## Consent Laws

### Defining Consent

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<th>How is Consent Defined?</th>
<th>Does the definition require &quot;freely given consent&quot; or &quot;affirmative consent&quot;?</th>
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<td><strong>Alabama</strong></td>
<td>Consent has been interpreted to mean &quot;acquiescence or compliance [with the proposition of another].&quot; Ex parte Gordon, 708 So. 2d 1100, 1113 (Ala. 1997). Lack of consent results from: 1. forcible compulsion; or 2. being incapable of consent. Ala. Code § 13A-6-70(b). In addition, &quot;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.&quot; 1. Ala. Code § 13A-6-70(d).</td>
<td>No. Ala. Code § 13A-6-70.</td>
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<td><strong>Alaska</strong></td>
<td>&quot;Without consent&quot; 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 2. is incapacitated as a result of an act of the defendant. Alaska Stat. § 11.41.470(10). The phrase &quot;without consent&quot; in statute refers to a particular type of unwanted sexual activity: unwanted sexual activity that is coerced by force or the threat of force. In re J.N.A, 440 P.3d 345, 349 (Alaska Ct. App. 2019).</td>
<td>No. Alaska Stat. § 11.41.470.</td>
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<td><strong>Arizona</strong></td>
<td>&quot;Without consent&quot; 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 &quot;mental defect&quot;) 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)(6).</td>
<td>No.</td>
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<tr>
<td><strong>Arkansas</strong></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 §§ 5-14-102; 5-14-125. 1. &quot;Forcible compulsion&quot; means physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person. Arkansas Code § 5-14-101(5). 2. &quot;Mentally defective&quot; means that a person suffers from a mental defect or disease that renders the person: incapable of understanding the nature and consequences of a sexual act; or incapable of appreciating or controlling the person’s conduct as a result of the influence of a controlled or intoxicating substance. 3. &quot;Mentally incapacitated&quot; 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; or administered to the person without the person’s consent; or that renders the person unaware a sexual act is occurring. Arkansas Code § 5-14-101(8). 4. &quot;Physically helpless&quot; means that a person is: unconscious; 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 &quot;physically helpless&quot; 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. Dobey v. State, 1996, 930 S.W.2d 360, 326 Ark. 382. 5. &quot;Physically incapacitated&quot; means that a person suffers from a 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 &quot;mental defect&quot;) below; or the victim is intentionally deceived to erroneously believe that the person is the victim’s spouse. 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. Hillman v. State, 569 S.W.3d 372 (Arkansas 2019).</td>
<td>No.</td>
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<tr>
<td><strong>California</strong></td>
<td>&quot;Consent&quot; 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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<tr>
<td><strong>Colorado</strong></td>
<td>&quot;Consent&quot; 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 § 18-3-401(1.5).</td>
<td>No.</td>
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<tr>
<td><strong>Connecticut</strong></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 sexually 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-70, 53a-71, 53a-72a, 53a-73a. 1. &quot;Mentally incapacitated&quot; means that a person is rendered temporarily incapacible 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). 2. &quot;Impaired because of mental disability or disease&quot; 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). 3. &quot;Physically helpless&quot; 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. Connecticut General Statutes Annotated § 53a-65(6).</td>
<td>No.</td>
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Delaware

Without consent means any of the following:

- 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 fruitless.
- The defendant knew the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed.
- 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 sexual conduct or incapable of consenting.
- 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 during the course of providing professional counseling, treatment or counseling 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.
- The defendant had substantially impaired the victim’s power to apprise 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.

Note: “health professional” includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, marriage and family counselors or therapists and hypnotherapists.

Note: “cognitive disability” means a developmental disability that substantially impairs an individual’s cognitive abilities including, but not limited to, delirium, dementia and other organic brain disorders for which there is an identifiable pathologic condition, as well as nonorganic brain disorders commonly called functional disorders.

“Cognitive disability” also includes conditions of mental retardation, severe cerebral palsy, and any other condition found to be closely related to mental retardation because such condition results in the impairment of general intellectual functioning or adaptive behavior similar to that of persons who have been diagnosed with mental retardation, or such condition requires treatment and services similar to those required for persons who have been diagnosed with mental retardation.

IDC 761.

District of Columbia

“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. C. Code § 22-3001(4).

“Force” means the use or threatened use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or incapacitate a person; or the use of a threat of harm sufficient to cause or compel submission by the victim. D.C. C. Code § 22-3001(5).

Florida

“Consent” means intelligent, knowing, and voluntary consent and does not include coerced submission. “Consent” shall not be defined or construed to mean the failure by the alleged victim to offer physical resistance to the offender. Florida Statute § 794.011.


Georgia

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.


Guam

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 victim or the victim’s submission to the actor out of fear of harm or retribution. Guam Code Annotated § 707-700.

A person who is mentally incapacitated or physically helpless as defined by the Guam statute cannot consent to a sexual act. G.C.A. § 25.10(a)(2).

A victim need not resist the actor for a proper prosecution. G.C.A. § 25.45.

Hawaii

Consent is not defined by statute. However, Hawaii law provides that a person commits a sex crime if:

- the person subjects another person to a sexual act by compulsion; or
- the person subjects a sexual act another person who is mentally defective, mentally incapacitated, or physically helpless, HRS §§ 707-730, 707-731, 707-732.

“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.

“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.

“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.

“Physically helpless” means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act. HRS § 707-700.

See also:

- Consent signifies voluntary agreement or concurrence . . . [c]onsent may be express or implied.” State v. Adams, 10 Haw. App. 593, 605, 880 P.2d 226, 234 (1994).

Evidence that victim rebuffed offender’s sexual advances by repeatedly telling offender to stop, attempting to pull way, and telling offender that she did not want to be touched was sufficient to establish absence of consent. State v. Jackson, 41 Haw. 39, 46, 922 P.2d 71, 78 (1996).

Idaho

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:

- the victim is under the age of sixteen and the perpetrator is eighteen years of age or older, and the victim is not lawfully married to the perpetrator;
- the victim is sixteen or seventeen years of age and the perpetrator is three years or more older than the victim;
- the victim is under the age of sixteen and is not lawfully married to the perpetrator;
- the victim is incapable, through any unreasonableness 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;
- the victim resists but the resistance is overcome by force or violence;
- the victim is prevented from resistance 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;
- 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 contact;
- the victim is at the time unconscious of the nature of the act (“unconscious of the nature of the act” means incapable of appraising the victim was unconscious or asleep, or was not aware, knowing, perceiving, or cognizant that the act occurred);
- 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;
- 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 concerning a crime to be instituted against the victim, or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.

Idaho Statutes § 18-6101.
"Consent" means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused is not a defense to constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent. 720 ILCS 5/11-0.1. A person who initially consents to sexual penetration or sexual conduct is not deemed incapable of consent 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 of the analysis is the defendant's knowledge or reasonably should have known regarding the victim's willingness or otherwise give the victim knowing consent." People v. Roldan 2015 Ill App (1st) 139862 ¶ 19.

Yes, it requires "freely given agreement" to the act of sexual penetration or sexual conduct in question. 720 ILCS 5/11-0.1.

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 other sexual conduct is occurring; (5) the victim is mentally disabled or defecient that consent to sexual intercourse or other sexual conduct cannot be given; or (4) the person disregarded the victim's attempts to physically, verbally, or by other visible conduct refuse the person's acts. IC §§ 35-42-4-1; 35-42-4-8.


Consent of a woman from fear of personal violence is void. Purrett v. State, 200 Ind. 7, 159 N.E. 755, 760 (1928).

No.

Consent is not specifically defined. However, Iowa law defines "sexual abuse" as any sex act between persons where: the sexual act is done by force or against the will of the other (if the consent or acquiescence of the victim is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other), or the victim 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. § 790.1.

The "against the will" element is deliberately broad and consciously designed to capture all circumstances when there is an actual failure of consent, including use of psychological force. See State v. Kelso-Cherry, 911 N.W.2d 661, 667 (Iowa 2018). It is not necessary to establish physical resistance by a person in order to establish that an act of sexual abuse was committed by force or against the will of the person. However, the circumstances surrounding the commission of the act may be considered in determining whether or not the act was done by force or against the will of the other. I.C.A. § 790.3.

See also:
The test for consent under that provision is whether the individual understands the nature and consequences of the proposed act. State v. Jee, 27 Kan. App. 2d 1, 4, 997 P.2d 737, 740 (2000).

The Kansas rape statute does not require proof that the defendant intended to have nonconsensual intercourse. The statute requires proof that the defendant had sexual intercourse without the victim's consent when the victim was overcome by force or fear. State v. Plunkett, 261 Kan. 1024, 1030–31, 934 P.2d 115, 118 (1997).

If an individual can comprehend the sexual nature of the proposed act, can understand the consequences of the proposed act, and can communicate unwillingness to act as well as a person who has been rendered unconscious or for any other reason is physically unable to communicate unwillingness to an act as a result of the influence of an intoxicating substance administered to him or her without his or her consent or as a result of any other act committed upon him without his or her consent. K.S.A. 21-5583.

See also:
The test for consent under that provision is whether the individual understands the nature and consequences of the proposed act. State v. Jee, 27 Kan. App. 2d 1, 4, 997 P.2d 737, 740 (2000).

The Kansas rape statute does not require proof that the defendant intended to have nonconsensual intercourse. The statute requires proof that the defendant had sexual intercourse without the victim's consent when the victim was overcome by force or fear. State v. Plunkett, 261 Kan. 1024, 1030–31, 934 P.2d 115, 118 (1997).

If an individual can comprehend the sexual nature of the proposed act, can understand the consequences of the proposed act, and can communicate unwillingness to act as well as a person who has been rendered unconscious or for any other reason is physically unable to communicate unwillingness to an act as a result of the influence of an intoxicating substance administered to him or her without his or her consent or as a result of any other act committed upon him without his or her consent. K.S.A. 21-5583.

Lack of consent results from:

(1) forcible compulsion;
(2) incapacity to consent; or
(3) the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in the victim which the victim does not expressly or impliedly acquiesce in the actor's conduct.

A person also is "deemed incapable of consent" when he or she is:

(1) less than 16 years old;
(2) 16 or 17 years old and the actor is at least 10 years older than the victim at the time of the sexual act;
(3) an individual unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to an intellectual disability or a mental illness;
(4) mentally incapacitated;
(5) physically helpless; or
(6) under the care or custody of state or local agency pursuant to court order and the actor is employed or working on behalf of the state or local agency, except where the persons are lawfully married to each other and there is no court order in effect prohibiting contact between the parties. KRS § 510.020.

"Mental illness" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association. KRS § 510.010.

"Individual with an intellectual disability" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior manifested and during the developmental period. KRS § 510.010.

"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of an intoxicating substance administered to him or her without his or her consent or as a result of any other act committed upon him without his or her consent. KRS § 510.010.

"Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act as well as a person who has been rendered unconscious or for any other reason is physically unable to communicate an unwillingness to an act as a result of the influence of a controlled substance or legend drug. KRS § 510.010.
Louisiana

Consent is not defined. However, Louisiana law provides that a person commits a sex crime:

1. when the victim resists the act to the utmost, but whose resistance is overcome by force;
2. when the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution;
3. when the victim is prevented from resisting the act because the offender is armed with a dangerous weapon;
4. when the victim is under the age of 13;
5. when two or more offenders participated in the act;
6. when the victim is prevented from resisting the act because he suffers from a physical or mental infirmity, such as:
   a. a physical or mental infirmity means a person who has certain specified intellectual or physical limitations or conditions;
   b. a physical or mental infirmity means a person who is physically or mentally incapacitated;
   c. a physical or mental infirmity means a person who is mentally or physically incapacitated;
7. if the victim is prevented from resisting the act by threats of physical violence under circumstances against which the victim reasonably believes such resistance would not prevent the rape;
8. if the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of mind produced by the use of a narcotic or anesthetic agent or other controlled dangerous substance administered by a person who is the abuser of an illegal drug;
9. if the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity;
10. if 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;
11. if the victim submits under the belief that the person committing the act is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or nonartistic practice or by the offender. LSA R.S. 14:42.1, LSA R.S. 14:43.1, LSA R.S. 14:43.3.

