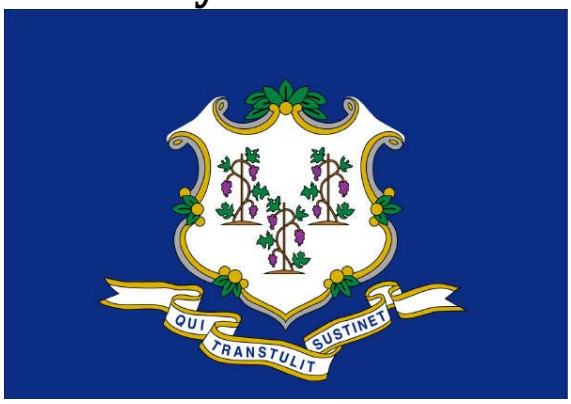
The Connecticut Law Enforcement and Prosecutors Manual on

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 Connecticut 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
June 2008

CONNECTICUT

Topic Outline

I. OFFENSES DEFINED

A. Child Abuse and Neglect

1. "Abuse" Defined
2. "Neglect" Defined
3. Sexual Abuse by a Stranger

B. Child Pornography

1. Definitions
   a. "Child Pornography"
   b. "Minor"
2. Possession of Child Pornography
   a. Live Performance Depicted in Materials "Performed Before an Audience"
   b. Exceptions
3. Importation of Child Pornography
4. Virtual/Simulated Child Pornography

C. Employing a Minor in an Obscene Performance

D. Injury or Risk of Injury To, Or Impairing Morals Of, Children

1. Elements
2. Two General Types of Behavior Likely to Harm Children Proscribed by the Risk-of-Injury Statute
3. Contacts With Intimate Parts in Sexual and Indecent Manner

E. Online Enticement/Solicitation to Travel With the Intent to Engage in Sex With a Minor

F. Promoting a Minor in an Obscene Performance

1. "Obscene" Defined
2. "Harmful to Minors" Defined
3. "Minor" Defined
4. "Prohibited Sexual Act" Defined
5. "Nude Performance" Defined
6. Meaning of "Promote"

G. Sexual Assault

1. First Degree
2. Second Degree
3. Fourth Degree

H. Transporting Minor for Purposes of Prostitution

II. MANDATORY REPORTING

A. Persons Classified as Mandatory Reporters

B. Grounds for Making a Report

C. Circumstances Where Reporting Requirements Do Not Apply

D. Penalty for Failing to Make a Report

E. Immunity from Liability

III. SEARCH AND SEIZURE OF ELECTRONIC EVIDENCE

A. Search Warrants

1. Probable Cause
   a. "Probable Cause" Defined
   b. Existence of Probable Cause
   c. False Statements: The Defendant's Burden
   d. Challenges Regarding the Role of an Issuing Judge
   e. Suppression Hearings/Standards of Review
   f. Evidence of Affirmative Defense Not Relevant
   g. Exclusionary-Rule Exception
2. Scope
   a. Description of Items to Be Seized
   b. Inclusion of Tainted Evidence
3. Staleness

B. Anticipatory Warrants

C. Methods of Searching

D. Types of Searches

1. Private Searches
    a. Fourth Amendment
    b. Exception
2. Consent Searches
3. Civilian Searches
4. Employer Searches
5. University-Campus Searches

E. Computer Technician/Repairperson Discoveries

F. Photo-Development Discoveries

G. Criminal Forfeiture

H. Disciplinary Hearings for Federal and State Officers

I. Probation and Parolee Rights

IV. JURISDICTION AND NEXUS

A. Jurisdictional Nexus

B. Internet Nexus

C. State Jurisdiction, Federal Jurisdiction, Concurrent Jurisdiction

1. State
2. Federal
3. Concurrent

D. Interstate Possession of Child Pornography

V. DISCOVERY AND EVIDENCE

A. Timely Review of Evidence

B. Defense Requests for Copies of Child Pornography

C. Introduction of E-mails into Evidence

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

D. Text-Only Evidence

1. Introduction into Evidence
2. Relevance

E. Evidence Obtained from Internet Service Providers

1. Electronics Communications Privacy Act
2. Cable Act
3. Patriot Act
    a. National Trap and Trace Authority
    b. State-Court-Judge Jurisdictional Limits

F. Evidence of Mental State

G. Evidence of Prior Misconduct

1. Inadmissibility of Prior Misconduct
2. Admissibility of Prior Misconduct
    a. Evidence of Connected Crimes
    b. Two-Part Test

H. Reputation and Character Evidence

1. Putting Character in Issue
    a. The Defendant's Right to Put Character in Issue
    b. Limitation on Right
2. Methods of Proving a Trait of Character: Reputation and Opinion Evidence

I. Witnesses and Testimony

1. Confrontation Clause
    a. The Defendant's Right to Confront Witnesses Against Him or Her
    b. Right Not Absolute
2. Child Witnesses
    a. Videotaping of Testimony
    b. Procedures Used When Child Is 12 Years of Age or Younger
3. Prior Acts Reflecting Adversely on Honesty

J. Privileges

1. Privileged Communications Based on Relationships
    a. "Confidential Communications" Defined
    b. Physician-Patient Privilege
    c. Attorney-Client Privilege
        i. Statements Made in the Presence of Third Parties
        ii. Burden of Proof
        iii. Consent
    d. Clergy-Penitent/Communicants Privilege
2. Privilege Against Self-Incrimination
3. Privileged Records

K. Hearsay Exception: Constancy of Accusation

VI. AGE OF CHILD VICTIM

A. Proving the Age of the Child Depicted in Child Pornography

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

1. Child Pornography
2. Sexual Assault

VII. MULTIPLE COUNTS

A. What Constitutes an "Item" of Child Pornography

B. Issues of Double Jeopardy

VIII. DEFENSES

A. Statute of Limitations

1. Criminal
2. Civil

B. Age

1. Sexual Assault in the Second Degree
2. Risk of Injury to a Child

C. Emancipation

1. Sexual Assault in the Second Degree
2. Risk of Injury to a Child

D. Consent

E. Diminished Capacity

1. Addiction to the Internet
2. Insanity

F. First Amendment

G. Impossibility

1. Factual
2. Legal

H. Manufacturing Jurisdiction

I. Outrageous Conduct

J. Researcher

K. Sexual Orientation

IX. SENTENCING ISSUES

A. Enhancement

1. Age of Victim
2. Distribution/Intent to Traffic
3. Number of Images
4. Pattern of Activity for Sexual Exploitation
5. Sadistic, Masochistic, or Violent Material
6. Use of Computers

B. Sentence-Review Division: Factors Taken into Consideration

X. SUPERVISED RELEASE

CONNECTICUT

Case List by Court

A case with an asterisk (*) means that the decision is unreported and may be subject to further appellate review.

I. United States Supreme Court

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

II. Supreme Court of Connecticut

- *Henderson v. Woolley*, 230 Conn. 472 (1994).
- *Manifold v. Ragaglia*, 272 Conn. 410 (2004).
- *State v. Blake*, 157 Conn. 99 (1968).
- *State v. Bonello*, 210 Conn. 51 (1989).
- *State v. Burney*, 288 Conn. 548 (2008).
- *State v. Chapman*, 227 Conn. 616 (1993).
- *State v. Christian*, 267 Conn. 710 (2004).
- *State v. Crowell*, 228 Conn. 393 (1994).
- *State v. Dinoto*, 229 Conn. 580 (1994).
- *State v. Ehlers*, 252 Conn. 579 (2000).
- *State v. George J.* 280 Conn. 551 (2006).
- *State v. Jason B.*, 248 Conn. 543 (1999).
- *State v. Kalphat*, 285 Conn. 367 (2008).
- *State v. Kirk R.*, 271 Conn. 499 (2004).
- *State v. Martin*, 189 Conn. 1 (1983).
- *State v. Schriver*, 207 Conn. 456 (1988).
- *State v. Skakel*, 276 Conn. 633 (2006).
- *State v. Slimskey*, 257 Conn. 842 (2001).
- *State v. Sorbella*, 277 Conn. 155 (2005).
- *State v. Zarick*, 227 Conn. 207 (1993).
- *Zamstein v. Marvasti*, 240 Conn. 549 (1997).
- *Teresa T. v. Ragaglia*, 272 Conn. 734 (2005).
- *Ward v. Greene*, 267 Conn. 539 (2004).

III. Appellate Court of Connecticut

- *State v. Aggen*, 79 Conn. App. 263 (2003)
- *State v. Blake*, 63 Conn. App. 536 (2001)
- *State v. Davis*, 13 Conn. App. 667 (1988)

- *State v. Davis*, 76 Conn. App. 653 (2003).
- *State v. Grant*, 89 Conn. App. 635 (2005).
- *State v. Greene*, 81 Conn. App. 492 (2003).
- *State v. Hoskie*, 74 Conn. App. 663 (2003).
- *State v. Menzies*, 26 Conn. App. 674 (1992)
- *State v. Nathan J*., 99 Conn. App. 713 (2007).
- *State v. Parsons*, 28 Conn. App. 91 (1992)
- *State v. Plude*, 30 Conn. App. 527 (1993)
- *State v. Ramirez*, 101 Conn. App. 283 (2007).
- *State v. Russell*, 25 Conn. App. 243 (1991).
- *State v. Siering*, 35 Conn. App. 173 (1994).
- *State v. Thomas*, 106 Conn. App. 160 (2008).

IV. Superior Court of Connecticut

A. Judicial District of Ansonia-Milford, at Milford

- *State v. Herbette*,* 2001 Conn. Super. LEXIS 335 (2001)

B. Judicial District of Fairfield, at Bridgeport

- *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683 (1995)
- *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1998 Conn. Super. LEXIS 1622 (1998)
- *See v. Bridgeport Roman Catholic Diocesan Corporation*,* 1993 Conn. Super. LEXIS 2369 (1993)
- *See v. Bridgeport Roman Catholic Diocesan Corporation*,* 1997 Conn. Super. LEXIS 2098 (1997)

C. Judicial District of Hartford-New Britain,

1. At Hartford

- *Little v. Booth*,* 1997 Conn. Super. LEXIS 524 (1997)
- *Reed v. Zizka*,* 1998 Conn. Super. LEXIS 620 (1998)
- *State v. West*, 2001 Conn. Super. LEXIS 1549 (2001).

2. At New Britain

- *Geneus v. State*,* 1999 Conn. Super. LEXIS 1369 (1999)

D. Judicial District of Litchfield, at Litchfield

- *State v. Pape*,* 2002 Conn. Super. LEXIS 2984 (2002)

- *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066 (2001)
- *State v. Roesing*,* 2002 Conn. Super. LEXIS 1787 (2002)

E. Judicial District of Middlesex, at Middletown

- *Hayes v. Norwich Roman Catholic Diocesan Corp.*, 2004 Conn. Super. LEXIS 676 (2004)
- *Hethcote v. Norwich Roman Catholic Diosean Corp*., 2007 Conn. Super. LEXIS 892 (2007).
- *In re Adam M.*, 2007 Conn. Super. LEXIS 272 (2007).
- *In re Bianca W.F.*,* 1999 Conn. Super. LEXIS 1807 (1999)
- *In re Michael K.*,* 2001 Conn. Super. LEXIS 59 (2001)

F. Judicial District of New Britain, at New Britain

- *State v. Howell*, 2007 Conn. Super. LEXIS 442 (2007).

G. Judicial District of New Haven

1. At Meridien

- *State v. Bacon*, 2005 Conn. Super. LEXIS 581 (2005).
- *State v. Solters*,* 1995 Conn. Super. LEXIS 2287 (1995)

2. At New Haven

- *Lane v. Lane*,* 1999 Conn. Super LEXIS 993 (1999)
- *State v. Lasaga*,* 2002 Conn. Super. LEXIS 25 (2002)

H. Judicial District of New London, at Norwich

- *Parker v. Nelson*,* 1997 Conn. Super. LEXIS 1638 (1997)

I. Judicial District of New London, at New London

- *Ward v. Greene*, 2002 Conn. Super. LEXIS 572 (2002).

J. Judicial District of Stamford-Norwalk, at Stamford

- *Doe v. Boy Scouts of America*,* 1999 Conn. Super. LEXIS 230 (1999)

K. Judicial District of Waterbury, at Waterbury

- *State v. Romero*, 1998 Conn. Super. LEXIS 2217 (1998).
- *State v Shields*, 2007 Conn. Super. LEXIS 1453 (2007).

