



ALAN WILSON  
ATTORNEY GENERAL

June 30, 2014

The Honorable Mike Fair  
211 Gressette Senate Office  
Columbia, SC 29202

Dear Senator Fair:

Attorney General Alan Wilson has referred your letter dated March 11, 2014 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issues (as quoted from your letter):**

- 1) Does S.C. Code Ann. § 63-7-310 impose a duty on a mandatory reporter to report when an adult discloses that he or she was abused as a child?
- 2) If yes, under what circumstances would such a report be required (e.g. if the alleged abuser is a parent or teacher, other children [may] possibly still [be] at risk, [what is] the length of time passed since [the] abuse occurred, etc.?)
- 3) [If yes,] are there any circumstances under which such reporting would not be required (e.g. death of the perpetrator, length of time passed)?

**Short Answer:** Based on the statutory intent of South Carolina Code § 63-7-310 of the Children's Code to protect children, this Office believes a court will find that a mandatory reporter would not have to report pursuant to South Carolina Code § 63-7-310 when an adult discloses being abused in the past as a child, as long as the adult is not mentally incompetent, as long as there is no information that another child (who is, at the time of the disclosure, under the age of eighteen as defined in 63-3-20(3)) has been or may be abused or neglected as defined in S.C. Code Section 63-7-20(4), and as long as there is no other law that would require the abuse to be reported. Nevertheless, an adult who was abused in the past as a child may voluntarily report abuse that occurred in South Carolina to law enforcement at any time, as there is no statute of limitations on criminal actions for child abuse or criminal sexual conduct in South Carolina.<sup>1</sup>

**Law/Analysis:**

South Carolina Code § 63-7-310 states:

(A) A physician, nurse, dentist, optometrist, medical examiner, or coroner, or an employee of a county medical examiner's or coroner's office, or any other medical, emergency medical services, mental health, or allied health professional, member of the clergy including a Christian Science Practitioner or religious healer, school teacher, counselor, principal, assistant principal, school attendance officer, social or public assistance worker, substance abuse treatment staff, or childcare worker in a

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<sup>1</sup> Adults and mandatory reporters still must comply with any other laws that may otherwise require disclosure or action.

childcare center or foster care facility, foster parent, police or law enforcement officer, juvenile justice worker, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, judge, or a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA **must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.**

(B) If a person required to report pursuant to subsection (A) has received information in the person's professional capacity which gives the person reason to believe that **a child's physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect** if committed by a parent, guardian, or other person responsible for the child's welfare, but the reporter believes that the act or omission was committed by a person other than the parent, guardian, or other person responsible for the child's welfare, the reporter must make a report to the appropriate law enforcement agency.

(C) Except as provided in subsection (A), a person, including, but not limited to, a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA, who has reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse and neglect may report, and is encouraged to report, in accordance with this section.

(D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found.

S.C. Code § 63-7-310 (1976 Code, as amended) (emphasis added).

As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the Legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the Legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

The first place to look in regards to interpreting the statute is to the legislative intent. Title 63 is titled as the “Children’s Code” and states:

This title shall be liberally construed to the end that families whose unity or well-being is threatened shall be assisted and protected, and restored if possible as secure units of law-abiding members; and that each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance and control that will conduce to his welfare and the best interests of the State, and that when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they should have given him.

S.C. Code § 63-1-30 (1976 Code, as amended). Additionally, the purpose of protecting children is clearly laid out in plain language by the Legislature in S.C. Code § 63-7-10. It states:

(A) Any intervention by the State into family life on behalf of children must be guided by law, by strong philosophical underpinnings, and by sound professional standards for practice. Child welfare services must be based on these principles:

...

(B) It is the purpose of this chapter to:

- (1) acknowledge the different intervention needs of families;
- (2) establish an effective system of services throughout the State to safeguard the well-being and development of endangered children and to preserve and stabilize family life, whenever appropriate;
- (3) ensure permanency on a timely basis for children when removal from their homes is necessary;
- (4) establish fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members; and
- (5) establish an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them.

