

## COMMISSION ON INDIGENT DEFENSE

### FY 2010-2011 ACCOUNTABILITY REPORT

#### Section I-Executive Summary:

##### 1. Purpose Mission and Values:

The Commission on Indigent Defense, in cooperation and consultation with state agencies, professional associations and other groups concerning the administration of criminal justice and the improvement and expansion of defender services, establishes and monitors programs and services for the delivery of legal representation to indigent defendants in State courts.

The Office of Indigent Defense establishes criteria used in the determination of indigency and qualifications for services for indigent legal representation and administers the distribution of appropriated funding for indigent defense. Additionally, the office establishes and supervises training programs for the Public Defender offices across the State as well as implementing a central reporting system for the accurate compilation of statistical data pertaining to the delivery of indigent defense services.

The Office of Appellate Defense is responsible for the majority of indigent criminal appeals, including death penalty appeals, before the South Carolina Supreme Court and Court of Appeals. The mission of Appellate Defense is to provide superior representation and legal analysis in a cost-efficient manner.

The Office of Circuit Public Defenders created by the Indigent Defense Act in 2007 provides a statewide public defender system with standards and accountability for representation and assistance of counsel to indigent defendants in a manner that is fair and consistent throughout the state. It replaced a county based system comprised of 39 Chief Public Defenders, employed by eleemosynary corporations, with 16 Circuit Public Defenders employed by the commission. This has resulted in fiscal accountability and consistent standards for the delivery of indigent defense services to the citizens of South Carolina.

The Death Penalty Trial Unit provides a resource for quality, cost effective representation in capital trials on a statewide basis and provides a savings to the state in the cost of representation for indigent defendants in death penalty trials. The Death Penalty Trial Division has significantly reduced the expense of capital litigation, while providing qualified representation from the staff of this division. Capital trials were previously handled almost exclusively by the private bar which resulted in the state paying near "market rates" for legal services. The agency can

now provide legal representation as well as investigation and mitigation services to achieve the desired results.

## **2. Major Achievements from Past Year:**

The agency continues to implement the Indigent Defense Act of 2007. We held periodic meetings with the circuit public defenders throughout the year to discuss many issues addressing implementation of the Act. These included discussion of conflicts issues and the possibility of reducing the number of defendants referred to the private bar; caseload issues including the increasing number of Magistrate cases being assigned to public defenders; 2010-11 budgetary issues including budget reduction and possible reductions; briefings on 2011-12 budget proposals and many analyses of county budget impacts under various scenarios. In addition, circuit defenders responded to our requests for information on negative impacts to their operations and personnel based on legislative proposals as they were being worked through the legislative process. Their 100% response became critically important in making the case against a 2011-12 reduction in public defender funding.

The agency conducted a human resources survey as of July 1, 2010 and January 1, 2011 to determine the number of full and part-time public defenders and the number of full and part-time attorneys on contract with public defender offices, as well as further breakdowns of other personnel, including investigators, employed in public defender offices. The survey also addressed salary information for public defenders, and included a section on county funding. Since we initiated this survey in 2009, the agency has been able to obtain completely reliable data on these topics, and the survey results were important throughout the budget process and at other times during the year.

We encouraged circuit defenders to be present at House and Senate budget subcommittee hearings and during floor debate, and the response was overwhelming. Circuit Defenders became thoroughly versed in budget issues and actively contacted their local representatives throughout the process, to educate them in public defender needs, which had a strong positive impact on our ability to hold on to the 2010-11 level of public defender funding. This achieved one of our on-going objectives of getting circuit defenders and all public defenders in the state more aware and better educated on the needs of the state's indigent defense system, and in turn more active in providing input in the legislative process.

Throughout 2010-11 the agency continued to improve its model technology and data collection system, and we placed heavy emphasis on Circuit Defenders to assure that data was being accurately and fully entered into our system. Many other states have sought our input in designing their technology throughout the year.

During the year we emphasized to circuit defenders the statutory requirement that in indigent capital trial cases one of the two (2) assigned attorneys must be a public defender. This has reduced the number of privately appointed attorneys which previously have been assigned to capital cases. As of June 30, 2011, public defenders are now representing nine (9) defendants charged with capital crimes. This will have the effect over time of reducing the amount of attorney fees which otherwise would be paid by the agency to private attorneys through the agency's Death Penalty Trial Fund.

Pursuant to a Commission motion to develop standards for public defender caseloads and the creation of a committee by the Chairman to address this issue, the agency has worked with the Chairman to assemble information and materials on caseload standards from as many states as possible throughout the country and has made the materials available to the Chairman and the committee members.

We fully participated in the work of the Sentencing Reform Commission which resulted in passage of the landmark Sentencing Reform legislation, attending virtually every meeting of its Commission and the hearings on the legislation, and kept the circuit defenders up-to-date on its progress. Likewise, we distributed proposed changes in the Criminal Rules to circuit defenders, and encouraged their comments as well as their attendance and participation at the Supreme Court's hearing on the rules changes.

On November 22, 2010, we sponsored a seminar for all public defenders at the new SC Bar Continuing Education Center on the new sentencing reform legislation which was effective January 1, 2011. This was the first seminar to be conducted by any group, including judges, which addressed this new legislation. The seminar was mandatory for all public defenders unless there was a court scheduling conflict (it was held during a "Chambers Week"), and nearly all public defenders were able to attend. There was no charge for the seminar, and the SC Bar complimented the space and AV assistance, which saved the agency about \$3500 in costs based on the lowest proposal from hotels in the area.

For the fifth year, the agency continued to sponsor its annual Public Defender Best Practices Seminar in partnership with the Charleston School of Law (February 2011), and played a key role in organizing the Fifth Annual Public Defender Investigators Conference (March 2011). We assisted in securing speakers for the annual Public Defender Association Conference (September 2010), all in furtherance of the professional development mission of the agency. The agency also continued the important summer Rural Extern Program in partnership with the Charleston School of Law. This program received national recognition and was featured in an article in the Spring 2010 issue of the National Legal Aid and

Defender Association's publication, *The Cornerstone*. The agency's Executive Director continues to serve as a member of the Board of Advisors of the Charleston School of Law.

In July, 2011, at the invitation of the New York University's Brennan Center for Justice, the Director and Deputy Director attended a conference on Community Oriented Defender Networking, which focused on the issues of performance measurements for public defenders, understanding the concept and advantages of community oriented services by public defenders, and an in-depth look at the operation of drug treatment courts. This conference was particularly educational in identifying issues and methods to raise with our circuit defenders. In addition we were able to have an invitation extended to Sen. Gerald Malloy to attend and address the conference on his role in achieving a statewide indigent defense system for South Carolina as well as his role in securing much needed sentencing reform for the state. This was a major presentation before attendees from throughout the United States and was enthusiastically received. It has led to an invitation to him to address the National Legal Aid and Defender Association 100<sup>th</sup> Annual Meeting in Washington, DC, in December 2011 and has highlighted his leadership in criminal reform issues on a national level.

Throughout the summer and fall of 2009, Hugh Ryan, Deputy Director and General Counsel, worked with the SC Department of Social Services, the SC Guardian ad Litem Program, the Children's Law Center, the SC Access to Justice Commission, and the SC Bar pursuant to a 2010-11 Legislative Proviso directive, to address ways to reduce the increasing costs of family court related cases. A detailed report of this collaboration, authored by Hugh and approved by all participating committee members, was issued in the fall of 2009. Simultaneously, we worked with a separate committee of the SC Bar in addressing many of the same issues. This lengthy dual-track process resulted in the Chief Justice issuing an Administrative Order in early 2010, effective July 1, 2010, which no longer makes it mandatory that *guardians ad litem* be attorneys. In FY 2008-09 the agency paid guardian-attorneys over \$600,000. While the Order is not retroactive to pending cases, the agency began realizing a savings from this action in the third quarter FY2010-11 and when the savings is fully realized it is projected to be in the \$400,000-500,000 range.

In addition, the requirement that the agency annually allocate a portion of funds provided for Civil Court Appointments to the SC Guardian ad Litem Program, has again been made discretionary by legislative proviso. In the past, these payments were as much as \$365,000. While no funds have been available to allocate for this purpose since 2008, this modification can potentially ease much of the pressure on meeting overall obligations from Civil Appointments funding.

The agency continued its internal audit of Rule 608 civil and criminal vouchers. Our new technology requires fewer voucher processing personnel and provides time to more carefully review payment requests for substantive issues. Many fees and expenses were called into question, many resolved with the submitting attorney, and many resolved in motion conferences and court hearings with judges. The agency had no funds to pay Rule 608 Civil Appointments vouchers for all of FY 2010-11 and accumulated approximately \$800,000 in unpaid vouchers. The cases which fall under Rule 608 for court appointment are mostly Family Court (Abuse and Neglect/Termination of Parental Rights) case and Post Conviction Relief cases which are handled in the Court of Common Pleas. We notified members of the Bar that there were no funds available to pay fees, but the Commission set aside \$100,000 to pay for out-of-pocket expenses to attorneys handling the cases. These funds were nearly 100% exhausted by the end of the fiscal year.

