

SMITH, RODGERS & STRICKLAND, PLLC

**NCGS 14-27.5A
SEXUAL BATTERY
EFFECTIVE DECEMBER 1, 2003**

BY

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Our General Assembly recently passed a number of new laws that will affect school children in our state, and *even couples on dates*. One specifically designed to protect children from the sexual conduct of other children or adults was **Senate Bill 912, An Act to Create the Offense of Sexual Battery**. This new law will also offer some protection to ladies on a romantic date.

It has previously been the case, but after December 1, 2003 it will no longer be so, that when one person non-consensually touched another person's genital area, private parts, buttocks, or erogenous zones through the clothing of the victim, the crime committed was more often than not a mere simple assault.

Now, there were a few exceptions, say where the perpetrator was 18 years old, and a male, and he touched a female, or if the touch was part of an attempt to commit a rape or felonious sex offense, or if an adult attempted to take an indecent liberty with a minor. But such exceptions did not cover one juvenile "fondling" another at school or grabbing some part of the other person's body as the two passed in a hallway between classes, or while the two were "on a date."

The following statute creates new law on this subject. First, let's look at the new definitions.

G.S. 14-27.1 reads as rewritten:

"§ 14-27.1. Definitions. As used in this Article, unless the context requires otherwise:

...

(5) 'Sexual contact' means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, or (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks.

(6) 'Touching' as used in subdivision (5) of this section, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim."

Now, we'll take a look at the new law. Article 7 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-27.5A. Sexual battery.

(a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class A1 misdemeanor."

This law became effective at 12:01AM, December 1, 2003.

Our Comments:

As you can readily see, sexual battery will cover sexual contact from inappropriate touching on a legitimate date by adults to groping in the hallway of a school by juveniles.

Note carefully at the definitions of sexual contact and touching.

Sexual contact by touching the anus, sexual organ, breast, groin or the buttocks of a person against their will or consent now carries a harsher criminal penalty.

Touching those areas through clothes is also a crime.

And a perpetrator touching a victim with those areas of the perpetrator's body (anus, sexual organ, breast, groin or the buttocks) skin-to-skin or through clothing, is a crime as well.

And this bears mentioning: unlike statutory rape or indecent liberties, there is no requirement that the victim's age be less than the defendant's age. This conduct covers inappropriate and nonconsensual touching, as defined, no matter the ages of the parties to the crime!

As usual, where people are adults and consent to these actions, this type of conduct is not criminal.

Some may think that this law is unfair, too harsh; they say the behavior condemned is just a harmless, childish prank. That is simply misguided. Such is not the opinion of our General Assembly, and it is the Assembly's opinion that matters here. It seems to us that in most cases immature juvenile boys will aim this type of behavior at juvenile girls. And we think you should make it clear, especially to the young boys, that this behavior will not be tolerated. The young girls should especially be encouraged to report any violations wherein they, or a friend, are the victim of such a crime.

If you have probable cause to believe a sexual battery has occurred, we suggest you consider a petition for perpetrators not yet sixteen years of age, and a criminal arrest warrant for defendants sixteen years of age or older.

SROs may want to share this bulletin with school administrators and teachers, and this would be an excellent crime for a news interview and a follow up article in your local newspaper. The more people who are aware of it, the less it is likely to occur.

This law was a long time coming. Now that it is here, we owe it to the victims to enforce it.