



# **South Carolina Bar**

Continuing Legal Education Division

## **2018 SC BAR CONVENTION**

### **Criminal Law Section (Part 1)**

“The Bread of the Sandwich”

**Friday, January 19**

*SC Supreme Court Commission on CLE Course No. 180799*



**South Carolina Bar**

Continuing Legal Education Division

**2018 SC BAR CONVENTION**

**Criminal Law Section (Part 1)**

**Friday, January 19**

**Get More Business Without Getting A  
Grievance**

*Prof. Michael J. Virzi*

**Criminal Law Section  
Ethics Update  
January 19, 2018**

**Michael J. Virzi**

## SC Bar Ethics Advisory Opinion 17-02 (2017)

---

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY.

**Applicable Rules of Professional Conduct:** 7.1, 7.2

**Factual Background:** Local and regional newspapers, local web-based platforms (including television stations or networks) and national publishers compile annual “Best of...” surveys of their readers, or conduct evaluations of lawyers resulting in a designation or accolade as a “Best Lawyer” or “Super Lawyer” or similar appellation. Some of the publications require firms to ask for nominations from their customers or to pay a fee in order to be nominated for voting, while others accept all nominations and votes without the knowledge or consent of the nominee. All have differing criteria for receiving or achieving the particular designation or accolade. Most, if not all, of the organizations offer a badge or emblem for use on firm websites and in other marketing materials to publicize the bestowed honor, some of which will also serve on the firm website as a hyperlink to the website of the bestowing organization.

**Question Presented:** May a South Carolina lawyer accept and advertise a designation or accolade such as “Best Lawyers” or “Super Lawyers,” whether in a legal publication or in a newspaper readers poll, in conformity with the advertising rules of the South Carolina Rules of Professional Conduct?

**Summary:** Yes, the lawyer may accept and advertise such a designation or accolade, and utilize any “badges,” symbols, or other marks authorized by the designating entity in situations when:

1. the entity or publication has strict, objective standards for inclusion in the listing that are verifiable and would be recognized by a reasonable lawyer as establishing a legitimate basis for determining whether the lawyer has the knowledge, skill, experience, or expertise indicated by the listing;
2. the standards for inclusion are explained in the advertisement or information on how to obtain the standards is provided in the advertisement (referral to the publication’s website is adequate if the standards are published therein);

3. the date of any such designation or accolade is included;
4. an advertisement makes it clear that the designation or accolade is made by a specific publication or entity through use of distinctive typeface or italics;
5. no payment of any kind for any purpose, including, but not limited to, advertising or purchase of commemorative items, is required of the lawyer, or the lawyer's firm, for receiving the designation, accolade, or inclusion in the listing; and
6. the organization charges the lawyer only reasonable advertising fees to the extent it not only confers such a designation or accolade but also provides a medium for promoting or advertising the designation or accolade to the public.

**Discussion:** The courts or bars of several jurisdictions nationwide have addressed this issue [1]. They have uniformly approved the acceptance of designations or accolades and use of them (including proprietary “badges,” symbols, or other marks) in attorneys’ advertising subject to certain conditions designed to insure that the use of such accolades or designations is not false or misleading.

S.C. R. Prof. Conduct 7.1 prohibits communications regarding a lawyer that are “false, misleading, or deceptive.” A communication may violate the rule if it “contains a material misrepresentation of fact or law,” omits facts “necessary to make [a] statement considered as a whole not materially misleading,” or creates “an unjustified expectation about results the lawyer can achieve ....” *Id.*

In 2007, the North Carolina Bar, applying virtually identical Rule language to the communication of an attorney’s designation as a “North Carolina Super Lawyer” by the publication of that name made the following observations:

[I]n *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U.S. 91 (1990), a plurality of the Supreme Court concluded that a lawyer has a constitutional right, under the standards applicable to commercial speech, to advertise his certification as a trial specialist by the National Board of Trial Advocacy (NBTA). The Court found NBTA to be a “bona fide organization,” with “objectively clear” standards, which had made inquiry into Peel’s fitness for certification and which had not “issued certificates indiscriminately for a price.” *Id.* at 102, 110. If a state is concerned that a lawyer’s claim to certification may be a sham, the state can require the lawyer “to demonstrate that such certification is available to all lawyers who meet objective and consistently applied

standards relevant to practice in a particular area of the law." *Id.* at 109. In concluding that the NBTA certification advertised by Peel in his letterhead was neither actually nor potentially misleading, the Court emphasized "the principle that disclosure of truthful, relevant information is more likely to make a positive contribution to decision-making than is concealment of such information."

N.C. State Bar 2007 Formal Ethics Opinion ("FEO") 14

(<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2007-formal-ethics-opinion-14/>).

Referencing an earlier opinion, N.C. State Bar 2003 FEO 3, regarding advertising membership in the "Million Dollar Advocates Forum," the 2007 opinion stated that such an advertisement was determined not to violate Rule 7.1 where:

1. the organization has strict, objective standards for admission that are verifiable and would be recognized by a reasonable lawyer as establishing a legitimate basis for determining whether the lawyer has the knowledge, skill, experience, or expertise indicated by the designated membership;
2. the standards for membership are explained in the advertisement or information on how to obtain the standards is provided in the advertisement;
3. the organization has no financial interest in promoting the particular lawyer; and
4. the organization charges the lawyer only reasonable membership fees.

*Id.* Applying this specifically to a lawyer being designated as a *North Carolina Super Lawyer* and advertising that fact, the 2007 opinion stated that the *Super Lawyers* organization "appears to be a bona fide organization, as described in Peel ..., in that it has objectively clear and consistently applied standards for inclusion in its lists and inclusion is available to all lawyers who meet the standards." *Id.* Applying the standards of its 2003 opinion in the context of a *Super Lawyers* designation, the opinion held advertising such designation or accolade was not misleading or deceptive within the meaning of Rule 7.1 where:

1. the publication has strict, objective standards for inclusion in the listing that are verifiable and would be recognized by a reasonable lawyer as establishing a legitimate basis for determining whether

- the lawyer has the knowledge, skill, experience, or expertise indicated by the listing;
2. the standards for inclusion are explained in the advertisement or information on how to obtain the standards is provided in the advertisement (referral to the publication's website is adequate if the standards are published therein; and
  3. no compensation is paid by the lawyer, or the lawyer's firm, for inclusion in the listing.

*Id.* The opinion further stated that an advertisement must make it clear that the "Super Lawyer" designation is made by a specific publication or entity through use of distinctive typeface or italics "and may not simply state that the lawyer is a 'Super Lawyer,'" which would constitute an unsubstantiated comparison prohibited by the rule. *Id.* Finally, the opinion noted that where, as with *North Carolina Super Lawyers*, the listing was redone annually, any advertisement should include the specific year in which the lawyer was so designated in order to prevent misleading the public that the designation was perpetual. Compliance with these guidelines as articulated in the 2007 North Carolina Bar opinion satisfy the requirements of S.C. R. Prof. Cond. 7.1.

The guidelines set forth above also address the prohibition of S.C. Rule of Prof. Conduct 7.2(c) that a lawyer not pay anything of value for a recommendation except "the reasonable costs of advertisements or communications permitted by this Rule." *Id.* Applying similar language in the North Carolina rules, the 2007 opinion stated that an attorney could purchase an advertisement in the *North Carolina Super Lawyers* advertising supplement or magazine at the going advertising rate so long as payment for an advertisement was not a prerequisite to participation or inclusion in the evaluation and listing process for the organization.

