The District of Columbia 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 District of Columbia 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 used. Over the next few years we will update these existing manuals and create new manuals for prosecutors and law enforcement professionals to use in the defense of children and families.

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

The Editors,

National Law Center for Children and Families
June 2008

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Case List by Court

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

I. United States Supreme Court

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

II. District of Columbia Court of Appeals

- *Ali v. United States*, 520 A.2d 306 (D.C. 1987)
- *Ballard v. United States*, 430 A.2d 483 (D.C. 1981)
- *Barnes v. United States*, 600 A.2d 821 (D.C. 1991)
- *Barrera v. United States*, 599 A.2d 1119 (D.C. 1991)
- *Battle v. United States*, 630 A.2d 211 (D.C. 1993)
- *Blackledge v. United States*, 871 A.2d 1193 (D.C. 2005)
- *Brake v. United States*, 494 A.2d 646 (D.C. 1985)
- *Brooke v. United States*,[++] 208 A.2d 726 (D.C. 1965)
- *Brooks v. United States*,[++] 367 A.2d 1297 (D.C. 1976)
- *Brown v. United States*,[++] 795 A.2d 56 (D.C. 2002)
- *Burton v. United States*,[++] 657 A.2d 741 (D.C. 1994)
- *Cannon v. Igorzurkie*,[++] 779 A.2d 887 (D.C. 2001)
- *Carras v. District of Columbia*,[++] 183 A.2d 393 (D.C. 1962)
- *Cevenini v. Nelson*, 707 A.2d 768 (D.C. 1998)
- *Crawford v. United States*, 628 A.2d 1002 (D.C. 1993)
- *Croom v. United States*, 546 A.2d 1006 (D.C. 1988)
- *Cullen v. United States*, 886 A.2d 870 (D.C. 2005)
- *Curry v. United States*, 498 A.2d 534 (D.C. 1985)
- *Davis v. United States*,[++] 781 A.2d 729 (D.C. 2001)
- *Davis v. United States*, 641 A.2d 484 (D.C. 1994)
- *District of Columbia v. Doe*, 524 A.2d 30 (D.C. 1987)
- *District of Columbia v. Garcia*,[++] 335 A.2d 217 (D.C. 1975)
- *Douglas v. United States*, 386 A.2d 289 (D.C. 1978)
- *Evans v. United States*, 299 A.2d 136 (D.C. 1973)
- *Farris v. Compton*, 652 A.2d 49 (D.C. 1994)
- *Feaster v. United States*, 631 A.2d 400 (D.C. 1993)
- *Fitzgerald v. United States*, 472 A.2d 52 (D.C. 1984)
- *Gaithor v. United States*,[++] 251 A.2d 644 (D.C. 1969)
- *Galindo v. United States*, 630 A.2d 202 (D.C. 1993)
- *Gant v. United States*, 518 A.2d 103 (D.C. 1986)

- *Goldston v. United States*,[++] 562 A.2d 96 (D.C. 1989)
- *Graham v. United States*, 746 A.2d 289 (D.C. 2000)
- *Green v. United States*, 948 A.2d 554 (D.C. 2008)
- *Guzman v. United States*, 769 A.2d 785 (D.C. 2001)
- *Hall v. United States*, 400 A.2d 1063 (D.C. 1979)
- *Harris v. United States*, 356 A.2d 630 (D.C. 1976)
- *Hicks v. United States*, 658 A.2d 200 (D.C. 1995)
- *Hicks-Bey v. United States*, 649 A.2d 569 (D.C. 1994)
- *Howard v. United States*, 663 A.2d 524 (D.C. 1995)
- *Huffman v. United States*,[++] 259 A.2d 342 (D.C. 1969)
- *In re A.B.*, 556 A.2d 645 (D.C. 1989)
- *In re C.C.J.*, 777 A.2d 265 (D.C. 2001)
- *In re E.F.*, 740 A.2d 547 (D.C. 1999)
- *In re J.A.*,[++] 601 A.2d 69 (D.C. 1991)
- *In re L.A.G.*, 407 A.2d 688 (D.C. 1979)
- *In re Lewis*, 88 A.2d 582 (D.C. 1952)
- *In re S.G.*, 581 A.2d 771 (D.C. 1990)
- *Johnson v. United States*, 364 A.2d 1198 (D.C. 1976)
- *Keene v. United States*, 661 A.2d 1073 (D.C. 1995)
- *Kyle v. United States*, 759 A.2d 192 (D.C. 2000)
- *Lawrence v. United States*, 482 A.2d 374 (D.C. 1984)
- *McIlwain v. United States*, 568 A.2d 470 (D.C. 1989)
- *McLeod v. United States*, 568 A.2d 1094 (D.C. 1990)
- *Merle v. United States*, 683 A.2d 755 (D.C. 1996)
- *Mindombe v. United States*, 795 A.2d 39 (D.C. 2002)
- *Mungo v. United States*, 772 A.2d 240 (D.C. 2001)
- *Nelson v. United States*, 649 A.2d 301 (D.C. 1994)
- *Oliver v. United States*, 711 A.2d 70 (D.C. 1998)
- *Parker v. United States*, 751 A.2d 943 (D.C. 2000)
- *Pounds v. United States*, 529 A.2d 791 (D.C. 1987)
- *Proctor v. United States*, 685 A.2d 735 (D.C. 1996)
- *Roberts v. United States*, 752 A.2d 583 (D.C. 2000)
- *Roberts v. United States*, 743 A.2d 212 (D.C. 1999)
- *Rucker v. United States*,[++] 455 A.2d 889 (D.C. 1983)
- *Sanchez-Rengifo v. United States*, 815 A.2d 351 (D.C. 2002)
- *Sanders v. United States*,[++] 751 A.2d 952 (D.C. 2000)
- *Shelton v. United States*, 721 A.2d 603 (D.C. 1998)
- *Shorter v. United States*, 792 A.2d 228 (D.C. 2001)
- *Slaughter v. District of Columbia*, 134 A.2d 338 (D.C. 1957)
- *Smith v. United States*, 337 A.2d 219 (D.C. 1975)
- *Smith v. Whitehead*,[++] 436 A.2d 339 (D.C. 1981)
- *Thompson v. United States*, 618 A.2d 110 (D.C. 1992)
- *United States v. Sell*,[++] 487 A.2d 225 (D.C. 1985)
- *United States v. Shorter*, 343 A.2d 569 (D.C. 1975)

- *Ware v. United States*,[++] 672 A.2d 557 (D.C. 1996)
- *Williams v. United States*, 756 A.2d 380 (D.C. 2000)
- *Wright v. United States*,[++] 717 A.2d 304 (D.C. 1998)
- *Wright v. United States*,[++] 608 A.2d 763 (D.C. 1992)

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Topic Outline with Cases

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

I. OFFENSES DEFINED

A. Assault: Nonviolent Sexual Touching

1. Elements of Assault

- *In re A.B.*, 556 A.2d 645 (D.C. 1989)
- *In re L.A.G.*, 407 A.2d 688 (D.C. 1979)

2. Elements of Nonviolent Sexual Touching

- *Mungo v. United States*, 772 A.2d 240 (D.C. 2001)
- *In re A.B.*, 556 A.2d 645 (D.C. 1989)
- *In re L.A.G.*, 407 A.2d 688 (D.C. 1979)

a. Examples

- *Mungo v. United States*, 772 A.2d 240 (D.C. 2001)
- *In re A.B.*, 556 A.2d 645 (D.C. 1989)

b. Intent

- *In re A.B.*, 556 A.2d 645 (D.C. 1989)

c. Lesser Included Offense

- *Mungo v. United States*, 772 A.2d 240 (D.C. 2001)

B. Child Abuse and Neglect

1. "Neglected Child"

a. Defined

- *In re J.A.* ,[++] 601 A.2d 69 (D.C. 1991)
- *In re S.G.*, 581 A.2d 771 (D.C. 1990)

b. Notice

- *In re C.C.J.*, 777 A.2d 265 (D.C. 2001)

2. "Abused" Defined

- *In re J.A.* ,[++] 601 A.2d 69 (D.C. 1991)

C. Child Pornography

1. Using a Minor in a Sexual Performance

- The D.C. statute prohibiting using a minor in a sexual performance can be found at D.C. CODE ANN. § 22-3102 (formerly § 22-2012).
- *Green v. United States*, 948 A.2d 554 (D.C. 2008)

2. Virtual/Simulated Child Pornography

No relevant D.C. cases reported.

D. Enticement

1. Enticing a Child

- *Oliver v. United States*, 711 A.2d 70 (D.C. 1998)
- *Blackledge v. United States*, 871 A.2d 1193 (D.C. 2005)

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

No relevant D.C. cases reported.

E. Incest

- *Pounds v. United States*, 529 A.2d 791 (D.C. 1987)

F. Sexual Abuse

1. First-Degree Child Sexual Abuse

a. Elements

- *Sanchez-Rengifo v. United States*, 815 A.2d 351 (D.C. 2002)

b. "Sexual Act" Defined

- *Sanchez-Rengifo v. United States*, 815 A.2d 351 (D.C. 2002)

2. Second-Degree Child Sexual Abuse

a. Elements

- *Green v. United States*, 948 A.2d 554 (D.C. 2008)
- *Sanchez-Rengifo v. United States*, 815 A.2d 351 (D.C. 2002)
- *In re E.F.*, 740 A.2d 547 (D.C. 1999)

b. "Sexual Contact" Defined

- *Sanchez-Rengifo v. United States*, 815 A.2d 351 (D.C. 2002)

3. Misdemeanor Sexual Abuse

a. Elements

- *Mungo v. United States*, 772 A.2d 240 (D.C. 2001)

b. Definitions

i. "Sexual Act"

- *Mungo v. United States*, 772 A.2d 240 (D.C. 2001)

ii. "Sexual Contact"

- *Mungo v. United States*, 772 A.2d 240 (D.C. 2001)

c. Intent

- *Mungo v. United States*, 772 A.2d 240 (D.C. 2001)

G. Sexual Proposals

1. Elements

- *District of Columbia v. Garcia*,[++] 335 A.2d 217 (D.C. 1975)

2. "Sexual Proposal" Defined

- *District of Columbia v. Garcia*,[++] 335 A.2d 217 (D.C. 1975)

H. Sodomy

1. Elements

- *Proctor v. United States*, 685 A.2d 735 (D.C. 1996)

2. Penetration

- *Proctor v. United States*, 685 A.2d 735 (D.C. 1996)

3. Emission

- *Proctor v. United States*, 685 A.2d 735 (D.C. 1996)

I. Solicitation

- *Thompson v. United States*, 618 A.2d 110 (D.C. 1992)

1. Elements

- *Thompson v. United States*, 618 A.2d 110 (D.C. 1992)
- *Gaithor v. United States*,[++] 251 A.2d 644 (D.C. 1969)

2. Scope of the Offense

- *Thompson v. United States*, 618 A.2d 110 (D.C. 1992)

J. Statutory Rape

- *Pounds v. United States*, 529 A.2d 791 (D.C. 1987)
- *Ballard v. United States*, 430 A.2d 483 (D.C. 1981)

K. Taking Indecent Liberties with Minors

1. Elements

- *Hall v. United States*, 400 A.2d 1063 (D.C. 1979)
- *Evans v. United States*, 299 A.2d 136 (D.C. 1973)

2. Intent

- *Evans v. United States*, 299 A.2d 136 (D.C. 1973)

L. Transporting a Minor for the Purposes of Prostitution

No relevant D.C. cases reported.

II. MANDATORY REPORTERS

- *Graham v. United States*, 746 A.2d 289 (D.C. 2000)

III. SEARCH AND SEIZURE OF ELECTRONIC EVIDENCE

A. Search Warrants

1. Probable Cause

- *Davis v. United States*,[++] 781 A.2d 729 (D.C. 2001)

a. Test to Determine Probable Cause

- *Davis v. United States*,[++] 781 A.2d 729 (D.C. 2001)
- *Rucker v. United States*,[++] 455 A.2d 889 (D.C. 1983)

b. Use of Informants

i. Generally

- *Goldston v. United States*,[++] 562 A.2d 96 (D.C. 1989)

ii. Reliability and Credibility

- *Sanders v. United States*,[++] 751 A.2d 952 (D.C. 2000)

(a) Factors to Consider

- *Goldston v. United States*,[++] 562 A.2d 96 (D.C. 1989)

(b) Citizens Versus Paid Informants

- *Ware v. United States*,[++] 672 A.2d 557 (D.C. 1996)

(c) Anonymous Tips

- *Sanders v. United States*,[++] 751 A.2d 952 (D.C. 2000)
- *Ware v. United States*,[++] 672 A.2d 557 (D.C. 1996)

c. False Information: The Defendant's Burden

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

2. Scope

- *Smith v. Whitehead*,[++] 436 A.2d 339 (D.C. 1981)

a. Items Not Listed in the Warrant

- *Smith v. Whitehead*,[++] 436 A.2d 339 (D.C. 1981)

b. Burden

- *Smith v. Whitehead*,[++] 436 A.2d 339 (D.C. 1981)

3. Staleness

a. Search Warrants

No relevant D.C. cases reported.

b. Arrest Warrants

- *Brooke v. United States*,[++] 208 A.2d 726 (D.C. 1965)

B. Anticipatory Warrants

No relevant D.C. cases reported.

C. Types of Searches

1. Employer Searches

No relevant D.C. cases reported.

2. Private Searches

No relevant D.C. cases reported.

3. University Campus Searches

No relevant D.C. cases reported.

4. Warrantless Searches

a. Consent Searches

i. Voluntariness

- *Burton v. United States*,[++] 657 A.2d 741 (D.C. 1994)

ii. Scope of Consent

- *Wright v. United States*,[++] 717 A.2d 304 (D.C. 1998)
- *Ware v. United States*,[++] 672 A.2d 557 (D.C. 1996)

iii. Withdrawal of Consent

- *Burton v. United States*,[++] 657 A.2d 741 (D.C. 1994)

iv. Good Faith

- *Wright v. United States*,[++] 717 A.2d 304 (D.C. 1998)

v. Third Party Consent

(a) Generally

- *Wright v. United States*, ++717 A.2d 304 (D.C. 1998)
- *Wright v. United States*,[++] 608 A.2d 763 (D.C. 1992)

(b) Parental Consent

- *Wright v. United States*,[++] 608 A.2d 763 (D.C. 1992)

(c) Employee Consent

- *Huffman v. United States*,[++] 259 A.2d 342 (D.C. 1969)

b. Exigent Circumstances

i. Generally

- *Gant v. United States*, 518 A.2d 103 (D.C. 1986)

ii. Factors to Consider

- *Brooks v. United States*,[++] 367 A.2d 1297 (D.C. 1976)

c. Plain View Searches

- *Gant v. United States*, 518 A.2d 103 (D.C. 1986)

i. Test to Determine Plain View

- *Gant v. United States*, 518 A.2d 103 (D.C. 1986)

ii. "Inadvertent" Discovery

- *Brooks v. United States*,[++] 367 A.2d 1297 (D.C. 1976)

iii. Temporal and Spatial Dimensions

- *Brooks v. United States*,[++] 367 A.2d 1297 (D.C. 1976)

d. *Terry* Detention

i. "Stop and Inquiry"

- *McIlwain v. United States*, 568 A.2d 470 (D.C. 1989)

ii. Duration of Detention

- *McIlwain v. United States*, 568 A.2d 470 (D.C. 1989)

D. Methods of Searching

No relevant D.C. cases reported.

E. Computer Technician/Repairperson Discoveries

No relevant D.C. cases reported.

F. Photo Development Discoveries

No relevant D.C. cases reported.

G. Criminal Forfeiture

No relevant D.C. cases reported.

H. Disciplinary Hearings for Federal and State Officers

No relevant D.C. cases reported.

I. Probation and Parolee Rights

No relevant D.C. cases reported.

IV. JURISDICTION AND NEXUS

A. Jurisdictional Nexus

No relevant D.C. cases reported.

B. Internet Nexus

No relevant D.C. cases reported.

C. State Jurisdiction, Federal Jurisdiction, Concurrent Jurisdiction

1. State

No relevant D.C. cases reported.

2. Federal

No relevant D.C. cases reported.

3. Concurrent

No relevant D.C. cases reported.

D. Interstate Possession of Child Pornography

No relevant D.C. cases reported.

V. DISCOVERY AND EVIDENCE

A. Discovery by the Defendant

1. Discoverable Material

a. The Defendant's Statements

- *Davis v. United States*, 641 A.2d 484 (D.C. 1994)

b. Physical and Mental Examinations

- *Nelson v. United States*, 649 A.2d 301 (D.C. 1994)

c. Physical and Mental Health Records

- *Nelson v. United States*, 649 A.2d 301 (D.C. 1994)

2. Non-Discoverable Material

- *Davis v. United States*, 641 A.2d 484 (D.C. 1994)

3. Defense Requests for Copies of Child Pornography

No relevant D.C. cases reported; however, D.C. Superior Court Criminal Rule 16(a)(1)(C) states that upon request of the defendant, the prosecutor must permit him or her to inspect tangible objects that are within the Government's possession and are material to the preparation of the defendant's defense.

B. Precision of Dates in the Indictment

- *Roberts v. United States*, 743 A.2d 212 (D.C. 1999)

C. Timely Review of Evidence

No relevant D.C. cases reported.

D. Introduction of Evidence

1. Electronic Eavesdropping Evidence

- *United States v. Sell*,[++] 487 A.2d 225 (D.C. 1985)

a. Warrantless Interceptions

- *United States v. Sell*,[++] 487 A.2d 225 (D.C. 1985)

b. Consent

i. Proof

- *United States v. Sell*,[++] 487 A.2d 225 (D.C. 1985)

ii. Voluntariness

- *United States v. Sell*,[++] 487 A.2d 225 (D.C. 1985)

iii. Involuntariness

- *United States v. Sell*,[++] 487 A.2d 225 (D.C. 1985)

c. Testimonial Disclosures

- *United States v. Sell*,[++] 487 A.2d 225 (D.C. 1985)

2. Email Evidence

a. Hearsay Issues

No relevant D.C. cases reported.

b. Authentication Issues

No relevant D.C. cases reported.

c. Circumstantial Evidence

No relevant D.C. cases reported.

d. Technical Aspects of Electronic Evidence Regarding Admissibility

No relevant D.C. cases reported.

3. Evidence Obtained from Internet Service Providers

a. Electronic Communications Privacy Act

No relevant D.C. cases reported.

b. Cable Act

No relevant D.C. cases reported.

c. Patriot Act

No relevant D.C. cases reported.

