

Plea Negotiations in Sexual Assault Cases

Speaker Information

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Biographical Information

Dave Contreras has been licensed to practice law in the State of Texas since 1986. A graduate of Texas Tech University School of Law, Mr. Contreras has tried numerous jury trials while as a trial attorney employed by The El Paso County Public Defenders Office, as an Assistant District Attorney in the El Paso County District Attorney's Office as well as in his current position. Mr. Contreras has experience trying all types of offenses ranging from simple misdemeanors up to Capital Murders in both the Adult and Juvenile systems. Additionally Mr. Contreras has served as Chief of the Juvenile Division with the El Paso County District Attorney's Office, as a Police Officer for the El Paso Police Department and as a Special Agent for the Federal Bureau of Investigation in Dallas, Texas. In addition to the legal and law enforcement training he has received, Mr. Contreras has received Intensive Drug Identification and Investigation training provided by the Drug Enforcement Administration in Quantico, Virginia. Responsible for the training of law enforcement in the El Paso County area, Mr. Contreras is a regular visiting instructor for the El Paso County Sheriff's Training Academy and the El Paso Police Department Academy in addition to having taught Criminal Justice courses at the University of Texas at El Paso. A frequent lecturer at area schools, Mr. Contreras also provides lectures for civic and other community based organizations on Juvenile Law, Juvenile Justice and the Prevention of juvenile delinquency in the El Paso area and outside of Texas.

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"Let's Make a Deal...if we can"

**The Dynamics of Child against Child
Sexual Assault Cases**

**By
Dave Robert Contreras¹
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Children are not smaller versions of adults!

If there is one concept that the public has so much trouble grasping, it is the foregoing and the following, "Children are not smaller versions of adults"! This concept is readily understandable in all other childhood endeavors but when it comes to children in the development of their reasoning and their grasp of "right and wrong". For all practical purposes, adults for some reason hold children to the same degree of culpability as they would an adult. Additionally adults tend to project their own concepts of "motivation" for volitional acts on children.

Children tend to do things or engage in behaviors for reasons that go way beyond our adult recollection. I use the term "recollection" instead of understanding because all adults were children at one time and subject to the whims and inexperience inherent in childhood. We as adults just do not remember how "stupid we could be at times". Kids do things for no other reason than because *they are kids*. Who has not heard a child plead his case for doing something "stupid" with the explanation of, "I don't know why I did it, I was just stupid I guess"! Children tend to learn right from wrong from their parents and those around them. Basically a child does not know an activity is wrong until someone tells them. Children are always testing their boundaries and do not know they have crossed those limits until it is pointed out to them, and usually and hopefully by an adult who can explain where they trespassed.

Another reason children engage in certain behaviors is because they copy or mimic behavior demonstrated around them. If Dad drinks in the home, his children will most likely drink in the future. If Dad loves to watch baseball, chances are pretty good that his children will also learn to love to watch baseball even at a very young age. If Mom loves to ride motorcycles, there are good chances that some of her children will learn to ride, and enjoy, riding motorcycles. If there is domestic violence in the home, there are strong chances the children will learn that violence is an appropriate form of expression. If the family religiously attends church and church functions, even the youngest of the children will go through the ritual of preparing for church and attending services or church functions. This does not mean that the child really understands the concepts of "God, spirituality or eternity", for that matter; the child is merely mimicking the behavior of the family around him or her. In short children learn behaviors by observing behaviors.

Didn't someone say sometime and somewhere, "It takes a village to raise a child".

In today's day and age we find ourselves living in a very big village. Curiously the term "big village" is an oxymoron. By definition, villages are small. Yet "village" implies a community that is small enough that every member of the unit may, and can, have an impact on every other member. However, in today's present environment, or community, just about everything we want to know, need to know or do not want to know about our world is not any further away than the click of a computer mouse. Then again we living in today's environment do not even have to go in search of such information, instead it finds us. No, it does not find us, it pushes itself upon us. Whether we want to see it or hear it, it is thrust upon us in such an unrelenting manner that like it or not, we absorb it and if we as adults do, then so do our children. This is no more apparent in the entertainment and fashion industries.

Everyday anyone living in a city in the United States and the techno-industrialized world will view and absorb acts of violence, anarchy and sex. Just viewing the world news on any given evening, or listening to the radio will expose the viewer/listener to a steady diet of sex and violence, and that is just with the material contained in the commercials.

