Consent Laws

Defining Consent

<table>
<thead>
<tr>
<th>State</th>
<th>How is Consent Defined?</th>
<th>Does the definition require “freely given consent” or “affirmative consent”?</th>
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<tbody>
<tr>
<td>Alabama</td>
<td>Consent has been interpreted to mean “assent or compliance with the proposition of another.” Ex parte Gordon, 706 So. 2d 1180, 1183 (Ala. 1997). Lack of consent results from: 1. forcible compulsion; or 2. being incapable of consent. Ala. Code § 13A-6-70(h). In addition, “Consent to engage in sexual intercourse, sodomy, sexual acts, or sexual contact may be communicated by words or actions. The existence of a current or previous marital, dating, social, or sexual relationship with the defendant is not sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device or sexually transmitted disease protection, without additional evidence of consent, is not sufficient to constitute consent.” 1. Ala. Code § 13A-6-70(l).</td>
<td>No. Ala. Code § 13A-6-70.</td>
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<tr>
<td>Alaska</td>
<td>Without consent means that a person: 1. with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or 1. is incapacitated as a result of an act of the defendant. Alaska Stat. § 11.41.470(8). The phrase “without consent” in statute refers to a particular type of unwanted sexual activity: unwanted sexual activity that is coerced by force or threat of force, or coerced by other means, or coerced by coercion, or coerced by means other than force, threat of force, or other means.</td>
<td>No. Alaska Stat. § 11.41.470.</td>
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<td>Arizona</td>
<td>Without consent includes any of the following: 1. the victim is coerced by the immediate use or threatened use of force against a person or property; 2. the victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant (see definition of “mental defect” below); 3. the victim is intentionally deceived as to the nature of the act; or 4. the victim is intentionally deceived to erroneously believe that the person is the victim’s spouse. Arizona Revised Statute § 13-1401(A)(7).</td>
<td>No.</td>
</tr>
<tr>
<td>Arkansas</td>
<td>There is a lack of consent if a person engages in a sexual act with another person by forcible compulsion or with a person who is incapable of consent because he or she is physically helpless, mentally defective or mentally incapacitated, or because of a victim’s age. Arkansas Code §§ 5-14-103; 5-14-125. • Mentally defective” means that a person suffers from a mental disease or defect that renders the person: • incapable of understanding the nature and consequences of a sexual act; or • unable to appreciate or control the person’s conduct as a result of the influence of a controlled or intoxicating substance: • administered to the person without the person’s consent; or • that renders the person unaware of a sexual act is occurring. Arkansas Code § 5-14-101(4). • Mentally incapacitated” means that a person is temporarily incapable of appreciating or controlling the person’s conduct as a result of the influence of a controlled or intoxicating substance: • administered to the person without the person’s consent; or • that renders the person unaware of a sexual act is occurring. Arkansas Code § 5-14-101(5). • Physically helpless” means that a person is: • physically helpless; • physically unable to communicate a lack of consent; or • rendered unaware that a sexual act is occurring. • A nursing home patient was unable to communicate lack of consent and, thus, was “physically helpless” within the meaning of statute for attempted rape purposes, victim was blind, unable to speak, and confined to bed or wheelchair, and victim could only grunt, raise her hand, and shake her head from side to side to communicate. Dobbs v. State, 1995, 930 S.W.2d 360, 326 Ark. 382. • Note: a determination that a person is mentally defective shall not be based solely on the person’s IQ. • A nursing home patient was unable to communicate lack of consent and, thus, was “physically helpless” within the meaning of statute for attempted rape purposes, victim was blind, unable to speak, and confined to bed or wheelchair, and victim could only grunt, raise her hand, and shake her head from side to side to communicate. Dobbs v. State, 1995, 930 S.W.2d 360, 326 Ark. 382. • Note: When criminality of conduct depends on a victim’s being incapable of consent because he or she is mentally defective or mentally incapacitated, it is an affirmative defense that the actor reasonably believed the victim was capable of consent. Arkansas Code § 5-14-102(c). The existence of forcible compulsion in a rape case does not depend on the quantum of force that is applied but rather on whether the act is consummated against the victim’s will. III/Allen v. State, 569 S.W.2d 572 (Arkansas 1978).</td>
<td>No.</td>
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<td>California</td>
<td>“Consent” is defined to mean positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. California Penal Code § 261.6.</td>
<td>Yes. California Penal Code § 261.6.</td>
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<td>Colorado</td>
<td>“Consent” means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship is not sufficient to constitute consent. Submission under the influence of fear does not constitute consent. Colorado Revised Statutes Annotated §18-3-403(1.5).</td>
<td>No.</td>
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<tr>
<td>Connecticut</td>
<td>Lack of consent to sexual activity exists where: 1. the accused compels the victim to engage in sexual activity by the use or threat of force against the victim (or against a third person); 2. the victim is mentally incapacitated or impaired because of mental disability or disease to the extent that the person is unable to consent to sexual activity; or 3. the victim is physically helpless. Connecticut General Statutes Annotated §§ 53a-65; 53a-10; 53a-71; 53a-72a; 53a-73a. • Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling such person’s conduct owing to the influence of a drug or intoxicating substance administered to such person without such person’s consent, or owing to any other act committed upon such person without such person’s consent. Connecticut General Statutes Annotated § 53a-65(1). • Impaired because of mental disability or disease” means that a person suffers from a mental disability or disease which renders such person incapable of appraising or controlling such person’s conduct. Connecticut General Statutes Annotated § 53a-65(4). • Physically helpless” means that a person is unconscious or for any other reason is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact.</td>
<td>No. Connecticut General Statutes Annotated § 53a-65(6).</td>
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<tr>
<td>State</td>
<td>Consent</td>
<td>Description</td>
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<td>Delaware</td>
<td>Consent is not defined by statute. However, Delaware law provides that a person commits a sex crime if the person engages in sexual penetration or sexual contact with another person and:</td>
<td>- The defendant compelled the victim to submit by an act of coercion or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. The victim need resist only to the extent that it is reasonably necessary to make the victim’s refusal to consent known to the defendant, unless such resistance would be futile or foolishly.</td>
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<td>- The defendant knew the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed.</td>
<td>- The defendant knew the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the defendant’s conduct or incapable of consenting.</td>
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<td>- The defendant is a health professional, a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse for which person shall be deemed to be without consent if such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the time of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested.</td>
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<td>- The defendant had substantially impaired the victim’s power to appraise or control the victim’s own conduct by administering or employing without the other person’s knowledge or against the other person’s will, drugs, intoxicants or other means for the purpose of preventing resistance.</td>
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<td>District of Columbia</td>
<td>Consent means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent. D.C. Code § 22-300(4).</td>
<td>Yes. Consent to the sexual act or contact in question must be freely given. Agreement D.C. Code § 22-900(1).</td>
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<td>Florida</td>
<td>Consent means intelligent, knowing, and voluntary consent and does not include coerced submission. “Consent” shall not be deemed or construed to mean the failure to contra the alleged victim to offer physical resistance to the offender. Florida Statute § 794.011.</td>
<td>Yes – the statute requires that consent be “voluntary.”</td>
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<td>Georgia</td>
<td>The State of Georgia does not define consent in reference to sexual activity. The offense of rape occurs when it is against “a female forcibly and against her will.” Georgia Code § 16-6-1.</td>
<td>No.</td>
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<td>Guam</td>
<td>Consent is not specifically defined. However, Guam law provides that a person commits a sex crime if the person engages in sexual penetration or sexual contact with another person and:</td>
<td>- (1) force or coercion is used to accomplish the sexual penetration or sexual contact; or</td>
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<td>- (2) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless. 9 G.C.A. §§ 25.15; 25.20; 25.25; 25.30.</td>
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<td>Hawaii</td>
<td>Consent is not defined by statute. However, Hawaii law provides that a person commits a sex crime if:</td>
<td>- the person subjects another person to a sexual act by compulsion; or</td>
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<td>- the person subjects a sexual act another person who is mentally defective, mentally incapacitated, or physically helpless. HRS §§ 707-70; 707-71; 707-72.</td>
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<td>- “Compulsion” means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss. HRS §§ 707-700.</td>
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<td>- “Mentally defective” means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person’s conduct. HRS §§ 707-700.</td>
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<td>- “Mentally incapacitated” means a person rendered temporarily incapable of appraising or controlling the person’s conduct as a result of the influence of a substance administered to the person without the person’s consent. HRS §§ 707-700.</td>
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<td>- “Physically helpless” means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act. HRS § 707.40(a)(6).</td>
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<td>Idaho</td>
<td>Consent is not specifically defined. However, Idaho law defines rape as “the penetration, however slight, of the oral, anal or vaginal opening with a penis” accomplished under any of the following circumstances:</td>
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<td>- the victim is under the age of sixteen and the perpetrator is eighteen years of age or older;</td>
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<td>- the victim is eighteen years of age or older and the perpetrator is seven years or more older than the victim;</td>
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<td>- the victim is incapable, through any unsoundness of mind, due to any cause, including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent;</td>
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<td>- the victim resists but the resistance is overcome by force or violence;</td>
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<td>- the victim is prevented from resisting by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution, or is unable to resist due to any intoxicating, narcotic, or anesthetic substance;</td>
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Illinois

"Consent" means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or sexual conduct resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent. A person who initially consents to sexual penetration or sexual conduct is not deemed to have consented to any sexual penetration or sexual conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct. 720 ILCS 5/11-1.70. The "focus is on what the defendant knew or reasonably should have known regarding the victim's willingness or ability to give knowing consent." People v. Roldan, 2015 Ill App (1st) 139862, ¶ 19.

Indiana

Consent is not specifically defined under the current law. However, Indiana law provides that a person commits a sex crime if: (1) the victim is compelled by force or imminent threat of force; (2) the victim is unaware that the sexual intercourse or sexual conduct is occurring; or (3) the course of consensual or consensual conduct is otherwise occurring. State v. Flynn, 261 Kan. 1024, 1030–31, 934 P.2d 113, 118 (1997).

Iowa

Consent is not specifically defined. However, Iowa law defines "sexual abuse" as any sex act between persons where: (1) the sexual act is done by force or against the will; or (2) the consent is obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or (3) the victim is incapable of giving consent because of mental deficiency or disease, or because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender; or (4) the victim is under the age of 14; or (5) the victim's consent was obtained through a knowing misrepresentation that the sexual intercourse was a medically or therapeutically necessary procedure; or (6) the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority. K.S.A. 21-5503.

Kansas

Consent is not specifically defined. However, Kansas law provides that a person commits a sex crime when a person knowingly engages in sexual intercourse with a person who does not consent under any of the following circumstances: (1) the actor is the victim of force or fear; (2) the victim is unconscious or physically powerless; (3) the victim is incapacitated in giving consent because of mental deficiency or disease, or because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender; (4) the victim is under the age of 14; (5) if the victim's consent was obtained through a knowing misrepresentation that the sexual intercourse was a medically or therapeutically necessary procedure; or (6) if the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority. K.S.A. 21-5503.

Kentucky

Lack of consent" results from: (1) forcible compulsion; (2) incapacity to consent; or (3) if the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor’s conduct.

Lack of consent in sexual intercourse: (1) the victim is 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 conduct; (2) the victim is at the time unconscious of the nature of the act ("unconsciousness of the nature of the act") means incapable of existing because the victim was unconscious or asleep, or was not aware, knowing, perceiving, or cognizant that the act occurred; (3) the victim submits under the belief that the person committing the act is the victim’s spouse or someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused with intent to induce such belief; (4) the victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to some person in the future, cause damage to property, engage in other conduct constituting a crime or cause criminal charges to be instituted against the victim, or expose a secret or publicize an asserted fact, true or false, tending to subject any person to hatred, contempt or ridicule.

No.

Lack of free will: Yes, it requires "freely given agreement" to the act of sexual penetration or sexual conduct in question. 720 ILCS 5/11-1.70.

No.

No.

No.
Louisiana Consent is not specifically defined. However, Louisiana law provides that a person commits a sex crime if that person engages in a "sexual act" with another person and:
1. (1) the other person submits as a result of compulsion; or
2. (2) the other person, not the actor's spouse, has not in fact attained the age of 14 years; or
3. (3) the other person, not the actor's spouse, has not in fact attained 12 years of age; or
4. (4) the actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by furnishing or administering or employing drugs, intoxicants or other similar means; or
5. (5) the actor compels or induces the other person to engage in the sexual act by any threat; or
6. (6) the actor compels or induces the other person to engage in the sexual act if the other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent; or
7. (7) the other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent; or
8. (8) when the victim, through unsoundness of mind, is temporarily or permanently incapable of understanding the nature of the act and the offender knew or should have known of the victim's incapacity; or
9. (9) when the victim submits under the belief that the victim is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the offender. LSA-R.S. 14:42, LSA-R.S. 14:42.1, LSA-R.S. 14:43, LSA-R.S. 14:43.1.