The Committee also notes that any advertisement utilizing an accolade or designation such as "Super Lawyer" must also comply with generally applicable rules regarding advertisements set forth in Rules 7.2(d) through (h). The Committee would particularly note that Rule 7.2(i) requires that the information regarding the standards for selection – either the standards themselves, or direction on where to find them—must appear in the specified format (no unreadable type) and on the same page as the accolade or designation.

In summary, a South Carolina licensed attorney may, consistent with Rules 7.1 and 7.2, accept and advertise a designation or accolade from an organization such as "Super Lawyers," "Best Lawyers," as well as a local newspaper's "Best

of” readers poll, and utilize any “badges,” symbols, or other marks authorized by the designating entity in situations where

1. the entity or publication has strict, objective standards for inclusion in the listing that are verifiable and would be recognized by a reasonable lawyer as establishing a legitimate basis for determining whether the lawyer has the knowledge, skill, experience, or expertise indicated by the listing;
2. the standards for inclusion are explained in the advertisement or information on how to obtain the standards is provided in the advertisement (referral to the publication’s website is adequate if the standards are published therein);
3. the date of any such designation or accolade is included;
4. an advertisement makes it clear that the designation or accolade is made by a specific publication or entity through use of distinctive typeface or italics;
5. no payment of any kind for any purpose, including, but not limited to, advertising or purchase of commemorative items, is required of the lawyer, or the lawyer’s firm, for receiving the designation, accolade, or inclusion in the listing; and
6. the organization charges the lawyer only reasonable advertising fees to the extent it not only confers such a designation or accolade, but also provides a medium for promoting or advertising the designation or accolade to the public.

---

[1] The Committee has, of the date of this opinion, located the following decisions of state courts or bar authorities addressing the same question:

- North Carolina State Bar 2007 Formal Ethics Opinion 14 (<https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2007-formal-ethics-opinion-14>).
- *In re Opinion 39* of Committee on Attorney Advertising, 961 A.2d 722 (N.J. 2008).
- Delaware State Bar Ethics Opinion No. 2008-2 (<http://media.dsba.org/ethics/pdfs/2008-2.pdf>).
- Florida Bar Rule 4-7.14, Comment “Awards, Honors, and Ratings.”
- Notice to the Bar from the New Jersey Supreme Court Committee on Attorney Advertising, 5/4/16 (<http://www.judiciary.state.nj.us/notices/2016/n160518a.pdf>).
- State Bar of Michigan Ethics Opinion No. RI-341 (2007) ([http://www.michbar.org/opinions/ethics/numbered\\_opinions?OpinionID=1211](http://www.michbar.org/opinions/ethics/numbered_opinions?OpinionID=1211)).
- Washington State Bar Advisory Opinion No. 2008 (<http://mcle.mywsba.org/IO/print.aspx?ID=1252>).
- Utah State Bar Ethics Advisory Opinion No. 14-04 (<https://www.utahbar.org/ethics-advisory-opinions/ethics-advisory-opinion-14-04>).
- Alaska Bar Association Ethics Opinion No.2009-2 (found at [https://www.alaskabar.org/servlet/content/2009\\_02.html](https://www.alaskabar.org/servlet/content/2009_02.html)).

### **RULE 7.3: SOLICITATION OF CLIENTS**

(a) A lawyer shall not by in person, live telephone or real time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by direct written, recorded or electronic communication or by in person, telephone, telegraph, facsimile or real time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer;

(2) the solicitation involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence;

(3) the solicitation concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person solicited or a relative of that person unless the accident or disaster occurred more than thirty (30) days prior to the solicitation;

(4) the solicitation concerns a specific matter and the lawyer knows, or reasonably should know, that the person solicited is represented by a lawyer in the matter; or

(5) the lawyer knows, or reasonably should know, that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.

(c) Any lawyer who uses written, recorded, or electronic solicitation shall maintain a file for two years showing the following:

(1) the basis by which the lawyer knows the person solicited needs legal services; and

(2) the factual basis for any statements made in the written, recorded, or electronic communication.

(d) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter, and with whom the lawyer has no family, close personal or prior

professional relationship, shall conform to Rules 7.1 and 7.2 and, in addition, must conform to the following provisions:

(1) The words "ADVERTISING MATERIAL," printed in capital letters and in prominent type, shall appear on the front of the outside envelope and on the front of each page of the material. Every such recorded or electronic communication shall clearly state both at the beginning and at the end that the communication is an advertisement. If the solicitation is made by computer, including, but not limited to, electronic mail, the words "ADVERTISING MATERIAL," printed in capital letters and in prominent type, shall appear in any subject line of the message and at the beginning and end of the communication.

(2) Each solicitation must include the following statements:

(A) "You may wish to consult your lawyer or another lawyer instead of me (us). You may obtain information about other lawyers by consulting directories, seeking the advice of others, or calling the South Carolina Bar Lawyer Referral Service at 799-7100 in Columbia or toll free at 1-800-868-2284. If you have already engaged a lawyer in connection with the legal matter referred to in this communication, you should direct any questions you have to that lawyer" and

(B) "The exact nature of your legal situation will depend on many facts not known to me (us) at this time. You should understand that the advice and information in this communication is general and that your own situation may vary."

Where the solicitation is written, the above statements must be in a type no smaller than that used in the body of the communication.

(3) Each solicitation must include the following statement: "ANY COMPLAINTS ABOUT THIS COMMUNICATION OR THE REPRESENTATIONS OF ANY LAWYER MAY BE DIRECTED TO THE COMMISSION ON LAWYER CONDUCT, 1220 SENATE STREET, SUITE 305, COLUMBIA, SOUTH CAROLINA 29201 – TELEPHONE NUMBER 803-734-2037." Where the solicitation is written, this statement must be printed in capital letters and in a size no smaller than that used in the body of the communication.

(e) Written communications mailed to the target of the solicitation shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted or certified delivery.

(f) Written communications mailed to the target of the solicitation shall not be made to resemble legal pleadings or other legal documents.

(g) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member shall disclose how the lawyer obtained the information prompting the communication.

(h) A written communication seeking employment by the target of the solicitation in a specific matter shall not reveal on the envelope, or on the outside of a self mailing brochure or pamphlet, the nature of the client's legal problem.

(i) If a lawyer reasonably believes that a lawyer other than the lawyer whose name or signature appears on the communication will likely be the lawyer who primarily handles the case or matter, or that the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter shall include a statement so advising the potential client.

(j) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. A lawyer may participate with a prepaid or group legal service plan only if the plan is established in compliance with all statutory and regulatory requirements imposed upon such plans under South Carolina law. Lawyers who participate in a legal service plan must make reasonable efforts to assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b).

### **Comment**

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches. For example, advertisements that are automatically generated in response to an Internet search are not solicitations. Because those advertisements are generated in response to Internet-based research, they are more analogous to a lawyer's response to a request for information (which is not a solicitation) than an unsolicited and targeted letter to a person who is known to be in need of a particular legal service (which is a solicitation).

### **ABA Model Rule 3.8 Special Responsibilities Of A Prosecutor**

The prosecutor in a criminal case shall:

...

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

### **Comment on Rule 3.8**

...

[7] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, paragraph (g) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (g) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[8] Under paragraph (h), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that

the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[9] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (g) and (h), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.



