

RCW 9A.44.030 Defenses to prosecution under this chapter. (1)

In any prosecution under this chapter in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

(2) In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be: PROVIDED, That it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be the age identified in subsection (3) of this section based upon declarations as to age by the alleged victim.

(3) The defense afforded by subsection (2) of this section requires that for the following defendants, the reasonable belief be as indicated:

(a) For a defendant charged with rape of a child in the first degree, that the victim was at least twelve, or was less than twenty-four months younger than the defendant;

(b) For a defendant charged with rape of a child in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;

(c) For a defendant charged with rape of a child in the third degree, that the victim was at least sixteen, or was less than forty-eight months younger than the defendant;

(d) For a defendant charged with sexual misconduct with a minor in the first degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant;

(e) For a defendant charged with child molestation in the first degree, that the victim was at least twelve, or was less than thirty-six months younger than the defendant;

(f) For a defendant charged with child molestation in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;

(g) For a defendant charged with child molestation in the third degree, that the victim was at least sixteen, or was less than thirty-six months younger than the defendant;

(h) For a defendant charged with sexual misconduct with a minor in the second degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant. [1988 c 145 § 20; 1975 1st ex.s. c 14 § 3. Formerly RCW 9.79.160.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.