Maine Consent is not specifically defined. However, Maine law provides that a person is guilty of a sex crime if that person engages in a "sexual contact" with another person and:
1. (1) the other person has not expressly or impliedly acquiesced in the sexual contact; or
2. (2) the other person is unconscious or otherwise incapable of resisting and has not consented to the sexual contact; or
3. (3) the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact; or
4. (4) the other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 5 years older than the other person; or
5. (5) the actor is at least 21 years of age and engages in a sexual act with another person, not the actor's spouse, who is either 16 or 17 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit or institution in which the student is enrolled; or
6. (6) the other person has not expressly or impliedly acquiesced in the sexual contact; or
7. (7) the other person is a substantially cognitively impaired individual, a mentally incapacitated individual, or a helpless individual; or
8. (8) if the victim is a substantial cognitively impaired individual, a mentally incapacitated individual, or a helpless individual; or
9. (9) the victim resists the act to the utmost, but whose resistance is overcome by force; or
10. (10) when the victim is under the age of 13; or
11. (11) when two or more offenders participated in the act; or
12. (12) when the victim is present from resisting the act because the offender is armed with a dangerous weapon; or
13. (13) when the victim is under the age of 13; or
14. (14) when the victim is present from resisting the act because the victim suffers from a physical or mental infirmity preventing such resistance ("mental infirmity" means a person with an intelligence quotient of seventy or lower, "physical infirmity" means a person who is a quadriplegic or paraplegic); or
15. (15) when the victim is present from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape; or
16. (16) the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim; or
17. (17) when the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity; or
18. (18) when the victim, through unsoundness of mind, is temporarily or permanently incapable of understanding the nature of the act and the offender knew or should have known of the victim's incapacity; or
19. (19) when the victim submits under the belief that the victim is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the offender. LSA-R.S. 14:42, LSA-R.S. 14:42.1, LSA-R.S. 14:43, LSA-R.S. 14:43.1.

Maryland Consent is not specifically defined. However, Maryland law provides that a person commits a sex crime if that person engages in "vaginal intercourse" or "sexual act" with another person and:
1. (1) by force, or the threat of force, without the consent of the other; or
2. (2) if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or
3. (3) if the victim is under the age of 14 years, and the person performing the act is at least 4 years older than the other person; or
4. (4) if the victim is under arrest or otherwise in actual physical custody; (2) knows or reasonably should know that the person is under arrest or otherwise in actual physical custody. LSA-R.S. 14:41.1.

Consent is not defined. However, Louisiana law provides that a person commits a sex crime if that person engages in "vaginal intercourse" or "sexual act" with another person and:
1. (1) the other person submits as a result of compulsion; or
2. (2) the other person, not the actor’s spouse, has not in fact attained the age of 14 years; or
3. (3) the other person, not the actor’s spouse, has not in fact attained 12 years of age; or
4. (4) the actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by furnishing or administering or employing drugs, intoxicants or other similar means; or
5. (5) the actor compels or induces the other person to engage in the sexual act by any threat; or
6. (6) the actor compels or induces the other person to engage in the sexual act if the other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent; or
7. (7) the other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent; or
8. (8) when the victim, through unsoundness of mind, is temporarily or permanently incapable of understanding the nature of the act and the offender knew or should have known of the victim's incapacity; or
9. (9) when the victim submits under the belief that the victim is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the offender. LSA-R.S. 14:42, LSA-R.S. 14:42.1, LSA-R.S. 14:43, LSA-R.S. 14:43.1.

Further, a person is deemed incapable of consent when the person is under arrest or otherwise in the actual physical custody of a police officer or other law enforcement official and the offender is a police officer or other law enforcement official who either: (1) arrested the person or was responsible for maintaining the person in actual custody; (2) knows or reasonably should know that the person is under arrest or otherwise in actual custody. LSA-R.S. 14:41.1.
<table>
<thead>
<tr>
<th>State</th>
<th>Consent is not specifically defined. The standard used in the sexual assault statutes is whether the accused compels the victim to submit by force or against her will, or compels such person to submit by threat of bodily injury. Miss. Gen. Laws Ann. Ch. 265 § 22.</th>
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<tbody>
<tr>
<td>Massachusetts</td>
<td>Consent is not specifically defined. The standard used in the sexual assault statutes is whether the accused used “force or coercion to accomplish the sexual act.” Mich. Comp. Laws. Ann. § 750.520b – e.</td>
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<tr>
<td>Michigan</td>
<td>Consent is not specifically defined. The standard used in the sexual assault statutes is whether the accused used “force or coercion to accomplish the sexual act.” Mich. Comp. Laws. Ann. § 750.520b – e.</td>
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<tr>
<td>Minnesota</td>
<td>Consent means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant fostered a particular sexual act. Further: A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act. Corroboration of the victim’s testimony is not required to show lack of consent. Minn. Stat. § 609.341(4).</td>
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<td>Missouri</td>
<td>Consent is not specifically defined. However, Missouri law provides that rape in the first degree is committed if the offender has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by use of force or coercion. Force, fear, or threat of harm or injury is defined as “the use of or threat of use of a power or force to accomplish the sexual act.” Mo. Rev. Stat. § 566.030.</td>
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<td>Montana</td>
<td>The term “consent” means words or overt actions indicating a freely given present agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following: (1) an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn; (2) a current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and (3) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent. The victim is incapacitated if consent because the victim is mentally disordered or incapacitated; physically helpless; by deception, coercion, or surprise; less than 16 years old; incarcerated in an adult or juvenile correctional detention, or treatment facility or is on probation, conditional release, or parole and the perpetrator is an employee, contractor or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the victim is a part of a lawful search; lack of consent if the individuals are married to each other, and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority; receiving services from a youth care facility, and the perpetrator: has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and (3) an employee, contractor, or volunteer of the youth care facility; or is an employee, contractor, or volunteer of the youth care facility; or (3) this does not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is received services from a youth care facility and the other individual is a patient in the facility, or is an employee, contractor, or volunteer of the facility or community-based service.</td>
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<tr>
<td>Not defined</td>
<td>Consent is not specifically defined. The standard used in the sexual assault statutes is whether the accused used “force or coercion to accomplish the sexual act.” Mich. Comp. Laws. Ann. § 750.520b – e.</td>
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<td>Directly involved in the parent or guardian's case or involved in the supervision of the case.</td>
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<td>No, but resistance by the victim is not required to show lack of consent. Mont. Code Ann. § 45-5-311(5).</td>
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<td>Not specified.</td>
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<tr>
<td>No, but resistance by the victim is not required to show lack of consent. Mont. Code Ann. § 45-5-311(5).</td>
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</table>
Consent itself is not defined, however "without consent" means:

(a) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the victim's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor.

(b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and

(c) A victim need not resist verbally or physically where it would be useless or futile to do so.


Nevada

Consent is not defined by statute. However, it is an element of the crime of sexual assault that the act was committed against the will of the victim. Nev. Rev. Stat. Ann. § 200.366.

New Hampshire

The term consent is not defined by statute. However, consent is explicitly rejected as a defense for certain listed sexual assault crimes, as described below.

Yes, for some crimes. A person commits aggravated felonious sexual assault if he or she engages in sexual penetration with a person that indicates by speech or conduct that there is not freely given consent to performance of the sexual act. N.H. Rev. Stat. Ann. § 632-A:2(I)(m).

New Jersey

New Jersey's criminal code includes a generally applicable definition of consent as follows:

1. General. The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

2. Consent to bodily harm. When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if:

   (i) The bodily harm consented to or threatened by the conduct consented to is not serious; or

   (ii) The conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity of a kind not forbidden by law; or

   (iii) The consent establishes a justification for the conduct under chapter 3 of the code.

3. Ineffective Consent. Unless otherwise provided by the code or by the law defining the offense, assent does not constitute consent if:

   (i) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

   (ii) It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute an offense; or

   (iii) It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.


New Mexico

New Mexico does not specifically define "consent." However, New Mexico defines "force or coercion" as:

(1) the use of physical force or physical violence;

(2) the use of threats to use physical force against the victim or another when the victim believes that there is a present ability to execute the threats;

(3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;

(4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or

(5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.

Physical or verbal resistance of the victim is not an element of force or coercion. New Mexico Statutes §50-9-10.

New York

Under New York law, lack of consent results from:

(1) forceful compulsion;

(2) incapacity to consent;

(3) where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forceful compulsion or incapacity to consent, in which the victim does not expressly or implicitly acquiesce in the actor's conduct; or

(4) where the offense charged is rape in the 3rd degree or criminal sexual act in the 3rd degree, in addition to forceful compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances. New York Penal Law §130.05.

North Carolina

North Carolina does not specifically define consent. The concept of "force" is used in the statute, but this term is also not defined.

"Against the will of the other person" is defined as either: (a) without consent of the other person; or (b) after consent is revoked. North Carolina General Statutes Annotated §14-27.20(1a).

A threat of serious bodily harm which reasonably places fear in a person's mind is sufficient to demonstrate the use of force and the lack of consent.


Additionally, submission, including submission due to fear, fright, coercion or realization that in the particular circumstances there is no reasonable way to avert or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;


Also State v. Kane, 253 N.C. App. 656, 7 (2014) ("Consent induced by violence or fear of violence is not effective to preclude a rape conviction.")

No.

North Dakota

North Dakota does not specifically define "consent." However, "sexual imposition" is a crime defined in NDCC § 12.1-20-04 as:

A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act or sexual contact, is guilty of a class B felony if the actor compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting.

The statute defines "coercion" in §12.1-20-02 as:

- To exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.

Additionally, "sexual imposition" is a crime defined in chapter 12.1-20-03 as:

A person who engages in a sexual act, or who engages another to engage in a sexual act, is guilty of a class B felony if the actor compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting.

No.

Ohio

Ohio does not specifically define "consent." However, submission to sexual conduct as a result of fear may be sufficient to prove lack of consent as physical force or threat of physical force, threat of imminent death, or threat of serious bodily harm, mere submission to sexual conduct is not enough to prove lack of consent.


No.
<table>
<thead>
<tr>
<th>State</th>
<th>Definition of Consent: A person is considered incapable of consenting to a sexual act if the person is:</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oklahoma</td>
<td>(a) under 18 years of age; (b) incapable of appraising the nature of the person's conduct; (c) mentally incapacitated; or (d) physically helpless. A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence. A person is incapable of appraising the nature of the person's conduct if: (a) the person is unable to understand the nature of the conduct; (b) the person is unable to understand the right to choose whether and how to engage in conduct, including the right to revoke a prior decision to engage in conduct; or (c) the person is unable to communicate a decision to engage in conduct.</td>
<td></td>
</tr>
<tr>
<td>Oregon</td>
<td>Oregon does not specifically define &quot;consent.&quot; However, a person is considered incapable of consenting to a sexual act if the person is: (a) under 18 years of age; (b) incapable of appraising the nature of the person's conduct; (c) mentally incapacitated; or (d) physically helpless.</td>
<td>N/A</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Pennsylvania does not specifically define &quot;consent.&quot; However, a person commits a felony of the first degree when the person engages in sexual intercourse with a complainant: (1) By forcible compulsion; (2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; (3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring; (4) Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance; or (5) Who suffers from a mental disability which renders the complainant incapable of consent.</td>
<td>N/A</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>Puerto Rico does not specifically define &quot;consent.&quot; Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental under any of the following circumstances commits a severe second degree felony: (1) the victim has not yet reached the age of sixteen (16) at the time of the event; (2) due to mental disability or illness, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission; (3) the victim has been compelled into the act by means of physical force, violence, intimidation or the threat of serious and immediate bodily harm; (4) the victim's capability to consent has been annulled or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances; (5) when at the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused; (6) when the person submits to the act by means of deception, trickery, simulation or cover up with respect to the identity of the person accused; (7) when the person is forced or induced by means of abuse or physical or psychological violence into participating or becoming involved in unwanted sexual relations with third parties; (8) if the person is a relative of the victim, by ascendency or descendant, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree; or (9) when the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or psychotherapeutic treatment, or any type of counseling, or because there is a relationship with the victim as the leader of his/her religious belief.</td>
<td>N/A</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Rhode Island does not specifically define &quot;consent.&quot; A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if any of the following circumstances exist: (1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless; (2) The accused uses force or coercion; (3) The accused, through concealment or by the element of surprise, is able to overcome the victim; or (4) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Forcible compulsion" is defined as "compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term comprehends a severe second degree felony: (1) uses or threatens to use a weapon, or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon; (2) overcomes the victim through the application of physical force or physical violence; (3) coerces the victim to submit by threatening to use force or violence on the victim and the victim reasonably believes that the accused has the present ability to execute these threats; or (4) coerces the victim to submit by threatening to at some time in the future murder, inflict serious bodily injury upon or kidnap the victim or any other person and the victim reasonably believes that the accused has the ability to execute this threat. | N/A |
South Carolina does not specifically define "consent." A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses force or coercion to accomplish sexual battery;
(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of force or coercion, kidnapping, trafficking in persons, robbery, extortion, or any other similar offense or act;
(c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless; or
(d) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance. S.C. Code Ann. § 16-3-652.

"Aggravated force" means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon. S.C. Code Ann. § 16-3-653(c).

A person is guilty of criminal sexual conduct in the second degree if the actor uses aggravated coercion to accomplish sexual battery. S.C. Code Ann. § 16-3-653(1).

"Aggravated coercion" means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes the actor has the present ability or can carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person. S.C. Code Ann. § 16-3-653(b).

A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances; or
(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless; or
(c) The actor uses force or coercion to accomplish sexual battery after the victim has resisted the act or has communicated unwillingness to an act. S.C. Code Ann. § 16-3-654.