# South Carolina Bar

Continuing Legal Education Division

## **2018 SC BAR CONVENTION**

### **Criminal Law Section (Part 1)**

**Friday, January 19**

**Back to Basics: Plea Preparation and  
Presentation Panel**

*Hon. Steven H. John*

*Deputy Solicitor Candice A. Lively*

*Chief Public Defender E. Fielding Pringle*

No Materials Available



**South Carolina Bar**

Continuing Legal Education Division

**2018 SC BAR CONVENTION**

**Criminal Law Section (Part 1)**

**Friday, January 19**

**Crash Course in Prison Sentences**

*Christina C. Bigelow*

# CRASH COURSE IN PRISON SENTENCES

---

Christina Catoe Bigelow  
Deputy General Counsel  
South Carolina Department of Corrections  
(803) 896-1738  
[bigelow.christina@doc.sc.gov](mailto:bigelow.christina@doc.sc.gov)

# Basic Background Info about SCDC

---

- SCDC currently has 22 institutions, will be 21 soon (Catawba closing)
- Categorized into 4 security levels
  - Level 3 - high
  - Level 2 - medium
  - Level 1-B - minimum
  - Level 1-A – pre-release work centers

# Jurisdiction of SCDC

---

- Per S.C. Code 24-3-20 (A), a person sentenced to “more than three months” comes to SCDC.
- If sentence is less than three months, it must be served at the county detention center.
- Per S.C. Code 24-3-30 (A), SCDC, not a judge, has authority to determine how to classify an inmate and where to house the inmate.

# Good Time Credit – S.C. Code 24-13-210

---

- Parolable offenses – 20 days earned per month
- No parole (85%) offenses – 3 days per month
- Day-for-day (mandatory minimum) sentences - no good time available

# Earned Work and Education Credits – S.C. Code 24-13-230

---

- Parolable offenses – maximum yearly 180 days – average 10.86 days of credit per month for 5-day per week job
- No parole (85%) offenses – maximum yearly 72 days – 6 days per month
- Day-for-day (mandatory minimum) offenses – no work or education credits available

# Jail Time Credit – S.C. Code 24-13-40

---

- In every case in computing the time served by a prisoner, full credit against the sentence **MUST** be given for time served prior to trial and sentencing and **MAY** be given for time spent on monitored house arrest.
  - Case law says providing jail time credit is mandatory
  - Credit for monitored house arrest is per a June 2013 amendment – completely discretionary with sentencing judge – please ensure the amount of credit is clear on the sentence sheet if awarding it
  - Good time credit (at the rate applicable to the inmate's offense) is automatically factored into jail time credit

# Exceptions to Jail Time Credit

---

- Two exceptions are set forth in S.C. Code 24-13-40:
  - When a prisoner is an escapee from a penal institution
  - When a prisoner is actually serving another sentence

# Subsequent Concurrent Sentences

---

- “Concurrent” is NOT the same as “concurrent and backdated”
- A subsequent concurrent sentence will start on the date of sentencing, minus any jail time applicable to that particular offense
- A subsequent sentence will not automatically be backdated to the start date of a previously-imposed sentence unless the judge specifically writes the previous start date on the subsequent sentence sheet

# Three Categories of Adult Sentences

---

- Parolable sentences – earn the most amount of good time and work/education credits – 20 days GT and average 10.86 EWC per month
- No parole or 85% sentences – earn much less credit – 3 days GT per month and max 6 days of EWC per month
- Day for day or “mandatory minimum” sentences – no credits to reduce the service time – sentence is served “day-for-day”

# Violent vs. No Parole (85%)

---

- Violent offenses are defined by S.C. Code 16-1-60
- “No parole” or 85% offenses are defined by S.C. Code 24-13-100
- An 85% offense is usually also a violent offense, but not always:
  - Example: Trafficking crack 10-28 grams, 1<sup>st</sup> offense
    - Violent because listed in S.C. Code 16-1-60
    - But not 85% because only carries 3-10 years

# Maxout date vs. Parole Eligibility Date

---

- Maxout (release) date:
  - Calculated based upon incarcerative sentence only
  - Date when sentence is satisfied (expired)
  - May or may not be followed by supervision in the community
- Parole eligibility date:
  - Calculated based upon total sentence, not just incarcerative portion
  - Earliest opportunity for release – go before the parole board
  - If paroled, offender continues to serve his or her sentence in the community under supervision by the Department of Probation, Pardon & Parole Services (“PPP”)

# Additional Notes on Parole Eligibility

---

- Violent (but not 85%) offenders – eligible after serving one-third of sentence
- Non-violent offenders – eligible after one-fourth of sentence
- Work credits can be used to shorten the parole eligibility date
- Subsequent violent offenders – per statute, not eligible for parole if serving a sentence for a violent offense and had a prior violent offense under S.C. Code 16-1-60

# CDR Codes v. Statutes

---

- Case law indicates that SCDC must follow the statute listed on the sentence sheet in the event there is a mismatch between the statute and the CDR code listed.
  - Example: Drug offenses under S.C. Code 44-53-370 and -375
    - Be sure all statutory subsections are filled out (i.e., S.C. Code 44-53-370 (e)(2)(a)(2))

# Sentence Calculator

---

- [www.doc.sc.gov](http://www.doc.sc.gov)
- Research tab
- “Release Date Calculation” near bottom of list on the right hand side
- Accept disclaimer – then can input various sentences
  - This provides an ESTIMATE only and assumes best possible conditions.
    - Does not take into account time spent at R&E (intake) – add at least two months to be on the safe side.

# Supervision After Release

---

- Parole – for regular parolable offenses
- Community Supervision Program – for 85% offenders
- Supervised Furlough (mostly a relic of the past - 1983-1993)
- Supervised Reentry – S.C. Code 24-21-32

# THE YOUTHFUL OFFENDER ACT

---

- S.C. Code 24-19-5 *et seq.*
- Generally for offenders age 17 to 25 at time of conviction
- No violent crimes except burglary second degree violent, which requires 3-year day-for-day sentence, and criminal sexual conduct with a minor in the third degree where victim was over age 14 and act was consensual
- No 85% offenses
- Only one bite at the YOA apple

# Second Degree Burglary and the April 21, 2016 Amendment

---

- Prior to April 21, 2016, both violent and non-violent second degree burglary offenses carried a three-year day-for-day sentence under the Youthful Offender Act.
- On April 21, 2016, S.C. Code 24-19-10 (d) was changed to state that only second degree burglary violent carries a three-year day-for-day sentence.
- Savings clause in the Act: because there was a savings clause in the Act that amended the statute, SCDC is required to look at the offense date to determine whether the three-year day-for-day sentence applies.

# Powers of the Court Upon Conviction of a Youthful Offender

---

- Generally one of two things happen:
  - Impose a YOA sentence, but suspend it to probation
    - “probation” means adult probation with PPP
  - Impose an active YOA sentence “not to exceed 6 years”
    - Per Craft v. State, if the adult maximum sentence is less than 6 years, the adult maximum controls.
      - Example: possession of heroin carries a max of 2 years

# Reception and Evaluation (“Intake”)

---

- SCDC staff are required to make a “complete study” of each youthful offender upon intake
- Intake should be completed in 30 days unless there are “exceptional circumstances”
- Males – go through intake at Kirkland R&E and then assigned to either Trenton or Turbeville
- Females – go through intake at Camille Graham and then placed in the YOA program at Camille Graham

# After Intake is Complete

---

- SCDC's youthful offender division uses our internal mandatory minimum guidelines to assign the youthful offender to a term of programming.
  - Generally 6 months, 9 months, 18 months, or three-year mandatory minimum for burglary second degree
  - After serving the assigned term, the youthful offender is conditionally released to YOA parole ("intensive supervision") for a period of one year
  - If offender is non-compliant, per statute, SCDC can keep a youthful offender up to 4 years in our discretion. Such an offender must be conditionally released at the 4-year mark.
  - Jail time is applied to "back up" the entire statutory period, EXCEPT for three-year day-for-day sentences – we apply the jail time to reduce the three-year period.
    - Example: for PWID cocaine: offender receives a 6-month term. Offender comes to intake for about a month and then begins his 6-month term. Any jail time credit would reduce the entire statutory period we have jurisdiction over the offender, but would not be applied to reduce the 6-month programming term.

