

SNOHOMISH COUNTY PROSECUTOR'S OFFICE INVESTIGATIVE CHECKLIST

INDECENT LIBERTIES BY FORCIBLE COMPULSION/VICTIM INCAPABLE OF CONSENT/ABUSE OF POSITION OVER VULNERABLE VICTIM RCW 9A.44.100

ELEMENTS

1. The suspect knowingly caused the victim to have sexual contact* with the suspect or another person; AND
2. The victim was not married to the perpetrator; AND
3. The sexual contact occurred
 - a. by forcible compulsion**; OR
 - b. when the victim was incapable of consent*** by reason of being “mentally defective, mentally incapacitated, or physically helpless” (as defined in RCW 9A.44.010); OR
 - c. when the victim is a “person with a developmental disability” (as defined in RCW 9A.44.010) and the perpetrator either had “supervisory authority” (as defined in RCW 9A.44.010) over the victim or was providing transportation, within the course of his or her employment, to the victim at the time of the offense; OR
 - d. when the perpetrator was a “health care provider” (as defined in RCW 9A.44.010), the victim was a client or patient, and the sexual contact occurred during a “treatment” session, consultation, interview, or examination (as defined in RCW 9A.44.010). (Note: It is a defense that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment.); OR
 - e. when the victim was a resident of a facility for “persons with a mental disorder or chemical dependency” (as defined in RCW 9A.44.010) and the perpetrator had “supervisory authority” (as defined in RCW 9A.44.010) over the victim; OR
 - f. when the victim was a “frail elder or vulnerable adult” (as defined in RCW 9A.44.010) and the perpetrator had a “significant relationship” (as defined in RCW 9A.44.010) with the victim, or was providing transportation, within the course of his/her employment, to the victim at the time of the offense.

*Sexual contact means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

**Forcible compulsion means physical force which overcame resistance, or a threat, express or implied, that placed the victim in fear of death or physical injury to herself/himself or another person, or in fear that she/he or another person would be kidnapped.

***Consent means that at the time of the sexual contact the victim used actual words or conduct indicating freely given agreement to have sexual contact.

Defense: If the lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

SPECIFIC CONSIDERATIONS

- [] 1. Describe the sexual contact: who's sexual or other intimate parts were touched; what parts; by whom; and how do we know the touching was for the purpose of gratifying the sexual desire of either party or a third party?
- [] 2. Specific description of victim's injuries, with 35mm photos taken upon first contact and after bruises become visible.
- [] 3. Description of any threats or force used, comments made, or weapons used by suspect.
- [] 4. Names, addresses and phone numbers of people to whom victim talked about the incident; be sure we know first person told and get statement from that person.
- [] 5. Description of any verbal or physical resistance made by victim. Can neighbors or passers-by corroborate?
- [] 6. Describe length and nature of relationship between victim and suspect, if any. If legally married, are they living separately and has one of them filed for separation or dissolution?
- [] 7. Indication whether victim was physically helpless (asleep, unconscious or unable to communicate unwillingness) or mentally incapacitated (unable to understand nature or consequences of act of intercourse due to illness, defect, influence of alcohol or drugs or other cause). If either condition is indicated, document any available supporting evidence.
- [] 8. Collect any items that may have suspect's fingerprints, if identity may be an issue.
- [] 9. If the suspect is a proprietor or employee of a care or treatment facility and directly supervised victim, and victim is developmentally disabled, mentally disordered or chemically dependent, document both suspect's position and victim's condition.
- [] 10. If suspect is a health care provider and victim is a client or patient, determine whether sexual contact took place during consultation, examination or treatment.
- [] 11. If suspect provided welfare, health or residential assistance, personal care, or organized recreational activities to victim, and victim was at least 60 years old, or victim was incapacitated, developmentally disabled, admitted to a long-term care facility, or receiving services from a home health, hospice or home care agency, document both suspect's position and victim's status.
- [] 12. Document in officer's report and in witness statements all observations of victim's physical and emotional condition at or near time of sexual contact.