

### Consent Laws

**Last Updated: April 2023**

#### Defining Consent

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<th>Does the definition require ‘freely given consent’ or ‘affirmative consent’?</th>
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<td>Alabama</td>
<td>Consents has been interpreted to mean acquiescence or compliance with the proposition of another. Ex parte Gordon, 708 So. 2d 1180, 1183 (Ala. 1997).</td>
<td>No: Ala. Code § 13A-6-70(b).</td>
</tr>
<tr>
<td>Alaska</td>
<td>Without consent means that a person is unconscious or for any other reason is physically unable to resist an act of 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. 1. Ala. Code § 13A-6-70(b).</td>
<td>No: Alaska Stat. § 11.41.470.</td>
</tr>
<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; or 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.</td>
<td>No.</td>
</tr>
<tr>
<td>Arkansas</td>
<td>There is a lack of consent if a person engages in a sexual act with another person by forceful compulsion or with a person who is incapable of consent because he or she is physically helpless, mentally defective or mentally incapacitated, or because of a victim’s age. Arkansas Code §§ 5-14-103; 5-14-125.</td>
<td>No.</td>
</tr>
<tr>
<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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<tr>
<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 § 18-3-405(1.5).</td>
<td>No.</td>
</tr>
<tr>
<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>
<td>No.</td>
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<tr>
<td>Massachusetts</td>
<td>Consent has been interpreted to mean acquiescence or compliance with the proposition of another. Ex parte Gordon, 708 So. 2d 1180, 1183 (Ala. 1997).</td>
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### Consent Laws

- **Consent** means cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. California Penal Code § 261.6.
- **Without consent** means that a person is: 1. 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; or 2. is incapacitated as a result of an act of the defendant. Alaska Stat. § 11.41.470(10). The phrase “without consent” in statute refers to a particular type of unwanted sexual activity: unwanted sexual activity that is coerced by force or the threat of force. In re J.D. 440 P.3d 345, 349 (Alaska Ct. App. 2019).
- **Mentally impaired** means use or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Factors to be considered in determining an implied threat include the respective ages and sizes of the victim and the accused, the respective mental and physical conditions of the victim and the accused, the atmosphere and physical setting in which the incident was alleged to have taken place, the extent to which the accused may have been in a position of authority, domination, or custodial control over the victim, or whether the victim was under drugs. Forcible compulsion does not require proof of resistance by the victim. Ala. Code § 13A-6-601(1).
- **Mentally incapacitated** means that a person suffers from a mental disability or disease that renders the person unaware a sexual act is occurring. Arkansas Code § 5-14-101(8). Note: When criminality of conduct depends on a victim’s being incapable of consent because he or she is mentally defective or mentally incapacitated, or because of a victim’s age, Arkansas Code §§ 5-14-103; 5-14-125.
- **Mentally defective** means that a person suffers from a mental disability or disease that renders the person incapable of understanding the nature and consequences of a sexual act; or that suffers from a mental defect. Arkansas Code § 5-14-101(5). Note: a determination that a person is mentally defective shall not be based solely on the person’s IQ.
- **Physically helpless** means that a person is: 1. incapable of communicating a lack of consent; or 2. rendered unaware that a sexual act is occurring. Arkansas Code § 5-14-101(5). A nursing home patient was unable to communicate lack of consent and, thus, was “physically helpless” within the meaning of statute. Ina v. State, 440 P.3d 345, 349 (Alaska Ct. App. 2019). Note: When criminality of conduct depends on a victim’s being incapable of consent because he or she is mentally defective or mentally incapacitated, it is an affirmative defense that the actor reasonably believed the victim was capable of consent. Arkansas Code § 5-14-102(c).
- **Mentally incapacitated** means that a person is: 1. incapable of communicating consent. Arkansas Code § 5-14-101(5). 2. rendered unaware that a sexual act is occurring. Arkansas Code § 5-14-101(5). 3. incapable of understanding the nature and consequences of a sexual act; or 4. incapable of appreciating 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. Connecticut General Statutes Annotated § 53a-65(1).
- **Mentally impaired** means that a person is: 1. physically helpless. Connecticut General Statutes Annotated §§ 53a-65; 53a-70; 53a-71; 53a-72a; 53a-73a. 2. rendered unaware that a sexual act is occurring. Connecticut General Statutes Annotated § 53a-70. 3. incapable of understanding the nature and consequences of a sexual act; or 4. incapable of appreciating 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. Connecticut General Statutes Annotated § 53a-65(1).
- **Physically helpless** means that a person is unable to communicate lack of consent or for any other reason is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact. Connecticut General Statutes Annotated § 53a-65(5).
- **Mentally incapacitated** means use or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Factors to be considered in determining an implied threat include the respective ages and sizes of the victim and the accused, the respective mental and physical conditions of the victim and the accused, the atmosphere and physical setting in which the incident was alleged to have taken place, the extent to which the accused may have been in a position of authority, domination, or custodial control over the victim, or whether the victim was under drugs. Forcible compulsion does not require proof of resistance by the victim. Ala. Code § 13A-6-601(1).
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**Delaware**

"Consent" means any of the following:

- The defendant compelled the victim to submit by an act of coercion or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. The victim need resist only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant, unless such resistance would be futile or foolishly.
- The defendant knew the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed.
- The defendant knew the victim suffered from a cognitive disability, mental illness or mental defect which renders the person incapable of appreciating the nature of the sexual conduct or incapable of consent.
- 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 of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested.
- The defendant had substantially impaired the victim’s power to appraise or control the victim’s own conduct by administering or employing without the other person’s knowledge or against the other person’s will, drugs, intoxicants or other means for the purpose of preventing resistance.

Note: “health professional” includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but are not 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.

**District of Columbia**

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

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

**Florida**

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


**Georgia**

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

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


**Guam**

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

A person who is mentally incapacitated or physically helpless as defined by the Guam statute cannot consent to a sexual act. 9 G.C.A. § 25.10(a)(2).

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

**Hawaii**

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

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

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

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

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

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

See also:

- Consent signifies voluntary agreement or concurrence. 9 G.C.A. § 25.10(a)(2).


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

**Idaho**

Consent is not specifically defined.

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

- The victim is under the age of sixteen and the perpetrator is eighteen years of age or older, and the victim is not lawfully married to the perpetrator;
- The victim is sixteen or seventen years of age and the perpetrator is three years or more older than the victim, and the victim is not lawfully married to the perpetrator;
- The victim is incapacitated, through any unsoundness of mind, due to any cause, including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent;
- The victim resists but the resistance is overcome by force or violence;
- The victim is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution, or is unable to resist due to any intoxicating, narcotic, or anesthetic substance;
- The victim is prevented from resistance due to an objectively reasonable belief that resistance would be futile or that resistance would result in force or violence beyond that necessary to accomplish the prohibited contact;
- The victim is at the time unconscious of the nature of the act (“unconscious of the nature of the act” means incapable of awareness because the victim was unconscious or asleep, or was not aware, knowing, perceiving, or cognizant that the act occurred);
- The victim submits under the belief that the person committing the act is the victim’s spouse or someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused with intent to induce such belief;
- The victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to some person in the future, cause damage to property, engage in other conduct constituting a crime or cause criminal charges to be instituted against the victim, or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.

Idaho Statutes § 18-6101.
Illinois

“Consent” means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused or other person constitutes consent. The manner of dress of the victim at the time of the offense shall not constitute consent. 720 ICSL 5/11-1/1.

A person who initially consents to sexual penetration or sexual conduct is not deemed incapable of giving 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 ICSL 5/11-1/70.

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. Bolden 2015 IL App (1st) 139988, ¶ 29.

No.

Indiana

Consent is not specifically defined under the current law. However, Indiana law provides that a person commits a sex crime if: (1) the victim is compelled by force or imminent threat of force; (2) the victim is unaware that the sexual intercourse or other sexual conduct is occurring; (3) 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.

Iowa

Consent is not specifically defined. However, Iowa law defines “sexual abuse” as any sex act between persons where: (a) 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 (b) 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. § 709.3.

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

No.

Kansas

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

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

K.S.A. 21-5563.

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. See State v. Flores, 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 to the point of injury. The Kansas statute requires only a finding that the victim was overcome by force or fear.


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; (3) 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.

Kansas

Lack of consent results from:

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

A person is also “deemed incapable of consent” when he or she is

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

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

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

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

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

Yes, it requires “freely given agreement” to the act of sexual penetration or sexual conduct in question. 720 ICSL 5/11-0.1.
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 abnormality of mind produced by a narcotic or another controlled dangerous substance administered by the offender and without the knowledge of the victim;
(9) when the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim’s incapacity;
(10) when the victim, through unsoundness of mind, is temporarily or permanently incapable of understanding the nature of the act and the offender knew or should have known of the victim’s incapacity;
(11) when the victim submits under the belief that the person committing the act is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or impunity 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. 