Indeed the commercials themselves can be pretty explicit and stimulating to the young developing mind and body of a "child" of juvenile age.² The reader must be mindful of the fact that a child can be prosecuted for acts committed during the ages of puberty and sexual development, which but for their age (ten through 16 inclusive) would not be criminal if committed by an adult.³ As adult prosecutors and defense attorneys we must be mindful of this reality and be prepared to deal with the issue on a mature and non-judgmental level. Our focus as officers of the court is to make sure we are dealing with the "true sexual juvenile offender" and not the "experimenting" pubescent. Additionally it is our duty as experts and advocates to the parties in these types of lawsuits in this particular area of the law that we convey this reality to our clients⁴ and to probation officers or caseworkers that deal with the juvenile justice system

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² "Child" means a person who is: ten years of age or older and under 17 years of age;". Texas Family Code Section 51.02 (2) (A)

³ For example a 17-year-old male who has consensual sex with his 13-year-old girlfriend may be prosecuted for Aggravated Sexual Assault, where on the other hand, a 26 year old who has consensual sex with his 19-year-old girlfriend, well, has just had sex.

⁴ Yes the State of Texas is a client, and one, which if left uninformed, can be inflexible on issues of crime and punishment.

consumer.

What's Love got to do with it?

At this juncture it is fair to state that if a juvenile has now reached the point where he has engaged in conduct that constitutes a sexual assault offense⁵, he or she has been charged with delinquent conduct, and the case has now reached the pretrial stage, counsel for the respective parties to the suit now have to determine whether some resolution can be agreed on, or to take the issue to trial. Again as responsible officers of the court we must be dealing with true sexual offenses, or if not true in the criminal sense, some conduct that requires supervision and rehabilitation of the juvenile⁶. Literally we are talking about conduct where, "love has absolutely nothing to do with it" is a major factor to consider and address by all parties concerned.

Basically Texas Code of Criminal Procedure Article 62.01 (5) contains the definition of those sexual assault offenses that are reportable (or require registration as a sex offender) and the subject of this paper and the plea negotiations that may develop therefrom any attempt to resolve the matter. In short (or not so short) those offenses are: Indecency With a Child Penal Code (PC) 21.11, Sexual Assault (PC) 22.011, Aggravated Sexual Assault (PC 22.021), Prohibited Sexual Conduct (more commonly referred to as "incest". (PC 25.02), Sexual Performance by a Child (PC43.25), Possession or Promotion of Child Pornography (PC) 43.26 or a second adjudication for Indecent Exposure (PC) 21.08. The article also includes several other offenses that normally would not qualify as sexual offenses, those being Aggravated Kidnapping (PC 20.04) where there is a finding that a deadly weapon was used in the commission of the offense⁷ or the intent of the kidnapping was for the intent of committing a sexual offense, Unlawful Restraint (PC 22.02), or Burglary (PC 30.02) wherein the offense was committed with intent to commit the offense of Sexual Assault, or Aggravated Sexual Assault, or the Aggravated kidnapping as alleged in the article. It should be noted that in three of these referenced offenses the sexual assault did not necessarily have to have been committed.

So What's on the Table?

Basically in juvenile cases there are three ways to negotiate a Sexual offense two of which will be discussed here in this paper, and one that will be explained in footnote number 8. Those avenues of negotiation are: 1) registration, 2) reduction of the charged offense, or 3) length of the probationary period⁸.

As hard as it is to imagine...

As difficult as it may be to imagine that our communities' children are having sex (whether willingly or in violation of the law) and being charged for such conduct, so is the imagination of counsel for both the State and the juvenile to be challenged in resolving these matters. However a caveat must be added here, there are of course those juveniles who even at a young age are sexual offenders and predators. These juveniles must be dealt with in an appropriate manner. The attorney for the State must see that justice is done and that the juvenile is rehabilitated, but must also put the welfare and safety of the community as a priority in the disposition of these cases. In this instance transfer of the juvenile's case to criminal court or proceeding under the Determinate Sentencing scheme may be appropriate¹³. Of course when a juvenile is charged under these two avenues no one would begrudge his counsel for vigorously representing his client's interest and putting the State to the test, in this situation, as the saying goes "the kid gloves come off", thus counsel for the State and the juvenile will then be challenged with another test of their imagination.

¹³ See Sections 53.045 "Violent or Habitual Offenders" and 54.02 Waiver of Jurisdiction and Discretionary Transfer to Criminal Court.