4. Other Crimes and Prior Acts Evidence

a. Inadmissible

i. Generally

- *Parker v. United States*, 751 A.2d 943 (D.C. 2000)
- *Howard v. United States*, 663 A.2d 524 (D.C. 1995)

ii. To Show Character and Propensity

- *McLeod v. United States*, 568 A.2d 1094 (D.C. 1990)

b. Admissible

- *Parker v. United States*, 751 A.2d 943 (D.C. 2000)
- *Howard v. United States*, 663 A.2d 524 (D.C. 1995)
- *McLeod v. United States*, 568 A.2d 1094 (D.C. 1990)
- *Ali v. United States*, 520 A.2d 306 (D.C. 1987)
- *Pounds v. United States*, 529 A.2d 791 (D.C. 1987)

i. Exceptions

(a) Mental Disposition

- *Howard v. United States*, 663 A.2d 524 (D.C. 1995)
- *Feaster v. United States*, 631 A.2d 400 (D.C. 1993)

(b) History of Sexual Abuse

- *Graham v. United States*, 746 A.2d 289 (D.C. 2000)
- *Pounds v. United States*, 529 A.2d 791 (D.C. 1987)

(c) Lustful Disposition

- *Parker v. United States*, 751 A.2d 943 (D.C. 2000)

(d) Unusual Sexual Preference

- *Parker v. United States*, 751 A.2d 943 (D.C. 2000)

(e) Impeachment

- *Keene v. United States*, 661 A.2d 1073 (D.C. 1995)
- *Galindo v. United States*, 630 A.2d 202 (D.C. 1993)
- *Lawrence v. United States*, 482 A.2d 374 (D.C. 1984)

(f) Recantation of Prior Sexual Assault

- *Shorter v. United States*, 792 A.2d 228 (D.C. 2001)

(g) Notice or Knowledge of Dangerous Condition

- *District of Columbia v. Doe*, 524 A.2d 30 (D.C. 1987)

ii. Requisite Findings

- *Parker v. United States*, 751 A.2d 943 (D.C. 2000)

5. Reputation and Character Evidence Offered by the Defendant

a. Direct Examination

- *Curry v. United States*, 498 A.2d 534 (D.C. 1985)

b. Cross-Examination

- *Curry v. United States*, 498 A.2d 534 (D.C. 1985)

c. Jury Instructions

- *Curry v. United States*, 498 A.2d 534 (D.C. 1985)

6. Text Only Evidence

a. Introduction into Evidence

No relevant D.C. cases reported.

b. Relevance

No relevant D.C. cases reported.

E. Witness Testimony

1. Assessing Competency

a. Generally

- *Barrera v. United States*, 599 A.2d 1119 (D.C. 1991)

b. Appellate Review

- *Howard v. United States*, 663 A.2d 524 (D.C. 1995)
- *Galindo v. United States*, 630 A.2d 202 (D.C. 1993)

2. Corroboration of Testimony: Sexual Offense Victims

- *Battle v. United States*, 630 A.2d 211 (D.C. 1993)
- *Barrera v. United States*, 599 A.2d 1119 (D.C. 1991)

3. Child Witnesses

a. Competency

- *Howard v. United States*, 663 A.2d 524 (D.C. 1995)
- *Galindo v. United States*, 630 A.2d 202 (D.C. 1993)
- *Barnes v. United States*, 600 A.2d 821 (D.C. 1991)
- *Barrera v. United States*, 599 A.2d 1119 (D.C. 1991)
- *Johnson v. United States*, 364 A.2d 1198 (D.C. 1976)
- *In re Lewis*, 88 A.2d 582 (D.C. 1952)

i. Factors to Consider

(a) Age

- *Barnes v. United States*, 600 A.2d 821 (D.C. 1991)

(b) Recollection

- *Johnson v. United States*, 364 A.2d 1198 (D.C. 1976)

(c) Impressions

- *Johnson v. United States*, 364 A.2d 1198 (D.C. 1976)

ii. *Voir Dire*

- *Barnes v. United States*, 600 A.2d 821 (D.C. 1991)

iii. Appellate Review

- *Barnes v. United States*, 600 A.2d 821 (D.C. 1991)
- *Johnson v. United States*, 364 A.2d 1198 (D.C. 1976)

b. Credibility

i. Factors to Consider

- *Barnes v. United States*, 600 A.2d 821 (D.C. 1991)

ii. Delayed Reporting

- *Battle v. United States*, 630 A.2d 211 (D.C. 1993)

iii. Ultimate Determination

- *Barnes v. United States*, 600 A.2d 821 (D.C. 1991)

c. Closed Circuit Television Testimony: Showing of "Necessity"

- *Hicks-Bey v. United States*, 649 A.2d 569 (D.C. 1994)

4. Expert Testimony

a. Test for Admissibility

- *Mindombe v. United States*, 795 A.2d 39 (D.C. 2002)
- *Gant v. United States*, 518 A.2d 103 (D.C. 1986)
- *Douglas v. United States*, 386 A.2d 289 (D.C. 1978)

b. Permissible Testimony: Behavioral Characteristics and the Psychological Dynamics of Child Victims

- *Mindombe v. United States*, 795 A.2d 39 (D.C. 2002)
- *Oliver v. United States*, 711 A.2d 70 (D.C. 1998)

i. Purpose

- *Mindombe v. United States*, 795 A.2d 39 (D.C. 2002)

ii. Admissibility

(a) Generally

- *Mindombe v. United States*, 795 A.2d 39 (D.C. 2002)

(b) Preempt or Rebut Inferences

- *Mindombe v. United States*, 795 A.2d 39 (D.C. 2002)

(c) Psychology of Recantation

- *Oliver v. United States*, 711 A.2d 70 (D.C. 1998)

(d) Syndrome Type Testimony

- *Mindombe v. United States*, 795 A.2d 39 (D.C. 2002)

c. Impermissible Testimony: Opinions on Ultimate Issues

- *Mindombe v. United States*, 795 A.2d 39 (D.C. 2002)

i. Truthfulness of Witness

- *Mindombe v. United States*, 795 A.2d 39 (D.C. 2002)

ii. Credibility Determinations

- *Mindombe v. United States*, 795 A.2d 39 (D.C. 2002)
- *Oliver v. United States*, 711 A.2d 70 (D.C. 1998)

5. Cross-Examination of Witnesses

a. Right to Confrontation

- *Guzman v. United States*, 769 A.2d 785 (D.C. 2001)

i. Curtailment of the Right

- *Guzman v. United States*, 769 A.2d 785 (D.C. 2001)

ii. Appellate Review

- *Guzman v. United States*, 769 A.2d 785 (D.C. 2001)

b. Limits

- *Guzman v. United States*, 769 A.2d 785 (D.C. 2001)

i. Discretionary

- *Guzman v. United States*, 769 A.2d 785 (D.C. 2001)

ii. Factors to Consider

- *Guzman v. United States*, 769 A.2d 785 (D.C. 2001)

c. Bias

i. Definition

- *Guzman v. United States*, 769 A.2d 785 (D.C. 2001)

ii. Proper Foundation on Cross-Examination

- *Guzman v. United States*, 769 A.2d 785 (D.C. 2001)

iii. Discretion

- *Guzman v. United States*, 769 A.2d 785 (D.C. 2001)

F. Hearsay

1. When Is an Out-of-Court Statement Not Hearsay?

- *Battle v. United States*, 630 A.2d 211 (D.C. 1993)
- *Guzman v. United States*, 769 A.2d 785 (D.C. 2001)

2. Hearsay Exceptions

a. Hospital Records

i. Business Records Act

- *Smith v. United States*, 337 A.2d 219 (D.C. 1975)

ii. Admissibility of Evidence

(a) Physical Facts

- *Smith v. United States*, 337 A.2d 219 (D.C. 1975)

(b) Slides

- *Smith v. United States*, 337 A.2d 219 (D.C. 1975)

b. Medical Diagnosis

- *Galindo v. United States*, 630 A.2d 202 (D.C. 1993)

c. Prior Consistent Statements

- *Battle v. United States*, 630 A.2d 211 (D.C. 1993)

d. Prior Identification or Prior Description

- *Williams v. United States*, 756 A.2d 380 (D.C. 2000)
- *Battle v. United States*, 630 A.2d 211 (D.C. 1993)

e. Prior Recorded Testimony

- *Feaster v. United States*, 631 A.2d 400 (D.C. 1993)

i. Unavailability

- *Feaster v. United States*, 631 A.2d 400 (D.C. 1993)

ii. Opportunity to Cross-Examine

- *Feaster v. United States*, 631 A.2d 400 (D.C. 1993)

iii. Discretion

- *Feaster v. United States*, 631 A.2d 400 (D.C. 1993)

f. "Report-of-Rape" Rule

- *Williams v. United States*, 756 A.2d 380 (D.C. 2000)
- *Battle v. United States*, 630 A.2d 211 (D.C. 1993)
- *Galindo v. United States*, 630 A.2d 202 (D.C. 1993)

i. Corroboration of a Complainant's Testimony

- *Battle v. United States*, 630 A.2d 211 (D.C. 1993)

ii. Details

- *Battle v. United States*, 630 A.2d 211 (D.C. 1993)

g. Spontaneous Utterance

- *In re Lewis*, 88 A.2d 582 (D.C. 1952)

G. Child Neglect and Child Protective Proceedings: Special Procedures

1. Burden

- *In re C.C.J.*, 777 A.2d 265 (D.C. 2001)

2. Function of the Trial Court

- *In re C.C.J.*, 777 A.2d 265 (D.C. 2001)

3. Inferences of Neglect

- *In re C.C.J.*, 777 A.2d 265 (D.C. 2001)

4. Appellate Review

- *In re C.C.J.*, 777 A.2d 265 (D.C. 2001)

H. Privileges

- *In re E.F.*, 740 A.2d 547 (D.C. 1999)

1. Marital Privilege

- *Croom v. United States*, 546 A.2d 1006 (D.C. 1988)

2. Physician-Patient Privilege

a. Application

- *Graham v. United States*, 746 A.2d 289 (D.C. 2000)

b. Who Is a Mental Health Professional?

- *Graham v. United States*, 746 A.2d 289 (D.C. 2000)

3. Privileges in Child Neglect Proceedings

- *Graham v. United States*, 746 A.2d 289 (D.C. 2000)

VI. AGE OF CHILD VICTIM

A. Proving the Age of the Child Victim

- *Slaughter v. District of Columbia*, 134 A.2d 338 (D.C. 1957)

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

No relevant D.C. cases reported.

VII. MULTIPLE COUNTS

A. What Constitutes an Item of Child Pornography?

No relevant D.C. cases reported.

B. Double Jeopardy

- *Sanchez-Rengifo v. United States*, 815 A.2d 351 (D.C. 2002)

1. Duplicate Convictions

- *Sanchez-Rengifo v. United States*, 815 A.2d 351 (D.C. 2002)

2. Multiple Convictions

a. Statutory Elements Analysis

- *Cullen v. United States*, 886 A.2d 870 (D.C. 2005)
- *Sanchez-Rengifo v. United States*, 815 A.2d 351 (D.C. 2002)

b. Factual Analysis

- *Sanchez-Rengifo v. United States*, 815 A.2d 351 (D.C. 2002)

3. Lesser Included Offenses

- *Hicks v. United States*, 658 A.2d 200 (D.C. 1995)
- *Pounds v. United States*, 529 A.2d 791 (D.C. 1987)

4. Single, Continuing Schemes

- *Cullen v. United States*, 886 A.2d 870 (D.C. 2005)
- *Sanchez-Rengifo v. United States*, 815 A.2d 351 (D.C. 2002)
- *Roberts v. United States*, 752 A.2d 583 (D.C. 2000)

5. Repeated Acts of Sexual Violence or Abuse

- *Brown v. United States*,[++] 795 A.2d 56 (D.C. 2002)
- *Sanchez-Rengifo v. United States*, 815 A.2d 351 (D.C. 2002)

VIII. DEFENSES

A. Consent

1. Sexual Intercourse

- *Williams v. United States*, 756 A.2d 380 (D.C. 2000)

2. Sexual Touching

- *In re A.B.*, 556 A.2d 645 (D.C. 1989)

B. Diminished Capacity

1. Addiction to the Internet

No relevant D.C. cases reported.

2. Insanity

a. Elements of the Insanity Defense

- *United States v. Shorter*, 343 A.2d 569 (D.C. 1975)

b. Definitions

i. "Mental Disease or Defect"

- *United States v. Shorter*, 343 A.2d 569 (D.C. 1975)

ii. "Disease"

- *United States v. Shorter*, 343 A.2d 569 (D.C. 1975)

iii. "Defect"

- *United States v. Shorter*, 343 A.2d 569 (D.C. 1975)

c. Mental Retardation

i. Defined

- *United States v. Shorter*, 343 A.2d 569 (D.C. 1975)

ii. As Insanity

- *United States v. Shorter*, 343 A.2d 569 (D.C. 1975)

d. Commitment: Judicial Hearing Required

- *Harris v. United States*, 356 A.2d 630 (D.C. 1976)

i. Pre-Hearing Commitment

- *United States v. Shorter*, 343 A.2d 569 (D.C. 1975)

ii. Burden of Proof

- *Harris v. United States*, 356 A.2d 630 (D.C. 1976)
- *United States v. Shorter*, 343 A.2d 569 (D.C. 1975)

iii. Protection of the Public and the Patient

- *Harris v. United States*, 356 A.2d 630 (D.C. 1976)

C. Impossibility

1. Factual

No relevant D.C. cases reported.

2. Legal

No relevant D.C. cases reported.

D. Intoxication

1. General Intent Crimes

- *Kyle v. United States*, 759 A.2d 192 (D.C. 2000)

2. Specific Intent Crimes

- *Kyle v. United States*, 759 A.2d 192 (D.C. 2000)

E. Manufacturing Jurisdiction

No relevant D.C. cases reported.

F. Mistake

1. Of Fact: Sexual Abuse

- *In re E.F.*, 740 A.2d 547 (D.C. 1999)

2. Of Law

No relevant D.C. cases reported.

G. Outrageous Conduct

No relevant D.C. cases reported.

H. Researcher

No relevant D.C. cases reported.

I. Sexual Orientation

No relevant D.C. cases reported.

J. Statute of Limitations: Sexual Abuse Cases

1. Accrual

- *Cevenini v. Nelson*, 707 A.2d 768 (D.C. 1998)

a. Generally

- *Cevenini v. Nelson*, 707 A.2d 768 (D.C. 1998)

b. Cases Involving Minors

- *Cevenini v. Nelson*, 707 A.2d 768 (D.C. 1998)

2. Running

a. Generally

- *Cevenini v. Nelson*, 707 A.2d 768 (D.C. 1998)

b. Notice

- *Cevenini v. Nelson*, 707 A.2d 768 (D.C. 1998)

i. Actual

- *Cevenini v. Nelson*, 707 A.2d 768 (D.C. 1998)

ii. Inquiry

- *Cevenini v. Nelson*, 707 A.2d 768 (D.C. 1998)

3. Tolling

a. Discovery Rule

- *Farris v. Compton*, 652 A.2d 49 (D.C. 1994)

b. Repressed Memory

- *Farris v. Compton*, 652 A.2d 49 (D.C. 1994)

c. Fraudulent Concealment

- *Cevenini v. Nelson*, 707 A.2d 768 (D.C. 1998)

i. Claims or Facts

- *Cevenini v. Nelson*, 707 A.2d 768 (D.C. 1998)
- *Farris v. Compton*, 652 A.2d 49 (D.C. 1994)

ii. Identity of Liable Parties

- *Cevenini v. Nelson*, 707 A.2d 768 (D.C. 1998)

IX. SENTENCING ISSUES

A. Enhancement

1. Age of Child Victim

No relevant D.C. cases reported.

2. Distribution/Intent to Traffic

No relevant D.C. cases reported.

3. Number of Images

No relevant D.C. cases reported.

4. Pattern of Activity for Sexual Exploitation

No relevant D.C. cases reported.

5. Prior Offenses

- *Brake v. United States*, 494 A.2d 646 (D.C. 1985)

6. Sadistic, Masochistic, or Violent Material

No relevant D.C. cases reported.

7. Use of Computers

No relevant D.C. cases reported.

B. Consecutive Sentences

- *Crawford v. United States*, 628 A.2d 1002 (D.C. 1993)

C. Previous Convictions

- *Fitzgerald v. United States*, 472 A.2d 52 (D.C. 1984)

D. Sexual Psychopath Act: Commitment of Sexual Psychopaths

- *Shelton v. United States*, 721 A.2d 603 (D.C. 1998)

1. Intent of the Sexual Psychopath Act

- *Shelton v. United States*, 721 A.2d 603 (D.C. 1998)

2. Operation of the Sexual Psychopath Act

- *Shelton v. United States*, 721 A.2d 603 (D.C. 1998)

a. Filed in Connection with a Criminal Proceeding

- *Shelton v. United States*, 721 A.2d 603 (D.C. 1998)

b. Filed Independently of a Criminal Proceeding

- *Shelton v. United States*, 721 A.2d 603 (D.C. 1998)

3. "Sexual Psychopath" Defined

- *Shelton v. United States*, 721 A.2d 603 (D.C. 1998)
- *Carras v. District of Columbia*,[++] 183 A.2d 393 (D.C. 1962)

E. Appellate Review of Sentences

- *Crawford v. United States*, 628 A.2d 1002 (D.C. 1993)

X. SUPERVISED RELEASE

A. Probation Revocation Proceedings

- *Merle v. United States*, 683 A.2d 755 (D.C. 1996)

1. Admissibility of Evidence

- *Merle v. United States*, 683 A.2d 755 (D.C. 1996)

2. Confrontation Clause

- *Merle v. United States*, 683 A.2d 755 (D.C. 1996)

3. Mental Illness As a Defense

- *Merle v. United States*, 683 A.2d 755 (D.C. 1996)

B. Sex Offender Registration Act

- *Cannon v. Igorzurkie*,[++] 779 A.2d 887 (D.C. 2001)

1. Retroactivity

- *Cannon v. Igorzurkie*,[++] 779 A.2d 887 (D.C. 2001)

2. Who Registers?

- *Cannon v. Igorzurkie*,[++] 779 A.2d 887 (D.C. 2001)

3. Release of Registration Information

- *Cannon v. Igorzurkie*,[++] 779 A.2d 887 (D.C. 2001)

4. Mandatory Compliance

- *Cannon v. Igorzurkie*,[++] 779 A.2d 887 (D.C. 2001)

DISTRICT OF COLUMBIA

Case Highlights

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

Ali v. United States, 520 A.2d 306 (D.C. 1987)

Admission of allegations of sexual abuse committed by the defendant against the complainant's younger sister was inadmissible because this evidence generated the impermissible "propensity" inference.

Ballard v. United States, 430 A.2d 483 (D.C. 1981)

The offense of carnal knowledge is not a lesser included offense of rape.

Barnes v. United States, 600 A.2d 821 (D.C. 1991)

A minor complainant who testified in specific detail as to the circumstances surrounding the offense and who demonstrated the requisite intelligence and mental capacity to understand, recall, and narrate her impressions of the occurrence, was competent to testify, even absent *voir dire*.

