### Consent Laws

**Defining Consent**

<table>
<thead>
<tr>
<th>State</th>
<th>How is Consent Defined?</th>
<th>Does the definition require 'freely given consent' or 'affirmative consent'?</th>
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<tr>
<td><strong>Alabama</strong></td>
<td>Consent has been interpreted to mean &quot;acquiescence or compliance [with the proposition of another].&quot; Ex parte Gordon, 708 So. 2d 1106, 1163 (Ala. 1997).</td>
<td>No. Alabama Code § 13A-6-70(b).</td>
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<td>Lack of consent results from:&lt;br&gt;1. forcible compulsion; or&lt;br&gt;2. being incapable of consent. Ala. Code § 13A-6-70(b).</td>
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<td>In addition, &quot;Consent to engage in sexual intercourse, sodomy, sexual acts, or sexual contact may be communicated by words or actions. The existence of a current or previous marital, dating, social, or sexual relationship with the defendant is not sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device or sexually transmitted disease protection, without additional evidence of consent, is not sufficient to constitute consent.&quot; 1. Ala. Code § 13A-6-70(d).</td>
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<td>'Forcible compulsion' means or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Factors to be considered in determining an implied threat include the respective ages and sizes of the victim and the accused, the respective mental and physical conditions of the victim and the accused, the atmosphere and physical setting in which the incident was alleged to have taken place, the extent to which the accused may have been in a position of authority, domination, or custodial control over the victim, or whether the victim was under drugs. Forcible compulsion does not require proof of resistance by the victim. Ala. Code § 13A-6-601(1).</td>
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<td>Existence of forcible compulsion is conclusive presumptive evidence of lack of consent, but lack of consent can also exist without forcible compulsion. Ex parte Gordon, 706 So. 2d 1106, 1163 (Ala. 1997).</td>
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<td><strong>Alaska</strong></td>
<td>&quot;Without consent&quot; means that a person:&lt;br&gt;1. with or without resisting, is coerced by the use of force against a person or property; or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or&lt;br&gt;2. is incapacitated as a result of an act of the defendant. Alaska Stat. § 11.41.470(10).</td>
<td>No. Alaska Stat. § 11.41.470.</td>
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<td>The phrase &quot;without consent&quot; in statute refers to a particular type of unwanted sexual activity: unwanted sexual activity that is coerced by force or the threat of force. In re Ex parte Gordon, 440 P.3d 345, 349 (Alaska Ct. App. 2019).</td>
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<td><strong>Arizona</strong></td>
<td>&quot;Without consent&quot; includes any of the following:&lt;br&gt;1. the victim is coerced by the immediate use or threatened use of force against a person or property; or&lt;br&gt;2. the victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant (see definition of &quot;mental defect&quot; below); or&lt;br&gt;3. the victim is intentionally deceived as to the nature of the act; or&lt;br&gt;4. the victim is intentionally deceived to erroneously believe that the person is the victim’s spouse.</td>
<td>No.</td>
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<td>Arizona Revised Statute § 13-1401(A)(7).</td>
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<td><strong>Arkansas</strong></td>
<td>There is a lack of consent if a person engages in a sexual act with another person by forcible compulsion or with a person who is incapable of consent because he or she is physically helpless, mentally defective or mentally incapacitated, or because of a victim's age. Arkansas Code §§ 5-14-101; 5-14-125.</td>
<td>No.</td>
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<td>• ‘‘Forcible compulsion’’ means physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person. Arkansas Code § 5-14-101(3).</td>
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<td>• ‘‘Mentally defective’’ means that a person suffers from a mental disease or defect that renders the person:&lt;br&gt;• unable to understand the nature and consequences of a sexual act; or&lt;br&gt;• unaware a sexual act is occurring.&lt;br&gt;Note: a determination that a person is mentally defective shall not be based solely on the person’s IQ. Arkansas Code § 5-14-101(5).</td>
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<td>• ‘‘Mentally incapacitated’’ means that a person is temporarily incapable of appreciating or controlling the person’s conduct as a result of the influence of a controlled or intoxicating substance:&lt;br&gt;• administered to the person without the person’s consent; or&lt;br&gt;• that results the person unaware a sexual act is occurring. Arkansas Code § 5-14-101(6).</td>
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<td>• ‘‘Physically helpless’’ means that a person is:&lt;br&gt;• unconscious;&lt;br&gt;• physically unable to communicate a lack of consent; or&lt;br&gt;• rendered unaware that a sexual act is occurring. Arkansas Code § 5-14-101(8).</td>
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<td>• A nursing home patient was unable to communicate lack of consent and, thus, was “physically helpless” within a meaning of statute for attempted rape purposes; victim was blind, unable to speak, and confined to bed or wheelchair, and victim could only point, raise her hand, and shake her head from side to side to communicate. Dobbs v. State, 1996, 590 S.W.2d 360, 326 Ark. 362.</td>
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<td>• Note: When criminality of conduct depends on a victim’s being incapable of consent because he or she is mentally defective or mentally incapacitated, it is an affirmative defense that the actor reasonably believed that the victim was capable of consent. Arkansas Code § 5-14-102(e).</td>
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<td>The existence of forcible compulsion in a rape case does not depend on the quantum of force that is applied but rather on whether the act is consummated against the victim’s will. Hillman v. State, 509 S.W.3d 372 (Arkansas 2019).</td>
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<td><strong>California</strong></td>
<td>&quot;Consent&quot; is defined to mean positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. California Penal Code § 261.6.</td>
<td>Yes. California Penal Code § 261.6.</td>
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<td><strong>Colorado</strong></td>
<td>&quot;Consent&quot; means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship is not sufficient to constitute consent. Submission under the influence of fear does not constitute consent. Colorado Revised Statutes Annotated § 18-3-401(15).</td>
<td>No.</td>
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<td><strong>Connecticut</strong></td>
<td>Lack of consent to sexual activity exists when:&lt;br&gt;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);&lt;br&gt;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&lt;br&gt;3. the person is physically helpless. Connecticut General Statutes Annotated §§ 53a-65(3a-10; 53a-71; 53a-72a; 53a-73a).</td>
<td>No.</td>
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<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(5).</td>
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<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 or controlling such person’s conduct. Connecticut General Statutes Annotated § 53a-65(4).</td>
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<td>• ‘‘Physically helpless’’ means that a person is unconscious or for any other reason is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact. Connecticut General Statutes Annotated § 53a-65(6).</td>
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**Delaware**

Without consent means any of the following:

- The defendant compelled the victim to submit by an act of coercion or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. The victim need resist only to the extent that it is reasonably necessary to make the victim’s refusal to consent known to the defendant, unless such resistance would be futile or foolishly.
- The defendant knew the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed.
- The defendant knew the victim suffered from a cognitive disability, mental illness or mental defect which rendered the person incapable of appraising the nature of the sexual act or incapable of consenting.
- Where the defendant is a health professional, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed during the guise of providing professional counseling, treatment or counseling and where at the time of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested.
- The defendant had substantially impaired the victim’s power to appraise or control the victim’s own conduct by administering or employing without the other person’s knowledge or against the other person’s will, drugs, intoxicants or other means for the purpose of preventing resistance.

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, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists.

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

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

11 Delaware Code § 761.

**District of Columbia**

Consent means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent. D.C. Code § 22-3001(4).

“Force” means the use or threatened use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or incapacitate a person, or the use of a threat of harm sufficient to coerce or compel submission by the victim. D.C. Code § 22-3001(13).

**Florida**

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

**Georgia**

The State of Georgia does not define consent in reference to sexual activity.

The offense of rape occurs when it is against “a female forcibly and against her will.” Georgia Code § 16-6-1.


**Guam**

Consent means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the victim or that the victim failed to resist a particular sexual act. 9 G.C.A. § 25.10(a)(2).

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

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

**Hawaii**

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

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

“Compulsion” means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss. HRS § 707-700.

“Mentally defective” means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person’s conduct. HRS § 707-700.

“Mentally incapacitated” means a person rendered temporarily incapacitated of appraising or controlling the person’s conduct as a result of the influence of a substance administered to the person without the person’s consent. HRS § 707-700.

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

See also:

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

Evidence that victim rebuffed offender’s sexual advances by repeatedly telling offender to stop, attempting to pull way, and telling offender that she did not want to be touched was sufficient to establish absence of consent. State v. Jackson, 81 Haw. 39, 46, 912 P.2d 71, 78 (1996).

**Idaho**

Consent is not specifically defined.

However, Idaho law defines rape as “the penetration, however slight, of the oral, anal or vaginal opening with a penis” accomplished under any one of the following circumstances:

- the victim is under the age of sixteen and the perpetrator is eighteen years of age or older, and the victim is not lawfully married to the perpetrator;
- the victim is sixteen or seventeen years of age and the perpetrator is three years or more older than the victim, and the victim is not lawfully married to the perpetrator;
- 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;
- the victim resists but the resistance is overcome by force or violence;
- the victim is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of an authority that is not unlawful in the perpetrator; or
- the victim is incapacitated by the defendant with the belief that the victim is unconscious or asleep, or was not aware, knowing, perceiving, or cognizing that the act occurred.

- the victim submits under the belief that the victim committing the act is the victim’s spouse or someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused with intent to induce such belief;
- the victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to some person in the future, cause damage to property, engage in other conduct constituting a crime, or cause criminal charges to be instituted against the victim, or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.

Idaho Statutes § 18-6101.
"Consent" means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused or the victim constitutes consent. The manner of dress of the victim at the time of the offense shall not constitute consent. 720 ILCS 5/11-0.1. A person who initially consents to sexual penetration or sexual conduct is not deemed incapable of giving consent or to any sexual penetration or sexual conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct. 720 ILCS 5/11-1.70.

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

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

No.

"The "force" required to sustain a rape conviction in this state does not require that a rape victim resist to the point that the intercourse continues by force or fear. A person may be convicted of rape if intercourse begins consensually but consent is withdrawn after penetration. 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 proposed act."

No.

