than five thousand dollars or imprisoned for not more than one year, or both, for each subsequent violation.

As referenced in your opinion request, §17-28-320 (C) provides:

[t]he physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or *nolo contendere* plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first. [Emphasis added].

Section 17-28-340 (A) through (F), however, authorizes a procedure, by petition to the general sessions or family court in which the person was convicted or adjudicated, for the destruction of evidence prior to the expiration of the required time period.

We are unable to find any South Carolina appellate court decisions or prior opinions of this office specifically addressing the application of §17-28-320 (C). However, several principles of statutory construction are relevant here. First and foremost, is the time-honored tenet of interpretation that the primary guideline to be used in the interpretation of statutes is to ascertain and give effect to the intention of the Legislature. *Sonoco Products Co. v. S.C. Dept. of Revenue*, 378 S.C. 385, 662 S.E.2d 599 (2008). A statute as a whole must receive a practical, reasonable and fair interpretation, consonant with the purpose, design and policy of the lawmakers. *Caughman v. Columbia Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948). The words used therein should be given their plain and ordinary meaning. *Worthington v. Belcher*, 274 S.C. 366, 264 S.E.2d 148 (1980). The clear and unambiguous terms of a statute must be applied according to their literal meaning. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Systems Corp. v. Leatherman*, 309 S.C. 174, 420 S.E.2d 843 (1992). The interpretation should be according to the natural and obvious significance of the wording without resort to subtle and refined construction for the purpose of either limiting or expanding the statute's operation. *Walton v. Walton*, 282 S.C. 165, 318 S.E.2d 14 (1984); *see also Greenville Baseball v. Bearden*, 200 S.C. 363, 20 S.E.2d 813, 816 (1942) [stating “it is a familiar canon of construction that a thing which is in the intention of the makers of a statute is as much within the statute as if it were within the letter. It is also an old and well-established rule that words ought to be subservient to the intent, and not the intent to the words”].

Consistent with the above, the Legislature clearly provided that a custodian of evidence must only preserve physical evidence and biological material for defendants convicted of or adjudicated on a guilty or *nolo contendere* plea for offenses enumerated in §17-28-320 (A), for seven years from the date of sentencing, or until the defendant is released from incarceration,² dies while incarcerated, or is executed, whichever comes first. At that time, the custodian of evidence may then either return the evidence to its rightful owner or otherwise dispose of it pursuant to existing policies and procedures, without a court order pursuant to §17-28-340.

We advise, however, that there are other matters to consider regarding the return or disposition of physical evidence and biological material pursuant to §17-28-320 (C). The Act requires the preservation of physical evidence and biological material for the twenty-four offenses enumerated in §17-28-320 (A), but other criminal offenses would not be subject to the Act's provisions. We refer to *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578, 582 (2000), where the court discussed the canon “*expressio unius est exclusio alterius*,” or “to express or include one thing implies the exclusion of another.” Evidence in cases involving these other criminal offenses should, therefore, be preserved by evidence custodians while these cases are pending

either at trial, on direct appeal, or while a defendant pursues or is able to pursue post-conviction or federal habeas relief. In order to avoid violating a defendant's constitutional rights or depriving the State of evidence that it may later need to re-prosecute defendants at a later date, we advise that evidence in these cases should not be destroyed, returned, or disposed of without reasonable notification to and approval of the Circuit Solicitor.

In addition, we note the recent United States Supreme Court decision in *Skinner v. Switzer*, _ U.S. _, 131 S.Ct. 1289 (2011), addressing when a state prisoner, complaining of unconstitutional state action, may pursue a civil rights claim under 42 U.S.C. §1983. In 1995, a Texas jury convicted Skinner and sentenced him to death for murdering his live-in girlfriend and her two sons. The girlfriend was bludgeoned and choked with an axe handle and her sons were stabbed to death. Skinner never denied his presence in the house, but he claimed that a potent alcohol and drug mix rendered him physically unable to commit the brutal murders. Skinner identified his girlfriend's uncle as the likely perpetrator. In preparation for trial, the State tested some of the physical evidence, including blood on Skinner's clothing, blood and hair from a blanket that partially covered one of the victims, hairs on one of the victims, and fingerprint evidence. Some of the evidence implicated Skinner, but fingerprints on a bag containing one of the knives did not. However, the State left untested several items, including knives found on the premises, an axe handle, vaginal swabs, fingernail clippings, and certain hair samples. *Id.*, 131 S.Ct. at 1294.

In the decade following his conviction, Skinner unsuccessfully pursued state and federal post-conviction relief. *Id.* Meanwhile, in 2001, Texas enacted Article 64, which allows prisoners to gain post-conviction DNA testing under limited circumstances.³ Invoking Article 64, Skinner twice moved in state court for DNA testing of the untested biological evidence. Both motions were denied. The Texas Court of Criminal Appeals affirmed the first denial of relief on the ground that Skinner had not shown, as required by Article 64, that he “would not have been convicted if exculpatory results had been obtained through DNA testing.” The court then affirmed the second denial of relief on the ground that Skinner had not shown, as required by Article 64, that the evidence was not previously tested “through no fault” on his part. *Id.* at 1295.

Skinner subsequently filed a federal action for injunctive relief under §1983, naming as defendant the District Attorney who had custody of the evidence that Skinner would like to have tested. Skinner alleged that Texas violated his Fourteenth Amendment right to due process by refusing to provide for the DNA testing he requested. The federal magistrate recommended dismissal of the complaint for failure to state a claim, reasoning that post-conviction requests for DNA evidence are cognizable only in habeas corpus, not under §1983. Adopting that recommendation, the district court dismissed Skinner's suit and the Fifth Circuit Court of Appeals affirmed. *Id.* at 1295-96.

The United States Supreme Court reversed, holding “Skinner has properly invoked §1983. Success in his suit for DNA testing would not ‘necessarily imply’ the invalidity of his

conviction.” *Id.* at 1298. Instead, while the DNA tests sought by Skinner might prove exculpatory, that outcome was hardly inevitable. Instead, the DNA results might prove inconclusive or they might further incriminate Skinner. As a result, The Court permitted Skinner to use a §1983 action to force the state to provide a process to Skinner. *Id.*

Skinner reinforces that a §1983 action remains available for procedural challenges where success in the action would not necessarily spell immediate or speedier release for the prisoner. Skinner therefore demonstrates the importance of continuing to preserve physical evidence and biological material for the crimes enumerated in §17-28-320 (A).⁴

Lastly, in an opinion dated February 23, 2011, we noted legislation detailing the rights of a victim as set forth in §§16-3-1505 *et seq.*⁵ Pursuant to §16-3-1535 (E):

[a] law enforcement agency and the summary court must return to a victim personal property recovered or taken as evidence *as expeditiously as possible*, substituting photographs of the property and itemized lists of the property including serial numbers and unique identifying characteristics for use as evidence when possible. [Emphasis added].

Although we concluded in that opinion that the mandate of §17-28-320 (C) prevails over §16-3-1535 (E), and that a custodian of evidence would not be responsible for compensating the next of kin of the deceased individual if the personal belongings cannot be returned more expeditiously than authorized by the Act, we reiterate that the rights of the next of kin should be taken into account once personal belongings are no longer required to be preserved pursuant to §17-28-320 (C). We advise, however, that the evidence custodian should contact the Circuit Solicitor before any personal items are returned to next of kin.

Conclusion

We again note that the Preservation of Evidence Act pertains to the preservation of physical evidence and biological material for the offenses enumerated in §17-28-320 (A).⁶ We further advise that in cases involving co-defendants or multiple defendants, the Act would require that the physical evidence and biological material be retained long enough to cover the longest sentence received by any defendant. Evidence custodians should contact the Circuit Solicitor to discuss the status of cases regarding unindicted co-defendants or those defendants awaiting trial, prior to compliance with §17-28-320 (C). We remind evidence custodians that §17-28-320 (C) does not replace other considerations regarding the preservation of physical evidence and biological material in these cases. Evidence custodians must be mindful of not violating a defendant's constitutional rights or depriving the State of evidence that it may later need to re-prosecute defendants at a later date. In light of the considerations above, physical evidence and biological material should not automatically be disposed of seven years after a guilty plea. We therefore advise evidence custodians to contact the Circuit Solicitor and the Office of the South Carolina Attorney General to determine if any case is still being litigated or

can still be litigated, and to determine the status of a case when deciding whether physical evidence and biological material should be preserved.

Very Truly Yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

Footnotes

¹ We note the recent training seminar conducted by the South Carolina Commission on Prosecution Coordination, “The South Carolina Preservation of Evidence Act: Duties of and Liability for Evidence Custodian” (March 14, 2011). The course notebook states the definition of “physical evidence” should not be limited to evidence actually “produced” or “used” in a criminal proceeding (such as evidence either marked for identification only, used for impeachment purposes but not admitted, or offered for admission but not admitted), because it is reasonable to conclude the Legislature intended “physical evidence” to include all evidence collected in a case, regardless of whether it was used in a criminal proceeding. It is further explained:

[the Act] is part of a larger piece of legislation, Act 413 of 2009, that included the “Access to Justice Post-Conviction DNA Testing Act” aimed [at] providing convicted defendants with the opportunity to have evidence, which was not previously subjected to DNA testing or not to the same type of DNA testing, tested to determine whether it possesses any exculpatory value. Items from which DNA or other forensic evidence has not been developed is not always introduced at trial. Therefore, it is often evidence that never played a part in a defendant's trial that is the focus of a post-conviction DNA test or testing application. If “physical evidence” were interpreted to only include those items of evidence actually used in court, the testing provided for in the “Access to Justice Post-Conviction DNA Testing Act” could not be accomplished (because the evidence would not have been retained).

That the Act requires the preservation of all physical evidence and biological material would also apply to a conviction or adjudication obtained by plea. As stated in the course notebook: “[r]arely is evidence used in a guilty plea proceeding. Therefore, there would be no need for the

legislature to have included convictions and adjudications obtained by guilty plea if ‘physical evidence’ only included, in the post-conviction context, evidence used in a judicial proceeding.”

² Section 17-28-310(7) states “incarceration” means “serving a term of confinement in the custody of the South Carolina Department of Corrections or the South Carolina Department of Juvenile Justice and does not include a person on probation, parole, or under a community supervision program.” [Emphasis added]. As noted in the referenced course notebook prepared by the South Carolina Commission on Prosecution Coordination, a person released from a term of confinement on probation, parole, under a community supervision program may have that revoked and can be returned to confinement. It is, therefore, important for evidence custodians to ensure evidence is not destroyed or returned based on “stale” release notifications. Evidence custodians should contact the custodial agency that provided the release notification to determine whether the defendant has been returned to prison, i.e., is “incarcerated” for purposes of the Act.

³ We again note §§17-28-10 et seq. (the “Access to Justice Post-Conviction DNA Testing Act”), which was enacted to provide convicted defendants with the opportunity to have evidence, which was not previously subjected to DNA testing or not to the same type of DNA testing, tested to determine whether it possesses any exculpatory value.

⁴ See footnote 3, *supra*.

⁵ The term “victim” is defined by §16-3-1510(1) as:

. . . any individual who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense . . . “Victim” also includes any individual's spouse, parent, child, or the lawful representative of a victim who is: (a) deceased; (b) a minor; (c) incompetent; or (d) physically or psychologically incapacitated.