Maine

Consent is not specifically defined. Note that all crimes in the Maine criminal code are grouped into five categories:

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

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

(1) the other person submits as a result of compulsion (Class A crime);
(2) the other person, not the actor’s spouse, has not in fact attained the age of 14 years (Class A crime);
(3) the other person, not the actor’s spouse, has not in fact attained 12 years of age (Class A crime);
(4) the actor has substantially impaired the other person’s power to appraise or control the other person’s sexual acts by administering, administering, using or possessing, 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 or controlling 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 or supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervision or disciplinary authority over the other person (Class B crime);
(9) the other person, not the actor’s spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual act (Class C crime);
(10) the other person, not the actor’s spouse, is under official supervision as a probationer, a parolee, a sex offender or supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervision or disciplinary authority over the other person (Class B crime);
(11) the other person, not the actor’s spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual act (Class C crime);
(12) the other person, not the actor’s spouse, has not in fact attained the age of 18 years and is a resident in or attending a children’s home, child care facility, facility operated by a family child care provider, children’s residential care facility, drug treatment center, youth camp licensed under Title 22, section 2409 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual act (Class C crime);
(13) the other person, not the actor’s spouse, has not in fact attained the age of 18 years and is a resident in or attending a children’s home, child care facility, facility operated by a family child care provider, children’s residential care facility, drug treatment center, youth camp licensed under Title 22, section 2409 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual act (Class C crime);
(14) the actor is a psychiatrist, psychologist or licensed as a social worker or counseling professional or paraprofessor, 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, 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 or the organization, program or residence recognizes the other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability or autism;
(16) 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 suffers from a mental disability that is reasonably apparent or known to the actor (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 other person has not expressly or impliedly acquiesced to the sexual act and the actor is criminally negligent with regard to whether the other person has expressed (Class C crime);
(19) the actor is a law enforcement officer acting in performance of official duties and the other person, not the actor’s spouse, is under arrest, in custody or being interrogated or is temporarily detained, including during a traffic stop or questioning pursuant to an investigation of a crime (Class C crime);
(20) the other person, not the actor’s spouse, is either 14 or 15 years of age and the actor is at least 5 years older than the other person (Class D crime);
(21) the other person, not the actor’s spouse, is either 14 or 15 years of age and the actor is at least 5 years older than the other person and the actor knows that the other person is related to the actor within the 2nd degree of consanguinity (Class C 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 officials in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class E crime);
(24) 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 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 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 and the actor is at least 10 years older than the student (Class D crime); 17-A M.R.S.A. 255-A, 255-A.

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

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

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

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

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

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

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

(7) the other person, not the actor’s spouse, is in fact less than 14 years of age and the actor is at least 3 years older and the sexual contact includes penetration (Class B crime);

(8) the other person, not the actor’s spouse, is in fact less than 12 years of age and the actor is at least 3 years older and the sexual contact includes penetration (Class A crime);

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

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

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

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

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

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

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

(16) the other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person (Class C crime);

(17) the other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person and the sexual contact includes penetration (Class B crime);

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

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

(20) the actor, owns 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 (Class C crime);

(21) the actor, owns or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism and the sexual contact includes penetration (Class B crime);

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

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

(24) the other person, not the actor’s spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class E crime);

(25) the other person, not the actor’s spouse, is in fact less than 16 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class E crime);

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

(27) the actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or paraprofessionals to 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 and the sexual contact includes penetration (Class C crime);

(28) the actor is employed to provide care to a dependent person, who is not the actor’s spouse or domestic partner and who is unable to perform self-care because of advanced age of physical or mental disease, disorder or defect (Class D crime); or

(29) the actor is employed to provide care to a dependent person, who is not the actor’s spouse or domestic partner and who is unable to perform self-care because of advanced age of physical or mental disease, disorder or defect and the sexual contact includes penetration. For the purposes of this paragraph, “domestic partners” means 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other’s welfare (Class C crime). 17-A M.R.S.A. 255-A.
the sexual touching (Class D crime); (3) the other person, not the actor’s spouse, is in fact less than 14 years of age and the actor is at least 5 years older (Class D crime); (4) the other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of understanding the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent (Class D crime); (5) the other person, not the actor’s spouse, is under official supervision as a prostitute, 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); (6) the other person, not the actor’s spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a tutor, employee or other official having instructional, supervisory or disciplinary authority over the student or the actor is a substitute teacher who had a supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual touching (Class D crime); (7) the other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person (Class D crime); (8) the other person submits as a result of compulsion (Class D crime); (9) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or in a person with an intellectual disability (Class D crime); (10) the other person, not the actor’s spouse, is, in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class E crime); (11) the actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or purports to be a psychiatrist, 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 of the actor (Class D crime); (12) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor; or (13) the actor is employed to provide care to a dependent person, who is not the actor’s spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect (Class D crime); - 17-A M.R.S.A. 260.

Maryland

Consent is not specifically defined. However, Maryland law provides that a person commits a sex crime if that person engages in “vaginal intercourse” or “sexual act” with another: (1) by force, or the threat of force, without the consent of the other; (2) if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; (3) if the victim is under the age of 14 years, and the person performing the act is at least 4 years older than the victim; or (4) if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old. MD Code, Criminal Law, § 3-103; § 3-104; § 3-107.

“Mentally incapacitated individual” means an individual who, because of the influence of a drug, narcotic, or intoxicating substance, or because of an act committed on the individual without the individual’s consent or awareness, is rendered substantially incapable of: (1) appraising the nature of the individual’s conduct; or (2) resisting vaginal intercourse, a sexual act, or sexual contact. MD Code, Criminal Law, § 3-301.

“Physically helpless individual” means an individual who: (1) is unconscious; or (2) does not consent to vaginal intercourse, a sexual act, or sexual contact; and (3) is physically unable to resist, or communicate unwillingness to submit to, vaginal intercourse, a sexual act, or sexual contact. MD Code, Criminal Law, § 3-301.

“Substantially cognitively impaired individual” means an individual who suffers from an intellectual disability or a mental disorder, either of which temporarily or permanently renders the individual substantially incapable of: (1) appraising the nature of the individual’s conduct; (2) resisting vaginal intercourse, a sexual act, or sexual contact; or (3) communicating unwillingness to submit to vaginal intercourse, a sexual act, or sexual contact. MD Code, Criminal Law, § 3-301.

Maryland law also provides that a person may not engage in sexual contact with another: (1) if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or (2) if the victim is under the age of 14 years, and the person performing the sexual act is at least 4 years older than the victim; or (3) if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old. MD Code, Criminal Law, § 3-307.

Also see:
In the case of a conscious and competent victim, mere passivity on the victim’s part will not establish the absence of consent. The law looks for express negation or implicit negation as evidenced by some degree of physical resistance or an explanation of why the will to resist was overcome by force or fear of harm. People v. State, 218 Md. 430, 428, 98 A.2d 281, 291 (1954).
It is well settled that the terms “against the will” and “without the consent” are synonymous in the law of rape. State v. Rank, 289 Md. 236, 241, 424 A.2d 720, 725 (1981).
Given the fact that consent must precede penetration, it follows in our view that although a woman may have consented to a sexual encounter, even to intercourse, if that consent was withdrawn prior to the act of penetration, then it cannot be said that she has consented to sexual intercourse. On the other hand, ordinarily if she consents prior to penetration and withdraws the consent following penetration, there is no rape. Batts v. State, 287 Md. 655, 644, 444 A.2d 1256, 1270 (1980).

Massachusetts

Consent is not specifically defined. The standard in the sexual assault statutes is whether the accused compel another to submit by force or threat of force or by force or coercion to accomplish the sexual act. Mich. Comp. Laws. Ann. § 750.520b – e.

Michigan

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

Minnesota

Consent means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act. Further:
• A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.
• Corroboration of the victim’s testimony is not required to show lack of consent.

Mississippi

Not defined.
Missouri

Consent is not specifically defined. However, Missouri law provides that rape in the first degree is committed if the offender has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by use of forcible compulsion. Forceful 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 and voluntary decision to consent to sexual intercourse. Mo. Stat. § 566.030.

Montana

The term "consent" means words or overt actions indicating a freely given arrangement to have sexual intercourse or sexual contact and is further defined as:

- 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 actor in the conduct at issue does not constitute consent, and
- Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

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;
- Incestuous in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, or parole and the perpetrator is an employee, contractor or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; or
- This does not apply if the individuals are married to each other, and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.

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

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

Admitted to a mental health facility, a community-based facility or a residential facility, or is receiving community-based services and the perpetrator:

- Has supervisory or disciplinary authority over the victim or is providing treatment to the victim;
- Is an employee, contractor or volunteer of the facility or community-based service;
- The activity of the individuals are married to each other and any of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

Program participant in a private alternative adolescent resident or outdoor program and the perpetrator is:

- A worker affiliated with the program;
- This does not apply if the individuals are married to each other and one of the individuals involved is a program participant and the other individual is a worker affiliated with the program.
- A client receiving psychotherapy services and the perpetrator:

- Is providing or purporting to provide psychotherapy services to the victim;
- Is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim.

- This does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client.

- A student of an elementary, middle, junior high or high school, whether public or nonpublic, and the perpetrator is not a student of an elementary, middle, junior high or high school and is an employee, contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other authority over the student in a school setting.

- This does not apply if the individuals are married to each other.

- A program participant in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer who is involved in the case in which the victim is a witness or is being investigated.

- This does not apply if the individuals are married to each other.

- A parent or guardian involved in a child abuse or neglect proceeding and the perpetrator is:

- Employed by the department of public health and human services for the purposes of carrying out the department's duties and
- Directly involved in the parent or guardian's case or involved in the supervision of the case.

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. Canu, 735 A.2d 414, 424, 159 N.J. 584, 483 (1999).

Ineffective Consent

Unless otherwise provided by the law defining the offense, consent does not constitute consent if:

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

2. Consent to bodily harm. When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if:

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

3. Consent to sexual intercourse. In addition, in 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. § 45-5-501(5).

2.

Ineffective Consent

Unless otherwise provided by the law defining the offense, consent does not constitute consent if:

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

2. It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known to the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute an offense; or

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


New Hampshire

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

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). 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. § 45-5-501(5).

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:

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

3. Ineffective Consent. Unless otherwise provided by the law defining the offense, consent does not constitute consent if:

   a. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or
   b. It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known to the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute an offense; or
   c. It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.


Nebraska

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

- (a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor’s deception as to the identity of the actor or the nature or purpose of the act on the part of the actor.

- (b) The victim need only resist, either verbally or physically, so as to make the victim’s refusal to consent genuine and real and so as to reasonably make known to the actor the victim’s refusal to consent.

- (c) A victim need not resist verbally or physically where it would be useless or futile to do so.


Nevada

Consent is not defined by statute. However, it is an element of the crime of sexual assault that the crime was committed against the will of the victim. Nev. Rev. Stat. Ann. § 200.366.

No.

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. § 358-A:2(16).

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

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

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

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

New York Penal Law §130.05.

