

In the Supreme Court of the State of Idaho

**IN RE: CRIMINAL JURY
INSTRUCTIONS**

ORDER

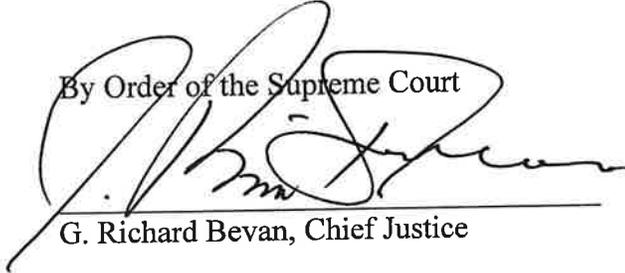
The Idaho Supreme Court, having reviewed recommendations of the Idaho Criminal Jury Instructions Committee, and having reviewed revisions of the Idaho Criminal Jury Instructions based upon those recommendations,

NOW, THEREFORE, IT IS ORDERED that the Court accepts revisions to Idaho Criminal Jury Instructions 901 (Female Rape), 904 (Resistance to Rape), 905 (Implicit Threat), 907 (Unsoundness of Mind – Consent), 908 (Unsoundness of Mind – Defined), 909 (Reasonable Belief as to Age), 912 (Defense: Defendant Under Age 14), 921 (Forcible Penetration by Foreign Object), 922 (Sexual Abuse of Child), 923 (Sexual Abuse of Child – Definitions), 926 (Possession of Sexually Exploitative Material), 927 (Sexual Exploitation – Definitions), 928 (Sexual Battery of a Child), 929 (Lewd and Lascivious Conduct), 930 (Lewd Conduct - Touching), 931 (Passions Need Not Be Actually Aroused), and 932 (Consent of Victim No Defense). The Court orders that 902 (Male Rape), and 920 (Infamous Crime Against Nature) be deleted. The revised Idaho Criminal Jury Instructions shall be disseminated for general use by the trial bench and bar in Idaho, to be effective immediately. It is recommended that whenever these revised Idaho Criminal Jury Instructions contain an instruction applicable to a case and the trial judge determines that the jury should be instructed on that subject, the judge should use the instruction contained in the revised Idaho Criminal Jury Instructions, unless the judge finds that a different instruction would more adequately, accurately or clearly state the law.

IT IS FURTHER ORDERED that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly e-Bulletin, and that, as soon as practicable, a summary of the amendments effected by this Order shall be published in one issue of *The Advocate*.

DATED this 2nd day of March, 2026.

By Order of the Supreme Court



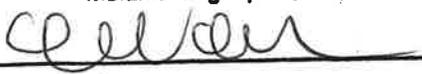
G. Richard Bevan, Chief Justice

ATTEST:



Melanie Gagnepain

I, Melanie Gagnepain, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
Certify that the above is a true and correct copy of the
Order entered in the above entitled
cause and now on record in my office. WITNESS my
hand and the Seal of this Court 3-2-2026
Melanie Gagnepain, Clerk

By  Deputy

ICJI 901 Female Rape

INSTRUCTION NO.

In order for the defendant to be guilty of Rape, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] caused his penis to penetrate, however slightly, the [vaginal] [oral] [anal] opening of [name or initials of victim], ~~a female person~~, [and]

[4. ~~she~~ [name or initials of victim] was under the age of sixteen (16) years, the defendant was eighteen (18) years of age or older, and [name or initials of victim] was not lawfully married to the defendant.]

[or]

[4. [name of victim] was sixteen (16) or seventeen (17) years of age, the defendant was three (3) years or more older than [name or initials of victim], and [name or initials of victim] was not lawfully married to the defendant.]

[or]

[4. ~~she~~ [name or initials of victim] was incapable of giving legal consent because of unsoundness of mind, due to any cause including, but not limited to, mental illness, mental deficiency, or developmental disability, whether temporary or permanent.]

[or]

[4. ~~she~~ [name or initials of victim] resisted, but her [name or initials of victim] resistance was overcome by force or violence]

[or]

[4. [name or initials of victim] was prevented from resistance due to an objectively reasonable belief that resistance would be futile or that resistance would result in force or violence beyond that necessary to accomplish the prohibited contact.]

[or]

4. ~~she~~ [name or initials of victim] was prevented from resisting by the] [infliction] [attempted infliction] [or] [threatened infliction] [of bodily harm, accompanied by apparent power of execution.]

