

# **The Delaware Law Enforcement and Prosecutors Manual on Child Exploitation Crimes**

## **Statutory and Case Law**



**NATIONAL LAW CENTER  
FOR CHILDREN AND FAMILIES**



## **National Law Center for Children and Families' Preface to the 2008 Second Edition**

It is our honor at the National Law Center for Children and Families to provide this second edition of the Delaware State Manual. This manual is an update and refinement of the state legal manual produced by the National Center for Missing and Exploited Children (NCMEC) in 2004.

The National Law Center is a non-profit law center formed in 1991 and based in Alexandria, Virginia. It has since served as an agent of change and education in the area of child sexual exploitation. The NLC is proud to continue that service today in seminars and through its website, [www.nationallawcenter.org](http://www.nationallawcenter.org). In addition to these projects, the National Law Center has entered into a partnership with the NCMEC to update these existing 25 manuals used. Over the next few years we will update these existing manuals and create new manuals for prosecutors and law enforcement professionals to use in the defense of children and families.

Additionally, the manual would not have been completed were it not for the support of NCMEC's Legal Staff and L.J. Decker, NLC Law Clerk (3L Georgetown University Law Center), Christien Oliver, (JD George Washington School of Law 2008) and Tara Steinnerd (3L Catholic University School of Law).

The Editors,

National Law Center for Children and Families  
June 2008

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  - a. “Dealing in” Defined
  - b. Proving Intent to “Deal in”
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3. Staleness
  - a. Probable Cause
  - b. 10-Day Expiration on Search Warrants
4. Minor Omissions and Inconsistencies

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No state cases reported.

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3. Consent Searches
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**A. Timely Review of Evidence**

**B. Defense Requests for Copies of Child Pornography**

**C. Introduction of E-mails into Evidence**

1. Hearsay/Authentication Issues
2. Circumstantial Evidence
3. Technical Aspects of Electronic Evidence Regarding Admissibility

**D. Text-Only Evidence**

1. Introduction into Evidence
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**E. Evidence Obtained from Internet Service Providers**

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## **IX. SUPERVISED RELEASE: PROBATION**

- A. Restrictions**
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# DELAWARE

## *Topic Outline with Cases*

A case with + indicates a decision that has not been designated for publication.

A case with ++ indicates the subject matter of the case is not child sexual exploitation, but nonetheless the principle presented may still apply.

### I. OFFENSES DEFINED

#### A. Child Pornography (a.k.a. Sexual Exploitation of a Child)

##### 1. Photographing or Filming

- *Kemske v. State*, No. 168, 2007 Del. LEXIS 1 ( Del. Jan. 2, 2007)
- *Keichline v. State*, No. 490, 1991 Del. LEXIS 306 (Del. Aug. 22, 1991)
- *Naughton v. State*, 453 A.2d 796 (Del. 1981)
- *State v. Sisson*, 883 A.2d 68 (Del. Super. Ct. 2005)

##### 2. Possession of Child Pornography

- *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84 (Del. Super. Ct. Mar. 26, 2002)

##### a. “Prohibited Sexual Act” Defined

- *Fink v. State*, 817 A.2d 781 (Del. 2003)

##### b. “Sexual Contact” Defined

- *Johnson v. State*, No. 576, 2007 Del. LEXIS 190 (Del. Apr. 25, 2007)
- *Keichline v. State*, No. 490, 1991 Del. LEXIS 306 (Del. Aug. 22, 1991)

##### 3. Unlawfully Dealing in Child Pornography

- *State v. Dittie*, No. 56, 1987 Del. LEXIS 1178 (Del. July 6, 1987)
- *State v. McGraw*, No. 0106019765, 2002 Del. Super. LEXIS 339 (Del. Super. Ct. May 16, 2002)
- *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84 (Del. Super. Ct. Mar. 26, 2002)

- *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060 (Del. Super. Ct. Feb. 5, 1987)

**a. “Dealing in” Defined**

- *State v. Dittie*, No. 56, 1987 Del. LEXIS 1178 (Del. July 6, 1987)
- *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060 (Del. Super. Ct. Feb. 5, 1987)

**b. Proving Intent to “Deal in”**

- *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060 (Del. Super. Ct. Feb. 5, 1987)

**c. “Transports” Defined**

- *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060 (Del. Super. Ct. Feb. 5, 1987)

**4. Virtual/Simulated Child Pornography**

- *Fink v. State*, 817 A.2d 781 (Del. 2003)
- *Keichline v. State*, No. 490, 1991 Del. LEXIS 306 (Del. Aug. 22, 1991)
- *Naughton v. State*, 453 A.2d 796 (Del. 1981)

**5. “Child” Defined**

- *Spry v. State*, No. 388, 1992 Del. LEXIS 358 (Del. Sept. 22, 1992)
- *State v. Pandiscio*, No. IN 89-09-0581R2, 1995 Del. Super. LEXIS 233 (Del. Super. Ct. May 17, 1995)

**B. Continuous Sexual Abuse of a Child**

- *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471 (Del. Super. Ct. June 6, 2000)

**C. Deviate Sexual Intercourse**

- *Acosta v. State*, 417 A.2d 373 (Del. 1980)

**D. Obscene Material in the Presence of Minors**

**1. Elements**

- *State v. Colasuonno*, 432 A.2d 334 (Del. Super. Ct. 1981)

**2. “Readily Accessible” Defined**

- *State v. Colasuonno*, 432 A.2d 334 (Del. Super. Ct. 1981)

**E. Online Enticement/Solicitation for Travel with the Intent to Engage in Sex with a Minor**

No state cases reported.

**F. Sexual Solicitation of a Child**

- *Winters v. State*, No. 181, 2004 Del. LEXIS 390 (Del. Sept. 8, 2004)
- *State v. Hartman*, No number in original, 2000 Del. Super. LEXIS 400 (Del. Super. Ct. Aug. 24, 2000)

**G. Unlawful Sexual Intercourse**

**1. First Degree**

**a. Elements**

- *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471 (Del. Super. Ct. June 6, 2000)
- *State v. Leighton*, No. S 95-11-095, 1996 Del. Super. LEXIS 250 (Del. Super. Ct. May 13, 1996)
- *State v. Wilson*, No. IN 89-05-1397, 1992 Del. Super. LEXIS 94 (Del. Super. Ct. Feb. 18, 1992)

**b. “Sexual Intercourse” Defined**

- *State v. Burns*, No. 0605017137, 2007 Del. Super. LEXIS 269 (Del. Super. Ct. Sept. 11, 2007)
- *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471 (Del. Super. Ct. June 6, 2000)

**c. “Voluntary Social Companion” Defined**

- *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471 (Del. Super. Ct. June 6, 2000)

## **2. Second Degree**

### **a. Elements**

- *Hoyle v. State*,<sup>+</sup> No. 320, 2008 Del. LEXIS 63 (Del. Feb. 11, 2008)
- *In re Charles G.*, No. JN 91-0452, 1991 Del. Fam. Ct. LEXIS 35 (Del. Fam. Ct. Sept. 10, 1991)

### **b. “Sexual Contact” Defined**

- *Hoyle v. State*,<sup>+</sup> No. 320, 2008 Del. LEXIS 63 (Del. Feb. 11, 2008)
- *In re Charles G.*, No. JN 91-0452, 1991 Del. Fam. Ct. LEXIS 35 (Del. Fam. Ct. Sept. 10, 1991)

## **3. Third Degree**

- *State v. McGraw*, No. 0106019765, 2002 Del. Super. LEXIS 339 (Del. Super. Ct. May 16, 2002)

## **H. Transporting Minor for the Purposes of Prostitution**

No state cases reported.

## **II. SEARCH AND SEIZURE OF ELECTRONIC EVIDENCE**

### **A. Search Warrants**

#### **1. Probable Cause**

- *Fink v. State*, 817 A.2d 781 (Del. 2003)
- *State v. Sisson*, 883 A.2d 868 (Del. Super. Ct. 2005)
- *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27 (Del. Super. Ct. Feb. 25, 2002)

#### **a. When Does Probable Cause Exist?**

- *Harris v. State*,<sup>+++</sup> 806 A.2d 119 (Del. 2002).

#### **b. Affidavit**

- *Fink v. State*, 817 A.2d 781 (Del. 2003)
- *State v. Dorn*, No. 92-11-0145, 1993 Del. Super. LEXIS 219 (Del. Super. Ct. June 7, 1993)

- *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27 (Del. Super. Ct. Feb. 25, 2002)
- *State v. Jones*,<sup>+</sup> <sup>++</sup> No number in original, 1996 Del. Super. LEXIS 314 (Del. Super. Ct. May 29, 1996)
- *State v. Cintron*,<sup>++</sup> No. 0208022221, 2003 Del. C.P. LEXIS 53 (Del. C.P. Nov. 26, 2003)

**c. Magistrate's Determination of Probable Cause**

**i. Totality of the Circumstances**

- *LeGrande v. State*,<sup>++</sup> 947 A.2d 1103 (Del. 2008)
- *Fink v. State*, 817 A.2d 781 (Del. 2003)
- *Lewis v. State*,<sup>++</sup> No. 273, 1990 Del. LEXIS 93 (Del. Mar. 19, 1990)
- *State v. Gria*,<sup>++</sup> No number in original, 1998 Del. Super. LEXIS 5 (Del. Super. Ct. Feb. 10, 1998)

**ii. Crimes Against Children**

- *State v. Dorn*, No. 92-11-0145, 1993 Del. Super. LEXIS 219 (Del. Super. Ct. June 7, 1993)

**iii. Reviewing Court**

- *LeGrande v. State*,<sup>++</sup> 947 A.2d 1103 (Del. 2008)
- *State v. Cintron*,<sup>++</sup> No. 0208022221, 2003 Del. C.P. LEXIS 53 (Del. C.P. Nov. 26, 2003)

**d. Informants**

- *McAllister v. State*,<sup>+++</sup> 807 A.2d 1119 (Del. 2002)
- *State v. Sisson*, 883 A.2d 868 (Del. Super. Ct. 2005)

**i. Identified Citizen Informant**

- *Shantz v. State*,<sup>++</sup> 344 A.2d 245 (Del. 1975)
- *State v. Sisson*, 883 A.2d 868 (Del. Super. Ct. 2005)

**ii. Confidential Informants**

- *McAllister v. State*,<sup>+++</sup> 807 A.2d 1119 (Del. 2002)
- *State v. Sisson*, 883 A.2d 868 (Del. Super. Ct. 2005)

**iii. Criminal Informants**

- *State v. Sisson*, 883 A.2d 868 (Del. Super. Ct. 2005)

**iv. Aguilar-Spinelli Test**

- *Shantz v. State*,<sup>++</sup> 344 A.2d 245 (Del. 1975)

**(a) Trustworthiness**

- *State v. Poli*,<sup>++</sup> 390 A.2d 415 (Del. 1978)

**(b) Sufficient Detail**

- *State v. Poli*,<sup>++</sup> 390 A.2d 415 (Del. 1978)

**e. Information Provided in the Warrant**

- *Fink v. State*, 817 A.2d 781 (Del. 2003)
- *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27 (Del. Super. Ct. Feb. 25, 2002)
- *State v. Dorn*, No. 92-11-0145, 1993 Del. Super. LEXIS 219 (Del. Super. Ct. June 7, 1993)

**i. Description of Property**

- *Scott v. State*,<sup>++</sup> No. 127, 1992 Del. LEXIS 494 (Del. Dec. 18, 1992)

**ii. Reasonable Inferences**

- *Sisson v. State*, 903 A.2d 288 (Del. 2006)
- *James v. State*,<sup>++</sup> No. 340, 1985 Del. LEXIS 583 (Del. Aug. 7, 1985)

**f. The Defendant's Burden**

- *Franks v. Delaware*,<sup>++</sup> 438 U.S. 154 (1978)

**2. Scope of Search Warrant**

- *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27 (Del. Super. Ct. Feb. 25, 2002)

**a. Seizure of Items Not in a Search Warrant**

- *State v. Phillips*,<sup>++</sup> 366 A.2d 1203 (Del. Super. Ct. 1976)

**b. Search of Items Not in a Search Warrant**

- *State v. Fink*, No number in original, 2001 Del. Super. LEXIS 188 (Del. Super. Ct. Mar. 30, 2001)
- *State v. Dorn*, No. 92-11-0145, 1993 Del. Super. LEXIS 219 (Del. Super. Ct. June 7, 1993)

**c. Overbreadth**

- *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27 (Del. Super. Ct. Feb. 25, 2002)

**3. Staleness**

**a. Probable Cause**

- *Backus v. State*,<sup>++</sup> 845 A.2d 515 (Del. 2004)
- *State v. Dorn*, No. S 87-01-8001, 1989 Del. Super. LEXIS 424 (Del. Super. Ct. Nov. 3, 1989)

**b. 10-Day Expiration on Search Warrants**

- *State v. Gria*,<sup>++</sup> No number in original, 1998 Del. Super. LEXIS 5 (Del. Super. Ct. Feb. 10, 1998)

**4. Minor Omissions and Inconsistencies**

- *State v. Fink*, No number in original, 2001 Del. Super. LEXIS 188 (Del. Super. Ct. Mar. 30, 2001)

**B. Anticipatory Warrants**

No state cases reported.

**C. Types of Searches**

**1. Civilian Searches**

No state cases reported.

**2. Commission of a Felony**

- *Jeffers v. State*,<sup>++</sup> 934 A.2d 908 (Del. 2007)
- *Scott v. State*,<sup>++</sup> No. 127, 1992 Del. LEXIS 494 (Del. Dec. 18, 1992)

### **3. Consent Searches**

- *McAllister v. State*,<sup>+++</sup> 807 A.2d 1119 (Del. 2002)

### **4. Employer Searches**

No state cases reported.

### **5. Exigent Circumstances**

- *Reeder v. State*,<sup>++</sup> No. 552, 2001 Del. LEXIS 133 (Del. Mar. 26, 2001)
- *State v. Seward*,<sup>++</sup> No. 0608023596, 2007 Del. Super. LEXIS 192 (Del. Super. Ct. Apr. 11, 2007)

### **6. Private Searches**

#### **a. Generally**

- *Viridin v. State*,<sup>++</sup> 780 A.2d 1024 (Del. 2001)
- *State v. Benge*,<sup>++</sup> No. 0210012355, 2003 Del. Super. LEXIS 245 (Del. Super. Ct. June 26, 2003)

#### **b. When Do Private Searches Become Governmental?**

- *Viridin v. State*,<sup>++</sup> 780 A.2d 1024 (Del. 2001)
- *Atamian v. Hawk*,<sup>++</sup> 842 A.2d 654 (Del. Super. Ct. 2003)

### **7. University-Campus Searches**

No state cases reported.

### **D. Methods of Searching**

No state cases reported.

### **E. Computer-Technician/Repairperson Discoveries**

No state cases reported.

### **F. Photo-Development Discoveries**

No state cases reported.



**G. Criminal Forfeiture**

- *State v. Santiago*,<sup>+ ++</sup> No. 94M-04-037, 1994 Del. Super. LEXIS 402 (Del. Super. Ct. June 7, 1994)

**H. Disciplinary Hearings for Federal and State Officers**

No state cases reported.