We emphasized to the Legislature the critical need to fund Civil Appointments for FY 2011-12 and the Legislature responded by appropriating in non-recurring funds a total of \$2,048,879 for FY 2011-12. From that amount all accumulated obligations were paid for the previous fiscal year.

In FY08-09 the agency began encouraging Circuit Defenders to apply for federal grant funds through both the Byrne Grant program of the U.S. Department of Justice and direct grants from DOJ. In years past no public defender grant request had ever been approved by the local screening committee for a Byrne Grant. The agency had been told early in the summer of 2009 not to expect any approvals, as meritorious as the grant applications might be. A strong push to change that tradition was made through meetings with state legislators and Department of Justice personnel. However, the effort was unsuccessful and when Byrne Grant announcements were made last year, no funding was granted for indigent defense.

In late June, 2009, SCCID Commission Chairman Harry Dest and the Executive Director attended a meeting in Washington, DC sponsored by the NLADA and attended by about 50 persons from throughout the country, at which the Attorney General Eric Holder spoke about his and the Obama Administration's commitment to indigent defense throughout the nation. This meeting was also attended by members of his senior staff involved in DOJ grants, many of whom also spoke at the meeting. During the brief question and answer period following the Attorney General's remarks (2 questions allowed), Chairman Dest asked the second question, which became the centerpiece of all discussion for the remainder of the two-day meeting. His question, preceded by a statement as to the treatment that public defender/Byrne grant applications had gotten in SC over the years, was: "Why are public defenders across the nation, and particularly in SC, being shut out of the process and when would the rules change so that the process would open up?" After much applause for the question, the Attorney General gave a direct answer and

seemed genuinely concerned about the issue. He said that it would begin opening up immediately. Indeed, in the latest Byrne Grant Request for Proposals there is a specific reference for the first time that public defender grant proposals were to be fully considered along with all others. The agency has applied again for a technology grant to allow interface of our system with those of the Court, and was again turned down. Several circuits also applied for Byrne Grants and were also turned down. Meanwhile, the agency has done everything that we know to do to insist that the SC screening committee take public defender grant applications seriously, rather than not even being scored, as has been the case in past years. At a meeting with Mr. Burke Fitzpatrick who oversees the application process in SC, the agency's executive director and deputy director were told point blank that the agency technology interface application was excellently prepared, covered every issue, and under normal circumstances would definitely be funded, but he could give no assurance as to what the screening committee would do, and not to hold out any hope for funding.

At the Brennan Center conference, referenced above, we emphasized to the Department of Justice representative the difficulties we have had in accessing Byrne Grant funds in South Carolina, and he agreed to assist in making accessibility achievable.

Mr. Adams reiterated the importance of this issue for all public defender operations throughout the United States at the national NLADA conference in December, 2010, and during an NLADA underwritten workshop with the Louisiana Indigent Defense Board in Baton Rouge. Additionally, Mr. Adams continues to serve on the 12-member NLADA Defender Policy Group, which is the public defender policy arm of NLADA to which he was elected in 2009; and in meetings of the Defender Policy Group and in numerous other meetings and conference calls in which he has participated, he has insisted that this issue be one of the major objectives of NLADA.

As a member of the NLADA planning group for the DOJ-sponsored National Symposium on Indigent Defense held in February, 2010, in Washington, DC, Mr. Adams insisted that this issue be one of the major focuses of that conference, and much attention was given to the topic during that three-day meeting. It has become a major issue now being pursued by NLADA.

The only success the agency had during the fiscal year in obtaining federal grant funding was a direct DOJ grant awarded jointly to SCCID and the Prosecution Coordination Commission in the spring of 2010. The grant provides for each agency to conduct two (2) seminars over a two (2) year period in prosecuting and defending capital cases. Each agency was awarded \$100,000 over the two-year period (2010-11) to conduct separate seminars. The 2010 SCCID seminar was held August 12-14,

2010, in Columbia, and well attended. The second seminar was held May 2-4, 2011 and was enthusiastically attended to capacity. The agencies have been awarded the grant to continue Capital Defense Training for an additional two years.

The agency also participated in the John R. Justice Student Loan Repayment Grant with Commission on Prosecution Coordination and the Office of the Federal Public Defender. The total grant was for \$129,064 and was divided equally between the prosecutors and defenders. This grant assists in repayment of qualifying law school loans for attorneys who meet income qualifications and commit to three years service in the public sector. This program was well-received, and it is hoped that it will survive Congressional budget reductions in 2012.

Another source of revenue which the agency has encouraged is funding from municipalities. At present only two cities provide any direct funding – City of Rock Hill and City of North Charleston. However, the Charleston County public defender's office has been awarded a local government grant in the amount of \$50,000, for FY 2011-12. We have had discussions with the general counsel and the director of the SC Municipal Association as to public defender obligations to represent indigent defendants on municipal charges in city and town municipal court unless funding for doing so is provided by the municipality as they do for prosecutors, judges, court facilities and other court personnel. This issue is as yet unresolved, and discussions, which began when several public defender operations refused to provide counsel for municipal ordinance violations, were discontinued at the request of the municipal association, and have not yet resumed. However, this is an issue which needs to be carefully addressed in the future and could result in an additional source of revenue for public defender operations as has occurred in North Charleston and Rock Hill.

As previously discussed, in April, 2010, the agency again applied for a Byrne Grant through the Department of Justice for the express purpose of interfacing our technology with that of the Court Administration and Docket Management. This year, the Legislature in response to our lack of success with Byrne Grant funding, appropriated non-recurring funding for this project and other needed technology upgrades to proceed.

While not directly related to Court Administration interface, throughout the year the agency has made a number of major revisions to our technology, all directed toward improving its usefulness for both public defenders and the private bar, as well as agency staff. One of the most significant improvements is the installation and upgrade of a "Tutorial" which walks a user of the system through each step from registering as an attorney, to registering a case, to the entry of time data and fee and expert information. Here is a complete list of new features in the system during the last two fiscal years:

## **SCCID Technology/Website/Database Improvements As of July 1, 2011**

### About SCCID

- Circuit Public Defenders listed under Public Defender section for easier access.
- Interactive map created under Locations section for quick directions.

### Licensed Investigators

- A list of all Investigators that have registered with our office and have a Valid Investigator Licensed issued by SLED.

### Tutorials

- Easy to follow Step-by-Step tutorials for Registering new cases and submitting vouchers.

### Register for New User Access

- The new registration process allows members to access the SC Vendor Web quickly and easily to verify their Vendor IDs.
- Required fields create better accuracy prior to verifying info with the CG and IRS.
- Registration information can be updated at any time.

### Member Sign-In

- Users can now request e-mails containing their lost passwords.
- Users can now register for agency sponsored seminars and conferences

### Register New Case

- Registration is now broken into three categories and lists the case types for those categories to aid in preventing incorrect registrations.
- Attorneys can now choose from predefined lists for more accurate reporting such as Case Type, Court Type, and County of Indictment.
- Required fields create better accuracy for registered cases.
- Attorneys can now choose to create Pro Bono cases that allow expenses only.
- Multiple Docket, Warrant, Ticket, and Indictment Numbers added to a predefined format for better accuracy.
- Link added for searching for proper CDR codes.

### My Cases

- New search features have been added:
  - Search by Client Name

- Search by Case Type
  - Search by Case Status
  - Search by Time Span
- Attorneys can now download spreadsheets of the results of their search criteria for internal tracking.
  - Attorneys can see the Voucher ID for faster results when calling staff for assistance.
  - New vouchers automatically appear when a case is not disposed.
  - Timesheets move to the latest voucher in criminal cases, allowing the Attorneys to track their time throughout a case without submitting the time until the case is disposed.
  - Timesheets can be uploaded by using an excel spreadsheet with a specific format or entered manually.
  - Attorneys can view a list of all time created for a case.
  - Experts defined within the expenses page for better reporting.
  - Attorneys can upload documents directly to a voucher, allowing more productivity from staff.

#### The Database Software

- We switched from MySQL Server to SQL Server 2005 which offers many benefits over MySQL Server including speed, management and security.

#### The Database Hardware

- We added a new firewall that allows for better defense against unwanted intrusions.
- We are upgrading the server for better performance for all users.
  - More hard drive space added for uploaded documents.
  - More memory added for better performance.
  - More processors added for better performance and allowing reports to be run separate from the live system.
  - Cooling unit added to prevent damage to component from overheating.
  - Back up drives are removable for storage in a safety deposit box.

Our technology continues to be a national model and has been the subject of several seminar presentations around the country. Two separate seminars focused on it at the February 2010 National Indigent Defense Symposium sponsored by the Department of Justice, and during the year the agency had inquiries and/or visits from representatives of state indigent defense organizations in several states, including Maine, Louisiana, Texas, Kentucky and Ohio.

