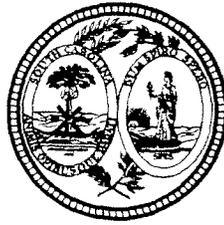


8047 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 12, 2005

Robert L. McCurdy, Staff Attorney
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Dear Mr. McCurdy:

In a letter to this office you indicated that a question has arisen concerning the effect of a provision of Act No. 106 of 2005 on STOP formula grant awards received by the State. In order to be eligible for STOP formula grant awards, states must certify that they are in compliance with the statutory eligibility requirements of the Violence Against Women Act (VAWA) (42 U.S.C. §§ 3796gg to 3799gg-5). According to your letter, a state is in compliance with the VAWA requirement regarding costs of criminal charges and protection orders if the state:

...certifies that its laws, policies and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal or local jurisdiction;

Effective January 1, 2006, Act No. 106 of 2005 amends Section 16-3-1750(D) with regard to the fee for filing a complaint and motion for a restraining order against a person engaged in harassment or stalking. Such provision states:

The magistrates court must provide forms to facilitate the preparation and filing of a complaint and motion for a restraining order by a plaintiff not represented by counsel. The court must not charge a fee for filing a complaint and motion for a restraining order against a person engaged in harassment or stalking. However, the court shall assess a filing fee against the nonprevailing party in an action for a

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restraining order. The court may hold a person in contempt of court for failure to pay this filing fee. (emphasis added).

Therefore, such provision provides that an individual who files a complaint and motion for a restraining order regarding another individual engaged in harassment or stalking and who does not prevail in the action is subject to the cost of the filing of the action. Referencing such requirement, you have asked whether Section 16-3-1750 violates the VAWA requirement set forth previously regarding a victim not bearing the costs related to criminal charges and protection orders.

S.C. Code Ann. §§ 16-25-10 et seq. provide for the offense of criminal domestic violence and for the offense of violating the terms and conditions of an order of protection. Pursuant to S.C. Code Ann. §§ 20-4-10 et seq. an individual may seek an order of protection from the family court or a magistrate's court so as to protect the petitioner or minor household members from abuse of another household member. Pursuant to Section 20-4-60, an order of protection may include:

- (1) temporarily enjoining the respondent from abusing, threatening to abuse, or molesting the petitioner or the person or persons on whose behalf the petition was filed.
- (2) temporarily enjoining the respondent from communicating or attempting to communicate with the petitioner in any way which would violate the provisions of this chapter and temporarily enjoining the respondent from entering or attempting to enter the petitioner's place of residence, employment, education or other location as the court may order.

As set forth by the referenced VAWA legislation, a state is in compliance with the VAWA requirement regarding costs of criminal charges and protection orders if the state "...certifies that its laws, policies and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, stalking or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration or service of a warrant, protection order, petition for a protection order, or witness subpoena...." The provision in Act No. 106 which allows the assessment of a filing fee against a nonprevailing party in an action for a restraining order relates to the offense of harassment or stalking. In my opinion, an action for a restraining order against an individual engaged in harassing or stalking is arguably distinguishable from a prosecution for the offense of domestic violence or the filing, issuance, registration and service of a protection order. Therefore, it appears that the State would be in compliance with the referenced statutory eligibility requirements of the Violence Against Women Act regarding the assessment of costs related to criminal charges and protection orders. However, this conclusion is not free from doubt and consideration may be given to seeking an amendment to Section 16-3-

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1750(D) so as to eliminate the opportunity for the assessment of a filing fee against the nonprevailing party in an action for a restraining order.

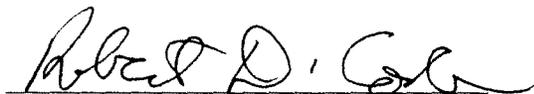
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General