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MAKING THE CASE FOR WELLNESS

by Michael Kahn, JD, LPC

One early morning as I was driving to my job at the New Jersey Attorney General's Office, I found myself pounding the steering wheel. At home, I had already hit the snooze button countless times so the "pounding the wheel" portion of my morning was the final "wake up call" that I needed to do something different. For many of you, your signs of stress and unhappiness aren't as dramatic, but are no less impactful. You realize at some level that you need to change something about your work and how you approach self-care. Some of you listen; but many more ignore the message. Fortunately, the legal community, often resistant to change, is beginning to seriously acknowledge the importance of wellness. An increasing number of jurisdictions in the US and Canada have a wellness/mental health/substance abuse CLE requirement or at least allow wellness programs to satisfy CLE hours. This is important

not only on the human level, but also for more practical reasons. Christopher Newbold, Executive VP of ALPS says, "If lawyers are not taking care of themselves, they generally are more likely to commit malpractice, and our experience in claims handling supports that" (Christine Simmons, New York Law Journal at Law.com, November 28, 2018). Looking at systemic changes is outside the purview of this article; but law firms must get on board as well. Newbold says that "[w]e're creating cultures in law firms that are misaligned with the values of taking care of one another."

The recent National Task Force on Lawyer Well-Being report (*The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, lawyerwellbeing.net) concluded that "lawyer well-being issues can no longer be ignored" due to "an elevated risk for mental health and substance abuse disorders." In addition, the report says that many lawyers are not "thriving"

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Making the Case For Wellness *Continued*

and are experiencing “a ‘profound ambivalence’ about their work.”

Having “made the case” for wellness, the remainder of this article offers interventions for improved well-being.

Challenge Automatic Negative Thoughts

Billable hours, financial strains and life events are well known stressors. Add to that common attorney personality traits and you have a toxic cocktail impacting well-being. These traits include perfectionism, pessimism, intolerance for weakness/hypercriticism, and unrealistic standards of achievement and can lead to negative thoughts (“I’m a failure,” “I always [or shouldn’t] make mistakes,” “My life s**ks”) which impact mood and behavior. Also called self-talk, these negative thoughts often go unchallenged. The thoughts sometimes have grains of truth but are warped versions of reality. Some common categories of negative self-talk are below (from David Burns, *Feeling Good Handbook* 1989, 1999) and John Grohol, *PsychCentral.com*). Consider whether you fall into some of these traps, as many of us do.

- **Filtering:** Magnify the negative details of a situation while filtering out all positive aspects.
- **Polarized Thinking:** Also called “all or nothing” thinking. You are either

perfect or a complete failure.

- **Overgeneralization:** Arrive at a general conclusion based on a single incident or piece of evidence. You see a single, unpleasant event as part of a never-ending pattern of defeat.
 - **Catastrophizing:** Expect disaster to strike, no matter what. You use “what if” questions to imagine the absolute worst occurring.
 - **Shoulds:** Ironclad rules about how every person (including yourself) should behave. You feel angry when others break the rules and guilty or ashamed when you violate your own rules.
 - **Emotional Reasoning:** Whatever a person is feeling is believed to be true automatically and unconditionally. If you feel stupid and boring, then you conclude you are stupid and boring.
- Since these thoughts often go unchallenged, a common intervention is to dispute the negative self-talk with questions such as: *What is the evidence for this thought or belief? Am I confusing a thinking habit with a fact? Is this thought a habit I learned from my parents? Would I speak with a close family member or friend with the toxic language I use on*



myself? The next step is to replace the old thought with a more realistic one. Here is a more detailed example (from *Stress Management for Lawyers, How to Increase Personal & Professional Satisfaction in the Law*, Amiram Elwork, Ph.D. Vorkell Group 2007):

Self-Talk: “I am going to totally blow this trial!”

Disputing questions:

- How do I know this will happen before the trial even starts?
- How many times have I actually blown a trial before?
- How many times have I said that before, but it never happened?
- What is a possible truth? I need to prepare a little more because I think my opening statement could be better...
- Once a real problem has been validated, ask:
 - How can I fix this?
 - What can I do about it right now?
 - Is there someone who can assist me?
 - How can I solve [prevent] this problem in the future?

Other ways to improve well-being:

Focus on things you can control. Victor Frankl, MD, a Nazi concentration camp survivor and the author of *Man's Search for Meaning* said, “Everything can be taken from [an individual] but one thing: the last of the human freedoms—to choose one’s attitude in any given set of circumstances, to choose one’s own way.” To put Dr. Frankl’s statement another way, you often can’t control what happens to you, but you can choose your response. There are countless things in your practice that you have little control over (i.e. your clients, evidence, opposing counsel, judges, juries, the law etc.). The



Making the Case For Wellness *Continued*

overall lesson I take from Dr. Frankl is to focus on things that *you can control or at least manage*: your thoughts, actions, words, and your attitude.

Take yourself lightly and your work seriously. Accept all parts of yourself even the flawed parts. This is not to say that self-improvement is not a worthy goal but be realistic about perfection. We can experience moments of perfection, so it is seductive, but not sustainable.

