Consent Laws

Defining Consent

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<th>State</th>
<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>Alaska</td>
<td>&quot;Without consent&quot; means that a person: 1. without resisting, is coerced by the use of force against a person or property; or 2. is incapacitated as a result of an act of the defendant. Alaska Stat. § 11.41.470(10).</td>
<td>No. Alabama Stat. § 11.41.470.</td>
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<td>Arizona</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 incapacitated by reason of mental or physical incapacity; 3. the victim is temporarily incapacitated as a result of the influence of a controlled substance; 4. the victim is intentionally deceived to erroneously believe that the person is the victim's spouse. Arizona Revised Statute § 13-1401(A)(7).</td>
<td>No.</td>
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<td>Arkansas</td>
<td>There is a lack of consent if a person engages in a sexual act with another person by forceful compulsion or with a person who is incapable of consent because he or she is physically helpless, mentally defective or mentally incapacitated, or because of a victim's age. Arkansas Code §§ 5-14-103; 5-14-125.</td>
<td>No.</td>
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<td>California</td>
<td>&quot;Consent&quot; is defined to mean &quot;acquiescence or compliance with the proposition of another.&quot; Ex parte Gordon, 708 So. 2d 1100, 1103 (Ala. 1997).</td>
<td>Yes. California Penal Code § 261.6.</td>
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<td>Colorado</td>
<td>&quot;Consent&quot; means cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. Colorado Penal Code § 261.6.</td>
<td>No.</td>
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<td>Connecticut</td>
<td>Lack of consent to sexual activity exists where: 1. the accused compels the victim to engage in sexual activity by the use or threat of force against the victim (or against a third person); 2. the victim is mentally incapacitated or impaired because of mental disability or disease to the extent that the person is incapable of 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.</td>
<td>No.</td>
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<td>Connecticut</td>
<td>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).</td>
<td>No.</td>
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<td>Connecticut</td>
<td>Impaired because of mental disability or disease means that a person suffers from a mental disability or disease which renders such person incapable of appreciating the nature of person's conduct. Connecticut General Statutes Annotated § 53a-65(4).</td>
<td>No.</td>
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<td>Connecticut</td>
<td>&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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<tr>
<td>State</td>
<td>Consent Definition</td>
<td>Consent Required?</td>
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<td>Delaware</td>
<td>&quot;Without consent&quot; means any of the following:</td>
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<td>- The defendant compelled the victim to submit by an act of coercion or by force,</td>
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<td>by gesture, or by threat of death, physical injury, or bodily pain, which</td>
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<td>would have produced a reasonable person under the circumstances to submit.</td>
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<td>- The defendant knew the victim was unconscious, asleep, or otherwise unaware</td>
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<td>that a sexual act was being performed.</td>
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<td>- The defendant knew that the victim was suffering from a disease, disorder, or</td>
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<td>defect which renders the person incapable of appraising the nature of the sexual</td>
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<td>act, or incapable of controlling the person's own conduct.</td>
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<td>- Where the defendant is a health professional, or a minster, priest, rabbi, or</td>
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<td>another member of a religious organization engaged in pastoral counseling, the</td>
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<td>District of Columbia</td>
<td>&quot;Consent&quot; means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent. D.C. Code § 22-3001(4).</td>
<td>Yes. Consent to the sexual act or contact in question must be freely given agreement. D.C. Code § 22-9001(4).</td>
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<tr>
<td>Florida</td>
<td>&quot;Consent&quot; means intelligent, knowing, and voluntary consent and does not include coerced submission. &quot;Consent&quot; shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the</td>
<td>Yes – the statute requires that consent be &quot;voluntary&quot;.</td>
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<td>Hawaii</td>
<td>Consent is defined in statute. However, Hawaii law provides that a person commits a sex crime if:</td>
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<td>- the person subjects another person to a sexual act by compulsion;</td>
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<td>- the person subjects a sexual act to another person who is mentally defective, mentally incapacitated, or physically helpless HRS §§ 707-730; 707-731; 707-732.</td>
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<td>&quot;Compulsion&quot; means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss. HRS § 707-700.</td>
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<td>Guam</td>
<td>Consent means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the victim or that the victim failed to resist a particular sexual act. 9 G.C.A. § 25.10(a)(2).</td>
<td>Yes – &quot;consent&quot; means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. 9 G.C.A. § 25.10(a)(2).</td>
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<td>Idaho</td>
<td>Consent is not specifically defined.</td>
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<td>However, Idaho law defines rape as &quot;the penetration, however slight, of the oral, anal, or vaginal opening with a penis&quot; accomplished under any of the following circumstances:</td>
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<td>- the victim is under the age of sixteen and the perpetrator is eighteen years of age or older, and the victim is not lawfully married to the perpetrator;</td>
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<td>- the victim is sixteen or seventeen years of age and the perpetrator is three years or more older than the victim, and the victim is not lawfully married to the perpetrator;</td>
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<td>- the victim is incapable, through any unsoundness of mind, due to any cause, including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent;</td>
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<td>- the victim resists but the resistance is overcome by force or violence;</td>
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<td>- the victim is prevented from resistance by the infliction of physical injury, attempted infliction, or threatened infliction of bodily harm, accompanied or apparent power of property, narcotics, or anesthetic substance;</td>
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<td>- the victim is prevented from resistance by the use of force, threats, or coercion by the defendant;</td>
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<td>- the victim is incapable, through any unsoundness of mind, due to any cause, including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent;</td>
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<td>- the victim submits under the belief that the victim is unconscious, asleep, other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused with intent to induce such belief;</td>
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<td>- the victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to someone in the future, cause damage to property, engage in other conduct constituting 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.</td>
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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. "Conservative disability" also includes conditions of mental retardation, severe cerebral palsy, and any other condition found to be extremely 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. 11 Delaware Code § 761.

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.
Illinois

"Consent" means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the actor is not a defense to a charge of unlawful sexual penetration or sexual conduct. The manner of dress of the victim at the time of the offense shall not constitute consent. 720 ILCS 5/11-1. A person who initially consents to sexual penetration or sexual conduct is not precluded from withdrawing consent if the actor commits any other sexual penetration or sexual conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct. 720 ILCS 5/11-1.70.

The focus is on what the defendant knew or reasonably should have known regarding the victim’s willingness or absence of consent. People v. Bolden 2015 Ill App (1st) 131962 ¶ 19.

Consent is not specifically defined under the current law. However, Illinois 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 in question is occurring; (3) the victim is mentally disabled or is rendered temporarily incapable of appraising or controlling his or her conduct, due to the effect of any intoxicating substance or legend drug. KRS § 510.010.

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

Indiana

Consent is not specifically defined. However, Indiana 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);
- 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. § 709.1.

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-Christy, 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. § 709.3.

No.

Iowa

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);
- 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.A.C. § 709.1.

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-Christy, 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.A.C. § 709.3.

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, 119 (1997).

If an individual can comprehend the sexual nature of the proposed act, can understand he or she has the right to refuse to participate, and possesses a rudimentary grasp of the possible results arising from participation in the act, he or she has the capacity to consent. State v. Jee, 27 Kan. App. 2d 1, 5, 997 P.2d 737, 740 (2000).

No.

Kansas

Consent is not specifically defined. However, Kansas law provides that a person commits rape when a person knowingly engages in sexual intercourse with a victim who does not consent under any of the following circumstances:

1. The victim is overcome by force or fear.
2. The victim is unconscious or physically powerless.
3. The victim is incapable of giving consent because of mental deficiency or disease, or because of the effect of any intoxicating substance, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender.
4. The victim is under the age of 14.
5. The victim's consent was obtained through a knowing misrepresentation that the sexual intercourse was a medically or therapeutically necessary procedure; or
6. The victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority. K.S.A. 21-5503.

See also:

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, 119 (1997).

A person may be convicted of rape if intercourse begins consensually but consent is withdrawn after penetration and the intercourse continues by force or fear. State v. Plunkett, 261 Kan. 1024, 1030–31, 934 P.2d 115, 119 (1997).

The "force" required to sustain a rape conviction in this state does not require that a rape victim resist to the point of injury or death. The Kansas rape statute does not require the State to prove that a rape victim told the offender she did not consent, physically resisted the offender, and then endured sexual intercourse against her will. It does not require that a victim be physically overcome by force in the form of a beating or physical restraint. It requires only a finding that she did not give her consent and that the victim was overpowered by force or fear to facilitate the sexual intercourse. State v. Berwick, 255 Kan. 589, 894, 800 P.2d 1261, 1271 (1994).

No.

Kentucky

Lack of consent results from:

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

A person is also "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 and manifested 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 act as well as a person who has been rendered unconscious or for any other reason is physically unable to communicate an unwillingness to act as a result of the influence of a controlled substance or legend drug. KRS § 510.010.
Consent is not specifically defined. However, Louisiana law provides that a person commits a sex crime:

1. when the victim resides 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 the victim suffers from a physical or mental impairment such as “mental infirmity” means a person with an intelligence quotient of seventy or lower; “physical infirmity” means a person who is a quadriplegic or paraplegic;
7. when the victim is prevented from resisting the act by force or threats of physical violence under circumstances against which the victim reasonably believes that such resistance would not prevent the rape;
8. when 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 a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim;
9. when 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. when the victim, through unconsciousness of mind, is temporarily or permanently incapable of understanding the nature of the act or of the offender or knew or should have known of the victim’s incapacity;
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 other means practiced by the offender, LSA-R.S. 14:42.1, LSA-R.S. 14:42.2, LSA-R.S. 14:43, LSA-R.S. 14:43.1.

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

No.

Louisiana 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 furnishing, administering or employing, 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 conscious or otherwise physically incapable 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 prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the act has supervisory 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 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 reintegration status or is detained in a hospital, prison or other institution, and the act has supervisory or disciplinary authority over the other person (Class B crime);
11. 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);
12. the other person, not the actor’s spouse, has not in fact attained the age of 18 years and is a resident in or attending a children’s home, child care facility, facility operated by a family child care provider, children’s residential care facility, drug treatment center, youth camp licensed under Title 22, section 2409 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person or the other person is a student in the program or residence or 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 the organization, program or residence recognizes the other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the act was committed without the actor’s knowledge of the other person having a qualifying disability;
13. the other person, not the actor’s spouse, receives services from the organization, program or residence and the organization, program or residence recognizes the other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the act was committed without the actor’s knowledge of the other person having a qualifying disability;
14. the other person, not the actor’s spouse, is a student in the program or residence and the organization, program or residence recognizes the other person as a person with a mental disability.