Further, a person is deemed incapable of consent when the person is under arrest or otherwise in the actual 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.

Maine

Consent is not specifically defined.

Note that all crimes in the Maine criminal code are grouped into five categories:

- Class A crime, maximum sentence: 30 years;
- Class B crime, maximum sentence: 10 years;
- Class C crime, maximum sentence: 5 years;
- Class D crime, maximum sentence: less than one year; or
- Class E crime, maximum sentence: 6 months.

However, Maine law provides that a person is guilty of a sex crime if that person engages in a "sexual act" with another person and:

1. the other person submits as a result of compulsion (Class A crime);
2. the other person, not the actor's spouse, has not in fact attained the age of 14 years (Class A crime);
3. the other person, not the actor's spouse, has not in fact attained 12 years of age (Class A crime);
4. the actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by fleecing, administering or employing drugs, intoxicants or other similar means (Class B crime);
5. the actor compels or induces the other person to engage in the sexual act by any threat (Class B crime);
6. 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 or of understanding that the person has the right to deny or withdraw consent (Class B crime);
7. the other person is unconscious or otherwise physically incapacitated of resisting and has not consented to the sexual act (Class B crime);
8. the other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender or supervised release, a parolee on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervision or disciplinary authority over the other person (Class B crime);
9. the other person, not the actor's spouse, 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 having instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual act (Class C crime);
10. the other person, not the actor's spouse, 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 having instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual act (Class C crime);
11. when the victim submits under the belief that the person committing the act is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or nonartistic practice or by the offender. LSA R.S. 14:42.1, LSA R.S. 14:43.1, LSA R.S. 14:43.3, LSA R.S. 14:43.3.
A person is also guilty of a sex crime if the actor intentionally subjects another person to any "sexual contact" and
(1) the other person has not expressly or impliedly acquiesced in the sexual contact and the actor is criminally
negligent with regard to whether the other person has acquiesced (Class D crime);
(2) the other person has not expressly or impliedly acquiesced in the sexual contact, the actor is criminally
negligent with regard to whether the other person has acquiesced and the sexual contact includes penetration
(Class C crime);
(3) the other person is unconscious or otherwise physically incapable of resisting and has not consented to
the sexual contact (Class D crime);
(4) the other person is unconscious or otherwise physically incapable of resisting and has not consented to
the sexual contact and the sexual contact includes penetration (Class C crime);
(5) the other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3
years older (Class C crime);
(6) the other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3
years older (Class B crime);
(7) the other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3
years younger and the sexual contact includes penetration (Class B crime);
(8) the other person, not the actor's spouse, is in fact less than 15 years of age and the actor is at least 10
years older than the other person (Class D crime);
(9) the other person suffers from a mental disability that is reasonably apparent or known to the actor 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 (Class D crime);
(10) the other person suffers from a mental disability that is reasonably apparent or known to the actor 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 and the sexual contact includes
penetration (Class C crime);
(11) the other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex
offender or supervised release, a prisoner on supervised community confinement status or a juvenile on
community supervision status is detained in a hospital, prison or other institution and the actor has
supervisory or disciplinary authority over the other person (Class D crime);
(12) the other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex
offender on supervised release, a prisoner on supervised community confinement status or a juvenile on
community supervision status or is detained in a hospital, prison or other institution and the actor has
supervisory or disciplinary authority over the other person at any time during the 12 months prior to the sexual
contact and the sexual contact included penetration (Class C crime);
(13) the other person is in fact less than 18 years of age, is a student enrolled in a public high school,
secondary or special education school, facility or institution and the actor is at least 10 years older than the
student (Class D crime); or
(14) the other person, not the actor's spouse, 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 having instructional, supervisory or disciplinary authority over the student at any time during
the 12 months prior to the sexual contact (Class D crime);
(15) the other person, not the actor's spouse, 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 having instructional, supervisory or disciplinary authority over the student and the sexual contact
includes penetration or the actor was a substitute teacher who had instructional, supervisory or disciplinary
authority over the student at any time during the 12 months prior to the sexual contact (Class C crime);
(16) the other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent,
guardian or other similar person responsible for the long-term general care and welfare of that other person (Class
C crime);
(17) the other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent,
guardian or other similar person responsible for the long-term general care and welfare of that other person and
the sexual contact includes penetration (Class B crime);
(18) the other person submits as a result of compulsion (Class C crime);
(19) the other person submits as a result of compulsion and the sexual contact includes penetration (Class B
crime);
(20) the actor owns, operates or is an employee of an 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 and suffers from a mental
disability that is reasonably apparent or known to the actor (Class D crime);
(21) the actor owns, operates or is an employee of an 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 and suffers from a mental
disability that reasonably apparent or known to the actor and the sexual contact includes penetration (Class C
crime);
(22) the actor owns, operates or is an employee of an 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 and suffers from a mental
disability that is reasonably apparent or known to the actor (Class D crime);
(23) the actor owns, operates or is an employee of an 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 and suffers from a mental
disability that is reasonably apparent or known to the actor and the sexual contact includes penetration (Class C
crime);
(24) the other person, not the actor's spouse, is in fact less than 18 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,
who is at least 21 years of age, is a teacher, employee or other official in the school district, school union,
educational unit, school, facility or institution in which the student is enrolled (Class C crime);
(25) the other person, not the actor's spouse, is in fact less than 18 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,
who is at least 21 years of age, is a teacher, employee or other official in the school district, school union,
educational unit, school, facility or institution in which the student is enrolled and the actor receives services for
an intellectual disability or autism or is a person with an intellectual disability (Class C crime);
(26) the actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or
purported to be a psychiatrist, a psychologist or licensed as a social worker or counseling professional to the
other person and other person, not the actor's spouse, is a current patient or client of the actor (Class D crime);
(27) the actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or
purported to be a psychiatrist, a psychologist or licensed as a social worker or counseling professional to the
other person and other person, not the actor's spouse, is a current patient or client of the actor (Class D crime);
(28) 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 disease,
disorder or defect (Class D crime); or
(29) 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 disease,
disorder or defect and the sexual contact includes penetration. For the purposes of this paragraph, "domestic
dpartners" means 2 unmarried adults who are domiciled together under a long-term arrangement that
evidences a commitment to remain responsible indefinitely for each other's welfare (Class C crime).
the sexual touching (Class D crime); (1) 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 (Class D crime); (4) the other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of understanding the nature of the contact involved or of expressing negation or objection as evidenced by some degree of physical resistance or an explanation of why the will to resist was overcome by force or fear of harm; Travis v. State, 287 Md. 310, 415 A.2d 420 (1980).

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: (1) by force, or the threat of force, without the consent of the other; (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; (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 victim; or (4) if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old. MD Code, Criminal Law, § 3-301; § 3-302; § 3-307.

Maryland law further provides that a person may not engage in sexual contact with another: (1) 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 (2) if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim; or (3) if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old. MD Code, Criminal Law, § 3-301; § 3-302; § 3-307.

See also:

In the case of a conscious and competent victim, mere passivity on the victim’s part will not establish the absence of consent. The law looks for express negation or implicit negation as evidenced by some degree of physical resistance or an explanation of why the will to resist was overcome by force or fear of harm; Travis v. State, 287 Md. 310, 415 A.2d 420 (1980).

Given the fact that consent must precede penetration, it follows in our view that although a woman may have consented consensually to sexual contact after penetration, there is no rape. State v. Rank, 289 Md. 230, 424 A.2d 720, 725 (1981).

It is well settled that the terms “against the will” and “without the consent” are synonymous in the law of rape. State v. Rank, 289 Md. 230, 424 A.2d 720, 725 (1981).

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Missouri

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 forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim’s knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed decision to engage in sexual intercourse. Mo. Stat. § 566.050.

Montana

The term “consent” means words or overt actions indicating a freely given arrangement to have sexual intercourse or sexual contact and is further defined as 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 incapable of consent because the victim is:

- mentally disordered or incapacitated;
- physically helpless;
- overcome by deception, coercion, or surprise;
- less than 16 years old;
- incarcerated in an adult or juvenile correctional, detention, or treatment facility or in 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 act part of a lawful search; this does not apply 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
  - is an employee, contractor, or volunteer of the youth care facility;
  - 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 receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community based service;
  - admitted to a mental health facility, a community-based facility or a residential facility, or is receiving community-based services and the perpetrator:
    - has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
    - is an employee, contractor or volunteer of the facility or community-based service;
  - 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 receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community based service);
- program participant in a private alternative adolescent resident or outdoor program and the perpetrator is a worker affiliated with the program:
  - this does not apply if the individuals are married to each other and one of the individuals involved is a program participant and the other individual is a worker affiliated with the program;
  - client receiving psychotherapy services and the perpetrator:
    - is providing or purporting to provide psychotherapy services to the victim; and
    - is 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;
  - this does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client;
  - student of an elementary, middle, junior high or high school, whether public or nonpublic, and the perpetrator is: a student of an elementary, middle, junior high or high school and an employee, contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other authority over the student in a school setting;
  - this does not apply if the individuals are married to each other;
  - a program participant and the other individual is a worker affiliated with the program.
- program participant in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer who is involved in the case in which the victim is a witness or is being investigated;
- this does not apply if the individuals are married to each other;
- parent or guardian involved in a child abuse or neglect proceeding and the perpetrator is:
  - employed by the department of public health and human services for the purposes of carrying out the department’s duties and
  - directly involved in the parent or guardian’s case or involved in the supervision of the case.

Nebraska

Consent itself is not defined; however, “without consent” means:

1. (a)(i) 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 actor’s deception as to the identity of the actor or the nature or purpose of the action of the part of the actor;
2. 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
3. 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 crime 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.

New Jersey

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

1. In general: The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent was given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or
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 the bodily harm consented to or threatened by the conduct consented to is not serious; or
3. The conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity of a kind not forbidden by law.
4. The conduct establishes a justification for the conduct under chapter 3 of the code.

3. Ineffective Consent: Unless otherwise provided by law or the law defining the offense, consent does not constitute consent 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 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
3. It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

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 violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threat;
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.

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 circumstance in addition to forcible compulsion or incapacity to consent, in which the victim does not expressively or impliedly acquiesce in the actor's conduct;
4. Where the offense charged is rape in the 3rd degree or criminal sexual act in the 3rd degree, in addition to forcible 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 to engage 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.

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

Ohio does not specifically define "consent." However, submission to sexual conduct as a result of force may be shown even without a showing of lack of consent. Ohio Revised Code 2907.01(B)(2) defines "forced consent" as:

1. The use of physical force or threat of physical force need not be shown to prove rape, but may be considered by the trier of fact along with all other relevant evidence.

North Dakota does not specifically define "consent." However, "sexual imposition" is a crime defined in NDC § 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 (1) compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting; or (2) engages in a sexual act or sexual contact, is guilty of a class B felony if the actor (1) compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting; or (2) engages in a sexual act or sexual contact, is guilty of a class B felony if the actor (1) compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting; or (2) engages in a sexual act or sexual contact, is guilty of a class B felony if the actor (1) compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting.

Oregon does not specifically define "consent." However, a person is considered incapable of consenting to a sexual act if the person is:

1. Under 18 years of age;
2. Mentally incapacitated;
3. Physically incapacitated.

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:

1. The person is unable to understand the nature of the conduct;
2. 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;
3. The person is unable to appraise 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.

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

Consent cannot be inferred under circumstances in which consent is not clear including, but not limited to:

1. Submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent.
2. Submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent.
3. Submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent.
4. Submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent.
5. Submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent.
6. Submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent.
7. Submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent.
8. Submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent.
9. Submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent.
10. Submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent.
Pennsylvania does not specifically define “consent.” However, a person commits a felony of the first degree when he or she 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, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance; or  
5. Who suffers from a mental disability which renders the complainant incapable of consent. 18 Pa.C.S.A. § 3121.  
6. Deleted by 2002, Dec. 9, P.L. 1350, No. 162, § 2, effective in 60 days.  
7. Who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.  

“Compulsion” is defined as “compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person’s death, whether the death occurred before, during or after sexual intercourse.” 18 Pa.C.S.A. § 3101.  

