

SNOHOMISH COUNTY PROSECUTOR'S OFFICE INVESTIGATIVE CHECKLIST

SECOND DEGREE RAPE

RCW 9A.44.050

ELEMENTS

1. The suspect engaged in sexual intercourse with the victim; AND
2. The sexual intercourse occurred
 - a. by forcible compulsion**; OR
 - b. when the victim was incapable of consent*** by reason of being “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 is not married to the victim and 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 intercourse with the knowledge that the sexual intercourse 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 was not married to the victim and 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 was not married to the victim and 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 intercourse means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex. Exception: penetration for medically recognized treatment or for diagnostic purposes is excluded from this definition. Sexual intercourse also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another, whether such persons are of the same or opposite sex.

**Forcible compulsion means physical force which overcomes resistance, or an express or implied threat that places the victim in fear of death or physical injury to the victim or another person, or in fear that the victim or another person will 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 type of sexual intercourse: a) any penetration of the vagina or anus, however slight, by an object, committed on one person by another, excluding penetration for medical treatment or diagnosis; or b) sexual contact between the sex organs of one person and the mouth or anus of another.
- [] 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 rape; be sure we know first person told and get statement from that person.
- [] 5. Clear indication of name of medical personnel who talked with/examined victim following the incident, along with readable copies of relevant medical records (requires signed waiver from victim).
- [] 6. Gather and properly preserve victim's clothing worn at time of rape and sheets, towels, carpet, etc., which might contain body fluids. (Important when fact of intercourse and/or identity may be an issue. If victim has washed clothes worn at time of rape, collect instead clothes she is wearing if she has not showered since rape.)
- [] 7. Description of any verbal or physical resistance made by victim. Can neighbors or passers-by corroborate?
- [] 8. Describe length and nature of relationship between victim and suspect, if any.
- [] 9. 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.
- [] 10. Collect any items that may have suspect's fingerprints, if identity may be an issue.
- [] 11. 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.

- 12. If suspect is a health care provider and victim is a client or patient, determine whether sexual intercourse took place during consultation, examination or treatment.
- 13. 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.
- 14. Document in officer's report and in witness statements all observations of victim's physical and emotional condition at or near time of sexual intercourse.