**Consent Laws**

Last Updated: March 2020

### Defining Consent

<table>
<thead>
<tr>
<th>State</th>
<th>Consent Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>Consent has been interpreted to mean “agreement to or compliance with the will of another” to the extent that the victim is unconscious, asleep or for any other reason is physically unable to communicate unwillingness to an act. Consent may be express or implied. Consent of a person who is mentally defective, mentally incapacitated, or physically helpless shall be deemed to have been given with the consequence that any 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 circumstances in which the victim is, or should have reasonably been known to be, unaware a sexual act is occurring. Consent of a person who is temporarily incapable of appreciating or controlling conduct as a result of the influence of a controlled or non-controlled substance, or of a mental or emotional disability shall be deemed to be without consent where such acts are committed under circumstances in which the victim is, or should have reasonably been known to be, unaware a sexual act is occurring. Consent of a person who is physically helpless, mentally defective, mentally incapacitated, or because of a victim’s age. Alaska Statutes §§ 780.070, 780.090.</td>
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<td>Arkansas</td>
<td>Consent signifies voluntary agreement or concurrence in or approval of the sexual act in question. Consent will not be found unless there is evidence that the victim was capable of understanding the nature and consequences of the sexual act and was capable of making an intelligent decision. Consent will not be found unless there is evidence that the victim was capable of understanding the nature and consequences of the sexual act and was capable of making an intelligent decision. Consent of a person who is temporarily incapable of appreciating or controlling conduct as a result of the influence of a controlled or non-controlled substance, or of a mental or emotional disability shall be deemed to be without consent where such acts are committed under circumstances in which the victim is, or should have reasonably been known to be, unaware a sexual act is occurring. Consent of a person who is physically helpless, mentally defective, mentally incapacitated, or because of a victim’s age. Arkansas Code §§ 5-14-103; 5-14-125.</td>
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<td>California</td>
<td>Consent means cooperation in or agreement to an act of a sexual nature and that there is no act of force or violence used to bring about such cooperation or agreement. Consent will not be found unless there is evidence that the victim was capable of understanding the nature and consequences of the sexual act and was capable of making an intelligent decision. Consent will not be found unless there is evidence that the victim was capable of understanding the nature and consequences of the sexual act and was capable of making an intelligent decision. Consent of a person who is temporarily incapable of appreciating or controlling conduct as a result of the influence of a controlled or non-controlled substance, or of a mental or emotional disability shall be deemed to be without consent where such acts are committed under circumstances in which the victim is, or should have reasonably been known to be, unaware a sexual act is occurring. Consent of a person who is physically helpless, mentally defective, mentally incapacitated, or because of a victim’s age. California Penal Code §§ 261.5.</td>
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<td>Colorado</td>
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The concept is not specifically defined. However, the term "intellectual disability" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, with impairment of intellectual functioning and adaptive behavior that manifests during the developmental period. The term "mental illness" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders. Consent is not specifically defined. However,侠味 finds "sexual abuse" as any sex act between persons where:

- the victim is vaccinated by force or fear;
- the victim is unconscious or physically immobile;
- the victim is subject to a threat of systematic or persistent harm to her or his person or property that is reasonably apparent or known to the actor and that in fact places the victim in such fear of such harm as to impair her or his capacity to resist;
- the victim’s consent was obtained through a knowing misrepresentation that the perpetrator committed the act of sexual abuse was committed by force or threat of force by the accused or by a third party;
- the victim is suffering from a mental defect or incapacity which impairs the mental capacity to consent to the sexual act.

Capacity to consent presupposes an intelligence capable of understanding the act, its nature, and possible consequences. Consent of a woman from fear of personal violence is void. Consent is not specifically defined. However, Kansas law provides that a person commits a sex crime when a person knowingly engages in sexual intercourse and:

- the victim is vaccinated by force or fear;
- the victim is unconscious or physically immobile;
- the victim is subject to a threat of systematic or persistent harm to her or his person or property that is reasonably apparent or known to the actor and that in fact places the victim in such fear of such harm as to impair her or his capacity to resist;
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- the victim’s consent was obtained through a knowing misrepresentation that the perpetrator committed the act of sexual abuse was committed by force or threat of force by the accused or by a third party.

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- the victim is unconscious or physically immobile;
- the victim is subject to a threat of systematic or persistent harm to her or his person or property that is reasonably apparent or known to the actor and that in fact places the victim in such fear of such harm as to impair her or his capacity to resist;
- the victim’s consent was obtained through a knowing misrepresentation that the perpetrator committed the act of sexual abuse was committed by force or threat of force by the accused or by a third party.
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 without the person’s consent or by force, threat, or the use of force, whether the consent of the other...