Three Gratitudes. For 21 consecutive days take two minutes to think of three new things you are grateful for and then write them down. Each day you need to identify *three entirely new things* so you will have 63 at the end of the 21 days. They can be big things like your health and family and “smaller” things, such as a sunny day (An important one for me since I live in the Northwest), a good piece of pizza or having a friendly conversation with a stranger. As lawyers, we are trained to look for potential problems, which is helpful on the job, but can also impact well-being. This exercise helps you train the brain to look for positive things in your life rather than scanning for what’s wrong.

Generosity. Richard Davidson, PhD from The Center for Healthy Minds says, “The best way to activate positive-emotion circuits in the brain is through generosity...[T]here are systematic changes in the brain that are associated with generosity.” Consider concrete ways that you can be generous to people and animals. For me, it is regularly volunteering at an animal shelter.

Go outside. To me, this is a no-brainer. If you need proof, one study (Bratman et al., *Nature Experience Reduces Rumination and Subgenual Prefrontal Cortex Activation*, Proceedings of the National Academy of Sciences of the United States of America) concluded that walking in nature reduced participants’ rumination on negative aspects of their lives, as evidenced by self-report and a change in brain activity.

Notice exceptions to the problem (or Learning from the past and the present). When Atlanta Braves first baseman Freddie Freeman is in a batting slump, it is probably helpful for him to review record-

ings of his swing when he is hitting well and identify what he is doing differently. Your slump looks different, but the same lesson applies. If you are unhappy with your job or feeling stressed, ask yourself: When in the **past** have I enjoyed this or any job? Been more relaxed? Engaged in better self-care?

Also focus on the **present**: Pay attention to when things are going well with your job and well-being. In either case, whether it is past or present exceptions to the problem, note what’s different and how you made it happen. Basically, you are going to school on yourself.

Talk with someone. Discussing concerns with someone is often helpful even if the other person says little. Leverage available resources such as colleagues, mentors, LAP counselors, friends, spouse/partner or a religious advisor. This suggestion should not to be discounted. Getting something off your chest can be incredibly helpful whether you are simply “venting” or problem solving.

Micro self-care. Micro self-care is defined as quick, self-replenishing practices throughout the day, every day, that are simple, free and doable. In other words, don’t wait for your next vacation. Incorporate small habits into your day and throughout the week. You can start the day with a grounding tool (i.e. listening to music in the car on the way to work), practice an energizing tool after lunch (i.e. walking outside) and implement something relaxing at the end of the day to transition out of work (i.e. on the way home sit at a local lake for 10 minutes). During a workshop, one lawyer said that to avoid bringing work issues home he would imagine putting them in a duffle bag and tossing them by the side of the train tracks he crossed on the way home. He would “pick up the duffle bag” in the morning on the way back to work.

Strategy for keeping your commitments

At the end of one of our CLE programs a lawyer participant said, “This is all well and good, and I am pretty pumped



up now, but I have been to these kinds of things for years and yet I always seem to drift back into my old ways. How is any of this really going to make a lasting difference?” Fair point! Here are suggestions for keeping your commitment to improved well-being:

- Pick one key desired change.
- Make sure the goal is SMART (Specific, Measurable, Attainable, Relevant, and Time Bound). Ex.: I will listen to classical music during my commute to work for three of the five days (you can eventually increase the days, but it is important for you to experience success first).
- Write down the goal.
- Tell someone you trust.
- Ask that person to follow up with you.

So, to avoid the “drift back into **your** old ways”, write down one thing you can commit to NOW to improve your well-being AND identify who are you going to tell.



Michael is co-founder of ReelTime Creative Learning Experiences (www.reeltimecle.com), as well as a therapist and personal

coach. He was a Deputy Attorney General with the NJ Attorney General’s office for six years before leaving the law in 1991 and becoming Assistant Director of Career Services at Tulane Law School. Michael has been a Licensed Professional Counselor since 1996 and facilitates grief groups for lawyers. He presented on wellness at the 2016 GACDL Spring Seminar. Reach out to Michael at michael@reeltimecle.com.

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GACDL CLE!

Information about seminars can be found on our website: **www.gacdl.org**. Click on "CLE." As soon as schedules and registration forms are complete they are posted online.

Bill Daniel Trial Advocacy Program

September 11-14 at Georgia Tech. Program director is Jill Travis. Application information coming in June.

Fall Seminar November 8-9 at Brasstown Valley Resort, Young Harris, Georgia. Seminar Directors Larry Duttweiler and Nazish Ahmed.

GACDL's 2019 Winter Seminar: January 24 & 25, 2020 at the State Bar of Georgia Headquarters in Atlanta, Ga. You can also watch it live from the bar building in Savannah, GA. More information will be announced on the GACDL Listserv.

GACDL's Debra Blum Mental Health Advocacy Program with Michael Perlin will be held at the Georgia State University's College of Law on May 1-2, 2020. The training is **FREE** to GACDL members.



Members, be sure to join GACDL's Private Facebook Group!
It's for members only!