Barrera v. United States, 599 A.2d 1119 (D.C. 1991)

The requirement of independent corroboration of charges of sexual assault against minors has been repealed. The evolution of court decisions has eliminated a presumption that a child complaining of a sexual assault is fabricating the story unless there is corroborating evidence. It is up to the jury to consider a child's testimony along with all the other evidence. As is true with any witness, a child's testimony at times may be inconsistent or confused and, just as with any witness, such confusion or inconsistency will weigh in the jury's determination of credibility.

Battle v. United States, 630 A.2d 211 (D.C. 1993)

Testimony by a law enforcement officer and the rape victim's aunt with respect to the victim's report of rape was admissible under the "report-of-rape" rule that restricts statements to the fact that the victim notified someone of the sexual assault.

Blackledge v. United States, 871 A.2d 1193 (D.C. 2005)

Defendant's conviction for kidnapping does not merge with his conviction for enticing a child. Further, to support the conviction for enticing a child, the evidence must be sufficient to prove that the defendant took the victim for the purposes of committing a sexual offense.

Brake v. United States, 494 A.2d 646 (D.C. 1985)

Assault with intent to commit sodomy is a lesser included offense of sodomy.

Brooke v. United States,[++] 208 A.2d 726 (D.C. 1965)

An arrest warrant does not become void by mere passage of time.

Brooks v. United States,[++] 367 A.2d 1297 (D.C. 1976)

In determining whether a warrantless law enforcement entry may be sustained on the basis of exigent circumstances, the pertinent considerations are: (1) a grave offense is involved, particularly a crime of violence; (2) the suspect is reasonably believed to be armed; (3) there is a clear showing of probable cause and a strong reason to believe that the suspect is in the dwelling; (4) the likelihood of escape is great if the suspect is not swiftly apprehended; (5) whether the entry was peaceful; and (6) whether the entry took place during the day or at night.

Brown v. United States,[++] 795A.2d 56 (D.C. 2002)

Courts frequently reject the argument that repeated acts of sexual violence or abuse constitute only a single, continuous offense.

Burton v. United States,[++] 657 A.2d 741 (D.C. 1994)

Warrantless searches are *per se* unreasonable, subject to a few specifically established and well delineated exceptions. One of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent. At trial, the Government is not required to establish that a defendant knew that he or she had a right to withhold consent in order to uphold a finding that a consent to search was voluntary. Rather, the Government must establish in the totality of the circumstances that consent was, in fact, freely given. While the Government's burden falls short of establishing a knowing and intelligent waiver of the right not to consent to a search, to approve such searches without the most careful scrutiny would sanction the possibility of official coercion; therefore, account must be taken of subtly coercive law enforcement questions, as well as the possibly vulnerable subjective state of the person who consents.

Cannon v. Igorzurkie,[++] 779 A.2d 887 (D.C. 2001)

The Sex Offender Registration Act requires persons identified as "sex offenders" to register in spite of age. Consequently, because a juvenile defendant was tried and convicted as an adult, the requirements of the Act were properly applied to the defendant.

Carras v. District of Columbia,[++] 183 A.2d 393 (D.C. 1962)

Within the statutory definition of the term "sexual psychopath," the words "likely to attack or otherwise inflict injury, loss, pain, or other evil" are not restricted to physical injury alone. In the common understanding of the words, injury can include injury to one's feelings and pain includes mental suffering.

Cevenini v. Nelson, 707 A.2d 768 (D.C. 1998)

Inquiry notice is charged to a plaintiff when he or she is aware of an injury, its cause, and some evidence of wrongdoing. District of Columbia Court's have never held that accrual should be tolled until the plaintiff fully appreciates the "impact" of the harm directed at him or her.

Crawford v. United States, 628 A.2d 1002 (D.C. 1993)

The defendant was convicted of five counts of enticing a minor, one count of indecent liberties with a minor, and seven counts of sodomy of a minor. He was sentenced to the maximum possible term for each count, with all but four counts running consecutively. An appellate court, in considering either a direct appeal of a sentence or an appeal of a post trial decision on sentence reduction, will not review sentences that are within statutory limits, as are the defendant's, upon the ground that such sentences are too severe. Further, the defendant's aggregate sentence, as applied to his crimes, is not so grossly disproportionate that it violates the Eighth Amendment. The defendant is currently serving a sentence for 10 counts of offenses constituting sexual exploitation of a minor, who was 12 years old when the incidents began; he was a junior high school teacher, who abused a position of respect and power in relation to an elementary school student, although the victim did not attend his school; and he had been convicted in 1969 of taking indecent liberties with an 8-year-old while a teacher in Michigan. Given the facts of the case, even with mitigating factors ably presented by counsel taken into account, the defendant's sentence – imposed in accordance with our statutory scheme – is not grossly disproportionate to the gravity of his crimes. The fact that the defendant can point to a different sentence imposed by the same judge on a different person in similar circumstances does not change the proportionality analysis.

Croom v. United States, 546 A.2d 1006 (D.C. 1988)

There is no compelling reason in the interest of marital harmony to limit a waiver of the marital privilege to grand jury proceedings. Upon a spouse's voluntary decision to testify before the grand jury, there is an acknowledgement of marital disharmony and the privilege cannot be used at a later trial to insulate the accused from the possibility of conviction and imprisonment.

Cullen v. United States, 886 A.2d 870 (D.C. 2005)

Although two acts may be separated by a brief passage of time, the interval of time does not necessarily terminate the appellant's original intent to engage in sexual contact with the victim without consent. Therefore, separate punishments for multiple acts of sexual abuse committed in a single course of conduct can violate the prohibition against double jeopardy.

Curry v. United States, 498 A.2d 534 (D.C. 1985)

A defendant may advance one or more of his or her character traits as evidence of his or her innocence. Further, his or her presentation of his or her reputation in the community may be as narrow or as broad as he or she chooses so long as it remains relevant and germane to the issues at trial. On cross-examination, the Government is limited to the traits raised by the defendant. Once raised, the jury must be instructed that character evidence can raise a reasonable doubt about guilt. In the present case, the court held that the desirability of character testimony was clear since attacking the credibility of the complainant was the key defense theory. No objection could have been sustained on the grounds of admissibility or relevance and, in view of the defendant's virtually unblemished criminal record and work history, there was little countervailing reason not to present such testimony.

Davis v. United States, 641 A.2d 484 (D.C. 1994)

An accused has the right to discover specific types of information within the Government's control, including any written record of the defendant's relevant statements; however, internal documents made by the Government in connection with an investigation or prosecution are excluded from the scope of discovery.

Davis v. United States,[++] 781 A.2d 729 (D.C. 2001)

The test for determining probable cause is whether a reasonably prudent law enforcement officer, considering the totality of the circumstances confronting him or her, and drawing from his or her experience, would be warranted in the belief that an offense has been or is being committed.

District of Columbia v. Doe, 524 A.2d 30 (D.C. 1987)

Evidence of prior incidents is generally admissible to show a defendant's notice or knowledge of a dangerous condition that causes an injury. Such evidence is also admissible to show the dangerous nature of the specific condition at issue. To qualify for admission, prior incidents should have occurred under substantially similar temporal and physical conditions.

District of Columbia v. Garcia,[++] 335 A.2d 217 (D.C. 1975)

A sexual "proposal" connotes virtually the same conduct or speech-conduct as a sexual solicitation. The term clearly implies a personal importunity addressed to a particular individual to do some sexual act. The sexual acts are limited to those that are lewd, obscene, or indecent. It is appropriate to construe the sexual proposal clause of the D.C. Code as limited to solicitations to commit lewd, obscene, or indecent sexual acts that, if accomplished, would be punishable as a crime; therefore, various "sex related" offenses in the D.C. Code must be examined to see which, if any, fit into this narrow category of conduct.

Douglas v. United States, 386 A.2d 289 (D.C. 1978)

During the course of a forceful entry and warrantless search of the defendant's apartment, a detective removed a photograph from the defendant's apartment; however, the photograph was not included in the identified array. Instead a photograph from the files of the Metropolitan Police Department was used; therefore, law enforcement in no way made use of the illegally seized photography. Since the seized photograph had no role in the subsequent identification procedure, there was no specific tainted evidence for the court to suppress.

Evans v. United States, 299 A.2d 136 (D.C. 1973)

The specific intent to arouse oneself may be inferred from one's actions. The defendant inserted his hand in the pants of the complainants around the pubic area, inserted his finger in their vaginas, and massaged their breasts. Such acts are sufficient to give rise to an inference that he had the requisite intent at the time.

Farris v. Compton, 652 A.2d 49 (D.C. 1994)

The plaintiffs, two sisters, filed suit against their brother, the defendant, seeking compensatory and punitive damages for repeated acts of incestuous sexual abuse

allegedly perpetrated upon them by the defendant during their childhood and youth in Washington, D.C. in the 1950s and 1960s. The plaintiffs claimed that each had repressed her recollection of the abuse for more than 20 years and contended that because of this repression, which was itself allegedly induced by the defendant's wrongful acts, the statute of limitations was tolled until their memories were reawakened in 1990 as a result of therapeutic intervention. The district court granted the defendant's motion to dismiss the complaint as time barred. The appellate court found that while it is not easy to defend against allegations of events said to have taken place a great many years ago, accepting the allegations of the complaint as true for the purpose of the certified question, the complaint is not time barred. If, as a result of the defendant's wrongful conduct, either plaintiff's recollection of the relevant events has been repressed, and if she has thus been effectively precluded during the period of repression from seeking legal redress, then that plaintiff's right of action did not accrue until the date that she recovered her memory of the wrongful conduct.

Feaster v. United States, 631 A.2d 400 (D.C. 1993)

A trial judge has abused his or her discretion in excluding the grand jury transcript of a witness unless the exclusion is accompanied by a finding that the witness was not shown to be unavailable to testify at trial.

Fitzgerald v. United States, 472 A.2d 52 (D.C. 1984)

When a defendant is once again convicted during a retrial, the trial court will be restricted to the sentence it imposed upon the previous conviction unless a harsher sentence is justified on the basis of identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding.

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.

Gaithor v. United States,[++] 251 A.2d 644 (D.C. 1969)

Fellatio is generally included in the definition of sodomy.

Galindo v. United States, 630 A.2d 202 (D.C. 1993)

Under the report-of-rape rule, a witness may testify that a sexual assault complainant stated that a sexual crime occurred and may relate the details necessary to identify the crime. A mother's testimony that her child pointed to her genitals and said "he put a thing there" was admissible to show that the child reported a sexual offense.

Gant v. United States, 518 A.2d 103 (D.C. 1986)

The only issue at trial was whether the sexual intercourse between the defendant and a child victim had been against the child's will. An expert testified as to the amount of pain suffered by the victim during sexual intercourse with the defendant. The expert also concluded that, based on the pain involved, the intercourse had been forced rather than consenting. The defendant's motion to strike expert testimony was untimely since defense counsel elicited the expert's testimony on cross-examination and did not move to strike it until two other witnesses had testified; therefore, any objection to the testimony was waived. Notwithstanding that the expert testimony intruded on the jury's function to determine the ultimate issue, the tactical decision by experienced defense counsel to attack the expert's testimony through cross-examination and presentation of a defense expert with a contrary opinion, precludes a finding of plain error.

Goldston v. United States,[++] 562 A.2d 96 (D.C. 1989)

While veracity, reliability, and basis of knowledge are all highly relevant in determining the value of an informant's report, these elements should not be understood as entirely separate and independent requirements to be rigidly exacted in every case. Rather, they should be understood simply as closely intertwined issues that may usefully clarify the commonsense, practical question of whether there is probable cause. Because the test is one requiring a balancing of several different factors, if one of the relevant indicia is deficient, it is not fatal to a finding of probable cause if there is a strong showing as to another or if there exists some other indicia of reliability.

Graham v. United States, 746 A.2d 289 (D.C. 2000)

When a case involves the issue of the safety and welfare of children, courts are more willing to find an exception to evidentiary privileges; therefore, it was proper for the trial court to admit testimony from mental health professionals in a child neglect proceeding, despite the existence of a privilege.

Green v. United States, 948 A.2d 554 (D.C. 2008)

Failure to instruct the jury on an element of the offense does not *per se* satisfy the plain error test. Even if the court fails to instruct the jury on the element of intent required for conviction of second-degree child sexual abuse, the error must have affected the defendant's substantial rights or the fairness of the trial in order to have the conviction reversed.

Guzman v. United States, 769 A.2d 785 (D.C. 2001)

It is not improper for the trial court to limit the scope of the cross-examination to matters raised on direct examination.

Hall v. United States, 400 A.2d 1063 (D.C. 1979)

Assault is a lesser included offense of taking indecent liberties with a minor child. It defies the imagination that anyone could commit an indecent act without also committing an assault especially given that, by law, the victim cannot consent to the indecent act.

Harris v. United States, 356 A.2d 630 (D.C. 1976)

Even though a patient may have improved materially after psychiatric care and appear to be a good prospect for restoration as a useful member of society, if an "abnormal mental condition" renders him potentially dangerous, reasonable medical doubts or reasonable judicial doubts are to be resolved in favor of the public and in favor of the subject's safety.

Hicks v. United States, 658 A.2d 200 (D.C. 1995)

The defendant's attorney requested that the trial judge include in his charge to the jury the standard, cautionary instruction on the testimony of a child witness in effect at the time of the trial. The trial judge declined to do so in light of the fact that his core instructions already asked the jurors to examine the testimony of each witness, to ask themselves questions, and to be critical regarding the testimony of each witness. On appeal, the defendant claimed this refusal was reversible error. The appellate court disagreed, finding that children's testimony is not inherently suspect and no special corroboration is required. A trial judge retains discretion to determine whether the jury should receive a special instruction with respect to the credibility of a young witness and, if so, the nature of that instruction.

Hicks-Bey v. United States, 649 A.2d 569 (D.C. 1994)

If the Government makes an adequate showing of necessity, the Government's interest in protecting child witnesses from the trauma of testifying in child abuse cases is sufficiently important to justify the use of a special procedure that permits a child witness to testify against a defendant in the absence of face-to-face confrontation (*i.e.*, the use of closed circuit television procedures). The demonstration of necessity requires three trial court findings: (i) the trial court must hear evidence and determine whether use of the one-way, closed circuit television procedure is necessary to protect the welfare of the particular child witness who seeks to testify; (ii) the trial court must also find that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant; and (iii) the trial court must find that the emotional distress suffered by the child witness in the presence of the defendant is more than *de minimus* (*i.e.*, more than mere nervousness or excitement or some reluctance to testify).

Howard v. United States, 663 A.2d 524 (D.C. 1995)

Evidence of offenses other than that for which the accused is on trial is inadmissible; however, in sexual offense prosecutions, there exists a well-established exception: because the mental disposition of the defendant at the time of the act charged is relevant, evidence that at some prior time he or she was similarly disposed is also relevant.

Huffman v. United States,[++] 259 A.2d 342 (D.C. 1969)

An employee of a business concern, whether manager or otherwise, lacks the power to give a general authorization to law enforcement to search his or her employer's premises.

In re A.B., 556 A.2d 645 (D.C. 1989)

A nonviolent, sexual touching is not restricted to contact in the genital area, nor does the offense call for evidence of the juvenile defendant's specific intent to obtain or derive sexual satisfaction. The evidence was sufficient to support the finding that the grabbing

and squeezing of the victim's buttocks by the appellant constituted a nonviolent sexual touching, regardless of whether the defendant intended to gain sexual satisfaction from the incident.

In re C.C.J., 777 A.2d 265 (D.C. 2001)

The goal of the child neglect statute is aimed at protecting children and should be interpreted broadly; therefore, courts are allowed to assume neglect when parents were unable to or did not explain injuries. The evidence of chronic and unexplained sexual injuries in young children while in the custody of the parents is sufficient to justify an inference of neglect.

In re E.F., 740 A.2d 547 (D.C. 1999)

Mistake of the victim's age does not constitute a defense to second-degree child sexual abuse.

In re J.A.,[++] 601 A.2d 69 (D.C. 1991)

"Neglected child" means a child who is abandoned or abused by his or her parent, guardian, or other custodian. "Abused," when used with reference to a child, means a child whose parent, guardian, or custodian inflicts or fails to make reasonable efforts to prevent the infliction of physical or mental injury upon the child, including excessive corporal punishment or an act of sexual abuse, molestation, or exploitation.

In re L.A.G., 407 A.2d 688 (D.C. 1979)

A nonviolent action involving sexual misconduct may constitute an assault because the sexual nature of the conduct supplies the element of violence or threat of violence.

In re Lewis, 88 A.2d 582 (D.C. 1952)

What constitutes a spontaneous utterance depends on the facts peculiar to each case and will be determined by the exercise of sound judicial discretion. The fact that the statements are made in response to inquiry is not decisive of the question of spontaneity and the time element, while important, is not controlling. Guided by these principles, the appellate court found a mother's testimony concerning her child's statements was admissible. While the record does not show the exact time that elapsed between the event and the relating of it by the child, it appears clear it was of no lengthy duration. As soon as the child returned home, the mother saw from the child's appearance that she was upset, indicating the child was still under the influence of her very recent experience.

In re S.G., 581 A.2d 771 (D.C. 1990)

A neglected child can be a child who is in imminent danger of being abused and whose sibling has already been abused.

Johnson v. United States, 364 A.2d 1198 (D.C. 1976)

There is no rule of law that conclusively presumes a child under a certain age lacks the capacity to testify. The determination of whether a child is legally competent to testify is a matter that rests within the broad discretion of the trial court. The most important factor in determining the competency of a child witness is the child's ability to recollect the events about which he or she is to testify.

Keene v. United States, 661 A.2d 1073 (D.C. 1995)

Generally, a complainant's prior sexual acts with someone other than the defendant will have no relevance whatsoever to the complainant's credibility as a witness; therefore, they are inadmissible to impeach a complainant's credibility. A witness's prior acts may be admissible, however, where those particular acts bear directly upon the veracity of the witness in respect to the issues involved in the trial.

Kyle v. United States, 759 A.2d 192 (D.C. 2000)

Voluntary intoxication is not a defense to a general intent crime such as first-degree sexual abuse.

Lawrence v. United States, 482 A.2d 374 (D.C. 1984)

The defendant was convicted of carnal knowledge and indecent liberties with a minor. On appeal, he contends the trial court violated his Sixth Amendment right to confront the witnesses against him by limiting his cross-examination of the Government's primary witness, the victim's mother. The appellate court agreed, finding that by preventing exploration into prior false accusations of sexual activity made by the victim's mother against other family members, the trial court erred.

McIlwain v. United States, 568 A.2d 470 (D.C. 1989)

The trial court did not commit reversible error by admitting into evidence an inculpatory statement uttered by the defendant while in his room at the boarding house in which he lived. The detective in charge of the investigation entered the defendant's room and asked him what had happened. The defendant, in an effort to exculpate himself, responded to the detective's question with the answer that the victim had been in his room after using the bathroom, and that he had pulled down the victim's pants only for the purpose of putting the child's penis back into his pants. Thereupon, the detective placed the appellant under arrest and took him to the station house. When the detective asked the defendant what had happened, the defendant was not in custody so as to trigger *Miranda*; therefore, the detective need not have first given a *Miranda* warning. Consequently, the defendant's pre-trial motion to suppress the statement he had made to the detective was denied.