Throughout the unusually long budget deliberation process the agency staff and the circuit defenders worked tirelessly with the legislative leadership, our legislative Commissioners, and local legislators and remained focused on the agency's

message. The Circuit Defenders responded to our calls to attend all budget subcommittee meetings and floor debates. We were fortunate to have legislative Commissioners who made sure that our message resonated in both houses and additional Commissioners who conveyed our message with their personal contacts. This process began with presentation of the SCCID budget proposal to the Governor in September 2010, and concluded with the General Assembly's adjournment on June 30, 2011, a long nine-month time span. We commend all agency personnel for their diligence and ability to make our case for full funding clearly and forcefully, relying entirely on data which our system generated.

One top budget priority for FY11-12 was adequate funding for Civil Appointments. These cases include Abuse and Neglect of minors and vulnerable adults, Termination of Parental Rights, Probate Commitments, Sexually Violent Predator Act and Post Conviction Relief actions. Throughout the lengthy budget deliberations, we constantly pushed for this funding, and stayed in active communication with the SC Bar leadership and its government affairs staff on this issue, as well as with the entire Bar membership through articles in the Bar's *EBlas*t (email notifications to all SC Bar members) and *Lawyers Weekly*.

A great deal of agency senior staff time during the year was devoted to managing and protecting the agency budget. A detailed balance sheet is generated each Monday morning to assist with ongoing financial decision-making.

Chief Appellate Defender, Robert M. Dudek, a twenty-year veteran appellate attorney was appointed last year. Mr. Dudek is appellate counsel in over two hundred and forty (240) published opinions in the Supreme Court and the Court of Appeals. He has been an annual speaker at the statewide Public Defender conference for many years, presenting the yearly case law update, and has also lectured on the death penalty. In addition, he has presented at the Best Practices Seminar for the past two years, which is sponsored by the Commission on Indigent Defense and the Charleston School of Law. Mr. Dudek conducts continuing seminars on preserving the trial record for appellate review at the request of the Chief Circuit Public Defenders throughout the state. He was also a member of the committee that carried out the Commission's mandate and produced the Criminal Practice Manual, authored by Judge Ralph King Anderson, Jr. The change has resulted in a number of very positive improvements in how the division is managed.

Hugh Ryan, Bob Dudek, Bill McGuire, Boyd Young and Kathrine Hudgins have all participated in various Continuing Legal Education seminars as invited speakers throughout the year. Also during the year the Director and Deputy Director have been invited to speak to many groups about the work of the agency, including judges, state bar association, magistrates, municipal and county officials.

**The Office of Indigent Defense** provided \$21,626,830 for the representation of indigent persons in the criminal justice system, of this amount the Agency:

- Distributed over \$10,400,000 to the state's Public Defender offices for operating expenses;
- Processed payments of \$1,831,503 for fees and expenses in capital cases
- Paid \$2,401,089 to appointed counsel for fees and expenses in non capital conflict cases
- Paid \$87,695 to appointed counsel for fees and expenses in Family Court and civil appointment cases *(funds were allocated in FY12 to pay for cases submitted in FY11 that went unpaid for lack of appropriated funding. Typically these expenses have averaged over \$2M per year)*
- Paid \$368,737 for transcripts in indigent appeals cases
- Disbursed \$1,700,000 to local Legal Aid Services for operating expenses

**The Office of Appellate Defense** provides quality representation in direct appeals and post conviction relief cases statewide.

The Division of Appellate Defense, of the Office of Indigent Defense, provides quality representation for clients in direct appeals and post-conviction relief appeals statewide. The division began the fiscal year with one thousand seven hundred and forty (1,740) cases and opened six hundred and ninety-three (693) cases during Fiscal Year 2010. The division closed seven hundred and sixty-four (764) cases during the same period. The Appellate Division is currently handling one thousand six hundred and sixty-nine (1,669) cases, including twenty-four death penalty (24) cases with a staff of eight attorneys.<sup>1</sup>

The present caseload of approximately 208 cases per attorney was labeled by the Spangenberg Group in its report, and Executive Director Patton Adams, as "unconscionable." Although three additional FTE's for attorneys were requested in

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<sup>1</sup> Given that South Carolina could become an "opt in" state in the future under the 1996 Effective Death Penalty Act Appellate Defenders usually assist their death penalty clients with filing their post-conviction applications to toll the federal statute of limitations for future federal habeas actions. The failure to do so could cause a client, after he is no longer the responsibility of the Appellate Division, to be barred by the 180 day statute of limitations in death penalty cases if that statute is applied retroactively by the federal courts. Thus, Appellate Defenders handling capital cases must be vigilant to protect the future statute of limitations for their client, which further adds to their workload.

the 2009-2010 fiscal year and approved by the General Assembly, none was funded and no additional relief was forthcoming last year. The Appellate Division remains at eight staff attorneys, with one additional part-time position that does not include any benefits.

- Senior Appellate Defender, and former Chief Appellate Defender Joseph L. Savitz, III retired during fiscal year 2010-2011.
- Appellate Defender Elizabeth Franklin-Best was selected Lawyer of the Year by the South Carolina Public Defender's Association.
- Appellate Defender Kathrine Hudgins served as Chairperson of the Criminal Law Section of the South Carolina Bar this year which included planning the Criminal Law Section's presentation at the Annual Bar Association Convention.
- Chief Appellate Defender, Robert M. Dudek, and Appellate Defender Breen Stevens, a former law clerk to the Honorable Daniel Pieper, have been assisting the Honorable Ralph King Anderson Jr., with writing the second edition of his book, South Carolina Standard Criminal Defense Manual, A Practical Guide for Public Defenders and Attorneys Representing Criminal Indigent Defendants in Non-Capital Cases.
- Chief Appellate Defender Dudek once again presented the case law update from the Supreme Court and the Court of Appeals at the statewide Public Defender Convention. He also addressed the Best Practices Seminar in Charleston which is sponsored by the Commission on Indigent Defense and the Charleston Law School. Dudek also made a presentation at the Death Penalty Seminar at Litchfield Beach, and one on preserving the record for appeal for the Dorchester and Orangeburg County Public Defender's Offices.
- Appellate Defender LaNelle Durant gave a talk for the Speakers' Bureau of the South Carolina Bar at Blythewood High School about what was involved in the practice of law. She also gave a talk to battered women at Sister Care and one to the Chamber of Commerce.
- Chief Administrative Coordinator Sharon Graham continues to serve on the Board of Directors for the South Carolina Public Records Association. She also serves on the Newberry County Accommodations Sales Tax Committee.
- Kimberly McCall, who has a wealth of administrative experience, joined the staff in September 2010 as an administrative assistant replacing another administrative assistant.

- Chris Sanchez, formerly an English Instructor and graduate assistant at UCLA, joined the staff in December 2010 as an administrative assistant replacing another assistant.
- Administrative Assistant Felicia Berry is currently working at night on her Bachelor's Degree in Criminal Justice.
- With individual confidentiality concerns based on identity theft and other privacy considerations spreading nationwide, the Appellate Division continued to improve on ensuring personal information pertaining to victims, children and certain witnesses were redacted from the appellate records through the use of its software and office procedures which are designed to assure the protection of information about victims and certain other witnesses.
- The Appellate Division also intends to install a new case management system this year so that it can more efficiently process the plethora of filings that it handles each year in the Court of Appeals and the Supreme Court.
- The Appellate Division, while still three staff attorneys short, expects a similarly productive year in FY 11-12. However, the division is badly in need of filling the three existing Appellate Defender positions (FTE's) that have not been funded.

**The Capital Trial Division** currently consists of (4) full-time staff members. There are three (3) attorneys, and a paralegal/office administrator.

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

The Capital Trial Division employs three (3) full-time attorneys. The Chief Attorney, William S. McGuire, has thirteen years of experience as a criminal defense trial lawyer. He also clerked for two South Carolina Circuit Court Judges; the Honorable Rodney Peebles (now retired), and the Honorable Daniel Pieper (now serving on the South Carolina Court of Appeals). McGuire has approximately nine (9) years of experience representing defendants facing the death penalty. Before returning to South Carolina in 2008, McGuire was a full-time capital defender in Atlanta, Georgia.

McGuire teaches on the subject of capital voir dire once a year at a CLE seminar co-sponsored by National Association of Criminal Defense Lawyers and the

Southern Center for Human Rights. He has also served as faculty at the Southern Public Defender Training Institute. McGuire has taught or lectured regarding capital defense or criminal defense in general, in Alabama, Georgia, Oregon, Pennsylvania, Colorado, Louisiana and South Carolina. The South Carolina Association of Criminal Defense Lawyers named McGuire as the first recipient of that organization's Champion of Justice Award in 2009. McGuire is also a recipient of the American Jurisprudence Award.

Boyd Young has over seven (7) years of capital defense trial experience. He clerked for South Carolina Circuit Court Judge A. Victor Rawl (now retired). Before returning to South Carolina in 2008, Young worked as a full-time capital defender in Georgia for a number of years. Young teaches capital voir dire annually for the National Association of Criminal Defense Lawyers, and has taught or lectured regarding capital defense in Alabama, Colorado, Georgia, Ohio, Pennsylvania, Louisiana and South Carolina. He has served as faculty at the Southern Public Defender Training Institute and the National Criminal Defense College.

