

TEXAS CRIMINAL DEFENSE GUIDE E-BOOK



NEAL DAVIS

LAW FIRM, PLLC



**COMPUTER CRIMES &
CHILD PORNOGRAPY**

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COMPUTER CRIMES AND CHILD PORNOGRAPHY

The purpose of the Neal Davis Law Firm E-book series is designed to provide basic, accessible information that is relevant to those who have been charged with a particular type of crime. Those facing charges will be better prepared to make informed decisions if they understand the nature and implications of the charges against them, and have more clarity about what the court process will involve.

WHAT IS A COMPUTER CRIME?

“Computer crimes” refers to criminal offenses related to downloading, possessing or distributing child pornography, as well as soliciting minors (or someone posing as a minor) online. These are serious felonies that have become more frequently charged due to advances in computer forensics and the relative ease of investigation.

These offenses are viewed harshly under both state and federal law, and punishments can extend to decades in prison depending on the nature of the offense. A person convicted of child pornography or online solicitation can be required to register as a sex offender and be prevented from living close to schools or spending time near children.

Child pornography covers a variety of state and federal offenses. The most influential factors affecting whether charges are filed in state or federal court are the number of images, whether the defendant actually produced or disseminated images as opposed to downloading and possessing them, and potentially aggravating factors such as a prior history of child sex abuse.

CHOOSING A CHILD PORNOGRAPHY DEFENSE ATTORNEY

When charged with one of these offenses, it is crucial to consult a qualified attorney as soon as possible. Speaking with police before consulting a defense lawyer could seriously damage your case. Special issues in computer crime cases include:

- Computer forensics
- Mental health issues
- How police conducted their investigation
- How to persuade a prosecutor or grand jury to dismiss the charges before the case gets to trial

If you would like a free consultation to discuss your situation with a qualified attorney, please contact the [Neal Davis Law Firm](#) as soon as possible.

COMPUTER CRIMES: CHARGES

ONLINE SOLICITATION OF A MINOR

A minor is any person younger than 17 years old or someone who the defendant believes is under 17 years old. It is a crime for a person who is at least 17 years old to communicate in a sexually explicit manner, with the intent to commit a sex offense, with a minor or to distribute sexually explicit material to a minor.

It is also illegal to use electronic means to invite or solicit a minor to meet with the intent that the minor will engage in sexual behavior. A person charged with this latter crime can also be charged with another crime (e.g., sexual assault of a child), if that occurs on top of soliciting a minor.

Continue reading to learn more about [online solicitation of a child](#).

LAW

Texas Penal Code [Chapter 33, Section 33.021](#):

ONLINE SOLICITATION OF A MINOR. (a) In this section:

(1) "Minor" means:

(A) an individual who is younger than 17 years of age; or

(B) an individual whom the actor believes to be younger than 17 years of age.

(2) "Sexual contact," "sexual intercourse," and "deviate sexual intercourse" have the meanings assigned by Section 21.01.

(3) "Sexually explicit" means any communication, language, or material, including a photographic or video image, that relates to or describes sexual conduct, as defined by Section 43.25.

(b) A person who is 17 years of age or older commits an offense if, with the intent to commit an offense listed in Article 62.001(5)(A), (B), or (K), Code of Criminal Procedure, the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:

(1) communicates in a sexually explicit manner with a minor; or

(2) distributes sexually explicit material to a minor.

(c) A person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.

(d) It is not a defense to prosecution under Subsection (c) that the meeting did not occur.

(e) It is a defense to prosecution under this section that at the time conduct described by Subsection

(c) was committed:

(1) the actor was married to the minor; or

- (2) the actor was not more than three years older than the minor and the minor consented to the conduct.
- (f) An offense under Subsection (b) is a felony of the third degree, except that the offense is a felony of the second degree if the minor is younger than 14 years of age or is an individual whom the actor believes to be younger than 14 years of age at the time of the commission of the offense. An offense under Subsection (c) is a felony of the second degree.
- (g) 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, the other law, or both.



PUNISHMENT

Online solicitation of a minor is a second or third-degree felony, depending on the circumstances. Further, the defendant faces registration as a sex offender for ten years after being discharged from prison or community supervision.



DEFENSE STRATEGY

Lots of possible defense strategies exist - from the defendant not believing the person he or she was communicating with was actually a minor, to there being no intent to engage in sexual behavior.

Entrapment is also a defense under Texas Penal Code [Section 8.06](#), which states, "It is a defense to prosecution that the actor engaged in the conduct charged because he was induced to do so by a law enforcement agent using persuasion or other means likely to cause persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment."



PROCESS

Investigations in these cases can occur as part of an undercover sting operation where law enforcement pose as minors. When actual minors are involved, an investigation begins when a third party learns about the online contact. For example, the minor discusses the allegations with a parent, teacher or friend, or a family member discovers the online contact by finding messages on a cell phone or social media account.

As part of their investigation, police will try to obtain records concerning the accused person's cell phone, social media and Internet accounts, email, IP address (a numerical label assigned to a computer) and anything else that could help the prosecution prove its case.

During the investigation, police often try to interview the person accused. For example, police may attempt to interrogate the person accused when he arrives at the location to meet the minor. Other times, the police may arrive at the person's residence with a search warrant for any computers allegedly used for the solicitation and try to interview him there.