No.

Note 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 furnishing, administering or employing, 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 conscious or otherwise physically incapable 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 prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the act has supervisory 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 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 reintegration status or is detained in a hospital, prison or other institution, and the act has supervisory or disciplinary authority over the other person (Class B crime);
11. 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);
12. the other person, not the actor’s spouse, has not in fact attained the age of 18 years and is a resident in or attending a children’s home, child care facility, facility operated by a family child care provider, children’s residential care facility, drug treatment center, youth camp licensed under Title 22, section 2409 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person or the other person is a student in the program or residence or 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 the organization, program or residence recognizes the other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the act was committed without the actor’s knowledge of the other person having a qualifying disability;
13. the other person, not the actor’s spouse, receives services from the organization, program or residence and the organization, program or residence recognizes the other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the act was committed without the actor’s knowledge of the other person having a qualifying disability;
14. the other person, not the actor’s spouse, is a student in the program or residence and the organization, program or residence recognizes the other person as a person with a mental disability.

No.
A person is 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 14 years of age and the actor is at least 3 years older and the sexual contact includes penetration (Class B crime);

(8) 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 and the sexual contact includes penetration (Class A crime);

(9) the other person, not the actor’s spouse, is in fact either 14 or 15 years of age and the actor is at least 10 years older than the other person (Class D crime);

(10) 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 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);

(11) 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 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);

(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 reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person (Class C crime);

(13) 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 reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person, and the sexual contact includes penetration (Class C crime);

(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 supervisory or disciplinary authority over the student or the student 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);

(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 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 and the sexual contact included penetration (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 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 person and the sexual contact includes penetration (Class C 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 or 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 C crime);

(21) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered or is 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 that 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);

(22) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered or is 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 that 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);

(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 (Class D 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 E 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 sexual contact includes penetration (Class D crime);

(26) the actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or paraprofessionals to be a psychiatrist, a psychologist or licensed as a social worker or counseling professional to the other person and the other person, not the actor’s spouse, is a current patient or client of the actor (Class C crime);

(27) the actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or paraprofessionals to be a psychiatrist, a psychologist or licensed as a social worker or counseling professional to the other person and the other person, not the actor’s spouse, is a current patient or client of the actor (Class C 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 partners” 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);

(3) 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 appreciating the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent (Class D crime);

(5) the other person, not the actor’s spouse, is under official supervision as a probationer, parolee, sex offender or 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 (Class D crime);

(6) 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 supervisory, disciplinary or disciplinary authority over the student or the actor is a substitute teacher who has no supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual touching (Class D crime);

(7) 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 D crime);

(8) the other person submits as a result of compulsion (Class D crime);

(9) 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 the organization, program or residence recognizes that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability (Class D crime);

(10) 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 E crime);

(11) the actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or purports to be a psychiatrist, psychologist or licensed as a social worker or counseling professional to the other person and the other person, not the actor’s spouse, is a current patient or client of the actor (Class E crime);

(12) 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 E crime);

(13) 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 E crime). 17-A M.R.S.A. 260.

Maryland: Consent is not specifically defined. However, Maryland law provides that a person commits a sex crime if that person engages in "vaginal intercourse" or "sexual act" with another:

(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, § 3-103; § 3-304; § 3-307.

"Mentally incapacitated individual" means an individual who, because of the influence of a drug, narcotic, or intoxicating substance, or because of an act committed on the individual without the individual's consent or awareness, is rendered substantially incapable of:

(1) appraising the nature of the individual's conduct; or

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

"Physically helpless individual" means an individual who:

1. is unconscious; or

2. does not consent to vaginal intercourse, a sexual act, or sexual contact; and

(1) is physically unable to resist, or communicate unwillingness to submit to, vaginal intercourse, a sexual act, or sexual contact. MD Code, Criminal Law, § 3-301.

"Substantially cognitively impaired individual" means an individual who suffers from an intellectual disability or a mental disorder, either of which temporarily or permanently renders the individual substantially incapable of:

(1) appraising the nature of the individual's conduct; or

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

Maryland law also provides that a person may not engage in sexual contact with another:

(1) if the victim is a substantially cognitively impaired 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;

(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, § 3-307.

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 having to do with the rape. State v. Rosen, 289 Md. 230, 241, 424 A.2d 720, 725 (1981).

Given the fact that consent must precede penetration, it follows in our view that although a woman may have concluded with a sexual encounter, even to intercourse, if that conversation was prior to the act of penetration, then it cannot be said that she has consented to sexual intercourse. On the other hand, ordinarily if she consents prior to penetration and withdraws the consent following penetration, there is no rape. State v. State, 287 Md. 675, 684, 414 A.2d 1266, 1270 (1980).

Massachusetts: Consent is not specifically defined. The standard in the sexual assault statutes is whether the accused compels the victim to submit by force or against his or her will, or compels such person to submit by threat of bodily injury. Mass. Gen. Laws. Ann. Ch. 265, § 30.

Michigan: Consent is not specifically defined. The standard used in the sexual assault statutes is whether the accused used "force or coercion to accomplish the sexual act." Mich. Comp. Laws. Ann. § 750.520b – e.

Minnesota: Consent means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act. Further:

A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.

Corroboration of the victim's testimony is not required to show lack of consent. Minn. Stat. § 609.341(4).

Mississippi: Not defined.
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 consent. Mo. Stat. § 566.050.

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:

- An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn.
- 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
- Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

When a 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 is on probation, conditional release, or parole and the perpetrator is an employee, contractor or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is a 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;
  - 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 applies to all of 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;
  - A client receiving psychotherapy services and the perpetrator:
  - Is providing or purporting to provide psychotherapy services to the victim; or
  - 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 client;
    - 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;
  - A student of an elementary, middle, junior high or high school, whether public or nonpublic, and the perpetrator is not a student of an elementary, middle, junior high or high school and is 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 student of a formal 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.
- A 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.

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:

- An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn.
- 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
- Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

Yes, consent is defined to mean words or overt actions indicating a “freely given agreement” to have sexual intercourse or contact. Mont. Code Ann. § 45-5-501(1)(a). In addition, resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent. Mont. Code Ann. § 45-5-511(5).

Consent itself is not defined, however "without consent" means:

- (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 victim, if any was actually given, was the result of the victim's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;
- The victim need not resist verbally or physically where it would be useless or futile to do so.
- The victim need not resist verbally or physically where it would be useless or futile to do so.
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- (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.)
- (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.)
- (This does not apply if the individuals are married to each other.)
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Yes, for some crimes. A person commits aggravated felonious sexual assault if he or she engages in sexual penetration with a person that indicates by speech or conduct that there is not freely given consent to performance of the sexual act. N.H. Rev. Stat. Ann. § 630-A:2(6)(a).

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.

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.

- Nevada law does not specifically define consent.

New Hampshire'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 negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.
2. Consent to bodily harm. When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if:
   - The bodily harm consented to or threatened is not serious; or
   - The conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity of a kind not forbidden by law; or
   - The consent establishes a justification for the conduct under chapter 3 of the code.
3. Ineffective Consent. Unless otherwise provided by the law defining the offense, assault does not constitute consent if:
   - It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or
   - 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
   - It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

In order to establish effective consent the putative victim of a sexual assault, a defendant must demonstrate the presence of “affirmative and freely given permission...” State v. Cucchi, 735 A.2d 414, 424, 159 N.J. 584, 603 (1999).

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 consent. Mo. Stat. § 566.050.
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 threats;
- (3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;
- (4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or
- (5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on a patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.

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

New York

Under New York law, lack of consent results from:

- (1) forcible compulsion;
- (2) incapacity to consent;
- (3) where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not express or explicitly acquiesce in the actor's conduct; or
- (4) where the offense charged is rape in the 3rd degree or criminal sexual act in the 3rd degree, in addition to 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.

New York Penal Law §130.05.

North Carolina

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

Against the will of the other person is defined as either: (a) without consent of the other person; or (b) after consent is revoked by the other person, in a manner that would cause a reasonable person to believe consent is revoked. North Carolina General Statutes Annotated §14-27.20(a).

A threat of serious bodily harm which reasonably places fear in a person's mind is sufficient to demonstrate the use of force and the lack of consent: State v. Morettone, 84 N.C. App. 517, 522, 380 S.E.2d 608, 611 (1989).

Additionally, submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent. State v. Ricks, 34 N.C. App. 734, 735, 239 S.E.2d 602, 603 (1977); see also State v. Keane, 235 N.C. App. 656, 5 (2014). ("Consent induced by violence or fear of violence is not effective to preclude a rape conviction.")

North Dakota

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

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

Additionally, "gross sexual imposition" is a crime defined in § 12.1-20-03 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 with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or other activity to become a member of or associate of any criminal street gang.

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

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

Ohio

Ohio does not specifically define "consent." However, submission to sexual conduct as a result of fear may be shown by a proving the lack of consent as physical force or threat of physical force need not be shown to prove rape, merely the overcoming of the victim's will by fear or duress. In re Adams (Ohio Ct.Cl. 1990) 61 Ohio Misc. 2d 571, 575, 530 N.E.2d 861, 863.

Oklahoma

The term "consent" means the affirmative, unambiguous and voluntary agreement to engage in a specific sexual activity during a sexual encounter which can be revoked at any time.

Consent cannot be given by an individual who:

- is asleep or is mentally or physically incapacitated either through the effect of drugs or alcohol or for any other reason, or
- is under duress, threat, coercion or force.

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

- the absence of an individual saying "no" or "stop," or
- the existence of a prior or current relationship or sexual activity.

Oklahoma Stat. tit. 21, § 113.

Oregon

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

- (a) under 18 years of age;
- (b) incapable or appraising the nature of the person's conduct;
- (c) mentally incapacitated; or
- (d) physically helpless.

A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence.

