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**SENATE BILL 6372**

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**State of Washington**                      **60th Legislature**                      **2008 Regular Session**

**By** Senators Eide, Stevens, and Shin; by request of Attorney General

Read first time 01/16/08. Referred to Committee on Judiciary.

1            AN ACT Relating to including defendants who are persons  
2 specifically authorized to assist and act at the direction of law  
3 enforcement officers for the purpose of affirmative defenses; and  
4 amending RCW 9.68A.110.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 9.68A.110 and 2007 c 368 s 3 are each amended to read  
7 as follows:

8            (1) In a prosecution under RCW 9.68A.040, it is not a defense that  
9 the defendant was involved in activities of law enforcement and  
10 prosecution agencies in the investigation and prosecution of criminal  
11 offenses. Law enforcement and prosecution agencies shall not employ  
12 minors to aid in the investigation of a violation of RCW 9.68A.090 or  
13 9.68A.100. This chapter does not apply to lawful conduct between  
14 spouses.

15            (2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or  
16 9.68A.080, it is not a defense that the defendant did not know the age  
17 of the child depicted in the visual or printed matter: PROVIDED, That  
18 it is a defense, which the defendant must prove by a preponderance of

1 the evidence, that at the time of the offense the defendant was not in  
2 possession of any facts on the basis of which he or she should  
3 reasonably have known that the person depicted was a minor.

4 (3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.101, or  
5 9.68A.102, it is not a defense that the defendant did not know the  
6 alleged victim's age: PROVIDED, That it is a defense, which the  
7 defendant must prove by a preponderance of the evidence, that at the  
8 time of the offense, the defendant made a reasonable bona fide attempt  
9 to ascertain the true age of the minor by requiring production of a  
10 driver's license, marriage license, birth certificate, or other  
11 governmental or educational identification card or paper and did not  
12 rely solely on the oral allegations or apparent age of the minor.

13 (4) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070,  
14 it shall be an affirmative defense that the defendant was a law  
15 enforcement officer or a person specifically authorized, in writing, to  
16 assist a law enforcement officer and acting at the direction of a law  
17 enforcement officer in the process of conducting an official  
18 investigation of a sex-related crime against a minor, or that the  
19 defendant was providing individual case treatment as a recognized  
20 medical facility or as a psychiatrist or psychologist licensed under  
21 Title 18 RCW.

22 (5) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070,  
23 the state is not required to establish the identity of the alleged  
24 victim.

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