## 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>
</tr>
</thead>
<tbody>
<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 1160, 1163 (Ala. 1997). Lack of consent results from: 1. forcible compulsion; or 2. being incapable of consent. Ala. Code § 13A-6-70(b).</td>
<td></td>
</tr>
<tr>
<td></td>
<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>
<td></td>
</tr>
<tr>
<td></td>
<td>'Forcible compulsion' means use 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-6-401(1).</td>
<td></td>
</tr>
<tr>
<td></td>
<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 1180 (Ala.1997).</td>
<td></td>
</tr>
<tr>
<td><strong>Alaska</strong></td>
<td>&quot;Without consent&quot; means that a person: 1. is coercion by the immediate use or threatened use of force against a person or property; 2. the victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant (see definition of &quot;mental defect&quot; below); 3. the victim is intentionally deceived as to the nature of the act; or 4. the victim is intentionally deceived to erroneously believe that the person is the victim's spouse. No. Alaska Stat. § 11.41.470.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot;Without consent&quot; includes any of the following: 1. the victim is incapable of consent because he or she is physically helpless, mentally defective or mentally incapacitated, or because of a victim's age. Alaska Stat. § 11.41.470(8).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot;Without consent&quot; also includes any of the following: 1. the victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant (see definition of &quot;mental defect&quot; below); 3. the victim is intentionally deceived as to the nature of the act; or 4. the victim is intentionally deceived to erroneously believe that the person is the victim's spouse. No. Alaska Stat. § 11.41.470(8).</td>
<td></td>
</tr>
<tr>
<td><strong>Arkansas</strong></td>
<td>There is a lack of consent if a person engages in a sexual act with another person by forcible compulsion or with a person who is incapable of consent because he or she is physically helpless, mentally defective or mentally incapacitated, or because of a victim’s age. Arkansas Code §§ 5-14-103; 5-14-125.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Mentally defective means that a person suffers from a mental disorder or defect that renders the person: * incapable of understanding the nature and consequences of a sexual act; or * unaware a sexual act is occurring. Note: a determination that a person is mentally defective shall not be based solely on the person’s IQ. Arkansas Code § 5-14-101(4).</td>
<td></td>
</tr>
<tr>
<td></td>
<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: * administered to the person without the person’s consent; or * renders the person unaware a sexual act is occurring. Arkansas Code § 5-14-101(5).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Physically helpless means that a person is: * physically unable to communicate a lack of consent; or * rendered unaware that a sexual act is occurring. Arkansas Code § 5-14-101(7).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Nursing home patient was unable to communicate lack of consent and, thus, was &quot;physically helpless&quot; within the meaning of statute for attempted rape purposes, victim was blind, unable to speak, and confined to bed or wheelchair, and victim could only grunt, raise her hand, and shake her head from side to side to communicate Dobbs v. State, 1996, 530 S.W.2d 360, 326 Ark. 382.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• When a victim’s capability of consent 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(c).</td>
<td></td>
</tr>
<tr>
<td></td>
<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.Billman v. State, 569 S.W.3d 372 (Arkansas 2019).</td>
<td></td>
</tr>
<tr>
<td><strong>California</strong></td>
<td>&quot;Consent&quot; is defined to mean positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. California Penal Code § 261.6. Yes. California Penal Code § 261.6.</td>
<td></td>
</tr>
<tr>
<td><strong>Colorado</strong></td>
<td>&quot;Consent&quot; means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship is not sufficient to constitute consent. Submission under the influence of fear does not constitute consent. Colorado Revised Statutes Annotated § 18-3-401.5(1.5). No. Colorado Revised Statutes Annotated § 18-3-401.5(1.5).</td>
<td></td>
</tr>
<tr>
<td><strong>Connecticut</strong></td>
<td>Lack of consent to sexual activity exists where: 1. the accused compels the victim to engage in sexual activity by the use or threat of force against the victim or against a third person; 2. the victim is mentally incapacitated or impaired because of mental disability or disease to the extent that the person is unable to consent to sexual activity; or 3. the victim is physically helpless. Connecticut General Statutes Annotated §§ 53a-65(1)-(3).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot;Mentally incapacitated&quot; means that a person’s conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person’s consent: Connecticut General Statutes Annotated §§ 53a-65(1).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot;Physically helpless&quot; means that a person is unconscious or for any other reason is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact: Connecticut General Statutes Annotated §§ 53a-65(6). No. Connecticut General Statutes Annotated §§ 53a-65(6).</td>
<td></td>
</tr>
</tbody>
</table>
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 victim incapable of appraising the nature of the act, or of consenting to the act.

• The defendant is a health professional, a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse on which person shall be deemed to be without consent because 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.

• 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.

• 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 identifying 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 conditions result 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 threat of harm sufficient to coerce or compel submission by the victim. D.C. Code § 22-3001(5).

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 to resist 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 is not specifically defined. However, Guam law provides that a person commits a sex crime if the person engages in sexual penetration or sexual contact with another person and:

• (1) force or coercion is used to accomplish the sexual penetration or sexual contact; or
• (2) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless. 9 G.C.A. §§ 25.10(a)(2), 25.50.

“Force or Coercion” includes, but is not limited to:

• when the actor overcomes the victim through the actual application of physical force or physical violence;
• when the actor coerces the victim to submit by threatening to use force or violence on the victim and the victim believes that the actor has the present ability to execute these threats;
• when the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person if the victim does not submit;
• when the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable; or
• when the actor, through concealment or by the element of surprise, is able to overcome the victim. 9 G.C.A. § 25.10(a)(2).

“Mentally Defective” means a person suffering from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct. 9 G.C.A. § 25.10(a)(4).

“Mentally Incapacitated” means a person rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent. 9 G.C.A. § 25.10(a)(5).

“Physically Helpless” means a person is unconscious, asleep or for any other reason is physically unable to communicate unwillingness to an act. 9 G.C.A. § 25.10(a)(6).

A victim need not resist the actor for a proper prosecution. 9 G.C.A. § 25.45.

Hawaii

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

• the person subjects another person to a sexual act by compulsion; or
• the person subjects a sexual act another person who is mentally defective, mentally incapacitated, or physically helpless. HRS §§ 707-703; 707-731; 707-732.

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

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

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

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

See also:“Consent signifies voluntary agreement or concurrence . . .” [consent may be express or implied.] State v. Adams, 10 Haw. App. 593, 605, 860 P.2d 226, 234 (1994).

Evidence that victim rebuffed offender’s sexual advances by repeatedly telling offender to stop, attempting to pull away, and telling offender that she did not want to be touched was sufficient to establish absence of consent. State v. Jackson, 61 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;
• the victim is under the age of eighteen years and the perpetrator is twenty-one years of age or older;
• the victim is under the age of eighteen years and the perpetrator is at least three years older than the victim;
• 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 resists from the resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution, or is unable to resist due to any intoxicating, narcotic, or anesthetizing substance.

Not specified.
<table>
<thead>
<tr>
<th>Illinois</th>
<th>Consent means a freely given agreement to the act of sexual penetration or sexual conduct in question. Yes, it requires “freely given agreement” to the act of sexual penetration or sexual conduct in question. 720 ILCS 5/111-1.70.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana</td>
<td>Consent is not specifically defined under the current law. However, Indiana law provides that a person commits a sex crime if: (1) the victim is compelled by force or imminent threat of force; (2) the victim is unaware that the sexual intercourse or sexual conduct is occurring; or (3) the sexual intercourse or sexual conduct is occurring as a result of the influence of an intoxicating substance administered to him or her without his or her consent. No.</td>
</tr>
<tr>
<td>Iowa</td>
<td>Consent is not specifically defined. However, Iowa law defines “sexual abuse” as any sex act between persons where: (1) the sexual act is done by force or against the will of the other (if the consent or acquiescence of the victim is procured by threats of violence toward any person or if the act is done while the victim is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other); or (2) 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.</td>
</tr>
<tr>
<td>Kansas</td>
<td>Consent is not specifically defined. However, Kansas law provides that a person commits a sex crime when a person knowingly engages in sexual intercourse with a person who does not consent under any of the following circumstances: (1) the victim is overcome by force or fear; (2) the victim is unconscious or physically powerless; (3) the victim is incapable of giving consent because of mental deficiency or disease, or because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender; (4) the victim is under the age of 14; (5) the victim’s consent was obtained through a knowing misrepresentation that the sexual intercourse was a medically or therapeutically necessary procedure; or (6) the victim’s consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender’s authority. No.</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Lack of consent results from: (1) forcible compulsion; (2) incapacity to consent; or (3) if the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor’s conduct. No.</td>
</tr>
</tbody>
</table>
**Louisiana**

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

1. when the victim resists the act to the utmost, but whose resistance is overcome by force;
2. when the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution;
3. when the victim is prevented from resisting the act because the offender is armed with a dangerous weapon;
4. when the victim is under the age of 13;
5. when two or more offenders participated in the act;
6. when the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing such resistance; (*mental infirmity* means a person with an intelligence quotient of 75 or lower; *physical infirmity* means a person who is 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 giving or of understanding the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or any other controlled dangerous substance administered by the offender and without the knowledge of the victim;
9. when the victim is incapable of giving or of understanding the act by reason of stupor or abnormal condition of the mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity;
10. when the victim, through unconsciousness or temporary or permanent incapacity to vote, is 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 concealment practiced by the offender. LSA-R.S. 14:42, LSA-R.S. 14:42.1, LSA-R.S. 14:43, LSA-R.S. 14:43.1.

Further, a person is deemed incapable of consent when the person is under arrest or otherwise in the actual custody of a police officer or other law enforcement official and the offender is a police officer or other law enforcement official who either:
1. arrested the person or was responsible for maintaining the person in actual custody;
2. knows or reasonably should know that the person is under arrest or otherwise in actual custody. LSA-R.S. 14:41.1.

**Maine**

Consent is not specifically defined.

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

1. the other person submits as a result of compulsion;
2. the other person, not the actor's spouse, has not in fact attained the age of 14 years;
3. the other person, not the actor's spouse, has not in fact attained 12 years of age;
4. the actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by means of force, fraud, threat, or duress or by administration of drugs, intoxicants, or other similar means;
5. the actor compels or induces the other person to engage in the sexual act by threat;
6. the actor compels or induces the other person to engage in the sexual act by force or by threat;
7. the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act;
8. the other person, not the actor's spouse, is either 14 or 15 years of age and the actor is at least 5 years older than the other person;
9. the actor is at least 21 years of age and engages in a sexual act with another person, not the actor's spouse, who is either 16 or 17 years of age and is a student enrolled in a private or public elementary, secondary or specialized education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational authority, or the facility or institution in which the student is enrolled;
10. the actor has not expressly or impliedly acquiesced to the sexual act; or
11. the actor is a law enforcement officer acting in performance of official duties and the other person, not the actor's spouse, is under arrest, in custody or being interrogated or temporarily detained, including during a traffic stop or questioning pursuant to an investigation of a crime. 17-A M.R.S.A. 253, 254.

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;
2. the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact;
3. the other person is unconscious or otherwise physically incapable or resisting and has not consented to the sexual contact includes penetration;
4. 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;
5. 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;
6. 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;
7. the other person, not the actor's spouse, is in fact either 14 or 15 years of age and the actor is at least 10 years older than the other person;
8. the other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent.

A person is guilty of a sex crime if the actor intentionally subjects another person to any "sexual touching" if:

1. the other person has not expressly or impliedly acquiesced in the sexual touching;
2. 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;
3. the other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent. 17-A M.R.S.A. 255-A.

**Maryland**

Consent is not specifically defined.

However, Maryland law provides that a person commits a sex crime if that person engages in "vaginal intercourse" or "sexual act" with another person and:

1. by force, or the threat of force, without the consent of the other;
2. if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual;
3. if the victim is under the age of 14 years, and the person performing the act is at least 4 years older than the victim;
4. if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old;
5. if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

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

1. appraising the nature of the individual's conduct;
2. resisting vaginal intercourse, a sexual act, or sexual contact.

"Physically helpless individual" means an individual who:

1. is unconscious;
2. does not consent to vaginal intercourse, a sexual act, or sexual contact;
3. is physically unable to resist, or communicate unwillingness to submit to, vaginal intercourse, a sexual act, or sexual contact.

"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;
The term "consent" means words or overt actions 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 has a customary social relationship with the actor. Further:

- A person who is mentally incapacitated or physically helpless is defined as one who is incapable of consent. Further, as to 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 the consent prior to penetration and withdrawal of consent following penetration, there is no rape. (Ritch v. State, 287 Md. 675, 684, 414 A.2d 1266, 1270 (1980).)

- Force, fear, or threat is sufficient alone to show lack of consent. (Force, fear, or threat is sufficient alone to show lack of consent. Mont. Code Ann. § 45-5-511(1).)

- Corroboration of the victim’s testimony is not required to show lack of consent. (Corroboration of the victim’s testimony is not required to show lack of consent. Mont. Code Ann. § 45-5-511(1).)

- It is well settled that the terms “against the will” and “without the consent” are synonymous in the law of rape. (State v. Ritch, 209 Md. 230, 241, 414 A.2d 720, 723 (1980).)

- The victim is incapable of consent because the victim has been tricked, threatened, or otherwise induced to submit by force or fear of harm. (The victim is incapable of consent because the victim has been tricked, threatened, or otherwise induced to submit by force or fear of harm. Mont. Code Ann. § 45-5-501(1).)

- Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent. (Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent. Mont. Code Ann. § 45-5-501(1).)

- The victim is incapable of consent because the victim:
  - is a child; or
  - is younger than 14 years of age; or
  - is older than 17 years of age; or
  - is a person with a mental or physical disability; or
  - is suffering from a mental or physical illness; or
  - is suffering from the effects of alcohol or drugs.

- Consent is not specifically defined. The standard used in the sexual assault statutes is whether the accused compelled the victim to submit by force or against his or her will, or compels such person to submit by threat of bodily injury. (Consent is not specifically defined. The standard used in the sexual assault statutes is whether the accused compelled the victim to submit by force or against his or her will, or compels such person to submit by threat of bodily injury. Mass. Gen. Laws Ann. Ch. 265 § 22.)

- Consent is not specifically defined. The term “consent” means words or overt actions 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 has a customary social relationship with the actor. Further:
  - A person who is mentally incapacitated or physically helpless is defined as one who is incapable of consent. Further, as to 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 the consent prior to penetration and withdrawal of consent following penetration, there is no rape. (Ritch v. State, 287 Md. 675, 684, 414 A.2d 1266, 1270 (1980).)

- Force, fear, or threat is sufficient alone to show lack of consent. (Force, fear, or threat is sufficient alone to show lack of consent. Mont. Code Ann. § 45-5-511(1).)

- Corroboration of the victim’s testimony is not required to show lack of consent. (Corroboration of the victim’s testimony is not required to show lack of consent. Mont. Code Ann. § 45-5-511(1).)

- It is well settled that the terms “against the will” and “without the consent” are synonymous in the law of rape. (State v. Ritch, 209 Md. 230, 241, 414 A.2d 720, 723 (1980).)

- The victim is incapable of consent because the victim has been tricked, threatened, or otherwise induced to submit by force or fear of harm. (The victim is incapable of consent because the victim has been tricked, threatened, or otherwise induced to submit by force or fear of harm. Mont. Code Ann. § 45-5-501(1).)

- Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent. (Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent. Mont. Code Ann. § 45-5-501(1).)

- The victim is incapable of consent because the victim:
  - is a child; or
  - is younger than 14 years of age; or
  - is older than 17 years of age; or
  - is a person with a mental or physical disability; or
  - is suffering from a mental or physical illness; or
  - is suffering from the effects of alcohol or drugs.

- Consent is not specifically defined. The term “consent” means words or overt actions 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 has a customary social relationship with the actor. Further:
  - A person who is mentally incapacitated or physically helpless is defined as one who is incapable of consent. Further, as to 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 the consent prior to penetration and withdrawal of consent following penetration, there is no rape. (Ritch v. State, 287 Md. 675, 684, 414 A.2d 1266, 1270 (1980).)

- Force, fear, or threat is sufficient alone to show lack of consent. (Force, fear, or threat is sufficient alone to show lack of consent. Mont. Code Ann. § 45-5-511(1).)

- Corroboration of the victim’s testimony is not required to show lack of consent. (Corroboration of the victim’s testimony is not required to show lack of consent. Mont. Code Ann. § 45-5-511(1).)
Nebraska. Consent is not defined by statute. However, it is an element of the crime of sexual assault that the consent was obtained by force, threat of force, or coercion. Neb. Rev. Stat. Ann. § 28-318.

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

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

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

2. Consent to bodily harm: When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if:
   - (i) the victim consents to or threatened by the conduct consented to is not serious; or
   - (ii) the conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity of a kind not forbidden by law.

3. Consent establishes a justification for the conduct under chapter 3 of the code.

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

- (1) the use of physical force or physical violence;
- (2) the use of threats to use physical force or to threaten the use of 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 commission 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 commission of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.

New York. Under New York law, lack of consent results from:

- (1) forcible compulsion;
- (2) incapacity to consent;
- (3) where the offense charged is sexual abuse or forcible touching, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or
- (4) where the offense charged is rape in the 3rd degree or criminal sexual act in the 3rd degree, in addition to forcible compulsion or incapacity to consent, under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.

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

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

A threat of serious bodily harm which reasonably places fear in a person's mind is sufficient to demonstrate the use of force and the lack of consent. State v. Mors, 94 N.C. 517, 522, 380 S.E.2d 608, 611 (1989).

Additionally, submission, including submission due to fear, fright, coercion or intimidation that in the particular situation it is futile or impossible to resist, is a defense. State v. Ricks, 34 N.C. App. 734, 239 S.E.2d 602, 603 (1977); see also State v. Kase, 235 N.C. App. 665, 7 (2014) ("Consent induced by violence or fear of violence is not effective to preclude a rape conviction.")

North Dakota. North Dakota does not specifically define "consent." However, "sexual imposition" is a crime defined in NDCC § 12-1-20-04 as:

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

The statute defines "coercion" in § 12-1-20-02 as:

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

Additionally, "gross sexual imposition" is a crime defined in § 12-1-20-03 as:

- A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
  - That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
  - That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 18-03-3, 1, or other means with intent to prevent resistance;
  - That person knows or has reasonable cause to believe that the victim is unaware that a sexual act is being committed upon him or her;
  - That the victim is less than fifteen years old; or
  - That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.

Ohio. Ohio does not specifically define "consent." However, submission to sexual conduct as a result of fear may be sufficient in proving lack of consent as physical force or threat of physical force or threat of rape, merely the overcoming of the victim's will by fear or duress. In re Adams (Ohio Ct. Cl. 1990) 61 Ohio Misc. 2d 571, 573, 580 N.E.2d 881, 883.
<table>
<thead>
<tr>
<th>State</th>
<th>Definition</th>
<th>Consent Requirements</th>
</tr>
</thead>
</table>
| Oklahoma     | The term "consent" means the affirmative, unambiguous and voluntary agreement to engage in a specific sexual activity during a sexual encounter which can be revoked at any time. Consent cannot be given by an individual who:   
- is asleep or is mentally or physically incapacitated either through the effect of drugs or alcohol or for any other reason; or   
- is under duress, threat, coercion or force.  
Consent cannot be inferred under circumstances in which consent is not clear including, but not limited to:   
- the absence of an individual saying "no" or "stop", or   
- the existence of a prior or current relationship or sexual activity.  
Okla. Stat. tit. 21, § 113. | Yes. The term "consent" means the affirmative, unambiguous and voluntary agreement to engage in a specific sexual activity during a sexual encounter which can be revoked at any time. Okla. Stat. tit. 21, § 113 |
| Oregon       | Oregon does not specifically define "consent." However, a person is considered incapable of consenting to a sexual act if the person is:   
- (a) under 18 years of age;   
- (b) incapable of appraising the nature of the person's conduct;   
- (c) mentally incapacitated; or   
- (d) physically helpless.  
A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence. A person is incapable of appraising the nature of the person's conduct if:   
- (a) the person is unable to understand the nature of the conduct;   
- (b) the person is unable to understand the right to choose whether and how to engage in conduct, including the right to revoke a prior decision to engage in conduct; or   
- (c) the person is unable to communicate a decision to engage in conduct.  
| 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 sexual offense:   
- If the victim has not yet reached the age of sixteen (16) at the time of the event;   
- If due to mental disability or illness, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission;   
- If the victim has been compelled into the act by means of physical force, violence, intimidation or the threat of serious and immediate bodily harm;   
- If the victim's capacity to consent has been annulled or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotic, depressants or stimulants, or similar means or substances;   
- When at the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused;   
- If the victim submits to the act by means of deception, trickery, simulation or cover up with respect to the identity of the person accused;   
- If the victim is forced or induced by means of abuse or physical or psychological violence into participating or becoming involved in unwanted sexual relations with third parties;   
- If the accused person is a relative of the victim, by ascendency or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree; or   
- When the accused person takes advantage of a trust deposited in his/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or psychotherapeutic treatment, or any type of counseling, or because there is a relationship with the victim as the leader of his/her religious belief.  
Puerto Rico Stat. tit. 33 § 4770. | N/A. |
| 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:   
- (1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless;   
- (2) The accused uses force or coercion;   
- (3) The accused, through concealment or by the element of surprise, is able to overcome the victim; or   
- (4) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation.  
A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and if any of the following circumstances exist:   
- (1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless;   
- (2) The accused uses force, element of surprise, or coercion.  
A person is guilty of third degree sexual assault if he or she is over the age of eighteen (18) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age. R.I. Gen. Laws § 11-37-6.  
"Force or coercion" means when the accused does any of the following:   
- (1) Uses or threatens to use a weapon, or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;   
- (2) Overcomes the victim through the application of physical force or physical violence;   
- (3) Coerses the victim to submit by threatening to use force or violence on the victim and the victim reasonably believes that the accused has the present ability to execute these threats; or   
- (4) Coerses 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). | N/A. |
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 force or coercion to accomplish sexual battery;
(b) The victim submits to sexual abuse by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, treachery 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 and incapable of resisting or physically helpless.

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

(1) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances;
(2) 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.

"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. § 16-3-652.

"Aggravated coercion" means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, or if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person. S.C. Code Ann. § 16-3-653(b). A person is guilty of criminal sexual conduct in the second degree if the actor uses aggravated coercion to accomplish sexual battery. S.C. Code Ann. § 16-3-653(1).

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

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

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

Tennessee

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

(1) If the victim is less than thirteen years of age;
(2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim’s presence, accompanied by apparent power of execution;
(3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act;
(4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or substance;
(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.

Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim 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, or physically helpless;

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

(1) Force or coercion is used to accomplish the act;
(2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;
(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless;
(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. § 39-13-503.

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 physical force, violence, or coercion;
(2) The actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;
(3) The actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
(4) 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;
(5) 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;
(6) 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;
(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 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;
(9) The actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
(10) The actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
(11) The actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
(12) The actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
(13) The actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
(14) The actor is a care provider hired to assist the other person with activities of daily life and causes the other person to submit or participate by exploiting the other person’s dependency on the actor.