A person is incapable of appraising the nature of the person's conduct if:

- (a) the person is unable to understand the nature of the conduct;
- (b) the person is unable to understand the right to choose whether and how to engage in conduct, including the right to revoke a prior decision to engage in conduct; or
- (c) the person is unable to communicate a decision to engage in conduct.

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<tr>
<th>State</th>
<th>Description</th>
<th>Excerpt</th>
<th>Result</th>
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<tbody>
<tr>
<td>Pennsylvania</td>
<td>Forcible compulsion means that the actor uses physical force or physical violence of a high and aggravated nature that would prevent resistance by a person of reasonable resolution; or</td>
<td>No.</td>
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<tr>
<td>Puerto Rico</td>
<td>Forcible compulsion means that the actor uses physical force or physical violence of a high and aggravated nature that would prevent resistance by a person of reasonable resolution; or</td>
<td>No.</td>
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<tr>
<td>Rhode Island</td>
<td>A person is guilty of criminal sexual conduct if he or she engages in sexual penetration with another person and if the victim is physically helpless.</td>
<td>No/A.</td>
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<tr>
<td>South Carolina</td>
<td>A person is guilty of criminal sexual conduct in the first degree if the accused force or coercion to accomplish sexual battery. S.C. Code Ann. § 16-3-653(1).</td>
<td>No.</td>
<td></td>
</tr>
</tbody>
</table>
“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 this 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. Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or another person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;
3. The other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
4. The actor knows that as a result of medical care or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
5. The other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
6. The actor has intentionally impaired the other person’s power to appraise or control the other person’s consent by administering any substance without the other person’s knowledge;
7. The actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
8. The actor is a public servant who coerces the other person to submit or participate;
9. The actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person’s professional dependency on the actor;
10. The actor is a clergyman who causes the other person to submit or participate by exploiting the other person’s emotional dependency on the clergyman in the clergyman’s professional character as spiritual adviser;
11. The actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under the Texas Family Code;
12. The actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor;
13. Purposes of the crime of sexual battery a victim is incapable of consent if: (1) the sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services described in (2); and (2) the defendant, whether licensed by the state or not, is a member of the clergy, healthcare provider, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Tenn. Code Ann. § 39-13-505.

For purposes of the crime of sexual battery a victim is incapable of consent if:

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

Sexual battery is unlawful sexual contact with a victim by the defendant or by a 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
4. The sexual contact is accomplished by fraud.

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

1. The actor compels the other person to submit or participate by the use of physical force, violence, or coercion;
2. The actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;
3. The other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
4. The actor knows that as a result of medical care or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
5. The other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
6. The actor has intentionally impaired the other person’s power to appraise or control the other person’s consent by administering any substance without the other person’s knowledge;
7. The actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
8. The actor is a public servant who coerces the other person to submit or participate;
9. The actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person’s emotional dependency on the actor;
10. The actor is a clergyman who causes the other person to submit or participate by exploiting the other person’s emotional dependency on the clergyman in the clergyman’s professional character as spiritual adviser;
11. The actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under the Texas Family Code;
12. The actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor;
13. Purposes of the crime of sexual battery a victim is incapable of consent if: (1) the sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services described in (2); and (2) the defendant, whether licensed by the state or not, is a member of the clergy, healthcare provider, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Tenn. Code Ann. § 39-13-505.

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

1. The actor expresses lack of consent through words or conduct;
2. The actor overcomes the victim through the actual application of physical force or violence;
3. The actor is able to overcome the victim by concealment or by the element of surprise;
4. 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 that the actor has the ability to execute this threat;
5. 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 victim has the ability to execute this threat;
6. “To retaliate” includes threats of physical force, kidnapping, or extortion;
7. The victim is unconscious, unaware that the act is occurring, or is physically unable to resist;
8. The actor knows or reasonably should know that the victim has a mental disease or defect, which renders the victim unable to appraise the nature of the act, resist the act, understand the possible consequences to the victim’s health or safety, or appraise the nature of the relationship between the actor and the victim;
9. The actor knows that the victim participates because the victim erroneously believes that the actor is someone else;
10. The actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim’s knowledge;
11. The victim is younger than 14 years of age;
12. The victim is younger than 18 years of age and at the time of the offense the actor was the victim’s parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim;
13. The victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to _force_ or threat required under Subsection (b) or (d) above;
14. The actor is a health professional or religious counselor, the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested.
**Vermont**

"Consent" means the affirmative, unambiguous, and voluntary agreement to engage in a sexual act, which can be revoked at any time. 13 Vermont Stat. Ann. §2325(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. §2326(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 law and lascivious conduct.
- (B) knew or reasonably should have known that the other person was unaware that a sexual act or law and lascivious conduct was being committed; or
- (C) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or law and lascivious conduct with the actor because the person was substantially impaired by alcohol, drugs, or other intoxicating substances.


**Virginia**

Virginia does not provide a definition for consent, but defines rape as sexual intercourse (i) against the complaining witness’s will, by force, threat or intimidation of or against the complaining witness or another person, or (ii) through the use of the complaining witness’s mental or physical helplessness, or (iii) with a child under age 13 as the victim, and sexual battery as sexual abuse against the will of the complaining witness, by force, threat, intimidation or reuse. VA Code Ann. §§18.2-61; 18.2-67.4.

No.

**Washington**

Consent requires that there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact at the time of the act. Wash. Rev. Code Ann. § 9A.44.010(2).


**West Virginia**

Lack of consent results from forcible compulsion, incapacity to consent, or, if the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor’s conduct. W. Va. Code Ann. § 61-8B-2(b).

A person cannot consent to sexual intercourse if they are less than 16 years old, mentally defective, mentally incapacitated, physically incapacitated, physically disabled, or subject to incarceration, confinement or supervision by a state, county, or local governmental entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact. W. Va. Code Ann. § 61-8B-2(c).

No

**Wisconsin**

"Consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact.

A person is presumed (but the presumption may be rebutted by competent evidence) incapable of consent to sexual intercourse or sexual contact in circumstances where:

- (a) the person suffers from a mental illness or defect which impairs capacity to appraise personal conduct; or
- (b) the person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.


**Wyoming**

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

No.
Although it does not directly affect consent, lack of consent to the element of the following crimes (meaning the offender is responsible regardless of whether the victim consented):

- The following constitutes sexual assault in the first degree:
  - A person engaging in sexual penetration with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.410(a)(5).
  - The following constitutes sexual assault in the second degree:
    - A person engaging in sexual contact with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.420(a)(2).

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(1)(a) and 11.41.425(1)(a). Incapacitated means temporarily incapacitated by intoxication that causes an individual to be "unaware that a sexual act is being committed" or "mentally incapable of consenting," including being unable to appraise the nature of one's own conduct or physically unable to express unwillingness to act.

The following constitutes sexual assault in the first degree:
- A person engaging in sexual penetration with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or program that is required by law to be licensed by the state, Alaska Stat. § 11.41.410(a)(5).
- The following constitutes sexual assault in the second degree:
  - A person engaging in sexual penetration with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.420(a)(2).

The following constitutes sexual assault in the third degree:
- A person engaging in sexual contact with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.425(a)(3).
- "Mentally incapable" means suffering from a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person's conduct, including the potential for harm to that person. Alaska Stat. § 11.41.470(a). A person is incapable of appreciating or understanding the nature and consequences of the act of sexual penetration, for purposes of determining whether that person is "mentally incapable" of consenting, where that person does not have the capacity to understand the full range of ordinary and foreseeable social, medical, and practical consequences that the conduct entails. Jackson v. State, 710 P.2d 587 (Alaska Ct. App. 1985).

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 or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.410(a)(3).
- A person engaging in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed 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 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. § 11.41.425(a)(4).
- A person engaging in sexual penetration with a person who is 18 years of age or older engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adoptive parent, or legal guardian. Alaska Stat. § 11.41.434(a)(2).
- A person who is 18 years of age or older engages in sexual penetration with a person who is under 18 years of age, and the victim is residing in the same household as the offender or the offender occupies a position of authority in relation to the victim. Alaska Stat. § 11.41.434(a)(3).

In addition:
- A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person who is fifteen, sixteen or seventeen years of age and the person is in a “position of trust,” regardless of consent. Arizona Revised Statute § 13-1404(A).
<table>
<thead>
<tr>
<th><strong>Arkansas Code</strong></th>
<th><strong>California Penal Code</strong></th>
<th><strong>Colorado Revised Statutes</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally, 16 years old, subject to various close-in-age provisions (below): Arkansas Code § 5-14-127(a)(1).</td>
<td>18 years old: California Penal Code § 261.5.</td>
<td>17 years old, subject to various close-in-age provisions (described below): Colorado Revised Statutes Annotated § 18-3-402(1)(a)(4).</td>
</tr>
<tr>
<td>Yes, a person can be incapable of consent because he or she is mentally defective or incapacitated. Arkansas Code §§ 5-14-103(a)(2); 5-14-125(a)(2).</td>
<td>Yes, a person can be incapable of giving legal consent because he or she is mentally incapacitated. California Penal Code § 261(a)(6)(A).</td>
<td>Yes, the actor may be guilty of sexual assault and/or unlawful sexual contact when the victim is incapable of appraising the nature of the victim’s conduct. Colorado Revised Statutes Annotated §§ 18-3-402(1)(b); 18-3-404(1)(b).</td>
</tr>
<tr>
<td>Yes, a person that is unconscious is deemed “physically helpless” and unable to give consent. Arkansas Code § 5-14-101(6)(A).</td>
<td>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)(6)(A).</td>
<td>Yes, the actor may be guilty of sexual assault and/or unlawful sexual contact when the victim is incapable of appraising the nature of the victim’s conduct. Colorado Revised Statutes Annotated § 18-3-402(1)(b); 18-3-404(1)(b).</td>
</tr>
<tr>
<td>Yes, a person that is temporarily incapacitated is deemed “mentally incapacitated” and unable to give consent.Arkansas Code § 5-14-101(6)(B).</td>
<td>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 substance, and this condition was known, or reasonably should have been known, by the accused. California Penal Code § 261(a)(3).</td>
<td>Yes, any actor who knowingly subjects a victim to sexual contact commits unlawful sexual contact if the actor has substantially impaired the victim’s power to appraise or control the victim’s conduct by employing, without the victim’s consent, any drug, intoxicant, or other means for the purpose of causing submission. Colorado Revised Statutes Annotated § 18-3-404(1)(d).</td>
</tr>
<tr>
<td>Yes, in a prosecution for non-forcible rape and sexual assault in the first degree, the actor cannot consent if certain relationships, listed below, exist between the victim and offender. These include:</td>
<td>Yes, a minor is capable of consenting to sexual intercourse with an adult who is the minor’s spouse. California Penal Code § 261.5(a).</td>
<td>Yes, married spouses:</td>
</tr>
<tr>
<td>a. member of minor-victim’s family (including by adoption);</td>
<td>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. 261.6(b).</td>
<td>• There are certain marital exceptions when there is a marital relationship between an actor and a victim where the elements of unlawful sexual behavior offense specifically excludes a spouse, such as certain age-related sexual assault offenses, sexual assault on a child (person under the age of eighteen (18)), and sexual assault on a child by a person under the age of eighteen (18), and sexual assault on a child by a person of trust. Colorado Revised Statutes Annotated §§ 18-3-402; 18-3-403(1); 18-3-403.5(1); 18-3-409.</td>
</tr>
<tr>
<td>b. employee of a non-profit organization or a city or county that provides services to a child or a person who is incapacitated. People In Interest of G.B. 18-3-404(1)(d).</td>
<td>In the custody of law enforcement:</td>
<td>• In the custody of law enforcement:</td>
</tr>
<tr>
<td>c. employee of the correctional facility where a minor-victim is in custody; or</td>
<td>a. a victim who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail or with an offender who is under the supervision of either department or a city or county.</td>
<td>a. a victim who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail or with an offender who is under the supervision of either department or a city or county.</td>
</tr>
<tr>
<td>d. 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.</td>
<td>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).</td>
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**Arkansas Code**

