### Consent Laws

#### Defining Consent

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<td>Alabama</td>
<td>Consent has been interpreted to mean &quot;acquiescence or compliance with the proposition of another.&quot; Ex parte Gordon, 708 So. 2d 1100, 1103 (Ala. 1997).</td>
<td>No. Ala. Code § 13A-6-70(b).</td>
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<td>Alaska</td>
<td>Without consent means that a person: 1. is unresponsive; or 2. is physically unable to resist an affirmative threat of death, imminent physical injury, or kidnapping threatened to any person; or 3. is incapacitated as a result of an act of the defendant. Alaska Stat. § 11.41.470(10).</td>
<td>No. Alaska Stat. § 11.41.470.</td>
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<tr>
<td>Arizona</td>
<td>Without consent includes any of the following: 1. the victim is coerced by the immediate use or threatened use of force against a person or property; 2. the victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep, or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant (see definition of &quot;mental defect&quot;) below; 3. the victim is intentionally deceived as to the nature of the act; or 4. the victim is intentionally deceived to erroneously believe that the person is the victim’s spouse. Arizona Revised Statute § 13-1401(A)(7).</td>
<td>No.</td>
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<td>Arkansas</td>
<td>There is a lack of consent if a person engages in a sexual act with another person by force or by consent or when the person is incapable of consent because he or she is physically helpless, mentally defective or mentally incapacitated, or because of a victim’s age. Arkansas Code §§ 5-14-101; 5-14-125.</td>
<td>No.</td>
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<td>California</td>
<td>Consent is defined to mean positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. California Penal Code § 261.6.</td>
<td>Yes. California Penal Code § 261.6.</td>
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<td>Colorado</td>
<td>Consent 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 § 18-3-403(1.5).</td>
<td>No.</td>
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<td>Connecticut</td>
<td>Lack of consent to sexual activity exists where: 1. the accused compels the victim to engage in sexual activity by the use or threat of force against the victim (or against a third person); 2. the victim is mentally incapacitated or impaired because of mental disability or disease to the extent that the person is unable to consent to sexual activity; or 3. the victim is physically helpless. Connecticut General Statutes Annotated §§ 53a-65; 53a-70; 53a-71; 53a-72a; 53a-73a.</td>
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<td>In addition, &quot;Consent to engage in sexual intercourse, sodomy, sexual acts, or sexual contact may be communicated by words or actions. The existence of a current or previous marital, dating, social, or sexual relationship with the defendant is not sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device or sexually transmitted disease protection, without additional evidence of consent, is not sufficient to constitute consent.&quot; 1. Ala. Code § 13A-6-70(d).</td>
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<td>Arizona</td>
<td>Forceful 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. Forceful compulsion does not require proof of resistance by the victim. Ala. Code § 13A-6-401(1).</td>
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<td>Existence of forcible compulsion is conclusive presumptive evidence of lack of consent, but lack of consent can also exist without forcible compulsion. Ex parte Gordon, 706 So. 2d 1100, 1103 (Ala. 1997).</td>
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<td>Consent to the sexual act or contact in question must be freely given. Agreement D.C. Code § 22-9001(4).</td>
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<td>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 injure a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim. D.C. Code § 22-3001(15).</td>
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<td>The State of Georgia does not define consent in reference to sexual activity. The offense of rape occurs when it is against &quot;a female forcibly and against her will.&quot; Georgia Code § 16-6-1. The phrase &quot;against her will&quot; means without consent. Wightman v. State, 289 Ga.App. 225, 656 S.E.2d 563 (2008).</td>
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- The defendant compelled the victim to submit by an act of coercion or by force, 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 feebly.

- 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 individual incapable of appraising the nature of the sexual conduct or incapable of consenting.

- Where the defendant is a health professional, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the time the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested.

- The defendant had substantially impaired the victim’s power to appraise or control the victim’s own conduct by administering or employing without the other person’s knowledge or against the other person’s will, drugs, intoxicants or other means for the purpose of preventing resistance.

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

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

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

- 11 Delaware Code § 761.

**No**

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"Consent" means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim will not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent. 720 ICS 5/5-1-01. A person who initially consents to sexual penetration or sexual conduct is not relieved from the responsibility to give consent to any sexual penetration or sexual conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct. 720 ICS 5/5-1-70.

"The focus is on what the defendant knew or reasonably should have known regarding the victim's willingness or ability to give knowing consent." People v. Boland 2015 IL App (1st) 131962, ¶ 19.

No.

In Iowa, consent is not specifically defined. However, Iowa law defines "sexual abuse" as any sex act between persons where the sexual act is done by force or against the will of the other (if the consent or acquiescence of the victim is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other), or the victim is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters. I.C.A. § 709.1.

No.

In Indiana, consent is not specifically defined. However, Indiana law provides that a person commits a sex crime if: (1) the victim is compelled by force or imminent threat of force; (2) the victim is unaware that the sexual intercourse or other sexual conduct is occurring; (5) the victim is so mentally disabled or deficient that consent to sexual intercourse or other sexual conduct cannot be given; or (4) the person disregarded the victim's attempts to physically, verbally, or by other visible conduct refuse the person's acts. IC §§ 35-42-4-1; 35-42-4-8.

No.

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

- The sexual act is done by force or against the will of the other (if the consent or acquiescence of the victim is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other), or the victim is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.
- The victim is under the age of 14.
- The victim's consent was obtained through a knowing misrepresentation that the sexual intercourse was a medically or therapeutically necessary procedure; or
- 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.

I.C. § 503.120.

No.

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

- The sexual act is done by force or fear.
- The victim is unconscious or physically powerless.
- 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.
- The victim is under the age of 14.
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I.C.A. § 709.1.

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

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

If an individual can comprehend the sexual nature of the proposed act, can understand he or she has the right to refuse to participate, and possesses a rudimentary grasp of the possible results arising from participation in the act, he or she has the capacity to consent. State v. Ice, 27 Kan. App. 2d 1, 3, 997 P.2d 737, 740 (2000).

A person may be convicted of rape if intercourse begins consensually but consent is withdrawn after penetration and the intercourse continues by force or fear. State v. Floss, 299 Kan. 1052, 1053, 329 P.3d 429, 430 (2014).

The "force" required to sustain a rape conviction in this state does not require that a rape victim resist the point of penetration in a sexual act or other sexual crimes such as battery or aggravated sexual assault. The Kansas rape statute does not require the State to prove that a rape victim told the offender she did not consent, physically resisted the offender, and then endured sexual intercourse against her will. It does not require that a victim be physically overcome by force in the form of a beating or physical restraint. It requires only a finding that she did not give her consent and that the victim was overcome by force or fear to facilitate the sexual intercourse. State v. Borthwick, 255 Kan. 599, 604, 880 P.2d 1261, 1271 (1994).

No.

In Kentucky, lack of consent results from:

- Forceful compulsion;
- Incapacity to consent; or
- If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

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

- Less than 16 years old;
- 16 or 17 years old and the actor is at least 10 years older than the victim at the time of the sexual act;
- An individual unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to an intellectual disability or a mental illness;
- Mentally incapacitated;
- Physically helpless; or
- Under the care or custody of state or local agency pursuant to court order and the actor is employed or working on behalf of the state or local agency, except when the persons are lawfully married to each other and there is no court order in effect prohibiting contact between the parties.

KRS § 510.010.

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

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

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

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

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

- (1) when the victim resists the act to the utmost, but whose resistance is overcome by force;
- (2) when the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution;
- (3) when the victim is prevented from resisting the act because the offender is armed with a dangerous weapon;
- (4) when the victim is under the age of 13;
- (5) when two or more offenders participated in the act;
- (6) when the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity; such infirmity means a person with an intelligence quotient of seventy or lower; "physical infirmity" means a person who is a quadriplegic or paraplegic;
- (7) when the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape;
- (8) when the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim;
- (9) when the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity;
- (10) when the victim, through unconsciousness of mind, is temporarily or permanently incapable of understanding the nature of the act and the offender knew or should have known of the victim's incapacity;
- (11) when monitoring the act is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or other artifice 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 has arrested the person or was responsible for maintaining the person in actual custody;

No.

Maine

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

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

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

- (1) the other person submits as a result of compulsion (Class A crime);
- (2) the other person, not the actor’s spouse, has not in fact attained the age of 14 years (Class A crime);
- (3) the other person, not the actor’s spouse, has not in fact attained 12 years of age (Class A crime);
- (4) the actor has substantially impaired the other person’s power to appraise or control the other person’s sexual acts by furnishing, administering or employing, intoxicants or other similar means (Class B crime);
- (5) the actor compels or induces the other person to engage in the sexual act by threat (Class B crime);
- (6) the other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent (Class B crime);
- (7) the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act (Class B crime);
- (8) the other person, not the actor’s spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person (Class B crime);
- (9) the other person, not the actor’s spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is an employee or other official having instructional, supervisory or disciplinary authority over the student or the actor was an employee or other official having instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual act (Class C crime);
- (10) the other person, not the actor’s spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person (Class B crime);
- (11) the other person, not the actor’s spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is an employee or other official having instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual act (Class C crime);
- (12) the other person, not the actor’s spouse, has not in fact attained the age of 18 years and is a resident in or attending a children’s home, child care facility, facility operated by a family child care provider, children’s residential care facility, drug treatment center, youth camp licensed under Title 22, section 2495 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the student or the actor was an employee or other official having instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual act (Class C crime);
- (13) the other person is not in fact in school, not in school, or special education school, facility or institution recognizes the other person as a person with an intellectual disability or autism. It is an offense for the actor to have sexual acts with a person who is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class C crime);
- (14) the actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or paraprofessionals to be a psychiatrist, a psychologist or licensed as a social worker or counseling professional to the other person and the other person, not the actor’s spouse, is a current patient or client of the actor (Class C crime);
- (15) 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 (Class C crime);
- (16) 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 (Class C crime);
- (17) the actor is employed to provide care to a dependent person, who is not the actor’s spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect (Class C crime);
- (18) the actor has not expressly or impliedly acquiesced to the sexual act and the actor is criminally negligent with regard to whether the other person has acquiesced (Class C crime);
- (19) the actor is a law enforcement officer in performance of official duties and the other person, not the actor’s spouse, who is either 14 or 15 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class C crime);
- (20) the actor is a law enforcement officer acting in performance of official duties and the other 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 special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class C crime);
- (21) the other person, not the actor’s spouse, is 14 or 15 years of age and the actor is at least 5 years older than the other person (Class D crime);
- (22) the other person, not the actor’s spouse, is either 14 or 15 years of age and the actor is at least 10 years older than the other person (Class C crime);
- (23) 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 special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class C crime).
secondary or special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled and the actor knows that the student is related to the actor within the 2nd degree of consanguinity (Class D crime).