Casey Secor, has three years of capital defense experience and training.

Ms. Natasha Holliday is the Division's paralegal and office manger. She received her paralegal degree in 1997, and has approximately thirteen (13) years of experience working in law offices involved in the representation of defendant's facing the death penalty. In essence she manages an office responsible for undertaking the complex litigation involving numerous death penalty trials.

The Capital Trial Division has undergone a recent structural change. Initially, the Division consisted of two (2) attorneys and two (2) mitigation specialists. The Division was fully staffed in this regard and began taking on a full case load in January of 2009.

In January of 2011, the Division restructured itself and is now comprised of three (3) attorneys and a paralegal/office administrator.

The Division has enrolled as counsel in twenty-one (21) death penalty matters since being fully staffed. It has concluded its representation in nine (9) of those matters. Only one defendant represented by the Division has received a death sentence. As a result, only one of the trials conducted by the attorneys of the Capital Trial Division has been appealed.

The three attorneys in the Capital Division are currently involved in the direct representation of thirteen (13) defendants facing death penalty prosecutions. Three (3) of these cases have orders setting the trial dates within the year.

It is important to note that generally, at any given time, three (3) out of four (4) defendants that the Trial Division represents have offered to plead guilty to all the pending charges and be sentenced to life without the possibility of parole (LWOP). It is the prosecutors' rejection of those offers that is resulting in costly and time consuming capital trials. The average length of a jury trial conducted by the Capital Trial Division is three (3) and a half weeks.

It is the policy of the Division that immediately upon appointment the case is quickly investigated and, where appropriate and where competent evidence of guilt is clear, the client is encouraged to plead guilty and to a life without parole sentence. The Division has, on occasion, been able to convey a written offer to plead guilty to a lwop sentence within mere weeks from the incident date. The attorneys of the Division devote an enormous amount of hours to a case at its inception in an effort to have the Defendant avoid a death sentence by submitting an offer to plead guilty. Again, it is the State's rejection of such offers to plead the defendant guilty and to a lwop sentence that is resulting in costly capital trials.

### **Constitutional Requirement of Heightened Reliability in Death Verdicts**

Once the prosecution has decided to pursue a sentence of death an extraordinary burden is placed upon the Court, the State, and defense counsel to ensure the fairness, accuracy, and reliability of the trial and any subsequent sentencing proceeding. The touchstones for these heightened protections are the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution.

As the United States Supreme Court has observed “[t]he fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special ‘need for reliability in the determination that death is the appropriate punishment’ in any capital case.” *Johnson v. Mississippi*, 486 U.S. 578, 584 (1988).

It is well established that when a defendant's life is at stake, a court must be “particularly sensitive to insure that every safeguard is observed.” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976). This heightened standard of reliability is “a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different.” *Ford v. Wainwright*, 477 U.S. 399, 411 (1986).

Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a

corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

*Woodson v. North Carolina*, 428 U.S. 280, 305 (1976).

The United States Supreme Court has repeatedly emphasized the principle that, because of the exceptional and irrevocable nature of the death penalty, “extraordinary measures” are required by the Eighth and Fourteenth Amendments to ensure the reliability of decisions regarding both guilt and punishment in a capital trial. *Eddings v. Oklahoma*, 455 U.S. 104, 118 (1982) (O’Connor, J., concurring). *See also Beck v. Alabama*, 447 U.S. 625, 637-38 (1980); *Lockett v. Ohio*, 438 U.S. 586, 604 (1978); and *Gardner v. Florida*, 430 U.S. 349, 357-58 (1977).

The South Carolina Supreme Court has recognized that the level of representation demanded in capital cases will require defense counsel to expend “extraordinary time, effort and commitment” on behalf of a capital defendant. *State v. Bailey*, 309 S.C. 455, 424 S.E.2d 503 (S.C. 1992).

The “Heightened Reliability” standard demanded in capital cases has been established in U.S. Supreme Court jurisprudence over the last thirty-five (35) years and requires that all rules established for the capital client must be strictly enforced. A defendant is entitled to zealous high quality representation wherein “defense counsel must seek to have [the rules and procedures that benefit capital defendants] enforced or their clients will die.” *Compendium of Standards for Indigent Defense, Vol. III, Standards for Capital Case Representation, Dept. of Justice, 2000* (citing *Nebraska Commission on Public Advocacy, Standards for Indigent Defense Services in Capital and Non-Capital Cases*).

The Supreme Court of South Carolina has recognized the complexities involved in capital litigation and the enormous demands placed on defense counsel in capital cases. “The awesome burden placed upon an attorney appointed to represent a capital case defendant is incomparably greater than in a non-capital case.” *State v. Bailey*, 309 S.C. 455, 424 S.E.2d 503 (S.C. 1992). As demanding as capital cases were at the time, this statement by our South Carolina Supreme Court was made about a *decade before* the Supreme Court of the United States issued multiple opinions *increasing* the demands of defense counsel in capital cases.

Recent United States Supreme Court opinions have placed ever growing demands on defense counsel regarding the lengths to which potential mitigation evidence must be investigated. *See generally Wiggins v. Smith*, 539 U.S. 510 (2003)(death sentence reversed due to inadequate mitigation investigation). There is currently a documented trend in federal death penalty cases of rising attorney and expert cost.

This trend of rising costs is likely closely related to United States Supreme Court rulings regarding counsel's obligation to thoroughly investigate potential mitigation evidence. The requisite hours expended by defense counsel and defense experts required to meet these demands have been rising in recent years and are expected to keep rising. *See Update on the Cost, Quality, and Availability of Defense Representation in Federal Death Penalty Cases, Judicial Conference Committee on Defender Services, 2008.*

A very recent case indicates that presenting even a "reasonable mitigation theory supported by evidence" will not prevent a death sentence from being reversed if a more comprehensive investigation would have revealed different evidence not presented at trial. *Sears v. Upton*, 2010 WL 2571856 (U.S.Ga.)(2010)(despite interviewing a dozen witnesses and calling seven witnesses at trial and presenting a "reasonable mitigation theory supported by evidence," counsel's investigation was still found to be constitutionally inadequate. The constitutional demands regarding attorney performance require defense counsel, in addition to conducting an independent fact investigation, to conduct a thorough and complete mitigation investigation and present the very best potential defense, not merely a reasonable one.

As stated above, there is an increasing demand regarding the quality of trial preparation and the thoroughness of investigations in capital cases. The South Carolina Supreme Court has recognized the uniquely complicated nature of a capital case and has declared that "[c]apital trials today, as never before, represent a myriad of complexities heretofore unknown." *State v. Bailey*, 309 S.C. 455, 424 S.E.2d 503 (S.C. 1992). An example of the heightened demands regarding an attorney's preparation for trial and the lengths that defense counsel must go to is the fact that attorneys have recently been found to be ineffective for failing to interview the *murder victim's* family. *U.S. v. Keutzer*, 59 MJ 773, see also *Scott v. Schriro*, 567 F.3d 573 (9th Cir. 2009).

The demands regarding efforts of defense counsel necessary to provide constitutionally adequate and effective assistance of counsel are not likely to recede. Therefore, attorney case work hours required to be expended on a capital case will likely continue to increase until the level of trial preparation in capital cases becomes uniformly consistent with the standard of practice mandated by the United States Supreme Court. *See Update on the Cost, Quality, and Availability of Defense Representation in Federal Death Penalty Cases, Judicial Conference Committee on Defender Services, 2008.*

What is expected of capital defense attorneys in terms of their performance in a capital case can also be found in the *ABA Guidelines for the Appointment and*

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

### **Attorney's Obligation to Devote Time to Capital Cases**

There is a very strong correlation between the amount of attorney and expert time devoted to a capital case and the outcome. In the bottom third of cases regarding the amount of attorney and expert time expended on a capital case defendants were sentenced to death at a rate of 44%. See *Update on the Cost, Quality, and Availability of Defense Representation in Federal Death Penalty Cases, Judicial Conference Committee on Defender Services*, 2008. In the top two thirds of cases regarding attorney and expert time devoted to the case, the defendant had only a 19% percent chance of being sentenced to death. *Id.* Given this strong correlation between attorney time devoted to a capital defendant's case and the defendant's likelihood to be sentenced to die at the end of the trial, defense counsel has a compelling obligation to devote the appropriate time to a capital case.

At the federal level, the median number of attorney hours expended in a death penalty case that ended with a guilty plea is One Thousand Thirty-Four (1,034) hours. The median number of attorney hours expended in a federal death penalty case that resulted in a trial is Two Thousand Seven Hundred Twenty-Six (2,726) hours. These figures are taken from federal death penalty cases from the years 1998 – 2004. See *Update on the Cost, Quality, and Availability of Defense Representation in Federal Death Penalty Cases, Judicial Conference Committee on Defender Services*, 2008.