<https://www.facebook.com/groups/GACDL/>



GACDL's Fall Seminar

November 8 & 9, 2019

Brasstown Valley Resort
Young Harris, GA

Larry Duttweiler and Nazish Ahmed
Program Directors

2019 Legislative Session Review

by Kendra Mitchell, Kendra Mitchell Law, LLC

GACDL had a busy but good legislative session this year, with the combined efforts of myself, Jill Travis, and the Legislative Committee teaming up to tackle the session's largest issues. For the first time in a long time, legislators reached out to GACDL for regular input on key pieces of legislation and we truly felt that we had a seat at the table. Here are summaries of the key items that became law during the 2019 Session:

GACDL Top Priorities

The Child Abuse Registry was a top legislative priority going into session and GACDL devoted a lot of time to redrafting this Code section, beginning last summer when we joined a committee to address the issues in the current statute, composed of Administrative Law Judges, The Barton Center, PAC, and other interested parties. Executive Director Jill Travis was instrumental in getting the language right in the new Code sections!

HB 478 – The Child Abuse Registry - O.C.G.A. § 49-5-183

- The key change to the Registry is that Due Process protections were added for alleged child abusers to provide adequate notice of DFCS' intent to include a person on the registry and an opportunity to be heard prior to inclusion.
- The revised Code section, which will become effective on January 1, 2020, establishes that no minors will be included on the registry, that detailed notice about the substantiated case and the abuser's rights will be sent to the alleged abuser before inclusion on it, and that alleged abusers will now have an opportunity for a hearing in front of an Administrative Law Judge (ALJ):
 - After one receives notice from DFCS of a substantiated child abuse case against them, the abuser can request, in

writing, a hearing by an ALJ. DFCS must then send the request for a hearing to OSAH within 10 days of receipt, and the hearing must be held (unless by mutual consent or for good cause shown) within 30 days of an alleged abuser's request in the county where the abuse occurred or at a suitable location within 50 miles of that location.

- The alleged abuser shall be noticed of any failure to find, by a preponderance, that the evidence was sufficient to include them in the Registry within 5 days of the hearing.
- The prosecutor in the county where the abuse occurred will be noticed and inclusion on the Child Abuse Registry can be stayed until the conclusion of any criminal case against the alleged abuser, to include any direct appeal of that case.
- The new Code section will also include an opportunity to appeal the ALJ's ruling to the Superior Court, when requested within 30 days of the that ruling.
- There will be no inclusion of anyone's name on the Registry until the alleged abuser's appeal rights have been exhausted.
- O.C.G.A. § 49-5-184 was also revised to include an opportunity for expungement from the Registry
 - An abuser included on the Registry may petition DFCS for expungement 3 years after inclusion on it. An ALJ must then hold a hearing within 60 days of receiving the petition for expungement from DFCS.
 - If the petitioner is successful in the expungement hearing, the ALJ must order expungement of their name from the registry within 5 days.
 - The legislation also details the factors that will be used to determine expungement, and those factors include consid-

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erations of the effect on an individual's employment and licensure opportunities, as well as any completion of training, rehabilitation, or efforts to learn effective strategies to care for children the individual has undertaken.

- The ALJ must notify the petitioner of their decision within 5 days after the expungement hearing.
- If expungement from the registry is denied, the abuser can request expungement again after 3 years.
- There is no expungement from the registry when, because of the abuse, the abuser has an open dependency case, has lost parental rights, or a child fatality occurred.

Courts

There were several smaller bills dealing with municipal, probate and magistrate courts this session. Larger bills of note included two new Superior Court Judgeships, one in the Gwinnett Judicial Circuit (HB 21) and one in the Griffin Judicial Circuit (HB 28). Both will become effective on January 1, 2020. Additionally, the term of court of the Northeastern Judicial Circuit, Hall County only, will commence on the second Monday in January, April, and July, and the first Monday in October. This becomes effective on July 1.

The largest piece of Courts legislation, though not criminal in nature, was the creation of the Georgia Statewide Business Court in HB 239.

- HB 239 created the Georgia Statewide Business Court in Article VI of the State Constitution in O.C.G.A. § 15-5A-1, to begin on July 1, 2020. The creation of this court does not nullify the existence of any other business court in the state. The Court will have the same terms as the Georgia Supreme Court.
- Nothing in this chapter shall preclude a state or superior court from creating or continuing an existing business court division.
- The court may grant both legal and equitable relief, and decisions from the Court may be appealed to the Court of Appeals and the Supreme Court. Judgments from the Probate Court may be appealed to the statewide business court.
- O.C.G.A. § 15-5A-2 sets the location of the Statewide Business Court in Atlanta OR in Macon-Bibb County. Judges of the Court can also in their discretion hold a hearing or trial by telephone or other electronic means.
- Bench trials are the default, but the Court can also hold jury trials in any county where venue is proper.
- § 15-5A-6 and 7 establish that there shall be one judge and one division. The judge must have 15 years of experience in complex civil litigation and will be appointed by the Governor by July 1 of this year with approval by the Senate and House Judiciary Committees by Dec. 31, 2019
- All judges will serve a 5-year term. They can be reappointed for any number of times.
- The Court will have an e-filing system selected by the Judge.
- Rules for the court will be promulgated by the Judge and an 8-member panel
- The filing fee in the Court is \$3,000 and the e-filing fee will be a max of \$30.00.
- Parties are entitled to Counsel and may appointed an attorney if they cannot hire one.