L. Judicial District of Windham, Geographical Area 11 at Danielson

- *State v. Charron*, 2002 Conn. Super. LEXIS 520 (2002).
- *State v. Toccaline*, 2003 Conn. Super. LEXIS 2067 (2003).

CONNECTICUT

Topic Outline With Cases

A case with an asterisk (*) means that the decision is unreported and may be subject to further appellate review.

I. OFFENSES DEFINED

A. Child Abuse and Neglect

1. "Abuse" Defined

- *In re Michael K.*,* 2001 Conn. Super. LEXIS 59 (2001)
- *Lane v. Lane*,* 1999 Conn. Super LEXIS 993 (1999)

2. "Neglect" Defined

- *In re Michael K.*,* 2001 Conn. Super. LEXIS 59 (2001)
- *In re Adam M.*, 2007 Conn. Super. LEXIS 272 (2007)

3. Sexual Abuse by a Stranger

- *In re Bianca W.F.*,* 1999 Conn. Super. LEXIS 1807 (1999)

B. Child Pornography

1. Definitions

a. "Child Pornography"

- *State v. Ehlers*, 252 Conn. 579 (2000)

b. "Minor"

- *State v. Ehlers*, 252 Conn. 579 (2000)

2. Possession of Child Pornography

- *State v. Ehlers*, 252 Conn. 579 (2000)

a. Live Performance Depicted in Materials "Performed Before an Audience"

- *State v. Ehlers*, 252 Conn. 579 (2000)

b. Exceptions

- *State v. Ehlers*, 252 Conn. 579 (2000)

3. Importation of Child Pornography

- *State v. Ehlers*, 252 Conn. 579 (2000)

4. Virtual/Simulated Child Pornography

- *State v. Bacon*, 2005 Conn. Super. LEXIS 582 (2005)

C. Employing a Minor in an Obscene Performance

- *State v. Zarick*, 227 Conn. 207 (1993)

D. Injury or Risk of Injury To, Or Impairing Morals Of, Children

1. Elements

- *State v. Bonello*, 210 Conn. 51 (1989)
- *State v. Davis*, 13 Conn. App. 667 (1988)
- *State v. Jason B.*, 248 Conn. 543 (1999)
- *State v. Martin*, 189 Conn. 1 (1983)
- *State v. Plude*, 30 Conn. App. 527 (1993)
- *State v. Schriver*, 207 Conn. 456 (1988)
- *State v. Slimskey*, 257 Conn. 842 (2001)
- *State v. Zarick*, 227 Conn. 207 (1993)

2. Two General Types of Behavior Likely to Harm Children Proscribed by the Risk-of-Injury Statute

- *State v. Martin*, 189 Conn. 1 (1983)
- *State v. Schriver*, 207 Conn. 456 (1988)

3. Contacts With Intimate Parts in Sexual and Indecent Manner

- *Geneus v. State*,* 1999 Conn. Super. LEXIS 1369 (1999)
- *State v. Ehlers*, 252 Conn. 579 (2000)
- *State v. Schriver*, 207 Conn. 456 (1988)

E. Online Enticement/Solicitation to Travel With the Intent to Engage in Sex With a Minor

No state cases reported.

F. Promoting a Minor in an Obscene Performance

- *State v. Parsons*, 28 Conn. App. 91 (1992)

1. "Obscene" Defined

- *State v. Parsons*, 28 Conn. App. 91 (1992)

2. "Harmful to Minors" Defined

- *State v. Parsons*, 28 Conn. App. 91 (1992)

3. "Minor" Defined

- *State v. Parsons*, 28 Conn. App. 91 (1992)

4. "Prohibited Sexual Act" Defined

- *State v. Parsons*, 28 Conn. App. 91 (1992)

5. "Nude Performance" Defined

- *State v. Parsons*, 28 Conn. App. 91 (1992)

6. Meaning of "Promote"

- *State v. Parsons*, 28 Conn. App. 91 (1992)

G. Sexual Assault

1. First Degree

- *State v. Bonello*, 210 Conn. 51 (1989)
- *State v. Chapman*, 227 Conn. 616 (1993)
- *State v. Crowell*, 228 Conn. 393 (1994)
- *State v. Dinoto*, 229 Conn. 580 (1994)
- *State v. Romero*, 1998 Conn. Super. LEXIS 2217 (1998)
- *State v. Russell*, 25 Conn. App. 243 (1991)
- *State v. Zarick*, 227 Conn. 207 (1993)

2. Second Degree

- *Reed v. Zizka*,* 1998 Conn. Super. LEXIS 620 (1998)

- *State v. Bonello*, 210 Conn. 51 (1989)
- *State v. Crowell*, 228 Conn. 393 (1994)
- *State v. Plude*, 30 Conn. App. 527 (1993)
- *State v. Slimskey*, 257 Conn. 842 (2001)
- *State v. Zarick*, 227 Conn. 207 (1993)

3. Fourth Degree

- *State v. Zarick*, 227 Conn. 207 (1993)

H. Transporting Minor for Purposes of Prostitution

No state cases reported.

II. MANDATORY REPORTING

A. Persons Classified as Mandatory Reporters

- *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1998 Conn. Super. LEXIS 1622 (1998)
- *Zamstein v. Marvasti*, 240 Conn. 549 (1997)

B. Grounds for Making a Report

- *Lane v. Lane*,* 1999 Conn. Super LEXIS 993 (1999)
- *Parker v. Nelson*,* 1997 Conn. Super. LEXIS 1638 (1997)
- *Zamstein v. Marvasti*, 240 Conn. 549 (1997)

C. Circumstances Where Reporting Requirements Do Not Apply

- *See v. Bridgeport Roman Catholic Diocesan Corporation*,* 1997 Conn. Super. LEXIS 2098 (1997)
- *Teresa T. v. Ragaglia*, 272 Conn. 734 (2005)

D. Penalty for Failing to Make a Report

- *Ward v. Greene*, 2002 Conn. Super. LEXIS 572 (2002)
- *Parker v. Nelson*,* 1997 Conn. Super. LEXIS 1638 (1997)
- *Zamstein v. Marvasti*, 240 Conn. 549 (1997)

E. Immunity from Liability

- *Manifold v. Ragaglia*, 272 Conn. 410 (2004)

- *Parker v. Nelson*,* 1997 Conn. Super. LEXIS 1638 (1997)

- *Zamstein v. Marvasti*, 240 Conn. 549 (1997)

F. Scope of the class of persons protected

- *Ward v. Greene*, 267 Conn. 539 (2004)

III. SEARCH AND SEIZURE OF ELECTRONIC EVIDENCE

A. Search Warrants

1. Probable Cause

a. "Probable Cause" Defined

- *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066 (2001)
- *State v. Zarick*, 227 Conn. 207 (1993)

b. Existence of Probable Cause

- *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066 (2001)
- *State v. Zarick*, 227 Conn. 207 (1993)

c. False Statements: The Defendant's Burden

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

d. Challenges Regarding the Role of an Issuing Judge

- *State v. Zarick*, 227 Conn. 207 (1993)

e. Suppression Hearings/Standards of Review

- *State v. Howell*, 2007 Conn. Super. LEXIS 442 (2007)
- *State v Shields*, 2007 Conn. Super. LEXIS 1453 (2007)
- *State v. Toccaline*, 2003 Conn. Super. LEXIS 2067 (2003)
- *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066 (2001)
- *State v. Roesing*,* 2002 Conn. Super. LEXIS 1787 (2002)
- *State v. Zarick*, 227 Conn. 207 (1993)

f. Evidence of Affirmative Defense Not Relevant

- *State v. Roesing*,* 2002 Conn. Super. LEXIS 1787 (2002)

g. Exclusionary-Rule Exception

- *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066 (2001)

2. Scope

a. Description of Items to Be Seized

- *State v. Charron*, 2002 Conn. Super. LEXIS 520 (2002)
- *State v. West*, 2001 Conn. Super. LEXIS 1549 (2001)
- *State v. Zarick*, 227 Conn. 207 (1993)

b. Inclusion of Tainted Evidence

- *State v. Lasaga*,* 2002 Conn. Super. LEXIS 25 (2002)

3. Staleness

- *State v. Greene*, 81 Conn. App. 492 (2003)
- *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066 (2001)

B. Anticipatory Warrants

No state cases reported.

C. Methods of Searching

No state cases reported.

D. Types of Searches

1. Private Searches

a. Fourth Amendment

- *State v. Lasaga*,* 2002 Conn. Super. LEXIS 25 (2002)

b. Exception

- *State v. Kalphat*, 285 Conn. 367 (2008)
- *State v. Lasaga*,* 2002 Conn. Super. LEXIS 25 (2002)

2. Consent Searches

- *State v. Solters*,* 1995 Conn. Super. LEXIS 2287 (1995)
- *State v. Zarick*, 227 Conn. 207 (1993)

3. Civilian Searches

No state cases reported.

4. Employer Searches

No state cases reported.

5. University-Campus Searches

No state cases reported.

E. Computer Technician/Repairperson Discoveries

No state cases reported.

F. Photo-Development Discoveries

No state cases reported.

G. Criminal Forfeiture

No state cases reported.

H. Disciplinary Hearings for Federal and State Officers

No state cases reported.

I. Probation and Parolee Rights

No state cases reported.

IV. JURISDICTION AND NEXUS

A. Jurisdictional Nexus

No state cases reported.

B. Internet Nexus

No state cases reported.

C. State Jurisdiction, Federal Jurisdiction, Concurrent Jurisdiction

1. State

No state cases reported.

2. Federal

No state cases reported.

3. Concurrent

No state cases reported.

D. Interstate Possession of Child Pornography

No state cases reported.

V. DISCOVERY AND EVIDENCE

A. Timely Review of Evidence

No state cases reported.

B. Defense Requests for Copies of Child Pornography

No state cases reported.

C. Introduction of E-mails into Evidence

1. Hearsay/Authentication Issues

No state cases reported.

2. Circumstantial Evidence

No state cases reported.

3. Technical Aspects of Electronic Evidence Regarding Admissibility

No state cases reported.

D. Text-Only Evidence

1. Introduction into Evidence

No state cases reported.

2. Relevance

No state cases reported.

E. Evidence Obtained from Internet Service Providers

1. Electronics Communications Privacy Act

No state cases reported.

2. Cable Act

No state cases reported.

3. Patriot Act

a. National Trap and Trace Authority

No state cases reported.

b. State-Court-Judge Jurisdictional Limits

No state cases reported.

F. Evidence of Mental State

- *State v. Menzies*, 26 Conn. App. 674 (1992)

G. Evidence of Prior Misconduct

1. Inadmissibility of Prior Misconduct

- *State v. Herbette*,* 2001 Conn. Super. LEXIS 335 (2001)

2. Admissibility of Prior Misconduct

a. Evidence of Connected Crimes

- *State v. Aggen*, 79 Conn. App. 263, (2003)
- *State v. Herbette*,* 2001 Conn. Super. LEXIS 335 (2001)

b. Two-Part Test

- *State v. Herbette*,* 2001 Conn. Super. LEXIS 335 (2001)
- *State v. Hoskie*, 74 Conn. App. 663 (2003)

H. Reputation and Character Evidence

1. Putting Character in Issue

a. The Defendant's Right to Put Character in Issue

- *State v. Blake*, 157 Conn. 99 (1968)

b. Limitation on Right

- *State v. Blake*, 157 Conn. 99 (1968)

2. Methods of Proving a Trait of Character: Reputation and Opinion Evidence

- *State v. Blake*, 157 Conn. 99 (1968)

I. Witnesses and Testimony

1. Confrontation Clause

a. The Defendant's Right to Confront Witnesses Against Him or Her

- *State v. Menzies*, 26 Conn. App. 674 (1992)

b. Right Not Absolute

- *State v. Bonello*, 210 Conn. 51 (1989)
- *State v. Grant*, 89 Conn. App. 635 (2005)
- *State v. Menzies*, 26 Conn. App. 674 (1992)

2. Child Witnesses

a. Videotaping of Testimony

- *State v. Bonello*, 210 Conn. 51 (1989)

b. Procedures Used When Child Is 12 Years of Age or Younger

- *State v. Davis*, 76 Conn. App. 653 (2003)
- *State v. Menzies*, 26 Conn. App. 674 (1992)

3. Prior Acts Reflecting Adversely on Honesty

- *State v. Menzies*, 26 Conn. App. 674 (1992)

J. Privileges

1. Privileged Communications Based on Relationships

a. "Confidential Communications" Defined

- *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683 (1995)

b. Physician-Patient Privilege

- *Hethcote v. Norwich Roman Catholic Diosean Corp.*, 2007 Conn. Super. LEXIS 892 (2007)
- *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683 (1995)

c. Attorney-Client Privilege

- *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683 (1995)

i. Statements Made in the Presence of Third Parties

- *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683 (1995)
- *State v. Christian*, 267 Conn. 710 (2004).

ii. Burden of Proof

- *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683 (1995)

iii. Consent

- *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683 (1995)

d. Clergy-Penitent/Communicants Privilege

- *Hethcote v. Norwich Roman Catholic Diosean Corp.*, 2007 Conn. Super. LEXIS 892 (2007)
- *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683 (1995)

2. Privilege Against Self-Incrimination

- *Rosado v. Bridgeport Roman Catholic Diocesan Corporation,** 1995 Conn. Super. LEXIS 1683 (1995)

3. Privileged Records

- *State v. Slimskey*, 257 Conn. 842 (2001)

K. Hearsay Exception: Constancy of Accusation

- *State v. Burney*, 288 Conn. 548 (2008)
- *State v. Parsons*, 28 Conn. App. 91 (1992)
- *State v. Ramirez*, 101 Conn. App. 283 (2007)

VI. AGE OF CHILD VICTIM

A. Proving the Age of the Child Depicted in Child Pornography

- *State v. Kirk R.*, 271 Conn. 499 (2004)

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

1. Child Pornography

No state cases reported.

