### Consent Laws

#### Defining Consent

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<th>State</th>
<th>How is Consent Defined?</th>
<th>Does the definition require 'freely given consent' or 'affirmative consent'?</th>
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<td>Alabama</td>
<td>Consent has been interpreted to mean &quot;acquiescence or compliance [with the proposition of another].&quot; Ex parte Gordon, 708 So. 2d 1180, 1183 (Ala. 1997). Lack of consent results from: 1. forcible compulsion; or 2. being incapable of consent. Ala. Code § 13A-6-70(b). In addition, &quot;Consent to engage in sexual intercourse, sodomy, sexual acts, or sexual contact may be communicated by words or actions. The existence of a current or previous marital, dating, social, or sexual relationship with the defendant is not sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device or sexually transmitted disease protection, without additional evidence of consent, is not sufficient to constitute consent.&quot; 1. Ala. Code § 13A-6-70(d).</td>
<td>No. Ala. Code § 13A-6-70.</td>
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<td>Alaska</td>
<td>&quot;Without consent&quot; means that a person: 1. is without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or 2. is incapacitated as a result of an act of the defendant. Alaska Stat. § 11.41.470(10). The phrase &quot;without consent&quot; in statute refers to a particular type of unwanted sexual activity: unwanted sexual activity that is coerced by force or the threat of force. In re J.P.A., 440 P.3d 345, 349 (Alaska Ct. App. 2019).</td>
<td>No. Alaska Stat. § 11.41.470.</td>
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<td>Arizona</td>
<td>&quot;Without consent&quot; includes any of the following: 1. the victim is coerced by the immediate use or threatened use of force against a person or property; 2. the victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant (see definition of &quot;mental defect&quot; below); 3. the victim is intentionally deceived as to the nature of the act; or 4. the victim is intentionally deceived to erroneously believe that the person is the victim's spouse.</td>
<td>No.</td>
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<td>Arkansas</td>
<td>There is a lack of consent if a person engages in a sexual act with another person by forcible compulsion or with a person who is incapable of consent because he or she is physically helpless, mentally defective or mentally incapacitated, or because of a victim's age. Arkansas Code §§ 5-14-103; 5-14-125. 1. &quot;Forcible compulsion&quot; means physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person. Arkansas Code § 5-14-101(5). 2. &quot;Mentally defective&quot; means a person suffers from a mental disease or defect that renders the person: (a) incapable of understanding the nature and consequences of a sexual act; or (b) unable to appreciate the nature of such person's conduct. Arkansas Code § 5-14-101(5). 3. &quot;Mentally incapacitated&quot; means that a person is mentally defective and unable to control his or her act. 4. &quot;Physically helpless&quot; means that the person is: (a) unconscious; (b) physically unable to communicate a lack of consent; or (c) rendered unaware that a sexual act is occurring. &quot;Without consent&quot; includes any of the following: 1. the victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant (see definition of &quot;mental defect&quot; below); 2. the victim is intentionally deceived as to the nature of the act; or 3. the victim is intentionally deceived to erroneously believe that the person is the victim's spouse.</td>
<td>No.</td>
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<td>California</td>
<td>&quot;Consent&quot; is defined to mean positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. California Penal Code § 261.6.</td>
<td>Yes. California Penal Code § 261.6.</td>
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<td>Colorado</td>
<td>&quot;Consent&quot; means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship is not sufficient to constitute consent. Submission under the influence of fear does not constitute consent. Colorado Revised Statutes Annotated § 18-3-405(1.5).</td>
<td>No.</td>
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<td>Connecticut</td>
<td>Lack of consent to sexual activity exists where: 1. the accused compelled 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-10; 53a-11; 53a-72a; 53a-73a. &quot;Mentally incapacitated&quot; means that a person is rendered temporarily incapacitated of apprising 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). &quot;Impaired because of mental disability or disease&quot; means that a person suffers from a mental disability or disease which renders such person incapable of appraising the fact of one's conduct. Connecticut General Statutes Annotated § 53a-65(4). &quot;Physically helpless&quot; means that a person is unconscious or for any other reason is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact. Connecticut General Statutes Annotated § 53a-65(6).</td>
<td>No.</td>
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<td>State</td>
<td>Consent Definition</td>
<td>Note</td>
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<td>Delaware</td>
<td>&quot;Without consent&quot; means any of the following:</td>
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<td>- The defendant compelled the victim to submit by an act of coercion or by force, 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.</td>
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<td>- The defendant knew the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed.</td>
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<td>- The defendant knew the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting.</td>
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<td>- 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 the 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 professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested.</td>
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<td>- 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.</td>
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<td>District of Columbia</td>