"Mentally defective" means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct. S.C. Code Ann. § 16-3-653(c).

"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause. S.C. Code Ann. § 16-3-653(f).

"Physically helpless" means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act. S.C. Code Ann. § 16-3-653(f).

South Dakota does not provide a definition for consent, but it provides that no consent exists for an act of sexual penetration accomplished with any person under the following circumstances:

1. If the victim is less than thirteen years of age;
2. Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution;
3. If the victim is incapable, because of physical or mental incapacity, of giving consent to such act;
4. If the victim is capable of giving consent and has reason to know that the actor has the present ability or can carry out the threat;
5. If the victim is 13 years of age but less than 16 years of age, and the perpetrator is at least 3 years older than the victim. S.D. Code §22-22-1.

Tennessee does not provide a definition for consent, but it provides that no consent exists for an act of sexual penetration accomplished with any person under the following circumstances:

1. Force or coercion is used to accomplish the act;
2. Sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;
3. The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless; or

Sexual battery is unlawful sexual contact with a victim by the defendant or by a defendant in any of the following circumstances:

1. Force or coercion is used to accomplish the act;
2. Sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;
3. The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless; or
4. The sexual contact is accomplished by fraud.

For purposes of the crime of sexual battery a victim is incapable of consent if (1) the sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services described in (2); and (2) the defendant, whether licensed by the state or not, is a member of the medical, healthcare professional, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Tenn. Code Ann. §39-13-503.

Under Texas law, sexual assault "without the consent" of the other person arises when:

1. the actor compels the other person to submit or participate by the use of physical force, violence, or coercion;
2. the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;
3. the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
4. the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
5. the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
6. the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
7. the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
8. the actor is a public servant who coerces the other person to submit or participate;
9. the actor is a mental health services provider or a health care services provider who causes the other person to submit or participate;
10. the actor is a member of the clergy, healthcare professional, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Tex. Code Ann. §39-13-503.
Under Utah law, sexual offenses “without consent” of the victim arise when:

- (a) the victim expresses lack of consent through words or conduct;
- (b) the actor overcomes the victim through the actual application of physical force or violence; or
- (c) the actor is able to overcome the victim through concealment or by the element of surprise;
- (d) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or
- (e) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;
- (f) “to retaliate” includes threats of physical force, kidnapping, or extortion;
- (g) the actor knows the victim is unconscious, unaware that the act is occurring, or is physically unable to resist;
- (h) the actor knows or reasonably should know that the victim has a mental disease or defect, which renders the victim unable to appraise the nature of the act, resist the act, understand the possible consequences to the victim’s health or safety, or appraise the nature of the relationship between the actor and the victim; or
- (i) the actor knows that the victim participates because the victim erroneously believes that the actor is someone else;
- (j) the actor intentionally impaired the power of the victim to apprise or control his or her conduct by administering any substance without the victim’s knowledge;
- (k) the victim is younger than 14 years of age;
- (l) the victim is younger than 18 years of age and at the time of the offense the actor was the victim’s parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim;
- (m) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and enroles or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (b) or (d) above; or
- (n) the actor is a health professional or religious counselor, the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was medically or professionally appropriate diagnostic, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested;
- (o) consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act; Consent may be initially given but may be withdrawn through words or conduct at any time prior to or during sexual activity. Utah Code Ann. §76-3-406(2)(a).

Yes, a person is deemed incapable of exercising independent judgment about the matter.

Consent is not defined by statute. However, case law suggests that in order for a person to consent to sexual intercourse or sexual contact, consent should be given out of free will, and determining whether someone has truly consented requires close attention to a wide range of contextual elements, including verbal and nonverbal cues. State v. Beigelberger, 400 P.3d 1127, 1145 (Utah App. 2017).

Under state law, sexual offenses “without consent” of the victim arise when:

- (a) a person is less than 16 years old;
- (b) the person is mentally defective or mentally incapacitated;
- (c) the person suffers from a mental illness or defect which impairs capacity to appraise personal conduct; or
- (d) the person is a minor through force, intimidation, or abuse of a position of authority.

Virginia does not provide a definition for consent, but defines rape as sexual intercourse (i) against the consent of the person's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacitation or physical helplessness; or (iii) with a weapon; or (iv) in the form of sex trafficking; or (v) sexual battery as sexual abuse against the will of the complaining witness, by force, threat, intimidation or fraud.

Wash. Rev. Code Ann. § 9A.44.010(1). A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person where the victim did not consent to sexual intercourse with the perpetrator, or where there is a threat of physical force against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat.

Washington does not provide a definition for consent, but defines rape as sexual intercourse (i) against the consent of the person’s will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness’s mental incapacitation or physical helplessness; or (iii) with a weapon; or (iv) in the form of sex trafficking; or (v) sexual battery as sexual abuse against the will of the complaining witness, by force, threat, intimidation or fraud.

Wisconsin does not define consent by statute. However, case law suggests that in order for a person to consent to sexual intercourse, the person must be in a position to exercise independent judgment about the matter. Wilson v. State, 635 P.2d 1246 (Wyo. 1982).

Wyoming does not define consent by statute. However, case law suggests that in order for a person to consent to sexual intercourse, the person must be in a position to exercise independent judgment about the matter. Wilson v. State, 635 P.2d 1246 (Wyo. 1982).

### Capacity to Consent

<table>
<thead>
<tr>
<th>State</th>
<th>At what age is a person able to consent?</th>
<th>Does developmental disability and/or mental incapacity impact the victim’s ability consent?</th>
<th>Does consciousness impact the victim’s ability consent?</th>
<th>Does intoxication impact the victim’s ability consent?</th>
<th>Does the relationship between the victim and actor impact the victim’s ability consent?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utah</td>
<td>16 years old</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Vermont</td>
<td>13 years old</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Virginia</td>
<td>18 years old</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Washington</td>
<td>18 years old</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>West Virginia</td>
<td>18 years old</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>18 years old</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Wyoming</td>
<td>18 years old</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
Yes, a person is deemed incapable of consenting if he or she is incapacitated. Alaska Code § 13A-6-70(c).

"Incapacitated" means (among other things) that (a) a person suffers from a mental or developmental disability which renders the person incapable of appraising the nature of his or her conduct or (b) a person who is unable to give consent or is unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate. Alaska Code § 13A-6-602(c).

Yes, a person is deemed incapable of consenting if he or she is incapacitated. Alaska Code § 13A-6-70(c).

"Incapacitated" means (among other things) that a person is unable to give consent or unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate. Alaska Code § 13A-6-602(c).

Yes, a person is deemed incapable of consenting if he or she is incapacitated. Alaska Code § 13A-6-70(c).

"Incapacitated" means (among other things) that a person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, intoxicating substance and the condition was known or should have been reasonably known to the offender. Alaska Code § 13A-6-602(c).

Yes, in certain cases:

- In cases involving the sexual assault of a child by an adult, person engaging in sexual penetration with a person who the offender knows is a child knows and trusts the adult and the adult exercises authority and domination over the child sufficient to allow inference of an implied threat if the child did not comply. R.E.V. v. State, 944 So. 2d 981, 984 (Ala. Crim. App. 2006) (citing Power v. State, 597 So. 2d 721 (Ala. 1991), as limited by Ex parte J.P., 855 So. 2d 280 (Ala. 2002)).
- It is illegal for a school employee to engage in "a sex act with a student under the age of 19 years" to use sex contact with such a student, or to solicit a sex act (including sexual intercourse, deviate sexual intercourse, or sexual contact with a student under the age of 10 by "solicit[ing], persuad[ing], encourag[ing], harass[ing], or entic[ing] a student." Consent is not a defense for these acts. Ala. Code §§ 13A-6-70(c), 13A-6-60(2)(b).
- The Alaska Statute does not directly address intimidation, but intimidation that causes an individual to be "unaware that a sexual act is being committed" may invalidate consent.

Yes, there are several relationships between offender and victim for which consent is unavailable as a defense, including:

- The following constitutes sexual assault in the first degree:
  - A person engaging in sexual penetration with another person who the offender knows is mentally incapable and who is in the offender's care or authority of law or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.410(a)(3).
  - A person engaging in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed (meaning the offender is responsible regardless of whether the victim consented):
    - A person engaging in sexual contact with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or a program that is required by law to be licensed by the state. Alaska Stat. § 11.41.420(a)(2).
    - A person engaging in sexual penetration with a person who is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(3).
    - The following constitutes sexual assault in the second degree:
      - A person engaging in sexual contact with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or a program that is required by law to be licensed by the state. Alaska Stat. § 11.41.420(a)(2).
      - A person engaging in sexual penetration with a person who is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(3).
      - The following constitutes sexual assault in the third degree:
        - A person engaging in sexual contact with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or a program that is required by law to be licensed by the state. Alaska Stat. § 11.41.420(a)(2).
        - A person engaging in sexual penetration with a person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or a program that is required by law to be licensed by the state. Alaska Stat. § 11.41.420(a)(3).
- The following constitutes sexual assault in the second degree:
  - A person engaging in sexual contact with another person who the offender knows is mentally incapable and who is in the offender's care or authority of law or in a facility or a program that is required by law to be licensed by the state. Alaska Stat. § 11.41.410(a)(3).
  - A person engaging in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed (meaning the offender is responsible regardless of whether the victim consented):
    - A person engaging in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed (meaning the offender is responsible regardless of whether the victim consented):
      - A person engaging in sexual penetration with a person who is in the offender's care by authority of law or in a facility or a program that is required by law to be licensed by the state. Alaska Stat. § 11.41.410(a)(3).
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  - A person engaging in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed (meaning the offender is responsible regardless of whether the victim consented):
    - A person engaging in sexual penetration with a person who is in the offender's care by authority of law or in a facility or a program that is required by law to be licensed by the state. Alaska Stat. § 11.41.410(a)(3).
- Consent is not an element of the crime of incest for engaging in sexual intercourse with a family member (meaning the crime of incest occurs whether or not the parties consented to the act). Alaska Code § 13A-13-3-1.
Yes, a person can be incapable of giving legal consent because he or she is mentally defective or mentally incapacitated. Arizona Revised Statutes Annotated § 18-3-405.3(1).

- Yes, a person that is unconscious is deemed "physically helpless" and unable to give consent. Arizona Revised Statutes Annotated § 18-3-405.3(1).
- Yes, a person that is temporarily incapacitated is deemed "physically helpless" and unable to give consent. Arizona Revised Statutes Annotated § 18-3-405.3(1).
- Yes, any actor who knowingly employs, without the person's consent; or perceives or cognizant that the sexual act is occurring, is deemed "mentally incapacitated" and unable to give consent. Arizona Revised Statutes Annotated § 18-3-405.3(1).
- Yes, in a prosecution for forcible rape and sexual assault in the first through third degree, the victim cannot consent if certain relationships, listed below, exist between the victim and offender. These include:
  - a member of minor-victim’s family (including by adoption);
  - an employee of the correctional facility where a minorvictim is in custody;
  - a teacher, athletic coach, counselor or a caretaker.

- In addition:
  - employees of correctional facilities commit unlawful sexual conduct by intentionally or knowingly engaging in any act of sexual nature with an offender who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail with an offender who is under the supervision of either department or a city or county.

- Yes, a minor is capable of consenting to sexual intercourse with an adult who is the minor’s spouse. California Penal Code § 261.5(a).

- Yes, a victim can be incapable of understanding the nature of the act and it is known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).
- Yes, a minor is capable of giving legal consent because of the nature of the act and it is known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).
- Yes, a person can be incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition as long as such condition is known or should have reasonably been known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).
- Yes, a person can be incapable of consent by reason of drugs, alcohol or any other similar impairment of cognition as long as such condition is known or should have reasonably been known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).
- Yes, for certain crimes. Spousal status is a defense to a prosecution for sexual abuse under section 13-1406 if the person was the spouse of the other person at the time of the commission of the act. Arizona Revised Statute § 13-1401(D).

- Yes, in a prosecution for forcible rape and sexual assault in the first through third degree, the victim cannot consent if certain relationships, listed below, exist between the victim and offender. These include:
  - a member of minor-victim’s family (including by adoption);
  - an employee of the correctional facility where a minorvictim is in custody;
  - a teacher, athletic coach, counselor or a caretaker.

- However, if the accused had reason to know that the victim was incapable of giving legal consent, the accused is guilty of rape if engaging in an act of sexual intercourse where the other person is prevented from resisting by reason of mental or physical incapacity or by any intoxicating or anesthetic substance.

- Yes, any actor who knowingly employs, without the person's consent; or perceives or cognizant that the sexual act is occurring, is deemed "mentally incapacitated" and unable to give consent. Arizona Revised Statutes Annotated § 18-3-405.3(1).
- Yes, a person who has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search. Colorado Revised Statutes Annotated § 18-3-402(1)(v).
- A minor is capable of consenting to sexual intercourse with an adult who is the minor’s spouse. California Penal Code § 261.5(a).
- Yes, a person occupies a "position of trust" within the meaning of the statute where the person assumes an ongoing and continuous supervisory professional purpose when it is served no professional purpose.
- Yes, the accused is guilty of rape if engaging in an act of sexual intercourse where the other person is prevented from resisting by reason of mental or physical incapacity or by any intoxicating or anesthetic substance, and this condition was known or should have reasonably been known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).
- In addition:
  - A peace officer commits unlawful sexual conduct by knowingly engaging in sexual contact, oral sexual contact or sexual intercourse with any person who is in the officer's custody or a person who the officer knows or has reason to know is the subject of an investigation. Arizona Revised Statute § 17-341(A).
  - A licensed behavioral health professional, psychiatrist or psychologist commits sexual misconduct by intentionally or knowingly engaging in sexual intercourse with a client who is currently under the care or supervision of the licensed behavioral health professional, psychiatrist or psychologist. Arizona Revised Statute § 17-341(A).
  - Employees of correctional facilities commit unlawful sexual conduct by intentionally or knowingly engaging in any act of sexual nature with a patient who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail.