"Lack of consent results from:

- (1) forcible compulsion;
- (2) incapacity to consent; or
- (3) if the offense charged is sexual abuse, any circumstance 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 year 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) 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.

No.

"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 663, 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. § 709.5.

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- (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) 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.

No.

"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 § 510.00.

"Individual with an intellectual disability" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifesting 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 or her consent. KRS § 510.010.

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

- (1) when the victim resists the act to the utmost, but whose resistance is overcome by force;
- (2) when the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution;
- (3) when the victim is prevented from resisting the act because the offender is armed with a dangerous weapon;
- (4) when the victim is under the age of 13;
- (5) when two or more offenders participated in the act;
- (6) when the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity, such 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 where 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 abnormality 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 unsoundness of mind, is temporarily or permanently incapable of understanding the nature of the act and the offender knew or should have known of the victim’s incapacity;
- (11) 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, LSA-R.S. 14:42.1, LSA-R.S. 14:43, LSA-R.S. 14:43.1.

Further, a person is deemed incapable of consent when the person is under arrest or otherwise in the actual custody of a police officer or other law enforcement official and the offender is a police officer or other law enforcement official who either: (1) arrested the person or was responsible for maintaining the person in actual custody; (2) knows or reasonably should know that the person is under arrest or otherwise in actual custody. LSA-R.S. 14:41.
A person is also guilty of a sex crime if the actor intentionally subjects another person to any "sexual contact" and
(1) the other person has not expressly or impliedly acquiesced in the sexual contact and the actor is criminally
negligent with regard to whether the other person has acquiesced (Class D crime);
(2) the other person has not expressly or impliedly acquitted 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 less than 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, 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 actor has
supervisory or disciplinary authority over the other person (Class D crime);
(13) the other person, not the actor’s spouse, is under official supervision as a probationer, 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 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 instructional, supervisory or disciplinary authority over the student at any time during the
12 months prior to the sexual contact (Class D crime);
(15) the other person, not the actor’s spouse, is a student enrolled in a private or public elementary,
secondary or special education school, facility or institution and the actor is a teacher, employee or other
official having instructional, supervisory or disciplinary authority over the student and the sexual contact
includes penetration or the actor was a substitute teacher who had instructional, supervisory or disciplinary
authority over the student at any time during the 12 months prior to the sexual contact 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 other person
(Class C crime);
(17) the other person is in fact less than 14 and the actor is a parent, stepparent, foster parent, guardian or other
similar person responsible for the long-term general care and welfare of that other person
(Class C crime);
(18) the other person submits as a result of compulsion (Class C crime);
(19) the other person submits as a result of compulsion and the sexual contact includes penetration (Class
B crime);
(20) the actor owns, operates or is an employee of an organization, program or residence that is operated,
administered, licensed or funded by the Department of Health and Human Services and the other person,
not the actor’s spouse, receives services from the organization, program or residence and suffers from a mental
disability that is reasonably apparent or known to the actor (Class D crime);
(21) the actor owns, operates or is an employee of an organization, program or residence that is operated,
administered, licensed or funded by the Department of Health and Human Services and the other person,
not the actor’s spouse, receives services from the organization, program or residence and suffers from a mental
disability that is reasonably apparent or known to the actor and the sexual contact includes penetration (Class
C crime);
(22) the actor, owns, operates or is an employee of an organization, program or residence that is operated,
administered, licensed or funded by the Department of Health and Human Services and the other person,
not the actor’s spouse, receives services from the organization, program or residence and suffers from a mental
disability that is reasonably apparent or known to the actor and the sexual contact includes penetration (Class
C crime);
(23) the actor, owns, operates or is an employee of an organization, program or residence that is operated,
administered, licensed or funded by the Department of Health and Human Services and the other person,
not the actor’s spouse, receives services from the organization, program or residence and suffers from a mental
disability that is reasonably apparent or known to the actor and the sexual contact includes penetration (Class
C crime);
(24) the other person, not the actor’s spouse, is in fact less than 18 years of age and is a student enrolled in
a private or public elementary, secondary or special education school, facility or institution and the actor,
who is at least 21 years of age, is a teacher, employee or other official in the school district, school union,
educational unit, school, facility or institution in which the student is enrolled (Class C crime);
(25) the other person, not the actor’s spouse, is in fact less than 12 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 D crime);
(26) the actor is 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 D
crime);
(27) the actor is 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 D
crime);
(28) the actor is employed to provide care to a dependent person, who is not the actor’s spouse or domestic
partner and who is unable to perform self-care because of advanced age or physical or mental disability,
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 disability,
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);  
(1) the other person, not the actor’s spouse, is in fact less than 14 years of age and the actor is at least 5 years older (Class D crime);  
(4) the other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appreciating the nature of the act involved or of understanding that the other person has the right to consent or withdraw consent (Class D crime);  
(6) the other person, not the actor’s spouse, is under official supervision as a prostitute; a parolee, a 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);  
(8) 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 in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class E crime);  
(10) 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);  
(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 D 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 D crime);  
(15) the actor uses a position of trust, authority, control or custody to gain the victim’s trust or to cause the victim to submit by force and against his or her will, or compels such person to submit by threat of bodily resistance or an explanation of why the will to resist was overcome by force or fear of harm;  
(16) the actor exercises control over the victim, not the actor’s spouse, in the provision of health care services (Class D crime);  
(17) 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);  
(19) the victim is under the age of 14 years at the time of the act, with the exception of a sexual act where the actor is the victim’s 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);  
(20) the actor assaults a dependent person, with the consent of the person with whom the actor is employed, who is under the age of 18 years;  
(21) the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or  
(22) the actor assaults a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or  
(23) the actor assaults a person who is under the age of 14 years and the person performing the act is at least 4 years older than the victim; or  
(24) the actor assaults a person who is under the age of 14 years and the person performing the act is at least 15 years older (Class D crime);  
(25) the actor assaults a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or  
(26) the actor assaults a person who is under the age of 14 years and the person performing the act is at least 15 years older than the victim; or  
(27) the actor assaults a person who is under the age of 14 years and the person performing the sexual act is at least 21 years old (MD Code, Criminal Law, § 3-301).  

**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; or  
(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, § 3-101; § 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:  
(i) appraising the nature of the individual's conduct; or  
(ii) 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  
(i) 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) resisting 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, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or  
(2) if the victim is under the age of 14 years, and the person performing the sexual act 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 of harm. State v. State, 218 Md. App. 410, 428, 98 A.2d 281, 291 (2014).  
It is well settled that the terms "against the will" and "without the consent" are synonymous in the law of rape. State v. Rusk, 287 Md. 639, 644, 444 A.2d 1256, 1270 (1982).  
Given the fact that consent must precede penetration, it follows in our view that although a woman may have "consented" to a sexual encounter, even to intercourse, if that consent is withdrawn 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. 639, 644, 444 A.2d 1256, 1270 (1982).  

**Massachusetts**  
Consent is not specifically defined. The standard in the sexual assault statutes is whether the accused compelled the victim to submit by force and against his or her will, or compels such person to submit by threat of bodily force or violence. Mich. Comp. Laws. Ann. § 750.520b — e.  

**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.  

**Mississippi**  
Not defined.  

**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:  
(1) A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.  
(2) Corroboration of the victim's testimony is not required to show lack of consent. Minn. Stat. § 609.341(4).  

**Missouri**  
Not specified.  

**Montana**  
Not specified.
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 follows:

1. An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn.
2. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the conduct in the act does not constitute consent; and
3. Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

The victim is incapable of consent because the victim is:

1. Mentally disordered or incapacitated;
2. Physically helpless;
3. Overcome by deception, coercion, or surprise;
4. Less than 16 years old;
5. Incarcerated in an adult or juvenile correctional, detention, or treatment facility or 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 or arrest; and
6. The victim 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.

Consenting services from a youth care facility, and the perpetrator:

1. Has supervisory or disciplinary authority over the victim or is providing treatment to the victim;
2. Is an employee, contractor, or volunteer of the youth care facility; or
3. This does not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is 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:

1. Has supervisory or disciplinary authority over the victim or is providing treatment to the victim;
2. Is an employee, contractor, or volunteer of the facility or community-based service;
3. The victim is incapable of consent if the perpetrator is employed by a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim.
4. 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 psychotherapy services to the client.
5. 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.

6. The victim is incapable of consent if the perpetrator is a law enforcement officer who is involved in a case in which the victim is a witness or is being investigated.
7. This does not apply if the individuals are married to each other.
8. A parent or guardian involved in a child abuse or neglect proceeding and the perpetrator is:
9. Employed by the department of health and human services for the purposes of carrying out the department’s duties and
10. Directly involved in the parent or guardian’s case or involved in the supervision of the case.

Consent to bodily harm consented to or threatened by the conduct consented to is not serious; or


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

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:
   1. The bodily harm consented to threatened by the conduct consented to is not serious; or
   2. The conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity of a kind not forbidden by law.
3. The consent establishes a justification for the conduct under chapter 3 of the code.

In order to establish effective consent by the putative victim of a sexual assault, a defendant must demonstrate the presence of “affirmative and freely-given permission.” State v. Cajulis, 733 A.2d 414, 424, 159 N.J. 584, 603 (1999).

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

Yes, for some crimes. A person commits aggravated felonious sexual assault if he or she engages in sexual penetration with a person that indicates by speech or conduct that there is not freely given consent to performance of the sexual act. N.H. Rev. Stat. Ann. § 630-A:2(10).

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).
North Dakota does not specifically define "consent." However, the statute defines "sexual imposition" 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 or 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. North Dakota Centennial Code § 12.1-20-06.

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

(a) the person is under 18 years of age;  
(b) the person is asleep;  
(c) the person is mentally incapacitated; or  
(d) the person is physically helpless.


Additionally, submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent. State v. Biele, 34 N.C. App. 734, 735, 239 S.E.2d 602, 603 (1977); see also State v. Keane, 335 N.C. App. 656, 6 (2014) ("Consent induced by violence or fear of violence is not effective to preclude a rape conviction").

No.

No.

No.

No.

No.

No.

No.

No.

No.

No.

No.

No.

No.

No.