2. Sexual Assault

- *State v. Plude*, 30 Conn. App. 527 (1993)

VII. MULTIPLE COUNTS

A. What Constitutes an "Item" of Child Pornography

No state cases reported.

B. Issues of Double Jeopardy

- *State v. Davis*, 13 Conn. App. 667 (1988)
- *State v. Thomas*, 106 Conn. App. 160 (2008).

VIII. DEFENSES

A. Statute of Limitations

1. Criminal

- *Henderson v. Woolley*, 230 Conn. 472 (1994)
- *State v. Crowell*, 228 Conn. 393 (1994)
- *State v. George J.* 280 Conn. 551 (2006)
- *State v. Skakel*, 276 Conn. 633 (2006).

2. Civil

- *Doe v. Boy Scouts of America*,* 1999 Conn. Super. LEXIS 230 (1999)
- *Henderson v. Woolley*, 230 Conn. 472 (1994)
- *Little v. Booth*,* 1997 Conn. Super. LEXIS 524 (1997)
- *See v. Bridgeport Roman Catholic Diocesan Corporation*,* 1993 Conn. Super. LEXIS 2369 (1993)

B. Age

1. Sexual Assault in the Second Degree

- *State v. Blake*, 63 Conn. App. 536 (2001)
- *v. Plude*, 30 Conn. App. 527 (1993)

2. Risk of Injury to a Child

- *State v. Plude*, 30 Conn. App. 527 (1993)

C. Emancipation

1. Sexual Assault in the Second Degree

- *State v. Plude*, 30 Conn. App. 527 (1993)

2. Risk of Injury to a Child

- *State v. Nathan J.*, 99 Conn. App. 713 (2007)
- *State v. Plude*, 30 Conn. App. 527 (1993)

D. Consent

No state cases reported.

E. Diminished Capacity

1. Addiction to the Internet

No state cases reported.

2. Insanity

No state cases reported.

F. First Amendment

- *Hayes v. Norwich Roman Catholic Diocesan Corp.*, 2004 Conn. Super. LEXIS 676 (2004)

G. Impossibility

1. Factual

No state cases reported.

2. Legal

No state cases reported.

H. Manufacturing Jurisdiction

No state cases reported.

I. Outrageous Conduct

No state cases reported.

J. Researcher

No state cases reported.

K. Sexual Orientation

No state cases reported.

IX. SENTENCING ISSUES

A. Enhancement

1. Age of Victim

No state cases reported.

2. Distribution/Intent to Traffic

No state cases reported.

3. Number of Images

No state cases reported.

4. Pattern of Activity for Sexual Exploitation

No state cases reported.

5. Sadistic, Masochistic, or Violent Material

No state cases reported.

6. Use of Computers

No state cases reported.

B. Sentence-Review Division: Factors Taken into Consideration

- *State v. Pape*,* 2002 Conn. Super. LEXIS 2984 (2002)

X. SUPERVISED RELEASE

No state cases reported.

CONNECTICUT

Case Highlights

A case with an asterisk (*) means that the decision is unreported and may be subject to further appellate review.

Doe v. Boy Scouts of America,* 1999 Conn. Super. LEXIS 230 (1999)

An action to recover damages for personal injury to a minor, including emotional distress, caused by sexual abuse, sexual exploitation, or sexual assault must be brought by the victim no later than 17 years from the date the victim attains the age of majority.

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.

Geneus v. State,* 1999 Conn. Super. LEXIS 1369 (1999)

The Connecticut Department of Motor Vehicles' decision, after a hearing, determining that a convicted felon who had endangered the health, safety, and morals of a minor was unfit to hold a public-passenger-transportation permit, is within its sound discretion; therefore, the defendant's felony conviction for risk of injury to a minor was a proper basis for revocation of a public-passenger permit.

Hayes v. Norwich Roman Catholic Diocesan Corp., 2004 Conn. Super. LEXIS 676 (2004).

Since the United States Supreme Court has consistently failed to allow the free exercise clause of the First Amendment to relieve an individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs, church defendants cannot appropriately implicate the First Amendment as a defense to their alleged negligent conduct. While the free exercise clause might well prohibit the court from interfering in the manner in which a Diocese supervised a priest's performance of Mass, or confession, it certainly cannot prohibit a court from determining whether the Diocese should be liable for negligently allowing its employees to engage in criminal conduct.

Hethcote v. Norwich Roman Catholic Diosean Corp., 2007 Conn. Super. LEXIS 892 (2007).

Communications made to a psychiatrist by a patient for the purpose of treatment are, generally, privileged. There is no exception for situations in which child abuse is known or in good faith suspected. There also appears to be no "child abuse" exception to the clergy privilege.

Henderson v. Woolley, 230 Conn. 472 (1994)

The parental-immunity doctrine does not preclude a child victim of parental sexual abuse from vindicating his or her rights by bringing an action for damages.

In re Adam M., 2007 Conn. Super. LEXIS 272 (2007).

The court acknowledges the State of Connecticut's DCF website's definition of neglect, "the failure, whether intentional or not, of the person responsible for the child's care to provide and maintain adequate food, clothing, medical care, supervision and/or education," as a definition of neglect. The court also acknowledges the State of Connecticut's DCF websites examples of neglect of a child.

In re Bianca W.F.,* 1999 Conn. Super. LEXIS 1807 (1999)

If a child were molested by a complete stranger, the child might be found neglected due to the parent's failure to protect the child and to provide him or her with proper care; however, the child could not fairly be adjudicated "abused," as such a finding can be entered only when the parent or guardian directly causes the abuse.

In re Michael K.,* 2001 Conn. Super. LEXIS 59 (2001)

A child or youth may be found "neglected" when he or she is denied proper care and attention, whether physically or emotionally, or if he or she has been abused.

Lane v. Lane,* 1999 Conn. Super LEXIS 993 (1999)

Abuse means a child or youth has had physical injury or injuries inflicted upon him or her other than by accidental means; has injuries which are at variance with the history given of them; or is in a condition which is the result of maltreatment, such as malnutrition, sexual molestation, exploitation, deprivation of necessities, emotional maltreatment, or cruel punishment.

Little v. Booth,* 1997 Conn. Super. LEXIS 524 (1997)

An exception to the general doctrine of governmental immunity is that the defendant knew or should have known of the imminence of harm to an identifiable person.

Manifold v. Ragaglia, 272 Conn. 410 (2004).

A physician who performs a child abuse evaluation at the request of the department is a reporter who is entitled to immunity from liability for claims arising from that determination. Also, immunity is extended to secondary reporters of abuse also is consistent with the legislature's recognition of the important roles of medical professionals in the investigation of child abuse

Parker v. Nelson,* 1997 Conn. Super. LEXIS 1638 (1997)

The plaintiffs' complaint alleged that Nelson, a teacher, failed to report instances of alleged child abuse communicated to her by a student, and, as a result of that failure, the abuse continued and the plaintiffs were thereby injured. Consequently, the plaintiffs' complaint stated a viable cause of action for negligence *per se* in that the plaintiffs

alleged the violation of a statute and pleaded facts sufficient to allege a causal link between the statutory violation and the alleged injury; therefore, the defendant's motion to strike was denied.

Reed v. Zizka,* 1998 Conn. Super. LEXIS 620 (1998)

The laws and standards of the Roman Catholic Church expressly prohibit priests from engaging in any sexual activity of any kind. Thus, even if a priest engages in sexually abusive conduct, he does so only after abandoning the church's tenets and his personal commitment to celibacy. Sexually abusive conduct amounts to the abandonment of the Church's business. As a matter of law, therefore, the alleged sexual abuse, even if true, cannot be said to further the defendants' business and, therefore, is outside of the scope of employment.

Rosado v. Bridgeport Roman Catholic Diocesan Corporation,* 1995 Conn. Super. LEXIS 1683 (1995)

The privilege against self-incrimination extends not only to answers that would in themselves support a conviction under a criminal statute but likewise embraces those that would furnish a link in the chain of evidence needed to prosecute the witness. To sustain the privilege, it need only be evident from the implications of the question, and the setting in which it is asked that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result.

Rosado v. Bridgeport Roman Catholic Diocesan Corporation,* 1998 Conn. Super. LEXIS 1622 (1998)

The Free-Exercise Clause did not relieve the defendants from reporting suspected child abuse.

See v. Bridgeport Roman Catholic Diocesan Corporation,* 1993 Conn. Super. LEXIS 2369 (1993)

No action to recover damages for personal injury to a minor, including emotional distress, caused by sexual abuse, sexual exploitation, or sexual assault may be brought by such person later than 17 years from the days such person attains the age of majority.

See v. Bridgeport Roman Catholic Diocesan Corporation,* 1997 Conn. Super. LEXIS 2098 (1997)

Where the victims are 18 or over at the time of the complaints of sexual abuse, mandatory-reporting requirements do not apply.

State v. Aggen, 79 Conn. App. 263, (2003).

One exception to the general rule barring evidence of uncharged misconduct is that such evidence is offered to prove a common plan or scheme. To be admissible under the common scheme exception, the marks which the uncharged and the charged offenses have in common must be such that it may be logically inferred that if the defendant is guilty of one he must be guilty of the other. To guide that analysis, the Connecticut Supreme Court has held that evidence of prior sex offenses committed with persons other than the prosecuting witness is admissible to show a common design or plan where the prior offenses (1) are not too remote in time; (2) are similar to the offense charged; and (3) are committed upon persons similar to the prosecuting witness. Connecticut courts are

more liberal in admitting evidence of other criminal acts to show a common scheme or pattern in sex related crimes than other crimes.

State v. Bacon, 2005 Conn. Super. LEXIS 582 (2005).

The United States Supreme Court has held that the government may not criminalize the possession and production of virtual child pornography if no child is used in the production of pornography and the images are completely fictional. Virtual child pornography must, therefore, be distinguished from actual child pornography in order to be protected by the First Amendment.

State v. Blake, 63 Conn. App. 536 (2001).

No affirmative defense of fraudulent misrepresentation of age is available under the statute (§ 53a-71).

State v. Blake, 157 Conn. 99 (1968)

A defendant may choose to put his or her character in issue; however, he or she may not put his or her general good character in issue. Only specific traits of the defendant's character that are involved in the crime(s) charged may be put in issue.

State v. Bonello, 210 Conn. 51 (1989)

In order to satisfy its burden of proving compelling need to videotape a minor victim's testimony outside the physical presence of the defendant, the State must: (1) show that the minor victim would be so intimidated, or otherwise inhibited, by the physical presence of the defendant that the trustworthiness of the victim's testimony would be seriously called into question; and (2) establish proof of compelling need by clear and convincing evidence. The primary focus of the trial court's inquiry must be on the reliability of the minor victim's testimony, not on the injury the victim may suffer by testifying in the presence of the accused.

