The Maryland Law Enforcement and Prosecutors Manual on
Child Exploitation Crimes

Statutory and Case Law

National Law Center for Children and Families

National Center for Missing & Exploited Children

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 Maryland State Manual. This manual is an update and refinement of the 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. In addition to these projects, the National Law Center has entered into a partnership with the NCMEC to update these existing 25 manuals. 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, NLC Law Clerk (JD George Washington School of Law 2008), Tara Steinnerd. NLC Law Clerk (3L Catholic University School of Law), Michael Bare (Valparaiso University School of Law), Amanda Rekow (University of Idaho College of Law), Leigh Darrell (University of Baltimore School of Law), Aeri Yum (University of Hawaii Richardson School of Law), Aimee Conway (Suffolk University Law School), Jennifer Allen (University of Hawaii Richardson School of Law), Judith Harris (University of Hawaii Richardson School of Law), Lianne Aoki (University of Hawaii Richardson School of Law), Jeffrey Van Der Veer (University of Colorado School of Law), and Kelly Higa (University of Hawaii Richardson School of Law).

The Editors,

National Law Center for Children and Families
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MARYLAND

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MARYLAND

Case List by Court

A case with ++ indicates that although the subject matter is not child exploitation, the principle presented may still apply.

I. United States Supreme Court

- *Franks v. Delaware*,[++] 438 U.S. 154 (1978)

II. Maryland Court of Appeals

- *Acuna v. State*, 629 A.2d 1233 (Md. 1993)
- *Anderson v. State*, 812 A.2d 1016 (Md. 2002)
- *Attorney Grievance Comm'n v. Childress*, 758 A.2d 117 (Md. 2000)
- *Attorney Grievance Comm'n v. Thompson*, 786 A.2d 763 (Md. 2001)
- *Cooksey v. State*, 752 A.2d 606 (Md. 2000)
- *Degren v. State*, 722 A.2d 887 (Md. 1999)
- *Doe v. Maskell*, 679 A.2d 1087 (Md. 1996)
- *Fletcher v. State*, 260 A.2d 34 (Md. 1970)
- *Garnett v. State*, 632 A.2d 797 (Md. 1993)
- *Graves v. State*, 772 A.2d 1225 (Md. 2001)
- *Gregoire v. State*, 128 A.2d 243 (Md. 1957)
- *Guesfeird v. State*, 480 A.2d 800 (Md. 1984)
- *Hutton v. State*, 663 A.2d 1289 (Md. 1995)
- *In re Appeal No. 180*, 365 A.2d 540 (Md. 1976)
- *In re Douglas P.*, 635 A.2d 427 (Md. 1994)
- *Jefferson v. State*, 147 A.2d 204 (Md. 1958)
- *Jones v. Baltimore City Police Dep't.*, 3606 A.2d 214 (Md. 1992)
- *Lusby v. State*, 141 A.2d 893 (Md. 1958)
- *McDonald v. State*,[++] 701 A.2d 675 (Md. 1997)
- *McNeil v. State*, 739 A.2d 80 (Md. 1999)
- *Messina v. State*, 130 A.2d 578 (Md. 1957)
- *Moore v. State*, 879 A.2d 1111 (Md. 2005)
- *Murphy v. Merzbacher*, 697 A.2d 861 (Md. 1997)
- *Outmezguine v. State*, 641 A.2d 870 (Md. 1994)
- *Pettit v. Erie Ins. Exch.*, 709 A.2d 1287 (Md. 1998)
- *Reed v. State*,[++] 391 A.2d 364 (Md. 1978)
- *Rite Aid Corp. v. Hagley*, 824 A.2d 107 (Md. 2003)
- *State v. Boozer*, 497 A.2d 1129 (Md. 1985)
- *State v. Lancaster*, 631 A.2d 453 (Md. 1993)
- *State v. Mulkey*, 560 A.2d 24 (Md. 1989)
- *State v. Taylor*, 701 A.2d 389 (Md. 1997)
- *State v. Taylor*, 810 A.2d 964 (Md. 2002)

- *State v. Watson*, 580 A.2d 1067 (Md. 1990)
- *Sweet v. State*, 806 A.2d 265 (Md. 2002)
- *Taylor v. State*, 133 A.2d 414 (Md. 1957)
- *Vogel v. State*, 554 A.2d 1231 (Md. 1989)
- *Wildermuth v. State*, 530 A.2d 275 (Md. 1987)
- *Young v. State*, 806 A.2d 233 (Md. 2002)

III. Maryland Court of Special Appeals

- *Anderson v. State*, 487 A.2d 294 (Md. Ct. Spec. App. 1985)
- *Anderson v. State*, 790 A.2d 732 (Md. Ct. Spec. App. 2002)
- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)
- *Brackins v. State*, 578 A.2d 300 (Md. Ct. Spec. App. 1990)
- *Cassidy v. State*, 536 A.2d 666 (Md. Ct. Spec. App. 1988)
- *Copsey v. State*, 507 A.2d 186 (Md. Ct. Spec. App. 1986)
- *Cortez v. State*, 656 A.2d 360 (Md. Ct. Spec. App. 1995)
- *Doe v. Archdiocese*, 689 A.2d 634 (Md. Ct. Spec. App. 1997)
- *Freed v. Worcester County Dep't of Soc. Servs.*, 518 A.2d 159 (Md. Ct. Spec. App. 1986)
- *Giles v. State*,[++] 271 A.2d 766 (Md. Ct. Spec. App. 1970)
- *Hamwright v. State*,[++] 787 A.2d 824 (Md. Ct. Spec. App. 2001)
- *Harmony v. State*, 594 A.2d 1182 (Md. Ct. Spec. App. 1991)
- *Harnish v. State*, 266 A.2d 364 (Md. Ct. Spec. App. 1970)
- *Hopkins v. State*, 768 A.2d 89 (Md. Ct. Spec. App. 2001)
- *Hughes v. State*, 287 A.2d 299 (Md. Ct. Spec. App. 1972)
- *In re Adoption/Guardianship No. 2152A et al.*, 641 A.2d 889 (Md. Ct. Spec. App. 1994)
- *Johnson v. State*,[++] 352 A.2d 349 (Md. Ct. Spec. App. 1976)
- *Jones v. State*,[++] 283 A.2d 184 (Md. Ct. Spec. App. 1971)
- *Kelly v. State*,[++] 412 A.2d 1274 (Md. Ct. Spec. App. 1980)
- *Malee v. State*, 809 A.2d 1 (Md. Ct. Spec. App. 2002)
- *Matthews v. State*, 666 A.2d 912 (Md. Ct. Spec. App. 1995)
- *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112 (Md. Ct. Spec. App. 2001)
- *Newman v. State*, 499 A.2d 492 (Md. Ct. Spec. App. 1985)
- *Outmezguine v. State*, 627 A.2d 541 (Md. Ct. Spec. App. 1993)
- *Pettit v. Erie Ins. Exch.*, 699 A.2d 550 (Md. Ct. Spec. App. 1997)
- *Raines v. State*, 788 A.2d 697 (Md. Ct. Spec. App. 2002)
- *Smith v. State*, 252 A.2d 277 (Md. Ct. Spec. App. 1969)
- *Smith v. State*, 491 A.2d 587 (Md. Ct. Spec. App. 1985)
- *Starkey v. State*, 810 A.2d 542 (Md. Ct. Spec. App. 2002)
- *State v. Lee*,[++] 613 A.2d 395 (Md. Ct. Spec. App. 1992)
- *Tapscott v. State*, 664 A.2d 42 (Md. Ct. Spec. App. 1995)
- *White v. State*, 238 A.2d 278 (Md. Ct. Spec. App. 1968)
- *Wildberger v. State*, 536 A.2d 718 (Md. Ct. Spec. App. 1988)

- *Wilson v. State*,[++] 752 A.2d 125 (Md. Ct. Spec. App. 2000)

MARYLAND

Topic Outline with Cases

A case with ++ indicates that although the subject matter is not child exploitation, the principle presented may still apply.

I. OFFENSES DEFINED

A. Battery

- *Cortez v. State*, 656 A.2d 360 (Md. Ct. Spec. App. 1995)
- *Vogel v. State*, 554 A.2d 1231 (Md. 1989)

B. Child Abuse

- *Anderson v. State*, 790 A.2d 732 (Md. Ct. Spec. App. 2002)
- *Anderson v. State*, 812 A.2d 1016 (Md. 2002)
- *Brackins v. State*, 578 A.2d 300 (Md. Ct. Spec. App. 1990)
- *Graves v. State*, 772 A.2d 1225 (Md. 2001)
- *Hopkins v. State*, 768 A.2d 89 (Md. Ct. Spec. App. 2001)
- *In re Douglas P.*, 635 A.2d 427 (Md. 1994)
- *Raines v. State*, 788 A.2d 697 (Md. Ct. Spec. App. 2002)
- *Rite Aid Corp. v. Hagley*, 824 A.2d 107 (Md. 2003)
- *State v. Taylor*, 701 A.2d 389 (Md. 1997)
- *Tapscott v. State*, 664 A.2d 42 (Md. Ct. Spec. App. 1995)
- *Vogel v. State*, 554 A.2d 1231 (Md. 1989)

1. Definitions

a. "Child"

- *Graves v. State*, 772 A.2d 1225 (Md. 2001)
- *Hopkins v. State*, 768 A.2d 89 (Md. Ct. Spec. App. 2001)
- *In re Douglas P.*, 635 A.2d 427 (Md. 1994)
- *Tapscott v. State*, 664 A.2d 42 (Md. Ct. Spec. App. 1995)

b. "Family Member"

- *Graves v. State*, 772 A.2d 1225 (Md. 2001)
- *Hopkins v. State*, 768 A.2d 89 (Md. Ct. Spec. App. 2001)
- *In re Douglas P.*, 635 A.2d 427 (Md. 1994)
- *Tapscott v. State*, 664 A.2d 42 (Md. Ct. Spec. App. 1995)

c. "Household Member"

- *Graves v. State*, 772 A.2d 1225 (Md. 2001)
- *Hopkins v. State*, 768 A.2d 89 (Md. Ct. Spec. App. 2001)
- *In re Douglas P.*, 635 A.2d 427 (Md. 1994)
- *Tapscott v. State*, 664 A.2d 42 (Md. Ct. Spec. App. 1995)

d. "Responsibility for Supervision of a Child"

- *Anderson v. State*, 790 A.2d 732 (Md. Ct. Spec. App. 2002)
- *Anderson v. State*, 812 A.2d 1016 (Md. 2002)

e. "Persons Entrusted with Responsibility for Supervision of a Child"

- *Anderson v. State*, 790 A.2d 732 (Md. Ct. Spec. App. 2002)
- *Anderson v. State*, 812 A.2d 1016 (Md. 2002)

2. Sexual Abuse of a Child

- *Brackins v. State*, 578 A.2d 300 (Md. Ct. Spec. App. 1990)
- *Cooksey v. State*, 752 A.2d 606 (Md. 2000)
- *Degren v. State*, 722 A.2d 887 (Md. 1999)
- *Graves v. State*, 772 A.2d 1225 (Md. 2001)
- *Hopkins v. State*, 768 A.2d 89 (Md. Ct. Spec. App. 2001)
- *In re Douglas P.*, 635 A.2d 427 (Md. 1994)
- *Raines v. State*, 788 A.2d 697 (Md. Ct. Spec. App. 2002)
- *Rite Aid Corp. v. Hagley*, 824 A.2d 107 (Md. 2003)
- *Tapscott v. State*, 664 A.2d 42 (Md. Ct. Spec. App. 1995)
- *Vogel v. State*, 554 A.2d 1231 (Md. 1989)
- *Wildermuth v. State*, 530 A.2d 275 (Md. 1987)

a. Omission or Failure to Act

- *Degren v. State*, 722 A.2d 887 (Md. 1999)

b. Physical Injury

- *Brackins v. State*, 578 A.2d 300 (Md. Ct. Spec. App. 1990)

c. Continuing Offense

- *Cooksey v. State*, 752 A.2d 606 (Md. 2000)

3. Child Abuse v. Common-Law Assault and Battery

- *Anderson v. State*, 487 A.2d 294 (Md. Ct. Spec. App. 1985)

4. Child Exploitation

- *Brackins v. State*, 578 A.2d 300 (Md. Ct. Spec. App. 1990)
- *Raines v. State*, 788 A.2d 697 (Md. Ct. Spec. App. 2002)
- *Rite Aid Corp. v. Hagley*, 824 A.2d 107 (Md. 2003)

C. Child Pornography

- *Moore v. State*, 879 A.2d 1111 (Md. 2005)
- *Outmezguine v. State*, 627 A.2d 541 (Md. Ct. Spec. App. 1993)
- *State v. Taylor*, 810 A.2d 964 (Md. 2002)

1. Definitions

a. "Minor"

- *Outmezguine v. State*, 627 A.2d 541 (Md. Ct. Spec. App. 1993)
- *Outmezguine v. State*, 641 A.2d 870 (Md. 1994)

b. "Sexual Conduct"

- *Outmezguine v. State*, 641 A.2d 870 (Md. 1994)

2. Forms of Child Pornography

a. Soliciting, Causing, Inducing, or Knowingly Permitting

- *Outmezguine v. State*, 627 A.2d 541 (Md. Ct. Spec. App. 1993)

b. Photographing or Filming a Minor

- *Outmezguine v. State*, 627 A.2d 541 (Md. Ct. Spec. App. 1993)

c. Knowingly Promoting, Distributing, or Possessing with the Intent to Distribute

- *Moore v. State*, 879 A.2d 111 (Md. 2005)
- *Outmezguine v. State*, 627 A.2d 541 (Md. Ct. Spec. App. 1993)

d. Virtual/Simulated Child Pornography

No relevant state cases reported.

3. Scienter

- *Outmezguine v. State*, 641 A.2d 870 (Md. 1994)

D. Contributing to the Delinquency of a Child

- *Attorney Grievance Comm'n v. Childress*, 758 A.2d 117 (Md. 2000)

E. Incest

1. Elements

- *Smith v. State*, 491 A.2d 587 (Md. Ct. Spec. App. 1985)
- *Tapscott v. State*, 664 A.2d 42 (Md. Ct. Spec. App. 1995)

2. "Consanguinity" Defined

- *Tapscott v. State*, 664 A.2d 42 (Md. Ct. Spec. App. 1995)

F. Indecent Exposure

1. Offense at Common Law

- *Messina v. State*, 130 A.2d 578 (Md. 1957)

2. Public Place

- *Messina v. State*, 130 A.2d 578 (Md. 1957)

3. Intent

- *Messina v. State*, 130 A.2d 578 (Md. 1957)

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

No relevant state cases reported.

H. Prostitution, Pimping, and Pandering

1. Elements

- *McNeil v. State*, 739 A.2d 80 (Md. 1999)

2. Definitions

a. "Prostitution"

- *In re Appeal No. 180*, 365 A.2d 540 (Md. 1976)
- *McNeil v. State*, 739 A.2d 80 (Md. 1999)

b. "Lewdness"

- *McNeil v. State*, 739 A.2d 80 (Md. 1999)

c. "Assignation"

- *McNeil v. State*, 739 A.2d 80 (Md. 1999)

d. "Solicit"

- *In re Appeal No. 180*, 365 A.2d 540 (Md. 1976)
- *McNeil v. State*, 739 A.2d 80 (Md. 1999)

I. Rape in the Second Degree

- *Garnett v. State*, 632 A.2d 797 (Md. 1993)
- *Graves v. State*, 772 A.2d 1225 (Md. 2001)
- *Smith v. State*, 491 A.2d 587 (Md. Ct. Spec. App. 1985)

J. Sexual Offense

1. Second Degree

a. Elements

- *Cooksey v. State*, 752 A.2d 606 (Md. 2000)
- *Pettit v. Erie Ins. Exch.*, 709 A.2d 1287 (Md. 1998)
- *Starkey v. State*, 810 A.2d 542 (Md. Ct. Spec. App. 2002)

b. Penetration

- *Raines v. State*, 788 A.2d 697 (Md. Ct. Spec. App. 2002)

2. Third Degree

a. Elements

- *Malee v. State*, 809 A.2d 1 (Md. Ct. Spec. App. 2002)
- *Starkey v. State*, 810 A.2d 542 (Md. Ct. Spec. App. 2002)
- *State v. Taylor*, 810 A.2d 964 (Md. 2002)

b. "Sexual Contact" Defined

- *Cooksey v. State*, 752 A.2d 606 (Md. 2000)
- *Malee v. State*, 809 A.2d 1 (Md. Ct. Spec. App. 2002)
- *Pettit v. Erie Ins. Exch.*, 709 A.2d 1287 (Md. 1998)

c. Fellatio

- *Starkey v. State*, 810 A.2d 542 (Md. Ct. Spec. App. 2002)

3. Fourth Degree

a. Elements

- *Cortez v. State*, 656 A.2d 360 (Md. Ct. Spec. App. 1995)
- *Starkey v. State*, 810 A.2d 542 (Md. Ct. Spec. App. 2002)
- *State v. Boozer*, 497 A.2d 1129 (Md. 1985)
- *State v. Lancaster*, 631 A.2d 453 (Md. 1993)

b. Definitions

i. "Sexual Contact"

- *Cortez v. State*, 656 A.2d 360 (Md. Ct. Spec. App. 1995)
- *State v. Boozer*, 497 A.2d 1129 (Md. 1985)

ii. "Sexual Act"

- *Cortez v. State*, 656 A.2d 360 (Md. Ct. Spec. App. 1995)
- *State v. Boozer*, 497 A.2d 1129 (Md. 1985)

- *State v. Lancaster*, 631 A.2d 453 (Md. 1993)

iii. "Vaginal Intercourse"

- *Cortez v. State*, 656 A.2d 360 (Md. Ct. Spec. App. 1995)
- *State v. Boozer*, 497 A.2d 1129 (Md. 1985)
- *State v. Lancaster*, 631 A.2d 453 (Md. 1993)

c. Multi-Purpose Offense

- *Cortez v. State*, 656 A.2d 360 (Md. Ct. Spec. App. 1995)

K. Stalking

- *Attorney Grievance Comm'n v. Thompson*, 786 A.2d 763 (Md. 2001)

L. Transporting a Minor for Purposes of Prostitution

- *Young v. State*, 806 A.2d 233 (Md. 2002)

M. Unnatural or Perverted Sexual Practices

- *Fletcher v. State*, 260 A.2d 34 (Md. 1970)
- *Gregoire v. State*, 128 A.2d 243 (Md. 1957)
- *Hughes v. State*, 287 A.2d 299 (Md. Ct. Spec. App. 1972)
- *Kelly v. State*,[++] 412 A.2d 1274 (Md. Ct. Spec. App. 1980)
- *State v. Lancaster*, 631 A.2d 453 (Md. 1993)

II. MANDATORY REPORTING

A. Duty to Report

1. Who Must Report?

a. Professionals

- *Rite Aid Corp. v. Hagley*, 824 A.2d 107 (Md. 2003)

b. Others

- *Rite Aid Corp. v. Hagley*, 824 A.2d 107 (Md. 2003)

2. Definitions

a. "Abuse"

- *Rite Aid Corp. v. Hagley*, 824 A.2d 107 (Md. 2003)

b. "Neglected Child"

- *Freed v. Worcester County Dep't of Soc. Servs.*, 518 A.2d 159 (Md. Ct. Spec. App. 1986)

3. Confidential Information

- *Freed v. Worcester County Dep't of Soc. Servs.*, 518 A.2d 159 (Md. Ct. Spec. App. 1986)

B. Immunity: Good-Faith Requirement

- *Freed v. Worcester County Dep't of Soc. Servs.*, 518 A.2d 159 (Md. Ct. Spec. App. 1986)
- *Rite Aid Corp. v. Hagley*, 824 A.2d 107 (Md. 2003)

1. "Good Faith" Defined

- *Rite Aid Corp. v. Hagley*, 824 A.2d 107 (Md. 2003)

2. Standard

- *Rite Aid Corp. v. Hagley*, 824 A.2d 107 (Md. 2003)

III. SEARCH AND SEIZURE OF ELECTRONIC EVIDENCE

A. Search Warrants

1. Probable Cause

a. Defined

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

b. Test to Establish Probable Cause

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

c. Particularity Requirement

- *Giles v. State*,[++] 271 A.2d 766 (Md. Ct. Spec. App. 1970)

d. Good-Faith Exception

i. Generally

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

ii. Appellate Review

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

e. False Information: The Defendant's Burden

- *Franks v. Delaware*,[++] 438 U.S. 154 (1978)
- *McDonald v. State*,[++] 701 A.2d 675 (Md. 1997)
- *Wilson v. State*,[++] 752 A.2d 125 (Md. Ct. Spec. App. 2000)

f. Appellate Review

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

2. Scope

- *Hughes v. State*, 287 A.2d 299 (Md. Ct. Spec. App. 1972)

3. Staleness

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

a. Incriminating Evidence

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

b. Factors to Consider

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

i. Remoteness

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

ii. Nature of the Offense

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

iii. Place to Be Searched

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

B. Scope of the Fourth Amendment

1. Visual Inspections of Unclothed Children

- *Wildberger v. State*, 536 A.2d 718 (Md. Ct. Spec. App. 1988)

2. Determining Reasonableness

- *Wildberger v. State*, 536 A.2d 718 (Md. Ct. Spec. App. 1988)

C. Anticipatory Warrants

1. Defined

- *McDonald v. State*,[++] 701 A.2d 675 (Md. 1997)
- *State v. Lee*,[++] 613 A.2d 395 (Md. Ct. Spec. App. 1992)

2. Inherent Risks

- *State v. Lee*,[++] 613 A.2d 395 (Md. Ct. Spec. App. 1992)

a. Premature Issuance

- *State v. Lee*,[++] 613 A.2d 395 (Md. Ct. Spec. App. 1992)

b. Particularized Showing

- *State v. Lee*,[++] 613 A.2d 395 (Md. Ct. Spec. App. 1992)

3. Warrant Application

- *State v. Lee*,[++] 613 A.2d 395 (Md. Ct. Spec. App. 1992)

D. Types of Searches

1. Employer Searches

No relevant state cases reported.

