

**SNOHOMISH COUNTY PROSECUTOR'S OFFICE INVESTIGATIVE CHECKLIST**

**SEXUAL MISCONDUCT WITH MINOR, FIRST AND SECOND DEGREE      RCW 9A.44.093/096**

**ELEMENTS**

- 1. The suspect had, or knowingly caused another person under 18 to have, sexual intercourse\* (Class C felony) or sexual contact\*\* (Gross Misdemeanor) with the victim; AND
- 2a. The victim was at least 16 years old but less than 18 years old and not married to the perpetrator; AND  
The perpetrator was at least 60 months older than the victim; AND  
The perpetrator was in a "significant relationship" (as defined by RCW 9A.44.010) to the victim, and abused a "supervisory position" (as defined by RCW 9A.44.010) within that relationship in order to engage in or cause another person under 18 to engage in sexual intercourse/sexual contact with the victim.

OR

- 2b. The suspect was a "school employee" (as defined by RCW 9A.44.010); AND  
The victim was an "enrolled student" (as defined by RCW 9A.44.010) of the school, was at least 16 but not more than 21 years old, and was not married to the suspect; AND  
The suspect was at least 60 months older than the victim.

OR

- 2c. The suspect was a foster parent; AND  
The victim was the suspect's foster child; AND  
The victim was at least 16 years old.

\*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.

\*\*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.

Defense: At the time of the offense, the suspect reasonably believed the alleged victim to be at least 18, or that the victim was less than 60 months younger than the suspect, based upon declarations as to age by the victim.

**SPECIFIC REQUIREMENTS**

- [ ] 1.      [ ] a. For Class C felony, 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.

- b. For Gross Misdemeanor, 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. Determine victim's date of birth, suspect's date of birth, and time frame for sexual intercourse/sexual contact.
  
- 3. Establish that the victim is not married to the suspect.
  
- 4. Determine whether medical exam may produce evidence and if so, make sure it is done timely. Get signed release from victim, if possible, and obtain medical records of exam.
  
- 5. Determine if CPS is involved and if so, indicate caseworker's name and phone number. Check to see if CPS or police have received other complaints concerning suspect or victim. Obtain those CPS and police reports.
  
- 6. If there is an indication of other victims, locate and interview them.
  
- 7. Interview suspect's spouse/significant other regarding alibi and other defenses, and to get information corroborating or refuting victim's account.
  
- 8. Things to ask victim:
  - Determine who the victim told first about the abuse, others who were told before police, and get statements from those people.
  - Determine as near as possible when the abuse began and ended, victim's age and suspect's age. Can victim recall specific incidents, including first and last?
  - What suspect said.
  - Where abuse occurred.
  - Whether there was oral, vaginal and/or anal contact (if vaginal or anal, whether there was penetration).
  - Whether suspect made victim touch him, and if so, where.
  - Whether suspect wanted to take, or took, naked pictures of victim, or showed victim pornographic material.
  - Whether anyone else has sexually abused the child.
  
- 9. Find out if victim is in counseling and if so, with whom.
  
- 10. Seize any sex aids, calendars, diaries, pornography, clothing, bedding, camera equipment and photos of victim in suspect's possession which are connected to the offense.
  
- 11. Determine whether suspect knew how old victim was, and if so, how. Establish this with victim, suspect and any witnesses to victim's representation of age.

- 12. Determine nature of and length of relationship between victim and suspect.
- 13. If crime is based on suspect's abuse of a supervisory position while in a significant relationship with the victim:
  - a. Document and detail the evidence to show that the suspect undertook the responsibility to provide education, health, welfare or organized recreational activities principally for minors, or supervised minors in the course of suspect's employment. For example, employment records or statements from co-workers or fellow volunteers.
  - b. Document and detail the evidence to show that the suspect made a direct or indirect threat or promise to use the suspect's authority to the detriment or benefit of the victim in order to engage in sexual intercourse with the victim.
- 14. If the crime is based on suspect's status as a school employee:
  - a. Document and detail the evidence to show that the suspect was employed by a public or private school for grades up through 12<sup>th</sup> grade and who was not a student at the school. For example, employment records or statements from co-workers.
  - b. Document and detail the evidence to show that the victim was enrolled at the school, attending a program hosted or sponsored by the school, or who received home-based instruction.
- 15. If the crime is based on suspect's status as a foster parent:
  - a. Document and detail the evidence to show that the suspect was a foster parent.
  - b. Document and detail the evidence to show that the victim was the suspect's foster child.