- Yes, a person can be incapable of giving consent by reason of drugs, alcohol or any other similar impairment of cognition as long as such condition is known or should have reasonably been known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).
- Yes, a person can be incapable of giving consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition as long as such condition is known or should have reasonably been known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).
- Yes, a minor is capable of giving legal consent because of the nature of the act and it is known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).
- Yes, a minor is capable of giving legal consent because of the nature of the act and it is known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).
- Yes, any actor who knowingly employs, without the person's consent; or perceives or cognizant that the sexual act is occurring, is deemed "mentally incapacitated" and unable to give consent. Arizona Revised Statutes Annotated § 18-3-405.3(1).
- Yes, the accused is guilty of rape if engaging in an act of sexual intercourse where the other person is prevented from resisting by reason of mental or physical incapacity or by any intoxicating or anesthetic substance.

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- Yes, any actor who knowingly employs, without the person’s consent; or perceives or cognizant that the sexual act is occurring, is deemed "mentally incapacitated” and unable to give consent. Arizona Revised Statutes Annotated § 18-3-405.3(1).
- Yes, the accused is guilty of rape if engaging in an act of sexual intercourse where the other person is prevented from resisting by reason of mental or physical incapacity or by any intoxicating or anesthetic substance.

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- Yes, a person that is temporarily incapacitated is deemed "physically helpless" and unable to give consent. Arizona Revised Statutes Annotated § 18-3-405.3(1).
- Yes, any actor who knowingly employs, without the person’s consent; or perceives or cognizant that the sexual act is occurring, is deemed "mentally incapacitated” and unable to give consent. Arizona Revised Statutes Annotated § 18-3-405.3(1).
- Yes, the accused is guilty of rape if engaging in an act of sexual intercourse where the other person is prevented from resisting by reason of mental or physical incapacity or by any intoxicating or anesthetic substance.

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**Connecticut**


Yes, a person can be mentally incapacitated or impaired because of mental disability or disease to the extent that the person is unable to consent to sexual activity. Connecticut General Statutes Annotated §§ 53a-64, 53a-70, 53a-71.

However, there is an affirmative defense that the actor, at the time of the conduct constituting the criminal offense, did not know of such condition of the victim. Connecticut General Statutes Annotated § 53a-67(a).

**Mentally incapacitated** means that a person is rendered temporarily incapable of appraising or controlling such person’s conduct owing to the influence of a drug or intoxicating substance administered to such person without such person’s consent or owing to any other act committed upon such person without such person’s consent. Connecticut General Statutes Annotated § 53a-65(5).

**Physically helpless** means that a person is unable to do so and the defendant knew of such condition of the victim. Connecticut General Statutes Annotated § 53a-64(5).

Impaired because of mental disability or disease” means that a person suffers from a mental disability or disease which renders such person incapable of appraising the nature of such person’s conduct. Connecticut General Statutes Annotated § 53a-65(4).

Yes, a person can be mentally incapacitated or impaired because of mental disability or disease to the extent that the person is unable to consent to sexual activity. Connecticut General Statutes Annotated §§ 53a-64, 53a-70, 53a-71.

**Mentally incapacitated** means that a person is rendered temporarily incapable of appraising or controlling such person’s conduct owing to the influence of a drug or intoxicating substance administered to such person without such person’s consent or owing to any other act committed upon such person without such person’s consent. Connecticut General Statutes Annotated § 53a-65(5).

Yes, there is no consent if the defendant knew the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed. 11 Delaware Code § 761(k)(5).

**Impaired because of mental disability or disease” means that a person suffers from a mental disability or disease which renders such person incapable of appraising the nature of such person’s conduct. Connecticut General Statutes Annotated § 53a-65(4).

**Physically helpless** means that a person is unable to do so and the defendant knew of such condition of the victim. Connecticut General Statutes Annotated § 53a-64(5).

**Mentally incapacitated** means that a person is rendered temporarily incapable of appraising or controlling such person’s conduct owing to the influence of a drug or intoxicating substance administered to such person without such person’s consent or owing to any other act committed upon such person without such person’s consent. Connecticut General Statutes Annotated § 53a-65(5).

Delaware

18 years old, but 16 and 17 years old may consent to intercourse if the other partner is younger than 30. 11 Delaware Code §§ 761(1) & 760a(2). If the victim is at least 12 years old and the defendant is no more than 4 years older than the victim, it is an affirmative defense in the victim consented to the act “knowingly.” 11 Delaware Code §§ 762(6). A person acts “knowingly” with respect to an element of an offense when: (1) If the element involves the nature of the person’s conduct or the attendant circumstances, the person is aware that the conduct is of that nature or that such circumstances exist; and (2) If the element involves the result of the person’s conduct, the person is aware that it is practically certain that the conduct will cause that result. 11 Delaware Code §§ 231(c)

Yes, a person can be incapacitated or impaired because of mental disability or disease to the extent that the person is unable to consent to sexual activity. Connecticut General Statutes Annotated §§ 53a-64, 53a-70, 53a-71.

**Mentally incapacitated** means that a person is rendered temporarily incapable of appraising or controlling such person’s conduct owing to the influence of a drug or intoxicating substance administered to such person without such person’s consent. Connecticut General Statutes Annotated § 53a-65(5).

In addition, a victim may be considered “physically helpless” if he or she is unable to communicate lack of consent because the victim is heavily intoxicated. Annotated § 770(b) Conn. App. 799, 807, 183 A.3d 654, 659 n.3, 655 (2018). 11 Delaware Code § 761(k)(5).

If victim and perpetrator are married:

- There is a marital exception to rape in the fourth degree which criminalizes sexual intercourse between another person who has not yet reached his or her eighteenth birthday, and a person who is 30 years of age or older. Such intercourse will not be unlawful if the victim and person are married at the time of such intercourse. 11 Delaware Code § 770.

- When the perpetrator is in a position of trust over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778(3)); or

- When the perpetrator is in a position of trust over the victim. 11 Delaware Code § 778(1).

**Victim and perpetrator are married:**

- There is a marital exception to rape in the fourth degree which criminalizes sexual intercourse between another person who has not yet reached his or her eighteenth birthday, and a person who is 30 years of age or older. Such intercourse will not be unlawful if the victim and person are married at the time of such intercourse. 11 Delaware Code § 770.

- When the perpetrator is in a position of trust over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778(1)).

- Intentionally engages in sexual contact or sexual penetration with a child with the age of 16 and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778(3)).

- Intentionally engages in sexual contact or sexual penetration with a child with the age of 16 and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778(1)).

- Intentionally engages in sexual contact or sexual penetration with a child with the age of 16 and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778(3)).
have sexual contact with the person or a third person and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778A(1));

• A male who intentionally exposes his genitals or buttocks to a child under the age of 16 under circumstances in which he knows his conduct is likely to cause annoyance, alarm, offense or alarm when the person is at least 4 years older than the child and he stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778A(3));

• A female who intentionally exposes her genitals, breast or buttocks to a child under the age of 16 under circumstances in which she knows her conduct is likely to cause annoyance, alarm, offense or alarm when the person is at least 4 years older than the child and she stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778A(3));

• Position of trust, authority or supervision over a child includes, but is not limited to:
  • Familial or custodial authority or supervision;
  • A teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer;
  • A babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer;
  • Any healthcare professional as defined above;
  • Clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer;
  • Any law-enforcement officer, as that term is defined in 11 Delaware Code § 761(e), and including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or
  • Any other person who because of that person's familial relationship, profession, employment, vocation, association, or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children (11 Delaware Code § 761(e)).

• Health Professional or Religious Figure
  • Where the defendant is a health professional, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested (11 Delaware Code § 761(k)(4)).

11 Delaware Code § 761(c) and § 761(c)(4).
supervision of the victim at the time of the act; and
• Any employee or volunteer of a school, church, synagogue, mosque, or other religious institution, or an educational, social, vocational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver, administrative, support staff, or any other person in a position of trust with or authority over a child or a minor. D.C. Code §§ 22–3001(6), 22–3009.04.

Sexual Abuse of a Ward
• A ward, patient, client, or prisoner, as applicable, cannot consent to sexual conduct with any staff member, employee, contract employee, consultant, or volunteer at a hospital, treatment facility, detention or correctional facility, group home, or other institution; anyone who is an ambulance driver or attendant, a bus driver or attendant, or person who participates in the transportation of a ward, patient, client or prisoner to and from such institutions; or any official custodian of a ward, patient, client, or prisoner. D.C. Code §§ 22–3013, 22–3014.

Sexual Abuse of a Patient or Client
• A patient or client cannot consent to sexual conduct with any person who purports to provide, in any manner, professional services of a medical, therapeutic, or counseling (whether legal, spiritual, or otherwise) nature, or is otherwise in a professional relationship of trust with the patient/client if:
  (1) The actor represents falsely that the sexual contact is for a bona fide medical or therapeutic purpose, or for a bona fide professional purpose for which the services are being provided;
  (2) The nature of the treatment or service provided by the actor and the mental, emotional, or physical condition of the patient or client are such that the actor knows or has reason to know that the patient or client is impaired from declining participation in the sexual contact;
  (3) The actor represents falsely that he or she is licensed as a particular type of professional; OR
  (4) The sexual act or contact occurs during the course of a consultation, examination, treatment, therapy, or other provision of professional services.

Florida

Yes, any developmental disability or mental incapacity may impair the victim’s ability to intelligently, knowingly, and voluntarily consent. Florida Statutes § 794.011(3)(a)-(c). In addition, there are increased penalties for a sexual battery carried out on a victim that the accuser either knew or has reason to believe is mentally defective.

“Mentally defective” means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. Florida Statutes § 794.011(3)(b). Yes, a person that is physically helpless or mentally incapacitated may not be able to provide intelligent, knowing, and voluntary consent.

“Physically helpless” means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act. Florida Statutes § 794.011(3)(a).

“Mentally incapacitated” means temporarily incapacitated by the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(c).

“Mentally incapacitated” means temporarily incapacitated by appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(c).

Yes, a person that is mentally incapacitated may not be able to provide intelligent, knowing, and voluntary consent. Florida Statutes § 794.011(1)(c).

A person cannot consent to sexual activity with a law enforcement officer, correctional officer, correctional probation officer, who is certified as an electroshock treatment officer, or an electroshock treatment officer exempt from such certification or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government. Florida Statutes § 794.011(4)(e)(7).

A person less than 18 years of age cannot consent to engage in conduct which would constitute sexual battery with a person who is in a position of familial or custodial authority. Florida Statutes § 794.011(3)(b).

“Sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose. Florida Statutes § 794.011(1)(b).

Georgia

Yes, a victim who has a developmental disability or lacks the mental capacity to make ordinary judgments on his or her own is unable to give consent to sexual acts. Rice v. The State, 502 S.E.2d 402, 252 Ga. App. 536 (1998).

Yes, a victim whose will is temporarily lost due to drunkenness or due to the use of drugs or other cause, is unable to consent to sexual activity. Gore v. State, 119 Ga. 418 (1904); Evans v. State, 67 Ga. App. 631 (1942). Yes, a victim whose will is temporarily lost from intoxication, arising from use of drugs or other cause, is unable to consent to sexual activity. Gore v. State, 119 Ga. 418 (1904); Evans v. State, 67 Ga. App. 631 (1942). Yes.

A employee or agent engages in improper sexual conduct in the first degree if that employee or agent engages in sexually explicit conduct with a person they know or reasonably should have known is contemporaneously:
• Entitled as a student at a school of which he or she is an employee or agent;
• Under probation, parole, accountability court, or pretrial diversion supervision of the office or court of which he or she is an employee or agent;
• Held in custody by any law enforcement agency of which he or she is an employee or agent;
• Patient in or at a hospital of which he or she is an employee or agent;
• In the custody of a correctional facility, juvenile detention facility, facility providing services to persons with a disability, or a facility providing child welfare and youth services of which he or she is an employee or agent;
• Subject of such employer or agent’s actual or purported psychotherapy treatment or counseling;
• Admitted for care at a sensitive care facility of which he or she is an employee or agent. Georgia Code § 16–6–3(a).
Guam

86 Haw. 426, 435, 949 P.2d, 918 P.2d 254

Statutes §§ 18-6101.

18 years old. Idaho

707-730; 707-731; 707-732.

Yes. A person commits a sex crime if the person subjects to a sexual act another person who is mentally defective or mentally incapacitated. Idaho Statutes §§ 25.15; 25.20; 25.25; 25.30. See also State v. Soura, 918 P.2d 254 (Hawaii App. 1996).