<td>&quot;Consent&quot; means words or overt actions indicating a freely given agreement to the sexual act or contact in question.</td>
<td>Yes. Consent to the sexual act or contact in question must be freely given agreement. D.C. Code § 22-3001(4).</td>
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<td>Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent. D.C. Code § 22-3001(4).</td>
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<td>Florida</td>
<td>&quot;Consent&quot; means intelligent, knowing, and voluntary consent and does not include coerced submission. &quot;Consent&quot; shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender. Florida Statute § 794.031.</td>
<td>Yes – the statute requires that consent be “voluntary.”</td>
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<td>Georgia</td>
<td>The State of Georgia does not define consent in reference to sexual activity.</td>
<td>No.</td>
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<td>The offense of rape occurs when it is against “a female forcibly and against her will.” Georgia Code § 16-6-1.</td>
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<td>Guam</td>
<td>Consent means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the victim or that the victim failed to resist a particular sexual act. 9 G.C.A. § 25.10(a)(2).</td>
<td>Yes – &quot;consent&quot; means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. 9 G.C.A. § 25.10(a)(2).</td>
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<td>A person who is mentally incapacitated or physically helpless as defined by the Guam statute cannot consent to a particular sexual act. 9 G.C.A. § 25.10(a)(2).</td>
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<td>A victim need not resist the actor for a proper prosecution. 9 G.C.A. § 25.45.</td>
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<td>Hawaii</td>
<td>Consent is not defined by statute. However, Hawaii law provides that a person commits a sex crime if:</td>
<td>Not in statute, though please see State v. Adams above for more information.</td>
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<td>- the person subjects another person to a sexual act by compulsion; or</td>
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<td>- the person subjects a sexual act another person who is mentally defective, mentally incapacitated, or physically helpless. HRS §§ 707-730, 707-731, 707-732</td>
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<td>&quot;Compulsion&quot; means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss. HRS § 707-700.</td>
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<td>- 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.</td>
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<td>- 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.</td>
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<td>- &quot;Physically helpless&quot; means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act. HRS § 707-700.</td>
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<td>See also:</td>
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<td>&quot;Consent signifies voluntary agreement or concurrence . . . [c]onsent may be express or implied.” State v. Adams, 10 Haw. App. 593, 605, 880 P.2d 226, 234 (1994).</td>
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<td>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).</td>
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<td>Idaho</td>
<td>Consent is not specifically defined.</td>
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<td>However, Idaho law defines rape as “the penetration, however slight, of the oral, anal or vaginal opening with a penis” accomplished under any one of the following circumstances:</td>
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<td>- the victim is under the age of sixteen and the perpetrator is eighteen years of age or older, and the victim is not lawfully married to the perpetrator;</td>
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<td>- the victim is sixteen or seventeen years of age and the perpetrator is three years or more older than the victim, or the victim is not lawfully married to the perpetrator;</td>
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<td>- 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;</td>
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<td>- the victim resists but the resistance is overcome by force or violence;</td>
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<td>- the victim is prevented from resistance by the infliction, 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;</td>
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<td>- 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;</td>
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<td>- the victim is at the time unconscious of the nature of the act (“unconscious of the nature of the act” means incapable of occurring because the victim was unconscious or asleep, or was not aware, knowing, perceiving, or cognizant that the act occurred);</td>
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<td>- 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;</td>
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<td>- the victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to some person in the future, cause damage to property, engage in other conduct constituting a crime to be imitated against the victim, or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.</td>
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<td>Idaho Statutes § 18-6101.</td>
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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 mentally disabled or is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters. I.C.A. § 709.1. The “against the will” element is deliberately broad and consciously designed to capture all circumstances when there is an actual failure of consent, including use of psychological force. See State v. Kelso-Christy, 911 N.W.2d 663, 667 (Iowa 2018). It is not necessary to establish physical resistance by a person in order to establish that an act of sexual abuse was committed by force or against the will of the person. However, the circumstances surrounding the commission of the act may be considered in determining whether or not the act was done by force or against the will of the other. I.C.A. § 709.3.

