



Experts can be disqualified on grounds other than those enumerated. Rule 702(g).

Showings must be made by the greater weight of the evidence (preponderance of proof).

State v. McGrady, 368 N.C. 880 (2016).



Rule 403's probative value vs. unfair prejudice balancing test still applies.

State v. King, 366 N.C. 68 (2012).

Degree of Certainty

May testify to degree of belief. Absolute certainty is not required. *In re C.M.*, 198 N.C. App. 53, 60 (2009) (conclusions were "likely" but not certain).

Goes to weight and credibility, challengeable by cross or competing expert. *State v. Babich*, 252 N.C. App. 165 (2017).

Testimony that is too speculative or equivocal does not assist the trier of fact. *State v. Clark*, 324 N.C. 146 (1989).

Identity of perpetrator

Cannot testify that a certain person is the perpetrator or is guilty (but can, if hearsay exception applies, testify to identity as reported to expert). *State v. Figured*, 116 N.C. App. 1 (1994).

Physical injuries (causes)

May opine about the cause of injuries. *State v. Goforth*, 170 N.C. App. 584 (2005) (doctor testified that damaged hymenal tissues was the result of penetration).

Delayed disclosure

May testify that child victims often delay in disclosing abuse (but may not opine about why *this* child delayed). *State v. Shore*, 258 N.C. App. 660 (2018).

Legal conclusions

Ultimate issue? Yes. Legal conclusion? No. E.g., describing size of a penetrating object but not the conclusion that rape occurred. *State v. Smith*, 315 N.C. 76 (1985).

Credibility

Cannot opine on credibility (e.g., that child is telling the truth). *State v. Brigman*, 178 N.C. App. 78 (2006).

Opposing party can open the door. *State v. Baymon*, 336 N.C. 748 (1994) (defendant's cross suggested child was coached).

May testify that children generally do not lie about sexual abuse. *State v. Worley*, 268 N.C. App. 300 (2019).

**Expert testimony
about children****Suggestibility of children**

Permitted. *State v. Walston*, 244 N.C. App. 299 (2015) (testified to the general possibility of the alteration or creation of memories through questioning or suggestive acts).

Can provide a profile of abused children but cannot opine on credibility. *State v. Carter*, 216 N.C. App. 453 (2011) (that child was "dramatic" and "manipulative" was impermissible comment on credibility).

Opining on abuse with insufficient evidence of physical injuries

Prohibited. See *State v. Stancil*, 355 N.C. 266 (2002) (improper testimony that child was a victim of sexual abuse when based on child exams and interview of psychologist, but no physical evidence was observed).

Pain, on its own, is insufficient evidence of physical injury. *State v. Delsanto*, 172 N.C. App. 42 (2005) (pain is subjective and unverifiable).

May testify that a lack of physical evidence does not necessarily mean that abuse did not occur. See, e.g., *State v. Jennings*, 209 N.C. App. 329 (2011) (any possible tear in hymen would have healed by time of examination).

Opinion that abuse occurred may not be based on a lack of physical injuries. See, e.g., *State v. Davis*, 265 N.C. App. 512 (2019) (error to allow testimony that absence of physical indicators is consistent with someone reporting a sexual assault).

Characteristics of abused children

Testimony OK by qualified experts. *State v. Davis*, 368 N.C. 794 (2016).

Expert need not have examined child. *State v. Ragland*, 226 N.C. App. 547 (2013). Opinion may be based on third party information and records. *State v. McCall*, 162 N.C. App. 64 (2004). A lack of personal interaction may, however, reduce expert's usefulness. *In re K.G.W.*, 250 N.C. App. 62 (2016).

Testimony can corroborate/explain patterns of abused children but cannot be stand-alone evidence of abuse. *State v. Kelly*, 118 N.C. App. 589 (1995).

May not use to opine on credibility, or, in the absence of physical evidence, whether sexual abuse occurred. *State v. Frady*, 228 N.C. App. 682 (2013) (expert did not address characteristics of sexually abused children nor whether child exhibited symptoms consistent with those characteristics).