2. Private Searches

No relevant state cases reported.

3. University-Campus Searches

No relevant state cases reported.

4. Warrantless Searches

a. Consent Searches

- *Jones v. State*,[++] 283 A.2d 184 (Md. Ct. Spec. App. 1971)

i. Totality of Circumstances

- *Johnson v. State*,[++] 352 A.2d 349 (Md. Ct. Spec. App. 1976)

ii. Determination of Voluntariness

- *Johnson v. State*,[++] 352 A.2d 349 (Md. Ct. Spec. App. 1976)

iii. Parental Consent

- *Jones v. State*,[++] 283 A.2d 184 (Md. Ct. Spec. App. 1971)

iv. Preponderance of the Evidence

- *Johnson v. State*,[++] 352 A.2d 349 (Md. Ct. Spec. App. 1976)

b. Exigent Circumstances

No relevant state cases reported.

E. Methods of Searching

No relevant state cases reported.

F. Electronic Eavesdropping

1. Interception of Wire, Oral, or Electronic Communications

- *Anderson v. State*, 790 A.2d 732 (Md. Ct. Spec. App. 2002)

2. Reasonable Suspicion

- *Anderson v. State*, 790 A.2d 732 (Md. Ct. Spec. App. 2002)
- *Anderson v. State*, 812 A.2d 1016 (Md. 2002)

G. Computer-Technician/Repairperson Discoveries

No relevant state cases reported.

H. Photo-Development Discoveries

See generally Rite Aid Corp. v. Hagley, 824 A.2d 107 (Md. 2003).

I. Criminal Forfeiture

No relevant state cases reported.

J. Disciplinary Hearings for Federal and State Officers

No relevant state cases reported.

K. Probation and Parolee Rights

1. Discharge from Probation

- *Jones v. Baltimore City Police Dep't.*, 3606 A.2d 214 (Md. 1992)

2. Expungement of Criminal Record

- *Jones v. Baltimore City Police Dep't.*, 3606 A.2d 214 (Md. 1992)

IV. JURISDICTION AND NEXUS

A. Jurisdictional Nexus

No relevant state cases reported.

B. Internet Nexus

No relevant state cases reported.

C. County Jurisdiction, State Jurisdiction, Federal Jurisdiction, Concurrent Jurisdiction, and Juvenile Court Jurisdiction

- *Copsey v. State*, 507 A.2d 186 (Md. Ct. Spec. App. 1986)

1. County

- *Copsey v. State*, 507 A.2d 186 (Md. Ct. Spec. App. 1986)

2. State

No relevant state cases reported.

3. Federal

No relevant state cases reported.

4. Concurrent

No relevant state cases reported.

5. Juvenile Court

a. Jurisdiction

- *Fletcher v. State*, 260 A.2d 34 (Md. 1970)
- *Jefferson v. State*, 147 A.2d 204 (Md. 1958)
- *Taylor v. State*, 133 A.2d 414 (Md. 1957)

b. No Jurisdiction

- *Hamwright v. State*,[++] 787 A.2d 824 (Md. Ct. Spec. App. 2001)

c. Transferable Cases

- *Hamwright v. State*,[++] 787 A.2d 824 (Md. Ct. Spec. App. 2001)

d. Factors Considered for Waiver

- *Hamwright v. State*,[++] 787 A.2d 824 (Md. Ct. Spec. App. 2001)

D. Interstate Possession of Child Pornography

No relevant state cases reported.

V. DISCOVERY AND EVIDENCE

A. Timely Review of Evidence

No relevant state cases reported.

B. Charging Documents and Indictments

1. Requirements of a Charging Document

a. Generally

- *Cooksey v. State*, 752 A.2d 606 (Md. 2000)
- *Harmony v. State*, 594 A.2d 1182 (Md. Ct. Spec. App. 1991)
- *State v. Mulkey*, 560 A.2d 24 (Md. 1989)

b. Cases Involving Sexual Offenses Committed Against a Minor

- *Cooksey v. State*, 752 A.2d 606 (Md. 2000)
- *Harmony v. State*, 594 A.2d 1182 (Md. Ct. Spec. App. 1991)
- *State v. Mulkey*, 560 A.2d 24 (Md. 1989)

2. Dates

a. Generally

- *Malee v. State*, 809 A.2d 1 (Md. Ct. Spec. App. 2002)
- *State v. Mulkey*, 560 A.2d 24 (Md. 1989)

b. Cases Involving Sexual Offenses Committed Against a Minor

- *Harmony v. State*, 594 A.2d 1182 (Md. Ct. Spec. App. 1991)

C. Defense Requests for Copies of Child Pornography

No relevant state cases reported.

D. Discovery by the State: Blood Samples

- *Tapscott v. State*, 664 A.2d 42 (Md. Ct. Spec. App. 1995)

E. Introduction of E-mails into Evidence

1. Hearsay/Authentication Issues

No relevant state cases reported.

2. Circumstantial Evidence

No relevant state cases reported.

3. Technical Aspects of Electronic Evidence Regarding Admissibility

No relevant state cases reported.

F. Text-Only Evidence

1. Introduction into Evidence

No relevant state cases reported.

2. Relevance

No relevant state cases reported.

G. Evidence Obtained from Internet Service Providers

1. Electronic Communications Privacy Act

No relevant state cases reported.

2. Cable Act

No relevant state cases reported.

3. Patriot Act

a. National Trap and Trace Authority

No relevant state cases reported.

b. State-Court-Judge Jurisdictional Limits

No relevant state cases reported.

H. Prior Bad Acts

1. Inadmissible

a. Proof of Guilt

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

b. Proof of Character

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

c. Appellate Review

- *Newman v. State*, 499 A.2d 492 (Md. Ct. Spec. App. 1985)

2. Admissible

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)
- *State v. Taylor*, 701 A.2d 389 (Md. 1997)

a. Burden

- *Acuna v. State*, 629 A.2d 1233 (Md. 1993)

b. Preferred Method to Proffer Evidence

- *Vogel v. State*, 554 A.2d 1231 (Md. 1989)

c. Trial Judge's Discretion

- *Acuna v. State*, 629 A.2d 1233 (Md. 1993)

d. Relevance

i. Generally

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)
- *State v. Taylor*, 701 A.2d 389 (Md. 1997)

ii. Three-Prong Test

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

e. Common Scheme or Plan

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

f. Crimes Linked in Time or Circumstance

- *State v. Taylor*, 701 A.2d 389 (Md. 1997)

g. Prior Abuse

- *Hopkins v. State*, 768 A.2d 89 (Md. Ct. Spec. App. 2001)

i. Sexual

- *Acuna v. State*, 629 A.2d 1233 (Md. 1993)
- *State v. Taylor*, 701 A.2d 389 (Md. 1997)
- *Vogel v. State*, 554 A.2d 1231 (Md. 1989)

(a) Same Victim

- *Acuna v. State*, 629 A.2d 1233 (Md. 1993)
- *State v. Taylor*, 701 A.2d 389 (Md. 1997)
- *Vogel v. State*, 554 A.2d 1231 (Md. 1989)

(b) Different Victims

- *Behrel v. State*, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

ii. Physical

- *State v. Taylor*, 701 A.2d 389 (Md. 1997)

I. Prior Convictions: Impeachment

- *Hopkins v. State*, 768 A.2d 89 (Md. Ct. Spec. App. 2001)

1. Infamous Crimes and Probative Value

- *Hopkins v. State*, 768 A.2d 89 (Md. Ct. Spec. App. 2001)

2. Exclusion of Non-Infamous Crimes

- *Hopkins v. State*, 768 A.2d 89 (Md. Ct. Spec. App. 2001)

J. Character Evidence

1. Offered by the State

- *State v. Watson*, 580 A.2d 1067 (Md. 1990)

2. Offered by the Defendant

a. Generally

- *State v. Watson*, 580 A.2d 1067 (Md. 1990)

b. The Defendant "Opens the Door"

- *State v. Watson*, 580 A.2d 1067 (Md. 1990)

i. Relevance to a Specific Character Trait

- *State v. Watson*, 580 A.2d 1067 (Md. 1990)

ii. Limitations on Questions Asked

- *State v. Watson*, 580 A.2d 1067 (Md. 1990)

iii. Balancing Probative Value and Prejudice

- *State v. Watson*, 580 A.2d 1067 (Md. 1990)

K. Witness Testimony

1. Corroboration of a Victim's Testimony

a. Corroboration

- *White v. State*, 238 A.2d 278 (Md. Ct. Spec. App. 1968)

b. Proof of Penetration

- *Wilson v. State*,[++] 752 A.2d 125 (Md. Ct. Spec. App. 2000)

2. Expert Testimony

- *Tapscott v. State*, 664 A.2d 42 (Md. Ct. Spec. App. 1995)

a. Factual Bases for Expert Opinions

- *In re Adoption/Guardianship No. 2152A et al.*, 641 A.2d 889 (Md. Ct. Spec. App. 1994)

i. Hearsay Testimony

- *Matthews v. State*, 666 A.2d 912 (Md. Ct. Spec. App. 1995)

ii. Credibility Opinions

- *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112 (Md. Ct. Spec. App. 2001)

b. Medical Opinions

- *Acuna v. State*, 629 A.2d 1233 (Md. 1993)

c. Post-Traumatic Stress Disorder (PTSD)

i. Diagnostic Criteria

- *Hutton v. State*, 663 A.2d 1289 (Md. 1995)

ii. Triggers of Post-Traumatic Stress Disorder

(a) Generally

- *Hutton v. State*, 663 A.2d 1289 (Md. 1995)

(b) Rape

- *Hutton v. State*, 663 A.2d 1289 (Md. 1995)

(c) Child Sexual Abuse

- *Hutton v. State*, 663 A.2d 1289 (Md. 1995)

(d) Credibility of the Sufferer

- *Hutton v. State*, 663 A.2d 1289 (Md. 1995)

(e) Negation of Consent

- *Hutton v. State*, 663 A.2d 1289 (Md. 1995)

d. Common Characteristics of Child-Sexual-Abuse-Accommodation Syndrome

- *Hutton v. State*, 663 A.2d 1289 (Md. 1995)

e. Scientific Evidence

i. Validity and Reliability

(a) Generally

- *Reed v. State*,[++] 391 A.2d 364 (Md. 1978)

(b) Test to Establish Reliability

- *Reed v. State*,[++] 391 A.2d 364 (Md. 1978)

ii. Polygraphs

(a) Inadmissible

- *Guesfeird v. State*, 480 A.2d 800 (Md. 1984)

(b) Grounds for Reversal

- *Guesfeird v. State*, 480 A.2d 800 (Md. 1984)

(c) Factors to Determine Prejudice

- *Guesfeird v. State*, 480 A.2d 800 (Md. 1984)

(d) Mistrial

- *Guesfeird v. State*, 480 A.2d 800 (Md. 1984)

iii. Deoxyribonucleic Acid (DNA)

- *Tapscott v. State*, 664 A.2d 42 (Md. Ct. Spec. App. 1995)

3. Child Witnesses

- *White v. State*, 238 A.2d 278 (Md. Ct. Spec. App. 1968)

a. Competency

- *Matthews v. State*, 666 A.2d 912 (Md. Ct. Spec. App. 1995)

b. Closed-Circuit Television

- *Wildermuth v. State*, 530 A.2d 275 (Md. 1987)

4. Hearsay

a. "Hearsay" Defined

- *Cassidy v. State*, 536 A.2d 666 (Md. Ct. Spec. App. 1988)

b. Burden of Proof

- *Cassidy v. State*, 536 A.2d 666 (Md. Ct. Spec. App. 1988)

c. Administrative Proceedings

- *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112 (Md. Ct. Spec. App. 2001)

d. Exceptions

i. *Res Gestae*

- *Harmony v. State*, 594 A.2d 1182 (Md. Ct. Spec. App. 1991)
- *Harnish v. State*, 266 A.2d 364 (Md. Ct. Spec. App. 1970)
- *Smith v. State*, 252 A.2d 277 (Md. Ct. Spec. App. 1969)

(a) Spontaneity

- *Harnish v. State*, 266 A.2d 364 (Md. Ct. Spec. App. 1970)

(b) Declarations of a Child

- *Harnish v. State*, 266 A.2d 364 (Md. Ct. Spec. App. 1970)

(c) Incompetent Witnesses

- *Smith v. State*, 252 A.2d 277 (Md. Ct. Spec. App. 1969)

ii. Excited Utterance

- *Cassidy v. State*, 536 A.2d 666 (Md. Ct. Spec. App. 1988)
- *Harmony v. State*, 594 A.2d 1182 (Md. Ct. Spec. App. 1991)

iii. Physical Condition and Medical History

(a) Generally

- *Cassidy v. State*, 536 A.2d 666 (Md. Ct. Spec. App. 1988)

(b) Out-of-Court Statements As Substantive Evidence

(i) Statements to an Examining Physician

- *Cassidy v. State*, 536 A.2d 666 (Md. Ct. Spec. App. 1988)

(ii) Statements to a Treating Physician

- *Cassidy v. State*, 536 A.2d 666 (Md. Ct. Spec. App. 1988)

iv. Child's Statement of Sexual Abuse

(a) Trustworthiness

- *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112 (Md. Ct. Spec. App. 2001)

(b) Admissibility

- *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112 (Md. Ct. Spec. App. 2001)

(c) Applicability to Administrative Hearings

- *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112 (Md. Ct. Spec. App. 2001)

v. Family Records and Statements

- *Lusby v. State*, 141 A.2d 893 (Md. 1958)

L. Privileges

No relevant state cases reported.

VI. AGE OF CHILD VICTIM

A. Proving the Age of the Child Depicted: Methods to Determine Whether the Child Is Under 16

- *Outmezguine v. State*, 627 A.2d 541 (Md. Ct. Spec. App. 1993)

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

- *Outmezguine v. State*, 641 A.2d 870 (Md. 1994)

VII. MULTIPLE COUNTS

A. What Constitutes an Item of Child Pornography?

No relevant state cases reported.

B. Multiplicity

1. Generally

- *State v. Boozer*, 497 A.2d 1129 (Md. 1985)

2. Application

a. Sexual Intercourse

- *State v. Boozer*, 497 A.2d 1129 (Md. 1985)

b. Sex Offenses

- *Malee v. State*, 809 A.2d 1 (Md. Ct. Spec. App. 2002)

C. Double Jeopardy

1. Attachment of Double-Jeopardy Protection

- *State v. Boozer*, 497 A.2d 1129 (Md. 1985)

a. Jury Trial

- *State v. Boozer*, 497 A.2d 1129 (Md. 1985)

b. Bench Trial

- *State v. Taylor*, 810 A.2d 964 (Md. 2002)

c. *Nolle Prosequi*

- *State v. Boozer*, 497 A.2d 1129 (Md. 1985)

2. Single Act, More than One Statute

- *Smith v. State*, 491 A.2d 587 (Md. Ct. Spec. App. 1985)

3. Joinder

a. Two-Part Test

- *State v. Taylor*, 701 A.2d 389 (Md. 1997)

b. Trauma to Victims

- *State v. Taylor*, 701 A.2d 389 (Md. 1997)

4. Merger

- *Smith v. State*, 491 A.2d 587 (Md. Ct. Spec. App. 1985)

a. Lesser- and Greater-Included Offenses

- *Cortez v. State*, 656 A.2d 360 (Md. Ct. Spec. App. 1995)

b. Required-Evidence Test/Same-Evidence Test

- *Cortez v. State*, 656 A.2d 360 (Md. Ct. Spec. App. 1995)
- *State v. Lancaster*, 631 A.2d 453 (Md. 1993)

i. Multi-Purpose Offenses

- *Cortez v. State*, 656 A.2d 360 (Md. Ct. Spec. App. 1995)
- *State v. Lancaster*, 631 A.2d 453 (Md. 1993)

ii. Sentencing

- *Cortez v. State*, 656 A.2d 360 (Md. Ct. Spec. App. 1995)
- *State v. Lancaster*, 631 A.2d 453 (Md. 1993)

iii. Application to Common-Law Crimes

- *State v. Lancaster*, 631 A.2d 453 (Md. 1993)

c. Threshold Test

- *State v. Lancaster*, 631 A.2d 453 (Md. 1993)

5. Protection Against Multiple Sentences

- *Smith v. State*, 491 A.2d 587 (Md. Ct. Spec. App. 1985)

VIII. DEFENSES

A. Consent

1. Definition

- *Gregoire v. State*, 128 A.2d 243 (Md. 1957)
- *Lusby v. State*, 141 A.2d 893 (Md. 1958)

a. Consent Versus Assent

- *Gregoire v. State*, 128 A.2d 243 (Md. 1957)
- *Lusby v. State*, 141 A.2d 893 (Md. 1958)

b. Consent Versus Submission

- *Gregoire v. State*, 128 A.2d 243 (Md. 1957)
- *Lusby v. State*, 141 A.2d 893 (Md. 1958)

2. Validity of Consent

a. Generally

- *Pettit v. Erie Ins. Exch.*, 699 A.2d 550 (Md. Ct. Spec. App. 1997)

b. Consent by Children

i. Generally

- *Pettit v. Erie Ins. Exch.*, 699 A.2d 550 (Md. Ct. Spec. App. 1997)

ii. Sexual Contact or Conduct

- *Pettit v. Erie Ins. Exch.*, 699 A.2d 550 (Md. Ct. Spec. App. 1997)

iii. Indecent Assault

- *Gregoire v. State*, 128 A.2d 243 (Md. 1957)

iv. Determination

- *Gregoire v. State*, 128 A.2d 243 (Md. 1957)

B. Diminished Capacity

1. Addiction to the Internet

No relevant state cases reported.

2. Insanity

No relevant state cases reported.

C. Impossibility

1. Factual

No relevant state cases reported.

2. Legal

No relevant state cases reported.

D. "Justification" for Child-Pornography Offenses

- *Outmezguine v. State*, 627 A.2d 541 (Md. Ct. Spec. App. 1993)

E. Manufacturing Jurisdiction

No relevant state cases reported.

F. Mistake

1. Of Fact: Age

- *Garnett v. State*, 632 A.2d 797 (Md. 1993)

2. Of Law

No relevant state cases reported.

G. Outrageous Conduct

No relevant state cases reported.

H. Researcher

No relevant state cases reported.

I. Sexual Orientation

No relevant state cases reported.

J. Statute of Limitations

1. Criminal Cases

- *Harmony v. State*, 594 A.2d 1182 (Md. Ct. Spec. App. 1991)

2. Civil Cases

- *Doe v. Archdiocese*, 689 A.2d 634 (Md. Ct. Spec. App. 1997)
- *Doe v. Maskell*, 679 A.2d 1087 (Md. 1996)
- *Murphy v. Merzbacher*, 697 A.2d 861 (Md. 1997)

a. Discovery Rule

i. Generally

- *Doe v. Archdiocese*, 689 A.2d 634 (Md. Ct. Spec. App. 1997)
- *Doe v. Maskell*, 679 A.2d 1087 (Md. 1996)
- *Murphy v. Merzbacher*, 697 A.2d 861 (Md. 1997)

ii. Inquiry Notice

- *Doe v. Archdiocese*, 689 A.2d 634 (Md. Ct. Spec. App. 1997)

b. Tolling

i. Equitable Estoppel

- *Murphy v. Merzbacher*, 697 A.2d 861 (Md. 1997)

ii. Fear

- *Murphy v. Merzbacher*, 697 A.2d 861 (Md. 1997)

iii. Fraud

(a) Generally

- *Doe v. Archdiocese*, 689 A.2d 634 (Md. Ct. Spec. App. 1997)
- *Murphy v. Merzbacher*, 697 A.2d 861 (Md. 1997)

(b) Burden

- *Doe v. Archdiocese*, 689 A.2d 634 (Md. Ct. Spec. App. 1997)

iv. Minority or Disability

- *Doe v. Maskell*, 342 Md. 684, 696 (1996)
- *Murphy v. Merzbacher*, 697 A.2d 861 (Md. 1997)

IX. SENTENCING ISSUES

A. Enhancement

1. Age of Victim

No relevant state cases reported.

2. Distribution/Intent to Traffic

No relevant state cases reported.

3. Number of Images

No relevant state cases reported.

4. Pattern of Activity for Sexual Exploitation

No relevant state cases reported.

5. Sadistic, Masochistic, or Violent Material

No relevant state cases reported.

6. Use of Computers

No relevant state cases reported.

B. Consideration of Other Surrounding Factors

- *Hamwright v. State*,[++] 787 A.2d 824 (Md. Ct. Spec. App. 2001)

C. Consecutive Versus Concurrent Sentences

- *Malee v. State*, 809 A.2d 1 (Md. Ct. Spec. App. 2002)

D. Common-Law Crimes

- *Messina v. State*, 130 A.2d 578 (Md. 1957)

X. SUPERVISED RELEASE

A. Sex-Offender Registration

1. When Must an Offender Register?

- *Sweet v. State*, 806 A.2d 265 (Md. 2002)
- *Young v. State*, 806 A.2d 233 (Md. 2002)

2. Release of Information to the Public

a. Generally

- *Young v. State*, 806 A.2d 233 (Md. 2002)

b. Internet Access

- *Young v. State*, 806 A.2d 233 (Md. 2002)

B. Classification as a Sexually Violent Predator

1. "Sexually Violent Predator" Defined

- *Graves v. State*, 772 A.2d 1225 (Md. 2001)
- *Sweet v. State*, 806 A.2d 265 (Md. 2002)

2. Court Proceedings

a. Written Notice of Intent to Make Request

- *Graves v. State*, 772 A.2d 1225 (Md. 2001)

b. Two-Step Analysis

- *Sweet v. State*, 806 A.2d 265 (Md. 2002)

3. Petition for Termination of Status

- *Graves v. State*, 772 A.2d 1225 (Md. 2001)

MARYLAND
Case Highlights

A case with ++ indicates that although the subject matter is not child exploitation, the principle presented may still apply.