Lack of consent results from:
(1) forcible compulsion;
(2) incapacity to consent; or
(3) the defendant charged is sexually abusive, 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; or
(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.

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 § 510.020.

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

Mentally incapacitated means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of an intoxicating substance administered to him or her without his or her consent or as a result of any other act committed upon him or her by 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.
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 inability;
(7) 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 the actor's use of hypnotic or other similar means (Class D crime, maximum sentence: less than one year);

Louisiana

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

(1) the other person submits as a result of compulsion (Class A crime);
(2) the other person, not the actor's spouse, has not in fact attained the age of 14 years (Class A crime);
(3) the other person, not the actor's spouse, has not in fact attained 12 years of age (Class A crime);
(4) the actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by furnishing, administering or employing drugs, intoxicants or other similar means (Class B crime);
(5) the actor compels or induces the other person to engage in the sexual act by threats or promises (Class B crime);
(6) the other person is incompetent or otherwise physically incapable of consenting and has not consented to the sexual act (Class B crime);
(7) 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 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);
(8) the other person, not the actor's spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other 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);
(9) when the victim is unconscious or otherwise physically incapable of resisting the act (Class B crime);
(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 (Class B crime);
(11) when the victim, under the belief that the person committing the act is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or other means practiced by the offender (LSA R.S. 14:42, LSA R.S. 14:42.1, LSA R.S. 14:43, LSA R.S. 14:43.1).

Maine

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

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

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

(1) 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 suffering from a physical or mental inability;
(7) 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 the actor or other controlled dangerous substance administered by the offender and without the knowledge of the victim;
(8) when the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity;
(9) when the victim submits under the belief that the person committing the act is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or other means practiced by the offender (LSA R.S. 14:42, LSA R.S. 14:42.1, LSA R.S. 14:43, LSA R.S. 14:43.1).

Further, a person is deemed incapable of consent when the person is under arrest or otherwise in the actual custody of a police officer or other law enforcement official and the offender is a police officer or other law enforcement official who either:

(1) arrested the person or was responsible for maintaining the person in actual custody;
(2) knows or reasonably should know that the person is under arrest or otherwise in actual custody (LSA R.S. 14:41).

