



# TEXAS SEX CRIMES GUIDE

*Legal Defense for the Accused*

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Are you scared that your entire life is going to be ruined because you've been charged with a sex crimes charges can result in serious penalties, including jail time and lifetime registry as a sex offender. If you are forced to register as a sex offender, you may be unable to work at a job or live in certain neighborhoods. At Rush &

Gransee, L.C., we have significant experience in the investigation of sex crimes and assault cases and work aggressively to defend the rights of our clients.

Our sex crimes defense lawyers are aggressive in the investigation of your case and will assert your rights in and out of court. To prevent jail time and lifetime registry as a sex offender, contact our lawyers today for a consultation on your case and all of your potential defenses.

Even before charges are filed against you, law enforcement officials, including police officers and the prosecution will be building a case against you. If you have been accused of a sex crime, you need immediate attention to your case. Our attorneys will initiate an immediate investigation to assert your rights.

Our lawyers handle the following sex crimes and assault cases:

- » Sexual assault
- » Indecent exposure
- » Indecency charges
- » Statutory rape
- » Rape
- » Pornography and Internet crimes

Charging a defendant with a sex crime often involves proving subjective facts. Our criminal law attorneys are experienced in the complex nature of sex crimes allegations and know how to effectively challenge the prosecution's case. For example, in an indecent exposure case, the DA must prove that the act was done to gratify someone sexually. If you have been accused of indecent exposure, our lawyers will take all necessary steps to challenge the evidence and

accusations of the DA to protect your rights, keep you out of jail, and prevent sex offender registry.

## SEX OFFENDER REGISTRATION

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Sex offender registration may be for a lifetime. It requires that the accused sex offender report to the police and report any relocation or move. You will be listed on the Internet and may have to live far away from children, schools, or your work. For many sex offender registrants, it is very difficult to secure gainful employment. If you are under investigation for a sex crime or believe that you may be charged with a sex crime, it is never too early to contact a lawyer regarding your rights and your case.

Contact Rush & Gransee, L.C., today for an initial consultation or case evaluation with an experienced San Antonio sex crime lawyer. Our criminal defense team offers aggressive defense to individuals charged with sex crimes, including, sexual assault, Internet sex crimes or pornography charges, and indecent exposure.

## CHILD PORNOGRAPHY LAWYER

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If you believe that you are being investigated for possession of child pornography you need to call a San Antonio criminal defense attorney that has defended individuals charged with similar crimes.

Often the detectives will get a search warrant to search your phone, computers and home for images of child pornography. Even material that you believe has been deleted from your computer will likely be able to be recovered by a computer specialist trained in searching for prohibited items. Occasionally, a computer repair facilities technician will come across images believed to be child pornography while repairing a computer this often sets off a chain of events that includes a call to the police which results in an investigation.



It is possible to be charged in both a Texas State Court and Federal Court for the same conduct. It is even possible to have charges filed and pending in State and federal Court simultaneously. In most cases a defendant would be in a better position if his or her case was filed only in a Texas State Court and not in Federal Court. Child Pornography cases filed in State Court generally result in better outcomes for defendants than cases filed in Federal Court. Also, possession of child pornography cases filed in State Court are usually not investigated as fully as those filed in Federal Court. Pushing the prosecutors all the way to trial in a Texas State Court, such as a Bexar County District Court, will not normally result in a substantially harsher sentence compared to a plea bargain. While in Federal Court if a defendant maintains his innocence and is found guilty after a trial it is likely the sentence will be substantially worse than if a plea bargain had been entered. The Federal System may give a defendant a sentence reduction if the defendant “accepts responsibility”. It is therefore very important to fully investigate all facts, defenses and possible innocent explanations when facing a Federal Charge of Possession of Child Pornography. A decision will need to be made whether to go to trial or plea and, also whether to disclose to the prosecutor any facts that may or will create a reasonable doubt. Sometimes it is best to withhold facts from the prosecution that create a reasonable doubt and only share them with a jury of your peers.