Acuna v. State, 629 A.2d 1233 (Md. 1993)

In a sex-offense prosecution, when the State presents proof of prior, sexual, criminal conduct of the same type by the accused perpetrated against the same victim, the law of evidence has already determined that, in general, the probative value, used as substantive evidence that the defendant carried out the offense charged, outweighs the inherent prejudicial effect.

Anderson v. State, 487 A.2d 294 (Md. Ct. Spec. App. 1985)

The child-abuse law is broader than common-law assault and battery in that it does not require a physical assault upon the child or any physical force to be applied by the accused individual; however, the child-abuse law is more restrictive than common-law assault and battery in that it focuses narrowly upon a discrete class of potential violators and a discrete class of victims.

Anderson v. State, 790 A.2d 732 (Md. Ct. Spec. App. 2002)

Consensual sexual intercourse between an adult and a minor can constitute child abuse under Maryland law.

Anderson v. State, 812 A.2d 1016 (Md. 2002)

A parent impliedly consents to a teacher taking all reasonable measures to assure the safe return of his or her child from school, including personally driving the child home. The defendant assumed that responsibility when he agreed to drive the 14-year-old victim home. Since the events leading up to the sexual encounter between the victim and the defendant were set in motion on school property and because, at the time of the offense, there had been no temporal break in the teacher-student relationship, the defendant was properly convicted of child abuse.

Attorney Grievance Comm'n v. Childress, 758 A.2d 117 (Md. 2000)

Based upon the transcripts of the criminal case brought against the defendant and the testimony presented at oral argument before the intermediary appellate court, there was clear and convincing evidence that the defendant committed criminal acts, namely crossing state lines with the intent to commit a sexual act with a minor. The defendant's conduct rose to a level that was prejudicial to the administration of justice, as the exhibition of such behavior is likely to impair public confidence in the profession, impact the image of the legal profession, and engender disrespect for the court; therefore, the defendant did in fact violate the Maryland Lawyers' Rules of Professional Conduct.

Attorney Grievance Comm'n v. Thompson, 786 A.2d 763 (Md. 2001)

Despite the defendant's present high-level motivation not to repeat the misconduct that led to the present charges, the fact remains that he stalked a child and, while his relevant misconduct did not extend beyond stalking, it is undisputed that his disorder involves a sexual attraction to pubescent boys, including a driven or addictive component; therefore, his criminal act undermines his trustworthiness and fitness as a lawyer.

Behrel v. State, 823 A.2d 696 (Md. Ct. Spec. App. 2003)

Where suspicion of criminal activity has focused on a specific individual by a standard more probable than not, and it is alleged that the evidence sought was created, retained, and employed in ongoing criminal activity over a four-year period, the magistrate could reasonably conclude that there was a "fair probability" that the evidence would be retained in the residence of the accused.

Brackins v. State, 578 A.2d 300 (Md. Ct. Spec. App. 1990)

The defendant exploited the child when he partially disrobed her for his own pleasure, amusement, gratification, and interest. A Polaroid snapshot of the event was not a necessary element of the exploitation, although it was disparaging evidence of the act of exploitation, because, to be convicted of exploitation, and therefore child abuse, threats, coercion, or subsequent use of the fruits of the acts are not necessary. The State need only prove, beyond a reasonable doubt, that the parent or person having temporary or permanent custody of a child took advantage of or unjustly or improperly used the child for his or her own benefit.

Cassidy v. State, 536 A.2d 666 (Md. Ct. Spec. App. 1988)

The out-of-court assertion of "daddy did this" by a child victim was not an excited utterance, nor was it a statement of bodily condition made to a treating physician; therefore, admitting the statement into evidence was in error and the error was not harmless.

Cooksey v. State, 752 A.2d 606 (Md. 2000)

Counts charging sexual abuse in a continuing course of conduct are not duplicitous as child sexual abuse, by its nature, may be committed either by one act or by multiple acts, and readily permits characterization as a continuing offense over a period of time.

Copsey v. State, 507 A.2d 186 (Md. Ct. Spec. App. 1986)

The defendant was charged with a continuing sexual offense involving regular transportation across county lines. He was initially charged and convicted in one county for a continuing sexual offense of a minor and was subsequently charged in another county for what was, in effect, a continuing sexual offense against the same minor male over a shorter period of time. The defendant was, therefore, unconstitutionally subjected to the risk of multiple punishment for the same offense, in violation of the Fifth Amendment right against double jeopardy.

Cortez v. State, 656 A.2d 360 (Md. Ct. Spec. App. 1995)

At a bench trial the defendant was convicted of fourth-degree sex offense and battery and sentenced to one year for the sex offense and a concurrent four-year term for battery. On appeal he asserted that battery is a lesser-included offense of a fourth-degree sex offense and, therefore, merges into the fourth-degree sex offense, thereby precluding a separate sentence for battery. Since the appellate court was not able to tell whether the trial judge did find the defendant committed a battery by the use of force separate and distinct from that used to commit the fourth-degree sex offense, the appellate court resolved the doubt in favor of the defendant and vacated the sentence for battery.

Degren v. State, 722 A.2d 887 (Md. 1999)

The definition of sexual abuse contemplates not just an affirmative act in directly molesting or exploiting a child, but one's omission or failure to act to prevent molestation or exploitation when it is reasonably possible to act and when there is a duty to do so. The definition itself encompasses what the defendant actually did: the affirmative acts of watching and failing to intervene in a rape.

Doe v. Archdiocese, 689 A.2d 634 (Md. Ct. Spec. App. 1997)

Although the Maryland legislature has chosen to create some exceptions to the general rule regarding statute of limitations, it has not created an exception for victims of child sexual abuse. Where the legislature has not expressly provided for an exception, courts cannot allow any implied or equitable exception to be engrafted upon it.

Doe v. Maskell, 679 A.2d 1087 (Md. 1996)

The appellate court found that the phenomenon of repression and the normal process of forgetting are indistinguishable scientifically; therefore, it follows that they should be treated the same legally. Consequently, the mental process of repression of memories of past sexual abuse does not activate the discovery rule and the plaintiffs' suits were thus barred by the statute of limitations.

Fletcher v. State, 260 A.2d 34 (Md. 1970)

At trial there was a clear conflict in testimony, and the trial court chose to believe the testimony of the child victim and his grandfather and to reject the exculpatory statements of the defendant. Since there was ample evidence from the rather graphic description by the child of acts of unnatural and perverted sexual practice by the defendant, occurring approximately 50 times, with the supporting evidence of the grandfather regarding gifts given to the child by the defendant and admission by the defendant of giving gifts to the child, the trial court's determination of guilt was reasonably supported.

Franks v. Delaware,[++] 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.

Freed v. Worcester County Dep't of Soc. Servs., 518 A.2d 159 (Md. Ct. Spec. App. 1986)

Except as otherwise provided by Maryland's Family Law Article, all records and reports concerning child abuse or neglect are confidential and their unauthorized disclosure is a criminal offense subject to penalty. Information contained in reports or records concerning child abuse or neglect may be disclosed only under a court order.

Garnett v. State, 632 A.2d 797 (Md. 1993)

Maryland's second-degree rape statute defines a strict liability offense that does not require the State to prove *mens rea*. Further, the statute makes no allowance for a mistake-of-age defense.

Giles v. State,[++] 271 A.2d 766 (Md. Ct. Spec. App. 1970)

In a search warrant the description of the premises to be searched must enable the law-enforcement officer with the warrant to locate the place with certainty. Lacking such description of the premises, a search warrant is general and, therefore, illegal.

Graves v. State, 772 A.2d 1225 (Md. 2001)

The statutory definition of a sexually violent predator does not encompass persons who have been convicted of criminal acts committed in another jurisdiction that would constitute a sexually violent offense in Maryland.

Gregoire v. State, 128 A.2d 243 (Md. 1957)

Generally a person accused of a crime may not be convicted on the uncorroborated testimony of an accomplice; however, in the present case there was no reason to believe that the prosecuting witnesses, two minor boys on whom the defendant performed oral sex, made the accusations to gratify malice or to shield themselves from punishment, as neither one of them knew the defendant before and, if they had not reported the incidents, no one would have known of the commission of the criminal acts. There was no evidence that either of the prosecuting witnesses voluntarily engaged in the criminal acts and there was no doubt that the defendant enticed both of them into his vehicle.

Guesfeird v. State, 480 A.2d 800 (Md. 1984)

An unsolicited and inadvertent reference by the complaining witness to taking a lie detector test is ground for reversible error where the trial court denied the defendant's motion for a mistrial and gave a curative instruction.

Hamwright v. State,[++] 787 A.2d 824 (Md. Ct. Spec. App. 2001)

The 15-year-old defendant was charged with two crimes that were punishable by life imprisonment – the first-degree sexual offense and attempted first-degree sexual offense – as well as a host of other crimes that were not punishable by either death or life

imprisonment. The trial court did not have jurisdiction over a crime that did not arise "incident to" the sex offense.

Harmony v. State, 594 A.2d 1182 (Md. Ct. Spec. App. 1991)

The facts surrounding the victim's statements to her sister clearly satisfied the requirements of the excited-utterance hearsay exception. The victim was upset enough after the incident to lock herself in a bathroom, crying. When she called her sister, she was still crying. Additionally the call was made in the course of the same evening as the incident of abuse; therefore, it was unlikely that the exciting influence of the incident had subsided to the extent that she was capable of forethought or deliberate design in her conversation with her sister.

Harnish v. State, 266 A.2d 364 (Md. Ct. Spec. App. 1970)

The defendant was convicted in a non-jury trial of committing an unnatural and perverted sex act. The appellate court found that the lower-court committed reversible error in permitting the mother of the child victim to relate a conversation she had with the victim of the alleged crime, her 5-year-old son, concerning what occurred between him and the defendant some 11 days earlier.

Hopkins v. State, 768 A.2d 89 (Md. Ct. Spec. App. 2001)

For the purposes of impeachment, since the issue is always the truth of the witness, where there is no way to determine whether a crime affects the defendant's testimony simply by the name of the crime that crime should be inadmissible for purposes of impeachment; therefore, the crime of child abuse is inadmissible for purposes of impeachment.

Hughes v. State, 287 A.2d 299 (Md. Ct. Spec. App. 1972)

A search-warrant affidavit included information that, in his apartment, the defendant had shown the child victim photographs and books with pictures of nude men performing sodomy and unnatural and perverted sex acts, immediately after which the defendant sodomized the victim. The warrant directed the seizure of obscene items, namely loose photographs and books of pictures showing nude males engaging in sodomy and unnatural and perverted sex acts. As described, the appellate court found that the property to be seized was sufficiently and specifically designated. Further, the court did not think that the warrant authorized a general rummage through all materials in the defendant's apartment.

Hutton v. State, 663 A.2d 1289 (Md. 1995)

When post-traumatic stress disorder expert testimony (PTSD) also addresses the credibility of the victim, it is inadmissible because it invades the province of the jury. Expert testimony that the victim was experiencing PTSD due to sexual abuse exceeded the confines of proper expert testimony because the expert improperly remarked on the credibility of the victim and gave an opinion that the victim was subjected to sexual abuse.

In re Adoption/Guardianship No. 2152A et al., 641 A.2d 889 (Md. Ct. Spec. App. 1994)

The testimony of a licensed, clinical psychologist who had treated a child victim and who expressed opinions about the victim's mental state on the basis of his observations of the victim and on statements the victim made to him in the course of therapy, was properly admitted. The trial court did not err in permitting the psychologist to rely upon the statements made to him by the victim as one of the bases for his expert opinion.

In re Appeal No. 180, 365 A.2d 540 (Md. 1976)

The word "solicit," as used in Maryland statutes criminalizing solicitation for the purpose of prostitution, is to be read in the terms of its ordinary meaning and not with reference to the common-law offense of solicitation.

In re Douglas P., 635 A.2d 427 (Md. 1994)

A "delinquent act" can be based upon conduct constituting child abuse.

Jefferson v. State, 147 A.2d 204 (Md. 1958)

When agreed to by the parties and approved by the lower court, the original transcript may be dispensed with. Despite the absence of a transcript, the Court of Appeals maintains jurisdiction to entertain an appeal.

Johnson v. State,[++] 352 A.2d 349 (Md. Ct. Spec. App. 1976)

The circumstances of the defendant's arrest, less than an hour before his consent was obtained, is an important factor in the "totality of the circumstances" by which the voluntariness of the consent is to be determined; however, the illegality of the arrest does not itself make all consents resulting there from involuntary.

Jones v. Baltimore City Police Dep't., 3606 A.2d 214 (Md. 1992)

The Law Enforcement Officers' Bill of Rights (LEOBR) provides that a law-enforcement officer is ordinarily entitled to an administrative hearing before punitive action is taken against that officer; however, an officer is not entitled to a hearing if he or she has been charged with and convicted of a felony. An officer who has been found guilty of a felony but granted probation before judgment has not been "convicted of a felony" for LEOBR purposes.

Jones v. State,[++] 283 A.2d 184 (Md. Ct. Spec. App. 1971)

There is authority in Maryland that a parent may consent to a search of a child's living quarters if the child is living at home.

Kelly v. State,[++] 412 A.2d 1274 (Md. Ct. Spec. App. 1980)

The right of privacy did not apply to the unnatural or perverted sexual act (sodomy) of which the defendant was convicted.

Lusby v. State, 141 A.2d 893 (Md. 1958)

It is proper, where the evidence is otherwise competent, for one to testify to facts of family history such as the identity of parents or other relations; therefore, the testimony

of the prosecutrix to the effect that the defendant was her father was sufficient proof of her pedigraic status and the testimony was not hearsay.

Malee v. State, 809 A.2d 1 (Md. Ct. Spec. App. 2002)

In the context of a sexual-abuse case concerning a minor, when time is not an essential element of the offense, general allegations as to time are constitutionally sufficient if the actual date of the offense is unknown. The present case involved charges of multiple sexual abuses of a continuing nature against a child victim who was unable to specify exact dates or times of the various acts. Consequently the information that stated the offenses occurred from 1980 to 1988 was constitutionally valid under the Maryland Declaration of Rights.

Matthews v. State, 666 A.2d 912 (Md. Ct. Spec. App. 1995)

Permitting a 4-year old child to be a witness and to testify at trial was not in error since the trial court correctly concluded that the child was competent to testify before she testified. The trial court conducted a *voir dire* examination of the child outside of the presence of the jury; the child responded affirmatively to the court's questions regarding whether she knew the difference between telling the truth and telling a lie and she promised to tell the truth; and the court allowed both the prosecutor and defense counsel to *voir dire* the child.

McDonald v. State,[++] 701 A.2d 675 (Md. 1997)

An anticipatory warrant is one that is issued before the necessary events have occurred to permit a lawful search of the premises. If those events never occur, the warrant is void.

McNeil v. State, 739 A.2d 80 (Md. 1999)

It is unlawful to procure, solicit, or offer to procure or solicit someone for the purpose of prostitution, lewdness, or assignation. This provision of Maryland law applies to anyone who solicits another for the purpose of prostitution, whether it is the prostitute, the prostitute's agent, or potential customers.

Messina v. State, 130 A.2d 578 (Md. 1957)

The crime of indecent exposure is an offense at common law. In the case of a common-law crime, the only restriction, with respect to sentencing, is that the sentence be within the reasonable discretion of the trial judge and not cruel and unusual punishment.

Montgomery County Dep't of Health & Human Servs. v. P.F., 768 A.2d 112 (Md. Ct. Spec. App. 2001)

The notion that an administrative law judge (ALJ) was obligated to credit the expert opinion of the social worker that the child was credible, rather than independently assess the credibility of the child's reported statement, was clearly contrary to a basic evidentiary rule that should be known and honored, even in administrative proceedings. While administrative agencies are not bound to observe the technical, common-law rules of evidence, they are not prevented from doing so as long as the evidentiary rules are not applied in an arbitrary or oppressive manner that deprives a party of his or her right to a fair hearing.

Moore v. State, 879 A.2d 1111 (Md. 2005)

Defendant downloaded child pornography to his computer, and was charged with misdemeanor possession (Crim. Law § 11-208) and felony "depiction or description." (Crim. Law. § 11-207). The Court found that Crim. Law § 11-207 was aimed at those who created child pornography using computers, and not those who merely download it.

Murphy v. Merzbacher, 697 A.2d 861 (Md. 1997)

In light of the fact that Merzbacher's alleged threats ceased before any of the alleged victim's of sexual abuse reached the age of majority, the victims' failure to maintain their actions within the applicable limitations period after that date was unreasonable as a matter of law and absolutely bars their claims against Merzbacher.

Newman v. State, 499 A.2d 492 (Md. Ct. Spec. App. 1985)

The trial judge committed reversible error in admitting the unsworn pre-trial statement of a defense witness containing details, furnished by the alleged victim, of certain sexual and other offense, including some not on trial.

Outmezguine v. State, 627 A.2d 541 (Md. Ct. Spec. App. 1993)

It is indeed possible for a person photographing or filming young people engaged in sexual conduct to determine whether they are under 18 and thus prevent a criminal violation from occurring.

Outmezguine v. State, 641 A.2d 870 (Md. 1994)

The First Amendment does not require knowledge of the minor's age to be an element of the crime of child pornography (*i.e.*, the offense of photographing a minor engaging in sexual conduct), nor does it require a reasonable mistake-of-age defense. The scienter requirement refers to knowledge of the nature and character of the materials produced, and not to knowledge of the minor's age.

Pettit v. Erie Ins. Exch., 699 A.2d 550 (Md. Ct. Spec. App. 1997)

The insured's intent to sexually molest two young boys is sufficient to trigger the intentional injury exclusion of the policies at issue.

Pettit v. Erie Ins. Exch., 709 A.2d 1287 (Md. 1998)

An adult insured's intent to engage in sexual contact with a child embodies an intent to injure for the purpose of applying the intentional injury exclusion for insurance coverage purposes.

Raines v. State, 788 A.2d 697 (Md. Ct. Spec. App. 2002)

A reasonable fact-finder could conclude that, when the defendant penetrated his daughter's vagina with a vibrator and dildo while X-rated videos played on the VCR in his bedroom, his actions were for the purposes of sexual arousal, gratification, or abuse.

Reed v. State,[++] 391 A.2d 364 (Md. 1978)

If the reliability of a particular scientific technique cannot be judicially noticed, it is necessary that the reliability be demonstrated before testimony based on the technique

can be introduced into evidence. While this demonstration will generally include testimony by witnesses, a court can and should take notice of law journal articles, articles from reliable sources that appear in scientific journals, and other publications that bear on the degree of acceptance by recognized experts that a particular process has achieved.

Rite Aid Corp. v. Hagley, 824 A.2d 107 (Md. 2003)

The photographing of a nude child for one's own benefit or advantage can constitute sexual abuse under Maryland law.

Smith v. State, 252 A.2d 277 (Md. Ct. Spec. App. 1969)

The medical evidence showed that the vagina of the victim was split by the insertion of some object, which could have been a penis, and that sperm were all around the area, and probably within the vagina as well. The most probable explanation of the injuries and conditions was the entrance of a penis within the vagina of the victim. Consequently there was legally sufficient evidence from which penetration could have been found beyond a reasonable doubt.

Smith v. State, 491 A.2d 587 (Md. Ct. Spec. App. 1985)

The charging document defined a minor child as under 18, rather than under 16. This over-inclusive designation was unfortunate, as the victim in fact was 15 years old in 1969, and therefore, a minor according to the applicable law. Despite this actuality, the failure of the information to state the appropriate age rendered it void as not stating an offense.

Starkey v. State, 810 A.2d 542 (Md. Ct. Spec. App. 2002)

A person commits a third-degree sex offense when he or she is at least 21 years of age and he or she engages in the act of fellatio with another person who is 14 or 15 years of age. Both persons are necessarily engaged in the act, involving the penis of one and the mouth of the other; therefore, both are performers.

State v. Boozer, 497 A.2d 1129 (Md. 1985)

Since the defendant was placed in jeopardy pursuant to the charge of engaging in a sexual act with a person aged 14 and 4 or more years younger than the defendant, he is protected from further prosecution for any sexual act with the victim; however, he is not protected from prosecution for prohibited vaginal intercourse or attempted vaginal intercourse with the victim because such was not embraced within the charge originally brought against him.

State v. Lancaster, 631 A.2d 453 (Md. 1993)

The elements of "taking into one's mouth the sexual organ of any other person" are equivalent to the elements of "performing a sexual act with a minor," except with respect to the element of the victim's age; therefore, both offenses were properly merged under the required-evidence test.

State v. Lee,[++] 613 A.2d 395 (Md. Ct. Spec. App. 1992)

Warrants issued before criminal possession has actually occurred present greater potential for abuse than do more routine warrants based on past events that indicate likely current possession; therefore, to protect against abuse, a particularized showing is required that the items to be seized will be in the place to be searched at a specific time.

State v. Mulkey, 560 A.2d 24 (Md. 1989)

The State is not confined to the specific date or dates stated in the charging document because the allegation as to date is not regarded as going to an essential element of the crime, and within reasonable limits, proof of any date before the return of the indictment and within the statute of limitations is sufficient. Consequently, because the charges against the defendant consisted of numerous sexual offenses and the child victims were incapable of indicating the exact dates or times of the sexual acts, the indictment, which informed the defendant of the continuing nature of the violations, the defendant's defense was not prejudiced.

State v. Taylor, 701 A.2d 389 (Md. 1997)

A paramount interest of the criminal-justice system should be avoiding unnecessary trials and the accompanying trauma to young victims of multiple acts of child abuse. These victims should not have to testify at multiple trials if the evidence would be the same at each trial and all of the acts of alleged abuse would be mutually admissible at each trial; therefore, separate trials of the defendant were not required since the defendant was not subject to any prejudice by the joinder of separate charges of child abuse, due to the fact that similar evidence would have been admitted in each case.

State v. Taylor, 810 A.2d 964 (Md. 2002)

After an acquittal of a party upon a regular trial on an indictment for either a felony or a misdemeanor, the verdict of acquittal can never afterward, in any form of proceeding, be set aside and a new trial granted. It matters not whether such verdict is the result of a misdirection of the judge on a question of law or of a misconception of fact of the part of the jury.