DUI

HB 471 – The new Implied Consent Notice, was proposed in response to the Elliott decision, replacing the current **O.C.G.A. § 40-5-67.1** notice:

- In direct counter to Elliott, the IC notice will now state that refusals MAY be used against Defendants in court.
- The new notice will also say that one's driver's license WILL be suspended for a minimum period of one year.
- The bill became effective on April 28, 2019.
- Potential issues that came up at the legislature this year and may return next year include:
 - Ignition Interlock. This was proposed this year as a possible option for first-time DUI's. GACDL opposed this issue, because of the prohibitive cost of the ignition interlock devices and other concerns.
 - Pretrial Diversion was also proposed for first-time offenders, and GACDL opposed it as well, primarily because of the arbitrary nature of pre-trial diversion.

Drug Offenses

Drug offenses were not as much of a focus this year as in many years, but these are a few pieces of legislation that passed:

- **HB 551 O.C.G.A. §16-13-121: Kratom**
 - This bill outlawed kratom, a plant-derived opioid substitute sold in convenience stores and gas stations, for possession by anyone under 18. Possession of kratom by anyone under 18 will be a misdemeanor.
 - Anyone who sells kratom to a person under 18 will also be guilty of a misdemeanor.
- **SB 121 O.C.G.A. §16-13-59: Pill Mills**
 - The prescription information reported to the Prescription Drug Monitoring Database shall now be kept for 5 years rather than 2 years in law now.
- **HB 217 O.C.G.A. §16-13-32: Immunity from Liability**
 - A person employed by or acting as an agent of a registered syringe services program shall be immune from civil and criminal liability arising from the possession, distribution, or exchange of hypodermic syringes or needles and related supplies as part of a syringe services program.
 - "Syringe services program" includes syringe services programs for substance abuse and harm reduction; programs for the training and provision of naloxone for opioid overdoses; screening and referral programs for HIV, viral hepatitis, sexually transmitted diseases, and tuberculosis; programs to deliver safer injection supplies; and evidence-based interventions to reduce the negative consequences of drug related behaviors.

Law Enforcement

- HB 325 O.C.G.A. revises O.C.G.A. § 35-8-7.1 by providing that the Records of investigations of law enforcement officers



2019 Legislative Session Review *Continued*

by the Peace Officer Standard and Training Council (POST) will be kept for 30 years after the date that such investigation is deemed concluded.

- This includes, but is not limited to, all records used to investigate complaints against an officer and any polygraph case files containing official polygraph reports.

New Crimes

These are two new crimes created by the Georgia General Assembly this year: **HB 118 - Unlawful Request for Emergency Services Assistance - O.C.G.A. § 16-10-28** and **The “Protection Against False Claims for Emergency Services Act”**

- This is not truly a new crime, but rather an update to crime of Transmitting a False Alarm.
- An Unlawful Request for Emergency Services Assistance occurs when an individual transmits a request for emergency services assistance when there is no reasonable ground for believing the truth of information which forms the basis of such report or warning AND the request has to do with:
 - a purported hazardous device or substance;
 - a purported individual who has threatened harm to themselves or another individual with a deadly weapon;
 - An individual who purportedly has committed a criminal act involving the use or threat of physical force or violence or an act constituting an immediate threat to any person’s life or safety; or
 - The use of any electronic device or software to alter, conceal, or disguise, or attempt to alter, conceal, or disguise,

the location or identity of the person making the request.

- The last section was the onus for the Bill, in an attempt to combat “swatting,” the act of making a false report simply to draw a large number of emergency personnel to a location.
- The new law carries the same penalties as Transmitting a False Alarm, with one change. If serious injury or death occurs as a result of such unlawful request, then it will be charged as a felony, punishable by 1-10 years and a \$5,000 fine.

HB 353 Staging a Motor Vehicle Collision O.C.G.A. § 33-1-9.1

- This crime is defined by staging an accident, or attempting to stage one, with the intent to commit insurance fraud. One commits Staging a Motor Vehicle Collision when they 1. Intentionally cause or attempts to cause a motor vehicle collision, OR 2. when they engage in a scheme to fabricate evidence of a motor vehicle collision that did not occur. The new offense is a felony and carries a sentence of 1-5 years’ imprisonment.
- Aggravated Staging is staging a motor vehicle collision, as above, but when such collision results in the serious personal injury of another. It is a felony punishable by 2-5 years’ imprisonment.



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- Finally, the legislature also created the crime of Making a Fraudulent Claim Related to a Staged Collision. This is when a person makes, or assists in making, a claim for insurance benefits of any type or brings, or assists in bringing, a civil lawsuit against another seeking monetary damages with knowledge that the injuries for which insurance benefits or damages are sought resulted from a staged collision. This offense is punishable by 1-5 years' imprisonment.
- The law became effective on April 25, 2019.

Penal Institutions

HB 345 O.C.G.A. § 42-1-11.3

On a good note, GACDL partners were successful this year in limiting the extent to which restraints and solitary confinement can be used on pregnant women, those in labor or delivery, or women in the immediate (6-week) postpartum period.