(25) 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 secondary, or special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled and the actor is at least 10 years older than the student (Class D 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 and the actor is criminally negligent with regard to whether the other person has acquiesced (Class D crime);

(2) the other person has not expressly or impliedly acquiesced in the sexual contact and the actor is criminally negligent with regard to whether the other person has acquiesced and the sexual contact includes penetration (Class C crime);

(3) the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact (Class D crime);

(4) the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact and the sexual contact includes penetration (Class C crime);

(5) the other person, not the actor’s spouse, is in fact less than 14 years of age and the actor is at least 3 years older (Class C crime);

(6) the other person, not the actor’s spouse, is in fact less than 12 years of age and the actor is at least 3 years older (Class B crime);

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

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

(9) the other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent and the sexual contact includes penetration (Class C crime);

(10) the other person, not the actor’s spouse, is under official supervision as a probationer, a parolee, a sex offender or supervised release, a prisoner on supervised community confinement status or a juvenile on community supervision status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person (Class D crime);

(11) the other person, not the actor’s spouse, is under official supervision as a probationer, a parolee, a sex offender or supervised release, a prisoner on supervised community confinement status or a juvenile on community supervision status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person and the sexual contact includes penetration (Class C crime);

(12) the other person, not the actor’s spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the actor at any time during the 12 months prior to the sexual contact (Class D crime);

(13) the other person, not the actor’s spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the actor at any time during the 12 months prior to the sexual contact and the sexual contact includes penetration or the actor was a substitute teacher who had instructional, supervisory or disciplinary authority over the actor at any time during the 12 months prior to the sexual contact and the sexual contact included penetration (Class C crime);

(14) the other person, not the actor’s spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the other person and the sexual contact includes penetration or the actor was a substitute teacher who had instructional, supervisory or disciplinary authority over the other person and the sexual contact included penetration (Class C crime);

(15) the other person, not the actor’s spouse, is in fact less than 16 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person (Class C crime);

(16) the other person, not the actor’s spouse, is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person and the sexual contact includes penetration (Class C crime);

(17) the other person, not the actor’s spouse, is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person and the sexual contact includes penetration and the actor receives services for an intellectual disability or autism or is a person with an intellectual disability (Class C crime);

(18) the other person submits as a result of compulsion (Class C crime);

(19) the other person submits as a result of compulsion and the sexual contact includes penetration (Class B crime);

(20) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor (Class D crime);

(21) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability (Class C crime);

(22) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor (Class D crime);

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A person is also guilty of a sex crime if the actor intentionally subjects another person to any “sexual touching” and

(1) the other person has not expressly or impliedly acquiesced in the sexual touching and the actor is criminally negligent with regard to whether the other person has acquiesced (Class D crime);

(2) the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual touching and the sexual contact includes penetration (Class C crime).
<table>
<thead>
<tr>
<th>State</th>
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### Maryland

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

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

### Massachusetts

Consent is not specifically defined. The standard in the sexual assault statutes is whether the accused commits the sexual act by force or coercion or to accomplish the sexual act.

### Michigan

Consent is not specifically defined. The standard used in the sexual assault statutes is whether the accused used “force or coercion to accomplish the sexual act.”

### Minnesota

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

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

Consent is not specifically defined. The standard used in the sexual assault statutes is whether the accused used “force or coercion to accomplish the sexual act.”

### Mississippi

Not defined.

### Massachusetts

Consent is not specifically defined. The standard in the sexual assault statutes is whether the accused committed the sexual act by force or coercion or to accomplish the sexual act.

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

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

Consent is not specifically defined. The standard used in the sexual assault statutes is whether the accused used “force or coercion to accomplish the sexual act.”

### Mississippi

Not defined.
Consent is not specifically defined. However, Missouri law provides that rape in the first degree is committed if the offender has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed, voluntary, and intelligent decision. Mo. Stat. § 566.030.

The term “consent” means words or overt actions indicating a freely given arrangement to have sexual intercourse or sexual contact and is further defined by the following:

- An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn.
- A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the conduct in the conduct at issue does not constitute 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.

The victim is incapable of consent because the victim is:

- Mentally disordered or incapacitated;
- Physically helpless;
- Overcome by deception, coercion, or surprise;
- Less than 16 years old;
- Incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is a part of a lawful search;
- The victim expressed a lack of consent through words, or conduct that there is not freely given consent to performance of the bodily harm consented to or threatened by the conduct consented to is not serious; or
- The victim needs not resist verbally or physically so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and
- A victim need not resist verbally or physically where it would be useless or futile to do so.

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

Georgia

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

New York

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

New Jersey

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

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

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

New Mexico

The term consent is not defined by statute. However, it is an element of the crime if sexual assault that the crime was committed against the will of the victim. N.M. Stat. Ann. § 20A.366.

No.

No.

Yes, for some crimes. A person commits aggravated felonious sexual assault if he or she engages in sexual penetration with a person that indicates by speech or conduct that there is not freely given consent to performance of the sexual act. N.H. Rev. Stat. Ann. § 630-A:2(6)(m).

No.

No.

No.
New Mexico does not specifically define "consent." However, New Mexico defines "force or coercion" as:

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

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

No.

New York

Under New York law, lack of consent results from:

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

New York Penal Law §130.05.

No.

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.

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. Moore, 84 N.C. App. 337, 322, 500 S.E.2d 608, 611 (1999).

Additionally, submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent. State v. Ricks, 34 N.C. App. 734, 735, 239 S.E.2d 602, 603 (1977); see also State v. Koontz, 345 N.C. App. 656, 8 (2014). ("Consent induced by violence or fear or violence is not effective to preclude a rape conviction.")

A child under the age of 12 is presumed incapable of consent. See State v. Jannuzzi, 45 N.C. App. 481 (1980).

No.

North Dakota

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

A person who engages in a sexual act or sexual contact with another, or who engages another to engage in a sexual act or sexual contact, is guilty of a class B felony if the actor (1) exploits the other person to submit by any threat or coercion that would render a person reasonably incapable of engaging in any sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or associate of any criminal street gang.

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

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

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 engages 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 19-03-5.1, 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 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.

No.

Ohio

Ohio does not specifically define "consent." However, submission to sexual conduct as a result of fear may be sufficient to give lack of consent as physical force or threat of physical force need not be shown to prove rape, merely the overcoming of the victim's will by fear or duress. In re Adams (Ohio Ct. Cl. 1990) 61 Ohio Misc. 2d 571, 573, 580 N.E.2d 861, 863.

No.

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; 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.

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.

No.

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.

Dr. Rev. Stat. § 165.315.

No.
Pennsylvania does not specifically define "consent." However, a person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:

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


This act includes the threat of the use of a deadly weapon. S.C. Code Ann. § 16-3-651(c).

When the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused:

- (a) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.
- (b) The victim submits to the act by means of deception, trickery, simulation or cover up with respect to the identity of the person accused.
- (c) 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.
- (d) The accused person is a relative of the victim, by ascendency or decreancy, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree.
- (e) When the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of dependency because the victim is under his/her custody, guardianship, or secondary to special educational, medical or psychological 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 does not specifically define "consent." Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental under any of the following circumstances commits a severe second degree felony:

- (1) The victim has not yet reached the age of sixteen (16) at the time of the event;
- (2) The victim is under the age of fourteen (14) years and the accused is at least ten (10) years older than the victim;
- (3) The accused, through concealment or by the element of surprise, is able to overcome the victim;
- (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:

- (1) He or she is over the age of fourteen (14) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age. R.I. Gen. Laws § 11-37-6(a).
- (2) He or she is over the age of eighteen (18) years and engaged in sexual penetration or sexual contact with another person over the age of fourteen (14) years and under the age of eighteen (18) years, when:
  - The accused has supervisory or disciplinary power over the victim by virtue of the accused's legal, professional, or occupational status; or
  - The accused is otherwise acting in a position of authority with respect to the victim.

Unless the parties are:

- (A) Engaging in sexual penetration or contact consensually;
- (B) Between the ages of sixteen (16) and twenty (20) years; and
- (C) No more than thirty (30) months apart in age. R.I. Gen. Laws § 11-37-6(b).

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 of the following circumstances are proven:

- (a) The actor uses aggravated force to accomplish sexual battery. S.C. Code Ann. § 16-3-653(1).

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

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

- (a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances.
- (b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. S.C. Code Ann. § 16-3-634.
"Mentally defective" means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising or controlling his or her conduct. S.C. Code Ann. § 16-3-651(e).

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

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

South Dakota does not provide a definition for consent, but it provides that no consent exists for an act of sexual penetration accomplished with any 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 another person, or by causing the victim or another person to submit or participate by exploiting the other person's dependency on the actor, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional or physical dependency on the actor;
3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, physically helpless, or a vulnerable adult (defined as "a person eighteen (18) years of age or older who, because of intellectual disability or physical dysfunction, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others") with an intellectual disability;
or

Sexual battery is unlawful sexual contact with a victim by the defendant or 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 penetration that the victim is mentally defective, mentally incapacitated, physically helpless; or
3) The defendant knows or has reason to know that the victim is mentally disabled, mentally incapacitated, physically helpless; or

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

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

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 at the time that the actor has the present ability to execute the threat;
3) The actor overcomes the other person with the use of any substance without the other person's knowledge;
4) The actor overcomes the other person through the actual application of physical force or violence; or
5) The actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives that the actor has the ability to execute this threat;
or
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 coerces the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
8) The actor is a public servant who coerces the other person to submit or participate;
9) The actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
10) The actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman's professional character as spiritual adviser;
11) The actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under the Texas Family Code;
12) The actor is a health care services provider who, in the course of performing an assisted reproduction procedure on another person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor;
13) Purposes of the crime of sexual battery a victim is incapable of consent if (1) the sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services described in (2); and (2) the defendant, whether licensed by the state or not, is a member of the clergy, healthcare professional, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Tenn. Code Ann. §39-13-505.