**I. Probationer and Parolee Rights**

- *Fuller v. State*, 844 A.2d 290 (Del. 2004)
- *State v. Thomas*,<sup>+ ++</sup> No. 0609003631, 2007 Del. Super. LEXIS 75 (Del. Super. Ct. May 29, 2007)
- *State v. Tucker*,<sup>+ ++</sup> No. 0608016366, 2007 Del. Super. LEXIS 100 (Del. Super. Ct. Apr. 10, 2007)

**III. JURISDICTION AND NEXUS**

**A. Jurisdictional Nexus**

No state cases reported.

**B. Internet Nexus**

No state cases reported.

**C. State Jurisdiction, Federal Jurisdiction, Concurrent Jurisdiction**

**1. State**

**a. Superior Court**

- *Murdter v. State*,<sup>+</sup> 782 A.2d 266 (Del. 2001)
- *State v. Wilson*, No. IN 89-05-1397, 1992 Del. Super. LEXIS 94 (Del. Super. Ct. Feb. 18, 1992)

**b. Family Court**

- *State v. Wilson*, No. IN 89-05-1397, 1992 Del. Super. LEXIS 94 (Del. Super. Ct. Feb. 18, 1992)

**2. Federal**

No state cases reported.

**3. Concurrent**

No state cases reported.

**D. Interstate Possession of Child Pornography**

- *State v. White*, No. 0102019515, 2001 Del. Super. LEXIS 513 (Del. Super. Ct. Dec. 28, 2001)

**IV. DISCOVERY AND EVIDENCE**

**A. Timely Review of Evidence**

No state cases reported.

**B. Defense Requests for Copies of Child Pornography**

- *State v. White*, No. 0102019515, 2001 Del. Super. LEXIS 513 (Del. Super. Ct. Dec. 28, 2001)

**C. Introduction of E-mails into Evidence<sup>1</sup>**

**1. Hearsay/Authentication Issues**

No state cases reported.

**2. Circumstantial Evidence**

No state cases reported.

**3. Technical Aspects of Electronic Evidence Regarding Admissibility**

No state cases reported.

**D. Text-Only Evidence**

**1. Introduction into Evidence**

No state cases reported.

**2. Relevance**

No state cases reported.

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<sup>1</sup> In *Capano v. State*, 781 A.2d 556 (Del. 1999) and *Sisson v. State*, 903 A.2d 288 (Del. 2006), introduction of E-mail into evidence seemed to occur without discussion or objection.

**E. Evidence Obtained from Internet Service Providers**

**1. Electronic Communications Privacy Act**

No state cases reported.

**2. Cable Act**

No state cases reported.

**3. Patriot Act**

**a. National Trap and Trace Authority**

No state cases reported.

**b. State-Court-Judge Jurisdictional Limits**

No state cases reported.

**F. Dates of Alleged Offense**

- *Clark v. State*, No. 417, 2006 Del. LEXIS 222 (Del. May 2, 2006)
- *Phipps v. State*, No. 105, 1996 Del. LEXIS 95 (Del. Feb. 16, 1996)

**G. Prior Bad Acts**

**1. Inadmissible**

- *Ruiz v. State*,<sup>++</sup> No. 463, 2003 Del. LEXIS 200 (Del. Apr. 1, 2003)
- *Dorman v. State*,<sup>++</sup> No. 434, 1992 Del. LEXIS 94 (Del. Jan. 27, 1992)

**2. Admissible**

- *Webb v. State*, No. 95, 2006 Del. LEXIS 546 (Del. Oct. 18, 2006)
- *Ruiz v. State*,<sup>++</sup> No. 463, 2003 Del. LEXIS 200 (Del. Apr. 1, 2003)
- *Kenton v. State*, No. 456, 1999 Del. LEXIS 336 (Del. Oct. 20, 1999)
- *Dorman v. State*,<sup>++</sup> No. 434, 1992 Del. LEXIS 94 (Del. Jan. 27, 1992)
- *Getz v. State*, 538 A.2d 726 (Del. 1988)
- *State v. Thompson*,<sup>+</sup> No. 0503015897, 2005 Del. C.P. LEXIS 37 (Del. C.P. Sept. 16, 2005)

**a. The Defendant Testifies**

- *Dorman v. State*,<sup>++</sup> No. 434, 1992 Del. LEXIS 94 (Del. Jan. 27, 1992)

**b. Evidence of Juvenile Adjudications**

- *Reid v. State*, No. 247, 2005 Del. LEXIS 492 (Del. Nov. 30, 2005)
- *Rhodes v. State*,<sup>+</sup><sup>++</sup> No. 597, 2003 Del. LEXIS 278 (Del. May 16, 2003)

**H. Privileges**

No state cases reported.

**V. AGE OF CHILD VICTIM**

**A. Proving the Age of the Child Depicted**

No state cases reported.

**B. The Defendant's Knowledge of the Age of the Child Depicted**

No state cases reported.

**VI. MULTIPLE COUNTS**

**A. What Constitutes an "Item" of Child Pornography?**

- *Fink v. State*, 817 A.2d 781 (Del. 2003)
- *State v. Sisson*, 883 A.2d 68 (Del. Super. Ct. 2005)

**B. Double Jeopardy: Two Offenses Based on the Same Act or Criminal Transaction**

- *Fink v. State*, 817 A.2d 781 (Del. 2003)
- *State v. Sisson*, 883 A.2d 68 (Del. Super. Ct. 2005)
- *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84 (Del. Super. Ct. Mar. 26, 2002)

**C. Joinder**

- *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84 (Del. Super. Ct. Mar. 26, 2002)

**1. Examples**

**a. Joinder**

- *State v. Eisenback*, No. 0401006193, 2004 Del. Super. LEXIS 385 (Del. Super. Ct. Nov. 30, 2004)
- *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84 (Del. Super. Ct. Mar. 26, 2002)

**b. No Joinder**

- *State v. Hartman*, No number in original, 2000 Del. Super. LEXIS 400 (Del. Super. Ct. Aug. 24, 2000)

**2. Severability**

- *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84 (Del. Super. Ct. Mar. 26, 2002)

**a. Prejudice**

- *State v. Sisson*, No. 0403019957, 2005 Del. Super. LEXIS 111 (Del. Super. Ct. Apr. 7, 2005)
- *State v. Eisenback*, No. 0401006193, 2004 Del. Super. LEXIS 385 (Del. Super. Ct. Nov. 30, 2004)
- *State v. McGraw*, No. 0106019765, 2002 Del. Super. LEXIS 339 (Del. Super. Ct. May 16, 2002)
- *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84 (Del. Super. Ct. Mar. 26, 2002)

**b. The Defendant's Burden**

- *Kemske v. State*, No. 168, 2007 Del. LEXIS 1 (Del. Jan. 2, 2007)
- *State v. Sisson*, No. 0403019957, 2005 Del. Super. LEXIS 111 (Del. Super. Ct. Apr. 7, 2005)
- *State v. McGraw*, No. 0106019765, 2002 Del. Super. LEXIS 339 (Del. Super. Ct. May 16, 2002)
- *State v. Hartman*, No number in original, 2000 Del. Super. LEXIS 400 (Del. Super. Ct. Aug. 24, 2000)

**VII. DEFENSES**

**A. Consent**

**1. Sexual Offenses Generally**

- *Stewart v. State*, No. 07M-10-078 PLA, 2008 Del. Super. LEXIS 134 (Del. Super. Ct. Apr. 10, 2008)

**2. Deviate Sexual Intercourse**

- *Acosta v. State*, 417 A.2d 373 (Del. 1980)

**3. Sexual Intercourse**

- *State v. Pandiscio*, No. IN 89-09-0581R2, 1995 Del. Super. LEXIS 233 (Del. Super. Ct. May 17, 1995)

**4. Sexual Exploitation**

- *State v. Pandiscio*, No. IN 89-09-0581R2, 1995 Del. Super. LEXIS 233 (Del. Super. Ct. May 17, 1995)

**B. Diminished Capacity**

- *Bates v. State*,<sup>++</sup> 386 A.2d 1139 (Del. 1978)

**1. Addiction to the Internet**

No state cases reported.

**2. Insanity**

- *Bates v. State*,<sup>++</sup> 386 A.2d 1139 (Del. 1978)

**C. Entrapment**

- *Harrison v. State*,<sup>++</sup> 442 A.2d 1377 (Del. 1982)

**D. Extreme Emotional Distress**

- *State v. Gronenthal*,<sup>++</sup> No. 9807001798, 2005 Del. Super. LEXIS 215 (Del. Super. Ct. June 3, 2005)
- *State v. Magner*,<sup>++</sup> 732 A.2d 234 (Del. Super. Ct. 1997)

**1. Bifurcated Analysis**

- *State v. Magner*,<sup>++</sup> 732 A.2d 234 (Del. Super. Ct. 1997)

**2. Burden**

- *Jones v. State*,<sup>++</sup> No. 253, 1992 Del. LEXIS 181 (Del. May 7, 1992)

**E. First Amendment**

- *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060 (Del. Super. Ct. Feb. 5, 1987)

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No state cases reported.

**2. Legal**

No state cases reported.

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No state cases reported.

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- *Winters v. State*, No. 181, 2004 Del. LEXIS 390 (Del. Sept. 8, 2004)

**I. Mistake of Law**

- *Bryson v. State*,<sup>+++</sup> No. 100, 2003 Del. LEXIS 45 (Del. Jan. 16, 2003)
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No state cases reported.

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No state cases reported.

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No state cases reported.

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- *State v. Pandiscio*, No. IN 89-09-0581R2, 1995 Del. Super. LEXIS 233 (Del. Super. Ct. May 17, 1995)

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- *Jones v. State*,<sup>++</sup> No. 486, 2003 Del. LEXIS 85 (Del. Feb. 14, 2003)

### C. Enhancement

#### 1. Age of Victim

No state cases reported.

#### 2. Distribution/Intent to Traffic

No state cases reported.

#### 3. Number of Images

No state cases reported.

#### 4. Pattern of Activity for Sexual Exploitation

No state cases reported.

#### 5. Sadistic, Masochistic, or Violent Material

No state cases reported.

#### 6. Use of Computers

No state cases reported.

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### A. Restrictions

- *Jackson v. State*,<sup>++</sup> 821 A.2d 881 (Del. 2003)



**B. Revocation**

- *Jackson v. State*,<sup>++</sup> 821 A.2d 881 (Del. 2003)

# DELAWARE

## *Case List by Court*

*A case with + indicates a decision that has not been designated for publication.*

*A case with ++ indicates the subject matter of the case is not child sexual exploitation, but nonetheless the principle presented may still apply.*

### **I. United States Supreme Court**

- *Franks v. Delaware*,<sup>++</sup> 438 U.S. 154 (1978)

### **II. Supreme Court of Delaware**

- *Acosta v. State*, 417 A.2d 373 (Del. 1980)
- *Backus v. State*,<sup>++</sup> 845 A.2d 515 (Del. 2004)
- *Bates v. State*,<sup>++</sup> 386 A.2d 1139 (Del. 1978)
- *Bryson v. State*,<sup>+++</sup> No. 100, 2003 Del. LEXIS 45 (Del. Jan. 16, 2003)
- *Clark v. State*, No. 417, 2006 Del. LEXIS 222 (Del. May 2, 2006)
- *Colon v. State*,<sup>++</sup> 900 A.2d 635 (Del. 2006)
- *Dorman v. State*,<sup>++</sup> No. 434, 1992 Del. LEXIS 94 (Del. Jan. 27, 1992)
- *Fink v. State*, 817 A.2d 781 (Del. 2003)
- *Fuller v. State*, 844 A.2d 290 (Del. 2004)
- *Getz v. State*, 538 A.2d 726 (Del. 1988)
- *Harris v. State*,<sup>+++</sup> 806 A.2d 119 (Del. 2002)
- *Harrison v. State*,<sup>++</sup> 442 A.2d 1377 (Del. 1982)
- *Hoyle v. State*,<sup>+</sup> No. 320, 2008 Del. LEXIS 63 (Del. Feb. 11, 2008)
- *Jackson v. State*,<sup>++</sup> 821 A.2d 881 (Del. 2003)
- *James v. State*,<sup>++</sup> No. 340, 1985 Del. LEXIS 583 (Del. Aug. 7, 1985)
- *Jeffers v. State*,<sup>++</sup> 934 A.2d 908 (Del. 2007)
- *Johnson v. State*, No. 576, 2007 Del. LEXIS 190 (Del. Apr. 25, 2007)
- *Jones v. State*,<sup>++</sup> No. 253, 1992 Del. LEXIS 181 (Del. May 7, 1992)
- *Jones v. State*,<sup>++</sup> No. 486, 2003 Del. LEXIS 85 (Del. Feb. 14, 2003)
- *Keichline v. State*, No. 490, 1991 Del. LEXIS 306 (Del. Aug. 22, 1991)
- *Kemske v. State*, No. 168, 2007 Del. LEXIS 1 (Del. Jan. 2, 2007)
- *Kenton v. State*, No. 456, 1999 Del. LEXIS 336 (Del. Oct. 20, 1999)
- *Kipp v. State*,<sup>++</sup> 704 A.2d 839 (Del. 1997)
- *LeGrande v. State*,<sup>++</sup> 947 A.2d 1103 (Del. 2008)
- *Lewis v. State*,<sup>++</sup> No. 273, 1990 Del. LEXIS 93 (Del. Mar. 19, 1990)
- *McAllister v. State*,<sup>+++</sup> 807 A.2d 1119 (Del. 2002)
- *Murdter v. State*,<sup>+</sup> 782 A.2d 266 (Del. 2001)
- *Naughton v. State*, 453 A.2d 796 (Del. 1981)

- *Phipps v. State*, No. 105, 1996 Del. LEXIS 95 (Del. Feb. 16, 1996)
- *Pritchard v. State*, No. 280, 2004 Del. LEXIS 61 (Del. Feb. 4, 2004)
- *Reeder v. State*,<sup>++</sup> No. 552, 2001 Del. LEXIS 133 (Del. Mar. 26, 2001)
- *Reid v. State*, No. 247, 2005 Del. LEXIS 492 (Del. Nov. 30, 2005)
- *Rhodes v. State*,<sup>+++</sup> No. 597, 2003 Del. LEXIS 278 (Del. May 16, 2003)
- *Ruiz v. State*,<sup>++</sup> No. 463, 2003 Del. LEXIS 200 (Del. Apr. 1, 2003)
- *Scott v. State*,<sup>++</sup> No. 127, 1992 Del. LEXIS 494 (Del. Dec. 18, 1992)
- *Shantz v. State*,<sup>++</sup> 344 A.2d 245 (Del. 1975)
- *Sisson v. State*, 903 A.2d 288 (Del. 2006)
- *Spry v. State*, No. 388, 1992 Del. LEXIS 358 (Del. Sept. 22, 1992)
- *State v. Dittie*, No. 56, 1987 Del. LEXIS 1178 (Del. July 6, 1987)
- *State v. Poli*,<sup>++</sup> 390 A.2d 415 (Del. 1978)
- *Viridin v. State*,<sup>++</sup> 780 A.2d 1024 (Del. 2001)
- *Webb v. State*, No. 95, 2006 Del. LEXIS 546 (Del. Oct. 18, 2006)
- *Winters v. State*, No. 181, 2004 Del. LEXIS 390 (Del. Sept. 8, 2004)