McLeod v. United States, 568 A.2d 1094 (D.C. 1990)

A prosecutor must notify the Director of Social Services if, upon the complaint of any person of criminal conduct by another or the arrest of a person charged with criminal conduct, it appears that the conduct involves an intrafamily offense.

Merle v. United States, 683 A.2d 755 (D.C. 1996)

Mental illness does not usually constitute a defense in probation revocation proceedings; however, if a probationer has made all reasonable efforts to comply with the conditions of probation and yet cannot do so through no fault of his or her own, it is fundamentally unfair to automatically revoke probation without considering whether adequate alternative methods of punishing the defendant are available.

Mindombe v. United States, 795 A.2d 39 (D.C. 2002)

An expert witness may testify (i) as to a child's capability to sequence events, (ii) that child victims of incest do not always report such incidents of abuse quickly, and (iii) that children exhibit a variety of responses and reactions to abuse, because such testimony is beyond the typical juror's knowledge and understanding and no conclusions are given concerning the victim's candor and honesty, whether the victim was abused, or whether the defendant is guilty.

Mungo v. United States, 772 A.2d 240 (D.C. 2001)

A nonviolent, sexual touching assault is a lesser included offense of misdemeanor sexual abuse.

Nelson v. United States, 649 A.2d 301 (D.C. 1994)

A defendant may present evidence that tends to show that another person committed the crimes charged; however, before such evidence can be deemed relevant it must clearly link the other person to the commission of the crime.

Oliver v. United States, 711 A.2d 70 (D.C. 1998)

Among other things, on appeal the defendant contended the Government failed to prove he was four years older than the children he was accused of enticing. The defendant was 80 years old at the time of his sentencing and the child he was convicted of enticing was 9 years old at the time of trial. Viewing the evidence in the light most favorable to the Government, as the appellate court must, not only was it obvious to the jurors that the defendant was at least four years older than the child, but also the evidence showed that he had been taking children on camping trips for approximately 20 years.

Parker v. United States, 751 A.2d 943 (D.C. 2000)

Evidence of other crimes is admissible to show "lustful disposition" or "unusual sexual preference."

Pounds v. United States, 529 A.2d 791 (D.C. 1987)

In prosecutions for sexual offenses, evidence of a history of sexual abuse of the complainant by the defendant may be admissible on the theory of predisposition to gratify special desires with that particular victim. In the present case, the appellate court found that without information concerning the history of sexual abuse by the defendant (the victim's father), certain facts would have remained unexplained. The complainant's lack of hysteria or trauma when finally reporting to a friend what had been occurring, the matter-of fact way in which she described the incidents of sexual assault, and her failure to inform her mother would have been difficult to understand without showing longstanding sexual abuse by the her father.

Proctor v. United States, 685 A.2d 735 (D.C. 1996)

The defendant was found guilty of two counts of sodomy. The trial judge instructed the jury that both of the sodomy charges relate to the allegation that the defendant placed his penis in the mouth of the complaining witness. On appeal the defendant contended the evidence was insufficient to support his convictions because it failed to establish that he

placed his penis *in* the mouth of the complainant and so did not show penetration as required by the then-existing crime. The appellate court agreed, holding the Government had to prove the defendant placed his penis *into* the mouth of the complaining witness. Even though the trial judge explained that any penetration, however slight, is enough to meet the penetration requirement and that proof of ejaculation is not required, slight penetration remains a differentiating feature between sodomy and crimes punished less severely such as taking indecent liberties. A mere touching does not make out the offense of sodomy. In the present case, there must have been evidence that the penis passed into or through the lips of the victim, even slightly, or the statutory requirement of a "placing…in the mouth" was not met.

Roberts v. United States, 743 A.2d 212 (D.C. 1999)

Precision in specifying the dates of particular incidents of molestation in an indictment is not required if the conduct is of a continuing nature.

Roberts v. United States, 752 A.2d 583 (D.C. 2000)

When an offense is of a continuing nature, the prosecution cannot readily provide precise dates in the indictment.

Rucker v. United States,[++] 455 A.2d 889 (D.C. 1983)

Probable cause must be supported by more than mere suspicion but need not be based on evidence sufficient to sustain a conviction. The line between mere suspicion and probable cause to arrest must necessarily be drawn in light of the particular case and its facts and circumstances.

Sanchez-Rengifo v. United States, 815 A.2d 351 (D.C. 2002)

The defendant made decisions to commit different sex acts upon his victim; he chose to satisfy a different criminal impulse by inflicting a new outrage on the complainant; and there was an appreciable period of time between the various acts that defendant forced upon the victim during which the child's pleas and cries were met with threats. Where successive impulses are separately given, even though all unite in swelling a common stream of action, separate indictments lie.

Sanders v. United States,[++] 751 A.2d 952 (D.C. 2000)

Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if his or her allegations turn out to be fabricated, an anonymous tip alone seldom demonstrates an informant's basis of knowledge or veracity.

Shelton v. United States, 721 A.2d 603 (D.C. 1998)

A defendant may receive credit for time spent confined under the Sexual Psychopath Act at St. Elizabeth's Hospital if the trial court orders and the defendant serves that confinement subsequent to a guilty plea to sexual offenses but prior to sentencing on the plea.

Shorter v. United States, 792 A.2d 228 (D.C. 2001)

A complaining witness's recantation of an alleged prior sexual assault is, by itself, insufficient to convincingly show that the accusation is false.

Slaughter v. District of Columbia, 134 A.2d 338 (D.C. 1957)

A witness is competent to testify as to his or her own age and date of birth.

Smith v. United States, 337 A.2d 219 (D.C. 1975)

Observations of physical facts upon which competent physicians would not be likely to disagree are admissible under the federal Business Records Act. The admission of two reports containing the results of tests conducted by a hospital was not error as the tests were not offered as diagnostic opinions but rather as observations of factual data upon which competent physicians would not be likely to disagree.

Smith v. Whitehead,[++] 436 A.2d 339 (D.C. 1981)

If a search is based upon a warrant that fails to mention a particular object, though law enforcement knows its location and intends to seize it, there is a violation of the express constitutional requirement that warrants particularly describe the things to be seized; however, an officer or agent executing a search warrant may seize any property discovered in the course of the lawful execution of such warrant if he or she has probable cause to believe that such property is subject to seizure, even if the property is not enumerated in the warrant or the application for the warrant. No additional warrant is required to authorize such seizure if the property is fully set forth in the return.

Thompson v. United States, 618 A.2d 110 (D.C. 1992)

The District of Columbia's solicitation statute is not limited in scope to either those individuals seeking to pay for sexual acts or those seeking to profit from those acts as both fit within the reach of the statute.

United States v. Sell,[++] 487 A.2d 225 (D.C. 1985)

For the purpose of showing voluntary consent, it is only necessary for the Government to show initially that one party to a communication engaged in a communication knowing that the communication was being monitored by Government agents. Such a showing is sufficient to permit the testimonial use of such communications unless the party objecting to its use shows by a preponderance of the evidence that the will of the party so engaged in the communication was overcome by threats or improper inducements amounting to coercion or duress.

United States v. Shorter, 343 A.2d 569 (D.C. 1975)

There are many types of mental disorders that are considered sufficient to negate the element of criminal responsibility and are included under the legal rubric of the "insanity defense." Mental retardation is one such disorder, so that for purposes of determining responsibility retardation is a species of insanity; however, for other purposes, notably treatment, retardation is not considered either legally or otherwise to be a type of mental illness and the treatment of the mentally ill or insane and the mentally retarded is quite different.

Ware v. United States,[++] 672 A.2d 557 (D.C. 1996)

A citizen is *prima facie* a more credible source than a paid informant. Moreover, when a citizen appears to have personally observed a crime, the reliability of his or her information is greatly enhanced.

Williams v. United States, 756 A.2d 380 (D.C. 2000)

A minor cannot consent to sexual intercourse in a meaningful way.

Wright v. United States,[++] 608 A.2d 763 (D.C. 1992)

Courts have generally been hesitant to conclude that a parent lacks authority to consent to a search of a child's bedroom even when the child has reached adulthood; however, a parent's authority to consent to a search of his or her adult child's room is not without limits.

Wright v. United States,[++] 717 A.2d 304 (D.C. 1998)

When law enforcement has acted in good faith with the consent and at the request of a home owner in conducting a search, evidence so obtained cannot be excluded merely because the officers may have made a reasonable mistake as to the extent of the owner's authority.

DISTRICT OF COLUMBIA
Offenses Defined

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

I. Assault: Nonviolent Sexual Touching

A. Elements of Assault

- An assault is an attempt, with force or violence, to do a corporal injury to another person.
  – *In re A.B.*, 556 A.2d 645, 646 (D.C. 1989).
  – *In re L.A.G.*, 407 A.2d 688, 689 (D.C. 1979).

- An assault may consist of any act tending to result in corporal injury to another person, accompanied with such circumstances that denote, at the time, an intention coupled with the present ability of using actual violence against the person.
  – *In re A.B.*, 556 A.2d 645, 646 (D.C. 1989).
  – *In re L.A.G.*, 407 A.2d 688, 689 (D.C. 1979).

- The Government need not prove as an element of the crime that the victim in fact suffered anger, fear, or humiliation.
  – *In re A.B.*, 556 A.2d 645, 647 n.3 (D.C. 1989).

B. Elements of Nonviolent Sexual Touching

- The essential elements of nonviolent sexual touching are:
  (1) the defendant committed a sexual touching on another person;
  (2) when the defendant committed the touching, he or she acted voluntarily, on purpose, and not by mistake or accident; and
  (3) the other person did not consent to being touched by the defendant in that matter.
  – *Mungo v. United States*, 772 A.2d 240, 246 (D.C. 2001).

- If an assault involves nonviolent sexual touching, there is still an assault within the terms of the D.C. Code because the sexual nature of the conduct supplies the element of violence or threat of violence.
  – *Mungo v. United States*, 772 A.2d 240, 245 (D.C. 2001).
  – *In re A.B.*, 556 A.2d 645, 646 (D.C. 1989).
  – *In re L.A.G.*, 407 A.2d 688, 689 (D.C. 1979).

1. Examples

- Touching another person's body in a place that would cause fear, shame, humiliation, or mental anguish in a person of **reasonable sensibility**, if done without consent, constitutes sexual touching.
  – *Mungo v. United States*, 772 A.2d 240, 246 (D.C. 2001).

- A man who takes improper liberties with the person of a female, without her consent, is guilty of assault.
  – *In re A.B.*, 556 A.2d 645, 646 (D.C. 1989).

2. Intent

- The sexual touching doctrine is not designed to protect an individual from the specific intent of another individual but from unwanted roving hands; accordingly, in the heterosexual context, specific lustful intent is unnecessary.
  – *In re A.B.*, 556 A.2d 645, 647 (D.C. 1989).

3. Lesser Included Offense

- Nonviolent sexual touching is a lesser included offense of misdemeanor sexual abuse.
  – *Mungo v. United States*, 772 A.2d 240, 246 (D.C. 2001).

II. Child Abuse and Neglect

A. "Neglected Child"

1. Defined

- A "neglected child" is a child who:

(1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or other custodian;
(2) has been abandoned or abused by his or her parent, guardian, or other custodian; or
(3) is in imminent danger of being abused and whose sibling has already been abused. D.C. CODE ANN. § 16-2301(9).
– *In re J.A.* ,[++] 601 A.2d 69, 73, 73 n.1 (D.C. 1991).
– *In re S.G.*, 581 A.2d 771, 778 (D.C. 1990).

2. Notice

- Although the D.C. Code does not expressly require notice, persons of ordinary intelligence should have no difficulty ascertaining what type of injury constitutes child neglect.
  – *In re C.C.J.*, 777 A.2d 265, 269 (D.C. 2001).

B. "Abused" Defined

- The term "abused," when used with reference to a child, means a child whose parent, guardian, or custodian inflicts or fails to make reasonable efforts to prevent the infliction of physical or mental injury upon the child, including excessive corporal punishment or an act of sexual abuse, molestation, or exploitation.
  – *In re J.A.* ,[++] 601 A.2d 69, 73 (D.C. 1991).

III. Child Pornography

A. Using a Minor in a Sexual Performance

- The D.C. statute prohibiting using a minor in a sexual performance can be found at D.C. CODE ANN. § 22-3102 (formerly § 22-2012).

- A judge does not have to define the meaning of "lewd" in order to adequately define the meaning of the Sexual Performance Using a Minor statute for the jury.
  – *Green v. United States*, 948 A.2d 554 (D.C. 2008).

B. Virtual/Simulated Child Pornography

No relevant D.C. cases reported.

IV. Enticement

A. Enticing a Child

- As one of the elements of enticing a child, the Government must show that the defendant enticed, lured, or persuaded a child to go with him or her for the purpose of committing a sexual offense.
  – *Oliver v. United States*, 711 A.2d 70, 73 n.4 (D.C. 1998).

- The statutory definitions of "sexual act" and "sexual contact" are couched in terms reflecting sexual abuse; therefore, there is no distinction between enticing a child and child abuse under the D.C. Code.
  – *Oliver v. United States*, 711 A.2d 70, 73 n.4 (D.C. 1998).

- A defendant's conviction for kidnapping does not merge with his conviction for enticing a child, since one crime requires a factual element that the other crime did not require.
  – *Blackledge v. United States*, 871 A.2d 1193 (D.C. 2005).

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

No relevant D.C. cases reported.

V. Incest

- The crime of incest has three requirements:
  (1) bodily invasion (*i.e.*, sexual intercourse);
  (2) the victim-defendant relationship is within the third degree of consanguinity; and
  (3) the defendant knew the victim was so related at the time of sexual intercourse.
  – *Pounds v. United States*, 529 A.2d 791, 797 (D.C. 1987).

VI. Sexual Abuse

First-Degree Child Sexual Abuse

1. Elements

- Whoever, being at least four years older than a child, engages in a sexual act with that child or causes that child to engage in a sexual act, is guilty of child sexual abuse in the first degree. D.C. CODE ANN. § 22-3008 (formerly D.C. CODE ANN. § 22-4108).
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 355 n.4 (D.C. 2002).

2. "Sexual Act" Defined

- "Sexual act" is defined, in part, as:
  penetration, however slight, of the vulva of another person by a penis; contact between the mouth and the penis; or
  contact between the mouth and the vulva.
  D.C. CODE ANN. § 22-3001(8) (formerly D.C. CODE ANN. § 22-4101(8)).
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 355 (D.C. 2002).

Second-Degree Child Sexual Abuse

1. Elements

- Whoever, being at least four years older than a child, engages in sexual contact with that child or causes that child to engage in sexual contact, is guilty of child sexual abuse in the second degree. D.C. CODE ANN. § 22-3009 (formerly D.C. CODE ANN. § 22-4109).
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 355 n.4 (D.C. 2002).

– *In re E.F.*, 740 A.2d 547, 548 (D.C. 1999).

2. "Sexual Contact" Defined

- "Sexual contact" is defined, in part, as the touching, with any body part, of the breast of any person with an intent to abuse, arouse, or gratify the sexual desire of any person. D.C. CODE ANN. § 22-3001(9) (formerly D.C. CODE ANN. § 22-4101(9)).
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 355 (D.C. 2002).

Misdemeanor Sexual Abuse

1. Elements

- Whoever engages in a sexual act or sexual contact with another person and who should have knowledge or reason to know that the act was committed without the other person's permission is guilty of misdemeanor sexual abuse. D.C. CODE ANN. § 22-3006 (formerly D.C. CODE ANN. § 22-4106).
  – *Mungo v. United States*, 772 A.2d 240, 244-45 (D.C. 2001).

2. Definitions

a. "Sexual Act"

- "Sexual act" means: the penetration, however slight, of the anus or vulva of another by a penis; contact between the mouth and the penis; contact between the mouth and the vulva; contact between the mouth and the anus; or the penetration, however slight, of the anus or vulva by a hand, finger, or any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. D.C. CODE ANN. § 22-3001(8) (formerly D.C. CODE ANN. § 22-4101(8)).
  – *Mungo v. United States*, 772 A.2d 240, 245 (D.C. 2001).

- The emission of semen is not required.
  – *Mungo v. United States*, 772 A.2d 240, 245 (D.C. 2001).

b. "Sexual Contact"

- "Sexual contact" means the touching with any clothed or unclothed body part or any object, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. D.C. CODE ANN. § 22-3001(9) (formerly D.C. CODE ANN. § 22-4101(9)).
  – *Mungo v. United States*, 772 A.2d 240, 245 (D.C. 2001).

3. Intent

- When prosecuting misdemeanor sexual abuse based on alleged sexual contact or an alleged sexual act, the Government must prove an element of intent (*i.e.*, the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person).
  – *Mungo v. United States*, 772 A.2d 240, 245 (D.C. 2001).

VII. Sexual Proposals

A. Elements

- It is unlawful for any person to make any obscene or indecent exposure of his or her person, or to make any lewd, obscene, or indecent sexual proposal in the District of Columbia. D.C. CODE ANN. § 22-1312(a) (formerly D.C. CODE ANN. § 22-1112(a)).
  – *District of Columbia v. Garcia*,[++] 335 A.2d 217, 219 n.1 (D.C. 1975).

- The sexual proposal clause of the D.C. Code is limited to solicitations to commit lewd, obscene, or indecent sexual acts that, if accomplished would be punishable as crimes.
  – *District of Columbia v. Garcia*,[++] 335 A.2d 217, 221 (D.C. 1975).

B. "Sexual Proposal" Defined

- A "sexual proposal" connotes the same conduct or speech-conduct as a sexual solicitation.
  – *District of Columbia v. Garcia*,[++] 335 A.2d 217, 221 (D.C. 1975).

- The term clearly implies a personal importunity addressed to a particular individual to do some sexual act.
  – *District of Columbia v. Garcia*,[++] 335 A.2d 217, 221 (D.C. 1975).

VIII. Sodomy

A. Elements

- D.C. CODE ANN. § 22-3802 repealed (formerly D.C. CODE ANN. § 22-3502).
  – *Proctor v. United States*, 685 A.2d 735, 737 (D.C. 1996).

B. Penetration

- Any penetration, however, slight, is sufficient to complete the offense.
  – *Proctor v. United States*, 685 A.2d 735, 737 (D.C. 1996).

C. Emission

- Proof of emission is not necessary.
  – *Proctor v. United States*, 685 A.2d 735, 737 (D.C. 1996).

IX. Solicitation

- While the applicable statute does not use the word "solicit," the crime is commonly referred to as "solicitation."
  – *Thompson v. United States*, 618 A.2d 110, 111 n.1 (D.C. 1992).