⁶ We reiterate that other criminal offenses would not be subject to the Act's provisions and we advise that evidence in these cases should not be destroyed, returned, or disposed of without reasonable notification to and approval of the Circuit Solicitor.

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South Carolina Commission on Prosecution Coordination

Luther F. Carter Center for Health Sciences
Francis Marion University
200 West Evans Street
Florence, South Carolina

Monday, July 24, 2017



Prosecution CLE Series™

**“Getting, Storing, Retaining and Releasing
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SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

**“Getting, Storing, Retaining and Releasing Evidence:
Legal and Practical Considerations”**

Florence, South Carolina
July 24, 2017

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Getting Evidence: When to Use Search Warrants, Court Orders, and Subpoenas, and How to Obtain Them

Amie L. Clifford
Education Coordinator
S.C. Commission on Prosecution Coordination

Subpoenas

- **GENERAL SESSIONS COURT**
 - **Rule 13, SCRCrimP**
 - **Allows for use of subpoena to compel the attendance of witnesses at a court proceeding.**
 - **"just" the witness: Subpoena**
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Subpoenas

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 - Question is how & when can you use subpoena
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 - S.C. Bar Eth. Adv. Comm. Op. 01-05 (p. 28)
 - *See also In the Matter of Fabri (p. 28)*

Subpoenas

- **General Sessions Court - Rule 13 (cont'd)**
 - Question is how & when can you use subpoena
 - **How?**
 - Subpoena - to have witness appear at a proceeding for the purpose of testifying
 - Subpoena *duces tecum* - to have a witness appear with documents at a hearing
 - Look at Rule 13 (as compared to Rule 45)

Rule 13 S.C. Rules of Criminal Procedure	Rule 45 S.C. Rules of Civil Procedure
<p>(a) Issuance of Subpoenas.</p> <p>Upon the request of any party, the clerk of court shall issue subpoenas or <u>subpoenas duces tecum for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court. The subpoena shall state the name of the court, the title of the action, and shall command each person to whom it is directed to attend and give testimony, or otherwise produce documentary evidence at time and place therein specified.</u> The subpoena shall also set forth the name of the party requesting the appearance of such witness and the name of counsel for the party, if any.</p> <p>NOTE: A complete copy of rule 13 is included in the appendix to this outline.</p>	<p>a) Form; Issuance.</p> <p>(1) Every subpoena shall:</p> <p>(A) state the name of the court from which it is issued; and</p> <p>(B) state the title of the action, the name of the court in which it is pending, and its civil action number; and</p> <p>(C) command each person to whom it is directed to attend and give testimony <u>or produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified;</u> and</p> <p>(D) set forth the text of subdivisions (c) and (d) of this rule.</p> <p><u>A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.</u></p> <p>(2) <u>.... If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court for the county in which production or inspection is to be made. Provided, however, that a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person.</u></p> <p>(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of a court in which the attorney is authorized to practice.</p>

Rule 13 S.C. Rules of Criminal Procedure	Rule 45 S.C. Rules of Civil Procedure
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Subpoenas

- **General Sessions Court - Rule 13**
 - Question is how can you use subpoena *duces tecum* (*cont'd*)
 - Comparison of Rule 13, SCRCrimP, to Rule 45, SCRCP, supports conclusion that can only use subpoena *duces tecum* in General Sessions court to have someone bring documentary evidence to a hearing (NOT to produce outside of court)
 - Language in 56-5-2946(C) can be read to create an exception to this general rule and authorize use of a subpoena *duces tecum* to get information related to tests for alcohol or drugs where defendant charged under Section 56-5-2945

Subpoenas

- **SUMMARY COURT - Rules 13 & 23, SCMCR, & S.C. Code §22-3-920 (14-25-45 & 14-25-115)**
 - **Section 22-3-920**
 - Allows for issuance of "summons" by Summary Courts to secure presence of witnesses
 - **Rule 13(e), SCMCR**
 - use of subpoena to compel the attendance of witnesses at a court proceeding
 - **Rule 23(a), SCMCR**
 - use of subpoena to compel the attendance of witnesses at a court proceeding

