Reg. 5037

The State of South Carolina

OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 8, 1995 Informal Opinion

Mr. David Barden
Assistant Director
Department of Public Safety
5410 Broad River Road
Columbia, South Carolina 29210

Dear Mr. Barden:

Cam Crawford has requested that I determine whether South Carolina is in compliance with the Violence Against Women grant requirements as set forth in P.L. 103-322 which is part of the Violent Crime Control Act of 1994. It is my opinion that this State is in compliance therewith, and therefore meets all the legal requirements for program eligibility.

Section 2006 of 108 Stat. 1915 (P.L. 103-322) provides in pertinent part that a State, in order to qualify for program eligibility, must:

(1) certify that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that the abused bear the costs associated with the filing of criminal charges against the domestic violence offender, or the costs associated with the issuance or service of a warrant, protection order or witness subpoena; or

(2) gives the Attorney General assurance that its laws, policies, and practices will be in compliance with the requirements of paragraph (1) within the later of -

(A) the period ending of the date on which the next session of the State legislature ends; or
(B) 2 years.

A question has been raised regarding this requirement in that the Family Court charges a filing fee in connection with a petition for an order of protection from domestic abuse.

Pursuant to S. C. Code Ann., Section 20-4-40, a person may seek an order of protection in cases involving violence by a household member. Such proceeding is in addition to any other remedy available at law. § 20-4-130. During non-business hours or at other times when the court is not in session, the petition may be filed with a magistrate. The magistrate may issue an order of protection granting only the relief provided in § 20-4-60(a)(1). A filing fee is required to begin the Family Court action, but the fee can be waived if the petitioner is indigent. § 20-4-40(e). In addition, if a Family Court order of protection is violated, there is no charge for prosecution.

This Office has previously recognized that such an Order of Protection proceeding as is authorized in Title 20 "is a civil proceeding." 1984 Op. Atty. Gen. 273. There, we stated that "this Office is in agreement with [the] ... description of such proceeding as being civil in nature."

It is clear, however, that Section 2006 of the Violent Crime Control Act of 1994 speaks only to fees or costs in criminal cases, not civil proceedings. Section 2006(a)(1) mandates that the State must certify that its laws, policies, or practices do not require that the accused bear the costs associated with the filing of criminal charges against the domestic violence offender for any "misdemeanor or felony domestic violence offense". Such language precedes the phrase "... or the costs associated with the issuance or service of a warrant, protection order or witness subpoena ...". Clearly, this Section is referencing only criminal cases, not civil proceedings. The fact that term "protection order" is mentioned therein is only in the criminal context. Furthermore, the heading which precedes § 2006 specifically states that this Section deals with "Filing Costs for Criminal Charges."

It should also be noted that, from time to time, magistrates impose as a condition of bond in criminal proceedings the requirement that a person stay away from the victim. In 1988 Op. Atty. Gen. No. 213, we commented upon a magistrate's authority to make non-contact with the victim a condition of bond:

> [a]s to your specific question concerning whether a magistrate or municipal judge is setting a bond in a criminal domestic violence case could impose the conditions set forth above, it appears that a defendant could be

> restrained or enjoined from entering a domestic dwelling and be restrained from leaving the State of South Carolina. As noted, Section 17-15-10 authorizes as a condition of release restrictions on a defendant's "travel, association or place of abode of the person during the period of release." Also, the judge may impose any other condition considered "reasonably necessary to assume appearance as required." Such conditions would be consistent with the provisions of Section 17-15-30 which sets forth additional matters to be considered in determining conditions of release.

In my view, it is in this criminal context that Section 2006 is referencing a "protection order".

With respect to fees or costs in a criminal proceeding, it is well-recognized that some jurisdictions authorize "the imposition of costs on the prosecuting witness in certain circumstances as, for example, where there was no probable cause for the prosecution." However, there must be an express statute authorizing such imposition.

I am unaware of any South Carolina statute imposing costs in this way. The practice in South Carolina is that there be no such charge in a criminal case to any person seeking a warrant or any other criminal process. To my knowledge, South Carolina places no financial burden on any crime victim in any aspect of the criminal process. In fact, South Carolina provides just the opposite treatment with the adoption of the Victim's and Witnesses's Bill of Rights. S. C. Code Ann. § 16-3-1510 et seq. and the Victim Witness Assistance Program. S. C. Code Ann. § 16-3-1400, et seq. See also, Op. Atty. Gen., April 12, 1978 (magistrates may not charge fees in criminal cases); § 17-1-10 (a criminal action is prosecuted by the State as a party).

Accordingly, in view of the fact that Section 2006 relates only to criminal cases, and that fees or costs are not charged to a victim or prosecuting witness for seeking process in criminal cases in South Carolina, it is my opinion that South Carolina is in compliance with the requirements for Violence Against Women program eligibility.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific

questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph