

Sex Crimes: Definitions and Penalties Texas

Last Updated: April 2023

Sexual Assault

Question	Answer
How is it defined?	<ul style="list-style-type: none">• Intentionally or knowingly causing any of the following:<ul style="list-style-type: none">• Penetration of the anus or sexual organ of another by any means without that person's consent;• Penetration of the mouth of another person by the sexual organ of the actor without that person's consent; or• The sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person including the actor.• A sexual assault is without consent if:<ul style="list-style-type: none">• the actor compels the other person to submit or participate by the use of physical force, violence, or coercion;• the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;• the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;• the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;• the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;• the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;• the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;• the actor is a public servant who coerces the other person to submit or participate;• the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;• the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser;• the actor is an employee of a facility where the other person is a resident, unless the employee

- and resident are formally or informally married to each other under Chapter 2, Family Code;
- the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor;
- the actor is a coach or tutor who causes the other person to submit or participate by using the actor's power or influence to exploit the other person's dependency on the actor; or
- the actor is a caregiver hired to assist the other person with activities of daily life and causes the other person to submit or participate by exploiting the other person's dependency on the actor.

- **“Against a child”**

- Intentionally or knowingly causing any of the following (regardless of whether the person knows the age of the child):
 - Penetration of the anus or sexual organ of a child by any means;
 - Penetration of the mouth of a child by the sexual organ of the actor;
 - The sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
 - The anus of a child to contact the mouth, anus, or sexual organ of another person including the actor; or
 - The mouth of a child to contact the anus or sexual organ of another person including the actor.
- Unless:
 - The conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party;
 - The actor was the spouse of the child; or
 - The child is over 13 years of age and the actor was not more than 3 years older than the child, not a registered sex offender, not a repeat offender, not prohibited from marrying or purporting to marry the child, and not prohibited from living under the appearance of marriage with the child.

What are the punishments for this crime?

- Second degree felony: 2-20 years' imprisonment; maximum fine of \$10,000.
- First degree felony if actor was prohibited from marrying or purporting to marry victim or prohibited from living under the appearance of being married: 5-99 years' imprisonment; maximum fine of \$10,000; or if a person with whom the actor was prohibited from engaging in sexual intercourse or deviate sexual intercourse under § 25.02; or a state jail felony if the actor has not received express consent (not applicable to sexual assault against a child): 180 days-2 years' imprisonment; maximum fine of \$10,000; if a deadly weapon was used or the individual was previously convicted of a felony, punishable as a third degree felony (2-10 years' imprisonment and maximum fine of \$10,000).

Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Child” means a person younger than 17 years of age. • “Spouse” means a person who is legally married to another. • “Health care services provider” means a licensed physician, a licensed chiropractor, a licensed physical therapist, a licensed physician assistant, a licensed registered nurse, a licensed vocational nurse, or a licensed advanced practice nurse. • “Mental health services provider” means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a licensed social worker, a chemical dependency counselor, a licensed professional counselor, a licensed marriage and family therapist, a member of the clergy, a psychologist offering psychological services, or a special officer for mental health assignment. • “Employee of a facility” means a person who is an employee of a health facility, or any other person who provides services for a facility for compensation, including contract labor.
Statutory citation(s):	<ul style="list-style-type: none"> • Tex. Penal Code Ann. § 22.011, §12.31, 12.32

Aggravated Sexual Assault

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Intentionally or knowingly causing any of the following or acts in concert with one who intentionally or knowingly causes: <ul style="list-style-type: none"> • Penetration of the anus or sexual organ of another by any means without that person’s consent; • Penetration of the mouth of another person by the sexual organ of the actor without the person’s consent; or • The sexual organ of another person, without that person’s consent, to contact or penetrate the mouth, anus, or sexual organ of another person including the actor; and • The person caused serious bodily injury or attempts to cause the death of the victim or another person; • The person by acts or words places the victim in fear that any person will be forced into prostitution or trafficked, or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person; • The person by acts or words occurring in the presence of the victim threatens to cause any person to be forced into prostitution or trafficked, or to cause the death, serious bodily injury, or kidnapping of any person; • The person uses or exhibits a deadly weapon; • The person administers or provides to the victim of the offense any substance capable of

impairing the victim's ability to appraise the nature of the act or to resist the act;