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

1. the other person has not expressly or impliedly acquiesced in the sexual contact and the actor is criminally negligent with regard to whether the other person has acquiesced (Class D crime);
2. the other person has not expressly or impliedly acquiesced in the sexual contact and the actor is criminally negligent with regard to whether the other person has acquiesced and the sexual contact includes penetration (Class C crime);
3. the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact (Class D crime);
4. the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact and the sexual contact includes penetration (Class C crime);
5. the other person, not the actor’s spouse, is in fact less than 14 years of age and the actor is at least 3 years older (Class C crime);
6. the other person, not the actor’s spouse, is in fact less than 12 years of age and the actor is at least 3 years older (Class B crime);
7. the other person, not the actor’s spouse, is in fact less than 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 sexual offender or supervised release, a prisoner on supervised community confinement status or a youth 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);
13. the other person, not the actor’s spouse, is under official supervision as a probationer, a parolee, a sexual offender or supervised release, a prisoner on supervised community confinement status or a youth on community supervision status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person and the sexual contact includes penetration (Class C crime);
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 or the student was a substitute teacher who had instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual contact (Class 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 aparent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person (Class D 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 C crime);
18. the other person submits as a result of compulsion (Class C crime);
19. the other person submits as a result of compulsion and the sexual contact includes penetration (Class B crime);
20. the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor (Class D crime);
21. the actor owns, operates or is an employee of an organization, program or residence that is operated, administered or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the program, organization or residence and the actor was a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student and the sexual contact includes penetration (Class C crime);
22. the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor (Class D crime);
23. the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor (Class D crime);
24. the other person, not the actor’s spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class E crime);
25. the other person, not the actor’s spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor 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 student is related to the actor within the 2nd degree of consanguinity (Class D crime);
26. 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 actor or another person, the actor’s spouse’s parent or child (Class E crime);
27. 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 actor or another person, the actor’s spouse’s parent or child (Class D crime);
28. the actor is employed to provide care to a dependent person, who is not the actor’s spouse and domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect (Class D crime); or
29. the actor is employed to provide care to a dependent person, who is not the actor’s spouse and domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect and the sexual contact includes penetration. For the purposes of this paragraph, "domestic partners" means 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other’s welfare (Class C crime).  17–A M.R.S.A. 253–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 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);
(5) the other person, not the actor’s spouse, is under official supervision as a prostitute, a parolee, a sex offender or supervised release, a prisoner on supervised community confinement status or a juvenile on community confinement status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person (Class D crime);
(6) the other person, not the actor’s spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class E crime);
(7) 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 or client of the actor (Class D crime);
(8) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability or autism; (Class D crime);
(9) 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 25 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);
(10) the other person, not the actor’s spouse, is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or
(11) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor’s spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor (Class D crime);
(13) the actor is employed to provide care to a dependent person, who is not the actor’s spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect (Class D crime). 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, § 3-303; § 3-304; § 3-307.

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

“Physically helpless individual” means an individual who:
(i) is unconscious, or
(ii) is physically unable to resist, or communicate unwillingness to submit to, vaginal intercourse, a sexual act, or sexual contact. Md. Code, Criminal Law, § 3-301.

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

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

See also:
In the case of a conscious and competent victim, mere passivity on the victim’s part will not establish the absence of consent. The law looks for express negation or implicit negation as evidenced by some degree of physical resistance or an explanation of why the will to resist was overcome by force or fear of harm. V. State, 218 Md. App. 420, 428, 98 A.2d 281, 291 (2014).

Massachusetts

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

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

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. Forcible compulsion includes the use of a substance administered without a victim’s knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed decision to consent to sexual intercourse. State v. Cuni, 733 A.2d 414, 424, 159 N.J. 584, 603 (1999).

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, but not limited by the following:

- An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn.
- A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the conduct in the context of the issue does not constitute consent.
- Lack of consent may be inferred on the basis of 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 disoriented or incapacitated;
  - physically helpless;
  - overcome by deception, coercion, or surprise;
  - less than 16 years old;
  - incapacitated 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 in part of a lawful search;
  - this does not apply if the individuals are married to each other and one of the individuals involved in an offense or probation or parole and the other individual is a probation or parole officer of a supervising authority.
- Receiving services from a youth care facility, and the perpetrator:
  - has supervisory or disciplinary authority over the victim or is providing treatment to the victim;
  - is an employee, contractor, or volunteer of the youth care facility;
  - this does not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and in 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 receiving community-based services and the perpetrator:
  - has supervisory or disciplinary authority over the victim or is providing treatment to the victim, and
  - is an employee, contractor or volunteer of the facility or community-based service;
- The conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity, 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;
- The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim’s consent was the result of the use 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;
- The victim need not resist verbally or physically where it would be useless or futile to do so.
- The victim need only resist, either verbally or physically, so as to make the victim’s refusal to consent apparent to the perpetrator or the victim could reasonably believe that the victim’s refusal to consent was apparent to the perpetrator;
- The victim need not resist verbally or physically where it would be useless or futile to do so; or
- The victim need not resist verbally or physically where it would be useless or futile to do so.
- Consent is not specifically defined.