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

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

No. [The essence of consent is that it is given out of free will, and determining whether someone has truly consented requires close attention to a wide range of contextual elements, including verbal and nonverbal cues]. State v. Reigelsperger, 400 P.3d 1127, 1145 (Utah App. 2017).
**Vermont**

- "Consent" means the affirmative, unambiguous, and voluntary agreement to engage in a sexual act, which can be revoked at any time. 13 Vermont Stat. Ann. §3251(3).
- "Incapable of consenting" means (among other things) that a person (A) is incapable of understanding the nature of the conduct at issue; (B) is physically incapable of resisting, declining participation in, or communicating unwillingness to engage in the conduct at issue; or (C) lacks the mental ability to make or communicate a decision about whether to engage in the conduct at issue. 13 Vermont Stat. Ann. §3251(10).
- Additionally, a person will be deemed to have acted without the consent of the other person if the actor:
  - (A) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or lied and lascivious conduct.
  - (B) knew or reasonably should have known that the other person was unaware that a sexual act or lied and lascivious conduct was being committed;
  - (C) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or lied and lascivious conduct with the actor because the person was substantially impaired by alcohol, drugs, or other inhibitory means.

Yes.

**Virgin Islands**

- Consent is not specifically defined. However, there is no consent in circumstances when:
  1. a person’s resistance is prevented by fear of immediate and great bodily harm (Williams v. Virgin Islands, No. CRIM. 2007-0008, 2001 WL 4017278 (V.I. Sept. 12, 2001)); or
  2. either force, intimidation, or abuse of a position of authority is used to accomplish a sexual act (Francis v. People, No. S.C.T.CRIM. 2015-0002, 2015 WL 6600074 (V.I. Oct. 23, 2015)); or
  3. the victim is 13, 14 or 15 years old even if force, intimidation or abuse of a position of authority was not used to accomplish the sexual act (Francis v. People, No. S.C.T.CRIM. 2015-0002, 2015 WL 6600074 (V.I. Oct. 23, 2015)).

No.

**Washington**

- "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact with the person. Wash. Rev. Code Ann. § 9A.44.010(2).
- Consent is not defined. However, there is no consent in circumstances when:
  1. the person is unconscious, asleep, or is otherwise incapable of appraising or controlling his or her conduct because the person was substantially impaired by alcohol, drugs, or other inhibitory means.
  2. the person is unconscious or for any other reason is physically unable to communicate unwillingness to an act of sexual intercourse or sexual contact.

Yes. Wash. Rev. Code Ann. § 9A.44.010(2). A person is guilty of rape in the first or second degree, when circumstances not constituting rape in the first or second degree, such as those involving the sexual intercourse with another person where the victim did not consent to sexual intercourse with the perpetrator or where there is a threat of substantial unlawful harm to property rights of the victim. Wash. Rev. Code Ann. § 9A.44.060(1).
- Consent means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or contact. Wash. Rev. Code Ann. § 9A.44.010(2).

No.

**West Virginia**

- 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. W. Va. Code Ann. § 61-8B-2(1).
- "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact with the person. W. Va. Code Ann. § 61-8B-2(2).

No.

**Wisconsin**

- Consent is not defined. However, there is no consent in circumstances when:
  1. the person is unconscious, asleep, or is otherwise incapable of appraising or controlling his or her conduct because the person was substantially impaired by alcohol, drugs, or other inhibitory means.
  2. the person is unconscious or for any other reason is physically unable to communicate unwillingness to an act of sexual intercourse or sexual contact.


Yes.

**Wyoming**

- Consent is not specifically defined. However, case law suggests that in order for a person to consent to sexual contact or sexual intercourse in circumstances where:
  1. the person is unconscious, asleep, or is otherwise incapable of appraising or controlling his or her conduct because the person was substantially impaired by alcohol, drugs, or other inhibitory means.
  2. the person is unconscious or for any other reason is physically unable to communicate unwillingness to an act of sexual intercourse or sexual contact.

Yes.

**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 consent?</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>16 years old. Ala. Code § 13A-6-70(c)</td>
<td>Yes, a person is deemed incapable of consenting if he or she is incapacitated. Ala. Code § 13A-6-70(c).</td>
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Yes. A "protected person" is one who has a developmental disability attributable to an intellectual disability, autism, cerebral palsy, epilepsy, or other disabling neurological condition. Ala. Code § 13A-6-82. A "protected person" is one who has a developmental disability attributable to an intellectual disability, autism, cerebral palsy, epilepsy, or other disabling neurological condition. Ala. Code § 13A-6-82. A "protected person" is one who has a developmental disability attributable to an intellectual disability, autism, cerebral palsy, epilepsy, or other disabling neurological condition. Ala. Code § 13A-6-82. A "protected person" is one who has a developmental disability attributable to an intellectual disability, autism, cerebral palsy, epilepsy, or other disabling neurological condition. Ala. Code § 13A-6-82.
Although it does not directly affect consent, lack of consent to 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. § 11.41.420(a)(2).

- A person engaging in sexual penetration with a person who is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(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)(2).

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

- The following constitutes sexual assault in the second degree:

  - A person engaging in sexual penetration with another person who the offender knows is mentally incapable and who is in the offender’s care by authority of law or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.420(a)(2).

- 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).

- The following constitutes sexual assault in the third degree:

  - A person engaging in sexual contact with another person who the offender knows is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(3).

- The following constitutes sexual assault in the third degree:

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

- The following constitutes sexual assault in the third degree:

  - A person engaging in sexual contact with another person who the offender knows is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(3).

- The following constitutes sexual assault in the third degree:

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

- The following constitutes sexual assault in the third degree:

  - A person engaging in sexual contact with another person who the offender knows is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(3).

Yes, "without consent" means that a person is incapacitated as a result of an act of the defendant. Alaska Stat. § 11.41.470(10)(B). In addition, sexual assault includes sexual penetration or contact with a person who is incapacitated. Alaska Stat. § 11.41.420(a)(3) and § 11.41.425(a)(1). Incapacitated means temporarily incapacitated: means temporarily incapacitated:

- "Mentally incapable" means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another. Arizona Revised Statute § 13-1404(A)(7)(b).

- Yes, a victim can be incapable of committing the act by reason of sleep or any other similar impairment of consciousness as long as such condition is known or should have reasonably been known to the defendant. Arizona Revised Statute § 13-1404(A)(7)(b).

- Yes, a victim can be incapable of committing the act by reason of sleep or any other similar impairment of consciousness as long as such condition is known or should have reasonably been known to the defendant. Arizona Revised Statute § 13-1404(A)(7)(b).

The Alaska Statute does not directly address intoxication, but the inclusion of a drug or alcohol or any other similar impairment of consciousness as long as such condition is known or should have reasonably been known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).

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

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

- Yes, a victim can be incapable of committing the act by reason of sleep or any other similar impairment of consciousness as long as such condition is known or should have reasonably been known to the defendant. Arizona Revised Statute § 13-1404(A)(7)(b).
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<th>State</th>
<th>Age of Consent</th>
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<td>Colorado</td>
<td>17 years old, subject to various close-in-age provisions (described below)</td>
<td>Yes, a person may be guilty of sexual assault if the victim is incapable of appraising the nature of the victim’s conduct; Colorado Revised Statutes Annotated § 18-3-402(1)(b); 18-3-404(1)(b)</td>
<td>Yes, unconsciousness falls within the definition of “physically helpless” and therefore the actor may be guilty of sexual assault and/or unlawful sexual contact when the victim is unconscious and the actor knows the victim is unconscious and the victim has not consented. Colorado Revised Statutes Annotated § 18-3-401.</td>
<td>In addition, the sexual assault statute prohibits sexual intrusion or penetration if actor knows that victim is incapable of appraising nature of victim's conduct may extend to victims who are partially asleep; People v. Platt 770 P.2d 802 (Colo. App. 2007).</td>
<td>Relationship with the minor’s parent, adoptive parent, grandparent; aunt, uncle, legal guardian, foster, step-parent, stepparent, step-grandparent or sibling; Related to the minor by blood or marriage within the third degree and at least ten years older than the minor; The minor’s employer; An employee of a group home or residential treatment facility where the minor resides or has previously resided. Arizona Revised Statute § 13-1401(A)(2); A peace officer commits unlawful sexual conduct by knowingly engaging in sexual contact, oral sexual contact or sexual intercourse with any person who is in the officer’s custody or a person who the officer knows or has reason to know is the subject of an investigation. Arizona Revised Statute § 13-1412(A); A licensed behavioral health professional, psychiatrist or psychologist commits sexual misconduct by intentionally or knowingly engaging in sexual intercourse with a client who is currently under the care or supervision of the licensed behavioral health professional; psychiatrist or psychologist. Arizona Revised Statute § 13-1410(A); Employees of correctional facilities commit unlawful sexual conduct by intentionally or knowingly engaging in any act of a sexual nature with an offender who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail or with an offender who is under the supervision of either department or a city or county. Arizona Revised Statute § 13-1419(A); Yes, any actor who knowingly subjects a victim to sexual contact commits unlawful sexual contact if the actor has substantially impaired the victim’s power to appraise or control the victim’s conduct by employing, without the victim’s consent, any drug, intoxicant, or other means for the purpose of causing submission. Colorado Revised Statutes Annotated § 18-3-404(1)(c); In addition, in People In Interest of J.R. 2016 WL 2438425 (Colo. App. 2016), the court held that evidence that a sexual assault victim was intoxicated during sexual intercourse, and was for that reason incapable of appraising nature of her conduct, was sufficient to support a sexual assault conviction.</td>
</tr>
</tbody>
</table>
Connecticut


Yes, a person can be mentally incapacitated or impaired because of mental disability or disease to the extent that the person is unable to consent to sexual activity. Connecticut General Statutes Annotated §§ 53a-65, 53a-70, 53a-71. However, there is an affirmative defense that the actor, at the time of the conduct constituting the criminal offense, did not know of such condition of the victim. Connecticut General Statutes Annotated § 53a-67(a).

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

Mentally incapacitated means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent. Connecticut General Statutes Annotated § 53a-65(1).

Delaware

18 years old, but 16 and 17 year-olds may consent to intercourse if the other person is no younger than 16. 11 Delaware Code §§ 770(a) (1-2). If the victim is at least 12 years old and the defendant is no more than 4 years older than the victim, it is an affirmative defense if the victim consented to the act "knowingly". 11 Delaware Code §§ 761 (1) and 762(d).

A person acts "knowingly" with respect to an element of an offense when (1) if the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that the conduct is that nature or that such circumstances exist; and (2) if the element involves a result of the person's conduct, the person is aware that it is practically certain that the conduct will cause that result. 11 Delaware Code § 231(c).

Yes, a person can be incapable of consenting or appraising the nature of the sexual conduct if the victim suffered from a cognitive disability, mental illness or mental defect and the defendant knew of such condition. 11 Delaware Code § 761(k)(5).

Yes, there is no consent if the defendant knew the victim was unconscious, asleep or otherwise substantially incapacitated so that the act was being performed. 11 Delaware Code § 761(k)(2).