Puerto Rico does not specifically define “consent.” 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 by the use of force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or overcomes the victim through the application of physical force or physical violence into participating or becoming involved in unwanted sexual relations with third parties;  
4. The accused person is a relative of the victim, by ascendency or descendency, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree; or  
5. 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.  

Rhode Island does not specifically define “consent.” 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. 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. R.I. Gen. Laws § 11-37-2.  

A person is guilty of second degree sexual assault if he or she engages in sexual contact 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. Uses force, element of surprise, or coercion;  
3. The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation. R.I. Gen. Laws § 11-37-4.  

A person is guilty of third degree sexual assault if:  
1. He or she is over the age of fourteen (14) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age. R.I. Gen. Laws § 11-37-6(a).  
2. He or she is over the age of eighteen (18) years and engaged in sexual penetration or sexual contact with another person over the age of fourteen (14) years and under the age of eighteen (18) years, when:  
   a. The person has supervisory or disciplinary power over the victim by virtue of the person's legal, professional, or occupational status; or  
   b. The accused is otherwise acting in a position of authority with respect to the victim;  
   c. The accused is a mental health care provider who has been given authority to act;  
   d. The accused knows that the victim was under the influence of alcohol, drugs, or medication; or  
   e. The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.  

Rhode Island Stat. tit. 33 § 4770.  

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:  
1. The actor uses aggravated force to accomplish sexual battery;  
2. The actor uses force or coercion to accomplish sexual battery; or  
3. The actor uses hypnosis, narcotics, depressants or stimulants, or any similar means or substances; or  
4. The actor uses hypnosis, narcotics, depressants or stimulants, or any similar means or substances, or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or other means of the purpose of preventing resistance; or  
5. Who suffers from a mental disability which renders the complainant incapable of consent. 18 Pa.C.S.A. § 3121.  
6. Deleted by 2002, Dec. 9, P.L. 1350, No. 162, § 2, effective in 60 days.  
7. Who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.  

“Compulsion” is defined as “compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person’s death, whether the death occurred before, during or after sexual intercourse.” 18 Pa.C.S.A. § 3101.
"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. § 16-3-651(e).

"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether that condition is produced by illness, defect, the influence of a substance or from some other cause. S.C. Code Ann. § 16-3-651(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. § 16-3-651(g).

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 of the following circumstances:

1. If the victim is less than thirteen years of age;
2. If the victim expresses lack of consent through words or conduct;
3. If the victim is unable to appraise the nature of the act, resist the act, understand the possible consequences to the victim or to a person other than the victim, or to a person to whom the victim has a dependency relationship;
4. If the defendant knows or has reason to know at the time of the penetration that the victim did not consent;
5. If the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, physically helpless or a vulnerable adult (defined as "a person eighteen (18) years of age or older who, because of intellectual disability or physical dysfunction, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others") with an intellectual disability; or

Tennessee does not provide a definition for consent, but provides that rape is unlawful sexual penetration of a victim by the defendant or of the victim accompanied by any of the following circumstances:

1. Force or coercion is used to accomplish the act;
2. The sexual contact 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, physically helpless or a vulnerable adult (defined as "a person eighteen (18) years of age or older who, because of intellectual disability or physical dysfunction, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others") with an intellectual disability; or

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

1. Force or coercion is used to accomplish the act;
2. The 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, physically helpless or a vulnerable adult (defined as "a person eighteen (18) years of age or older who, because of intellectual disability or physical dysfunction, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others") with an intellectual disability; or

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

1. (a) The actor compels the other person to submit or participate in an act of sexual penetration by the use of physical force, violence, or coercion;
2. (b) The actor compels the other person to submit or participate in an act of sexual penetration by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes at the time of the act that the actor has the present ability to execute the threat;
3. (c) The actor compels the other person to submit or participate in an act of sexual penetration by administering any substance without the other person's knowledge;
4. (d) The actor compels the other person to submit or participate in an act of sexual penetration 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;
5. (e) The actor compels the other person to submit or participate in an act of sexual penetration by the use of any other means of coercion or by administering any substance without the other person's knowledge; or
6. (f) The actor compels the other person to submit or participate in an act of sexual penetration by the use of any other means of coercion or by administering any substance without the other person's knowledge.

Under Utah law, sexual offenses "without consent" of the victim arise when:

1. (a) The actor expresses lack of consent through words or conduct;
2. (b) The actor overcomes the victim through the actual application of physical force or violence;
3. (c) The actor uses a weapon to overcome the victim or to cause him or her to submit or participate by the element of surprise;
4. (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;
5. (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;
6. (f) ("to retaliate" includes threats of physical force, kidnapping, or extortion);
7. (g) The victim is unconscious, unaware that the act is occurring, or is physically unable to resist;
8. (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 or to a person other than the victim, or to a person to whom the victim has a dependency relationship;
9. (i) 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;
10. (j) ("to retaliate" includes threats of physical force, kidnapping, or extortion);
11. (k) 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 or to a person other than the victim, or to a person to whom the victim has a dependency relationship.

The essence of consent is that it is 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. Reigelsperger, 400 P.3d 1127, 1145 (Utah App. 2017).
Consent means the affirmative, unambiguous, and voluntary agreement to engage in a sexual act, which can be revoked at any time. R.E.N. v. State. Yes. 13 Vermont Stat. Ann. §325(3).

"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 engage in the conduct at issue. 13 Vermont Stat. Ann. §325(10).

Additionally, a person will be deemed to have acted without the consent of the other person where the actor:

- (A) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or was physically helpless;
- (B) knew or reasonably should have known that the other person was unaware that a sexual act or was physically helpless; or
- (C) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or was physically helpless.

Incapacitated means (among other things) that a person is temporarily incapable of giving or unable to communicate an unwillingness to act because the person is unconscious, asleep, or other things physically limited or unable to communicate. Ala. Code §13A-6-70(2)(c).

Yes, in certain cases:
- In cases involving the sexual assault of a child by an adult, forcible compulsion may be found where the child knows the attacker but the attacker exercises authority and domination over the child sufficient to allow inference of an implied threat if the child did not comply. R.E.N. v. State. Yes. Ala. Crim. App. 2006, citing Pass v. State, 597 So.2d 721 (Ala.1991), as limited by Ex parte J.A.P., 853 So.2d 180 (Ala.2002). It is illegal for a school employee to engage in a sex act with a student under the age of 19 by: soliciting, persuading, encouraging, harassing, or enticing a student. Consent is not a defense for these acts. Ala. Code §§ 13A-6-81; 13A-6-82. A "protected person" is one who has a developmental disability attributable to an intellectual disability, autism, cerebral palsy, epilepsy, or other disabling neurological condition. Ala. Code § 15-25-1.

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). Ala. Code § 13A-13-3.
Mentally incapable means the condition is known or should have reasonably been known to the offender who is mentally incapable, incapacitated, or incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Alaska Stat. § 11.41.420(a)(4).

The following constitutes sexual assault in the third degree:

A person engaging in sexual penetration with a person who is mentally incapable, incapacitated, or incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Alaska Stat. § 11.41.420(a)(4).

The following constitutes sexual assault in the third degree:

A person engaging in sexual penetration with a person who is mentally incapable, incapacitated, or incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Alaska Stat. § 11.41.420(a)(4).

The Alaska Statute does not directly address intoxication, but a person who is temporarily incapable of understanding the nature and consequences of a person's act is being committed. Alaska Stat. § 11.41.425(a)(1). Yes, "without consent" means that a person is incapacitated as a result of an act of the defendant. Alaska Stat. § 11.41.470(10)(B). In addition, sexual assault includes sexual penetration or contact with a person who is incapacitated. Alaska Stat. §§ 11.41.420(a)(3) and 11.41.425(a)(1). Incapacitated means temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Alaska Stat. § 11.41.470(2). An individual that is unconscious would be both incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act.

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

A person engaging in sexual penetration with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.410(a)(4).

A person engaging in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and the offender is a health care worker and the offense takes place during the course of professional treatment of the victim. Alaska Stat. § 11.41.420(a)(4).

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 in a facility or program that is required by law to be licensed by the state. Alaska Stat. §§ 11.41.420(a)(2).

A person engaging in sexual contact with a person who the offender knows is unaware that a sexual act is being committed. Alaska Stat. § 11.41.425(a)(1). Yes, a person committing sexual assault on a person who is incapable of giving consent is liable for such an act. Alaska Stat. § 13-1405. In addition, sexual assault includes sexual penetration or contact with a person who is incapacitated. Alaska Stat. §§ 11.41.420(a)(3) and 11.41.425(a)(1). Incapacitated means temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Alaska Stat. § 11.41.470(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)(4).

A person committing sexual assault on a person who is incapable of giving consent is liable for such an act. Alaska Stat. § 13-1405. In addition, sexual assault includes sexual penetration or contact with a person who is incapacitated. Alaska Stat. §§ 11.41.420(a)(3) and 11.41.425(a)(1). Incapacitated means temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Alaska Stat. § 11.41.470(2).

A person engaging in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and the offender is a health care worker and the offense takes place during the course of professional treatment of the victim. Alaska Stat. § 11.41.420(a)(4).

A person engaging in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(4).

A person engaging in sexual penetration of a minor who is less than 14 years of age. Alaska Stat. § 11.41.420(a)(4).

A person engaging in sexual penetration with a person who is mentally incapable, incapacitated, or physically unable to express unwillingness to act. Alaska Stat. § 11.41.470(2).

A person engaging in sexual penetration with a person who is mentally incapable, incapacitated, or incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Alaska Stat. § 11.41.470(2).

A person engaging in sexual contact with a person who the offender knows is unaware that a sexual act is being committed. Alaska Stat. § 11.41.425(a)(1).
Arkansas

Yes, a person can be incapable of consent because he or she is mentally defective or incapacitated. Arkansas Code §§ 5-14-101(6)(a); 5-14-103(a)(2); 5-14-125(f)(2).

Yes, a person that is temporarily incapacitated is capable of consent and may be guilty of sexual assault. Arkansas Code § 5-14-101(6)(a).

Yes, a person that is temporarily incapacitated is capable of consent and may be guilty of sexual assault. Arkansas Code § 5-14-101(6)(a).

Yes, a person can be incapable of giving legal consent because he or she is partially asleep. People v. Fakosforsch, 238 Cal. App. 4th 166, 189 (Cal. Ct. App. 2015).

California

Yes, the accused is guilty of rape if engaging in an act of sexual intercourse where the other person is at the time unconscious of the nature of the act and it is known to the accused. California Penal Code § 261(a)(4)(A).

"Unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

- was unconscious or asleep;
- was not aware, knowing, perceiving or cognizant that the act occurred;
- was not aware, knowing, perceiving or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact; or
- was not aware, knowing, perceiving or cognizant of the essential characteristics of the act due to the perpetrator’s fraudulent representation that the sexual penetration served a professional purpose when it 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 any intoxicating or anesthetic substance, or any controlled or intoxicating substance: administered to the person without the person's consent; or what renders the person unaware a sexual act is occurring, is deemed "mentally incapacitated" and unable to give consent. Arkansas Code § 5-14-101(6).

Yes, in a prosecution for non-forcible rape and sexual assault in the first degree, the victim cannot consent if certain relationships, listed below, exist between the victim and offender. These include:

- a related by blood relationship (including by adoption);
- a member of the victim's family (including by adoption);
- a teacher, athletic coach, counselor or a caretaker.

Arkansas Code §§ 5-14-103; 5-14-124; 5-14-125; 5-14-126; 5-14-127.

Criminal liability is not typically imposed where the actor commits any degree of sexual assault on his or her spouse (other than with respect to forcible compulsion). Arkansas Code §§ 5-14-124(a)(1); 5-14-125(a); 5-14-126(a); 5-14-127(a)(1).

Yes, a minor is capable of consenting to sexual intercourse with an adult who is the minor’s spouse. California Penal Code § 261(a)(5).

However, a current or previous dating or marital relationship is not sufficient to constitute consent if consent is at issue in a prosecution for rape. 261(b).
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-63, 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).  

"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. Connecticut General Statutes Annotated § 53a-65(6).

"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).

