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### DOMESTIC ABUSE ACT CREATES EXCEPTION TO SUNDAY CIVIL SERVICE PROHIBITION

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During this past legislative session, the General Assembly enacted the "Protection from Domestic Abuse Act." A new statute (Code Section 16-25-20) makes it a crime to (1) cause physical harm to one's family or household member or (2) offer or attempt to cause physical harm to one's family (with "apparent present ability" to do so) under circumstances reasonably creating fear of imminent peril. The penalty for the violation of the statute, first or second offense, is a fine of not more than two hundred dollars or imprisonment for not more than thirty days. A third violation is a General Sessions Court offense.

The new legislation in addition to establishing the offense of criminal violence establishes a civil procedure through which an individual who has been physically harmed, assaulted, or threatened with physical harm may petition the courts for an order of protection. Such orders are issued only after service of a petition on the respondent. Generally, the Family Court has jurisdiction over all these proceedings, except that the petition may be filed with a magistrate during non-business hours or at other times when the Family Court is not in session. A magistrate is limited to issuing an order temporarily enjoining the individual causing the alleged abuse from abusing, threatening to abuse, or molesting

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*Prepared by Attorney General T. Travis Medlock, the LEGAL LOG will examine and explain opinions and legal matters of interest to law enforcement officers in South Carolina.*

*Your comments and suggestions for future issues are solicited. Correspondence should be addressed to LEGAL LOG, 5400 Broad River Road, Columbia, S.C. 29210.*

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the petitioner. The Legislature specifically recognized that in certain situations an emergency hearing must be held. Such a hearing may be held within twenty-four hours of service of a summons and petition upon the respondent.

As a result of the provision for an emergency hearing, the Attorney General's Office was asked whether a summons and petition for an order of protection, and the subsequently issued protection, may be served on Sunday. Section 15-9-1010, Code of Laws of South Carolina, 1976, generally

provides that "(n)o civil process, except in attachment proceedings, shall be served on Sunday." However, in the opinion of this office, it is arguable that the General Assembly intended that service of the items referred to above must be permitted on Sunday. Such authorization of service must be construed as an exception to the general legislation prohibiting Sunday service.

Our opinion recognizes the fact that the Protection from Domestic Abuse Act has the clear purpose of providing relief in an emergency situation. Logic and established principles of legal construction lead us to this conclusion that legal pleadings and orders under the Act can be served on Sunday.

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