No.
Pennsylvania

Pennsylvania does not specifically define “consent.” However, a person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:

(a) By forcible compulsion;
(b) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
(c) Who is unconscious or where the complainant knows that the person is unaware that the sexual intercourse is occurring;
(d) Where the person has substantially impaired the complainant’s power to appraise or control his or her conduct by administering, inducing, or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
or
(e) Who suffers from a mental disability which renders the complainant incapable of consent. 18 Pa.C.S.A. § 3121.


(f) Who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

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

Puerto Rico

Puerto Rico does not specifically define “consent.” Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental under any of the following circumstances commits a second degree felony:

- When the victim has not yet reached the age of sixteen (16) at the time of the event;
- Due to mental disability or illness, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission;
- The victim has been compelled by means of physical force, violence, intimidation or the threat of serious and immediate bodily harm;
- The victim’s capability to consent has been annulled or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances;
- When the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused;
- The victim submits to the act by means of deception, trickery, simulation or cover up with respect to the identity of the person accused;
- The victim is forced or induced by means of abuse or physical or psychological violence into participating in becoming involved in unwanted sexual relations with third parties;
- If the accused person is a relative of the victim, by ascendancy or descendency, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree; or
- On the when accused person takes advantage of the trust deposited in further by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or special education, medical or psychotherapeutic treatment, or because there is a relationship with the victim as the leader of his/her religious belief.

Rhode Island

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

(a) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless;
(b) The accused uses force or coercion;
(c) The accused, through concealment or by the element of surprise, is able to overcome the victim; or
(d) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation. R.I. Gen. Laws § 11-37-2. A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(a) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless;
(b) The accused uses force, element of surprise, or coercion;
(c) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation. R.I. Gen. Laws § 11-37-4.

A person is guilty of third degree sexual assault if:

(I) He or she engages in sexual penetration without the victim’s consent, and if any of the following circumstances exist:

(a) The accused acts with the victim’s consent;
(b) He or she engages in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age. R.I. Gen. Laws § 11-37-6(a).

II) He or she engages in sexual penetration with another person over the age of eighteen (18) years and engaged in sexual penetration or sexual contact with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age. R.I. Gen. Laws § 11-37-6(b).

III) He or she is over the age of eighteen (18) years and engaged in sexual penetration or sexual contact with another person over the age of fourteen (14) years and under the age of eighteen (18) years, when:

(a) The accused has supervisory or disciplinary power over the victim by virtue of the accused’s legal, professional, or occupational status; or
(b) The accused is otherwise acting in a position of authority with respect to the victim;
(c) Unless the parties are:
   - (A) engaging in sexual penetration or contact consensually;
   - (B) between the ages of sixteen (16) and twenty (20) years; and
   - (C) no more than thirty (30) months apart in age. R.I. Gen. Laws § 11-37-6(b).

“Force or coercion” means when the accused does any of the following:

- Uses or threatens to use a weapon, or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;
- Overcomes the victim through the application of physical force or physical violence;
- Coerces the victim to submit by threatening to use force or violence on the victim and the victim reasonably believes that the accused has the present ability to execute these threats; or
- Coerces the victim to submit by threatening to at some time in the future murder, inflict serious bodily injury upon or kidnap the victim or any other person and the victim reasonably believes that the accused has the ability to execute this threat. R.I. Gen. Laws §§ 11-37-1(2).

South Carolina

South Carolina does not specifically define “consent.” A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

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

“Aggravated force” means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon. S.C. Code Ann. § 16-3-653(1).

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

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

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

(a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances; or
(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. S.C. Code Ann. § 16-3-653.
Mentally defective means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct. S.C. Code Ann. § 16-3-651(e).

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

Physically helpless means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act. S.C. Code Ann. § 16-3-651(g).

South Dakota

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 any other person in the victim's presence, accompanied by apparent power of execution;
3. If the victim is incapable, because of physical or mental incapacity, of giving consent to such act;
4. If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnotic;
5. If the victim is 13 years of age, but less than 16 years of age, and the perpetrator is at least 3 years older than the victim. S.D. Code § 22-22-1.

No person fifteen years of age or older may knowingly engage in sexual contact with another person other than his or her spouse who, although capable of consenting, has not consented to such contact. S.D. Code § 22-22-7.4.

Tennessee

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

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 or emotionally disabled, or mentally or physically incompetent, or was under the influence of alcohol, drugs, or other substances that render him or her incapable of giving consent at the time of the penetration;
4. The sexual contact is accomplished by fraud.

For purposes of the crime of sexual battery a victim is incapable of consent if (1) the sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services described in (2); and (2) the defendant, whether licensed by the state or not, is a member of the clergy, healthcare professional, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Tenn. Code Ann. §39-13-505.

Texas

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 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 actor compels the other person not to consent and the actor knows the other person is unconscious or physically unable to resist;
4. The actor knows that as a result of mental illness 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 actor compels the other person not to consent 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 who coerces 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 coerces the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman's professional character as spiritual advisor;
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 professional, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Tenn. Code Ann. §39-13-505.

Texas Code Ann. §22.011(b).

Utah

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

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 or emotionally disabled, or mentally or physically incompetent, or was under the influence of alcohol, drugs, or other substances that render him or her incapable of giving consent at the time of the penetration;
4. The sexual contact is accomplished by fraud.

For purposes of the crime of sexual battery a victim is incapable of consent if (1) the sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services described in (2); and (2) the defendant, whether licensed by the state or not, is a member of the clergy, healthcare professional, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Tenn. Code Ann. §39-13-505.

No. [The essence of consent is that it is given out of free will, and determining whether someone has truly consented requires close attention to a wide range of contextual elements, including verbal and nonverbal cues. State v. Reigelsperger, 400 P.3d 1112, 1145 (Utah App. 2017).]
"Consent" means the affirmative, unambiguous, and voluntary agreement to engage in a sexual act, which can be revoked at any time. 13 Vermont Stat. Ann. §325(3).

"Incapable of consenting" means that (A) he is incapable of understanding the nature of the conduct at issue; (B) he is physically incapable of resisting, declining participation in, or communicating unwillingness to engage in the conduct at issue; or (C) lacks the mental ability to make or communicate a decision about whether to engage in the conduct at issue. 13 Vermont Stat. Ann. §325(10).

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

- (A) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or knew and lascivious conduct.
- (B) knew or reasonably should have known that the other person was unaware that a sexual act or lewd 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 lewd and lascivious conduct with the actor because the person was substantially impaired by alcohol, drugs, or other intoxicants.

Yes. 13 Vermont Stat. Ann. §3254

Virgin Islands

Consent is not specifically defined. However, there is no consent in circumstances when:

- (a) a person's resistance is prevented by fear of immediate and great bodily harm (Williams v. Virgin Islands, No. CRIM. 2007-0008, 2001 WL 4012738 (V.I. Sept. 12, 2001)); or
- (b) either force, intimidation, or abuse of a position of authority is used to accomplish a sexual act. Francu v. People, No. S.C.T.CRIM. 2015-0002, 2015 WL 6406004 (V.I. Oct. 23, 2015); or
- (c) the victim is 13, 14 or 15 years old even if force, intimidation or abuse of a position of authority was not used to accomplish the sexual act.Francu v. People, No. S.C.T.CRIM. 2015-0002, 2015 WL 6406004 (V.I. Oct. 23, 2015).

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).

Yes. Wash. Rev. Code Ann. § 9A.44.010(2). A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person where the victim did not consent to sexual intercourse by the perpetrator or where there is a threat of substantial unlawful harm to property rights of the victim. Wash. Rev. Code Ann. § 9A.44.060(1).

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

Yes.

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 express or imply, or is incapable of expressing or implying, the victim's ability to consent. 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 helpless, or subject to incarceration, confinement or supervision by a state, county, or local government 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 or sexual contact.


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, 653 P.2d 1246 (Wyo. 1983).

No.

Capacity to Consent

<table>
<thead>
<tr>
<th>State</th>
<th>At what age is a person able to consent?</th>
<th>Does developmental disability/or mental incapacity impact the victim's ability consent?</th>
<th>Does consciousness impact the victim's ability consent?</th>
<th>Does intoxication impact the victim's ability consent?</th>
<th>Does the relationship between the victim and actor impact the victim's ability consent?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>16 years old. Ala. Code § 13A-6-70(c).</td>
<td>Yes, a person is deemed incapable of consenting if he or she is incapacitated.</td>
<td>Yes, a person is deemed incapable of consenting if he or she is unconscious.</td>
<td>Yes, a person is deemed incapable of consenting if he or she is incapacitated.</td>
<td>Yes. In cases involving the sexual assault of a child by an adult, forcible compulsion may be found where the child knows and trusts the adult and the adult exercises authority and domination over the child sufficient to allow inference of an implied threat if the child did not comply. R.E.N. v. State, 944 So. 2d 981, 984 (Ala. Crim. App. 2006) (citing Poss v. State, 957 So. 2d 721 (Ala. Crim. App. 2006)).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&quot;Incapacitated&quot; means (among other things) that a person is unable to give consent or unable to communicate an unwillingness to an act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate. Ala. Code § 13A-6-60(2)(c).</td>
<td>&quot;Incapacitated&quot; means (among other things) that a person is unable to give consent or unable to communicate an unwillingness to an act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate. Ala. Code § 13A-6-60(2)(c).</td>
<td>&quot;Incapacitated&quot; means (among other things) that a person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance and the condition was known or should have been reasonably known to the offender. Ala. Code § 13A-6-60(2)(b).</td>
<td>&quot;Solicit[ing], persuad[ing], encourag[ing], harass[ing], or enter[ing] a student.&quot; Consent is not a defense for these acts. Ala. Code §§ 13A-6-81; 13A-6-82. A &quot;protected person&quot; is one who has a developmental disability attributable to an intellectual disability, autism, cerebral palsy, epilepsy, or other disabling neurological condition. Ala. Code § 15-25-1. Consent is not an element of the crime of incest for engaging in sexual intercourse with a family member meaning the crime of incest occurs whether or not the parties consented to the act. Ala. Code § 13A-13-3.</td>
</tr>
</tbody>
</table>
Yes, there are several relationships between offender and victim for which consent is unavailable as a defense, including:

- The following constitutes sexual assault in the first degree:
  - A person engaging in sexual penetration with another person who the offender knows is mentally incapable and who is in the offender’s care 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)(4).
  - A person engaging in sexual contact with a person who the offender knows is unaware that a sexual act is being committed. Alaska Stat. § 11.41.425(a)(1).