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

In addition to direct representation of capital defendants, the three (3) staff attorneys have taken on the responsibility of providing death penalty specific legal education to South Carolina attorneys.

This is a need that has been neglected by the state of South Carolina. If a state's legislative body is to allow a statute proscribing capital punishment, then the state is obligated to train counsel to defend death penalty prosecutions. See attached case of *Archuleta v. Galetka*, 616 Utah Advance Rep. 2008 UT 76 (stating that it is the responsibility of the state legislature to provide for adequate defense of capital defendants, including providing sufficient resources to attract, train, compensate, and support legal counsel).

In the twelve (12) years before the creation of the Capital Trial Division, only two (2) capital defense seminars were held in South Carolina that were presented and sponsored by a South Carolina entity. These were both small one-day seminars sponsored by two (2) nonprofit organizations, the South Carolina Association of Criminal Defense Lawyers (SCADL) and the South Carolina Death Penalty Resource and Defense Center (formally the Center for Capital Litigation).

The Capital Division has, despite being in existence for a relatively short amount of time, arranged for six (6) capital defense CLE programs in South Carolina.

The first CLE seminar that the Capital Trial Division offered was a three (3) day training program regarding capital voir dire and was held on December 11, 2008. Nationally recognized experts in the field lectured at the program. With regard to applicants, priority was given to two (2) groups. Attorneys currently appointed to a capital case and all public defenders were given first opportunity to enroll before the program was advertised to the criminal defense bar. The Capital Trial Division presented the CLE with no financial assistance from any state entity. Applicants were charged a registration fee.

The Division's Chief Attorney, William McGuire, recently obtained a federal grant of over One Hundred Thousand (\$100,000.00) Dollars and the Division subsequently conducted two (2) separate capital defense trainings. The first of these trainings was a three-day "bring your case" styled CLE seminar that was held in August 2010. Another three-day lecture based training was held in May of 2011.

The South Carolina Commission on Indigent Defense has secured the renewal of the federal grant and two (2) additional three-day trainings will be held in the future. Feedback regarding all of the trainings that the Capital Trial Division has provided has been extremely positive, and the lawyers in attendance have indicated a desire and need for more such seminars.

The Chief Attorney of the Division, William McGuire, was also able to convince the National Association of Defense Lawyers to hold one of their annually held death penalty seminars in South Carolina. The CLE seminar "Making the Case for

Life” was held in Charleston, South Carolina in September 2010. This was a three-day capital defense training.

In less than two (2) short years the Capital Trial Division will have arranged for six (6) capital defense CLE seminars to be held in South Carolina. That has more than tripled what had been done in this regard in the last twelve (12) years. Despite the fact that it is the state of South Carolina’s responsibility to provide funding for capital defense training, all of the capital defense CLE programs that the Capital Trial Division has managed to bring to the state have been, or will be, conducted without expending any state funds.

Also, while the Division’s attorneys are required to attend Continuing Legal Education seminars in order to keep their law license current, the Capital Trial Division has generally not had to pay any registration fees for such seminars. The attorneys in the Division are generally able to secure scholarships or locate capital defense specific CLE’s for which there is no registration fee.

The Division is also responsible for being a resource for attorneys appointed to capital cases. Because South Carolina has a relatively small number of pending capital cases at any one time, a well organized capital defense bar has not developed in the state. As a result, it is not unusual for attorneys with little, or no, capital defense training to be appointed to represent capital defendants in South Carolina. This Division has been consulting with attorneys and investigators assigned to capital cases throughout the state.

#### A. Attorney Hours.

The average number of hours the three (3) attorneys dedicate to casework on an annual basis is over Two Thousand (2,000) case work hours for each attorney.

The amount of direct savings to the state of South Carolina can be derived by multiplying the attorney casework hours by the hourly rate a member of the private bar could bill the Commission on Indigent Defense in a capital case. A member of the private bar having the same extensive experience and training of the Division’s two (2) most experienced attorneys could bill the state at a rate of One Hundred Twenty (\$120.00) Dollars. This figure multiplied by the number of the two (2) attorneys’ casework hours, approximately Four Thousand (4,000) hours, is Four Hundred Eighty Thousand (\$480,000.00) Dollars. An attorney in private practice with the same experience and training as the third attorney in the Division could bill the state at a rate of One Hundred Ten (\$110.00) Dollars per hour. That figure multiplied by the number of projected case work hours, Two Thousand (2,000) hours, is Two Hundred Twenty Thousand (\$220,000.00) Dollars.

The Capital Trial Division attorneys, alone, provide approximately Seven Hundred Thousand (\$700,000.00) Dollars of direct services annually.

#### B. Volunteer Hours

The Chief Attorney of the Division, William McGuire, has made a concerted effort to recruit attorneys to represent indigent capital defendants on a pro bono basis. To date, and at Mr. McGuire's request, four (4) out-of-state attorneys have either enrolled as counsel or agreed to enroll as counsel of record in a death noticed case on a pro bono basis. Two of those attorneys also provided the services of one (1) mitigation specialist, who did not bill the state for any travel related expenses.

Further, the Division has reached an agreement with three out-of-state law firms located in Washington, D.C. to provide pro bono services with regard to death noticed cases pending in South Carolina. Those firms have all expressed a desire to have one or more of their attorneys eventually enroll as counsel in a death noticed case, but given the current state of the economy, have offered pro bono assistance in matters that do not require them to be declared counsel of record. To date, this pro bono assistance has come in the form of researching and drafting pretrial motions.

While it is difficult to predict exactly what the cost benefit is to the state in terms of the pro bono assistance that the Division has secured, a conservative estimate is that the state will receive tens of thousands of dollars worth of legal services on a pro bono basis.

The Capital Trial Division also recruits law clerks from the University of South Carolina School of Law and the Charleston School of Law for year-round and summer positions. The Division also participates in a public interest law clerk job fair to secure additional law clerks for the summer months. All law clerk positions with the Division are non-paying. The Division receives approximately Twenty-five Thousand (\$25,000.00) Dollars of law clerk services on a volunteer basis.

#### C. Paralegal hours

It is more difficult to estimate the cost savings provided by having the support of a paralegal, as the Commission does not allow billing for such services. Suffice it to say that such support is very valuable and allows the attorneys and mitigation specialist to dedicate their time to casework hours. It is fair to say that the state receives approximately Thirty-three Thousand (\$33,000.00) Dollars in value in terms of paralegal/administrative support.

D. Other financial benefit to the state.

The reversal rate of death penalty trials is extremely high. Approximately 64% of death sentences in South Carolina are reversed. This is in line with the national rate of 68%. Of course, a number of these cases are reversed due to ineffective assistance of counsel. Often this is due to a failure to properly investigate the case. It is not likely that any of the cases assigned to the Division will be overturned in this matter. Fewer reversals obviate the need for expensive retrials.

The fact that the Division consults with attorneys appointed to capital cases who have little or no capital training should lead to the reduction in the reversal rate in those cases as well.

It is the state's responsibility to provide for training for capital defense lawyers. Because the Division obtained a federal grant and employed other methods to bring capital defense trainings to South Carolina, the state's obligation to provide capital defense training has been satisfied with no cost to the state of South Carolina.

The savings to the state with regard to the federal training grant is easily measured. Because the federal grant has a measurable dollar value of approximately One Hundred (\$100,000.00) the state of South Carolina has benefited directly in that amount. Of course, that cost savings will be attributed to the next fiscal year.

The Capital Trial Division continues to succeed in every aspect of its mission. The Division has done so in a manner that saves the state of South Carolina a substantial amount of funds and resources.

Using attorney case work hours, the value of recruited pro bono services, and the value of the training and consulting the Division has provided, the Capital Trial Division is responsible for providing approximately Nine Hundred Thousand (\$900,00.00) Dollars of direct services to South Carolina in this fiscal year.

The amount above does not take into account the hidden savings in terms of costly trials rendered unnecessary due to the Division's attorneys forging a plea agreement, or the costly retrial rendered unnecessary based on poor attorney performance.

The amount of state funds necessary to fund the services referenced above is approximately Four Hundred and Fifty Thousand (\$500,000.00) Dollars. This fiscal year the Capital Trial Division produced nearly two (2) dollars in services for every (1) dollar of state funds.

In summary, while it has been one of the most challenging years in state government, the agency was able to meet its program responsibilities and it maintain a level of sponsorship for professional development. While the agency staffing level is well below full strength, the use of technology allows many tasks to be completed with fewer personnel and we have relied on part-time student help to fill the gaps. Among the general public defender workforce, our survey results reflect a decrease of five (5) public defenders in the state over the last year. The severe lack of adequate funding coupled with the unsustainable case loads for public defenders at all levels, and well as for all indigent defense services, has brought the system to the brink of collapse.