[or]

[4. she [name or initials of victim] was unable to resist due to any intoxicating, narcotic, or anesthetic substance

[or]

[4. she [name or initials of victim] was unconscious of the nature of the act. "Unconscious of the nature of the act" means incapable of resisting because of one of the following conditions:

- (1) she [name or initials of victim] was unconscious or asleep; or
- (2) she [name or initials of victim] was not aware, knowing, perceiving, or cognizant that the act occurred.]

[or]

[4. she [name or initials of victim] submitted to the penetration under the belief that the defendant was her [name or initials of victim] husbandspouse, and

5. such belief was induced by artifice, pretense, or concealment practiced by the defendant, with the ~~specific~~ intent to induce such belief.]

[or]

[4. [name of victim] submitted under the belief that the person committing the act was someone other than the defendant, and

5. such belief was induced by artifice, pretense, or concealment practiced by the defendant, with the intent to induce such belief]

[or]

[4. she [name or initials of victim] submitted under the belief, instilled by the defendant, that if [she/he] did not submit, the defendant would [cause physical harm to some person in the future] [or] [cause damage to property] [or] [engage in other conduct constituting a crime] [or] [accuse any person of a crime] [or] [cause criminal charges to be instituted against her [name or initials of victim]] [or] [expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

ICJI 904 – Resistance to Rape

INSTRUCTION NO.

Although [name or initials of victim] must have resisted the act of penetration, the amount of resistance need only be such as would show the victim's lack of consent to the act.

Comment

In Idaho, a rape victim is not required to resist to the utmost of the victim's ability. *State v. Neil*, 13 Idaho 539, 90 P. 860 (1907). The importance of resistance by the victim is simply to show two elements of the crime—the assailant's intent to use force in order to have sexual intercourse and the victim's non-consent. *State v. Andreason*, 44 Idaho 396, 357 P. 370 (1927). *See also, State v. Fowler*, 13 Idaho 317, 89 P. 757 (1907); *State v. Lewis*, 96 Idaho 743, 536 P.2d 738 (1975); *State v. Robran*, 119 Idaho 285, 805 P.2d 491 (Ct. App. 1991); *State v. Gossett*, 119 Idaho 581, 808 P.2d 1326 (Ct. App. 1991).

This instruction should only be given if the defendant is charged with violating I.C. § 18-6101~~(3)~~(4) or I.C. § 18-6108(2).

A victim's verbal resistance is sufficient evidence of resistance under forcible rape statute; physical resistance is not required. *State v. Jones*, 154 Idaho 412, 299 P.3d 219 (2013).

ICJI 905 Implicit Threat

INSTRUCTION NO.

A threat of immediate and great bodily harm does not need to be expressed in words or through the exhibition of a deadly weapon. A threat may be expressed by acts and conduct which, under the circumstances, create a fear of immediate and great bodily harm.

Comment

I.C. § 18-6101(5).

This instruction is based upon *State v. Lewis*, 96 Idaho 743, 536 P.2d 738 (1975). It should only be given in circumstances where there was no express threat and no use or exhibition of a deadly weapon.

This instruction may have to be modified if the threat was made to a third person. I.C. § 18-6101(10).

ICJI 907 Unsoundness of Mind - Consent

INSTRUCTION NO.

A person is incapable of giving legal consent to the alleged penetration if, because of unsoundness of mind, the person is unable to understand and appreciate either the nature of the act or the consequences that may flow from that act.

Comment

I.C. §§ 18-6101(3) and 18-6604.

State v. Soura, 118 Idaho 232, 796 P.2d 109 (1990); *State v. Cosler*, 39 Idaho 519, 228 P. 277 (1924); and *State v. Simes*, 12 Idaho 310, 85 P. 914 (1906). *State v. Ericson*, 566 P.3d 468, 472 (Idaho Ct. App. 2025).

ICJI 908 Unsoundness of Mind - Defined

A person is of unsound mind if that person is incapable of normally managing affairs in a reasonable manner. Unsoundness of mind exists when the intellectual powers are fundamentally lacking, or where incapable of understanding and acting with discretion in the ordinary affairs of life. The term 'unsoundness of mind' thus includes a range of mental impairment.

Comment

State v. Soura, 118 Idaho 232, 796 P.2d 109 (1990); *State v. Ericson*, 566 P.3d 468, 472 (Idaho Ct. App. 2025).