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


Additionally, submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent. State v. Pink, 34 N.C. App. 734, 735, 239 S.E.2d 602, 603 (1980); see also State v. Keane, 335 N.C. App. 658, 6 (2014) ("Consent induced by violence or fear of violence is not effective to preclude a rape conviction").

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

1. the use of physical force or threat of physical force, or by the use of threats to use physical violence or physical force against the victim or another when the victim knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or
2. the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or
3. the act of engaging in a sexual act of a sexual nature, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or implicitly acquiesce in the actor's conduct;
4. where the offense charged is rape in the 3rd degree or criminal sexual act in the 3rd degree, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.

Ohio does not specifically define "consent." However, submission to sexual conduct as a result of fear may be sufficient to prove 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.

Oklahoma defines "consent" as 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 inferred under circumstances in which consent is not clear including, but not limited to:

1. the absence of an individual saying "no" or "stop;" or
2. 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.

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

1. under 18 years of age;
2. incapable of appraising the nature of the person's conduct;
3. mentally incapacitated; or
4. physically helpless.

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

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

1. the person is unable to understand the nature of the conduct;
2. the person is unable to understand the right to choose whether and how to engage in conduct, including the right to revoke a prior decision to engage in conduct; or
3. the person is unable to communicate a decision to engage in conduct.

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:

(1) By forcible compulsion;
(2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
(3) By use or threat to use a weapon;
(4) Who is unconscious or whom the person knows the complainant is unaware of the nature of the act at the time of its commission;
(5) Who has been compelled by means of physical force, violence, intimidation, or the threat of serious and immediate bodily harm;
(6) If the victim's capacity to consent has been annull'd or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances;
(7) When the victim reasonably believes that the accused has the present ability to execute these threats;
(8) When the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or psychotherapy 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) If the victim has not yet reached the age of sixteen (16) at the time of the event;
(2) If the victim is a person suffering from mental disability or illness, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission;
(3) If the victim has been compelled by means of physical force, violence, intimidation, or the threat of serious and immediate bodily harm;
(4) If the victim's capacity to consent has been annull'd or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances;
(5) 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;
(6) If the victim submits to the act by means of deception, trickery, simulation or cover up with respect to the identity of the person accused;
(7) If the victim is forced or induced by means of abuse or physical or psychological violence into participating or becoming involved in unwanted sexual relations with third parties;
(8) 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
(9) When the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or psychotherapeutic treatment, or any type of counseling, or because there is a relationship with the victim as the leader of his/her religious belief.

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

(1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless;
(2) The accused uses force or coercion;
(3) The accused, through concealment or by the element of surprise, is able to overcome the victim; or
(4) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation. R.I. Gen. Laws § 11-37-2.

A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless;
(2) The accused uses force, element of surprise, or coercion;
(3) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation. R.I. Gen. Laws § 11-37-3.

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 the age of eighteen (18) years, when:
(i) The accused has supervisory or disciplinary power over the victim by virtue of the accused's legal, professional, or occupational status; or
(ii) The accused is otherwise acting in a position of authority with respect to the victim;
(iii) Unless the parties are:
(A) Engaging in sexual penetration or contact consensually;
(B) Between the ages of sixteen (16) and twenty (20) years; and
(C) No more than thirty (30) months apart in age, R.I. Gen. Laws §§ 11-37-6(b).

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

(1) Uses or threatens to use a weapon, or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;
(2) Overcomes the victim through the application of physical force or physical violence;
(3) Coerces the victim to submit by threatening to use force or violence on the victim and the victim reasonably believes that the accused has the present ability to execute these threats; or
(4) Comprises the victim to submit by threatening to at some time in the future murder, inflict serious bodily injury upon or kidnap the victim or any other person and the victim reasonably believes that the accused has the ability to execute this threat. R.I. Gen. Laws §§ 11-37-12.

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

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(c).

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

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

(1) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances; or
(2) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. 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 the nature of his or her conduct. S.C. Code Ann. § 16-3-651(e).

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

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

South Dakota does not provide a definition for consent, but it provides that no consent exists for an act of sexual penetration accomplished with any 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 someone else in the victim’s presence, accompanied by apparent power of execution;
3. If the victim is incapacitated, because of physical or mental incapacity, of giving consent to such act;
4. If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or any hypnosis;
5. If the victim is 13 years of age, but less than 16 years of age, and the perpetrator is at least 3 years older than the victim. S.D. Code § 22-22-1.

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

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

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

South Dakota does not provide a definition for consent, but it provides that no consent exists for an act of sexual penetration accomplished with anyone 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 someone else in the victim’s presence, accompanied by apparent power of execution;
3. If the victim is incapacitated, because of physical or mental incapacity, of giving consent to such act;
4. If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or any hypnosis;
5. If the victim is 13 years of age, but less than 16 years of age, and the perpetrator is at least 3 years older than the victim. S.D. Code § 22-22-1.

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

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

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

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

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

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

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

1. The actor coerces the other person to submit or participate by the use of physical force, violence, or coercion;
2. The actor coerces the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;
3. The other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
4. The actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
5. The other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
6. The actor has intentionally impaired the other person’s power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
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 caregiver who becomes the other person to submit or participate by exploiting the other person's emotional dependency on the caregiver in the caregiver's professional character as a spiritual advisor;
11. The actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under the Texas Family Code; or
12. The actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor;
13. The 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 Texas law, sexual offenses "without consent" of the victim arise when:

1. The actor expresses lack of consent through words or conduct;
2. The actor coerces the other person through the actual application of physical force or violence;
3. The actor is able to overcome the victim through concealment or by the element of surprise;
4. The actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives the threat as real and the actors has the ability to execute this threat;
5. The actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes that the actor has the ability to execute this threat;
6. "(to retaliate" includes threats of physical force, kidnapping, or extortion);
7. The actor coerces the victim to submit or participate by exploiting the other person's emotional dependency on the actor;
8. The actor knows or reasonably should know that the victim has a mental disease or defect, which renders the victim unable to appraise the nature of the act, resist the act, understand the possible consequences to the victim's health or safety, or appraise the nature of the relationship between the actor and the victim;
9. The actor knows that the victim participates because the victim erroneously believes that the actor is someone else;
10. The actor intentionally impairs the power of the victim to appraise or control his conduct by administering any substance without the victim's knowledge;
11. The victim is younger than 14 years of age;
12. The victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim;
13. The victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (b) or (d) above;
14. 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.

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. §3252(3).

*Incapable of consenting* means the person: (A) is incapable of understanding the nature of the conduct at issue; (B) is physically incapable of resisting, declining participation in, or communicating unwillingness to engage in the conduct at issue; or (C) lacks the mental ability to make or communicate a decision about whether to engage in the conduct at issue. 13 Vermont Stat. Ann. §3252(10).

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

- (A) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or was incapacitated; or
- (B) knew or reasonably should have known that the other person was unaware that a sexual act or lawful and lascivious conduct was being committed; or
- (C) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or was unlawfully and lasciviously conduct with the actor because the person was substantially impaired by alcohol, drugs, or other intoxicating substances.

13 Vermont Stat. Ann. §3254

### Virginia

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

- (a) a person's resistance is prevented by fear of immediate and great bodily harm (Williams v. Virginia Islands, No. CRIM. 2007-0008, 2001 WL 4072738 (V.I. Sept. 12, 2001)); or
- (b) 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 6460004 (V.I. Oct. 23, 2015); or
- (c) the victim is 13, 14 or 15 years old even if force; intimidation or abuse of a position of authority was not used to accomplish the sexual act.Frances v. People, No. S.C.T.CRIM. 2015-0002, 2015 WL 6460004 (V.I. Oct. 23, 2015).

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

### Washington

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

Lack of consent results from forcible compulsion, incapacity to consent, or, if the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct. Wash. Rev. Code Ann. § 9A.44.010(2).

Yes. Wash. Rev. Code Ann. § 9A.44.010(2). A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person where the victim did not consent to sexual intercourse 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 sexual contact. Wash. Rev. Code Ann. § 9A.44.010(2).

### 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.

A person cannot consent to sexual intercourse if they are less than 16 years old, mentally defective, mentally incapacitated, physically incapacitated, blind, deaf, or otherwise physically limited or otherwise impeded in the expression of their will.


*"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. Wis. Rev. Code Ann. § 940.22(4).

### Wisconsin

Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent may be initially given but may be withdrawn through words or conduct at any time prior to or during sexual activity. Utah Code Ann. §76-1-406(2)(c).

Yes. A person is presumed (but the presumption may be rebutted by competent evidence) incapable of consent to sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. Wash. Rev. Code Ann. § 9A.44.010(2).

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

### Wyoming

Consent is not defined by statute. However, case law suggests that in order for a person to consent to sexual intercourse, the person must be in a position to exercise independent judgment about the matter. Wilson v. State, 655 P.2d 1246 (Wyo. 1982).

Yes. In certain cases:

- In cases involving the sexual assault of a child by an adult, forcible compulsion may be found where the child knows and trusts the adult and the adult exercises authority and domination over the child sufficient to allow inference of an implied threat if the child did not comply. R.E.N. v. State, 944 So. 2d 981, 984 (Ala. Crim. App. 2006) (citing cases).
- It is illegal for a school employee to engage in a sex act with a student under the age of 15 years or with a student who is a "protected person" under the age of 22 years or to have "sexual contact" with such a student; or to solicit a sex act (including sexual intercourse, deviate sexual intercourse, or sexual contact) with a student under the age of 19 by "soliciting[ing], persuad[ing], encourag[ing], harass[ing], or entic[ing] a student." Consent is not a defense for these acts. Ala. Code §§ 13A-6-41; 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-13-3.

## 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>
</tr>
</thead>
<tbody>
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<td>Alabama</td>
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</table>
Alaska

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)(1). Incapacitated means temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Alaska Stat. § 11.41.470(2). An individual that is unconscious would be both incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Pursuant to King v. State, 978 P.2d 1278 (Alaska Ct. App. 1999), a person who is asleep is incapacitated.

In addition, lack of consent is not an element for many crimes where an individual would be unaware that a sexual act is being committed (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 a person who is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(4).

