

DELAYED DISCLOSURE OF CHILD SEXUAL ABUSE^{1, 2, 3}
(WHERE STATE INTRODUCES EXPERT TESTIMONY)

Dr. [_____]’s testimony is offered only to explain his/her opinion that delayed complaints of sexual abuse are common, and not necessarily inconsistent with sexual abuse.⁴ The weight to be given to Dr. [_____]’s testimony is entirely up to you. You may give it great weight, or slight weight, or you may, in your discretion, reject it entirely.

Regardless of the weight you give to Dr. [_____]’s testimony, if any, you may not consider this testimony as proof that sexual abuse occurred. You also may not consider the doctor’s testimony as proof that [complaining witness]’s complaint was truthful.⁵

You may only consider Dr. [_____]’s testimony, if you accept it, for the principle that delayed disclosure commonly occurs among victims of child sexual abuse and is not necessarily inconsistent with sexual abuse.⁶ This testimony about delayed disclosure, if you choose to give it any weight, may only be considered in assessing the complaining witness’s⁷ credibility and for no other purpose.⁸ You may not consider the expert testimony as in any way proving that [defendant] committed, or did not commit, any particular act of sexual abuse. The ultimate

¹ In *State v. J.L.G.*, 234 N.J. 265, 272 (2018), the Supreme Court of New Jersey held “that expert testimony about CSAAS in general, and its component behaviors other than delayed disclosure, may no longer be admitted at criminal trials.” Further, “when the other prongs of Rule 702 are met, the State may present expert evidence on delayed disclosure among victims of child sexual abuse -- and only that evidence -- to a jury. Trial judges must exercise care to limit the testimony and bar any reference to ‘CSAAS,’ an abuse ‘syndrome,’ other CSAAS ‘behaviors’ aside from delayed disclosure, or causes for delayed disclosure. *Id.* at 303. The testimony should not stray from explaining that delayed disclosure commonly occurs among victims of child sexual abuse and offering a basis for that conclusion.” *Ibid.*

² This charge should be given in conjunction with the Expert Testimony charge, where applicable, both before the expert witness testifies and as part of the Court’s Criminal Final Charge.

³ Delayed disclosure testimony is not admissible if the child has offered, or can offer, a “rational explanation” for the delayed disclosure. *J.L.G.*, 234 N.J. at 305. The child’s “rational explanation” need not be given on the witness stand - any statement the child makes “during the pretrial investigative phase” is enough to bar the testimony. *Ibid.* “Whether a victim’s delayed disclosure is beyond the ken of the average juror will depend on the facts of the case. *Ibid.* If a child witness cannot offer a rational explanation for the delay in disclosing abuse -- which may happen during the pretrial investigative phase or on the witness stand -- expert evidence may be admitted to help the jury understand the child’s behavior. *Ibid.* In this context, we do not accept that jurors can interpret and understand an explanation that is not offered.” *Ibid.*

⁴ “Jury instructions should explain that delay is not necessarily inconsistent with abuse.” *J.L.G.*, 234 N.J. at 304.

⁵ “Evidence about delay is not proof of abuse; nor is it proof that the victim testified truthfully.” *J.L.G.*, 234 N.J. at 304.

⁶ “Jury instructions should explain that delay is not necessarily inconsistent with abuse.” *J.L.G.*, 234 N.J. at 304.

⁷ *State v. Cusumano*, 369 N.J. Super. 305, 311 n.1 (App. Div. 2004).

⁸ Evidence about delay “can dispel misconceptions about delayed reporting and may be considered in assessing a witness’s credibility.” *J.L.G.*, 234 N.J. at 304.

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determination of whether or not the State has proven defendant's guilt beyond a reasonable doubt is to be made only by the jury.