- Effective October 1:
 - A pregnant woman shall not be required to squat or cough during a strip search in the second or third trimester;
 - A pregnant woman shall not be required to undergo any vaginal exam unless prescribed a performed by a licensed healthcare professional;
 - A custodian shall not use handcuffs, waist shackles, leg irons, or restraints of any kind on a pregnant woman in the second or third trimester of pregnancy, in labor, in delivery, or in the immediate postpartum period;
 - If wrist handcuffs are used, then the institution must document circumstances of and duration of such shackling within two days for reporting purposes;
 - A woman who is in the immediate postpartum period may only be restrained using wrist handcuffs with her wrists held in front of her body and only if there are compelling grounds to believe that such woman presents: (A) An immediate and serious threat of harm to herself, staff, or others; or (B) A substantial flight risk and cannot be reasonably contained by other means;
 - A pregnant woman or woman who is in the immediate postpartum period shall not be placed in solitary confinement, in administrative segregation, or for medical observation in a solitary confinement setting.
- Further, the bill states that "It is the intent of the General Assembly that a pregnant woman who is temporarily held in a county jail pending transfer to a state penal institution be transferred as expeditiously as possible."

Sex Offenses

Sex offenses were the largest category of changes to the criminal Code this year, continuing the expansion of criminal liability for the "demand side" of prostitution, trafficking, and other crimes.

One bill that was favored by both prosecutors and defense attorneys was HB 282, which deals with the preservation of sexual assault evidence. **HB 282 revised O.C.G.A. § 17-5-71** by establishing a new time period for the preservation of physical evidence, including DNA, in sexual assault cases where the vic-

tim reports the sexual assault. The new time periods are as follows:

1. 30 years from the date of arrest;
2. 7 years from the completion of any sentence for a sexual assault; and
3. If there is no arrest in the case, then the physical evidence will be kept for 50 years.



HB 470 Clarifies DNA Collection for Certain Sex Offenses, as follows:

- DNA will be collected from Felony First Offenders and felons sentenced under Conditional Discharge O.C.G.A. § 35-3-160.
 - DNA is to be collected by Noninvasive means, then analyzed by the GBI and stored in their DNA Data Bank.
- O.C.G.A. § 35-3-165 is also revised to provide for Expungement from the DNA Data Bank for these offenders:
 - The bill states that the GBI shall destroy all samples and remove the profile from the data bank within 30 days when Court sends certified copy of: 1) Dismissal, 2) Acquittal, 3) A notice that all felony charges were reduced to misdemeanors, or 4) That the First Offender/conditional discharge sentence was successfully completed.

HB 281 - Increased Penalties for Pimping & Pandering - O.C.G.A. § 16-6-13

For the offenses in O.C.G.A § 16-6-9 through § 16-6-12:

- § 16-6-11 Pimping and § 16-6-12 Pandering
 - The 1st offense is a high & aggravated misdemeanor.
 - 72 hours minimum custody will now be required.
- For a 2nd or subsequent offense, the crime will be charged as a felony, with a penalty of 1-10 years' imprisonment.

For O.C.G.A § 16-6-9 through § 16-6-12 When involving a person under 16

- All crimes are felonies punishable by 10-30 years and a fine up to \$100,000.

SB 158 - The "Anti-Human Trafficking Protective Response Act"

- The key change to this rather long bill is the use of nuisance to combat sex trafficking at hotels and similar locations.
 - Section I-9: O.C.G.A. § 41-3-1 - Place for Unlawful Sexual Purposes and Evidence of Nuisance.
 - Unlawful purposes now include violations of Code Sections 16-5-46, 16-6-2, 16-6-8, 16-6-9, 16-6-10, 16-6-11, 16-6-12, 16-6-15, 16-6-16 when:
 - (1) Returned in an indictment by a grand jury; OR
 - (2) Filed as an accusation by a prosecuting attorney that results in a conviction, a plea of guilty under first offender, a plea of nolo contendere, adjudication in an accountability court, or a dismissal after successful completion of a pretrial diversion program.

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- Whoever knowingly establishes, owns, or leases a place for the purpose of sexually related charges shall be guilty of maintaining a nuisance.
- Prima facie evidence exists when:
 - (2) above
 - The prosecuting attorney notifies the owner in writing of two or more unrelated incidents of sexually related charges occurring within a 24-month period preceding such notice and, after the receipt of such notice and within 24 months of the first of the incidents resulting in a sexually related charge.

SB 9 Sextortion AND Sexual Assault by Persons with Supervisory or Disciplinary Authority

- This bill is really two bills that were combined into one in the waning days of the 2019 Legislative Session.

Sexual Assault by Persons with Supervisory or Disciplinary Authority, is an effort that began in 2018:

- Sexual contact in this section is defined as contact between the intimate parts of either person for the sexual gratification of either person.
 - Intimate parts are the genital area, groin, inner thighs, buttocks, or breasts.
- Sexually explicit conduct is as defined in O.C.G.A. § 16-12-100.

Section I: O.C.G.A. § 16-6-5.1. Improper Sexual Contact by Employee or Agent in the First Degree is when such employee or agent knowingly engages in sexually explicit conduct with another person whom such employee or agent knows or reasonably should have known is contemporaneously: 1. Enrolled as a student; 2. Under probation, parole, accountability court, or pre-trial diversion supervision; 3. Being detained by or in custody of any law enforcement agency; 4. A patient in or at a hospital; 5. In the custody of a correctional facility, juvenile detention facility, facility providing services to a person with a disability; 6. The subject of actual or purported psychotherapy treatment or counseling; 7. Admitted for care at a sensitive care facility. These are the same categories that are used in the current law. The penalties changed, however.