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

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

"Mentally incapable" means suffering from a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person's conduct, including the potential for harm to that person. Alaska Stat. § 11.41.470(4). A person is incapable of appreciating or understanding the nature and consequences of the act of sexual penetration for purposes of determining whether that person is "mentally incapable" of consenting, where that person does not have the capacity to understand the full range of ordinary and foreseeable social, medical, and practical consequences that the act entails. Jackson v. State, 890 P.2d 547 (Alaska Ct. App. 1995).

Arizona

Yes, sexual assault includes sexual penetration or contact with a person who is incapacitated. Arizona Revised Statute § 13-1404(A). Incapacitated means temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Pursuant to King v. State, 978 P.2d 1278 (Alaska Ct. App. 1999), a person who is asleep is incapacitated.

In addition, lack of consent is not an element for many crimes where an individual would be unaware that a sexual act is being committed (meaning the offender is responsible regardless of whether the victim consented):

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

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

- The following constitutes sexual assault in the third degree:
  - A person engaging in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(4).

- The following constitutes sexual assault in the third degree:
  - A person engaging in sexual penetration with a person who is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(4).

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

"Mentally incapable" means suffering from a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person's conduct, including the potential for harm to that person. Arizona Revised Statute § 13-1404(A). A person is incapable of appreciating or understanding the nature and consequences of the act of sexual penetration for purposes of determining whether that person is "mentally incapable" of consenting, where that person does not have the capacity to understand the full range of ordinary and foreseeable social, medical, and practical consequences that the act entails. Jackson v. State, 890 P.2d 547 (Alaska Ct. App. 1995).
### Arkansas

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<tbody>
<tr>
<td>16 years old</td>
<td>[Arkansas Code §§ 5-14-101(6); 5-14-103(a)(2); 5-14-125(f)(2)]</td>
<td>Yes, a person that is temporarily incapacitated is capable of giving legal consent.</td>
</tr>
<tr>
<td>17 years old</td>
<td>[Arkansas Code §§ 5-14-101(6)-5-14-101(10)(A)]</td>
<td>Yes, a person that is temporarily incapacitated is capable of giving legal consent.</td>
</tr>
<tr>
<td>18 years old</td>
<td>[Arkansas Code § 261(a)(1)]</td>
<td>Yes, in a prosecution for non-forcible rape and sexual assault, if the actor has substantially impaired the victim's power to appraise or control the act, the accused is guilty of rape if the victim consented to a sexual intercourse by being induced without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission.</td>
</tr>
</tbody>
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### California

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<tbody>
<tr>
<td>18 years old</td>
<td>[California Penal Code § 261.5]</td>
<td>Yes, a person is incapable of giving legal consent because of a mental disorder or developmental disability.</td>
</tr>
<tr>
<td>19 years old</td>
<td>[California Penal Code § 261(a)(1); See People v. Fakosdouchis, 238 Cal. App. 4th 166, 189 (Cal. Ct. App. 2015).]</td>
<td>Yes, the accused is guilty of rape if engaging in an act of sexual intercourse where the other person is at the time unconscious of the nature of the act and it is known to the accused.</td>
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### Colorado

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<td>17 years old</td>
<td>[Colorado Revised Statutes Annotated §§ 18-3-402(1)(f); 18-3-404(1)(b)]</td>
<td>Yes, the actor may be guilty of sexual assault and/or unlawful sexual contact when the victim is incapable of appraising the nature of the victim's conduct.</td>
</tr>
<tr>
<td>18 years old</td>
<td>[Colorado Revised Statutes Annotated §§ 18-3-402(1)(d); 18-3-404(1)(b)]</td>
<td>Yes, any person 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.</td>
</tr>
</tbody>
</table>

### Notes
- A person is incapable of giving legal consent if certain relationships, listed below, exist between the victim and offender. These include:
  - a person who has a legal guardian, foster parent, stepparent, adoptive parent, grandparent, aunt, uncle, legal guardian, foster parent, step-grandparent or sibling.
  - a person who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility, a youth 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.
- 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.
- An employee of the correctional facility where a minor-victim is in custody, or a teacher, athletic coach, counselor or a caretaker.
- In the custody of law enforcement:
  - a child cannot consent to sexual contact with a person who has supervisory or disciplinary authority over the child.
- A person who is in a position of trust with respect to the minor's parent, adoptive parent, grandparent; aunt, uncle, legal guardian, foster parent, step-grandparent or sibling.
- A person who is in a position of trust with respect to the minor's employer.
- 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.
- Arkansas Revised Statute § 13-1401(A)(2).
- A person that is temporarily incapacitated is capable of giving legal consent if certain relationships, listed below, exist between the victim and offender. These include:
  - a person who has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, and the victim, who is incapable of giving legal consent, consents to a sexual intrusion or sexual penetration with a person who has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search. Colorado Revised Statutes Annotated §§ 18-3-402(1)(d).
- 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.
- Arkansas Revised Statute § 13-1401(A)(2).
- Employees of the correctional facility where a minor-victim is in custody, or a teacher, athletic coach, counselor or a caretaker.
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- A person who is in a position of trust with respect to the minor's employer.
- 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.
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- Employees of the correctional facility where a minor-victim is in custody, or a teacher, athletic coach, counselor or a caretaker.
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- In the custody of law enforcement:
  - 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.
- Arkansas Revised Statute § 13-1401(A)(2).
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-71.

Yes, "physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate lack of consent because the victim is heavily intoxicated. Connecticut General Statutes Annotated § 53a-65(6).

Yes, "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).

For the purpose of sexual crimes, except an offense under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-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;
• such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person;
• the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception;
• 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;
• 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;
• 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, or
• 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.

Delaware

16 years old. 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)(3).

Yes, there is no consent if the defendant knew the victim was unconscious, asleep or otherwise physically helpless. Intentionally engages in sexual intercourse by administering or employing knowledge 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, in one of 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 duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act. Colorado Revised Statutes Annotated § 18-3-401(3).

16 years old, but 16 and 17 year-olds may consent to intercourse if the other partner is younger than 30. 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 of that nature or that such circumstances exist; and (2) If the element involves a result of the person's conduct, the person is aware that it is practically certain that the conduct will cause that result. 11 Delaware Code § 231(c).

16 years old. 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 § 33a-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).

For the purpose of sexual crimes, except an offense under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-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;
• such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person;
• the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception;
• 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;
• 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;
• 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, or
• 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(k)(14).

11 Delaware Code § 761(e) and § 761(e)(4).
“Significant relationship” means
including:

- Mentally incapacitated
- Mentally defective

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 understanding participation in that sexual act;
- Incapable of communicating unwillingness to engage in that sexual act.


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

Yes. Sexual Abuse of a Minor:

- 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 or 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 partner 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 with or 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 years enrolled in a secondary level school cannot consent to sexual acts or sexual contact with any teacher, counselor, or other person of authority in that school or school system. D.C. Code §§ 22-3009.03, 22-3009.04.

Sexual Abuse of a Ward:

- A ward, patient, client, or prisoner, as applicable, cannot consent to sexual acts or sexual contact with any staff member, employee, contract employee, consultant, or volunteer at a hospital, treatment facility, detention or correctional facility, group home, or other institution; anyone who is an ambulance driver or attendant, a bus driver or attendant, or person who participates in the transportation of a ward, patient, client, or prisoner to and from such institutions; or any official custodian of a ward, patient, client, or prisoner. D.C. Code §§ 22-3013, 22-3014.

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 is 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 any other provision of professional services.

D.C. Code §§ 22-3015, 22-3016.

Yes. A person that is physically helpless or 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 due to any other act committed upon that person without his or her consent. D.C. Code §§ 22-3011(1)(d).

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

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Yes, a person is unable to consent to engaging in a sexual act if such person is physically helpless or mentally incapacitated may not be able to provide intelligent, knowing, and voluntary consent.

“Physically helpless” means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to engage in a sexual act; or

“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 inability to consent due to the facts, can lead to a finding of physical or mental incapacitation such that the victim may not give consent. Driver v. State, 252 So. 3d 374, 379 (Fla. Dist. Ct. App. 2018).