- **§ 5-14-101(5)**: The term “incapacitated” means incapable of resisting the act due to the essential characteristics of the act due to the perpetrator’s fraud in fact; or
- **§ 5-14-101(6)**: “Unconscious” of the nature of the act means incapable of resisting because the victim meets any 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.

**California Penal Code**

- **§§ 5-14-124(a)(1); 5-14-125; 5-14-126(a); 5-14-127(a)(1).** employees of correctional facilities commits unlawful sexual conduct by intentionally or knowingly engaging in sexual intercourse with a client who is currently under the care or supervision of the licensed behavioral health professional, psychiatrist or psychologist. Arkansas Revised Statute § 13-1414(A).

**Colorado Revised Statutes**

- **§ 5-14-101(6)**: Persons are incapable of resisting the act due to the perpetrator’s fraud in fact; or
- **§ 5-14-101(6)(a)**: “Unconscious” of the nature of the act means incapable of resisting because the victim meets any 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.

**Married spouses:**

- **§ 18-3-404(1)(d):** There are certain marital exceptions when there is a marital relationship between an actor and a victim where the elements of unlawful sexual behavior offense specifically excludes a spouse, such as certain age-related sexual assault offenses, sexual assault on a child (person under the age of eighteen (18)), and sexual assault on a child by a person under the age of eighteen (18), and sexual assault on a child by a person of trust.

**In the custody of law enforcement:**

- **§ 18-3-404(1)(d):** In the custody of law enforcement: a. a victim who is in the custody of a correctional facility, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail or with an offender who is under the supervision of either department or a city or county.

**Terrorist and client:**

- **§ 18-3-404(1)(e):** A victim or the victim’s family, the victim’s employer or any person who has reason to know is an employee of a group home or residential treatment facility where the minor resides or has previously resided.

**Children and any non-parent person in a position of trust:**

- **§ 18-3-404(1)(c):** In the custody of law enforcement: a. a victim who is in the custody of law or detained in a hospital or other institution cannot consent to any sexual intrusion or sexual penetration with a person who has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search. Colorado Revised Statutes Annotated § 18-3-405(1)(d).

In **People In Interest of G.B.** 18-3-404(1)(d): The court held that evidence that a sexual assault victim was intoxicated during sexual intercourse, and was for that reason incapable of appraising nature of her conduct, was sufficient to support a sexual assault conviction.
Connecticut

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).

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(f).

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A person is guilty of sexual assault in the second degree if the other partner is: (1) under 18 years old 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; or (2) if the child is (A) a patient of the actor and the sexual intercourse was performed by the actor's own conduct or 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)(3).

Delaware

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).

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Yes, a person can be mentally incapacitated 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).

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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(f).

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).

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(f).

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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, importunes 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(k)(4).
Florida

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 probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the officer, official, or person has authority to coerce or control the victim.

Sexual battery means oral, anal, or female genital penetration of another by any object without the consent of the person penetrated. A person who engages in sexual battery, other than a sexual battery committed in a manner that constitutes sexual abuse of a patient or client, is guilty of a misdemeanor of the first degree, punishable as provided in § 948.12.

Sexual Abuse of a Patient or Client

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)(i–d). In addition, there are increased penalties for a sexual battery carried out on a victim that the accused either knew or reasonably should have known was physically or mentally incapacitated. Florida Statutes § 794.011(1)(c)(i).

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

A person cannot consent to sexual activity with a person who is in a position of familial or custodial authority. Florida Statutes § 794.011(8).

Florida Statutes §§ 794.011; 794.05.

Sexual Abuse of a Ward

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

A person less than 18 years of age cannot consent to sexual acts or sexual conduct with any other person.” D.C. Code §§ 22–3009.01, 22–3009.02.

Incapable of communicating unwillingness to engage in a sexual act; or

Incapable of appraising or controlling a sexual act due to a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control his or her conduct, given invasiorialy or unknowingly, given to the victim by the accused. D.C. Code § 22–3002, 22–3004(4).

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 probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the officer, official, or person has authority to coerce or control the victim.

A person less than 18 years of age cannot consent to sexual acts or sexual conduct with any other person.” D.C. Code §§ 22–3009.01, 22–3009.02.

District of Columbia § 22–30801(3).

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)(i–d). In addition, there are increased penalties for a sexual battery carried out on a victim that the accused either knew or reasonably should have known was physically or mentally incapacitated. Florida Statutes § 794.011(1)(c)(i).

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

Sexual Abuse of a Secondary Education Student

Yes. A person is unable to consent to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(d).

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 §§ 22–3005(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; or incapable of communicating unwillingness to engage in that sexual act. D.C. Code §§ 22–3005(2)(A)–(C), 22–3005(2)(A)–(C).

Yes. A person is unable to consent to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(d).

A person less than 18 years of age cannot consent to sexual acts or sexual conduct with any other person.” D.C. Code §§ 22–3009.01, 22–3009.02.

Incapable of communicating unwillingness to engage in a sexual act; or

Incapable of appraising or controlling a sexual act due to a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control his or her conduct, given invasiorialy or unknowingly, given to the victim by the accused. D.C. Code § 22–3002, 22–3004(4).

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 probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the officer, official, or person has authority to coerce or control the victim.

A person less than 18 years of age cannot consent to sexual acts or sexual conduct with any other person.” D.C. Code §§ 22–3009.01, 22–3009.02.

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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 probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the officer, official, or person has authority to coerce or control the victim.

A person less than 18 years of age cannot consent to sexual acts or sexual conduct with any other person.” D.C. Code §§ 22–3009.01, 22–3009.02.

Incapable of communicating unwillingness to engage in a sexual act; or

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Georgia

16 years old: 9 G.C.A. §§ 25.15; 25.20; 25.25.

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. 9 G.C.A. § 25.30.

'Mentally Defective' means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct. 9 G.C.A. § 25.10(a)(8).

'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. 9 G.C.A. § 25.10(a)(3).

No.

Hawaii

16 years old: HRS §§ 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. HRS §§ 707-730; 707-731; 707-732.

The state must show that the victim was "mentally defective" (a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct) and that Defendant knew that Complaining Witness was mentally defective. In Interest of Doe, 815 P.2d 254 (Hawaii App. 1990).

Yes. A person commits a sex crime if the person subjects to a sexual act another person who is physically helpless, which includes unconsciousness. HRS §§ 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. 9 G.C.A. § 25.10(a)(8).

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 narcotic, anesthetic or other substance administered to that person without his or her consent. 9 G.C.A. § 25.10(a)(5).

Yes.

Addendum:

- An employee or agent engages in improper sexual contact in the first degree if that employee or agent engages in sexually explicit conduct with a person they knew or reasonably should have known is incompetent.
  - engaged as a student at a school of which he or she is an employee or agent.
  - under probation, parole, or a program or within a facility as a condition of probation or parole, accountability court, or pretrial diversion supervision of the office or court of which he or she is an employee or agent.
  - being detained by or in the custody of any law enforcement agency of which he or she is an employee or agent.
  - patient in a hospital of which he or she is an employee or agent.
  - in the custody of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, or a facility providing child welfare and youth services of which he or she is an employee or agent.
  - the subject of such employee or agent's actual or purported psychotherapy treatment or counseling.
  - admitted for care at a sensitive care facility of which he or she is an employee or agent. 9 G.C.A. § 16-6-5.1(b).

- In addition, a person commits an offense of improper sexual contact when a person in a "position of trust" engages in sexually explicit conduct with a minor for whom he or she has entered into an agreement entrusting him or her with the responsibility of education and supervision of such minor. Georgia Code §§ 16-6-5.1(b)(21) & (22). "Person in a position of trust" means an individual with whom a parent, guardian, or other person standing in loco parentis of a minor has entered into an agreement entrusting such individual with the responsibility of education and supervision of such minor. Georgia Code § 16-6-5.1(a)(5.1).

- Consent is not a defense to offenses under section 16-6-5.1.
Yes. A person commits a sex crime if: (a) the victim is 18 years of age or older and holds a position of trust, and the actor is 17 years of age; (b) the actor is at least 16 years old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor; or (c) the person is not legally married to the minor. HRS § 707-731.

A person commits sexual assault in the fourth degree if the person knowingly engages in or causes sexual contact with a minor who is at least 16 years old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor; provided that: (i) the person is not less than 5 years older than the minor; and (ii) the person is not legally married to the minor. HRS § 707-733.