- 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).

- The following constitutes sexual assault in the third degree:
  - A person engaging in sexual contact with a person who is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.425(a)(1).

- 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 act entails. Jacono v. State, 980 P.2d 547 (Alaska Ct. App. 1999).

- The Alaska Statute does not directly address intoxication, but an individual to be “unaware” that a sexual act is being committed may invalidate consent.
<table>
<thead>
<tr>
<th>State</th>
<th>Age of Majority</th>
<th>Statute(s)</th>
<th>Definition/Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas</td>
<td>18 years old</td>
<td>§ 5-14-101(8)(A)</td>
<td>Yes, a person that is temporarily incapacitated and unable to give consent to the accused. Colorado Code § 5-14-101(8)(A)</td>
</tr>
<tr>
<td>California</td>
<td>18 years old</td>
<td>§ 18-3-405.3(1)</td>
<td>Yes, a minor is capable of consenting to sexual intercourse with an adult who is the minor’s spouse. Colorado Penal Code § 261.5(a).</td>
</tr>
<tr>
<td>Colorado</td>
<td>17 years old, subject to certain close-in-age provisions (described below):</td>
<td>§ 18-3-402(1)(a)-(c)</td>
<td>Yes, a person who knowingly subjects a victim to sexual contact commits unlawful sexual contact if the victim has not consented or reasonably should have known that the sexual contact was unwanted. Colorado Revised Statutes Annotated § 18-3-402(1)(a)</td>
</tr>
</tbody>
</table>

### Arkansas

- **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(e)(2)
- **Yes, a person that is unconscious is incapable of resisting because the victim meets any one of the following conditions:**
  - Unconscious of the nature of the act
  - Physically helpless
  - Administered to the person without the person's consent
  - What renders the person unaware a sexual act is occurring
  - Deemed "mentally incapacitated" and unable to give consent. Arkansas Code § 5-14-101(8)(A)
- **Yes, in a prosecution for non-forcible rape and sexual assault in the first through third degrees, the victim cannot consent if certain relationships, listed below, exist between the victim and offender. These include:**
  - Member of victim’s family (including by adoption)
  - Employee of the correctional facility where a minor-victim is in custody; or
  - Teacher, athletic coach, counselor or a caretaker. Arkansas Code §§ 5-14-103; 5-14-124; 5-14-125; 5-14-126; 5-14-127

### California

- **Yes, a person can be incapable of giving legal consent because of a mental disorder or developmental disability.** California Penal Code § 261(a1). See People v. Fakoskoush, 238 Cal. App. 4th 166, 189 (Cal. Ct. App. 2015).
- **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 is known to the accused.** California Penal Code § 261(a1)(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.
- **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, or any intoxicating or anesthetic substance, and this condition was known, or reasonably should have been known, by the accused.** California Penal Code § 261(a1)(b)

### Colorado

- **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)
- **Yes, unconsciousness falls within the definition of “physically helpless” and therefore the actor may be guilty of sexual assault and/or unlawful sexual contact when the victim is unconscious:**
  - The actor knows the victim is unconscious and the victim has not consented. Colorado Revised Statutes Annotated § 18-3-401.
  - In addition, the sexual assault statute prohibiting sexual intrusion or penetration if actor knows that victim is incapable of appraising nature of victim’s conduct may extend to victims who are partially asleep. People v. Platt, 770 P.2d 802 (Colo. App. 2007).
- **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).
- **In addition, in People v. Interest of J.R.B., 2018 WL 2454625 (Colo. App. 2018), 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.**

### General Notes

- Yes. Married spouses:
  - There are certain marital exceptions when there is a marital relationship between an actor and a victim where the elements of the unlawful sexual behavior offense specifically excludes a spouse, such as certain age-related sexual assault offenses, sexual assault on a child (where the actor is at least ten years older than the victim), and sexual assault on a child by a person of trust. Colorado Revised Statutes Annotated §§ 18-3-402; 18-3-404(1)(c), 18-3-405(3)(i), 18-3-409.
- In the custody of law enforcement:
  - A victim who is in 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 § 18-3-402(1)(c).
- Therapist and client:
  - A client cannot consent to any sexual intrusion, sexual penetration or sexual contact with the client’s psychotherapist. Colorado Revised Statutes Annotated § 18-3-405.5.
- Child and any non-parent person in a position of trust over the child:
  - A child cannot consent to sexual contact with a person who is not the child’s spouse and where such person is in a position of trust with respect to the victim. Colorado Revised Statutes Annotated § 18-3-405.5(b).
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-65(4)

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

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).

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

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For the purpose of sexual crimes, except an offense under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72 or 53a-72b, it shall be an affirmative defense that the defendant knew the victim was unconscious or for any other reason was 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).

In addition, a victim may be considered "physically helpless" if he or she is unable to communicate lack of consent because the victim is heavily intoxicated. Connecticut App. 180 Conn. 799, 801, 185 A.3d 654, 659, cert. denied 524 Conn. 941, 184 A.3d 760 (2018).

Yes. A person is guilty of sexual abuse of a child by a person 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 and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child and the person stands in a position of trust, authority, or supervision over the child.

One in a "position of trust" includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act. Colorado Revised Statutes Annotated § 18-3-401(3).

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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, alarm, offense or alarm when the person is at least 4 years older than the child and he stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778A(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, alarm, offense or alarm when the person is at least 4 years older than the child and she stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778A(2)(b));

- Suggests, solicits, requests, commands, impstones 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, alarm, 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(e).
**District of Columbia**

18 years of age, subject to a close-in-age exception. D.C. Code § 22-3001(1)(b).

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**Florida**

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

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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. Florida Statutes § 794.011(8). Sexual battery means oral, anal, or female genital penetration by, or with, the sexual organ of another, or the anal or female genital penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose. Florida Statutes § 794.011(9).
Yes. A person acting in a professional capacity to instruct, teach, counsel; or
An employee or agent engages in improper sexual contact if the person
knows or has reason to know that the victim is mentally incapacitated, which includes a
person that is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent.
9 G.C.A. §§ 25.10(a)(5); 25.15; 25.20; 25.25; 25.30.

Yes. A person acts in a position of trust if the person engages in sexually explicit conduct with a minor that is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent.
9 G.C.A. §§ 25.10(a)(6); 25.15; 25.20; 25.25; 25.30.

Yes. A person commits a sexual assault in the second degree if the person
knows or has reason to know that the victim is mentally incapacitated, which includes a
person that is temporarily incapable of appraising or controlling his or her conduct due to the influence of a substance administered to that person without his or her consent.
9 G.C.A. §§ 25.10(a)(5); 25.15; 25.20; 25.25; 25.30.

Marriage is a defense to certain sex crimes. HRS §§ 707-730; 707-731; 707-732.

Yes. A person commits sex assault in the third degree if the person
knows or has reason to know that the victim is temporarily incapable of
appraising or controlling his or her conduct due to the influence of a substance administered to that person without his or her consent.
9 G.C.A. §§ 25.10(a)(6); 25.15; 25.20; 25.25; 25.30.

Yes. A person commits sexual contact with a minor if the person
knows or has reason to know that the victim is temporarily incapable of
appraising or controlling his or her conduct due to the influence of a substance administered to that person without his or her consent.
9 G.C.A. §§ 25.10(a)(6); 25.15; 25.20; 25.25; 25.30.

Yes. A person commits sexual contact with a minor if the person
knows or has reason to know that the victim is temporarily incapable of
appraising or controlling his or her conduct due to the influence of a substance administered to that person without his or her consent.
9 G.C.A. §§ 25.10(a)(6); 25.15; 25.20; 25.25; 25.30.
Idaho

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

Yes. A person commits a sex crime if the person is 17 years of age or older and holds a position of trust, authority, or supervision in relation to the victim, then the age of consent is 18 years old.

Yes, a person commits a sex crime if the victim is incapable, through any unsoundness of mind, due to any cause, including, but not limited to, mental illness, mental disability, or developmental disability, whether temporary or permanent, of giving legal consent. Idaho Statutes § 18-6101(3).

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

- Victim had a passive personality with an IQ of 71, placing her in the lowest 2 ½ percent of the population;
- Victim had never held a job and could only perform mental tasks and then only under close supervision;
- Victim could not perform domestic work or take trips without close supervision;
- Victim had not completed special education courses in high school.

Yes. A person commits a sex crime if the victim at the time is unconscious of the nature of the act due to being:

- unconscious or asleep; or
- not aware, knowing, perceiving, or cognizant that the act occurred. Idaho Statutes § 18-6101(7).

Yes. A person commits a sex crime if the victim is unable to resist due to any intoxicating, narcotic, or anesthetic substance. Idaho Statutes § 18-6101(8).

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

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

Illinois

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

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

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

Illinois courts apply a totality of the circumstances test when determining whether a victim had the requisite mental capacity to consent: See People v. Whitney, 647 N.E.2d 1062 (Ill. App. 1995) (“to support a guilty verdict based upon the victim’s inability to understand the nature of the act and to give knowing consent, the State must show that the victim had insufficient intelligence to understand the act, its nature, and possible consequences.”)

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

In addition, the crime and punishment is more severe if the accused delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim’s consent or by threat or deception rather than merely for purposes. 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.60.

Yes. A person commits a sex crime if the person is 17 years of age or older and holds a position of trust, authority, or supervision in relation to the victim, then the age of consent is 18 years old.

Yes, a person commits a sex crime if the victim is incapable, through any unsoundness of mind, due to any cause, including, but not limited to, mental illness, mental disability, or developmental disability, whether temporary or permanent, of giving legal consent. Idaho Statutes § 18-6101(3).