# Violations of Conditional Release

---

- An offender who violates the terms of conditional release (also called YOA parole or intensive supervision) can be returned to SCDC custody any time before expiration of the 6-year statutory period we have jurisdiction over the offender
- An offender accused of a violation has the opportunity to appear before an panel (comprised of three SCDC officials) for an “administrative review”
- The panel decides whether to revoke the conditional release and return the offender to custody or continue the offender on conditional release

# Unconditional Discharge

---

- Complete release from our custody and supervision in the community
- Usually occurs well before the 6-year period for compliant offenders
  - A youthful offender CAN be unconditionally discharged one year after being conditionally released.
  - A youthful offender MUST be unconditionally discharged six years from the sentence start date (backed up by any jail time credit).
    - Probationary sentences that are later activated: six-year total period still begins on sentence start date (minus jail time credit).

# Expungement of YOA Sentences

---

- If a youthful offender has no other convictions in the five-year period following unconditional discharge, the offender can apply for expungement of the YOA sentence.
  - Application for expungement is considered by a circuit court judge and is completely discretionary
  - S.C. Code 22-5-920 (B)(2)(b) specifically prohibits violent offenses from being expunged, so a YOA sentence for burglary second violent cannot be expunged

# The Shock Incarceration Program

---

- NOTE: The Shock program is NOT just for youthful offenders, but is often used in conjunction with YOA sentences.
- Shock is for any offender with a non-violent, non-85% sentence who is under the age of 30 at the time of admission to SCDC and is eligible for parole in two years or less. (Also, the offender cannot have any prior SCDC sentences.)
- Shock is a 90-day program with a focus on personal accountability, discipline, skill development, community service, and character development. Daily physical activity is required.
- At the end of the 90 days, the offenders is released to parole supervision by PPP.

# QUESTIONS?

---

- PLEASE CONTACT ME IF YOU HAVE ANY DOUBTS OR CONCERNS ABOUT HOW A SENTENCE MIGHT PLAY OUT!
- (803) 896-1738 – DIRECT LINE
- (803) 896-8508 – MAIL LINE FOR GENERAL COUNSEL'S OFFICE
- E-MAIL: [bigelow.christina@doc.sc.gov](mailto:bigelow.christina@doc.sc.gov)



**South Carolina Bar**

Continuing Legal Education Division

**2018 SC BAR CONVENTION**

**Criminal Law Section (Part 1)**

**Friday, January 19**

**Trail ‘Em, Nail ‘Em and Jail ‘Em No More:  
Supervision After Sentencing Reform**

*Matthew C. Buchanan*

# Supervision After Sentencing Reform



**S.C. Dept. of Probation, Parole & Pardon Services**

**January 19, 2018**

**S.C. Bar Convention, Kiawah Island, SC**

# Many Facets of PPP

## An Overview

- Probation
- Parole
- Community Supervision
- Supervised Reentry
- Ignition Interlock Program
- GPS Tracking (Jessie's Law)
- Administrative Monitoring



# Omnibus Crime Reduction and Sentencing Reform Act of 2010

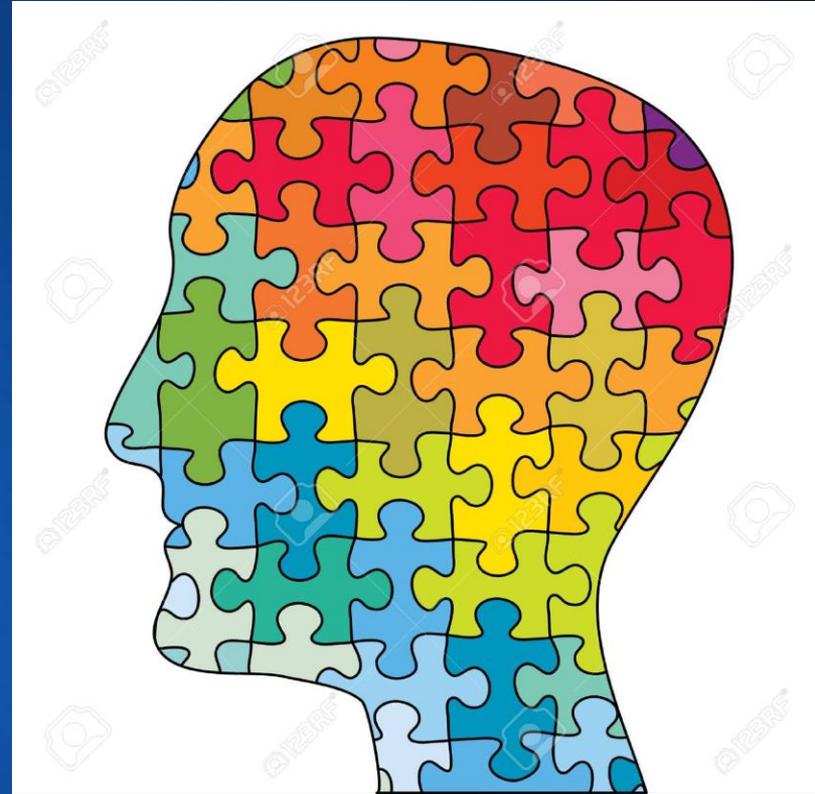
- Most provisions effective January 1, 2011.
- Includes major changes to supervision, including:
  - Required actuarial risk/needs assessment.
  - Administrative Sanctions.
  - Warrantless searches.
  - Compliance credits.
  - Administrative Monitoring.
  - Supervised Reentry.

# Actuarial Risk/Need Assessment

- S.C. Code §24-21-280(C):
  - A probation agent must conduct an actuarial assessment of offender risks and needs, including criminal risk factors and specific needs of each individual, under the supervision of the department, which shall be used to make objectively based decisions that are consistent with evidence-based practices on the type of supervision and services necessary. The actuarial assessment tool shall include screening and comprehensive versions. The screening version shall be used as a triage tool to determine offenders who require the comprehensive version. The director also shall require each agent to receive annual training on evidence-based practices and criminal risks factors and how to target these factors to reduce recidivism.

# Criminal Risk Factors

- These include:
  - Age;
  - Education;
  - Drug addiction;
  - Family support;
  - Prior criminal history;
  - History of violence;
  - Criminal thinking;
  - Mental health; and
  - Personality/attitudes.



# Administrative Sanctions

- **S.C. Code §24-21-110:**
  - Responses to violations in lieu of going to court.
  - Sanctions imposed by PPP hearing officers.
  - Sanctions must be equal or less restrictive than those available to the revoking authority.
  - Sanctions may not include revocation.
  - Contributed to a **46** percent reduction in offenders returning to prison for technical violations.

# SEARCH AND SEIZURE

- Individuals under supervision must allow warrantless searches of their person, belongings, and vehicle by:
  - Probation Agents
  - Other Law Enforcement
    - Must contact PPP for verification that the suspect is under supervision.
    - Must submit data regarding the use of this law to PPP.
- This does not apply to Class C misdemeanors
- Probation: Requires reasonable suspicion. (Reasonable suspicion not needed for all other forms of supervision.)

# PROBATION

- Supervision ordered by the court at sentencing

**HERMAN**<sup>®</sup>

by Jim Unger



**"I'm putting you on probation. That means  
no more robberies for 12 months."**

# WHAT IS PROBATION?

- S.C. Code §24-21-410
  - After conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of a court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation. Probation is a form of clemency.