A person cannot consent to sexual activity with a law enforcement officer, correctional officer, or correctional probation officer, who is certificated 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(1)(g).
| Georgia | 16 years old. Georgia Code § 16–6–3(a).
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<tr>
<td>Yes. A person who has a developmental disability or lacks the mental capacity to make ordinary judgments on his or her own is unable to give consent to sexual acts. Riser v. The State, 562 S.E.2d 492, 232 Ga. App. 536 (1998).</td>
</tr>
<tr>
<td>Yes. A person whose will is temporarily lost due to unconsciousness arising from use of drugs or other cause, or sleep is unable to consent to sexual activity. Gore v. State, 119 Ga. 418 (1904); Evans v. State, 67 Ga. App. 631 (1942).</td>
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<tr>
<td>Yes. A person who is mentally defective or mentally incapacitated, which includes unconsciousness. 9 G.C.A. §25.10(a)(8); 25.15; 25.20; 25.25; 25.30.</td>
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<tr>
<td>Mentally Defective means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct. 9 G.C.A. § 25 tal(a)(8).</td>
</tr>
<tr>
<td>Mentally Incapacitated means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent. 9 G.C.A. § 25 tal(a)(8).</td>
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<tr>
<td>Yes. A person who is stopped by a law enforcement officer for operating in the State of Hawaii, a person in the custody of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, or a facility providing child welfare and youth services of which he or she is an employee or agent;</td>
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<td>patient on or in a hospital of which he or she is an employee or agent;</td>
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<td>the subject of such employee or agent’s actual or purported psychotherapy treatment or counseling; or</td>
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<tr>
<td>admitted for care at a sensitive care facility of which he or she is an employee or agent. Georgia Code § 16–6–5.1(b).</td>
</tr>
<tr>
<td>In addition, a person commits the offense of improper sexual contact when a person in a “position of trust” engages in sexually explicit conduct with a minor for whom he or she has entered into an agreement entrusting him or her with the responsibility of education and supervision of such minor. Georgia Code §§ 16–6–5.1(b, 21) &amp; (c, 2). “Person in a position of trust” means an individual with whom a parent, guardian, or other person standing in loco parentis of a minor has entered into an agreement entrusting such individual with the responsibility of education and supervision of such minor. Georgia Code § 16–6–5.1(c)(5.1).</td>
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<tr>
<td>Consent is not a defense to offenses under section 16–6–5.1.</td>
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<tr>
<td>Yes. A person commits a sex crime if the person engages in sexual penetration or sexual contact with another person and the actor knows or has reason to know that the victim is mentally defective or mentally incapacitated. HRS §§ 707–730; 707–731; 707–732.</td>
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<tr>
<td>The state must show that the victim was &quot;mentally defective&quot; (a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct) and that Defendant knew that Complainant Witness was mentally defective. In Interest of Doe, 818 P.2d 254 (Hawaii App. 1990).</td>
</tr>
<tr>
<td>Yes. A person commits a sex crime if the person subjects to a sexual act another person who is physically helpless, which includes unconsciousness. HRS §§ 707–700; 707–730; 707–731; 707–732.</td>
</tr>
<tr>
<td>Yes. A person commits a sex crime if the person subjects to a sexual act another person who is mentally defective or mentally incapacitated, which includes a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent. HRS § 707–706; 707–730; 707–731; 707–732.</td>
</tr>
<tr>
<td>Yes. A person commits a sex crime if the person subjects to a sexual act another person who is temporarily lost from intoxication, due to any other act, or in the custody of a correctional facility of which he or she is an employee or agent;</td>
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<tr>
<td>admitted for care at a sensitive care facility of which he or she is an employee or agent. HRS § 707–731(1)(c) to the charge of sexual penetration.</td>
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<td>Person acting in a professional capacity to instruct, advise, or supervise a minor;</td>
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<tr>
<td>Appointed public defender for a minor;</td>
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<tr>
<td>Person acting in a professional capacity to instruct, advise, or supervise a minor who is at least 16 years old.</td>
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<td>Mentally Incapacitated</td>
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Idaho
18 years old. Idaho Statutes §§ 18-6101.

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

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

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

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

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.
to the extent
Mentally incapacitated
Kansas
Iowa
Indiana

Yes. A person commits a sex crime if the victim is so mentally disabled or deficient that consent to sexual intercourse or sexual conduct cannot be given. K.S.A. 35-42-4; 35-42-8.

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; 35-42-8.

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

Yes. It is a defense to a sexual misconduct with a minor if the child is or has ever been married, except where the sexual misconduct is committed by using or threatening the use of deadly force or by furnishing the victim, without the victim’s knowledge, with any alcoholic liquor, narcotic, drug, anesthetic, or intoxicating substance or knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. IC §§ 35-42-4; 35-42-9.

Yes. It is a defense to a sexual misconduct with a minor if the child is or has ever been married, except where the sexual misconduct is committed by using or threatening the use of deadly force or by furnishing the victim, without the victim’s knowledge, with any alcoholic liquor, narcotic, drug, anesthetic, or intoxicating substance or knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. IC §§ 35-42-4; 35-42-9.

A person has a professional relationship with a child if the person has a license to practice and to engage in sexual acts with a child. IC § 35-42-4.7.

A person has a professional relationship with a child if the person has a license issued by the state or a political subdivision on the basis of the person’s training and experience that authorizes the person to carry out a particular occupation; or is employed in a position in which counseling, supervising, instructing, or recruiting children from a significant part of the population; AND the person has a relationship with a child that is based on the person’s employment or licensed status as described in subdivision (1). IC § 35-42-4.7(a).

Indiana

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

Note. K.S.A. 21-5507 is held to violate the equal protection provisions of the Fourteenth Amendment to the United States Constitution and L.L. K. v. Indiana Department of Correction. 756 N.E.2d 569 (Ind. 2001).

Replete the extent that it results in a punishment for unlawful voluntary

Yes. A person commits a sex crime where the person otherwise meets the elements of the sex crime and the victim is incapacitated of giving consent because of mental or emotional incapacity, IC § 35-42-1.

Yes. A person commits a sex crime where the person otherwise meets the elements of the sex crime and the victim is unconscious or physically a person with a disability who is in a residential program operated or supervised by a community agency. 720 ILCS 5/11-9.9.

A person commits aggravated sexual conduct with a victim who is at least 15 years of age but under 18 years of age and the person is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim. 720 ILCS 5/11-6.1.

Yes. It is a defense to a sexual misconduct with a minor if the child is or has ever been married, except where the sexual misconduct is committed by using or threatening the use of deadly force or by furnishing the victim, without the victim’s knowledge, with any alcoholic liquor, narcotic, drug, anesthetic, or intoxicating substance or knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. IC §§ 35-42-4; 35-42-9.

Yes. It is a defense to a sexual misconduct with a minor if the child is or has ever been married, except where the sexual misconduct is committed by using or threatening the use of deadly force or by furnishing the victim, without the victim’s knowledge, with any alcoholic liquor, narcotic, drug, anesthetic, or intoxicating substance or knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. IC §§ 35-42-4; 35-42-9.

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; 35-42-8.

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

Yes. It is a defense to a sexual misconduct with a minor if the child is or has ever been married, except where the sexual misconduct is committed by using or threatening the use of deadly force or by furnishing the victim, without the victim’s knowledge, with any alcoholic liquor, narcotic, drug, anesthetic, or intoxicating substance or knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. IC §§ 35-42-4; 35-42-9.

Yes. It is a defense to a sexual misconduct with a minor if the child is or has ever been married, except where the sexual misconduct is committed by using or threatening the use of deadly force or by furnishing the victim, without the victim’s knowledge, with any alcoholic liquor, narcotic, drug, anesthetic, or intoxicating substance or knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. IC §§ 35-42-4; 35-42-9.

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; 35-42-8.

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

Yes. It is a defense to a sexual misconduct with a minor if the child is or has ever been married, except where the sexual misconduct is committed by using or threatening the use of deadly force or by furnishing the victim, without the victim’s knowledge, with any alcoholic liquor, narcotic, drug, anesthetic, or intoxicating substance or knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. IC §§ 35-42-4; 35-42-9.
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.

In addition, a person commits a sex crime when:

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

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

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

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

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

6. The offender is a teacher or other person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate or in the custody of the correctional facility.

7. The offender is an employee of the Kansas department for aging and disability services or the employee of a contractor who is under contract to provide services in an aging and disability services or the employee of a contractor who is under contract to provide services in a juvenile community supervision agency 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.

8. The offender is an employee of the Kansas department for children and families and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been released on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate who has been released and is currently on parole, conditional release or postrelease supervision.

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

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

11. The offender is a teacher or other person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate who has been released and is currently on parole, conditional release or postrelease supervision.
Yes. A person who engages in sexual intercourse or deviate sexual intercourse with another person to whom the person is married, or subjects another person to whom the person is married to sexual contact, does not commit an offense under this chapter regardless of the person's age solely because the other person is less than sixteen (16) years old or an individual with an intellectual disability. KRS § 510.035.

A person is guilty of sexual abuse in the first degree if he or she is in a position of authority or position of special trust or authority. Such behavior is sexual abuse 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.
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; or (2) the actor, when 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.

Yes. A person is guilty of a sex crime if that person engages in a "sexual act/contact/touching" with another person and the other person is unconscious of or otherwise physically incapable of resisting and has not consented to the other person's sexual acts by furnishing, administering or employing drugs, intoxicants or other similar means.

Yes. A person is guilty of a sex crime if that person engages in a "sexual act/contact/touching" with another person and the actor has substantially impaired the other person's power to apprise or control the other person's sexual acts by furnishing, administering or employing drugs, intoxicants or other similar means.

Yes. A person is guilty of a sex crime if that person is under arrest or otherwise in the actual custody of a peace officer or other law enforcement official and: (1) the actor or 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. M.R.S.A. 14:81.4.
Maryland
16 years old. MD Code, Criminal Law, § 3-308.

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

See also Reed v. State, 2015 WL 5945316 (Md. App. 2015) (“the individual is mentally defective when he or she suffers from a mental disability that renders him or her substantially incapacitated of appearing the nature of the individual’s conduct”).

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

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

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

Yes. Age of consent law applies differently if the actor is a teacher or other school employee who is in a position of authority over the other person. MD Code, Criminal Law, § 3-308.

A correctional employee (and other related employees such as an employee of a contracting provider) may not engage in sexual activity with students. MD Code, Criminal Law, § 3-304.

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

There are exceptions for separation or use of force and limited divorce. MD Code, Criminal Law, § 3-318.

Massachusetts
16 to 18 years old depending on the crime below.

Yes, if the victim was incapable of consenting due to such developmental disability and/or mental incapacity. Con. v. Fuller, 845 N.E.2d 454, 466 Mass.App.Ct. 84 (2006).

The punishment for indecent assault and battery on a person with a permanent or long-term physical or mental impairment that prevents or restricts the individual’s ability to provide for his or her own care or protection is more severe. Mass.G.L. Anns. ch. 265, §13H and §13K (defining “person with a disability”).

Yes, if such intoxication renders the person incapable of giving consent. Con. v. Urbano, 880 N.E.2d 735, 410 Mass. 606 (2008).

However, it is aggravated statutory rape (which carries a heavier punishment) for a person that is a “mandated reporter” at the time of the act to have sexual intercourse or unnatural sexual intercourse with a child under 18 years of age. Mass. Gen. Laws. Ann. ch. 265, §25A.

