

## **An Examination of the Law Regarding Sex Crimes and the Protection of Minors**

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During the summer months of this year, I have noticed a fairly significant increase in the number of sex crimes that have been brought to court. In analyzing those cases in my office, I have been surprised by the large numbers of young men, aged 20 to 25, who have been charged with having sex with girls aged 13, 14, and 15. All such cases that have come through my office have involved defendants from Mexico and Honduras. All of those defendants have explained their conduct by telling me that it is not illegal to do what they did in their native countries. I have no idea whether or not that is true, but they are no longer in their native countries, and the law here in North Carolina is very strict about such behavior. Therefore, I want to write this column on the law regarding sex crimes in the state courts of North Carolina.

North Carolina has strong laws designed to protect children from any predatory behavior of adults, especially when that predatory behavior is of a sexual nature. If a man is five years or more older than the girl with whom he has any sexual contact, and that girl is less than sixteen years of age, there is an absolute prohibition against his having any type of sex with her.<sup>1</sup> Her wishes in that matter are irrelevant under the law because the law provides that, as a minor, she is incapable of giving consent for sexual activity. Even if she requests and instigates the sexual activity, it is illegal for the man to engage in any sexual contact with her. Cultural differences are not a defense to this charge, nor are cultural differences considered by the courts to be a mitigating factor for getting a lighter sentence. Likewise, ignorance of the law is neither a defense nor a mitigating factor for sentencing purposes.

In such cases described in the preceding paragraph, even where no force and no weapon were involved, these offenses are classified as Class C felonies, and the punishments are severe, with probation prohibited, and terms of imprisonment ranging from almost four years for a first offender to twenty years or more depending on a defendant with multiple prior convictions.<sup>2</sup>

Of course, everyone knows that forcible sexual activity by any person with any other person, is illegal. Moreover, the statutes are gender-neutral, meaning that a female can be charged with raping a male, or a person of one sex can be charged with raping a person of the same sex, although such charges are not common in North Carolina. In fact, this writer knows of no such charges that have been brought in the courts of this state, but television reports of such charges from other states have been in the news several times during the past year.

For forcible rape and sex offense charges to be proved in court, the prosecution must allege and prove that the sexual contact is both by force and against the victim's

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<sup>1</sup> G.S. 14-27.7A(II) Statutory rape of person who is 13, 14, or 15 years old.

<sup>2</sup> G.S. 15A-1340.17(c).

will. When the forcible sexual activity involves vaginal intercourse, it is called “rape,” and when the forcible sexual activity involves any other form of sexual penetration, it is called “sexual offense,” but the punishments provided for by law are equally severe for both types of sexual conduct.

Evidence of sexual contact against the victim’s will can be as simple as the victim saying “no” or “stop” or any similar words to show that the victim does not want to engage in the sexual contact. It is not required by law that the victim must physically resist the sexual activity or attempt to flee the scene. Persons convicted of either forcible rape or sex offenses will be punished as a Class B-2 felony, which means that probation is not available, prison is mandatory, and the sentences will run from approximately eight years for a first offender to thirty years or more for a person with prior convictions.<sup>3</sup>

If a weapon is involved, or the assault results in serious personal injury, or if more than one defendant get together to commit the offense, then the case against the defendant is much more serious, and the punishments are likewise more serious if the defendant is convicted. Such sexual offenses are called first degree rape or first degree sexual offense, both classified as Class B-1 felonies. Such a conviction, for either offense, requires a mandatory sentence of life in prison without parole.<sup>4</sup>

There is insufficient space available in this column for this writer to describe all of the numerous North Carolina statutes regarding sexual activity. To summarize the laws, however, it will suffice to state that sexual activity should only be engaged in between consenting, adult individuals, and the law will usually not get involved unless one or both of those individuals are minors instead of adults. Sex between adults and children should always be avoided. The reader should understand that persons under the age of sixteen are children in the eyes of the law and incapable of giving consent for sexual activity. So any readers who come from countries where such conduct is not illegal, beware, you cannot engage in such sexual activity here. It is not only illegal but it is prosecuted to the full extent of the law. And that prosecution can get very heavy-handed.

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<sup>3</sup> G.S. 15A-1340.17(c).

<sup>4</sup> G.S. 15A-1340.16B.