State v. Burney, 288 Conn. 548 (2008).

The constancy of accusation doctrine operates as an exception to two evidentiary rules. First, it allows evidence to be admitted for the purpose of bolstering the testimony of the sexual assault victim before her testimony has been impeached. Second, it allows a sexual assault victim's statements to be admitted when they otherwise would be barred as hearsay. The constancy of accusation doctrine does not operate to bar evidence regarding the details of the reported sexual assault that otherwise is admissible under other rules of evidence.

State v. Chapman, 227 Conn. 616 (1993).

Conn. Gen. Stat. 53a-70(a) provides that sexual assault may be committed by the use of force against such other person or by the threat of the use of force against such other person which reasonably causes such person to fear physical injury to such person or a third person. The text of the statute clearly separates "force" from "threat of use of force" by using the disjunctive "or." The use of the disjunctive "or" between the two parts of the statute indicates a clear legislative intent of separability.

State v. Christian, 267 Conn. 710 (2004).

Statements made in the presence of a third party are usually not privileged because there is then no reasonable expectation of confidentiality. The only recognize exception to this rule is when the third party was an interpreter, clerk or agent of the client's attorney.

State v. Crowell, 228 Conn. 393 (1994)

There is a seven-year limitation period for child-sexual-abuse offenses; however, the statute of limitations in criminal cases should be construed liberally, in favor of the accused, and should not be accorded retrospective effect in the absence of language that clearly necessitates such an interpretation.

State v. Davis, 76 Conn. App. 653 (2003).

The trial court has the discretion necessary to grant a motion to have a child victim testify outside of the presence of the defendant. The state employs a case-by-case analysis, where the trial court must balance the individual defendant's right of confrontation against the interest of the state in obtaining reliable testimony from the particular minor victim in question.

State v. Davis, 13 Conn. App. 667 (1988)

Risk of injury to a minor does not constitute a lesser-included offense of the crimes of assault in the third degree and unlawful restraint in the first degree, due to the fact that risk of injury to a minor requires a showing of elements that the other two crimes did not.

State v. Dinoto, 229 Conn. 580 (1994).

Where there is no explicit evidence of the threat of use of force, it is improper for the trial court to instruct the jury that a person is guilty of sexual assault in the first degree when such person compels another person to engage in sexual intercourse by the use of force against such other person or by the threat of the use of force against such person which reasonably causes such person to fear physical injury. Also, it is improper for the trial court to read an entire statute to a jury when the pleadings or the evidence support a violation of only a portion of the statute.

State v. Ehlers, 252 Conn. 579 (2000)

Possession of child pornography depicting children under the age of 16 is prohibited, but the possession of pornographic materials depicting persons 18 years of age or older is not. The only arguable ambiguity in the statute is whether possession of materials depicting 16 and 17 year olds is prohibited. Even if the statute is assumed vague as to materials depicting 16 and 17 year olds, the defendant’s First Amendment rights are not implicated, as his or her conduct clearly falls within the statute’s unmistakable core meaning of prohibited conduct.

State v. George J. 280 Conn. 551 (2006).

The statute of limitation commences only when the actual victim notifies the specified authorities. The victim is the person against whom the offense was committed

State v. Grant, 89 Conn. App. 635 (2005).

The confrontation clause does not suspend the rules of evidence to give the defendant the right to engage in unrestricted cross-examination. Only relevant evidence may be elicited through cross-examination. The court determines whether the evidence sought on cross-examination is relevant by determining whether that evidence renders the existence of other facts either certain or more probable.

State v. Herbette,* 2001 Conn. Super. LEXIS 335 (2001)

Evidence of prior misconduct that is probative of a common plan or scheme, that of a defendant using his position as a stepfather and a babysitter to assault young children, is relevant and material.

State v. Hoskie, 74 Conn. App. 663 (2003).

Because of the difficulties inherent in this balancing of the two part test, the trial court's decision will be reversed only where abuse of discretion is manifest or where an injustice appears to have been done. On review, therefore, every reasonable presumption should be given in favor of the trial court's ruling.

State v. Jason B., 248 Conn. 543 (1999).

A defendant who was born in May, 1978, was "more than two years older" than the victim, who was born in August, 1980.

State v. Kirk R., 271 Conn. 499 (2004).

The court looked to legislative intent for problems of determining the age of the victim. In a House Report, Representative Radcliffe provided that looking at the official birth certificate or asking the mother or father or guardian how old the individual was at the time of the crime will be information on the record to substantiate a conviction.

State v. Lasaga,* 2002 Conn. Super. LEXIS 25 (2002)

A wrongful search or seizure conducted by a private party does not violate the Fourth Amendment and such private wrongdoing does not deprive the government of the right to use evidence that it has acquired lawfully. The Fourth Amendment may be invoked, however, where a private person, in light of all circumstances of the case, is acting as the agent or instrument of the state.

State v. Martin, 189 Conn. 1 (1983)

Two general types of behavior likely to harm children are proscribed by the risk-of-injury statute: (1) deliberate indifference to, acquiescence in, or the creation of situations inimical to the minor's moral or physical welfare; and (2) acts directly perpetrated on the person of the minor and injurious to his or her moral or physical well-being.

State v. Menzies, 26 Conn. App. 674 (1992)

Because the state's burden is to prove by clear and convincing evidence a compelling need to have the *guardian ad litem* sit by the alleged victim's side during her testimony. The defendant has failed to establish that he was in any way prejudiced by the presence of the *guardian ad litem*. The *guardian ad litem* in no way interfered with the jury's ability to observe the witness' demeanor or to evaluate her credibility, nor did her

presence suggest that the witness was a victim who required protection from the defendant.

State v. Nathan J., 99 Conn. App. 713 (2007).

The defense of reasonable parental discipline applies to a charge under the risk of injury statute.

*State v. Pape,** 2002 Conn. Super. LEXIS 2984 (2002)

The Connecticut Sentence-Review Division is limited in the scope of its review. The Division is to determine whether the sentence imposed should be modified because it is inappropriate or disproportionate in light of the nature of the offense; the character of the offender; the protection of the public interest; and the deterrent, rehabilitative, isolative, and denunciatory purposes for which the sentence was intended.

State v. Parsons, 28 Conn. App. 91 (1992)

The "constancy-of-accusation" doctrine allows a complainant in a sexual-offense case to testify that he or she informed others of the attack. Those so informed are then allowed to testify concerning the complaint made by the victim and are permitted to relate the details of the attack as the victim narrated.

State v. Plude, 30 Conn. App. 527 (1993)

Engaging in sexual intercourse with a person under the age of 16 years constitutes a violation of law without regard to the actor's belief as to the victim's age.

State v. Ramirez, 101 Conn. App. 283 (2007).

As a general rule, an out-of-court statement offered to establish the truth of the matter asserted is hearsay, and it is therefore inadmissible unless it falls within a recognized exception to the hearsay rule.

*State v. Roesing,** 2001 Conn. Super. LEXIS 2066 (2001)

A search warrant that sought seizure of devices, correspondence, evidence of payment, passwords, and other evidence related to the crime of attempted possession of child pornography was not invalidated by the fact that it also sought the seizure of evidence related to the crime of possession of child pornography.

*State v. Roesing,** 2002 Conn. Super. LEXIS 1787 (2002)

A warrant will not be invalidated on the grounds that it contained facts supporting a defense of renunciation. While evidence of an affirmative defense may be relevant at trial, it is not relevant for the purpose of rebutting the trial court's finding of probable cause.

State v. Romero, 1998 Conn. Super. LEXIS 2217 (1998).

Penetration, however slight, is sufficient to complete fellatio, oral sex, and does not require the emission of semen.

State v. Russell, 25 Conn. App. 243 (1991).

One can commit sexual assault in the first degree without first having committed sexual assault in the second degree because each statute requires proof of a fact that the other does not.

State v. Schriver, 207 Conn. 456 (1988)

The defendant's conduct of seizing a fully clothed 13-year-old girl by her waist stating that he wants to touch her does not constitute the kind of lewd behavior that is barred by the "morals clause" of Connecticut's "risking-injury-to-a-minor" statute.

State v Shields, 2007 Conn. Super. LEXIS 1453 (2007).

A reviewing court's responsibility is not to determine whether, presented with the same facts, it would have issued the warrant, or whether the warrant affidavit could have contained additional information or have been more artfully drawn. Rather, the court must view the information in the affidavit in the light most favorable to upholding the magistrate's determination of probable cause.

State v. Siering, 35 Conn. App. 173 (1994).

Continued penetration of the female sex organ by the male sex organ is factually 'sexual intercourse and if intercourse is without consent and accomplished through force, it constitutes sexual assault.

State v. Skakel, 276 Conn. 633 (2006).

An amendment to the statute changing the statute of limitations is not to be applied retroactively because the language of the amendment indicates that it is "applicable to any offense committed on or after said date."

State v. Slimskey, 257 Conn. 842 (2001)

The need to balance a witness's statutory privilege to keep psychiatric records confidential against a defendant's rights under the confrontation clause is well recognized. If for the purposes of cross examination, a defendant believes that certain privileged records would disclose information especially probative of a witness's ability to comprehend, know, or correctly relate the truth, he or she may, out of the jury's presence, attempt to make a preliminary showing that there is a reasonable ground to believe that the failure to produce the records would likely impair his or her right to impeach the witness. If in the trial court's judgment the defendant successfully makes this showing, the state must then obtain the witness's permission for the court to inspect the records *in camera*. A witness's refusal to consent to such an *in camera* inspection entitles the defendant to have the witness's testimony stricken.

State v. Solters,* 1995 Conn. Super. LEXIS 2287 (1995)

The defendant claimed that in consenting to the search of his house, on charges of illegal storage of a weapon and risk of injury to a minor child, he did not agree to its scope and hence to the seizure of all the weapons. The consent form signed by the defendant authorized a search of the entire premises without limitation, and it also authorized the officers "to take from the aforesaid location such materials or other property as they may

desire." He complained that it was not specifically explained to him that the search would be as wide ranging as it was, that the entire house would be searched, and that all of the weapons belonging to him would be seized; however, the failure specifically to communicate this information did not invalidate the consent. Law enforcement was under no obligation to advise the defendant that his entire gun collection was subject to seizure once he had given his consent.

State v. Sorbella, 277 Conn. 155 (2005).

Sex assault in the second degree is a general intent crime, not a strict liability crime, so the crime to commit statutory rape is a recognized offense. The state is not required to establish that the accused knew that the person with whom he had sexual intercourse was under the age of 16, only that the accused knowingly engaged in sexual intercourse with a person who had not attained the age of 16.

State v. Thomas, 106 Conn. App. 160 (2008).

Because jeopardy attaches at the commencement of trial, to be vindicated at all, a colorable double jeopardy claim must be addressed by way of interlocutory review. The right not to be tried necessarily falls into the category of rights that can be enjoyed only if vindicated prior to trial.

State v. Zarick, 227 Conn. 207 (1993)

A defendant challenging the role of an issuing judge in connection with the issuance of a warrant requires, at a minimum, the same substantial preliminary showing of misconduct that is required in the case of a challenge to an affiant's statements. The defendant was unable to show any misconduct on the part of the judge that would have justified the defendant calling the judge as a witness. Unsubstantiated, purely speculative assertions cannot substitute for such a showing.

Teresa T. v. Ragaglia, 272 Conn. 734 (2005).

Permitting the Commissioner of the Department of Children and Families to exercise discretion when responding to a report of abuse is consistent with public policy. The commissioner is not required to remove the child upon a finding of probable cause, but merely authorizes the commissioner to seek removal under such circumstances.

Ward v. Greene, 267 Conn. 539 (2004).

The scope of protection appears to be directed at the child, or children, placed at risk in a singular incident, who should be the subject of a report of abuse or neglect under the statute and are, accordingly, in need of services. The policy statement thus suggests that the legislature intended to focus on children who already have been exposed to conduct that amounts to a reportable event.

Ward v. Greene, 2002 Conn. Super. LEXIS 572 (2002).

The court finds that it is implicit from the penalty imposed for failure to report that the legislature did not intend to create a private cause of action for a statutory violation.

Zamstein v. Marvasti, 240 Conn. 549 (1997)

Imposing a duty of care, running to the benefit of alleged sexual abusers upon mental-health professionals who have been engaged to evaluate whether sexual abuse has occurred, is contrary to public policy, as it may deter the assessment and evaluation of child sexual abuse.