State v. Watson, 580 A.2d 1067 (Md. 1990)

The crime of second-degree rape based on the defendant having had sexual intercourse with a consenting 13-year-old girl bears little, if any, relationship to the defendant's character for peacefulness and non-violence. The defendant's criminal act, though reprehensible, did not involve any element of force and violence and its probative value, if any, was substantially outweighed by the potential prejudice of the jury misunderstanding the nature of the crime the defendant committed.

Sweet v. State, 806 A.2d 265 (Md. 2002)

The trial court erred in failing to find, on the record, the factual predicate necessary for finding the defendant was a sexually violent predator. The record was devoid of any indication that the sentencing court had considered the defendant's future risk, as required by statute, or had found, by a preponderance of the evidence, that the defendant was at risk to commit a subsequent violent offense.

Tapscott v. State, 664 A.2d 42 (Md. Ct. Spec. App. 1995)

On appeal the defendant alleged that there was insufficient evidence to prove his child-abuse convictions because the State was limited by the indictment to proving that he had the responsibility for the child victim's supervision at the time of the offenses. He also argued that since there was no evidence of mutual consent, necessary to prove that he was

responsible for the victim's supervision, there was insufficient evidence to prove the child-abuse counts. The appellate count found there was sufficient evidence to prove the child-abuse counts because at the time of both sexual encounters, the victim was legally a child; the defendant was the victim's half uncle; the defendant had accepted responsibility for the victim's supervision by agreeing to pick her up after work and have her spend the night at his house so that he could take her to a job interview the following morning; and that the defendant engaged in sexual intercourse with the minor and performed oral sex of her on two separate occasions.

Taylor v. State, 133 A.2d 414 (Md. 1957)

Consent of a victim who is under the age of consent is not a defense to a charge of assault with intent to rape.

Vogel v. State, 554 A.2d 1231 (Md. 1989)

One of the exceptions to the general rule that evidence that tends to show the accused committed another crime independent of that for which he or she is on trial, even one of the same type, is inadmissible, includes prosecutions for sexual crimes when similar offenses have been committed by the same parties prior to the crime alleged; however, the exception does not apply to prior offenses against any person other than the victim.

White v. State, 238 A.2d 278 (Md. Ct. Spec. App. 1968)

The testimony of a victim, if believed, is sufficient to support a verdict. The victim in an unnatural sex case is not an accomplice and his or her testimony need not be corroborated.

Wildberger v. State, 536 A.2d 718 (Md. Ct. Spec. App. 1988)

One of the defendants was convicted at trial of being an accessory after the fact, based on various sexual offenses her husband had committed against their minor daughter. The appellate court found her testimony to be sufficient reason for the lower court to conclude that she knew about the sexual abuse and was trying to protect her husband. The appellate court could not conclude, based on independent review, that the trial judge was clearly erroneous.

Wildermuth v. State, 530 A.2d 275 (Md. 1987)

The type of confrontation permitted by the use of a closed-circuit television can be constitutionally justified only if the prerequisites are met. One of those prerequisites is a showing of witness unavailability, a degree of necessity supporting the use of a procedure, or evidence that would otherwise not satisfy the confrontation requirements. If testimony in open court will indeed result in the child witness suffering serious emotional distress, there is sufficient unavailability.

Wilson v. State,[++] 752 A.2d 125 (Md. Ct. Spec. App. 2000)

The victim need not go into sordid detail to effectively establish that penetration occurred during the course of a sexual assault. A victim's description of what occurred to him or her is sufficient to establish, *prima facie*, that penetration occurred.

Young v. State, 806 A.2d 233 (Md. 2002)

The sex-offender-registration statute is not punitive in nature. It does not expose the defendant to a larger punishment than the maximum penalty already set forth in the statute. Rather, it is a remedial constraint necessary for the community's protection.

MARYLAND
Offenses Defined

A case with ++ indicates that although the subject matter is not child exploitation, the principle presented may still apply.

I. Battery

- Battery is defined as "the least actual force unlawfully applied to the person of another."
  – *Cortez v. State*, 656 A.2d 360, 363 (Md. Ct. Spec. App. 1995).
  – *Vogel v. State*, 554 A.2d 1231, 1232 (Md. 1989).

- Force is applied when there is any touching of a person or anything attached to the person by the aggressor or by any person or thing set in motion by him or her.
  – *Cortez v. State*, 656 A.2d 360, 363 (Md. Ct. Spec. App. 1995).
  – *Vogel v. State*, 554 A.2d 1231, 1232 (Md. 1989).

- The mere placing of one's hand upon the body of another without the latter's consent is sufficient to constitute the offense of battery.
  – *Cortez v. State*, 656 A.2d 360, 363 (Md. Ct. Spec. App. 1995).
  – *Vogel v. State*, 554 A.2d 1231, 1232 (Md. 1989).

II. Child Abuse

- Child abuse, sexual or physical, by a parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a child or a household or family member is prohibited.
  – *Anderson v. State*, 790 A.2d 732, 738 (Md. Ct. Spec. App. 2002).
  – *Anderson v. State*, 812 A.2d 1016, 1020 (Md. 2002).
  – *Brackins v. State*, 578 A.2d 300, 303-4 (Md. Ct. Spec. App. 1990).
  – *Graves v. State*, 772 A.2d 1225, 1228 (Md. 2001).
  – *Hopkins v. State*, 768 A.2d 89, 93 (Md. Ct. Spec. App. 2001).
  – *In re Douglas P.*, 635 A.2d 427, 429 (Md. 1994).
  – *Raines v. State*, 788 A.2d 697, 704 (Md. Ct. Spec. App. 2002).
  – *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 116 (Md. 2003).
  – *State v. Taylor*, 701 A.2d 389, 392-3 (Md. 1997).
  – *Tapscott v. State*, 664 A.2d 42, 50-1 (Md. Ct. Spec. App. 1995).
  – *Vogel v. State*, 554 A.2d 1231, 1232 (Md. 1989).

A. Definitions

1. "Child"

- "Child" means any individual under the age of 18 years.
  – *Graves v. State*, 772 A.2d 1225, 1228 (Md. 2001).
  – *Hopkins v. State*, 768 A.2d 89, 93 (Md. Ct. Spec. App. 2001).

– *In re Douglas P.*, 635 A.2d 427, 429 (Md. 1994).
– *Tapscott v. State*, 664 A.2d 42, 50-1 (Md. Ct. Spec. App. 1995).

2. "Family Member"

- "Family member" means a relative of a child by blood, adoption, or marriage.
  – *Graves v. State*, 772 A.2d 1225, 1228 (Md. 2001).
  – *Hopkins v. State*, 768 A.2d 89, 93 (Md. Ct. Spec. App. 2001).
  – *In re Douglas P.*, 635 A.2d 427, 429 (Md. 1994).
  – *Tapscott v. State*, 664 A.2d 42, 50-1 (Md. Ct. Spec. App. 1995).

3. "Household Member"

- "Household member" means a person who lives with or is a regular presence in a home of a child at the time of the alleged abuse.
  – *Graves v. State*, 772 A.2d 1225, 1228 (Md. 2001).
  – *Hopkins v. State*, 768 A.2d 89, 93 (Md. Ct. Spec. App. 2001).
  – *In re Douglas P.*, 635 A.2d 427, 429 (Md. 1994).
  – *Tapscott v. State*, 664 A.2d 42, 50-1 (Md. Ct. Spec. App. 1995).

4. "Responsibility for Supervision of a Child"

- "Responsibility for the supervision of a child" is not the same as "assumption of the permanent or temporary care or custody of a child," because the latter equates to *in loco parentis* status and arises only when one is willing to assume all the obligations and to receive all the benefits associated with one standing as a natural parent to a child.
  – *Anderson v. State*, 790 A.2d 732, 738 (Md. Ct. Spec. App. 2002).
  – *Anderson v. State*, 812 A.2d 1016, 1021-22 (Md. 2002).

- "Responsibility" in its common and generally accepted meaning denotes accountability and "supervision" emphasizes broad authority to oversee with the powers of direction and decision.
  – *Anderson v. State*, 790 A.2d 732, 738 (Md. Ct. Spec. App. 2002).
  – *Anderson v. State*, 812 A.2d 1016, 1021-22 (Md. 2002)

- Responsibility may be obtained only upon the mutual consent, expressed or implied, by the one legally charged with the care of a child and by the one assuming the responsibility.
  – *Anderson v. State*, 790 A.2d 732, 738 (Md. Ct. Spec. App. 2002).
  – *Anderson v. State*, 812 A.2d 1016, 1021-22 (Md. 2002)

- A parent may not impose responsibility for the supervision of his or her minor child on a third person unless that person accepts the responsibility, and a third person may not assume such responsibility

unless the parent grants it.
– *Anderson v. State*, 790 A.2d 732, 738 (Md. Ct. Spec. App. 2002).
– *Anderson v. State*, 812 A.2d 1016, 1021-22 (Md. 2002)

5. "Persons Entrusted with Responsibility for Supervision of a Child"

- Whether a person has responsibility for the supervision of a minor child is a question of fact for the jury.
  – *Anderson v. State*, 812 A.2d 1016, 1021 (Md. 2002)
- A temporal break in a teacher and student relationship, depending on its length and nature, can interrupt the implied consent of a parent and dispel the teacher's duty to supervise the parent's child.
  – *Anderson v. State*, 790 A.2d 732, 738 (Md. Ct. Spec. App. 2002).

- Once a teacher assumes the task of personally transporting a child from school to home with the implied consent of the parent, he or she also assumes the responsibility of supervising that child.
  – *Anderson v. State*, 812 A.2d 1016, 1023 (Md. 2002)

B. Sexual Abuse of a Child

- "Sexual abuse" means any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member.
  – *Brackins v. State*, 578 A.2d 300, 302 (Md. Ct. Spec. App. 1990).
  – *Cooksey v. State*, 752 A.2d 606, 608 (Md. 2000).
  – *Degren v. State*, 722 A.2d 887, 891 (Md. 1999).
  – *Graves v. State*, 772 A.2d 1225, 1228 (Md. 2001).
  – *Hopkins v. State*, 768 A.2d 89, 93 (Md. Ct. Spec. App. 2001).
  – *In re Douglas P.*, 635 A.2d 427, 429 (Md. 1994).
  – *Raines v. State*, 788 A.2d 697, 704 (Md. Ct. Spec. App. 2002).
  – *Tapscott v. State*, 664 A.2d 42, 50-1 (Md. Ct. Spec. App. 1995).
  – *Vogel v. State*, 554 A.2d 1231, 1232 (Md. 1989).
  – *Wildermuth v. State*, 530 A.2d 275, 290 (Md. 1987).

- Sexual abuse includes, but is not limited to:
  (1) incest, rape, or sexual offense in any degree;
  (2) sodomy; and
  (3) unnatural or perverted sexual practices.
  – *Cooksey v. State*, 752 A.2d 606, 608 (Md. 2000).
  – *Degren v. State*, 722 A.2d 887, 891 (Md. 1999).
  – *Graves v. State*, 772 A.2d 1225, 1228 (Md. 2001).
  – *Hopkins v. State*, 768 A.2d 89, 93 (Md. Ct. Spec. App. 2001).
  – *In re Douglas P.*, 635 A.2d 427, 429 (Md. 1994).
  – *Raines v. State*, 788 A.2d 697, 704 (Md. Ct. Spec. App. 2002).
  – *Tapscott v. State*, 664 A.2d 42, 50-1 (Md. Ct. Spec. App. 1995).
  – *Vogel v. State*, 554 A.2d 1231, 1232 (Md. 1989).
  – *Wildermuth v. State*, 530 A.2d 275, 290 (Md. 1987).

- The photographing of a nude child for one's own benefit or advantage can constitute sexual abuse under Maryland law.
  – *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 115 (Md. 2003).

1. Omission or Failure to Act

- The definition of sexual abuse contemplates not just an affirmative act in directly molesting or exploiting a child but also one's omission or failure to act to prevent molestation or exploitation when it is reasonably possible to act and when there is a duty to do so.
  – *Degren v. State*, 722 A.2d 887, 899 (Md. 1999).

2. Physical Injury

- Physical injury need not be shown in order to prove sexual abuse.
  – *Brackins v. State*, 578 A.2d 300, 302 (Md. Ct. Spec. App. 1990).

3. Continuing Offense

- Child sexual abuse, by its nature, may be committed either by one act or by multiple acts, and readily permits characterization as a "continuing" offense over a period of time.
  – *Cooksey v. State*, 752 A.2d 606, 608-9 (Md. 2000).

C. Child Abuse v. Common-Law Assault and Battery

- Maryland's child-abuse law is broader than common-law assault and battery in that it does not require a physical assault upon the child or that any physical force be applied by the accused; however, its more restrictive than common-law assault and battery in that it focuses narrowly upon a discrete class of potential violators and a discrete class of victims.
  – *Anderson v. State*, 790 A.2d 732, 738 (Md. Ct. Spec. App. 2002).

D. Child Exploitation

- To be convicted of exploitation, and therefore, child abuse, threats, coercion, or subsequent use of the fruits of the acts are not necessary.
  – *Brackins v. State*, 578 A.2d 300, 302 (Md. Ct. Spec. App. 1990).
  – *Raines v. State*, 788 A.2d 697, 705 (Md. Ct. Spec. App. 2002).
  – *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 116 (Md. 2003).

- The State need only prove, beyond a reasonable doubt, that the parent or person having temporary or permanent custody of a child takes advantage of or unjustly or improperly uses the child for his or her own benefit.
  – *Brackins v. State*, 578 A.2d 300, 302 (Md. Ct. Spec. App. 1990).
  – *Raines v. State*, 788 A.2d 697, 705 (Md. Ct. Spec. App. 2002).
  – *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 116 (Md. 2003).

III. Child Pornography

- Child pornography involves the production and dissemination of material depicting children engaged in either obscene conduct or other defined sexual conduct that may, but need not, be legally obscene.
  – *Outmezguine v. State*, 627 A.2d 541, 542 (Md. Ct. Spec. App. 1993).

- Every person who knowingly compiles, enters, transmits, makes, prints, publishes, reproduces, causes, allows, buys, sells, receives, exchanges, or disseminates any notice, statement, advertisement, or minor's name, telephone number, place of residence, physical characteristic or other descriptive or identifying information for the purpose of engaging, facilitating, encouraging, offering, or soliciting unlawful sexual conduct or sadomasochistic abuse of or with any minor is subject to a penalty.
  – *State v. Taylor*, 810 A.2d 964, 967 (Md. 2002).

A. Definitions

1. "Minor"

- "Minor" is defined as an individual under 18 years of age.
  – *Outmezguine v. State*, 627 A.2d 541, 542 (Md. Ct. Spec. App. 1993).
  – *Outmezguine v. State*, 641 A.2d 870, 871 (Md. 1994).

2. "Sexual Conduct"

- "Sexual conduct" means human masturbation, sexual intercourse, or any touching of or contact with genitals, pubic areas, or buttocks of a male or female, or the breasts of the female, whether alone or between members of the same or opposite sex, or between humans and animals.
  – *Outmezguine v. State*, 641 A.2d 870, 871 (Md. 1994).

B. Forms of Child Pornography

1. Soliciting, Causing, Inducing, or Knowingly Permitting

- It is unlawful for a person to solicit, cause, induce, or knowingly permit a minor to engage as a subject in the production of an obscene matter or a visual representation or performance that depicts a minor engaged as a subject in sexual conduct.
  – *Outmezguine v. State*, 627 A.2d 541, 543 (Md. Ct. Spec. App. 1993).

2. Photographing or Filming a Minor

- Every person who photographs or films a minor engaging in sexual conduct is subject to criminal penalty.
  – *Outmezguine v. State*, 627 A.2d 541, 543 (Md. Ct. Spec. App. 1993).

3. Knowingly Promoting, Distributing, or Possessing with the Intent to Distribute

- It is unlawful for a person to knowingly promote, distribute, or possess with the intent to distribute any matter or visual representation or performance that depicts a minor engaged as a subject in sexual conduct.
  –*Outmezguine v. State*, 627 A.2d 541, 543 (Md. Ct. Spec. App. 1993).

    - See generally *Moore v. State*, 879 A.2d 1111 (Md. 2005) for the difference between misdemeanor and felony possession of child pornography.

4. Virtual/Simulated Child Pornography

No relevant state cases reported.

C. Scienter

- The scienter requirement refers to knowledge of the nature and character of the materials produced.
  – *Outmezguine v. State*, 641 A.2d 870, 871 (Md. 1994).

- A defendant photographer must have knowledge that he or she is taking pictures of sexual conduct.
  – *Outmezguine v. State*, 641 A.2d 870, 871 (Md. 1994).

IV. Contributing to the Delinquency of a Child

- It is unlawful for an adult to willfully contribute to, encourage, cause, or tend to cause any act, omission, or condition that renders a child delinquent, in need of supervision, or in need of assistance.
  – *Attorney Grievance Comm'n v. Childress*, 758 A.2d. 117, 124 (Md. 2000).

V. Incest

A. Elements

- Persons who knowingly have carnal knowledge of another person, being within the degrees of consanguinity, within which marriages are prohibited by Maryland law, are guilty of incest.
  – *Smith v. State*, 491 A.2d 587, 594 (Md. Ct. Spec. App. 1985).
  – *Tapscott v. State*, 664 A.2d 42, 50-1 (Md. Ct. Spec. App. 1995).

B. "Consanguinity" Defined

- "Consanguinity" is defined as kinship, blood relation, the connection or relation of persons descended from the same stock or common ancestor.
  – *Tapscott v. State*, 664 A.2d 42, 50-1 (Md. Ct. Spec. App. 1995).

VI. Indecent Exposure

A. Offense at Common Law

- Indecent exposure in a public place in such a manner that the act is seen or is likely to be seen by casual observers is an offense at common law.
  – *Messina v. State*, 130 A.2d 578, 579 (Md. 1957).

- The common-law crime of indecent exposure consists of exposure in public of the entire person or of parts that should not be exhibited.
  – *Messina v. State*, 130 A.2d 578, 579 (Md. 1957).

- An exposure becomes indecent, and a crime, when the defendant exposes him- or herself at such a time and place that, as a reasonable person, he or she knows or should know his or her act will be open to the observation of others.
  – *Messina v. State*, 130 A.2d 578, 579 (Md. 1957).

B. Public Place

- Ordinarily, the place where the exposure is made must be public.
  – *Messina v. State*, 130 A.2d 578, 579 (Md. 1957).

- What constitutes a public place within the meaning of the offense depends on the circumstances of the case.
  – *Messina v. State*, 130 A.2d 578, 579 (Md. 1957).

- An exposure is public, or in a public place, if it occurs under such circumstances that it could be seen by a number of persons if they were present and happened to look.
  – *Messina v. State*, 130 A.2d 578, 579 (Md. 1957).

- It is immaterial that the exposure is seen by only one person if it occurs at a place open or exposed to the view of the public and where anyone who happened to have been nearby could have seen if he or she had looked.
  – *Messina v. State*, 130 A.2d 578, 579 (Md. 1957).

C. Intent

- Indecent exposure, to amount to a crime, must have been done intentionally.
  – *Messina v. State*, 130 A.2d 578, 579 (Md. 1957).

- Intent may be inferred from the conduct of the accused and the circumstances and environment of the occurrence.
  – *Messina v. State*, 130 A.2d 578, 579 (Md. 1957).

- The essential intent is general, not specific.
  – *Messina v. State*, 130 A.2d 578, 579 (Md. 1957).

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

No relevant state cases reported.

VIII. Prostitution, Pimping, and Pandering

A. Elements

- It is unlawful to procure, solicit, or offer to procure or solicit another for the purpose of prostitution, lewdness, or assignation.
  – *McNeil v. State*, 739 A.2d 80, 84 (Md. 1999).

- The provision applies to anyone who solicits for the purpose of prostitution, including the prostitute, his or her agents who solicit potential customers, and potential customers who solicit the prostitute.
  – *McNeil v. State*, 739 A.2d 80, 84 (Md. 1999).

B. Definitions

1. "Prostitution"

- "Prostitution" is defined as the offering or receiving of the body for sexual intercourse for hire.
  – *In re Appeal No. 180*, 278 Md. 443, 444 (1976).
  – *McNeil v. State*, 739 A.2d 80, 83 (Md. 1999).

2. "Lewdness"

- "Lewdness" is construed to mean any unnatural sexual practice.
  – *McNeil v. State*, 739 A.2d 80, 83 (Md. 1999).

3. "Assignation"

- "Assignation" is construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.
  – *McNeil v. State*, 739 A.2d 80, 83 (Md. 1999).

4. "Solicit"

- "Solicit," with respect to soliciting for the purpose of prostitution, is to be read in the terms of its ordinary meaning and not with reference to the common-law offense of solicitation.
  – *In re Appeal No. 180*, 278 Md. 443, 444 (1976).
  – *McNeil v. State*, 739 A.2d 80, 93 (Md. 1999).

- Common definitions of "solicit" include:
  (1) to ask or seek earnestly or pleadingly;
  (2) to beg;
  (3) to entreat;
  (4) to tempt or entice another to do wrong; and
  (5) to accost another for some immoral purpose.
  – *McNeil v. State*, 739 A.2d 80, 93 (Md. 1999).

IX. Rape in the Second Degree

- A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:
  (1) by force or threat of force against the will and without the consent of the other person;
  (2) who is mentally defective, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally defective, mentally incapacitated, or physically helpless; or
  (3) who is under 14 years of age and the person performing the act is at least 4 years older than the victim.

– *Garnett v. State*, 632 A.2d 797, 798 (Md. 1993).
– *Graves v. State*, 772 A.2d 1225, 1228 (Md. 2001).
– *Smith v. State*, 491 A.2d 587, 594 (Md. Ct. Spec. App. 1985).