Yes. A person commits a sex crime if the person subjects to a sexual act another person who is mentally defective or mentally incapacitated. HRS §§ 707-730; 707-731; 707-732.

The state must show that the victim was "mentally defective" (a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct) and that Defendant knew that Complaining Witness was mentally defective. In re Interest of Doe, 918 P.2d 254 (Hawaii App. 1996).

Yes. Person residing in the same home with a minor under the age of 14:

(a) A person commits the offense of sexual assault of a minor under the age of 14 if the person subjects to a sexual act an imprisoned person, a person serving a sentence in a State correctional facility, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility, by a private company providing services at a State correctional facility, elderly caretaker, law enforcement officer:

(a) A person commits sexual assault in the second degree if the person knowingly subjects to sexual penetration a minor who is at least 16 years old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor; provided that: (i) the person is not legally married to the minor; (ii) the person has entered into an agreement entrusting him or her with the responsibility of education and supervision of such minor. Georgia Code § 16-6-5.1(a)(5.1)

Yes. A person commits a sex crime if the victim at the time is unconscious or asleep; or

(a) A person commits sexual assault in the second degree if the person subjects to a sexual act another person who is physically helpless, which includes a person who is unconscious, temporarily incapacitated, which includes a person who is rendered temporarily incapacitated of appraising or controlling his or her conduct as a result of the influence of a substance administered to the person without his or her consent. Idaho Statutes § 25.10(a)(6); 25.15; 25.20; 25.25; 25.30.

A person commits the offense of improper persons engaged in prostitution or commercial sex acts with a minor.

In addition, a person commits the offense of improper sexual contact when a person in a "position of trust" engages in sexually explicit conduct with a minor for whom he or she has entered into an agreement entrusting him or her with the responsibility of education and supervision of such minor. Georgia Code § 16-6-5.1(b)(2) and (c)(2). "Person in a position of trust" means an individual with whom a person has an ongoing relationship of a sexual nature or an ongoing relationship for the purpose of supervision of such minor or an individual with whom a person has entered into an ongoing relationship for the purpose of supervision of such minor with the responsibility of education and supervision of such minor. Georgia Code § 16-6-5.1(a)(5.1)

Consent is not a defense to offenses under section 16-6-5.1.
A person has a professional relationship with a child if the person is a counselor, supervising, instructing, or recruiting children having a relationship with a child that is based on the person's mentorship, counseling, supervising, instructing, or recruiting children having a relationship with a child that is based on the person's counseling, supervising, instructing, or recruiting children having a relationship with a child that is based on the person's professional relationship with the child.

Yes. A person commits a sex crime if that person knows that the victim is unable to understand the nature of the act and is unable to give knowing consent:

1. A person commits aggravated criminal sexual abuse if a person commits an act of sexual contact with a victim who is a person with a severe or profound intellectual disability. 720 ILCS 5/11-1.60.

2. Illinois courts apply a totality of the circumstances test when determining whether a victim had the requisite mental capacity to consent. People v. Whiteley, 647 N.E.2d 1062 (Ill. App. 1995) (“to support a guilty verdict based upon the victim’s inability to understand the act, its nature, and possible consequences.”).
Yes. A person commits a sex crime when:

(1) the sex act is performed while the person is suffering from a mental defect or incapacity which precludes giving consent; or
(2) the sex act is performed while the person is mentally incapacitated. I.C.A. § 709.4.

*Mentally incapacitated* means that a person is temporarily incapable of appraising or controlling the person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance. I.C.A. § 709.1A.

The key issue is whether the mental strength of the victim is so far below the normal that it precludes effective resistance. State v. Sullivan, 298 N.W.2d 287, 372 (Iowa 1980). Persons who are so mentally incompetent or incapacitated as to be unable to understand the nature and consequences of the sex act are incapable of giving consent. Id.

Yes. Sexual abuse is defined as any sex act between persons where the other person is suffering from a mental defect or incapacity which precludes giving consent or lacks the mental capacity to know the right and wrong of conduct in sexual matters. I.C.A. § 709.1.

In addition, a person commits a sex crime if:

(1) the sex act is between persons who are not cohabiting as husband and wife and the other person is suffering from a defect or incapacity which precludes giving consent; or
(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. Sexual abuse is defined as any sex act between persons that is done against the will of the other, which includes an act that is done while the other person is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness. I.C.A. § 709.1.

In addition, a person commits a sex crime if:

(1) the sex act is between persons who are not cohabitating as husband and wife and the other person is suffering from a defect or incapacity which precludes giving consent; or
(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime when:

(1) the sex act is performed while the other person is suffering from a mental defect or incapacity which precludes giving consent; or
(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. If the sex act is between persons cohabitating as husband and wife at the time of the act, a person does not commit sexual abuse in the third degree even where:

(1) the other person is suffering from a mental defect or incapacity which precludes giving consent; or
(2) the victim is 12 to 15 years old. I.C.A. § 709.4.

I.C.A. § 709.8 provides a marriage exception for "lascivious behavior with a child." I.C.A. § 709.12 provides a marriage exception for "indecent contact with a child." Iowa also criminalizes sex acts by:

(1) an employee, contractor, or agent who is under contract to provide services in such facility or a contract to provide services in such facility or a parole officer, volunteer for the department of corrections, or the employee or agent of a contractor, vendor, or agent of a institutional facility with a juvenile placed at such facility; or
(2) the child is 16 years of age or older who is an inmate who has been released and is currently on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 18 years of age or older who is an inmate who has been released on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 18 years of age or older who is an inmate who has been released on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 18 years of age who is currently in a professional relationship."

Yes. A person commits a sex crime when:

(1) the sex act is performed while the other person is suffering from a mental defect or incapacity which precludes giving consent; or
(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. Sexual abuse is defined as any sex act between persons where the other person is suffering from a mental defect or incapacity which precludes giving consent or lacks the mental capacity to know the right and wrong of conduct in sexual matters. I.C.A. § 709.1.

In addition, a person commits a sex crime if:

(1) the sex act is between persons who are not cohabiting as husband and wife and the other person is suffering from a defect or incapacity which precludes giving consent; or
(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. Sexual abuse is defined as any sex act between persons that is done against the will of the other, which includes an act that is done while the other person is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness. I.C.A. § 709.1.

In addition, a person commits a sex crime if:

(1) the sex act is between persons who are not cohabitating as husband and wife and the other person is suffering from a defect or incapacity which precludes giving consent; or
(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.
Yes. A person is deemed incapable of consent when he or she is physically helpless, which includes intoxication, or if the incapacitation causes the person to be physically helpless. KRS §§ 510.010.

Yes. A person is deemed incapable of consent when he or she is mentally incapacitated, which includes intoxication, or if the incapacitation causes the person to be physically helpless. KRS §§ 510.010.

Yes. A person is deemed incapable of consent when he or she is physically helpless, which includes intoxication, or if the incapacitation causes the person to be physically helpless. KRS §§ 510.010.

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performed prior to the time that the sexual act occurred)
and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence that is reasonably apparent or known to the actor; or

(4) the actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disability.

Mental disability can be either "reasonably apparent" or "known to the actor" and thus the statute allows for either "subjective awareness or an objective manifestation of the required disability." State v. Chadbo, 478 A.2d 1136, 1138 (Maine 1984).

**Maryland**

- 16 years old: MD Code, Criminal Law, § 3-308.

Yes. A person may not engage in "vaginal intercourse," "sexual act," or "sexual contact" with another if the victim is a substantially cognitively impaired individual and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual. MD Code, Criminal Law, § 3-304-3-307.

See also Bond v. State, 2015 WL 594336 (Md. App 2015) ("the individual is mentally defective when he or she suffers from a mental disability that renders him or her substantially incapable of 'appraising the nature of the individual's conduct'.")

**Massachusetts**

- 16 to 18 years old depending on the crime below:


Yes, if the victim was incapable of consenting due to such intellectual disability and/or mental incapacity. Con v. Fuller, 845 N.E.2d 454, 46 Mass App Ct. 84 (2006). The punishment for indecent assault and battery on a person with a disability (a person with a permanent or long-term physical or mental impairment that prevents or restricts the individual’s ability to provide for his or her own care or protection) is more severe. Mass. Gen. Laws Ann. ch. 265, §138.

Yes, if the victim is so impaired as to be incapable of consenting to intercourse. Con v. Esteban, 845 N.E.2d 736, 450 Mass. 855 (2008).


Fact of intoxication is not necessarily mean that an individual is incapable of deciding whether to consent to a sexual encounter id.

No. However, it is aggravated statutory rape (which carries a harsher punishment) for a person to be a "Mandated reporter" at the time of the act to have sexual intercourse or unnatural sexual intercourse with a child under 18 years of age. Mass. Gen. Laws. Ann. ch. 265, §27A. "Mandated reporter" means a person who is:

- (i) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, ophthalm, allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcohol counselor, psychiatrist or clinical social worker;

- (ii) a public or private school teacher, educational administrator, guidance or family counselor, child care worker, person paid to care for or work with a child in any public or private facility, or home or program funded by the Commonwealth or licensed under chapter 13D that provides child care or residential services to children and that provides the services of child care resource and referral agencies, voucher management agencies or family child care systems or child care food programs, licensor of the department of early education and care or school attendance officer;

- (iii) a probation officer, clerk-magistrate of a district court, parole officer, social worker, foster parent, firefighter, police officer, or animal control officer;

- (iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis;
Mentally incapacitated means that a person is: (1) asleep or not conscious; (2) unable to withhold consent to sexual penetration or contact, and the person either knows or has reason to know that the person is mentally incapacitated, or physically helpless; (3) under the influence of alcohol, a narcotic, anesthetic, or any other substance administered to that person without his or her consent; or (4) an adult who is 16 or 17 years of age and any of the following: (i) in charge of a medical or other public or private institution, school or facility or that person's designated agent; or (ii) the child advocate. Minn. Gen. Laws Ann. ch. 119, § 119.021.

Yes. A person who is mentally incapacitated, mentally incapacitated or physically helpless cannot consent to a sexual act. Minn. Stat. § 609.341(a).

It constitutes criminal sexual conduct if the actor commits sexual penetration or contact and the person either knows or has reason to know that the person is mentally incapacitated, or physically helpless. Minn. Stat. §§ 609.342, 609.343, 609.344, 609.345.

Mentally incapacitated means that a person: (1) under the influence of alcohol, a narcotic, anesthetic, or any other substance administered to that person without his or her consent, (2) that person under the influence of any substance or substances to a degree that renders him incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct. Minn. Stat. §§ 609.341, 609.345.

Mentally impaired means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration, or (2) that person is under the influence of any substance or substances to a degree that renders him incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct. Minn. Stat. §§ 609.341, 609.345.

Physically helpless means that a person is: (a) asleep or not conscious; or (b) unable to withhold consent to sexual penetration or contact because of a physical condition, or (c) unable to communicate consent and the condition is known or reasonably should have been known to the actor. Minn. Stat. §§ 609.341, 609.345.

Yes. Criminal sexual conduct in the third or fourth degree occurs if: (1) the actor is at least 16 but less than 18 years of age at the time of the sexual penetration or contact, and the actor or accomplice used force or coercion to accomplish the act, or (2) the actor is at least 16 but less than 18 years of age at the time of the sexual penetration or contact and the actor or accomplice used a significant relationship or pressure, or other means, to influence the complainant's will in an act of sexual penetration or sexual contact, and the complainant was under 16 at the time of the sexual penetration or contact.

Student's comments: I think the information is clear and effective in conveying the concept of mental incapacity and its implications in criminal sexual conduct. The definitions are well-organized and easy to understand. The examples provided are helpful in illustrating the application of these definitions in real-world situations.
The following acts constitute criminal sexual conduct in the fourth degree:

1. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense.

2. The actor was a psychotherapist and the complainant was the actor's former patient who was emotionally dependent on the actor; when the psychotherapist-patient relationship was ongoing;

3. The actor was a licensed educator employed or contracted to provide services for an elementary, middle, or secondary school;

4. The actor was age 18 or older and at least 48 months older than the complainant, and the sexual penetration or sexual contact occurred by means of therapeutic deception;

5. The actor was or falsely impersonated a psychotherapist, the complainant was the actor's patient or former patient, and the sexual penetration or sexual contact occurred by means of therapeutic deception;

6. The actor was or falsely impersonated a provider of medical services to the complainant and the sexual penetration or sexual contact occurred by means of deception or false representation that the sexual penetration or sexual contact was for a bona fide medical purpose;

7. The actor was or falsely impersonated a member of the clergy, the complainant was not married to the actor, the complainant met with the actor in private seeking or receiving religious or spiritual advice, aid, or comfort from the actor, and the sexual penetration or sexual contact occurred during the course of the meeting or during a period of time when the meetings were ongoing;

8. The actor provided special transportation service to the complainant and the sexual penetration or sexual contact occurred during or immediately before or after the actor transported the complainant;

9. The actor was or falsely impersonated a peace officer, as defined in section 626.84, the actor physically or constructively restrained the complainant or the complainant did not reasonably feel free to leave the actor's presence, and the sexual penetration or sexual contact was not pursuant to a lawful search or lawful use of force;

10. The actor was an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including but not limited to jails, prisons, detention centers, or work release facilities, and the complainant was a resident of a facility or under supervision of the correctional system;

11. The actor was a caregiver, facility staff person, or person providing services in a facility, and the complainant was a vulnerable adult who was a resident, patient, or client of the facility who was impaired in judgment or capacity by mental or emotional dysfunction or undue influence; or

12. The actor was a caregiver, facility staff person, or person providing services in a facility, and the complainant was a resident, patient, or client of the facility who was emotionally dependent on the actor; this clause does not apply if a consensual sexual personal relationship existed prior to the caregiving relationship or if the actor was a personal care attendant.