CONNECTICUT
Offenses Defined

A case with an asterisk (*) means that the decision is unreported and may be subject to further appellate review.

I. Child Abuse and Neglect

A. "Abuse" Defined

- "Abused" means that a child or youth:
  (1) has had physical injury or injuries inflicted upon him or her other than by accidental means; or
  (2) has injuries which are at variance with the history given of them; or
  (3) is in a condition that is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment, or cruel punishment. *Conn. Gen. Stat. § 46b-120(3).*

  – *In re Michael K.*,* 2001 Conn. Super. LEXIS 59, 18 (2001).
  – *Lane v. Lane*,* 1999 Conn. Super. LEXIS 993, 31 (1999).

B. "Neglect" Defined

- A child or youth may be found neglected when he or she is being denied proper care and attention, physically or emotionally, or has been abused. *Conn. Gen. Stat. § 46b-120(8).*
- Neglect can be the failure, whether intentional or not, of the person responsible for the child's care to provide and maintain adequate food, clothing, medical care, supervision and/or education

  – *In re Michael K.*,* 2001 Conn. Super. LEXIS 59, 17-18 (2001).
  • *In re Adam M.*, 2007 Conn. Super. LEXIS 272, 25 (2007).

C. Sexual Abuse by a Stranger

- If a child were molested by a complete stranger, the child might be found neglected because the parents failed to protect the child and denied him or her proper care, but the child could not fairly be adjudicated "abused" under Connecticut General Statute Annotated §§ 46b-120(3)(A) and 46b-120(8)(D). It is only when the parent or guardian causes the abuse that such a finding can enter.

  – *In re Bianca W.F.*,* 1999 Conn. Super. LEXIS 1807, 7 (1999).

II. Child Pornography

A. Definitions

1. "Child Pornography"

- "Child pornography" is material involving a live performance or photographic or other visual reproduction of a live performance that depicts a minor in a prohibited sexual act. *Conn. Gen. Stat. § 53a-193 (13)*.
  – *State v. Ehlers*, 252 Conn. 579, 581 n.3 (2000).

2. "Minor"

- The term minor means a person under the age of 16 years.
  – *State v. Ehlers*, 252 Conn. 579, 589 (2000).

B. Possession of Child Pornography

- A person is guilty of possessing child pornography when he or she knowingly possesses child pornography. *Conn. Gen. Stat. § 53a-196d(a)*.
  – *State v. Ehlers*, 252 Conn. 579, 581 n.2 (2000).

1. Live Performance Depicted in Materials "Performed Before an Audience"

- There must be some recording or viewing of, or listening to, a live performance, or a reproduction of a live performance, by a person or persons other than the person or persons simultaneously engaged in the performance.
  – *State v. Ehlers*, 252 Conn. 579, 595 (2000).

- The number of such persons recording, viewing, or listening to the performance and whether they actually are present at the live performance or depicted in reproductions of it is irrelevant for purposes of determining whether an "audience" exists.
  – *State v. Ehlers*, 252 Conn. 579, 595 (2000).

- An audience could consist of a single photographer of the live performance, whether he or she actually was present at the performance or ever viewed the photographs, or a single person viewing photographs of the performance, whether any spectator was present at the live performance or depicted in the photographs.
  – *State v. Ehlers*, 252 Conn. 579, 595-96 (2000).

2. Exceptions

- Possession of a photographic or other visual reproduction of a nude minor for a bona fide artistic, medical, scientific, educational, religious, governmental, or judicial purpose is not to be a violation of the possession statute.
  – *State v. Ehlers*, 252 Conn. 579, 581 n.2 (2000).

C. Importation of Child Pornography

- A person is guilty of importing child pornography when, with intent to promote child pornography, he or she knowingly imports or causes to be imported into the state any child pornography of known content and character. *Conn. Gen. Stat. § 53a-196c*.
  – *State v. Ehlers*, 252 Conn. 579, 590 n.12 (2000).

D. Virtual/Simulated Child Pornography

- Virtual child pornography must be distinguished from actual child pornography in order to be protected by the First Amendment.
  - *State v. Bacon*, 2005 Conn. Super. LEXIS 582, 5 (2005)

III. Employing a Minor in an Obscene Performance

- A person is guilty of employing a minor in an obscene performance when:
  (1) he or she employs any minor, whether or not such minor receives any consideration, for the purpose of promoting any material or performance which is obscene as to minors, notwithstanding that such material or performance is intended for an adult audience; or
  (2) he or she permits any such minor to be employed, whether or not such minor receives any consideration, in the promotion of any material or performance which is obscene as to minors, notwithstanding that such material or performance is intended for an adult audience, and he or she is the parent or guardian of such minor or otherwise responsible for the general supervision of such minor's welfare.

  Conn. Gen. Stat. § 53a-196a(a).
  – *State v. Zarick*, 227 Conn. 207, 210 n.2 (1993).

IV. Injury or Risk of Injury To, Or Impairing Morals Of, Children

A. Elements

- Any person who willfully or unlawfully causes or permits any child under the age of 16 years to be placed in such a situation that his or her life or limb is endangered, or his or her health is likely to be injured, or his or her morals are likely to be impaired, or does any act likely to impair the health or morals of

any such child, shall be fined not more than $500 or imprisoned not more than 10 years or both. *Conn. Gen. Stat. § 53-21*.

- A defendant who was born in May 1978 was "more than two years older" than the victim who was born in August 1980.
  – *State v. Bonello*, 210 Conn. 51, 53 n.2 (1989).
  – *State v. Davis*, 13 Conn. App. 667, 668 n.1 (1988).
  – *State v Jason B.*, 248 Conn. 543, 554 (1999).
  – *State v. Martin*, 189 Conn. 1, 7-8 (1983).
  – *State v. Plude*, 30 Conn. App. 527, 528 n.2 (1993).
  – *State v. Schriver*, 207 Conn. 456, 457 n.1 (1988).
  – *State v. Slimskey*, 257 Conn. 842, 844 n.2 (2001).
  – *State v. Zarick*, 227 Conn. 207, 210 n.2 (1993).

- A defendant need not physically touch a minor in order to violate the statute.
  – *State v. Schriver*, 207 Conn. 456, 467 (1988).

B. Two General Types of Behavior Likely to Harm Children Proscribed by the Risk-of-Injury Statute

- Two general types of behavior that are likely to harm children and are proscribed by the risk-of-injury statute are:
  (1) deliberate indifference to, acquiescence in, or the creation of situations inimical to the minor's moral or physical welfare; and
  (2) acts directly perpetrated on the person of the minor and injurious to his or her moral or physical well-being.
  – *State v. Martin*, 189 Conn. 1, 12 (1983).
  – *State v. Schriver*, 207 Conn. 456, 464 (1988).

C. Contacts With Intimate Parts in Sexual and Indecent Manner

- Any person who has contact with the intimate parts of a child under the age of 16 years or subjects a child under 16 years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child shall be guilty of a class C felony. *Conn. Gen. Stat. § 53-21*.
  – *Geneus v. State*,* 1999 Conn. Super. LEXIS 1369, 1 n.1 (1999).
  – *State v. Ehlers*, 252 Conn. 579, 594 n.16 (2000).

- The deliberate touching of the private parts of a child under the age of 16 in a sexual and indecent manner constitutes a violation.
  – *State v. Schriver*, 207 Conn. 456, 463 (1988).

V. Online Enticement/Solicitation to Travel With the Intent to Engage in Sex With a Minor

No state cases reported.

VI. Promoting a Minor in an Obscene Performance

- A person is guilty of promoting a minor in an obscene performance when he or she knowingly promotes any performance or material in which a minor is employed, whether or not such minor receives any consideration, and such performance or material is obscene as to minors notwithstanding that such performance or material is intended for an adult audience. *Conn. Gen. Stat. § 53a-196b(a)*.
  – *State v. Parsons*, 28 Conn. App. 91, 100 (1992).

A. "Obscene" Defined

- Material or a performance is obscene as to minors if it depicts a prohibited sexual act and, taken as a whole, it is harmful to minors.
  – *State v. Parsons*, 28 Conn. App. 91, 100 (1992).

B. "Harmful to Minors" Defined

- "Harmful to minors" means that quality of any description or representation, in whatever form, of a prohibited sexual act, when:
  (1) it predominantly appeals to the prurient, shameful, or morbid interest of minors;
  (2) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  (3) taken as a whole, it lacks serious literary, artistic, educational, political, or scientific value for minors.
  Conn. Gen. Stat. § 53a-193(b).
  – *State v. Parsons*, 28 Conn. App. 91, 100-01 (1992).

C. "Minor" Defined

- "Minor" means any person less than 16 years old.
  – *State v. Parsons*, 28 Conn. App. 91, 100 (1992).

D. "Prohibited Sexual Act" Defined

- "Prohibited sexual act" means erotic fondling, nude performance, sexual excitement, sadomasochistic abuse, masturbation, or sexual intercourse. *Conn. Gen. Stat. § 53a-193(c).*
  – *State v. Parsons*, 28 Conn. App. 91, 101 (1992).

E. "Nude Performance" Defined

- "Nude performance" means the showing of the human male or female genitals, public area, or buttocks with less than a fully opaque covering. *Conn. Gen. Stat. § 53a-193(d).*
  – *State v. Parsons*, 28 Conn. App. 91, 101 (1992).

F. Meaning of "Promote"

- "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, advertise, produce, direct, or participate in. *Conn. Gen. Stat. § 53a-193(l)*.
  – *State v. Parsons*, 28 Conn. App. 91, 101 (1992).

VII. Sexual Assault

A. First Degree

- A person is guilty of sexual assault in the first degree when such person:
  (1) compels another person to engage in sexual intercourse by the use of force against such other person or a third person, or by the threat of use of force against such other person or against a third person which reasonably causes such person to fear physical injury to such person or a third person; or
  (2) engages in sexual intercourse with a person under 13 years of age; or
  (3) commits sexual assault in the second degree and in the commission of such offense is aided by two or more other persons actually present. *Conn. Gen. Stat. § 53a-70(a).*
  –*State v. Bonello*, 210 Conn. 51, 53 n.2 (1989).
  –*State v. Crowell*, 228 Conn. 393, 396 n.4 (1994).
  –*State v. Zarick*, 227 Conn. 207, 210 n.2 (1993).
- Where there is no explicit evidence of the threat of use of force, it is improper for the trial court to instruct the jury that a person is guilty of sexual assault in the first degree when such person compels another person to engage in sexual intercourse by the use of force against such other person or by the threat of the use of force against such person which reasonably causes such person to fear physical injury. Also, it is improper for the trial court to read an entire statute to a jury when the pleadings or the evidence support a violation of only a portion of the statute.
  -*State v. Dinoto*, 229 Conn. 580, 583 (1994).
- Conn. Gen. Stat. 53a-70(a) provides that sexual assault may be committed by the use of force against such other person or by the threat of the use of force against such other person which reasonably causes such person to fear physical injury to such person or a third person. The text of the statute clearly separates "force" from "threat of use of force" by using the disjunctive "or." The use of the disjunctive "or" between the two parts of the statute indicates a clear legislative intent of separability.
  - *State v. Chapman*, 227 Conn. 616, 622 (1993).
- One can commit sexual assault in the first degree without first having committed sexual assault in the second degree because each statute requires proof of a fact that the other does not.
  - *State v. Russell*, 25 Conn. App. 243, 251 (1991).

- Penetration, however slight, is sufficient to complete fellatio, oral sex, and does not require the emission of semen.
  - *State v. Romero*, 1998 Conn. Super. LEXIS 2217, 4 (1998).

B. Second Degree

- A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and such other person is 13 years of age or older but under 16 years of age and the actor is more than two years older than such person. *Conn. Gen. Stat. § 53a-71(a).*
  - *Reed v. Zizka*,* 1998 Conn. Super. LEXIS 620, 10 n.1 (1998).
  - *State v. Bonello*, 210 Conn. 51, 53 n.2 (1989).
  - *State v. Crowell*, 228 Conn. 393, 396 n.6 (1994).
  - *State v. Plude*, 30 Conn. App. 527, 528 n.1 (1993).
  - *State v. Slimskey*, 257 Conn. 842, 844 n.2 (2001).
  - *State v. Zarick*, 227 Conn. 207, 210 n.2 (1993).