Nebraska

Consent itself is not defined, however “without consent” means:

- (i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the 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;
- 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; or
- A victim need not resist verbally or physically where it would be useless or futile to do so.

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:


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 infraction 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 infraction of such harm is a defense if:
   i. The bodily harm consented to or threatened by the conduct consented to is not serious; or
   ii. The conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity of a kind not forbidden by law; or
   iii. 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, assent does not constitute consent if:
   i. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or
   ii. 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 the harmfulness of the conduct charged to constitute an offense; or
   iii. It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

| New Mexico | New Mexico does not specifically define "consent." However, New Mexico defines "force or coercion" as:  
(1) the use of physical force or physical violence;  
(2) the use of threats to use physical 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 which renders the victim incapable of understanding the nature or consequences of the act; or  
(5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on a patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.  
Physical or verbal resistance of the victim is not an element of force or coercion. New Mexico Statutes §50-9-10. |
|---|---|
| New York | Under New York law, lack of consent results from:  
(1) forcible compulsion;  
(2) incapacity to consent;  
(3) where the offense charged is sexual abuse or forcible touching, any circumstances in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or  
(4) where the offense charged is rape in the 3rd degree or criminal sexual act in the 3rd degree, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances. New York Penal Law §130.05. |
| North Carolina | North Carolina does not specifically define "consent." The concept of "force" is used in the statute, but this term is also not defined.  
"Against the will of the other person" is defined as either: (a) without consent of the other person; or (b) after consent is revoked by the other person, in a manner that would cause a reasonable person to believe consent is revoked. North Carolina General Statutes Annotated §14-27.20(1a).  
A threat of serious bodily harm which reasonably places fear in a person's mind is sufficient to demonstrate the use of force and the lack of consent. State v. Merritt, 94 N.C. App. 517, 522, 380 S.E.2d 608, 611 (1989).  
Additionally, submission, including submission due to fear, fright, coercion or realization that in the particular situation resistance is futile is not consent. State v. Hicks, 34 N.C. App. 734, 735, 239 S.E.2d 602, 603 (1977); see also State v. Keene, 335 N.C. App. 656, 7 (2014) ("Consent induced by violence or fear of violence is not effective to preclude a rape conviction").  
| North Dakota | North Dakota does not specifically define "consent." However, "sexual imposition" is a crime defined in NDCC § 12.1-20-04 as:  
A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act or sexual contact, is guilty of a class B felony if the actor (1) compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting; or (2) engages in a sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or mental condition that renders him or her incapable of understanding the nature of his or her conduct.  
The statute defines "coercion" in §12.1-20-02 as:  
- to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.  
Additionally, "gross sexual imposition" is a crime defined in §12.1-20-03 as:  
- A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:  
  1. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being.  
  2. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance.  
  3. That person knows or has reasonable cause to believe that the victim is unaware that a sexual act is being committed upon him or her.  
  4. That victim is less than fifteen years old; or  
  5. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct. |
| Ohio | Ohio does not specifically define "consent." However, submission to sexual conduct as a result of fear may be sufficient to demonstrate 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.Ci. 1990) 61 Ohio Misc.2d 571, 573, 580 N.E.2d 861, 863. |
| Oklahoma | The term "consent" means the affirmative, unambiguous and voluntary agreement to engage in a specific sexual activity during a sexual encounter which can be revoked at any time.  
Consent cannot be given by an individual who:  
- is asleep or is mentally or physically incapacitated either through the effect of drugs or alcohol or for any other reason; or  
- is under duress, threat, coercion or force.  
Consent cannot be inferred under circumstances in which consent is not clear including, but not limited to:  
- the absence of an individual saying "no" or "stop"; or  
- the existence of a prior or current relationship or sexual activity. Okla. Stat. tit. 21, § 113. |
| Oregon | Oregon does not specifically define "consent." However, a person is considered incapable of consenting to a sexual act if the person is:  
- (a) under 18 years of age;  
- (b) incapable of appraising the nature of the person's conduct;  
- (c) mentally incapacitated; or  
- (d) physically helpless.  
A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of facts along with all other relevant evidence.  
A person is incapable of appraising the nature of the person's conduct if:  
- (a) the person is unable to understand the nature of the conduct;  
- (b) the person is unable to understand the right to choose whether and how to engage in conduct, including the right to revoke a prior decision to engage in conduct; or  
- (c) the person is unable to communicate a decision to engage in conduct. Or. Rev. Stat. § 163.315. |
**Pennsylvania**