Texas Code Ann. § 22.011(b).
Under Utah law, sexual offenses without consent of the victim arise when:

- (a) the victim expresses lack of consent through words or conduct;
- (b) the actor overcomes the victim through the actual application of physical force or violence;
- (c) the actor is able to overcome the victim through concealment or by the element of surprise;

- (d) (i) the actor coerces the victim to submit by threatening or retaliating in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or
- (ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;

- (e) (i) “to retaliate” includes threats of physical force, kidnapping, or extortion;
- (ii) the actor knows that the victim is unconscious, unaware that the act is occurring, or is physically unable to resist;
- (iii) the actor knows or reasonably should know that the victim has a mental disease or defect which renders the victim unable to appraise the nature of the act, resist the act, understand the possible consequences to the victim’s health or safety, or appraise the nature of the relationship between the actor and the victim;
- (iv) the actor knows that the victim participates because the victim erroneously believes that the actor is someone else;
- (v) the actor intentionally impaired the power of the victim to appreciate the nature of the act or to resist such conduct at the time the victim would have engaged in such conduct or, in the case of an unconscious person, the actor’s action; or
- (vi) the actor is a health professional or religious counselor, the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was medically or professionally appropriate diagnostic, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested.

- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent may be initially given but may be withdrawn through words or conduct at any time prior to or during sexual activity. Utah Code Ann. §76-3-406(2)(c).

**Utah**

<table>
<thead>
<tr>
<th>State</th>
<th>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. §3253(3).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>&quot;Incapable of consenting&quot; means the person: (A) is incapable of understanding the nature of the conduct at issue; (B) is 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. §3253(10).</td>
</tr>
<tr>
<td></td>
<td>Additionally, a person will be deemed to have acted without the consent of the other person where the actor:</td>
</tr>
<tr>
<td></td>
<td>(A) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or lewd and lascivious conduct;</td>
</tr>
<tr>
<td></td>
<td>(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</td>
</tr>
<tr>
<td></td>
<td>(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.</td>
</tr>
</tbody>
</table>

**Vermont**

<table>
<thead>
<tr>
<th>Consent</th>
<th>Consent is not specifically defined. However, there is no consent in circumstances when:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(a) a person’s resistance is prevented by fear of immediate and great bodily harm (Williams v. Virgin Islands, No. CRIM. 2007-0008, 2011 WL 4072778 (V.I. Sept. 12, 2011)); or</td>
</tr>
<tr>
<td></td>
<td>(b) the actor overcomes the victim through the actual application of physical force, intimidation or abuse of a position of authority;</td>
</tr>
<tr>
<td></td>
<td>(c) the actor is able to overcome the victim through concealment or by the element of surprise;</td>
</tr>
</tbody>
</table>

**Virgin Islands**

<table>
<thead>
<tr>
<th>Consent</th>
<th>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(1).</th>
</tr>
</thead>
</table>

**Washington**

<table>
<thead>
<tr>
<th>Consent</th>
<th>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.</th>
</tr>
</thead>
</table>

**West Virginia**

<table>
<thead>
<tr>
<th>Consent</th>
<th>Lack of consent results from forcible compulsion, incapacity to consent, or, if the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or implicitly acquiesce in the actor’s conduct. W. Va. Code Ann. § 61-1B-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 prohibited person having sexual intercourse, or causing sexual intrusion or sexual contact. W. Va. Code Ann. § 61-1B-2(c).</th>
</tr>
</thead>
</table>

**Wisconsin**

<table>
<thead>
<tr>
<th>Consent</th>
<th>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.</th>
</tr>
</thead>
</table>

**Wyoming**

| Consent | 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, 655 P.2d 1246 (Wyo. 1982). |

capacity to consent

<table>
<thead>
<tr>
<th>State</th>
<th>At what age is a person able to consent?</th>
<th>Does developmental disability and/or mental incapacity impact the victim’s ability consent?</th>
<th>Does consciousness impact the victim’s ability consent?</th>
<th>Does intoxication impact the victim’s ability consent?</th>
<th>Does the relationship between the victim and actor impact the victim’s ability to consent?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

[1] The essence of consent is that it is given out of free will, and determining whether someone has truly consented requires close attention to a wide range of contextual elements, including verbal and nonverbal cues. State v. Reigelsperger, 400 P.3d 1127, 1145 (Utah App. 2017).
Yes, a person is deemed incapable of consenting if he or she is incapacitated. Alaska Code § 13A-6-70(c).

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

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

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

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

"Incapacitated" means (among other things) that a person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance or condition that is not an element of the offense. Alaska Code § 13A-6-602(e).

Yes, in certain cases:

• In cases involving the sexual assault of a child by an adult, forced completion of a sexual penetration to which the child knows and treats 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 Pomp v. State, 597 So. 2d 721 (Ala. 1991), as limited by Ex parte J.P., 853 So. 2d 280 (Ala. 2002)).

• It is illegal for a school employee to engage in "a sex act with a student under the age of 19 years" to have "sexual contact" with such a student, or to solicit a sex act (including sexual intercourse, deviate sexual intercourse, or sexual contact) with a student under the age of 19 by "soliciting[ing], persuad[ing], encourag[ing], harang[ing], or entic[ing] a student." Consent is not a defense for these acts. Ala. Code §§ 13A-41-64, 13A-41-62.

Although it does not directly affect consent, lack of consent is not an element of the following crimes (meaning the offender is responsible regardless of whether the victim consented):

• The following constitutes sexual assault in the first degree:

  • A person engaging in sexual penetration with another person who the offender knows is mentally incapable and who is in the offender’s care by authority of law or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.410(a)(3).

• The following constitutes sexual assault in the second degree:

  • A person engaging in sexual contact with another person who the offender knows is mentally incapable and who is in the offender’s care by authority of law or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.420(a)(3).

  • A person engaging in sexual penetration with a person who is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(3).

  • A person engaging in sexual contact with a person who the offender knows is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.425(a)(3).

• "Mentally incapable" means suffering from a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person’s conduct, including the potential for harm to the 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, foreseeable social, medical, and practical consequences that the act entails. Jackson v. State, 990 P.2d 587 (Alaska Ct. App. 1995).

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)(3).

  • A person engaging in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and the offender is a health care worker and the offense takes place during the course of professional treatment of the victim. Alaska Stat. § 11.41.410(a)(4).

• 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)(3).

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

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

• The following constitutes sexual assault in the third degree:

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

• The following constitutes sexual abuse of a minor in the first degree:

  • A person who is 18 years of age or older engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim’s natural parent, stepparent, adoptive parent, or legal guardian. Alaska Stat. § 11.41.425(a)(2).

  • A person who is 18 years of age or older engages in sexual penetration with a person who is under 18 years of age, and the victim is residing in the same household as the offender or the offender occupies a position of authority in relation to the victim. Alaska Stat. § 11.41.425(a)(3).

The Alaska Statute does not directly address intimidation, but intercourse that causes an individual to be "unaware that a sexual act is being committed" may invalidate consent.

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.
Arizona

Yes, a minor is capable of consenting to sexual intercourse with an adult who is the minor’s spouse. Arizona Penal Code § 261.7(a).

Arkansas

Yes, a person who is temporarily incapable of appreciating or controlling the person’s conduct as a result of a controlled or intoxicating substance; administered to the person without the person’s consent; or what renders the person unaware a sexual act is occurring; is deemed “mentally incapacitated” and unable to give consent. Arkansas Code § 5-14-101(5).

California

Yes, a minor is capable of consenting to sexual intercourse if 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, and this condition was occurring, unaware a sexual act is occurring, or by any intentional, deceptive, fraudulent, or misleading representation that the sexual contact was occurring.

Colorado

Yes, a minor is capable of consenting to sexual intercourse if 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, and this condition was occurring, unaware a sexual act is occurring, or by any intentional, deceptive, fraudulent, or misleading representation that the sexual contact was occurring.

Yes, the court may be guilty of sexual assault and/or unlawful sexual contact when the victim is inapplicable 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 and the actor knows the victim is unconscious and the victim has not consented. Colorado Revised Statutes Annotated §§ 18-3-402(1)(b); 18-3-404(1)(b). In addition, the sexual assault statute prohibits sexual intrusion or penetration if actor knows that victim is incapable of apprising nature of victim’s conduct may extend to victims who are partially asleep. People v. Allen, 770 P.2d 802 (Colo. App. 1989).
Pellman v. People

"Impaired because of mental disability or disease" means 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, 53a-70, 53a-71.

If the element involves the nature of the victim, defendant or such person's consent, Connecticut General Statutes Annotated § 53a-65(4). The term "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 with the consent of the victim, Connecticut General Statutes Annotated § 53a-65(5).

A victim is one who is: (1) the person engaged in the sexual encounter later becomes unable to do so and the defendant continues to engage in such sexual activity; (2) 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 (3) the person is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child. Connecticut General Statutes Annotated § 53a-65(c).

A person is guilty of sexual abuse of a child by a person in a position of trust over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child. Connecticut General Statutes Annotated § 53a-67(a).

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

- such other person is 13 years of age or older but under 16 years of age and the person is more than three years older than such other person;
- such other person is less than 18 years old and the person is such other person's guardian or otherwise responsible for the general supervision of such person's welfare;
- such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person;
- the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception, or
- the actor commits the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional; or
- the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or
- the actor is a coach in an athletic activity or a person who provides, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and (A) is in a secondary school and receives such coaching or instruction in a secondary school setting, or (B) is under 18 years of age; or
- the actor is 20 years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and such other person is under 18 years of age; or
- such other person is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person. Connecticut General Statutes Annotated § 53a-71.
have sexual contact with the person or a third person and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778A(1));

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

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

● Significant relationship includes:

- the position of trust, authority or supervision over
- a child includes, but is not limited to:

  - familial or custodial authority or supervision;

  - a teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer;

  - a babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer;

  - any healthcare professional as defined above;

  - clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer;

  - any law enforcement officer, as that term is defined in 11 Delaware Code § 781(c), and including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or

  - any other person who because of that person’s familial relationship, profession, employment, vocation, 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 § 786(c)).

● 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 § 781(k)(1)(d).