The state is fortunate to have an extremely professional and dedicated corps of public defenders who are committed to carrying the heavy load for now and they should be recognized and commended for protecting and upholding every American's 6<sup>th</sup> Amendment rights; but for the future the systemic problems must be addressed, the system must be adequately funded, the number of public defenders increased, and the individual caseload substantially reduced if the system is going to be sustained and succeed as envisioned by the 2007 Indigent Defense Act.

### **3. Key Strategic Goals For Present and Future Years:**

The ultimate goal of the agency is to provide a unified, cost effective and efficient statewide system for the delivery of indigent defense to all eligible citizens of the state.

The mission of the agency also is to provide the resources necessary to appointed counsel, both Public Defenders and private attorneys, to represent those indigent or otherwise appointed clients in the State's criminal, civil and family courts. The lack of standardization in the determination of indigency is one of the key factors in assuring that resources are allocated to those citizens that qualify under federal poverty guidelines and to further ascertain the guidelines and qualifications for a determination of indigency are consistent throughout the state. To achieve this goal, the agency plans to review procedures of other states for determination of indigency and compare procedures used in South Carolina to develop a standard procedure to be implemented statewide. This proposed procedure will be submitted to the Chief Justice for discussion and approval by the Court and revision of South Carolina Appellate Court Rule 602 to incorporate the standardized procedure.

Additionally, the agency collects statistics on the operation of the indigent defense system in the State and provides information and material to interested parties including the Executive, Legislative and Judicial agencies of state government.

#### **4. Key Strategic Challenges (mission, operational, human resource, financial and community related):**

The main purpose of this agency is to oversee the state's new unified circuit defender system and the representation of indigents pursuant to SC Appellate Court Rule 608 appointments; to disburse money to the indigent legal system in this State; to represent indigent clients in the appeal process; and to provide direct legal representation to indigent defendants charged with capital offenses. The majority of the funding comes from non-appropriated sources derived from fine surcharges and application fees. This source of funding has not proved sufficient for the criminal defense system and South Carolina currently ranks about 46<sup>th</sup> in indigent defense spending per capita. Only a portion of the per capita distribution to the Public Defender Offices is appropriated by the General Assembly. Since FY 2000-2001, the agency has not received any recurring appropriated funds for the Conflict Appointment Fund, Civil Appointment Fund, or the Death Penalty Trial Fund.

The major barrier to the successful operation of the agency is adequate appropriated funding. The non-appropriated sources of revenue have peaked, as other agencies have been funded from these same sources, raising the surcharge on fines to 107.5%. This source has not shown significant increases over the past years to meet the growing demands of this agency. While sources such as these may provide a good supplemental base for funding, in order for the source to remain adequate, sufficient appropriated funding is a necessity.

Appellate Defense maintains a constant caseload of over 1500 appeals and post conviction relief actions. The division presently employs eight attorneys, each with a caseload far in excess of recommended ethical and professional standards. The historical lack of sufficient operating revenue, funding and budget cuts and considerable increase in caseload leaves this area severely under funded to accomplish its mission.

#### **5. How This Report is Used To Improve Organizational Performance:**

This report provides a guide throughout the year for assessing allocation of resources, adjusting priorities and assessing progress toward goals.

### **Section II – Organizational Profile**

#### **1. Main Products Services and Primary Methods of Delivery:**

The Office of Indigent Defense disburses money to provide for the state's share of the maintenance of the local Public Defender Offices and reimburses private attorneys for their time and expenses in representing indigent clients when appointed by the courts. The Office of Appellate Defense provides representation of indigent

clients in direct appeals and post conviction relief actions. The Death Penalty Trial Division provides representation of indigent defendants in capital punishment trials.

**2. Key Customer Groups and Their Key Requirements/Expectations:**

The key customers of this agency are the citizens of the state who require, but cannot afford legal representation in state courts, the public defenders of this state, and attorneys appointed to represent indigent persons in the State Courts.

**3. Key Stakeholders Other Than Customers:**

The key stakeholders are the citizens of the State of South Carolina, who are provided legal representation as guaranteed by the State and US Constitution.

**4. Key Suppliers and Partners:**

The General Assembly is the key supplier for the agency, as it provides the funding for the agency to meet the goals of its mission.

**5. Operation Locations:**

The agency headquarters is located at 1330 Lady Street, Suite 401, Columbia, SC 29201. This location houses the administrative office of the Commission, The Office of Indigent Defense, The Office of Appellate Defense and the Death Penalty Trial Division offices. A Circuit Public Defender Office is located throughout the state in each judicial circuit and a county public defender office is maintained in each of the forty-six counties.

**6. Number of Employees:**

37 Unclassified FTEs and 30.00 Classified FTEs.

The Commission appoints the Executive Director, who oversees the general operation of the agency. The Executive Director is responsible for the day-to-day operation of the agency.

**7. Regulatory Environment:**

The agency operates under applicable federal law, state statutes, provisos, rules and regulations, including SC Appellate Court Rules.

**8. Performance Improvement System:**

The Executive Director and the Commission set performance expectations.

## **9. Organizational Structure:**

The Commission appoints the Executive Director who oversees the general operation of the agency. The executive Director is responsible for the day-to-day operation of the agency. The agency has four divisions, the Office of Indigent Defense, the Division of Appellate Defense, the Death Penalty Trial Division and the Circuit Public Defenders.

## **10. Expenditures/Appropriations Chart (attached)**

## **11. Major Program Areas Chart (attached) Programs that comprise 80 % of total budget**

### **Section III – Elements of Malcolm Baldrige Award Criteria**

#### **Category 1 – Senior Leadership, Governance and Social Responsibility:**

*1. How do senior leaders set, deploy and ensure two-way communication throughout the organization and with customers and stakeholders, as appropriate for: a) short and long term organization direction and organizational priorities, b) performance expectations, c) organizational values, and d) ethical behavior*

The "open-door" policy provides the forum for any employee to communicate with any other employee, including division heads, supervisors, deputy directors and the executive director without any restriction. Email, telephone and personal communication avenues are provided to all staff members. Customers and other stakeholders can contact agency personnel through the website, which provides direct link email or telephone numbers.

The Commission and the Executive Director establish all policies and procedures. Budget and other matters are proposed by the Executive Director to the Commission which accepts, rejects or modifies the proposal.

Recurring and long term agency policy decisions are determined by the Chairman and the Executive Director and then submitted to the full commission for ratification.

The Executive Director is delegated the authority by the commission to make emergency policy decisions and to supervise the day-to-day operations of the agency.

Performance Expectations are determined by the Executive Director.

Organizational Values are established by the Executive Director and the Commission.

Ethical Behavioral Standards are those expected to be followed by all state employees.

***2. How do senior leaders establish and promote a focus on customers and other stakeholders?***

The Executive Director has direct contact with the agency's customers. He is available to any person who calls and often gets calls from attorneys, judges, public defenders and other agency personnel. The agency has an open door, open phone policy.

The Chief Appellate Defender is responsible for the division's overall caseload and communicates with clients, their families, the Courts, other lawyers and all other interested parties.

The Chief Attorney for the Death Penalty Trial Division is responsible for the division's caseload, support staff and activities.

The Circuit Public Defenders are selected for a four year term by a panel comprised of elected representatives from each county bar association within the circuit. They are responsible for delivery of indigent defense services in criminal proceedings at the local level.

Civil Appointment Cases are handled by private attorneys appointed under South Carolina Appellate Court Rule 608.

***3. How does the organization address the current and potential impact on the public of its programs, services, facilities and operations, including associated risks?***

Daily interaction and communication with the courts, public defenders, and appointed counsel representing indigents, provides information and feedback for assessing the impact and risks for the organization.

***4. How do senior leaders maintain fiscal, legal and regulator accountability?***

The Executive Director is responsible for final accountability. Staff is trained to examine all requests for payment to ensure that all required documentation is provided and that all statutes, policies and procedure are complied with.

**5. *What performance measures do senior leaders regularly review to inform them on needed actions?***

The speed and accuracy of processing payment requests and the resolution of problems are reviewed and acted upon in a timely fashion by staff members and the executive staff. In the Appellate Division, the Chief Appellate Defender monitors the written and in-court performance of his staff to ensure that they exceed professional and ethical standards. The Chief Attorney for the Death Penalty Trial Division monitors the performance of his staff to ensure that they exceed professional and ethical standards. The Circuit Public Defenders are subject to statutory guidelines and performance standards developed by the commission.

**6. *How do senior leaders use organizational performance review findings and employee feedback to improve their own leadership effectiveness and the effectiveness of management throughout the organization, including the head of the organization, and the governance board/policy making body? How do their personal actions reflect a commitment to the organizational values?***

Staff meetings are used to determine how the agency is functioning. Employees are encouraged to bring up problems and suggest solutions. Informal conversations often result in solving most issues. Suggestions are reviewed and considered based on administrative and fiscal merit.

All staff members work toward achieving maximum effectiveness and cost efficiency in delivering our services.

**7. *How do senior leaders promote and personally participate in succession planning and the development of future organizational leaders?***

Staff is encouraged to engage in educational, training and professional development opportunities that may enhance their career growth.