Delaware

18 years old, but 16 and 17 year-olds may consent to intercourse if the other person is younger than 30. 11 Delaware Code §§ 770a(1)–(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 if the victim consented to the act "knowingly". 11 Delaware Code §§ 781(1) and 782(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 a 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 incapable of consenting or appraising the nature of the sexual conduct if the victim suffered from a cognitive disability, mental illness or mental defect and the defendant knew of such condition. 11 Delaware Code § 761(k)(5).

Yes, there is no consent if the defendant knew the victim was unconscious, asleep or otherwise unaware of the sexual act being performed. 11 Delaware Code § 761(k)(6).

Yes, but not in all circumstances. There is no consent if the defendant has 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. 11 Delaware Code § 761(k)(6).

For the purpose of sexual crimes, except an offense under section 53a-70, 53a-70a, 53a-71, 53a-71a or 53a-72, it shall be an affirmative defense that the defendant and the alleged victim were, at the time of the alleged offense, living together by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship. Connecticut General Statutes Annotated § 53a-67(h).

A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and:  

• such other person is less than 18 years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare; or  

• such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or  

• the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception; or  

• the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional; or  

• the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of a local or regional board of education which employs the actor; or  

• the actor is a coach in an athletic activity or a person who provides instructive, ongoing instruction and such other person is a recipient of such coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under 18 years of age; or  

• the actor is 20 years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and such other person is under 18 years of age; or  

• such other person is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.  

Connecticut General Statutes Annotated § 53a-71.

Yes.

• One in a "position of trust" includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act. Colorado Revised Statutes Annotated § 18-6-407(3).

For the purpose of sexual crimes, except an offense under section 53a-70, 53a-70a, 53a-71, 53a-71a or 53a-72, it shall be an affirmative defense that the defendant and the alleged victim were, at the time of the alleged offense, living together by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship. Connecticut General Statutes Annotated § 53a-67(h).

A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and:

• such other person is less than 18 years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare; or

• such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or

• the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception; or

• the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional; or

• the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of a local or regional board of education which employs the actor; or

• the actor is a coach in an athletic activity or a person who provides instructive, ongoing instruction and such other person is a recipient of such coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under 18 years of age; or

• the actor is 20 years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and such other person is under 18 years of age; or

• such other person is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.  

Connecticut General Statutes Annotated § 53a-71.
of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778(3)).

A person is guilty of sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree when such person:

- Intentionally has sexual contact with a child under the age of 16 or causes the child to 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));

- Is 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, affront, 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(2)(a));

- Is 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, affront, 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(2)(b));

- Suggests, solicits, requests, commands, implores or otherwise attempts to induce a child under the age of 16 to have sexual contact or sexual intercourse or unlawful sexual penetration with the person or a third person, knowing that the person is thereby likely to cause annoyance, affront, offense or alarm to the child or another when the person is at least 4 years older than the child 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(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 health 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, 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, avocation 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(c).
Yes. A person is unable to consent to engaging in a sexual act if such person is incapable of appraising the nature of the conduct. D.C. Code §§ 22-3003(2)(A)-(C), 22-3005(2)(A)-(C).

Yes. A person is unable to consent to engaging in a sexual act if such person is:
- Incapable of appraising the nature of the conduct;
- Incapable of declining participation in that sexual act; or
- Incapable of communicating unwillingness to engage in that sexual act.


Yes. A victim’s ability to consent is impacted by his/her intoxication due to a drug, intoxicant or other similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct; given involuntarily or unknowingly to the victim by the accused. D.C. Code § 22-3002, 22-3004(4).

Yes. A person is unable to consent to engaging in a sexual act if such person is physically helpless or mentally incapacitated.

Florida Statutes § 794.011(1)(d).

"Sexual battery" means oral, anal, or female genital penetration by, or union with, the sexual organ of another person who is incapable of consent 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)(d).

"Mentally incapacitated" means temporarily incapable of 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 due to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(d).

"Mentally incapacitated" means temporarily incapable of 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. Florida Statutes § 794.011(1)(d).

"Mentally incapacitated" means temporarily incapable of 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. Florida Statutes § 794.011(1)(d).

Florida

18 years old, subject to a close-in-age exception. Florida Statutes §§ 794.011, 794.05.

Yes, any developmental disability and/or mental incapacity may impair the victim’s ability to intelligently, knowingly, and voluntarily consent. Florida Statutes § 794.011(1)(c)-(d). In addition, there are increased penalties for a sexual battery carried out on a victim that the accused either knew or had 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(1)(c).

"Mentally incapacitated" means temporarily incapable of 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 due to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(d).

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 or sexual contact;
- Declining participation in the sexual act or sexual contact such that the actor knows or has reason to know the victim is temporarily incapable of providing intelligent, knowing, and voluntary consent;
- Declining participation in the sexual act or sexual contact such that the actor knows or has reason to know the victim’s or the victim’s mental, emotional, or physical condition of the victim or client are temporarily impaired by the actor and the mental, emotional, or physical condition of the victim or client are such that the actor knows or has reason to know that the victim or client is temporarily impaired by the actor; and
- The actor represents falsely that the sexual act or 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.

D.C. Code §§ 22-3015, 22-3016.

A person cannot consent to sexual activity with a law enforcement officer, correctional officer, or correctional probation officer, who is certified or is an elected official exempt from such certification or any other person in a position of control or authority in a prison, jail, 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 officer is in a position of control or authority as an agent or employee of government. Florida Statutes § 794.011(8).

A person less than 18 years of age cannot consent to sexual acts or sexual contact with any person who purports to provide, in any manner, professional services of a medical, therapeutic, or counseling (whether legal, mental, emotional, spiritual, or otherwise) nature, or is otherwise in a professional relationship of trust with the patient/client if:
- The actor represents falsely that the sexual act or 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; or
- The actor represents falsely that the victim is temporarily incapacitated such that the actor knows or has reason to know the victim’s or the victim’s mental, emotional, or physical condition of the victim or client are temporarily impaired by the actor; and
- The actor represents falsely that he or she is licensed as a particular type of professional; or
- The sexual act or sexual contact occurs during the course of a consultation, examination, treatment, therapy, or other provision of professional services. D.C. Code §§ 22-3001(10).
Yes, a victim who is mentally incapacitated, which includes a person that is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent. H.R.S. § 707-730(1)(c).

Yes. A person commits a sex crime if the person commits an act another person who is physically helpless, which includes unconsciousness, H.R.S. §§ 707-700; 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, which includes a person who is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a substance administered to the person without the person’s consent. H.R.S. §§ 707-700; 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 physically helpless, which includes unconsciousness, H.R.S. §§ 707-700; 707-730; 707-731; 707-732.

Yes. A person commits a sex crime if the person engages in sexual penetration or sexual contact with another person and the actor knows or has reason to know that the victim is mentally defective or mentally incapacitated. G.C.A. §§ 25.15; 25.20; 25.25; 25.30.

Yes. A person commits sexual assault in the second degree if the person knowingly subjects to sexual penetration or sexual contact with another person and the actor knows or has reason to know that the victim is mentally incapacitated, which includes a person that is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent. 9 G.C.A. § 25.10(a)(5).

Yes. A person commits sexual assault in the second degree if the person knowingly subjects to sexual penetration or sexual contact with another person and the actor knows or has reason to know that the victim is mentally incapacitated, which includes a person that is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent. H.R.S. §§ 25.15; 25.20; 25.25; 25.30.

Yes. A person commits sexual assault in the second degree if the person knowingly subjects to sexual penetration or sexual contact with another person and the actor knows or has reason to know that the victim is mentally incapacitated, which includes a person that is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent. H.R.S. §§ 25.15; 25.20; 25.25; 25.30.

Yes. A person commits a sex crime if the person subjects to a sexual act another person who is mentally defective or mentally incapacitated, which includes a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a substance administered to the person without the person’s consent. H.R.S. §§ 707-700; 707-730; 707-731; 707-732.

Yes. A person commits sexual assault in the second degree if the person knowingly subjects to sexual penetration a minor who is at least 18 years old.
Idaho

18 years old: Idaho Statutes §§ 18-6101.

Yes, a person commits a sex crime if 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: Idaho Statutes § 18-6101(3).

See also State v. Soura, 796 P.2d 109 (Idaho 1990). In determining whether the victim had the capacity to consent, the court stated that the applicable test was whether the victim "understood and appreciated the physical, emotional and moral consequences of sexual intercourse with the defendant." The court in Soura looked at several factors, including that:

- Victim had a passive personality with an IQ of 71, placing her in the lowest 2.3 percent of the population;
- Victim had never held a job and could only perform menial tasks and then only under close supervision;
- Victim could not perform domestic work or take trips without close supervision;
- Victim had not completed special education courses in high school.

Illinois

17 years old: 720 ILCS 5/11-1.40. However, if the actor is 17 years of age or older and holds a position of trust, authority, or supervision in relation to the victim, then the age of consent is 18 years old.

Yes. A person commits a sex crime if that person knows that the victim is unable to understand the nature of the act or is unable to give knowing consent: 720 ILCS 5/11-1.20; 720 ILCS 5/11-1.50.

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

Illinois courts apply a totality of the circumstances test when determining whether a victim had the requisite mental capacity to consent: See People v. Whiton, 647 N.E.2d 1062 (Ill. App. 1995) ("To support a guilty verdict based upon the victim's inability to understand the act and to give knowing consent, the State must show that the victim had insufficient intelligence to understand the act, its nature, and possible consequences.")
Yes. A person commits a sex crime if the other person is unaware that the sexual intercourse or other sexual conduct is occurring. IC §§ 35-42-4-1; 35-42-4-8.

In addition, the crime and punishment is more severe if the offense is facilitated by furnishing the victim, without the victim’s knowledge, with a drug or a controlled substance knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. IC §§ 35-42-4-1; 35-42-4-8.

Yes. If the intoxication causes the victim to be unaware that the sexual intercourse or other sexual conduct is occurring, IC §§ 35-42-4-1; 35-42-4-8.

Yes. It is a defense to sexual misconduct with a minor of the child is or has ever been married, except where the sexual misconduct is committed by using or threatening the use of deadly force or by furnishing the victim, without the victim’s knowledge, with a drug or a controlled substance or knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. IC §§ 35-42-4-1; 35-42-4-8.

In addition, a person commits child seduction if: (1) a person who is at least 18 years of age and is the guardian, adoptive parent, adoptive grandparent, custodian, stepparent, or child care worker for a child who is less than 18 years of age engaged in sexual acts with the child; (2) a person who (i) has had a professional relationship with a child less than 18 years of age with whom the person knows to be less than 18 years of age, (ii) may exert undue influence on the child because of the person’s current or previous professional relationship with the child; and (iii) uses or exerts the person’s professional relationship to engage in sexual acts with the child; or (3) a law enforcement officer who is at least 5 years older than a child who is less than 18 years of age, has contact with the child while acting within the scope of the law enforcement officer’s official duties with respect to the child, and uses or exerts the law enforcement officer’s professional relationship with the child to engage in sexual acts with the child. IC § 35-42-4-7.

A person has a professional relationship with a child if the person has a license issued by the state or a political subdivision on the basis of the person’s training and experience that authorizes the person to carry out a particular occupation; or is employed in a position in which counseling, supervising, instructing, or recruiting children from a significant part of the employment; AND the person has a relationship with a child that is based on the person’s employment or licensed status as described in subdivision (1) of IC § 35-42-4-7(a).

See also Benner v. State, No. 18A-DR-2014, 2019 WL 5122467, at *1 (Ind. Ct. App. July 16, 2019) (Section 35-42-4-7(a) clearly does not limit the criminal offense to a person who is currently in a professional relationship.)

Yes. Sexual abuse is defined as any sexual 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. § 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 mental defect or incapacity which precludes giving consent; or (2) the sex act is performed while the other person is mentally incapacitated. I.C. § 709.1.

“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. § 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, 272 (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.

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In addition, a person commits a sex crime if: (1) the sex act is performed while the other person is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness. I.C. § 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 mental defect or incapacity which precludes giving consent; or (2) the sex act is performed while the other person is physically helpless. I.C. § 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. § 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, 272 (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. If the sex act is between persons cohabitating as husband and wife at the time of the sex act, the person is suffering from a mental defect or incapacity which precludes giving consent. I.C. § 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. § 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, 272 (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. A person commits a sex crime where the person otherwise meets the elements of the sex crime and the victim is unconscious or physically incapacitated. K.S.A. 21-5503.