'Mandated reporter' means a person who is:

(a) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of patients; medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath, allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselors, religious leaders or clergy;

(b) a public or private school teacher, educational administrator, guidance or family counselor, child care worker, person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 13D 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, licensor of the department of early education and care and school attendance officer;

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

(d) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, counsel, train or counsel a child on a regular basis;

(e) in charge of a medical or other public institution, school or facility or that person's designated agent;


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

Yes. A person is guilty of criminal sexual conduct of the third or fourth degree if (1) the victim is a substantially cognitively impaired individual or mentally incapacitated individual, or physically helpless. Mich. Comp. Laws. Ann. §§ 750.520(d)(i)(ii), 750.521(c)(1)(i), 750.521b(c)(1)(i), 750.520(e)(i), 750.520b(c)(1)(i), 750.520c(e)(i), 750.520d(c)(1), 750.520b(e)(1)(i).

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

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

Yes. A person is guilty of criminal sexual conduct of the third or fourth degree if (2) the victim is unconscious, asleep, or under the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent. See definition of 'Mentally incapacitated' Mich. Comp. Laws. Ann. § 750.520b(c).

Yes. Criminal sexual conduct in the third or fourth degree occurs if the victim is at least 16 but less than 26 and is receiving special education services, and, in each case, is a student at a school where the actor is employed or volunteers. Mich. Comp. Laws. Ann. § 750.520d.

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

(1) The actor is a member of the same household as the victim.

(2) The actor is related to the victim by blood or affinity to the fourth degree.

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

(4) 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.

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

(6) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident, and the sexual penetration occurs during the period of that other person's residency. Mich. Comp. Laws. Ann. § 750.520b & c.
Minnesota

With respect to first or second degree criminal sexual misconduct:

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


With respect to third or fourth degree criminal sexual misconduct:

- If the younger party is under the age of 14, the older party must be no more than 36 months older.
- If the younger party is 14 or 15 years old, the other person must be in a current or recent position of authority or has a significant relationship with the victim in which the age consent is 18 years old.

"Current or recent position of authority" includes but is not limited to any person who is a parent or acting in the place of a parent and charged with the care, control, or supervision of a child, or a person who is charged with any duty or responsibility for the care, control, or supervision of a child, either independently or through another, at the time of the act, or within 120 days immediately preceding the act. This includes a psychotherapist. Minn. Stat. § 609.341(10).

"Significant relationship" means a situation in which the actor is: (1) the complainant's parent, stepparent, or guardian; (2) any of the following persons related to the complainant: brother, sister, stepbrother, stepsister, father, mother, uncle, aunt, nephew, or niece; (3) any grandparent or great-uncle, great-aunt; (4) an adult who jointly resides intermittently or regularly in the same household as the complainant and who is not the complainant's spouse; or (4) an adult who is or was involved in a significant romantic or sexual relationship with the parent of a complainant. Minn. Stat. § 609.341(13).

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

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

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

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

"Physically helpless" means that a person is:

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

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

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

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

State v. Betros, 788 N.W.2d 635, App. 2010 (finding that evidence was sufficient to support finding that complainant was physically incapacitated, thus supporting degree of third-degree criminal sexual conduct relating to sexual encounter between defendant and complainant, where complainant testified that she was severely intoxicated and did not know that she was unconscious when defendant raped her, and gaps in complainant’s memory were consistent with testimony that she was severely intoxicated).

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 16 years of age and the actor is more than 36 months older than the complainant and in a current or recent position of authority over the complainant (neither mistake as to the complainant’s age nor consent to the act by the complainant are defenses).
  - 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 (neither mistake as to the complainant’s age nor consent to the act by the complainant are defenses). The complainant suffered personal injury, and the sexual abuse involved multiple acts committed over an extended period of time.

  - The following acts constitute criminal sexual conduct in the third degree:
    - 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 are defenses). 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 are defenses).
    - 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 are defenses). The actor suffered personal injury, and 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 are defenses).
    - 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 nonconsensual; or
2. The actor and the complainant were in one of the following occupational relationships at the time of the act:
   - The complainant was the actor’s former patient who was emotionally dependent on the actor; or
   - The actor was a psychotherapist, the complainant was the actor’s patient, and the sexual penetration or sexual contact occurred during a psychotherapy session or during a period of time when the psychotherapist-patient relationship was ongoing;
   - The actor was a psychotherapist and the complainant was the actor’s former patient who was emotionally dependent on the actor; or
   - The actor was or falsely impersonated a psychotherapist, the complainant was the actor’s patient or former patient, and the sexual penetration or sexual contact occurred by means of deception or false representation that the sexual penetration or sexual contact was for a bona fide medical purpose; or
   - The actor was or falsely impersonated a member of the clergy, the complainant was not married to the actor, the complainant met with the actor in private seeking or receiving religious or spiritual advice, aid, or comfort from the actor, and the sexual penetration or sexual contact occurred during the course of the meeting or during a period of time when the meetings were ongoing;
   - 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 restrained the complainant or the complainant had no reasonable means of escape that would not result in harm to the actor’s or another’s safety; or
   - The actor was or falsely impersonated a peace officer, as defined in section 626.84, the actor physically or constructively restrained the complainant or the complainant had no reasonable means of escape that would not result in harm to the actor’s or another’s safety.

8. The actor was an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients who are emotionally dependent on the actor or suffer from mental illness or mental health issues, and the sexual abuse involved multiple acts committed over an extended period of time.
Mississippi

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

"Mentally defective person" means one who suffers from a mental disease, defect or condition which renders that person temporarily or permanently incapable of knowing the nature and quality of his or her conduct. Miss. Code Ann. § 97-3-97(9).

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

Yes, a person is guilty of sexual battery if he or she engages in sexual penetration with a physically helpless person, which includes a person that is permanently incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent. Miss. Code Ann. § 97-3-95.

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

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

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

1. 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.

2. The actor had a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense.

3. The actor was age 18 or older and at least 48 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 the actor is less than 60 months older than the victim. In any such case, if the actor is no more than 60 months older than the complainant, then shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 18 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense.

4. The actor was a licensed educator employed or contracted to provide services for an elementary, middle, or secondary school; the complainant was enrolled in a secondary school; and:
   a. the actor was a licensed educator employed or contracted to provide service for the school at which the complainant was a student;
   b. the actor was age 18 or older and at least 48 months older than the complainant and was employed or contracted to provide service for the secondary school at which the complainant was a student; or
   c. the actor was age 18 or older and at least 48 months older than the complainant, and was a licensed educator employed or contracted to provide services for an elementary, middle, or secondary school; and:
      i. the actor was a caregiver, facility staff person, or person providing services in a facility, and the complainant was a vulnerable adult who was a resident, patient, or client of the facility who was impaired in judgment or capacity by mental or emotional dysfunction or undue influence; or
      ii. the actor was a caregiver, facility staff person, or person providing services in a facility, and the complainant was a resident, patient, or client of the facility. This clause does not apply if a consensual sexual personal relationship existed prior to the caregiving relationship or if the actor was a personal care attendant.

Minn. Stat. § 609.345.

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

Minn. Stat. § 609.344 and § 609.345; see also Minn. Stat. § 609.341(24).
<table>
<thead>
<tr>
<th>Missouri</th>
<th>Montanta</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, a person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Mo. Ann. Stat. § 566.030.</td>
<td>Yes. “Without consent” means the victim is incapable of consent because the victim is mentally disordered or incapacitated. Mont. Code Ann. § 45-5-501(1)(b)(ii).</td>
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<td>Yes. “Without consent” means given by a person who by reason of youth, mental disease, disorder, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense. Mont. Code Ann. § 45-2-211(2)(b).</td>
</tr>
<tr>
<td>Yes, a person commits the crime of sexual contact with a student if he or she has sexual contact with a student of a school and is:</td>
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</tr>
<tr>
<td>a teacher;</td>
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</tr>
<tr>
<td>an employee of the school;</td>
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</tr>
<tr>
<td>a volunteer of the school or an organization working with the school on a project or program who is not a student at the school;</td>
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</tr>
<tr>
<td>an elected or appointed official of the school district;</td>
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</tr>
<tr>
<td>a person employed by an entity that contracts with the school or school district to provide services.</td>
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</tr>
<tr>
<td>It is not a defense that the student consented to the sexual contact. Mo. Rev. Stat. § 566.086.</td>
<td>It is also a crime for sexual conduct to take place between caretakers and nursing facility residents; mental health providers and vulnerable persons; and corrections officers and prisoners. Mo. Ann. Stat. §§ 566.131 &amp; 566.145.</td>
</tr>
</tbody>
</table>

**Missouri**

- 14 years old. Mo. Rev. Stat. § 566.032 (statutory rape in the first degree). However, statutory rape in the second degree is defined as an act of sexual intercourse with another person who is less than 17 years old. Mo. Rev. Stat. § 566.034 (statutory rape in the second degree).


- Yes. “Without consent” means the victim is incapable of consent because the victim is mentally disordered or incapacitated. Mont. Code Ann. § 45-5-501(1)(b)(iv).

- Yes. Consent is ineffective if it is given by a person who because of reason of youth, mental disease, disorder, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense. Mont. Code Ann. § 45-2-211(2)(b).

**Montana**


- Yes. “Without consent” means the victim is incapable of consent because the victim is mentally disordered or incapacitated. Mont. Code Ann. § 45-5-501(1)(b)(ii).
**Nebraska**

16 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 "439 first degree sexual assault." State v. Freeman, 267 Neb. 737, 733 (2004).

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

**Nevada**

Yes. A person is deemed unable to 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).

**New Hampshire**

Yes. A person is deemed unable to consent if he or she is "mentally ... incapable of resisting or understanding the nature of his or her conduct." N.H. Rev. Stat. Ann. § 632-A:2(I)(g).


Yes. A person is deemed unable to consent if he or she is "mentally ... incapable of resisting or understanding the nature of his or her conduct." N.H. Rev. Stat. Ann. § 632-A:2(I)(g).


Yes. A person is deemed unable to consent if he or she is "mentally incapable of resisting or understanding the nature of his or her conduct." N.H. Rev. Stat. Ann. § 632-A:2(10).


Yes, for: • Patients and parolees: • a person commits the offense of sexual abuse of a patient or parolee if such person engages in sexual intercourse with a patient or parolee when the person provides therapy, medical treatment, or examination of the victim and in 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(11). • A person commits aggravated felons sexual assault if he or she engages in sexual penetration with a victim that is 15 years of age or older and under 18...
New Mexico

17 years old. New Mexico Statutes §30-9-10(A); §30-9-11.