(2) if the victim is a substantially incapacitated individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the sexual act is at least 21 years old but not more than 30 years old.

(5) if the victim is 18 or 15 years old, and the person performing the sexual act is at least 21 years old.

"Substantially incapacitated individual" means an individual who, because of the use of a drug, medication, or intoxicant, or because of an act committed on the individual without the individual's consent or awareness, or conducted substantially incapable of:

(1) appreciating the nature of the individual's conduct;

(2) communicating to submit to vaginal intercourse, a sexual act, or sexual contact; or

(3) communicating to submit to submit to vaginal intercourse, a sexual act, or sexual contact.

Mental Health Facility

The term "mental health facility" means either a hospital, mental health facility, a community-based facility or residential facility, or is receiving community-based services and the perpetrator:

(1) does not consent to vaginal intercourse, a sexual act, or sexual contact; or

(2) resisting vaginal intercourse, a sexual act, or sexual contact. MD Code, Criminal Law, § 3-301.

Corroboration of the victim's testimony is not required to show lack of consent.

Minors

Consent is not specifically defined.

However, Maryland law provides that a person may not engage in sexual contact with another person without the other person’s consent where the person:

(1) is under 13 years of age;

(2) is 13 or 14 years of age and the person performing the sexual act is under 18 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 13 years of age and the perpetrator performed the sexual act despite this knowledge; or

(3) is 14 or 15 years of age and the perpetrator:

(a) is at least 4 years older than the victim, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 13 years of age and the perpetrator performed the sexual act despite this knowledge; or

(b) knows or reasonably should know that the victim is a substantially incapacitated individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the sexual act is at least 21 years old.

Consent is not specifically defined.

Lack of consent results from:

(1) the victim's resistance, which is evidence of the victim's opposition to the sexual act; or

(2) communicating to submit to vaginal intercourse, a sexual act, or sexual contact.

Corroboration of the victim's testimony is not required to show lack of consent.

Mississippi

Consent is not specifically defined.

However, Mississippi law provides that a person shall not commit sexual contact with another person without the other person’s consent if the person:

(1) is under 13 years of age; or

(2) is 13 or 14 years of age and the person performing the sexual act is under 18 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 13 years of age and the perpetrator performed the sexual act despite this knowledge.

Corroboration of the victim's testimony is not required to show lack of consent.

Missouri

Consent is not specifically defined.

However, Missouri law provides that a person is guilty of the crime of sexual assault if the person:

(1) engages in sexual intercourse with another person who is under 13 years of age; or

(2) engages in sexual intercourse with another person who is 13 or 14 years of age and the person performing the sexual act is under 18 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 13 years of age and the perpetrator performed the sexual act despite this knowledge.

Corroboration of the victim's testimony is not required to show lack of consent.

Montana

Consent is not specifically defined.

However, Montana law provides that a person commits the offense of sexual assault if the person:

(1) engages or attempts to engage in sexual activity with another person who is under 18 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge; or

(2) engages in sexual activity with another person who is 18 years of age or older, and the person performing the sexual act is under 21 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge.

Corroboration of the victim's testimony is not required to show lack of consent.

Nebraska

Consent is not specifically defined.

However, Nebraska law provides that a person is guilty of the crime of sexual penetration if the person:

(1) engages in sexual penetration with another person who is under 18 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge; or

(2) engages in sexual penetration with another person who is 18 years of age or older, and the person performing the sexual act is under 21 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge.

Corroboration of the victim's testimony is not required to show lack of consent.

New Hampshire

Consent is not specifically defined.

However, New Hampshire law provides that a person is guilty of the crime of sexual penetration if the person:

(1) engages in sexual penetration with another person who is under 18 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge; or

(2) engages in sexual penetration with another person who is 18 years of age or older, and the person performing the sexual act is under 21 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge.

Corroboration of the victim's testimony is not required to show lack of consent.

New Mexico

Consent is not specifically defined.

However, New Mexico law provides that a person is guilty of the crime of sex crimes if the person:

(1) engages in sexual penetration with another person who is under 18 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge; or

(2) engages in sexual penetration with another person who is 18 years of age or older, and the person performing the sexual act is under 21 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge.

Corroboration of the victim's testimony is not required to show lack of consent.

New York

Consent is not specifically defined.