11 Delaware Code § 781(e) and § 786(c)(4).
Gore v. State
Mentally defective, 252 So. 3d 374, 379 (Fla. 2021); 119 Ga. 418 (1904); 502
Sexual battery
Evans v. State
Physically helpless/mentally incapacitated
Yes. A victim who has a
exception. Florida Statutes § 794.011(1)(b).
18 years old, subject to
Yes. Any developmental
disability and/or mental
capacity may impair the
victim’s ability to intelligently, knowingly, and voluntarily
consent. Florida Statutes § 794.011(3)(b)-(c).
"Mentally incapacitated" means
temporarily or permanently
incapable of appraising or controlling
a person’s own conduct due to
the influence of a narcotic, anesthetic,
or intoxicating substance administered
without his or her consent.
Florida Statutes § 794.011(1)(c).
"Mentally incapacitated" means temporarily
incapable of appraising or controlling
a person’s own conduct due to
the influence of a narcotic, anesthetic,
or intoxicating substance administered
without his or her consent.
Florida Statutes § 794.011(1)(e).
"Mentally incapacitated" means temporarily
incapable of appraising or controlling
a person’s own conduct due to
the influence of a narcotic, anesthetic,
or intoxicating substance administered
without his or her consent.
Florida Statutes § 794.011(1)(f).
Yes. A person who is physically
defective or mentally incapacitated
may not be able to provide
intelligent, knowing, and voluntary
consent. Florida Statutes § 794.011(1)(b).
Yes, a person who is mentally
defective or mentally incapacitated
may not be able to provide
intelligent, knowing, and voluntary
consent. Florida Statutes § 794.011(1)(c).
Yes. A person who is mentally
defective or mentally incapacitated
may not be able to provide
intelligent, knowing, and voluntary
consent. Florida Statutes § 794.011(1)(e).
Yes. A person who is mentally
defective or mentally incapacitated
may not be able to provide
intelligent, knowing, and voluntary
consent. Florida Statutes § 794.011(1)(f).
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, non-elected,
or official, who is acting in such a manner as to lead the victim to reasonably believe
that the offender is in a position of control or authority as an agent
or employee of law enforcement.
Florida Statutes § 794.011(4)(e)(7).
"Sexual battery" means oral, anal, or vaginal penetration
by, or union with, the sexual organ of another or the anal
or vaginal penetration of another by any other object;
hence, however, sexual battery does not include an act done for a
bona fide medical purpose.
Florida Statutes § 794.011(3)(b).
Indiana
16 years old, subject to
Yes. A victim who has a
developmental disability or
disability or lacks the mental capacity to
make ordinary judgments on
his or her own is unable to
give consent to sexual acts.
Yes. A victim whose will is
temporarily lost due to
unconsciousness arising from use
of drugs or other cause, or is
unable to consent to sexual
activity.
Yes, any developmental
disability and/or mental
capacity may impair the
victim’s ability to intelligently, knowingly, and voluntarily
consent. Florida Statutes § 794.011(3)(b)-(c).
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, non-elected,
or official, who is acting in such a manner as to lead the victim to reasonably believe
that the offender is in a position of control or authority as an agent
or employee of law enforcement.
Florida Statutes § 794.011(4)(e)(7).
"Sexual battery" means oral, anal, or vaginal penetration
by, or union with, the sexual organ of another or the anal
or vaginal penetration of another by any other object;
hence, however, sexual battery does not include an act done for a
bona fide medical purpose.
Florida Statutes § 794.011(3)(b).
"Sexual battery" means oral, anal, or vaginal penetration
by, or union with, the sexual organ of another or the anal
or vaginal penetration of another by any other object;
hence, however, sexual battery does not include an act done for a
bona fide medical purpose.
Florida Statutes § 794.011(3)(b).
"Sexual battery" means oral, anal, or vaginal penetration
by, or union with, the sexual organ of another or the anal
or vaginal penetration of another by any other object;
hence, however, sexual battery does not include an act done for a
bona fide medical purpose.
Florida Statutes § 794.011(3)(b).
"Sexual battery" means oral, anal, or vaginal penetration
by, or union with, the sexual organ of another or the anal
or vaginal penetration of another by any other object;
hence, however, sexual battery does not include an act done for a
bona fide medical purpose.
Florida Statutes § 794.011(3)(b).
"Sexual battery" means oral, anal, or vaginal penetration
by, or union with, the sexual organ of another or the anal
or vaginal penetration of another by any other object;
hence, however, sexual battery does not include an act done for a
bona fide medical purpose.
Florida Statutes § 794.011(3)(b).
In addition, a person commits the offense of improper sexual contact when a person in a "position of trust" engages in sexually explicit conduct with a minor for whom he or she has entered into an agreement entrusting him or her with the responsibility of education and supervision of such minor. Georgia Code § 16-6-5 (10)-(21) & (c)2. "Person in a position of trust" means an individual with whom a person's guardian, or other person standing in loco parentis of a minor has entered into an agreement entrusting such individual with the responsibility of education and supervision of such minor. Georgia Code § 16-6-5 (1) (c)5 (1) Consent is not a defense to offenses under section 16-6-5.1.

**Guam**

18 years old. 9 G.C.A. §§ 25.10(a)(8); 25.15; 25.20; 25.25; 25.30.

Yes. A person commits a sex crime if the person engages in sexual penetration or sexual contact with another person who is mentally defective or mentally incapacitated. 9 G.C.A. §§ 25.10(a)(8); 25.15; 25.20; 25.25; 25.30.

No.

**Hawaii**

16 years old. HRS §§ 707-700; 707-703; 707-730; 707-731; 707-732.

Yes. A person commits a sex crime if the person subjects to a sexual act another person who is mentally defective or mentally incapacitated. HRS §§ 707-700; 707-703; 707-730; 707-732.

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

Yes. A person commits a sex crime if the person subjects to a sexual act another person who is physically helpless, which includes a person who is unconscious. HRS §§ 707-700; 707-703; 707-732.

Yes. A person commits a sex crime if the person subjects to a sexual act another person who is temporarily incapacitated, which includes a person that is rendered temporarily incapacitated of appraising or controlling his or her conduct as a result of 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 commits a sex crime if the person subjects to a sexual act another person who is mentally incapacitated, which includes a person who is temporarily incapacitated of appraising or controlling his or her conduct as a result of 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 commits a sex crime if the person subjects to a sexual act another person who is temporarily incapacitated, which includes a person that is rendered temporarily incapacitated of appraising or controlling his or her conduct as a result of 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 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.

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. People v. Whitten, 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 for other than medicinal purposes: 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.60.

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, a person commits custodial sexual misconduct when:

- he or she is an employee of a penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act, or person in the custody of a law enforcement agency or employee shall not be a defense to a prosecution under section 5/11-9.2. A person is deemed incapable of consent, for purposes of section 5/11-9.2 when he or she is a probationer, parolee, releasee, inmate in custody of the penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act, or a person in the custody of a law enforcement agency or employee. 720 ILCS 5/11-9.2.

In addition, a person commits sexual misconduct with a person with a disability when:

- he or she is or has had a professional relationship with a child less than 18 years of age engages in sexual acts with a custodian, stepparent, or child care worker for a child who is a person with a disability who is in a residential program operated or supervised by a community agency. 720 ILCS 5/11-9.5.

A person commits aggravated sexual conduct with a victim who is at least 13 years of age and under 18 years of age, and the person is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim. 720 ILCS 5/11-1.60.

Illinois

§§ 35-42-4.5, § 35-42-4.9. 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, accuse any person of 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.

Yes. A person commits custodial sexual misconduct when:

- he or she is an employee of a penal system and engages in sexual conduct or sexual penetration with a person who is in the custody of that penal system;

- he or she is an employee of a treatment and detention facility and engages in sexual conduct or sexual penetration with a person who is in the custody of that treatment and detention facility; or

- he or she is an employee of a law enforcement agency and engages in sexual conduct or sexual penetration with a person who is in the custody of a law enforcement agency or employee. 720 ILCS 5/11-9.2.

Also, a probation or supervising officer, surveillance agent, or aftercare specialist commits custodial sexual misconduct if the probation or supervising officer, surveillance agent, or aftercare specialist engages in sexual conduct or sexual penetration with a probationer, parolee, releasee, or someone serving a term of conditional release who is under the supervisory, disciplinary, or custodial authority of the officer or agent or employee so engaging in the sexual conduct or sexual penetration: 720 ILCS 5/11-9.2.

In addition, a person commits sexual misconduct with a person with a disability when:

- he or she is an employee as defined in the statute and knowingly engages in sexual conduct or sexual penetration with a person with a disability who is under the care and custody of the Department of Human Services at a State-operated facility; or

- he or she is an employee of a community agency funded by the Department of Human Services and knowingly engages in sexual conduct or sexual penetration with a person with a disability who is in a residential program operated or supervised by a community agency. 720 ILCS 5/11-9.5.

Indiana

16 years old. IC §§ 35-42-4.9.

Yes. A person commits a sex crime if that person knows that the victim is mentally disabled or deficient that consent to sexual intercourse or sexual conduct cannot be given. IC §§ 35-42-4.1, 35-42-4.4.

Yes. A person commits a sex crime if the other person is unaware that the sexual intercourse or other sexual conduct is occurring. IC §§ 35-42-4.1, 35-42-4.4.

In addition, the crime and punishment is more severe if the offender is facilitated by furnishing the drug or controlled substance without the victim's knowledge: IC §§ 35-42-4.1, 35-42-4.4.

Yes. If the intoxication causes the victim to be unaware that the sexual intercourse or other sexual conduct is occurring: IC §§ 35-42-4.1, 35-42-4.4.

In addition, the crime and punishment is more severe if the offense is facilitated by furnishing the drug or controlled substance without the victim's knowledge: IC §§ 35-42-4.1, 35-42-4.4.

Yes. It is a defense to sexual misconduct with a minor if the child is or has ever been married, except where the sexual misconduct is committed by use of deadly force or by furnishing the victim, without the victim's knowledge, with a drug or other controlled substance or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge. IC § 35-42-4.9.

In addition, a person commits child seduction if:

- (1) a person who is at least 18 years of age and is the guardian, adoptive parent, custodian, stepparent, or child care worker for a child less than 18 years of age engages in sexual acts with the child;

- (2) a person who (i) has or had a professional relationship with a child less than 18 years of age whom the person knows to be at least 16 years of age but less than 18 years of age; (ii) may exert undue influence on the child because of the person's current or previous professional relationship with the child; and (iii) uses or exerts the person's professional relationship to engage in sexual acts with the child; or

- (3) a law enforcement officer who is at least 5 years older than a child less than 18 years of age had contact with the child while acting within the scope of the law enforcement officer’s official duties with respect to the child; and uses the law enforcement officer’s professional relationship with the child to engage in sexual acts with the child. IC § 35-42-4.7.
Yes. Sexual abuse is defined as any sex act between persons where the other person is suffering from a mental defect or incapacity which precludes giving consent or lacks the mental capacity to know the right and wrong of conduct in sexual matters. I.C.A. § 709.4.

In addition, a person commits a sex crime if:

(1) the sex act is between persons who are not cohabitating as husband and wife and the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

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

The key issue is whether the mental strength of the victim is so far below the normal that it precludes effective resistance. State v. Sullivan, 298 N.W.2d 267, 272 (Iowa 1980). Persons who are so mentally incompetent or incapacitated as to be unable to understand the nature and consequences of the sex act are incapable of giving consent. Id.

Yes. Sexual abuse is defined as any sex act between persons that is done against the will of the other, which includes an act that is done while the other person is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness. I.C.A. § 709.4.

In addition, a person commits a sex crime if:

(1) the sex act is performed while the other person is under the influence of a controlled substance which results in the person from consenting to the act and the person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is under the influence of a controlled substance which results in the person from consenting to the act and the person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. The crime of sexual abuse is a serious crime. I.C.A. § 709.4.

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

(1) the other person is suffering from a mental defect or incapacity which includes being under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the victim is 12 to 15 years old. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is under the influence of a controlled substance which results in the person from consenting to the act and the person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

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

(1) the other person is suffering from a mental defect or incapacity which includes being under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

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

(1) the other person is suffering from a mental defect or incapacity which includes being under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.

Yes. A person commits a sex crime if:

(1) the sex act is performed while the other person is suffering from a defect or incapacity which precludes giving consent; or

(2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4.
Yes. A person is deemed incapable of consent when he or she is an individual that suffers from a mental illness. KRS §§ 510.010. See also Wiedenbauer v. Commonwealth, 2013 WL 6212240 (Ky App. 2013). "In determining whether a woman 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 consented to." KRS § 510.010.

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

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

Yes. A person is deemed incapable of consent when he or she is a person in a position of authority or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a foster child placed in the care of such family foster home; (9) the offender is a teacher or other person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services; (11) the offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under court 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 assigned to a community correctional services program under the supervision and control of community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of community corrections; (12) the offender is a security or an employee of a security 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 community corrections; (13) the offender is a law enforcement officer 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 interacting with such law enforcement officer during the course of a traffic stop, a custodial interrogation, an interview in connection with an investigation, or while the law enforcement officer has such person detained.

K.S.A. § 21-5512. It is a defense to each of the above offenses if the person is married to the offender.
Louisiana

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

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

(1) when the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing such resistance ("mental infirmity" means a person with an intelligence quotient of seventy or lower; "physical infirmity" means a person who is a quadriplegic or paraplegic);

(2) when the victim, through insouciance 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. LSA-R.S. 14:42, LSA-R.S. 14:42.1, LSA-R.S. 14:45.

See also State v. Ward, 903 So.2d 480 (La. App. 2005) (the applicable test for evaluating mental capacity to consent is whether the "victim was incapable of understanding the nature of the act").

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

(1) when the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind, which would likely include unconsciousness, produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim;

(2) when the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by an intoxicating agent or any cause, which would likely include unconsciousness, and the offender knew or should have known of the victim's incapacity. LSA-R.S. 14:42.1, LSA-R.S. 14:45.

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

(1) when the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by an intoxicating agent or any cause, and the offender knew or should have known of the victim's incapacity. LSA-R.S. 14:42.1, LSA-R.S. 14:45.