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

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

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

If a person commits sexual penetration is perpetrated on an inmate confined in a correctional facility or jail while the person is in a position of authority over the victim that is less than 15 years of age, the perpetrator is in a position of authority over the victim and is more than 4 years older than the victim, or if the victim is a 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(l)(k).

A person commits aggravated sexual assault if he or she engages in sexual penetration with a person that is at least 16 years old but less than 18 years old and the actor is in a position of authority over the victim that is less than 13 years of age. N.H. Rev. Stat. Ann. § 632-A:21(l)(l).

A person commits sexual assault if he or she engages in sexual penetration with a person that is at least 13 years of age or a school volunteer, and who is at least 18 years age and is at least 4 years older than the child and not the spouse of that child, leaves while performing services in or on behalf of a child, or is on school property, and at least 18 years of age and is at least 4 years older than the child and the perpetrator is in a position of authority over the victim and is more than 4 years older than the victim. New Mexico Statutes §30-9-11(G).

It is a crime if sexual penetration is perpetrated on a child 13 to 16 years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least 18 years of age and is at least 4 years older than the child and not the spouse of that child, leaves while performing services in or on behalf of a child, or is on school property, and at least 18 years of age and is at least 4 years older than the child and the perpetrator is in a position of authority over the victim and is more than 4 years older than the victim. New Mexico Statutes §30-9-11(E)(2).

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New Jersey


Yes, it is aggravated sexual assault to commit an act of sexual penetration with a person that the actor knows or should have known at the time of the sexual penetration was physically helpless or intellectually or mentally incompetent, or has a mental disease or defect which endangers the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent or incapable of understanding or exercising the right to refuse to engage in the conduct. N.J. Stat. Ann. § 2C:14-2c(7).

Consent is ineffective if:
1. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or
2. It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute an offense; or
3. It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

It is sexual assault to commit an act of sexual penetration with a person that is on parole or probation, or is a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status. N.J. Stat. Ann. § 2C:14-2(c)(2).

An actor is guilty of aggravated sexual assault if he or she commits an act of sexual penetration with another person who is less than 13 years old, or if the victim is 13, 14, or 15 years old and the actor is:

• related to the victim by blood or affinity to the third degree; or
• has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status; or
• is a resource family parent, guardian, or stands in loco parentis within the household.

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

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

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

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

A person commits sexual assault if he or she engages in sexual contact with a victim over whom the perpetrator has a position of authority (1) at a correctional institution, secure psychiatric unit, juvenile detention facility, or any other setting in which the victim is not free to leave; (2) via direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation; and the perpetrator uses this authority to coerce the victim. Consent is not a defense. N.H. Rev. Stat. Ann. § 632-A:2(I)(v).

Yes, it is sexual assault to commit an act of sexual penetration with a person that is on parole or probation, or is a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status. N.J. Stat. Ann. § 2C:14-2(c)(2).

Consent is ineffective if:
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2. It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute an offense; or
3. It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

A person commits sexual assault if he or she engages in sexual contact or sexual penetration with a victim over whom the perpetrator has a position of authority (1) at a correctional institution, secure psychiatric unit, juvenile detention facility, or any other setting in which the victim is not free to leave; (2) via direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation; and the perpetrator uses this authority to coerce the victim. Consent is not a defense. N.H. Rev. Stat. Ann. § 632-A:2(I)(v).

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Yes, a mentally disabled person or mentally incapacitated person is incapable of giving consent. New York Penal Law §130.00(5); § 14-27.30.

Yes, it is a crime to engage in sexual activity with a physically helpless person, which includes a person who is unconscious, is incapable of giving consent, or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent. New York Penal Law §130.00(5); § 14-27.30.

Yes, it is a crime to engage in sexual activity with a mentally incapacitated person, which includes a person who is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent. New York Penal Law §130.00(5); § 14-27.30.

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

Ohio

At age 16 a person can consent. A person who is eighteen years or older shall engage in sexual conduct with another person (who is not their spouse) if that person or cause another person to have sexual conduct with that person, if the other person is a minor, fifteen years of age or older, and the actor has supervisory or disciplinary authority over the other person. Ohio Rev. Code Ann. § 2907.03(A)(8); 2907.03(A)(13); 2907.04(A)(1)(a).

Yes.

Yes, no person shall engage in sexual conduct or sexual contact with another person 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 imposes strict liability for conduct that results in sexual assault on the victim's age if: Yes.

A person 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.

Idaho

Yes.

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.

Idaho imposes strict liability for conduct that results in sexual assault on the victim's age if: Yes.

A person 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's definition of sexual battery, sexual imposition and gross sexual imposition do not include consensual sexual conduct between married couples. Ohio Rev. Code Ann. §§ 2907.03(A); 2907.06(A) & 2907.05(A).

Yes.

A person who knowingly has sexual contact with another, or who causes another person to have sexual contact with another, is guilty of sexual assault if the other person is under the age of eighteen, and the actor has supervisory or disciplinary authority over the other person. N.D. Century Code Ann. § 12.1-20-06.1.

A person who 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, 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 imposes strict liability for conduct that results in sexual assault on the victim's age if: Yes.

A person engages in sexual conduct or sexual contact with another, or who causes another to engage in a sexual act, is guilty of 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.

Idaho imposes strict liability for conduct that results in sexual assault on the victim's age if: Yes.

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

Ohio imposes strict liability for conduct that results in sexual assault on the victim's age if: Yes.

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

Idaho imposes strict liability for conduct that results in sexual assault on the victim's age if: Yes.

A person engages in sexual conduct or sexual contact with another, or who causes another to engage in a sexual act, is guilty of 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.

Idaho imposes strict liability for conduct that results in sexual assault on the victim's age if: Yes.
In Oklahoma, a person is capable of committing a sexual act if they are mentally incapacitated or incapable of appraising the nature of the person’s conduct. Okla. Stat. tit. 21, § 1111(A)(2).

In Oregon, a person is incapable of committing a sexual act if they are mentally incapacitated or incapable of appraising the nature of the person’s conduct. Or. Rev. Stat. § 163.315.

In Ohio, the definition of "physically helpless" includes that the person is unconscious. Ohio Rev. Code Ann. § 2907.07(A)(2). (5)
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. 18 Pa.C.S.A. § 3122.1.

A person commits the crime of sexual abuse in the first degree if the complainant is incapable of consent by reason of being mentally incapacitated, physically helpless or incapable of appraising the nature of the victim's conduct. 18 Pa.C.S.A. § 3122. (a)(6).

A person commits a felony of the third degree when the person engages in sexual intercourse, deviate sexual intercourse or indecent contact with a student at a school or any other person who has direct or indirect contact with a student. 18 Pa.C.S.A. § 3124.2(a.1). 3124.2(a.2).

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

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. 18 Pa.C.S.A. § 3122.1.

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

Yes. It is rape to have sexual intercourse with a complainant who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring. 18 Pa.C.S.A. §§ 3125(a)(4-5) and 3126(a)(4-5).

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It is deviate sexual intercourse in the first degree if the complainant suffers from a mental disability which renders him or her incapable of consent. 18 Pa.C.S.A. § 3123(a)(3), (a)(4).

It is indecent assault or aggravated indecent assault for certain activities if the complainant suffers from a mental disability which renders him or her incapable of consent. 18 Pa.C.S.A. §§ 3125(a)(4-5) and 3126(a)(4-5).

It is indecent assault or aggravated indecent assault for particular activities if the complainant suffers from a mental disability which renders him or her incapable of consent. 18 Pa.C.S.A. § 3123(a)(3), (a)(4).

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It is deviate sexual intercourse in the first degree if the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance. 18 Pa.C.S.A. §§ 3125(c)(4-5) and 3126(b)(4-5).

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Yes. A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless, which includes unconsciousness. S.C. Code Ann. § 16-3-654(1)(b).

"Mentally defective" means that a "person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct." S.C. Code Ann. § 16-3-651(e)(g).

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

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

"Sexual battery" means "sexual intercourse, unnatural or fellatio, and any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes." S.C. Code Ann. § 16-3-755(A)(5).


South Carolina

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

South Dakota does not specifically reference consciousness; however, a person who is unconscious may be deemed incapable of consenting to sexual contact because of mental or physical incapacity. S.D. Code Ann. § 22-22-7.2.

Yes. The statute for sexual contact with a child under 16 years of age, where aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a misdemeanor. S.C. Code 1976 § 16-3-755(B-D).

South Dakota

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

Yes. There are limitations on liability for a person if the victim is the legal spouse of the actor. See S.C. Code Ann. § 16-3-658. Spousal sexual battery is also defined separately in instances where sexual battery occurs through use of aggravated force, defined as the use or threat of use of a weapon or the use or threat of use of physical force or physical violence of a high and aggravated nature, which creates a reasonable apprehension that the actor will inflict great bodily harm or death upon the victim by one spouse against the other spouse of the relationship or by one spouse against the other spouse of the relationship. S.D. Code Ann. § 22-22-7.

Tennessee

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

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

Tennessee

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

Yes. The definition of sexually or otherwise responsible means that a "person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of the person's conduct." Tenn. Code Ann. § 39-13-501(3).

Tennessee

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

Yes. A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and the victim suffers from a mental disease or defect which includes unconsciousness. S.C. Code Ann. § 16-3-654(1)(b).

Tennessee

Yes. A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and the victim suffers from a mental disease or defect which includes unconsciousness. S.C. Code Ann. § 16-3-654(1)(b).

Tennessee

"Mentally incapacitated" means that a "person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent." Tenn. Code Ann. § 39-13-501(4).

"Mentally incapacitated" means that a "person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent." Tenn. Code Ann. § 39-13-501(4).

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

"Mentally incapacitated" means that a "person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent." Tenn. Code Ann. § 39-13-501(4).