- New Penalties:
 - 1-25 years, a fine of \$100,000, or both;
 - If the victim is a child under 16 then it is punishable by 25-50 years, \$100,000, or both, and the provisions of O.C.G.A. § 17-10-6.2;
 - If the employee or agent is 14-21, the victim is 14-21, and the employee or agent is no more than 48 months older than the victim, then it is a misdemeanor and is not subject to O.C.G.A. 17-10-6.2.

Improper Sexual Contact by Employee or Agent in the Second Degree occurs when an employee or agent commits the offense of improper sexual contact by employee or agent in the second degree when such employee or agent knowingly engages in sexual contact with any of the same parties above, **excluding sexually explicit conduct**.

- This is a high & aggravated misdemeanor;
- It is not subject to O.C.G.A. 17-10-6.2.
 - Unless it involves a child under age of 16, then the crime is a felony punishable by 1-25 years, a fine of \$25,000, or both.
- The second degree offense contains the same Romeo and Juliet provision as for the First Degree
- A second or subsequent offense is a felony, carrying 1-5 years and subject to O.C.G.A. 17-10-6.2.



Section 2: O.C.G.A. § 16-11-92 “Sextortion”

- This is another new crime created during the 2019 Session.
 - The bill states that no person shall intentionally coerce orally, in writing, or electronically another individual who is more than 18 years of age to distribute any photograph, video, or other image that depicts any individual in a state of nudity or engaged in sexually explicit conduct.
 - The first offense is H & A misdemeanor;
 - The second offense is felony punishable by 1-5 years.

The new law applies to a person within or outside of Georgia who commits a violation involving a Georgia resident, and to Georgia residents who commit these offenses involving anyone inside or outside the state.

Traffic

“CJ’s Law” - SB 1 - O.C.G.A. § 40-6-394 – Clean-up of Serious Injury by Vehicle penalties when a driver leaves the scene of the accident

- Any person who, without malice aforethought, proximately causes an accident that the person knew resulted in bodily harm AND leaves the scene of the accident in violation of subsection (b) of Code Section 40-6-270.
 - A person convicted of violating this subsection shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than ten years.
- There is no violation if the parties involved exchange motor vehicle insurance information prior to leaving the scene.

SB 25 – O.C.G.A. § 40-6-163 - Duties of a Driver when Meeting or Overtaking a School Bus

- Clarifies when a driver must stop when passing or overtaking a school bus:
 - The driver of a vehicle upon a highway with separate roadways or a divided highway, need not stop upon meeting or passing a school bus which is on a separate roadway or on another half of a divided highway, or
 - Upon a controlled access highway when the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross.
- Became law on February 15, 2019

2019 Legislative Session Review *Continued*

Other

HB 424: Various topics include in one bill. The bill became law on April 18, 2019. It has three main parts:

Elder Person Protections

• O.C.G.A. §16-5-23.1 Battery

- This is just a clean-up of language in the Battery statute, in the sections relating to elder persons and those in assisted living facilities.
- Subsection (j) category “65 years of age and older” was removed and (j) now is the former section (k):
 - A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code Section 31-7-12.2, relating to assisted living communities, or Code Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173, relating to home health care and hospices, who commits the offense of battery against a person who is admitted to or receiving services from such facility, person, or entity
- Penalty is 1-5 years, a fine of not more than \$2,000.00, or both.

• Exploitation under O.C.G.A. § 16-5-100 protection of elder persons

- Now includes the illegal taking of resources belonging to a disabled adult or elder person when access to the resources was obtained due to the disabled adult’s or elder person’s mental or physical incapacity.

• Evidence of Past Sexual Behavior, O.C.G.A. § 24-4-412

- This evidence is now admissible if it provides:
 - Evidence of specific instances of a victim’s or complaining witness’s sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;
 - Evidence of specific instances of a victim’s or complaining witness’s sexual behavior with respect to the defendant if

it supports an inference that the accused could have reasonably believed that the complaining witness con-

sented to the conduct complained of in the prosecution;

- Evidence of specific instances of a victim’s or complaining witness’s sexual behavior with respect to the defendant or another person if offered by the prosecutor; and
- Evidence whose exclusion would violate the defendant’s constitutional rights.
- The procedure for offering this evidence in court is also in the bill:
 - If a party intends to offer evidence under subsection (b), the party must:
 - File a motion that specifically describes the evidence and states the purpose for which it is to be offered; and
 - Do so at least three days before trial unless the court, for good cause, sets a different date; and
 - The court then must conduct an in-camera hearing to examine the merits of the motion to determine its admission.



Criminal Gang Activity as defined in O.C.G.A. § 16-15-3

- The bill provides that the term ‘Criminal gang activity’ shall also mean the commission, attempted commission, conspiracy to commit, or the solicitation, coercion, or intimidation of another person to commit any offense defined in Code Section 16-5-46, Trafficking Persons for Labor Servitude or Sexual Servitude, 16-6-10, Keeping a Place of Prostitution, 16-6-11, Pimping, and 16-6-12, Pandering.