### III. Superior Court of Delaware

#### A. Kent

- *Atamian v. Hawk*,<sup>++</sup> 842 A.2d 654 (Del. Super. Ct. 2003)
- *State v. Eisenback*, No. 0401006193, 2004 Del. Super. LEXIS 385 (Del. Super. Ct. Nov. 30, 2004)
- *State v. Hartman*, No number in original, 2000 Del. Super. LEXIS 400 (Del. Super. Ct. Aug. 24, 2000)
- *State v. Phillips*,<sup>++</sup> 366 A.2d 1203 (Del. Super. Ct. 1976)
- *State v. Seward*,<sup>++</sup> No. 0608023596, 2007 Del. Super. LEXIS 192 (Del. Super. Ct. Apr. 11, 2007)
- *State v. White*, No. 0102019515, 2002 Del. Super. LEXIS 66 (Del. Super. Ct. Mar. 1, 2002)
- *State v. White*, No. 0102019515, 2001 Del. Super. LEXIS 513 (Del. Super. Ct. Dec. 28, 2001)

#### B. New Castle

- *State v. Benge*,<sup>++</sup> No. 0210012355, 2003 Del. Super. LEXIS 245 (Del. Super. Ct. June 26, 2003)
- *State v. Burns*, No. 0605017137, 2007 Del. Super. LEXIS 269 (Del. Super. Ct. Sept. 11, 2007)
- *State v. Colasuonno*, 432 A.2d 334 (Del. Super. Ct. 1981)
- *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060 (Del. Super. Ct. Feb. 5, 1987)
- *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27 (Del. Super. Ct. Feb. 25, 2002)

- *State v. Fink*, No number in original, 2001 Del. Super. LEXIS 188 (Del. Super. Ct. Mar. 30, 2001)
- *State v. Gria*,<sup>++</sup> No number in original, 1998 Del. Super. LEXIS 5 (Del. Super. Ct. Feb. 10, 1998)
- *State v. Gronenthal*,<sup>+++</sup> No. 9807001798, 2005 Del. Super. LEXIS 215 (Del. Super. Ct. June 3, 2005)
- *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84 (Del. Super. Ct. Mar. 26, 2002)
- *State v. Jones*,<sup>+++</sup> No number in original, 1996 Del. Super. LEXIS 314 (Del. Super. Ct. May 29, 1996)
- *State v. Magner*,<sup>++</sup> 732 A.2d 234 (Del. Super. Ct. 1997)
- *State v. McGraw*, No. 0106019765, 2002 Del. Super. LEXIS 339 (Del. Super. Ct. May 16, 2002)
- *State v. Pandiscio*, No. IN 89-09-0581R2, 1995 Del. Super. LEXIS 233 (Del. Super. Ct. May 17, 1995)
- *State v. Santiago*,<sup>+++</sup> No. 94M-04-037, 1994 Del. Super. LEXIS 402 (Del. Super. Ct. June 7, 1994)
- *State v. Sisson*, 883 A.2d 68 (Del. Super. Ct. 2005)
- *State v. Sisson*, 883 A.2d 868 (Del. Super. Ct. 2005)
- *State v. Sisson*, No. 0403019957, 2005 Del. Super. LEXIS 111 (Del. Super. Ct. Apr. 7, 2005)
- *State v. Thomas*,<sup>+++</sup> No. 0609003631, 2007 Del. Super. LEXIS 75 (Del. Super. Ct. May 29, 2007)
- *State v. Tucker*,<sup>+++</sup> No. 0608016366, 2007 Del. Super. LEXIS 100 (Del. Super. Ct. Apr. 10, 2007)
- *State v. Wilson*, No. IN 89-05-1397, 1992 Del. Super. LEXIS 94 (Del. Super. Ct. Feb. 18, 1992)
- *Stewart v. State*, No. 07M-10-078 PLA, 2008 Del. Super. LEXIS 134 (Del. Super. Ct. Apr. 10, 2008)

### C. Sussex

- *State v. Dorn*, No. 92-11-0145, 1993 Del. Super. LEXIS 219 (Del. Super. Ct. June 7, 1993)
- *State v. Dorn*, No. S 87-01-8001, 1989 Del. Super. LEXIS 424 (Del. Super. Ct. Nov. 3, 1989)
- *State v. Leighton*, No. S 95-11-095, 1996 Del. Super. LEXIS 250 (Del. Super. Ct. May 13, 1996)
- *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471 (Del. Super. Ct. June 6, 2000)

## IV. Family Court of Delaware: Newcastle

- *In re Charles G.*, No. JN 91-0452, 1991 Del. Fam. Ct. LEXIS 35 (Del. Fam. Ct. Sept. 10, 1991)

**V. Court of Common Pleas of Delaware:**

**A. New Castle**

- *State v. Cintron*,<sup>++</sup> No. 0208022221, 2003 Del. C.P. LEXIS 53 (Del. C.P. Nov. 26, 2003)

**B. Sussex**

- *State v. Thompson*,<sup>+</sup> No. 0503015897, 2005 Del. C.P. LEXIS 37 (Del. C.P. Sept. 16, 2005)

# DELAWARE

## *Case Highlights*

*A case with + indicates a decision that has not been designated for publication.*

*A case with ++ indicates the subject matter of the case is not child sexual exploitation, but nonetheless the principle presented may still apply.*

*Acosta v. State*, 417 A.2d 373 (Del. 1980)

Delaware's second-degree rape statute, as it existed in 1980, reads as follows: "A male is guilty of rape in the second degree when he intentionally engages in sexual intercourse with a female without her consent." The court found the statute not to be sexually discriminatory and, therefore, the equal protection clause of the Fourteenth Amendment of the Constitution was not violated.

*Atamian v. Hawk*, ++ 842 A.2d 654 (Del. Super. Ct. 2003)

Because the state trooper did not request or direct a security guard's search of the plaintiff, and the security guard had an independent motive of ensuring the safety of a hospital, the search at issue was not governmental action but a private search.

*Backus v. State*, ++ 845 A.2d 515 (Del. 2004)

Despite defendant's argument that police only had stale information about him, the court found that due to the officer's belief that defendant was about to engage in criminal activity, the police officer had a right to stop defendant. Further, the fact that guns are not subject to deterioration makes the passage of time less significant.

*Bates v. State*, ++ 386 A.2d 1139 (Del. 1978)

While the legislature recognizes the affirmative defense of insanity and the mitigating defense of extreme emotional distress, the Delaware Supreme Court would not accept the concepts of diminished capacity or partial insanity for fear of establishing judge-made rules of evidence.

*Bryson v. State*, +++ No. 100, 2003 Del. LEXIS 45 (Del. Jan. 16, 2003)

Mistake of law is an affirmative defense that is recognized when the defendant demonstrates and proves that he or she has been misled by information received from the State.

*Clark v. State*, No. 417, 2006 Del. LEXIS 222 (Del. May 2, 2006)

Although it is not necessary for the court to instruct the jury that the time when the crime occurred is not an essential element of the charged offense, it became necessary in this case when the defendant informed the court that he was going to seek acquittal based on the timing argument.

*Colon v. State*,<sup>++</sup> 900 A.2d 635 (Del. 2006)

Defendant's motion to reduce his sentence was time-barred, as he did not allege any extraordinary circumstances that justified considering his motion more than 90 days after sentencing.

*Dorman v. State*,<sup>++</sup> No. 434, 1992 Del. LEXIS 94 (Del. Jan. 27, 1992)

When a defendant him- or herself brings up his or her history of prior behavior, the State may question the defendant about previous convictions because he or she "opened the door" to this line of questioning.

*Fink v. State*, 817 A.2d 781 (Del. 2003)

Each depiction or picture of child pornography is a crime against the child and an offense to society; therefore, possession of multiple photographs equals multiple violations of the possession and dealing statutes.

*Franks v. Delaware*,<sup>++</sup> 438 U.S. 154 (1978)

Where a defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in a search-warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment of the U.S. Constitution requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

*Fuller v. State*, 844 A.2d 290 (Del. 2004)

The special nature of the probationary relationship and the conditions imposed on defendant under that relationship justified officers' search of defendant, despite the fact the officers may not have complied with every provision of the procedures governing searches of probationers.

*Getz v. State*, 538 A.2d 726 (Del. 1988)

The defendant was charged with the first-degree rape of his daughter. The State wished to present evidence of the defendant's sexual contact with his daughter on prior occasions; however, the evidence constituted an abuse of discretion because: (1) no evidential purpose was served by proof that the defendant committed other intentional criminal acts of the same type; (2) the sexual misconduct evidence was not admissible under the common plan or scheme exception; and (3) the State could not seek to impart a blanket exception to a classification of criminal offenses without regard to the materiality requirement.

*Harris v. State*,<sup>+++</sup> 806 A.2d 119 (Del. 2002)

Probable cause exists where the known facts and circumstances are sufficient to warrant a person of reasonable prudence in the belief that contraband or evidence of a crime will be found.

*Harrison v. State*,<sup>++</sup> 442 A.2d 1377 (Del. 1982)

Entrapment is a defense when there exists wrongdoing of the law-enforcement officer who originates the idea of the crime and then induces another person to engage in conduct constituting such a crime when the other person is not otherwise disposed to do so.

*Hoyle v. State*,<sup>+</sup> No. 320, 2008 Del. LEXIS 63 (Del. Feb. 11, 2008)

The victim's testimony that defendant digitally penetrated her vagina and touched her breasts when she was 15-years-old was sufficient to establish each element of second degree unlawful sexual contact.

*In re Charles G.*, No. JN 91-0452, 1991 Del. Fam. Ct. LEXIS 35 (Del. Fam. Ct. Sept. 10, 1991)

The defendant, a 10-year-old male, was charged with unlawful sexual contact in the second degree. The victim was five years old. In order for the defendant to be convicted of both assault in the third degree and unlawful sexual contact in the second, he must have formed the requisite intent; however, because the defendant was 10 years old, his sexual interest was not that of a person who was past puberty. Consequently, there was no intent or knowing causation because the actual result was outside the defendant's contemplation.

*Jackson v. State*,<sup>++</sup> 821 A.2d 881 (Del. 2003)

Probation cannot be revoked in the absence of a violation of an express condition of probation or of a condition so clearly implied that the probationer can be said to have notice of it.

*James v. State*,<sup>++</sup> No. 340, 1985 Del. LEXIS 583 (Del. Aug. 7, 1985)

A search warrant must state facts sufficient to warrant a reasonable person's belief that seizable property will be found at the stated place.

*Jeffers v. State*, 934 A.2d 908 (Del. 2007)

Because the officer observed a gun in a car, another officer received notice that defendant was the driver of the car, and defendant had a prior felony conviction that prevented him from possessing firearms, the police had probable cause to arrest the defendant without a warrant.

*Johnson v. State*, No. 576, 2007 Del. LEXIS 190 (Del. Apr. 25, 2007)

The appeals court found that the State presented evidence from which a jury could rationally conclude the defendant had intercourse with the 15-year-old victim; due to their ages, it was determined to be non-consensual.



*Jones v. State*,<sup>++</sup> No. 486, 2003 Del. LEXIS 85 (Del. Feb. 14, 2003)

The superior court may consider a motion to reduce a sentence only if the motion is made within 90 days after the sentence is imposed or upon a showing of extraordinary circumstances.

*Jones v. State*,<sup>++</sup> No. 253, 1992 Del. LEXIS 181 (Del. May 7, 1992)

The defendant must prove his or her burden that he or she acted under extreme emotional distress by a preponderance of the evidence. He or she must also prove that there is a reasonable explanation for the existence of extreme emotional distress in order to be entitled to an instruction to the jury on the extreme emotional distress defense.

*Keichline v. State*, No. 490, 1991 Del. LEXIS 306 (Del. Aug. 22, 1991)

The jury can infer first-degree rape and unlawful sexual intercourse from the victim's testimony that she was told her family would be evicted if she told anyone about the crimes and from a physician's testimony that the victim had a large vaginal opening for her age. Additionally, the jury can infer attempted first-degree rape and attempted unlawful sexual intercourse when the victim testified that the defendant would want to "put his thing inside her."

*Kemske v. State*, No. 168, 2007 Del. LEXIS 1 ( Del. Jan. 2, 2007)

In order for a jury to find a defendant guilty of Sexual Exploitation of a Child, the State must prove that the defendant filmed or photographed the child engaging in a prohibited sexual act.

*Kenton v. State*, No. 456, 1999 Del. LEXIS 336 (Del. Oct. 20, 1999)

Evidence of past domestic abuse against a person other than the subject of the present charge has limited if any relevance to a charge of first-degree assault and endangering the welfare of a child.

*Kipp v. State*,<sup>++</sup> 704 A.2d 839 (Del. 1997)

In very narrow circumstances, mistake of law can be a defense to a criminal charge.

*LeGrande v. State*,<sup>++</sup> 947 A.2d 1103 (Del. 2008)

The court found that the information corroborated did not show the tipster knew the defendant was involved in concealed criminal activity, and the information in the affidavit was insufficient to show probable cause.

*Lewis v. State*,<sup>++</sup> No. 273, 1990 Del. LEXIS 93 (Del. Mar. 19, 1990)

The task of the magistrate issuing a search warrant is to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

*McAllister v. State*,<sup>+++</sup> 807 A.2d 1119 (Del. 2002)

Warrantless searches conducted with consent represent an exception to the warrant requirement. In order to be valid, consent must be voluntary and given by a person with the authority to do so.

*Naughton v. State*, 453 A.2d 796 (Del. 1981)

Because the federal offense to which the defendant entered a guilty plea (mailing “photocopies of obscene, lewd, lascivious, indecent, filthy, and vile photographs”) and the four state counts of sexual exploitation of a child each contain factual elements not included in the other and the law defining each is intended to prevent a substantially different harm, the State is not barred from prosecuting the defendant.

*Phipps v. State*, No. 105, 1996 Del. LEXIS 95 (Del. Feb. 16, 1996)

In cases where a child victim is unable to recall the exact date of the crime, the State need only give a “reasonable time frame” within which the offense allegedly occurred.

*Pritchard v. State*, No. 280, 2004 Del. LEXIS 61 (Del. Feb. 4, 2004)

The court agreed with the vast majority of jurisdictions in upholding statutory rape laws that deny the mistake-of-age defense and determined that Del. Code Ann. tit. 11 §762 constitutes a proper exercise of Delaware’s police power to protect children from sexual predators.

*Reeder v. State*,<sup>++</sup> No. 552, 2001 Del. LEXIS 133 (Del. Mar. 26, 2001)

Warrantless searches of an individual’s home require that law enforcement has probable cause to believe that the fruit or instrumentality of a crime is within the home and that exigent circumstances require immediate search to prevent the destruction of the evidence.