# PROBATION

- Start date set by the Court (usually at sentencing or release from incarceration).
- Standard conditions incorporated by reference.
- Special conditions set by the court.
- Cannot exceed five years.
- Revocations handled in GS court, where the judge may continue, revoke up to the entire suspended sentence, amend, delete or add conditions, or terminate probation.

# CONDITIONS OF PROBATION

- I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my sentencing or release, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.
- I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere, at any time.
- I shall not use controlled substances, except when properly prescribed by a licensed physician, nor consume alcoholic beverages to excess, nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing for the violation of the conditions of my supervision.
- I shall not possess or purchase any firearms or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
- I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.

# CONDITIONS OF PROBATION

- I shall not violate any Federal, State, or Local Law, and I shall immediately contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
- I shall pay a supervision fee and any other fees as determined by the Department.
- I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the Court or by a warrant.
- I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution or other payments, and the service of any period of incarceration.
- I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agents.
- I agree to pay restitution and a statutory collection fee payable to the Department of Probation, Parole, and Pardon Services as directed by Agents of the Department. (20% collection fee charged)

# SPECIAL CONDITIONS

- The Sentencing Court has wide discretion to impose additional special conditions. These may include:
  - Drug and/or alcohol treatment.
  - Public Service Employment.
  - No-contact with victim, victim's family, or co-defendants.
  - Anger Management/Domestic Abuse Counseling.
  - Mental Health Counseling.
  - Intensive Supervision and Electronic Monitoring (GPS).
  - Curfews and House Arrest/Home Detention.
  - Probation Terminates Upon Payment in full (PTUP).
  - Obtain GED.
- The Court may modify, add or delete conditions at any time during the period of supervision.

# Length of Probation

- The period of probation may not exceed five years.
  - The Court may NOT “stack” probation terms by running them consecutively, unless they are from different sentencing events.
  - The Court may toll probation during periods of incarceration and absconsion, but not involuntary commitment.
- Compliance Credits §24-21-280(D)
  - If supervision is for more than one year, an offender may be awarded compliance credits for substantial completion of the conditions of supervision.
  - Offenders may earn up to 20 days for each 30 days in substantial completion.
  - Credits may be revoked as a response to violations.

# Violations – Compliance

- Violations that require measured responses.
  - These violations are addressed through the use of counseling, public service employment, verbal reprimands, revising the supervision plans, and inpatient or outpatient treatment.
  - Responses are related to the type of violation. I.E., drug treatment for failed drug tests, or referrals to vocational rehabilitation for prolonged unemployment.
  - Repeated violations will see graduated sanctions.
  - If offenders fail to respond to the graduated sanctions, the agents will bring the case back to General Sessions.

# Violations – Community Safety

- Serious violations that require an immediate response.
  - These include weapons violations, contact with victims, new criminal offenses, and other signs the offender is a danger.
- Agents may issue a warrant for the arrest of the offender and take the case back to court.
  - Bond cannot be denied for probation warrants.
- The sentencing court and the court where the violation occurred both have jurisdiction to hear the case.

# Violation Hearings

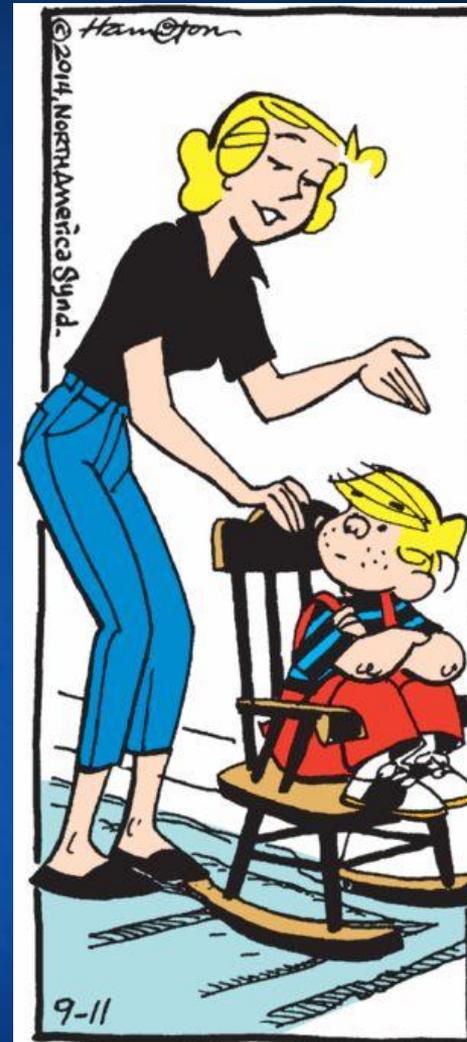
The Court may:

- Revoke up to the full amount of the suspended sentence,
- Revoke a partial amount and continue the offender on supervision,
- Extend probation up to the full five years,
- Add or modify conditions,
- Revoke a partial amount and terminate supervision
- Terminate supervision with no revocation.

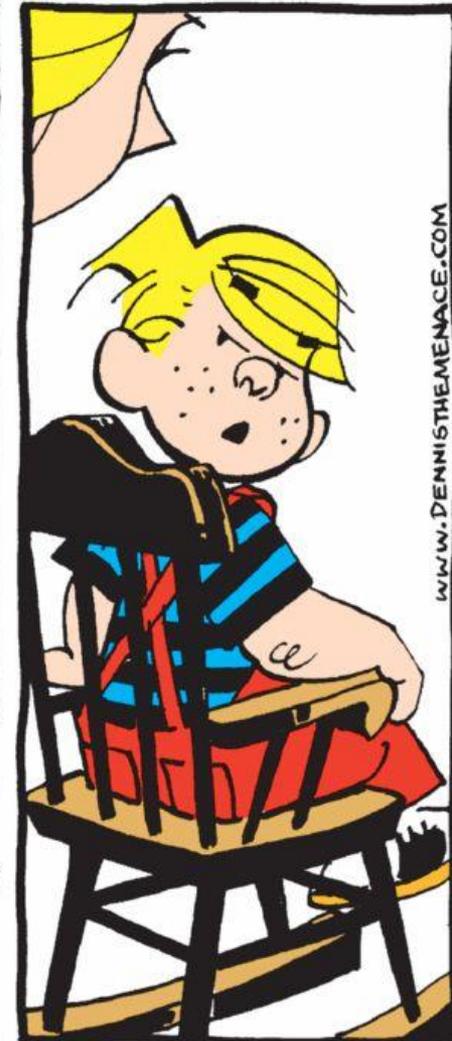


# PAROLE

- Supervision ordered by the Parole Board
  - Grants a release from active incarceration.
  - Conditions set by the Board.
  - Duration is as long as the originally imposed sentence without good time credit.
  - Maximum length of time on parole is life.
  - Violations handled by the Board, which may revoke parole in full or continue.



"YOU'RE FREE TO GO PLAY,  
IF YOU BEHAVE."



"THAT'S NOT FREEDOM,  
THAT'S PAROLE!"

# Parole Eligibility Checklist

- Is the offense an A, B, or C felony?
  - If yes, then No Parole.
- Is the offense one which carries 20 years or more?
  - If yes, Is it a drug crime made parole eligible by the Sentencing Reform Act? If no, then No Parole.
- Did the offense occur before 1996?
  - If yes, then it is likely parole eligible, but see below:
- Is the offense violent?
  - If yes, does the defendant have a conviction for a prior violent offense? If yes, then No Parole.