X. Sexual Offense

A. Second Degree

1. Elements

- To convict a defendant of second-degree sexual offense, the State must prove that:
  (1) the defendant committed fellatio, cunnilingus, analingus, or anal intercourse with the victim;
  (2) the victim was under 14 years of age at the time of the act; and
  (3) the defendant is at least four years older than the victim.
  – *Cooksey v. State*, 752 A.2d 606, 607 (Md. 2000).
  – *Pettit v. Erie Ins. Exch.*, 709 A.2d 1287, 1289 (Md. 1998).
  – *Starkey v. State*, 810 A.2d 534, 537 (Md. Ct. Spec. App. 2002).

- Emission of semen is not required.
  – *Pettit v. Erie Ins. Exch.*, 709 A.2d 1287, 1290-1 (Md. 1998).

2. Penetration

- A conviction for second-degree sexual assault requires penetration, however slight, by any object into the genital or anal opening of another person's body if the penetration can be reasonably construed as being for the purpose of sexual arousal or gratification or for abuse of the other party, and if the penetration is not for accepted medical purposes.
  – *Raines v. State*, 788 A.2d 697, 705 (Md. Ct. Spec. App. 2002).

B. Third Degree

1. Elements

- The third-degree sexual offense statute sets forth three subsections that specify alternative theories under which a person can be convicted:
  (1) a person engages in sexual contact with another person against the will and without the consent of the other person, coupled with certain aggravating factors such as using a weapon or inflicting serous physical injury;
  (2) a person engages in sexual contact with another person who is mentally defective, mentally incapacitated, or physically helpless; and
  (3) a person engages in sexual contact with another person who is under 14 years of age, when the person performing the sexual contact is four or more years older than the victim.
  – *Starkey v. State*, 810 A.2d 534, 537 (Md. Ct. Spec. App. 2002).

- A person is guilty of a sexual offense in the third degree if the person engages in:
  (1) a sexual act with another person who is 14 or 15 years of age and the person performing the sexual act is at least 21 years of age, or
  (2) vaginal intercourse with another person who is 14 or 15 years of age and the person performing the act is at least 21 years of age.
  – *Malee v. State*, 809 A.2d 1, 3-4 (Md. Ct. Spec. App. 2002).
  – *Starkey v. State*, 810 A.2d 534, 537 (Md. Ct. Spec. App. 2002).
  – *State v. Taylor*, 810 A.2d 964, 969 (Md. 2002).

2. "Sexual Contact" Defined

- "Sexual contact" is defined as the intentional touching of any part of the victim or actor's anal or genital areas or other intimate parts for the purpose of sexual arousal or gratification or for abuse of either party.
  – *Cooksey v. State*, 752 A.2d 606, 607 (Md. 2000).

– *Malee v. State*, 809 A.2d 1, 3-4 (Md. Ct. Spec. App. 2002).
– *Pettit v. Erie Ins. Exch.*, 709 A.2d 1287, 1290-1 (Md. 1998).

3. Fellatio

- "Sexual act" includes fellatio.
  – *Starkey v. State*, 810 A.2d 534, 537 (Md. Ct. Spec. App. 2002).

C. Fourth Degree

1. Elements

- A person is guilty of a fourth-degree sexual offense if the person engages in:
  (1) sexual contact with another person against the will and without the consent of the other person;
  (2) a sexual act with another person who is 14 or 15 years of age and the person performing the sexual act is 4 or more years older than the other person; or
  (3) vaginal intercourse with another person who is 14 or 15 years of age and the person performing the act is 4 or more years older than the other person.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *Starkey v. State*, 810 A.2d 534, 537 (Md. Ct. Spec. App. 2002).
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

2. Definitions

a. "Sexual Contact"

- "Sexual contact" means the intentional touching of any part of the victim's or actor's anal or genital areas or other intimate parts for the purposes of sexual arousal or gratification or for abuse of either party and includes the penetration, however slight, by any part of a person's body, other than the penis, mouth, or tongue, into the genital or anal opening of another person's body if that penetration can be reasonably construed as being for the purposes of sexual arousal or gratification or for abuse of either party.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).

- "Sexual contact" does not include acts commonly expressive of familial or friendly affection, or acts for accepted medical purposes.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).

b. "Sexual Act"

- "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

- "Sexual act" also means the penetration, however slight, by any object into the genital or anal opening of another person's body if the penetration can be reasonably construed as being for the purposes of sexual arousal or gratification or for abuse of either party and if the penetration is not for accepted medical purposes.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

- Emission of semen is not required.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

c. "Vaginal Intercourse"

- Vaginal intercourse has its ordinary meaning of genital copulation.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

- Penetration, however slight, is evidence of vaginal intercourse.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

- Emission of semen is not required.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

3. Multi-Purpose Offense

- Fourth-degree sexual offense is a multi-purpose offense because it has alternative elements.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).

- Under the statutory language itself or the common-law requirements, fourth-degree sexual assault may be committed in two or more different ways, any one of which is sufficient for a conviction.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).

XI. Stalking

- To stalk means to engage in a persistent pattern of conduct that:
  (1) alarms, annoys, intimidates, frightens, or terrorizes a person, and
  (2) causes the person to reasonably fear for his or her safety, or that of any third person.
  – *Attorney Grievance Comm'n v. Thompson*, 786 A.2d 763, 766 (Md. 2001).

XII. Transporting a Minor for Purposes of Prostitution

- Any person who knowingly transports or causes to be transported, or who aids or assists in obtaining transportation for, by any means of conveyance, through or across Maryland, any person for the purpose of prostitution, or with the intent and purpose to induce, entice, or compel the person to become a prostitute, is guilty of a felony. MD. ANN. CODE, CRIM. LAW § 11-303.
  – *Young v. State*, 806 A.2d 233, 236 (Md. 2002).

XIII. Unnatural or Perverted Sexual Practices

- Every person who is convicted of taking into his or her mouth the sexual organ of any other person or animal, or who is convicted of placing his or her sexual organ in the mouth of any other person or animal, or who is convicted of committing any other unnatural or perverted sexual practice with any other person or animal is guilty of a felony.
  – *Fletcher v. State*, 206 A.2d 34, 38 (Md. 1970).
  – *Gregoire v. State*, 128 A.2d 243, 245 (Md. 1957).
  – *Hughes v. State*, 297 A.2d 299, 302 (Md. Ct. Spec. App. 1972).
  – *Kelly v. State*,[++] 412 A.2d 1274, 1274 (Md. Ct. Spec. App. 1980).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

MARYLAND

Mandatory Reporting

I. Duty to Report

A. Who Must Report?

1. Professionals

- Each health practitioner, police officer, educator, or human-service worker, acting in a professional capacity who has reason to believe that a child has been subjected to neglect or neglected must notify the local department of social services or the appropriate law-enforcement agency. MD. CODE ANN., FAM. LAW § 5-704.
  – *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 115 n.6 (Md. 2003).

- If the reporter is acting as a staff member of a hospital, public-health agency, childcare institution, juvenile detention center, school, or similar institution, he or she must immediately notify and give all required information to the head of the institution or the head person's designee. MD. CODE ANN., FAM. LAW § 5-704.
  – *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 115 n.6 (Md. 2003).

2. Others

- A person other than a health practitioner, police officer, or educator, or human-service worker, who has reason to believe that a child has been subjected to abuse or neglect must notify the local department of social services or the appropriate law-enforcement agency. MD. CODE ANN., FAM. LAW § 5-705.
  – *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 115 n.6 (Md. 2003).

B. Definitions

1. "Abuse"

- "Abuse" includes sexual abuse of a child, regardless of whether physical injuries are sustained. MD. CODE ANN., FAM. LAW § 5-701(b)(2).
  – *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 115 (Md. 2003).

- The photographing of a nude child for one's own benefit or advantage can constitute sexual abuse under Maryland law.
  – *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 115 (Md. 2003).

2. "Neglected Child"

- A "neglected child" is a minor child who has suffered or is suffering significant physical or mental harm or injury from:
  (1) the absence of the his or her parent(s), guardian, or custodian; or
  (2) the failure of the his or her parent(s), guardian, or custodian to give proper care and attention to him or her and to his or her problems under circumstances that indicate that the child's health or welfare is harmed or threatened thereby, unless the failure consists only of providing the child with non-medical remedial care and treatment recognized by state law instead of medical treatment.

  MD. CODE ANN., FAM. LAW § 5-701(g).
  – *Freed v. Worcester County Dep't of Soc. Servs.*, 518 A.2d 159, 161 (Md. Ct. Spec. App. 1986).

C. Confidential Information

- All records and reports concerning child abuse or neglect are confidential, and their unauthorized disclosure is a criminal offense subject to penalty. MD. ANN. CODE art. 88A, § 6.
  – *Freed v. Worcester County Dep't of Soc. Servs.*, 518 A.2d 159, 161 (Md. Ct. Spec. App. 1986).

- Information contained in reports or records concerning child abuse or neglect may be disclosed only under a court order.
  – *Freed v. Worcester County Dep't of Soc. Servs.*, 518 A.2d 159, 161 (Md. Ct. Spec. App. 1986).

II. Immunity: Good-Faith Requirement

- Immunity from civil and criminal liability is granted to any person who, in good faith, makes or participates in making a report of abuse or neglect, or who participates in an investigation or a resulting judicial proceeding. MD. CODE ANN., CTS. & JUD. PROC. § 5-620; MD. CODE ANN., FAM. LAW § 5-708.
  – *Freed v. Worcester County Dep't of Soc. Servs.*, 518 A.2d 159, 161 (Md. Ct. Spec. App. 1986).
  – *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 110 (Md. 2003).

A. "Good Faith" Defined

- Acting in good faith denotes performing honestly and with proper motive, even if negligently.
  – *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 117-8 (Md. 2003).

B. Standard

- The standard for determining good faith is a defendant's honest belief in the suitability of the actions taken. Therefore, it is immaterial whether a person is negligent in arriving at a certain belief or in taking a particular action.

– *Rite Aid Corp. v. Hagley*, 824 A.2d 107, 117-8 (Md. 2003).

MARYLAND

Search and Seizure of Electronic Evidence

A case with ++ indicates that although the subject matter is not child exploitation, the principle presented may still apply.

I. Search Warrants

A. Probable Cause

1. Defined

- Probable cause is defined as a fair probability that contraband or evidence of a crime will be found in a particular place.
  – *Behrel v. State*, 823 A.2d 696, 708 (Md. Ct. Spec. App. 2003).

2. Test to Establish Probable Cause

- The issuing magistrate makes a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him or her, 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.
  – *Behrel v. State*, 823 A.2d 696, 708 (Md. Ct. Spec. App. 2003).

- In determining whether a warrant is supported by probable cause, the issuing judge is confined to the averments contained in the search-warrant application; however, wholly conclusory statements in a warrant application ordinarily will not suffice.
  – *Behrel v. State*, 823 A.2d 696, 708 (Md. Ct. Spec. App. 2003).

3. Particularity Requirement

- The search warrant must name or describe, with reasonable particularity, the individual, building, apartment, premise, place, or thing to be searched.
  – *Giles v. State*,[++] 271 A.2d 766, 767 (Md. Ct. Spec. App. 1970).

- The description of the premises to be searched must enable the officer with the warrant to locate the place with certainty. Lacking such a description of the premises, a search warrant is general, and therefore illegal, and can produce no legal evidence.
  – *Giles v. State*,[++] 271 A.2d 766, 767 (Md. Ct. Spec. App. 1970).

4. Good-Faith Exception

a. Generally

- Evidence seized under a warrant subsequently determined to be invalid may be admissible if the executing officers acted in objective good faith with reasonable reliance on the warrant.
  – *Behrel v. State*, 823 A.2d 696, 716 (Md. Ct. Spec. App. 2003).

- Despite judicial authorization to search, good faith does not apply if a reasonably well-trained officer would have known that the search was illegal.
  – *Behrel v. State*, 823 A.2d 696, 716-7 (Md. Ct. Spec. App. 2003).

b. Appellate Review

- Because the application of the good-faith exception to the allegations of a search-warrant affidavit presents an objectively ascertainable question, it is for the appellate court to decide whether the affidavit was sufficient to support the requisite belief that the warrant was valid; however, when the record does not contain a finding as to the good-faith question, the appellate court is confined to the language of the affidavit in reviewing the applicability of the good-faith exception.
  – *Behrel v. State*, 823 A.2d 696, 715 (Md. Ct. Spec. App. 2003).

- A reviewing court has discretion to decide the good-faith exception issue without first resolving whether a warrant was supported by probable cause.
  – *Behrel v. State*, 823 A.2d 696, 708 (Md. Ct. Spec. App. 2003).

5. False Information: 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*,[++] 438 U.S. 154, 164-65 (1978).

- The burden is on the defendant to establish knowing or reckless falsity by a preponderance of the evidence before the evidence will be suppressed.
  – *McDonald v. State*,[++] 701 A.2d 675, 683 (Md. 1997).
  – *Wilson v. State*,[++] 752 A.2d 1250, 1266 (Md. Ct. Spec. App. 2000).

- Negligence or innocent mistake resulting in false statements in the affidavit is not sufficient to establish the defendant's burden.
  – *McDonald v. State*,[++] 701 A.2d 675, 683 (Md. 1997).
  – *Wilson v. State*,[++] 752 A.2d 1250, 1266 (Md. Ct. Spec. App. 2000).

6. Appellate Review

- In reviewing affidavits on a probable-cause determination, when a magistrate has found probable cause, an appellate court should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner.
  – *Behrel v. State*, 823 A.2d 696, 708 (Md. Ct. Spec. App. 2003).

- A reviewing court must determine if the issuing magistrate had a substantial basis for concluding that the evidence sought would be discovered in the place described in the application and its affidavit.
  – *Behrel v. State*, 823 A.2d 696, 708 (Md. Ct. Spec. App. 2003).

- Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.
  – *Behrel v. State*, 823 A.2d 696, 708 (Md. Ct. Spec. App. 2003).

B. Scope

- The items that law enforcement may reasonably seize under a constitutionally valid warrant and search are not confined to those specifically designated in the warrant if a nexus exists between the item seized and criminal behavior. Such nexus is automatically provided in the case of fruits and instrumentalities of crime and contraband, but may exist also as to mere evidence.
  – *Hughes v. State*, 297 A.2d 299, 308 (Md. Ct. Spec. App. 1972).

C. Staleness

- There is no bright-line rule for determining the staleness of probable cause. Rather, it depends upon the circumstances of each case, as related in the affidavit for the warrant.
  – *Behrel v. State*, 823 A.2d 696, 710 (Md. Ct. Spec. App. 2003).

1. Incriminating Evidence

- A highly incriminating or consumable item of personal property is less likely to remain in one place as long as an item of property that is not consumable or that is innocuous in itself, or not particularly incriminating.
  – *Behrel v. State*, 823 A.2d 696, 709 (Md. Ct. Spec. App. 2003).

2. Factors to Consider

- The likelihood that the evidence sought is still in place is a function not simply of watch and calendar, but of variables that do not punch a clock, including the character of the:
  (1) crime;
  (2) criminal;
  (3) thing to be seized; and
  (4) place to be searched.
  – *Behrel v. State*, 823 A.2d 696, 709 (Md. Ct. Spec. App. 2003).

a. Remoteness

- There is no statute in Maryland providing that the facts in a search-warrant application, set forth to establish probable cause, must result from observations made within a designated time before the issuance of the warrant.
  – *Behrel v. State*, 823 A.2d 696, 709 (Md. Ct. Spec. App. 2003).

- The remoteness of the facts observed from the date of issuance of the warrant is an element to be considered in each instance by the issuing authority in his or her determination of whether it appears that there is probable cause.
  – *Behrel v. State*, 823 A.2d 696, 709 (Md. Ct. Spec. App. 2003).

- The affidavit for a search warrant on probable cause, based on information and belief, should in some manner, by averment of date or otherwise, show that the event or circumstance constituting probable cause occurred at the time not so remote from the date of the affidavit as to render it improbable that the alleged violation of law authorizing the search was in existence at the time the application for the search warrant was made.
  – *Behrel v. State*, 823 A.2d 696, 708 (Md. Ct. Spec. App. 2003).

b. Nature of the Offense

- The nature of the offense is a factor bearing on a claim of staleness of the information used to obtain a search warrant.
  – *Behrel v. State*, 823 A.2d 696, 713-4 (Md. Ct. Spec. App. 2003).

- It would be reasonable for an issuing magistrate to conclude that a person charged with sexual exploitation of children through photographs and similar items would be likely to retain them for an indefinite period of time because their perceived usefulness to the suspect would be of a continuing nature,

through gratification obtained by him or her.
– *Behrel v. State*, 823 A.2d 696, 713-4 (Md. Ct. Spec. App. 2003).

c. Place to Be Searched

- If an offender has relocated his or her residence between the time of the crime and the time of the search, this will sometimes add weight to the argument that the information has become stale.
  – *Behrel v. State*, 823 A.2d 696, 714 (Md. Ct. Spec. App. 2003).

II. Scope of the Fourth Amendment

A. Visual Inspections of Unclothed Children

- The Fourth Amendment applies to visual inspections conducted by state officials of unclothed children for evidence of child abuse; however, such a search and seizure is constitutionally prohibited, in the absence of parental consent, if it is unreasonable.
  – *Wildberger v. State*, 536 A.2d 718, 722 (Md. Ct. Spec. App. 1988).

B. Determining Reasonableness

- What is constitutionally reasonable will vary according to the context of the search.
  – *Wildberger v. State*, 536 A.2d 718, 722 (Md. Ct. Spec. App. 1988).

- In each case, a balancing of the need for the particular search against the invasion of personal rights that the search entails is required.
  – *Wildberger v. State*, 536 A.2d 718, 722 (Md. Ct. Spec. App. 1988).

- Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.
  – *Wildberger v. State*, 536 A.2d 718, 722 (Md. Ct. Spec. App. 1988).

III. Anticipatory Warrants

A. Defined

- Anticipatory warrants are warrants based upon an affidavit showing probable cause that at some future time, but not presently, certain evidence of crime will be located at a specified place.
  – *McDonald v. State*,[++] 701 A.2d 675, 678 (Md. 1997).

- By definition, such warrants are issued before the necessary events have occurred that would allow a constitutional search of the premises. If those

events do not transpire, the warrant is void.
– *McDonald v. State*,[++] 701 A.2d 675, 678 (Md. 1997).
– *State v. Lee*,[++] 613 A.2d 395, 396 (Md. Ct. Spec. App. 1992).

B. Inherent Risks

- The risks inherent in anticipatory warrants include the risk of:
  (1) premature issuance;
  (2) judicial abdication of the probable-cause determination; and
  (3) premature execution.
  – *State v. Lee*,[++] 613 A.2d 395, 396 (Md. Ct. Spec. App. 1992).

1. Premature Issuance

- Premature issuance refers to clearly unconstitutional anticipatory warrants based on mere speculation of future criminal activity or on evidence indicating only that the suspect is expected to commit a crime in the future.
  – *State v. Lee*,[++] 613 A.2d 395, 396 (Md. Ct. Spec. App. 1992).

- Speculation or inference, however good, that a crime will be committed in the future at a certain place cannot sustain a warrant.
  – *State v. Lee*,[++] 613 A.2d 395, 396 (Md. Ct. Spec. App. 1992).

2. Particularized Showing

- A particularized showing that the items to be seized will be in the place to be searched at a specified time is required.
  – *State v. Lee*,[++] 613 A.2d 395, 396 (Md. Ct. Spec. App. 1992).

- Courts often speak in terms of "inevitability" or "imminence" when referring to the "particularity" requirement.
  – *State v. Lee*,[++] 613 A.2d 395, 397 (Md. Ct. Spec. App. 1992).

C. Warrant Application

- Affidavits supporting the application for an anticipatory warrant must show not only that law enforcement believes a delivery of contraband is going to occur, but also how law enforcement has obtained this belief, how reliable their sources are, and what part government agents will play in the delivery.
  – *State v. Lee*,[++] 613 A.2d 395, 397-8 (Md. Ct. Spec. App. 1992).

- Judicial officers must scrutinize whether there is probable cause to believe that the contraband will be located on the premises when the search takes place.
  – *State v. Lee*,[++] 613 A.2d 395, 397-8 (Md. Ct. Spec. App. 1992).

IV. Types of Searches

A. Employer Searches

No relevant state cases reported.

B. Private Searches

No relevant state cases reported.

C. University-Campus Searches

No relevant state cases reported.

D. Warrantless Searches

1. Consent Searches

- A search by permission is one of the exceptions to the general rule that reasonable searches must be made under a valid search warrant.
  – *Jones v. State*,[++] 283 A.2d 184, 187 (Md. Ct. Spec. App. 1971).

- The reasonableness of any search depends upon the facts and circumstances of each case.
  – *Jones v. State*,[++] 283 A.2d 184, 187 (Md. Ct. Spec. App. 1971).

A. Totality of Circumstances

- The circumstances of a defendant's arrest are an important factor in the totality of all the circumstances by which the voluntariness of a consent to search is to be determined.
  – *Johnson v. State*,[++] 352 A.2d 349, 350 (Md. Ct. Spec. App. 1976).

- The illegality of an arrest does not itself make all consents resulting there from involuntary.
  – *Johnson v. State*,[++] 352 A.2d 349, 350 (Md. Ct. Spec. App. 1976).

- The legality or illegality of a custodial holding is but one element to be considered in determining the voluntariness of consent. More determinative of the question, are the actual circumstances surrounding an arrest, such as the heightened possibilities for coercion derived from the particular custodial atmosphere.
  – *Johnson v. State*,[++] 352 A.2d 349, 350 (Md. Ct. Spec. App. 1976).

B. Determination of Voluntariness

- Whether consent to search is in fact voluntary or is the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances.
  – *Johnson v. State*,[++] 352 A.2d 349, 353 (Md. Ct. Spec. App. 1976).

- The factors of coercion and non-coercion are isolated and placed in juxtaposition in order to determine the voluntariness of a consent search.
  – *Johnson v. State*,[++] 352 A.2d 349, 353 (Md. Ct. Spec. App. 1976).

- The fact that a defendant is given Miranda warnings and is told of the right to refuse consent to a search, are non-coercive factors.
  – *Johnson v. State*,[++] 352 A.2d 349, 353 (Md. Ct. Spec. App. 1976).