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Yes. A person commits a sex crime if the victim is unable to resist due to any intoxicating, narcotic, or anesthetic substance. Idaho Statutes § 18-6101(8).

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

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Yes, a person commits a sex crime if the victim is incapable, through any unsoundness of mind, due to any cause, including, but not limited to, mental illness, mental disability, or developmental disability, whether temporary or permanent, of giving legal consent. Idaho Statutes § 18-6101(3).

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Yes. A person commits a sex crime if the victim is unable to resist due to any intoxicating, narcotic, or anesthetic substance. Idaho Statutes § 18-6101(8).

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In addition, the crime and punishment is more severe if the accused delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim’s consent or by threat or deception rather than merely for purposes. 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.60.
Iowa

> 16 years old. I.C.A. § 709.4

Yes. Sexual abuse is defined as any sex act between persons where the other person is suffering from a mental defect or incapacity which precludes giving consent or lacks the mental capacity to know the right and wrong of conducts in sexual matters. I.C.A. § 709.4.

In addition, a person commits a sex crime if:

1. The sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

“Mentally incapacitated” means that a person is temporarily incapable of appraising or controlling the person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance. I.C.A. § 709.4A.

The key issue is whether the mental strength of the victim is so far below the normal that it precludes effective resistance. State v. Sullivan, 258 N.W.2d 267, 272 (Iowa 1979). Persons who are so mentally incompetent or incapacitated as to be unable to understand the nature and consequences of the sex act are incapable of giving consent.

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. 21–5507.

See also State v. Jonay, 461 P.2d 1382 (Kan. 1969) (“When a mentally deficient individual’s capacity to consent to a sexual act is at issue, the jury is capable of determining the extent that it results in a punishment for unlawful voluntary penetration with a person who has a disability who is in a residential program operated or supervised by a community agency. 720 I.C.A. 5116–9.

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 any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or reasonably apparent to the offender. K.S.A. 21–5507.

Yes. It is a defense to a prosecution of indecent liberties with a child (as defined in subdivision (1) of K.S.A. 14–2850) if:

1. The person who is 17 years of age or over and holds a professional relationship with a child who is under 14 years of age has a license issued by the state or a political subdivision on the basis of the person’s training and experience that authorizes the person to carry out a particular occupation; or

2. The person who is 17 years of age or over and holds a professional relationship with a child who is under 14 years of age has a relationship with a child that is based on the person’s employment or licensed status as described in subdivision (1) of K.S.A. 14–2850.

Yes. A person commits a sex crime if:

1. The sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

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Yes. A person commits a sex crime if:

1. The sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.
whether that individual is able to understand the nature and consequences of engaging in such an act. In reaching its determination, the jury should evaluate the individual’s behavior in normal sexual intercourse as well as consider any expert testimony concerning the individual’s mental deficiency.

persons of the same sex but not persons of the opposite sex. The court held that the statute could not be enforced to the extent the statute contravenes liberty interests protected in the Due Process Clause of the Fourteenth Amendment. State v. Limon, 30 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 is confined to such jail;

4. The offender is a law enforcement officer, an employee of a juvenile detention facility or corrections house, or the employee of a contractor who is under contract to provide services in such facility or corrections 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 corrections 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: (i) released on conditional release from a juvenile correctional facility under the supervision and control of the department of corrections or juvenile community supervision agency; 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 currently under supervision;

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

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

9. The offender is an employee or other person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a foster child placed in the care of such family foster home;

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

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

12. The offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of community corrections 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 community corrections services;
Yes. The following are deemed incapable of consent when he or she is an individual that suffers from a physical or mental infirmity preventing such resistance (“mental infirmity” means a person with an intelligence): (1) when the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity; (2) when the victim is incapacitated by reason of stupor or abnormal condition of the mind which would likely produce an unconsciousness, produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the actor; (3) when the victim is incapacitated 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 actor; (4) when the victim is incapacitated 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 actor.

Yes. The following are deemed incapable of consent when he or she is physically helpless, which includes unconsciousness: (1) when the victim is incapable of resisting the nature of the sexual act being performed prior to the time that the sexual act occurred.

Yes. The following are deemed incapable of consent when he or she is mentally defective: (1) when the victim is incapable of granting consent because she is mentally defective, the sole question is whether she is capable of appraising the nature of the sexual act being performed prior to the time that the sexual act occurred; (2) when the victim is incapable of understanding the nature of the act by reason of stupor or abnormal condition of the mind, which would likely include unconsciousness.

Yes. The following are deemed incapable of consent when he or she is mentally incapacitated, which includes intoxication, or if the intoxication causes the person to be physically helpless: (1) when the victim is incapable of consent because she is mentally incapacitated, which includes intoxication, or if the intoxication causes the person to be physically helpless; (2) when the victim is mentally incapacitated because the other person is less than sixteen (16) years old or an individual with an intellectual disability.

Yes. It is a defense to a charge of sexual battery with a child that the sexual act occurred when the victim was under arrest or otherwise deprived of freedom of action by reason of custodial authority.

Yes. The following are deemed incapable of consent when he or she is mentally incapacitated, which includes intoxication, or if the intoxication causes the person to be physically helpless: (1) when the victim is incapable of consent because she is mentally incapacitated, which includes intoxication, or if the intoxication causes the person to be physically helpless; (2) when the victim is mentally incapacitated because the other person is less than sixteen (16) years old or an individual with an intellectual disability.
M.R.S.A. 254.

Yes. A person is guilty of a sex crime if that person engages in a sexual act with another person and:

1. the other person suffers from mental disability that is reasonably apparent or known to the actor, and 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 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;

3. 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, disorder or defect, 17-A M.R.S. 255-A, 255-A.260.

Yes. A person is guilty of a sex crime if that person engages in a sexual act with another person and 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 drugs, anesthetic agent or other intoxicating substance, 3.20-M.R.S. 12-A, 255-A.260.

Yes. A person is guilty of a sex crime if that person engages in a sexual act with another person and 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 drugs, anesthetic agent or other intoxicating substance, 3.20-M.R.S. 12-A, 255-A.260.

No. A person is not guilty if the actor is a medical, nursing or similar person responsible for the care or services for children, and the actor is a treatment center, youth camp licensed or similar 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, has not 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 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee, substitute teacher or other official having instructional, supervisory or disciplinary authority over the other person.

Yes. A person is guilty of a sex crime if that person engages in a sexual act with another person and:

1. the other person, not the actor's spouse, is under official supervision as a probationer, parolee, 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;

2. 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, substitute teacher or other official having instructional, supervisory or disciplinary authority over the other person;

3. the other person, not the actor's spouse, has not 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 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee, substitute teacher or other person having instructional, supervisory or disciplinary authority over the other person;

4. the other person has in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person;

5. 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 in the other person and the other person, not the actor's spouse, is a current patient or client of the actor;

6. 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 person with an intellectual disability or autism;

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 person with an intellectual disability or autism.

Note: The above only applies if the perpetrator provides intoxicants to the victim and says nothing about instances in which the victim voluntarily consumed alcohol or other substance administered by the perpetrator, prior to the assault.


No. A person is not guilty if the actor is a medical, nursing or similar person responsible for the care or services for children, and the actor is a treatment center, youth camp licensed or similar 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, has not 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 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee, substitute teacher or other person having instructional, supervisory or disciplinary authority over the other person.


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 accused officer or other law enforcement official either: (1) arrested the person or was responsible for maintaining the person in actual custody; or (2) knew or reasonably should know that the person is under arrest or otherwise in actual custody.

M.R.S.A. 14:41.4.
Mentally incapacitated Com. Physically helpless
"means a person who is:

Michigan

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

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

Yes, if the victim was incapacitated or unconscious due to any other act or substance administered to the victim without his or her consent. See definition of "mentally incapacitated." Mich. Comp. Laws Ann. § 750.520a(j). The punishment for indecent sexual contact and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless. Mich. Comp. Laws Ann. §§ 750.520b(1)(d)(i), 750.520c(1)(d)(i), 750.520d(1)(c), 750.520e(1)(c).

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

Yes. A person is guilty of criminal sexual conduct if the person engages in sexual penetration or sexual contact and the actor knows or has reason to know that the victim is physically helpless, which includes circumstances in which the victim is rendered temporarily or permanently incapable of giving consent. Mich. Comp. Laws Ann. §§ 750.520b(1)(d)(ii), 750.520c(1)(d), 750.520d(1)(c).

"Physically helpless" means that a person is unconscious, asleep, or for any other physical reason is physically unable to resist the actor's advances. Mich. Comp. Laws Ann. § 750.520a(m).

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 unlawful sexual intercourse. Mass. Gen. Laws Ann. ch. 272 §4.

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

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

See also Reed v. State, 2015 WL 5945316 (Md. App. 2015) ("[t]he individual is mentally defective when he or she suffers from a mental disability that renders him or her substantially incapable of appraising the nature of the individual's conduct").

Massachusetts

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


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

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

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

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

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

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

- If the younger party is under the age of 14, the older party must be no more than 36 months older.
- If the younger party is 14 or 15 years old, the older party must be no more than 36 months older.
- If the older party is 16 years old, unless the actor is in a current or recent position of authority or has a significant relationship with the victim in which case the age of consent is 18 years old. Minn. Stat. § 609.342 – 345.

With respect to third or fourth degree criminal sexual misconduct:

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

"Current or recent position of authority" includes but is not limited to any person who is a parent or acting in the place of a parent and charged with the care, upbringing, education, custody, discipline, or supervision of a child, or a person who is charged with any duty or responsibility for the care, upbringing, education, custody, discipline, or supervision of a child, or acts independently or through another, at the time of or within 120 days immediately preceding the act. This includes but is not limited to a member of the clergy, a person who is in a position of authority over the complainant, or a person who is emotionally dependent on the actor. Minn. Stat. § 609.341(10).

"Significant relationship" means a situation in which the actor is: (1) the complainant’s parent, stepparent, or guardian; (2) any of the following persons related to the complainant: brother, sister, stepbrother, stepsister, aunt, uncle, nephew, niece, grandfather, great-grandparent, great-aunt, great-uncle; (3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and is not the complainant’s spouse; or (4) an adult who is or was involved in a significant romantic or sexual relationship with the parent of a complainant. Minn. Stat. § 609.341(15).