A. Elements

- It is unlawful for any person to invite, entice, persuade, or address for the purpose of inviting, enticing, or persuading, any person in the District of Columbia for the purpose of prostitution or any other immoral or lewd purpose. D.C. CODE ANN. § 22-2701(a).
  – *Thompson v. United States*, 618 A.2d 110, 111 n.1 (D.C. 1992).
  – *Gaithor v. United States*,[++] 251 A.2d 644, 645 n.1 (D.C. 1969).

B. Scope of the Offense

- The phrase "other immoral or lewd purpose" is limited to refer only to acts of sodomy.
  – *Thompson v. United States*, 618 A.2d 110, 111 n.1 (D.C. 1992).

- The solicitation statute is not limited in scope to either those individuals seeking to pay for sexual acts or those seeking to profit from those acts as both fit within the reach of the statute.
  – *Thompson v. United States*, 618 A.2d 110, 112-113 (D.C. 1992).

X. Statutory Rape

- D.C. CODE ANN. § 22-4801 defining Statutory Rape has been repealed (formerly D.C. CODE ANN. § 22-2801). "First Degree Sexual Abuse of a Minor" and "Second Degree Sexual Abuse of a Minor" now define this crime. D.C. CODE ANN. § 22-3009.01, D.C. CODE ANN. § 22-3009.02.
  – *Pounds v. United States*, 529 A.2d 791, 796-97 (D.C. 1987).
  – *Ballard v. United States*, 430 A.2d 483, 485-86 (D.C. 1981).

XI. Taking Indecent Liberties with Minors

A. Elements

- Indecent Acts with Children statutes, D.C. CODE ANN. § 22-3801 AND § 22-3801 have been repealed (formerly D.C. CODE ANN. § 22-3501(a)). Indcent Acts with Children are now divided between Sexual Performance

Using Minors (D.C. CODE ANN. §§ 22-3101 – 3104) and Child Sexual Abuse and Sexual Abuse of a Minor (D.C. CODE ANN. §§ 22-3008-3009).
– *Hall v. United States*, 400 A.2d 1063, 1066 (D.C. 1979).
– *Evans v. United States*, 299 A.2d 136, 139-40 (D.C. 1973).

B. Intent

- The intent to arouse the accused may be inferred from the accused's actions.
  – *Evans v. United States*, 299 A.2d 136, 140 (D.C. 1973).

XII. Transporting a Minor for the Purposes of Prostitution

No relevant D.C. cases reported.

DISTRICT OF COLUMBIA

Mandatory Reporters

- Consistent with the public interest of protecting children from abuse, certain persons are required to report known or suspected child abuse, including every physician, psychologist, medical examiner, dentist, chiropractor, registered nurse, licensed practical nurse, person involved in the care and treatment of patients, law enforcement officer, school official, teacher, social service worker, daycare worker, and mental health professional. D.C. CODE ANN. § 4-1321.02(b) (formerly D.C. CODE ANN. § 2-1352(b)).
  – *Graham v. United States*, 746 A.2d 289, 293 (D.C. 2000).

- Any "mandatory reporter" who knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been or is in immediate danger of being a mentally or physically abused or neglected child must immediately report or have a report made of such knowledge or suspicion to either the Metropolitan Police Department of the District of Columbia or the Child Protective Services Division of the Department of Human Services. D.C. CODE ANN. § 4-1321.02(a) (formerly D.C. CODE ANN. § 2-1352(a)).
  – *Graham v. United States*, 746 A.2d 289, 293-94 (D.C. 2000).

DISTRICT OF COLUMBIA

Search and Seizure of Electronic Evidence

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

I. Search Warrants

A. Probable Cause

- Probable cause is a fluid concept – turning on the assessment of probabilities in particular factual context – not readily or even usefully reduced to a neat set of legal rules.
  – *Davis v. United States*,[++] 781 A.2d 729, 734 (D.C. 2001).

1. Test to Determine Probable Cause

- The test for determining probable cause is whether a reasonably prudent law enforcement officer, considering the total circumstances confronting him or her and drawing from his or her experience, would be warranted in the belief that an offense has been or is being committed.
  – *Davis v. United States*,[++] 781 A.2d 729, 734 (D.C. 2001).

- Probable cause must be supported by more than mere suspicion, but need not be based on evidence sufficient to sustain a conviction.
  – *Rucker v. United States*,[++] 455 A.2d 889, 891 (D.C. 1983).

2. Use of Informants

a. Generally

- While veracity, reliability, and basis of knowledge are all highly relevant in determining the value of an informant's report, these elements should not be understood as entirely separate and independent requirements to be rigidly exacted in every case. Rather, they should be understood simply as closely intertwined issues that may usefully clarify the commonsense, practical question of whether there is probable cause.
  – *Goldston v. United States*,[++] 562 A.2d 96, 98 (D.C. 1989).

- Because the test is one requiring a balancing of several different factors, if one of the relevant indicia is deficient, it is not fatal to a finding of probable cause if there is a strong

showing as to another or if there exists some other indicia of reliability.
– *Goldston v. United States*,[++] 562 A.2d 96, 98 (D.C. 1989).

b. Reliability and Credibility

- Accurate prediction of future events has no "talismanic quality" and is only one indicium of reliability.
  – *Sanders v. United States*,[++] 751 A.2d 952, 954 (D.C. 2000).

i. Factors to Consider

- While an informant's history of supplying prior productive information is a most important guide to establishing reliability and credibility, other ancillary issues come into play, such as:
  (1) employment;
  (2) personal attributes favoring accuracy in observation and reporting;
  (3) reputation with others;
  (4) personal connection with the suspect;
  (5) any circumstances suggesting probable lack of motivation to falsify; and
  (6) association with known criminals.
  – *Goldston v. United States*,[++] 562 A.2d 96, 99 (D.C. 1989).

- Corroboration through other sources of information reduces the chances of a reckless or prevaricating tale, thus providing a substantial basis for crediting an informant's statement.
  – *Goldston v. United States*,[++] 562 A.2d 96, 100 (D.C. 1989).

ii. Citizens Versus Paid Informants

- A citizen is *prima facie* a more credible source than a paid informant.
  – *Ware v. United States*,[++] 672 A.2d 557, 563 (D.C. 1996).

- When a citizen appears to have personally observed a crime, the reliability of his or her information is greatly enhanced.
  – *Ware v. United States*,[++] 672 A.2d 557, 563 (D.C. 1996).

iii. Anonymous Tips

- Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if his or her allegations turn out to be fabricated, an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity.
  – *Sanders v. United States*,[++] 751 A.2d 952, 954 (D.C. 2000).

- The fact that a tip is given in person rather than over the telephone further strengthens its credibility.
  – *Ware v. United States*,[++] 672 A.2d 557, 563 (D.C. 1996).

3. False Information: The Defendant's Burden

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

B. Scope

- The Fourth Amendment requires that the scope of every authorized search be particularly described.
  – *Smith v. Whitehead*,[++] 436 A.2d 339, 345 (D.C. 1981).

1. Items Not Listed in the Warrant

- If a search is based upon a warrant that fails to mention a particular object, though law enforcement knows its location and intends to seize it, there is a violation of the express constitutional requirement that warrants particularly describe the things to be seized. To extend the scope of such an intrusion to the seizure of objects not contraband nor stolen nor dangerous in themselves, which law enforcement knows in advance they will find in plain view and intend to seize, would fly in the face of the basic rule that no amount of probable cause can justify a warrantless seizure.
  – *Smith v. Whitehead*,[++] 436 A.2d 339, 345 (D.C. 1981).

- An officer or agent executing a search warrant may seize any property discovered in the course of the lawful execution of such warrant if she or she has probable cause to believe that such property is subject to seizure, even if the property is not enumerated in the warrant or the application for the warrant. No additional warrant is required to

authorize such seizure if the property is fully set forth in the return. D.C. CODE ANN. § 23-524(e).
– *Smith v. Whitehead*,[++] 436 A.2d 339, 344 n.2 (D.C. 1981).

2. Burden

- The government bears the burden of justifying seizures not within the scope of a valid warrant.
  – *Smith v. Whitehead*,[++] 436 A.2d 339, 348 (D.C. 1981).

C. Staleness

1. Search Warrants

No relevant D.C. cases reported.

2. Arrest Warrants

- An arrest warrant does not become void by mere passage of time.
  – *Brooke v. United States*,[++] 208 A.2d 726, 728 (D.C. 1965).

II. Anticipatory Warrants

No relevant D.C. cases reported.

III. Types of Searches

A. Employer Searches

No relevant D.C. cases reported.

B. Private Searches

No relevant D.C. cases reported.

C. University Campus Searches

No relevant D.C. cases reported.

D. Warrantless Searches

1. Consent Searches

a. Voluntariness

- The Government is not required to establish that a defendant knew that he or she had a right to withhold consent in order to uphold a finding that a consent to search was voluntary.
  – *Burton v. United States*,[++] 657 A.2d 741, 745 (D.C. 1994).

- The Government must establish in the totality of the circumstances that consent was, in fact, freely given.
  – *Burton v. United States*,[++] 657 A.2d 741, 745 (D.C. 1994).

- While the Government's burden falls short of establishing a knowing and intelligent waiver of the right not to consent to a search, to approve such searches without the most careful scrutiny would sanction the possibility of official coercion; therefore, account must be taken of subtly coercive law enforcement questions as well as the possibly vulnerable subjective state of the person who consents.
  – *Burton v. United States*,[++] 657 A.2d 741, 745 (D.C. 1994).

b. Scope of Consent

- The standard for measuring the scope of a suspect's consent to search is that of objective reasonableness: what would the typical, reasonable person have understood by the exchange between the officer and the suspect? Would the facts available to the officer at the moment warrant a person of reasonable caution to believe that the consenting party had authority over the premises?
  – *Wright v. United States*,[++] 717 A.2d 304, 306 n.2 (D.C. 1998).
  – *Ware v. United States*,[++] 672 A.2d 557, 565 (D.C. 1996).

- A suspect may delimit as he or she chooses the scope of the search to which he or she consents.
  – *Ware v. United States*,[++] 672 A.2d 557, 565 (D.C. 1996).

- The scope of a search is generally defined by its expressed object.
  – *Ware v. United States*,[++] 672 A.2d 557, 565 (D.C. 1996).

c. Withdrawal of Consent

- Consent may be withdrawn any time prior to completion of the search.
  – *Burton v. United States*,[++] 657 A.2d 741, 746 (D.C. 1994).

- An effective withdrawal of consent requires unequivocal conduct in either the form of an act, statement, or some combination of the two that is inconsistent with the consent to the search previously given.
  – *Burton v. United States*,[++] 657 A.2d 741, 748 (D.C. 1994).

- Conduct falling short of an unequivocal act or statement of withdrawal is not sufficiently indicative of an intent to withdraw consent to be searched.
  – *Burton v. United States*,[++] 657 A.2d 741, 746 (D.C. 1994).

- Under the objective reasonableness standard, the less equivocal a defendant's actions are, the more obvious is the intent to withdraw consent to be searched.
  – *Burton v. United States*,[++] 657 A.2d 741, 746 n.11 (D.C. 1994).

d. Good Faith

- When law enforcement has acted in good faith with the consent and at the request of a homeowner in conducting a search, evidence so obtained cannot be excluded merely because the officers may have made a reasonable mistake as to the extent of the owner's authority.
  – *Wright v. United States*,[++] 717 A.2d 304, 307 (D.C. 1998).

e. Third Party Consent

i. Generally

- The touchstone for analyzing whether a warrantless search violates the Fourth Amendment when a third party consents to the search is whether the third party possessed common authority over or a sufficient relationship to the premises or effects sought to be inspected.
  – *Wright v. United States*,[++] 608 A.2d 763, 766 (D.C. 1992).

- The authority that justifies the third party consent rests on mutual use of the property by persons generally having joint access or control for most purposes so that it is reasonable to recognize that any of the co-

inhabitants has the right to permit the inspection of his or her own right and that the others have assumed the risk that one of their number might permit the common area to be searched.
– *Wright v. United States*,[++] 717 A.2d 304, 308 (D.C. 1998).

ii. Parental Consent

- Courts have generally been hesitant to conclude that a parent lacks authority to consent to a search of a child's bedroom even when the child has reached adulthood.
  – *Wright v. United States*,[++] 608 A.2d 763, 766 (D.C. 1992).

- A parent's authority to consent to a search of his or her adult child's room is not without limits.
  – *Wright v. United States*,[++] 608 A.2d 763, 767 (D.C. 1992).

iii. Employee Consent

- An employee of a business concern, whether manager or otherwise, lacks the power to give a general authorization to law enforcement to search his or her employer's premises, and it would be illegal for him or her to attempt to give such consent.
  – *Huffman v. United States*,[++] 259 A.2d 342, 346 (D.C. 1969).

2. Exigent Circumstances

a. Generally

- Exigent circumstances justifying a warrantless entry and search include:
  (1) the need to protect or preserve life or avoid serious injury;
  (2) the need to prevent the escape of a suspected criminal; and
  (3) the need to preserve evidence that may be destroyed either through deliberate action or natural forces.

  Nonetheless, a warrantless search must be strictly circumscribed by the exigencies that justify its initiation.
  – *Gant v. United States*, 518 A.2d 103, 106 (D.C. 1986).

b. Factors to Consider

- In determining whether a warrantless law enforcement entry may be sustained on the basis of exigent circumstances, the pertinent considerations are:
  (1) a grave offense is involved, particularly a crime of violence;

(2) the suspect is reasonably believed to be armed;
(3) there is:
  (a) a clear showing of probable cause, and
  (b) a strong reason to believe that the suspect is in the dwelling;
(4) the likelihood of escape is great if the suspect is not swiftly apprehended;
(5) whether the entry was peaceful; and
(6) whether the entry took place during the day or at night.
– *Brooks v. United States*,[++] 367 A.2d 1297, 1301 (D.C. 1976).

- Under limited circumstances, the "likelihood of escape" inquiry properly includes consideration of the probability that evidence as well as the suspect may be lost.
  – *Brooks v. United States*,[++] 367 A.2d 1297, 1303 (D.C. 1976).

3. Plain-View Searches

- Plain view alone does not justify the warrantless seizure of evidence**.**
  – *Gant v. United States*, 518 A.2d 103, 107 (D.C. 1986).

a. Test to Determine Plain View

- The law enforcement officers must be lawfully present at the site of the search and seizure; their discovery of evidence must be inadvertent; and it must be immediately apparent to them that they have evidence before them.
  – *Gant v. United States*, 518 A.2d 103, 107 (D.C. 1986).

b. "Inadvertent" Discovery

- The consideration of whether evidence was discovered "inadvertently" turns upon the motivation of the officers in the activities that unearthed the disputed evidence.
  – *Brooks v. United States*,[++] 367 A.2d 1297, 1306 (D.C. 1976).

- If the discovery were expected and constituted the principal purpose of the intrusion – in the absence of an adequate reason why a warrant could not have been obtained – the plain-view exception is inapplicable.
  – *Brooks v. United States*,[++] 367 A.2d 1297, 1306-07 (D.C. 1976).

c. Temporal and Spatial Dimensions

- Under the plain view doctrine, it must be established that the lawfulness of the officers' presence has both temporal and spatial dimensions.
  – *Brooks v. United States*,[++] 367 A.2d 1297, 1305 (D.C. 1976).

- The propriety of the warrantless search depends upon when and under what circumstances the questioned evidence first came within view.
  – *Brooks v. United States*,[++] 367 A.2d 1297, 1305 (D.C. 1976).

4. *Terry* Detention

a. "Stop and Inquiry"

- Under the Fourth Amendment, a law enforcement officer who lacks probable cause but whose observations lead him or her to reasonably suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoke suspicion.
  – *McIlwain v. United States*, 568 A.2d 470, 472 (D.C. 1989).

- The "stop and inquiry" must be reasonably related in scope to the justification for their initiation.
  – *McIlwain v. United States*, 568 A.2d 470, 472 (D.C. 1989).

- The officer may ask the detainee a moderate number of questions to determine his or her identity and to try to obtain information confirming or dispelling the officer's suspicions, but the detainee is not obliged to respond.
  – *McIlwain v. United States*, 568 A.2d 470, 472 (D.C. 1989).

- Unless the detainee's answers provide probable cause to arrest him or her, he or she must be released.
  – *McIlwain v. United States*, 568 A.2d 470, 472 (D.C. 1989).

b. Duration of Detention

- In assessing whether a *Terry* detention is too long in duration to be justified as an investigative stop, it is appropriate to examine whether law enforcement diligently pursued a mean of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.
  – *McIlwain v. United States*, 568 A.2d 470, 473 (D.C. 1989).

- The question is not simply whether some other alternative was available, but whether law enforcement acted unreasonably in failing to recognize or to pursue it.
  – *McIlwain v. United States*, 568 A.2d 470, 473 (D.C. 1989).

IV. Methods of Searching

No relevant D.C. cases reported.

V. Computer Technician/Repairperson Discoveries

No relevant D.C. cases reported.

VI. Photo Development Discoveries

No relevant D.C. cases reported.

VII. Criminal Forfeiture

No relevant D.C. cases reported.

VIII. Disciplinary Hearings for Federal and State Officers

No relevant D.C. cases reported.

IX. Probation and Parolee Rights

No relevant D.C. cases reported.

DISTRICT OF COLUMBIA

Jurisdiction and Nexus

I. Jurisdictional Nexus

No relevant D.C. cases reported.

II. Internet Nexus

No relevant D.C. cases reported.

III. State Jurisdiction, Federal Jurisdiction, Concurrent Jurisdiction

A. State

No relevant D.C. cases reported.

B. Federal

No relevant D.C. cases reported.

C. Concurrent

No relevant D.C. cases reported.

IV. Interstate Possession of Child Pornography

No relevant D.C. cases reported.

DISTRICT OF COLUMBIA

Discovery and Evidence

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

I. Discovery by the Defendant

A. Discoverable Material

1. The Defendant's Statements

- An accused has the right to discover specific types of information within the Government's control, including any written record of the defendant's relevant statements. D.C. SUPER. CT. CRIM. R. 16.
  – *Davis v. United States*, 641 A.2d 484, 489 (D.C. 1994).

2. Physical and Mental Examinations

- The Government must permit inspection of the results or reports of physical or mental examinations that are within the possession, custody, or control of the government and are material to the preparation of the defense or are intended for use by the Government as evidence in chief at trial. D.C. SUPER. CT. CRIM. R. 16(a)(1)(D).
  – *Nelson v. United States*, 649 A.2d 301, 307 (D.C. 1994).

3. Physical and Mental Health Records

- When a party seeks to subpoena physical and mental health records, that party must make the additional showing that the disclosure is required in the interests of public justice.
  – *Nelson v. United States*, 649 A.2d 301, 309 (D.C. 1994).

- The documents must have evidentiary relevance and not be for the purpose of conducting a fishing expedition.
  – *Nelson v. United States*, 649 A.2d 301, 309 (D.C. 1994).