*Reid v. State*, No. 247, 2005 Del. LEXIS 492 (Del. Nov. 30, 2005)

The Court determined that the trial court did not err in not allowing defendant to use a witness’ juvenile adjudication of delinquency for burglary for impeachment purposes. Although burglary is a crime of dishonesty, it can be distinguished from false statements, fraud, or perjury, and the admission of the witness’ juvenile adjudication of delinquency was not necessary for a fair determination of defendant’s guilt or innocence.

*Rhodes v. State*,<sup>+++</sup> No. 597, 2003 Del. LEXIS 278 (Del. May 16, 2003)

The Delaware Rules of Evidence generally exclude juvenile adjudications of delinquency for impeachment purposes; however, in a criminal case a court may allow evidence of juvenile adjudications of delinquency of a witness other than the accused.

*Ruiz v. State*,<sup>++</sup> No. 463, 2003 Del. LEXIS 200 (Del. Apr. 1, 2003)

Evidence of other crimes, wrongs, or acts is inadmissible to prove the character of a person. Admission of other crimes, wrongs, or acts is allowed for purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or absence of accident.

*Scott v. State*,<sup>++</sup> No. 127, 1992 Del. LEXIS 494 (Del. Dec. 18, 1992)

In assessing the sufficiency of a search warrant's description of property, it is enough if the description is such that the officer with the search warrant can, with reasonable effort, ascertain and identify the place intended. When the warrant describes the occupant or owner of the place to be searched, that description generally prevails over any listed street name or apartment number.

*Shantz v. State*,<sup>++</sup> 344 A.2d 245 (Del. 1975)

Probable cause for an arrest may rest on hearsay, but it must include a report by an informant who meets a two-fold test of reliability.

*Sisson v. State*, 903 A.2d 288 (Del. 2006)

In viewing the magistrate's probable cause determination with great deference, the court found the magistrate had a substantial basis for determining there was probable cause child pornography existed on the defendant's computer. Also, due to the nature of child pornography, the less-than-three-month time period did not render the information in the warrant stale. Further, the AOL screenname that the Internet Service Provider gave law enforcement was enough to establish a nexus between the defendant's residence and computer and the intercepted images of child pornography.

*Spry v. State*, No. 388, 1992 Del. LEXIS 358 (Del. Sept. 22, 1992)

"Child" means an individual 18 years or less.

*State v. Benge*,<sup>++</sup> No. 0210012355, 2003 Del. Super. LEXIS 245 (Del. Super. Ct. June 26, 2003)

Because police officers' warrantless search of a bag defendant left in an inn's office was a significant expansion of defendant's relative's search; the evidence obtained through the search was suppressed.

*State v. Burns*, No. 0605017137, 2007 Del. Super. LEXIS 269 (Del. Super. Ct. Sept. 11, 2007)

The testimony of one victim, in which she discussed "penetration" and "sexual intercourse," was sufficient to support a rape charge against the defendant.

*State v. Cintron*,<sup>++</sup> No. 0208022221, 2003 Del. C.P. LEXIS 53 (Del. C.P. Nov. 26, 2003)

There were no statements in the affidavit linking the defendant to the property or evidence to demonstrate probable cause. Therefore, because there was no finding of probable cause, the evidence had to be suppressed.

*State v. Colasuonno*, 432 A.2d 334 (Del. Super. Ct. 1981)

A person is guilty of obscenity when he or she allows a person under 12 years of age to be on the premises where material harmful to minors is sold.

*State v. Dittie*, No. 56, 1987 Del. LEXIS 1178 (Del. July 6, 1987)

Where one is charged with dealing in child pornography solely because there is transportation or carrying of the pornography out of his or her home, the charge may be erroneous without further evidence that the defendant is actually "dealing in" child pornography.

*State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060 (Del. Super. Ct. Feb. 5, 1987)

The defendant could not be convicted of unlawfully dealing in material depicting a child engaging in a prohibited sexual act because the State failed to show beyond a reasonable doubt that the defendant was moving the material within his possession with the intent to transfer possession of or title to the material to others.

*State v. Dorn*, No. 92-11-0145, 1993 Del. Super. LEXIS 219 (Del. Super. Ct. June 7, 1993)

A magistrate may issue a search warrant to search for evidence relevant to other crimes against children when the warrant establishes: (1) that pedophiles commit ongoing sexual crimes against numerous victims who are minor children; (2) what items pedophiles keep that evidence their crimes; (3) that the defendant was known by law enforcement to keep such items in the past; and (4) when the defendant committed ongoing sexual crimes against a minor victim.

*State v. Dorn*, No. S 87-01-8001, 1989 Del. Super. LEXIS 424 (Del. Super. Ct. Nov. 3, 1989)

The defendant moved to suppress evidence consisting of photographs of the minor victim and photography equipment. The photographs were taken between the summer of 1982 and the spring of 1985. The abuse was not reported until the spring of 1986. The defendant contended the information that prompted the warrant was stale as the alleged crimes occurred two years prior to the search-warrant application. The court found that the warrant was not stale and probable cause still existed because pictures are taken to memorialize an event and not made to be destroyed.

*State v. Eisenback*, No. 0401006193, 2004 Del. Super. LEXIS 385 (Del. Super. Ct. Nov. 30, 2004)

Because the defendant testified that he viewed the pornographic images of the children immediately after he abused the victims in order to achieve an orgasm, there was a sufficient link between all the counts against the defendant to be considered part of the same act or transaction or a common scheme or plan; motion to sever was denied.

*State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27 (Del. Super. Ct. Feb. 25, 2002)

A warrant must describe the place to be searched and the person or thing to be seized with particularity. There must be a logical nexus between the items seized and the place to be searched.

*State v. Fink*, No number in original, 2001 Del. Super. LEXIS 188 (Del. Super. Ct. Mar. 30, 2001)

Because computer files can be disguised or masked in order to conceal their contents, one is unable to infer what the file actually contains; therefore, it may be necessary to look at the contents of every file.

*State v. Gria*,<sup>++</sup> No number in original, 1998 Del. Super. LEXIS 5 (Del. Super. Ct. Feb. 10, 1998)

The 10-day period in which a search warrant must be executed is to be computed by excluding the day on which the search warrant is issued and including the day the warrant is executed.

*State v. Gronenthal*,<sup>++</sup> No. 9807001798, 2005 Del. Super. LEXIS 215 (Del. Super. Ct. June 3, 2005)

Defendant asserted ineffective assistance of counsel for failure to present the defense of extreme emotional distress. The Court determined that even if defendant counsel's failure to present this defense fell below the standard of reasonable level of assistance, the defendant did not show that but for this allegedly ineffective assistance, there would have been a different result.

*State v. Hartman*, No number in original, 2000 Del. Super. LEXIS 400 (Del. Super. Ct. Aug. 24, 2000)

Where there is evidence that a defendant showed the victim child-pornography images on his or her computer monitor to solicit the child into participating in prohibited sexual acts, and when such acts result, it is proper for the charges of sexual solicitation of a child, unlawful sexual intercourse, and unlawful sexual contact to be tried together because the counts involve the same sexual act and the charges are "inextricably intertwined."

*State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84 (Del. Super. Ct. Mar. 26, 2002)

When there is evidence that a victim was shown child pornography in order to groom him or her for future sexual relationships with the defendant, and when the defendant admits that showing the victim such pictures was a part of his or her overall plan to seduce the victim, these circumstances cause the crimes to be connected and thus joined at trial. In this case, the simultaneous prosecution of possession and dealing in child pornography did not result in double jeopardy because the State used different child-pornography images for each charge.

*State v. Jones*,<sup>++</sup> No number in original, 1996 Del. Super. LEXIS 314 (Del. Super. Ct. May 29, 1996)

An improper identification of the location to be searched will not support a warrant.

*State v. Leighton*, No. S 95-11-095, 1996 Del. Super. LEXIS 250 (Del. Super. Ct. May 13, 1996)

To establish the offense of continuous sexual abuse of a child, the State must prove that the defendant committed three predicate acts of sexual conduct with a child under the age of 14 within a period of at least three months.

*State v. Magner*,<sup>++</sup> 732 A.2d 234 (Del. Super. Ct. 1997)

The defense of extreme emotional distress calls for a bifurcated analysis consisting of an objective and subjective inquiry. The question of whether there is a reasonable explanation or excuse for the existence of the extreme emotional distress encompasses the objective test. The subjective test lies in the reasonableness or excuse determined from the viewpoint of a reasonable person in the accused's situation under the circumstances the accused believes them to be.

*State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471 (Del. Super. Ct. June 6, 2000)

A person is guilty of unlawful sexual intercourse in the first degree when he or she intentionally engages in sexual intercourse with someone less than 16 years of age and the defendant is not the victim's voluntary social companion.

*State v. McGraw*, No. 0106019765, 2002 Del. Super. LEXIS 339 (Del. Super. Ct. May 16, 2002)  
The defendant was charged with unlawfully dealing in child pornography and unlawful sexual contact in the third degree. The court granted the defendant's motion to sever because: (1) the offenses sought to be severed are not of the same or similar character to justify joinder; (2) the offenses are not part of the same act or transaction; and (3) the defendant established that he may suffer unfair prejudice by the joinder of offenses.

*State v. Pandiscio*, No. IN 89-09-0581R2, 1995 Del. Super. LEXIS 233 (Del. Super. Ct. May 17, 1995)

Sexual intercourse is without consent when the victim is less than 16 years old.

*State v. Phillips*,<sup>++</sup> 366 A.2d 1203 (Del. Super. Ct. 1976)

Search warrants must be specific as to prevent law-enforcement officers from conducting exploratory searches; however, items not in the warrant may be seized when they are in plain view and the officer had a right to be there to see that item.

*State v. Poli*,<sup>++</sup> 390 A.2d 415 (Del. 1978)

Probable cause may be based on hearsay information (*i.e.*, an unidentified informant's tip) where it is shown that the tip is reliable and trustworthy.

*State v. Santiago*,<sup>++</sup> No. 94M-04-037, 1994 Del. Super. LEXIS 402 (Del. Super. Ct. June 7, 1994)

A motion by the State for criminal forfeiture must be filed no later than 20 days before the trial of the criminal offense.

*State v. Seward*,<sup>++</sup> No. 0608023596, 2007 Del. Super. LEXIS 192 (Del. Super. Ct. Apr. 11, 2007)

Officers' belief that defendant would imminently remove or destroy the contraband in his possession was reasonable based on the circumstances, and, therefore, the state established that there were exigent circumstances which justified the warrantless entry into defendant's home.

*State v. Sisson*, 883 A.2d 68 (Del. Super. Ct. 2005)

The crime of Sexual Exploitation occurs each time the defendant creates a "visual depiction" of a child engaged in a prohibited sexual act. Despite defendant's claim that the pictures were a product of a single photo shoot, each digital image equaled a separate count of sexual exploitation.

*State v. Sisson*, 883 A.2d 868 (Del. Super. Ct. 2005)

A screen name provided by an Internet Service Provider was enough for a finding of probable cause, and the information provided by the Provider was sufficiently reliable without law enforcement corroboration for purposes of the warrant. Therefore, under the "four-corners" test, there was probable cause for the warrant.

*State v. Sisson*, No. 0403019957, 2005 Del. Super. LEXIS 111 (Del. Super. Ct. Apr. 7, 2005)

The court concluded that even though some evidence of the images of child pornography found on defendant's computer would likely be admissible to prove the sexual exploitation charges against defendant, admission of that evidence at a joint trial of all charges would have caused substantial unfair prejudice to defendant. The sexual exploitation charges were severed and tried separately from the remaining charges.

*State v. Thomas*,<sup>+</sup> <sup>++</sup> No. 0609003631, 2007 Del. Super. LEXIS 75 (Del. Super. Ct. May 29, 2007)

The warrant requirement is relaxed when law enforcement seeks to search a probationer's residence, and probationers do not enjoy the "absolute liberty," but have conditional liberty properly dependent on observance of special [probation] restrictions."

*State v. Thompson*,<sup>+</sup> No. 0503015897, 2005 Del. C.P. LEXIS 37 (Del. C.P. Sept. 16, 2005)

If the State can not satisfy all of the *Getz* factors, the evidence of prior bad acts is inadmissible, and here, the Court found that the State could not satisfy any of the *Getz* factors.

*State v. Tucker*,<sup>+</sup> <sup>++</sup> No. 0608016366, 2007 Del. Super. LEXIS 100 (Del. Super. Ct. Apr. 10, 2007)

The probation officer did not have to seek out defendant probationer's consent before searching defendant's residence, as the search was something defendant consented to as a condition of his probation.

*State v. White*, No. 0102019515, 2002 Del. Super. LEXIS 66 (Del. Super. Ct. Mar. 1, 2002)

Even when redacted copies of the computer hard drives have been created, inspection must still take place in Delaware because there is no guarantee that all pornography can be redacted.

*State v. White*, No. 0102019515, 2001 Del. Super. LEXIS 513 (Del. Super. Ct. Dec. 28, 2001)

Because child pornography cannot be transported across state lines, inspection of computer hard drives, computer disks, and digital cameras, must take place in Delaware.

*State v. Wilson*, No. IN 89-05-1397, 1992 Del. Super. LEXIS 94 (Del. Super. Ct. Feb. 18, 1992)

Since matters of felonious conduct between family members are not required by law to be heard in family court, the prosecutor had the discretion to charge the defendant, who was indicted on two counts of unlawful sexual intercourse in the first degree due to sexual conduct with his daughter, with a more serious crime because the prosecutor had probable cause to believe that the defendant's conduct satisfied the elements of a felony statute and because the prosecutor's reasons for doing so were not based on an arbitrary or unjustifiable standard.

*Stewart v. State*, No. 07M-10-078 PLA, 2008 Del. Super. LEXIS 134 (Del. Super. Ct. Apr. 10, 2008)

The goal of the Delaware Legislature is to punish adults who sexually victimize teenagers but excuse sexual contact between teenagers.

*Webb v. State*, No. 95, 2006 Del. LEXIS 546 (Del. Oct. 18, 2006)

Defendant testified that he thought the 13-year-old girl he had sex with was her mother, his girlfriend. Therefore, the daughter's rebuttal testimony about prior sexual encounters she had with defendant was admissible to negate the claim of mistake.

*Winters v. State*, No. 181, 2004 Del. LEXIS 390 (Del. Sept. 8, 2004)

Defendant was convicted of sexual exploitation of a child after he forced a 15-year-old girl into his car after he unsuccessfully propositioned her. In Delaware, it is a crime to knowingly solicit any child who has not yet reached his or her 16<sup>th</sup> birthday, and defendant's mistake of fact concerning the victim's age is not a defense.

*Viridin v. State*,<sup>++</sup> 780 A.2d 1024 (Del. 2001)

A search or seizure conducted by a private party does not violate the Fourth Amendment; however, when a private party conducts a search as an instrument or agent of the government the Fourth Amendment will apply.