**8. *How do senior leaders create an environment for performance improvement and the accomplishment of strategic objectives?***

While no formal assessment measures are implemented, close daily interaction between senior staff, supervisors and administrative staff provides effective communication and monitoring of all agency activities.

***9. How do senior leaders create an environment for organizational and workforce learning?***

Staff members are encouraged and allowed time to participate in relevant community activities, including speaking at professional conferences and other forums that include the legal community that we serve.

***10. How do senior leaders communicate with, engage, empower and motivate the entire workforce throughout the organization? How do senior leaders take an active role in reward and recognition processes to reinforce high performance throughout the organization?***

Frequent meetings are held with all circuit public defenders; a comprehensive manual of performance standards and guidelines has been developed; periodic agency staff meetings on a division or overall basis occur; employees are encouraged to attend professional development seminars and programs.

***11. How do senior leaders actively support and strengthen the communities in which your organization operates? Include how senior leaders determine areas of emphasis for organizational involvement and support, and how senior leaders, the workforce, and the organization contribute to improving these communities.***

Through the agency's Summer Rural Extern Program, law students are placed in rural public defender operations throughout the state; Circuit Public Defender ceremonies were organized by the agency and community leaders were invited to attend; magazine and news articles were written and published to give the citizens a better understanding of the role of public defenders and indigent defense.

**Category 2 – Strategic Planning**

The Strategic Planning process begins with a review of the previous year's budget and workload by the executive staff to determine needs for the upcoming year. The Commissioners are consulted on budget and operational goals. Suggestions and input is also sought from the Circuit Public Defenders from each judicial circuit, the SC Bar Association, the SC Public Defender Association, the SC Association of Criminal Defense Lawyers and the Chief Justice of the SC Supreme Court. The primary mission of this agency is centered on funding for public defenders and appointed counsel and representation of indigents at the trial level and at the appellate level, and most of the planning concerns budget matters. There is also a desperate need for additional attorneys at the trial and appellate level to adequately represent the ever-increasing caseload and bring the caseload numbers into compliance with standards set by the American Bar Association.

### **Category 3 – Customer Focus:**

#### ***1. How do you determine who your customers are and what their key requirements are?***

The main mission of the agency is to aid in providing adequate representation of indigent persons in the State's court systems. This is done by providing funding to supply those persons with an attorney and the resources needed for the legal action. The question of client satisfaction is addressed by the courts. Since the attorneys are the ones requesting the reimbursement and resources, they are best suited to determine the effectiveness of the agency. Determination of indigency is through a screening process at the local intake level.

#### ***2. How do you keep your listening and learning methods current with changing customer/business needs and expectations?***

The open door-open phone policy in the agency allows anyone to voice a concern or discuss an issue with the Executive Director or any other staff member. Conferences and seminars throughout the year provide the opportunity to listen to ideas or suggestions and to develop new approaches to providing services. The agency does not have a policy of "non change". When a concern, criticism or complaint is expressed, the policy or procedure is reviewed and changed if it will increase efficiency or save time or money. The philosophy of the agency is that everything can be improved upon.

#### ***3. What are your key customer access mechanisms, and how do these access mechanisms enable customers to seek information, conduct business, and make complaints?***

The agency maintains a website that provides a wealth of information for persons seeking services for indigent representation. There are links to all public defender offices throughout the state, as well direct email to key agency staff members for inquiries. The site also provides links to other judicial agencies and state offices.

#### ***4. How do you measure customer/stakeholder satisfaction and dissatisfaction, and use this information to improve?***

Seminars, conferences and periodic meetings attended by public defenders, private attorneys and other representatives of the state's judicial system allows agency leadership to interact and exchange information and ideas. Suggestions from

appointed attorneys and the legal community are reviewed and implemented if they can provide more efficient and cost-effective methods of delivery of our services.

***5. How do you use information and feedback from customers/stakeholders to keep services or programs relevant and provide for continuous improvement?***

Communication with the public defender offices, attorneys and other organizations provides input on procedures or policy that may need to be updated. As stated above, when a suggestion is made, the information is reviewed and acted upon to make changes if it provides for more efficient and effective delivery of services.

Part of the customer group is comprised of public defenders and private attorneys appointed to indigent cases. The agency provides information through funding for published seminar materials and appearing at seminars and conferences to explain agency policy and procedures. The Executive Director makes on site visits to the public defender offices, judges, law school administrators and indigent defense programs in neighboring states. The other part is comprised of indigents that are represented by staff attorneys in the Division of Appellate Defense. Success criteria are based on the ability to provide effective representation at a reasonable cost to the citizens of South Carolina.

***6. How do you build positive relationships with customers and stakeholders to meet and exceed their expectations? Indicate any key distinctions between different customer groups.***

Guidelines and standards of representation of indigent individuals have been published and made available to criminal defense attorneys throughout the state. They specify the proper way to achieve positive relationships with the clientele. In addition, conferences and the agency's annual Best Practices Seminar also achieve this purpose.

**Category 4 – Measurement, Analysis and Knowledge Management:**

***1. How do you decide which operations, processes and systems to measure for tracking financial and operational performance, including progress relative to strategic objectives and actions plans?***

The primary operation of the agency is providing cost effective representation, either through staff appellate attorneys, public defenders or private attorneys appointed by the courts. Operational performance is measured by maintaining accurate accounting records and compiling accurate statistical information.

***2. How do you select, collect, align and integrate data/information for analysis to provide effective support for decision and innovation throughout your organization?***

Information collected and statistics are analyzed to determine trends and make comparisons. This data provides the basis for funding requests and budget analysis.

***3. What are your key measures, how do you review them, and how do you keep them current with organizational needs and direction?***

The speed and efficiency in processing payments to our customers and the accuracy of the accounting and statistical data collected are measures for the Office of Indigent Defense, while effective representation at a reasonable cost to the state is the measure for the Division of Appellate Defense, the Capital Trial Division and the Circuit Public Defender Division.

***4. How do you select and use key comparative data and information to support operational and strategic decision making and innovation?***

Information is collected from payment requests concerning case types, using standardized criminal codes and detailed expense information. From this information, we are able to determine usual and average expenses for various aspects of a case. This information is often provided to judges and attorneys to assist them in determining what is "reasonable and necessary" for representation in court. The agency has published a "bench book" that provides information on all expert witnesses, including fees charged for any expert that has provided services for indigent defense over the past three years. This has proved to be an invaluable tool in determining the "reasonableness" of an experts proposed charges. Information is also collected from Public Defenders on their county funding, caseloads, staffing, etc. for comparison with funding for solicitors.

***5. How do you ensure data integrity, reliability, timeliness, accuracy, security and availability for decision-making?***

Information collected includes the date the request is received, the date processed and the date mailed to the recipient. Several processes verify financial information and reporting functions and are automated to produce reports for budgeting and financial tracking.

***6. How do you translate organizational performance review findings into priorities for continuous improvement?***

By observing trends provided by analysis of statistical data, reviewing workload and duties of staff and cross training employees to provide back up staffing when required.

***7. How do you collect, transfer and maintain organizational and workforce knowledge (knowledge assets)? How do you identify and share and implement best practices, as appropriate?***

Cross training of support staff to perform multiple tasks and function in different areas as needed, information and knowledge is shared continually. The staff is routinely informed about agency projects, activities and goals.

**Category 5 – Workforce Focus:**

***1. How does management organize and measure work to enable your workforce to: 1) develop their full potential, aligned with the organizations objectives, strategies and action plans; and 2) promote cooperation, initiative, empowerment, teamwork innovation and your organizational culture?***

When funding permits, employees are encouraged to participate in educational, training and professional development opportunities. Employees are also encouraged to learn and assume additional job duties and responsibilities within the agency. Cross training and sharing of information and work procedures also provide a platform for sharing improvements in the work process.

***2. How do you achieve effective communication and knowledge/skill/best practice sharing across departments, jobs, and locations? Give examples:***

Best Practices Seminar; participatory conferences, including continuing legal education for all attorneys employed by the agency, and other training within each division.

***3. How does management recruit, hire, place, and retain new employees? Describe any barriers that you may encounter.***

Through the State of SC Human Resources processes.

**4. How do you assess your workforce capability and capacity needs, including skills, competencies and staffing levels?**

This is a continual process, based on workload assessments for each division.

**5. How does your workforce performance management system, including feedback to and from individual members of the workforce, support high performance work and contribute to the achievement of your action plans?**

Employees have open access to make suggestions for improvement of our processes and are frequently directly involved in designing and improving our systems.

**6. How does your development and learning system for leaders address the following: a) development of personal leadership attributes; b) development of organizational knowledge; c) ethical practices; d) your core competencies, strategic challenges, and accomplishment of action plans?**

Through attendance at Best Practice seminars, publication of guidelines and standards of representation of indigents; attending CLE Seminars with ethics requirements.

**7. How do you identify and address key development training needs for your workforce, including job skills training, performance excellence training, diversity training, management/leadership development, new employee orientation, and safety training?**

This is based on job functions, evolving systems and experience of employees.