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

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


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

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

**Puerto Rico**

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

- (1) The victim has not yet reached the age of sixteen (16) at the time of the event;
- (2) Due to mental disability or illness, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission;
- (3) The victim has been compelled by the use of force or by means of physical, violence, intimidation or the threat of serious and immediate bodily harm;
- (4) The victim's capability to consent has been nullified 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 at the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused;
- (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 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 or is a relative of the victim, by ascendency or descendant, or consanguinity, 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**

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 § 11-37-4.

A person is guilty of third degree sexual assault if:

- (1) He or she is over the age of eighteen (18) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age. R.I. Gen. Laws § 11-37-6(a).
- (2) He or she is over the age of eighteen (18) years and engaged in sexual penetration or sexual contact with another person over the age of fourteen (14) years and under the age of eighteen (18) years, when:
  - (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) The accused is otherwise acting in a position of authority with respect to the victim;
  - (iv) The accused is otherwise acting in a position of authority with respect to the victim;
  - (v) 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:

- (i) 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;
- (ii) Overcomes the victim through the application of physical force or physical violence;
- (iii) Compels the victim to submit by threatening to use force or violence on the victim and the victim reasonably believes that the accused has the ability to execute these threats;
- (iv) 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 ability to execute these threats.

**South Carolina**

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

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

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

"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, under circumstances of aggravation, against the victim or any other person. S.C. Code Ann. § 16-3-653(b).

A person is guilty of criminal sexual conduct in the 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.

**South Dakota**

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

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

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

"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, under circumstances of aggravation, against the victim or any other person. S.C. Code Ann. § 16-3-653(b).

A person is guilty of criminal sexual conduct in the 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 this condition is produced by illness, defect, the influence of a substance or from some other cause. S.C. Code Ann. § 16-3-651(f).

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

South Dakota

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

1. The victim is less than thirteen years of age;
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 is incapable of giving consent to such act;
3. The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, physically helpless or a vulnerable adult (defined as "a person eighteen (18) years of age or older who, because of intellectual disability or physical dysfunction, is unable to fully manage the person’s own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others") with an intellectual disability; or

No.

Tennessee

Tennessee does not provide a definition for consent, but it provides that rape is unwelcome sexual penetration of a victim by the defendant or of 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 is incapable of giving consent to such act;
3. The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, physically helpless or a vulnerable adult (defined as "a person eighteen (18) years of age or older who, because of intellectual disability or physical dysfunction, is unable to fully manage the person’s own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others") with an intellectual disability; or

No.

Texas

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

1. The actor compels the other person to submit or participate by the use of physical force, violence, or coercion;
2. The actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes at the time that the actor has or will be able to execute the threat;
3. The actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;
4. The actor knows the other person is unconscious or physically unable to resist;
5. 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;
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 compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
8. The actor is a 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;
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’s professional character as spiritual adviser;
10. 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;
11. Purposes of the crime of sexual battery a victim is incapable of consent if (1) the sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services described in (2); and (2) the defendant, whether licensed by the state or not, is a member of the clergy, healthcare professional, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Tenn. Code Ann. § 39-13-505.

No.