Yes, but not in all circumstances. There is no consent if the defendant has substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance. 11 Delaware Code § 761(k)(6).

Yes.

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

For the purpose of sexual crimes, except an offense under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 750-72b, it shall be an affirmative defense that the defendant and the alleged victim were, at the time of the alleged offense, living together by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship. Connecticut General Statutes Annotated § 53a-67(h).

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

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

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

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

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

• the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of 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 intensive, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under 18 years of age; or

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

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

Connecticut General Statutes Annotated § 53a-71.
of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778(5)).

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

- Intentionally has sexual contact with a child under the age of 16 or causes the child to have sexual contact with the person or a third person and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778A(1));
- Is a male who intentionally exposes his genitals or buttocks to a child under the age of 16 under circumstances in which he knows his conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and he stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778A(2)(a));
- Is a female who intentionally exposes her genitals, breast or buttocks to a child under the age of 16 under circumstances in which she knows her conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and she stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778A(2)(b));
- Suggests, solicits, requests, commands, impounds or otherwise attempts to induce a child under the age of 16 to have sexual contact or sexual intercourse or unlawful sexual penetration with the person or a third person, knowing that the person is thereby likely to cause annoyance, affront, offense or alarm to the child or another when the person is at least 4 years older than the child and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778A(3)).

"Position of trust, authority or supervision over a child" includes, but is not limited to:

- Familial or custodial authority or supervision;
- A teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer;
- A babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer;
- Any health professional as defined above;
- Clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer;
- Any law-enforcement officer, including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or
- Any other person who because of that person’s familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children. 11 Delaware Code § 761(e).

Health Professional or Religious Figure

Where the defendant is a health professional, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. 11 Delaware Code § 761(c).
Florida

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

Yes, any developmental disability and/or mental incapacity may impair the victim’s ability to intelligently, knowingly, and voluntarily consent. Florida Statutes § 794.011(3)(c)(d). In addition, there are increased penalties for a sexual battery carried out on a victim that the accused either knows or has reason to believe is mentally defective.

“Mentally defective” means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. Florida Statutes § 794.011(1)(c).

“Mentally incapacitated” means temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(d).

Yes, a person that is physically helpless or mentally incapacitated may not be able to provide intelligent, knowing, and voluntary consent. Florida Statutes § 794.011(3)(c)(d).

Yes, a person that is physically helpless or mentally incapacitated may not be able to provide intelligent, knowing, and voluntary consent. Florida Statutes § 794.011(3)(c)(d).

Yes, a person that is mentally incapacitated may not be able to provide intelligent, knowing, and voluntary consent.

Mentally incapacitated’ means temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent. Florida Statutes § 794.011(1)(d). In addition, a victim’s voluntary capacity to engage in sexual acts may be impaired by factors, including the victim’s mental status, such that the victim is unable to give voluntary consent. Florida Statutes § 794.011(3)(c)(d).

16 years old. D.C. Code § 22-3001(3).

Yes. A person is unable to consent to engaging in a sexual act if such person is incapable of appraising the nature of the conduct. D.C. Code §§ 22-3003(2)(A)-(C), 22-3005(2)(A)-(C).

Yes, a person is unable to consent to engaging in a sexual act if such person is incapable of appraising the nature of the conduct; incapable of declining to participate in such sexual act; or incapable of communicating unwillingness to engage in such sexual act. D.C. Code §§ 22-3003(2)(A)-(C), 22-3005(2)(A)-(C).

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

Yes. A minor, defined as a person under the age of 18, in a “significant relationship” with a person who is over 18 cannot consent to sexual acts or sexual contact with such person. D.C. Code §§ 22-5009.01, 22-5009.02.

“Significant relationship” includes:

• A parent, sibling, aunt, uncle, or grandparent, whether related by blood, marriage, domestic partnership, or adoption;

• A legal or de facto guardian of any person, more than 4 years older than the victim, who resides intermittently or permanently in the same dwelling as the victim;

• The person or the spouse, domestic partner, or paramour of the person who is charged with any duty or responsibility for the health, welfare, or supervision of the victim at the time of the act; and

• Any employee or volunteer of a school, church, synagogue, mosque, or other religious institution; or an educational, social, recreational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver, administrator, or support staff, or any other person in a position of trust or with authority over a child or a minor. D.C. Code § 22-3001(10).

Sexual Abuse of a Secondary Education Student

• A student under the age of 20 enrolled in a secondary level school cannot consent to sexual acts or sexual conduct with any teacher, teacher’s aide, or other person in a position of trust or with authority over a child or a minor.


Sexual Abuse of a Patient or Client

• A patient or client cannot consent to sexual acts or sexual contact with any person who purports to provide, in any manner, professional services of a medical, therapeutic, or counseling (whether legal, spiritual, or otherwise) nature, or is otherwise in a professional relationship of trust with the patient/client if:

• (1) The actor represents falsely that the sexual act or sexual contact is for a bona fide medical or therapeutic purpose, or for a bona fide professional purpose for which the services are being provided;

• (2) The nature of the treatment or service provided by the actor and the mental, emotional, or physical condition of the patient or client or such that the actor knows or has reason to know that the patient or client is impaired from declining participation in the sexual act or sexual contact;

• (3) The actor represents falsely that he or she is licensed as a particular type of professional; or

• (4) The sexual act or sexual contact occurs during the course of a consultation, examination, treatment, therapy, or other provision of professional services.


A person cannot consent to sexual activity with a law enforcement officer, correctional officer, or correctional probation officer, who is certified or is an elected official exempt from such certification or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government. Florida Statutes § 794.011(8).

A person less than 18 years of age cannot consent to engage in conduct which would constitute sexual battery with a person who is in a position of familial or custodial authority. Florida Statutes § 794.011(8).

“Sexual battery” means oral, anal, or female genital penetration by, or union with, the sexual organ of another, or the anal or female genital penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose. Florida Statutes § 794.011(9).

Yes. A minor, defined as a person under the age of 18, in a “significant relationship” with a person who is over 18 cannot consent to sexual acts or sexual contact with such person. D.C. Code §§ 22-5009.01, 22-5009.02.
Yes. A person who commits a sex crime if the person engages in sexual penetration or sexual contact with another person and the actor knows or has reason to know that the victim is mentally defective or mentally incapacitated. Ga. Code §§ 25.10(a)(4); 25.15; 25.20; 25.25; 25.30.

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

"Mentally Incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent. G.C.A. § 25.10(a)(3).

Yes. A person who commits a sex crime if the person engages in sexual penetration or sexual contact with another person and the actor knows or has reason to know that the victim is mentally incapacitated, which includes unconsciousness. 9 G.C.A. §25.10(a)(6); 25.15; 25.20; 25.25; 25.30.

Yes. A person who commits a sex crime if the person engages in sexual penetration or sexual contact with another person and the actor knows or has reason to know that the victim is temporarily lost from intoxication, the use of drugs or other cause, or is unconscious. Baise v. The State, 67 Ga. App. 631 (1942).

Yes. A person who commits a sex crime if the person engages in sexual penetration or sexual contact with another person and the actor knows or has reason to know that the victim is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to the person without his or her consent. 9 G.C.A. § 25.10(a)(5); 25.15; 25.20; 25.25; 25.30.

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Illinois

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

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

Illinois courts apply a totality of the circumstances test when determining whether a victim had the requisite mental capacity to consent. See People v. White, 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 the victim at the time is unconscious of the nature of the act due to being: unconscious or asleep; or not aware, knowing, perceiving, or remnant that the act occurred. Idaho Statutes § 18-6101(7).

Idaho

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

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

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

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

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 purposes. 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.60.

Yes. The court in Soura noted that treatment and detention facility; or engages in sexual conduct or sexual penetration with a person who is in the custody of that penal system; or engages in sexual conduct or sexual penetration with a person who is in the custody of any treatment and detention facility; or

-- a person who is in the custody of any other penal system or person serving a term of conditional release who is a probationer, parolee, or releasee, when the probation or supervising officer, surveillance agent, or aftercare specialist engages in sexual conduct or sexual penetration with a person who is in the custody of any other penal system or person serving a term of conditional release who is a probationer, parolee, or releasee, or

Also, a probation or supervising officer, surveillance agent, or aftercare specialist commits custodial sexual misconduct when the probationer or supervising officer, surveillance agent, or aftercare specialist engages in sexual conduct or sexual penetration with a person who is in the custody of any other penal system or person serving a term of conditional release who is a probationer, parolee, or releasee.

Illinois

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; or

-- he or she is an employee of a penal system or person serving a term of conditional release who is in the custody of that penal system and engaged in sexual conduct or sexual penetration with a person who is in the custody of that penal system; or

-- he or she is an employee of a penal system who is in the custody of any other penal system; or

-- he or she is an employee of a penal system who is in the custody of any other penal system or person serving a term of conditional release who is a probationer, parolee, or releasee.

Yes. A person commits sexual misconduct with a person with a disability when:

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

-- he or she is an employee of a penal system who is in the custody of any other penal system or person serving a term of conditional release who is a probationer, parolee, or releasee.

Yes. A person commits sexual misconduct with a person without a disability 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 any other penal system; or

-- he or she is an employee of a penal system who is in the custody of any other penal system or person serving a term of conditional release who is a probationer, parolee, or releasee.

Yes. A person commits sexual misconduct with a person without a disability 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 any other penal system; or

-- he or she is an employee of a penal system who is in the custody of any other penal system or person serving a term of conditional release who is a probationer, parolee, or releasee.

Yes. A person commits sexual misconduct with a person without a disability 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 any other penal system; or

-- he or she is an employee of a penal system who is in the custody of any other penal system or person serving a term of conditional release who is a probationer, parolee, or releasee.
Mentally incapacitated, 861, No. 18A-CR-2614, 2019 WL

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; 35-42-4.9. In addition, the crime is more severe if the offense is facilitated by inducing the victim's unconsciousness. IC §§ 35-42-4; 35-42-4.9.

Yes. If the intoxication causes the victim to be unaware that the sexual intercourse or other sexual conduct is occurring, IC §§ 35-42-4.1; 35-42-4.8.

Yes. It is a defense to a prosecution of rape for engaging in sexual relations if the sex act is performed while the other person is physically helpless. I.C.A. § 709.4.

In addition, a person commits a sex crime if: 

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

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

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.
sexual conduct between members of the same sex that is less harsh than the punishment for the same conduct between members of the opposite sex. The court struck the phrase “and are members of the opposite sex” from the statute State v. Limon, 280 Kan. 275, 276, 122 P.3d 22, 24 (2005).