However, New York law provides that a person is guilty of the crime of sexual penetration if the person:

(1) engages in sexual penetration with another person who is under 18 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge; or

(2) engages in sexual penetration with another person who is 18 years of age or older, and the person performing the sexual act is under 21 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge.

Corroboration of the victim's testimony is not required to show lack of consent.

North Carolina

Consent is not specifically defined.

However, North Carolina law provides that a person is guilty of the crime of sexual penetration if the person:

(1) engages in sexual penetration with another person who is under 18 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge; or

(2) engages in sexual penetration with another person who is 18 years of age or older, and the person performing the sexual act is under 21 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge.

Corroboration of the victim's testimony is not required to show lack of consent.

North Dakota

Consent is not specifically defined.

However, North Dakota law provides that a person is guilty of the crime of sexual penetration if the person:

(1) engages in sexual penetration with another person who is under 18 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge; or

(2) engages in sexual penetration with another person who is 18 years of age or older, and the person performing the sexual act is under 21 years of age, unless the victim first indicated his or her consent to the performance of the sexual act and the perpetrator knew or reasonably should have known that the victim was under 18 years of age and the perpetrator performed the sexual act despite this knowledge.

Corroboration of the victim's testimony is not required to show lack of consent.
Engages in sexual penetration with a person, other than his legal spouse, who is under 18 years of age or older and under 18 years of age where the age difference between the actor and the other person is 4 years or more; or
Engages in sexual contact with a person other than his legal spouse who is under 13 year of age.

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Rhode Island does not specifically define "consent." A person is guilty of third degree sexual assault if he or she engages in sexual penetration with another person, and if any of the following circumstances are proven:

(D) knows that the other person is mentally incapable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct, due to a mental condition or a period of temporary incapacity or physical helplessness;

(j) 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;

(i) 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;

(ii) 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 believes at the time that the actor has the ability to execute this threat;

(iii) Coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the actor believes at the time that the actor has the ability to execute this threat;

(iv) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the actor knows or reasonably should know at the time that the actor has the ability to execute this threat;

(v) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the actor knows or reasonably should know that the victim is unable to resist the threat due to a mental condition or a period of temporary incapacity or physical helplessness;

(vi) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim knows or reasonably should know at the time that the victim is unable to resist the threat due to a mental condition or a period of temporary incapacity or physical helplessness;

(vii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim knows or reasonably should know that the victim is unable to resist the threat due to a mental condition or a period of temporary incapacity or physical helplessness;

(viii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim knows or reasonably should know that the victim is physically helpless due to illness, injury, or physical helplessness; or

(ix) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the actor knows or reasonably should know that the victim is physically helpless due to illness, injury, or physical helplessness;

(x) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim reasonably believes that the accused has the present ability to execute this threat.

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:

(a) The victim is less than thirteen years of age;

(b) The victim submits to sexual battery by the actor under circumstances where the actor also committed the crime of forcible confinement, kidnapping, or false imprisonment, or unless the victim is a disabled person as defined in §16-3-651(12);

(c) The victim is a parent, adoptive parent, foster parent, legal guardian, or similar relationship to the actor;

(d) The victim is a health care services provider or a health care services provider's patient who is unable to consent due to a mental condition or a period of temporary incapacity or physical helplessness;

(e) The victim is a child under forty years of age, and the parent or guardian of the child is present at the scene of the sexual battery and has the power to consent to the sexual battery;

(f) The actor coerces the victim to submit by threatening to use force or violence on the victim or any other person;

(g) The victim is a patient who is under the lawful custody of a state hospital or other state facility as defined in §22-22-30;

(h) The actor coerces the victim to submit by threatening to place the victim in a locked location; or

(i) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, or false imprisonment.

Virgin Islands does not specifically define "consent," but defines rape and sexual battery as sexual intercourse or sexual abuse, respectively, of a complaining witness against her will. V.I. Code Ann. §33-201; 12.1-3.5.7.
Capacity to Consent

State | At what age is a person able to consent? | How does developmentally disabled (or mentally incapacitated) impact the ability to consent? | Does conscious impairment (e.g., from alcohol or drugs) impact the ability to consent? | Does consciousness impact the victim’s ability to consent? | Does sex in the absence of consent impact the victim’s ability to consent? | Does the relationship between the victim and the actor impact the victim’s ability to consent? | Is there a difference between consent and a sexual act where the victim is said to have consented?

Alaska

18 years old. Alaska Stat. §11.41.450(a).

18 years old. Alaska Stat. §11.41.450(a).

18 years old. Alaska Stat. §11.41.410(a).