UPDATE: VETO

SB 15 O.C.G.A. § 20-2-1185 - School Safety Planning

- This bill required every public and private school to have a site assessment from an entity approved by GEMA by January 1, 2021.
- The highlight of the bill was a mandatory School Safety Plan developed from the site assessment. The School Safety Plan was to be updated annually, and was to address school safety in school zones, at functions, and on transportation. In addition, drills were mandatory, including one at least annually addressing a mass casualty incident.
- There was also to be designated a School Safety Coordinator, and it was unclear what the qualifications and background of this individual would be.
- “Reasonable suspicion” of any violent threat was to be reported to local law enforcement, who would subsequently report to GBI.
- GACDL partners worked hard during and after session to limit the effect of the bill and were successful in getting the mandatory reporting limited to violent crimes only.



2019 Legislative Session Review *Continued*

- Governor Kemp vetoed it on the basis that it took local control from the schools.

2020 Session

These are a few of the bills dropped after Crossover Day, so we will see them again during the 2020 Session.

HB 624 - This bill, the “Second Chance Act” by Rep. Davis of the 87th District, would amend O.C.G.A. § 35-3-37 by providing that when an individual is convicted a felony, misdemeanor, or a series of felonies or misdemeanors arising from a single incident, successfully completes the terms of his or her sentence, and is not convicted of another felony or misdemeanor offense, excluding any nonserious traffic offense, for at least ten years from the date of completion of the sentence, the criminal history record of the individual’s conviction shall be automatically restricted. The Bill also carves out exceptions, crimes for which record restriction will not be available.

HB 714 sponsored by Rep. Nguyen of the 89th, would amend O.C.G.A. § 42-5-3. It provides for limits on the penalties available to correctional facilities. It provides for both administrative and substantive infractions; sets maximum periods of consecutive and total time an incarcerated person can be subject to restrictive housing; provides limitations for the use of restrictive housing; requires that incarcerated persons subject to restrictive

housings receive certain services, and limits the release of incarcerated persons directly from restrictive housing to the community.

SB 272 is a bill that amends O.C.G.A. § 16-13-2 to prohibit the sale to and by minors of drug products containing dextromethorphan. A similar bill was proposed this session but failed in committee.



Kendra is the owner of Kendra Mitchell Law, LLC, where she practices criminal and family law. Before starting her own firm in January of this year, she was a partner in the firm of Khan, Sanchez, & Mitchell. Kendra served as a Policy Analyst for Governor Sonny Perdue and then as a Budget Analyst for the Georgia General Assembly, House Budget and Research Office before returning to school at Georgia State University College of Law in 2013. She also served as the GACDL Lobbyist for the 2018 and 2019 Sessions of the Georgia General Assembly. You can reach out to her at kendra@ksmlawoffices.com.

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Please contact Ashleigh Merchant

(ashleigh@merchantlawfirm.com)

or Jill Travis

(jill@gacdl.org)

**with your suggestions
for legislature changes.**

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Four Seminars in 113 Days

+ The Legislative Session

+ Active JNC

+ The Learning Curve

= *One Grateful Executive Director!*

- by Jill Travis, *Executive Director GACDL*

Yes, I have read Michael Kahn's article on page one and I am looking to improve my well-being by focusing on the many exciting things happening here at GACDL and letting you know how grateful I am for everyone who makes this the successful association that it is.

1. GACDL has a tremendous asset named **Brandie Martinez Bedard**. Besides



her technological prowess and ability to help achieve any goal, she is smart, dependable, organized, and fun. For many years I have been on the other side of the GACDL desk, working as a volunteer in various capacities, and coming inside of this association has proven to be more challenging than I expected. I am grateful for Brandie teaching me the ropes and allowing GACDL to grow and change in ways that we both think is best for its future.

2. **Laura Hogue**, the officers, and the **Long-Range Planning Committee** have been on some of the same learning curve with me. They have been patient, kind, understanding, and most importantly, supportive. Laura has an ambitious task list during her presiden-



tial year and her tenacity shines bright. I recognize the monumental contributions each officer makes to GACDL and the tremendous time toll it takes on your practice and life. I am grateful for your confidence in my ability to help lead GACDL and for all that you do to support me as your Executive Director.

3. Seminars, seminars, seminars! Seriously, had it not been for **Suesan Miller** and the fantastic program directors **Suzanne Tevis** and **Brian Tevis** (Winter), **Bubba Head** and **Suesan Miller**



(DUI), **Manal Chehimi** and **Keith Fitzgerald** (Spring), and **Charles Mittelstadt** and **Lawrence Zimmerman** (Digital Evidence/DEJ), I'm not sure how I could have survived the rigorous schedule of events. You read the headline correctly, four seminars in 113 days! Honestly, at this very moment, I am grateful that those seminars are in my rear-view mirror! I learned



so much – not only from the phenomenal presentations but also all the nuts and bolts of seminar planning. Previously, my role has been as an attendee at a seminar or managing the Bill Daniel Trial Advocacy Program, so I have come to appreciate the myriad details that are essential for pulling off these large seminars. If you are interested in speaking at a future seminar, please reach out to Suesan. She and her committee, including Vice-Chair, **Ryan Swingle**, do an amazing job of vetting and finding speakers. A few of the images that left an imprint with me since the last publication of TGD include: **Ben Sessions's** standing room only session on DUI Motions; more than