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

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

In addition, a person commits a sex crime when:

(a) the offender is an employee or volunteer of a correctional facility, and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on parole, conditional release or postrelease supervision and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is an inmate who has been released and is currently on parole, conditional release or postrelease supervision;

(b) the offender is a parole officer, volunteer for the department of corrections or the employee or volunteer of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate;
A person is deemed 18 years old.

Yes. The following are deemed incapable of consent when he or she is: (1) 21 years old or more, and he or she engages in sexual intercourse with another person less than 18 years old and for whom he or she provides a foster family home; (2) in a position of authority or position of special trust and he or she engages in sexual intercourse with a minor under 18 years old with whom he or she comes into contact as a result of that position; (3) a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, a detention facility, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact: KRS § 510.120

A person is guilty of rape in the third degree if the person is: (1) 21 years old or more, and he or she engages in sexual intercourse with another person less than 18 years old and for whom he or she provides a foster family home; (2) in a position of authority or position of special trust and he or she engages in sexual intercourse with a minor under 18 years old with whom he or she comes into contact as a result of that position; (3) a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, a detention facility, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact: KRS § 510.120

A person is guilty of sexual abuse in the second degree if the person is a juvenile or minor who the person knows is less than eighteen (18) years old, and the minor can see or hear the person masturbate: KRS § 510.110

A person is guilty of sexual abuse in the second degree if the person is a juvenile or minor who the person knows is less than eighteen (18) years old, and the minor can see or hear the person masturbate: KRS § 510.110

A person is deemed incapable of consent when he or she is: (1) incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by

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; (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 a narcotic or anesthetic agent or other controlled dangerous substance administered by

Kentucky

18 years old.

A person is deemed incapable of consent when he or she is: (1) less than sixteen (16) years old; or (2) sixteen (16) or seventeen (17) years old and the actor at least ten (10) years older than victim at the time of the sexual act. KRS § 510.020.

Yes. A person is deemed incapable of consent when he or she is an individual with an intellectual disability or an individual that suffers from a mental illness. KRS §§ 510.010. See also Wilkerson v. Commonwealth, 621 S.W.2d 240 (Ky. App. 1981). ("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 performed" prior to the time that the sexual act occurred.)

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

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

Yes. 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; (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 a narcotic or anesthetic agent or other controlled dangerous substance administered by

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

Yes. Marriage: (1) a person who engages in sexual intercourse or deviate sexual intercourse with another person to whom the person is married; or subjects another person to whom the person is married to sexual contact, does not commit an offense under this chapter regardless of the person’s age solely because the other person is less than sixteen (16) years old or an individual with an intellectual disability. KRS § 510.035.

A person who engages in sexual abuse in the first degree if he or she is in a position of authority or position of special trust, as defined in KRS 552.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate. KRS § 510.110

A person is guilty of sexual abuse in the second degree if the person is a juvenile or minor who the person knows is less than eighteen (18) years old, and the minor can see or hear the person masturbate: KRS § 510.110

A person is guilty of sexual abuse in the second degree if the person is a juvenile or minor who the person knows is less than eighteen (18) years old, and the minor can see or hear the person masturbate: KRS § 510.110

A person is guilty of rape in the first degree, and does not require an additional showing of lack of consent.

Yes. It is a defense to each of the above offenses if the person is married to the offender.
A.2d 1136, 1138

Chabot

required disability.

subjective awareness or an

objective manifestation of the

nature of the act and the

offender must have known of

the victim's incapacity. 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 "the victim was incapable of understanding the

nature of the act").

"sexual

crime if that person engages in

the sexual act. 17-A M.R.S.A. 253,

assault under 17-A M.R.S.A. 253, certain charges of

Marriage is a defense to charges of gross sexual

assault under 17-A M.R.S.A. 253, certain charges of

unlawful sexual contact under 17-A M.R.S.A. 253-A, visual sexual assault

and certain charges of unlawful sexual

contact under 17-A M.R.S.A. 260.

Maine also criminalizes sex acts when there is a

particular relationship between the actor and 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:

(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

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 other

person

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 other person

is mentally handicapped or

mentally ill;

(4) the actor

employs or

operates or is an

employee of an

organization, program or

residence that is operated,

administered, licensed or funded

by the Department of Health

and Human Services and the

other person, not the actor's

spouse, receives services

from the

organization, program or

residence and the other person

is mentally handicapped or

mentally ill;

(5) the actor

employs or

operates or is an

employee of an

organization, program or

residence that is operated,

administered, licensed or funded

by the Department of Health

and Human Services and the

other person, not the actor's

spouse, receives services

from the

organization, program or

residence and the other person

is mentally handicapped or

mentally ill;

(6) the actor

employs or

operates or is an

employee of an

organization, program or

residence that is operated,

administered, licensed or funded

by the Department of Health

and Human Services and the

other person, not the actor's

spouse, receives services

from the

organization, program or

residence and the other person

is mentally handicapped or

mentally ill;

(7) the actor

employs or

operates or is an

employee of an

organization, program or

residence that is operated,

administered, licensed or funded

by the Department of Health

and Human Services and the

other person, not the actor's

spouse, receives services

from the

organization, program or

residence and the other person

is mentally handicapped or

mentally ill;

(8) the actor

employs or

operates or is an

employee of an

organization, program or

residence that is operated,

administered, licensed or funded

by the Department of Health

and Human Services and the

other person, not the actor's

spouse, receives services

from the

organization, program or

residence and the other person

is mentally handicapped or

mentally ill; or

(9) the actor

employs or

operates or is an

employee of an

organization, program or

residence that is operated,

administered, licensed or funded

by the Department of Health

and Human Services and the

other person, not the actor's

spouse, receives services

from the

organization, program or

residence and the other person

is mentally handicapped or

mentally ill; and

the consent of a student, whether or not that student

is 17 years of age or older, is not a defense. LSA-R.S.

14:81.4.

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; or (2) knows or reasonably should know that the person is under arrest or otherwise in actual custody. LSA-R.S. 14:81.1.

The consent of an incapacitated person is not a defense to charges of unlawful sexual contact with that person, regardless of whether or not that person has been known of the victim's incapacity. LSA-R.S. 14:42.1, LSA-R.S. 14:45.

Please note that the above only applies if the perpetrator provides medical treatment for the victim, says nothing about instances in which the victim voluntarily consumed alcohol or drugs, and the perpetrator, prior to the assault, did not have known of the victim's incapacity. LSA-R.S. 14:42.1, LSA-R.S. 14:45.

A person's consent to sexual contact is not a defense to charges of sexual battery or assault. LSA-R.S. 14:42.1, LSA-R.S. 14:45.

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

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 other

person

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 other person

is mentally handicapped or

mentally ill;

(4) the actor

employs or

operates or is an

employee of an

organization, program or

residence that is operated,

administered, licensed or funded

by the Department of Health

and Human Services and the

other person, not the actor's

spouse, receives services

from the

organization, program or

residence and the other person

is mentally handicapped or

mentally ill; or

(5) the actor

employs or

operates or is an

employee of an

organization, program or

residence that is operated,

administered, licensed or funded

by the Department of Health

and Human Services and the

other person, not the actor's

spouse, receives services

from the

organization, program or

residence and the other person

is mentally handicapped or

mentally ill; and

the consent of an incapacitated person is not a defense to charges of unlawful sexual contact with that person, regardless of whether or not that person has been known of the victim's incapacity. LSA-R.S. 14:42.1, LSA-R.S. 14:45.

The consent of a student, whether or not that student

is 17 years of age or older, is not a defense. LSA-R.S. 14:81.4.
**Maryland**

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

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

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

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

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

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

Yes. Age of consent law applies differently if the actor is a teacher or other school employee who is in a position of authority over the other person. However, he or she may not engage in sexual activity with school students. MD Code, Criminal Law, § 3-304, 3-307.

Criminal sexual conduct in the third or fourth degree occurs if the victim is at least 12 but less than 17 years of age and the actor is related to the victim by blood or affinity to the fourth degree, or if the acts occur by an employee of a contractor providing goods or services to a correctional facility. However, he or she may not engage in sexual activity with school students. MD Code, Criminal Law, § 3-304, 3-307.

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

- The actor is a member of the same household as the victim.
- The actor is related to the victim by blood or affinity to the fourth degree.
- The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
- The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.
- The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.
- The actor is an employee of a hospital, medical facility, intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.
- The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident and the sexual penetration occurs during the period of that other person's residency.

MD Code, Criminal Law, § 3-304, 3-307.

**Massachusetts**

16 to 18 years old depending on the crime below.

- It is a crime to induce a person under 18 of chaste life to have unlawful sexual intercourse. Mass. Gen. Laws Ann. ch. 272 § 4.
- The punishment for indecent assault and battery on a person with a disability is a permanent or limited divorce. MD Code, Criminal Law, § 3-318.
- However, it is aggravated statutory rape (which carries a harsher punishment) for a person who is a "mandated reporter" at the time of the act to have sexual intercourse or unnatural sexual intercourse with a child under 16 years of age. Mass. Gen. Laws. Ann. ch. 265, § 27A.
- "Mandated reporter" means a person who is:
  - (i) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, charter, optician, podiatrist, optometrist, osteopath, allied medical health and human services professional licensed under section 165 of chapter 112 and alcoholism counselors of the poison control center 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 with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 15D that provides child care or residential services to children or that provides the services of child care resources and referral agencies, voucher management agencies or family child care systems or child care food programs, licentor of the department of early education and care or school attendance officer;
  - (iii) a probation officer, clerk-magistrate of a district court, parole officer, social worker, foster parent, firefighter, police officer, or animal control officer;
  - (iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis;
  - (v) in charge of a medical or other public or private institution, school or facility or that person's designated agent;

Yes. A person may not engage in "vaginal intercourse," or "vaginal contact," or "sexual conduct" with an individual confined in a child care institution licensed by the Department of Juvenile Services, a detention center for juveniles, or a facility for juveniles. MD Code, Criminal Law, § 3-318.

**Michigan**

16 years old, unless such youth is employed at the victim's school in which case the age of consent is 18 years old.


Yes. A person is guilty of criminal sexual conduct if the person engages in sexual penetration or sexual contact and the actor knows or has reason to know that the victim is mentally incapacitated, or has reason to know that the victim is a substantially cognitively impaired individual and mentally incapacitated individual. Mich. Comp. Laws. Ann. §§ 750.520d(1)(c), 750.520e(1)(c).

"Mentally incapable" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent; or due to any other act committed upon that person without his or her consent. Mich. Comp. Laws. Ann. § 750.520e(1)(c).