## CHILD PORNOGRAPHY POSSESSION

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The FBI is actively looking for individuals that may possess or distribute child pornography and they have very sophisticated methods to locate and identify suspects. Therefore, most cases involving allegations of child pornography were investigated by the FBI and are filed in Federal Court. Occasionally cases are filed in Texas State Court such as when the pornography was discovered by the local police or investigators or when the quantity of images is small, or it is believed the defendant acquired the image inadvertently. The Bexar County sheriff has deputies and the San Antonio Police department has Police officers looking for people that possess or distribute child pornography.

Under Texas State law (Texas Penal Code 43.26) it is a felony crime to possess or promote child pornography. For the purposes of child pornography, a child is a person younger than 18. Promotion of child pornography is more serious than mere possession. Promotion is generally the distribution, passing along, or circulation of the material. Promotion of child pornography can be presumed if a defendant has six or more identical visual depictions. There are a few limited defenses such as when the defendant and the depicted child are within two years of age of each other; when reasonable steps were taken to destroy the material within an appropriate period, or in limited circumstances if possessed by school administrators as part of their duties.

Federal law (18 U.S.C. section 2252(a)) prohibits knowingly transporting, shipping, or receiving any visual depiction of a minor engaged in sexually explicit conduct. Receipt and/or possession of child pornography (18 U.S.C. 2252(A), is generally less serious than the distribution of child pornography.

Federal law, Title 18 United States Code, Section 2256(8) describes the offense of possession of child pornography where the image is of a prepubescent minor or a minor less than 12 years of age.

A growing phenomenon on the internet is peer to peer file sharing (also known as P2P, P-to-P, P2P communications, and peer to peer communication). The P2P file sharing is available to internet users through specific software. Some P2P software is suspect because various police agencies have seen it used frequently by people searching for prohibited items. One file sharing network that has been investigated is the “Gnutella Network” and another is “Morpheus”. Law enforcement will search the various networks matching keywords and log their results. Through this tedious task they identify internet protocol (IP) addresses that are likely to have images of child pornography.

Computers are therefore used to find, view and locate child pornography. It is not necessary that the image be stored or retained to violate the State and Federal Laws. Even if a file or image is “deleted” it is likely still on the computer. Even after deletion the image can probably be recovered either from the computer’s hard drive or its cache memory. Thus, the ability of an investigator to retrieve images from a computer is more dependent on a user’s operating system than on when an image was deleted. If a file was only momentarily possessed and

was deleted upon finding its content a crime should not be asserted by any investigating agency.

Some of the things that the FBI or Detectives may consider is: how often the suspect accesses the images; did the defendant store the images in identified files; and what search terms were used to locate or access the child pornography. The investigator for the prosecution is likely to run a scan of a phone's and computer's hard drive and cache memory. They will be initially looking for "known child pornography". Their initial scan may be for exact matches of images that have been routinely uncovered and identified as child pornography. Many images have been around long enough that the FBI or other state and federal investigative agencies have identified the child pictured and know the child's name and exact age when the picture was taken. If some of the pictures appear to be of a minor, but it is not obvious that it is a minor, the prosecutor may employ an expert such as a pediatrician to opine as to the age of the person in the picture.

A San Antonio child pornography lawyer may hire a forensic computer expert when representing someone that has been charged with possession of child pornography. It is possible that the images were accessed or placed on the electronic device without the knowledge of the defendant. To evaluate that theory, it is important to determine whether someone else had access to the device when any of the images were accessed, searched, downloaded, or stored. Also, are the images arguably not of a child or not sexual in nature? A complete background of the defendant needs to be taken so that any mitigating factors can be brought to the attention of prosecutors and judge if necessary. If a computer, home, or phone were searched without a warrant it will be necessary to determine if a motion to suppress alleging an illegal or unconstitutional search may result in the case being thrown-out. Alternatively, if a warrant was obtained by the police or investigators the warrant should be examined for irregularities and challenged if it may result in some of the evidence being tossed out.

