



CHILD ABUSE LEGAL UPDATE

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CHARGING ISSUES





STATE V. CALDERON

- Facts: Multiple counts of indecent liberties, the main issue is how individual acts are separated or combined for charging purposes. Since most CSA cases involve more than one act, this can be a difficult call.
- Issue: Do you charge two inappropriate sexual acts that happened within an hour of each other as one count of the crime or two? How many charges should you take out when it comes to continuous abuse?

STATE V. CALDERON

- Four part test in indecent liberties to determine if multiple acts are part of “one continuous transaction” or if each is its own crime:
 1. whether the acts occur at or near the same time;
 2. whether the acts occur at the same location;
 3. whether there is a causal relationship between the acts, in particular whether there was an intervening event; and
 4. whether there is a fresh impulse motivating some of the conduct. Note that this test only applies when we are looking at “non-sexual acts” (kissing, touching, etc).
- This does not apply to individual sex acts (for example, if a victim is digitally penetrated and also performs oral sex, those are still two distinct crimes).

STATE V CALDERON

- Defendant was convicted of three counts of indecent liberties. One each for:
 1. kissing the victim outside his van,
 2. kissing the victim on the mouth inside his van,
 3. a second count of kissing the victim on the mouth inside his van.
 4. These all happened on the same day.
- The court determined that these were touching and not sexual acts.
- After applying the test above, they concluded that the acts outside the van and inside the van were two distinct acts but that the two acts inside the van should be viewed as one continuous transaction and therefore should account for only one charge as they occurred close in time and were not separated by an intervening act.

EVIDENCE ISSUES



“VOUCHING FOR CREDIBILITY”

- State v. Collins, No. COA22-488 (04 April 2023)
 - Defendant claimed that testimony by an expert that the victim had not been coached was admissible testimony. The court pointed out that saying a witness was not coached is not the same as saying they are telling the truth or that you believe them.
 - Defendant also wanted to use records from the victim's elementary school to cross-examine her and try to prove she is not credible. While certain issues in recent school records might be admissible against a victim, these were too long ago and not severe enough to implicate truthfulness.

“VOUCHING FOR CREDIBILITY”

- State v. Owens, No. COA22-517 (17 January 2023)
 - A good review of existing rules for expert testimony
 - Testimony:
 - [The State]: Was her disclosure on that day consistent with what you heard her testify to today?
 - [Greene]: It was. . . .
 - [The State]: Each time that you have heard [Sue] disclose what happened, has she been consistent in her disclosure?
 - [Greene]: Yes, ma'am.
 - Witnesses (and lawyers) need to be careful with their words when talking about a victim's statements
 - The use of the word "consistent" is fine but be cautious going any further into words like "believable" "credible" etc. It seems to me that if the State had really harped on the "consistent statement" thing, the court might have had more of a problem.
 - So, even with the word 'consistent' we should be careful not to have a witness try and frame consistency as "proof" that a victim is credible or their story is true.

STATUTORY UPDATE





SL 2023 – 14 / SB 20 ABORTION BILL

- Amends Chapter 90 of Article 11 . Abortion Laws.
 - Defines various terms.
 - Creates new G.S. 90-21.81A makes “unlawful after the twelfth (12th) week of a woman’s pregnancy to advise, procure, or cause a miscarriage or abortion” and outlaws “partial-birth abortions” by a physician or health care provider at any time.
 - New G.S. 90-21.81B. When abortion is lawful.
 - Allows abortions for “life-limiting anomaly” out to twenty-four (24) weeks.

SL 2023 – 14 / SB 20 NEW CRIMES

- Amends Chapter 90 of Article 11 . Abortion Laws.
 - Modifies G.S. 90-21.121 making it illegal to perform an abortion because of:
 - The actual or presumed race or racial makeup of the unborn child.
 - The sex of the child.
 - The presence or presumed presence of Down syndrome.
 - New G.S. 90-21.82A – requires any abortion performed after twelve (12) weeks be performed in a hospital.

Eff. 7.1.2023

SL 2023 – 14 / SB 20 NEW CRIMES

- Amends Chapter 90 of Article 11 . Abortion Laws.
 - Creates new G.S. 131E-153.7. Penalties.
 - Class 3 misdemeanor to operate an abortion clinic without a license – fine of \$50 for first offense, and not more than \$500 for each subsequent violation.
- New G.S. 90-21.145. Penalties.
 - “(b) Unlawful Killing of Child Born Alive ... intentionally performs or attempt to perform an over act that kills a child born alive shall be punished under G.S. 14-18 (c) for murder”.

SL 2023 – 14 / SB 20

SEX OFFENDER MONITORING

- Expands Satellite-Based Monitoring for Violent and Repeat Sexual Offenders.
 - Response to litigation challenging statute.
 - Modifies G.S. 14-208.40A . Determination of satellite-based monitoring requirement by court – must consider all the factors listed in the statute.
 - Require the Department of Adult Correction to do a risk assessment of the offender.

Eff. October 1, 2023



SL 2023 – 14 / SB 20
MISDEMEANOR ASSAULT – PREGNANT
WOMAN

- Modifies G.S. 14-33 Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.
 - Adds “(2a) Assaults a pregnant woman” to a category of victims that an assault, assault and battery, or affray receives Class A1 misdemeanor punishment.