Yes. A person who is mentally impaired, mentally incapacitated or physically helpless cannot consent to a sexual act. Minn. Stat. § 609.341(4). 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 substance, administered to that person without their 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 behavior. Minn. Stat. § 609.345.

"Mentally impaired" means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration. Minn. Stat. § 609.345.

"Physically helpless" means that a person is: (a) asleep or not conscious; (b) unable to withdraw 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 first or second degree:
  - Complainant is at least 14 but less than 18 years of age and the actor is more than 36 months older than the complainant and in a current or recent position of authority over the complainant (neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense).
  - The actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration or contact, and the actor or an accomplice used force or coercion to accomplish the act; the complainant suffered personal injury, or the sexual abuse involved multiple acts committed over an extended period (neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense).
  - 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 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 one of the following occupational relationships at the time of the act:
   - the actor was a psychotherapist 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;
   - the actor was a psychotherapist and the complainant was the actor’s former patient who was emotionally dependent on the actor, or the sexual penetration or sexual contact occurred by means of deception or false representations that the sexual penetration or sexual contact was for bona fide medical purposes;
   - the actor was or falsely impersonated a psychotherapist, the complainant was a patient or former patient, and the sexual penetration or sexual contact occurred by means of deception or false representations that the sexual penetration or sexual contact was for a bona fide medical purpose;
   - 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 setting 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;
   - the actor provided special transportation service to the complainant and the sexual penetration or sexual contact occurred by means of deception of false representations that the sexual penetration or sexual contact was for a bona fide medical purpose;
   - the actor was or falsely impersonated a peace officer, as defined in section 626.84, the actor physically or constructively restrained the complainant or the complainant did not reasonably feel free to leave the actor’s presence, and the sexual penetration or sexual contact was not pursuant to a lawful search or lawful use of force;
   - the actor was an employee, independent contractor, or volunteer of a state, county, city, or privately operated adults or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including but not limited to jails, prisons, detention centers, or...
Mentally incapacitated
Mentally defective person
Mississippi
Miss. Code Ann. § 97-3-95,
Consent is 14. Miss.
which case the age of
other person is 36 or
years old or (ii) the
age of consent is 18
child, in which case the
authority over the
position of trust or
the other person is in a
16 years old, unless (i)
highness person, which
includes a person
who for any reason
helpless person, which
includes a person
who for any reason
helpless person, which
includes a person

"Mentally defective person" means one who suffers from a mental disease, defect or condition which renders that person temporarily or permanently incapable of knowing the nature and quality of his or her conduct. Miss. Code Ann. § 97-3-97(1).

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

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 his or her unwillingness to engage in an act, the complainant suffered personal injury, or the sexual abuse involved multiple acts committed over an extended period of time. Miss. Code Ann. § 97-3-95(1).
<table>
<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Montana</td>
<td>14 years old. Mont. Code Ann. § 45-5-501(1)(b)(v).</td>
<td>Yes, a person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is less than 17 years old. Mont. Code Ann. § 566.034 (statutory rape in the second degree).</td>
</tr>
<tr>
<td>Missouri</td>
<td>Yes. “Without consent” means the victim is incapable of consent because the victim is mentally disordered or incapacitated. Mont. Code Ann. § 45-5-501(1)(b)(v).</td>
<td>Yes, a person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Missouri courts include the use of a substance without the victim’s knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse. Mo. Ann. Stat. § 566.030.</td>
</tr>
<tr>
<td>Missouri</td>
<td>Yes. Consent is ineffective if it is given by a person who by reason of youth, mental disease, disorder, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense. Mont. Code Ann. § 45-2-211(2)(b).</td>
<td>Yes, a person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. 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 consent to sexual intercourse. Mo. Ann. Stat. § 566.030.</td>
</tr>
<tr>
<td>Missouri</td>
<td>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:</td>
<td>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:</td>
</tr>
<tr>
<td>Missouri</td>
<td>• a teacher;</td>
<td>• a teacher;</td>
</tr>
<tr>
<td>Missouri</td>
<td>• a student teacher;</td>
<td>• an employee of the school;</td>
</tr>
<tr>
<td>Missouri</td>
<td>• an employee of the school;</td>
<td>• 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;</td>
</tr>
<tr>
<td>Missouri</td>
<td>• 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;</td>
<td>• an elected or appointed official of the school district;</td>
</tr>
<tr>
<td>Missouri</td>
<td>• an elected or appointed official of the school district;</td>
<td>• a person employed by an entity that contracts with the school or school district to provide services.</td>
</tr>
<tr>
<td>Missouri</td>
<td>It is not a defense that the student consented to the sexual contact. Mont. Rev. Stat. § 566.066.</td>
<td>It is also a crime for sexual conduct to take place between caretakers and nursing facility residents; mental health providers and vulnerable persons; and corrections officers and inmates. Mo. Ann. Stat. §§ 566.113 &amp; 566.145.</td>
</tr>
<tr>
<td>Missouri</td>
<td>It is also a crime for sexual conduct to take place between caretakers and nursing facility residents; mental health providers and vulnerable persons; and corrections officers and inmates. Mo. Ann. Stat. §§ 566.113 &amp; 566.145.</td>
<td></td>
</tr>
</tbody>
</table>
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 *439 first degree sexual assault." In re Gabriel P., 20 Neb. App. 422, 848 N.W.2d 305, 311 (2021). A victim's lack of consent is not an element of the crime when the victim is incapable of resisting or appraising the nature of his or her conduct. Id. Under § 28-319(1)(b), the two-part analysis requires a significant abnormality, such as severe intoxication or other substantial mental or physical impairment, on the part of the alleged victim, and knowledge of the abnormality on the part of the alleged attacker. Id.

Yes. Any person who subjects another person to sexual penetration who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree. Neb. Rev. Stat. §28-319(1)(b). Any person who subjects another person to sexual contact who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree in either the second degree or third degree. Neb. Rev. Stat. §28-320(1)(b)

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

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

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

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

Incest:
• Marriage
  • Position of authority at school or other:
    • It is illegal for an employee or volunteer in a position of authority at a school and 21 years of age or older to engage in sexual conduct with a pupil that is 16 years of age or older if the pupil was enrolled at the school and had contact with the perpetrator in his or her duties as an employee or volunteer, and the two are not married. Consent is not a defense. Nev. Rev. Stat. Ann. § 201.540(1),(2).
  • Position of authority at college or other:
    • It is illegal for an employee that is 21 years of age or older and in a position of authority at a college or university to engage in sexual conduct with a student that is 18 years of age or older who has not received a high school diploma, a general educational development certificate or an equivalent document and is enrolled at the college or university, and the two are not married. Consent is not a defense. Nev. Rev. Stat. Ann. § 201.550.
  • Position of authority at entity which provides services to children:
    • It is illegal for an employee, contractor or volunteer in a position of authority at an entity which provides services to children to engage in sexual conduct with a person who is 16 years of age or older but less than 18 and (1) who is under the care, custody, control or supervision of the entity at which the person is employed or volunteering or of which the person is a contractor, and (2) with whom the person has had contact in the course of performing his or her duties as an employee, contractor or volunteer. Nev. Rev. Stat. Ann. § 201.555.
  • Law enforcement officer:
    • It is illegal for a law enforcement officer to voluntarily engage in sexual conduct with a person who is under arrest or is currently detained by the law enforcement officer or any other law enforcement officer. Consent is not a defense. Nev. Rev. Stat. Ann. § 201.465.

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

Yes. Any person who subjects another person to sexual penetration who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree. Nev. Rev. Stat. §28-319(1)(b). Any person who subjects another person to sexual contact who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree in either the second degree or third degree. Neb. Rev. Stat. §28-320(1)(b)

Yes. Any person who subjects another person to sexual penetration who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree. Neb. Rev. Stat. §28-319(1)(b). Any person who subjects another person to sexual contact who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree in either the second degree or third degree. Neb. Rev. Stat. §28-320(1)(b)

The evidence established that the victim was incapacitated by alcohol, and her assailant knew or should have known that she was mentally or physically incapable of resisting or appraising the nature of his conduct. State v. Freeman, 267 Neb. 737, 733 (2004)

Yes. A person is deemed unable to consent if he or she has a disability that renders him or her incapable of freely exercising an independent choice as to whether or not to engage in sexual conduct and the actor knows or has reason to know of such a disability. N.H. Rev. Stat. Ann. § 632-A:2(11).

Yes. A person is deemed unable to consent if he or she is "mentally incapacitated" or "mentally or physically incapacitated by alcohol, drug, or other intoxicating substance," without his or her knowledge or consent. N.H. Rev. Stat. Ann. § 632-A:2(11).

Yes. A person commits aggravated felonious sexual assault if he or she engages in sexual penetration with a victim that is 13 years of age or older and under 18 years of age or older but less than 18 and (1) who is under the care, custody, control or supervision of the entity at which the person is employed or volunteering or of which the person is a contractor, and (2) with whom the person has had contact in the course of performing his or her duties as an employee, contractor or volunteer. Nev. Rev. Stat. Ann. § 201.555.
New Jersey


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


Yes, a person that is unconscious to physically helpless, and it is aggravated sexual assault to commit an act of sexual penetration with a person that the actor knew or should have known was physically incapacitated, which later rendered the victim permanently incapable of understanding the nature of the actor's conduct. 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.


Yes, it is aggravated sexual assault to commit an act of sexual penetration with a person that the actor knew or should have known was mentally incapacitated, which later rendered the victim temporarily incapable of understanding the nature of the actor's conduct. 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.


Yes, it is sexual assault to commit an act of sexual penetration with a person that is less than 13 years of age, 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. N.J. Stat. Ann. § 2C:14-2(c)(2).