Yes.

A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective, mentally incapacitated or physically helpless person.

Miss. Code Ann. § 97-3-95.

“Mentally defective person” means one who suffers from a mental disease, defect or condition which renders that person temporarily or permanently incapable of knowing the nature and quality of his or her conduct. Miss. Code Ann. § 97-3-95(b).

“Mentally incapacitated person” means one rendered incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent. Miss. Code Ann. § 97-3-95(c).

Mississippi

16 years old, unless (1) the other person is in a position of trust or authority over the child, in which case the age of consent is 14; Miss. Code Ann. § 97-3-95, Miss. Code Ann. § 97-3-63.

Yes.

A person is guilty of sexual battery if he or she engages in sexual penetration with a physically helpless person, which includes a person that is unconscious. Miss. Code Ann. § 97-3-95.

Yes, a person is guilty of sexual battery if he or she engages in sexual penetration with a physically helpless person, which includes a person who for any reason is incapable of making an informed consent to sexual intercourse. Mont. Code Ann. § 45-3-501(2)(b).
Yes. Any person who subjects another person to sexual penetration who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree. Neb. Rev. Stat. § 28-319(1)(b).

The evidence established that the victim was incapacitated by alcohol, and her assailant knew or should have known that she was mentally or physically incapable of resisting or appraising the nature of her conduct. In re Gabriel P., 223 Neb. 844, 844, 844 (1986).

Nevada


Yes. A person is deemed incapable of consent if he or she is "mentally — incapable of resisting or understanding the nature of his or her conduct." Nev. Rev. Stat. Ann. § 200.366(1).

Yes. A person is deemed incapable of consent if he or she is "mentally or physically incapable of resisting or understanding the nature of his or her conduct." Nev. Rev. Stat. Ann. § 200.366(1).

Although there is no specific mention of intoxication in the statute, a person is deemed incapable of consent if he or she is "mentally or physically incapable of resisting or understanding the nature of his or her conduct." Nev. Rev. Stat. Ann. § 200.366(1).

- Status of authority at school or other:
  - It is illegal for an employee or volunteer in a position of authority at a school and 21 years of age or older to engage in sexual conduct with a pupil that is 16 years of age or older if the pupil was enrolled at the school and had contact with the perpetrator in his or her duties as an employee or volunteer, and the two are not married. Consent is not a defense. Nev. Rev. Stat. Ann. § 45-5-502(5)(b)-(c).
  - Additionally, consent is ineffective under the sexual assault statute (Nev. Rev. Stat. Ann. § 200.366) if the victim is: (A) a witness in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer with at least one year of experience who is involved in the case in which the victim is a witness or is being investigated. (B) the victim is a minor or youth under 16 years old. Nev. Rev. Stat. Ann. § 200.366(3).
  - A person is deemed incapable of consent if the victim is: (C) a student of an elementary, middle, junior high or high school, whether public or nonpublic, and the perpetrator is a student of a different elementary, middle, junior high or high school, employee, contractor, or volunteer of any school who has ever held an instructional, supervisory, disciplinary, or other authority over the student in a school setting. (D) married to each other (this does not apply if the individuals are married to each other).
  - A protected individual is a person in the care or custody of the Department of Health and Human Services. (E) an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim. (F) an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator is a law enforcement officer who is not a student of an elementary, middle, junior high or high school, and the victim was physically or nonphysically incapacitated by alcohol. (G) an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator is a law enforcement officer who is not a student of an elementary, middle, junior high or high school, and the victim was incapacitated by alcohol. (H) an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator is a law enforcement officer who is not a student of an elementary, middle, junior high or high school, and the victim was incapacitated by alcohol. (I) a program participant in a private alternative education resident or outdoor program and the perpetrator is a worker affiliated with the program. (J) a program participant in a private alternative education resident or outdoor program and the perpetrator is a worker affiliated with the program.
New Jersey

Yes. It is an aggravated sexual assault to commit an act of sexual penetration with a person that the actor knew or should have known was intellectually or mentally incapacitated, or has a mental disease or defect which renders the victim temporarily or permanently incapable of understanding the nature of his or her conduct, including, but not limited to, being incapable of providing consent or incapable of understanding or exercising the right to refuse to engage in the conduct. N.J. Stat. Ann. § 2C:14-2(c)(3).

Consent is ineffective if:  
1. It is given by a person who is mentally incapable of understanding or exercising the right to refuse to engage in the conduct; or  
2. It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or

Yes. A person is deemed unable to consent if he or she has a disability that renders him or her incapable of freely arriving at an independent choice as to whether or not to engage in sexual conduct, and the actor knows or has reason to know that the victim has such a disability. N.J. Stat. Ann. § 2C:14-2(c)(3).

Yes. Although not expressly mentioned in the statute, evidence that the victim was unconscious may support a conclusion that victim was physically unable to resist State v. Greco, 767 A.2d 153, 156 (2000).  

New Hampshire


Yes. Except between spouses, a person is deemed unable to consent if he or she has a disability that renders him or her incapable of freely arriving at an independent choice as to whether or not to engage in sexual conduct, and the actor knows or has reason to know that the victim has such a disability. N.H. Rev. Stat. Ann. § 632-A:2(I)(b).

Yes. A person is deemed unable to consent if he or she is "mentally incapacitated" after being administered "any intoxicating substance," without his or her knowledge or consent. N.H. Rev. Stat. Ann. § 632-A:2(I)(f).

Yes. Consent is ineffective if:  
1. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or  
2. It is given by a person that the actor knew or should have known was mentally incapacitated, which includes when he or she is under the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without his or her knowledge or consent. N.H. Rev. Stat. Ann. § 632-A:2(I)(I).

Yes. A person commits sexual assault if he or she engages in sexual penetration with a person that is 15 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and is more than 4 years older than the victim, or when the actor is an employee, contractor, or volunteer at a primary or secondary educational institution and the victim is a student and up to 10 months after the student's graduation or departure. Consent of the victim shall not be considered a defense.

A person commits sexual assault if he or she engages in sexual penetration with a person that is over 13 but under 16 years old and the perpetrator is related by blood or a member of the same household. N.H. Rev. Stat. Ann. § 632-A:2(I)(j).


A person commits sexual assault if he or she engages in sexual contact or sexual penetration with a victim while the victim is on parole or probation or under juvenile probation; and the perpetrator uses this authority to coerce the victim. Consent is not a defense. N.H. Rev. Stat. Ann. § 632-A:2(I)(m).

A person commits sexual assault if he or she engages in sexual contact or sexual penetration with a victim who is in the position of authority over the victim while the victim is on parole or probation or under juvenile probation, and the perpetrator uses this authority to coerce the victim. Consent is not a defense. N.H. Rev. Stat. Ann. § 632-A:2(I)(n).

Yes. A person is deemed unable to consent if he or she has a disability that renders him or her incapable of freely arriving at an independent choice as to whether or not to engage in sexual conduct, and the actor knows or has reason to know that the victim has such a disability. N.H. Rev. Stat. Ann. § 632-A:2(I)(j).

Yes. It is an aggravated sexual assault to commit an act of sexual penetration with a person that the actor knew or should have known was mentally incapacitated, which includes when he or she is under the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without his or her knowledge or consent. N.H. Rev. Stat. Ann. § 632-A:2(I)(f).

Position of authority at entity which provides services to children:  
1. It is illegal for an employee, contractor or volunteer in a position of authority at an entity which provides services to children to engage in sexual conduct with a student that is 15 years of age or older who has not received a high school diploma, a general educational development certificate or an equivalent document and is enrolled at the college or university, and the two are not married. Consent is not a defense. Nev. Rev. Stat. Ann. § 201.550.

Position of authority at agency which provides services to children:  
1. It is illegal for an employee, contractor or volunteer in a position of authority at an entity which provides services to children to engage in sexual conduct with a student that is 15 years of age or older who has not received a high school diploma, a general educational development certificate or an equivalent document and is enrolled at the college or university, and the two are not married. Consent is not a defense. Nev. Rev. Stat. Ann. § 201.550.

Law enforcement officer:  
1. It is illegal for a law enforcement officer to voluntarily engage in sexual conduct with a person who is under arrest or is currently detained by the law enforcement officer or any other law enforcement officer. Consent is not a defense. Nev. Rev. Stat. Ann. § 201.465.
Yes, engaging in a sexual act when the perpetrator knows or has reason to know that the victim is unconscious or asleep is a criminal offense. New Mexico Statutes §30-9-10(A); §30-9-11.

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New York

17 years old. New York Penal Law §130.05.

Yes, a mentally disabled person or mentally incapacitated person is incapable of giving consent. New York Penal Law §130.05(3)(c) The law does not presume that a person with mental retardation is unable to consent to sexual intercourse.

"Mentally disabled" means that a person suffers from a mental disease or defect which renders him or her incapable of understanding the nature or consequences of the act committed to constitute a criminal offense.

"Mentally incapacitated" means a person that is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent. New York Penal Law §130.06(6).

Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.06(7), §130.05(3)(d).

Yes, a mentally incapacitated person, which includes a person who is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent. New York Penal Law §130.06(6).

Yes, a mentally incapacitated person is incapable of giving consent. New York Penal Law §130.05(3)(c) The law does not presume that a person with mental retardation is unable to consent to sexual intercourse.

Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.06(7), §130.05(3)(d).

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Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.06(7), §130.05(3)(d).

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"Mentally disabled" means that a person suffers from a mental disease or defect which renders him or her incapable of understanding the nature or consequences of the act committed to constitute a criminal offense.

"Mentally incapacitated" means a person that is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent. New York Penal Law §130.06(6).

Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.06(7), §130.05(3)(d).

Yes, a mentally incapacitated person is incapable of giving consent. New York Penal Law §130.05(3)(c) The law does not presume that a person with mental retardation is unable to consent to sexual intercourse.
Ohio imposes strict liability with respect to the victim's age if:

1. A person engages in sexual conduct or sexual contact with another who is not their spouse when the other person is less than thirteen years of age, whether or not the offender knew or had reason to know the age of the other person. Ohio Rev. Code Ann. § 2907.05(A)(1)(b) (crime of rape applies for sexual conduct 2907.05(A)(4))

2. No person shall engage in sexual conduct or sexual contact with another who is not their spouse if the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of chemical dependency or disease. § 2907.05(A)(4)

3. No person shall engage in sexual conduct or sexual contact with another who is not their spouse if the other person is incapable of understanding the nature of the sexual conduct or of the sexual nature of the sexual contact. § 2907.05(A)(4)

4. No person shall engage in sexual conduct or sexual contact with another who is not their spouse if the other person's incapability of understanding the nature of the sexual conduct or of the sexual nature of the sexual contact is substantially impaired because of a mental or physical condition or chemical dependency or disease. § 2907.05(A)(4)

5. No person shall engage in sexual conduct or sexual contact with another who is not their spouse if the other person is incapable of either appraising or controlling the victim's consent to activity with that person. § 2907.05(A)(4)

6. No person shall engage in sexual conduct or sexual contact with another who is not their spouse if the other person's knowledge has substantially impaired the victim's ability to resist or consent to activity with that person. § 2907.05(A)(4)

7. No person shall engage in sexual conduct or sexual contact with another who is not their spouse if the other person's incapability of understanding the nature of the sexual conduct or of the sexual nature of the sexual contact is substantially impaired because of a mental or physical condition or chemical dependency or disease. § 2907.05(A)(4)

8. No person shall engage in sexual conduct or sexual contact with another who is not their spouse if the other person's incapability of understanding the nature of the sexual conduct or of the sexual nature of the sexual contact is substantially impaired because of a mental or physical condition or chemical dependency or disease. § 2907.05(A)(4)

9. An offender commits gross sexual imposition when the offender knows or should have reasonably known the other person was physically helpless. North Carolina General Statutes Annotated § 14-27-22; § 14-27-27; § 14-27-33.

10. A person who engages in a sexual act with another who is seventeen years of age or older, or who causes another to engage in a sexual act, is guilty of gross sexual imposition if that person knows or has reasonable cause to believe that the other person suffers from a mental disability or mental disorder that temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act. North Carolina General Statutes Annotated § 14-27-20.

11. Yes, a person who engages in sexual conduct or sexual contact with another who is not their spouse, or who causes another to engage in sexual conduct or sexual contact with another, is guilty of gross sexual imposition if that person knows or has reasonable cause to believe that the other person suffers from a mental disability or mental disorder that temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act. North Carolina General Statutes Annotated § 14-27-20.

12. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of sexual assault if that person's knowledge has substantially impaired the victim's ability to resist or consent to the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-05-1, or other means with the intent to prevent resistance. § 12-1-20-03(1)(b).

13. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of sexual assault if that person's knowledge has substantially impaired the victim's ability to resist or consent to the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-05-1, or other means with the intent to prevent resistance. § 12-1-20-03(1)(c).