"Vaginal intercourse," and "vaginal contact," and the act knows or has reason to know that the victim is physically helpless, which includes incompetence. MD Code, Criminal Law, § 3-318.

"Physically helpless" means a person who is unconscious, asleep, or for any other reason is physically incapable of rendering the victim incapable of deciding whether to assent to a sexual intercourse. Id.

Yes. A person is guilty of criminal sexual conduct if the person engages in sexual penetration or sexual contact and the actor knows or has reason to know that the victim is a substantially cognitively impaired individual and mentally incapacitated individual. Mich. Comp. Laws. Ann. § 750.520d.

Yes. If the intoxication renders the person incapable of giving consent, the act, "sexual intercourse," "vaginal intercourse," "vaginal contact," "sexual conduct," or "sexual contact" with another if the victim is a substantially cognitively impaired individual and mentally incapacitated individual. Mich. Comp. Laws. Ann. § 750.520e.

Yes. Age of consent law applies differently if the actor is a teacher or other school employee who is in a position of authority over the other person. However, he or she may not engage in sexual activity with school students. Mich. Comp. Laws. Ann. § 750.520d.

A person may not also engage in "vaginal intercourse," or "vaginal contact," or "sexual conduct" with an individual confined in a child care institution licensed by the Department of Juvenile Services, a detention center for juveniles, or a facility for juveniles. Mich. Comp. Laws. Ann. § 750.520d.

A person may not be prosecuted for rape in the first degree, rape in the second degree, sexual offense in the third degree, or sexual offense in the fourth degree against a victim who was the person's legal spouse at the time of the alleged rape or sexual offense. MD Code, Criminal Law, § 3-318.

There are exceptions for separation or use of force and limited divorce. MD Code, Criminal Law, § 3-318.
Yes. A person who is mentally incapacitated, mentally incapacitated or physically helpless cannot consent to a sexual act. Minn. Stat. § 609.344.

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

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

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

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

Yes. A person who is physically incapacitated, mentally incapacitated or physically helpless cannot consent to a sexual act. Minn. Stat. § 609.344.

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

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

• The following acts constitute criminal sexual conduct in the first or second degree:
  - Complainant is at least 14 but less than 18 years of age and the actor is more than 36 months older than the complainant and in a current or recent position of authority over the complainant (neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense).
  - The actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration or contact, and the actor or an accomplice used force or coercion to accomplish the act, the complainant suffered personal injury, or the sexual abuse involved multiple acts committed over an extended period of time (neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense).
  - At the time of the act, the actor is in a prohibited occupational relationship with the complainant. Minn. Stat. § 609.344.

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

1. the actor performed massage or other bodywork for hire, the sexual penetration or sexual contact occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant, and the sexual penetration or sexual contact was consensual; or
2. the actor and the complainant were in one of the following occupational relationships at the time of the act:
   - the actor was a psychotherapist, the complainant was the actor’s patient, and the sexual penetration or sexual contact occurred during or immediately before or after the action that the psychotherapist-patient relationship was ongoing;
   - the actor was a psychotherapist and the complainant was the actor’s former patient who was emotionally dependent on the actor;
   - the actor or falsely impersonated a psychotherapist, the complainant was the actor’s former patient or former patient, and the sexual penetration or sexual contact occurred by means of deception or false representation that the sexual penetration or sexual contact was for a bona fide medical purpose;
   - the actor or falsely impersonated a member of the clergy, the complainant was not married to the actor, the complainant met with the actor in private seeking or receiving religious or spiritual advice, aid, or comfort from the actor, and the sexual penetration or sexual contact occurred during the course of the meetings or during a period of time when the meetings were ongoing;
   - the actor provided special transportation service to the complainant and the sexual penetration or sexual contact occurred during or immediately before or after the actor transported the complainant;
   - the actor was or falsely impersonated a peace officer, as defined in section 626.84, the actor physically or constructively prevented the complainant or the complainant or the complainant did not reasonably feel free to leave the actor’s presence, and the sexual penetration or sexual contact was not pursuant to a lawful search or lawful use of force;
   - 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...
18 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. Minn. Stat. § 609.345.

There are also statutes criminalizing sexual acts perpetrated by an actor in a “prohibited occupational relationship.” Minn. Stat. § 609.344 and § 609.345; see also Minn. Stat. § 609.341(2).

A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally incapacitated person, which includes an unconscious person who is rendered incapable of knowing or controlling his or her conduct. Minn. Stat. § 609.345.

The following acts constitute criminal sexual conduct in the fourth degree:

- Complainant is at least 14 but less than 16 years of age and the actor is more than 36 months older than the complainant or in a current or recent position of authority over the complainant. Consent by the complainant to the act is not a defense. Mistake of age is not a defense unless actor is less than 60 months older. In any such case, if the actor is no more than 60 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant’s age shall not be a defense.

- Complainant is at least 16 but less than 18 years of age and the actor is more than 36 months older than the complainant and in a current or recent position of authority over the complainant. Neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense. The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact. Neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense.

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 is permanently incapable of knowing the nature and quality of his or her conduct. Minn. Stat. § 609.341.

A person is guilty of sexual battery if he or she engages in sexual penetration with a child under 18 years of age if the actor is more than 36 months older than the complainant or in a current or recent position of trust or authority over the child, including, without limitation, the child’s teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach. Minn. Stat. § 609.341(2).

A person is guilty of sexual battery if he or she engages in sexual penetration with a child under 18 years of age if the actor is more than 36 months older than the complainant or in a current or recent position of trust or authority over the child, including, without limitation, the child’s teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach. Minn. Stat. § 609.341(2).

Yes, a person is guilty of sexual battery if he or she engages in sexual penetration with a mentally incapacitated person, which includes a person who is rendered incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent. Minn. Stat. § 609.345.

- Complainant is at least 16 but less than 18 years of age and the actor is more than 36 months older than the complainant or in a current or recent position of authority over the complainant. Consent by the complainant to the act is not a defense. Mistake of age is not a defense unless actor is less than 60 months older. In any such case, if the actor is no more than 60 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant’s age shall not be a defense.

- Complainant is at least 16 but less than 18 years of age and the actor is more than 36 months older than the complainant and in a current or recent position of authority over the complainant. Neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense. The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact. Neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense.

The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact, and the actor or accomplice used force or coercion to accomplish the act, the complainant suffered personal injury, or the sexual abuse involved multiple acts committed over an extended period of time. Neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense. Minn. Stat. § 609.345.

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Missouri

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. Mo. Ann. Stat. § 566.030.

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Yes, a person commits the offense of sexual contact with a student if he or she has sexual contact with a student of a school and is:  
(a) a teacher;  
(b) a student teacher;  
(c) an employee of the school;  
(d) a volunteer of the school; or  
(e) an organization or entity that contracts with the school or school district to provide services.

Montana

Yes, a person commits the crime of sexual contact with a student if he or she has sexual contact with a student of a school and is:  
(a) a teacher;  
(b) a student teacher;  
(c) an employee of the school;  
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(d) a volunteer of the school; or  
(e) an organization or entity that contracts with the school or school district to provide services.
Yes.

Any person who subjects another person to sexual penetration who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, is guilty of "aggravated sexual assault." In re Gabriel P., 20 Neb. App. 432, 845 N.W.2d 105, 111 (2021). A victim’s lack of consent is not an element of the crime when the victim is incapable of resisting or appraising the nature of his or her conduct. Id.

Under § 28-319(1)(b), the two-part analysis requires a significant abnormality, such as severe intoxication or other substantial mental or physical impairment, of the victim, and knowledge of the abnormality on the part of the alleged attacker. Id.

Yes.

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

Yes.

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

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

Incest.


• Marriage.


• Position of authority at school or other:
  • It is illegal for an employee or volunteer in a position of authority at a school and 21 years of age or older to engage in sexual conduct with a pupil that is 16 years of age or older and to have contact with the perpetrator in his or her duties as an employee or volunteer, and the two are not married. Consent is not a defense. Nev. Rev. Stat. Ann. § 201.550(1).

• Position of authority at entity which provides services to children:
  • It is illegal for an employee, contractor or volunteer in a position of authority at an entity which provides services to children to engage in sexual conduct with a person who is 16 years of age or older but less than 18 and (1) who is under the care, custody, control or supervision of the entity at which the person is employed or volunteering or of which the person is a contractor, and (2) whom the person has had contact in the course of performing his or her duties as an employee, contractor or volunteer. Nev. Rev. Stat. Ann. § 201.550(1).

• Law enforcement officer.

• It is illegal for a law enforcement officer to voluntarily engage in sexual conduct with a person who is under arrest or is currently detained by the law enforcement officer or any other law enforcement officer. Consent is not a defense. Nev. Rev. Stat. Ann. § 201.465.

Yes.

A person commits aggravated felonious sexual assault if he or she engages in sexual penetration with a victim when the person provides therapy, medical treatment, or examination of the victim and the course of that relationship or within one year of termination of the relationship, the person acts unethically or uses that position to coerce the victim. N.H. Rev. Stat. Ann. § 632-A:2(4).

Yes.

A person commits felonious sexual assault if he or she engages in sexual penetration with a victim that is 15 years of age or older and under 18 years old. 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 "aggravated sexual assault." In re Gabriel P., 20 Neb. App. 432, 845 N.W.2d 105, 111 (2021). A victim’s lack of consent is not an element of the crime when the victim is incapable of resisting or appraising the nature of his or her conduct. Id.

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

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Yes, engaging in a sexual act with the actor is in a position of authority over the victim and is more than 4 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. N.H. Rev. Stat. Ann. § 632-A:21(4)(b).

Yes, engaging in sexual penetration with a victim that is over 13 but under 16 years old and the perpetrator is related by blood or a member of the same household. N.H. Rev. Stat. Ann. § 632-A:21(i).


Yes, sexual activity between an adult and a minor (age 13-16) is permitted if the couple is married. New Mexico Statutes §30-9-11(10).

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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)(v)(c).

The law does not presume that a person with a mental retardation is unable to consent to sexual intercourse, and proof of incapacity must come from facts other than mental retardation alone. People v. Garavelli, 86 N.Y.2d 81, 86, 653 N.E.2d 1162, 1165 (1995).

- Mentally disabled means a person who has a mental disability when the person performing the act knows or should have reasonably known the other person has a mental disability or is mentally incapacitated.
- 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, it is a crime to engage in sexual activity with a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.00(5). New York Penal Law §150.05(3)(e).