An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person 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; or

It is sexual assault to commit an act of sexual penetration with a person that is at least 16 years old but less than 18 years old, and

(1) The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or
(2) The actor is related to the victim by blood or affinity to the third degree; or
(3) The actor is the victim's guardian or otherwise stands in loco parentis. N.J. Stat. Ann. § 2C:14-2(c)(3).

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

Yes, engaging in a sexual act when the perpetrator knows or has reason to know that the victim is a minor or a juvenile is sex crime if the perpetrator is in a position of authority over the victim. 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 a minor or a juvenile is a criminal offense. New Mexico Statutes §30-9-10(A); §30-9-11.

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

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

It is a crime if sexual penetration is perpetrated on a child 13 to 16 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 old and is at least four years older than the child and not the spouse of that child, lears while performing services in or
New York

17 years old. New York Penal Law §130.00(4).

Yes, it is a crime to engage in sexual activity with a person who has a mental disability or who is mentally incapacitated when the person performing the act knows or should have reasonably known the other person has a mental disability or is mentally incapacitated. North Carolina General Statutes Annotated §14-27.22; §14-27.27; §14-27.33.

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

Mentally incapacitated means a person who is rendered substantially incapable of appraising the nature of his or her act or of resisting the act of vaginal intercourse or a sexual act. North Carolina General Statutes Annotated §14-27.20.

for a school that the child is a student in a school. New Mexico Statutes §§80-9-11(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 §§80-9-10(A) (defining "the student") to cover sexual penetration perpetrated by a psychotherapist on a patient(s). §10-9-11.

for a school that the child is a student in a school. New Mexico Statutes §§80-9-11(G)(2).

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); §130.05(3)(e).

A person is guilty of facilitating a les from a controlled substance when he or she:
1. knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conducting 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 §130.00.

North Carolina


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 incapability of appraising the nature of a medical treatment, either because the patient is controlled or under the influence of an impairing substance, including, but not limited to, alcohol, anesthetics, controlled substances, or any other drug or psychoactive substance capable of impairing a person's physical or mental faculties. North Carolina General Statutes Annotated §14-27.33A.

Yes, it is a crime to engage in sexual activity with a physically helpless person who is mentally incapacitated when the person performing the act knows or should have reasonably known the other person's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy, New Mexico Statutes §§80-9-10(A) (defining "the student") to cover sexual penetration perpetrated by a psychotherapist on a patient(s). §10-9-11.

Yes, if the victim is the person's legal spouse at the time of the commission of the alleged rape or sexual offense. §14-27.34.

Consent is not a defense to sexual crimes committed by a defendant who:
1. has assumed the position of a parent in the home of a minor victim and engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age and engages in vaginal intercourse or a sexual act with such victim; (ii) is a teacher, school administrator, school teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim and engages in vaginal intercourse or a sexual act with a student (except when defendant is married to the student); or
3. is a school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student. North Carolina General Statutes Annotated §14-27.32; §14-27.32.
State v. Klein
North Dakota

liability with respect to minor's age.

where the offender is thirteen and sixteen there is an exception in that regard.

Ohio Rev. Code Ann. § 2907.06(A) (A). Ohio Revised Code, the other person is enrolled in a school that principally serves students with temporary or occasional disabilities.

A person who knowingly has sexual contact with another, or who causes another person to have sexual contact with them, is guilty of sexual assault if the person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare. N.D. Century Code Ann. § 12.1-20-07.

Any person who is in a position to control the behavior of another person is responsible for the behavior of that person, and is guilty of sexual assault if the person is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare. N.D. Century Code Ann. § 12.1-20-07.

A person who knowingly has sexual contact with another, or who causes another person to have sexual contact with them, is guilty of sexual assault if the person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare. N.D. Century Code Ann. § 12.1-20-07.

Yes, if the intoxication is involuntary.

A person who knowingly has sexual contact with another, or who causes another person to have sexual contact with them, is guilty of sexual assault if the person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare. N.D. Century Code Ann. § 12.1-20-07.

A person who knowingly has sexual contact with another, or who causes another person to have sexual contact with them, is guilty of sexual assault if the person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare. N.D. Century Code Ann. § 12.1-20-07.

Yes.

A person who engages in sexual assault with another, or who causes another to engage in sexual assault with another, is guilty of a felony of the fourth degree, which may be punished by a term of imprisonment not to exceed three years, and by a fine not to exceed five hundred dollars.

N.D. Century Code Chapter 12.1-20-07(3).
Yes. Rape in the first degree includes an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator.

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

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

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

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

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Pennsylvania

16 years old. 18 Pa.C.S.A. § 3122.1. Mistake of Age Defense – It is no defense that the defendant did not know the age of the child or reasonably believed the child to be the age of 14 years or older whenever criminality of conduct depends on a child being below the age of 14 years. However, when criminality depends on the child's being below a critical age of 14 years, it is a defense for the defendant to prove by a preponderance of the evidence that he or she reasonably believed the child to be above the critical age of 18 Pa.C.S.A. § 3122.1.

A person commits the offense of sexual intercourse with a child under 18 years of age if the person engages in sexual intercourse with a complainant who is less than 18 years of age. 18 Pa.C.S.A. § 3122.1(c).

A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person enganges in deviate sexual intercourse with a complainant who is less than 15 years of age. 18 Pa.C.S.A. § 3122.1(b).

It is aggregated 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 18 years of age and the person is one or more years older than the complainant and the person and the complainant are not married to each other. 18 Pa.C.S.A. § 3122(a)(1), (a)(2), (a)(3).

It is aggravated indecent assault of a child in the second degree if the complainant is less than 15 years of age or the complainant is less than 18 years of age and the person is one or more years older than the complainant and the person and the complainant are not married to each other. 18 Pa.C.S.A. § 3122(a)(1), (a)(2), (a)(3).

Pennsylvania

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A person commits the offense of sexual intercourse with a child under 18 years of age if the person engages in sexual intercourse with a complainant who is less than 18 years of age. 18 Pa.C.S.A. § 3122.1(c).

A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person enganges in deviate sexual intercourse with a complainant who is less than 15 years of age. 18 Pa.C.S.A. § 3122.1(b).

It is aggregated 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 18 years of age and the person is one or more years older than the complainant and the person and the complainant are not married to each other. 18 Pa.C.S.A. § 3122(a)(1), (a)(2), (a)(3).

It is aggravated indecent assault of a child in the second degree if the complainant is less than 15 years of age or the complainant is less than 18 years of age and the person is one or more years older than the complainant and the person and the complainant are not married to each other. 18 Pa.C.S.A. § 3122(a)(1), (a)(2), (a)(3).

Pennsylvania

16 years old. 18 Pa.C.S.A. § 3122.1. Mistake of Age Defense – It is no defense that the defendant did not know the age of the child or reasonably believed the child to be the age of 14 years or older whenever criminality of conduct depends on a child being below the age of 14 years. However, when criminality depends on the child's being below a critical age of 14 years, it is a defense for the defendant to prove by a preponderance of the evidence that he or she reasonably believed the child to be above the critical age of 18 Pa.C.S.A. § 3122.1.

A person commits the offense of sexual intercourse with a child under 18 years of age if the person engages in sexual intercourse with a complainant who is less than 18 years of age. 18 Pa.C.S.A. § 3122.1(c).

A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person enganges in deviate sexual intercourse with a complainant who is less than 15 years of age. 18 Pa.C.S.A. § 3122.1(b).

It is aggregated 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 18 years of age and the person is one or more years older than the complainant and the person and the complainant are not married to each other. 18 Pa.C.S.A. § 3122(a)(1), (a)(2), (a)(3).

It is aggravated indecent assault of a child in the second degree if the complainant is less than 15 years of age or the complainant is less than 18 years of age and the person is one or more years older than the complainant and the person and the complainant are not married to each other. 18 Pa.C.S.A. § 3122(a)(1), (a)(2), (a)(3).
Mentally disabled

"Mentally incapacitated" means a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or who is mentally unable to communicate unwillingness to engage in the act. R.I. Gen. Laws § 11-37-21(1).

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. R.I. Gen. Laws § 11-37-41(1).

"Mentally incapacitated" means a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or who is mentally unable to communicate unwillingness to engage in the act. R.I. Gen. Laws § 11-37-21(1).

"Mentally disabled" means a person who has a mental impairment which renders that person incapable of appraising the nature of the act. R.I. Gen. Laws § 11-37-5(4).

"Physically helpless" means a person "who is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to engage in the act." R.I. Gen. Laws § 11-37-6(4).
**South Carolina**


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 aggregated force or aggregated coercion was not used to accomplish sexual battery.

S.C. Code Ann. § 16-3-651(b).

Yes. A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and the actor knows or has reason to know that the victim is physically helpless, which includes unconsciousness. S.C. Code Ann. § 16-3-651(c)(b).

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

**South Dakota**


Yes, a person can be deemed incapable of consenting to sexual contact because of mental incapacity. S.D. Code § 22-22-7.

South Dakota does not specifically reference consciousness; however, a person who is unconscious may be deemed incapable of consenting to sexual contact because of mental or physical incapacity. S.D. Code § 22-22-7.1.

Yes, a person can be deemed incapable of consenting to sexual contact because of mental incapacity. However, a person who is unconscious may be deemed incapable of consenting to sexual contact because of mental or physical incapacity. S.D. Code § 22-22-10.

Yes. A person employed at any jail or juvenile correctional facility who knowingly engages in 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 § 22-22-7.1.

Yes. A person employed at any jail or juvenile correctional facility who knowingly engages in 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 § 22-22-7.1.

**Tennessee**


Yes. "mentally incapacitated" means that 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(4).

Yes. "mentally incapacitated" means that 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. 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. It is an offense for a defendant to engage in unlawful sexual contact with a minor when the minor is less than 18 years old, the defendant is at least 4 years older than the victim, and either: (A) the defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the minor by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or (B) the defendant had, at the time of the offense, parental or custodial authority over the minor and used the authority to accomplish the sexual contact. Tenn. Code Ann. §§ 39-13-509; 39-13-511.

Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim if the victim was, at the time of the offense, 13 years old or older, but less than 18 years old, or the victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age, and either: (A) the defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the minor by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or (B) the defendant had, at the time of the offense, parental or custodial authority over the minor and used the authority to accomplish the sexual contact. Tenn. Code Ann. § 39-13-527.

For purposes of the crime of sexual battery a victim is incapable of consent if (1) the sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services described in (2); and
Yes, a sexual assault is considered to occur without the consent of another person where: (A) the actor knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unable to resist; (B) the person was not in a state of physical incapacity due to illness or disease; or (C) the other person is a parent, stepparent, adoptive parent, or legal guardian of the victim, and the victim is under the age of 18 years old.

Yes, a sexual assault is considered to occur without the consent of another person where: (A) the actor knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unable to resist; (B) the person was not in a state of physical incapacity due to illness or disease; or (C) the other person is a parent, stepparent, adoptive parent, or legal guardian of the victim, and the victim is under the age of 18 years old.

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Yes, a sexual assault is considered to occur without the consent of another person where: (A) the actor knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unable to resist; (B) the person was not in a state of physical incapacity due to illness or disease; or (C) the other person is a parent, stepparent, adoptive parent, or legal guardian of the victim, and the victim is under the age of 18 years old.

Yes, a sexual assault is considered to occur without the consent of another person where: (A) the actor knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unable to resist; (B) the person was not in a state of physical incapacity due to illness or disease; or (C) the other person is a parent, stepparent, adoptive parent, or legal guardian of the victim, and the victim is under the age of 18 years old.
Yes, a person who engages in an act of sexual intercourse or sodomy with a person who is under the age of 16 and the sexual act is consensual is guilty of rape in the first degree. 14 V.I.C. § 1701.

Yes, a person who engages in sexual contact with a person when the other person is unconscious or physically helpless, or that person’s mental defect or incapacity is known to the actor, is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1701.

Yes, an actor who engages in an act of sexual intercourse or sodomy with a person under the age of 16 and the sexual act is consensual is guilty of rape in the first degree. 14 V.I.C. § 1701.

Yes, there are special roles for persons in positions of authority over the victim for persons residing in the same household of the victim.

The term “position of authority” includes, but is not exclusive to, the following: an employer, principal, scout leader, coach, teacher, counselor, school administrator, religious leader, clergy, nurse, psychologist, guardian ad litem, baby sitter, or substantially similar position, and a parole officer or probation officer other than when the officer is exercising custodial control over a minor. 14 V.I.C. § 1700a.

Yes, a person is guilty of aggravated rape in the second degree if they engage in an act of sexual intercourse or sodomy with a person who is under 16 years of age residing in the same household as the perpetrator and force, intimidation, or the perpetrator’s position of authority over the victim is used to accomplish the sexual act. 14 V.I.C. § 1700a.

Yes, a person is guilty of unlawful sexual contact in the first degree if they engage in sexual contact with a person who is under 16 years old and resides in the same household as the perpetrator and force, intimidation or the perpetrator’s position of authority over the victim is used to accomplish the sexual contact. 14 V.I.C. § 1700.

Yes, a person who is under 16 years old and resides in the same household as the perpetrator and force, intimidation, or the perpetrator’s position of authority over the victim is used to accomplish the sexual act, 14 V.I.C. § 1700a.

Yes, a sexual assault occurs if a person engages in a sexual act with a child who is under the age of 16 where the persons are married to each other and the sexual act is consensual or (2) where the person is less than 18 years old, the child is at least 16 years old, and the sexual act is consensual. Vermont Stat. Ann. §13-3252(e).

Yes, an accused is guilty of sexual battery if the sexual battery is committed by (i) an employee of a state or local correctional facility or regional jail, (ii) a person who is under 16 years of age residing in the same household as the perpetrator and force, intimidation, or the perpetrator’s position of authority over the victim is used to accomplish the sexual act, 14 V.I.C. § 1700a.

Yes, an accused is guilty of sexual battery if the sexual battery is committed by a person who is under 16 years old and resides in the same household as the perpetrator and force, intimidation, or the perpetrator’s position of authority over the victim is used to accomplish the sexual contact, 14 V.I.C. § 1700.

Yes, a sexual assault occurs if a person engages in a sexual act with a minor who is under the age of 16 that is committed by (1) the victim is entrusted to the actor’s care by authority of law or is the victim’s child, grandchild, foster child, adopted child or stepchild. Vermont Stat. Ann. §13-3252(d).

Yes, a sexual assault occurs if a person engages in a sexual act with a minor who is under the age of 16 where the person’s knowledge of the minor’s mental defect or incapacity is known to the actor. 14 V.I.C. § 1700.

Yes, a person is guilty of sexual assault if a person engages in a sexual act with a victim who has been convicted of a felony. VA Code Ann. §18.2-64.1.

Yes, a sexual assault occurs if a person engages in a sexual act with a minor who is under the age of 16 and the minor and the actor in a position of power, authority or supervision over the minor by virtue of the actor’s undertaking the responsibility or authority professionally or voluntarily, to provide for the health or welfare of, or guidance and instruction, or organized recreational activities for minors. 13 Vermont Stat. Ann. §3258.

Yes, a person who is under 16 years old and resides in the same household as the perpetrator and force, intimidation, or the perpetrator’s position of authority over the victim is used to accomplish the sexual act, 14 V.I.C. § 1700a.

Yes, a person who is under 16 years old and resides in the same household as the perpetrator and force, intimidation, or the perpetrator’s position of authority over the victim is used to accomplish the sexual contact, 14 V.I.C. § 1700.

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Yes, a person engaged in an act of sexual intercourse or sodomy with a person when the person’s consent to or resist the contact has been substantially impaired by an intoxicating, narcotic or anesthetic agent; or when the person is known by the defendant to be in such a state of stupor or weakness of mind produced by an intoxicating, narcotic or anesthetic agent; or when the person is incapable of giving consent, is guilty of rape in the first degree. 14 V.I.C. § 1701.
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.

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.44.010(2), 9A.44.050.

Yes, a person that is under the influence of a substance or from some other cause is "mentally incapacitated." Wash. Rev. Code Ann. § 9A.44.010(7).

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

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

Yes, 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;
(b) a school employee;
(c) a foster parent;
(d) a person who undertakes the responsibility, professionally or voluntarily, to provide education, health care, or emergency services to children or other minors;
(e) a person who in the course of his or her employment, to the victim at the time of the offense;
(f) long-term care facilities;
(g) home health, hospice, or home care agencies;
(h) a person providing transportation services within the course of his or her business; and
(i) physical and mental health care providers.

Wash. Rev. Code Ann. §§ 9A.44.093, 9A.44.050, 9A.44.006, 9A.44.010.

A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person (a) in a significant relationship with the victim and abuses a supervisory position within that relationship; (b) is a school employee; (c) is a foster parent; (d) who undertakes the responsibility, professionally or voluntarily, to provide education, health care, or emergency services to children or other minors; (e) a person who in the course of his or her employment, to the victim at the time of the offense; (f) long-term care facilities; (g) home health, hospice, or home care agencies; (h) a person providing transportation services within the course of his or her business; and (i) physical and mental health care providers.

Wash. Rev. Code Ann. §§ 9A.44.093, 9A.44.050, 9A.44.006, 9A.44.010.

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(c).

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

Yes, a person who is unconscious is "physically helpless" and cannot give consent. W. Va. Code Ann. §§ 61-8B-2(c), 61-8B-1, 61-8B-4; 61-8B-7.


"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(c).

Yes, a person is deemed incapabile 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 prerel 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 officer lawfully knows, without the use of force, threat, or intimidation, (a) 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 (b) a person detained or arrested by a law-enforcement officer, inmate, probationer, parolee, juvenile detainee, or pretrial defendant or pretrial officer 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 prerel services agency, a local criminal jail for the purposes of imprisonment, a work program, or any other parole/probation or prerel 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, community-based probation services agency or prerel services agency, the accused shall be guilty of a felony. VA Code Ann. §§ 18.2-64.2.

Note the rape statute applies "whether or not" the victim is the spouse of the actor. VA Code Ann. § 18.2-64.1.
<table>
<thead>
<tr>
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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 48.685(11) and 50.065(1)(c) who has sexual contact or sexual intercourse with a client at the entity. Entity is defined under section 48.685(12) to include a child welfare agency; foster home; interim caretaker; 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)(c) to include a facility, organization or service that provides direct care or treatment services to clients or an agency that employs or contracts with an individual to provide personal care services, including a hospital, home health agency, temporary employment agency that provides caregivers to another entity, and the board on aging and long-term care.
- (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. Wisc. Stat. Ann. §§ 940.22; 90.225; 940.395.

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


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

- Sexual abuse of a minor in the first degree.
- Sexual abuse of a minor in the second degree.
- Sexual abuse of a minor in the third degree.

**Sexual abuse of a minor in the first degree**:
- Being 18 years of age or older, the actor engages in sexual contact or sexual intrusion with a victim who is less than 16 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 or is a whole or half-brother or whole or half-sister.
- Being 18 years of age or older, the actor engages in sexual contact or sexual intrusion with a victim who is less than 16 years of age, and the actor is the victim’s legal guardian or a cousin or descendant of a brother or sister of the victim or is a whole or half-brother or whole or half-sister.
- Being 18 years of age or older, the actor engages in sexual contact or sexual intrusion with a victim who is less than 16 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 or is a whole or half-brother or whole or half-sister.

**Sexual abuse of a minor in the second degree**:
- Being 18 years of age or older, the actor engages in sexual contact or sexual intrusion with a victim who is less than 16 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 or is a whole or half-brother or whole or half-sister.
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**Sexual abuse of a minor in the third degree**:
- Being 18 years of age or older, the actor engages in sexual contact or sexual intrusion with a victim who is less than 16 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 or is a whole or half-brother or whole or half-sister.
- Being 18 years of age or older, the actor engages in sexual contact or sexual intrusion with a victim who is less than 16 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 or is a whole or half-brother or whole or half-sister.
- Being 18 years of age or older, the actor engages in sexual contact or sexual intrusion with a victim who is less than 16 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 or is a whole or half-brother or whole or half-sister.
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.