**8. How do you encourage on the job use of new knowledge and skills?**

Usually the job function will necessitate it.

**9. How does employee training contribute to the achievement of your action plans?**

A better trained employee produces a better work product more efficiently.

**10. How do you evaluate the effectiveness of your workforce and leader training and development systems?**

Standard yearly review system

***11. How do you motivate your workforce to develop and utilize their full potential?***

Close daily interaction between senior staff, supervisors and administrative staff provides effective communication and allows supervisors to be continually aware of opportunities for development or utilization of additional skills.

***12. What formal and/or informal assessment methods and measures do you use to obtain information on workforce well-being, satisfaction, and motivation? How do you use other measures such as employee retention and grievances? How do you use this information?***

Every employee is reminded that they can discuss any problems with their supervisor, as well as the Executive Director, Chief Appellate Attorney or Assistant Directors. Because of the size of the agency, and the daily contact with each other, employees are encouraged to discuss problems and give advice to each other. Again, because of the friendships that have developed over years of working together, co-workers provide a support system for the staff.

***13. How do you manage effective career progression and effective succession planning for your entire workforce throughout the organization?***

Through good planning and anticipating agency needs.

***14. How do you maintain a safe, secure and healthy work environment? (Include your workplace preparedness for emergencies and disasters.)***

We are located in a facility that is safe and secure with excellent emergency exits, and in close proximity to emergency care.

The Agency only occupies one suite of offices in an office building in Columbia. Safety and health hazards are examined by almost daily visible observations of work areas and common areas within the building.

## **Category 6 – Process Management:**

***1. How do you determine, and what are your organizations' core competencies, and how do they relate to your mission, competitive environment, and action plans?***

Implementation of technology initiatives, including electronic processing of payment requests, has reduced redundant processes and greatly increased the speed and efficiency in the work processes resulting in improved customer service.

***2. How do you determine and what are your key work processes that produce, create or add value for your customers and your organization and how do they relate to your core competencies? How do you ensure these processes are used?***

By ensuring that all employees are informed of changes and obtaining feedback from the staff when new procedures or processes are implemented.

***3. How do you incorporate organizational knowledge, new technology, cost controls, and other efficiency and effectiveness factors, such as cycle time, into process design and delivery?***

By informing staff of all agency activities and providing a forum for their ideas and implementation of any changes or improvements that may be needed.

***4. How does your day-to-day operation of these processes ensure meeting key performance requirements?***

Improvements in technology and automation are continually being upgraded to provide faster and more efficient response to our customer's needs.

***5. How do you systematically evaluate and improve your key product and service related work processes?***

Information technology improvements are the key factor to improving the performance of the agency, as well as the organizations we support and provide services for.

**6. What are your key support processes, and how do you evaluate, improve and update these processes to achieve better performance?**

Our commission, state judiciary, and national organizations

**7. How does your organization determine the resources needed to meet current and projected budget and financial obligations?**

Agency funding is primarily dependent on fluctuating fine, fee and surcharge collections through the court system. The agency receives minimal appropriated funding, making it difficult to project budget and financial stability to meet statutory mandates.

**Category 7 – Results**

**7.1 What are your performance levels and trends for the key measures of mission accomplishment/product and service performance that are important to your customers? How do your results compare to those of comparable organizations?**

These are measured by the collection of statistical data on the operation of the indigent defense systems statewide.

**7.2 What are your performance levels and trends for your key measures on customer satisfaction and dissatisfaction (a customer is defined as an actual or potential user of your organization's products or services)? How do your results compare to those of comparable organizations?**

Payment requests and per capita distribution funding are processed in an efficient and timely fashion. Appellate and capital trial attorneys are closely monitored to assure performance standards are met.

**7.3 What are your performance levels for the key measures on financial performance, including measures of cost containment, as appropriate?**

The agency's financial performance is controlled by the amount of money appropriated by the General Assembly.

***7.4 What are your performance levels and trends for the key measures of workforce engagement, workforce satisfaction, the development of our workforce, including leaders, workforce retention, workforce climate including workplace health, safety and security?***

Agency employees are mature, dedicated, and knowledgeable and work well together to get the work done and achieve agency goals.

***7.5 What are your performance levels and trends for the key measures of organizational effectiveness/operational efficiency, and work system performance (these could include measures related to the following: product, service, and work system innovation rates and improvement results; improvements to cycle time; supplier and partner performance; and results related to emergency drills or exercises?)***

Agency is operated in compliance with all applicable statutes, rules and regulations.

***7.6 What are your performance levels and trends for the key measures of regulatory/legal compliance and community support?***

Agency personnel are expected to perform in compliance with all applicable statutes, rules and regulations, including professional codes of ethics for professionally licensed employees.

## Strategic Planning

<b>Program Number and Title</b>	<b>Supported Agency Strategic Planning Goal/Objective</b>	<b><u>Related FY 10-11 and beyond</u> Key Agency Action Plan/ Plan/Initiative(s) and Timeline for Accomplishing the Plan (s)</b>	<b>Key Cross References for Performance Measures*</b>
I. Administration	Continue efforts to implement statewide standards for the delivery of services mandated by Federal and State constitution and statute.	Adequate funding for agency operations and programs to meet federal and state constitutional and statutory mandates	7

**Major Program Areas**

Program Number and Title	Major Program Area Purpose (Brief)	Major Program Areas		Key Cross References for Financial Results*
		FY 09-10 Budget Expenditures	FY 10-11 Budget Expenditures	
	Funding for maintenance and operation of agency and program funding to meet statutory mandates	<b>State:</b> 9,451,177.00 <b>Federal:</b> 0.00 <b>Other:</b> 13,175,652.00 <b>Total:</b> 22,626,829.00 <b>% of Total Budget:</b> 100%	<b>State:</b> 8,451,178.00 <b>Federal:</b> 0.00 <b>Other:</b> 13,175,652.00 <b>Total:</b> 21,626,830.00 <b>% of Total Budget:</b> 100%	7
		<b>State:</b> <b>Federal:</b> <b>Other:</b> <b>Total:</b> <b>% of Total Budget:</b>	<b>State:</b> <b>Federal:</b> <b>Other:</b> <b>Total:</b> <b>% of Total Budget:</b>	
		<b>State:</b> <b>Federal:</b> <b>Other:</b> <b>Total:</b> <b>% of Total Budget:</b>	<b>State:</b> <b>Federal:</b> <b>Other:</b> <b>Total:</b> <b>% of Total Budget:</b>	
		<b>State:</b> <b>Federal:</b> <b>Other:</b> <b>Total:</b> <b>% of Total Budget:</b>	<b>State:</b> <b>Federal:</b> <b>Other:</b> <b>Total:</b> <b>% of Total Budget:</b>	
		<b>State:</b> <b>Federal:</b> <b>Other:</b> <b>Total:</b> <b>% of Total Budget:</b>	<b>State:</b> <b>Federal:</b> <b>Other:</b> <b>Total:</b> <b>% of Total Budget:</b>	

**Below: List any programs not included above and show the remainder of expenditures by source of funds.**

<b>Remainder of Expenditures:</b>	<b>State:</b> <b>Federal:</b> <b>Other:</b> <b>Total:</b> <b>% of Total Budget:</b>	<b>State:</b> <b>Federal:</b> <b>Other:</b> <b>Total:</b> <b>% of Total Budget:</b>
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\* Key Cross-References are a link to the Category 7 - Business Results. These References provide a Chart number that is included in the 7th section of this document.

## Accountability Report Appropriations/Expenditures Chart

### Base Budget Expenditures and Appropriations

Major Budget Categories	FY 09-10 Actual Expenditures		FY 10-11 Actual Expenditures		FY 11-12 Appropriations Act	
	Total Funds	General Funds	Total Funds	General Funds	Total Funds	General Funds
Personal Service	\$ 4,112,756	\$ 3,537,540	\$ 4,142,371	\$ 3,537,540	\$ 4,142,371	\$ 3,537,540
Other Operating	\$ 804,283	\$ 96,000	\$ 763,800	\$ 96,000	\$ 763,800	\$ 96,000
Special Items	\$ 17,902,249	\$ 4,154,512	\$ 14,588,733	\$ 3,154,512	\$ 14,499,933	\$ 3,154,512
Permanent Improvements						
Case Services						
Distributions to Subdivisions						
Fringe Benefits	\$ 1,887,126	1663126	\$ 2,131,926	\$ 1,663,126	\$ 2,255,989	\$ 1,698,389
Non-recurring			\$ 1,700,000		\$ 561,705	
<b>Total</b>	\$ 24,706,414	\$ 9,451,178	\$ 23,326,830	\$ 8,451,178	\$ 22,223,798	\$ 8,486,441

### Other Expenditures

Sources of Funds	FY 09-10 Actual Expenditures	FY 10-11 Actual Expenditures
Supplemental Bills		
Capital Reserve Funds		
Bonds		