Eff. December 1, 2023

SL 2023 – 14 / SB 20

NEW CRIME – DOMESTIC VIOLENCE

- New G.S. 14-32.5 Misdemeanor crime of domestic violence.
 - Class A1 misdemeanor if a person “uses or attempts to use physical force, or threatens the use of a deadly weapon, against another person, if :
 - A Current of former spouse, parent or guardian of the victim.
 - A person with whom the victim shares a child in common.
 - A person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian.
 - A person similarly situated to a spouse, parent or guardian of the victim.
 - A person who has a current or recent former dating relationship with the victim.

Eff. December 1, 2023

SL 2023 – 71 / SB 626
MODIFY HUMAN TRAFFICKING AND RIOTING
LAWS.

- Modified G.S. 50D-1 related to Permanent No-contact Orders for victims and made clear that all human trafficking offenses under Article 10A of Chapter 14 are now covered – Order as part of the sentence is now allowed.
 - *Eff. August 1, 2023*
- Added “patronizes, solicits” as elements to Human Trafficking and Sexual Servitude under (intent element remains the same) G.S. 14-43.11 & 14-43.13.
 - *Eff. December 1, 2023*

SL 2023 – 96 / HB 674 CHILD ADVOCACY CENTERS/SHARE INFORMATION

- Creates a New Article 3A of Chapter 108A – Child Advocacy Centers.
 - Defines relevant terms including CACs, Law enforcement child medical evaluation, Multidisciplinary team, and State standards.
 - Establishes minimum standards for a CAC.
 - Provides a statutory scheme for sharing information of the department with multidisciplinary teams.
 - Provides a statutory scheme for accessing records of a CAC.
 - Creates limited immunity from civil liability for board members, staff members and volunteers of a CAC.

Eff. July 1, 2024

CAC STATUTE – SHARING INFORMATION

- If there is a statute that covers it, that governs
- If there is not:
 - Other members of the multidisciplinary team may share information that is relevant to the protection of a child with the multidisciplinary team, subject to State and federal statutes and rules
 - The Chief District Court Judge of the judicial district in which the multidisciplinary team sits may enter an administrative order designating certain local agencies, located within that jurisdiction, that are authorized to share information concerning a case of suspected child maltreatment
 - Any information shared among designated agencies pursuant to this section shall remain confidential, except where disclosure is required by law, shall be withheld from public inspection and shall be used only to the extent necessary for that agency to perform its required duties.
- Liability protection

CAC STATUTE – ACCESS TO RECORDS

- Records received by DSS from CAC (including CME, FI) are confidential and governed by DSS confidentiality statutes
- Same for cases involving LE
- Disclosure of information and records outlined in subsection (b) of this section shall only be released or otherwise made available to the following:
 - The North Carolina Department of Health and Human Services and county departments.
 - Law enforcement agencies, a prosecuting district attorney, or the Attorney General.
 - Health care providers or local management entity/managed care organizations providing medical or psychiatric care or services to the child, in the case of medical or mental health records.
 - The North Carolina Child Fatality Task Force.
 - As permitted under G.S. 7B-3100.

CAC STATUTE – ACCESS TO RECORDS

- Other than already addressed, a court order and in camera review will be required before release
- Sharing between CACs is ok as long as necessary
- Limited information can be shared with contracted providers as needed

UNPASSED BILLS THAT MADE CROSSOVER

- HB 591 – New. G.S. 14-190.17B. Restitution for sexual exploitation of a minor.
- Suggested modification to Obscenity Statutes to create consistencies related to 16 v. 18 years of age.
- H 748 – Felony Child Abuse/Expand Scope
 - Torture
 - Exposing a child to a controlled substance
- Kayla's Act: Protecting Domestic Violence Victims

HOT TOPICS IN CRIMINAL CHILD MALTREATMENT





REMOTE TESTIMONY

- Many offices now have the technology to make remote testimony easier
 - CRAVE System
 - OWL
- We have a statute (NCGS 15A-1225.1) that explicitly allows a child witness to testify remotely IF the State can show that testifying in the presence of the defendant would cause the child serious emotional distress
- This must be decided by the judge and included in a court order after hearing evidence
 - Evidence is usually from a therapist, etc.
- Talk to your prosecutor about this option if you think it would be beneficial in your case

ASSISTANCE FOR VICTIMS DURING TRIAL

- Remote Testimony – Allowed by law for child witnesses. Must address pretrial with motion and order including findings that being in the same room as defendant would create mental distress, etc.
- Courtroom Dogs – If approved by the judge, courthouse therapy dogs, etc. may accompany the child to the stand
- Support Person – Another person can accompany the child onto the stand as long as they do not influence testimony
- Comfort Item – With approval from the judge, a child may be able to bring a comfort item onto the stand. Even if they cannot, they can have something small in their pocket if it is not visible and will not be distracting.

WORKING WITH OTHER AGENCIES

- MDTs: The Best Way to Keep Kids Safe
 - If you want to set up a MDT, ask!
 - Get involved and make connections
 - Ask questions
- Information Sharing
 - A hodge-podge of statutes
 - Many jurisdictions have standing orders to allow info sharing in child maltreatment cases
 - Keep discovery rules in mind

QUESTIONS?





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Don't forget about the Child Abuse Listserv!