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

(1) when the victim is incapable of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by an intoxicating agent or any cause, and the offender knew or should have known of the victim's incapacity. LSA-R.S. 14:42.1, LSA-R.S. 14:45.

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

Also, prohibited sexual conduct between an educator and a student is committed when:

(1) an educator has sexual intercourse with a person who is 17 years of age or older, but less than 21 years of age, where there is an age difference of greater than 4 years between the two persons, when the victim is the spouse of the offender and is a student at the school where the educator is assigned, employed, or working at the time of the offense;

(2) an educator commits any lawful or lascivious act upon a student in the presence of a student who is 17 years of age or older, but less than 21 years of age, where there is an age difference of greater than 4 years between the two persons, with the intent of gratifying the sexual desires of either person, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense; or

(3) an educator intentionally engages in the touching of the anus or genitals of a student 17 years of age or older, but less than 21 years of age, where there is an age difference of greater than 4 years between the two persons, using any instrumentality or any part of the body of the educator, or the touching of the anus or genitals of the educator by a person 17 years of age or older, but less than 21 years of age, where there is an age difference of greater than 4 years between the two persons, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense using any instrumentality or any part of the body of the student.

A person is guilty of sexual abuse in the third degree if the person engages in a sexual act or contact with a person, regardless of consent. A person is guilty of a sex crime if that person engages in a sexual act or contact with another person and:

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

(2) the actor owns, operates, or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health.

Maine

16 years old. 17-A M.R.S.A. 284.

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

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

(2) the actor owns, operates, or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health.

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

(1) the other person, regardless of consent. A person is guilty of a sex crime if that person engages in a sexual act or contact with another person and:

(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 the organization, program or residence recognizes the other person as a person with an intellectual disability or autism; (3) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes the other person as a person with an intellectual disability or autism; (4) the actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disability, disease, disorder or defect; 17-A M.R.S.A. 253, 255-A, 260. Mental disability can be either "reasonably apparent" or "known to the actor" and thus the statute allows for either "subjective awareness or an objective manifestation of the required disability." State v. Cladout, 478 A.2d 1136, 1138 (Maine 1984).

Maryland

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

Yes. A person may not engage in "vaginal intercourse," "sexual act," or "sexual contact" with an inmate. A person may not engage in "vaginal intercourse," "sexual act," or "sexual contact" with a "mentally incapacitated individual" or 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.

See also Bredt v. State, 2015 WL 5945336 (Md. App. 2015) ([the] individual is mentally defective when he or she suffers from a mental disability that renders him or her substantially incapable of "appraising the nature of the individual's conduct").

Massachusetts

16 to 18 years old depending on the crime below.


Yes, if the victim was incapable of consenting due to such physical impairment, disability, or mental incapacity. Con. v. Fuller, 484 N.E.2d 454, 46 Mass. App. Ct. 84 (2006). The punishment for indecent assault and battery on a person with a disability (a person with a permanent or long-term physical or mental impairment that prevents or restricts the individual’s ability to provide for his or her own care or protection) is more severe. Mass. Gen. Laws. Ann. ch. 265, §138.

Yes, if the victim is so impaired as to be incapable of consenting to intercourse. Con. v. Fuller, 484 N.E.2d 736, 450 Mass. 853 (1985).

Yes, if such intoxication renders the person incapable of giving consent. Con. v. Fuller, 484 N.E.2d 735, 450 Mass. 608 (1985).

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

No. However, it is aggravated statutory rape (which carries a more severe punishment) for a person engaged in "sexual intercourse" or "sexual contact" with a "mandated reporter" at the time of the act to have sexual intercourse or unnatural sexual intercourse with a child under age 16 years of age. Mass. Gen. Laws. Ann. ch. 265, §23A.

'Mandated reporter' means a person who is:

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

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

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

• (iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis.
Yes. A person who is mentally incapacitated or physically helpless cannot consent to a sexual act. Minn. Stat. § 609.341.

It constitutes criminal sexual conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that (1) the complainant is mentally incapacitated, mentally impaired, or physically helpless; Minn. Stat. § 609.342.

Yes. A person who is a parent or guardian of the complainant, where the complainant was the actor's patient, and the sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. A person who is a parent or guardian of the complainant, where the complainant was the actor's patient, and the sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. Criminal sexual conduct in the third or fourth degree occurs if the victim is at least 13 but less than 18 years of age and any of the following:

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.

Yes. If the intoxication is a result of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or to sexual encounter relating to sexual penetration, contact, or conduct if the actor commits sexual penetration or contact and the actor knows or has reason to know that the complainant is mentally incapacitated, mentally impaired, or physically helpless. Minn. Stat. § 609.342.
The following acts constitute criminal sexual conduct in the fourth degree.

1. The actor was 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:

2. 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:

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

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

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

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

7. 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:

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

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

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

11. The actor was 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:

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

16 years old, unless (i) the other person is in a position of trust or authority over the child, in which case the age of consent is 18 years old or (ii) the other person is 16 or fewer months older than the victim, in which case the age of consent is 14. Miss. Code Ann. § 97-3-5-93, Miss. Code Ann. § 97-3-65.

Yes.

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

Yes.

A person is guilty of sexual battery if he or she engages in sexual penetration with a physically helpless person, which includes a person that is incapacitated, incapable of communicating an intention to engage in an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent. Miss. Code Ann. § 97-3-95(a).

Yes.

A person is guilty of sexual battery if he or she engages in sexual penetration with a physically helpless person, which includes a person who for any reason is incapable of communicating an intention to engage in an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent. Miss. Code Ann. § 97-3-95(a)(i).

Missouri

14 years old. Mo. Rev. Stat. § 566.034 (statutory rape in the second degree).

Yes.

A person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapable of consent, or lacks the capacity to consent, or by the use of forceful compulsion. Mo. Ann. Stat. § 566.030.

Yes.

A person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Mo. Ann. Stat. § 566.030.

Yes.

A person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered to 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.

Yes.

A person commits the crime of sexual contact with a person, if the other person has sexual contact with a student of a school and is:

- a teacher;
- a student teacher;
- an employee of the school;
- a volunteer of the school;
- a provider of transportation service;
- a transportation service provider, and others against the victim. Consents by the complainant is not defense to these sexual acts. These laws prohibit sexual acts perpetrated by an actor in a "prohibited sexual relationship."

Minn. Stat. § 609.344 and § 609.345; see also Minn. Stat. § 609.344(5).

Mississippi

14 years old. Mo. Rev. Stat. § 566.034 (statutory rape in the second degree). However, statutory rape in the first degree is defined as an act between a 14 year old or older having sexual intercourse with another person who is less than 17 years old. Mo. Rev. Stat. § 566.034 (statutory rape in the second degree).

Yes.

A person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Mo. Ann. Stat. § 566.030.

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 to 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.

Yes.

A person commits the crime of sexual contact with a person, if the other person has sexual contact with a student of a school and is:

- a teacher;
- a student teacher;
- an employee of the school;
- a volunteer of the school;
- a provider of transportation service;
- a transportation service provider, and others against the victim. Consents by the complainant is not defense to these sexual acts. These laws prohibit sexual acts perpetrated by an actor in a "prohibited sexual relationship."

Minn. Stat. § 609.344 and § 609.345; see also Minn. Stat. § 609.344(5).

Montana


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).

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)(vi).

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).

Yes. For purposes of sexual intercourse without consent statute (Mont. Code Ann. § 45-5-303), "without consent" means the victim is incapable of consent because the victim is:

- incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority or is receiving community-based services and the perpetrator: (i) has supervisory or disciplinary authority over the victim; (ii) is an employee, contractor, or volunteer of the facility or community-based service; or (iii) is an employee, contractor, or volunteer of the facility or community-based service.
- a community-based facility or a residential facility or is receiving community-based services and the perpetrator: (i) has supervisory or disciplinary authority over the victim; (ii) is an employee, contractor, or volunteer of the facility or community-based service.
- a community-based facility or a residential facility or is receiving community-based services and the perpetrator: (i) has supervisory or disciplinary authority over the victim; (ii) is an employee, contractor, or volunteer of the facility or community-based service.
- a community-based facility or a residential facility or is receiving community-based services and the perpetrator: (i) has supervisory or disciplinary authority over the victim; (ii) is an employee, contractor, or volunteer of the facility or community-based service.
- a community-based facility or a residential facility or is receiving community-based services and the perpetrator: (i) has supervisory or disciplinary authority over the victim; (ii) is an employee, contractor, or volunteer of the facility or community-based service.

Minn. Stat. § 609.344 and § 609.345; see also Minn. Stat. § 609.344(5).

Similarly, consent is ineffective under the sexual assault statute (Mont. Code Ann. § 45-5-502(5)) if the victim is:

- incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority or is receiving community-based services and the perpetrator: (i) has supervisory or disciplinary authority over the victim; (ii) is an employee, contractor, or volunteer of the facility or community-based service.
- a community-based facility or a residential facility or is receiving community-based services and the perpetrator: (i) has supervisory or disciplinary authority over the victim; (ii) is an employee, contractor, or volunteer of the facility or community-based service.
- a community-based facility or a residential facility or is receiving community-based services and the perpetrator: (i) has supervisory or disciplinary authority over the victim; (ii) is an employee, contractor, or volunteer of the facility or community-based service.
- a community-based facility or a residential facility or is receiving community-based services and the perpetrator: (i) has supervisory or disciplinary authority over the victim; (ii) is an employee, contractor, or volunteer of the facility or community-based service.
- a community-based facility or a residential facility or is receiving community-based services and the perpetrator: (i) has supervisory or disciplinary authority over the victim; (ii) is an employee, contractor, or volunteer of the facility or community-based service.

Minn. Stat. § 609.344 and § 609.345; see also Minn. Stat. § 609.344(5).
community-based facility or a residential facility or is receiving community-based services and the perpetrator: (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and (B) is an employee, contractor, or volunteer of the facility or community-based service.

Mont. Code Ann. § 45-5-502(5)(a). However, the above do not apply if the individuals are married. Mont. Code Ann. § 45-5-502(5)(b)(c).

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

- A witness in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer who is involved in the case in which the victim is a witness or is being investigated.
- This does not apply if the individuals are married to each other.
- A program participant in a private alternative program and the perpetrator is a worker affiliated with the program.
- This does not apply if the individuals are married to each other.
- A parent or guardian involved in a child abuse or neglect proceeding and the perpetrator is:
  - Employed by the department of public health and human services for the purposes of carrying out the department’s duties and
  - Directly involved in the parent or guardian’s case or involved in the supervision of the case.
- A client receiving psychotherapy services and the perpetrator:
  - Is providing or purporting to provide psychotherapy services to the victim or
  - Is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim.
- This does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client.


Nevada:

16 years old. Yes. A person who subjects another person to sexual penetration when the actor is 19 years of age or older and the victim is at least 12 but less than 16 years of age is guilty of sexual assault in the first degree. Nev. Rev. Stat. § 28-319(1)(c).

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. 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. Nev. Rev. Stat. § 28-319(1)(b).

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).

The evidence established that the victim was incapacitated by alcohol, and her assailant knew or should have known that she was mentally or physically incapable of resisting or appraising the nature of her conduct. Freeman v. Freeman, 267 Neb. 737, 753 (2004).

Yes, for:

- Intimacy and parolees.
- A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact. It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact. Nev. Rev. Stat. § 28-320.01.
- Protected individuals are those persons in the care or custody of the Department of Health and Human Services.
- A person commits the offense of sexual abuse of a protected individual if the person subjects a protected individual to sexual penetration or sexual contact. It is not a defense to a charge under this section that the protected individual consented to such sexual penetration or sexual contact. Nev. Rev. Stat. § 28-320.04.02.

Not for married spouses. There is also no “spousal-exclusion” to sexual assault charges. State v. Willis, 223 Neb. 844, 844 (1986).