B. Non-Discoverable Material

- Internal documents that are made by the Government in connection with an investigation or prosecution are excluded from the scope of discovery. D.C. SUPER. CT. CRIM. R. 16(a)(2).
  – *Davis v. United States*, 641 A.2d 484, 489 (D.C. 1994).

C. Defense Requests for Copies of Child Pornography

No relevant D.C. cases reported; however, D.C. Superior Court Criminal Rule 16(a)(1)(C) states that upon request of the defendant, the prosecutor must permit him or her to inspect tangible objects that are within the Government's possession and are material to the preparation of the defendant's defense.

II. Precision of Dates in the Indictment

- Precision in specifying the dates of particular incidents of molestation in an indictment is not required when the conduct was of a continuing nature.
  – *Roberts v. United States*, 743 A.2d 212, 221 (D.C. 1999).

III. Timely Review of Evidence

No relevant D.C. cases reported.

IV. Introduction of Evidence

A. Electronic Eavesdropping Evidence

- It is not unlawful for a person acting under color of law to intercept a wire or oral communication if such person is party to the communication or if one of the parties to the communication has given prior consent to such interception.
  D.C. CODE ANN. § 23-542(b)(2).
  – *United States v. Sell*,[++] 487 A.2d 225, 228 n.6 (D.C. 1985).

1. Warrantless Interceptions

- The warrantless interception of conversations based on one-party consent does not violate the Fourth Amendment.
  – *United States v. Sell*,[++] 487 A.2d 225, 229 (D.C. 1985).

2. Consent

a. Proof

- To show consent to the monitoring and recording of one's communications, the amount of proof required is normally quite different from that needed to prove consent to a physical search because a physical search involves doing something apparently contrary to self-interest whereas consent to an interception, as an incident to cooperation with law enforcement, ordinarily entails not unpleasant consequences.
  – *United States v. Sell*,[++] 487 A.2d 225, 229 (D.C. 1985).

- Under the "consent test," it will normally suffice for the government to show that the informer went ahead with a call after knowing what the law enforcement officers were about.
  – *United States v. Sell*,[++] 487 A.2d 225, 229 (D.C. 1985).

b. Voluntariness

- For the purpose of showing voluntary consent, it is only necessary for the Government to show initially that one party to a communication engaged in a communication knowing that the communication was being monitored by Government agents.
  – *United States v. Sell*,[++] 487 A.2d 225, 230 (D.C. 1985).

- A showing of one party's knowledge that the communication was being monitored would be sufficient to permit the testimonial use of the communication unless the objecting party shows, by a preponderance of the evidence, that the will of the party so engaged in the communication was overcome by threats or improper inducement amounting to coercion or duress.
  – *United States v. Sell*,[++] 487 A.2d 225, 230 (D.C. 1985).

c. Involuntariness

- To establish involuntariness of an informant's consent to the monitoring and recording of a conversation, the defendant's burden is to show that the informant's will was overcome by threats or improper inducement amounting to coercion or duress.
  – *United States v. Sell*,[++] 487 A.2d 225, 229 (D.C. 1985).

- One's will is not overborne simply because the Government offers benefits in exchange for cooperation, nor is consent vitiated because the Government, in order to secure cooperation, calls to an accused's attention a realistic description of his or her predicament created by his or her violation of the criminal law.
  – *United States v. Sell*,[++] 487 A.2d 225, 230 n.9 (D.C. 1985).

3. Testimonial Disclosures

- Testimonial disclosure of the contents of any legally intercepted wire or oral communication is expressly sanctioned. D.C. CODE ANN. § 23-542(b).
  – *United States v. Sell*,[++] 487 A.2d 225, 229 (D.C. 1985).

B. Email Evidence

1. Hearsay Issues

No relevant D.C. cases reported.

2. Authentication Issues

No relevant D.C. cases reported.

3. Circumstantial Evidence

No relevant D.C. cases reported.

4. Technical Aspects of Electronic Evidence Regarding Admissibility

No relevant D.C. cases reported.

C. Evidence Obtained from Internet Service Providers

1. Electronic Communications Privacy Act

No relevant D.C. cases reported.

2. Cable Act

No relevant D.C. cases reported.

3. Patriot Act

No relevant D.C. cases reported.

D. Other Crimes and Prior Acts Evidence

1. Inadmissible

a. Generally

- In criminal prosecutions, evidence of an offense other than that for which the accused is on trial is inadmissible.
  – *Parker v. United States*, 751 A.2d 943, 948 n.14 (D.C. 2000).
  – *Howard v. United States*, 663 A.2d 524, 528 (D.C. 1995).

b. To Show Character and Propensity

- Evidence of other crimes is inadmissible to prove bad character or propensity to commit a particular crime.
  – *McLeod v. United States*, 568 A.2d 1094, 1095 (D.C. 1990).

2. Admissible

- Even though evidence of other crimes is presumptively inadmissible, it is admissible if offered for a substantial, legitimate purpose.
  – *Parker v. United States*, 751 A.2d 943, 948 n.14 (D.C. 2000).
  – *Howard v. United States*, 663 A.2d 524, 528 (D.C. 1995).

- Evidence of other crimes is admissible to show motive, intent, the absence of mistake or accident, common scheme or plan, or identity.
  – *Parker v. United States*, 751 A.2d 943, 948 n.14 (D.C. 2000).
  – *Howard v. United States*, 663 A.2d 524, 528 (D.C. 1995).
  – *McLeod v. United States*, 568 A.2d 1094, 1095 n.1 (D.C. 1990).
  – *Ali v. United States*, 520 A.2d 306, 310 (D.C. 1987).
  – *Pounds v. United States*, 529 A.2d 791, 793 (D.C. 1987).

- The exceptions for intent, motive, and absence of mistake are applicable only when the defendant's state of mind is a material or genuine issue in the case and not merely a formal element of the crime charged.
  – *Howard v. United States*, 663 A.2d 524, 528 n.6 (D.C. 1995).

a. Exceptions

i. Mental Disposition

- In prosecutions for sexual offenses, there is a well-established exception that because the mental disposition of the defendant at the time of the act charged is relevant, so to is evidence that at some prior time he or she was similarly disposed; therefore, such evidence is admissible.
  – *Howard v. United States*, 663 A.2d 524, 528 (D.C. 1995).
  – *Feaster v. United States*, 631 A.2d 400, 412 n.28 (D.C. 1993).

ii. History of Sexual Abuse

- In prosecutions for sexual offenses, evidence of a history of sexual abuse of the complainant by the defendant may be admissible on the theory of predisposition to gratify special desires with that particular victim.
  – *Graham v. United States*, 746 A.2d 289, 296 (D.C. 2000).

– *Pounds v. United States*, 529 A.2d 791, 794 (D.C. 1987).

iii. Lustful Disposition

- "Lustful disposition" is an exception to the general rule of inadmissibility of evidence of other crimes.
  – *Parker v. United States*, 751 A.2d 943, 948 n.14 (D.C. 2000).

iv. Unusual Sexual Preference

- "Unusual sexual preference" is an exception to the general rule of inadmissibility of evidence of other crimes.
  – *Parker v. United States*, 751 A.2d 943, 948 n.14 (D.C. 2000).

v. Impeachment

- A witness may be cross-examined about a prior bad act that has not resulted in a conviction if:
  (1) the examiner has a factual basis for the question, and
  (2) the bad act bears directly upon the veracity of the witness with respect to issues involved in the trial.
  – *Keene v. United States*, 661 A.2d 1073, 1076 (D.C. 1995).
  – *Galindo v. United States*, 630 A.2d 202, 207 (D.C. 1993).
  – *Lawrence v. United States*, 482 A.2d 374, 377 (D.C. 1984).

- If impeachment through prior acts is permitted, evidence of the prior misconduct may be elicited only by cross-examination of the witness, not by extrinsic evidence.
  – *Lawrence v. United States*, 482 A.2d 374, 377 (D.C. 1984).

vi. Recantation of Prior Sexual Assault

- By itself, a complaining witness' recantation of an alleged prior sexual assault is insufficient to show convincingly that the accusation is false.
  – *Shorter v. United States*, 792 A.2d 228, *235 (D.C. 2001).

vii. Notice or Knowledge of Dangerous Condition

- Evidence of prior incidents is generally admissible to show a defendant's notice or knowledge of a dangerous condition that cause an injury.
  – *District of Columbia v. Doe*, 524 A.2d 30, 34 (D.C. 1987).

- Evidence of prior incidents is also admissible to show the dangerous nature of the specific condition at issue.
  – *District of Columbia v. Doe*, 524 A.2d 30, 34 (D.C. 1987).

b. Requisite Findings

- Before evidence of other offenses probative of any of the allowable issues may be admitted, a trial court is required to find that the defendant committed the other offenses by clear and convincing evidence and that the evidence of other offenses is:
  (1) directed to a genuine, material, and contested issue in the case;
  (2) relevant to the issue beyond demonstrating the defendant's criminal propensity; and
  (3) not more prejudicial than probative.
  – *Parker v. United States*, 751 A.2d 943, 948 n.14 (D.C. 2000).

E. Reputation and Character Evidence Offered by the Defendant

1. Direct Examination

- A defendant may advance one or more of his or her character traits as evidence of his or her innocence.
  – *Curry v. United States*, 498 A.2d 534, 544 (D.C. 1985).

- A defendant's presentation of his or her reputation in the community may be as narrow or as broad as he or she chooses so long as it remains relevant and germane to the issues at trial.
  – *Curry v. United States*, 498 A.2d 534, 544 (D.C. 1985).

2. Cross-Examination

- The Government is limited on cross-examination to traits raised by the defendant.
  – *Curry v. United States*, 498 A.2d 534, 544 (D.C. 1985).

3. Jury Instructions

- Once raised, the jury must be instructed that character evidence can raise a reasonable doubt about guilt.
  – *Curry v. United States*, 498 A.2d 534, 544 (D.C. 1985).

F. Text Only Evidence

1. Introduction into Evidence

No relevant D.C. cases reported.

2. Relevance

No relevant D.C. cases reported.

V. Witness Testimony

A. Assessing Competency

1. Generally

- In assessing the competency of a witness, a trial judge must evaluate the witness' ability to accurately perceive, recall, and relate purported facts as well as testify truthfully.
  – *Barrera v. United States*, 599 A.2d 1119, 1126 (D.C. 1991).

2. Appellate Review

- The determination of a witness' competence to testify lies within the sound discretion of the trial judge.
  – *Howard v. United States*, 663 A.2d 524, 530 (D.C. 1995).
  – *Galindo v. United States*, 630 A.2d 202, 206 (D.C. 1993).

- The appellate court will not disturb the trial judge's factual determination unless it is plainly deficient.
  – *Howard v. United States*, 663 A.2d 524, 530 (D.C. 1995).
  – *Galindo v. United States*, 630 A.2d 202, 206 (D.C. 1993).

B. Corroboration of Testimony: Sexual Offense Victims

- The law and evolution of court decisions have eliminated a presumption that a child complaining of a sexual assault is fabricating the story unless there is corroborating evidence; therefore, the requirement that the government offer corroboration of a sexual offense victim's testimony has been abolished.
  – *Battle v. United States*, 630 A.2d 211, 217 n.7 (D.C. 1993).
  – *Barrera v. United States*, 599 A.2d 1119, 1125 (D.C. 1991).

C. Child Witnesses

1. Competency

- A child is considered competent to testify if he or she:
  (1) is able to recall the events about which he or she is to testify;

(2) understands the difference between truth and a falsehood; and
(3) appreciates the duty to tell the truth.
– *Howard v. United States*, 663 A.2d 524, 530 (D.C. 1995).
– *Galindo v. United States*, 630 A.2d 202, 206-07 (D.C. 1993).
– *Barnes v. United States*, 600 A.2d 821, 823 (D.C. 1991).
– *Barrera v. United States*, 599 A.2d 1119, 1126 (D.C. 1991).
– *Johnson v. United States*, 364 A.2d 1198, 1202 (D.C. 1976).
– *In re Lewis*, 88 A.2d 582, 583 (D.C. 1952).

a. Factors to Consider

i. Age

- A child is not disqualified as a witness merely by reason of his or her youth.
  – *Barnes v. United States*, 600 A.2d 821, 824 n.6 (D.C. 1991).

- There is no precise age that determines the competency of a child to testify.
  – *Barnes v. United States*, 600 A.2d 821, 824 n.6 (D.C. 1991).

ii. Recollection

- The most important factor in determining the competency of a child witness is the child's ability to recollect the events about which he or she is to testify.
  – *Johnson v. United States*, 364 A.2d 1198, 1202-03 (D.C. 1976).

iii. Impressions

- The ultimate test of competence of a young child is whether the child has the requisite intelligence and mental capacity to understand, recall, and narrate his or her impressions of an occurrence.
  – *Johnson v. United States*, 364 A.2d 1198, 1203 (D.C. 1976).

b. *Voir Dire*

- In order to make a competency determination, a trial court may conduct *voir dire* in- or outside the jury's presence, with or without the participation of counsel.
  – *Barnes v. United States*, 600 A.2d 821, 823 (D.C. 1991).

- While *voir dire* is not mandatory, a preliminary examination is appropriate for a child witness of tender years.
  – *Barnes v. United States*, 600 A.2d 821, 823 (D.C. 1991).

c. Appellate Review

- An appellate court, in determining whether the trial court abused its discretion by permitting a child to testify, may properly examine the actual testimony of the child.
  – *Johnson v. United States*, 364 A.2d 1198, 1203 (D.C. 1976).

- If the trial transcript reveals that the complainant had an intelligent comprehension in answering questions posed to him or her, the trial court's finding of competency will be upheld, even absent *voir dire*.
  – *Barnes v. United States*, 600 A.2d 821, 824 (D.C. 1991).

- The appellate court must take into account the fact that it cannot review the child's conduct and demeanor in the courtroom.
  – *Johnson v. United States*, 364 A.2d 1198, 1203 (D.C. 1976).

2. Credibility

a. Factors to Consider

- In weighing a child witness' testimony, jurors may consider the witness':
  (1) age;
  (2) demeanor on the stand;
  (3) capacity to observe and recollect facts; and
  (4) ability to understand the questions put to him or her and to answer those questions intelligibly.
  – *Barnes v. United States*, 600 A.2d 821, 824 n.6 (D.C. 1991).

- A juror may also consider whether the child witness impresses him or her as having an accurate memory and recollection and whether the child victim impresses him or her as being a truth-telling individual.
  – *Barnes v. United States*, 600 A.2d 821, 824 n.6 (D.C. 1991).

b. Delayed Reporting

- When there is an explanation for the delay in the child's fear of reprisals, the delay should not render the complaint inadmissible.
  – *Battle v. United States*, 630 A.2d 211, 222 (D.C. 1993).

c. Ultimate Determination

- As in the case of all other witnesses, the jurors are the sole judges of the credibility of a child who testifies.
  – *Barnes v. United States*, 600 A.2d 821, 824 n.6 (D.C. 1991).

3. Closed Circuit Television Testimony: Showing of "Necessity"

- If the Government makes an adequate showing of necessity, the Government interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of a face-to-face confrontation with the defendant.
  – *Hicks-Bey v. United States*, 649 A.2d 569, 574 (D.C. 1994).

- The demonstration of "necessity" requires three trial court findings:
  (1) the trial court must hear evidence and determine whether use of the one-way, closed circuit television procedure is necessary to protect the welfare of the particular child witness who seeks to testify;
  (2) the trial court must also find that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant; and
  (3) the trial court must find that the emotional distress suffered by the child witness in the presence of the defendant is more than *de minimus* (*i.e.*, more than mere nervousness, excitement, or some reluctance to testify).
  – *Hicks-Bey v. United States*, 649 A.2d 569, 574 (D.C. 1994).

D. Expert Testimony

1. Test for Admissibility

- The test for admitting expert testimony in the District of Columbia is:
  (1) the subject matter is so distinctively related to some science, profession, business, or occupation as to be beyond the ken of the average layman, and
  (2) the witness has sufficient skill, knowledge, or experience in that field or calling as to make it appear that his or her opinion or inference will probably aid the trier in the search for truth.
  – *Mindombe v. United States*, 795 A.2d 39, 42 n.6 (D.C. 2002).
  – *Gant v. United States*, 518 A.2d 103, 110 n.16 (D.C. 1986).
  – *Douglas v. United States*, 386 A.2d 289, 295 (D.C. 1978).

- Expert testimony is inadmissible if state-of-the-pertinent-art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert.
  – *Mindombe v. United States*, 795 A.2d 39, 42 n.6 (D.C. 2002).
  – *Gant v. United States*, 518 A.2d 103, 110 n.16 (D.C. 1986).
  – *Douglas v. United States*, 386 A.2d 289, 296 (D.C. 1978).

2. Permissible Testimony: Behavioral Characteristics and the Psychological Dynamics of Child Victims

- Behavioral characteristics of child molestation victims and the psychological dynamics of a victim of child sexual abuse, including the tendency towards partial disclosure and recantation, are beyond the ken of the average juror; therefore, knowledge of common characteristics of sexually abused children gained from behavioral research very well may aid a jury in weighing the testimony and determining the credibility of an alleged victim.
  – *Mindombe v. United States*, 795 A.2d 39, 43 (D.C. 2002).
  – *Oliver v. United States*, 711 A.2d 70, 73 (D.C. 1998).

- Experts in psychological dynamics of victims of child sexual abuse are allowed to testify as to general tendencies.
  – *Mindombe v. United States*, 795 A.2d 39, 43 (D.C. 2002).

a. Purpose

- Testimony discussing the patterns and behaviors of molested children by experts who have researched and worked with victims in this area serves a useful purpose: victims should be allowed the opportunity to explain to a jury, through a qualified expert, the reasons for conduct that would otherwise be beyond the average juror's understanding.
  – *Mindombe v. United States*, 795 A.2d 39, 43 (D.C. 2002).

- Expert testimony regarding the behavior of child sexual abuse victims is admissible as part of the Government's case-in-chief because it provides a useful profile to the jury of the range of behaviors exhibited by victims of child sexual abuse.
  – *Mindombe v. United States*, 795 A.2d 39, 46 (D.C. 2002).

b. Admissibility

i. Generally

- Expert testimony on the behavior of child sexual abuse victims is admissible in cases where the Government successfully proffers that the facts and evidence to be presented at trial are likely to be inconsistent with a lay

juror's expectations as to how a child sexual abuse victim should respond to such a traumatizing event.
– *Mindombe v. United States*, 795 A.2d 39, 46 (D.C. 2002).

ii. Preempt or Rebut Inferences

- Expert testimony can be offered to preempt or rebut an inference, based on a child victim's actions and behaviors following alleged abuse, that the child has lied about the abuse because a jury may infer from a child's secrecy, inconsistency, or recantation that the child has fabricated his or her testimony.
  – *Mindombe v. United States*, 795 A.2d 39, 45 (D.C. 2002).

iii. Psychology of Recantation

- An expert witness's testimony is relevant where it assists jurors in understanding the psychology of an abused child's recantation.
  – *Oliver v. United States*, 711 A.2d 70, 73 (D.C. 1998).