A person residing in the same home with a minor under the age of 14:

(a) commits the offense of continuous sexual assault of a minor under the age of 14 if the person either resides in the same home with a minor under the age of 14 or has recurring access to the minor, and engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of 14. HRS § 707-733.6.

(1) requires payment of child support or supervision in relation to the victim; or

(2) is an employee of, or under the care and custody of, a law enforcement agency or employee. 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.50.

Yes. A person commits sexual misconduct with a person who is in the custody of that penal system; or

(a) treatment and detention facility; or

Yes. A person commits sexual misconduct with a person who is in the custody of a law enforcement agency or employee. 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.50.

Yes. A person commits custodial sexual misconduct when:

In addition, a person commits sexual misconduct with a person who is in the custody of a law enforcement agency or employee. 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.50.

(2) requires payment of child support or supervision in relation to the victim, then the age of consent is 18 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, supervision in relation to the victim, then the age of consent is 18 years old.

(a) commits the offense of custodial sexual misconduct when:

(4) is an employee of, or under the care and custody of, a mental institution, a correctional institution, parole agency, work release agency, or any facility or person serving a term of conditional release who is.

(b) commits sexual misconduct with a minor under the age of 14 if the person either resides in the same home with a minor under the age of 14 or has recurring access to the minor, and engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of 14. HRS § 707-733.6.

Yes. A person commits a sex crime if: (a) the victim is 18 years of age or older and holds a position of trust, and the actor is 17 years of age; (b) the actor is at least 16 years old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor; provided that: (i) the person is not less than 5 years older than the minor; and (ii) the person is not legally married to the minor. HRS § 707-731.

A person commits sexual assault in the fourth degree if the person knowingly engages in or causes sexual contact with a minor who is at least 16 years old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor; provided that: (i) the person is not less than 5 years older than the minor; and (ii) the person is not legally married to the minor. HRS § 707-733.

(a) requires payment of child support or supervision in relation to the victim; or

(b) commits sexual misconduct with a person who is in the custody of a law enforcement agency or employee. 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.50.

Yes. A person commits sexual assault in the fourth degree if the person knowingly engages in or causes sexual contact with a minor who is at least 16 years old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor; provided that: (i) the person is not less than 5 years older than the minor; and (ii) the person is not legally married to the minor. HRS § 707-731.

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720 ILCS 5/11-1.30; 720 ILCS 5/11-1.50.

In addition, the crime and purposes. 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.50.
**Kansas**

16 years old. K.S.A. 21-5506. 5507.

Note: K.S.A. 21-5507 was held to violate the equal protection provisions of the Fourteenth Amendment to the United States Constitution and L.L. White v. Johnson 716 F.2d 1613 (10th Cir. 1983) (Replaces the extent that it results in a punishment for unlawful voluntary

Yes. A person commits a sex crime where the person otherwise meets the elements of the sex crime and the victim is incapable of giving consent because of mental deficiency or disease, which condition was known by the offender or reasonably apparent to the offender. K.S.A. 21-5503.

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 bound. K.S.A. 21-5503.

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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 social 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 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 has been 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 direct supervision and offender control services to the department of corrections and: (A) 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 released on parole, conditional release from 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; or (ii) placed in the custody of the department of corrections or juvenile community supervision agency; (B) the offender is an employee of the department of corrections and: (A) 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 facility or sanctions house; or (ii) the offender is an 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 a foster child placed in the care of such facility or sanctions house;

(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 an inmate who has been released and is currently on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 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;

(8) 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 is a foster child placed in the care of such facility or sanctions house; or (ii) placed in the custody of the department of corrections under the supervision and control of the department of corrections or juvenile community supervision agency; and (B) the offender has knowledge that 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;

(9) 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 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;

(10) 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 court services; or (ii) the offender is an 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 a foster child placed in the care of such facility or sanctions house; or (ii) 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; or (ii) the offender is engaged in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older 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;
Kentucky

18 years old.
A person is deemed incapable of consent when he or she is:
- less than sixteen (16) years old;
- 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.

KRS § 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.

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 actor to be physically helpless. KRS §§ 510.010.

Yes. 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.

Yes. A person is guilty of sexual abuse in the first degree if he or she is in a position of authority or position of special trust, as defined in KRS 532.045, or in a position of special trust and he or she engages in sexual intercourse with another person less than eighteen (18) years old and the minor can see or hear the person masturbate. KRS § 510.110.

Yes. A person is guilty of sexual abuse in the second if he is a jailer, 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 engages in sexual intercourse with another person less than 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. KRS § 510.120.

Yes. 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 jailer, 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 contact; or
- (4) a peace officer, while serving in his or her official capacity, subjects a person to sexual intercourse who the officer: (1) arrested, held in custody, or investigated for commission of a traffic or criminal offense; or (2) knew or should have known was under arrest, held in custody, or being investigated for commission of a traffic or criminal offense. KRS § 510.060.

Louisiana

17 years old. LSA-R.S. 14:80.

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 the victim suffers from a physical or mental infirmity preventing such resistance ("mental infirmity" means a person with an intelligence);

Yes. The following are deemed to be without the lawful consent of the victim:
- (1) 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 person with whom the sexual act was performed prior to the time that the sexual act occurred.

Yes. The following are deemed to be without the lawful consent of the victim:
- (1) 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 produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person with whom the sexual act was performed prior to the time that the sexual act occurred.

Yes. It is a defense to a charge of sexual battery with a child under the age of 15 or carnal knowledge of a juvenile that the actor is the child's spouse. LSA-R.S. 14:80; LSA-R.S. 14:80.1.

Also, prohibited sexual conduct between an educator and a student is committed when:
- (1) an educator has sexual intercourse with a person who is 17 years of age or older, but less than 21 years of age, where there is an age difference of greater than 4 years between the two persons, when the victim is not the spouse of the offender and is a student at
A person is guilty of a sex crime if that person engages in a "sexual act/contact/touching" with another person and:

(1) the other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent;

(2) the actor owns, operates or is an employee of an organization, program or residence whose operation, administration, licensing or funding is 

(3) 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 the education, or other similar entity provides or administers, any substance administered by the actor and the other person has substantially impaired the other person’s power to appraise or control the use of the substance or anything proximate to the other person’s sexual acts by furnishing, administering, employing, or causing another person to furnish, administer, employ or cause to be administered or employed substances that is reasonably likely to impair the other person’s power to appraise or control the use of the substance or anything proximate to the other person’s sexual acts.

(4) the actor is employed to provide care to a dependent person, who is not the actor’s spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disability, and the actor is substantially incapacitated by a controlled substance administered by the actor and the other person is under arrest or otherwise in the actual custody of a police officer or other law enforcement official who is under arrest or otherwise in the actual custody of a police officer or other law enforcement official who either:

(5) apprehends or detains the person, and

(6) the actor owns 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 the organization, program or residence recognizes the other person as a current patient or client of the actor;

(7) 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 the organization, program or residence recognizes the other person as a current patient or client of the actor;

(8) the actor is employed to provide care to a dependent person, who is not the actor’s spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disability, and the actor is substantially incapacitated by a controlled substance administered by the actor and the other person has substantially impaired the other person’s power to appraise or control the use of the substance or anything proximate to the other person’s sexual acts by furnishing, administering, employing, or causing another person to furnish, administer, employ or cause to be administered or employed substances that is reasonably likely to impair the other person’s power to appraise or control the use of the substance or anything proximate to the other person’s sexual acts.

(9) the actor is employed to provide care to a dependent person, who is not the actor’s spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disability, and the actor is substantially incapacitated by a controlled substance administered by the actor and the other person is under arrest or otherwise in the actual custody of a police officer or other law enforcement official who either:

(10) apprehends or detains the person, and

(11) the actor owns 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 the organization, program or residence recognizes the other person as a current patient or client of the actor;

(12) 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 the organization, program or residence recognizes the other person as a current patient or client of the actor;

(13) the actor is employed to provide care to a dependent person, who is not the actor’s spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disability, and the actor is substantially incapacitated by a controlled substance administered by the actor and the other person has substantially impaired the other person’s power to appraise or control the use of the substance or anything proximate to the other person’s sexual acts by furnishing, administering, employing, or causing another person to furnish, administer, employ or cause to be administered or employed substances that is reasonably likely to impair the other person’s power to appraise or control the use of the substance or anything proximate to the other person’s sexual acts.
**Maryland**

16 to 18 years old depending on the crime below:

- It is a crime to induce a person under 18 of chaste life to have sexual conduct.

Yes. If the victim was incapable of consenting due to such developmental disability and/or mental incapacity, cases of vaginal intercourse, vaginal contact, or sexual conduct if the person is under 18 of the victim's school in Maryland. Yes, if the victim was incapable of giving consent. Com. v. Urbano, 880 N.E.2d 735, 418 Mass. 606 (2008).

Yes, if such intoxication renders the person incapable of giving consent. Com. v. Urbano, 880 N.E.2d 735, 418 Mass. 606 (2008). (defining "person with a disability (a person who is:"

- Mentally incapable of giving consent due to such developmental disability and/or mental incapacity, consents to vaginal intercourse, vaginal contact, or sexual conduct if the person has or has reason to know that the victim is a substantially mentally incapacitated individual and the person performing the act knows or reasonably should know that the victim is a substantially mentally incapacitated individual and mentally incapacitated individual and the person performing the act knows or reasonably should know that the victim is a substantially incapacitated mentally incapacitated individual and mentally incapacitated individual and the person performing the act knows or reasonably should know that the victim is a substantially incapacitated mentally incapacitated individual.

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. 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.

**Massachusetts**

- Yes. A person may be prosecuted for rape in the first degree, rape in the second degree, sexual offense in the third degree, or sexual offense in the fourth degree against a victim who was the person’s legal spouse at the time of the alleged rape or sexual offense. Mich. Comp. Laws. Ann. § 3-318. There are exceptions for separation or use of force and limited divorce. Mich. Comp. Law. Ann. § 3-318.

- 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, §25A.

- Yes. A person may not be prosecuted for rape in the first degree, rape in the second degree, sexual offense in the third degree, or sexual offense in the fourth degree against a victim who was the person’s legal spouse at the time of the alleged rape or sexual offense. Mich. Comp. Laws. Ann. § 3-318. There are exceptions for separation or use of force and limited divorce. Mich. Comp. Law. Ann. § 3-318.