ICJI 909 Reasonable Belief as to Age

INSTRUCTION NO.

You are instructed that it is not a defense to the crime of [name of offense charged] that the defendant did not know the age of [name or initials of victim], or that the defendant reasonably and in good faith believed that [name or initials of victim] was [sixteen (16)] [eighteen (18)] years of age or older.

Comment

I.C. § 18-6101(1) and (2).

This instruction would apply to any sex crime where the victim as a matter of law is held too young to give lawful consent to the defendant's conduct. *State v. Stiffler*, 117 Idaho 405, 788 P.2d 220 (1990) (statutory rape); *State v. Herr*, 97 Idaho 783, 554 P.2d 961 (1976) (lewd and lascivious conduct); and *State v. Suennen*, 36 Idaho 219, 209 P. 1072 (1922).

ICJI 912 Defense: Defendant Under Age 14

INSTRUCTION NO.

~~You may not find the defendant guilty of rape unless you find beyond a reasonable doubt either:~~

~~—— (a) that at the time of such alleged offense the defendant was fourteen (14) years of age or older, or~~

~~—— (b) that at the time of such alleged offense the defendant had the physical ability to accomplish penetration.~~

If defendant is under the age of 14 at the time of the act alleged, you may not find him guilty of rape unless you find, beyond a reasonable doubt, based on independent fact, that he had the physical ability to accomplish penetration.

Comment

I.C. § 18-6102.

ICJI 921 Forcible Penetration by Foreign Object

INSTRUCTION NO.

In order for the defendant to be guilty of Forcible Penetration by Foreign Object, the State must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] caused an object, instrument, or device, that is, a [item], to penetrate the [genital] [or] [anal] opening of [~~name of person~~ initials of victim]
4. for the purpose of sexual arousal, gratification, or abuse, and
- [5. the penetration was against [name of person]'s will, and
6. the penetration was accomplished [by the use of force or violence] [or] [by duress] [or] [by threats of immediate and great bodily harm, accompanied by the apparent power to inflict such harm].]

[or]

[5. [name of person] was incapable, through any unsoundness of mind, whether temporary or permanent, of giving legal consent.]

[or]

[5. the penetration was against [name of person]'s will, and
6. [name of person] was prevented from resistance by any [intoxicating] [narcotic] or [anesthetic] substance.]

If any of the above has not been proved beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-~~66046608~~. See *State v. Browning*, 123 Idaho 748, 852 P.2d 500 (Ct. App. 1993) (finger is an object); *State v. Ericson*, 566 P.3d 468, 473 (Idaho Ct. App. 2025) (affirming conviction for forcible penetration by use of a foreign object when object was finger).

ICJI 922 Sexual Abuse of Child

INSTRUCTION NO.

In order for the defendant to be guilty of Sexual Abuse of a Child, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] [solicited [name or initials of child] to participate in a sexual act] [or] [caused or had sexual contact with [name or initials of child] not amounting to lewd conduct]] [or] [~~made any photographic or electronic recording of [name of child]] [or] [induced, caused or permitted [name of child] to witness an act of sexual conduct],~~
4. the defendant was eighteen (18) years of age or older,
5. [name or initials of child] was under sixteen (16) years of age, and
6. the defendant did such act with the specific intent to gratify the lust, passions, or sexual desire of the defendant, of such child, or of some other person.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

~~I.C. § 18-1506. If this is not an included offense, then the words "not amounting to lewd conduct" should be deleted from element 3.~~

~~I.C. § 18-1506 is an included offense of I.C. § 18-1508. *State v. O'Neill*, 118 Idaho 244, 796 P.2d 121 (1990).~~

Sexual Abuse, I.C. § 18-1506, is not a lesser included offense of Lewd Conduct, I.C. § 18-1508. *State v. Flegel*, 151 Idaho 525, 526, 261 P.3d 519, 520 (2011).

ICJI 923 Sexual Abuse of Child - Definitions

INSTRUCTION NO.

In these jury instructions, the following words have the meanings stated.

~~["Solicit" means any offensive written, verbal, or physical act which is intended to communicate to the child the actor's desire to participate either in a sexual act or in sexual foreplay, or the actor's desire to gratify lust by the means of photographing or observing the child engaged in sexual conduct.]~~

~~["Sexual contact" means any physical contact between the child and any person which is caused by the actor, or the actor causing the child to have self contact.]~~

For the purposes of this section, "solicit" means any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

For the purposes of this section, "sexual contact" means any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such minor child to have self contact.