- The court does not regard expert testimony on the psychology of recantation as unfairly prejudicial, particularly where the expert provides no direct testimony as to the credibility of the complainant.
  – *Oliver v. United States*, 711 A.2d 70, 73 (D.C. 1998).

iv. Syndrome Type Testimony

- Syndrome type testimony is relevant and admissible to dispel myths the public might hold concerning a child sexual abuse victim's post-abuse behavior if that behavior is an issue in the case.
  – *Mindombe v. United States*, 795 A.2d 39, 45 (D.C. 2002).

3. Impermissible Testimony: Opinions on Ultimate Issues

- Courts prohibit the introduction of ultimate conclusions by an expert witness as to the truthfulness of a witness, whether a person was in fact abused, and the guilt of the defendant.
  – *Mindombe v. United States*, 795 A.2d 39, 43 (D.C. 2002).

a. Truthfulness of Witness

- While experts are generally allowed to explain seemingly inconsistent behavior by victims, they are not allowed to provide statistical probabilities of truthfulness nor are they

allowed to opine on the truthfulness of a particular complainant.
– *Mindombe v. United States*, 795 A.2d 39, 43 (D.C. 2002).

b. Credibility Determinations

- Experts are not permitted to make direct credibility determinations in child sexual abuse matters or to testify that a child has been sexually abused.
  – *Oliver v. United States*, 711 A.2d 70, 73 (D.C. 1998).

- Allowing experts to state opinions as to a witness' credibility or to vouchsafe for the accuracy of a victim's spontaneous recollection, or inaccuracy thereof, might indeed usurp the jury's task of determining witness credibility.
  – *Mindombe v. United States*, 795 A.2d 39, 43-44 (D.C. 2002).

E. Cross-Examination of Witnesses

1. Right to Confrontation

- The right of the accused in a criminal trial to confront and cross-examine adverse witnesses is protected by the Sixth Amendment of the Constitution; however, an accused's constitutional right to cross-examine a witness and present a defense is not implicated in every trial court determination to limit the scope of cross-examination.
  – *Guzman v. United States*, 769 A.2d 785, 793 (D.C. 2001).

a. Curtailment of the Right

- If the issue is merely collateral, ample cross-examination has already been allowed, or evidence has been admitted on a particular issue, trial court curtailment of the defendant's presentation does not implicate the defendant's Sixth Amendment rights.
  – *Guzman v. United States*, 769 A.2d 785, 793 (D.C. 2001).

b. Appellate Review

- Constitutional error will be found only when the trial court's rulings prohibited all inquiry into the possibility of bias under the defendant's theory.
  – *Guzman v. United States*, 769 A.2d 785, 793 (D.C. 2001).

2. Limits

- The right of cross-examination is not without limits.
  – *Guzman v. United States*, 769 A.2d 785, 790 (D.C. 2001).

a. Discretionary

- A trial judge is vested with wide discretion in controlling the cross-examination of witnesses and does not abuse that discretion by limiting cross-examination to those matters that are raised by the direct examination.
  – *Guzman v. United States*, 769 A.2d 785, 790 (D.C. 2001).

b. Factors to Consider

- Restriction on cross-examination may be imposed within reasonable limits to avoid such harassment, prejudice, confusion of the issues, and repetitive or marginally relevant interrogation; to ensure witness safety; or when the prejudicial effect of the proffered evidence outweighs its probative value.
  – *Guzman v. United States*, 769 A.2d 785, 790 (D.C. 2001).

3. Bias

a. Definition

- The term "bias" is used in the common law of evidence to describe the relationship between a party and a witness that might lead the witness to slant, unconsciously or otherwise, his or her testimony in favor of or against a party.
  – *Guzman v. United States*, 769 A.2d 785, 791 (D.C. 2001).

- To be probative in assessing a witness' credibility, the bias need not be personal for or against a party as other motives to fabricate fall within the doctrine.
  – *Guzman v. United States*, 769 A.2d 785, 791 (D.C. 2001).

b. Proper Foundation on Cross-Examination

- A proper foundation for bias cross-examination includes a proffer of some facts that support a genuine belief that the witness is biased in the manner asserted.
  – *Guzman v. United States*, 769 A.2d 785, 790 (D.C. 2001).

- Although an attorney attempting to show a witness' bias may not ask questions that are totally groundless, a question based on a well reasoned suspicion rather than an "improbable flight of fancy" is permissible.
  – *Guzman v. United States*, 769 A.2d 785, 791 (D.C. 2001).

- The attorney must proffer facts sufficient to permit the trial judge to evaluate whether the proposed question is probative of bias.
  – *Guzman v. United States*, 769 A.2d 785, 790 (D.C. 2001).

c. Discretion

- The trial court is vested with discretion in controlling bias cross-examination.
  – *Guzman v. United States*, 769 A.2d 785, 790 (D.C. 2001).

VI. Hearsay

A. When Is an Out-of-Court Statement Not Hearsay?

- Out-of-court statements are not hearsay if used for a purpose other than the truth of the matter asserted.
  – *Guzman v. United States*, 769 A.2d 785, 793 (D.C. 2001).

- An out-of-court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation is undertaken.
  – *Battle v. United States*, 630 A.2d 211, 214 (D.C. 1993).

- Out-of-court statements, if relevant, may be properly admitted to show the impact upon, or state of mind of the hearer.
  – *Guzman v. United States*, 769 A.2d 785, 793-94 (D.C. 2001).

B. Hearsay Exceptions

1. Hospital Records

a. Business Records Act

- Routine hospital records fall within the purview of the federal Business Records Act when they are made in the hospital's regular course of business and if it is the hospital's regular course of business to make such records.
  – *Smith v. United States*, 337 A.2d 219, 222 (D.C. 1975).

- The Business Records Act requires that the medium through which the information is preserved be in systematic use and the method by which the information or the message is obtained be routinely employed by the hospital.
  – *Smith v. United States*, 337 A.2d 219, 222 (D.C. 1975).

b. Admissibility of Evidence

i. Physical Facts

- Observations of physical facts upon which competent physicians would not be likely to disagree are admissible under the Business Records Act.
  – *Smith v. United States*, 337 A.2d 219, 223 (D.C. 1975).

ii. Slides

- Slides containing vaginal smears that have been tested by a hospital laboratory and found positive for the presence of intact sperm are admissible under the Business Records Act.
  – *Smith v. United States*, 337 A.2d 219, 223 (D.C. 1975).

2. Medical Diagnosis

- Under the medical diagnosis exception to the hearsay rule, statements made by a patient for purposes of obtaining medical treatment are admissible for their truth because the law is willing to assume that a declarant seeking medical help will speak truthfully to medical personnel. The same rationale applies to a parent who brings a very young child to a doctor for medical attention because the parent has the same incentive to be truthful in order to obtain appropriate medical care for the child.
  – *Galindo v. United States*, 630 A.2d 202, 210 (D.C. 1993).

- Even if statements of fault are generally excluded from the medical diagnosis exception, a statement by a child or the child's parent that the child has been sexually assaulted by someone who is effectively a member of the child's immediate household is admissible when reasonably pertinent to treatment, as the injury involves more than mere physical injury, but has psychological and emotional consequences as well.
  – *Galindo v. United States*, 630 A.2d 202, 210 (D.C. 1993).

3. Prior Consistent Statements

- Although evidence of a complaint of rape is admissible even though corroboration is not required, complaints of sexual offenses are analyzed as prior consistent statements, admissible to rebut a suggestion of recent fabrication.
  – *Battle v. United States*, 630 A.2d 211, 220-21 (D.C. 1993).

4. Prior Identification or Prior Description

- Evidence that a complainant stated a defendant was the person who sexually assaulted him or her is admissible under the prior-identification or prior-description exception to the hearsay rule; however, testimony recounting details of the complainant's descriptions of the offense would not be admissible under the exception.
  – *Williams v. United States*, 756 A.2d 380, 386 (D.C. 2000).

- Evidence identifying a defendant as the attacker is admissible as substantive evidence under the prior identification exception to the hearsay rule.
  – *Battle v. United States*, 630 A.2d 211, 223 (D.C. 1993).

5. Prior Recorded Testimony

- Under the prior recorded testimony exception to the hearsay rule, the proponent must establish that:
  (1) the direct testimony of the declarant is unavailable;
  (2) the former testimony was given under oath or affirmation in a legal proceeding;
  (3) the issues in the two proceedings were substantially the same; and
  (4) the party against whom the testimony is now offered had the opportunity to cross-examine the declarant at the former proceeding.
  – *Feaster v. United States*, 631 A.2d 400, 405 (D.C. 1993).

- Once statements satisfy the four elements of the prior testimony exception to the hearsay rule, the necessary indicia of reliability are met and any analysis of the substantive reliability of the testimony is inappropriate.
  – *Feaster v. United States*, 631 A.2d 400, 408 (D.C. 1993).

a. Unavailability

- In seeking to introduce evidence under the prior recorded testimony exception, the proponent bears the burden of demonstrating the unavailability of the declarant.
  – *Feaster v. United States*, 631 A.2d 400, 407 (D.C. 1993).

- If there is a possibility, albeit remote, that affirmative measures might produce the declarant, the obligation of good faith may demand their effectuation.
  – *Feaster v. United States*, 631 A.2d 400, 411 n.21 (D.C. 1993).

b. Opportunity to Cross-Examine

- An adequate opportunity to cross-examine exists if the parties and the issues in both proceedings are substantially the same.
  – *Feaster v. United States*, 631 A.2d 400, 406 (D.C. 1993).

c. Discretion

- Once the four elements of the prior recorded testimony exception have been established, it remains within the trial judge's discretion to exclude the evidence if its probative value is outweighed by its prejudicial effect.
  – *Feaster v. United States*, 631 A.2d 400, 405 (D.C. 1993).

6. "Report-of-Rape" Rule

- Under the report-of-rape rule, a witness may testify that the complainant stated a sexual crime occurred and may relate the details necessary to identify the crime.
  – *Williams v. United States*, 756 A.2d 380, 385 (D.C. 2000).
  – *Galindo v. United States*, 630 A.2d 202, 209 (D.C. 1993).

- Testimony that the complainant reported he or she was the victim of a sexual assault is admissible not for the truth of the matter asserted, but merely for the fact that the statement was made.
  –*Battle v. United States*, 630 A.2d 211, 216-17 (D.C. 1993).

a. Corroboration of a Complainant's Testimony

- Abolition of the corroboration requirement in sexual assault prosecutions does not preclude the Government from introducing evidence to corroborate the complainant's testimony under the report-of-rape rule either to explain an apparent inconsistency arising from the absence of evidence of a report or to rebut implied impeachment suggesting recent fabrication.
  –*Battle v. United States*, 630 A.2d 211, 217 (D.C. 1993).

b. Details

- The testimony about the complainant's prior statements can properly include only enough details to show that the complainant reported the sexual assault charged.
  –*Battle v. United States*, 630 A.2d 211, 223 (D.C. 1993).

- Only the fact of the complaint should be admitted and not the details of the occurrence, since the testimony is offered to bolster the credibility of the complaint.
  – *Battle v. United States*, 630 A.2d 211, 222 (D.C. 1993).

7. Spontaneous Utterance

- What constitutes a spontaneous utterance will depend on the facts peculiar to each case and will be determined by the exercise of sound judicial discretion that will not be disturbed on appeal unless clearly erroneous.
  – *In re Lewis*, 88 A.2d 582, 584 (D.C. 1952).

- The fact that the statements are made in response to inquiry is not decisive of the question of spontaneity and that the time element, while important, is not controlling.
  – *In re Lewis*, 88 A.2d 582, 584 (D.C. 1952).

- A spontaneous utterance is admissible only when a proper foundation is laid, such as the child's condition or the testimony of the child.
  – *In re Lewis*, 88 A.2d 582, 584 (D.C. 1952).

VII. Child Neglect and Child Protective Proceedings: Special Procedures

A. Burden

- In a child neglect proceeding, the Government has the burden of proving by a preponderance of the evidence that a child has been neglected.
  – *In re C.C.J.*, 777 A.2d 265, 268 (D.C. 2001).

B. Function of the Trial Court

- It is the function of the trial court to determine not only whether neglect or far more serious child abuse exists, but whether it is likely to exist.
  – *In re C.C.J.*, 777 A.2d 265, 269 (D.C. 2001).

C. Inferences of Neglect

- An inference of neglect is dependent upon the rationality of the connection between the facts proved and the ultimate fact presented.
  – *In re C.C.J.*, 777 A.2d 265, 268 (D.C. 2001).

- When the petition alleges a child is neglected by reason of abuse or evidence of illness or injury for which the parent, guardian, or custodian can give no satisfactory explanation, such is sufficient to justify an inference of neglect. D.C. CODE ANN. § 16-2316(c).
  – *In re C.C.J.*, 777 A.2d 265, 268 (D.C. 2001).

- Evidence of chronic and unexplained sexual injuries in young children while in the custody of the parents may be sufficient to justify an inference of neglect.
  – *In re C.C.J.*, 777 A.2d 265, 270 (D.C. 2001).

D. Appellate Review

- Deference is due to the trial court's determination of abuse or neglect.
  – *In re C.C.J.*, 777 A.2d 265, 269 (D.C. 2001).

- An appeals court does not second guess the trial judge on a very difficult call.
  – *In re C.C.J.*, 777 A.2d 265, 269 (D.C. 2001).

VIII. Privileges

- Testimonial privileges are exceptions to the general duty imposed on all persons to testify.
  – *In re E.F.*, 740 A.2d 547, 549 (D.C. 1999).

- Testimonial privileges must be strictly construed and accepted only to the very limited extent that by allowing such a refusal to testify or by excluding relevant evidence there exists a public good that transcends the general predominant principle of utilizing all rational means for ascertaining the truth.
  – *In re E.F.*, 740 A.2d 547, 549 (D.C. 1999).

A. Marital Privilege

- In civil and criminal proceedings, a husband or wife is competent but not compellable to testify for or against the other. D.C. CODE ANN. § 14-306(a).
  – *Croom v. United States*, 546 A.2d 1006, 1007 n.2 (D.C. 1988).

- The signing of a complaint by the spouse does not constitute a waiver of his or her right to invoke the marital privilege.
  – *Croom v. United States*, 546 A.2d 1006, 1008 (D.C. 1988).

B. Physician-Patient Privilege

1. Application

- A physician, surgeon, or mental health professional may not be permitted, without the consent of his or her client or the client's legal representative, to disclose any information, confidential in nature, that he or she has acquired in attending the client in a professional capacity and that was necessary to enable him or her to act in that capacity, whether the information was obtained from the client, from the client's family, or from the person in charge of the client. D.C. CODE ANN. § 14-307.
  – *Graham v. United States*, 746 A.2d 289, 292 (D.C. 2000).

2. Who Is a Mental Health Professional?

- A mental health professional includes a licensed social worker and any person reasonably believed by the client to be a mental health professional, including a:
  (1) person licensed to practice:
    (a) medicine, or
    (b) psychology;
  (2) licensed social worker;
  (3) professional marriage, family, or child counselor;
  (4) rape crisis or sexual abuse counselor who has undergone at least 40 hours of training and is under the supervision of a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist; and
  (5) licensed nurse who is a professional psychiatric nurse.
  D.C. CODE ANN. § 7-1201.01(11) (formerly D.C. CODE ANN. § 6-2001(11)).
  – *Graham v. United States*, 746 A.2d 289, 292, 292 n.4 (D.C. 2000).

C. Privileges in Child Neglect Proceedings

- With respect to child neglect proceedings, the D.C. Code creates an exception to both the spousal privilege and the physician-patient privilege in any proceeding concerning the welfare of a neglected child when a judge finds that the privilege should be waived in the interest of justice. D.C. CODE ANN. § 4-1321.05 (formerly D.C. CODE ANN. § 2-1355).
  – *Graham v. United States*, 746 A.2d 289, 294 (D.C. 2000).

DISTRICT OF COLUMBIA

Age of Child Victim

I. Proving the Age of the Child Victim

- While age is frequently proven by documentary evidence, there is no rule of law that requires evidence of that type.
  – *Slaughter v. District of Columbia*, 134 A.2d 338, 339 (D.C. 1957).

- A witness is competent to testify as to his or her own age and date of birth.
  – *Slaughter v. District of Columbia*, 134 A.2d 338, 339 (D.C. 1957).

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

No relevant D.C. cases reported.

DISTRICT OF COLUMBIA

Multiple Counts

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

I. What Constitutes an Item of Child Pornography?

No relevant D.C. cases reported.

II. Double Jeopardy

- The Double Jeopardy Clause protects against:
  (1) prosecutions for the same offense after acquittal or after conviction, and
  (2) multiple convictions for the same offense.
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 354 n.3 (D.C. 2002).

A. Duplicate Convictions

- When there are duplicate convictions for the same offense, one or more must be vacated in order for only one conviction and sentence to remain for a single offense.
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 354 (D.C. 2002).

- Even when concurrent sentences are imposed, the Double Jeopardy Clause precludes duplicate convictions because of the potential adverse collateral consequences of the convictions.
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 354 (D.C. 2002).

B. Multiple Convictions

1. Statutory Elements Analysis

- In determining whether multiple convictions are constitutionally permissible for criminal conduct that violates two distinct statutory provisions, the D.C. Court of Appeals applies the *Blockburger* test.
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 354 (D.C. 2002).

- The *Blockburger* test is based on the statutory elements of the offense as opposed to the facts of the case.
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 354 (D.C. 2002).

- Under the *Blockburger* test, whether there are two offenses for which punishment may be imposed or only one depends upon whether each provision requires proof of a fact that the other does not.
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 354 (D.C. 2002).

2. Factual Analysis

- A fact based approach remains appropriate when a defendant is convicted of two violations of the same statute.
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 354 (D.C. 2002).

- Under a fact based analysis, whether separate criminal acts have occurred depends upon whether they can be found to be factually separate.
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 354 (D.C. 2002).

- For purposes of the fact based merger analysis, criminal acts are considered separate when there is an appreciable length of time between the acts that constitute the two offenses or, when a subsequent criminal act was not the result of the original impulse but rather a fresh one.
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 354-55 (D.C. 2002).

C. Lesser Included Offenses

- In order to determine whether one offense is a lesser included offense of another, a court will look to the purposes of the statutes to determine if the conduct at which they are aimed and the rationale for addressing that conduct is similar.
  – *Pounds v. United States*, 529 A.2d 791, 797 n.8 (D.C. 1987).

- A lesser included offense must be both lesser and included; therefore, an offense with a heavier penalty cannot be regarded as a lesser offense of one with a lighter penalty.
  – *Hicks v. United States*, 658 A.2d 200, 203 (D.C. 1995).