A person has a professional relationship with a child if the person has a relationship with a child that is based on the person’s employment or licensed status as described in subdivision (1) of IC § 35-42-4-7(a).

See also Benner v. State, No. 18A-DR-2014, 2019 WL 5122467, at *1 (Ind. Ct. App. July 16, 2019) (Section 35-42-4-7(a) clearly does not limit the criminal offense to a person who is currently in a professional relationship.)

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whether that individual is able to understand the nature and consequences of engaging in such an act. In reaching its determination, the jury should evaluate the individual's behavior in normal sexual intercourse as well as consider any expert testimony concerning the individual's mental deficiency.

persons of the same sex but not persons of the opposite sex. The court held that the statute could not be enforced to the extent the statute contravenes liberty interests protected in the Due Process Clause of the Fourteenth Amendment. State v. Franco, 49 Kan. App. 2d 924, 319 P.3d 551 (2014).

In addition, a person commits a sex crime when:

1. The offender is an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services for a correctional institution, and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate;

2. The offender is a parole officer, volunteer for the department of corrections or the employee or volunteer of a contractor who is under contract to provide supervision services for persons 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 16 years of age or older who is an inmate who has been released on parole, conditional release or postrelease supervision and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is an inmate who has been released and is currently on parole, conditional release or postrelease supervision;

3. The offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such jail;

4. The offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility or sanctions house;

5. The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility;

6. The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution, and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been: (i) released on parole, conditional release or postrelease supervision; or (ii) placed in the custody of the department of corrections or juvenile community supervision agency; or (iii) under the supervision and control of the department of corrections under the supervision and control of the department of corrections or juvenile community supervision agency, and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision;

7. The offender is an employee of the Kansas department for aging and disability services or the Kansas department for children and families or the employee of a contractor who is under contract to provide services in an aging and disability or children and families institution or to the Kansas department for aging and disability services or the Kansas department for children and families and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a patient in such institution or in the custody of the secretary for aging and disability services or the secretary for children and families;

8. The offender is a worker, volunteer or other person in a position of authority in a family foster home licensed by the department of health and environment and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a foster child placed in the care of such family foster home;

9. The offender is a teacher or other person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a student enrolled at the school where the offender is employed;

10. The offender is a court services officer or the employee of a contractor who is under contract to provide supervision services for persons under court services supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services.

11. The offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of community corrections.

12. The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services for a correctional institution, and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate;
Yes. A person is deemed incapable of consent when he or she is an individual with an intellectual disability or an individual that suffers from a mental illness. KRS §§ 510.010. See also Billeaud v. Commonwealth 2015 WL 6212240 (Ky.App. 2015). (In determining whether a woman is incapable of granting consent because she is mentally defective, the sole question is whether she is capable of appreciating the nature of the sexual act being performed prior to the time that the sexual act occurred.)

Louisiana


Yes. The following are deemed to be without the lawful consent of the victim:

1) When the victim is prevented from resisting the act because he suffers from a physical or mental infirmity preventing such resistance (“mental infirmity” means a person with an intelligence deficit). 510.110

2) 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, which would likely include unconsciousness, produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the actor. 510.110

3) When the victim is in a position of special trust or authority. Such behavior is sexual abuse in the first degree. 510.110

4) A peace officer, while serving in his or her official capacity, subjects a person to sexual intercourse with a minor under 18 years old with whom he or she comes into contact as a result of that position.

5) A minor cannot consent to sexual contact from a person who is in a position of special trust or authority. Such behavior is sexual abuse in the first degree. 510.110

Kentucky

18 years old.

A person is deemed incapable of consent when he or she is:

• less than sixteen (16) years old; or
• sixteen (16) or seventeen (17) years old and the actor at least ten (10) years older than victim at the time of the sexual act. 510.020

Yes. A person is deemed incapable of consent when he or she is an individual with an intellectual disability or an individual that suffers from a mental illness. KRS §§ 510.010. See also Billeaud v. Commonwealth 2015 WL 6212240 (Ky.App. 2015). (In determining whether a woman is incapable of granting consent because she is mentally defective, the sole question is whether she is capable of appreciating the nature of the sexual act being performed prior to the time that the sexual act occurred.)

Yes. A person is deemed incapable of consent when he or she is physically helpless, which includes unconsciousness. KRS §§ 510.010.

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

Yes. A person is deemed incapable of consent when he or she is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind, which would likely include unconsciousness, produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the actor. 510.110

It is a defense to each of the above offenses if the person is married to the offender.

Marriage

• A person who engages in sexual intercourse or deviate sexual intercourse with another person to whom the person is married; or subjects another person to whom the person is married to sexual contact, does not commit an offense under this chapter regardless of the person’s age solely because the other person is less than sixteen (16) years old or an individual with an intellectual disability. KRS § 510.035.

• A person is guilty of sexual abuse in the first degree if he or she is a person in a position of authority or position of special trust, as defined in KRS 532.045, or he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate. KRS § 510.110

• A person is guilty of sexual abuse in the second degree if the person is a juvenile, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 530.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incapacitated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact. 510.120

• A person is guilty of rape in the third degree if the person is:

1) 21 years old or more, and he or she engages in sexual intercourse with another person less than 18 years old and for whom he or she provides a foster family home;

2) in a position of authority or position of special trust and he or she engages in sexual intercourse with a minor under 18 years old with whom he or she comes into contact as a result of that position;

3) a juvenile, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incapacitated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse; or

4) a peace officer, while serving in his or her official capacity, subjects a person to sexual intercourse who: (1) arrested, held in custody, or investigated for commission of a traffic or criminal offense; or (2) know or should have known was under arrest, held in custody, or being investigated for commission of a traffic or criminal offense. 510.130

See also Stinson v. Com., 396 S.W.3d 900, 906 (Ky. 2013) (“a minor cannot consent to sexual contact from a person who is in a position of special trust or authority. Such behavior is sexual abuse in the first degree, and does not require an additional showing of lack of consent.”)
Maryland

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

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

See also Best v. State, 2015 WL 5945316 (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”).

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

Yes. A person may not engage in "vaginal intercourse," a "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.

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

Yes.

Age of consent law applies differently if the actor is a teacher or other school employee who is in a position of authority over the other person. MD Code, Criminal Law, § 3-304.

A correctional employee (and other related employees such as an employee of a contractor providing goods and services to a correctional facility) may not engage in "sexual contact," "vaginal intercourse," or a "sexual act" with an inmate. MD Code, Criminal Law, § 3-307.

A person may also not engage in "sexual contact," "vaginal intercourse," or a "sexual act" with an individual confined in a child care institution licensed by the Department of Juvenile Services, a detention center for juveniles, or a facility (or juveniles. MD Code, Criminal Law, § 3-314.

Yes. A person may not engage in "sexual contact," "vaginal intercourse," or "sexual act" with an individual confined in a child care institution licensed by the Department of Juvenile Services, a detention center for juveniles, or a facility for juveniles. MD Code, Criminal Law, § 3-314.

Yes. A person may not engage in "sexual contact," "vaginal intercourse," or "sexual act" with an individual confined in a child care institution licensed by the Department of Juvenile Services, a detention center for juveniles, or a facility for juveniles. MD Code, Criminal Law, § 3-314.

Yes.

There are exceptions for separation or use of force and limited divorce. MD Code, Criminal Law, § 3-314.

Massachusetts

16 to 18 years old depending on the crime below.


Yes, if the victim was incapable of consenting due to such developmental 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, §13H and §13K (defining "person with a disability").

Yes, if the victim is so impaired as to be incapable of consenting to intercourse. Con. v. Blacke, 880 N.E.2d 736, 743, 450 Mass. 583, 592 (2008).

Yes. If, such intoxication renders the person incapable of giving consent. Con. v. Urban, 880 N.E.2d 735, 430 Mass. 606 (2008).

False. Intoxication, by itself, does not necessarily mean that an individual is incapable of deciding whether to assent to a sexual encounter. Id.

No. However, it is aggravated statutory rape (which carries a harsher punishment) for a person that is 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, osteopath, allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselors, psychiatrists or clinical social workers; (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 15D that provides child care or residential services to children or 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, 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, counsel, train or counsel a child on a regular basis; (v) in charge of a medical or other public institution, school or facility or that person’s designated agent; or (vi) the child advocate, Mass. Gen. Laws. Ann. ch. 119, §21.

Michigan

16 years old, unless much older is employed at the victim’s school in which case the age of consent is 18 years old. Mich. Comp. Laws. Ann. § 750.520b – e. (notably (d))

Yes.

A person is guilty of criminal sexual conduct if the person engages in sexual penetration or touching the other person knows or has reason to know that the victim is mentally incapacitated, or physically helpless. Mich. Comp. Laws. Ann. §§ 750.520b(1)(d), 750.520c(1)(c), 750.520d(1)(c), 750.520e(1)(c).

"Mentally incapable" means that a person suffers from a mental disease or defect that renders the person temporarily or permanently incapable of appraising the nature of his or her conduct. Mich. Comp. Laws. Ann. § 750.520b(e).

"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent. Mich. Comp. Laws. Ann. § 750.520b(k).

Yes. A person is guilty of criminal sexual conduct if the person engages in sexual penetration or touching the actor knows or has reason to know that the victim is physically helpless, which includes circumstances involving a minor. Mich. Comp. Laws. Ann. §§ 750.520b(1)(d), 750.520c(1)(c), 750.520d(1)(c).

"Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to give meaningful consent to an act. Mich. Comp. Laws. Ann. § 750.520b(m).

Yes. If, the intoxication is so as to make the person incapable of giving consent. Mich. Comp. Laws. Ann. § 750.520b(k).

Yes.

Criminal sexual conduct in the third or fourth degree occurs if the victim is at least 13 but less than 16 years of age and any of the following:

• The actor is a member of the same household as the victim.

• The actor is related to the victim by blood or affinity to the fourth degree.

• The actor is in a position of authority over the victim and used this authority to coerce the victim to submit;

• The actor is a teacher, substitute teacher, or administrator of the public school; nonpublic school, school district, or intermediate school district in which that other person is enrolled.

• The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or in a volunteer who is not a student in any public school or nonpublic school, or an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person; or

• The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident, and the sexual penetration occurs during the period of that other person’s residency. Mich. Comp. Laws. Ann. § 750.520b & c.
**With respect to first or second degree criminal sexual misconduct:**

- If the younger party is under the age of 14, the older party must be no more than 36 months older.
- If the younger party is 14 or 15 years old, the other person must be (i) no more than 36 months older and (ii) in a current or recent position of authority over the younger party.
- 18 years old, unless the actor is in a current or recent position of authority or has a significant relationship with the victim in which case the age of consent is 18 years old. Minn. Stat. § 609.342-345.

With respect to third or fourth degree criminal sexual misconduct:

- If the younger party is under the age of 16, the older party must be no more than 36 months older.
- If the younger party is 16 years old, unless the actor is in a current or recent position of authority or has a significant relationship with the victim in which case the age of consent is 18 years old.

"Current or recent position of authority" includes but is limited to any position to which the person has been known to have access to the victim or within whose care or control the victim was placed, or to which the person has been known to have access to the victim or within whose care or control the victim was placed. Minn. Stat. § 609.341(10).

A prohibited occupational relationship exists when the actor is (1) the complainant's parent, stepparent, or guardian; (2) any of the following persons related to the complainant: blood relative, marriage, adoption; brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, or niece; (3) the complainant's grandparent, great-uncle, great-aunt; (4) an adult who is jointly resides intermittently or regularly in the same dwelling as the complainant and is not the complainant's spouse; or (5) an adult who is or was involved in a significant romantic or sexual relationship with the parent of a complainant. Minn. Stat. § 609.341(13).

Yes. A person who is mentally incapacitated, mentally impaired, or physically helpless cannot consent to a sexual act. Minn. Stat. § 609.341(4).

Yes. A person who is physically incapacitated or mentally impaired or physically helpless cannot consent to a sexual act. Minn. Stat. § 609.341(4).

Yes. A person who is mentally incapacitated, mentally impaired, or physically helpless cannot consent to a sexual act. Minn. Stat. § 609.341(4).