# DELAWARE

## *Offenses Defined*

### **I. Child Pornography (a.k.a. Sexual Exploitation of a Child)**

#### **A. Photographing or Filming**

- A person is guilty of “sexual exploitation of a child” when he or she photographs or films a child engaging in a prohibited sexual act. DEL. CODE ANN. tit. 11, § 1108.
  - *Kemske v. State*, No. 168, 2007 Del. LEXIS 1 ( Del. Jan. 2, 2007).
  - *Keichline v. State*, No. 490, 1991 Del. LEXIS 306, \*8 (Del. Aug. 22, 1991).
  - *Naughton v. State*, 453 A.2d 796, 797 (Del. 1981).
  - *State v. Sisson*, 883 A.2d 68, 69 (Del. Super. Ct. 2005).

#### **B. Possession of Child Pornography**

- Possession of child pornography occurs when one possesses a visual depiction of a child engaged in a prohibited sexual act. DEL. CODE ANN. tit. 11, § 1111.
  - *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84, \*5 (Del. Super. Ct. Mar. 26, 2002).

##### **1. “Prohibited Sexual Act” Defined**

- “Prohibited sexual act” includes:
  - (1) sexual intercourse;
  - (2) anal intercourse;
  - (3) masturbation;
  - (4) bestiality;
  - (5) sadism;
  - (6) masochism;
  - (7) fellatio;
  - (8) cunnilingus;
  - (9) nudity, if such nudity is to be depicted for the purpose of sexual stimulation or the sexual gratification of any individual who may view such depiction;
  - (10) sexual contact;
  - (11) lascivious exhibition of the genitals or public area of any child;
  - (12) any other act which is intended to be a depiction or simulation of a prohibited sexual act. DEL. CODE ANN. tit. 11, § 1103.
  - *Fink v. State*, 817 A.2d 781, 789 (Del. 2003).

## 2. “Sexual Contact” Defined

- “Sexual contact” is defined as
  - “any intentional touching by the defendant of the anus, breast, buttocks or genitalia of another person; or
  - any intentional touching of another person with the defendant’s anus, breast, buttocks, or genitalia; or
  - intentionally causing or allowing another person to touch the defendant’s anus, breast, buttocks, or genitalia which touching, under the circumstances as viewed by a reasonable person, is intended to be sexual in nature. Sexual contact shall also include touching when covered by clothing.” DEL. CODE ANN. tit. 11, § 761(e).
    - *Johnson v. State*, No. 576, 2007 Del. LEXIS 190, \*5 n.5 (Del. Apr. 25, 2007).
    - *Keichline v. State*, No. 490, 1991 Del. LEXIS 306, \*8 (Del. Aug. 22, 1991).

## C. Unlawfully Dealing in Child Pornography

- Any person is guilty of dealing in child pornography when he or she, by means of a computer, intentionally complies, enters, accesses, transmits, receives, disseminates, stores, makes, prints, reproduces, or otherwise possesses any photograph, image, file, data, or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act. DEL. CODE ANN. tit. 11, § 1109.
  - *State v. Dittie*, No. 56, 1987 Del. LEXIS 1178, \*1 (Del. July 6, 1987).
  - *State v. McGraw*, No. 0106019765, 2002 Del. Super. LEXIS 339, \*3 (Del. Super. Ct. May 16, 2002).
  - *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060, \*2 (Del. Super. Ct. Feb. 5, 1987).
- Unlawfully dealing in child pornography first prohibits the shipment, mailing, or transporting of child pornography; second, prohibits the receipt of such material for the purpose of selling it; third, prohibits the distribution and dissemination of such material; and finally prohibits the compiling, entering, assessing, transmitting, receiving, exchanging, disseminating, storing, making, printing, reproducing, or otherwise possessing of such material by means of a computer.
  - *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84, \*5 (Del. Super. Ct. Mar. 26, 2002).

### 1. “Dealing in” Defined

- It is the knowing possession of such prohibited material outside the home that is unlawful but only if one “deals in” such material in the sense of being involved in a two-party transaction.
  - *State v. Dittie*, No. 56, 1987 Del. LEXIS 1178, \*2-3 (Del. July 6, 1987).

- The use of the words “dealing in” by the General Assembly indicates that the statute was not intended to reach the unilateral personal possession of material depicting a child engaging in a prohibited sexual act, but rather it was intended to reach those “dealing in” such material and prohibit such conduct.  
– *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060, \*9 (Del. Super. Ct. Feb. 5, 1987).
- One person may by him- or herself “deal with” something, but he or she may not, without an implied inference to some second party, “deal in” something.  
– *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060, \*10 (Del. Super. Ct. Feb. 5, 1987).

## 2. Proving Intent to “Deal in”

- Intent to deal in something might be shown by the mere quantity of material, packaging of material, nature of transport, or other circumstances demonstrating that the material was not for the sole and exclusive personal use of the possessor.  
– *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060, \*10 (Del. Super. Ct. Feb. 5, 1987).

## 3. “Transports” Defined

- A party may be deemed to have “transported” material only where that party has moved that material either with the intention of exposing its contents to others or with the intention of transferring possession of or title to the material to others.  
– *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060, \*10 (Del. Super. Ct. Feb. 5, 1987).

## D. Virtual/Simulated Child Pornography

- Virtual child pornography includes images that appear to depict minors, but are produced without using any real children. The U.S. Supreme Court has declared that prohibiting this type of pornography is unconstitutional, because the depictions are neither obscene under the *Miller v. California* test, nor child pornography under *New York v. Ferber*.  
– *Fink v. State*, 817 A.2d 781, 791 (Del. 2003).
- A person is guilty of “sexual exploitation of a child” when he or she photographs or films a child engaging in the simulation of a prohibited sexual act. DEL. CODE ANN. tit. 11, § 1108.  
– *Keichline v. State*, No. 490, 1991 Del. LEXIS 306, \*8 (Del. Aug. 22, 1991).  
– *Naughton v. State*, 453 A.2d 796, 797 (Del. 1981).

## **E. “Child” Defined**

- Child is defined as an individual 18 years or less or any individual who is intended by the defendant to appear to be 14 years of age or less. DEL. CODE ANN. tit. 11, § 1103.
  - *Spry v. State*, No. 388, 1992 Del. LEXIS 358, \*2-3 (Del. Sept. 22, 1992).
  - *State v. Pandiscio*, No. IN 89-09-0581R2, 1995 Del. Super. LEXIS 233, \*4 (Del. Super. Ct. May 17, 1995).

## **II. Continuous Sexual Abuse of a Child**

- A person is guilty of continuous sexual abuse of a child when, either residing in the same home with the minor child or having recurring access to the child, the person intentionally engages in three or more acts of sexual conduct with a child under the age of 14 years over a period of time not less than three months of duration. DEL. CODE ANN. tit. 11, § 778.
  - *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471, \*3, \*7 (Del. Super. Ct. June 6, 2000).

## **III. Deviate Sexual Intercourse**

- Deviate sexual intercourse means intercourse between persons of the same sex, including intercourse with the mouth or anus.
  - *Acosta v. State*, 417 A.2d 373, 376 (Del. 1980).
- Deviate sexual intercourse is without consent when the victim is less than 16 years old. DEL. CODE ANN. tit. 11, § 767(3).
  - *Acosta v. State*, 417 A.2d 373, 374 (Del. 1980).

## **IV. Obscene Material in the Presence of Minors**

### **A. Elements**

- A person is guilty of obscenity when he or she knowingly permits a person under the age of 12 to be on the premises where material harmful to minors is either sold or made available for commercial distribution and which material is readily accessible to or easily viewed by such minors. DEL. CODE ANN. tit. 11, § 1361(a)(5).
  - *State v. Colasuonno*, 432 A.2d 334, 336 (Del. Super. Ct. 1981).

### **B. “Readily Accessible” Defined**

- Material shall not be considered readily accessible to or easily viewed by minors if it has been placed or otherwise located five feet or more above the floor of the subject premises or if the material is concealed so that no more than the top three inches is visible to the passerby. DEL. CODE ANN. tit. 11, § 1361(a)(5).
  - *State v. Colasuonno*, 432 A.2d 334, 336 (Del. Super. Ct. 1981).

## V. Online Enticement/Solicitation for Travel with the Intent to Engage in Sex with a Minor

No state cases reported.

## VI. Sexual Solicitation of a Child

- An individual is guilty of Sexual Exploitation of a Child “if the person, being 18 years of age or older, intentionally or knowingly solicits . . . any child who has not yet reached his or her sixteenth birthday to engage in a prohibited sexual act.” DEL. CODE ANN. tit. 11, § 1112A(a)(1).  
– *Winters v. State*, No. 181, 2004 Del. LEXIS 390, \*3 (Del. Sept. 8, 2004).
- The sexual solicitation of a child can include the display to a child of homosexual and child-pornography images on a computer monitor.  
– *State v. Hartman*, No number in original, 2000 Del. Super. LEXIS 400, \*3 (Del. Super. Ct. Aug. 24, 2000).

## VII. Unlawful Sexual Intercourse

### A. First Degree

#### 1. Elements

- A person is guilty of unlawful sexual intercourse in the first degree when he or she intentionally engages in sexual intercourse with a victim less than 16 years of age and the defendant is not the victim’s voluntary social companion on the occasion of the crime. DEL. CODE ANN. tit. 11, § 775.  
– *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471, \*2, \*6 (Del. Super. Ct. June 6, 2000).  
– *State v. Leighton*, No. S 95-11-095, 1996 Del. Super. LEXIS 250, \*1 n.1 (Del. Super. Ct. May 13, 1996).  
– *State v. Wilson*, No. IN 89-05-1397, 1992 Del. Super. LEXIS 94, \*3-4 (Del. Super. Ct. Feb. 18, 1992).

#### 2. “Sexual Intercourse” Defined

- “Sexual intercourse” is:
  - (1) any act of physical union of the genitalia or anus of one person with the mouth, anus, or genitalia of another person; or
  - (2) any act of cunnilingus or fellatio regardless of whether penetration occurs. DEL. CODE ANN. tit. 11, § 761(f).  
– *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471, \*2 (Del. Super. Ct. June 6, 2000).

- Sexual intercourse occurs upon any penetration, however slight.
  - *State v. Burns*, No. 0605017137, 2007 Del. Super. LEXIS 269, \*33-34 (Del. Super. Ct. Sept. 11, 2007).
  - *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471, \*2 (Del. Super. Ct. June 6, 2000).
- Ejaculation is not required.
  - *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471, \*2 (Del. Super. Ct. June 6, 2000).

### 3. “Voluntary Social Companion” Defined

- A “voluntary social companion” is any victim who is in an accused’s company on the occasion of the offense as a result of the victim’s exercise of free will, without trickery, coercion, or duress.
  - *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471, \*2 (Del. Super. Ct. June 6, 2000).
- A victim who is less than 16 years of age or who is mentally defective is not the voluntary social companion of an accused in whose custody or care the victim is placed.
  - *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471, \*2 (Del. Super. Ct. June 6, 2000).
- A victim who is less than 12 years of age is not the voluntary social companion of an accused who is 18 years of age or older.
  - *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471, \*2 (Del. Super. Ct. June 6, 2000).

## B. Second Degree

### 1. Elements

- A person is guilty of unlawful sexual contact in the second degree when he or she intentionally has sexual conduct with another person who is less than 16 years of age or causes the victim to have sexual contact with him or her or a third person. DEL. CODE ANN. tit. 11, § 768.
  - *Hoyle v. State*, No. 320, 2008 Del. LEXIS 63, \*3 (Del. Feb. 11, 2008).
  - *In re Charles G.*, No. JN 91-0452, 1991 Del. Fam. Ct. LEXIS 35, \*4-5 (Del. Fam. Ct. Sept. 10, 1991).

### 2. “Sexual Contact” Defined

- “Sexual contact” includes any intentional touching of the anus, breast, buttocks, or genitalia of another person, which touching, under the circumstances, as viewed by a reasonable person, is sexual in nature.
  - *Hoyle v. State*,<sup>+</sup> No. 320, 2008 Del. LEXIS 63, \*4 (Del. Feb. 11, 2008).
  - *In re Charles G.*, No. JN 91-0452, 1991 Del. Fam. Ct. LEXIS 35, \*5 (Del. Fam. Ct. Sept. 10, 1991).

- “Sexual contact” also includes touching of those specified areas when covered by clothing.  
– *In re Charles G.*, No. JN 91-0452, 1991 Del. Fam. Ct. LEXIS 35, \*5 (Del. Fam. Ct. Sept. 10, 1991).

### **C. Third Degree**

- A person is guilty of unlawful sexual contact in the third degree when he or she has sexual contact with another person or causes the victim to have sexual contact with the person or a third person if the person knows that the contact is either offensive to the victim or occurs without the victim’s consent. DEL. CODE ANN. tit. 11, § 767.  
– *State v. McGraw*, No. 0106019765, 2002 Del. Super. LEXIS 339, \*3 (Del. Super. Ct. May 16, 2002).

## **VIII. Transporting Minor for the Purposes of Prostitution**

No state cases reported.

# DELAWARE

## *Search and Seizure of Electronic Evidence*

*A case with + indicates a decision that has not been designated for publication.*

*A case with ++ indicates the subject matter of the case is not child sexual exploitation, but nonetheless the principle presented may still apply.*

### **I. Search Warrants**

#### **A. Probable Cause**

- A search warrant may be issued only upon a showing of probable cause supported by oath or affirmation. Article I, § 6 of the Delaware Constitution provides that a search warrant may be issued only upon a showing of probable cause.  
– *Fink v. State*, 817 A.2d 781, 786 (Del. 2003).
- A search warrant may be issued only upon a showing of probable cause supported by oath or affirmation.  
– *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27, \*9 (Del. Super. Ct. Feb. 25, 2002).

#### **1. When Does Probable Cause Exist?**

- Probable cause exists where the known facts and circumstances are sufficient to warrant a person of reasonable prudence in the belief that contraband or evidence of a crime will be found.  
– *Harris v. State*,<sup>+,++</sup> 806 A.2d 119, 130 (Del. 2002).
- An Internet screen name alone can be sufficient to link the Internet subscriber associated with the screen name to criminal activity for purposes of establishing probable clause.  
– *State v. Sisson*, 883 A.2d 868, 878 (Del. Super. Ct. 2005).

#### **2. Affidavit**

- The affidavit in support of a search warrant must set forth facts adequate for a neutral judicial officer to form a reasonable belief that an offense has been committed and that seizable property would be found in a particular place or on a particular person.  
– *Fink v. State*, 817 A.2d 781, 786 (Del. 2003).



- *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27, \*10-11 (Del. Super. Ct. Feb. 25, 2002).
- *State v. Dorn*, No. 92-11-0145, 1993 Del. Super. LEXIS 219, \*8 (Del. Super. Ct. June 7, 1993).

- The affidavit and application for the warrant shall designate the house, place, conveyance, or person to be searched and shall describe the things or person sought as particularly as may be, and shall state that the complainant suspects such persons or things are concealed in the house, place, conveyance, or person designated and shall recite the facts upon which the suspicion is founded. DEL. CODE ANN. tit. 11, § 2306.