# EXPERIENCED SAN ANTONIO CHILD PORNOGRAPHY LAWYER FIGHT FOR YOU

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If someone is convicted of possession, promotion or distribution of child pornography it will be necessary to register as a sex offender for the rest of their life. Registration will affect where someone can live, shop, dine and socialize. Failure to register or missing a registration requirement is a new felony offense that can result in being sentenced to prison.

Give our San Antonio child pornography lawyer at Rush & Gransee, L.C. a call as soon as you believe you may be investigated for possession of child pornography. We offer free consultations.



## FREQUENTLY ASKED SEX CRIMES QUESTIONS

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### *What Should I Know About Sexual Assault Charges?*

In Texas, it's important to know that sexual assault is one of the most serious crimes. One of the reasons is because if you're convicted of this offense, you'll have to report as a sex offender for your whole life. Very often, these cases are defensible because it's an issue of consent. It's important to talk to a lawyer first. Some people are under the misconception that intoxication is a defense. If you go talk to an officer and say, "Well, I was intoxicated; both of us were intoxicated," that's not a defense. You must be careful when you talk to somebody about this offense, and it's advisable not to talk to anybody about it until you talk to a lawyer.

## *Do I Need a Lawyer for Aggravated Sexual Assault?*

If you're charged with aggravated sexual assault, it's important to hire an experienced lawyer, who has handled these cases in the past, and will put the time in defending you on this case. It's important in these cases to view the scene of the alleged incident, if possible. It's important to talk to witnesses, get all the background, and find out when the person made the statement. All those things play a role in determining whether or not your case is defensible, and can be won.

The case requires an all-out defense because if you're convicted for aggravated sexual assault, you'll have to report as a sex offender for your entire life, and it makes finding a job impossible. It's important that you put together an all-out defense in defending a charge of aggravated sexual assault.

## *Why Can't I Use Intoxication as Defense for Sexual Offenses?*

Intoxication is not a defense to sex crimes. People must be very careful to not allege that they were intoxicated, that they don't remember the offenses, or both the parties were intoxicated. That can be used against you. Think of how it comes out. If it comes down to discussion of who to believe, the complainant or the defendant, if the defendant has stated that he was intoxicated and doesn't remember the offense, it's very hard to defend that type of case.

## *What Can I Do If I'm Arrested for Hiring a Prostitute?*

Hiring a prostitute in Texas is a Class B misdemeanor, so it's not a high-level crime. However, it has ramifications because of the sexual nature and overall sense of the community. In most of those cases, there are friends, family, and spouses, that could be affected with a charge and with any conviction. It's important in these cases to handle it discretely. You want to get a good result including dismissal, or pretrial diversion to get you out of the criminal system. Because it is a Class B misdemeanor, it's handled by the lower level



prosecutors, and I think there's a decent chance that you will be able to resolve the case in your favor.

## *Can I Get Out of a Conviction of Public Lewdness?*

Public lewdness is considered a sex crime. In Texas, public lewdness is one of those offenses that can be almost innocent behavior. Events that could be public lewdness would be if two people go off and think they're totally hidden, but it's a public place, and they commit some sort of sex act. Or it can be someone in a private place being reckless about the possibility of somebody being present who would be offended. The fact is, it's easy to get charged with public lewdness, but a lot of times if you put up a fight to this type of charge, the DA will work something out that you can avoid a conviction on this case.

## *What Constitutes Sexual Assault and Indecency with a Child?*

Indecency with a child can involve behavior such as touching breasts over the clothes. It can involve touching over clothes with no skin-to-skin contact even. What it does require is that it be done with a sexual intent. Sometimes that's the issue – is it done with a sexual intent or not? You must be careful because indecency with a child doesn't require any overt sexual acts, such as penetration of a sexual organ or the type of things that people would normally think of as a sexual act.