Continued on page 14



One Grateful Executive Director *Continued*



150 people singing Happy Birthday to **Bubba Head**; **Suesan Miller** managing the controlled drinking lab so that Cory Yager's live demo on HGN went off with splendidly controlled drunkenness; the fabulous beach venue and perfect weather that kept our Spring Seminar attendees happy; the amazing scores Judges Self, Veal, and Palmer received for their ethics and profes-



sionalism presentations; the inspirational effect of **Drew Findling's** powerful speech; and the overwhelming sense that anyone who was not attending the Digital Evidence seminar was doing a disservice to their current and future clients. Brandie and I hope to be able to bring the DE seminar to our membership via a webinar soon.



4. The legislative session felt very different being an outside lobbyist rather than an inside drafter. I greatly appreciate Legislative Chair **Ashleigh Merchant's** wisdom and guidance in the legislative dance. **Scott Key**, **Jason Sheffield**, and **Russell Gabriel** took time to come help me and Kendra Mitchell at the Capitol on various issues. I am thankful that

I had so many well-formed relationships with legislators, staff, and other lobbyists—all which worked to GACDL's advantage. GACDL was able to make changes to proposed legislation AND be involved in positive legislation (e.g., HB 478, child abuse registry). As Kendra mentions in her article, GACDL finally has a seat at the table. I'm looking forward to making more inroads in 2020, with more GACDL volunteer help.

5. Governor Kemp's Judicial Nominations Commission has looked to fill judgeships in the Macon, Stone Mountain, Coweta, Fulton, Gwinnett, and Cherokee Judicial Circuits in the past few months. With the supreme guidance of Judicial Recommendation



Chair **Erin Gerstenzang**, GACDL Area Vice Presidents (or appointees from the appropriate district) have risen to the occasion, vetting the various applicants

and providing feedback to the JNC. Many thanks to **Erin**, **Megan Tuttle**, **Andrew Lynch**, **Michael Granims**, **Manal Chehimi**, and **Walt Britt** for spearheading the charge. It is so important for all Area VPs to have their committee ready to receive judicial applications as there is always a short window for these appointments. I really appreciate the volunteerism that goes along with this chore. Of course, the return is having a meaningful impact on who is recommended for a judgeship in your area, and we can all be thankful when that works out!

6. GACDL members are amazing! We are here for one another in crisis and in celebration. I am grateful that **Mike Shapiro** is the Listserv Administrator



Extraordinaire and **Zach North** is working on updating our motions and brief library as chair of the Technology Committee. Zach is also the member who teaches members how to use the GACDL app at each of the seminars. If you have not tried the app, you are missing out!

One Grateful Executive Director *Continued*

7. We rely on our Exhibitors for seminar sponsorship help, and this year three new sponsors have joined us thus far: A 2nd Chance Bail Bonds, Avalon Catering, and Paraben, Inc. LEXIS/NEXIS and Atlanta Custom Tailors remain faithful and supportive exhibitors. I am happy to recognize these companies and encourage members to support the entities that help to support GACDL.
8. ALL OF YOU! I am grateful that you attend seminars, sponsor members to attend seminars, help each other on the listserv, give GACDL High \$5s and other financial support, share motions and strategies, and engage each other in courtrooms, ballrooms, and grocery stores. We are surely stronger together!
9. Few of you know Alan Travis, but I am grateful that he is my chief cheerleader and the face and mind that can turn my frown into a smile after a long day of work. In February, we faced the challenge of losing our beloved Oscar, our



nearly 15-year-old Portuguese Water Dog, and it is moments like that when a job feels meaningless and the support of "your person" makes all the difference in the world.

None of us make it through life alone. Our families, the ones that we are born into, and the ones we create through marriage, friendships, and work, are essential

to our well-being. I hope you will join your GACDL family at Brasstown Valley Resort for the Fall Seminar on 8-9 November. Let's visit with old friends and make some new ones too!



This is Jill Travis's first year as Executive Director. She is GACDL's fourth executive director. Jill's experience as a private and public criminal defense attorney,

faculty member and program director of the Bill Daniel Trial Advocacy Program, and 18 years of legislative drafting helps shape her commitment to bringing quality CLE programs to criminal defense attorneys. Her goal is for GACDL to provide the best CLE programs available anywhere for criminal defense lawyers. Jill and her husband, Alan, live in the Inman Park neighborhood of Atlanta.

The Georgia Association of Criminal Defense Lawyers proudly announces the 19th Annual Bill Daniel Trial Advocacy Program

11-14 September 2019 • Georgia Tech Conference Center • Atlanta, Georgia



This prestigious program will accept 30 GACDL members with limited trial experience. Program cost includes: trial skills training with a nationally recognized group of faculty, lodging, meals, social events, and an opportunity to earn approximately 22 hours of CLE credits. (Entire program cost is \$1,500 per student. GCDLEF and GACDL scholarships will fund a portion of the costs for each student and student costs will be explained in the application.)

*This popular program is by application and acceptance only. Apply early! **Application coming soon!***

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