- Sexual assault in the second degree is a general-intent crime that requires only that the actor possess a general intent to perform the acts that constitute the elements of the offense.
  - *State v. Plude*, 30 Conn. App. 527, 534-35 (1993).

C. Fourth Degree

- A person is guilty of sexual assault in the fourth degree when such person intentionally subjects another person to sexual contact who is under 15 years of age. *Conn. Gen. Stat. § 53a-73a(a).*
  - *State v. Zarick*, 227 Conn. 207, 210 n.2 (1993).

VIII. Transporting Minor for Purposes of Prostitution

No state cases reported.

CONNECTICUT

Mandatory Reporting

A case with an asterisk (*) means that the decision is unreported and may be subject to further appellate review.

I. Persons Classified as Mandatory Reporters

- The following persons shall be mandated reporters:
  (1) any physician or surgeon;
  (2) any registered nurse or licensed-practical nurse;
  (3) any medical examiner;
  (4) any dentist or dental hygienist;
  (5) any psychologist;
  (6) any school teacher, school principal, school guidance counselor, or school paraprofessional;
  (7) any social worker;
  (8) any law-enforcement officer;
  (9) any clergyman;
  (10) any pharmacist;
  (11) any physical therapist;
  (12) any osteopath;
  (13) any optometrist;
  (14) any chiropractor;
  (15) any podiatrist;
  (16) any mental-health professional or physician's assistant;
  (17) any person who is a licensed, substance-abuse counselor; marital and family therapist; sexual-assault counselor; or a battered women's counselor; or
  (18) any person paid to care for a child in any public or private facility, daycare center, or family daycare home that is licensed by the state.

  Conn. Gen. Stat. § 17a-101(b).
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1998 Conn. Super. LEXIS 1622, 1 n.2 (1998).
  – *Zamstein v. Marvasti*, 240 Conn. 549, 559 n.6 (1997).

II. Grounds for Making a Report

- Any mandated reporter who in his or her professional capacity has reasonable cause to suspect or believe that any child under the age of 18 years has been abused, has had non-accidental, physical injury, or injury which is at variance with the history given of such injury, inflicted upon him or her by a person responsible for such child's health, welfare, or care or by a person given access to such child by such responsible person, or has been neglected, shall report or cause a report to be made.
  – *Lane v. Lane*,* 1999 Conn. Super LEXIS 993, 62 (1999).

- An oral report shall be made by a mandated reporter within 24 hours of suspecting or believing that a child has been abused or neglected by telephone or in person to the Commissioner of Children and Families or a law-enforcement agency, to be followed within 72 hours by a written report to the commissioner of children and families or his or her representative. *Conn. Gen. Stat. § 17a-101(c).*
  – *Parker v. Nelson*,* 1997 Conn. Super. LEXIS 1638, 2 n.1 (1997).
  – *Zamstein v. Marvasti*, 240 Conn. 549, 559 n.6 (1997).

III. Circumstances Where Reporting Requirements Do Not Apply

- Where the victims are 18 or over at the time of the complaints of sexual abuse, mandatory-reporting requirements do not apply.
  -*See v. Bridgeport Roman Catholic Diocesan Corporation*,* 1997 Conn. Super. LEXIS 2098, 37 (1997).

- Commissioner of the Department of Children and Families to exercise discretion when responding to a report of abuse is consistent with public policy. The commissioner is not required to remove the child upon a finding of probable cause, but merely authorizes the commissioner to seek removal under such circumstances.
  - *Teresa T. v. Ragaglia*, 272 Conn. 734, 756 (2005).

IV. Penalty for Failing to Make a Report

- Failure to make a report can result in as much as a $500 fine.

–*Parker v. Nelson*,* 1997 Conn. Super. LEXIS 1638, 2 n.1 (1997).
–*Zamstein v. Marvasti*, 240 Conn. 549, 560 (1997).

- The court finds that it is implicit from the penalty imposed for failure to report that the legislature did not intend to create a private cause of action for a statutory violation.
  - *Ward v. Greene*, 2002 Conn. Super. LEXIS 572, 15 (2002).

V. Immunity from Liability

- Persons who make reports in good faith shall be immune from any liability, civil or criminal, that may result from making the report.
  – *Parker v. Nelson*,* 1997 Conn. Super. LEXIS 1638, 5 n.3 (1997).
  – *Zamstein v. Marvasti*, 240 Conn. 549, 560 (1997).

CONNECTICUT

Search and Seizure of Electronic Evidence

A case with an asterisk (*) means that the decision is unreported and may be subject to further appellate review.

I. Search Warrants

A. Probable Cause

1. "Probable Cause" Defined

- Probable cause, broadly defined, comprises such facts as would reasonably persuade an impartial and reasonable mind not merely to suspect or conjecture, but to believe that criminal activity has occurred.
  – *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066, 5 (2001).

- Probable cause is a fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules.
  – *State v. Zarick*, 227 Conn. 207, 222 (1993).

2. Existence of Probable Cause

- In determining whether probable cause exists to conduct a search, a totality-of-the-circumstances test is used.
  – *State v. Zarick*, 227 Conn. 207, 222 (1993).

- Probable cause to search exists if:
  (1) there is probable cause to believe that the particular items sought to be seized are connected with criminal activity or will assist in a particular apprehension or conviction; and
  (2) there is probable cause to believe that the items sought to be seized will be found in the place to be searched.
  – *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066, 4 (2001).

- In determining the existence of probable cause to search, the magistrate should make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit there is a fair probability that contraband or evidence of a crime will be found in a particular place. In making this determination of probable cause the magistrate is entitled to draw reasonable inferences from the facts presented.
  – *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066, 4-5 (2001).
  – *State v. Zarick*, 227 Conn. 207, 222-23 (1993).

3. False Statements: 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).

4. Challenges Regarding the Role of an Issuing Judge

- A challenge regarding the role of an issuing judge in connection with the issuance of a search warrant requires, at a minimum, the same substantial preliminary showing of misconduct that is required in the case of a challenge to an affiant's statements. Unsubstantiated, purely speculative assertions cannot substitute for such a showing.
  – *State v. Zarick*, 227 Conn. 207, 216 (1993).

5. Suppression Hearings/Standards of Review

- A reviewing court cannot conduct a *de novo* review to determine what inferences it might draw but must conduct a review that accords the appropriate respect for the reasonable inferences drawn by the issuing judge.
  – *State v. Roesing*,* 2002 Conn. Super. LEXIS 1787, 3 (2002).

- When a magistrate has determined that the warrant affidavit presents sufficient objective indicia of reliability to justify a search and has issued a warrant, a court reviewing that warrant at a subsequent suppression hearing should defer to the reasonable inferences drawn by the magistrate.
  –*State v. Howell*, 2007 Conn. Super. LEXIS 442, 10 (2007).
  – *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066, 3-4 (2001).
  – *State v Shields*, 2007 Conn. Super. LEXIS 1453, 23 (2007).
  – *State v. Zarick*, 227 Conn. 207, 223 (1993).

- Where the circumstances for finding probable cause are detailed, where a substantial basis for crediting the source of information is apparent, and when a magistrate has in fact found probable cause, the reviewing court should not invalidate the warrant by application of rigid analytical categories.
  – *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066, 3-4 (2001).
  – *State v. Zarick*, 227 Conn. 207, 223 (1993).

- If an affidavit for a search warrant is defective, evidence obtained as a result of the subsequent search must be suppressed.
  -*State v. Toccaline*, 2003 Conn. Super. LEXIS 2067, 30 (2003).

6. Evidence of Affirmative Defense Not Relevant

- While evidence of an affirmative defense may be relevant at trial, it is not relevant for the purpose of rebutting the trial court's finding of probable cause.
  – *State v. Roesing*,* 2002 Conn. Super. LEXIS 1787, 2 (2002).

7. Exclusionary-Rule Exception

- The Constitution of Connecticut requires that evidence derived from an unlawful warrantless entry into the home be excluded unless the taint of the illegal entry is attenuated by the passage of time or intervening circumstance.
  – *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066, 9-10 (2001).

B. Scope

1. Description of Items to Be Seized

- The descriptions of items to be seized in a warrant need only be as specific as the circumstances and the nature of the activity under investigation permit.
  – *State v. Zarick*, 227 Conn. 207, 225 (1993).

- Police do not have to ignore incriminating evidence in plain view while they are operating within the parameters of a valid search warrant or are otherwise entitled to be in a position to view the items seized. A plain view seizure is reasonable under the Fourth Amendment if (1) the police intrusion that leads to the view must be legal, (2) the discovery of evidence must be inadvertent, and (3) it must be immediately apparent to the police that they have evidence before them.
  - *State v. West*, 2001 Conn. Super. LEXIS 1549, 12 (2001).

- The warrantless seizure of contraband in plain view is reasonable under the Fourth Amendment if (1) the initial intrusion that enabled the police to view the items seized must have been lawful, and (2) the police must have had probable cause to believe that these items were contraband or stolen goods.
  - *State v. Charron*, 2002 Conn. Super. LEXIS 520, 8 (2002).

2. Inclusion of Tainted Evidence

- The inclusion in an affidavit of tainted evidence does not render the warrant invalid so long as the untainted information in the affidavit suffices to show probable cause.
  – *State v. Lasaga*,* 2002 Conn. Super. LEXIS 25, 13 (2002).

C. Staleness

- A warrant is less likely to be stale when a defendant's home is a secure operational base rather than merely a criminal forum of convenience.
  – *State v. Roesing*,* 2001 Conn. Super. LEXIS 2066, 12 (2001).

- In light of those facts as set forth in the affidavit, the passage of time does not compel the conclusion that the information contained in the warrant affidavit was stale.
  -*State v. Greene*, 81 Conn. App. 492, 501 (2003).

II. Anticipatory Warrants

No state cases reported.

III. Methods of Searching

No state cases reported.

IV. Types of Searches

A. Private Searches

1. Fourth Amendment

- Fourth Amendment constitutional guarantees against unreasonable searches and seizures apply only to governmental action and do not apply to actions by private citizens acting in their private capacity.
  – *State v. Lasaga*,* 2002 Conn. Super. LEXIS 25, 9 (2002).

- A wrongful search or seizure conducted by a private party does not violate the Fourth Amendment and such private wrongdoing does not deprive the government of the right to use evidence that it has acquired lawfully.
  – *State v. Lasaga*,* 2002 Conn. Super. LEXIS 25, 9-10 (2002).

- The government may exceed the scope of a private search if it has an independent right to do so.
  – *State v. Lasaga*,* 2002 Conn. Super. LEXIS 25, 13 (2002).

2. Exception

- An exception to the general rule that the Fourth Amendment does not protect against searches by private persons is that the Fourth Amendment may be invoked where a private person, in light of all

circumstances of the case, is acting as the agent or instrument of the state.
– *State v. Lasaga*,* 2002 Conn. Super. LEXIS 25, 10 (2002).

- Absent an expectation of privacy in the invaded place, the subsequent police action has no constitutional ramifications. In order to meet this rule of standing, a two-part subjective/objective test must be satisfied: (1) whether the person contesting the search manifested a subjective expectation of privacy with respect to the invaded premises; and (2) whether that expectation is one that society would consider reasonable. This determination is made on a case-by-case basis.
- *State v. Kalphat*, 285 Conn. 367, 275 (2008).

B. Consent Searches

- A search is not unreasonable under the Fourth Amendment to the Constitution of the United States if a person with authority to do so has freely consented.
– *State v. Zarick*, 227 Conn. 207, 226 (1993).

- Law-enforcement officers have no more authority than they have been given by the consent.
– *State v. Solters*,* 1995 Conn. Super. LEXIS 2287, 5 (1995).

C. Civilian Searches

No state cases reported.

D. Employer Searches

No state cases reported.

E. University-Campus Searches

No state cases reported.

V. Computer Technician/Repairperson Discoveries

No state cases reported.

VI. Photo-Development Discoveries

No state cases reported.

VII. Criminal Forfeiture

No state cases reported.

VIII. Disciplinary Hearings for Federal and State Officers

No state cases reported.

IX. Probation and Parolee Rights

No state cases reported.

CONNECTICUT

Jurisdiction and Nexus

I. Jurisdictional Nexus

No state cases reported.

II. Internet Nexus

No state cases reported.

III. State Jurisdiction, Federal Jurisdiction, Concurrent Jurisdiction

A. State

No state cases reported.

B. Federal

No state cases reported.

C. Concurrent

No state cases reported.

