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ATTORNEY GENERAL

August 12, 2025

The Honorable Kevin Brackett, Solicitor
16th Circuit
Moss Justice Center
1675-lA York Highway
York, SC 29745-7422

Dear Solicitor Brackett:

You seek our opinion regarding S.C. Code Section 16-3-730. Your letter states the following:

> [t]his section criminalizes the publishing of a person's name who is an alleged victim of criminal sexual conduct. The statute does not outline where the allegation must have been made or who must have made the allegation. Furthermore, the statute does not delineate whether the alleged criminal sexual conduct must be the subject of a criminal investigation or criminal charges. Section 16-3-730 reads:
>
> > Whoever publishes or causes to be published the name of any person upon whom the crime of criminal sexual conduct has been committed or alleged to have been committed in this State in any newspaper, magazine or other publication shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or imprisonment of not more than three years. The provisions of this section shall not apply to publications made by order of the court.
>
> I am concerned that the statute may be overbroad because the context of the allegation is not defined. I am requesting your opinion as to how or where allegations must have been made, to wit, whether the allegations must be formal complaints to law enforcement and whether criminal charges against a perpetrator must have been filed for an alleged victim to be afforded the protection under this statute. I understand the purpose of the statute is to encourage victims to report crimes without fear of the embarrassment that attends such a crime and to protect them from potential smear campaigns.

Law/Analysis

Section 16-3-730 has been on the books for decades. Statutes, such as this, which protect the identity of victims of sexual assault, are designed to "encourage[ ] reporting of rape and other sexual assaults, so that they may be investigated and the perpetrators prosecuted.:" Certainly, the State "has a legitimate interest 'in protecting the privacy of a sexual assault victim.'" Doe v. Bd. of Regents of the University of Georgia, 452 S.E.2d 776, 780 (Ga. 1994).

The South Carolina decision upholding the statute is Dorman v. Aiken Communications, Inc., 303 S.C. 63, 398 S.E.2d 687 (1990). In Dorman, the Court found § 16-3-730 to be facially constitutional. There, the victim was sexually assaulted at gunpoint. The Aiken Standard obtained a statement given to the police. However, the victim's identity was not contained in that statement. The newspaper learned the identity of the victim "through various private sources." 303 S.C. at 65. Following publication, the victim sued the newspaper, alleging various causes of action, including a claim pursuant to § 16-3-730. The Aiken Standard argued that the statute violated the First Amendment.

However, the South Carolina Supreme Court rejected the First Amendment claim, stating as follows:

> . . . the United States Supreme Court has declined to rule similar statutes unconstitutional on their face. The Florida Star v. B.J.F., 491 U.S. 524, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989); Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975). Instead, it has addressed the First Amendment issue "only as it arose in a discrete factual context." Florida Star, supra at ____, 109 S.Ct. 12607, 105 L.Ed.2d at 453 (footnote omitted) . . . Accordingly, we too decline to hold the statute unconstitutional on its face. . . .

303 S.C. at 66, 398 S.E.2d at 683-89.

The Dorman Court went on to conclude that § 16-3-730 is a criminal statute and thus provides no private cause of action under that statute. According to the Court,

> [w]e find that the language and form of the statute do not purport to establish civil liability for violations. Although Dorman may benefit from its enforcement, the statutory provision is primarily for protection of the public as an entity, and this Court does not construe it to establish a private right of action. Hence, we reverse the ruling of the Circuit Court as to the cause of action based on § 16-3-730.

Nevertheless, despite the fact that § 16-3-730 provides no private right of action, the Court clearly found § 16-3-730 to be facially valid. In other words, the Court deemed the statute not unconstitutional "in toto" and its application must be evaluated on a case-by-case basis. See State v. German, 439 S.C. 449, 466, 887 S.E.2d 912, 920-21 (2024). The Court also suggested that the statute could be applied lawfully in certain circumstances. The Dorman Court, however,

did not elaborate upon those instances where the statute could be validly applied, choosing instead to leave the law's constitutionality to a "discrete factual context."

Following Dorman, the South Carolina Supreme Court, decided Doe v. Berkeley Publishers, 329 S.E.2d 636 (1998). There, "Respondent's claim [was] based upon the petitioner's [Berkeley Independent] truthful reporting that respondent was the victim of a sexual assault by an inmate. . . ." The issue in Doe was 'whether publishing Doe's name as the victim of sexual assault was a matter of public significance' was an issue for the jury." The Court of Appeals had held that it was a jury question. The Supreme Court reversed. According to our Supreme Court,

> [t]he Court of Appeals erred in separating the plaintiff's identity from the event. Under state law, if a person, whether willingly or not, becomes an actor in an event of public or general interest, "then the publication of his connection with such occurrence is not an invasion of his right to privacy." [citing Meetze v. Associated Press, 230 S.C. 330, 337, 95 S.E.2d 606, 609 (1956)]. Accordingly, Doe's invasion of privacy claim fails as a matter of law. . . .