Nebaska:

16 years old. Yes. A person who subjects another person to sexual penetration when the actor is 19 years of age or older and the victim is at least 12 but less than 16 years of age is guilty of sexual assault in the first degree. Neb. Rev. Stat. § 28-319(1)(c).

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 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 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).

Yes. A 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).

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

Incest:

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

Yes. Although not expressly mentioned in the statute, evidence that the victim was unconscious may support a conclusion that victim was physically unable to resist. State v. Grems, 766 A.2d 353, 356 (2000).

Yes. A person is deemed unable to consent if he or she is "mentally incapacitated" after being administered "any intoxicating substance." without his or her knowledge or consent. N.J. Rev. Stat. Ann. § 632-A-2(1)(f).

Yes. Consent is ineffective if:

1. The actor has supervisory or disciplinary power over the victim and is more than 4 years older, or permanently 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(a)(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

Yes. A person commits sexual assault if he or she engages in sexual penetration with a person that is under 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and is more than four years older than the victim, or when the actor is an employee, contractor, or volunteer at a primary or secondary educational institution and the victim is a student and up to 10 months after the student’s graduation or departure. Consent of the victim shall not be considered a defense.

A person commits aggravated 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 and the actor is in a position of authority over the victim and is more than four years older than the victim, or when the actor is an employee, contractor, or volunteer at a primary or secondary educational institution and the victim is a student and up to 10 months after the student’s graduation or departure. Consent of the victim shall not be considered a defense.

A person commits sexual assault if he or she engages in sexual penetration with a person who is legally incompetent, or has a mental disease or defect which renders the victim temporarily or permanently incapable of understanding the nature of the 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(a)(7).

Consent is ineffective if:

1. It is given by a person who is
2. A person who in committing an act of sexual penetration with a person that the actor knew or should have known was intellectually or mentally incapacitated, or has a mental disease or defect which renders the victim temporarily or permanently incapable of understanding the nature of the 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:14-1(g).

Consent is ineffective if:

1. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense.
2. It is given by a person who

Yes. It is illegal for an employee, contractor or volunteer in a position of authority at an entity which provides services to children to engage in sexual conduct with a student that is at least 16 years old but less than 18 years old, and the perpetrator is related by blood or is a member of the same household. N.H. Rev. Stat. Ann. § 632-A:3(IV).

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. N.H. Rev. Stat. Ann. § 201.465.

A person commits sexual assault if he or she engages in sexual penetration with a person that is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and is more than four years older than the victim, or when the actor is an employee, contractor, or volunteer at a primary or secondary educational institution and the victim is a student and up to 10 months after the student’s graduation or departure. Consent of the victim shall not be considered a defense.

A person commits aggravated sexual assault if he or she engages in sexual penetration with a person that is less than 13 years of age. N.H. Rev. Stat. Ann. § 632-A-2(1)(i).

A person commits sexual assault if he or she engages in sexual penetration with a person who is legally incompetent, or has a mental disease or defect which renders the victim temporarily or permanently incapable of understanding the nature of the 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(a)(7).

Consent is ineffective if:

1. It is given by a person who is
New Mexico
17 years old. New Mexico Statutes §30-9-11. Yes, engaging in a sexual act when the perpetrator knows or has reason to know that the victim is unconscious or asleep is a criminal offense. New Mexico Statutes §30-9-10(A); §30-9-11. Additionally, it is a crime if sexual penetration is perpetrated on a child 13 to 18 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, learns while performing services in or for a school that the child is a student in a school. New Mexico Statutes §30-9-11(G)(2).

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

*Personally disabled* means a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct. New York Penal Law §130.00(5).

*Mentally incapacitated* means a person that is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent. New York Penal Law §130.00(6).

Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.00(7); §130.05(3)(d).

Yes, a physically helpless 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 harmlessness of the conduct charged to constitute an offense; or

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

New Mexico Statutes §2C-2-10.

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

*Personally disabled* means a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct. New York Penal Law §130.00(5).

*Mentally incapacitated* means a person that is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent. New York Penal Law §130.00(6).

Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.00(7); §130.05(3)(d).

Yes, a physically helpless 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 harmlessness of the conduct charged to constitute an offense; or

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

New Mexico Statutes §2C-2-10.

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

*Personally disabled* means a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct. New York Penal Law §130.00(5).

*Mentally incapacitated* means a person that is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent. New York Penal Law §130.00(6).

Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.00(7); §130.05(3)(d).

Yes, a physically helpless 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 harmlessness of the conduct charged to constitute an offense; or

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

New Mexico Statutes §2C-2-10.

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

*Personally disabled* means a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct. New York Penal Law §130.00(5).

*Mentally incapacitated* means a person that is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent. New York Penal Law §130.00(6).

Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.00(7); §130.05(3)(d).

Yes, a physically helpless 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 harmlessness of the conduct charged to constitute an offense; or

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

New Mexico Statutes §2C-2-10.
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 victim who has an intellectual disability or a mental disorder that temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of sexual intercourse or a sexual act. North Carolina General Statutes Annotated § 14-27-20.

"Mentally incapacitated" means a victim who due to any act is rendered substantially incapable of either appraising the nature of his or her conduct, or of resisting the act of sexual intercourse or a sexual act. North Carolina General Statutes Annotated § 14-27-20.

A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act, is guilty of gross sexual imposition if the victim is mentally incapacitated in the course of that medical treatment. In this section, "incapacitated" is defined as a patient's incapacity of appraising the nature of a medical treatment, either because the patient is unconscious or under the influence of an impairing substance, including, but not limited to, alcohol, anesthetics, controlled substances, or 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, if the intoxication is involuntary. A person who engages in a sexual act with another, or who causes another to engage in a sexual act or sexual contact, in gross sexual imposition if that person knows or should have reasonably known the victim was unaware that a sexual act or sexual contact was being committed upon him or her. N.D. Century Code Chapter 12-1-20-03(1)(c) & (2)(c).

Yes, no person shall engage in sexual conduct or sexual contact with another who is not their spouse if the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or of being under the influence of a controlled substance, including, but not limited to, alcohol, anesthetics, or any other drug or psychoactive substance capable of impairing a person's physical or mental faculties. Ohio Rev. Code Ann. § 2907.05(A)(1) (crime of gross sexual imposition for sexual conduct). 2907.05(A)(5) (crime of gross sexual imposition for sexual contact).

Yes. No person shall engage in sexual conduct or sexual contact with another who is not their spouse if the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or of being under the influence of alcohol, a controlled substance, including, but not limited to, alcohol, anesthetics, or any other drug or psychoactive substance capable of impairing a person's physical or mental faculties. Ohio Rev. Code Ann. § 2907.05(A)(1) (crime of gross sexual imposition for sexual conduct). 2907.05(A)(5) (crime of gross sexual imposition for sexual contact). Additionally, no person shall engage in sexual conduct with a person whom they know, that at the time of the offense, such person was detained or in custody. New York Penal Law § 130.05(1)(a). Yes. A lawful marriage between a victim and defendant is a defense to certain sexual crimes regarding consent. North Carolina General Statutes Annotated § 14-27-32, 14-27-35; 14-27-36; 14-27-37. However, a person may be prosecuted under this Article because the victim was not the victim in the person's legal spouse at the time of the commission of the alleged rape or sexual offense. § 14-27-37.

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 household, whether the defendant knows or has reasonable cause to believe the minor is aware of the defendant's identity or that the minor is incapable of giving consent to the sexual act.

(2) is a teacher, 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, at any time during or after the time the defendant ceases to be a teacher, administrator, student teacher, school safety officer, coach, or any person who causes another person to have sexual contact with that person, is guilty of sexual assault if the other person is in official custody or otherwise under the supervision or control of the defendant, or any person who causes another person to have sexual contact with an adult or minor who is in official custody or otherwise under the supervision or control of the defendant, and the actor has supervisory or disciplinary authority over the other person. N.D. Century Code Ann. § 12-1-20-06.

A person who knowingly has sexual contact with another person who is an agent or employee of any governmental, private, charitable, or governmental, having custody of any person of any age or a person who is an agent or employee of any person, or institution, whether such institution is in official custody or in a hospital, prison, or any other governmental or private institution, and the actor has supervisory or disciplinary authority over the other person. N.D. Century Code Ann. § 12-1-20-07.

A person who knowingly has sexual contact with another person, who causes another person to have sexual contact with that person, is guilty of sexual assault if the other person is in official custody or otherwise under the supervision or control of the defendant, is responsible for the injury or harm suffered by the victim. N.D. Century Code Ann. § 12-1-20-07.

Yes, no person shall engage in sexual conduct or sexual contact with another who is not their spouse if the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or of being under the influence of a controlled substance, including, but not limited to, alcohol, anesthetics, 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. Rape in the first degree includes an act of sexual intercourse involving vaginal or anal penetration where the victim (not the spouse) is incapable through mental illness or any other unconsciousness of mind, temporary or permanent, of giving legal consent. Okla. Stat. tit. 21, § 1111(A)(5).

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

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 of the opposite sex as the perpetrator where the victim is at the time unconscious of the nature of the act and this fact is known to the accused. Okla. Stat. tit. 21, § 1111(A)(2), (4).

Yes. Rape in an act of sexual imposition includes an act of sexual contact or sexual conduct with another (not their spouse); cause another (not their spouse) to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when the offender: (1) knows that the other person, or one of the other persons, ability to appraise the nature of or control the offender’s or touching person’s conduct is substantially impaired; or (2) knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact. § 2907.06(A)(2–3).

An offender commits sexual imposition if they engage in sexual contact with another (not their spouse); cause another (not their spouse) to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when the offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicating administered by the other person or of the other persons, or by the offender, or the offender’s conduct toward the other person for the purpose of any kind of medical or dental examination, treatment, or surgery. § 2907.05(A)(3).

Additionally, an offender commits sexual battery if they engage in sexual contact with another (not their spouse) when the offender: (1) knows that the other person’s ability to appraise the nature of or control the other person’s own conduct is substantially impaired; or (2) knows that the other person submits because the other person is unaware that the act is being committed. § 2907.05(A)(2–3).

More other persons to have sexual contact, when for the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person temporarily or by force, threat of force, or deception. § 2907.08(A)(2).

If the intoxication is voluntary: An offender commits sexual imposition if they engage in sexual contact with another (not their spouse); cause another (not their spouse) to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when the offender: (1) knows that the other person, or one of the other persons, ability to appraise the nature of or control the offender’s or touching person’s conduct is substantially impaired; or (2) knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact. § 2907.06(A)(2–3).

An offender commits sexual imposition if they engage in sexual contact with another (not their spouse); cause another (not their spouse) to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when the offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicating administered by the other person or one of the other persons, or by the offender, or the offender’s conduct toward the other person for the purpose of any kind of medical or dental examination, treatment, or surgery. § 2907.05(A)(3).

Additionally, an offender commits sexual battery if they engage in sexual contact with another (not their spouse) when the offender: (1) knows that the other person’s ability to appraise the nature of or control the other person’s own conduct is substantially impaired; or (2) knows that the other person submits because the other person is unaware that the act is being committed. § 2907.05(A)(2–3).

Another person who is not that person’s spouse if the offender knows that the other person submits because the other person is unaware that the act is being committed. § 2907.03(A)(3).

Yes. Rape includes an act of sexual intercourse involving vaginal or anal penetration where the victim (not the spouse) is incapable through mental illness or any other unconsciousness of mind, temporary or permanent, of giving legal consent. Okla. Stat. tit. 21, § 1111(A)(1).

Yes. Rape is an act of sexual imposition includes an act of sexual contact or sexual conduct with another (not their spouse); cause another (not their spouse) to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when the offender: (1) knows that the other person, or one of the other persons, ability to appraise the nature of or control the offender’s or touching person’s conduct is substantially impaired; or (2) knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact. § 2907.06(A)(2–3).