IV. Interstate Possession of Child Pornography

No state cases reported.

CONNECTICUT

Discovery and Evidence

A case with an asterisk (*) means that the decision is unreported and may be subject to further appellate review.

I. Timely Review of Evidence

No state cases reported.

II. Defense Requests for Copies of Child Pornography

No state cases reported.

III. Introduction of E-mails into Evidence

A. Hearsay/Authentication Issues

No state cases reported.

B. Circumstantial Evidence

No state cases reported.

C. Technical Aspects of Electronic Evidence Regarding Admissibility

No state cases reported.

IV. Text-Only Evidence

A. Introduction into Evidence

No state cases reported.

B. Relevance

No state cases reported.

V. Evidence Obtained from Internet Service Providers

A. Electronics Communications Privacy Act

No state cases reported.

B. Cable Act

No state cases reported.

C. Patriot Act

1. National Trap and Trace Authority

No state cases reported.

2. State-Court-Judge Jurisdictional Limits

No state cases reported.

VI. Evidence of Mental State

- Evidence of a mental state need not be proven by direct evidence but may be proven by circumstantial evidence.
  – *State v. Menzies*, 26 Conn. App. 674, 697 (1992).

VII. Evidence of Prior Misconduct

A. Inadmissibility of Prior Misconduct

- Evidence of prior misconduct is inadmissible to prove that a criminal defendant is guilty of the crime of which the defendant is accused.
  – *State v. Herbette*,* 2001 Conn. Super. LEXIS 335, 2 (2001).

- Evidence of prior misconduct cannot be used to suggest that the defendant has a bad character or a propensity for criminal behavior.
  – *State v. Herbette*,* 2001 Conn. Super. LEXIS 335, 2 (2001).

B. Admissibility of Prior Misconduct

1. Evidence of Connected Crimes

- Evidence of crimes so connected with the principal crime by circumstance, motive, design, or innate peculiarity, that the commission of the collateral crime tends directly to prove the commission of the principal crime, is admissible.
  – *State v. Herbette*,* 2001 Conn. Super. LEXIS 335, 2 (2001).

- The rules of policy have no application whatever to evidence of any crime which directly tends to prove that the accused is guilty of the specific offense for which he or she is on trial.
  –*State v. Herbette*,* 2001 Conn. Super. LEXIS 335, 2-3 (2001).

- One exception to the general rule barring evidence of uncharged misconduct is that such evidence is is offered to prove a common plan or scheme. To be admissible under the common scheme exception, the marks which the uncharged and the charged offenses have in common must be such that it may be logically inferred that if the defendant is guilty of one he must be guilty of the other. To guide that analysis, the Connecticut Supreme Court has held that evidence of prior sex offenses committed with persons other than the prosecuting witness is admissible to show a common design or plan where the prior offenses (1) are not too remote in time; (2) are similar to the offense charged; and (3) are committed upon persons similar to the prosecuting witness. Connecticut courts are more liberal in admitting evidence of other criminal acts to show a common scheme or pattern in sex related crimes than other crimes.
  -*State v. Aggen*, 79 Conn. App. 263, 272 (2003).

2. Two-Part Test

- A two-part test has been developed to determine the admissibility of such evidence:
  (1) the evidence must be relevant and material to at least one of the circumstances encompassed by the exceptions; and
  (2) the probative value of the evidence must outweigh its prejudicial effect.
  – *State v. Herbette*,* 2001 Conn. Super. LEXIS 335, 3 (2001).

- Because of the difficulties inherent in this balancing of the two part test, the trial court's decision will be reversed only where abuse of discretion is manifest or where an injustice appears to have been done. On review, therefore, every reasonable presumption should be given in favor of the trial court's ruling
  -*State v. Hoskie*, 74 Conn. App. 663, 667 (2003).

VIII. Reputation and Character Evidence

A. Putting Character in Issue

1. The Defendant’s Right to Put Character in Issue

- A defendant may choose to put his or her character in issue.
  – *State v. Blake*, 157 Conn. 99, 103 (1968).

2. Limitation on Right

- It is not, however, his or her general good character which he or she may put in issue but only such specific traits of his or her character as are involved in the crime or crimes as charged.
  – *State v. Blake*, 157 Conn. 99, 103-04 (1968).

B. Methods of Proving a Trait of Character: Reputation and Opinion Evidence

- The classic method of proving a trait of character is by proof of general reputation in the community as to that trait, and that evidence may be elicited from those who have had an opportunity to know, and do know, of that reputation. Although the fact in issue is the actual character of the accused, it may be proved indirectly by evidence of his or her reputation as to his or her character in the community.
  – *State v. Blake*, 157 Conn. 99, 104 (1968).

- Character may also be proved by the opinion evidence of those who have been shown to have had an opportunity to form, and who have formed, an opinion as to the character of the accused with respect to the trait or traits in issue.
  – *State v. Blake*, 157 Conn. 99, 104-05 (1968).

IX. Witnesses and Testimony

A. Confrontation Clause

1. The Defendant's Right to Confront Witnesses Against Him or Her

- A criminal defendant's right to impeach the witnesses against him or her implicates his or her constitutional right to confrontation.
  – *State v. Menzies*, 26 Conn. App. 674, 684 (1992).

- The confrontation clause gives a defendant the right to confront the witnesses against him or her.
  – *State v. Menzies*, 26 Conn. App. 674, 684 (1992).

- Cross-examination to elicit facts tending to show motive, interest, bias, prejudice, and lack of veracity is a matter of right and may not be unduly restricted.
  – *State v. Menzies*, 26 Conn. App. 674, 684 (1992).

2. Right Not Absolute

- The right of confrontation, however, is not absolute and is subject to reasonable limitation.
  – *State v. Menzies*, 26 Conn. App. 674, 684 (1992).

- The right to face-to-face confrontation is not absolute, but rather may give way in an appropriate case to other competing interests so as to

permit the use of certain procedural devices to shield a child witness from the trauma of courtroom testimony.
– *State v. Bonello*, 210 Conn. 51, 57 (1989).

- The confrontation clause does not suspend the rules of evidence to give the defendant the right to engage in unrestricted cross-examination. Only relevant evidence may be elicited through cross-examination. The court determines whether the evidence sought on cross-examination is relevant by determining whether that evidence renders the existence of other facts either certain or more probable.
- *State v. Grant*, 89 Conn. App. 635, 639-40 (2005).

B. Child Witnesses

1. Videotaping of Testimony

- The practice of videotaping the testimony of a minor victim outside the physical presence of the defendant is, in appropriate circumstances, constitutionally permissible on a case-by-case analysis, whereby the trial court must balance the individual defendant's right of confrontation against the interest of the state in obtaining reliable testimony from the particular minor victim in question.
– *State v. Bonello*, 210 Conn. 51, 56 (1989).

- In any criminal prosecution of an offense involving assault, sexual assault, or abuse of a child 12 years of age or younger, the court may, upon motion of the attorney for any party, order that the testimony of the child be taken in a room other than the courtroom in the presence and under the supervision of the trial judge hearing the matter and be televised by closed-circuit equipment in the courtroom or recorded for later showing before the court. *Conn. Gen. Stat. § 54-86g(a)*.
– *State v. Bonello*, 210 Conn. 51, 63 n.5 (1989).

- Only the judge, the attorneys for the defendant and for the State, persons necessary to operate the equipment, and any person who would contribute to the welfare and well-being of the child may be present in the room with the child during his or her testimony. *Conn. Gen. Stat. § 54-86g(a)*.
– *State v. Bonello*, 210 Conn. 51, 63 n.5 (1989).

- The attorneys and the judge may question the child. *Conn. Gen. Stat. § 54-86g(a)*.
– *State v. Bonello*, 210 Conn. 51, 63 n.5 (1989).

- The defendant may observe and hear the testimony of the child and may consult with his or her attorney, but the court shall ensure that the child cannot hear or see the defendant. *Conn. Gen. Stat. § 54-86g(a).*
  – *State v. Bonello,* 210 Conn. 51, 63 n.5 (1989).

2. Procedures Used When Child Is 12 Years of Age or Younger

- In any criminal prosecution of an offense involving assault, sexual assault, or abuse of a child 12 years of age or younger, the court may, upon motion of the attorney for any party, order that the following procedures be used when the testimony of the child is taken:
  (1) persons shall be prohibited from entering and leaving the courtroom during the child's testimony;
  (2) an adult who is known to the child and with whom the child feels comfortable shall be permitted to sit in close proximity to the child during the child's testimony, provided such person shall not obscure the child from the view of the defendant or the trier of fact;
  (3) the use of anatomically correct dolls by the child shall be permitted; and
  (4) the attorneys for the defendant and for the State shall question the child while seated at a table positioned in front of the child, shall remain seated while posing objections, and shall ask questions and pose objections in a manner which is not intimidating to the child.
  Conn. Gen. Stat. § 54-86g(b).
  – *State v. Menzies,* 26 Conn. App. 674, 686 n.10 (1992).

- The trial court has the discretion necessary to grant a motion to have a child victim testify outside of the presence of the defendant. The state employs a case-by-case analysis, where the trial court must balance the individual defendant's right of confrontation against the interest of the state in obtaining reliable testimony from the particular minor victim in question.
  -*State v. Davis*, 76 Conn. App. 653, 675 (2003).

C. Prior Acts Reflecting Adversely on Honesty

- Prior acts reflecting adversely on a person's honesty bear sharply on the issue of veracity at trial, and subject to the court's discretion, may be admitted for purposes of impeachment.
  – *State v. Menzies*, 26 Conn. App. 674, 685 (1992).

- Whether the witness had made false accusations of abuse in the past is relevant to his or her credibility and veracity and any evidence tending to establish such accusations would be admissible.
  – *State v. Menzies*, 26 Conn. App. 674, 685 (1992).

X. Privileges

A. Privileged Communications Based on Relationships

1. "Confidential Communications" Defined

- Confidential communications are defined as communications made in confidence or communications made to such persons that the law regards them as privileged beyond forcing a disclosure thereof.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 37 (1995).

- Communications and records include all oral and written communications and records thereof relating to diagnosis or treatment of a patient's mental condition between the patient and a psychiatrist. Such communications and records shall be confidential. *Conn. Gen. Stat. § 52-146d(2); § 52-146e(a).*
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 37 (1995).

2. Physician-Patient Privilege

- In any civil action or any proceeding preliminary thereto or in any probate, legislative, or administrative proceeding, a physician, surgeon, or other licensed healthcare provider shall not disclose:
  (1) any communication made to him or her by, or any information obtained by him or her from a patient or the conservator or guardian of a patient with respect to any actual or supposed physical or mental disease or disorder; or
  (2) any information obtained by personal examination of a patient,
  unless the patient or his or her authorized representative explicitly consents to such disclosure.
  Conn. Gen. Stat. § 52-146o(a).
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 30 n.15 (1995).

- "Communications" means all oral and written communications and records thereof relating to the diagnosis and treatment of a person between such person and a psychologist or between a member of such person's family and a psychologist. *Conn. Gen. Stat. § 52-146c(a).*
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 33 n.17 (1995).

- Communications made to a psychiatrist by a patient for the purpose of treatment are, generally, privileged. There is no exception for situations in which child abuse is known or in good faith suspected.
  - *Hethcote v. Norwich Roman Catholic Diosean Corp.,* 2007 Conn. Super. LEXIS 892, 2 (2007).

3. Attorney-Client Privilege

- Communications between a client and attorney are privileged when made in confidence for the purpose of seeking legal advice.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 68 (1995).

a. Statements Made in the Presence of Third Parties

- Statements made in the presence of a third party are usually not privileged because there is then no reasonable expectation of confidentiality.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 68 (1995).

- The presence of certain third parties, however, who are agents or employees of an attorney or client, and who are necessary to the consultation, will not destroy the confidential nature of the communications.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 68 (1995).
  - *State v. Christian*, 267 Conn. 710, 749 (2004).

b. Burden of Proof

- The burden of proving the facts essential to the attorney-privilege is on the person asserting it. This burden, includes, of course, the burden of proving the essential element that the communication was confidential.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 69 (1995).

c. Consent

- The confidential attorney, solicitor, or counselor can never be called as a witness to disclose papers committed or communications made to him or her in that capacity, unless the client him- or herself consents to such disclosure.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 67-68 (1995).