D. Single, Continuing Schemes

- The D.C. Court of Appeals has recognized that same crimes by their very nature, including rape and assault, tend to be committed in a single, continuous episode rather than in a series of individually chargeable acts.
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 356 (D.C. 2002).

- Two or more acts, each of which would constitute an offense standing alone and which, therefore, could be charged as separate counts of an indictment, may instead be charged in a single count if those acts could be characterized as part of a single, continuing scheme.
  – *Roberts v. United States*, 752 A.2d 583 (D.C. 2000).

E. Repeated Acts of Sexual Violence or Abuse

- The argument that repeated acts of sexual violence or abuse constitutes only a single, continuous offense is often rejected.
  – *Brown v. United States*,[++] 795 A.2d 56, 64 (D.C. 2002).
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 358 (D.C. 2002).

- When successive impulses are separately given, even though all united in swelling a common stream of action, separate indictments lie.
  – *Sanchez-Rengifo v. United States*, 815 A.2d 351, 358 (D.C. 2002).

DISTRICT OF COLUMBIA
Defenses

I. Consent

A. Sexual Intercourse

- A minor cannot consent to sexual intercourse in a meaningful way.
  – *Williams v. United States*, 756 A.2d 380, 386 (D.C. 2000).

B. Sexual Touching

- The defense of consent is unavailable to an adult who assaults a child through sexual touching.
  – *In re A.B.*, 556 A.2d 645, 649 n.10 (D.C. 1989).

II. Diminished Capacity

A. Addiction to the Internet

No relevant D.C. cases reported.

B. Insanity

1. Elements of the Insanity Defense

- The insanity defense is raised where, as a result of mental disease or defect, a defendant lacks substantial capacity either to appreciate the criminality or wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.
  – *United States v. Shorter*, 343 A.2d 569, 571 (D.C. 1975).

2. Definitions

a. "Mental Disease or Defect"

- "Mental disease or defect" includes any abnormal condition of the mind that substantially affects mental or emotional processes and substantially impairs behavior controls.
  – *United States v. Shorter*, 343 A.2d 569, 571-72 (D.C. 1975).

b. "Disease"

- "Disease" is used in the sense of a condition that is considered capable of either improving or deteriorating.
  – *United States v. Shorter*, 343 A.2d 569, 572 (D.C. 1975).

c. "Defect"

- "Defect" is used in the sense of a condition that is not considered capable of either improving or deteriorating and that may be either congenital, the result of injury, or the residual effect of a physical or mental disease.
  – *United States v. Shorter*, 343 A.2d 569, 572 (D.C. 1975).

- Intelligence quotient (I.Q.) is probative as to the existence of a mental defect, along with other evidence.
  – *United States v. Shorter*, 343 A.2d 569, 572 n.5 (D.C. 1975).

3. Mental Retardation

a. Defined

- "Mental retardation" is a mental defect capable of affecting both mental processes and behavior controls to the extent that a defendant in a given situation might not be able to appreciate the wrongfulness of his or her conduct, or might not be able to conform his or her conduct to the requirements of the law.
  – *United States v. Shorter*, 343 A.2d 569, 572 (D.C. 1975).

b. As Insanity

- Mental retardation is one type of mental disorder that is considered sufficient to negate the element of criminal responsibility and that is included under the rubric of the insanity defense.
  – *United States v. Shorter*, 343 A.2d 569, 571 (D.C. 1975).

4. Commitment: Judicial Hearing Required

- A person who is found not guilty by reason of insanity cannot be committed to an indefinite period of psychiatric care unless he or she is first given a judicial hearing that follows procedures substantially similar to those used in civil commitment proceedings.
  – *Harris v. United States*, 356 A.2d 630, 631 n.2 (D.C. 1976).

a. Pre-Hearing Commitment

- The objective of the pre-hearing commitment is observation and examination to ascertain the individual's current mental condition.
  – *United States v. Shorter*, 343 A.2d 569, 572 (D.C. 1975).

- The commitment is temporary and of limited duration.
  – *United States v. Shorter*, 343 A.2d 569, 572 (D.C. 1975).

- A judicial hearing is required within 50 days to determine whether the person confined is eligible for release.
  – *United States v. Shorter*, 343 A.2d 569, 572 (D.C. 1975).

- The court must rule within 10 days from the beginning of the hearing and may order conditional or unconditional release if the evidence warrants.
  – *United States v. Shorter*, 343 A.2d 569, 572 (D.C. 1975).

b. Burden of Proof

- The person confined has the burden of proving that he or she is not mentally ill and is not likely to injure him, herself, or others due to mental illness.
  – *Harris v. United States*, 356 A.2d 630, 631 (D.C. 1976).
  – *United States v. Shorter*, 343 A.2d 569, 572 n.8 (D.C. 1975).

c. Protection of the Public and the Patient

- A patient may have improved materially and appear to be a good prospect for restoration as a useful member of society; however, if an abnormal mental condition renders him or her potentially dangerous, reasonable medical or judicial doubts are to be resolved in favor of the public and the patient's safety.
  – *Harris v. United States*, 356 A.2d 630, 632 (D.C. 1976).

III. Impossibility

A. Factual

No relevant D.C. cases reported.

B. Legal

No relevant D.C. cases reported.

IV. Intoxication

A. General Intent Crimes

- Intoxication is not a defense to a general intent crime such as first-degree sexual abuse.
  – *Kyle v. United States*, 759 A.2d 192, 199 (D.C. 2000).

B. Specific Intent Crimes

- Intoxication is material to negate specific intent.
  – *Kyle v. United States*, 759 A.2d 192, 199 (D.C. 2000).

V. Manufacturing Jurisdiction

No relevant D.C. cases reported.

VI. Mistake

A. Of Fact: Sexual Abuse

- Mistake of age is not a defense to prosecution under first- or second-degree child sexual abuse because the statute imposes a duty on the actor, under pain of strict liability, to determine the age of the victim before having sexual contact with her.
  – *In re E.F.*, 740 A.2d 547, 550 (D.C. 1999).

B. Of Law

No relevant D.C. cases reported.

VII. Outrageous Conduct

No relevant D.C. cases reported.

VIII. Researcher

No relevant D.C. cases reported.

IX. Sexual Orientation

No relevant D.C. cases reported.

X. Statute of Limitations: Sexual Abuse Cases

A. Accrual

- What constitutes accrual of a cause of action is a question of law; however, the actual date of accrual is a question of fact.
  – *Cevenini v. Nelson*, 707 A.2d 768, 770-771 (D.C. 1998).

1. Generally

- The applicable statute of limitations in sexual abuse cases provides that an action must be brought within three years from the time the right to maintain the action accrues. D.C. CODE ANN. § 12-301(8).
  – *Cevenini v. Nelson*, 707 A.2d 768, 770 (D.C. 1998).

2. Cases Involving Minors

- When the potential plaintiff is a minor at the time of accrual, he or she may bring the action within three years of his or her 18th birthday. D.C. CODE ANN. § 12-302(a)(1).
  – *Cevenini v. Nelson*, 707 A.2d 768, 770 (D.C. 1998).

B. Running

1. Generally

- Under both the general rule of claim accrual and the discovery rule exception, the statute of limitations begins to run when a plaintiff either has actual knowledge of a cause of action or is charged with knowledge of that cause of action.
  – *Cevenini v. Nelson*, 707 A.2d 768, 771 (D.C. 1998).

2. Notice

- Notice refers to the quantum of knowledge required to commence the running of the statute of limitations in a particular case.
  – *Cevenini v. Nelson*, 707 A.2d 768, 771 (D.C. 1998).

- Notice is divided into two categories: actual and inquiry. Either is sufficient to start the clock running under the statute of limitations.
  – *Cevenini v. Nelson*, 707 A.2d 768, 771 (D.C. 1998).

a. Actual

- Actual notice is notice actually possessed by the plaintiff.
  – *Cevenini v. Nelson*, 707 A.2d 768, 771 (D.C. 1998).

b. Inquiry

- Inquiry notice is notice the plaintiff would have possessed after due investigation.
  – *Cevenini v. Nelson*, 707 A.2d 768, 771 (D.C. 1998).

- A plaintiff can be charged with inquiry notice of his or her claims even if he or she is not actually aware of each essential element of his or her cause of action.
  – *Cevenini v. Nelson*, 707 A.2d 768, 771 (D.C. 1998).

- The claim accrues when the plaintiff knows of:
  (1) an injury;
  (2) its cause; and
  (3) some evidence of wrongdoing.
  – *Cevenini v. Nelson*, 707 A.2d 768, 771 (D.C. 1998).

C. Tolling

1. Discovery Rule

- When the fact of an injury can be readily determined, a claim accrues for the purposes of the statute of limitations at the time the injury actually occurs; however, if the existence of an injury is not readily apparent, the claim does not accrue until the plaintiff, exercising due diligence, has discovered, or reasonably should have discovered, all of the essential elements of his or her possible cause of action.
  – *Farris v. Compton*, 652 A.2d 49, 54 (D.C. 1994).

- The discovery rule was developed to redress situations in which the fact of injury is not readily apparent and indeed might not become apparent for several years after the incident causing injury has occurred.
  – *Farris v. Compton*, 652 A.2d 49, 55 (D.C. 1994).

2. Repressed Memory

- In repressed memory cases, an overwhelming majority of courts have held that the statute of limitations is not tolled in the absence of a claim that the plaintiffs, as adults, totally repressed their recollection of the fact of the abuse.
  – *Farris v. Compton*, 652 A.2d 49, 63 n.24 (D.C. 1994).

- When a plaintiff has alleged total repression of any recollection of sexual abuse that allegedly occurred during his or her childhood, the claim does not accrue until the date that he or she recovered his or her

memory to the extent that he or she knows, or reasonably should know, of some injury, its cause, and related wrongdoing.
– *Farris v. Compton*, 652 A.2d 49, 59 (D.C. 1994).

- If the defendant disputes repression or the date on which the plaintiff recovered his or her memory, the issue must be determined by the trier of fact and cannot be resolved on a motion to dismiss the complaint.
  – *Farris v. Compton*, 652 A.2d 49, 59-60 (D.C. 1994).

- A defendant who, through his or her own wrongful conduct, has caused the plaintiff to repress recollection of that conduct cannot avail him- or herself of the statute of limitations to defeat the plaintiff's claim.
  – *Farris v. Compton*, 652 A.2d 49, 60 (D.C. 1994).

3. Fraudulent Concealment

- Fraudulent concealment requires something of an affirmative nature designed to prevent discovery of a cause of action.
  – *Cevenini v. Nelson*, 707 A.2d 768, 773-74 (D.C. 1998).

a. Claims or Facts

- When the party claiming the protection of the statute of limitations has employed affirmative acts to fraudulently conceal either the existence of a claim or facts forming the basis of a cause of action, such conduct will toll the running of the statute.
  – *Cevenini v. Nelson*, 707 A.2d 768, 773 (D.C. 1998).

- When wrongful concealment of facts is alleged, a party responsible for such wrongful concealment is estopped from asserting the statute of limitations as a defense.
  – *Farris v. Compton*, 652 A.2d 49, 55 (D.C. 1994).

b. Identity of Liable Parties

- As long as the plaintiff possessed information that would have enabled him or her to file a timely claim, concealment of the identity of liable parties, unlike the concealment of the existence of a claim, is insufficient to toll the statute of limitations.
  – *Cevenini v. Nelson*, 707 A.2d 768, 774 (D.C. 1998).

DISTRICT OF COLUMBIA

Sentencing Issues

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

I. Enhancement

A. Age of Child Victim

No relevant D.C. cases reported.

B. Distribution/Intent to Traffic

No relevant D.C. cases reported.

C. Number of Images

No relevant D.C. cases reported.

D. Pattern of Activity for Sexual Exploitation

No relevant D.C. cases reported.

E. Prior Offenses

- If any person:
  (1) is convicted of a criminal offense under a law applicable exclusively to the District of Columbia, and
  (2) was previously convicted of a criminal offense that, at the time of the conviction referred to in clause (1), is the same as, constitutes, or necessarily includes the offense referred to in clause (1), such person may be sentenced to imprisonment for a term not more than one and one-half times the maximum prescribed for that conviction. D.C. CODE ANN. § 22-1804(a) (formerly D.C. CODE ANN. § 22-104(a)).

  – *Brake v. United States*, 494 A.2d 646, 648 (D.C. 1985).

F. Sadistic, Masochistic, or Violent Material

No relevant D.C. cases reported.

G. Use of Computers

No relevant D.C. cases reported.

II. Consecutive Sentences

- A statutory presumption favors consecutive sentences even when the convictions arise from the same transaction.
  – *Crawford v. United States*, 628 A.2d 1002, 1003 (D.C. 1993).

III. Previous Convictions

- If a defendant is again convicted after having had his or her original conviction overturned, the trial court will be restricted to the sentence it imposed upon the previous conviction unless a harsher sentence is justified on the basis of identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding.
  – *Fitzgerald v. United States*, 472 A.2d 52, 53-54 (D.C. 1984).

IV. Sexual Psychopath Act: Commitment of Sexual Psychopaths

- The Sexual Psychopath Act extends the law relating to the commitment of persons who are mentally incompetent so as to include as possible subjects of commitment to a mental hospital persons who are sexual psychopaths. D.C. CODE ANN. §§ 22-3803 – 3811 (formerly D.C. CODE ANN. §§ 22-3503 – 3511).
  – *Shelton v. United States*, 721 A.2d 603, 608 (D.C. 1998).

- Proceedings under the Sexual Psychopath Act are civil in nature.
  – *Shelton v. United States*, 721 A.2d 603, 608 (D.C. 1998).

A. Intent of the Sexual Psychopath Act

- Both the intent and the terms of the Sexual Psychopath Act are for the commitment of sexual psychopaths to hospitals for remedial treatment.
  – *Shelton v. United States*, 721 A.2d 603, 608 (D.C. 1998).

- Sexual psychopaths are patients of the hospital, not confined for violation of law.
  – *Shelton v. United States*, 721 A.2d 603, 608 (D.C. 1998).

B. Operation of the Sexual Psychopath Act

- To trigger the operation of the Sexual Psychopath Act, the prosecuting attorney must file a written statement setting forth the facts tending to show that the person is question is a sexual psychopath.
  – *Shelton v. United States*, 721 A.2d 603, 607 (D.C. 1998).

1. Filed in Connection with a Criminal Proceeding

- The statement may also be filed in connection with a criminal proceeding either on the instigation of the prosecuting attorney or on the initiative of the court.
  – *Shelton v. United States*, 721 A.2d 603, 607 (D.C. 1998).

2. Filed Independently of a Criminal Proceeding

- The statement may be filed independently of any criminal proceeding whenever it appears that any person with the District of Columbia is a sexual psychopath.
  – *Shelton v. United States*, 721 A.2d 603, 607 (D.C. 1998).

C. "Sexual Psychopath" Defined

- The Sexual Psychopath Act defines a "sexual psychopath" as a person who is not insane but who, by a course of repeated misconduct in sexual matters, has evidenced such a lack of power to control his or her sexual impulses as to be dangerous to other persons because he or she is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his or her desire. D.C. CODE ANN. § 22-3803(1) (formerly D.C. CODE ANN. § 22-3503(1)).
  – *Shelton v. United States*, 721 A.2d 603, 607 (D.C. 1998).
  – *Carras v. District of Columbia*,[++] 183 A.2d 393, 394 (D.C. 1962).

- A sexual psychopath cannot be insane.
  – *Shelton v. United States*, 721 A.2d 603, 607 (D.C. 1998).

V. Appellate Review of Sentences

- An appellate court will not, in considering either a direct appeal of a sentence or an appeal of a post-trial decision on sentence reduction, review sentences that are within statutory limits upon the ground that the sentence is too severe.
  – *Crawford v. United States*, 628 A.2d 1002, 1003 (D.C. 1993).

- Generally, sentences within statutory limits are unreviewable aside from constitutional considerations.
  – *Crawford v. United States*, 628 A.2d 1002, 1003-04 (D.C. 1993).

DISTRICT OF COLUMBIA

Supervised Release

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

I. Probation Revocation Proceedings

- Unlike a criminal trial, a probation revocation proceeding is more in the nature of an administrative hearing intimately concerned with the probationer's rehabilitation.
  – *Merle v. United States*, 683 A.2d 755, 760 n.3 (D.C. 1996).

A. Admissibility of Evidence

- The formal rules of evidence governing a criminal prosecution do not apply to a probation revocation proceeding.
  – *Merle v. United States*, 683 A.2d 755, 760 n.3 (D.C. 1996).

- All that is required to make evidence admissible is that it be reliable.
  – *Merle v. United States*, 683 A.2d 755, 760 n.3 (D.C. 1996).

B. Confrontation Clause

- Once a judge determines that evidence proffered at a probation revocation hearing is reliable, that determination satisfies the requirements of the Confrontation Clause.
  – *Merle v. United States*, 683 A.2d 755, 760 n.3 (D.C. 1996).

C. Mental Illness As a Defense

- Generally, mental illness is not a defense in probation revocation proceedings; however, if a probationer has made all reasonable efforts to comply with the conditions of probation and yet cannot do so through no fault of his or her own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the defendant are available.
  – *Merle v. United States*, 683 A.2d 755, 763 (D.C. 1996).

II. Sex Offender Registration Act

- The Sex Offender Registration Act establishes a registration and public notification regime for persons who have committed sex offense against minors or other crimes of sexual abuse. D.C. CODE ANN. §§ 22-4001 *et seq.* (formerly D.C. CODE ANN. §§ 24-1121 *et seq.*).
  – *Cannon v. Igorzurkie*,[++] 779 A.2d 887, 889-90 (D.C. 2001).

A. Retroactivity

- Provisions of the Sex Offender Registration Act apply retroactively to certain persons who committed registration offenses prior to its enactment.
  – *Cannon v. Igorzurkie*,[++] 779 A.2d 887, 890 n.6 (D.C. 2001).

B. Who Registers?

- The registration requirements of the Sex Offender Registration Act apply to anyone, regardless of age, who is a sex offender.
  – *Cannon v. Igorzurkie*,[++] 779 A.2d 887, 890 (D.C. 2001).

- A juvenile adjudication or disposition is not a conviction of a crime; however, the Sex Offender Registration Act will apply to a sex offender who committed a registration offense as a juvenile but who was lawfully prosecuted, convicted, and sentenced as an adult.
  – *Cannon v. Igorzurkie*,[++] 779 A.2d 887, 890 (D.C. 2001).

C. Release of Registration Information

- A registrant's timely notification of his or her intent to seek review of his or her registration determination may forestall the immediate release of registration information to the public.
  – *Cannon v. Igorzurkie*,[++] 779 A.2d 887, 889 n.3 (D.C. 2001).

D. Mandatory Compliance

- Compliance with registration is a mandatory condition of probation, parole, supervised release, and conditional release.
  – *Cannon v. Igorzurkie*,[++] 779 A.2d 887, 890 (D.C. 2001).