An offender commits sexual imposition if they engage in sexual contact with another (not their spouse); cause another (not their spouse) to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when the offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicating administered by the other person or one of the other persons, or by the offender, or the offender’s conduct toward the other person for the purpose of any kind of medical or dental examination, treatment, or surgery. § 2907.05(A)(3).

An offender commits sexual imposition if they engage in sexual contact with another (not their spouse); cause another (not their spouse) to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when the offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes; the other person is confined in a detention facility, and the offender is an employee of that detention facility; the other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric; or the other person is a minor, the offender is a peace officer, and the offender is more than five years older than the other person.

Ohio Rev. Code Ann. § 2907.03(A)(5)–(13).

An offender commits sexual imposition if they engage in sexual contact with another (not their spouse); cause another (not their spouse) to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when the offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person that the sexual contact is necessary for mental health treatment purposes; the other person is confined in a detention facility, and the offender is an employee of that detention facility; the other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric; or the other person is a minor, the offender is a peace officer, and the offender is more than five years older than the other person.


Yes. Rape in an act of sexual penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or of the opposite sex as the perpetrator where the victim is at the time unconscious of the nature of the act and this fact is known to the accused. Okla. Stat. tit. 21, § 1111(A)(2).
Physically helpless, 1951, 192 Or. 557, 235 P.2d 764.

18 Pa.C.S.A. § 3102.

Additionally:

\[ 1(b) \] Pa.C.S.A. § 3125(a)(6) and 3121(a)(5).

Yes. It is rape to have sexual intercourse with another person under 18 years of age.

No. It is not rape to have sexual intercourse with another person who is not under 18.

Or. Rev. Stat. § 163.305(3).

It is rape in the first degree if the complainant is under 16 years of age and is the person's sibling, child, or spouse's child. Or. Rev. Stat. § 163.405(1)(c).

It is rape in the second degree if the complainant is under 18 years of age.


It is sodomy in the second degree to engage in oral or anal sexual intercourse with a person under 18 years of age.

Or. Rev. Stat. § 163.381(1).

It is sexual intercourse in the first degree to cause the commission of an act of sodomy.

Or. Rev. Stat. § 163.315(3).

It is rape in the second degree to engage in sexual intercourse with another person.


It is sodomy in the first degree to engage in oral or anal sexual intercourse with a victim under the age of 12 if the victim is under the age of 16 and the person is the victim's sibling, child, or spouse's child.

Or. Rev. Stat. §§ 3125(a)(4-5) and 3121(a)(3).

It is rape in the third degree to have sexual intercourse with another person under 16 years of age.


It is sodomy in the first degree to engage in oral or anal sexual intercourse with a person under 16 years of age.

Or. Rev. Stat. § 163.381(1).

It is sexual assault in the first degree to cause another person to engage in sexual intercourse if the person is under 16 years of age.

Or. Rev. Stat. § 163.305(5).

It is rape in the second degree to engage in sexual intercourse with another person.


It is sodomy in the second degree to engage in oral or anal sexual intercourse with a person under 16 years of age.

Or. Rev. Stat. § 163.381(1).

It is oral or anal sexual intercourse in the first degree to subject another person to sexual contact if the victim is under 16 years of age or to intentionally cause a person to be under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.


It is rape in the third degree to have sexual intercourse with another person under 16 years of age.


It is sodomy in the first degree to engage in oral or anal sexual intercourse with a person under 16 years of age.

Or. Rev. Stat. § 163.381(1).

It is sexual assault in the first degree to cause another person to engage in sexual intercourse if the person is under 16 years of age.

Or. Rev. Stat. § 163.305(5).

It is rape in the second degree to engage in sexual intercourse with another person.


It is sodomy in the second degree to engage in oral or anal sexual intercourse with a person under 16 years of age.

Or. Rev. Stat. § 163.381(1).

It is sexual assault in the first degree to cause another person to engage in sexual intercourse if the person is under 16 years of age.

Or. Rev. Stat. § 163.305(5).

Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent.

18 Pa.C.S.A. § 3121(a)(5).

Yes. A person who has sexual intercourse with another person under the age of 16 is a first degree sexual offender under the age of 18.

Yes. It is rape to have sexual intercourse with a complainant who is unconscious or otherwise physically unable to communicate unwillingness to engage in sexual conduct.

Or. Rev. Stat. § 163.305(3).

Yes. It is rape to have sexual intercourse with a complainant who is unconscious or otherwise physically unable to communicate unwillingness to engage in sexual conduct.

Or. Rev. Stat. § 163.305(3).

Yes. A person who has sexual intercourse with another person under the age of 16 is a first degree sexual offender under the age of 18.

Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent.

18 Pa.C.S.A. § 3121(a)(5).

Yes. A person who has sexual intercourse with another person under the age of 16 is a first degree sexual offender under the age of 18.

Yes. It is rape to have sexual intercourse with a complainant who is unconscious or otherwise physically unable to communicate unwillingness to engage in sexual conduct.

Or. Rev. Stat. § 163.305(3).

Yes. A person who has sexual intercourse with another person under the age of 16 is a first degree sexual offender under the age of 18.

Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent.

18 Pa.C.S.A. § 3121(a)(5).

Yes. A person who has sexual intercourse with another person under the age of 16 is a first degree sexual offender under the age of 18.

Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent.

18 Pa.C.S.A. § 3121(a)(5).

Yes. A person who has sexual intercourse with another person under the age of 16 is a first degree sexual offender under the age of 18.

Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent.

18 Pa.C.S.A. § 3121(a)(5).

Yes. A person who has sexual intercourse with another person under the age of 16 is a first degree sexual offender under the age of 18.

Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent.

18 Pa.C.S.A. § 3121(a)(5).
Puerto Rico Stat. tit. 33 § 4770(a).

Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if due to mental disability or illness, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission. Puerto Rico Stat. tit. 33 § 4770(a).
### South Carolina

<table>
<thead>
<tr>
<th>16 years old.</th>
<th>S.C. Code Ann. § 16-3-655.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if the accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless. S.C. Code Ann. § 11-37-21(1).</td>
<td></td>
</tr>
<tr>
<td>A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and the accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless. R.I. Gen Law § 11-37-4(1).</td>
<td></td>
</tr>
<tr>
<td><strong>Mentally incapacitated</strong> 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 willingness to engage in the act.`</td>
<td></td>
</tr>
<tr>
<td><strong>Mentally disabled</strong> means a person who has a mental impairment which renders that person incapable of appraising the nature of the act.</td>
<td></td>
</tr>
<tr>
<td><strong>Physically helpless</strong> means a person who is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.</td>
<td></td>
</tr>
</tbody>
</table>

### Rhode Island

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. A person is guilty of sexual battery 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 physically helpless, which includes unconsciousness.</td>
<td></td>
</tr>
<tr>
<td>A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and the accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.</td>
<td></td>
</tr>
<tr>
<td><strong>Mentally incapacitated</strong> 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.</td>
<td></td>
</tr>
<tr>
<td><strong>Mentally disabled</strong> means a person who has a mental impairment which renders that person incapable of appraising the nature of the act.</td>
<td></td>
</tr>
<tr>
<td><strong>Physically helpless</strong> means a person who is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.</td>
<td></td>
</tr>
</tbody>
</table>

### South Carolina

<table>
<thead>
<tr>
<th>16 years old.</th>
<th>S.C. Code Ann. § 16-3-655(B-D).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. A person is guilty of sexual battery with the victim who is at least 14 years of age but who is less than 16 years of age and the actor is in a position of familial, custodial, or official authority to exercise the victim to submit or is older than the victim. S.C. Code Ann. § 16-3-655(B).</td>
<td></td>
</tr>
<tr>
<td>A person affiliated with a public or private secondary school in an official capacity engages in sexual contact with a student enrolled in the school who is 16 or 17 years of age, including due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent. S.C. Code Ann. § 16-3-755(E).</td>
<td></td>
</tr>
<tr>
<td>A person affiliated with a public or private secondary school in an official capacity is guilty of a felony. S.C. Code 1976 § 16-3-755(D).</td>
<td></td>
</tr>
</tbody>
</table>

### Rhode Island

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. A person is guilty of first 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 physically helpless, which includes unconsciousness.</td>
<td></td>
</tr>
<tr>
<td>A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and the accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.</td>
<td></td>
</tr>
<tr>
<td><strong>Mentally incapacitated</strong> 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.</td>
<td></td>
</tr>
<tr>
<td><strong>Mentally disabled</strong> means a person who has a mental impairment which renders that person incapable of appraising the nature of the act.</td>
<td></td>
</tr>
<tr>
<td><strong>Physically helpless</strong> means a person who is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.</td>
<td></td>
</tr>
</tbody>
</table>

### South Carolina

<table>
<thead>
<tr>
<th>16 years old.</th>
<th>S.C. Code Ann. § 16-3-655(D).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. A person is guilty of sexual battery with a victim who is 16 or 17 years of age, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a misdemeanor.</td>
<td></td>
</tr>
<tr>
<td>A person affiliated with a public or private secondary school in an official capacity violates the law and is guilty of a misdemeanor.</td>
<td></td>
</tr>
</tbody>
</table>

### Rhode Island

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. A person is guilty of first 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, including due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent.</td>
<td></td>
</tr>
<tr>
<td>A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and the accused knows or has reason to know that the victim is mentally incapacitated, including due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent.</td>
<td></td>
</tr>
</tbody>
</table>

### South Carolina

<table>
<thead>
<tr>
<th>16 years old.</th>
<th>S.C. Code Ann. § 16-3-655(E).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. There are limitations on liability for a person if the victim is the legal spouse of the actor. See S.C. Code Ann. § 16-3-653. Spousal sexual battery is also defined separately for instances where sexual battery accomplished through use of aggravated force, defined as the use or the threat of use of a weapon or the use or threat of use of physical force or physical violence of a high and aggravated nature, by one spouse against the other spouse if they are living together. A person can then be imprisoned for more than ten years. See S.C. Code Ann. § 16-3-655(A).</td>
<td></td>
</tr>
<tr>
<td>A person affiliated with a public or private secondary school in an official capacity engages in sexual contact with a student enrolled in the school who is 18 years of age or older, and the person affiliated with the public or private secondary school in an official capacity is guilty of a misdemeanor. S.C. Code 1976 § 16-3-755(C).</td>
<td></td>
</tr>
</tbody>
</table>

### Rhode Island

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>See</td>
</tr>
</tbody>
</table>
South Dakota
Yes, a person can be deemed incapable of consenting to sexual contact because of mental incapacity. S.D. Code Ann. §22-22-7.2.

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 Ann. §22-22-7.2.

Yes, a person can be deemed incapable of consenting to sexual contact because of any intoxicating agent. S.D. Code Ann. §22-22-14.7. The State must prove the defendant knew or reasonably should have known that the complainant’s intoxicated condition rendered her incapable of consenting. State v. Jones, 804 N.W. 2d 409, 414 (2011).

Yes:
- A person employed at any jail or juvenile correctional facility who knowingly engages in an act of sexual contact or sexual penetration with another 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 Ann. §§22-22-24 & 29.
- Any psychotherapist who knowingly engages in sexual contact or sexual penetration with a person who is not his or her spouse and who is a patient who is emotionally dependent on the psychotherapist at the time of contact is guilty of a felony. S.D. Code Ann. §§22-22-24 & 29.
- The statute for sexual contact with a child under 16 does not apply where the victim is the actor’s spouse. S.D. Code Ann. §22-22-7.

Tennessee
Yes, a sexual offense is considered to occur without the consent of the other person where:
- (A) the defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the minor that the defendant knew or reasonably should have known was incapable of giving consent, or due to any other act committed upon that person without the person’s consent. Tenn. Code Ann. §39-13-501(4).
- (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; 39-17-512.

Sexualattery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant’s 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 phystically 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 victim 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 victim and used the authority to accomplish the sexual contact. Tenn. Code Ann. §§39-13-501(4).

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. Note that in Tennessee, the sponsor of the defendant can be a “victim” under the rape and sexual battery provisions of the code. Tenn. Code Ann. §39-13-501(8).