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

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

"Mentally incapacitated" means: (1) that a person under the influence of alcohol, a narcotic, anesthetic, or any other substances, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration, or (2) that person is under the influence of any substance or substances to a degree that renders them incapable of appreciating, understanding, or controlling the person's conduct. Minn. Stat. § 609.341.

"Mentally impaired" means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration. Minn. Stat. § 609.341.

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

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:

1. Complainant is at least 14 but less than 16 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 shall be a defense).

2. 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).

3. 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 used force or coercion to accomplish the act, but 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).

4. At the time of the act, the actor is in a prohibited occupational relationship with the complainant. Minn. Stat. § 609.344.

A "prohibited occupational relationship" exists when the actor is in one of the following occupations and the act takes place under the specified circumstances:

1. The actor performed massage or other bodywork for hire, the sexual penetration or sexual contact occurred during or immediately before or after the act performed or was hired to perform one of those services for the complainant, and the sexual penetration or sexual contact was nonconsensual; or

2. The actor and the complainant were in the following occupational relationships at the time of the act:

   a. The actor was a psychotherapist, the complainant was the actor's patient, and the sexual penetration or sexual contact occurred during a psychotherapy session or during a period of time when the psychotherapist-patient relationship was ongoing.

   b. The actor was a psychotherapist and the complainant was the actor's former patient who was emotionally dependent upon the actor.

   c. The actor was or falsely impersonated a psychotherapist, the complainant was the actor's patient or former patient, and the sexual penetration or sexual contact occurred by means of deception or false representation that the sexual penetration or sexual contact was for a bona fide professional purpose.

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

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

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

   g. The actor was an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients criminally committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including but not limited to jails, prisons, detention centers, or...
The following acts constitute criminal sexual conduct in the fourth degree:

1. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

2. 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. See Minn. Stat. § 609.341.

3. A person is guilty of sexual battery if he or she engages in sexual penetration with a physically helpless person, which includes a person who is rendered incapable of communicating an unwillingness to engage in an act, or is a mentally incapacitated person, which includes a person who is 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. See Minn. Stat. § 609.344.

4. A person is guilty of sexual battery if he or she engages in sexual penetration with a physically helpless person, which includes a person who is 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. See Minn. Stat. § 609.344.

5. 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. See Minn. Stat. § 609.341.

6. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

7. 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. See Minn. Stat. § 609.341.

8. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

9. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.341.

10. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

11. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.341.

12. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

13. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.341.

14. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

15. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.341.

16. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

17. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.341.

18. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

19. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.341.

20. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

21. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.341.

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41. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.341.

42. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

43. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.341.

44. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

45. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.341.

46. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.

47. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.341.

48. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective person, mentally incapacitated person, or physically helpless person. See Minn. Stat. § 609.345.
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. Missouri Code Ann. § 566.030.

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. Missouri Ann. Stat. § 566.030.

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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. Missouri Ann. Stat. § 566.030.

Additionally, consent is ineffective under the sexual assault statute (Mont. Code Ann. § 45-5-501(1)(b)(v)) if the victim is:

- incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;
- receiving services from a youth care facility or the perpetrator: (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and (II) is an employee, contractor, or volunteer of the youth care facility; or
- admitted to a mental health facility, a community-based facility or a residential facility or is receiving community-based services and the perpetrator: (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and (B) is an employee, contractor, or volunteer of the facility or community-based service.

Yes, a person commits the crime of sexual contact with a student if he or she has sexual contact with a student of a school and is:

- a teacher;
- a student teacher;
- an employee of the school;
- a volunteer of the school or an organization working with the school on a project or program who is not a student at the school;
- an elected or appointed official of the school district; or
- a person employed by an entity that contracts with the school or school district to provide services.

Yes, a person commits the crime of sexual contact with a student if he or she has sexual contact with a student of a school and is:

- a parent or guardian involved in a child abuse or neglect proceeding and the perpetrator is a worker affiliated with the program;
- a program participant in a private alternative adolescent resident or outdoor program and the perpetrator is a worker affiliated with the program;
- a child or guardian of a child who has ever had legal or physical custody of the victim.

Yes, a person commits the crime of sexual contact with a student if he or she has sexual contact with a student of a school and is:

- a student teacher;
- an employee of the school;
- a volunteer of the school or an organization working with the school on a project or program who is not a student at the school;
- an elected or appointed official of the school district; or
- a person employed by an entity that contracts with the school or school district to provide services.

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- a student teacher;
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- a student teacher;
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- a student teacher;
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- a student teacher;
- an employee of the school; and
- a person employed by an entity that contracts with the school or school district to provide services.

Yes, a person commits the crime of sexual contact with a student if he or she has sexual contact with a student of a school and is:

- a teacher;
- a student teacher;
- an employee of the school; and
- a person employed by an entity that contracts with the school or school district to provide services.
**Nebraska**

16 years old. Any person who subjects another person to sexual penetration when the actor is 16 years of age or older and the victim is at least 12 but less than 16 years of age is guilty of sexual assault in the first degree. Neb. Rev. Stat. § 28-319(1)(e).

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 "first degree sexual assault." In re Gabriel P., 20 Neb. App. 432, 438-39, 954 N.W.2d 505, 511 (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."


Yes. A person is deemed incapable of consent if he or she is "mentally incapacitated without his or her knowledge to make a choice as to whether or not to engage in sexual conduct and the actor knows or has reason to know that the victim has such a disability." Neb. Rev. Stat. Ann. § 28-319(1)(c). Additionally, opposition of the alleged victim, and knowledge of the abnormality on the part of the alleged attacker. "Id."


Yes. A person is deemed incapable of consent if he or she is "mentally incapacitated without his or her knowledge to make a choice as to whether or not to engage in sexual conduct and the actor knows or has reason to know that the victim has such a disability." N.H. Rev. Stat. Ann. § 632-A:2(II)(c).


Yes. Although not expressly mentioned in the statute, evidence of the engaging in sexual penetration with a victim that is 13 years of age or older and under 18 years of age is guilty of sexual assault in the first degree. N.H. Rev. Stat. Ann. § 632-A:2(II).


Yes. A person is deemed incapable of consent if he or she is "mentally incapacitated without his or her knowledge to make a choice as to whether or not to engage in sexual conduct and the actor knows or has reason to know that the victim has such a disability." N.H. Rev. Stat. Ann. § 632-A:2(II)(c).


Yes. A person is deemed incapable of consent if he or she is "mentally incapacitated without his or her knowledge to make a choice as to whether or not to engage in sexual conduct and the actor knows or has reason to know that the victim has such a disability." N.H. Rev. Stat. Ann. § 632-A:2(II).
New Jersey


Yes, it is aggravated sexual assault to commit an act of sexual penetration with a person that the actor knows 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 victim 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(7).

Consent is ineffective if:
1. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or
2. It is given by a person 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.

15 years old and the actor is:
1. Who is less than 13 years old, or if the victim is 13, 14, or 15 years old and the actor is:
   * related to the victim by blood or affinity to the third degree,
   * has supervisory or disciplinary power over the victim by virtue of the actor’s legal, professional, or occupational status,
   * is a resource family parent, guardian, or stands in loco parentis within the household.
It is sexual assault to commit an act of sexual penetration with a person that is on parole or probation, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor’s legal, professional, or occupational status.

An actor is guilty of aggravated sexual assault if he or she engages in sexual behavior with a child who is less than 13 years old, or if the victim is 13, 14, or 15 years old and the actor is:
1. Related to the victim by blood or affinity to the third degree; or
2. Has supervisory or disciplinary power over the victim by virtue of the actor’s legal, professional, or occupational status,
3. Is a resource family parent, guardian, or stands in loco parentis within the household.


It is a crime if sexual penetration is perpetrated on an inmate confined in a correctional facility or jail while the perpetrator is related by blood or affinity to the third degree; or

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

New Mexico

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

Yes, engaging in a sexual act when the perpetrator knows or has reason to know that the victim is unconscious or otherwise unable to consent 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 unable to consent 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 §30-9-1(1).

It is a crime if sexual penetration is perpetrated on an inmate confined in a correctional facility or jail while the perpetrator is in a position of authority over the inmate. New Mexico Statutes §30-9-1(1)(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, and who is at least 18 years of age and is at least four years older than the child and the spouse of that child, learns while performing services in or
Yes, a mentally disabled person or mentally incapacitated person is incapable of giving consent. New York Penal Law §130.00(5). A person is incapable of giving consent if he or she is:

1. Mentally disabled, meaning 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(5).

2. Mentally incapacitated, meaning 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(5).

Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.00(5). The law does not presume that a person with mental retardation is unable to consent to sexual intercourse and proof of incapacity must come from facts other than mental retardation alone. People v. Curran, 86 N.Y.2d 81, 86, 653 N.E. 2d 1162, 1165 (1995).

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(5). 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, 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.

16 years old. North Carolina General Statutes Annotated §130.51.

Yes, it is a crime to engage in sexual activity with a physically helpless person, which includes a person who is unconscious, when the person performing the act knows or should have reasonably known the other person was physically helpless. North Carolina General Statutes Annotated §130.51.

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 mentally incapacitated person 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 mentally incapacitated person 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, 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, "Incapacitated" 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 another drug or psychoactive substance capable of impairing a person's physical or mental faculties. North Carolina General Statutes Annotated §14-27.33A.

Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.00(5). The law does not presume that a person with mental retardation is unable to consent to sexual intercourse and proof of incapacity must come from facts other than mental retardation alone. People v. Curran, 86 N.Y.2d 81, 86, 653 N.E. 2d 1162, 1165 (1995).

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

1. Has an intellectual disability or is mentally incapacitated in the course of that 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 another drug or psychoactive substance capable of impairing a person's physical or mental faculties. North Carolina General Statutes Annotated §14-27.33A.

2. Has an intellectual disability or is mentally incapacitated in the course of that 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 another drug or psychoactive substance capable of impairing a person's physical or mental faculties. North Carolina General Statutes Annotated §14-27.33A.