Subpoenas

- **Summary Court - Rules 13 & 23, & §22-3-920 (cont'd)**
- **Question is how & when can you use subpoena**
 - **WHEN?**
 - **Not before case initiated**
 - **HOW?**
 - **Subpoena - to have witness appear at a proceeding**
 - **Subpoena *duces tecum***
 - **ONLY for information related to tests for alcohol or drugs where defendant charged under Section 56-5-2945 (see 56-5-2946(C))**
 - **Language in 56-5-2946(C) can be read to authorize use of a subpoena *duces tecum* to get these records outside of a court appearance**
 - **Otherwise, no authority for subpoena *duces tecum* in Summary Courts - see S.C. Atty. Gen. Opinions (two)**

Subpoenas

- **Use of Subpoena *Duces Tecum* for Some Specific Types of Records? NO**
- **Access to medical records governed by HIPAA**
 - **LE exception (45 C.F.R. 165.512(f))**
 - **Allows for use of subpoena or summons issued by judicial official**
 - **South Carolina subpoenas are NOT issued by judicial officials**
 - **EXCEPTION: State GJ subpoenas & the investigatory subpoenas authorized for SLED in child fatalities & vulnerable adults investigations.**

Subpoenas

- What about some federal statutes/FRs that provide for use of subpoenas for some specific types of records? Use CAUTION!
 - EXAMPLE: Access to medical records governed by HIPAA
 - LE exception (45 C.F.R. 165.512(f))
 - Even though allows for use of subpoena or summons issued by judicial official, Rule 13 subpoenas most probably do NOT qualify
 - They do not qualify because Rule 13 Subpoenas are not issued by judicial officials (*can just pick up a Clerk's Office pre-signed*)
 - Probable exceptions: State GJ subpoenas &, only because 165.512(f) allows investigatory subpoenas, subpoenas authorized for in SLED child fatalities & vulnerable adults investigations.

Subpoenas

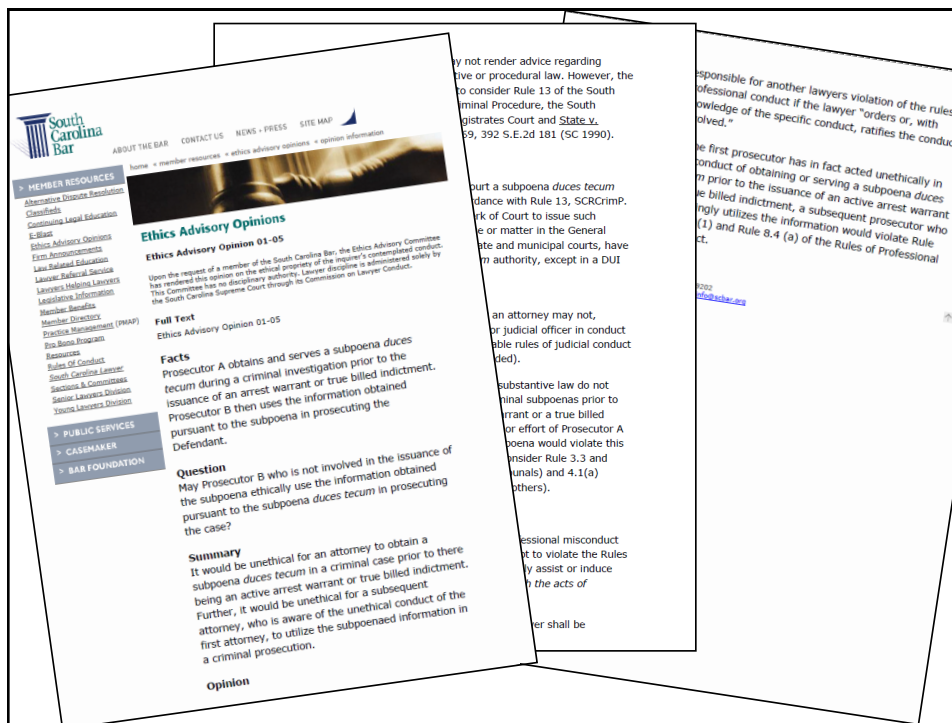
- Ethics Issues
 - S.C. Rules of Professional Conduct
 - Lawyers
 - Non-lawyers
 - Non-lawyers who work with prosecutors are expected to comply with same ethics rules as lawyers
 - Lawyers can be disciplined for conduct of non-lawyers with whom they work if conduct violates Rules (Rules 5.3)
 - Are there rules that discuss use of subpoenas?