Texas
17 years old. Texas Code Ann. §22.011(a) & (c).
Yes, a sexual assault is considered to occur without the consent of the other person where:
- the actor is a public servant who coerces the other person to submit or participate;
- the actor is a mental health services provider or a health care services provider who coerces the other person, who is a patient or former patient of the actor, to submit or participate by using the actor’s power to appraise or control the other person’s conduct by administering any substance without the other person’s knowledge. Texas Code Ann. §22.011(b)(6).

Yes, a sexual assault is considered to occur without the consent of the other person where the actor knows or reasonably believes that the act was for medically or occupationally 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 victim and used the authority to accomplish the sexual contact. Tenn. Code Ann. §§39-13-509; 39-17-512.

Sexualattery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant’s 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 phystically 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 victim 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 victim and used the authority to accomplish the sexual contact. Tenn. Code Ann. §§39-13-501(4).

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. Note that in Tennessee, the sponsor of the defendant can be a “victim” under the rape and sexual battery provisions of the code. Tenn. Code Ann. §39-13-501(8).

Utah
18 years old. Utah Code Ann. §76-7-406.  
Yes, a sexual offense is considered to occur without consent of the victim of the actor who is reasonably should know that the victim has a mental disease or defect, which renders the victim unable or incapacitated to appraise or control the nature of the act, (ii) understand the possible consequences to the victim’s health or safety, or (ix) treatment; and at the time of the act the victim reasonably believed that the act was for medically or

Yes, a sexual offense is considered to occur without consent of the victim of the actor who is reasonably should know that the victim has a mental disease or defect, which renders the victim unable or incapacitated to appraise or control the nature of the act, (ii) understand the possible consequences to the victim’s health or safety, or (ix) treatment; and at the time of the act the victim reasonably believed that the act was for medically or

Yes, a sexual offense is considered to occur without consent of the victim of the actor who is reasonably should know that the victim has a mental disease or defect, which renders the victim unable or incapacitated to appraise or control the nature of the act, (ii) understand the possible consequences to the victim’s health or safety, or (ix) treatment; and at the time of the act the victim reasonably believed that the act was for medically or

Yes, a sexual offense is considered to occur without consent of the victim of the actor who is reasonably should know that the victim has a mental disease or defect, which renders the victim unable or incapacitated to appraise or control the nature of the act, (ii) understand the possible consequences to the victim’s health or safety, or (ix) treatment; and at the time of the act the victim reasonably believed that the act was for medically or

Yes, a sexual offense is considered to occur without consent of the victim of the actor who is reasonably should know that the victim has a mental disease or defect, which renders the victim unable or incapacitated to appraise or control the nature of the act, (ii) understand the possible consequences to the victim’s health or safety, or (ix) treatment; and at the time of the act the victim reasonably believed that the act was for medically or
Yes, a person who is unconscious or physically helpless, or that person’s mental defect or incapacity is known to the actor, is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1701.

Yes, an actor who engages in sexual intercourse or sodomy with a person when through intoxication, immaturity or any unreasonableness of mind, either temporary or permanent, the person is incapable of giving consent, is guilty of rape in the first degree. 14 V.I.C. § 1701.

Yes, a person who is unconscious or physically helpless is a statutory term that applies to rape and other sex crimes, is not limited to a permanent condition and is a transferable punishment or the lessening of the interlocutory circumstance in which the victim was without the use of the complaining witness’ physical helplessness. VA Code Ann. §§18-2-61; 67:101(D).

Yes, there are special rules for persons in positions of authority over the victim and for persons residing in the same household of the victim. 13 Vermont Stat. Ann. §13-3252(c).

A sexual assault occurs if a person engages in a sexual act with a victim who is under the age of 16 and (1) the victim was incapable of giving consent to the sexual act due to substantial impairment by alcohol, drugs, or intoxicants and that condition is known or should have been known to the actor; or (2) the actor knew or should have known that the actor was incapable of granting consent to the sexual act due to the victim’s voluntary intoxication.

A sexual assault occurs if a person engages in sexual intercourse or sodomy with a person when the person’s ability to engage in the act is consent 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 from any cause is guilty of rape in the first degree. 14 V.I.C. § 1701.

A sexual assault occurs if a person engages in a sexual act with a victim where the actor knew or should have known that the victim was unaware that a sexual act was occurring. 13 Vermont Stat. Ann. §3252.

A sexual assault occurs if a person engages in an act of sexual intercourse or sodomy with a person when the person is under the age of 16 and (A) the actor knew or should have known that the other person was unaware that a sexual act was being committed; or (B) the actor knew or should have known that the other person’s ability to give consent was substantially impaired by alcohol, drugs, or intoxicants.

Yes, a person who engages in sexual contact with a person when the person is under the age of 16 years 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. § 1701.

Yes, a person who engages in sexual intercourse or sodomy with a person where the capability to give consent or to resist the contact is known or should have been known to the actor, is guilty of rape in the first degree. 14 V.I.C. § 1701.

Yes, a person who engages in sexual intercourse with a person when the person’s ability to engage in the act is consent or resist the contact has been substantially impaired by alcohol, drugs, or intoxicants and that condition is known or should have been known to the actor, is guilty of rape in the first degree. 14 V.I.C. § 1701.

Yes, a person who is under the age of 18 years of age shall be deemed incapable of giving consent to the sexual act due to incapacity or physical or mental defect or incapacity if the nature and degree of the condition is known or should have been known to the actor. 13 Vermont Stat. Ann. §3252.

Yes, a person who engages in sexual contact with a person who is under the age of 16 years, or with a child who is under the age of 16, except (1) where the persons are married to each other and the sexual act is consensual; or (2) the actor is at least 18 years old, resides in the victim’s household and serves in a parental role with respect to the victim. Vermont Stat. Ann. §13-3252(c).

Yes, a person who engages in sexual intercourse or sodomy with a person when the person is under the age of 16 years, the nature or consequences of the act are known or should have been known to the actor, is guilty of rape in the first degree. 14 V.I.C. § 1701.

Yes, a person who engages in sexual intercourse or sodomy with a person when the person is under the age of 16 years 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. § 1701.

Yes, a person who engages in sexual intercourse or sodomy with a person when the person is under the age of 16 years, the nature or consequences of the act are known or should have been known to the actor, is guilty of rape in the first degree. 14 V.I.C. § 1701.

Yes, a person who engages in sexual intercourse or sodomy with a person when the person is under the age of 16 years, the nature or consequences of the act are known or should have been known to the actor, is guilty of rape in the first degree. 14 V.I.C. § 1701.

Yes, an accused is guilty of sexual battery if he sexually abuses (i) an inmate; and knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with, the Department of Corrections or pursuant to a court order in a state, local correctional facility, or regional jail, or (ii) a probationer, parolee, or a pretrial or post trial offender under the jurisdiction of the Department of Corrections while on parole, probation, supervised community sentence, or for which the offender is being supervised by the Department, unless the offender, and the employee, contractor or other person provider services were married, parties to a civil union, or engaged in a consensual sexual relationship at the time of committing the offense for which the offender is being supervised by the Department. 13 Vermont Stat. Ann. §13-3252.

Yes, a person who engages in sexual intercourse or sodomy with a person who is under the age of 16 and (A) the actor knew or should have known that the other person was unaware that a sexual act was being committed; or (B) the actor knew or should have known that the other person’s ability to give consent was substantially impaired by alcohol, drugs, or intoxicants.
Yes, there are several special relationships between the victim and actor that would impact the victim's ability to consent and therefore make it a crime to engage in sexual intercourse with a person. Special relationships include:

(a) a person in a significant relationship with the victim and abuses a supervisory position within that relationship;

(b) a school employee;

(c) a foster parent;

(d) a person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors, frail elders or vulnerable adults;

(e) a person who in the course of his or her employment supervises minors;

(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.

Washington

Yes, a person who is unconscious is physically helpless. An actor is guilty of rape in the second degree if he or she sexual intercourse with a person who is physically helpless. Wash. Rev. Code Ann. §§ 9A.44.010(5), 9A.44.050.

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.

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

A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person (a) when (i) the victim is a resident of a correctional facility or is under correctional supervision of the Department of Corrections, the Department of Juvenile Justice, a secure facility, detention home, court services unit, community-based probation services agency or pretrial services agency, 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 pretrial services agency, the accused shall be guilty of a felony. Wash. Rev. Code Ann. § 9A.44.010.
<table>
<thead>
<tr>
<th>Wyoming</th>
<th>Wisconsin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, any actor who inflicts sexual intrusion on a victim commits a sexual assault in the second degree if the actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim's conduct. Wyo. Stat. Ann. § 6-2-302.</td>
<td>Yes, a person suffering from a &quot;mental illness or defect&quot; is presumed incapable of giving consent. Wis. Stat. Ann. § 940.225(4).</td>
</tr>
<tr>
<td>Yes, if the victim is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent. Wis. Stat. Ann. § 940.225(2).</td>
<td>&quot;Mental illness or defect&quot; is not defined in the statute, but has a &quot;meaning within the common understanding of the party&quot; under Wisconsin case law. State v. Perkins, 689 N.W.2d 684, 273 Wis. 2d 243 (Wis. Ct. App. 2004).</td>
</tr>
<tr>
<td>Yes, there are several special relationships between the victim and actor that would impact the victim's ability to consent and therefore make it a crime to engage in sexual contact with a person.</td>
<td></td>
</tr>
<tr>
<td>Yes, a person who is &quot;mentally incapacitated&quot; cannot give consent. Id. 61-8B-5; 61-8B-8.</td>
<td></td>
</tr>
<tr>
<td>A person commits a sexual assault in the second degree if the actor administers, or knows that someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to apprise or control his conduct. Wyo. Stat. Ann. § 6-2-303.</td>
<td>Yes, the purpose to have sexual contact or sexual intercourse with an individual who is confined in a correctional institution (unless the person was sexually assaulted by the inmate); and</td>
</tr>
<tr>
<td>Special relationships include:</td>
<td>(e) a probation, parole, or extended supervision agent who has sexual contact or sexual intercourse with the individual on parole, probation, or extended supervision who is supervised by him or her in a subordinate capacity.</td>
</tr>
<tr>
<td>1. a therapist-patient relationship;</td>
<td></td>
</tr>
<tr>
<td>2. (b) an employee of an adult family home, community-based residential facility, an in-patient health care facility, or a state treatment facility who assisted an elderly or disabled person with physical or mental health needs, or is responsible for the care and custody of children.</td>
<td></td>
</tr>
<tr>
<td>3. (c) an employee of a correctional staff member who has sexual contact or sexual intercourse with a client at the facility;</td>
<td></td>
</tr>
<tr>
<td>4. (f) a correctional staff member who has sexual contact or sexual intercourse with an individual who is confined in a correctional institution (unless the person was sexually assaulted by the inmate); and</td>
<td></td>
</tr>
<tr>
<td>5. (g) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>6. (h) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>7. (i) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>8. (j) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>9. (k) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>10. (l) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>11. (m) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>12. (n) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>13. (o) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>14. (p) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>15. (q) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>16. (r) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>17. (s) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>18. (t) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>19. (u) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>20. (v) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>21. (w) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>22. (x) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>23. (y) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>24. (z) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>25. (aa) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>26. (bb) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>27. (cc) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>28. (dd) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>29. (ee) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>30. (ff) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>31. (gg) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>32. (hh) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>33. (ii) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>34. (jj) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>35. (kk) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>36. (ll) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>37. (mm) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>38. (nn) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>39. (oo) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>40. (pp) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>41. (qq) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>42. (rr) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>43. (ss) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>44. (tt) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>45. (uu) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>46. (vv) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>47. (ww) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>48. (xx) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>49. (yy) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
<tr>
<td>50. (zz) a person who, by reason of his position, is able to exercise a controlling or dominating influence over the victim.</td>
<td></td>
</tr>
</tbody>
</table>

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

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


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


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