C. Parental Consent

- A parent may consent to a search of a child's living quarters if the child is living at home.
  – *Jones v. State*,[++] 283 A.2d 184, 187 (Md. Ct. Spec. App. 1971).

- The immunity from unreasonable searches and seizures being personal, an accused cannot object to the searching of another's premises, particularly that of his or her parents, if the latter consent to the search.
  – *Jones v. State*,[++] 283 A.2d 184, 187 (Md. Ct. Spec. App. 1971).

D. Preponderance of the Evidence

- The court need only be convinced by a preponderance of the evidence that the consent to seize is voluntarily given in order to admit the evidence.
  – *Johnson v. State*,[++] 352 A.2d 349, 353 (Md. Ct. Spec. App. 1976).

2. Exigent Circumstances

No relevant state cases reported.

V. Methods of Searching

No relevant state cases reported.

VI. Electronic Eavesdropping

A. Interception of Wire, Oral, or Electronic Communications

- The Maryland Wiretapping and Electronic Surveillance Act permits law-enforcement officers investigating allegations of child abuse to intercept telephone conversations to obtain evidence of the offense so long as one party to the conversation consents to the interception. MD. CODE ANN., CTS. & JUD. PROC. §§ 10-401 et seq.
  – *Anderson v. State*, 790 A.2d 732, 735 (Md. Ct. Spec. App. 2002).

B. Reasonable Suspicion

- An interception is lawful so long as the officer has reasonable suspicion to warrant an investigation.
  – *Anderson v. State*, 812 A.2d 1016, 1024 (Md. 2002).

- The target of the investigation need not actually have been adjudged guilty of committing an enumerated crime.
  – *Anderson v. State*, 790 A.2d 732, 735 (Md. Ct. Spec. App. 2002).

- Suspicion enough to warrant an investigation is sufficient.
  – *Anderson v. State*, 790 A.2d 732, 735 (Md. Ct. Spec. App. 2002).

VII. Computer-Technician/Repairperson Discoveries

No relevant state cases reported.

VIII. Photo-Development Discoveries

See generally Rite Aid Corp. v. Hagley, 824 A.2d 107 (Md. 2003).

XI. Criminal Forfeiture

No relevant state cases reported.

X. Disciplinary Hearings for Federal and State Officers

No relevant state cases reported.

XI. Probation and Parolee Rights

A. Discharge from Probation

- A grant of probation before judgment, unless subsequently altered by a violation of that probation, should have the effect of wiping the criminal slate

clean.
– *Jones v. Baltimore City Police Dep't.*, 606 A.2d 214, 217 (Md. 1992).

- Upon fulfillment of the terms and conditions of probation, the court shall discharge the person from probation.
  – *Jones v. Baltimore City Police Dep't.*, 606 A.2d 214, 217 (Md. 1992).

- Discharge is a final disposition of the matter.
  – *Jones v. Baltimore City Police Dep't.*, 606 A.2d 214, 217 (Md. 1992).

B. Expungement of Criminal Record

- A person who is granted probation before judgment is entitled, at the time he or she is discharged from probation or after three years have passed from the date probation was granted, to have all police and court records of his or her arrest, charge, and disposition expunged.
  – *Jones v. Baltimore City Police Dep't.*, 606 A.2d 214, 217 (Md. 1992).

MARYLAND
Jurisdiction and Nexus

A case with ++ indicates that although the subject matter is not child exploitation, the principle presented may still apply.

I. Jurisdictional Nexus

No relevant state cases reported.

II. Internet Nexus

No relevant state cases reported.

III. County Jurisdiction, State Jurisdiction, Federal Jurisdiction, Concurrent Jurisdiction, and Juvenile Court Jurisdiction

- An offense may be prosecuted in any jurisdiction in which it takes place.
  – *Copsey v. State*, 507 A.2d 186, 191 (Md. Ct. Spec. App. 1986).

A. County

- If a person is transported, by any means, with the intent to commit a sexual offense and the intent is followed by actual violation, the defendant may be tried in the appropriate court within whose jurisdiction the county lies where the transportation was offered, solicited, begun, continued, or ended. MD. CODE ANN., CRIM. LAW § 3-316 (formerly MD. CODE ANN. art. 27, § 465).
  – *Copsey v. State*, 507 A.2d 186, 188 (Md. Ct. Spec. App. 1986).

- The county that gets to the trial table first is permitted to offer proof of conduct occurring on either or both sides of the county line; however, that county may exhaust all the jeopardy to which a defendant can be subjected and there will be none left for the county that attempts a later prosecution.
  – *Copsey v. State*, 507 A.2d 186, 190 (Md. Ct. Spec. App. 1986).

B. State

No relevant state cases reported.

C. Federal

No relevant state cases reported.

D. Concurrent

No relevant state cases reported.

E. Juvenile Court

1. Jurisdiction

- The juvenile court has exclusive original jurisdiction to try any person who has reached his or her 18th birthday for any willful act or omission causing a child to be adjudicated neglected, delinquent, or in need of supervision.
  – *Fletcher v. State*, 206 A.2d 34, 38 (Md. 1970).

- The Circuit Court of Maryland, sitting as a juvenile court, has jurisdiction to try any parent, guardian, or any person over the age of 18 years for any willful act or omission contributing to, encouraging or tending to cause any condition bringing a child within the jurisdiction of the court.
  – *Jefferson v. State*, 147 A.2d 204, 206 (Md. 1958).
  – *Taylor v. State*, 133 A.2d 414, 415 (Md. 1957).

2. No Jurisdiction

- The juvenile court does not have jurisdiction over a child who is at least 14 years old and is alleged to have done an act, which, if committed by an adult, would be a crime punishable by death or life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the juvenile court has been filed.
  – *Hamwright v. State*,++ 787 A.2d 824, 827 (Md. Ct. Spec. App. 2001).

3. Transferable Cases

- The court exercising jurisdiction may transfer the case to the juvenile court if a waiver is believed to be in the interests of the child or society.
  – *Hamwright v. State*,++ 787 A.2d 824, 827 (Md. Ct. Spec. App. 2001).

- The court may not transfer a case to the juvenile court if:
  (1) the child has previously been waived to juvenile court and adjudicated delinquent;
  (2) the child was convicted in another unrelated case excluded from the jurisdiction of the juvenile court; or
  (3) the alleged offense is murder in the first degree and the accused child is 16 or 17 at the time the alleged offense was committed.
  – *Hamwright v. State*,++ 787 A.2d 824, 827 (Md. Ct. Spec. App. 2001).

4. Factors Considered for Waiver

- In making a determination as to waiver of jurisdiction, the court shall consider the following:
  (1) age of child;
  (2) mental and physical condition of child;
  (3) the child's amenability to treatment in any institution, facility, or program available to delinquents;
  (4) nature of the alleged offense; and
  (5) public safety.
  – *Hamwright v. State*,[++] 787 A.2d 824, 827 (Md. Ct. Spec. App. 2001).

IV. Interstate Possession of Child Pornography

No relevant state cases reported.

MARYLAND
Discovery and Evidence

A case with ++ indicates that although the subject matter is not child exploitation, the principle presented may still apply.

I. Timely Review of Evidence

No relevant state cases reported.

II. Charging Documents and Indictments

A. Requirements of a Charging Document

1. Generally

- A charging document must state, with reasonable particularity, the time and place the charged offenses occurred.
  – *Cooksey v. State*, 752 A.2d 606, 619 (Md. 2000).
  – *Harmony v. State*, 594 A.2d 1182, 1186 (Md. Ct. Spec. App. 1991).
  – *State v. Mulkey*, 316 Md. 475, 488 (1989).

2. Cases Involving Sexual Offenses Committed Against a Minor

- To aid a trial court in its determination of whether the requirements of the rule are met in the context of a sexual offense case involving a child victim, a non-exhaustive list of factors must be considered:
  (1) nature of the offense;
  (2) age and maturity of the child;
  (3) victim's ability to recall specific dates; and
  (4) the State's good-faith efforts and ability to determine reasonable dates.
  – *Cooksey v. State*, 752 A.2d 606, 619 (Md. 2000).
  – *Harmony v. State*, 594 A.2d 1182, 1186 (Md. Ct. Spec. App. 1991).
  – *State v. Mulkey*, 560 A.2d 24, 30 (Md. 1989).

B. Dates

1. Generally

- When it is impossible for the State to determine the exact date and time that any crime was committed, and specificity as to the exact time and date of the crime alleged is impossible to establish, there is no Maryland case law requiring that, in such a case, the State must plead

and prove the offense occurred on a specific date at a specific time.
– *Malee v. State*, 809 A.2d 1, 5 (Md. Ct. Spec. App. 2002).

- The State is not confined to the specific date or dates in the charging document.
  – *State v. Mulkey*, 560 A.2d 24, 27 (Md. 1989).

- The allegation as to date is not regarded as going to an essential element of the crime and, within reasonable limits, proof of any date before the return of the indictment and within the statute of limitations is sufficient.
  – *State v. Mulkey*, 560 A.2d 24, 27 (Md. 1989).

2. Cases Involving Sexual Offenses Committed Against a Minor

- In the limited context of a sexual offense involving a minor, the trial court should consider the information provided in a bill of particulars when determining whether the time of the offenses is stated with reasonable particularity in the charging document.
  – *Harmony v. State*, 594 A.2d 1182, 1186 (Md. Ct. Spec. App. 1991).

III. Defense Requests for Copies of Child Pornography

No relevant state cases reported.

IV. Discovery by the State: Blood Samples

- In a criminal case, the State may obtain blood samples from a defendant.
  – *Tapscott v. State*, 664 A.2d 42, 49 (Md. Ct. Spec. App. 1995).

V. Introduction of E-mails into Evidence

A. Hearsay/Authentication Issues

No relevant state cases reported.

B. Circumstantial Evidence

No relevant state cases reported.

C. Technical Aspects of Electronic Evidence Regarding Admissibility

No relevant state cases reported.

VI. Text-Only Evidence

A. Introduction into Evidence

No relevant state cases reported.

B. Relevance

No relevant state cases reported.

VII. Evidence Obtained from Internet Service Providers

A. Electronic Communications Privacy Act

No relevant state cases reported.

B. Cable Act

No relevant state cases reported.

C. Patriot Act

1. National Trap and Trace Authority

No relevant state cases reported.

2. State-Court-Judge Jurisdictional Limits

No relevant state cases reported.

VIII. Prior Bad Acts

A. Inadmissible

1. Proof of Guilt

- Evidence of a defendant's prior or other criminal acts may not be introduced to prove guilt of the offense for which the defendant is on trial.
  – *Behrel v. State*, 823 A.2d 696, 730 (Md. Ct. Spec. App. 2003).

2. Proof of Character

- Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. MD. EVID. R. 5-404(b).
  – *Behrel v. State*, 823 A.2d 696, 730-1 (Md. Ct. Spec. App. 2003).

3. Appellate Review

- Unless a statement containing allegations of other uncharged criminal acts and of a defendant's bad character is substantially relevant for some other purpose than to show a probability that the defendant committed the crime on trial because he or she is a person of criminal character, the admission of such evidence may be cause for reversal, due to its prejudicial effect.
  – *Newman v. State*, 499 A.2d 492, 498 (Md. Ct. Spec. App. 1985).

B. Admissible

- Although evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith, it may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake, or absence of accident. MD. EVID. R. 5-404(b).
  – *Behrel v. State*, 823 A.2d 696, 730-1 (Md. Ct. Spec. App. 2003).
  – *State v. Taylor*, 701 A.2d 389, 391-2 (Md. 1997).

1. Burden

- To be admitted into evidence during the State's case in chief, not only must prior criminal acts have some special relevance that justifies an exception to the general rule barring admissibility of other crimes, but the fact of the other offenses must also be established by evidence that is clear and convincing to the trial judge.
  – *Acuna v. State*, 629 A.2d 1233, 1237 (Md. 1993).

2. Preferred Method to Proffer Evidence

- The preferred method for submitting any evidence of other crimes to the court during trial would be by way of a proffer to the trial judge outside the presence or hearing of the jury. Such a proffer protects the jury from immediate prejudice and allows the trial judge to determine whether there is any way to limit the prejudicial aspects of the evidence while retaining its probative character and whether the evidence should properly be introduced at that time.
  – *Vogel v. State*, 554 A.2d 1231, 1235 (Md. 1989).

3. Trial Judge's Discretion

- The trial judge possesses discretion to determine whether other crimes' evidence that has special relevance should be received.
  – *Acuna v. State*, 629 A.2d 1233, 1237 (Md. 1993).

- In exercising that discretion, the trial judge should carefully weigh the necessity for and probative value of the evidence of other bad acts against any unfair prejudice likely to result from its admission.
  – *Acuna v. State*, 629 A.2d 1233, 1237 (Md. 1993).

4. Relevance

a. Generally

- Evidence of other crimes may be admitted if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit crime or his or her character as a criminal.
  – *Behrel v. State*, 823 A.2d 696, 730-1 (Md. Ct. Spec. App. 2003).
  – *State v. Taylor*, 701 A.2d 389, 392-3 (Md. 1997).

b. Three-Prong Test

- A three-pronged test governs the admissibility of other crimes evidence.
  – *Behrel v. State*, 823 A.2d 696, 731 (Md. Ct. Spec. App. 2003).

- First, the trial court must determine if the evidence fits within one or more of the exceptions to the rule. That decision does not involve any discretion on the part of the trial court; therefore, no deference is extended to the trial court in regard to its determination.
  – *Behrel v. State*, 823 A.2d 696, 731 (Md. Ct. Spec. App. 2003).

- Second, if the evidence fits within one of the exceptions, the trial court must determine whether the accused's involvement in the other crimes is established by clear and convincing evidence.
  – *Behrel v. State*, 823 A.2d 696, 731 (Md. Ct. Spec. App. 2003).

- Third, the trial court must carefully balance the necessity for, and probative value of, the other crimes evidence against any undue prejudice likely to result from its admission. This is a discretionary determination on the part of the trial court. What matters is that the evidence of the other crimes, however it might be categorized or labeled, enjoyed a special or heightened relevance in helping to establish a contested issue in the case.
  – *Behrel v. State*, 823 A.2d 696, 731 (Md. Ct. Spec. App. 2003).

5. Common Scheme or Plan

- The common-scheme or plan exception to the rule of the admissibility of other crimes' evidence might mean either of two things:
  (1) a *modus operandi*, which is but one means of establishing identity, or
  (2) a plan to commit one offense as part of a grand scheme to commit others.
  – *Behrel v. State*, 823 A.2d 696, 733 (Md. Ct. Spec. App. 2003).

- Wrongful acts planned and committed together may be proved in order to show a continuing plan or common scheme; however, there must be evidence of one grand plan. The commission of each is merely a step toward the realization of that goal. The fact that the crimes are similar to each other or occurred close in time to each other is insufficient.
  – *Behrel v. State*, 823 A.2d 696, 733-4 (Md. Ct. Spec. App. 2003).

6. Crimes Linked in Time or Circumstance

- Other crimes' evidence may also be admitted if the crimes are so linked together in point of time or circumstances that one cannot be fully shown without proving the other.
  – *State v. Taylor*, 701 A.2d 389, 392-3 (Md. 1997).

7. Prior Abuse

- Proof that a person has been convicted of child abuse does not assist the fact-finder in weighing that person's veracity.
  – *Hopkins v. State*, 768 A.2d 89, 94 (Md. Ct. Spec. App. 2001).

a. Sexual

- The court recognizes the exception to the rule excluding evidence of prior crimes when the:
  (1) prosecution is for sexual crimes;
  (2) prior illicit sexual acts are similar to that for which the accused is on trial; and
  (3) same accused and victim are involved.
  – *Acuna v. State*, 629 A.2d 1233, 1237 (Md. 1993).
  – *Vogel v. State*, 554 A.2d 1231, 1234 (Md. 1989).

- The fact that a defendant does not testify and, therefore, does not expressly state injuries to a victim were accidental, that he or she had no malice, and that he or she did not intend to injure the victim should not prevent the use of the other crimes' evidence.
  – *State v. Taylor*, 701 A.2d 389, 395 (Md. 1997).

i. Same Victim

- Courts have permitted prior acts of child sexual abuse perpetrated by the defendant against the same victim to be admissible in child sexual-abuse cases even though malice and intent are irrelevant in such cases and accident is almost never a defense.
  – *State v. Taylor*, 701 A.2d 389, 394 (Md. 1997).

- Evidence of prior offenses is admissible to show that the accused had a passion or propensity for illicit sexual relations with the particular person concerned in the crime on trial.
  – *Vogel v. State*, 554 A.2d 1231, 1234 (Md. 1989).

- In a sex-offense prosecution, when the state offers evidence of prior sexual criminal acts of the same type by the accused against the same victim, the law of evidence already has concluded that, in general, the probative value, as substantive evidence that the defendant committed the crime charged, outweighs the inherent prejudicial effect.
  – *Acuna v. State*, 629 A.2d 1233, 1238 (Md. 1993).

ii. Different Victims

- With respect to other crimes evidence in a separate prosecution of a defendant for sexual contact with one child, evidence of similar conduct with a different child would not be relevant because it would not tend to prove a common scheme.
  – *Behrel v. State*, 823 A.2d 696, 732 (Md. Ct. Spec. App. 2003).

b. Physical

- The justification for admitting other acts of abuse is even greater in physical, child-abuse cases than in sexual, child-abuse cases, for there is rarely any claim that sexual child abuse is accidental or is proper parental discipline.
  – *State v. Taylor*, 701 A.2d 389, 394 (Md. 1997).

IX. Prior Convictions: Impeachment

- For a prior conviction to be admissible for the limited purpose of impeachment, the crime under consideration must be either an infamous crime or another crime relevant

to the witness's credibility.
– *Hopkins v. State*, 768 A.2d 89, 91 (Md. Ct. Spec. App. 2001).

- The court must limit its focus to the name of the crime.
  – *Hopkins v. State*, 768 A.2d 89, 91 (Md. Ct. Spec. App. 2001).

- A trial court should never conduct a mini-trial by examining the circumstances underlying the prior conviction.
  – *Hopkins v. State*, 768 A.2d 89, 91 (Md. Ct. Spec. App. 2001).

A. Infamous Crimes and Probative Value

- For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if the:
  (1) crime was an infamous crime or other crime relevant to the witness's credibility; and
  (2) court determines that the probative value of admitting the evidence outweighs the danger of unfair prejudice to the witness or the objecting party.
  – *Hopkins v. State*, 768 A.2d 89, 92 (Md. Ct. Spec. App. 2001).

B. Exclusion of Non-Infamous Crimes

- Convictions for certain non-infamous crimes are excluded because they simply do not bear on the witness's credibility.
  – *Hopkins v. State*, 768 A.2d 89, 92 (Md. Ct. Spec. App. 2001).

- Convictions for non-infamous crimes that might be relevant to a witness's credibility must be excluded if the particular crime is defined in a way that would cause the fact-finder to speculate as to what conduct is impacting on the witness's credibility.
  – *Hopkins v. State*, 768 A.2d 89, 92 (Md. Ct. Spec. App. 2001).

X. Character Evidence

A. Offered by the State

- The State may not offer, as proof of guilt, evidence that the defendant is a person of bad character, and therefore, likely to commit the offense charged.
  – *State v. Watson*, 580 A.2d 1067, 1069 (Md. 1990).

B. Offered by the Defendant

1. Generally

- The defendant may offer, as proof of innocence, evidence of his or her good character to establish that it is unlikely that a person of such good character would commit the crime.
  – *State v. Watson*, 580 A.2d 1067, 1069 (Md. 1990).

2. The Defendant "Opens the Door"

- If the defendant calls witnesses to testify to his or her good character for a relevant character trait, then the prosecutor may offer evidence to establish the defendant's bad character for the same trait, and may cross-examine the defendant's character witnesses about their knowledge of the defendant's character or the soundness of their opinions.
  – *State v. Watson*, 580 A.2d 1067, 1069 (Md. 1990).

- The State may question a character witness about any crimes and offenses committed by the defendant that are relevant to the character trait testified to by the witness.
  – *State v. Watson*, 580 A.2d 1067, 1069 (Md. 1990).

a. Relevance to a Specific Character Trait

- When a character witness testifies regarding a specific character trait, cross-examination must be limited to those crimes or acts of the defendant that evidence bad character for that specific character trait.
  – *State v. Watson*, 580 A.2d 1067, 1069-70 (Md. 1990).

- Prior assault convictions are not relevant to the character trait of honesty.
  – *State v. Watson*, 580 A.2d 1067, 1069-70 (Md. 1990).

b. Limitations on Questions Asked

- When inquiring about relevant prior convictions, the cross-examiner is limited to the name of the crime, the time and place of conviction, and the punishment.
  – *State v. Watson*, 580 A.2d 1067, 1070 (Md. 1990).

- The cross-examiner is precluded from showing details or circumstances of aggravation.
  – *State v. Watson*, 580 A.2d 1067, 1070 (Md. 1990).

c. Balancing Probative Value and Prejudice

- When ruling on the admissibility of prior criminal acts to impeach character witnesses, courts have a responsibility to weigh probative value against prejudice.
  – *State v. Watson*, 580 A.2d 1067, 1072 (Md. 1990).

XI. Witness Testimony

A. Corroboration of a Victim's Testimony

1. Corroboration

- The testimony of a victim of unnatural and perverted sexual practices, if believed, is sufficient to support a verdict.
  – *White v. State*, 238 A.2d 278, 280 (Md. Ct. Spec. App. 1968).

- The victim in an unnatural sex case is not an accomplice, and his or her testimony need not be corroborated.
  – *White v. State*, 238 A.2d 278, 280 (Md. Ct. Spec. App. 1968).

2. Proof of Penetration

- A victim's description of what occurred to him or her is sufficient to establish, *prima facie*, that penetration occurred.
  – *Wilson v. State*,[++] 752 A.2d 1250, 1256 (Md. Ct. Spec. App. 2000).

- The victim need not go into sordid detail to effectively establish that penetration occurred during the course of a sexual assault.
  – *Wilson v. State*,[++] 752 A.2d 1250, 1256 (Md. Ct. Spec. App. 2000).