3. Has an intellectual disability or is mentally incapacitated in the course of that 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 another drug or psychoactive substance capable of impairing a person's physical or mental faculties. North Carolina General Statutes Annotated §14-27.33A.

for a school that the child is a student in a school. New Mexico Statutes §8-9-11(G)(2).

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 §8-9-11(G)(6) (defining "the old law") to cover sexual penetration perpetrated by a psychotherapist on a patient(s). §8-9-11.
State v. Klein, 200
North Dakota

the victim's age if:

Ohio imposes strict liability with respect to the victim's age if:

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 knew or had reasonable cause to believe that the victim is unaware that the sexual act or sexual contact is being committed upon him or her.

N.D. Century Code Chapter 12.1-20-03(1)(e) & (26c).

Yes. 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 gross sexual imposition if that person knows or has reasonable cause to believe that the victim is unaware that the sexual act or sexual contact is being committed upon him or her.

N.D. Century Code Chapter 12.1-20-03(1)(e).

Yes. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of sexual assault if that person knows or has reasonable cause to believe that the other person suffers from a mental or physical defect or defect which renders that person incapable of understanding the nature of his or her conduct.

N.D. Century Code Chapter 12.1-20-07(1)(b).

Yes, if the intoxication is involuntary.

A person who engages in a sexual act with another person, 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 sexual act or sexual contact is being committed upon him or her.

N.D. Century Code Chapter 12.1-20-03(1)(e) & (26c).

Yes. A person who engages in a sexual act with another person, 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 sexual act or sexual contact is being committed upon him or her.

N.D. Century Code Chapter 12.1-20-03(1)(e).

Yes. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of sexual assault if that person or someone with that person's knowledge has substantially impaired the victim's power to apprise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-05-1, or means or for the purpose of preventing resistance.

§ 12.1-20-07(1)(c).

Yes.

A person who engages in a sexual act with another person, 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 sexual act or sexual contact is being committed upon him or her.

N.D. Century Code Chapter 12.1-20-03(1)(e).

Yes.

A person who engages in a sexual act with another person, 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 sexual act or sexual contact is being committed upon him or her.

N.D. Century Code Chapter 12.1-20-03(1)(e).

Yes.

A person who engages in a sexual act with another person, 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 sexual act or sexual contact is being committed upon him or her.

N.D. Century Code Chapter 12.1-20-03(1)(e).

Ohio's definition of sexual battery, sexual imposition and gross sexual imposition do not include sexual conduct between married couples.

Ohio Rev. Code Ann. §§ 2907.02(A); 2907.06(A) & 2907.05(A).

Ohio's definition of rape does not include sexual conduct between married couples, unless the spouses are "living apart and separated." Ohio Rev. Code Ann. § 2907.02(A)(1).

Ohio also includes, in a position of authority:

It is a crime (sexual battery) to engage in sexual conduct with another (who is not a spouse) if:

• the offender is the other person’s natural or adoptive parent, stepparent, guardian, or custodian, or person in loco parentis of the other person;

• the other person is in custody of a law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person;

• the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school in which the state board of education prescribes minimum standards pursuant to provision (D) of section 3317.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school;

• the other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution;

• the other person is a minor, and the offender is the other person’s athletic or other coach at the time of the sexual conduct or is the person in loco parentis of the other person, or is a person with temporary or occasional disciplinary control over the other person;

• the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender is not enrolled in or attends that school, and the offender is not enrolled in and does not attend that school;

• the offender is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school in which the state board of education prescribes minimum standards pursuant to provision (D) of section 3317.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school;

• the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution;

• the offender is a minor, and the offender is the other person’s athletic or other coach at the time of the sexual conduct or is the person in loco parentis of the other person, or is a person with temporary or occasional disciplinary control over the other person;

• the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender is not enrolled in or attends that institution;

• the offender is a minor, and the offender is the other person’s athletic or other coach at the time of the sexual conduct or is the person in loco parentis of the other person, or is a person with temporary or occasional disciplinary control over the other person;

• the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender is not enrolled in or attends that institution;

• the offender is a minor, and the offender is the other person’s athletic or other coach at the time of the sexual conduct or is the person in loco parentis of the other person, or is a person with temporary or occasional disciplinary control over the other person;

• the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender is not enrolled in or attends that institution;

• the offender is a minor, and the offender is the other person’s athletic or other coach at the time of the sexual conduct or is the person in loco parentis of the other person, or is a person with temporary or occasional disciplinary control over the other person;

• the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender is not enrolled in or attends that institution;

• the offender is a minor, and the offender is the other person’s athletic or other coach at the time of the sexual conduct or is the person in loco parentis of the other person, or is a person with temporary or occasional disciplinary control over the other person;

• the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender is not enrolled in or attends that institution;
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 sex or the opposite sex as the perpetrator and who, at the time of the act, is under the age of 13 if the person is aware that the act is being committed.

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 sex or the opposite sex as the perpetrator and who, at the time of the act, is under the age of 13 if the person is aware that the act is being committed.

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 sex or the opposite sex as the perpetrator.

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 sex or the opposite sex as the perpetrator.

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physical helplessness or incapability of appraising the nature of the victim's conduct. Or Rev. Stat. § 163-405. 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 by reason of being mentally incapacitated, physically helpless or incapable of appraising the nature of the victim's conduct. Or Rev. Stat. § 163-427. 

Pennsylvania

Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent. 18 Pa.C.S.A. § 3121(a)(5).

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)(5). 

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. § 3121(a)(5). 

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)(5). 

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. § 3121(a)(5).

It is sexual abuse in the first degree when that person subjects another person to sexual contact and the victim is incapable by reason of being mentally incapacitated, physically helpless or incapable of appraising the nature of the victim's conduct. Or Rev. Stat. §163-427. 

16 years old. 18 Pa.C.S.A. § 3122. 

Mistake of Age 

Defense — It is no defense that the defendant did not know the age of the child unless the defendant was not reasonably believed to be the age of 14 years or older whenever circumstances of conduct depend on the child being below the age of 14 years. However, when circumstances depend on the child's being below a critical age, 14 years or older, 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 the offense of rape of a child when that 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 engages in deviate sexual intercourse with a complainant who is less than 13 years of age. 18 Pa.C.S.A. § 3121(b).

It is aggravated indecent assault of a child in the second degree if the complainant is less than 13 years of age or the complainant is less than 16 years of age and the person is four or more years older than the complainant and the person and the person are not married to each other. 18 Pa.C.S.A. § 3125(a)(1), (a)(2), (c).

It is aggravated indecent assault of a
No.

Puerto Rico

16 years old. Puerto Rico Stat. tit. 33 § 4770(a).

Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a second degree felony if the complainant is under 16 and the person is four or more years older than the complainant and the complainant and person are not married to one another.

16 years old. Puerto Rico Stat. tit. 33 § 4770(b).

Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if the person is physically unable to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance, or if the complainant suffers from a mental disability which renders him or her incapable of consent.

Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if the victim is mentally incapacitated, mentally disabled, or physically helpless.

Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if the victim is mentally disabled, or physically helpless.

Rhode Island


Yes. A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person, and if the accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.

Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a second degree felony if the person is physically unable to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance, or if the complainant suffers from a mental disability which renders him or her incapable of consent.

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South Carolina
16 years old. S.C. Code Ann. § 16-3-655. Yes. A person is guilty of criminal sexual conduct if the actor engages in sexual battery with the victim and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. S.C. Code Ann. § 16-3-654(1)(b).

“Mentally defective” means that a “person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct.”

“Mentally incapacitated” means that a “person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause.”

“Physically helpless” means that a “person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.”

S.C. Code Ann. § 16-3-651(e)(g).

Yes. A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and the actor causes the victim, without the victim’s consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a intoxicating substance, or any intoxicating substance. S.C. Code Ann. § 16-3-652(1)(c).

Yes. A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and the actor causes the victim, without the victim’s consent, to become mentally incapacitated or physically helpless, which includes unconsciousness. S.C. Code Ann. § 16-3-654(1)(b).

South Dakota
16 years old. S.D. Code §§ 22-22-7. 22-22-7.3. Yes, the definition of mentally incapacitated encompasses the situation where a person is rendered temporarily incapable of appraising 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, or due to any other act committed upon that person without the person’s consent. Tenn. Code Ann. § 39-13-501(5).

“Mentally incapacitated” means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of the person’s conduct. Tenn. Code Ann. § 39-13-501(3).

South Dakota does not specifically reference consciousness; however, it is reasonable to infer that consent or the lack thereof is an important factor in the definition of incapacitated. S.D. Code § 22-22-7.2. Yes, a person can be deemed incapable of consenting to sexual contact because of mental or physical incapacity. S.D. Code § 22-22-7.2.

Yes, the definition of mentally incapacitated encompasses the situation where a person is rendered temporarily incapable of appraising 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, or due to any other act committed upon that person without the person’s consent. Tenn. Code Ann. § 39-13-501(5).


Yes. A person employed at any jail or juvenile correctional facility who knowingly engages in an act of sexual contact or sexual penetration with a person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a felony. S.D. Code § 22-22-28-A.

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

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

A person employed at any jail or juvenile correctional facility who knowingly engages in an act of sexual contact or sexual penetration with a person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a felony. S.D. Code § 22-22-28-A.

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

Tennessee
16 years old. Tenn. Code Ann. § 39-13-528. Yes. See § 39-13-528 (A). (1) “Physically helpless” means that a “person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.”


Sexual battery by an authority figure is unlawful sexual contact with a student enrolled in a secondary school in an official capacity. Tenn. Code Ann. §39-13-529.

“Mentally incapacitated” means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of the person’s conduct. Tenn. Code Ann. § 39-13-501(3).

Sexual battery by an authority figure is unlawful sexual contact with a student enrolled in a secondary school in an official capacity. Tenn. Code Ann. §39-13-529.