# Parole Eligibility

- An easy way to find out for sure: Call PPP!
- A defendant may also waive parole eligibility as part of a plea bargain.
- Important note:  
“No parole offense” inmates may not be released until they have served 85% of their sentence.  
*This release is not parole!*
  - Inmates serving for a “no parole offense” must be released to a Community Supervision Program (CSP).



# Administrative Monitoring

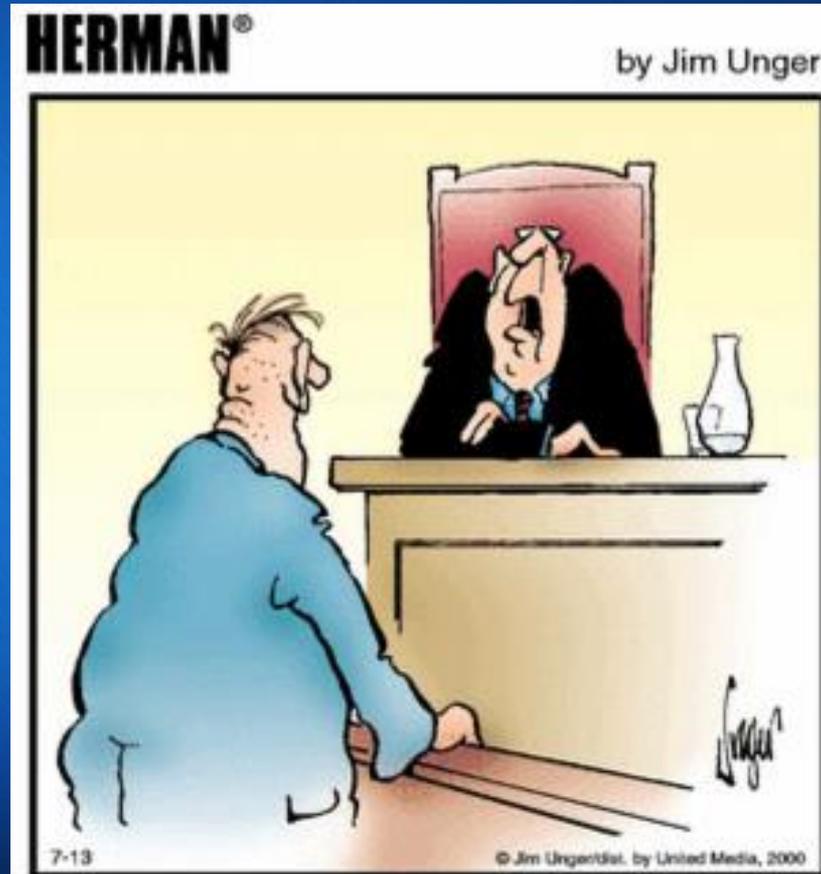
- S.C. Code §24-21-100:
  - The Department will continue to collect outstanding financial obligations (i.e. restitution, supervision fees) after active supervision ends.
  - Former offenders on the program must continue to make reasonable progress toward fulfillment of their financial obligations.
  - Failure to make reasonable progress can result in being brought back to court for contempt.
  - The court may sentence up to six months for contempt.

# Administrative Monitoring

- Other features:
  - Individuals on Administrative Monitoring must pay a **\$10** monthly fee along with their payments.
  - The court may remove an individual from Administrative Monitoring if the court finds that the individual is not able to pay and not likely to become able to pay.
  - Administrative Monitoring applies to offenses that occur after **January 1, 2011**.

# Supervised Reentry (SRP)

- Supervision required by statute for inmates who have served two continuous years or more.



**"The jury has found you not guilty, but I'm going to give you 2 years just to be on the safe side."**

# Supervised Reentry (SRP)

- Supervision required by statute for inmates who have served two continuous years or more.
  - Six months early release.
  - Conditions set by the Department.
  - Supervision for six months.
  - Violations handled by the Department Administrative Hearing Officer, who may revoke the SRP in full or continue.

# Supervision Pitfalls

- Overly specific conditions of probation.
- Third or subsequent drug offenses (PWID, mfg).
- *Alford* pleas for sex offenses.
- Shock Parole and the Youthful Offender Act.
- SOR violations and Jessie's Law.
- Community Supervision vs. Probation.

These can cause unpleasant surprises for defendants, causing violations, GPS requirements, and much longer sentences than expected.

# Overly Specific Conditions

- “Special condition of probation is inpatient treatment at Spring Rivers Center”
  - **Pitfall:** If the defendant is unable to complete the inpatient treatment at this facility, the probation agent’s hands are tied. The offender must be brought back to court for a violation.
  - **Solution:** “Special condition of probation is inpatient treatment. Recommend Spring Rivers Center.”
  - Allows the agent to look into an alternative provider if the first place does not work out.

# Third or subsequent drug offenses

- S.C. Code §44-53-370(b)(1):
- S.C. Code §44-53-375(B)(3):
  - Manufacturing, distribution and PWID of controlled substances are parole eligible if they are first or second offenses.
  - Third or subsequent offenses are parole eligible ONLY if all prior drug offenses are possession of controlled substances. Priors for trafficking, manufacturing, distribution and PWID will render the sentence ineligible for parole.

# Alford pleas for sex offenses

- Alford pleas allow a defendant to plea without an admission of guilt.
  - **Pitfall:** Agreeing to a probation sentence with sex offender conditions. Those conditions will include sex offender counseling, which requires admission of the sexual conduct to the counselor. Failure to do so will result in termination from counseling and a violation. State v. Herndon, 403 S.C. 84 (2013).
  - **Solution:** Advising the client about the requirement and preparing him or her for the counseling. Or arrange a plea that does not require the SOR.

# YOAs and Shock Incarceration

- Upon completion of Shock Incarceration, the inmate is granted parole.
- The term of parole is based on the maximum sentence of the offense. YOAs have a maximum term of six years.
- Upon a violation, the offender is returned to SCDC. YOA offenders out on Shock will resume their YOA sentence.

# SOR and Jessie's Law

- S.C. Code §23-3-540(E):
  - A person who is required to register pursuant to this article for committing criminal sexual conduct with a minor in the first degree, pursuant to Section 16-3-655(A)(1), or criminal sexual conduct with a minor in the third degree, pursuant to Section 16-3-655(C), and who violates a provision of this article, **must be ordered by the court** to be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device.  
(Emphasis Added)

# Community Supervision (CSP)

- Supervision required by statute for all “no parole” offenses (except LWOP).
  - CSP begins automatically after serving 85% of a “no parole” offense.
  - Maximum two year period of supervision.
  - Cannot go longer than the remaining 15% of the original sentence.
  - Violations are heard in GS court.
  - The judge may continue CSP, or revoke up to one year.
    - If revoked, the offender must complete a new two-year period of CSP after release from incarceration

# COMMUNITY SUPERVISION, cont.

- Example: 20 year sentence.
  - Offender completes 85% of the sentence (17 years).
  - Offender is released to CSP.
  - If the offender completes 2 years of CSP, his sentence is satisfied (at 19 years total).
  - If the offender is revoked, he can face up to 1 year in prison.
  - The maximum amount of CSP and/or revocation time is 3 years (20 years total sentence).

# COMMUNITY SUPERVISION, cont.

- Example: 10 year sentence (no-parole).
  - Offender completes 85% of the sentence (8 ½ years).
  - Offender is released to CSP.
  - The offender's CSP cannot extend beyond 10 years.
  - If the offender is revoked, he can face up to 1 year in prison, but not beyond the 10 years.
  - The total amount of CSP without a violation is 1 ½ years.