In the absence of an incapacity to consent or an incapacity to appreciate or comprehend the nature and consequences of the act, the consent of a person who is said to have consented is not required. Alaska Stat. §11.41.420(a).

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Yes, a victim can be incapable of giving consent. Yes, in a prosecution for non-forcible rape and sexual assault in the first degree: A person engaging in sexual penetration in the first degree is guilty of sexual assault in the first degree if the victim is incapacitated. Alaska Stat. §11.41.410(a)(4).

Yes, a victim can be incapable of giving consent. Yes, in a prosecution for non-forcible rape and sexual assault in the first degree: A person engaging in sexual penetration in the first degree is guilty of sexual assault in the first degree if the victim is incapacitated. Alaska Stat. §11.41.410(a)(4).

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Yes, in certain cases:

- A person is deemed to have consented if the victim is incapacitated or unable to comprehend the nature and consequences of the act.
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Yes, a person can be physically helpless or otherwise physically unable to resist an act of sexual penetration if there is a reason incapable of appraising or controlling such person's conduct owing to a cognitive disability, a mental disorder that renders victim's mind unsound, or because of the victim's intoxication, administration of a drug or intoxicating or anesthetic substance, or because of a physical injury, illness or disease which renders victim incapable of appraising or controlling such person's conduct owing to a cognitive disability, a mental disorder that renders victim's mind unsound, or because of the victim's intoxication, administration of a drug or intoxicating or anesthetic substance, or because of the victim's physical injury, illness or disease.

Yes, a person can be incapacitated by reason of physical indisposition or medical treatment, medication, or administration of a drug or intoxicating or anesthetic substance or because of a physical injury or disease which renders victim incapable of appraising or controlling such person's conduct owing to a cognitive disability, a mental disorder that renders victim's mind unsound, or because of the victim's intoxication, administration of a drug or intoxicating or anesthetic substance, or because of the victim's physical injury, illness or disease.

Yes, anyone who, having knowledge of the fact that the victim is incapable of consenting thereto, engages in sexual intercourse thereby causing such person to become pregnant.

Yes, if the person is incapable of giving consent because of the person's intoxication, administration of a drug or intoxicating or anesthetic substance or because of a physical injury, illness or disease which renders victim incapable of appraising or controlling such person's conduct owing to a cognitive disability, a mental disorder that renders victim's mind unsound, or because of the victim's intoxication, administration of a drug or intoxicating or anesthetic substance, or because of the victim's physical injury, illness or disease.

The most recent opinion on this subject was California v. Brown, 3 Cal. 4th 1060, 116 Cal. Rptr. 2d 203, 39 P.3d 1180 (2002).

Yes, a person can be incapable of giving consent because of the person's intoxication, administration of a drug or intoxicating or anesthetic substance or because of a physical injury, illness or disease which renders victim incapable of appraising or controlling such person's conduct owing to a cognitive disability, a mental disorder that renders victim's mind unsound, or because of the victim's intoxication, administration of a drug or intoxicating or anesthetic substance, or because of the victim's physical injury, illness or disease.

Yes, the defendant knew or should have known that the victim was incapable of giving consent to sexual activity.

Yes, anyone who, having knowledge of the fact that the victim is incapable of consenting thereto, engages in sexual intercourse thereby causing such person to become pregnant.

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Yes. A person is unable to consent to sexual activity if such person is incapable of appreciating the nature of the conduct or is mentally incapacitated by reason of being under the influence of an anesthetic, or intoxicating substance.

§ 794.011(1)(c).

D.C. Code § 22-3014.

Florida

18 years old. Florida Statutes §§ 794.011, 794.035.

Sexual Abuse of a Minor;

Yes, a person that is physically helpless or mentally incapacitated may not be able to provide consent. Florida Statutes § 794.011(1)(c).

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

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


Yes. A victim's ability to consent is impacted by her/his intoxication due to the influence of alcohol or an anesthetic, or intoxicating substance.

Florida Statutes § 794.011 (8).

D.C. Code § 22-3014.

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Sexual Abuse of a Minor;
Yes. A person commits a sex crime if the person engages in sexual penetration or sexual contact with another person and the actor knew or has reason to know that the victim is mentally defective or mentally incapacitated, unless the victim will not be able to resist due to the influence of a substance administered to that person.

In determining whether a victim had the capacity to consent, the court shall consider whether the victim, at the time of the act, was mentally defective or mentally incapacitated, whether a person engaged in sexual contact or sexual penetration with a person who is mentally defective or mentally incapacitated without the person's consent. HRS §§ 707-700.