14. A person who engages in sexual conduct or sexual contact with another who is not their spouse, or who causes another person to engage in sexual conduct or sexual contact with another, or who causes another person to have sexual contact with that person, is guilty of sexual assault if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person. N.D. Century Code Ann. § 12-1-20-06.

15. A person who engages in sexual conduct or sexual contact with another who is not their spouse, or who causes another person to engage in sexual conduct or sexual contact with another, or who causes another person to have sexual contact with that person, is guilty of sexual assault if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person. N.D. Century Code Ann. § 12-1-20-07.

16. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction. § 12-1-20-06.

17. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, addiction counselor, member of the clergy, or other person, whether licensed or employed by any person, the state, who performs or purports to perform psychotherapy. § 12-1-20-06.

18. "Marry" means:

   a. The Ohio definition of sexual battery, sexual imposition and gross sexual imposition do not distinguish sexual contact between married couples. Ohio Rev. Code Ann. 2907.03(A), 2907.06(A) & 2907.05(A).


   c. The act is sexual battery to engage in sexual conduct with another (who is not a spouse) if:

      i. the offender is the other person's natural or adoptive parent, or a stepparent, or the other person's legal guardian, or the other person is in loco parentis of the other person;

      ii. the other person is in custody of law or a correctional facility of the state, and the offender has supervisory or
Yes. Rape in the first degree includes an act of sexual intercourse involving vaginal or anal penetration where the victim (not the spouse) is incapable through mental illness or any other unsoundness of mind, temporary or permanent, of giving legal consent. Okla. Stat. tit. 21, § 1111(A)(2).

Yes. Rape in an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator where the victim is at the time unconscious of the nature of the act and this fact is known to the accused. Okla. Stat. tit. 21, § 1111(A)(5).

Yes. The definition of rape includes an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator where the victim is at the time unconscious of the nature of the act and the fact this is known to the accused. Okla. Stat. tit. 21, § 1111(A)(2), (4), (5).

Yes. Rape includes an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator.

• the victim is reassigned pursuant to state law, and the perpetrator is a person responsible for the victim’s health, safety or welfare including, but not limited to: a parent, a legal guardian, custodian, a foster parent, a person eighteen (18) years of age or older who cohabitates with the child’s parent, any public or private elementary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system. Stat. tit. 21, § 1111(A)(3), (5).
• the victim is less than fourteen (14) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public school, juvenile secure facility, or juvenile training facility, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system. Stat. tit. 21, § 1111(A)(8).
• the victim is less than fourteen (14) years of age and is under the legal custody of a state agency, federal agency, county, or municipality as a result of a conviction of a crime or other type of court, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system. Stat. tit. 21, § 1111(A)(6).
• the victim is a child; and the perpetrator is a person responsible for the victim’s health, safety or welfare including, but not limited to: a parent, a legal guardian, custodian, a foster parent, a person eighteen (18) years of age or older who cohabitates with the child’s parent, any public or private elementary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system. Stat. tit. 21, § 1111(B).


Yes. Rape in the first degree includes an act of sexual intercourse involving vaginal or anal penetration where the victim (not the spouse) is incapable through mental illness or any other unsoundness of mind, temporary or permanent, of giving legal consent. Okla. Stat. tit. 21, § 1111(A)(2).

Yes. Rape in an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator where the victim is at the time unconscious of the nature of the act and the fact this is known to the accused. Okla. Stat. tit. 21, § 1111(A)(5).

Yes. The definition of rape includes an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator where the victim is at the time unconscious of the nature of the act and the fact this is known to the accused. Okla. Stat. tit. 21, § 1111(A)(2), (4), (5).

Yes. Rape includes an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator.

• the victim is under the legal custody or supervision of a state agency, federal agency, county, or municipality, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system. Stat. tit. 21, § 1111(A)(3), (5).
• the victim is less than fourteen (14) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public school, juvenile secure facility, or juvenile training facility, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system. Stat. tit. 21, § 1111(A)(8).
• the victim is less than fourteen (14) years of age and is under the legal custody of a state agency, federal agency, county, or municipality as a result of a conviction of a crime or other type of court, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system. Stat. tit. 21, § 1111(A)(6).
• the victim is a child; and the perpetrator is a person responsible for the victim’s health, safety or welfare including, but not limited to: a parent, a legal guardian, custodian, a foster parent, a person eighteen (18) years of age or older who cohabitates with the child’s parent, any public or private elementary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system. Stat. tit. 21, § 1111(B).
Pennsylvania:

18 years old. 18 Pa.C.S.A. § 3122.1. Mistake of Age Defense – It is no defense that the defendant did not know the age of the child or reasonably believed the child to be under the age of 14 years, when in fact the victim was over 14 years old unless he or she was a child. See State v. Rice, 391 Pa. 243, 217 A.2d 660 (1966).

Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent. 18 Pa.C.S.A. § 3122(a)(3). It is indecent assault or aggravated indecent assault for certain activities if the complainant suffers from a mental disability which renders the person incapable of consent. 18 Pa.C.S.A. §§ 3122(a)(4) and 3122(a)(6).

It is deviate sexual intercourse in the first degree if the complainant suffers from a mental disability which renders the person incapable of consent. 18 Pa.C.S.A. § 3122(a)(5).

Yes. The definition of "physically helpless" includes any person who suffers from a mental disability which renders the person incapable of consent. 18 Pa.C.S.A. § 3122(a)(6).

Physically helpless means any person who suffers from a mental disability which renders the person incapable of consent. 18 Pa.C.S.A. § 3122(a)(6). It is not a defense that the complainant consented to sexual intercourse by excitement or otherwise, when consent was: (a) obtained by misrepresenting the nature of the sexual conduct; (b) the complainant is under the age of 14 and is the person's sibling, or spouse's child. Or. Rev. Stat. §§ 163.405(1)(a)(B), (1)(C).

Yes. It is rape to have sexual intercourse with a person under the age of 14. Or. Rev. Stat. § 163.415(1). It is sodomy in the first degree to engage in oral or anal sexual intercourse with a person under the age of 14. Or. Rev. Stat. § 163.415(1). It is sodomy in the third degree to engage in oral or anal sexual intercourse with another person under 16 years of age. Or. Rev. Stat. § 163.415(1). It is sodomy in the second degree to engage in oral or anal sexual intercourse with another person under the age of 16. Or. Rev. Stat. § 163.415(1). It is sodomy in the second degree to have sexual intercourse with another person under 18 years of age. Or. Rev. Stat. § 163.355(1).

Yes. It is rape to have sexual intercourse with a person under the age of 16. Or. Rev. Stat. §§ 163.355(1), 163.356(1). It is sodomy in the first degree to engage in oral or anal sexual intercourse with a victim under the age of 12 or if the victim is under the age of 16 and is the person's sibling, child, or spouse's child. Or. Rev. Stat. §§ 163.405(1)(a)(B), (1)(C).

Yes. It is sodomy in the second degree to engage in oral or anal sexual intercourse with a person under the age of 14. Or. Rev. Stat. § 163.415(1). It is sodomy in the third degree to engage in oral or anal sexual intercourse with another person under 16 years of age. Or. Rev. Stat. § 163.415(1). It is sodomy in the first degree to subject another person to sexual contact if: (a) the person is under the age of 14 years or to intentionally cause a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desires of a person. Or. Rev. Stat. § 163.427(1)(a)(A), (1)(B).

14 years old. Or. Rev. Stat. § 163.315. Additionally: It is rape in the first degree to have sexual intercourse with a victim under the age of 12 if the victim is under the age of 16 and is the person's sibling, child, or spouse's child. Or. Rev. Stat. §§ 163.355(1), 163.356(1).

Yes. A person is incapable of consenting to a sexual act if they are mentally incapacitated or incapable of appraising the nature of the person's conduct. Or. Rev. Stat. § 163.315. A person is incapable of appraising the nature of the person's conduct if: (a) the person is unable to understand the nature of the conduct; (b) the person is unable to understand the right to choose whether and how to engage in conduct, including the right to revoke a prior decision to engage in conduct; or (c) the person is unable to communicate a decision to engage in conduct. Or. Rev. Stat. § 163.305(3).

It is rape in the third degree to have sexual intercourse with another person under 18 years of age. Or. Rev. Stat. §§ 163.415(1), 163.415(2).

It is sodomy in the first degree to engage in oral or anal sexual intercourse with a person under the age of 14. Or. Rev. Stat. § 163.415(1). It is sodomy in the third degree to engage in oral or anal sexual intercourse with another person under 16 years of age. Or. Rev. Stat. § 163.415(1). It is sodomy in the second degree to engage in oral or anal sexual intercourse with another person under the age of 16. Or. Rev. Stat. § 163.415(1). It is sodomy in the second degree to have sexual intercourse with another person under 18 years of age. Or. Rev. Stat. § 163.355(1).

Yes. A person is incapable of consenting to a sexual act if they are mentally incapacitated or incapable of appraising the nature of the person's conduct. Or. Rev. Stat. § 163.315. A person is incapable of appraising the nature of the person's conduct if: (a) the person is unable to understand the nature of the conduct; (b) the person is unable to understand the right to choose whether and how to engage in conduct, including the right to revoke a prior decision to engage in conduct; or (c) the person is unable to communicate a decision to engage in conduct. Or. Rev. Stat. § 163.305(3).

Mentally incapacitated means a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense. Or. Rev. Stat. § 163.305(3).

Pennsylvania:

Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent. 18 Pa.C.S.A. § 3122(a)(5).

It is indecent assault or aggravate indecent assault for certain activities if the complainant suffers from a mental disability which renders the person incapable of consent. 18 Pa.C.S.A. §§ 3122(a)(4) and 3122(a)(6).

It is deviate sexual intercourse in the first degree if the complainant suffers from a mental disability which renders the person incapable of consent. 18 Pa.C.S.A. § 3122(a)(5).

Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent. 18 Pa.C.S.A. § 3122(a)(5).

It is indecent assault or aggravated indecent assault for certain activities if the complainant suffers from a mental disability which renders the person incapable of consent. 18 Pa.C.S.A. §§ 3122(a)(4) and 3122(a)(6).

It is deviate sexual intercourse in the first degree if the complainant suffers from a mental disability which renders the person incapable of consent. 18 Pa.C.S.A. § 3122(a)(5).

Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent. 18 Pa.C.S.A. § 3122(a)(5).

It is indecent assault or aggravated indecent assault for certain activities if the complainant suffers from a mental disability which renders the person incapable of consent. 18 Pa.C.S.A. §§ 3122(a)(4) and 3122(a)(6).

It is deviate sexual intercourse in the first degree if the complainant suffers from a mental disability which renders the person incapable of consent. 18 Pa.C.S.A. § 3122(a)(5).

Yes. A person who has sexual intercourse with another person commits the crime of rape in the first degree if the victim is under 16 years of age and is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child. Or. Rev. Stat. § 163.375(c).

Yes. It is rape to have sexual intercourse with a person under the age of 16 if the person is the victim's sibling, child, or spouse's child. Or. Rev. Stat. §§ 163.405(1)(a)(B), (1)(C).

Yes. It is second degree sexual abuse if the offender is 21 years old or older, the victim is under 18 years of age, and at any time before the offense the offender was not employed by the victim's "school," meaning they instruct or train an individual or a team in a sport. Or. Rev. Stat. §§ 163.425, 163.426.

It is custodial misconduct in the first or second degree for an individual to engage in specified sexual acts with another person when the other person is in the custody of a law enforcement agency following arrest, or who is incarcerated in a correctional facility, participating in an adult in custody or offender work crew or work release, or on probation, parole, post-prison supervision, or other supervised release if that individual is employed by the agency that arrested the person, operates the correctional facility, or supervises the work release. Or. Rev. Stat. §§ 163.452, 163.454, as revised by 2010 Oregon Laws Ch. 213 (H.B. 3146).
It is deviate sexual intercourse in the first degree if the complainant is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring or that the person has substantially impaired the complainant’s power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance; or (6) the person knows that the complainant is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring or that the person has substantially impaired the complainant’s power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.

It is deviate sexual intercourse in the first degree if the complainant is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring or that the person has substantially impaired the complainant’s power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.

It is deviate sexual intercourse in the first degree if the complainant is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring or that the person has substantially impaired the complainant’s power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.

A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.

It is deviate sexual intercourse in the first degree if the complainant is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring or that the person has substantially impaired the complainant’s power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.

A person commits deviate sexual intercourse with a complainant who is less than 13 years of age.

A person commits the indecent assault of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.

The accused person is a relative of the victim, by ascendency or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity, ascendancy or descendancy, or consanguinity, or the accused person has substantially impaired the victim’s capability to consent to the sexual activity by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances.

The accused person is a relative of the victim, by ascendency or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity, ascendancy or descendancy, or consanguinity, or the accused person has substantially impaired the victim’s capability to consent to the sexual activity by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances.

The accused person is a relative of the victim, by ascendency or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity, ascendancy or descendancy, or consanguinity, or the accused person has substantially impaired the victim’s capability to consent to the sexual activity by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances.
Rhode Island

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<tr>
<th>Age</th>
<th>Law Reference</th>
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Yes. A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if the accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless. R.I. Gen Laws § 11-37-21(b). A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and the accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless. R.I. Gen Laws § 11-37-4(b). "Mentally incapacitated" means a "person who has a mental impairment which renders that person incapable of appraising the nature of the act." R.I. Gen Laws § 11-37-14(c). "Physically helpless" means a person "who is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act." R.I. Gen Laws § 11-37-16(b).