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

- Mentally incapacitated means a person who has a mental disability when the person performing the act knows or should have reasonably known the other person was physically helpless. North Carolina General Statutes Annotated §14-27.22; §14-27.27; §14-27.33.

- Person who has a mental disability means a victim who has an intellectual disability or a mental disorder that temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.

- Mentally incapacitated means a person who is rendered substantially incapable of appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.

North Carolina


Yes, it is a crime to engage in sexual activity with a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.00(5). New York Penal Law §150.05(3)(e).

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

- 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 lawful marriage between a victim and defendant is a defense to offenses against sexual crimes. Consent is not a defense to sexual crimes committed by a defendant who:

1. has assumed the position of a parent in the home of a minor victim and engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age and engages in vaginal intercourse or a sexual act with such victim;
2. is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim and engages in vaginal intercourse or a sexual act with a student (except when defendant is married to the student); or
3. is a school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student. North Carolina General Statutes Annotated §14-27.33; §14-27.32.

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

Yes, it is a crime if sexual penetration is perpetrated by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy, or within a period of one year following the termination of psychotherapy. New Mexico Statutes §80-9-11G(A) (defining "forced contact" to cover sexual penetration perpetrated by a psychotherapist on a patient). §10-9-11.
A person who engages in sexual conduct or sexual contact with another who is not their spouse and who knows that the other person is a minor, and the other person is enrolled in or attends an educational entity, is guilty of assault if the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

Additionally, no person shall engage in sexual conduct with another person who is not their spouse if the other person's spouse or the person to whom they are in a dating relationship, consents to the sexual conduct.

A person who commits gross sexual imposition if they engage in sexual conduct with another (not their spouse), under section 2907.05(A)(5) (crime of gross sexual imposition for sexual conduct).

If the intoxication is involuntary:

Yes. A person who engages in sexual conduct or sexual contact with another, or who causes another to engage in sexual conduct or sexual contact, is guilty of gross sexual imposition if that person knows or has reasonable cause to believe that the victim is unaware that a sexual act or sexual contact is being committed upon him or her.

N.D. Century Code Chapter 12-1-20-03(C)(1) & (C)(2).

If the victim is under the age of eighteen years, the offense is a Class 2 felony, if the victim is between the ages of twelve and eighteen years, the offense is a Class 3 felony, and if the victim is between the ages of eighteen and twenty-one years, the offense is a Class 4 felony.

The victim's age if:

Yes, a person who engages in a sexual act with the victim, is guilty of gross sexual imposition if the victim knows or has reasonable cause to believe that the victim is unaware that a sexual act or sexual contact is being committed upon him or her.

N.D. Century Code Chapter 12-1-20-03(C)(1).

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

N.D. Century Code Chapter 12-1-20-03(C)(2).

A person who knows the age of the victim does not constitute a defense to the crime of statutory rape.

N.D.C.C. § 12.1-20-03(1)(c).

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

N.D. Century Code Chapter 12-1-20-03(C)(2).

Person committed sex act in a position of authority.

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 because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

Yes. A person who engages 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 because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

Ohio Revised Code Chapter 2907.02(A)(2).

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

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A person who engages in sexual conduct with another person, or who causes another person to engage in sexual conduct with another, or who causes another person to have sexual contact with that person, is guilty of statutory rape.

Yes. A person who engages in sexual conduct with another person, or who causes another person to engage in sexual conduct with another, or who causes another person to have sexual contact with that person, is guilty of statutory rape.

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Yes. A person who engages in sexual conduct with another person, or who causes another person to engage in sexual conduct with another, or who causes another person to have sexual contact with that person, is guilty of statutory rape.

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

A person who engages in sexual conduct with another person, or who causes another person to engage in sexual conduct with another, or who causes another person to have sexual contact with that person, is guilty of statutory rape.

A person who commits gross sexual imposition if they engage in sexual conduct with another (not their spouse), or cause two or more persons with that person's knowledge to have sexual contact with that person, is guilty of sexual assault.

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Yes. Rape in the first degree includes an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator where the victim is at the time unconscious of the nature of the act and this fact is known to the accused. Okla. Stat. tit. 21 § 1111A(5).

Yes. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator where the victim is at the time unconscious of the nature of the act and this fact is known to the accused. Okla. Stat. tit. 21 § 1111A(5).

Yes. Rape includes an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female within or without the bonds of matrimony and who may be of the same or the opposite sex as the perpetrator, and who may be of the same or the opposite sex as the perpetrator where the victim is at the time unconscious of the nature of the act and this fact is known to the accused. Okla. Stat. tit. 21 § 1111A(5).

**Oregon**

Yes. A person who has sexual intercourse with another person when the other person is under the age of 16 and is the person’s spouse’s child. Or. Rev. Stat. § 163.375(1).

Yes. A person is incapable of consenting to a sexual act if they are mentally incapacitated or incapable of appraising the nature of the person’s conduct (Or. Rev. Stat. § 163.315).

Yes. 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 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. Or. Rev. Stat. § 163.315(3).

Yes. Mentally incapacitated means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense. Or. Rev. Stat. § 163.350(2).

Yes. A person who engages in oral or anal intercourse with another person or causes another to engage in oral or anal intercourse commits the crime of sodomy in the first degree if the victim in incapable of consent by reason of mental incapacitation. Or. Rev. Stat. § 163.405.

Yes. A person commits the crime of sexual abuse in the first degree if that individual is employed by the agency that arrested the contractor of the state or federal government, a subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim. Or. Rev. Stat. § 163.425.

Yes. A person who has sexual intercourse with another person when the other person is under the age of 16 and is the person’s sibling, of the whole or half blood, the person’s child or the person’s spouse’s child. Or. Rev. Stat. § 163.375(1).

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Yes. A person who engages in oral or anal intercourse with another person or causes another to engage in oral or anal intercourse commits the crime of sodomy in the first degree if the victim in incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim’s conduct (Or. Rev. Stat. § 163.405).

Yes. A person commits the crime of sexual abuse in the first degree if that individual is employed by the agency that arrested the contractor of the state or federal government, a subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim. Or. Rev. Stat. § 163.425.

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Yes. A person commits the crime of sexual abuse in the first degree if that individual is employed by the agency that arrested the contractor of the state or federal government, a subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim. Or. Rev. Stat. § 163.425.
Pennsylvania

16 years old, 18 Pa.C.S.A. § 3121.1.  

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


When that person subjects another person to sexual contact and the victim is incapable of reason by being mentally incapacitated, physically helpless or incapable of appraising the nature of the victim's conduct.  


Nonprofit volunteer or employee who has contact with a student of the school or any other person who has direct contact with a student at a school commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child who is receiving services at the center.  

18 Pa.C.S.A. § 3124.2(a)(2).

School employee or volunteer:  

A person who is a school employee or volunteer engages in sexual contact with a student of the school or any other person who has direct contact with a student at a school commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child who is receiving services at the center.  

<table>
<thead>
<tr>
<th>State</th>
<th>Age Requirement</th>
<th>Sexual Penetration</th>
<th>Degree Sexual Assault Criteria</th>
<th>1st Degree Sexual Assault</th>
<th>2nd Degree Sexual Assault</th>
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<tr>
<td>Rhode Island</td>
<td>16 years old.</td>
<td>R.I. Gen. Laws § 11-37-6</td>
<td>Yes. A person is guilty of first 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. Laws § 11-37-6(1).</td>
<td>Yes. A person is guilty of first degree sexual assault if he or she engages in sexual penetration 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. Laws § 11-37-6(1).</td>
<td>Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or psychotherapeutic treatment, or any type of counseling, or because there is a relationship with the victim as the leader of his/her religious belief. Puerto Rico Stat. tit. 33 § 4770(h)</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>16 years old.</td>
<td>18 Pa.C.S.A. § 3125</td>
<td>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 incapacity 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(h).</td>
<td>Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if at the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused. Puerto Rico Stat. tit. 33 § 4770(e).</td>
<td>Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if: the accused person is a relative of the victim, by ascendency or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree; or the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or psychotherapeutic treatment, or any type of counseling, or because there is a relationship with the victim as the leader of his/her religious belief. Puerto Rico Stat. tit. 33 § 4770(h)-1.</td>
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South Carolina

16 years old. S.C. Code Ann. § 16-3-655.

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

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

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

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

South Dakota


Yes, a person can be deemed incapable of consenting to sexual contact because of mental incapacity. S.D. Code §22-22-7.2.

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**Texas**


Yes, a sexual assault is considered to occur without the consent of the other person where the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable of appraising the nature of the act or of resisting it. Texas Code Ann. §22.011(4).

In considering whether a person is incapable of resisting a sexual act due to mental disease or defect, we focus on whether he has the presence of mind sufficient to resist. Though a person may have the physical capability to resist, the question is whether he has the mental wherewithal to harness that capability. State v. State 615 S.W.3d 530, 541 (Tex. App. 2020).


Yes, a sexual assault is considered to occur without the consent of the other person if the other person has not consented and the actor knows or reasonably should have known that the other person is unconscious, unaware that the sexual assault is occurring or is physically unable to resist. Vermont Stat. Ann. §22.011(b)(3) & (5).

Yes, a sexual assault is considered to occur without the consent of the other person if the actor has intentionally impeded the other person'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)(9).

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 causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's dependency on the actor;
- the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's dependency on the clergyman in the clergyman's professional character as spiritual advisor;
- the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under the Texas Family Code;
- the actor is a health care services provider who, after the course of performing and reproducing a reproductive procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor;
- the actor is a coach or tutor who causes the other person to submit or participate by using the actor's power or influence to exploit the other person's dependency on the actor;
- the actor is a caregiver hired to assist the other person with activities of daily life and causes the other person to submit or participate by exploiting the other person's dependency on the actor. Texas Code Ann. §22.011(b)(15).

Yes, a sexual offense is considered to occur without the consent of the other person where:

- the actor is a person providing services to a child or to a person who is incapable of consenting to the sexual act in question. Utah Code Ann. §76-5-406(2).
- the actor is a person providing services to a child or to a person who is incapable of consenting to the sexual act in question and who is a resident of the actor's household, who provides professional or religious counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment. Utah Code Ann. §76-5-406(2).

Yes, a sexual offense is considered to occur without the consent of the other person where the actor knows or reasonably should know the victim's power to appraise or control the other person's conduct.