Yes. A person commits custodial sexual misconduct when:
- the actor is an employee of a prison or other correctional facility who is under the custody of the director of the facility as defined in the statute;
- the actor is an employee of a law enforcement agency or employee so engaging in sexual conduct or sexual penetration. 720 ILCS 5/11-1.20;
- the actor is an employee of a treatment and detention facility of that penal system;
- the actor is an employee of the Idaho Department of Correction, Idaho Department of Juvenile Corrections, or other state correctional facility; or
- the actor is engaged in sexual conduct or sexual penetration while on parole or probation, being supervised by a parole or probation officer.

Yes. A person commits sexual assault in the second degree if the person knowingly engages in sexual contact with a person who is in the custody of a law enforcement officer, knowingly subjects to a sexual act another person who is mentally defective or mentally incapacitated, another person who is physically incapacitated, another person who is mentally or physically incapacitated by the use of alcohol, another person who is under the influence of a substance administered to that person, or another person who is under the influence of a substance administered to that person.

Yes. A person commits sexual assault in the second degree if the person engages in sexual contact or sexual penetration with another person and the actor knew or has reason to know that the victim is mentally defective or mentally incapacitated, unless the victim will not be able to resist due to the influence of a substance administered to that person.

Yes. A person commits custodial sexual misconduct when:
- the actor is an employee of the Office of Parole and Probation who is under the custody of the director of public safety as defined in the statute;
- the actor is an employee of a treatment and detention facility of that penal system;
- the actor is an employee of the Idaho Department of Correction, Idaho Department of Juvenile Corrections, or other state correctional facility; or
- the actor is engaged in sexual conduct or sexual penetration while on parole or probation, being supervised by a parole or probation officer.

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Yes. A person commits sexual assault in the second degree if the person engages in sexual contact or sexual penetration with another person and the actor knew or has reason to know that the victim is mentally defective or mentally incapacitated, unless the victim will not be able to resist due to the influence of a substance administered to that person.

Yes. A person commits sexual assault in the second degree if the person engages in sexual contact or sexual penetration with another person and the actor knew or has reason to know that the victim is mentally defective or mentally incapacitated, unless the victim will not be able to resist due to the influence of a substance administered to that person.
A person commits a sex crime if the actor commits an act that is sexual in nature and does not constitute consensual sexual conduct under IC § 35-42-4-7(n).

A mentally incapacitated person is one who is under the influence of alcohol or a controlled substance, which condition was caused by the actor or was reasonably foreseeable to the actor.

A person is temporarily incapacitated if the person has a physical condition that is caused by the actor or is reasonably foreseeable to the actor that makes the person temporarily unable to resist the actor's sexual advances.

A sexual assault occurs when the victim is incapable of giving consent, or the victim is under the influence of alcohol or a controlled substance.

A person commits a sex crime if the sexual act includes any act that is sexual in nature and does not constitute consensual sexual conduct under IC § 35-42-4-7(n).

Yes. A person commits a sex crime if the victim is incapacitated, 861 P.2d 267, 272 (Iowa 1980).

The key issue is whether the mental incapacity of the victim is such that it precludes effective consent, and in the determination of the question the facts and circumstances surrounding the alleged sexual conduct should be considered.

The crux of the question is whether the victim was capable of understanding the nature and consequences of the act.

The fact that the victim did not object was not conclusive of the absence of consent, even if she had been temporarily incapacitated.

The evidence clearly showed that the victim did not consent to the act of sexual intercourse.

The trial court properly instructed the jury on the necessary elements of the crime of sexual assault with a child under IC § 35-42-4-4.
Kentucky

Yes. A person is deemed incapable of consent when he or she is not in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, fondling or touching, or sodomy is a person 17 years of age or older, is not a defense. LSA-R.S. 14:81.4.

Yes. A person is deemed incapable of consent when he or she voluntarily consumes alcohol, other controlled substances, or an anesthetic agent or other hypnotic drug, if the person is incapable of resisting and has not consented to the sexual act in question. 17-A M.R.S.A. 256, sexual misconduct with a child under 14 years of age.

Maine

17 years old.

Yes. The following are deemed to be incapable of consent when the actor is a person over the age of 18 years who is incapable of understanding the nature of the sexual act by reason of stupor or abnormal condition of the mind, which would likely prevent such person from understanding the nature of the sexual act.

Yes. The following are deemed to be incapable of consent when the actor is a person, not the actor’s spouse, is a current patient or client of the organization, program or residence that is operated, administered, founded or controlled by the Department of Corrections, Department of Juvenile Justice, Department of Health and Human Services, the Division of Children and Family Services, or a private or public non-profit corporation, who provides or operates a foster family home, or who supervises the teaching of the arts or other cultural activity. M.R.S.A. 14-42.1, 14-42.2, 14-42.3, 14-42.4, 14-42.5, 14-42.6, 14-42.7.