South Carolina

<table>
<thead>
<tr>
<th>Age</th>
<th>Law Reference</th>
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<tbody>
<tr>
<td>16 years old</td>
<td>S.C. Code Ann. § 16-3-655.</td>
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Yes. A person is guilty of criminal sexual conduct if the actor engages in sexual contact with the victim and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. S.C. Code Ann. § 16-3-654(1)(b). "Mentally defective" means that a "person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct." "Mentally incapacitated" means that a "person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause." "Physically helpless" means that a "person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act." S.C. Code Ann. § 16-3-651(4)(g).

Yes. A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and the actor knows or has reason to know that the victim is physically helpless, which includes unconsciousness. S.C. Code Ann. § 16-3-654(1)(b). Yes. A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and the victim is physically helpless, which includes unconsciousness. S.C. Code Ann. § 16-3-652(1)(c). Yes. A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if the accused knows or has reason to know that the victim is mentally incapacitated, including due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent. R.I. Gen Laws § 11-37-21(b). A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and the accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless. R.I. Gen Laws § 11-37-4(b).

Yes. A person affiliated with a public or private secondary school in an official capacity who engages in sexual battery with a student enrolled in the school who is 16 or 17 years of age, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony. S.C. Code 1976 § 16-3-755(B). A person affiliated with a public or private secondary school in an official capacity that engages in sexual battery with a student enrolled in the school who is 18 years of age, or older, where aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a misdemeanor. S.C. Code 1976 § 16-3-755(C). A person affiliated with a public or private secondary school in an official capacity and with direct supervisory authority over a student enrolled in the school who is 18 years of age or older, and the person affiliated with the public or private secondary school in an official capacity engages in sexual battery with the student, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony. S.C. Code 1976 § 16-3-755(D).

"Sexual battery" means "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the vaginal or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes." S.C. Code 1976 § 16-3-755(A)(5). "Student" means a person who is enrolled in a school. S.C. Code 1976 § 16-3-755(A)(6).
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<thead>
<tr>
<th>State</th>
<th>Age</th>
<th>Consent Consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Dakota</td>
<td>16 years</td>
<td>Yes, a person can be deemed incapable of consenting to sexual contact because of any mentally defective or mentally incapacitated condition. S.D. Code Ann. §72-22-7.2.</td>
</tr>
<tr>
<td>Tennessee</td>
<td>18 years</td>
<td>Yes, &quot;mentally defective&quot; means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapacitated of appraising the nature of the person's conduct. Tenn. Code Ann. §39-13-506(3).</td>
</tr>
<tr>
<td>Texas</td>
<td>17 years</td>
<td>Yes, a sexual assault is considered to occur without the consent of the other person if the actor knows that the other person is a minor or if the actor knows that the other person has been rendered temporarily incapacitated of appraising or controlling the other person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person. Tex. Code Ann. §22.011(b)(9).</td>
</tr>
<tr>
<td>Utah</td>
<td>18 years</td>
<td>Yes, a sexual offense is considered to occur without consent of the victim if the actor intentionally implied to the victim that the actor's power or influence to accomplish the sexual contact; or the defendant used the authority to accomplish the sexual contact; or the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or (c) the defendant, whether licensed by the state or not, is a member of the clergy, health care professional, or alcoholic and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Utah Code Ann. §76-5-406(2)(c).</td>
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Note that in Tennessee, the spouse of the defendant can be a "victim" under the rape and sexual battery provisions of the code. Tenn. Code Ann. §39-13-501(8).
Yes, a person who is unconscious or physically helpless, or that person's mental defect or incapacity is known to the actor, is guilty of unlawful sexual contact in the first degree.

14 V.I.C. § 1700.

An actor who perpetrates an act of sexual intercourse or sodomy with a person who is asleep, unconscious, or otherwise unaware that the sexual act is occurring. 13 Vermont Stat. Ann. §3252.

No person shall engage in a sexual act with another person when the other person is incapable of consenting to the sexual act due to substantial impairment by alcohol, drugs, or other intoxicants and that condition is known or reasonably should be known by the actor.


A sexual assault occurs if a person engages in a sexual act with child who is under the age of 16, except (1) where the persons are married to each other and the sexual act is consensual or (2) where the person is less than 19 years old, the child is at least 16 years old, and the sexual act is consensual. Vermont Stat. Ann. §13-352(c).

A sexual assault occurs if a person engages in a sexual act with a minor who is less than 19 years old, the child is at least 15 years old, the sexual act is consensual or (2) where the person is less than 19 years old, the child is at least 16 years old, and the sexual act is consensual. Vermont Stat. Ann. §§13-3252(c).

A person shall be deemed to have acted without the consent of the victim where the actor knew or should have known that the other person was not capable of consenting to the sexual act.


"Incapable of consenting" means the person: (A) is incapable of understanding the nature of the conduct at issue; (B) is physically incapable of resisting, declining participation in, or communicating unwillingness to engage in the conduct at issue; or (C) lacks the mental ability to make or communicate a decision about whether to consent.


Yes, a person who is unconscious or physically helpless, or that person’s mental defect or incapacity is known to the actor, is guilty of unlawful sexual contact in the first degree.

14 V.I.C. § 1700.

An actor who perpetrates an act of sexual intercourse or sodomy with a person who is asleep, unconscious, or otherwise unaware that the sexual act is occurring. 13 Vermont Stat. Ann. §3252.

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Yes, a person who is unconscious or physically helpless, or that person’s mental defect or incapacity is known to the actor, is guilty of unlawful sexual contact in the first degree.

14 V.I.C. § 1700.

An actor who perpetrates an act of sexual intercourse or sodomy with a person who is asleep, unconscious, or otherwise unaware that the sexual act is occurring. 13 Vermont Stat. Ann. §3252.

No person shall engage in a sexual act with another person when the other person is incapable of consenting to the sexual act due to substantial impairment by alcohol, drugs, or other intoxicants and that condition is known or reasonably should be known by the actor.


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14 V.I.C. § 1700.
### Washington

**16 years old, however, there are exceptions for persons in positions of trust, such as school employees and foster parents. Wash. Rev. Code Ann. §§ 9A.44.030; 9A.44.040.**

**Yes, a person who is unable to understand the nature or consequences of sexual intercourse at the time of the offense, whether that condition is produced by illness, defect, the influence of a substance or from some other cause, is "mentally incapacitated." An actor is guilty of rape in the second degree if he has sexual intercourse with a person who is mentally incapacitated Wash. Rev. Code Ann. §§ 9A.44.010(4); 9A.44.050.**

In any prosecution 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 reasonably believed that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless. Wash. Rev. Code Ann. §§ 9A.44.030.

An actor is guilty of rape in the second degree if he has sexual intercourse with a person with a developmental disability and the actor (i) has supervisory authority over the victim in (ii) was providing transportation, within the course of his or her employment, to the victim at the time of the offense. Wash. Rev. Code Ann. §§ 9A.44.050.

**Note the rape statute applies "whether or not" the victim is the spouse of the actor. Wash. Rev. Code Ann. § 9A.44.060.**

### West Virginia

**16 years old. W. Va. Code Ann. §§ 61-8B-2; 61-8B-4; 61-8B-9.**

**Yes, a person who is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent, or if the person suffers from a regional jail, is in a position of authority over an offender, and knows that the offender is under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail. W. Va. Code Ann. §18-2-67.4.**

**If any person providing services, paid or unpaid, to juveniles under the purview of the Juvenile and Domestic Relations District Court Law, or to juveniles who have been committed to the custody of the State Department of Juvenile Justice, carnally knows, without the use of force, any minor 15 years of age or older, when such minor is confined or detained in jail, has been detained in any facility mentioned in § 16.1-249, or has been committed to the custody of the Department of Juvenile Justice pursuant to § 16.1-278, knowing or having good reason to believe that (i) such minor is in such confinement or detention status, (ii) such minor is a ward of the Department of Juvenile Justice, or (iii) such minor is on probation, furlough, or leave from or has escaped or absconded from such confinement, detention, or custody, he shall be guilty of a felony. W. Va. Code Ann. §18-2-64.**

**Note the rape statute applies "whether or not" the victim is the spouse of the actor. W. Va. Code Ann. §18-2-61.**
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<td>Yes, a person who is unconscious is presumed incapable of consent. Wyo. Stat. Ann. § 940-225(4).</td>
<td>Yes, if the victim is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual intercourse with or fondle that person while the person is incapacitated. Wis. Stat. Ann. § 940.225(2).</td>
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<td>Yes, a person suffering from a “mental illness or defect” is presumed incapable of consent. Wis. Stat. Ann. § 940.225(4).</td>
<td>Yes, there are several special relationships between the victim and a person that would impact the victim’s ability to consent and therefore make it a crime to engage in sexual contact with a person.</td>
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<td>Special relationships include:</td>
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<td>(a) a therapist-patient relationship;</td>
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<td>Yes, any actor who inflicts sexual intrusion on a victim commits a sexual assault in the second degree if: the actor is in a position of authority over the victim and the actor inflicts sexual intrusion on a victim and the actor knows or reasonably should know that the victim through a mental illness, mental defect or developmental disability is incapable of appraising the nature of the victim’s conduct. Wyo. Stat. Ann. § 6-2-302.</td>
<td>(b) an employee of an adult family home, community-based residential facility, an in-patient health care facility, or a state treatment facility who has sexual contact or sexual intercourse with a patient or resident of the facility;</td>
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<td>(c) an employee of certain “entities” as defined in 48.685(3)(b) and 50.065(1)(c) who has sexual contact or sexual intercourse with a client at the entity. Entity is defined under section 50.065(1)(c) to include a facility, organization or service that provides direct care or treatment services to clients or an agency that employs or contracts with an individual to provide personal care services, including a hospital, home health agency, temporary employment agency that provides caregivers to another entity, and the board on aging and long-term care;</td>
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<td>(d) a correctional staff member who has sexual contact or sexual intercourse with an individual who is confined in a correctional institution (unless the person was sexually assaulted by the inmate) and</td>
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<td>Yes, if the victim is under the influence of an intoxicant to a degree which renders that person incapable of giving consent and the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual intercourse with or fondle that person while the person is incapacitated. Wis. Stat. Ann. § 940.225(2).</td>
<td>(e) a probation, parole, or extended supervision agent who has sexual contact or sexual contact with the individual on parole, probation, or extended supervision who is supervised by him or her in a subordinate. Wis. Stat. Ann. §§ 940.22; 940.225; 940.285.</td>
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**Position of authority** means that position occupied by a parent, guardian, relative, household member, teacher, employer, custodian, health care provider or any other person who, by reason of his position, is able to exercise significant influence over a person. Wyo. Stat. Ann. § 6-2-301

A person commits a sexual assault in the second degree if:  
1. the actor inflicts sexual intrusion on a victim and the actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit;  
2. the actor inflicts sexual intrusion on a victim and the actor is an employee, independent contractor or volunteer of a state, county, city or town, or privately operated adult or juvenile correctional system, including but not limited to jails, penal institutions, detention centers, juvenile residential or rehabilitative facilities, adult community correctional facilities or secure treatment facilities and the victim is known or should be known by the actor to be a resident of such facility or under supervision of the correctional system;  
3. the actor inflicts sexual intrusion on a victim and the actor is an employee or volunteer of an elementary or secondary public or private school who, by virtue of the actor’s employment or volunteer relationship with the school, has interaction with the victim who is a student or participant in the activities of the school and is more than four (4) years older than the victim or;  
4. the actor subjects another person to sexual contact or sexual intrusion in the actor’s capacity as a health care provider in the course of providing care, treatment, services or procedures to maintain, diagnose or otherwise treat a patient’s physical or mental condition. Wyo. Stat. Ann. § 6-2-303.

Depending on the age difference between the victim and actor, an actor in a position of authority over a victim may be guilty of sexual abuse of a minor in varying degrees:  
  - An actor commits the crime of sexual abuse of a minor in the first degree if:  
    - Being 18 years of age or older, the actor inflicts sexual intrusion on a victim who is less than 16 years of age, and the actor is the victim’s legal guardian or an ancestor or descendant on a brother or sister of the whole or half-blood;  
    - Being 18 years of age or older, the actor inflicts sexual intrusion on a victim who is less than 16 years of age and the actor occupies a position of authority in relation to the victim.  
  - An actor commits the crime of sexual abuse of a minor in the second degree if:
• Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 18 years of age, and the actor is the victim’s legal guardian or an ancestor or descendant or a brother or sister of the whole or half-blood

• Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 16 years of age and the actor occupies a position of authority in relation to the victim.

  • An actor commits the crime of sexual abuse of a minor in the third degree if:
    • Being 20 years of age or older, the actor engages in sexual intrusion with a victim who is either 16 or 17 years of age, and the victim is at least 4 years younger than the actor, and the actor occupies a position of authority in relation to the victim.

  • An actor commits the crime of sexual abuse of a minor in the fourth degree if:
    • Being 20 years of age or older, the actor engages in sexual contact with a victim who is either 16 or 17 years of age, and the victim is at least 4 years younger than the actor, and the actor occupies a position of authority in relation to the victim.