Yes, if such intoxication results in the victim becoming mentally incapacitated or physically helpless. But, see case law regarding voluntary intoxication discussed below.

Yes. A person who is physically incapacitated, mentally impaired, or physically helpless cannot consent to a sexual act. Minn. Stat. § 609.341(4).

Yes, a "significant relationship" or "current or recent position of authority" can affect the age of consent.

- The following acts constitute criminal sexual conduct in the third degree:
  - The complainant is at least 16 but less than 18 years of age and the actor is more than 36 months older.
  - The actor is in a current or recent position of authority over the complainant.
  - If the younger party is under the age of 14, the actor is more than 36 months older.
  - If the younger party is 14 or 15 years old, the other person must be (i) no more than 36 months older and (ii) in a current or recent position of authority over the younger party.
  - 18 years old, unless the actor is in a current or recent position of authority or has a significant relationship with the victim in which case the age of consent is 18 years old. Minn. Stat. § 609.342-345.

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  - The complainant is at least 16 but less than 18 years of age and the actor is more than 36 months older.
  - The actor is in a current or recent position of authority over the complainant.
  - If the younger party is under the age of 14, the actor is more than 36 months older.
  - If the younger party is 14 or 15 years old, the other person must be (i) no more than 36 months older and (ii) in a current or recent position of authority over the younger party.
  - 18 years old, unless the actor is in a current or recent position of authority or has a significant relationship with the victim in which case the age of consent is 18 years old. Minn. Stat. § 609.342-345.

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  - If the younger party is 14 or 15 years old, the other person must be (i) no more than 36 months older and (ii) in a current or recent position of authority over the younger party.
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  - If the younger party is under the age of 14, the actor is more than 36 months older.
  - If the younger party is 14 or 15 years old, the other person must be (i) no more than 36 months older and (ii) in a current or recent position of authority over the younger party.
  - 18 years old, unless the actor is in a current or recent position of authority or has a significant relationship with the victim in which case the age of consent is 18 years old. Minn. Stat. § 609.342-345.

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  - The actor is in a current or recent position of authority over the complainant.
  - If the younger party is under the age of 14, the actor is more than 36 months older.
  - If the younger party is 14 or 15 years old, the other person must be (i) no more than 36 months older and (ii) in a current or recent position of authority over the younger party.
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  - The actor is in a current or recent position of authority over the complainant.
  - If the younger party is under the age of 14, the actor is more than 36 months older.
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  - 18 years old, unless the actor is in a current or recent position of authority or has a significant relationship with the victim in which case the age of consent is 18 years old. Minn. Stat. § 609.342-345.
work released facilities, and the complainant was a resident of a facility or under supervision of the correctional system; and:
9. the complainant was enrolled in a secondary school and:
1. the actor was a licensed educator employed or contracted to provide service for the school at which the complainant was a student;
2. the actor was age 18 or older and at least 48 months older than the complainant and was employed or contracted to provide service for the secondary school at which the complainant was a student; or
3. the actor was age 18 or older and at least 48 months older than the complainant, and was a licensed educator employed or contracted to provide service for an elementary, middle, or secondary school; and
10. 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
11. 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. 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.

Minn. Stat. § 609.341.

• The following acts constitute criminal sexual conduct in the fourth degree:
  • Complainant is at least 14 but less than 16 years of age and the actor is more than 36 months older than the complainant or in a current or recent position of authority over the complainant. Consent by the complainant to the act is not a defense. Mistake of age is not a defense unless actor is less than 60 months older. In any such case, if the actor is no more than 60 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant’s age shall not be a defense.
  • Complainant is at least 16 but less than 18 years of age and the actor is more than 36 months older than the complainant and in a current or recent position of authority over the complainant. Neither mistake as to the complainant’s age nor consent to the act by the complainant is a defense.
  • The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact. Neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense.
  • The actor has a significant relationship to the complainant and the complainant was 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. If the complainant suffered personal injury, or the sexual abuse involved multiple acts committed over an extended period of time. Neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense.

Minn. Stat. § 609.345.

• There are also statutes criminalizing sexual acts perpetrated by therapists, clergy, medical services provider, correctional officers and special transportation service providers, and others against the victim. Consent by the complainant is not a defense to these sexual acts. These laws prohibit sexual acts perpetrated by an actor in a "prohibited occupational relationship."

Minn. Stat. § 609.344 and § 609.345; see also Minn. Stat. § 609.341(24).

16 years old, unless (i) the other person is in a position of trust or authority over the child, in which case the age of consent is 18 years old or (ii) the other person is 16 or fewer months older than the victim, in which case the age of consent is 14. Miss. Code Ann. § 97-3-95, Miss. Code Ann. § 97-3-65.

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.

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 temporarily or permanently incapable of knowing the nature and quality of his or her conduct. Miss. Code Ann. § 97-3-95(2).

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 temporarily or permanently 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).

Yes. A person is guilty of sexual battery if he or she engages in sexual penetration with a child under 18 years of age if the person is in a position of trust or authority over the child, including, without limitation, the child’s teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach. Miss. Code Ann. § 97-3-95(2).

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(9).

"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).
<table>
<thead>
<tr>
<th>State</th>
<th>Statutory Rape Age</th>
<th>Consent Requirement</th>
<th>Statutory Rape Offense 1</th>
<th>Statutory Rape Offense 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Missouri</td>
<td>14 years old</td>
<td>Yes, person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Mo. Ann. Stat. § 566.030.</td>
<td>Yes. Consent is ineffective if it is given by a person who by reason of youth, mental disease, disorder, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense. Mont. Code Ann. § 45-2-2111(2)(b).</td>
<td>Yes. Consent is ineffective if it is given by a person who by reason of youth, mental disease, disorder, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense. Mont. Code Ann. § 45-2-2111(2)(b).</td>
</tr>
<tr>
<td>Montana</td>
<td>16 years old</td>
<td>Yes. “Without consent” means the victim is incapable of consent because the victim is mentally disordered or incapacitated. Mont. Code Ann. § 45-5-501(1)(b)(iv).</td>
<td>Yes. a person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Mo. Ann. Stat. § 566.030.</td>
<td>Yes. a person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Mo. Ann. Stat. § 566.030.</td>
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</table>
**Nebraska**

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<tbody>
<tr>
<td><strong>16 years old.</strong> Any person who subjects another person to sexual penetration when the actor is 19 years of age or older and the victim is at least 12 but less than 16 years old is guilty of sexual assault in the first degree. Neb. Rev. Stat. §28-319(1)(b).</td>
</tr>
<tr>
<td>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 <em>439 first degree sexual assault.</em> In re Gabriel P., 20 Neb. App. 432, 438-39, 954 N.W.2d 305, 311 (2021). A victim's lack of consent is not an element of the crime when the victim is incapable of resisting or appraising the nature of his or her conduct. Id. Under § 28-319(1)(b), the two-part analysis requires a significant abnormality, such as severe intoxication or other substantial mental or physical impairment, on the part of the alleged victim, and knowledge of the abnormality on the part of the alleged attacker. Id.</td>
</tr>
</tbody>
</table>

**Yes.**

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<tbody>
<tr>
<td>Yes. A person is deemed incapable of consent if he or she is &quot;mentally... incapable of resisting or understanding the nature of his or her conduct.&quot; Nev. Rev. Stat. Ann. § 200.366(1).</td>
</tr>
<tr>
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</tr>
<tr>
<td>Although there is no specific mention of intoxication in the statute, a person is deemed incapable of consent if he or she is &quot;mentally or physically incapable of resisting or understanding the nature of his or her conduct.&quot; Nev. Rev. Stat. Ann. § 200.366(1).</td>
</tr>
</tbody>
</table>

**Incest.**

| Marriage |
| Position of authority at school or other |
| It is illegal for an employee or volunteer to engage in sexual conduct with a student who is 16 years of age or older and 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. § 201.540(1),(2). |
| Position of authority at college or other |
| It is illegal for an employee that is 21 years of age or older and in a position of authority at a college or university to engage in sexual conduct with a student that is 18 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 entity which provides services to children |
| 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 person who is 16 years of age or older but less than 18 and (1) who is under the care, custody, control or supervision of the entity in which the person is employed or volunteering or of which the person is a contractor, and (2) whom the person has had contact in the course of performing his or her duties as an employee, contractor or volunteer. Nev. Rev. Stat. Ann. § 201.555. |
| Law enforcement officer |
| 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. |

**New Hampshire**

| --- |
| **16 years old.**

Yes. A person is deemed unable to consent if he or she has a disability that renders him or her incapable of freely exercising an independent choice as to whether or not to engage in sexual conduct and the actor knows or has reason to know of such a disability. N.H. Rev. Stat. Ann. § 632-A:2(1)(h). |

<table>
<thead>
<tr>
<th>Yes. Although not expressly mentioned in the statute, evidence such as engagement in sexual penetration with a victim who has such a disability. N.H. Rev. Stat. Ann. § 632-A:2(1)(h).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. A person is deemed unable to consent if he or she is &quot;mentally incapacitated... administered any intoxicating substance,&quot; without his or her knowledge or consent. N.H. Rev. Stat. Ann. § 632-A:2(1)(i).</td>
</tr>
</tbody>
</table>

**Yes.**

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<tr>
<td>Yes. for</td>
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<tr>
<td><strong>Inmates and parolees.</strong></td>
</tr>
<tr>
<td>A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration. It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact. Nev. Rev. Stat. § 28-322.01.</td>
</tr>
<tr>
<td><strong>Protected individuals</strong> are those persons in the care or custody of the Department of Health and Human Services.</td>
</tr>
<tr>
<td>A person commits the offense of sexual abuse of a protected individual if the person subjects a protected individual to sexual penetration or sexual contact. It is not a defense to a charge under this section that the protected individual consented to such sexual penetration or sexual contact. Nev. Rev. Stat. § 28-322.04.02.</td>
</tr>
<tr>
<td>Not for married spouses. There is also no &quot;aggravated exclusion&quot; to sexual assault charges. State v. Willis, 225 Neb. 844, 844 (1986).</td>
</tr>
</tbody>
</table>
New Jersey


Yes, it is aggravated sexual assault to commit an act of sexual penetration with a person that the actor knew or should have known at the time of the sexual penetration was physically helpless or intellectually or mentally incapacitated, or has a mental disease or defect which renders the actor temporarily or permanently incapable of understanding the nature of his 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:14-2a(3).

Consent is ineffective if:
1. It is given by a person who is legally incompetent to authorize the conduct charged to constitute an offense; or
2. 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
3. It is induced by force, duress, or deception of a kind sought to be prevented by the law defining the offense.

Yes, it is 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, amphetamine, intoxicant, or other substance administered to that person without his prior knowledge or consent. N.J. Stat. Ann. § 2C:14-2a(7); N.J. Stat. Ann. § 2C:14-10g.

Consent is ineffective if:
1. It is given by a person who is legally incompetent to authorize the conduct charged to constitute an offense; or
2. 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
3. It is induced by force, duress, or deception of a kind sought to be prevented by the law defining the offense.

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

New Mexico

17 years old. New Mexico Statutes §30-9-11(I)(1).

Yes, engaging in a sexual act when the perpetrator knows or has reason to know that the victim is unconscious or otherwise physically helpless is a criminal offense. New Mexico Statutes §30-9-10(A); §30-9-11.

Yes, engaging in a sexual act when the perpetrator knows or has reason to know that the victim is unconscious or otherwise physically helpless is a criminal offense. New Mexico Statutes §30-9-10(A); §30-9-11.

Yes, sexual activity between an adult and a minor (age 13-16) is permitted if the couple is married. New Mexico Statutes §30-9-11(G).

It is a crime if sexual penetration is perpetrated on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the victim. New Mexico Statutes §30-9-11(E)(2).

It is a crime if sexual penetration is perpetrated on a child 13 to 15 years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, who is at least 18 years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or
New York

7 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)(b)(ii) (c). The law does not presume that a person who is mentally retarded is unable to consent to sexual intercourse and proof of incapacity must come from facts other than mental retardation alone. People v. Calvillo, 88 N.Y.2d 81, 86, 653 N.E.2d 1182, 1185 (1995).