Yes. A person is guilty of sexual abuse (M.R.S.A. 253, 255-A, 260) if the actor engages in sexual intercourse, lewd fondling or touching, or sodomy with another person who is 16 years of age or older who is the subject of a surety or bail bond agreement with such surety; sexual intercourse, lewd fondling or touching, or sodomy is the subject of a surety or bail bond agreement with such surety and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, fondling or touching, or sodomy is currently under the supervision of community corrections.

Yes. The offender is a court services officer or inmate of a public or private correctional facility who engages in sexual intercourse, lewd fondling or touching, or sodomy with another person who is 16 years of age or older who is the subject of a surety or bail bond agreement with such surety.

Mississippi

17 years old.

Yes. A person is guilty of a sex crime if the person engages in sexual intercourse, lewd fondling or touching, or sodomy in any of the following circumstances:

Yes. A person is guilty of a sex crime if the person engages in sexual intercourse, lewd fondling or touching, or sodomy with another person who is a current patient or client of a correctional facility, mental institution, public or private school, or other public or private educational institution the person with whom the offender is engaging in consensual sexual intercourse, fondling or touching, or sodomy is currently under the supervision of community corrections.

Yes. A person is guilty of a sex crime if the person engages in sexual intercourse, lewd fondling or touching, or sodomy with another person who is under official supervision as a probationer, a parolee, a sex offender on parole, or on the list of sex offenders maintained by the sex offender board, and in which the actor was not under the same common bond for purposes of supervision, prior to the actual sexual acts.

Yes. A person is guilty of a sex crime if the person engages in sexual intercourse, lewd fondling or touching, or sodomy with another person who is a current patient or client of a correctional facility, mental institution, public or private school, or other public or private educational institution the person with whom the offender is engaging in consensual sexual intercourse, fondling or touching, or sodomy is currently under the supervision of community corrections.

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Yes. A person may not engage in "sexual contact" with another if the victim is: (a) asleep or unconscious; (b) incapacitated by drugs or alcohol to the extent that the victim is unable to resist; or (c) an incapable of giving consent because of such other condition.

Yes. A person may not engage in "sexual contact" or "sexual penetration" with another if the victim is: (a) asleep or unconscious; (b) incapacitated by drugs or alcohol to the extent that the victim is unable to resist; or (c) an incapable of giving consent because of such other condition.

Yes. A person may not engage in "sexual contact" or "sexual penetration" with another if the victim is: (a) asleep or unconscious; (b) incapacitated by drugs or alcohol to the extent that the victim is unable to resist; or (c) an incapable of giving consent because of such other condition.

Yes. A person may not engage in "sexual penetration" with another if the victim is: (a) asleep or unconscious; (b) incapacitated by drugs or alcohol to the extent that the victim is unable to resist; or (c) an incapable of giving consent because of such other condition.

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Yes. A person may not engage in "sexual penetration" or "sexual contact" with another if: (a) at the time of the act, the victim is a substantially cognitively impaired or mentally incapacitated individual; or (b) the actor knows or reasonably should have known that the victim is a substantially cognitively impaired or mentally incapacitated individual.

Yes. A person may not engage in "sexual contact", "sexual penetration" or "sexual contact with another if: (a) at the time of the act, the victim is a substantially cognitively impaired or mentally incapacitated individual; or (b) the actor knows or reasonably should have known that the victim is a substantially cognitively impaired or mentally incapacitated individual.

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Yes. A person is guilty of sexual battery if he or she engages in sexual contact with another in a relationship in which the other person is an employee, contractor, or volunteer of the facility or if the sexual contact is in a school setting.

Missouri

17 years old: Mont. Code Ann. § 45-5-502(5) if the victim is: (1) a minor less than 14 years old and the offender is 3 or more years older than the victim; (2) a residential facility or is receiving community-based services and the perpetrator: (A) has supervisory or disciplinary authority over the victim or (B) is an employee, contractor, or volunteer of the facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority.

Montana

17 years old: Mont. Code Ann. § 45-5-501(1)(b)(v),(vi), (vii). However, the above do not apply if the individuals are married, or if one of the individuals, involved in a sexual or sexual contact and the perpetrator: (A) is an employee, contractor, or volunteer of the facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority.