The sexual assault does not require the state to prove any sexual intent, but requires that in most cases, there be some penetration of some organ. Both offenses require you, if you're convicted, to register as a sex offender for your entire life, so it's really important to avoid convictions on these offenses.



## *What Happens If I'm Arrested for Indecency with a Child?*

If you've been charged with indecency with a child in Texas, you need to get a lawyer right away. There are a few things that are likely to happen. One is that the police department or a detective is likely to contact you, to ask you to come in to give your side of the story. You need to talk to a lawyer before you make your commitment on that because the one thing that you don't want to do is tell the officer that you're not going to come in and you're invoking your right to remain silent, because that could be used against you. What you need to do is tell the officer that you need to talk to a lawyer and you'll get back to him. In most cases, after I consult with somebody, I contact the officer and tell them that you're not going to come in and talk. I think that in most cases you can expect that you'll end up getting charged and you need to fight the case.

Indecency with a child in Texas can involve even touching over the clothes. That's where it is incumbent to get a lawyer because the offense isn't necessarily a sexual assault; it is indecency with a child. It could even be an indecent exposure when a child is present. It could be touching over the clothes of a person's breasts. You have to be careful when you talk to a lawyer because there could be conduct that a lot of people think is innocent or not criminal in nature.

I had a case one time where an officer asked somebody, if it was possible that when he went in to kiss his stepchild good night that night, he may have touched the breast over the clothes. The person said that it was possible. He basically potentially admitted to part of the offense, so you have to be careful. Before you talk to an officer, you need to talk to a lawyer and let the lawyer advise you of whether you should go in and meet with them.

## *What Are the Defenses for Indecency with a Child?*

Indecency with a child allows for a couple defenses that are what we call affirmative defenses, that if you prove, you get off the case. One is the called the Romeo and Juliet defense. The Romeo and Juliet defense is where there is three years or less age difference between the two people, and of course it has to be consensual. That's one of the defenses that are available. There are a few

others that take some more elaborate explanation, but there are defenses that are available. The one thing that people have to be careful about is that intoxication is not a defense. Very often, that is alleged. People say, "I was intoxicated and I do not remember." That is not a defense; in fact, that hurts your defense.



## *How Can We Fight an Indecent Exposure Case?*

Indecent exposure cases run the gamut of police officers in a sting operation to a public person reporting an indecent exposure incident. Cases involving police officers are much more difficult to defend than the person that just reports an incident. Very often, the police officers have cameras hidden in the bill of their caps, or on their lapel, and the

incident is filmed. However, an officer can entice somebody, can make somebody do something that they normally wouldn't have done, and that can be a defense of issue.

If it's a layperson that reports an incident, then you have a lot of different issues. One of which is always in play is just the identity. It's not uncommon for these cases to take a period of time to make it through the courts. Very often, the ID of the person is very weak and very suspect, so very often they are defensible.

## *Is Indecent Exposure a Serious Charge?*

If you've been charged with indecent exposure, it's important to get a lawyer to represent you that understands the charge and understands the ramifications. For indecent exposure, if you're convicted or placed on deferred one time for that offense, you don't have to register as a sex offender. Down the road, if you're ever charged for a second indecent exposure, then you must register as a sex offender for 10 years. It's important to avoid that initial charge.

Indecent exposure can occur when someone exposes their genitalia in public or in a situation where someone is likely to be offended by that. A lot of times, it's an issue of ID. It's an issue of whether the person was reckless. It's a multi-prong case; the definition is complicated for the offense, so it does leave room

for a defense. We usually look at the case, after collecting all the evidence, and we make a decision. If we can't fight the case, can we avoid a conviction and get a deferred adjudication? The problem with indecent exposure, again, is that anytime down the road if you get a second charge, you have the potential to register as a sex offender.