"Mentally incapacitated or physically helpless, regardless of age, and either:" S.D. Code Ann. § 22-22-7.

Tennessee

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<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas</td>
<td>§§22.011(b)(3) &amp; (5).</td>
<td>Yes, a sexual assault is considered to occur without consent of the other person where: the actor knew the other person is a minor and the actor knew or reasonably should have known that the other person was incapable of giving the act's consent due to alcohol or drug influence or other impairment (such as fatigue or illness).</td>
</tr>
<tr>
<td>Utah</td>
<td>§76-5-406(2)(c)</td>
<td>Yes, a sexual offense is considered to occur without consent of the other person when: the actor knew or reasonably should have known that the other person was incapacitated by alcohol or drugs (or other intoxicants) and the actor knew or reasonably should have known that the victim was incapable of giving the act's consent due to alcohol or drug influence or other impairment (such as fatigue or illness).</td>
</tr>
<tr>
<td>Idaho</td>
<td>§76-5-406(2)(c)</td>
<td>Yes, a sexual offense is considered to occur without consent of the other person when: the actor knew or reasonably should have known that the other person was incapacitated by alcohol or drugs (or other intoxicants) and the actor knew or reasonably should have known that the victim was incapable of giving the act's consent due to alcohol or drug influence or other impairment (such as fatigue or illness).</td>
</tr>
<tr>
<td>Vermont</td>
<td>§21.11</td>
<td>Yes, a sexual assault is considered to occur without the consent of the other person if the actor knew or reasonably should have known that the victim was incapable of giving the act's consent due to alcohol or drug influence or other impairment (such as fatigue or illness).</td>
</tr>
<tr>
<td>Tennessee</td>
<td>§39-13-505</td>
<td>Yes, a sexual offense is considered to occur without consent of the other person when: the actor knew or reasonably should have known that the other person was incapable of giving the act's consent due to physical incapacity or insufficient reason to know what the act was or what it involved.</td>
</tr>
<tr>
<td>Huntsman</td>
<td></td>
<td>(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. §39-15-505</td>
</tr>
<tr>
<td>Note that in Tennessee, the spouse of the defendant can be a &quot;victim&quot; under the rape and sexual battery provisions of the Code. Tenn. Code Ann. §39-15-501(8).</td>
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</table>

**Incapable of consenting** means the person: (A) is incapable of understanding the nature of the conduct at issue; (B) is physically incapable of resisting, declining participation in, or communicating unwillingness; or (C) is incapable of giving the consent of the victim where the actor knew or reasonably should have known that the other person was incapable of giving the act's consent due to alcohol or drug influence or other impairment (such as fatigue or illness).
Yes, a person is guilty of rape if they engage in sexual contact with a person when the person's ability to consent or resist the contact has been substantially impaired by an intoxicating, narcotic or anesthetic agent; or when the person is known by the defendant to be in such a state of stupor or weakness of mind from any cause is guilty of rape in the first degree. 14 V.I.C. § 1701.

Yes, a person who is unconscious of the nature of the sexual act; the cause of the victim's lack of ability to give consent is not dispositive. Moline v. Comm., 636 S.E.2d 470 (2008). It is well established that a transitory circumstance such as intoxication may result in mental incapacity if the nature and degree of the intoxication has gone beyond the stage of merely reduced inhibition and has reached a point where the victim does not understand the nature or consequences of the sexual act; the cause of the victim's lack of ability to give consent is not dispositive. A sexual assault occurs if a person engages in a sexual act with a minor, where the persons are married to each other and the sexual act is consensual or where the person is less than 18 years old, and the sexual act is consensual. Vermont Stat. Ann. §13-3252(c).

Yes, a person who engages in sexual contact with a person who is under the age of 16 and the sexual act is consensual or where the person is less than 18 years old, and the sexual act is consensual. Vermont Stat. Ann. §13-3252(c).

Yes, a person who is unconscious of the nature or consequences of the sexual act; the cause of the victim's lack of ability to give consent is not dispositive. A sexual assault occurs if a person engages in a sexual act with a minor, where the persons are married to each other and the sexual act is consensual or where the person is less than 18 years old, and the sexual act is consensual. Vermont Stat. Ann. §13-3252(c).

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Yes, a person who engages in sexual contact with a person whose position of authority over the victim is used to accomplish the sexual act. 14 V.I.C. § 1700.

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Yes.ANDARD IMPAIRMENT. 14 V.I.C. § 1701.

Yes, a person is guilty of rape if the person has sexual intercourse with a complaining witness who is under the age of 16 where the complaining witness's mental incapacity or physical helplessness is known to the actor, is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1700.

An actor who perpetrates an act of sexual intercourse or sodomy with a person who through idiocy, immaturity 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.I.C. § 1701.

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Yes, a person is guilty of rape if they perpetrate an act of sexual intercourse or sodomy with a person who is, at the time unconscious of the nature of the sexual act; the cause of the victim's lack of ability to give consent is not dispositive. Moline v. Comm., 636 S.E.2d 470 (2008). It is well established that a transitory circumstance such as intoxication may result in mental incapacity if the nature and degree of the intoxication has gone beyond the stage of merely reduced inhibition and has reached a point where the victim does not understand the nature or consequences of the sexual act; the cause of the victim's lack of ability to give consent is not dispositive. A sexual assault occurs if a person engages in a sexual act with a minor, where the persons are married to each other and the sexual act is consensual or where the person is less than 18 years old, and the sexual act is consensual. Vermont Stat. Ann. §13-3252(c).

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An actor who perpetrates an act of sexual intercourse or sodomy with a person who when the other person is unaware of the nature or consequences of the sexual act; the cause of the victim's lack of ability to give consent is not dispositive. A sexual assault occurs if a person engages in a sexual act with a minor, where the persons are married to each other and the sexual act is consensual or where the person is less than 18 years old, and the sexual act is consensual. Vermont Stat. Ann. §13-3252(c).

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

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

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

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

The term “position of authority” includes, but is not exclusive to, the following: an employer, supervisor, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, babysitter, or substantially similar position, and a police officer or probation officer other than when the officer is exercising custodial control over a minor. 14 V.I.C. § 1704a.

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

A person is guilty of unlawful sexual contact in the second degree if they engage in sexual contact with a person who is under 16 years old and resides in the same household as the perpetrator, and force, intimidation or the perpetrator’s position of authority over the victim is used to accomplish the sexual contact. 14 V.I.C. § 1701.
### Washington

<table>
<thead>
<tr>
<th>Age 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.44.003, 9A.44.096</th>
</tr>
</thead>
<tbody>
<tr>
<td>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).</td>
</tr>
<tr>
<td>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 defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless. Wash. Rev. Code Ann. §§ 9A.44.050.</td>
</tr>
<tr>
<td>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.</td>
</tr>
<tr>
<td>For the purposes of this act, “sexual intercourse” means the penetration, however slight, of the sexual organ of one person with the anal or genital organs of another person with or without their consent. Va. Code Ann. § 18.2-64.2.</td>
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</tbody>
</table>

### West Virginia

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<tr>
<td>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 incapacitated 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) &amp; (4), 61-8B-2(c).</td>
</tr>
<tr>
<td>A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is, mentally deficient or mentally incapacitated. W. Va. Code Ann. § 61-8B-8.</td>
</tr>
</tbody>
</table>

### Note

- A person is deemed incapable of consent when such person is subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact by a corrections or parole officer. W. Va. Code Ann. §§ 61-8B-2, 61-8B-10.
- 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 suffering from a "mental illness or defect" is presumed incapable of giving consent. Wis. Stat. Ann. § 940.225(4).

"Mental illness or defect" is not defined in the statute, but has a "meaning within the common understanding of the jury" under Wisconsin case law State v. Perkins, 889 N.W.2d 684, 277 Wis. 2d 243 (Wis. Ct. App. 2004).


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

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

Special relationships include:
(a) a therapist-patient relationship;
(b) an employer of an adult family home, community-based residential facility, an in-patient health care facility, or a state treatment facility who has sexual contact or sexual intercourse with a patient or resident of the facility;
(c) an employee of certain "entities" as defined in 48.855(1)(b) and 50.0651(1)(a) who has sexual contact or sexual intercourse with a client at the entity. Entity is defined under section 48.855(1)(b) to include a skilled nursing facility. A "skilled nursing facility" means a health care facility, including a hospital, that provides direct care to or treatment services to clients or patients;
(d) a correctional staff member who has sexual contact or sexual intercourse with an individual who is confined in a correctional institution (notwithstanding the person was sexually assaulted by the inmate);
(e) a probation, parole, or extended supervision agent who has sexual intercourse or sexual contact with the individual on parole, probation, or extended supervision who is supervised by him or her or a subordinate; and;
(f) a law enforcement officer and has sexual contact or sexual intercourse with any person who is detained by any law enforcement officer or is in the custody of any law enforcement officer. Wis. Stat. Ann. §§ 940.22, 940.225, 940.235.


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.


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, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to appraise or control his conduct. Wyo. Stat. Ann. § 6-2-303.

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, 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 or should be known by the actor to be a resident of such facility or under supervision of the correctional system; 3. the actor inflicts sexual intrusion on a victim and the actor is an employee or volunteer of an elementary or secondary public or private school who, by virtue of the actor’s employment or volunteer relationship with the school, has interaction with the victim who is a student or participant in the activities of the school and is more than four (4) years older than the victim; or 4. the actor subjects another person to sexual contact or sexual intrusion in the actor’s capacity as a health care provider in the course of providing care, treatment, services or procedures to maintain, diagnose or otherwise treat a patient’s physical or mental condition.


Depending on the age difference between the victim and actor, 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 or 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 in relation to the victim.


An actor commits the crime of sexual abuse of a minor in the second degree if:
• Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 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 occupies a position of authority in relation to the victim.
An actor commits the crime of sexual abuse of a minor in the third degree if:
• Being 20 years of age or older, the actor engages in sexual intrusion with a victim who is either 16 or 17 years of age, and the victim is at least 4 years younger than the actor, and the actor occupies a position of authority in relation to the victim.

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