Subpoenas

- **Ethics Issues**
 - Are there rules that discuss use of subpoenas?
 - No, none directly address
 - BUT there are general rules under which the use of subpoenas may/will fall, including:
 - Rule 3.3 (candor toward tribunal)
 - Rule 4.1 (truthfulness in statements to others)
 - Rule 8.4 ("general" misconduct)

Subpoenas

- **Ethics Issues**
 - What are ethics issues that may arise in the use of subpoenas?



In the Matter of Fabri:

⁶ It has also come to our attention that some attorneys will receive documents from a witness prior to the time the witness was commanded to appear with the documents. Once the attorney receives the documents, the witness is generally released from their obligation to appear without any notice to the opposing party, who is still under the expectation that the witness will appear at the trial or hearing with the requested documents. We caution against this practice. Further, we conclude not only must an attorney notify the opposing party when subpoenaing the production of documents, but the opposing party must also be notified anytime the party issuing the subpoena receives the documents prior to the time requested in the subpoena. To hold otherwise would circumvent the purpose of the notice provision and would allow the party issuing the subpoena to gain a competitive advantage over the opposing party who may have no knowledge of the contents of the documents until the trial or hearing.

Subpoenas

- **Ethics Issues**
 - **What does this all mean?**
 - **CAUTION**
 - No appellate court decision on use of subpoena *duces tecum*
 - In light of EAO, AG Ops. (Stacey & Modla), and *In the Matter of Fabri*, would conservatively interpret the court rules authorizing and governing use of subpoenas *duces tecum*

Court Orders

- In most instances where may use a court order, can also use (and probably should use) search warrant instead.
- Examples of when **MUST** use a court order
 - Sexually transmitted disease test results
 - S.C. Code §44-29-136
 - Obtain from DHEC
 - Special showing (compelling need)
 - Special procedure
 - Electronic communications customer or subscriber information
 - 18 U.S.C. 2703(d)
 - Federal or state court (*State v. Odom*)
 - Special showing (SAS of relevancy & materiality)

Two Ways of "Making" Searches Reasonable

- Two ways to make a search reasonable (and okay under the Fourth Amendment and art. I of S.C. Constitution)
 - Have a search warrant
 - Conduct a search that falls under one or more of the recognized exceptions to search warrant requirement
- Today, focusing on search warrants
 - *If have time, will review exceptions to SW requirement*

Search Warrants

- Warrant
 - Section 17-13-140
 - Judge - neutral and with jurisdiction over area where property is located
 - Particularity in Description
 - Property to be searched
 - Property to be seized
 - Contraband
 - Instrumentalities,
 - Fruit of the crime, and/or
 - Evidence of crime

Search Warrants

- **Warrant**
 - **S.C. Code Ann. Section 17-13-140**
 - **Sworn affidavit**
 - **Sworn to before judge**
 - **What does "before" mean?**
 - **Oral testimony may supplement, but cannot itself satisfy statutory requirement**
 - **Affidavit must establish probable cause (PC)**
 - **What is PC?**
 - **Hearsay is okay**