## *Do I Need to Register as a Sex Offender for Indecent Exposure?*

If someone is convicted of indecent exposure one time, you don't have to register as a sex offender. However, if you are charged a second time and are convicted a second time, you do have to register as a sex offender for 10 years. It's important, on indecent exposures, to try to avoid any conviction, especially on a second charge because on a second, that sex offender registration for 10 years will destroy most people's lives.

## *What Happens If I'm Arrested for an Improper Relationship Between Teacher and Student?*

If you're charged with improper relationship between an educator and a student, it's important that you talk to a lawyer right away. The first thing that's going to happen is that the school is going to want to talk to you, a detective is going to want to talk to you, and you need the advice of a lawyer of whether you should talk to them. If you decide, even after talking to a lawyer, to talk to either the detective or someone at the school, it's important that you know what to avoid and how to answer some questions. For some questions, there's virtually no good answer to, so you need to be aware that if you go in and talk to them without the advice of a lawyer, as it's very risky.

## *What is Invasive Visual Recording?*

Invasive visual recording is a crime. That can be a lot of different situations that might be a crime. The obvious ones are things where people make a visual recording of somebody in a changing room. It could also be when somebody at a swim pool, records girls wearing string bikinis or thongs. It is possible to be making that recording and be charged. If you are, you need to hire a

lawyer because the fact situations will determine whether or not you may have committed a crime.

## *Can I Be Arrested for Unlawful Disclosure of Intimate Visual Material?*

Unlawful disclosure of intimate material is typically the offense of the boyfriend disclosing some picture or videos made of a girlfriend. They call it “sex blackmail.” That’s a crime. Usually what happens is that the victim is told by some friends that they saw on Facebook, or it was disclosed to them that they saw it on somebody else’s phone or something along those lines. If that’s the case, you need to hire a lawyer and the lawyer needs to investigate. Very often, those disclosures can be made inadvertently by mistake and very often, it’s not even intimate material. You just have to be careful with that offense. Don’t talk to people. Don’t admit to an offense. You need to first talk to a lawyer.

## CALL OUR DEFENSE LAWYERS TODAY

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Contact Rush & Gransee, L.C., today for an initial consultation or case evaluation with an experienced San Antonio, Texas, lawyer. Our criminal defense team offers aggressive defense to individuals charged with sex crimes, including, sexual assault, Internet sex crimes or pornography charges, and indecent exposure.



## ABOUT THE AUTHOR

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Kurt Gransee is a founding member of Rush & Gransee, L.C. Mr. Gransee started his legal career at a large defense firm where his legal skills were honed. Then Mr. Gransee joined the Bexar county District Attorney’s Office where he quickly rose through the ranks after successfully trying a variety

of criminal cases. Kurt Gransee has taken the skills he developed and created one of the pre-eminent law firms in San Antonio.

Mr. Gransee primarily limits his current practice to those individuals charged with State or Federal crimes. Mr. Gransee has a reputation of going the extra mile to get his client the justice they deserve. We have used to our advantage the foremost experts in accident reconstruction, medicine, computer forensics and psychology. By using the appropriate experts in a criminal case our clients can get justice, whether it's a not guilty or a greatly reduced sentence. Unlike many other criminal defense firms we have a fully staffed law firm, with a legal library, high speed copiers, and the ability to try a criminal case using high tech audio visual aids to persuade a jury.

Kurt Gransee has been voted by his peers and listed as one of San Antonio's Best Lawyers, for the past 11 years in the annual legal poll conducted by the monthly magazine "Scene in SA". Mr. Gransee was identified as one of San Antonio's best lawyers in Criminal Defense Law. Mr. Gransee has represented clients and litigated cases in a wide variety of criminal cases including injury to a child "shaken baby", internet child porn, Intoxication manslaughter, intoxication assault, DWI, and money laundering. Mr. Gransee has handled State and Federal cases throughout Texas, and in Federal District Court.

**RUSH  GRANSEE**