Comment

I.C. §§ 18-1506(2) & 18-1506(3). The terms "sexual act" and "sexual foreplay" are not defined in I.C. § 18-1506, but see I.C. § 18-1507 for definitions of related terms.

ICJI 926 Possession of Sexually Exploitative Material

INSTRUCTION NO.

In order for the defendant to be guilty of Possession of Sexually Exploitative Material, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho, and
3. the defendant [name] knowingly and willfully had in the defendant's possession sexually exploitative materials.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-1507A(2)(a).

ICJI 927 Sexual Exploitation - Definitions

INSTRUCTION NO.

As used in these jury instructions, the following words have the following meanings:

(a) "Child" means a person who is less than eighteen (18) years of age.

(b) "Commercial purpose" means the intention, objective, anticipation, or expectation of monetary gain or other material consideration, compensation, remuneration, or profit.

(c) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic areas, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(d) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.

(e) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement or bestiality.

(f) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(g) "Sadomasochism" means:

1. Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

2. The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(h) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(i) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(j) "Sexually exploitative material" means any image, photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, digitally or chemically produced or reproduced visual material which depicts where such visual material:

1. Shows a child engaged in, participating in, observing, or being used for explicit sexual conduct, or showing a child engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions, or video calling; or

2. Has been created, adapted, or modified to appear that an identifiable child is engaging in, participating in, observing, or being used for explicit sexual conduct.;

(k) "Bestiality" means a sexual connection in any manner between a human being and any animal.

(l) "Law enforcement officer" means any court personnel, sheriff, constable, peace officer, state police officer, correctional officer, probation officer, parole officer, prosecuting attorney, or attorney general, or their employees.

(m) "Vulnerable adult" means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources.

Comment

I.C. §§ : 18-1505B(2); 18-1507(2)-(1);

Only the definitions related to the charged offense should be included in the instruction.

ICJI 928 Sexual Battery of a Child Sixteen or Seventeen Years of Age

INSTRUCTION NO.

In order for the defendant to be guilty of Sexual Battery of a Child Sixteen or Seventeen Years of Age, the State must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. [the defendant [name] [committed [an act of] [genital-genital contact] [or] [oral-genital contact] [or] [anal-genital contact] [or] [oral-anal contact] [or] [manual-anal contact] [or] [manual-genital contact] [or] [any other] [a] [lewd or lascivious act] upon or with the body of [name or initials of victim],]

[or]

[the defendant [name] involved [name or initials of victim] in [sexual intercourse] [or] [erotic fondling] [or] [erotic nudity] [or] [masturbation] [or] [sadosomochism] [or] [sexual excitement] [or] [bestiality],]

[or]

[the defendant [name] solicited [name or initials of victim] to participate in a sexual act,]

[or]

[the defendant [name] caused or had sexual contact with [name or initials of victim],]

4. the defendant engaged in such conduct with the specific intent of arousing, appealing to, or gratifying the lust, passion, or sexual desires of the defendant, of such child, or of some other person,
5. [name or initials of victim] was [16] [or] [17] years of age, and
6. the defendant was at least 5 years of age older than [name or initials of victim].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-1508A.

ICJI 929 Lewd and Lascivious-Conduct With Minor Child Under Sixteen

INSTRUCTION NO.

In order for the defendant to be guilty of Lewd and Lascivious-Conduct With Minor Child Under Sixteen, the State must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. [the defendant [name] committed [an act of] [genital-genital contact] [or] [oral-genital contact] [or] [anal-genital contact] [or] oral-anal contact] [or] [manual-anal contact] [or] [manual-genital contact] [or] [any other] [a] [lewd or lascivious act] upon or with the body of [name or initials of victim],]

[or]

[the defendant [name] involved [name of victim] in an act of [bestiality] [or] [sado-masochistic abuse]]

4. [name or initials of victim] was a child under sixteen (16) years of age, and
5. the defendant [committed such act] [or] [involved such child in such act of [bestiality] [or] [sado-masochistic abuse] with the specific intent to arouse, appeal to, or gratify the lust or passions or sexual desires of the defendant, of such child, or of some other person.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-1508.

