

## **7.08 Child Sexual Abuse Syndrome**

**(1) Child Sexual Abuse Syndrome (CSAS), like Rape Trauma Syndrome, is a therapeutic concept encompassing identifiable behavioral, somatic, and psychological reactions a person may experience after sexual abuse or attempt thereof.**

**(2) The admissibility of expert testimony about an identifiable CSAS reaction depends on meeting the criteria of Guide to New York Evidence rule 7.01 and on the reason given that the evidence would be relevant and helpful to a jury to understand an issue in the proceeding.**

**(a) In general, in the exercise of a trial court's discretion, expert testimony may be admissible to explain the behavior of a complainant that might appear unusual or that jurors may not be expected to understand.**

**(b) In particular, in the exercise of a trial court's discretion, expert testimony may, for example, be admissible to dispel juror misconceptions regarding the ordinary responses of a victim; to explain a child's delay in reporting sexual abuse or a child's recantation; to explain why a child's behavior was not inconsistent with having been molested; why some children want to live with the person who abused them; why a child might appear "emotionally flat" following sexual assault; and why a child might run away from home.**

**(3) An expert may not testify that the child should be believed, or that the conduct at issue in the case constituted abuse; the expert may describe the relevant**

**general behavior patterns of an abused child that might be beyond the ken of the average juror.**

**Note**

**Subdivision (1)**, as well as the remainder of this rule, is derived from the seminal Court of Appeals decision in *People v Taylor* (75 NY2d 277 [1990]) that allowed for expert testimony on the analogous Rape Trauma Syndrome, as well as the Court of Appeals cases that specifically address the Child Sexual Abuse Syndrome (CSAS), also known as the Child Sexual Abuse Accommodation Syndrome (CSAAS). (*People v Carroll*, 95 NY2d 375, 387 [2000]; *People v Spicola*, 16 NY3d 441, 460-466 [2011]; *People v Williams*, 20 NY3d 579, 584 [2013]; *People v Nicholson*, 26 NY3d 813, 827-829 [2016].)

Although the admission of CSAS evidence has recently been challenged, it continues to be admissible under New York law. (*People v Austen*, 197 AD3d 861, 862 [4th Dept 2021] [“We reject defendant’s contention that CSAAS is no longer generally accepted in the relevant scientific community. Although a small number of other state courts do not allow expert testimony on CSAAS (*see e.g. State of New Jersey v J.L.G.*, 234 NJ 265, 289, 303, 190 A3d 442, 456, 464 [2018]), the record here provides no basis for us to reach a similar conclusion (*see Spicola*, 16 NY3d at 466”).

**Subdivision (2)**. Expert testimony concerning CSAS is admissible in “the sound discretion of the trial court” (*Nicholson* at 828) and parallels the reasons for admissibility of expert testimony concerning Rape Trauma Syndrome. (Guide to NY Evid rule 7.05.) As *Carroll* declared: “We have long held that expert testimony regarding rape trauma syndrome, abused child syndrome or similar conditions may be admitted to explain behavior of a victim that might appear unusual or that jurors may not be expected to understand (*see, People v Taylor*, 75 NY2d 277).” (*Carroll* at 387; *see Spicola* at 465 [“we have ‘long held’ evidence of psychological syndromes affecting certain crime victims to be admissible for the purpose of explaining behavior that might be puzzling to a jury (*see Carroll*, 95 NY2d at 387”).

In *People v Keindl* (68 NY2d 410, 422 [1986]), as *Carroll* explained, “expert testimony was permitted to ‘rebut defendant’s attempt to impair the credibility of [sexually abused children] by evidence that they had not promptly complained’ of the sexual abuse (*People v Taylor, supra*, 75 NY2d, at 288).” (*Carroll* at 387.) Similarly, in *Carroll*, the expert referred to CSAS “only generally insofar as it provides an understanding of why children may delay in reporting sexual abuse.” (*Id.*)

*Spicola* confirmed the admissibility of CSAS evidence and provided further illustrations of when it may be admissible, noting that “the majority of states ‘permit expert testimony to explain delayed reporting, recantation, and inconsistency,’ as well as ‘to explain why some abused children are angry, why some children want to live with the person who abused them, why a victim might appear “emotionally flat” following sexual assault, why a child might run away from home, and for other purposes’ (see 1 Myers on Evidence § 6.24, at 416-422 [collecting cases . . . ]).” (*Spicola* at 465; *Nicholson* at 828 [“The expert educates the jury on a scientifically-recognized ‘pattern of secrecy, helplessness, entrapment (and) accommodation’ experienced by the child victim. This includes assisting the jury to understand ‘why a child may wait a long time before reporting the alleged abuse,’ fail to report at all, and deny or recant claims of sexual assault” (citations omitted)].)

In explaining the “accommodation syndrome,” the expert may give “testimony concerning abusers’ behavior” that is relevant to explain the syndrome. (*Williams* at 584 [“That testimony assisted in explaining victims’ subsequent behavior that the factfinder might not understand, such as why victims may accommodate abusers and why they wait before disclosing the abuse”].)

**Subdivision (3)** is at the core of the admissibility of syndrome evidence when it states that: “An expert may not testify that the child should be believed, or that the conduct at issue in the case constituted abuse; the expert may describe the relevant general behavior patterns of an abused child that might be beyond the ken of the average juror.” (*See Carroll* at 387 [the expert testimony “did not attempt to impermissibly prove that the charged crimes occurred”]; *Spicola* at 465 [the expert “confirmed that the presence or absence of any particular behavior was not substantive evidence that sexual abuse had, or had not, occurred. He made it clear that he knew nothing about the facts of the case before taking the witness stand; that he was not venturing an opinion as to whether sexual abuse took place in this case; that it was up to the jury to decide whether the boy was being truthful”]; *People v Williams*, 20 NY3d 579, 584 [2013] [“the expert’s testimony exceeded permissible bounds when the prosecutor tailored the hypothetical questions to include facts concerning the abuse that occurred in this particular case. Such testimony went beyond explaining victim behavior that might be beyond the ken of a jury, and had the prejudicial effect of implying that the expert found the testimony of this particular complainant to be credible—even though the witness began his testimony claiming no knowledge of the case before the court”]; *People v Duell*, 124 AD3d 1225, 1229 [4th Dept 2015] [the “expert never opined that defendant committed the crimes; that the victim was, in fact, sexually abused; or that the victim’s behavior was consistent with such abuse”].)

While it is not permissible to permit the expert testimony solely to bolster the complainant's credibility, particularly by testimony that the expert credits the complainant (*Williams* at 584), CSAS is admissible to counter an inference from the complainant's behavior that the complainant "is not credible." (*Nicholson* at 828.) For example, in *Nicholson*, the complainant did not disclose the sexual assaults until 10 years after the first assault. The CSAS expert testimony was therefore "appropriate to assist the jury in assessing [the complainant's] credibility by 'explaining victims' subsequent behavior that the factfinder might not understand, such as why victims may accommodate abusers and why they wait before disclosing the abuse.'" (*Nicholson* at 828; see *Spicola* at 465 [the expert had not met the complainant and the CSAS testimony was not to be construed as an opinion on the complainant's credibility as to whether the abuse took place]; *Williams* at 584.)