Search Warrants

- **Warrant**
 - **Judge is to determine PC based on totality of the circumstances**
 - **Affidavit and any supplemental sworn oral testimony**
 - **Includes veracity and basis of knowledge of persons supplying information**
 - **CI v. eyewitness**
 - **Special Requirements for Warrants for Bodily samples**

Search Warrants

- **Special Requirements for Warrants for Bodily samples**
 - **PC that "relevant material" evidence will be found,**
 - **may be satisfied by noting existence of DNA evidence to which the individual's DNA profile could be compared.**
 - **a safe and reliable method will be used to secure the sample, and,**
 - **in cases involving suspects, probable cause to believe the suspect has committed the crime.**

Search Warrants

- **Search warrants must be signed!**

Search Warrants

- **Anticipatory Warrants**
 - **Warrant based on an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place.**
 - **Most anticipatory warrants subject their execution to some condition precedent, a “triggering condition.”**

Search Warrants

- **Anticipatory Warrnts.**
 - **Determination:**

(1) *now* probable that (2) contraband, evidence of a crime, or a fugitive *will be* on the described premises (3) when the warrant is executed.

In other words,

It must be true not only that *if* the triggering condition occurs “there is a fair probability that contraband or evidence of a crime will be found in a particular place,” but also that there is probable cause to believe the triggering condition *will occur*.

Search Warrants

- **Knock and Announce rule**
 - Rule
 - Time
- **Exceptions to Rule include:**
 - circumstances present threat of physical violence,
 - when prisoner escapes from LEO and retreats into his dwelling,
 - officers in pursuit of recently escaped arrestee, or
 - when officers have reason to believe evidence would likely be destroyed if advance notice were given
- **Exclusionary rule inapplicable to violations of knock and announce rule.**

Two Ways of "Making" Searches Reasonable

- **Warrant**
 - U.S. Const. amend IV
 - S.C. Const. art. I
 - S.C. Code Ann. Section 17-13-140
- **Recognized Exceptions to Warrant Requirement**

Exceptions to SW Requirement

- **Recognized Exceptions to Warrant Requirement**
 - **Consent**
 - **Automobile Search**
 - **Search Incident to Arrest**
 - **Exigent Circumstances**
 - **Terry Stop & Frisk**
 - **Plain View/Feel**
 - **Special Needs**
- **Administrative "Searches" (not really searches)**
 - **Inventory Search**
 - **Administrative Inspection**

Exceptions to Search Warrant Requirement: Consent

- **Consent**
 - **Must be explicit**
 - **Must be voluntary**
 - Not whether consent actually voluntary, but whether LEO reasonably assumed it was
 - Not whether person actually had lawful authority to consent, but whether LEO reasonably assumed that to be case
 - **Scope of Consent**
 - **Revocation of Consent**
 - **Multiple parties with authority/interest**
 - **Reduction in Recidivism Act**

Exceptions to Search Warrant Requirement: Consent (RIRA)

- Reduction in Recidivism Act
 - Provides for warrantless searches of probationers, parolees, & others under active supervision of PPP for offenses *other than* Class C misdemeanors and unclassified misdemeanors that carry a term of not more than one year.
 - Applies to offenders with qualifying offense with order date beginning on or after April 29, 2010.
 - Searches may be conducted by agents of the PPP or any other law enforcement officers.

Exceptions to Search Warrant Requirement: Consent (RIRA)

- Reduction in Recidivism Act
 - Scope of Search: the offender's person, any vehicle the offender owns or is *driving*, and/or any of the offender's possessions.
 - Cause Needed:
 - Probationers - agent/officer must have reasonable suspicion before conducting a warrantless search pursuant to the new law.
 - Parolees - offenders under active Parole, CSP, YOA, Shock Parole, SFII and DJJ supervision, offenders are subject to warrantless search without cause.