The alleged act(s) in element 3 must match the alleged act(s) in the charging document. *State v. Folk*, 151 Idaho 327, 342, 256 P.3d 735, 750 (2011); *State v. Day*, 154 Idaho 476, 480-81, 299 P.3d 788, 792-93 (Ct. App. 2013). The bracketed language “or any other lewd or lascivious act” in element 3 should only be included when such act is alleged in the charging document. *State v. Day*, 154 Idaho 476, 480-81, 299 P.3d 788, 792-93 (Ct. App. 2013).

Physical contact that is not of a similar class or character as the other enumerated acts does not constitute lewd or lascivious conduct. *State v. Kavajecz*, 139 Idaho 482, 486-87, 80 P.3d 1083, 1087-88 (2003). For example, touching of the breasts, kissing, or tickling is not “a lewd or lascivious act.” *State v. Folk*, 151 Idaho 327, 342, 256 P.3d 735, 750 (2011). A violation of I.C. § 18-1506, sexual abuse of a child under the age of sixteen, is not a lesser included offense of I.C. § 18-1508, lewd conduct with a minor child under sixteen. *State v. Flegel*, 151 Idaho 525, 529-30, 261 P.3d 519, 523-24 (2011).

The words "lewd and lascivious" do not need to be defined for the jury. *State v. Herr*, 97 Idaho 783, 554 P.2d 961 (1976); and *State v. Greensweig*, 102 Idaho 794, 641 P.2d 340 (Ct. App. 1982).

The statute makes it illegal to do certain acts upon the body "of a minor *or* child under the age of sixteen (16) years." The meaning of this phrase is unclear. It may be that the drafter of the statute believed that an emancipated person under the age of majority would not be a minor, so that the statute was intended to protect all un-emancipated minors and everyone who is under the age of sixteen years. Another interpretation is that the words "under the age of sixteen (16) years" were intended to modify both "minor" and "child." The statute is generally applied in Idaho only if the victim is under sixteen years of age.

Arranging a meeting place and arriving there at the prearranged time are sufficient to constitute a "substantial step" in furtherance of the crime of attempted lewd conduct with a minor. *State v. Glass*, 139 Idaho 815, 87 P.3d 302 (Ct. App. 2003).

Under I.C. § 19-1414, the precise time at which the offense was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material offense. Time is not a material element of the crime of lewd and lascivious conduct with a minor. *State v. Jones*, 140 Idaho 41, 89 P.3d 881 (Ct. App. 2003).

Violation of I.C. § 18-1506 is an included offense when an individual is charged with violation of I.C. § 18-1508. *State v. O'Neill*, 118 Idaho 244, 796 P.2d 121 (1990).

ICJI 930 Lewd Conduct – (Touching)

INSTRUCTION NO.

To constitute lewd ~~and~~or lascivious conduct, it is not necessary that bare skin be touched. The touching may be through the clothing.

Comment

The naked body of the victim does not have to be touched. *State v. Madrid*, 74 Idaho 200, 259 P.2d 1044 (1953); and *State v. Greensweig*, 102 Idaho 794, 641 P.2d 340 (Ct. App. 1982).

ICJI 931 Passions Need Not Be Actually Aroused

INSTRUCTION NO.

The law does not require as an essential element of the crime that the lust, passions, or sexual desires of either the defendant or [name or initials of victim] be actually aroused, appealed to, or gratified.

Comment

State v. Greensweig, 102 Idaho 794, 641 P.2d 340 (Ct. App. 1982).

ICJI 932 Consent of Victim No Defense

INSTRUCTION NO.

You are instructed that it is not a defense to the crime of [name of offense] that [name or initials of victim] may have consented to the alleged conduct.

Comment

This instruction would only apply when the defendant is alleged to have violated a statute prohibiting certain sexual conduct with persons under a specified age. *State v. Herr*, 97 Idaho 783, 554 P.2d 961 (1976).

The victim of statutory rape cannot consent to the sexual intercourse, *State v. Herr*, 97 Idaho 783, 554 P.2d 961 (1976); consent is not a defense to the crime of lewd conduct with a child under sixteen, *State v. Schwartzmiller*, 107 Idaho 89, 685 P.2d 830 (1984); and consent is not a defense to the crime of sexual battery of a child sixteen or seventeen years of age, *State v. Oar*, 129 Idaho 337, 340, 924 P.2d 599, 602 (1996). *State v. Knutsen*, 158 Idaho 199, 345 P.3d 989 (2015).