4. Clergy-Penitent/Communicants Privilege

- Confidential communications made by or to a member of the clergy in his or her religious capacity are privileged from disclosure whether that disclosure is sought from the member of the clergy from whom solace, counsel, or spiritual guidance is sought or from the person seeking the religious solace, counsel, or guidance.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 60-61 (1995).

- A clergyman, priest, minister, rabbi, or practitioner of any religious denomination accredited by the religious body to which he or she belongs who is settled in the work of the ministry shall not disclose confidential communications made to him or her in his or her professional capacity in any civil or criminal case or proceedings preliminary thereto, or in any legislative or administrative proceeding, unless the person making the confidential communication waives such privilege. *Conn. Gen. Stat. § 52-146b*.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 40 n.20 (1995).

- There are four fundamental conditions necessary to the establishment of a privilege against disclosure of communications:
  (1) does the communication originate in a confidence of secrecy?
  (2) is confidentiality of communication essential to the relation?
  (3) does the penitential relation deserve recognition and countenance? and
  (4) would the injury to the penitential relation by compulsory disclosure be greater than the benefit to justice?
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 48 (1995).

  - There also appears to be no "child abuse" exception to the clergy privilege.

  - *Hethcote v. Norwich Roman Catholic Diosean Corp*., 2007 Conn. Super. LEXIS 892, 3 (2007).

B. Privilege Against Self-Incrimination

- The privilege against self-incrimination not only protects the individual against being involuntarily called as a witness against him- or herself in a criminal prosecution but also privileges him or her not to answer official questions put to him or her in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him or her in future criminal proceedings.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 6-7 (1995).

- The availability of the privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure that it invites.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 8 (1995).

- The right to one's privilege against prosecution that could result from the testimony sought does not depend upon the likelihood of prosecution but upon the possibility of prosecution.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 9 (1995).

- The standard for determining whether a claim of privilege is justified is whether the claimant is confronted by substantial and real and not merely trifling or imaginary hazards of incrimination.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 8 (1995).

- A court may not deny a witness' invocation of the privilege unless it is perfectly clear, from a careful consideration of all the circumstances in the case, that the witness is mistaken and that the answers cannot possibly have a tendency to incriminate.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 8 (1995).

- The privilege extends to pretrial civil discovery proceedings, including depositions.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 7 (1995).

- The privilege against self-incrimination extends not only to answers that would in themselves support a conviction under a criminal statute but likewise embraces those who would furnish a link in the chain of evidence needed to prosecute the witness.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 37 (1995).

- To sustain the privilege it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question, or an explanation of why it cannot be answered, might be dangerous because injurious disclosure could result.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 9 (1995).

- The neglect or refusal of an accused party to testify shall not be commented upon by the court or prosecuting official. *Conn. Gen. Stat. § 54-84(a).*
  – *State v. Menzies*, 26 Conn. App. 674, 695 (1992).

- It is generally held that a witness cannot invoke the privilege against self-incrimination where he or she is either immune from prosecution, or where prosecution is barred by a statute of limitations.
  – *Rosado v. Bridgeport Roman Catholic Diocesan Corporation*,* 1995 Conn. Super. LEXIS 1683, 11 (1995).

C. Privileged Records

- A criminal defendant does not have a right to conduct a general fishing expedition into a witness's privileged records.
  – *State v. Slimskey*, 257 Conn. 842, 856 n.9 (2001).

- *In camera* judicial review of a victim's privileged records currently represents the most common method of balancing statutory privileges against the defendant's trial rights.
  – *State v. Slimskey*, 257 Conn. 842, 856 n.9 (2001).

- Access to confidential records should be left to the discretion of the trial court which is better able to access the probative value of such evidence as it relates to the particular case before it and to weigh that value against the interest in confidentiality of the records.
  – *State v. Slimskey*, 257 Conn. 842, 856 (2001).

- The linchpin of the determination of a defendant's access to the records is whether they sufficiently disclose material especially probative of the ability to comprehend, know, and correctly relate the truth so as to justify breach of their confidentiality and disclosing them to the defendant in order to protect his or her right of confrontation.
  – *State v. Slimskey*, 257 Conn. 842, 856-57 (2001).

XI. Hearsay Exception: Constancy of Accusation

- The constancy-of-accusation doctrine allows a complainant in a sexual-offense case to testify that he or she informed others of the attack. These other individuals are then allowed to testify concerning the complaint made by the victim and are permitted to relate the details of the attack as the victim narrated.
  – *State v. Parsons*, 28 Conn. App. 91, 105 (1992).

- As a general rule, an out-of-court statement offered to establish the truth of the matter asserted is hearsay, and it is therefore inadmissible unless it falls within a recognized exception to the hearsay rule.
  -*State v. Ramirez*, 101 Conn. App. 283, 288 (2007).

- The constancy of accusation doctrine operates as an exception to two evidentiary rules. First, it allows evidence to be admitted for the purpose of bolstering the testimony of the sexual assault victim before her testimony has been impeached. Second, it allows a sexual assault victim's statements to be admitted when they otherwise would be barred as

hearsay. The constancy of accusation doctrine does not operate to bar evidence regarding the details of the reported sexual assault that otherwise is admissible under other rules of evidence.

-*State v. Burney*, 288 Conn. 548, 557 (2008).

CONNECTICUT

Age of Child Victim

I. Proving the Age of the Child Depicted in Child Pornography

- The court looked to legislative intent for problems of determining the age of the victim. In a House Report, Representative Radcliffe provided that looking at the official birth certificate or asking the mother or father or guardian how old the individual was at the time of the crime will be information on the record to substantiate a conviction.
  - *State v. Kirk R.*, 271 Conn. 499, 514 (2004).

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

A. Child Pornography

No state cases reported.

B. Sexual Assault

- Engaging in sexual intercourse with a person under the age of 16 years constitutes a violation of law without regard to the actor's belief as to the victim's age.
  – *State v. Plude*, 30 Conn. App. 527, 534 (1993).

CONNECTICUT

Multiple Counts

I. What Constitutes an "Item" of Child Pornography

No state cases reported.

II. Issues of Double Jeopardy

- In any double-jeopardy analysis, the first issue to be resolved is whether the acts involved arise out of the "same act or transaction." If this question is answered in the affirmative, the next question addressed is whether the crimes constitute the "same offense."
  – *State v. Davis*, 13 Conn. App. 667, 670-71 (1988).

- A crime is a lesser included offense if it is not possible to commit the greater offense, in the manner described in the information or bill of particulars, without having first committed the lesser.
  – *State v. Davis*, 13 Conn. App. 667, 671 (1988).

- Because jeopardy attaches at the commencement of trial, to be vindicated at all, a colorable double jeopardy claim must be addressed by way of interlocutory review. The right not to be tried necessarily falls into the category of rights that can be enjoyed only if vindicated prior to trial.
  -*State v. Thomas*, 106 Conn. App. 160, 167 (2008).

CONNECTICUT

Defenses

A case with an asterisk (*) means that the decision is unreported and may be subject to further appellate review.

I. Statute of Limitations

A. Criminal

- No person may be prosecuted for any offense involving sexual abuse, sexual exploitation, or sexual assault of a minor except within two years from the date the victim attains the age of majority or within five years from the date the victim notifies any law-enforcement officer or state's attorney acting in his or her official capacity of the commission of the offense, whichever is earlier, provided in no event shall such period of time be less than five years after the commission of the offense. *Conn. Gen. Stat. § 54-193a.*
  – *Henderson v. Woolley*, 230 Conn. 472, 483 n.17 (1994).
  – *State v. Crowell*, 228 Conn. 393, 394 n.1 (1994).

- The statute of limitations commences only when the actual victim notifies the specified authorities. The victim is the person against whom the offense was committed.
  -*State v. George J.* 280 Conn. 551, 566-67 (2006).

  An amendment to the statute changing the statute of limitations is not to be applied retroactively because the language of the amendment indicates that it is "applicable to any offense committed on or after said date."
- *State v. Skakel*, 276 Conn. 633, 689-90 (2006).

B. Civil

- The Connecticut statute governing limitation of actions for damages to a minor caused by sexual abuse, exploitation, or assault, specifically provides that no action to recover damages for personal injury to a minor, including emotional distress, caused by sexual abuse, sexual exploitation, or sexual assault may be brought by such person later than 17 years from the date such person attains the age of majority. *Conn. Gen. Stat. § 52-577(d).*
  – *Doe v. Boy Scouts of America*,* 1999 Conn. Super. LEXIS 230, 5-6 (1999).
  – *Henderson v. Woolley*, 230 Conn. 472, 484 n.18 (1994).
  – *Little v. Booth*,* 1997 Conn. Super. LEXIS 524, 6 (1997).
  – *See v. Bridgeport Roman Catholic Diocesan Corporation*,* 1993 Conn. Super. LEXIS 2369, 2 (1993).

II. Age

A. Sexual Assault in the Second Degree

- The General Assembly eliminated mistake of age as an affirmative defense to the crime of sexual assault in the second degree. Consequently the State must establish that:
  (1) the defendant had engaged in sexual intercourse with the victim; and
  (2) at the time the offense was committed, the victim was under the age of 16 years.
  – *State v. Plude*, 30 Conn. App. 527, 534 (1993).
  – *State v. Blake*, 63 Conn. App. 536, 542 (2001).

B. Risk of Injury to a Child

- The "risk-of-injury-to-a-child" statute turns on the age of the victim. The victim's age is the operative fact that makes acts perpetrated against that victim criminal in nature.
  – *State v. Plude*, 30 Conn. App. 527, 535 (1993).

- The defense of reasonable parental discipline applies to a charge under the risk of injury statute.
  - *State v. Nathan J.*, 99 Conn. App. 713, 718 (2007).

III. Emancipation

A. Sexual Assault in the Second Degree

- No defense of emancipation exists, either at common law or statutorily, to a charge involving sexual assault in the second degree.
  – *State v. Plude*, 30 Conn. App. 527, 532-33 (1993).

B. Risk of Injury to a Child

- No defense of emancipation exists, either at common law or statutorily, to a charge involving risk of injury to a child.
  – *State v. Plude*, 30 Conn. App. 527, 532-33 (1993).

IV. Consent

- Continued penetration of the female sex organ by the male sex organ is factually 'sexual intercourse and if intercourse is without consent and accomplished through force, it constitutes sexual assault.
  - *State v. Siering*, 35 Conn. App. 173, 184 (1994).

V. Diminished Capacity

A. Addiction to the Internet

No state cases reported.

B. Insanity

No state cases reported.

VI. First Amendment

- Since the United States Supreme Court has consistently failed to allow the free exercise clause of the First Amendment to relieve an individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs, church defendants cannot appropriately implicate the First Amendment as a defense to their alleged negligent conduct. While the free exercise clause might well prohibit the court from interfering in the manner in which a Diocese supervised a priest's performance of Mass, or confession, it certainly cannot prohibit a court from determining whether the Diocese should be liable for negligently allowing its employees to engage in criminal conduct.
  - *Hayes v. Norwich Roman Catholic Diocesan Corp.*, 2004 Conn. Super. LEXIS 676, 13 (2004).

VII. Impossibility

A. Factual

No state cases reported.

B. Legal

No state cases reported.

VIII. Manufacturing Jurisdiction

No state cases reported.

IX. Outrageous Conduct

No state cases reported.

X. Researcher

No state cases reported.

XI. Sexual Orientation

No state cases reported.

CONNECTICUT

Sentencing Issues

A case with an asterisk (*) means that the decision is unreported and may be subject to further appellate review.

I. Enhancement

A. Age of Victim

No state cases reported.

B. Distribution/Intent to Traffic

No state cases reported.

C. Number of Images

No state cases reported.

D. Pattern of Activity for Sexual Exploitation

No state cases reported.

E. Sadistic, Masochistic, or Violent Material

No state cases reported.

F. Use of Computers

No state cases reported.

II. Sentence-Review Division: Factors Taken into Consideration

- The Connecticut Sentence-Review Division is limited in the scope of its review. The Division is to determine whether the sentence imposed should be modified because it is inappropriate or disproportionate in the light of:
  (1) the nature of the offense;
  (2) the character of the offender;
  (3) the protection of the public interest; and
  (4) the deterrent, rehabilitative, isolative, and denunciatory purposes for which the sentence was intended.

  – *State v. Pape*,* 2002 Conn. Super. LEXIS 2984, 3 (2002).

CONNECTICUT

Supervised Release

No state cases reported.