- Where the key to the State's case rests with the victim's testimony, the courts are normally satisfied with descriptions that, in light of all the surrounding facts, provide a reasonable basis from which to infer that penetration has occurred.
  – *Wilson v. State*,[++] 752 A.2d 1250, 1256 (Md. Ct. Spec. App. 2000).

B. Expert Testimony

- The trial court exercises broad discretion when determining whether a particular witness is qualified to give an opinion.
  – *Tapscott v. State*, 664 A.2d 42, 53 (Md. Ct. Spec. App. 1995).

1. Factual Bases for Expert Opinions

- The expert's opinion has no probative force unless a sufficient basis to

support a rational conclusion is shown.
– *In re Adoption/Guardianship No. 2152A et al.*, 641 A.2d 889, 896 (Md. Ct. Spec. App. 1994).

- Factual basis may be:
  (1) acquired during trial by the expert's observation of the person on whom he or she is going to render an opinion;
  (2) contained within a hypothetical question; or
  (3) obtained from second-hand (*i.e.*, hearsay) information.
  – *In re Adoption/Guardianship No. 2152A et al.*, 641 A.2d 889, 896 (Md. Ct. Spec. App. 1994).

- An expert witness may testify to an opinion based on facts ordinarily inadmissible as hearsay, but which are facts of the type reasonably relied upon by experts in the field.
  – *In re Adoption/Guardianship No. 2152A et al.*, 641 A.2d 889, 896 (Md. Ct. Spec. App. 1994).

- The expert should relate the information on which the opinion is based so the court can decide if it is reliable and was obtained in a trustworthy manner.
  – *In re Adoption/Guardianship No. 2152A et al.*, 641 A.2d 889, 896 (Md. Ct. Spec. App. 1994).

- The information does not have to be admitted into evidence for the expert to use it in forming an opinion.
  – *In re Adoption/Guardianship No. 2152A et al.*, 641 A.2d 889, 896 (Md. Ct. Spec. App. 1994).

a. Hearsay Testimony

- Hearsay evidence may be admitted, not as proof of the underlying facts, but as the basis of an expert's opinion testimony.
  – *Matthews v. State*, 666 A.2d 912, 920 (Md. Ct. Spec. App. 1995).

b. Credibility Opinions

- When the expert's opinion that the alleged abuse occurred is based primarily on the child's statements, there is an inadequate factual foundation for that opinion; therefore, child sexual abuse cannot be proved by an expert's testimony that, in his or her opinion, the abuse has occurred because the alleged child victim is credible.
  – *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112, 125 (Md. Ct. Spec. App. 2001).

- A social worker's opinion regarding the credibility of a child in a child abuse matter invades the fact-finder's role in assessing credibility and resolving disputed facts.
  – *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112, 125 (Md. Ct. Spec. App. 2001).

2. Medical Opinions

- A medical opinion concerning a child may be based in part upon information received by the professional from the child's mother, who was, in fact, the child's nurse and attendant.
  – *Acuna v. State*, 629 A.2d 1233, 1237 (Md. 1993).

3. Post-Traumatic Stress Disorder (PTSD)

a. Diagnostic Criteria

- PTSD is an anxiety disorder characterized by four diagnostic criteria:
  (1) existence of a recognizable stressor that would evoke significant symptoms of distress in almost everyone;
  (2) re-experiencing of the trauma as evidenced by at least one of the following:
    (a) recurrent and intrusive recollections of the event;
    (b) recurrent dreams of the event; or
    (c) sudden acting or feeling as if the traumatic event were reoccurring because of an association with an environmental or ideational stimulus;
  (3) Numbing of responsiveness to or reduced involvement with the external world, beginning some time after the trauma, as shown by at least one of the following:
    (a) markedly diminished interest in one or more significant activities;
    (b) feelings of detachment or estrangement from others; or
    (c) constricted affect;
  (4) at least two of the following symptoms that were not present before the trauma:
    (a) hyper alertness or exaggerated startle response;
    (b) sleep disturbance;
    (c) guilt about surviving when others have not, or about behavior required for survival;
    (d) memory impairment or trouble concentrating;
    (e) avoidance of activities that arouse recollection of the traumatic event; or
    (f) intensification of symptoms by exposure to events that symbolize or resemble the traumatic event.
  – *Hutton v. State*, 663 A.2d 1289, 1290 (Md. 1995).

b. Triggers of Post-Traumatic Stress Disorder

i. Generally

- There is no particular stressor that triggers PTSD.
  – *Hutton v. State*, 663 A.2d 1289, 1294 (Md. 1995).

- PTSD can be caused by any number of stressful experiences.
  – *Hutton v. State*, 663 A.2d 1289, 1294 (Md. 1995).

ii. Rape

- When the stressor is rape, the term "rape-trauma syndrome" is sometimes used.
  – *Hutton v. State*, 663 A.2d 1289, 1294 (Md. 1995).

iii. Child Sexual Abuse

- Child sexual abuse is a recognized stressor that causes PTSD.
  – *Hutton v. State*, 663 A.2d 1289, 1294 (Md. 1995).

- When PTSD is involved, the jury's responsibility to determine whether the abuse occurred involves making the connection between the existence of symptoms consistent with PTSD and the stressor.
  – *Hutton v. State*, 663 A.2d 1289, 1294 (Md. 1995).

iv. Credibility of the Sufferer

- When the stressor cannot be objectively determined, its existence depends upon the credibility of the PTSD sufferer.
  – *Hutton v. State*, 663 A.2d 1289, 1300 (Md. 1995).

- Where the PTSD expert testimony also addresses the credibility of the victim, it has been held inadmissible because it invaded the province of the jury.
  – *Hutton v. State*, 663 A.2d 1289, 1296-7 (Md. 1995).

v. Negation of Consent

- A jury, with the assistance of a competent expert, can understand that a diagnosis of PTSD tends to negate consent where the history, as reviewed by the expert,

reflects no other trauma that, in the expert's opinion, could produce that medically recognized disorder.
– *Hutton v. State*, 663 A.2d 1289, 1301 (Md. 1995).

4. Common Characteristics of Child-Sexual-Abuse-Accommodation Syndrome

- Child sexual abuse, a recognized stressor causing PTSD, may also be the triggering event for child-sexual-abuse-accommodation syndrome.
  –*Hutton v. State*, 663 A.2d 1289, 1294 (Md. 1995).

- For diagnostic purposes, characteristics commonly observed in sexually abused children, different from, and in addition to those normally associated with PTSD, come into play. They are:
  (1) secrecy;
  (2) helplessness;
  (3) entrapment and accommodation;
  (4) delayed, conflicted, and unconvincing disclosure; and
  (5) retraction.
  –*Hutton v. State*, 663 A.2d 1289, 1294 (Md. 1995).

5. Scientific Evidence

a. Validity and Reliability

i. Generally

- On occasion, the validity and reliability of a scientific technique may be so broadly and generally accepted in the scientific community that a trial court may take judicial notice of its reliability.
  – *Reed v. State*,[++] 391 A.2d 364, 367 (Md. 1978).

- If the reliability of a particular technique cannot be judicially noticed, it is necessary that the reliability be demonstrated before testimony based on the technique can be introduced into evidence. While this demonstration will generally include testimony by witnesses, a court can and should take notice of law journal articles, articles from reliable sources that appear in scientific journals, and other publications that bear on the degree of acceptance by recognized experts that a particular process has achieved.
  – *Reed v. State*,[++] 391 A.2d 364, 367 (Md. 1978).

ii. Test to Establish Reliability

- Before a scientific opinion will be received as evidence at trial, the basis of that opinion must be shown to be generally accepted as reliable within the expert's particular scientific field.
  – *Reed v. State*,[++] 391 A.2d 364, 367-8 (Md. 1978).

- According to the *Frye* standard, if a new scientific technique's validity is in controversy in the relevant scientific community or if the technique is experimental, expert testimony based upon its validity cannot be admitted into evidence.
  – *Reed v. State*,[++] 391 A.2d 364, 367 (Md. 1978).

- Testimony based on a technique that is found to have gained general acceptance in the scientific community may be admitted into evidence, but only if a trial judge also determines in the exercise of his discretion, that the proposed testimony will be helpful to the jury and that the expert is properly qualified.
  – *Reed v. State*,[++] 391 A.2d 364, 372 (Md. 1978).

b. Polygraphs

i. Inadmissible

- Evidence of polygraph tests is not admissible.
  – *Guesfeird v. State*, 480 A.d 800, 802 (Md. 1984).

- The results of a lie-detector test, as well as the fact of taking such a test, are not admissible.
  – *Guesfeird v. State*, 480 A.d 800, 802 (Md. 1984).

ii. Grounds for Reversal

- A reference to a lie-detector test in a criminal trial is not grounds for reversal if the result of the test cannot be inferred from the circumstances or if the reference is not prejudicial to defendant.
  – *Guesfeird v. State*, 480 A.d 800, 802 (Md. 1984).

iii. Factors to Determine Prejudice

- In determining whether evidence of a lie-detector test is so prejudicial that it denies the defendant a fair trial, courts look at many factors, including whether:

(1) the reference to the lie detector was repeated or whether it was a single, isolated statement;
(2) the reference was solicited by counsel or was an inadvertent and unresponsive statement;
(3) the witness making the reference is the principal witness upon whom the entire prosecution depends;
(4) credibility is a crucial issue;
(5) a great deal of other evidence exists; and
(6) an inference as to the result of the test can be drawn.
– *Guesfeird v. State*, 480 A.d 800, 802 (Md. 1984).

- No single factor is determinative in any case.
  – *Guesfeird v. State*, 480 A.d 800, 802 (Md. 1984).

- The factors themselves are not the test, but rather they help to evaluate whether the defendant was prejudiced.
  – *Guesfeird v. State*, 480 A.d 800, 802 (Md. 1984).

iv. Mistrial

- When the prosecutor's questioning inadvertently elicits a witness's reference to a polygraph test, there is cause for mistrial if, but only if, the reference to the test raises an inference about the result that substantially prejudices the defendant's case.
  – *Guesfeird v. State*, 480 A.d 800, 803 (Md. 1984).

- In deciding whether to grant or deny a defendant's motion for mistrial, the trial court must weigh various factors bearing on the substantiality of any resulting prejudice to the defendant.
  – *Guesfeird v. State*, 480 A.d 800, 803 (Md. 1984).

- The court must determine whether the:
  (1) inference as to the result of the test may be crucial in assessing the witness's credibility, and
  (2) the witness's credibility plays a vital role in the case.

  The fact that the reference is isolated or inadvertent does not alone insure that the reference is not prejudicial.
  – *Guesfeird v. State*, 480 A.d 800, 803 (Md. 1984).

c. Deoxyribonucleic Acid (DNA)

- Evidence of DNA profile is allowed to prove or disprove the identity of any person.
  – *Tapscott v. State*, 664 A.2d 42, 50-1 (Md. Ct. Spec. App. 1995).

C. Child Witnesses

- A child may testify within the discretion of the court.
  – *White v. State*, 238 A.2d 278, 280 (Md. Ct. Spec. App. 1968).

1. Competency

- The determination of a child's competence to testify is generally left to the sound discretion of the trial judge, whose judgment will not be disturbed on appeal, absent an abuse of that discretion.
  – *Matthews v. State*, 666 A.2d 912, 920 (Md. Ct. Spec. App. 1995).

- In a criminal trial, the age of a child may not be the reason for precluding a child from testifying.
  – *Matthews v. State*, 666 A.2d 912, 920 (Md. Ct. Spec. App. 1995).

- In determining a child's competency, the test is not the age of the child, but the child's reasonable ability to observe, to understand, to recall, and to relate happenings while conscious of a duty to speak the truth.
  – *Matthews v. State*, 666 A.2d 912, 920 (Md. Ct. Spec. App. 1995).

- When the issue is raised, the trial judge should conduct an examination out of the presence of the jury to develop the factual basis for a competency determination.
  – *Matthews v. State*, 666 A.2d 912, 920 (Md. Ct. Spec. App. 1995).

2. Closed-Circuit Television

- In a case of child abuse, a court may order that the testimony of a child victim be taken outside the courtroom and shown in the courtroom by means of closed-circuit television if the:
  (1) testimony is taken during the proceeding, and
  (2) judge determines that testimony by the child victim in the courtroom will result in the child suffering serious emotional distress such that the child cannot reasonably communicate.

  MD. CODE ANN., CTS. & JUD. PROC. § 9-102.
  – *Wildermuth v. State*, 530 A.2d 275, 277 (Md. 1987).

- Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child.
  – *Wildermuth v. State*, 530 A.2d 275, 277 (Md. 1987).

- Only the following persons may be in the room with the child when the child testifies by closed-circuit television:
  (1) the prosecuting attorney;
  (2) the attorney for the defendant;

(3) operators of the closed-circuit television equipment; and
(4) any person whose presence, in the opinion of the court, contributes to the well being of the child, including a person who has dealt with the child in a therapeutic setting concerning the abuse, unless the defendant objects.
– *Wildermuth v. State*, 530 A.2d 275, 277 (Md. 1987).

- During the child's testimony by closed-circuit television, the judge and the defendant shall be in the courtroom, where they will be allowed to communicate with the persons in the room where the child is testifying by any appropriate electronic method.
– *Wildermuth v. State*, 530 A.2d 275, 277 (Md. 1987).

D. Hearsay

1. "Hearsay" Defined

- A good working definition of hearsay is "an out-of-court assertion offered in court for the truth of the matter asserted, and thus resting for its value upon the credibility of the out-of-court asserter."
– *Cassidy v. State*, 536 A.2d 666, 669 (Md. Ct. Spec. App. 1988).

2. Burden of Proof

- The opponent of hearsay does not have to show why it should be rejected because the fact that it is hearsay is, presumptively, reason enough.
– *Cassidy v. State*, 536 A.2d 666, 669 (Md. Ct. Spec. App. 1988).

- When urging an exception to a rule of exclusion, the burden is upon the proponent of the exception.
– *Cassidy v. State*, 536 A.2d 666, 669 (Md. Ct. Spec. App. 1988).

- Hearsay will be excluded, unless the proponent demonstrates its probable trustworthiness.
– *Cassidy v. State*, 536 A.2d 666, 669 (Md. Ct. Spec. App. 1988).

- Affirmative evidence of trustworthiness contemplates something more than the absence of evidence of untrustworthiness.
– *Cassidy v. State*, 536 A.2d 666, 669 (Md. Ct. Spec. App. 1988).

3. Administrative Proceedings

- Although hearsay evidence may be admissible in an administrative proceeding, it is appropriate for an administrative law judge to question whether the hearsay statement is sufficiently reliable to be

considered credible evidence.
– *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112, 128 (Md. Ct. Spec. App. 2001).

4. Exceptions

a. *Res Gestae*

- Out-of-court declarations or utterances made by the victim of a crime may be related through testimony by a witness to whom they were addressed or overheard, notwithstanding the rule prohibiting hearsay testimony, if the statements come within the scope of the *res gestae* rule.
  – *Harnish v. State*, 266 A.2d 364, 365 (Md. Ct. Spec. App. 1970).

- "*Res gestae*" encompasses a family of spontaneous statements that are exceptions to the hearsay rule, including:
  (1) statements of present bodily condition;
  (2) statements of mental state;
  (3) excited utterances; and
  (4) unexcited statements of present-sense impression.
  – *Harmony v. State*, 594 A.2d 1182, 1186 (Md. Ct. Spec. App. 1991).

- What constitutes *res gestae* includes what was said during the crime and, in addition, some things that are said thereafter as a direct and immediate result thereof.
  – *Smith v. State*, 252 A.2d 277, 280 (Md. Ct. Spec. App. 1969).

i. Spontaneity

- Spontaneity is an essential ingredient since the basis for the admission of declarations under the *res gestae* rule is the belief that spontaneous and instinctive utterances, made without opportunity or time for reflection or deliberation, are more likely to produce a true and accurate statement of the transaction or event of which they form a part.
  – *Harnish v. State*, 266 A.2d 364, 365 (Md. Ct. Spec. App. 1970).

ii. Declarations of a Child

- The application of the *res gestae* rule should not be applied to declarations of a child of tender years with the same rigidity that its application would be given to declarations of adults.
  – *Harnish v. State*, 266 A.2d 364, 366 (Md. Ct. Spec. App. 1970).

iii. Incompetent Witnesses

- *Res gestae* statements by incompetent witnesses are usually not inadmissible.
  – *Smith v. State*, 252 A.2d 277, 280 (Md. Ct. Spec. App. 1969).

b. Excited Utterance

- A statement may be admitted under the excited-utterance exception if the declaration was made at such a time and under such circumstances that the exciting influence of the occurrence clearly produced a spontaneous and instinctive reaction on the part of the declarant, who was still emotionally engulfed by the situation.
  – *Harmony v. State*, 594 A.2d 1182, 1186 (Md. Ct. Spec. App. 1991).
  – *Cassidy v. State*, 536 A.2d 666, 675 (Md. Ct. Spec. App. 1988).

- The length of time between the declaration and the occurrence is a consideration not only of whether it was made spontaneously, but also of whether the declarant was still emotionally engulfed; however, time is not a conclusive factor.
  – *Harmony v. State*, 594 A.2d 1182, 1186 (Md. Ct. Spec. App. 1991).
  – *Cassidy v. State*, 536 A.2d 666, 675 (Md. Ct. Spec. App. 1988).

- Even within the shortest of time lapses, it is required that an out-of-court assertion actually be spontaneous, that the declarant literally still be in the throes of the exciting event, to constitute an excited utterance.
  – *Cassidy v. State*, 536 A.2d 666, 675 (Md. Ct. Spec. App. 1988).

- The utterance need not be contemporaneous or simultaneous with the principal act.
  – *Harmony v. State*, 594 A.2d 1182, 1186 (Md. Ct. Spec. App. 1991).

- If the utterance is subsequent to the principal act, it must be established that the exciting influence has not lost its effect or been dissipated by deliberation; however, the crucial factor is not so much the lapse of time or change of location, but the continuance of a situation, which insures that what is said is, in fact, a spontaneous reaction to the occurrence.
  – *Harmony v. State*, 594 A.2d 1182, 1186 (Md. Ct. Spec. App. 1991).

c. Physical Condition and Medical History

i. Generally

- A treating physician and an examining physician alike may render in court expert opinions based upon medical histories given to them by patients.
  – *Cassidy v. State*, 536 A.2d 666, 680 (Md. Ct. Spec. App. 1988).

ii. Out-of-Court Statements As Substantive Evidence

(a) Statements to an Examining Physician

- In the case of the examining physician, the out-of-court statements made to the physician are not admissible as substantive evidence.
  – *Cassidy v. State*, 536 A.2d 666, 680 (Md. Ct. Spec. App. 1988).

- The out-of-court statements may be inquired into in the probing of the reasons for the expert opinion, but the jury will be instructed to receive them for that limited purpose only, and not as substantive evidence.
  – *Cassidy v. State*, 536 A.2d 666, 680 (Md. Ct. Spec. App. 1988).

(b) Statements to a Treating Physician

- In the case of statements made to a treating physician, they serve not only as a legitimate predicate for the physician's expert opinion, but may also be received, through the medium of the testifying physician, as substantive evidence.
  – *Cassidy v. State*, 536 A.2d 666, 680 (Md. Ct. Spec. App. 1988).

- The declarant's motive in making the statement must be consistent with the purpose of promoting treatment.
  – *Cassidy v. State*, 536 A.2d 666, 680 (Md. Ct. Spec. App. 1988).

d. Child's Statement of Sexual Abuse

i. Trustworthiness

- A trial judge must make a preliminary determination of whether the young child's statement is sufficiently reliable to be admitted into evidence. Such hearsay may be admissible only if the statement possesses particularized guarantees of trustworthiness.
  – *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112, 128 (Md. Ct. Spec. App. 2001).

- In order to determine if a child's statement possesses particularized guarantees of trustworthiness, the court shall consider, but is not limited to, consideration of the following factors:
  (1) the child's personal knowledge of the event;
  (2) the certainty that the statement was made;
  (3) any apparent motive to fabricate or exhibit partiality by the child, including interest, bias, corruption, or coercion;
  (4) whether the statement was spontaneous or directly responsive to questions;
  (5) the timing of the statement;
  (6) whether the child's young age makes it unlikely that the child fabricated the statement that represents a graphic, detailed account beyond the child's knowledge and experience and the appropriateness of the terminology to the child's age;
  (7) the nature and duration of the abuse;
  (8) the inner consistency and coherence of the statement;
  (9) whether the child was suffering pain or distress when making the statement;
  (10) whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement;
  (11) whether the statement is suggestive due to the use of leading questions; and
  (12) the credibility of the person testifying about the statement.
  – *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112, 128 (Md. Ct. Spec. App. 2001).

ii. Admissibility

- If the child is available, the court must conduct an *in camera* examination of the child prior to determining the admissibility of the statement.
  – *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112, 128 (Md. Ct. Spec. App. 2001).

- If the child does not testify, the child's out-of-court statement will be admissible only if there is corroboration that the alleged offender had the opportunity to commit the alleged abuse.
  – *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112, 128 (Md. Ct. Spec. App. 2001). (2001).

iii. Applicability to Administrative Hearings

- Evidentiary and procedural limitations are not mandatory when the proceedings do not involve a court proceeding; however, admission of a child's statement into the administrative record does not mean that the administrative law judge (ALJ) is required to give it the same weight that a party attaches to it.
  – *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112, 128-9 (Md. Ct. Spec. App. 2001).

- The ALJ is legally correct to make a threshold determination of trustworthiness by considering the appropriate factors.
  – *Montgomery County Dep't of Health & Human Servs. v. P.F.*, 768 A.2d 112, 128-9 (Md. Ct. Spec. App. 2001).

e. Family Records and Statements

- It is proper, when the evidence is otherwise competent, for one party to testify to facts of family history, which relate to him or her, such as the identity of his or her parents or other relations.
  – *Lusby v. State*, 141 A.2d 893, 896 (Md. 1958).