- The victim is under 14 years of age; or
- The victim is an elderly or disabled individual.
- An aggravated sexual assault is without consent if:
 - the actor compels the other person to submit or participate by the use of physical force, violence, or coercion;
 - the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;
 - the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
 - the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
 - the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
 - the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
 - the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
 - the actor is a public servant who coerces the other person to submit or participate;
 - the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
 - the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser;
 - the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code; or
 - the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor.
- **“Against a child”**
 - Intentionally or knowingly causing or acting in concert with one who intentionally or knowingly causes any of the following:
 - Penetration of the anus or sexual organ of a child by any means;
 - Penetration of the mouth of a child by the sexual organ of the actor;

	<ul style="list-style-type: none"> • The sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; • The anus of a child to contact the mouth, anus, or sexual organ of another person including the actor; or • The mouth of a child to contact the anus or sexual organ of another person including the actor; and • The person causes serious bodily injury or attempts to cause the death of the victim or another person; • The person by acts or words places the victim in fear that any person will be forced into prostitution or trafficked, or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person; • The person by acts or words occurring in the presence of the victim threatens to cause any person to be forced into prostitution or trafficking, or to cause the death, serious bodily injury, or kidnapping of any person; • The person uses or exhibits a deadly weapon; • The person administers to the victim of the offense any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act; • The victim is under 14 years of age; or • The victim is elderly or disabled; • Unless: <ul style="list-style-type: none"> • the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.
<p>What are the punishments for this crime?</p>	<ul style="list-style-type: none"> • First degree felony: 5-99 years' imprisonment; maximum fine of \$10,000. • Minimum sentence increased to 25 years' imprisonment if: (i) the victim is under 6 years old or (ii) the victim is younger than 14 years old and the person: <ul style="list-style-type: none"> • Caused serious bodily injury or attempts to cause the death of the victim or another person; • Threatens or puts the victim in fear that any person will be forced into prostitution or trafficked, or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person; • Uses or exhibits a deadly weapon; • Administers or provides to the victim of the offense any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act; • Acts in concert with a person who commits a sexual assault.
<p>Anything else I should know?</p>	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Child” means a person younger than 17 years of age. • “Disabled individual” means a person older than 13 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person’s self from harm or to provide food, shelter, or medical care for the person’s self. • “Elderly individual” means a person 65 years of age or older.

Statutory citation(s):	• Tex. Penal Code Ann. § 22.021, §12.31
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Statutory Rape

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • “Statutory rape” is commonly used to refer to sexual penetration that is illegal because it involves a youth. <ul style="list-style-type: none"> • Texas has no specific statutory rape statute, but this sentiment is captured under § 22.011 (Sexual Assault “<i>Against a child</i>”), § 22.021 (Aggravated Sexual Assault “<i>Against a child</i>”) and Indecency with a Child § 22.11. • Indecency with a Child <ul style="list-style-type: none"> • A person commits an offense by: <ul style="list-style-type: none"> • (i) Engaging in sexual contact with a child younger than 17 or causing the child to engage in sexual contact (second degree felony); • (ii) Exposing the person’s anus or any part of the person’s genitals, knowing a child under 17 is present, with the intent to arouse or gratify the sexual desires of any person (third degree felony); or • (iii) Causing a child under 17 to expose his or her anus or any part of his or her genitals, with the intent to arouse or gratify the sexual desires of any person (third degree felony); • It is an affirmative defense to each of (i), (ii) and (iii) above if: <ul style="list-style-type: none"> • the actor is no more than 3 years older than the victim and is of the opposite sex, did not use duress, force, or a threat against the victim and is not a registered sex offender nor a repeat offender; or • actor was the spouse of the child.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Sexual assault: Second degree felony: 2-20 years’ imprisonment; maximum fine of \$10,000. • Aggravated sexual assault: First degree felony: 5-99 years’ imprisonment; maximum fine of \$10,000. • Indecency with a child: Second degree felony: 2-20 years’ imprisonment; maximum \$10,000 fine; Third degree felony: 2-10 years’ imprisonment; maximum \$10,000 fine.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Child” means a person younger than 17 years of age. • “Sexual contact” (only for the purposes of Indecency with a Child) means touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child, any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of the person with the intent to arouse or gratify the sexual desire of any person.

Statutory citation(s):	<ul style="list-style-type: none"> • Tex. Penal Code Ann. §§ 21.11, §12.31-32
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Sodomy

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex. • This law was held unconstitutional in <i>Lawrence v. Texas</i> 539 U.S. 588 (2003) but has not been officially repealed.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Class C misdemeanor: maximum fine of \$500.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Deviate sexual intercourse” means: any contact between any part of the genitals of one person and the mouth or anus of another person; or the penetration of the genitals or the anus of another person with an object.
Statutory citation(s):	<ul style="list-style-type: none"> • Tex. Penal Code Ann. § 21.06.