



Sex Offender Registration

Simply because a crime alleges sexual misconduct does not mean that the individual would register as a sex offender if convicted. The purpose behind sex offender registration and notification laws was to inform the public about sexual predators. Every year in the fervor to be tough on crime, the Legislature labels more and more people as sex offenders. Because the sex offender registry can include anything from indecent exposure to consensual statutory rape to juvenile offenses to violent offenses, the public must now look behind the label to truly investigate the reason the person was placed on the sex offender registry.

In order to determine whether an alleged offense would trigger sex offender registration –in this case, Improper Photography – you turn to Chapter 62 of the Code of Criminal Procedure. If the crime is not listed, then a person convicted would not be subject to sex offender registration.

In the situation whereby a 17 year old takes pictures of 39 young adults between the ages of 14 and 18 years old, a District Attorney could attempt to prosecute under the Possession or Promotion of Child Pornography statute which would trigger sex offender registration. Most District Attorneys are acutely aware of what does and doesn't trigger sex offender registration, and in this case the facts and circumstances simply may not support prosecution under the more serious crime.

Many of the current laws designed to protect children erroneously assume an adult perpetrator and a minor child. In the instant case, is it really "child pornography" when a 17 year old 'child' takes naked pictures of a peer?

Although the prosecution could seek to file charges under the Child Pornography statute, given the facts you told me I think Improper Photography is the more appropriate charge which more closely fits the allegations.

Included are the three relevant statutes:

CODE OF CRIMINAL PROCEDURE CHAPTER 62. SEX OFFENDER REGISTRATION PROGRAM

Art. 62.001:

(5) "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:



(A) a violation of Section **21.02 (Continuous sexual abuse of young child or children)**, **21.11 (Indecency with a child)**, **22.011 (Sexual assault)**, **22.021 (Aggravated sexual assault)**, or **25.02 (Prohibited sexual conduct)**, Penal Code;

(B) a violation of Section **43.05 (Compelling prostitution)**, **43.25 (Sexual performance by a child)**, or **43.26 (Possession or promotion of child pornography)**, Penal Code;

(C) a violation of Section **20.04(a)(4) (Aggravated kidnapping)**, Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D) a violation of Section **30.02 (Burglary)**, Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E) a violation of Section **20.02 (Unlawful restraint)**, **20.03 (Kidnapping)**, or **20.04 (Aggravated kidnapping)**, Penal Code, if, as applicable:

(i) the judgment in the case contains an affirmative finding under Article 42.015; or

(ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended **victim was younger than 17** years of age;

(F) the **second violation of Section 21.08 (Indecent exposure)**, Penal Code, but not if the second violation results in a deferred adjudication;

(G) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), or (E);

(H) a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), (G), or (J), but not if the violation results in a deferred adjudication;



(I) the second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure, but not if the second violation results in a deferred adjudication; or

(J) a violation of **Section 33.021 (Online solicitation of a minor)**, Penal Code.



Sec. 21.15. IMPROPER PHOTOGRAPHY OR VISUAL RECORDING.

(a) In this section, "promote" has the meaning assigned by Section 43.21.

(b) A person commits an offense if the person:

(1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another at a location that is not a bathroom or private dressing room:

(A) without the other person's consent; and

(B) with intent to arouse or gratify the sexual desire of any person;

(2) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another at a location that is a bathroom or private dressing room:

(A) without the other person's consent; and

(B) with intent to:

(i) invade the privacy of the other person; or

(ii) arouse or gratify the sexual desire of any person; or

(3) knowing the character and content of the photograph, recording, broadcast, or transmission, promotes a photograph, recording, broadcast, or transmission described by Subdivision (1) or (2).

(c) An offense under this section is a state jail felony.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

(e) For purposes of Subsection (b)(2), a sign or signs posted indicating that the person is being photographed or that a visual image of the person is being recorded, broadcast, or transmitted is not sufficient to establish the person's consent under that subdivision.



Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY.

(a) A person commits an offense if:

(1) the person knowingly or intentionally possesses visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct; and

(2) the person knows that the material depicts the child as described by Subdivision (1).

(b) In this section:

(1) "Promote" has the meaning assigned by Section 43.25.

(2) "Sexual conduct" has the meaning assigned by Section 43.25.

(3) "Visual material" means:

(A) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

(c) The affirmative defenses provided by Section 43.25(f) also apply to a prosecution under this section.

(d) An offense under Subsection (a) is a felony of the third degree.

(e) A person commits an offense if:

(1) the person knowingly or intentionally promotes or possesses with intent to promote material described by Subsection (a)(1); and

(2) the person knows that the material depicts the child as described by Subsection (a)(1).



(f) A person who possesses visual material that contains six or more identical visual depictions of a child as described by Subsection (a)(1) is presumed to possess the material with the intent to promote the material.

(g) An offense under Subsection (e) is a felony of the second degree.