- This hearsay rule refers only to declarations of pedigree by deceased or unavailable parties, and not to testimony by one who is a witness in the case.
  – *Lusby v. State*, 141 A.2d 893, 896 (1958).

XII. Privileges

No relevant state cases reported.

MARYLAND

Age of Child Victim

I. Proving the Age of the Child Depicted: Methods to Determine Whether the Child Is Under 16

- A trier of fact may determine whether a child who is depicted in obscene matter was under the age of 16 years by:
  (1) observation of the obscene matter depicting the child;
  (2) oral testimony by a witness to the production of the obscene matter;
  (3) expert-medical testimony; or
  (4) any other method authorized by an applicable provision of law or rule of evidence.

  – *Outmezguine v. State*, 627 A.2d 541, 548 (Md. Ct. Spec. App. 1993).

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

- Criminal responsibility may not be imposed for violations of child-pornography laws without some element of scienter on the part of the defendant; however, the scienter requirements does not refer to knowledge of the minor's age.

  – *Outmezguine v. State*, 627 A.2d 541, 548 (Md. Ct. Spec. App. 1993).

MARYLAND
Multiple Counts

I. What Constitutes an Item of Child Pornography?

No relevant state cases reported.

II. Multiplicity

A. Generally

- The classic test of multiplicity is whether the legislative intent is to punish individual acts separately or to punish only the course of action, which they constitute.
  – *State v. Boozer*, 497 A.2d 1129, 1133 (Md. 1985).

B. Application

1. Sexual Intercourse

- Each separate act of forcible sexual intercourse constitutes a separate crime.
  – *State v. Boozer*, 497 A.2d 1129, 1133 (Md. 1985).

2. Sex Offenses

- In Maryland, a single count that charges multiple incidents of sex offenses committed other than in the course of a single criminal episode of a relatively brief temporal period of time cannot be sustained as non-duplicitous on the theory of a continuing offense.
  – *Malee v. State*, 809 A.2d 1, 3-4 (Md. Ct. Spec. App. 2002).

III. Double Jeopardy

A. Attachment of Double-Jeopardy Protection

- The Double-Jeopardy Clause protects against multiple trials, multiple convictions, and multiple sentences for the same offense.
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).

1. Jury Trial

- Jeopardy attaches when the jury is empanelled and sworn in.
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).

2. Bench Trial

- Jeopardy attaches at a bench trial when the judge begins to hear or receive evidence.
  – *State v. Taylor*, 810 A.2d 964, 972 (Md. 2002).

- A judge is said to begin hearing evidence when the first witness begins to testify or when documentary evidence, such as a stipulation or record of prior proceedings, is submitted.
  – *State v. Taylor*, 810 A.2d 964, 972 (Md. 2002).

- Maryland case law has also recognized, without adopting the view that in a bench trial, jeopardy attaches when the first witness is sworn.
  – *State v. Taylor*, 810 A.2d 964, 972 (Md. 2002).

3. *Nolle Prosequi*

- The protection against double jeopardy ordinarily bars further prosecution of the same offense when the state enters a *nolle prosequi* without the consent of a defendant after jeopardy has attached.
  – *State v. Boozer*, 497 A.2d 1129, 1131 (Md. 1985).

B. Single Act, More than One Statute

- A single act may be an offense against two statutes.
  – *Smith v. State*, 491 A.2d 587, 594 (Md. Ct. Spec. App. 1985).

- If each statute requires proof of an additional fact that the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other.
  – *Smith v. State*, 491 A.2d 587, 594 (Md. Ct. Spec. App. 1985).

C. Joinder

1. Two-Part Test

- There is a two-part test for joinder of offenses. First, the court must ask if the evidence concerning each of the charged offenses is mutually admissible. Second, the court must ask if the interest in judicial economy outweighs the arguments favoring separate trials.
  – *State v. Taylor*, 701 A.2d 389, 391-2 (Md. 1997).

2. Trauma to Victims

- A paramount interest should be avoiding unnecessary trials and the accompanying trauma to victims of multiple offenses.
  – *State v. Taylor*, 701 A.2d 389, 391-2 (Md. 1997).

- Victims of child abuse should not have to testify at multiple trials if the evidence would be the same at each trial and all of the acts of alleged abuse would be mutually admissible at each trial.
  – *State v. Taylor*, 701 A.2d 389, 391-2 (Md. 1997).

D. Merger

- Under the doctrine of merger, a court compares the elements required to establish each crime charged. If one offense includes the same elements as the other plus an additional item, the lesser offense merges into the greater; however, a more difficult situation arises when offenses require proof of the same number of elements with neither being a greater offense, in which case the court determines the merger issue by evaluating the statutory language of each crime. The specific enactment becomes the offense for which the accused may be convicted and the general provision applies only to those cases that remain outside the scope of the more precise language.
  – *Smith v. State*, 491 A.2d 587, 594 (Md. Ct. Spec. App. 1985).

1. Lesser- and Greater-Included Offenses

- A lesser offense that merges into a greater offense depends on the elements of the crime, not the penalties.
  – *Cortez v. State*, 656 A.2d 360, 367 (Md. Ct. Spec. App. 1995).

2. Required-Evidence Test/Same-Evidence Test

- The "required-evidence test" is used to decide whether one criminal offense merges into another or whether one is a lesser-included offense of the other when both offenses are based on the same act(s).
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

- The required-evidence test focuses upon the elements of each offense.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

- If all of the elements of one offense are included in the other offense so that only the latter offense contains a distinct element or elements, the former merges into the latter, regardless of the maximum sentence each offense carries.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Lancaster*, 631 A.2d 453, 456, 463 (Md. 1993).

- Under the required-evidence test, if two offenses are the same, the law prohibits the merger of the offense that contains the greater elements into the included offense.
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

a. Multi-Purpose Offenses

- When applying the required-evidence test to multi-purpose offenses or to offenses having alternative elements, a court must examine the alternative elements relevant to the case at issue.
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

b. Sentencing

- When there is a merger under the required-evidence test, separate sentences are normally precluded. Instead a sentence may be imposed only for the offense having the additional element(s).
  – *Cortez v. State*, 656 A.2d 360, 362 (Md. Ct. Spec. App. 1995).
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

- When specifically authorized by the legislature, cumulative sentences may be imposed.
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

c. Application to Common-Law Crimes

- The required-evidence test is fully applicable when determining merger issues involving common-law crimes, including those for which there is no statutorily prescribed penalty.
  – *State v. Lancaster*, 631 A.2d 453, 466 (Md. 1993).

3. Threshold Test

- The required-evidence test is the normal standard under Maryland law for determining merger of offenses; however, it is not the exclusive standard.
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

- Maryland courts first apply the required-evidence test and, if that test is met, merger follows. It is only when there is no merger under the required-evidence test that other criteria are considered to determine whether the offenses should merge. These other criteria include:
  (1) the rule of lenity as a principle of statutory construction, as well as the position taken in other jurisdictions;
  (2) whether the type of act has historically resulted in multiple punishment; and
  (3) the fairness of multiple punishments in a particular situation.
  – *State v. Lancaster*, 631 A.2d 453, 456 (Md. 1993).

E. Protection Against Multiple Sentences

- The merger of offenses pursuant to the double-jeopardy clause guarantees that a person will not receive multiple sentences for the same crime.
  – *Smith v. State*, 491 A.2d 587, 594 (Md. Ct. Spec. App. 1985).

MARYLAND
Defenses

I. Consent

A. Definition

- Consent, in law, means a voluntary agreement by a person in the possession and exercise of adequate mentality to make an intelligent choice to do something proposed by another.
  – *Gregoire v. State*, 128 A.2d 243, 246 (Md. 1957).
  – *Lusby v. State*, 141 A.2d 893, 897 (Md. 1958).

1. Consent Versus Assent

- Consent differs significantly from assent.
  – *Gregoire v. State*, 128 A.2d 243, 246 (Md. 1957).
  – *Lusby v. State*, 141 A.2d 893, 897 (Md. 1958).

- Consent implies some positive action and always involves submission while assent means mere passivity or submission.
  – *Gregoire v. State*, 128 A.2d 243, 246 (Md. 1957).
  – *Lusby v. State*, 141 A.2d 893, 897 (Md. 1958).

2. Consent Versus Submission

- There is a distinction between mere submission and actual consent.
  – *Lusby v. State*, 141 A.2d 893, 897 (Md. 1958).

- Submission does not include consent.
  – *Gregoire v. State*, 128 A.2d 243, 246 (Md. 1957).
  – *Lusby v. State*, 141 A.2d 893, 897 (Md. 1958).

B. Validity of Consent

1. Generally

- To be effective, consent must be given by one who has the capacity to give it.
  – *Pettit v. Erie Ins. Exch.*, 699 A.d 550, 557 (Md. Ct. Spec. App. 1997).

- Even when a person is in fact competent to give consent, a statute may prevent the consent from being effective if the statute is intended to protect against certain kinds of harm.
  – *Pettit v. Erie Ins. Exch.*, 699 A.d 550, 557 (Md. Ct. Spec. App. 1997).

2. Consent by Children

a. Generally

- While a child's consent may be effective in certain instances, it is only effective if the child is capable of appreciating the nature, extent, and probable consequences of the conduct to which he or she consents.
  – *Pettit v. Erie Ins. Exch.*, 699 A.d 550, 557 (Md. Ct. Spec. App. 1997).

b. Sexual Contact or Conduct

- As a matter of law, a child cannot consent to sexual contact with an adult.
  – *Pettit v. Erie Ins. Exch.*, 699 A.d 550, 557 (Md. Ct. Spec. App. 1997).

c. Indecent Assault

- In cases of sex crimes with a minor, the age and mentality of the subject of an indecent assault is important and should always be considered in determining the presence or absence of consent.
  – *Gregoire v. State*, 128 A.2d 243, 246 (Md. 1957).

d. Determination

- In cases of persons charged with sex crimes on a child, the question of whether a prosecuting witness consented is usually characterized as an issue of fact to be decided by the trier of the facts.
  – *Gregoire v. State*, 128 A.2d 243, 246 (Md. 1957).

- Evidence may be admitted that shows the child is ignorantly indifferent and passive in the hands of a defendant, even to the point of submission, but there is a decided difference in law between mere submission and actual consent.
  – *Gregoire v. State*, 128 A.2d 243, 246 (Md. 1957).

II. Diminished Capacity

A. Addiction to the Internet

No relevant state cases reported.

B. Insanity

No relevant state cases reported.

III. Impossibility

A. Factual

No relevant state cases reported.

B. Legal

No relevant state cases reported.

IV. "Justification" for Child-Pornography Offenses

- The prohibitions and penalties imposed for child-pornography offenses do not extend to persons having a *bona fide* scientific, educational, governmental, artistic, news, or other similar justification for possessing or distributing such matter.
  – *Outmezguine v. State*, 627 A.2d 541, 549 (Md. Ct. Spec. App. 1993).

- A justification is not *bona fide* with regard to depictions of individuals under the age of 16 years engaging in sexual conduct if a reasonable person would find that a dominant purpose of the depiction is to arouse or gratify sexual desire in either the perpetrator, the individual under the age of 16 years, or the viewer.
  – *Outmezguine v. State*, 627 A.2d 541, 549 (Md. Ct. Spec. App. 1993).

V. Manufacturing Jurisdiction

No relevant state cases reported.

VI. Mistake

A. Of Fact: Age

- Maryland's second-degree rape statute defines a strict liability offense that does not require the State to prove *mens rea*.
  – *Garnett v. State*, 632 A.2d 797, 803 (Md. 1993).

- The statute makes no allowance for a mistake-of-age defense.
  – *Garnett v. State*, 632 A.2d 797, 803 (Md. 1993).

B. Of Law

No relevant state cases reported.

VII. Outrageous Conduct

No relevant state cases reported.

VIII. Researcher

No relevant state cases reported.

IX. Sexual Orientation

No relevant state cases reported.

X. Statute of Limitations

A. Criminal Cases

- In criminal cases, limitations must be raised as an affirmative defense, usually before trial and, at the latest, during trial.
  – *Harmony v. State*, 594 A.2d 1182, 1186 (Md. Ct. Spec. App. 1991).

B. Civil Cases

- A civil lawsuit must ordinarily be filed within three years from the date the action accrues, except in cases where a person is under disability or unless the law provides a different period of time within which an action can be commenced. MD. CODE ANN., CTS. & JUD. PROC. § 5-101.
  – *Doe v. Archdiocese*, 689 A.2d 634, 637-8 (Md. Ct. Spec. App. 1997).
  – *Doe v. Maskell*, 679 A.2d 1087, 1089 (Md. 1996).
  – *Murphy v. Merzbacher*, 697 A.2d 861, 862 (Md. 1997).

- Although the legislature has chosen to create some exceptions to the general rule, it has not created an exception for victims of childhood sexual abuse.
  – *Doe v. Archdiocese*, 689 A.2d 634, 637-8 (Md. Ct. Spec. App. 1997).

- Knowledge of the identity of a particular defendant is not a necessary element to trigger the running of the statute of limitations.
  – *Doe v. Archdiocese*, 689 A.2d 634, 644 (Md. Ct. Spec. App. 1997).

1. Discovery Rule

a. Generally

- The general assumption is that a tort plaintiff is immediately aware that he or she has been wronged and is put on notice that the statute of limitations is running; therefore, ordinarily the statute of limitations begins to run on the date the wrong is committed.

– *Murphy v. Merzbacher*, 697 A.2d 861, 865 (Md. 1997).

- Under the discovery rule, however, the statute of limitations is activated based on actual knowledge or express cognition or awareness implied from knowledge of circumstances that ought to have put a person of ordinary prudence on inquiry, thereby providing the individual with notice of all facts that an investigation would in all probability have disclosed if properly pursued.
  – *Doe v. Archdiocese*, 689 A.2d 634, 638 (Md. Ct. Spec. App. 1997).
  – *Doe v. Maskell*, 679 A.2d 1087, 1089-90 (Md. 1996).

b. Inquiry Notice

- The statute of limitations begins to run when the potential plaintiff is on inquiry notice of such facts and circumstances that would prompt a reasonable person to inquire further.
  – *Doe v. Archdiocese*, 689 A.2d 634, 644 (Md. Ct. Spec. App. 1997).

- Once on notice of one cause of action, a potential plaintiff is charged with responsibility for investigating all potential claims and all potential defendants with regard to the injury within the limitations period.
  – *Doe v. Archdiocese*, 689 A.2d 634, 644 (Md. Ct. Spec. App. 1997).

2. Tolling

a. Equitable Estoppel

- Equitable estoppel will not toll the running of limitations absent a showing that the defendant held out any inducements not to file suit or indicated that limitations would not be pleaded. The plaintiff must also have brought his or her action within a reasonable time after the conclusion of the events giving rise to the estoppel.
  – *Murphy v. Merzbacher*, 697 A.2d 861, 866 (Md. 1997).

- Where the inducement for delay or the hindrance to the commencement of an action, however, has ceased to operate before the expiration of the limitation period so as to give the plaintiff ample time in which to bring his or her action prior to the running of the statute of limitations, he or she cannot excuse his or her failure to do so on the ground of estoppel.
  – *Murphy v. Merzbacher*, 697 A.2d 861, 866 (Md. 1997).

b. Fear

- Unsubstantiated fear of retaliation is not a valid excuse for tolling the general three-year limitations period.
  – *Murphy v. Merzbacher*, 697 A.2d 861, 869 (Md. 1997).

- If the cessation of a defendant's threatening conduct gives the plaintiff ample time thereafter in which to institute his or her action prior to the running of the statute of limitations, he or she cannot raise an equitable argument to bar a defense of limitations.
  – *Murphy v. Merzbacher*, 697 A.2d 861, 869 (Md. 1997).

c. Fraud

i. Generally

- If the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action is deemed to accrue at the time the party discovers, or by the exercise of ordinary diligence should have discovered, the fraud.
  – *Doe v. Archdiocese*, 689 A.2d 634, 637-8 (Md. Ct. Spec. App. 1997).

- Unconscionable, inequitable, or fraudulent acts of commission or omission upon which another relies and has been deceived about his or her injury, may equitably estop a defendant from raising limitations as a defense under a general statute of limitations.
  – *Murphy v. Merzbacher*, 697 A.2d 861, 865 (Md. 1997).

ii. Burden

- The plaintiff must affirmatively show that he or she was kept in ignorance of his or her right of action by the fraud of the defendant, and must specifically allege and prove when and how his or her knowledge of the fraud was obtained so that the trial court can determine whether he or she exercised reasonable diligence to ascertain the facts.
  – *Doe v. Archdiocese*, 689 A.2d 634, 637-8 (Md. Ct. Spec. App. 1997).

d. Minority or Disability

- Minority is a valid excuse for not commencing suit within the general three-year limitations period.
  – *Murphy v. Merzbacher*, 697 A.2d 861, 865 (Md. 1997).

- When a cause of action accrues in favor of a minor or someone who is mentally incompetent, that person must file his action within either the lesser of three years or the applicable period of limitations after the date the disability is removed. MD. CODE ANN., CTS. & JUD. PROC. § 5-201.
  – *Doe v. Maskell*, 679 A.2d 1087, 1092 (Md. 1996).
  – *Murphy v. Merzbacher*, 697 A.2d 861, 868-9 (Md. 1997).

MARYLAND

Sentencing Issues

I. Enhancement

A. Age of Victim

No relevant state cases reported.

B. Distribution/Intent to Traffic

No relevant state cases reported.

C. Number of Images

No relevant state cases reported.

D. Pattern of Activity for Sexual Exploitation

No relevant state cases reported.

E. Sadistic, Masochistic, or Violent Material

No relevant state cases reported.

F. Use of Computers

No relevant state cases reported.

II. Consideration of Other Surrounding Factors

- A judge can take into account a wide, largely unlimited, range of factors in deciding what sentence is appropriate; this broad discretion permits the judge to consider the facts and circumstances surrounding a charge of which the defendant was acquitted.
  – *Hamwright v. State*,[++] 787 A.2d 824, 839 (Md. Ct. Spec. App. 2001).

- A judge is not limited to reviewing past conduct whose occurrence has been judicially established, but may view reliable evidence of conduct that may be opprobrious although not criminal, as well as details and circumstances of criminal conduct for which the person has not been tried.
  – *Hamwright v. State*,[++] 787 A.2d 824, 839 (Md. Ct. Spec. App. 2001).

III. Consecutive Versus Concurrent Sentences

- A court has power to impose whatever sentence it deems fit as long as it does not offend the constitution and is within statutory limits as to maximum and minimum penalties; this judicial power includes the determination of whether a sentence will be consecutive or concurrent, with the same limitations.
  – *Malee v. State*, 809 A.2d 1, 8-9 (Md. Ct. Spec. App. 2002).

- Jurisdiction to inflict cumulative punishment is dependent upon the fact that distinct violations of the law have been committed by one individual whose malefactions deserve separate and therefore cumulative penalties.
  – *Malee v. State*, 809 A.2d 1, 8-9 (Md. Ct. Spec. App. 2002).

IV. Common-Law Crimes

- In the case of a common-law crime, the only restrictions on sentence are that it be within the reasonable discretion of the trial judge and not cruel and unusual punishment.
  –*Messina v. State*, 130 A.2d 578, 607 (Md. 1957).

MARYLAND
Supervised Release

I. Sex-Offender Registration

A. When Must an Offender Register?

- Qualifying sexual offenders are not required to register until ordered by the court.
  – *Young v. State*, 806 A.2d 233, 237 n.4 (Md. 2002).

- The State is required to prove the facts predicate to sex-offender registration by a preponderance of the evidence prior to the imposition of registration requirements.
  – *Sweet v. State*, 806 A.2d 265, 270 (Md. 2002).

B. Release of Information to the Public

1. Generally

- The local law-enforcement agency must provide notice of a registration statement to any person if doing so is necessary to protect the public.
  – *Young v. State*, 806 A.2d 233, 237 (Md. 2002).

- Upon written request, the supervising authority must send a copy of the registration statement to the victim of the crime for which the registrant was convicted, any witness who testified against the registrant, and any individual specified in writing by the State's Attorney.
  – *Young v. State*, 806 A.2d 233, 237 (Md. 2002).

2. Internet Access

- The Maryland Department of Public Safety and Correctional Services is permitted to post a current listing of each registrant's name, offense, and other identifying information on the Internet.
  – *Young v. State*, 806 A.2d 233, 238 (Md. 2002).

II. Classification as a Sexually Violent Predator

A. "Sexually Violent Predator" Defined

- A "sexually violent predator" is an individual who:
  (1) is convicted of a second or subsequent sexually violent offense, and
  (2) has been determined to be at risk of committing a subsequent sexually violent offense.
  MD. CODE ANN., CRIM. PROC. § 11-701.
  – *Graves v. State*, 772 A.2d 1225, 1232 (Md. 2001).
  – *Sweet v. State*, 806 A.2d 265, 270 (Md. 2002).

- The statutory definition of a "sexually violent predator" does not encompass persons who have been convicted of criminal acts committed in another jurisdiction that would constitute a sexually violent offense in Maryland.
  – *Graves v. State*, 772 A.2d 1225, 1232 (Md. 2001).

B. Court Proceedings

1. Written Notice of Intent to Make Request

- The State's Attorney may not request a court to determine if a person is a sexually violent predator unless the State's Attorney serves written notice of intent to make the request on the defendant or the defendant's lawyer at least 30 days before trial.
  – *Graves v. State*, 772 A.2d 1225, 1229 .n.8 (Md. 2001).

2. Two-Step Analysis

- Classification as a sexually violent predator requires a trial court to engage in a two-step analysis. First, the court must determine if a defendant has committed more than one sexually violent offense. Second, the court must determine whether the defendant is at risk for committing additional sexually violent offenses. MD. CODE ANN., CRIM. PRO. § 11-703(b).
  – *Sweet v. State*, 806 A.2d 265, 270 (Md. 2002).

C. Petition for Termination of Status

- After a sexually violent predator has registered quarterly for a minimum of 10 years, he or she may file a petition with the court requesting a termination of status as a sexually violent predator.
  – *Graves v. State*, 772 A.2d 1225, 1233-4 (Md. 2001).