“Mentally disabled” means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct. New York Penal Law §130.00(3).

“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 §130.00(6).

North Carolina

16 years old. North Carolina General Statutes Annotated §14-27.22, §14-27.27. Yes, it is a crime to engage in sexual activity with a physically helpless person, which includes a person who is unconscious, is incapable of giving consent, or is mentally incapacitated when the person performing the act 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.

“Person who has a mental disability” means a victim who has an intellectual disability or a mental disorder that temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct or resisting the act of vaginal intercourse or a sexual act. North Carolina General Statutes Annotated §14-27.20.

“Mentally incapacitated” means that any act is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act. North Carolina General Statutes Annotated §14-27.20.

Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.00(6) §130.05(3)(b)(ii) (c).

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, is incapable of giving consent. New York Penal Law §130.00(6) §130.05(3)(b)(ii) (c).

Yes. A person is guilty of facilitating a sex offense with a controlled substance when he or she:

1. knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article, and

2. commits or attempts to commit such conduct constituting a felony defined in this article.

New York Penal Law §130.90.

Yes. Consent is not a defense to sexual crimes committed by a defendant who:

(i) has assumed the position of a parent in the home of a minor victim and engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age and engages in vaginal intercourse or a sexual act with such victim;

(ii) is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or is any officer, or employee of a school that the child is a student in a school. New Mexico Statutes §18-9-11(G)(2).

Yes. It is a crime if sexual penetration is perpetrated 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. New Mexico Statutes §18-9-11(A)(1) (defining "the act or attempt to cover sexual penetration perpetrated by a psychotherapist on a patient). §10-9-11.

for a school that the child is a student in a school. New Mexico Statutes §18-9-11(G)(2).

Yes, it is a crime to engage in sexual activity with a physically helpless person, which includes a person who is unconscious, is incapable of giving consent, or is mentally incapacitated when the person performing the act 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.

It is also a crime when a person who undertakes medical treatment of a patient engages in sexual contact or sexual penetration with the patient while the patient is incapacitated in the course of that medical treatment. In this section, "incompetent" is defined as a patient's incapacity of appraising the nature of a medical treatment, either because the patient is unconscious, or under the influence of an impairing substance, including, but not limited to, alcohol, anesthetics, controlled substances, or any other drug or psychoactive substance capable of impairing a patient's personal or mental faculties. North Carolina General Statutes Annotated §14-27.33A.

Yes, a mentally disabled person who has an intellectual disability or a mental disability that includes a person who is unconscious, is incapable of giving consent, or is mentally incapacitated when the person performing the act knows or should have reasonably known the other person was mentally incapacitated. North Carolina General Statutes Annotated §14-27.22, §14-27.27, §14-27.33.

Yes, it is a crime to engage in sexual activity with a physically helpless person, which includes a person who is unconscious, is incapable of giving consent, or is mentally incapacitated when the person performing the act 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.

It is a crime if 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, is incapable of giving consent. New York Penal Law §130.00(6) §130.05(3)(b)(ii) (c).

North Carolina


Yes, it is a crime to engage in sexual activity with a mentally handicapped person who is unconscious, is incapable of giving consent, or is mentally incapacitated when the person performing the act knows or should have reasonably known the other person was mentally incapacitated. North Carolina General Statutes Annotated §14-27.22, §14-27.27, §14-27.33.


New York

Consent is not a defense to sexual crimes committed by a defendant who:

(i) has assumed the position of a parent in the home of a minor victim and engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age and engages in vaginal intercourse or a sexual act with such victim;

(ii) is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or is any officer, or employee of a school that the child is a student in a school. New Mexico Statutes §18-9-11(G)(2).

Yes, it is a crime to engage in sexual activity with a physically helpless person, which includes a person who is unconscious, is incapable of giving consent, or is mentally incapacitated when the person performing the act 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.

It is also a crime when a person who undertakes medical treatment of a patient engages in sexual contact or sexual penetration with the patient while the patient is incapacitated in the course of that medical treatment. In this section, "incompetent" is defined as a patient's incapacity of appraising the nature of a medical treatment, either because the patient is unconscious, or under the influence of an impairing substance, including, but not limited to, alcohol, anesthetics, controlled substances, or any other drug or psychoactive substance capable of impairing a patient's personal or mental faculties. North Carolina General Statutes Annotated §14-27.33A.

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, is incapable of giving consent. New York Penal Law §130.00(6) §130.05(3)(b)(ii) (c).

North Carolina


Yes, it is a crime to engage in sexual activity with a mentally handicapped person who is unconscious, is incapable of giving consent, or is mentally incapacitated when the person performing the act knows or should have reasonably known the other person was mentally incapacitated. North Carolina General Statutes Annotated §14-27.22, §14-27.27, §14-27.33.
Yes, a person who engages in a sexual act with another, 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 victim is unaware that the victim is under the age of eighteen years.

Yes, a person who engages in a sexual act with another, 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 victim is unaware that the victim is under the age of eighteen years.

Yes.

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Additionally:

Stat. § 163.315.

18 years old. Or. Rev. Stat. § 163.375(c).

It is rape in the first degree if the victim is under eighteen (18) years of age and is the person’s spouse’s child. Or. Rev. Stat. § 163.355(1).

It is rape in the first degree if the victim was the person’s child or if the victim was less than twenty (20) years of age and the victim’s parent or one of the other persons is a peace officer who is more than two years older than the victim and the peace officer induces the victim to engage in sexual contact with that person or the peace officer induces the victim to engage in sexual contact with another (not the person’s spouse); cause another (not their spouse) to have sexual contact with two or more other persons to have sexual contact; when the offender is a mental health professional, the other person or one of the other persons is the person’s child, the offender induces the other person or the peace officer induces the other person who is the client or patient to submit by falsely representing to the other person or the peace officer or to the client or patient that the sexual contact is necessary for the treatment of the offender or the peace officer.

Yes. Rape in the first degree 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 this fact is known to the accused. Okla. Stat. tit. 21 § 1111(A)(5).

Yes. Rape is 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. Rape includes an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female within or without the bonds of matrimony and who may be of the same or opposite sex as the perpetrator.

• the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision that exercises authority over the victim, or
• a member of the same school system, a county, a municipality or a political subdivision that exercises authority over the victim, or
• the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim, or
• a peace officer who is more than two years older than the victim and the peace officer induces the victim to engage in sexual contact with that person or the peace officer induces the victim to engage in sexual contact with another (not the person’s spouse); cause another (not their spouse) to have sexual contact with two or more other persons to have sexual contact; when the offender is a mental health professional, the other person or one of the other persons is the person’s child, the offender induces the other person or the peace officer induces the other person who is the client or patient to submit by falsely representing to the other person or the peace officer or to the client or patient that the sexual contact is necessary for the treatment of the offender or the peace officer.

Not explicitly mentioned, but review of the statute indicates that the definitions of "physically helpless" and "physically helpless" may apply in cases where the victim is unconscious or otherwise physically unable to communicate willfulness to the accused.

Yes. Rape in the first degree 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 this fact is known to the accused. Okla. Stat. tit. 21 § 1111(A)(5).

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A person commits the crime of sexual abuse in the first degree when that person subjects another person to sexual contact and the victim is incapable of being mentally incapacitated, physically helpless or incapable of appraising the nature of the victim's conduct. Or. Rev. Stat. § 163.427.

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person to sexual contact and the
victim is incapable of being mentally
incapacitated, physically helpless or
incapable of appraising the nature of
the victim's conduct. Or. Rev. Stat. §
163.427.

Yes. It is rape to have sexual intercourse when 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. 18 Pa.C.S.A. § 3122(a)(4).

It is indecent assault or aggravated indecent assault for certain activities if the complainant is unconscious or incapable of consent. 18 Pa.C.S.A. §§ 3125(a)(3), (a)(4).

involuntary deviate sexual intercourse with a complainant who is less than 15 years of age. 18 Pa.C.S.A. § 3121(c).

volunteer or employee engages in sexual
intercourse, deviate sexual intercourse or indecent contact with a student of the school. 18 Pa.C.S.A. § 3124.2(a.1).

Yes. It is rape to have sexual intercourse with a complainant who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring. 18 Pa.C.S.A. §§ 3125(a)(3), (a)(4).

Yes. It is rape to have sexual intercourse with a complainant who is incapable of consent. 18 Pa.C.S.A. § 3121(a)(11).

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. § 3121(a)(11).

Yes. It is rape to have sexual intercourse with a complainant who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring. 18 Pa.C.S.A. § 3122(a)(3).

It is indecent assault or aggravated indecent assault for certain acts if the complainant suffers from a mental disability which renders him or her incapable of consent. 18 Pa.C.S.A. §§ 3125(a)(6) and 3126(a)(6).

It is indecent assault or aggravated indecent assault for certain acts if the complainant suffers from a mental disability which renders him or her incapable of consent. 18 Pa.C.S.A. § 3121(a)(11).

It is sodomy in the second degree to engage in oral or anal sexual intercourse with another person under 16 years of age. Or. Rev. Stat. § 163.405.

physical helplessness or incapacity of appraising the nature of the victim's conduct. Or. Rev. Stat. § 163.405.

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It is sexual abuse in the first degree to subject another person to sexual contact if the victim is less than 14 years of age 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 desire of a person. Or. Rev. Stat. § 163.427(1)(a)(A).

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Pennsylvania

16 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 of any other age when criminality of conduct depends on the child being below the age of 14 years. However, when criminality depends on the child's being below a critical age, 16 and 18 years, it is a defense for the defendant to prove by a preponderance of the evidence that he or she reasonably believed the child to be above the critical age. 18 Pa.C.S.A. § 3102.

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. 18 Pa.C.S.A. § 3121(c).

A person commits indecent sexual intercourse with 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. 18 Pa.C.S.A. § 3121(c).

A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree when that person subjects another person to sexual contact and the victim is incapable of being mentally incapacitated, physically helpless or incapable of appraising the nature of the victim's conduct. Or. Rev. Stat. § 163.427.

A person commits the crime of sexual abuse in the first degree when that person subjects another person to sexual contact and the victim is incapable of being mentally incapacitated, physically helpless or incapable of appraising the nature of the victim's conduct. Or. Rev. Stat. § 163.427.

A person who is a volunteer or employee of a nonprofit association or for-profit association commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child who is receiving services at the center. 18 Pa.C.S.A. § 3124.2(a.3).

A person commits indecent sexual intercourse with a child, or spouse's child of a person's sibling, if the complainant is less than 13 years of age and the person is four or more years older than the complainant and the person is not married to each other. 18 Pa.C.S.A. § 3125(a)(7), (c)(16).

A person who is a volunteer or an employee of a nonprofit association or for-profit association commits a felony of the third degree if the complainant is less than 13 years of age and the person is four or more years older than the complainant and the person is not married to each other. 18 Pa.C.S.A. § 3125(a)(7), (c)(16).

Yes. It is rape to have sexual intercourse when 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. 18 Pa.C.S.A. § 3122(a)(4).

Yes. It is rape to have sexual intercourse when 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. 18 Pa.C.S.A. § 3122(a)(4).

It is indecent assault or aggravated indecent assault for certain activities if the complainant suffers from a mental disability which renders him or her incapable of consent. 18 Pa.C.S.A. §§ 3125(a)(6) and 3126(a)(6).

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Physically helpless
Mentally disabled
Mentally incapacitated
"means a
"means a

Rhode Island

Puerto Rico
Stat. tit. 33 § 4770(b).

Rhode Island
Laws § 11-37-6.

16 years old. 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.


Mentally incapacitated" means "a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or who is mentally unable to communicate unwillingness to engage in the act." R.I. Gen. Laws § 11-37-2(1).

Mentally disabled" means "a person who has a mental impairment which renders that person incapable of appraising the nature of the act." R.I. Gen. Laws § 11-37-2(1).

Physically helpless" means "a person who is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to

Puerto Rico
Stat. tit. 33 § 4770(a).

16 years old. Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if 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.

Yes. Yes. Yes. Yes.

Rhode Island
Yes. Yes. Yes. No.

Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if 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.

Puerto Rico Stat. tit. 33 § 4770(b).

Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if: the accused person is a relative of the victim, by ascendancy or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity, or adoption up to the third degree; or 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. Puerto Rico Stat. tit. 33 § 4770(h).
Yes, a person can be deemed incapable of consenting to sexual contact because of any intoxication or incapacitation. S.C. Code §22-22-7.2.

South Dakota does not specifically define the condition of incapacitation. S.D. Code § 22-22-7.2.

Yes, a person can be deemed incapable of consenting to sexual contact because of any intoxication or incapacitation. S.D. Code §22-22-7.2.

Yes, a person can be deemed incapable of consenting to sexual contact due to the influence of a narcotic, anesthetic or other substance administered to that person without the person’s consent, or due to any other act committed upon that person without the person’s consent. Tenn. Code Ann. §39-13-501(4).

"mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person’s conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person’s consent. Tenn. Code Ann. §39-13-501(3).


Yes, the definition of mentally incapacitated encompasses the situation where a person is rendered temporarily incapable of appreciating or controlling the person’s conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person’s consent. Tenn. Code Ann. §39-13-501(4).


Yes, it is an offense for a defendant to engage in unlawful sexual contact with a minor when the miner is less than 18 years old, the defendant is at least 4 years older than the victim, and either: (A) the defendant was, at the time of the offense, in a position of trust or power to accomplish the sexual contact; or (B) the defendant had, at the time of the offense, parental or custodial authority over the minor and used the authority to accomplish the sexual contact. Tenn. Code Ann. §§ 39-13-501, 39-13-501(4).

Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant’s legal or occupational spouse. Tenn. Code Ann. §§ 39-13-501, 39-13-501(4).

Yes, there are limitations on liability for a person if the victim is the legal spouse of the actor. See S.C. Code Ann. §16-3-638. Spousal sexual battery is also defined separately in instances where sexual battery is accomplished through the use of aggravated force, defined as the use or threat of use of a weapon or the use or threat of physical force of a high and aggravated nature, which is either directed against the victim or committed in concert with the victim. S.C. Code Ann. §16-3-638(5).
Yes, a sexual assault is considered to occur without the consent of the other person if the victim 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, or (iv) to submit or participate by exploiting the other person's dependency on the clergyman in the clergyman's professional character as spiritual advisor.

Note that in Tennessee, the spouse of the defendant can be considered to be a victim of the offense of sexual assault of a child if the spouse was the spouse of the defendant at the time of the offense. Tenn. Code Ann. §39-13-505.

Yes, if the victim is younger than 18 years old and at the time of the offense the victim's parent, stepparent, adoptive parent, or legal guardian occupied a position of special trust in relation to the victim (which includes scout leaders, teachers, coaches, babysitters, coaches or volunteers in schools, etc.); or if the actor is a health professional or religious counselor, the act is committed under the guise of professionally appropriate diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was medically or professionally appropriate diagnosis, counseling, or treatment to the extent that the victim could not reasonably be expected to have manifested resistance.

Tenn. Code Ann. §39-13-505(2) and (4).

Note that a female under 18 years of age does not by marriage become capable of consenting to illicit sexual intercourse so as to bar prosecution of male participant in such act under carnal knowledge statute. State v. Ranzman, 115 Utah 283 (Utah 1949).

Yes, if the victim is a public servant who coerces the other person to submit or participate.

Yes, if the actor is the spouse of the child at the time of the offense. Tenn. Code Ann. §32-504(3).

Yes, if the actor is a coach or tutor who causes the other person to submit or participate by using the actor's power or influence to exploit the other person's dependency on the actor.

Yes, if the actor is a caregiver hired to assist the other person with activities of daily life and causes the other person to submit or participate by exploiting the other person's dependency on the actor. Texas Code Ann. §§22.011(b)(15) - (18).

Note that in Tennessee, the spouse of the defendant can be considered to be a victim of the offense of sexual assault of a child if the spouse was the spouse of the defendant at the time of the offense. Tenn. Code Ann. §39-13-505.

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Note that a female under 18 years of age does not by marriage become capable of consenting to illicit sexual intercourse so as to bar prosecution of male participant in such act under carnal knowledge statute. State v. Ranzman, 115 Utah 283 (Utah 1949).

Yes, if the actor is the spouse of the child at the time of the offense. Tenn. Code Ann. §32-504(3).

Yes, if the actor is a coach or tutor who causes the other person to submit or participate by using the actor's power or influence to exploit the other person's dependency on the actor.

Yes, if the actor is a caregiver hired to assist the other person with activities of daily life and causes the other person to submit or participate by exploiting the other person's dependency on the actor. Texas Code Ann. §§22.011(b)(15) - (18).

Note that in Tennessee, the spouse of the defendant can be considered to be a victim of the offense of sexual assault of a child if the spouse was the spouse of the defendant at the time of the offense. Tenn. Code Ann. §39-13-505.

Yes, if the victim is younger than 18 years old and at the time of the offense the victim's parent, stepparent, adoptive parent, or legal guardian occupied a position of special trust in relation to the victim (which includes scout leaders, teachers, coaches, babysitters, coaches or volunteers in schools, etc.); or if the actor is a health professional or religious counselor, the act is committed under the guise of professionally appropriate diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was medically or professionally appropriate diagnosis, counseling, or treatment to the extent that the victim could not reasonably be expected to have manifested resistance.

Tenn. Code Ann. §39-13-505(2) and (4).

Note that a female under 18 years of age does not by marriage become capable of consenting to illicit sexual intercourse so as to bar prosecution of male participant in such act under carnal knowledge statute. State v. Ranzman, 115 Utah 283 (Utah 1949).
to engage in the conduct at issue; or (C) lacks the mental ability to make or communicate a decision about whether to engage in the conduct at issue. 13 Vermont Stat. Ann. §3252.

Ann. §3252.

No person shall engage in sexual contact with another person when the other person 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. § 1708.

Yes, an actor who engages in sexual intercourse or sodomy with 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. § 1708.

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Yes, a person who engages in sexual intercourse or sodomy with 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. § 1708.

Yes, it is unlawful for an actor to engage in sexual intercourse or sodomy with 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. § 1708.

Yes, a person who engages in sexual intercourse or sodomy with 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. § 1708.

13 year old, unless legally married. 14 V.I.C. § 1702.

Yes, an actor who engages in sexual contact with 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. § 1708.

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No person shall engage in a sexual act with a person who is under the age of 18 and the persons are married to each other and the sexual act is consensual or (2) where the person is less than 16 years old, the child is at least 16 years old, and the sexual act is consensual. Vermont Stat. Ann. §13-3252(c).

No person shall engage in a sexual act with a minor and the actor is at least 48 months older than the minor and the actor is in a position of power, authority or supervision over the minor by virtue of the actor's undertaking the responsibility of any childcare, medical, psychological, guardian ad litem, baby sitter, or other task or obligation in the course of the minor's care to a third person caused by the actor's position of power, authority, professional or voluntarily, to provide for the health or welfare of the minor, or guidance instruction, or organized recreational activities for minors. 13 Vermont Stat. Ann. §3258.

Yes.

Yes, a person is guilty of rape if the person has sexual intercourse with a complaining witness who is under the age of 18 and is not deemed physically helpless. A person is guilty of rape in the first degree. 14 V.I.C. § 1708.

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Yes, a person is guilty of raping in the first degree if they engage in a sexual act with a person who is under 16 years old and resides in the same household as the perpetrator and force, intimidation, or the perpetrator's position of authority over the victim is used to accomplish the sexual act. 14 V.I.C. § 1708.

Yes, a person is guilty of raping in the first degree if they engage in a sexual act with a person who is under 16 years old and resides in the same household as the perpetrator and force, intimidation, or the perpetrator's position of authority over the victim is used to accomplish the sexual act. 14 V.I.C. § 1708.

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West Virginia

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 mental disease or defect which renders that person incapable of appraising the nature of his or her conduct, that person is incapable of giving consent for sexual intercourse or sexual intrusions. W. Va. Code Ann. §§ 61-8B-1(3) & (4), 61-8B-2(c).

A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated. W. Va. Code Ann. § 61-8B-8.

Washington

Yes, an actor is guilty of rape in the second degree if they have sexual intercourse with a person who is incapacitated by reason of being mentally incapacitated. Wash. Rev. Code Ann. § 9A.44.040. 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" Wash. Rev. Code Ann. § 9A.44.010(7).

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 must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless. Wash. Rev. Code Ann. §§ 9A.44.030.

An actor is guilty of rape in the second degree if they have sexual intercourse with a person with a developmental disability and the actor (i) has supervisory authority over the victim or (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.

Yes, a person who is unconscious is physically helpless. An actor is guilty of rape in the second degree if they have sexual intercourse with a person who is incapacitated by reason of being physically helpless. Wash. Rev. Code Ann. §§ 9A.44.010(2), 9A.44.050.

In any prosecution in which lack of consent is based solely upon the victim's mental incapacity or upon the victim being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless. Wash. Rev. Code Ann. §§ 9A.44.030.


"Mentally incapacitated" means 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 mental disease or defect which renders that person incapable of appraising the nature of his or her conduct, that person is incapable of giving consent for sexual intercourse or sexual intrusion. W. Va. Code Ann. §§ 61-8B-1(3) & (4), 61-8B-2(c).

A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated. W. Va. Code Ann. § 61-8B-8.
### Wisconsin

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<td></td>
<td>“Mental illness or defect” is not defined in the statute, but has a &quot;meaning within the common understanding of the jury&quot; under Wisconsin case law State v. Perkins, 689 N.W.2d 684, 277 Wis.2d 243 (Wis. Ct. App. 2004).</td>
</tr>
<tr>
<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 contact or sexual intercourse with the person while the person is incapable of giving consent. Wis. Stat. Ann. § 940.225(2).</td>
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<tr>
<td>Yes, there are several special relationships between the victim and actor that would impact the victim’s ability to consent and therefore make it a crime to engage in sexual contact with a person. Special relationships include:</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 if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent. Wis. Stat. Ann. § 940.225(2).</td>
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<tr>
<td>Yes, a person suffering from a &quot;mental illness or defect&quot; is presumed incapable of giving consent. Wis. Stat. Ann. § 940.225(4).</td>
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### Wyoming

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<tr>
<th>17 years old. Wyo. Stat. Ann. § 6-2-316.</th>
<th>Yes, any actor who inflicts sexual intrusion on a victim commits a sexual assault in the first degree if the actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim’s conduct. Wyo. Stat. Ann. § 6-2-302.</th>
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<tr>
<td>Yes, a person who is unconscious is presumed incapable of giving consent. Wyo. Stat. Ann. § 6-2-301.</td>
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<td>Yes, a person who is unconscious or incapable of giving consent is presumed incapable of giving consent. Wyo. Stat. Ann. § 6-2-301.</td>
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<tr>
<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 contact or sexual intercourse with the person while the person is incapable of giving consent. Wyo. Stat. Ann. § 6-2-301.</td>
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<tr>
<td>Yes, there are special rules for persons deemed to be in a “position of authority” over the victim that will impact the victim’s ability to consent.</td>
<td>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.</td>
</tr>
<tr>
<td>Yes, a person commits a sexual assault in the second degree if:</td>
<td>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;</td>
</tr>
<tr>
<td>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;</td>
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<tr>
<td>3. the actor inflicts sexual intrusion on a victim and the actor is an employee of certain “entities” as defined in Wyo. Stat. Ann. § 940.285(1);</td>
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<tr>
<td>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.</td>
<td>Wyo. Stat. Ann. § 6-2-301.</td>
</tr>
<tr>
<td>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:</td>
<td>Sexual abuse of a minor in the first degree. Wyo. Stat. Ann. § 6-2-314.</td>
</tr>
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</table>

- Sexual abuse of a minor in the first degree: |
  - Being 18 years of age or older, the actor inflicts sexual intrusion on a victim who is less than 18 years of age, and the actor is the victim’s legal guardian or an ancestor or descendent 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 18 years of age, and the actor is the victim’s legal guardian or an ancestor or descendent 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 18 years of age, and the actor occupies a position of authority over the victim |
  - Sexual abuse of a minor in the second degree: |
    - 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 descendent on 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 18 years of age, and the actor occupies a position of authority over the victim |
    - Sexual abuse of a minor in the third degree: |
      - 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 occupies a position of authority over 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.