– *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27, \*10 (Del. Super. Ct. Feb. 25, 2002).

- To determine whether adequate facts exist on the face of the affidavit to verify that probable cause existed for issuance of the warrant, the Court must find that a nexus exists between the items that are sought and the place in which the police wish to search; this is called the “four corners test.”

– *State v. Cintron*,<sup>++</sup> No. 0208022221, 2003 Del. C.P. LEXIS 53, \*5 (Del. C.P. Nov. 26, 2003).

- The misidentification of the place where illegal activity occurred is a serious defect in the affidavit.

– *State v. Jones*,<sup>+++</sup> No number in original, 1996 Del. Super. LEXIS 314, \*4 (Del. Super. Ct. May 29, 1996).

- The affidavit must adequately link the suspected person to the premises to be searched.

– *State v. Cintron*,<sup>++</sup> No. 0208022221, 2003 Del. C.P. LEXIS 53, \*7 (Del. C.P. Nov. 26, 2003).

### **3. Magistrate’s Determination of Probable Cause**

#### **a. Totality of the Circumstances**

- In determining whether probable cause to obtain a search warrant existed, the Delaware Supreme Court has adopted a “totality of the circumstances” test.

– *Fink v. State*, 817 A.2d 781, 787 (Del. 2003).

- The “totality of the circumstances test” requires the magistrate to examine factors such as the reliability of the informant, the details contained in the informant’s tip, and the degree to which the tip is corroborated by independent law police surveillance and information.

– *LeGrande v. State*,<sup>++</sup> 947 A.2d 1103, 1108 (Del. 2008).

- The task of the issuing magistrate is to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.  
– *Lewis v. State*,<sup>++</sup> No. 273, 1990 Del. LEXIS 93, \*4-5 (Del. Mar. 19, 1990).
- The knowledge of the magistrate issuing the search warrant may only be determined by and must be limited to the facts contained in the affidavit.  
– *State v. Gria*,<sup>++</sup> No number in original, 1998 Del. Super. LEXIS 5, \*4 (Del. Super. Ct. Feb. 10, 1998).

#### **b. Crimes Against Children**

- The magistrate may issue a warrant to search for evidence relevant to other crimes against children when the warrant establishes:
  - (1) that pedophiles commit ongoing sexual crimes against numerous victims who are minor children;
  - (2) what items pedophiles keep that evidence their crimes;
  - (3) that the defendant was known by the law-enforcement officer to keep such items in the past; and
  - (4) when the defendant committed ongoing sexual crimes against a minor victim.
 – *State v. Dorn*, No. 92-11-0145, 1993 Del. Super. LEXIS 219, \*11 (Del. Super. Ct. June 7, 1993).

#### **c. Reviewing Court**

- The duty of the reviewing court is to simply ensure the magistrate had a substantial basis for concluding there was probable cause; it is not a *de novo* review.  
– *LeGrande v. State*,<sup>++</sup> 947 A.2d 1103, 1108 (Del. 2008).
- The reviewing court must give great deference to the magistrate’s determination that a warrant is supported by probable cause.  
– *State v. Cintron*,<sup>++</sup> No. 0208022221, 2003 Del. C.P. LEXIS 53, \*5-6 (Del. C.P. Nov. 26, 2003).

### **4. Informants**

- An informant’s tip that is corroborated by independent law-enforcement work can form the basis for probable cause, regardless of what is known about the informant’s personal credibility or reliability.  
– *McAllister v. State*,<sup>+++</sup> 807 A.2d 1119, 1124 (Del. 2002).

- The reliability of the informant determines how much corroboration, if any, is necessary to meet the probable cause standard for the issuance of a search warrant.

– *State v. Sisson*, 883 A.2d 868, 879 (Del. Super. Ct. 2005).

**a. Identified Citizen Informant**

- An identified citizen informant carries his or her own credentials for reliability.

– *Shantz v. State*,<sup>++</sup> 344 A.2d 245, 248 (Del. 1975).

- A tip from a named citizen informant does not need corroboration to establish reliability of the information. There is a presumption the information is reliable because citizens have no reason to fabricate criminal activity.

– *State v. Sisson*, 883 A.2d 868, 879-880 (Del. Super. Ct. 2005).

**b. Confidential Informants**

- An anonymous tip, by itself, does not establish probable cause for law enforcement.

– *State v. Sisson*, 883 A.2d 868, 879 (Del. Super. Ct. 2005).

- A tip from a proven reliable confidential informant, coupled with a detective’s observations at the scene, clearly establishes probable cause to arrest.

– *McAllister v. State*,<sup>+++</sup> 807 A.2d 1119, 1124-25 (Del. 2002).

**c. Criminal Informants**

- A tip from a criminal is usually suspect and requires corroboration or other indicia of reliability before probable cause can be established.

– *State v. Sisson*, 883 A.2d 868, 879 (Del. Super. Ct. 2005).

**d. Aguilar-Spinelli Test**

- When an informant is not an assumedly reliable law-enforcement officer or citizen, the *Aguilar-Spinelli* test must be met in order to establish probable cause.

– *Shantz v. State*,<sup>++</sup> 344 A.2d 245, 247-48 (Del. 1975).

- The two prongs of the test are:
  - (1) the magistrate must be satisfied that the affidavit reveals the underlying circumstances from which the informant drew the conclusion that criminal activity had occurred, and

- (2) that there are sufficient reasons for believing that the informant's information is reliable.  
– *Shantz v. State*,<sup>++</sup> 344 A.2d 245, 247-48 (Del. 1975).

**i. Trustworthiness**

- To achieve the legal status of trustworthiness the information must:
  - (1) have been acquired in a reasonable manner, and
  - (2) there must be sufficient reason for believing the informant is credible.– *State v. Poli*,<sup>++</sup> 390 A.2d 415, 419 (Del. 1978).

**ii. Sufficient Detail**

- In the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail that the magistrate may know that he or she is relying on something more than a rumor or an accusation.  
– *State v. Poli*,<sup>++</sup> 390 A.2d 415, 419 (Del. 1978).

**5. Information Provided in the Warrant**

- A warrant must describe with particularity the place to be searched and the person or items to be seized. DEL. CODE ANN. tit. 11, § 2307(a).
  - *Fink v. State*, 817 A.2d 781, 786 (Del. 2003).
  - *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27, \*9 (Del. Super. Ct. Feb. 25, 2002).
- It is not necessary to have concretely proven that the items sought were located in the place to be searched; it is only necessary that the place be where one would normally expect to find those items.
  - *State v. Dorn*, No. 92-11-0145, 1993 Del. Super. LEXIS 219, \*9 (Del. Super. Ct. June 7, 1993).

**a. Description of Property**

- In assessing the sufficiency of a search warrant's description of property, it is enough if the description is such that the officer with the search warrant can, with reasonable effort, ascertain and identify the place intended.
  - *Scott v. State*,<sup>++</sup> No. 127, 1992 Del. LEXIS 494, \*10 (Del. Dec. 18, 1992).
- When the warrant describes the occupant or owner of the place to be searched, that description generally prevails over any listed street name or apartment number.

– *Scott v. State*,<sup>++</sup> No. 127, 1992 Del. LEXIS 494, \*10 (Del. Dec. 18, 1992).

## **b. Reasonable Inferences**

- A neutral and detached magistrate is entitled to draw reasonable inferences from the allegations in the affidavit.
  - *James v. State*,<sup>++</sup> No. 340, 1985 Del. LEXIS 583, \*6 (Del. Aug. 7, 1985).
  - *Sisson v. State*, 903 A.2d 288, 296 (Del. 2006).

## **6. The Defendant’s Burden**

- If a defendant establishes by a preponderance of the evidence that a false statement made knowingly, intentionally, or with reckless disregard for the truth was included in a probable-cause affidavit, and if it was material to establish probable cause, the false information must be excised from the affidavit.
  - *Franks v. Delaware*,<sup>++</sup> 438 U.S. 154, 164-65 (1978).

## **B. Scope of Search Warrant**

- It is well established that there must be a logical nexus between the items sought and place to be searched.
  - *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27, \*11 (Del. Super. Ct. Feb. 25, 2002).

### **1. Seizure of Items Not in a Search Warrant**

- Items within plain view of an officer are subject to seizure and may be introduced into evidence provided the officer has a right to be there; however, there must also be a nexus between the object seized, criminal behavior, and probable cause.
  - *State v. Phillips*,<sup>++</sup> 366 A.2d 1203, 1207 (Del. Super. Ct., 1976).

### **2. Search of Items Not in a Search Warrant**

- While an officer may view each file to determine whether it contains any of the evidence that he or she is authorized to seize, a computer search must not be permitted to degenerate into a search for other objects or a general search.
  - *State v. Fink*, No number in original, 2001 Del. Super. LEXIS 188, \*9 (Del. Super. Ct. Mar. 30, 2001).
- Because files can be disguised or masked in an effort to conceal their contents, it follows that when one reads a file name, one cannot actually draw an inference as to what the file contains.
  - *State v. Fink*, No number in original, 2001 Del. Super. LEXIS 188, \*8 (Del. Super. Ct. Mar. 30, 2001).

- It follows that in order to conduct a complete search for particular evidence in a computer, it may be necessary to take a look at the contents of every file.  
– *State v. Fink*, No number in original, 2001 Del. Super. LEXIS 188, \*8 (Del. Super. Ct. Mar. 30, 2001).
- If officer’s review videotapes to determine if they relate to the known victim and they discover unknown victims, this evidence is admissible even if probable cause did not exist because it would have been discovered inevitably.  
– *State v. Dorn*, No. 92-11-0145, 1993 Del. Super. LEXIS 219, \*12 (Del. Super. Ct. June 7, 1993).

### 3. Overbreadth

- An overbroad warrant has been defined as one that is broader than can be justified by the probable cause on which the warrant is based or one that authorizes in clear or specific terms the seizure of an entire set of items or documents, many of which will prove unrelated to the crime under investigation.  
– *State v. Fink*, No number in original, 2002 Del. Super. LEXIS 27, \*12-13 (Del. Super. Ct. Feb. 25, 2002).

## C. Staleness

### 1. Probable Cause

- The question of staleness of probable cause rests primarily upon the nature of the criminal activity alleged in the affirmation accompanying the warrant.  
– *State v. Dorn*, No. S 87-01-8001, 1989 Del. Super. LEXIS 424, \*16 (Del. Super. Ct. Nov. 3, 1989).
- Statements of dates and times, while instructive, are not dispositive to the ascertainment of the validity of probable cause. Other factors to be considered include the kind of property for which authority to search is sought and whether such evidence is highly incriminating or consumable and thus, likely to remain in one location.  
– *State v. Dorn*, No. S 87-01-8001, 1989 Del. Super. LEXIS 424, \*16 (Del. Super. Ct. Nov. 3, 1989).
- Whether information has become stale due to an impermissible delay in securing a warrant depends upon all the facts viewed in a flexible and practical manner.  
– *State v. Dorn*, No. S 87-01-8001, 1989 Del. Super. LEXIS 424, \*17 (Del. Super. Ct. Nov. 3, 1989).

- Where the evidence concerns criminal activity of a continuous manner or is not subject to deterioration or change because of the passage of time, the passage of time becomes less significant.  
– *Backus v. State*,<sup>++</sup> 845 A.2d 515, 517 (Del. 2004).
- Because people take pictures to memorialize or preserve an event, there is a strong presumption that the incriminating evidence would not disappear; thus this information would not be stale and could validly provide probable cause to issue the warrant.  
– *State v. Dorn*, No. S 87-01-8001, 1989 Del. Super. LEXIS 424, \*17-18 (Del. Super. Ct. Nov. 3, 1989).

## 2. 10-Day Expiration on Search Warrants

- Law enforcement is authorized to search a premises only on the date specified in the search warrant or within 10 days thereafter. DEL. CODE ANN. tit. 11, § 2310(b).  
– *State v. Gria*,<sup>++</sup> No number in original, 1998 Del. Super. LEXIS 5, \*3 (Del. Super. Ct. Feb. 10, 1998).
- The method of time computation prevailing in the courts of Delaware provides that the day of the event is not included, but the last day of the period is included; therefore, the 10-day period does not include the day on which the search warrant was issued.  
– *State v. Gria*,<sup>++</sup> No number in original, 1998 Del. Super. LEXIS 5, \*5-7 (Del. Super. Ct. Feb. 10, 1998).
- Law enforcement is not precluded from executing a search warrant on the same day it was issued.  
– *State v. Gria*,<sup>++</sup> No number in original, 1998 Del. Super. LEXIS 5, \*3 (Del. Super. Ct. Feb. 10, 1998).

### D. Minor Omissions and Inconsistencies

- Scrivener, clerical, or technical errors will not invalidate a warrant.  
– *State v. Fink*, No number in original, 2001 Del. Super. LEXIS 188, \*8 (Del. Super. Ct. Mar. 30, 2001).

## II. Anticipatory Warrants

No state cases reported.

## III. Types of Searches

### A. Civilian Searches

No state cases reported.

## **B. Commission of a Felony**

- A peace officer is authorized to make a warrantless arrest for a felony whenever there is reasonable ground to believe that the person to be arrested has committed a felony. DEL. CODE ANN. tit. 11, § 1904(b)(1).
  - *Jeffers v. State*,<sup>++</sup> 934 A.2d 908, 911 (Del. 2007).
  - *Scott v. State*,<sup>++</sup> No. 127, 1992 Del. LEXIS 494, \*5 (Del. Dec. 18, 1992).
- “Reasonable grounds to believe” means probable cause.
  - *Scott v. State*,<sup>++</sup> No. 127, 1992 Del. LEXIS 494, \*5 (Del. Dec. 18, 1992).

## **C. Consent Searches**

- Searches conducted pursuant to valid consent represent an exception to the warrant requirement.
  - *McAllister v. State*,<sup>+++</sup> 807 A.2d 1119, 1124 (Del. 2002).
- In order to be valid, consent must be voluntary and given by the person with the authority to do so.
  - *McAllister v. State*,<sup>+++</sup> 807 A.2d 1119, 1124 (Del. 2002).

## **D. Employer Searches**

No state cases reported.

## **E. Exigent Circumstances**

- Under the doctrine of exigent circumstances, a warrantless entry into a residence is permissible where the police are threatened with imminent destruction or removal of evidence.
  - *State v. Seward*,<sup>++</sup> No. 0608023596, 2007 Del. Super. LEXIS 192, \*12 (Del. Super. Ct. Apr. 11, 2007).
- Relevant factors concerning the reasonableness of police belief concerning the existence of exigent factors are: (1) the degree of urgency involved and amount of time necessary to obtain a warrant; (2) the reasonable belief that contraband is about to be removed; (3) the possibility of danger to the police officers guarding the site of contraband while a search warrant is sought; (4) information indicating the possessors of contraband are aware that the police are on their trail; and (5) the ready destructibility of the contraband and the knowledge that efforts to dispose of narcotics and to escape are characteristic behavior of persons engaged in the narcotics traffic.
  - *State v. Seward*,<sup>++</sup> No. 0608023596, 2007 Del. Super. LEXIS 192, \*13 (Del. Super. Ct. Apr. 11, 2007).
- Warrantless searches of an individual’s home require that law enforcement has probable cause to believe that the fruit or instrumentality of a crime is



within the home, and exigent circumstances require an immediate search to prevent the destruction of the evidence.

