

Steps to Take When Charged with a Sex Crime

- 1. RESIST THE URGE TO THINK, “I WILL SOLVE THIS PROBLEM ON MY OWN.”** The number one mistake people make —*especially innocent* people—when they first learn they have been accused of a sex offense is to let the shock, shame and disbelief combine to paralyze them from seeking help. Another layer of this very bad reaction is that although you may decide not to seek outside help, many will feel compelled by panic and/or personal righteousness to attempt to do something on their own behalf to address the situation themselves. There is a time for personal ingenuity but this is not it. A final component which frequently results in a “head in the sand” reaction is understandable but almost always wishful thinking that “this will just go away.” Perhaps it will go away but rarely just by ignoring it. So, if you shouldn’t try to solve the problem on your own and you shouldn’t “just do nothing,” what should you do and why?
- 2. CONTACT AND HIRE AN EXPERIENCED ATTORNEY RIGHT AWAY.** Let’s face it—if you are accused of a DUI, or even an offense like theft or burglary—you can wait until a few weeks before your first court date before contacting an attorney. You *shouldn’t*, but you can, and it may not hurt you *too* much in the long run. Not so with sex offense allegations! You need to speak to an attorney **AS SOON AS POSSIBLE**. **Waiting will hurt you.** You need very clear, specific guidance from an attorney right away. The attorney may decide he or she needs to undertake a time-sensitive investigation of the allegations immediately, may take steps to have you evaluated immediately and confidentially, or may try to preserve evidence which might otherwise disappear or be destroyed by the time of your first court date. You may be thinking that you will hire an attorney, if you eventually have to, but figure that you should talk to the accuser or someone close to them to discuss the allegations first. **THAT IS A CRAZY, BAD IDEA.**
- 3. HAVING ANY CONTACT WITH THE PERSON MAKING THE ALLEGATION IS THE RISKIEST COURSE OF ACTION YOU COULD TAKE.** Saying, or attempting to say, *anything at all* to the person who has accused you of this kind of offense will be construed as a sign that you are guilty, not innocent. Do not attempt to contact your accuser and **refuse any attempts by your accuser to initiate any contact with you.** If the person accusing you of something calls you on the phone to talk about it, it very well may be a “pre-text phone call.” This strategy for setting up suspects is very common in “he said/she said” cases and be forewarned, a police officer is not only listening to but is also **RECORDING** that telephone call which is scripted by the police and designed to get you to say something incriminating to corroborate the accusations.

Lies are permissible in these calls (and interrogations). Don't fall for the trap of your accuser calling just because they want you to apologize and then the whole thing will go away. Don't believe them when they say that their mom or dad is the person who wants to report the incident, but they don't want to do it – as long as you admit you made a mistake and apologize. Don't trust them when they say that they are sorry for making the accusations in the first place. Do not initiate or accept any contact from the accuser or someone close to them.

4. **DON'T ATTEMPT TO CONTACT ANY OF YOUR ACCUSER'S FAMILY OR FRIENDS.** This is similar to #3; it is especially applicable if the person accusing you is a child. Do not attempt to contact that child's parents, grandparents, teachers, anyone. Any attempt to contact the family of friends of your accuser can and will come back to haunt you later. Same goes for any attempt to have a third party contact them on your behalf.

Also, any contact you have with someone who is accusing you, or their friends or family, could easily result in you picking up additional criminal charges. Even if you don't say or do anything threatening, your accuser could easily tell law enforcement that you attempted to get them to change their story or dissuaded them from testifying in court. If you do that, not only will you make it easier for the DA to prosecute you without giving you your full Constitutional rights, you make it possible for them to charge you with making 'witness intimidation,' a violation of Penal Code section 136.1.

For all of the same reasons, do not ask anyone to have any contact with the accuser or the accuser's family on your behalf. In fact, that is oftentimes even worse for you and your case. Find and hire a lawyer that you trust to help guide you through this treacherous time.

5. **YOU DESERVE TO HAVE A TRUSTED ADVOCATE.** Reputation, cost, convenience, likeability—all of these things will go into your selection of an attorney. But none of those factors matter half as much as confidence that you can TRUST the person who will be representing you. At some point in this process, you're going to have to make a decision based on choices that aren't going to be apparent to you. You're going to have to rely on what you are being told by your attorney to make some very difficult and life-altering choices. If you aren't sure you trust that person, they can't help you. Also, and this is not insignificant—you need a *safe* person to talk to. You need to discuss the accusations and everything surrounding it, including your feelings, with someone who can protect the confidentiality of your conversation from the prying eyes of law enforcement. Many of the other people in your life that you would ordinarily talk to—friends, family, significant others—you will not and should not. First, the shame of these allegations will often stifle one's instinct to seek support from loved ones. Second, your

dearest confidantes may intend to keep your discussions confidential, but ultimately cannot do so if law enforcement wants to make them talk. Your loved ones have a right to remain silent and the right to counsel just like you. Everyone with knowledge of the circumstances surrounding the accusations should invoke those rights, especially the accused.

6. DON'T SAY ANYTHING! INSIST YOU WANT A LAWYER PRESENT! THE RIGHTS GUARANTEED BY OUR CONSTITUTION ARE NEVER MORE IMPORTANT THAN WHEN SOMEONE IS ACCUSED OF A SEX OFFENSE.