# COMMUNITY SUPERVISION, cont.

## SPLIT SENTENCES

- For all “no parole” offenses, CSP begins immediately upon release from prison.
- This means that split sentences are not released to probation, but to CSP.
- If CSP is successfully completed, the remainder of the sentence is satisfied.
  - Any residual probation is terminated.
  - State v. Dawkins, 352 S.C. 162, 573 S.E.2d 783 (2002)

# COMMUNITY SUPERVISION, cont.

- Example: 20 years suspended on 5 years with 5 years probation.
  - Offender completes 85% of the 5 active sentence.
  - Offender is released to CSP, not Probation.
  - If the offender completes 2 years of CSP, his sentence is satisfied.
  - If the offender's CSP is revoked (up to 1 year), he will come back out on CSP.

# COMMUNITY SUPERVISION, cont.

- Example: 20 years suspended on time served with 5 years probation.
  - Offender *does not* go to SCDC.
  - Offender begins probation sentence, and must complete 5 years of probation.
  - If the offender violates probation and goes to SCDC for a revocation, including a partial revocation, he comes out and must now complete 2 years of CSP.

# COMMUNITY SUPERVISION, cont.

- State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010)
  - The maximum amount of time a person can serve on CSP and revocations is the original sentence, including suspended time.
  - The offender can have successive revocations and periods of CSP until the total amount equals the original sentence.

# COMMUNITY SUPERVISION, cont.

- State v. Blakney, 410 S.C. 244, 763 S.E.2d 622 (Ct. App. 2014)
  - If the Court does not order probation, yet still suspends a portion of the sentence, the Picklesimer rule still applies.
  - No difference between a split sentence with probation to follow, or a split sentence.

# COMMUNITY SUPERVISION, cont.

- Example: 20 years suspended on 5 years with 5 years probation.
- Example: 20 years suspended on 5 years.
  - No difference in application.

# Questions??



Contact Information:  
Matthew.Buchanan@ppp.sc.gov  
(803) 734-9012

*Disclaimer: PPP makes no claim of ownership of any copyrighted works in this presentation.  
Fair Use is allowed for the purposes of education and information.*



**South Carolina Bar**

Continuing Legal Education Division

**2018 SC BAR CONVENTION**

**Criminal Law Section (Part 1)**

**Friday, January 19**

Legislative Update

*Senator Gerald Malloy*  
*Rep. G. Murrell Smith, Jr.*



**2018 SOUTH CAROLINA BAR CONVENTION**  
***CRIMINAL LAW LEGISLATIVE UPDATE***

**LAW**

**Featuring:**  
**Senator Gerald Malloy, Hartsville**  
**Representative G. Murrell Smith, Jr., Sumter**

## Drug Overdose Good Samaritan Immunity Act. 95, (S. 179) Effective Date June 10, 2017.

- This law provides immunity from prosecution to someone seeking medical assistance for another person experiencing a drug or alcohol overdose.
- The person must act in good faith, provide his or her name to law enforcement and cannot seek the medical assistance during execution of a warrant or other lawful search.

## Drug Overdose Good Samaritan Immunity Continued

- The immunity protects an individual from prosecution for possession and dispensing a controlled substance, methamphetamine or cocaine.
- Also protects against prosecution for related possession or delivery of drug paraphernalia.
- Alcohol offenses including possession by a minor or delivering alcohol to a minor are also protected.

# Impersonating An Attorney

Act. 64, (H.3215) Effective Date May 19, 2007

- Unlawful for a person, other than a licensed attorney, to represent he is a lawyer for soliciting business, obtaining anything of value or providing legal advice or assistance.
- First Offense is a misdemeanor and up to 1 year imprisonment and/or up to \$1,000.00 fine.
- Second Offense is a misdemeanor and up to 3 years imprisonment and/or up to \$2,500.00 fine.
- Third Offense is a felony and up to 5 years imprisonment and/or up to \$5,000.00 fine.

LAW

## Inmate Visitations

Act. 49, (S. 271) Effective Date May 19, 2017.

- Law allows an inmate to choose to visit an immediate family member who is near death or attend that family member's funeral.
- The Department of Corrections must determine that the inmate does not pose a security risk to the public or the place of the visit.
- SC DOC or other certified law enforcement who provide the security and transportation must be paid the actual costs from the inmate or other third parties prior to the visit.

## Mental Health Training for Law Enforcement Act. 46, (S. 173) Effective May 19, 2007

- The law requires certified law enforcement personnel to receive mental health and addictive disorder training over a three year period.
- The Law Enforcement Training Council shall determine how many hours of training are required over the three year period.

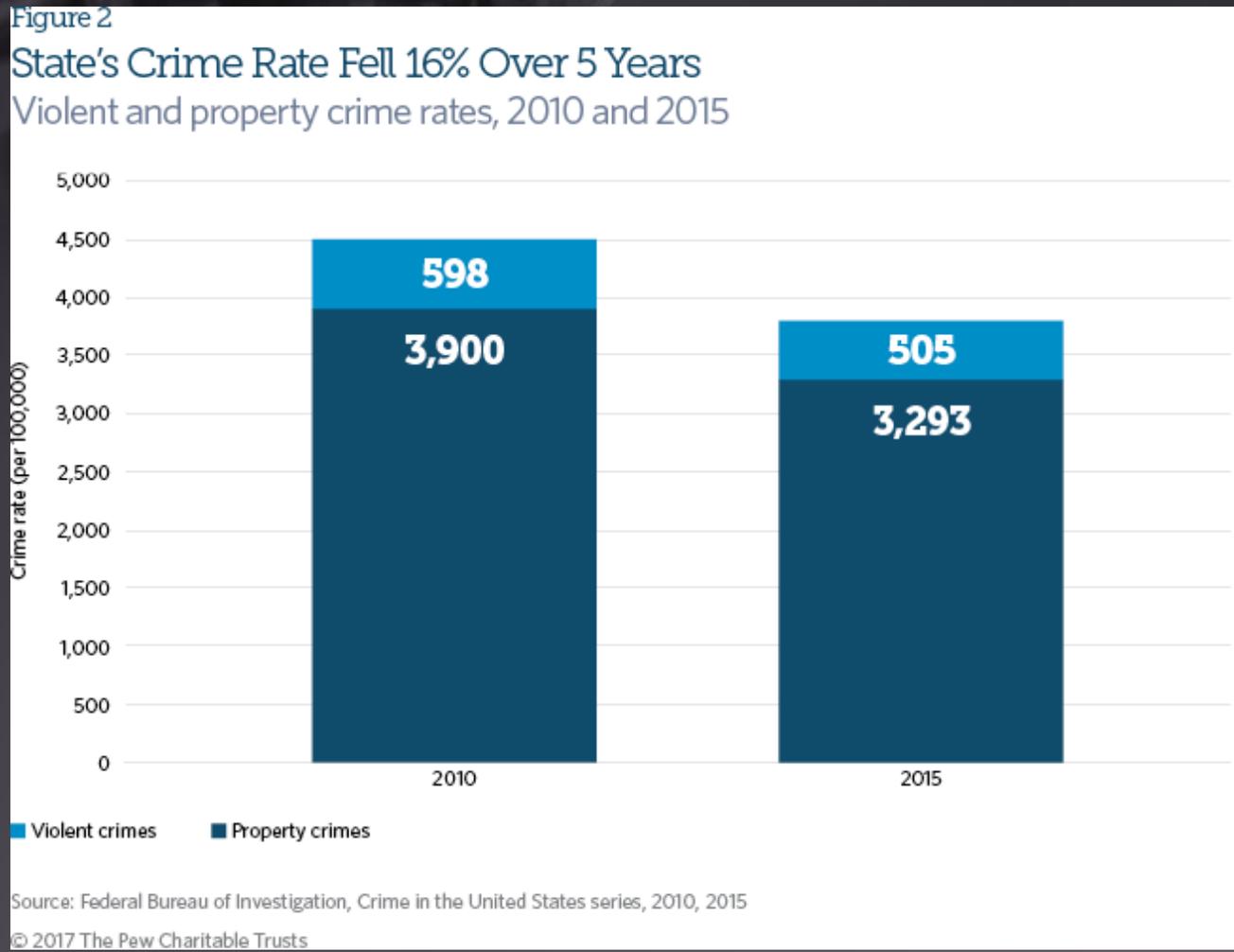
## Sentencing Reform Oversight Committee Reauthorized by Budget Proviso 117.123

- In 2010, The Sentencing Reform Oversight Committee was established.
- The Committee partnered with PEW Charitable Trusts to collect data and adopt evidence based practices in dealing with South Carolina's prison system.
- The work of the Committee led to passage of the "Omnibus Crime Reduction and Sentencing Reform Act of 2010."