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<table>
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<tr>
<th>State</th>
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<tr>
<td>Texas</td>
<td>Code Ann. §22.011(a) &amp; (c)</td>
<td>Yes, a sexual assault is considered to occur without the consent of the other person where the actor knows that a resident or employee of a facility where the other person is a resident or employee has intentionally impeded the other person's ability to communicate or control the other person's conduct by administering any substance to the other person.</td>
<td>Yes, a sexual assault is considered to occur without the consent of the other person where the actor knows or reasonably should have known that the victim was unaware that the act is occurring or is physically unable to resist.</td>
<td>Texas Code Ann. §§22.011(b)(3) &amp; (5).</td>
<td>Yes, a sexual assault is considered to occur without the consent of the other person where the actor knew or reasonably should have known that the victim was unaware that the act is occurring or is physically unable to resist.</td>
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<tr>
<td>Vermont</td>
<td>Code Ann. §76-5-406</td>
<td>Yes, a sexual offense is considered to occur without consent of the victim if the actor knew or reasonably should have known that the victim was unaware that the act is occurring or is physically unable to resist.</td>
<td>Yes, a sexual offense is considered to occur without consent of the victim if the actor intentionally impeded the other person's ability to communicate or control the other person's conduct by administering any substance to the other person.</td>
<td>Vermont Code Ann. §76-5-406(2)(c).</td>
<td>Yes, a sexual offense is considered to occur without consent of the victim if the actor knew or reasonably should have known that the victim was unaware that the act is occurring or is physically unable to resist.</td>
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</tbody>
</table>

Note that in Tennessee, the spouse of the defendant can be a "victim" under the rape and sexual battery provisions of the code. Tenn. Code Ann. §39-13-505.
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.

Yes, an actor who engages in sexual contact with a person when the person has sexual intercourse or sodomy with a person with whom the person has reached a point where the victim is entrusted to the actor's care by authority of law or is in a position of power, authority, or welfare of minors, or guidance, leadership, and other sex crimes, is not guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1701.

Yes, an actor who engages in sexual contact with a person when the person has sexual intercourse or sodomy with a person with whom the person has reached a point where the victim is entrusted to the actor's care by authority of law or is in a position of power, authority, or welfare of minors, or guidance, leadership, and other sex crimes, is not guilty of sexual battery if the nature and degree of the victim's incapacitation is known to the actor, is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1700.

Anne, an actor who engages in sexual contact with a person when the person is under the influence of alcohol, drugs, or other intoxicating or anesthetic agent, or is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1700.

Yes, an actor who engages in sexual contact with a person when the person is under the influence of alcohol, drugs, or other intoxicating or anesthetic agent, or is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1700.

Yes, a person is guilty of sexual battery if he sexually commits the act of sexual intercourse or sodomy with a person when the person has sexual intercourse or sodomy with a person with whom the person has reached a point where the victim is entrusted to the actor's care by authority of law or is in a position of power, authority, or welfare of minors, or guidance, leadership, and other sex crimes, is not guilty of sexual battery if the nature and degree of the victim's incapacitation is known to the actor, is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1700.

Yes, a sexual assault occurs if a person engages in a sexual act with child who is under the age of 16 and is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild. Vermont Stat. Ann. §13-3252(d).

Yes, a person is guilty of sexual battery if he sexually commits the act of sexual intercourse or sodomy with a person when the person is under the influence of alcohol, drugs, or other intoxicating or anesthetic agent, or is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1700.

Yes, it is a crime to engage in sexual contact with a person who is under the influence of alcohol, drugs, or other intoxicating or anesthetic agent, or is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1700.

Yes, a person who engages in sexual contact with a person when the person is under the influence of alcohol, drugs, or other intoxicating or anesthetic agent, or is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1700.

Yes, an actor who engages in sexual contact with a person when the person is under the influence of alcohol, drugs, or other intoxicating or anesthetic agent, or is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1700.

Yes, a sexual assault occurs if a person engages in a sexual act with child who is under the age of 16 and is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild; or (2) the actor is at least 18 years old, resides in the victim's household and serves in a parental role with respect to the victim. Vermont Stat. Ann. §13-3252(e).

Yes, a sexual assault occurs if a person engages in a sexual act with a victim who is under the age of 18 and is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild; or (2) the actor is at least 18 years old, resides in the victim's household and serves in a parental role with respect to the victim. Vermont Stat. Ann. §13-3252(e).

Yes, a person is guilty of sexual battery if he sexually commits the act of sexual intercourse or sodomy with a person when the person is under the influence of alcohol, drugs, or other intoxicating or anesthetic agent, or is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1700.

Yes, a person is guilty of sexual contact with a person when the person is under the influence of alcohol, drugs, or other intoxicating or anesthetic agent, or is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1700.
Washington

Yes, an actor is guilty of rape in the second degree if they have sexual intercourse with a person who is incapable of consent by reason of being mentally incapacitated. Wash. Rev. Code Ann. § 9A.44.050.

A person who is unable to understand the nature or consequences of sexual intercourse is "mentally incapacitated" when the actor (i) has supervision authority over the victim or (ii) is providing transportation within the course of his or her employment, to the victim at the time of the offense; Wash. Rev. Code Ann. § 9A.44.030.

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) is providing transportation, within the course of his or her employment, to the victim at the time of the offense; Wash. Rev. Code Ann. § 9A.44.030.

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 incapable of consent by reason of being physically incapacitated. Wash. Rev. Code Ann. §§ 9A.44.050(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.44.050.

Yes, a person that is under the influence of a substance "which materially affects the victim's judgment causing the victim to be physically helpless" is "mentally incapacitated". Wash. Rev. Code Ann. § 9A.44.010(7).

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 have sexual intercourse with a person. Special relationships include:

- (a) a person in a significant relationship with the victim and actor that would impact the victim’s ability to consent;
- (b) a staff employee;
- (c) a foster parent;
- (d) a person who undertakes the responsibility, professionally or voluntarily, to provide education, health care, or any of the services provided within the course of the victim's employment;
- (e) a person in a significant relationship with the victim and/or adult;
- (f) a person providing transportation services within the course of his or her business;
- (g) a person with supervision authority over a person detained or arrested by a law enforcement officer, probationer, parolee, or local government entity when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact by a corrections or parole officer.

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 intrusion. W. Va. Code Ann. §§ 61-8B-1(3) & (4), 61-8B-2(2).

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.


"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. W. Va. Code Ann. §§ 61-8B-1, 61-8B-2(2).

Yes, a person who is deemed incapable of consent when such person is subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact by a corrections or parole officer. W. Va. Code Ann. §§ 61-8B-2, 61-8B-10.

unit as defined in § 16.1-235, a local community-based probation services agency, or a pretrial services agency who is in a position of authority over a person detained or arrested by a law enforcement officer, inmate, probationer, parolee, juvenile detainee, or pretrial defendant or pretrial offender carnally knows, without the use of force, threat, or intimidation, (i) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail or (ii) a person detained or arrested by a law enforcement officer, inmate, probationer, parolee, juvenile detainee, or pretrial defendant or pretrial offender in the custody of a private, local, or state law enforcement agency or under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home as defined in § 16.1-228, a state or local court services unit as defined in § 16.1-235, a local community-based probation services agency, a pretrial services agency, a local correctional or regional jail for the purposes of imprisonment, a work program, or any other parole/probation or pretrial services program or agency and the accused knew that the person was detained, arrested, in custody or under the jurisdiction of a correctional facility, jail, Department of Corrections, Department of Juvenile Justice, secure facility, detention home, court services unit, or community-based probation services agency or pretrial services agency, the accused shall be guilty of a felony. VA Code Ann. §18-2-64.2.
**Wisconsin**


Yes, a person suffering from a "mental illness or defect" is presumed incapable of giving consent. Wis. Stat. Ann. § 940.225(4).

"Mental illness or defect" is not defined in the statute, but has a "meaning within the common understanding of the jury" under Wisconsin case law. State v. Perkins, 689 N.W.2d 684, 277 Wis.2d 243 (Wis. Ct. App. 2004).


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).

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:
- (a) a therapist-patient relationship;
- (b) an employer of an adult family home, community-based residential facility, an in-patient health care facility, or a state treatment facility who has sexual contact or sexual intercourse with a patient or resident of the facility;
- (c) an employee of certain "entities" as defined in 48.855(1)(b) and 50.065(1)(c) who has sexual contact or sexual intercourse with a client at the entity. Entity is defined under section 48.855(1)(b) to include a child welfare agency: foster home, interim caregiver, successor guardian; group home: shelter care facility; temporary employment agency; organization that facilitates delegations of the care and custody of children. Entity is defined under section 50.065(1) to include a facility, organization or service that provides direct care or treatment services to clients or an agency that employs or contracts with an individual to provide personal care services, including a hospital, home health agency, temporary employment agency that provides caregivers to another entity, and the board on aging and long-term care.
- (d) a correctional staff member who has sexual contact or sexual intercourse with an individual who is confined in a correctional institution (unless the person was sexually assaulted by the inmate);
- (e) a probation, parole, or extended supervision agent who has sexual intercourse or sexual contact with the individual on parole, probation, or extended supervision who is supervised by him or her or a subordinate; and
- (f) a law enforcement officer and has sexual contact or sexual intercourse with any person who is detained by any law enforcement officer or is in the custody of any law enforcement officer. Wis. Stat. Ann. §§ 940.22; 90.225; 940.295.

A person commits a sexual assault in the second degree if:
1. the actor inflicts sexual intrusion on a victim and the actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit;
2. the actor inflicts sexual intrusion on a victim and the actor is an employee, independent contractor or volunteer of a state, county, city or town, or privately operated adult or juvenile correctional system, including but not limited to jails, penal institutions, detention centers, juvenile residential or rehabilitative facilities, adult community correctional facilities or secure treatment facilities and the victim is known or should be known by the actor to be a resident of such facility or under supervision of the correctional system;
3. the actor inflicts sexual intrusion on a victim and the actor is an employee or volunteer of an elementary or secondary public or private school who, by virtue of the actor’s employment or volunteer relationship with the school, has interaction with the victim who is a student or participant in the activities of the school and is more than four (4) years older than the victim;
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.


Depending on the age difference between the victim and actor, an actor in a position of authority over a victim may be guilty of sexual abuse of a minor in varying degrees:


An actor commits the crime of sexual abuse of a minor in the first degree if:
- Being 18 years of age or older, the actor commits sexual abuse of a minor who is less than 12 years of age, and the actor is the victim’s legal guardian or an ancestor or descendant of a brother or sister of the victim.

No other information is provided in the document for this section.
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.