329 S.C. at 414, 496 S.E.2d at 637. The Court held that "the commission of a violent crime between inmates of a county jail is a matter of public significance as a matter of law" and thus the victim possessed no action for invasion of privacy. Section 16-3-730 was not addressed.

The Fourth Circuit considered § 16-3-730 in Nappier v. Jefferson Standard Life Ins. Co., 322 F.2d 502 (1963). In that case, Plaintiffs brought an action for invasion of privacy through defendant's televising the fact of plaintiffs' rape. Plaintiffs asserted that both § 16-3-730 and the common law had been violated through such publication. In Nappier, the actual name of neither Plaintiff was published by the television station and that the television report "was a matter of public interest and record. . . . "

According to the Court, the statute was violated since "the broadcast, as pleaded, sufficiently identified the victims other than by name. . . ." In the view of the Fourth Circuit,

> [t]he meaning of the term 'name' cannot be given the narrow import ascribed it by standard without impairing the purpose of the statute. Aside from the personal protection of the woman involved, the object of this law, concededly, is to encourage a free report of the crime by the victim. Cf. State v. Evjue, 253 Wis. 146, 33 N.W.2d 305, 13 A.L.R.2d 1201 (1948). Fear of publicity might deter her from notifying the police. Thus, the public interest is advanced by the statute; the crime is investigated promptly and the injured person is shielded.

322 F.2d at 504. The Court went on to say that

> [i]n South Carolina the penal aspect of the statute does not require an interpretation so rigid as to strip its wording of its plain connotation. [citations omitted]. . . . This is

> certainly sound construction when, as here, the statute is only employed to provide civil redress.

Thus, while the constitutionality of the statute was not challenged, the Fourth Circuit held that "[n]o matter the news value, South Carolina has unequivocally declared the identity of the injured person shall not be made known in press or broadcast." Id. at 505. Based upon Nappier, as well as Dorman, § 16-3-730 remains valid and enforceable.

With respect to your question regarding whether the statute's protection of a victim's identity can be limited to those situations where a criminal sexual conduct is reported to law enforcement, we see no such limitation in the statute's plain language. Instead, the language of § 16-3-730 appears to encompass the name of any victim of criminal sexual conduct. ["any person upon whom the crime of sexual conduct has been committed or alleged to have been committed"]. As our Supreme Court has repeatedly recognized,

> [t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. . . . Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. . . . Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory construction are not needed and the court has no right to impose another meaning. . . . "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. . . ."

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E. 578, 581 (2000). Thus, as to us, at least, there appears no room for interpretation of the statute beyond its express language.

However, the primary purpose of the statute is to encourage victims of sexual assault to report these crimes against them to the police. Therefore, while our interpretation is limited to § 16-3-730's plain wording, we do point out that our Supreme Court has, on occasion, held that ". . . Courts will reject the ordinary meaning of the words used in a statute however plain it may be, when to accept such meaning would defeat the plain legislative intent." Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 815 (1942). We are not saying here that a court will depart from the plain wording of § 16-3-730 – encompassing all victims of criminal sexual conduct – but only that a court would undoubtedly recognize that the statute's overriding purpose is to encourage victims to come forward and report these heinous crimes against them.

Conclusion

Section 16-3-730 is valid and enforceable. Our Supreme Court in Dorman held that the statute is constitutional on its face and that the constitutional validity of each situation must be determined on its own "discrete" facts.

According to the Fourth Circuit, in Nappier, "[a]side from the personal protection of the woman involved, the object of [§ 16-3-730] . . . is to encourage a free report of the crime by the victim. . . ." In the words of the Fourth Circuit, "[f]ear of publicity might deter her from notifying the police. Thus, the public interest is advanced by the statute; the crime is investigated promptly and the injured person is shielded."

With respect to your principal question of whether § 16-3-730 may be interpreted to limit the statute's protection to those situations where the criminal sexual conduct is reported to the police, we cannot do so. No such limitation appears in the statute's plain language. On its face, the statute literally applies to "any person" upon whom "the crime of criminal sexual conduct has been committed or alleged to have been committed in this State. . . ."

We emphasize, however, that if a court determines that this literal language defeats the Legislature's intent, the court is free to interpret the statute consistent with such intent. Greenville Baseball, supra. Thus, while we are not saying that a court will depart from the plain language of § 16-3-730 – encompassing all victims of criminal sexual conduct – we stress that the court, in its interpretation, would undoubtedly recognize that the statute's overriding purpose is to encourage victims of criminal sexual conduct to come forward and report these heinous crimes against them.

Sincerely,

Robert D. Cook
Solicitor General