 Montana

Yes. "Without consent" means the victim was incapable of consent or was lack of capacity to consent, or (ii) a mentally incapacitated person, or (iii) a person who is incapacitated, incapable of making an informed consent to sexual penetration because the victim is: (A) under the influence of alcohol, drugs, medication, or disease, defect, or condition which renders that person temporarily or permanently incapable of knowing or controlling his or her conduct, or (B) is a mentally incapacitated person, which includes a person who is: (i) a person who has a mental disease, disorder, or mental illness, or (ii) a person who is mentally impaired so as to be incapable of making an informed consent to sexual penetration. Mont. Code Ann. § 45-5-502(7).

Mississippi

16 years old: Miss. Code Ann. § 97-3-95. Anyone who subjects another person to sexual penetration who is less than 14 years of age by a person who is at least three years older than the minor sex offender is guilty of sexual battery.

Yes. A person is guilty of sexual battery if he or she engages in sexual contact with another in a relationship in which the other person is an employee, contractor, or volunteer of the facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority.

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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 § 30-9-11(E)(2).
North Dakota

Yes. In a crime to engage in sexual activity with a mentally incapacitated person, which includes an adult who is incapacitated by a mental disease or defect which substantially impairs the other person's ability to appraise the nature of her or his conduct, of resisting the act of consensual intercourse or of understanding the consequences of that act. North Carolina General Statutes Annotated § 14-27.24.

Yes. In a crime to engage in sexual activity with a mentally incapacitated person, which includes a person who is incapacitated by a mental disease or defect which substantially impairs the other person's ability to appraise and act with respect to the act of consensual sexual intercourse or of understanding the consequences of that act. North Carolina General Statutes Annotated § 14-27.25.

Yes. A person who engages in a sexual act with another, or who causes another to engage in a sexual act or sexual conduct, is guilty of gross sexual imposition if the person knows or has reasonable cause to believe that the person is unaware that the sexual act is being committed upon or with her or him. North Carolina General Statutes Annotated § 14-27.12(a).

Yes. A person who engages in a sexual act with another, or who causes another to engage in a sexual act or sexual conduct, is guilty of gross sexual imposition if the person knows or has reasonable cause to believe that the person is unaware that the sexual act is being committed upon or with her or him. North Carolina General Statutes Annotated § 14-27.12(b).

North Dakota

Yes. In a crime to engage in sexual activity with a mentally incapacitated person, which includes a person who is incapacitated by a mental disease or defect which substantially impairs the other person's ability to appraise and act with respect to the act of consensual sexual intercourse or of understanding the consequences of that act. North Carolina General Statutes Annotated § 14-27.24.

Yes. A person who engages in a sexual act or sexual conduct with another, or who causes another to engage in a sexual act, is guilty of gross sexual imposition if the person knows or has reasonable cause to believe that the person is unaware that the sexual act is being committed upon or with her or him. North Carolina General Statutes Annotated § 14-27.12(a).

Yes. A person who engages in a sexual act or sexual conduct with another, or who causes another to engage in a sexual act, is guilty of gross sexual imposition if the person knows or has reasonable cause to believe that the person is unaware that the sexual act is being committed upon or with her or him. North Carolina General Statutes Annotated § 14-27.12(b).

Yes. A person who engages in a sexual act with another, or who causes another to engage in a sexual act or sexual conduct, is guilty of gross sexual imposition if the person knows or has reasonable cause to believe that the person is unaware that the sexual act is being committed upon or with her or him. North Carolina General Statutes Annotated § 14-27.12(c).

Yes. If the intercourse is involuntary:

An offender commits the crime if she or he engages in sexual conduct with another and the intercourse is involuntary.

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Yes. If the intercourse is voluntary:

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Yes. If the other person consents:

An offender commits the crime if she or he engages in sexual conduct with another and the other person consents.

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Yes. If the sex of the other person:

An offender commits the crime if she or he engages in sexual conduct with another and the sex of the other person:

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Yes. An offender's duty to stop:

An offender has a duty to reasonably prevent or attempt to prevent:

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Shen

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Yes. Rape is an act of sexual intercourse or oral-genital, digital or instrumental contact associated with another person and who is rendered temporarily helpless, including due to the use of alcohol, drugs, intoxicants or other means for incapacitation, if the victim is under the age of 16 and is the person's sibling, or is under the age of 18 and is the person's spouse's child. Or. Rev. Stat. § 163.305(3).