Exceptions to Search Warrant Requirement: Consent (RIRA)

- Reduction in Recidivism Act
 - Search Requirements: *Immediately* prior to conducting a search pursuant to this law, the agent/officer must verify with PPP, or by other means available, that the individual is actively under supervision.
 - Inquiries may be directed - 24 hours a day, seven days a week - to PPP's GPS Operations Center at 1-800-263-7191.

Exceptions to Search Warrant Requirement: Consent (RIRA)

- Reduction in Recidivism Act
 - Search Protocol and Punishment for Noncompliance:
 - All search inquiries and responses must be documented on a PPP Offender Search Law form.
 - Any agent/officer conducting a search or seizure without a warrant pursuant to the Act must report to his agency each search or seizure, to include the date of the search, the offender's name, address, DOB, gender, and race.
 - Search documentation forms will be submitted at the end of each month to PPP for review of abuse.

Exceptions to Search Warrant Requirement: Consent (RIRA)

- Reduction in Recidivism Act
 - Search Protocol and Punishment for Noncompliance:
 - A finding of abuse must be reported by PPP to the South Carolina State Law Enforcement Division for investigation.
 - If an agent/officer fails to report each search or seizure, he is subject to discipline pursuant to the employing agency's policies and procedures. In the absence of a written policy by the employing agency enforcing the reporting requirements, the legislature has provided for a one day suspension without pay.

Exceptions to Search Warrant Requirement: Auto Search

- Automobile Search
 - Two elements:
 - Probable cause to search for contraband or other evidence
 - Exigency (supplied by mobility)
 - Includes right to search containers within vehicle regardless to whom the container belongs
 - Right to search container ≠ right to search passenger

Exceptions to Search Warrant Requirement: Search Incident to Arrest

- **Search Incident to Arrest**
 - Lawful custodial arrest
 - Historic purposes
 - Scope - entire area within actual reach, lunge or grasp of the arrestee
 - Arrests near/from cars: only portion of passenger compartment to which the arrestee has ready access or in which evidence is located (*Arizona v. Gant*)
 - May Precede formal arrest

Exceptions to Search Warrant Requirement: Terry Stop & Frisk

- **Terry Stop & Frisk**
 - All needed is reasonable articulable suspicion (RAS)
 - Stop (*purpose is crime-related*)
 - Reasonable articulable suspicion that crime has occurred, is occurring, or is about to occur
 - Frisk (*purpose is to protect LEO*)
 - Reasonable articulable suspicion that person stopped might be armed

Exceptions to Search Warrant Requirement: Terry Stop & Frisk

- **Terry Stop & Frisk**
 - All needed is reasonable articulable suspicion (RAS) (remember, need for each: stop & frisk)
 - Subjective Intention of Officer Irrelevant
 - Automobile Stops
 - Driver or Passenger conduct
 - Driver out
 - Passenger(s) out
 - Passengers have standing
 - Private vehicles v. common carriers
 - Duration

Exceptions to Search Warrant Requirement: Plain View & Feel

- **Plain View/Feel**
 - Officer where has lawful right to be
 - Object
 - Seen or felt in "plain view"
 - No manipulation!
 - View - no moving
 - Feel - surface/felt on patdown of clothing
 - Incriminating nature immediately apparent
 - Inadvertance not necessary

Exceptions to Search Warrant Requirement: Inventories

- **Inventory "Search"**
 - **What is it?**
 - Not really a search for 4th Amendment purposes because not conducted for the purpose of collecting evidence, contraband, instrumentalities of crime, etc.
 - Is an inventory of property lawfully seized and detained, in order to protect the property (that, for example, might be in a car that is being towed), and to protect LE against danger and false claims of loss/damage to property
 - Inventories must be conducted pursuant to standardized criteria (LEAs should have written policies)
 - Absence of written policy makes it more likely that not all inventories will be conducted in same manner, which makes it easier for defendants to argue that inventory was pretext to conduct search for evidence, contraband, etc.

Questions???

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