S.C. Code § 63-7-10 (1976 Code, as amended). A child is defined in Title 63 as “a person under the age of eighteen.” S.C. Code §§ 63-1-40(1); 63-7-20(3) (1976 Code, as amended). It seems clear the legislative intent of S.C. Code § 63-7-310 is to protect children. More specifically, the intent is to protect those children who are or who have been abused by reporting that information to law enforcement. An implication is that children either would not know to report abuse to law enforcement or else they would not be able to do so themselves. It goes without saying that if an adult is not mentally competent, if there is a child (someone under the age of eighteen at the time the information is being disclosed) who currently is or has been abused, or if there is another law that requires disclosure, then the mandatory reporter would need to report the abuse of an adult in the past as a child pursuant to South Carolina Code § 63-7-310. However, your question concerns adults who were abused in their past. A mentally-competent adult would have both the ability to report prior abuse and knowledge of the crime but may not choose to report past abuse for a number of reasons.

An adult who was abused as a child may voluntarily report past criminal abuse to law enforcement regardless of how long ago the conduct occurred.<sup>2</sup> As stated above, it should be noted that South Carolina does not have a statute of limitations for criminal charges for sexual abuse of a child or criminal sexual conduct. Jodi Leibowitz, Criminal Statutes of Limitations: An Obstacle to the Prosecution and Punishment of Child Sexual Abuse, 25 Cardozo L.Rev. 907 (Dec. 2003). A civil statute of limitations on actions is generally three years from when “the person knew or by the exercise of reasonable diligence should have known that he had a cause of action,” though there have been numerous cases discussing the circumstances in which tolling begins in civil sexual abuse cases. S.C. Code § 15-3-535; see, e.g., Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014); Doe v. Crooks, 364 S.C. 349, 613 S.E.2d 536 (2005); Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000); Doe v. R.D., 308 S.C. 139, 417 S.E.2d 541 (1992).<sup>3</sup> However, South Carolina Code Section 15-3-555 states regarding civil actions based on sexual abuse or incest:

(A) An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later.

(B) Parental immunity is not a defense against claims based on sexual abuse or incest that occurred before, on, or after this section's effective date.

S.C. Code § 15-3-555 (1976 Code, as amended).<sup>4</sup>

**Conclusion:** As stated above, this Office believes a court will conclude the statutory intent of South Carolina Code § 63-7-310 of the Children’s Code is to protect children. As such, this Office believes a court will conclude that a mandatory reporter would not have to report pursuant to South Carolina Code § 63-7-310 when an adult discloses being abused in the past as a child, as long as the adult is not mentally incompetent, as long as there is no information that another child (who is, at the time of the disclosure, under the age of eighteen as defined in 63-3-20(3)) has been or may be abused or neglected as defined in S.C. Code § 63-7-20(4), and as long as there is no other law that would require the abuse to be reported. However, this Office is only issuing a legal opinion based on the current law at this time. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how

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<sup>2</sup> However, as with all cases, there may be legal or other issues that may apply which could preclude prosecution of a case, and such cases must be evaluated on a case-by-case basis. South Carolina law enforcement has jurisdiction over crimes that occurred in South Carolina which violate state law. For conduct that occurred outside of South Carolina, law enforcement at the location where the conduct occurred would normally have jurisdiction.

<sup>3</sup> While there is not a significant amount of case law on S.C. Code § 63-7-310, our State Supreme Court has held there is no private cause of action for negligence based on failure to report abuse pursuant to S.C. Code § 63-7-310. Doe ex rel. Doe v. Wal-Mart Stores, Inc., 393 S.C. 240, 711 S.E.2d 908 (2011). See, also, Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2004) (finding a psychiatrist had no duty to warn all foreseeable future victims). However, for further questions or specific factual scenarios we would recommend seeking a declaratory judgment from the court, as only a court of law can interpret statutes and make such determinations. S.C. Code § 15-53-20, et al.

<sup>4</sup> Please note 2013 S.C. H.B. 3940 proposed removing any limitation on commencement of civil actions in S.C. Code § 15-3-555 when the Victim is under eighteen. While there may be other relevant statutes, case law and proposed legislation regarding your question, this opinion is merely noting a few.

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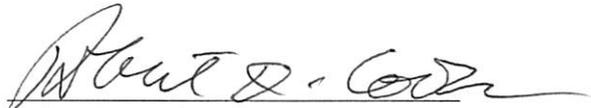
this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General