– *Reeder v. State*,<sup>++</sup> No. 552, 2001 Del. LEXIS 133, \*4-5 (Del. Mar. 26, 2001).

## **F. Private Searches**

### **1. Generally**

- A search or seizure conducted by a private party does not implicate the Fourth Amendment.  
– *Viridin v. State*,<sup>++</sup> 780 A.2d 1024, 1030 (Del. 2001).
- Minimal and incidental law-enforcement involvement does not establish a violation of the Fourth Amendment or Article 1, § 6 of the Delaware Constitution. The police must instigate, orchestrate, encourage or exceed the scope of the private search in some affirmative way to trigger the application of the Fourth Amendment.  
– *Viridin v. State*,<sup>++</sup> 780 A.2d 1024, 1033 (Del. 2001).
- When law enforcement is present during a private search in order to keep the peace in case of a confrontation, it is not accurate to say that they merely witness the private search.  
– *Viridin v. State*,<sup>++</sup> 780 A.2d 1024, 1032 (Del. 2001).
- The “significant expansion” rule provides that when a private search occurs, the police may not do a search more extensive than the private one performed unless a specific exception to the warrant requirement exists or a warrant is obtained.  
– *State v. Benge*,<sup>++</sup> No. 0210012355, 2003 Del. Super. LEXIS 245, \*9 (Del. Super. Ct. June 26, 2003).

### **2. When Do Private Searches Become Governmental?**

- When a private party conducts a search as an “instrument or agent” of the government the Fourth Amendment and Article 1, § 6 of the Delaware Constitution apply.  
– *Viridin v. State*,<sup>++</sup> 780 A.2d 1024, 1030 (Del. 2001).
- When the police instigate, orchestrate, encourage or exceed the scope of the private search in some affirmative way, the application of the Fourth Amendment is triggered.  
– *Atamian v. Hawk*,<sup>++</sup> 842 A.2d 654, 659 (Del. Super. Ct. 2003).
- Private searches do not serve as a Trojan horse for investigation that goes beyond the scope of the private search.  
– *Viridin v. State*,<sup>++</sup> 780 A.2d 1024, 1032 (Del. 2001).

- The level of law-enforcement participation may transform a private search into a governmental search. Two critical factors are:
  - (1) whether the government knew or acquiesced in the intrusive conduct, and
  - (2) whether the private party's purpose in conducting the search was to assist law enforcement or further its own ends.
    - *Viridin v. State*,<sup>++</sup> 780 A.2d 1024, 1030 (Del. 2001).
- The defendant bears the burden of proving that the private party was acting as an instrument or agent of the government.
  - *Viridin v. State*,<sup>++</sup> 780 A.2d 1024, 1031 (Del. 2001).

#### **G. University-Campus Searches**

No state cases reported.

#### **IV. Methods of Searching**

No state cases reported.

#### **V. Computer-Technician/Repairperson Discoveries**

No state cases reported.

#### **VI. Photo-Development Discoveries**

No state cases reported.

#### **VII. Criminal Forfeiture**

- When the State seeks to forfeit property of a person charged with a criminal offense pursuant to a statute, authorizing a criminal forfeiture, it shall file a motion for forfeiture no later than 20 days before trial of a criminal offense.
  - *State v. Santiago*,<sup>+ ++</sup> No. 94M-04-037, 1994 Del. Super. LEXIS 402, \*3 (Del. Super. Ct. June 7, 1994).
- The motion must allege the factual and legal basis for forfeiture and the extent of the interest or property subject to forfeiture.
  - *State v. Santiago*,<sup>+ ++</sup> No. 94M-04-037, 1994 Del. Super. LEXIS 402, \*3 (Del. Super. Ct. June 7, 1994).

#### **VIII. Disciplinary Hearings for Federal and State Officers**

No state cases reported.

## IX. Probationer and Parolee Rights

- Probation officers have statutory authority to search a probationer's residence in accordance with procedures established by the Department of Corrections, and it must be based on reasonable grounds. DEL. CODE ANN. tit. 11, § 4231(d).  
– *State v. Tucker*,<sup>++</sup> No. 0608016366, 2007 Del. Super. LEXIS 100, \*10 (Del. Super. Ct. Apr. 10, 2007).
- The reasonableness analysis for a search under the Fourth Amendment of the U.S. Constitution is altered because of a subject's status as a probationer and his limited privacy rights resulting therefrom; this subject's special nature justifies a departure from the usual warrant and probable cause requirements.  
– *Fuller v. State*, 844 A.2d 290, 292 (Del. 2004).  
– *State v. Thomas*,<sup>++</sup> No. 0609003631, 2007 Del. Super. LEXIS 75, \*5-6 (Del. Super. Ct. May 29, 2007).

# DELAWARE

## *Jurisdiction and Nexus*

### **I. Jurisdictional Nexus**

No state cases reported.

### **II. Internet Nexus**

No state cases reported.

### **III. State Jurisdiction, Federal Jurisdiction, Concurrent Jurisdiction**

#### **A. State**

##### **1. Superior Court**

- The Delaware constitution vests general criminal jurisdiction in the superior court. DEL. CONST. art. IV, § 7.  
– *State v. Wilson*, No. IN 89-05-1397, 1992 Del. Super. LEXIS 94, \*4 (Del. Super. Ct. Feb. 18, 1992).
- Only the superior court has jurisdiction over felonies. DEL. CODE ANN. tit. 10, § 922; DEL. CODE ANN. tit. 11, § 2701(c).  
– *State v. Wilson*, No. IN 89-05-1397, 1992 Del. Super. LEXIS 94, \*5 (Del. Super. Ct. Feb. 18, 1992).
- The Superior Court does have jurisdiction over a father who has sexual intercourse with his minor daughter charged with Unlawful Sexual Intercourse in the First Degree; he does not necessarily have to be charged with the specific charge of Incest which is under the exclusive jurisdiction of the Family Court.  
– *Murdter v. State*,<sup>+</sup> 782 A.2d 266 (Del. 2001).

##### **2. Family Court**

- The General Assembly conferred jurisdiction over non-felony offense and criminal cases involving crimes committed by one member of the family against another member of the family in the family court.  
– *State v. Wilson*, No. IN 89-05-1397, 1992 Del. Super. LEXIS 94, \*5 (Del. Super. Ct. Feb. 18, 1992).

- The General Assembly could not and did not confer jurisdiction over a felony offense committed by one family member against another to the family court.  
– *State v. Wilson*, No. IN 89-05-1397, 1992 Del. Super. LEXIS 94, \*5 (Del. Super. Ct. Feb. 18, 1992).

**B. Federal**

No state cases reported.

**C. Concurrent**

No state cases reported.

**IV. Interstate Possession of Child Pornography**

- Child pornography is illegal contraband, and it may not be transported across state lines.  
– *State v. White*, No. 0102019515, 2001 Del. Super. LEXIS 513, \*1-2 (Del. Super. Ct. Dec. 28, 2001).

# DELAWARE

## *Discovery and Evidence*

*A case with + indicates a decision that has not been designated for publication.*

*A case with ++ indicates the subject matter of the case is not child sexual exploitation, but nonetheless the principle presented may still apply.*

### **I. Timely Review of Evidence**

No state cases reported.

### **II. Defense Requests for Copies of Child Pornography**

- Upon request of the defendant the State shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody, or control of the State, and which are material to the preparation of the defendant's defense or are intended for use by the State as evidence in chief at the trial, or were obtained from or belong to the defendant; however, when inspection is authorized for child pornography, it must take place within Delaware, on the premises of a Delaware State Police facility or such other location within the State as the parties agree.  
– *State v. White*, No. 0102019515, 2001 Del. Super. LEXIS 513, \*2 (Del. Super. Ct. Dec. 28, 2001).
- Inspection of a computer hard drive, computer disks, and a digital camera, which the State has seized to examine for child pornography, must take place in Delaware on the premises of a Delaware State Police facility or such other location within the State as the parties agree.  
– *State v. White*, No. 0102019515, 2001 Del. Super. LEXIS 513, \*2-3 (Del. Super. Ct. Dec. 28, 2001).
- Redacted copies of the hard drive may not be transported across state lines because of a concern that the media will still contain child pornography.  
– *State v. White*, No. 0102019515, 2002 Del. Super. LEXIS 66, \*2-3 (Del. Super. Ct. Mar. 1, 2002).

### **III. Introduction of E-mails into Evidence<sup>2</sup>**

#### **A. Hearsay/Authentication Issues**

No state cases reported.

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<sup>2</sup> In *Capano v. State*, 781 A.2d 556 (Del. 1999) and *Sisson v. State*, 903 A.2d 288 (Del. 2006), introduction of E-mail into evidence seemed to occur without discussion or objection.

**B. Circumstantial Evidence**

No state cases reported.

**C. Technical Aspects of Electronic Evidence Regarding Admissibility**

No state cases reported.

**IV. Text-Only Evidence**

**A. Introduction into Evidence**

No state cases reported.

**B. Relevance**

No state cases reported.

**V. Evidence Obtained from Internet Service Providers**

**A. Electronic Communications Privacy Act**

No state cases reported.

**B. Cable Act**

No state cases reported.

**C. Patriot Act**

**1. National Trap and Trace Authority**

No state cases reported.

**2. State-Court-Judge Jurisdictional Limits**

No state cases reported.

**VI. Dates of Alleged Offense**

- The time when the crime occurred is not an essential element of the charged offense.  
– *Clark v. State*, No. 417, 2006 Del. LEXIS 222, \*3 (Del. May 2, 2006).
- It is sufficient if the evidence shows that the alleged offense was committed at any time within the period of the applicable statute of limitations  
– *Clark v. State*, No. 417, 2006 Del. LEXIS 222, \*3 (Del. May 2, 2006).  
– *Phipps v. State*, No. 105, 1996 Del. LEXIS 95, \*3 (Del. Feb. 16, 1996).

- In cases where a child victim is unable to recall the exact date of the crime, the State need only give a reasonable time frame within which the offense allegedly occurred.  
– *Phipps v. State*, No. 105, 1996 Del. LEXIS 95, \*3 (Del. Feb. 16, 1996).

## VII. Prior Bad Acts

### A. Inadmissible

- Evidence of other crimes, wrongs, or acts is not admissible to prove the person committed the charged offense. DEL. R. EVID. 404(b).  
– *Ruiz v. State*,<sup>++</sup> No. 463, 2003 Del. LEXIS 200, \*8 (Del. Apr. 1, 2003).  
– *Dorman v. State*,<sup>++</sup> No. 434, 1992 Del. LEXIS 94, \*5 (Del. Jan. 27, 1992).
- Evidence of prior bad acts may not be offered into evidence to support a general inference of bad character. DEL. R. EVID. 404(b).  
– *Ruiz v. State*,<sup>++</sup> No. 463, 2003 Del. LEXIS 200, \*8 (Del. Apr. 1, 2003).

### B. Admissible

- Evidence of other crimes, wrongs, or acts may be admitted for purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or absence of accident. DEL. R. EVID. 404(b).  
– *Ruiz v. State*,<sup>++</sup> No. 463, 2003 Del. LEXIS 200, \*8 (Del. Apr. 1, 2003).  
– *Dorman v. State*,<sup>++</sup> No. 434, 1992 Del. LEXIS 94, \*5 (Del. Jan. 27, 1992).
- Evidence of prior misconduct is permissible when it has independent logical relevance and when its probative value is not substantially outweighed by the danger of unfair prejudice.  
– *Ruiz v. State*,<sup>++</sup> No. 463, 2003 Del. LEXIS 200, \*8-9 (Del. Apr. 1, 2003).
- Guidelines for admissibility of prior bad-acts evidence are:
  - (1) the evidence must be material to an issue or ultimate fact in dispute in the case;
  - (2) the evidence must be introduced for a purpose allowed under Delaware Rule of Evidence 404(b) or for any other purpose not inconsistent with the basic prohibition against evidence of bad acts;
  - (3) the other crimes must be proved by evidence that is plain, clear, and conclusive;
  - (4) the other crimes must not be too remote in time from the current charged offense;
  - (5) the court must balance the probative value of such evidence against its unfairly prejudicial effect; and
  - (6) the jury should be instructed concerning the purpose for the admission of the evidence.
 – *State v. Thompson*,<sup>+</sup> No. 0503015897, 2005 Del. C.P. LEXIS 37 (Del. C.P. Sept. 16, 2005).  
– *Kenton v. State*, No. 456, 1999 Del. LEXIS 336, \*4 (Del. Oct. 20, 1999).  
– *Getz v. State*, 538 A.2d 726, 734 (Del. 1988).



- Eyewitness testimony is “plain, clear, and conclusive” evidence for purposes of the *Getz* analysis.

– *Webb v. State*, No. 95, 2006 Del. LEXIS 546, \*5 (Del. Oct. 18, 2006).

### **1. The Defendant Testifies**

- A prosecutor may question a defendant’s prior bad acts when the defendant’s direct testimony opens the door to that line of questioning by putting his or her prior behavior in issue.

– *Dorman v. State*,<sup>++</sup> No. 434, 1992 Del. LEXIS 94, \*6-7 (Del. Jan. 27, 1992).

### **2. Evidence of Juvenile Adjudications**

- Delaware Rule of Evidence 609(d) generally excludes evidence of juvenile adjudications of delinquency for impeachment purposes; however, the court in a criminal case may allow evidence of juvenile adjudications of delinquency of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission is necessary for a fair determination of guilt.

– *Reid v. State*, No. 247, 2005 Del. LEXIS 492, \*9 (Del. Nov. 30, 2005).

– *Rhodes v. State*,<sup>+++</sup> No. 597, 2003 Del. LEXIS 278, \*2-3 (Del. May 16, 2003).

## **VIII. Privileges**

No state cases reported.

# **DELAWARE**

*Age of Child Victim*

**I. Proving the Age of the Child Depicted**

No state cases reported.

**II. The Defendant's Knowledge of the Age of the Child Depicted**

No state cases reported.

# DELAWARE

## *Multiple Counts*

### **I. What Constitutes an “Item” of Child Pornography?**

- The clearest reading of the statutes is that each individual “visual depiction” of child pornography that is knowingly “dealt” or possessed by the defendant constitutes the basis for a separate offense under the statutes. DEL. CODE ANN. tit. 11, §§ 1109(4), 1111(1).  
– *Fink v. State*, 817 A.2d 781, 788 (Del. 2003).  
– *State v. Sisson*, 883 A.2d 68, 72 (Del. Super. Ct. 2005).
- Each picture is a crime against the child as well as an offense to society.  
– *Fink v. State*, 817 A.2d 781, 788 (Del. 2003).