We're so familiar with the *Miranda* warnings (because they're ubiquitous in popular culture) that we often don't truly hear the words and take them to heart. Remember, the *Miranda* warnings say: *anything* you say can and *will be used AGAINST YOU* in a court of law. That's ANYTHING you say. "I'm innocent," "I don't know what you're talking about," "I don't know that person," "I didn't do anything wrong," all seemingly innocent statements—even those are all statements which will be used *against* you, even though you may think there's no way saying something like that could be used to hurt you. You simply have no way of knowing what potential effect anything you say will have on an eventual case against you. So... don't say anything. NOT A WORD. The only safe words to say, ever, are: "Officer, I respectfully assert my Constitutional right to remain silent and demand to speak with an attorney immediately." If they keep asking questions—and they very well may—keep repeating those same words until they shut up. Asserting your Constitutional rights does not make you look guilty. Cops will tell you it does; they'll also tell you asserting your rights make it impossible for them to 'help' you. The police are permitted to lie during this process, they are trained to get confessions through psychological techniques and they will try mightily to get you to talk. Investigators may actually minimize the seriousness or strength of the accusations by describing your accuser as having questionable credibility or telling you that the claims are "just hearsay" which you could clear up if you would talk to them. Those are more tricks. Do not talk!

7. YOUR ACCUSER'S STATEMENTS TO THE POLICE ARE NOT "JUST HEARSAY." People accused of sex crimes sometimes assume that just because the only evidence against them is the word of their accuser, that means it's "just hearsay" and ultimately won't hold up in court. Hearsay is an often used but rarely understood legal term of art. It is a concept that does not apply to the firsthand claims of a person who says they were sexually victimized. Indeed, there is a jury instruction that says the testimony of one witness, if believed by the jury, is sufficient to establish proof beyond a reasonable doubt and to convict the accused. Please, please, don't let yourself be lulled into a false sense of security and complacency by assuming that if it's a "he said/she said" situation, it means the case will just go away easily. The focus of the police is

frequently to establish corroboration – by a pretext phone call or an admission by the suspect in an interrogation with police or even a statement by the accused to their loved one.

8. **PROTECT THE ABILITY OF YOUR FRIENDS AND FAMILY TO HELP YOU BY NOT DISCUSSING THE SITUATION WITH THEM.** Two ways in which sex crime cases vary slightly from other types of criminal matters are that: 1) they are somewhat more likely to go to trial; and 2) when they do go to trial, your attorney is likely to be more inclined to call what are known as “moral character” witnesses on your behalf. Moral character witnesses are people who can testify that they know you well and that you are not the kind of person who would do this sort of thing. Obviously, friends and family are the most likely potential moral character witnesses. If you talk to a potential moral character witness about what happened, you make it impossible for your attorney to call him or her to the stand and testify on your behalf. Why? Because you’ve had a conversation which is probably not privileged, and if the DA asks about what you said, the witness can be compelled to testify about that conversation. Your friends and family will want to help you—which means not talking to you about what happened.

If you have a loved one who is accused of a sex crime offense, please understand how important it is not to discuss the situation with him or her. Don’t ask them to talk about it; they will very much want to, but it won’t help anything in the long run. Is that what an attorney’s role is – to listen?

9. **COUNSEL ASSISTING SOMEONE ACCUSED OF A SEX OFFENSE MUST BE A “GOOD LISTENER” AND SO MUCH MORE.** If you are accused of a sex offense, you may be scared out of your mind and terrified of being judged by other people. Of course, you want a lawyer who listens to you and shows empathy for your situation. These are important qualities in a good lawyer for this type of case, but they are not enough. You should be seeking to hire an experienced advocate.

10. **IMPORTANT THINGS TO CONSIDER WHEN INTERVIEWING COUNSEL.**

a. **Who *specifically* will be representing you?** Be careful that when you meet with a firm, you’re meeting with the lawyer who will actually be primarily responsible for your case. It’s not uncommon to hire a firm who has a ‘meet and greet’ or ‘sales’ attorney, but your case is actually assigned to someone else in the firm for representation. Sometimes that’s okay—but it makes it difficult to tell if you trust your lawyer.

b. **Does this attorney seem to be listening?** Your story is important, and it should be heard. If you don’t feel like the attorney is actually hearing you, it’s going to be hard

to trust that attorney.

c. **Can this person tell me things I might not like to hear? If so, will I be able to really listen to this person?** If you get the sense during an initial conversation that the attorney makes everything seem too good to be true—well, it might just be too good to be true. You must be sure the attorney you hire is comfortable being straightforward and honest with you. At some point in the process, your attorney may need to say things to you that will be hard to hear and hard to say. If you don't think this is someone who can get through to you on that level, or seems hesitant to do so (either because it's unpleasant or because they're scared to lose your business), don't hire that person.

11. **BEING ACCUSED OF A SEXUAL CRIME IS A NIGHTMARE- BUT YOU CAN GET THROUGH IT.** The most important thing is to keep as calm as humanly possible, hire a quality attorney you trust immediately, and try to be as patient as you can. Panic is your enemy. Being accused of a [sex offense](#) is certainly a nightmare. But it is one that you can get through.

In other words, don't despair! If you are reading this and discover you've already broken some of these rules, don't fixate on that. When you speak with an attorney—which you need to do right away—make sure he or she knows what has happened so far, and he or she will take steps to limit any damage. Despair is the flip-side of the “false sense of security” coin; if you've given up already, you'll also be likely to unwittingly do things to make the situation worse. Contact [Jerod Gunsberg](#) and take steps to protect yourself. You deserve it!