**20.24 Sexual Exploitation of Child—Defense of Reasonable Belief of Age**

It is a defense to a charge of sexual exploitation of a child that the defendant did not know, and could not reasonably have learned, that the child was under 18 years of age.

The defendant has the burden of proving by clear and convincing evidence—that is, that it is highly probable—that the defendant did not know and could not reasonably have learned that [*name of victim*] was under 18 years of age. Proof by clear and convincing evidence is a lower standard of proof than proof beyond a reasonable doubt.

If you find by clear and convincing evidence that the defendant did not know and could not reasonably have learned that the child was under 18 years of age, you must find the defendant not guilty of the charge of sexual exploitation of a child.

**Comment**

Although 18 U.S.C. § 2251 is silent on whether reasonable mistake of age may serve as an affirmative defense, the Ninth Circuit has held that the defense is required by the First Amendment. *United States v. U.S. Dist. Ct.*, 858 F.2d 534, 540-42 (9th Cir. 1988). The defendant must establish this defense by clear and convincing evidence. *Id.* at 543.