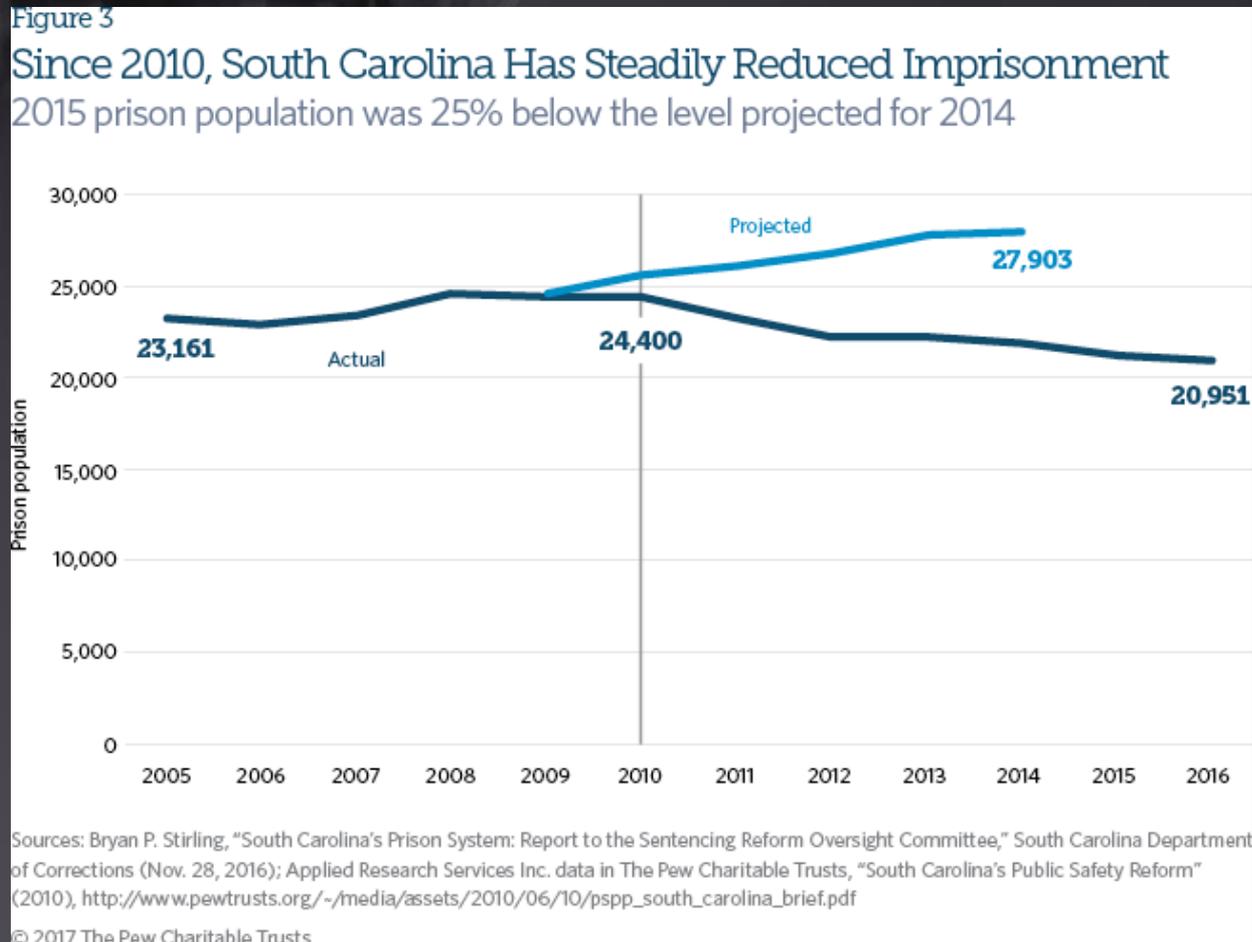
## Sentencing Reform Oversight Committee

- Since 2010, PEW data shows SC prison population has declined 14% while the crime rate fell 16%.
- The three-year recidivism rate fell 13% from those released in 2013 vs. those released in 2009.
- Six prisons were closed and \$491 million has been saved.

## Sentencing Reform Oversight Committee



# Sentencing Reform Oversight Committee



## Sentencing Reform Oversight Committee

- In 2017, The Sentencing Reform Oversight Committee was reinstated and again partnered with PEW to collect and review relevant data to continue to address the SC prison system.
- The Committee broke out into three working groups focusing on release mechanisms, community supervision and sentencing guidelines.

## Sentencing Reform Oversight Committee

- The Release Mechanism Workgroup is reviewing administrative releases, medical and geriatric parole and other decisions affecting parole.
- Community Supervision is focused on improving restitution collection, reevaluating compliance credits of those released under supervision and expanding outreach with community partners.
- Sentencing Workgroup is evaluating judicial discretion in current sentencing laws, comparing SC sentencing practices with other states for similar offenses and expanding the use of SC Drug Courts.

## Release Mechanism Recommendations

- Allow administrative release of parole eligible inmates provided they meet educational and good behavior requirements.
- They must be in prison on a non-violent offense and any victim would have an opportunity to object to the release and trigger a parole hearing.

## Release Mechanism Recommendations

- Expand Geriatric Parole to those inmates 60 or older (current law is 70) provided they have served 50% of sentence.
- Inmates would be ineligible for Geriatric Parole if they are incarcerated for sex crimes or domestic violence or deemed by the parole board to pose a safety risk upon release.

## Community Supervision Recommendations

- Require courts to apprise victims of the exact nature of restitution while also mandating the court consider the offender's ability to pay restitution when setting the amount.
- Allows a judge to defer to PPP to adjust a restitution payment schedule due to an offender's inability to pay (i.e. not a willful failure to pay)
- Clarify that offenders serving one year probation terms are eligible to earn compliance credits. Some courts sentence individuals to one year and one day to allow compliance credits based on the current statute.
- Current law allows a judge to set probation terms up to 5 years. Recommendation is to set tiered terms of probation based on the classification of the underlying felony or misdemeanor.

## Sentencing Classification Recommendations

- Review current drug weight presumptions in our trafficking statutes to be more in line with other states.
- Adjust from measuring certain drugs by dosage unit and convert to weight due to the substances moving from pill form to powder form.
- Standardize and expand state drug courts.

## Sentencing Reform Oversight Committee

- The Full Committee will issue a final report adopting the recommendations of the working groups this month.
- The hope is these efforts will result in legislation this year that continue to build upon the 2010 reforms.