### **II. Double Jeopardy: Two Offenses Based on the Same Act or Criminal Transaction**

- Constitutional prohibitions against double jeopardy prohibit the State from charging the same offense repetitively in several counts.  
– *Fink v. State*, 817 A.2d 781, 788 (Del. 2003).
- The rule against multiplicity is not violated and the double-jeopardy clause is not implicated when multiple separate violations of two distinct statutes are charged in multiple counts.  
– *Fink v. State*, 817 A.2d 781, 788 (Del. 2003).  
– *State v. Sisson*, 883 A.2d 68 (Del. Super. Ct. 2005).
- If the State recovers photographs depicting sexual acts by children that have been stored on a computer maintained by the defendant, and attempted to use those same photographs to first charge the defendant of unlawfully dealing in pornography and possession of pornography, a double-jeopardy claim would appear to have merit.  
– *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84, \*6 (Del. Super. Ct. Mar. 26, 2002).

### **III. Joinder**

- Two or more offenses may be joined in the same indictment provided that one of the following circumstances exist:
  - (1) the offenses are of the same or similar character;
  - (2) the offenses are based on the same act or transaction;
  - (3) the offenses are based on two or more connected acts or transactions; or
  - (4) the offenses are based on two or more acts or transactions constituting parts of a common scheme or plan.  
– *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84, \*2 (Del. Super. Ct. Mar. 26, 2002).

## A. Examples

### 1. Joinder

- When a defendant testifies that the pornographic images of the child were used after the defendant abused the victims in order to achieve an orgasm, there is a sufficient link to show that the counts are part of the same act or transaction or common scheme or plan that precludes severance.  
– *State v. Eisenback*, No. 0401006193, 2004 Del. Super. LEXIS 385, \*5-6 (Del. Super. Ct. Nov. 30, 2004).
- When there is evidence that the victim was shown child pornography in order to groom the victim for future sexual relationships with the defendant, and when the defendant admits that he had shown the pictures to the victim as part of his plan to seduce him, the crimes of rape in the second degree, unlawfully dealing in child porn, and possession of child porn are connected and thus should be tried together.  
– *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84, \*3-4 (Del. Super. Ct. Mar. 26, 2002).

### 2. No Joinder

- When different counts involve the same alleged sex act as one of their elements and involve essentially one single event, it appears that the counts are so inextricably intertwined that it would be virtually impossible for the State to present evidence as to any of the counts without presenting evidence with respect to all of them; therefore, the charges should be tried together.  
– *State v. Hartman*, No number in original, 2000 Del. Super. LEXIS 400, \*5-6 (Del. Super. Ct. Aug. 24, 2000).

## B. Severability

- The joinder rule is not absolute.  
– *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84, \*2-3 (Del. Super. Ct. Mar. 26, 2002).

### 1. Prejudice

- If it appears that either the defendant or the State is prejudiced by the joinder of offenses in an indictment, the court may, in its discretion, sever the offenses and order separate trials.  
– *State v. Sisson*, No. 0403019957, 2005 Del. Super. LEXIS 111, \*6-14 (Del. Super. Ct. Apr. 7, 2005).  
– *State v. Eisenback*, No. 0401006193, 2004 Del. Super. LEXIS 385, \*2-3 (Del. Super. Ct. Nov. 30, 2004).

- *State v. McGraw*, No. 0106019765, 2002 Del. Super. LEXIS 339, \*3-4 (Del. Super. Ct. May 16, 2002).
- *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84, \*2-3 (Del. Super. Ct. Mar. 26, 2002).

- The forms of prejudice which a defendant may suffer from an improper joinder of offenses include the fact that:
  - (1) the jury may cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not do so;
  - (2) the jury may use the evidence of one of the crimes to infer a general criminal disposition of the defendant in order to find guilt of the other crime or crimes; or
  - (3) the defendant may be subject to embarrassment or confusion in presenting different and separate defenses to different charges.
  - *State v. Hermes*, No. 0108008792, 2002 Del. Super. LEXIS 84, \*2-3 (Del. Super. Ct. Mar. 26, 2002).

## 2. The Defendant’s Burden

- The defendant bears the burden of demonstrating prejudice, and the defendant must show that prejudice will in fact result.
  - *State v. Sisson*, No. 0403019957, 2005 Del. Super. LEXIS 111, \*8 (Del. Super. Ct. Apr. 7, 2005).
  - *State v. McGraw*, No. 0106019765, 2002 Del. Super. LEXIS 339, \*4-5 (Del. Super. Ct. May 16, 2002).
  - *State v. Hartman*, No number in original, 2000 Del. Super. LEXIS 400, \*4 (Del. Super. Ct. Aug. 24, 2000).
- Even if the defendant cannot establish that sufficient prejudice would result and require severance, a crucial factor to be determined is whether the evidence of one crime would be admissible in the trial of the other crime.
  - *Kemske v. State*, No. 168, 2007 Del. LEXIS 1, \*10 ( Del. Jan. 2, 2007).
  - *State v. McGraw*, No. 0106019765, 2002 Del. Super. LEXIS 339, \*4-5 (Del. Super. Ct. May 16, 2002).

# DELAWARE

## *Defenses*

*A case with + indicates a decision that has not been designated for publication.*

*A case with ++ indicates the subject matter of the case is not child sexual exploitation, but nonetheless the principle presented may still apply.*

### **I. Consent**

#### **A. Sexual Offenses Generally**

- In sexual offenses where the victim's age is an element of the offense because the victim has not reached his or her sixteenth birthday, it is an affirmative defense that the victim consented "knowingly" to the act if the person committing the sexual act is no more than 4 years older than the victim, and the victim has reached his or her twelfth birthday at the time of the act. DEL. CODE ANN. tit. 11, § 762(d).  
– *Stewart v. State*, No. 07M-10-078 PLA, 2008 Del. Super. LEXIS 134, \*5 (Del. Super. Ct. Apr. 10, 2008).

#### **B. Deviate Sexual Intercourse**

- Deviate sexual intercourse is without consent when the victim is less than 16 years old.  
– *Acosta v. State*, 417 A.2d 373, 374 (Del. 1980).

#### **C. Sexual Intercourse**

- Sexual intercourse is without consent when the victim is less than 16 years old.  
– *State v. Pandiscio*, No. IN 89-09-0581R2, 1995 Del. Super. LEXIS 233, \*2 (Del. Super. Ct. May 17, 1995).

#### **D. Sexual Exploitation**

- A child cannot consent to sexual exploitation.  
– *State v. Pandiscio*, No. IN 89-09-0581R2, 1995 Del. Super. LEXIS 233, \*4 (Del. Super. Ct. May 17, 1995).

### **II. Diminished Capacity**

- Until established by the General Assembly as a provision collateral to the statutes governing insanity and extreme emotional distress, the doctrine of diminished responsibility may not be invoked in this State.

– *Bates v. State*,<sup>++</sup> 386 A.2d 1139, 1143-44 (Del. 1978).

#### **A. Addiction to the Internet**

No state cases reported.

#### **B. Insanity**

- In any prosecution for an offense, it is an affirmative defense that, at the time of the conduct charged, as a result of mental illness or mental defect, the accused lacked substantial capacity to appreciate the wrongfulness of his or her conduct or lacked sufficient willpower to choose whether he or she would do the act or refrain from doing it.

– *Bates v. State*,<sup>++</sup> 386 A.2d 1139, 1143 n.6 (Del. 1978).

### **III. Entrapment**

- In any prosecution for an offense, it is an affirmative defense that the accused engaged in the proscribed conduct because he or she was induced by a law-enforcement official or his or her agent who was acting in the knowing cooperation with such an official to engage in the proscribed conduct constituting such conduct that is a crime when such person is not otherwise disposed to do so.

– *Harrison v. State*,<sup>++</sup> 442 A.2d 1377, n.1 (Del. 1982).

### **IV. Extreme Emotional Distress**

- The purpose of the extreme-emotional-disturbance defense is to permit the defendant to show that his or her actions were caused by a mental infirmity not arising to the level of insanity and that he or she is less culpable for having committed them.

– *State v. Magner*,<sup>++</sup> 732 A.2d 234, 242 (Del. Super. Ct. 1997).

- Extreme Emotional Distress is a mitigating defense; it does not eliminate the charge.

– *State v. Gronenthal*,<sup>+ ++</sup> No. 9807001798, 2005 Del. Super. LEXIS 215, \*16 (Del. Super. Ct. June 3, 2005).

#### **A. Bifurcated Analysis**

- The defense of extreme emotional distress calls for a bifurcated analysis consisting of an objective and subjective inquiry. The question of whether there is a reasonable explanation or excuse for the existence of the extreme emotional distress preserves an objective inquiry and prevents an over-individualization of the legal standard. The defendant's subjective mental state, however, is important insofar as the reasonableness or excuse shall be determined from the viewpoint of a reasonable person in the accused's situation under the circumstances as the accused believed them to be.

– *State v. Magner*,<sup>++</sup> 732 A.2d 234, 241 (Del. Super. Ct. 1997).

## **B. Burden**

- A criminal defendant has the burden of proving that he or she acted under extreme emotional distress by a preponderance of the evidence. DEL. CODE ANN. tit. 11, § 641.  
– *Jones v. State*,<sup>++</sup> No. 253, 1992 Del. LEXIS 181, \*4 n.1 (Del. May 7, 1992).
- The defendant also has the burden of proving, by a preponderance of the evidence, that there is a reasonable explanation for the existence of the extreme emotional distress; therefore, a defendant is not entitled to an instruction on the extreme-emotional-distress defense unless there is credible evidence to support it.  
– *Jones v. State*,<sup>++</sup> No. 253, 1992 Del. LEXIS 181, \*4 n.1 (Del. May 7, 1992).

## **V. First Amendment**

- The First and Fourth Amendments prohibit making the mere private possession of obscene material a crime.  
– *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060, \*7 (Del. Super. Ct. Feb. 5, 1987).
- The zone of privacy follows the individual and not the material.  
– *State v. Dittie*, No. IN 86-05-0043, 1987 Del. Super. LEXIS 1060, \*7 (Del. Super. Ct. Feb. 5, 1987).

## **VI. Impossibility**

### **A. Factual**

No state cases reported.

### **B. Legal**

No state cases reported.

## **VII. Manufacturing Jurisdiction**

No state cases reported.

## **VIII. Mistake of Fact**

- A defendant's mistake as to the age of the victim or that the actor reasonably believed that the person had reached that person's sixteenth birthday is no defense. Denying this defense is a "proper exercise of Delaware's police power to protect children from sexual predators." DEL. CODE ANN. tit. 11, § 762(a).  
– *Winters v. State*, No. 181, 2004 Del. LEXIS 390, \*3 (Del. Sept. 8, 2004).
- Ignorance or mistake as to the age of the victim is not a defense to the charge of statutory rape.  
– *Pritchard v. State*, No. 280, 2004 Del. Lexis 61, \*4 (Del. Feb. 4, 2004).



## **IX. Mistake of Law**

- The mistake of law defense is an affirmative defense and is appropriately recognized where the defendant demonstrates that he or she has been misled by information received from the State.  
– *Bryson v. State*,<sup>+++</sup> No. 100, 2003 Del. LEXIS 45, \*4-5 (Del. 2003).
- The mistake of law defense is cognizable when the defendant:
  - (1) erroneously concludes, in good faith, that his or her particular conduct is not subject to the operation of the criminal law;
  - (2) makes a *bona fide*, diligent effort, adopting a course and resorting to sources and means at least as appropriate as any afforded or under the legal system, to ascertain and abide by the law;
  - (3) acts in good-faith reliance upon the results of such effort; and
  - (4) the conduct constituting the offense is neither immoral nor anti-social.– *Kipp v. State*,<sup>++</sup> 704 A.2d 839, 842 (Del. 1997).
- Ignorance of the law is not a defense to crime; however, a defendant is not charged with knowledge of a penal statute if he or she is misled concerning whether the statute is not being applied.  
– *Kipp v. State*,<sup>++</sup> 704 A.2d 839, 842 (Del. 1997).

## **X. Outrageous Conduct**

No state cases reported.

## **XI. Researcher**

No state cases reported.

## **XII. Sexual Orientation**

No state cases reported.

## **XIII. Statute of Limitations**

- The statute of limitations for felonies is five years; however, a prosecution for any Class A felony may be commenced at any time.  
– *State v. McCane*, No. S 97-11-0516, 2000 Del. Super. LEXIS 471, \*16 (Del. Super. Ct. June 6, 2000).  
– *State v. Pandiscio*, No. IN 89-09-0581R2, 1995 Del. Super. LEXIS 233, \*4 (Del. Super. Ct. May 17, 1995).

# DELAWARE

## *Sentencing Issues*

*A case with ++ indicates the subject matter of the case is not child sexual exploitation, but nonetheless the principle presented may still apply.*

### **I. Consecutive Sentences**

- Where consecutive sentences are imposed at a single criminal trial, the role of the constitutional guarantee is limited to assuring that the court does not exceed its legislative authorization by imposing multiple punishments for the same offense.  
– *State v. Leighton*, No. S 95-11-095, 1996 Del. Super. LEXIS 250, \*3 (Del. Super. Ct. May 13, 1996).

### **II. Motion to Reduce a Sentence**

- The superior court may consider a motion to reduce a sentence only if such motion is made within 90 days after the sentence is imposed or upon a showing of extraordinary circumstances.  
– *Colon v. State*,<sup>++</sup> 900 A.2d 635, 638 (Del. 2006).  
– *Jones v. State*,<sup>++</sup> No. 486, 2003 Del. LEXIS 85, \*3 (Del. Feb. 14, 2003).
- The superior court may not consider repetitive requests for a reduction of sentence.  
– *Jones v. State*,<sup>++</sup> No. 486, 2003 Del. LEXIS 85, \*3 (Del. Feb. 14, 2003).

### **III. Enhancement**

#### **A. Age of Victim**

No state cases reported.

#### **B. Distribution/Intent to Traffic**

No state cases reported.

#### **C. Number of Images**

No state cases reported.

#### **D. Pattern of Activity for Sexual Exploitation**

No state cases reported.

**E. Sadistic, Masochistic, or Violent Material**

No state cases reported.

**F. Use of Computers**

No state cases reported.

# DELAWARE

## *Supervised Release: Probation*

*A case with ++ indicates the subject matter of the case is not child sexual exploitation, but nonetheless the principle presented may still apply.*

### **I. Restrictions**

- Probation restrictions may affect fundamental rights such as freedom of speech and freedom of association if the conditions are primarily designed to meet the ends of rehabilitation and protect the public.  
– *Jackson v. State*,<sup>++</sup> 821 A.2d 881, 884 (Del. 2003).
- Courts have consistently upheld imposition of conditions of probation that restrict a defendant's freedom of speech and association when those conditions bear a reasonable relationship to the goals of probation.  
– *Jackson v. State*,<sup>++</sup> 821 A.2d 881, 884 (Del. 2003).

### **II. Revocation**

- Probation cannot be revoked in the absence of a violation of an express condition of probation or of a condition so clearly implied that the probationer can be said to have notice of it.  
– *Jackson v. State*,<sup>++</sup> 821 A.2d 881, 883 (Del. 2003).