- The actor is a health care services provider who causes the victim to submit or participate by using the actor's power or influence to exploit the other person's dependency on the actor. Utah Code Ann. §76-5-406(2).
- The actor is a caregiver hired to assist the other person with activities of daily life and causes the other person to submit or participate by exploiting the other person's dependency on the actor. Utah Code Ann. §76-5-406(2).
- The actor is a person providing services to a child or to a person who is incapable of consenting to the sexual act in question. Utah Code Ann. §76-5-406(2).
- The actor is a person providing services to a child or to a person who is incapable of consenting to the sexual act in question if the actor intentionally impeded the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge. Utah Code Ann. §76-5-406(2).
- The actor is a person providing services to a child or to a person who is incapable of consenting to the sexual act in question who was given or reasonably should have known that the person was incapable of consenting. Utah Code Ann. §76-5-406(2).
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91 years old, if the actor was the spouse of the child at the time of the offense. Texas Code Ann. §22.011(e).
to engage in the conduct at issue; or (C) lacks the mental ability to make or communicate a decision about whether to engage in the conduct at issue. 13 Vermont Stat. Ann. §3252(10).

Yes, a person who engages in sexual contact with a person when the other person is unconscious or physically helpless, or that person's mental defect or incapacity is known to the actor, is guilty of unlawful sexual contact in the first degree. 14 V.C. § 1700. An actor who perpetrates an act of sexual intercourse or sodomy with a person when through idiosyncrasy, amnesia or any unsoundness of mind, either temporary or permanent, the person is incapable of giving consent, is guilty of rape in the first degree. 14 V.C. § 1701.

Yes, an accused is guilty of sexual assault in the first degree if they perpetrate an act of sexual intercourse or sodomy with a person who is under the age of 10, the child is at least 18 years old, and the sexual act is consensual. 13 Vermont Stat. Ann. §3252(c).

Yes, an accused is guilty of sexual assault in the first degree if they engage in sexual contact with a minor and the actor is at least 48 months older than the minor and the actor is in a position of power, authority or supervision over the minor by virtue of the actor's undertaking the responsibility, through occupation or employment, or roles such as employer, landlord, or neighbor, or by virtue of professional or personal relationships. 14 V.C. § 1700a.

Yes, a person is guilty of rape if the actor engages in sexual intercourse or sodomy with a complaining witness from the same household of the victim. 13 Vermont Stat. Ann. §3252(c).

No person shall engage in a sexual act with a minor and the actor is at least 18 years old, the child is at least 15 years old, and the sexual act is consensual. 13 Vermont Stat. Ann. §3252(c).

Yes. 14 V.C. § 1700a.
unit as defined in §16.1-235, a local community-based probation services agency, or a pretrial services agency who is in a position of authority over a person detained or arrested by a law enforcement officer, inmate, probationer, parolee, juvenile detainee, or pretrial defendant or pretrial officer canally knows, without the use of force, threat, or intimidation, (c) an inmate who has been convicted to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail or (d) a person detained or arrested by a law enforcement officer, parole officer, probation officer, parolee, juvenile detainee, or pretrial defendant or pretrial officer in the custody of a private, local, or state law enforcement agency or under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home as defined in §16.1-226, a state or local court services unit as defined in §16.1-235, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program, or any other parole/probation or pretrial services program or agency and the accused knew that the person was detained, arrested, in custody or under the jurisdiction of a correctional facility, jail, Department of Corrections, Department of Juvenile Justice, secure facility, detention home, court services unit, community-based probation services agency or pretrial services agency, the accused shall be guilty of a felony. VA Code Ann. §18.2-64.2.

Note the rape statute applies "whether or not" the victim is the spouse of the actor. VA Code Ann. §18.2-64.1.

Washington

16 years old, however, there are exceptions for persons in positions of trust, such as school employees and foster parents. Wash. Rev. Code Ann. §§ 9A.44.009, 9A.44.096.

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

A person who is unable to understand the nature or consequences of sexual intercourse at the time of the offense, whether that condition is produced by illness, defect, the influence of a substance or from some other cause, is "mentally incapacitated." Wash. Rev. Code Ann. § 9A.44.010(7).

In any prosecution 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.44.050.

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

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

In any prosecution in which lack of consent is based solely upon the victim's mental incapacity or upon the victim being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless. Wash. Rev. Code Ann. §§ 9A.44.050.

Yes, a person that is under the influence of a substance "which prevents a person from appraising or controlling his or her conduct as a result of the influence of the substance or an intoxicating substance administered to that person" is mentally incapacitated. Wash. Rev. Code Ann. § 9A.44.050.


West Virginia


Yes, a person who is rendered temporarily incapacible of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent, or if the person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct, that person is incapable of giving consent for sexual intercourse or sexual intrusion. W. Va. Code Ann. §§ 61-8B-1(3) & (4), 61-8B-2(c).

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


Yes, a person who is deemed mentally incapacitated means a person who is rendered temporarily incapacible of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent. W. Va. Code Ann. §§ 61-8B-1, 61-8B-2(c).

Sexual intercourse with a person who is unconscious葡萄牙语的"mentally incapacitated" means a person who is rendered temporarily incapacible of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent. W. Va. Code Ann. §§ 61-8B-2, 61-8B-10.

Yes, there are several special relationships between the victim and actor that would impact the victim’s ability to consent and therefore make it a crime to have sexual intercourse with a person. Special relationships include: (a) a person in a significant relationship with the victim and abuses a supervisory position within that relationship; (b) a supervisory employee; (c) a foster parent; (d) a person who undertakes the responsibility professionally or voluntarily to provide education, health care, or other services to minors or vulnerable adults; (e) a person who in the course of his or her employment provides educational, care, or other services to minors or vulnerable adults; (f) long-term care facilities; (g) home health, hospice, or home care agencies; (h) a person providing transportation services within the course of his or her business; and (i) physical and mental health care providers.

Wash. Rev. Code Ann. §§ 9A.44.009, 9A.44.050, 9A.44.096, 9A.44.010.

A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person (a) when (i) the victim is a resident of a correctional facility or is under correctional supervision and (ii) the perpetrator is an employee or contact personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision, or (b) when the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer. Consent of the victim is not a defense to prosecution of this crime. Wash. Rev. Code Ann. § 9A.44.160.

Yes, a person who is unconscious is presumed incapable of giving consent. Wis. Stat. Ann. § 6-2-316.


Yes, if the victim is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent. Wyo. Stat. Ann. § 940.225(2).

Yes, there are several special relationships between the victim and actor that would impact the victim's ability to consent and therefore make it a crime to engage in sexual contact with a person.

Special relationships include:

(a) a therapist-patient relationship;
(b) an employee of an adult family home, community-based residential facility, an in-patient health care facility, or a state treatment facility who has sexual contact or sexual intercourse with a patient or resident of the facility;
(c) an employee of certain "entities" as defined in 48.65(1)(a) and 50.065(1)(c) who has sexual contact or sexual intercourse with a client at the entity. Entity is defined under section 48.65(1)(eb) to include a child welfare agency; foster home; intern care facility; successor guardian; group home; shelter care facility; temporary employment agency; organization that facilitates delegations of the care and custody of children. Entity is defined under section 50.065(1)(a) to include a facility, organization or service that provides direct care to clients or an agency that employs or contracts with an individual to provide personal care services, including a hospital, home health agency, temporary employment agency that provides caregivers to another entity, and the board on aging and long-term care.

(d) a correctional staff member who has sexual contact or sexual intercourse with an individual who is confined in a correctional institution (unless the person was sexually assaulted by the inmate);
(e) a probation, parole, or extended supervision agent or parole who has sexual contact or sexual contact with the individual on parole, probation, or extended supervision who is supervised by him or her or a subordinate;

(f) a law enforcement officer and has sexual contact or sexual intercourse with any person who is detained by any law enforcement officer or is in the custody of any law enforcement officer. Wis. Stat. Ann. §§ 940.22; 90.225; 940.265.

Yes, if the victim is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent. Wyo. Stat. Ann. § 940.225(2).

Yes, there are special rules for persons deemed to be in a "position of authority" over the victim that will impact the victim's ability to consent.

Position of authority means that position occupied by a parent, guardian, relative, household member, teacher, employer, custodian, health care provider or any other person who, by reason of his position, is able to exercise significant influence over a person. Wyo. Stat. Ann. § 6-2-301.

A person commits a sexual assault in the second degree if:

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


Depending on the age difference between the victim and actor, 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 16 years of age, and the actor is the victim's legal guardian or an ancestor or descendent on a brother or sister of the whole or half-blood,
- Being 18 years of age or older, the actor inflicts sexual intrusion on a victim who is less than 16 years of age and the actor occupies a position of authority over the victim.


An actor commits the crime of sexual abuse of a minor in the second degree if:

- 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 is the victim's legal guardian or an ancestor or descendent on a brother or sister of the whole or half-blood,
- Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 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 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 is the victim's legal guardian or an ancestor or descendent on a brother or sister of the whole or half-blood,
- Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 16 years of age and the actor occupies a position of authority in relation to the victim.

Yes, any actor who inflicts sexual intrusion on a victim commits a sexual assault in the first degree if the actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising or control his conduct. Wyo. Stat. Ann. § 6-2-302.


Yes, if the incapacitation makes the victim "physically helpless" or have a mental illness, mental deficiency or developmental disability that makes them incapable of appraising the nature of their conduct. Wyo. Stat. Ann. § 6-2-301; Wyo. Stat. Ann. § 6-2-302; CSC v. State of Wyoming, 118 P.3d 970 (Wyo. 2005).

Any actor who inflicts sexual intrusion on a victim commits a sexual assault in the second degree if the actor administers, or knows that someone else administered to the victim, a substance which substantially impairs the victim's power to appraise or control his conduct. Wyo. Stat. Ann. § 6-2-303.

Yes, any actor who inflicts sexual intrusion on a victim commits a sexual assault in the first degree if the actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim's conduct. Wyo. Stat. Ann. § 6-2-302.

Yes, any actor who inflicts sexual intrusion on a victim who, by reason of his position, is able to exercise significant influence over a person, an actor in a position of authority over a victim may commit a sexual assault in the first degree if:

- Depending on the age difference between the victim and actor, the actor engages in sexual contact with a victim who is less than 16 years of age, and the actor is the victim's legal guardian or an ancestor or descendent on a brother or sister of the whole or half-blood,
- Depending on the age difference between the victim and actor, 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 over the victim.

Wisconsin


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.


Yes, if the victim is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent. Wyo. Stat. Ann. § 940.225(2).
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<th>Number</th>
<th>Description</th>
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<tr>
<td>3rd</td>
<td>An actor commits the crime of sexual abuse of a minor in the third degree if:</td>
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<td>- 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.</td>
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<tr>
<td>4th</td>
<td>An actor commits the crime of sexual abuse of a minor in the fourth degree if:</td>
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<td>- 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.</td>
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