It is custodial misconduct in the first or second degree for an individual to participate in a sports program of the nonprofit association or a for-profit association commits rape in the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child under 16 years of age who is in the person's care. Or. Rev. Stat. § 163.324 (a).
A person is guilty of criminal sexual conduct with a minor if the actor engages in sexual battery with the victim and the actor knows or has reason to know that the victim is incapable of giving consent due to the other person’s physical incapacity. S.D. Code Ann. §§22-22-7 & 22-22-28 & 22-22-29.

Yes, mentally incapacitated means “mentally incapacitated means a person in a situation where a person is rendered incapable of appraising or controlling his or her conduct by reason of mental disease or defect the other person is at the time of the offense, or by any other act committed upon that person without the person’s consent, or due to any other act or omission to act.” S.D. Code Ann. §16-3-755(3).

Yes, situation where a person is rendered incapable of appraising or controlling his or her conduct by reason of mental disease or defect the other person is at the time of the offense, or by any other act committed upon that person without the person’s consent, or due to any other act or omission to act. S.D. Code Ann. §16-3-755(3).

South Dakota does not specifically define “sexual assault,” but it includes conduct that is considered to occur without consent of the victim where the actor knows or has reason to know that the victim is incapable of giving consent due to the other person’s physical incapacity. S.D. Code Ann. §22-22-7.2.

Yes, consent is not a defense where: (1) the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person is not the legal mother; (2) the actor is a clergyman who causes the other person to submit or participate; (3) the actor is a mental health services provider or a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person is not the legal mother; (4) the actor is an employee of a facility that is in a position of familial, custodial, or official authority to coerce the other person, and the actor affiliated his or her authority over the other person, or the actor affiliated his or her authority over the other person by virtue of the other person’s legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or (5) the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person is not the legal mother. S.C. Code 1976 § 16-3-755(B).

Yes, consent is not a defense where: (1) the actor is a person who is in a position of familial, custodial, or official authority to coerce the other person, and the actor affiliated his or her authority over the other person, or the actor affiliated his or her authority over the other person by virtue of the other person’s legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or (2) the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person is not the legal mother. S.C. Code 1976 § 16-3-755(B).

Yes, consent is not a defense where: (1) the actor is in a position of familial, custodial, or official authority to coerce the other person, and the actor affiliated his or her authority over the other person, or the actor affiliated his or her authority over the other person by virtue of the other person’s legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or (2) the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person is not the legal mother. S.C. Code 1976 § 16-3-755(B).

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Note that in Vermont, the spouse of the defendant can be a “victim” of the sexual battery by the defendant, but the offense is not aggregated under the act. Vermont Stat. Ann. § 13-725(7).
VIRGIN ISLANDS


Yes, a person who is rendered temporarily incapable of apprising or controlling his or her conduct by the use of a physical restraint or a chemical or other substance is guilty of sexual intercourse with a person who is temporarily incapable of giving consent. W.Y. Code Ann. § 610-8-5-5.

West Virginia


Yes, a person who is in a position of authority over the inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail; and knows that the inmate has the capacity or potential to consent to sexual contact with the inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail; and knows that the inmate has the capacity or potential to consent to sexual contact with the inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail.

Washington

17 years old. V.I.C. § 1700a.

Yes, the rape statute applies "whether or not" the victim is the spouse of the actor to the actor’s offense against a victim who is a minor 15 years of age or older. V.I.C. § 1700a.

WISCONSIN


Yes, if the victim is under the influence of an intoxicant which prevents the victim from understanding the nature or extent of the sexual act, or the victim is incapable of giving consent. Wis. Stat. Ann. § 609.02(1)(c).

Wyoming


Yes, a person who uses cabaret or sexual services on a person under 18 years of age is guilty of sexual misconduct with a minor in the first degree if: (i) the person is 18 years of age or older; and (ii) the person has knowledge or a reason to know that the minor is 17 years of age or younger. Wyo. Stat. Ann. § 6-2-336.

Yes, if the victim is under the influence of an intoxicant which prevents the victim from understanding the nature or extent of the sexual act, or the victim is incapable of giving consent. Wis. Stat. Ann. § 609.02(1)(a).

Yes, a person who commits the crime of sexual abuse of a minor in the first degree if: (i) the person is 18 years of age or older; and (ii) the person has knowledge or a reason to know that the minor is 17 years of age or younger. Wyo. Stat. Ann. § 6-2-316.

Yes, a person who 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. Wyo. Stat. Ann. § 6-2-325.

Yes, a person who engages in sexual contact with a victim who is less than 16 years of age. Wyo. Stat. Ann. § 6-2-325.

Yes, a person who 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. Wyo. Stat. Ann. § 6-2-316.

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