Utah

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

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

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

No.
**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. §2355(3).
- "Incapacitated" means the person: (A) is incapable of understanding the nature of the conduct; or (B) is physically incapable of resisting; declining participation in, or communicating unwillingness to engage in the conduct at issue; or (C) the other person was unaware that the sexual act or sexual contact was being committed.
- Additional, 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 person was incapacitated; or (B) knew or reasonably should have known that the other person was incapacitated; or (C) knew or reasonably should have known that the other person was incapacitated; or (D) knew or reasonably should have known that the other person was incapacitated; or (E) knew or reasonably should have known that the other person was incapacitated; or (F) knew or reasonably should have known that the other person was incapacitated.
- Consent is not specifically defined. However, there is no consent in circumstances when:
  1. (a) a person is incapable of understanding or communicating unwillingness to engage in the sexual act.
  2. (b) either force, intimidation, or abuse of a position of authority is used to accomplish the sexual act.
  3. (c) the person is under 13 or 14 years old even if force, intimidation, or abuse of a position of authority was not used to accomplish the sexual act.

**Virginia**

- Consent is not specifically defined. However, there is no consent in circumstances when:
  1. (a) a person is incapable of understanding or communicating unwillingness to engage in the sexual act.
  2. (b) either force, intimidation, or abuse of a position of authority is used to accomplish the sexual act.

**Washington**

- Consent requires that there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact at the time of the act. Wash. Rev. Code Ann. § 9A.44.010(2).
- Yes. Wash. Rev. Code Ann. § 9A.44.010(2). A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse or sexual contact with another person where the victim did not consent to sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

**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.
- Lack of consent results from forcible compulsion, incapacity to consent, or, if the offense charged is sexual abuse, any circumstances in which the defendant is said to have acted by force or threat of force.
- A person cannot consent to sexual intercourse if he or she is less than 16 years old, mentally defective, mentally incapacitated, physically incapacitated, physically helpless, or subject to incarceration, confinement or supervision by a state, county, or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact.

**Wisconsin**

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

**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).

### 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>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>16 years old. Ala. Code § 13A-6-70(c).</td>
<td>Yes, a person is deemed incapable of consenting if he or she is incapacitated. Ala. Code § 13A-6-70(c).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&quot;Incapacitated&quot; means (among other things) that a person suffers from a mental or developmental disability or defect which renders the person incapable of appraising the nature of his or her conduct or (b) a person who is physically or otherwise impaired or unable to communicate an unwillingness to engage in a sexual act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate. Ala. Code § 13A-6-60(2)(c).</td>
</tr>
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<td></td>
<td></td>
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</tr>
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<td></td>
<td></td>
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<tr>
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<td>&quot;Incapacitated&quot; means (among other things) that a person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance and the condition was known or should have been reasonably known to the actor. Ala. Code § 13A-6-60(2)(b).</td>
</tr>
</tbody>
</table>

### States with Specific Statutes

- **Alabama**: §§ 13A-6-70(c), 15-25-1.
- **Georgia**: § 16-7-60.
- **Nebraska**: § 28-707.
- **West Virginia**: § 18-2-102.

### Key Considerations

- 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. E.R.N. v. State, 944 So. 2d 981, 984 (Ala. Crim. App. 2006) (citing Pusey v. State, 597 So.2d 721, 724 (Ala. 1991)), as limited by Ex parte J.A.P., 853 So.2d 780 (Ala. 2002).
- It is illegal for a school employee to engage in a sex act with a student under the age of 19 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: (a) soliciting, persuading, encouraging, harassing, or enticing a student. Consent is not a defense for these acts. Ala. Code §§ 13A-6-81, 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-15-1.
- Consent is not an element of the crime of incest for engaging in sexual intercourse with a family member (meaning the crime of incest occurs whether or not the parties consented to the act). Ala. Code § 13A-15-3.
Arizona

16 years old, subject to certain close-in-age and “position of authority” exceptions (described §§ 11.41.456, 11.41.458).

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

The following constitutes sexual assault in the first degree:

- A person engaging in sexual penetration with another person who the offender knows is mentally incapable and who is in the offender’s care by authority of law or in a facility or program that is required by law to be licensed by the state. Arizona Stat. § 11.41.440(a)(3).

- The following constitutes sexual assault in the second degree:

- A person engaging in sexual contact with another person who the offender knows is mentally incapable and who is in the offender’s care by authority of law or in a facility or program that is required by law to be licensed by the state. Arizona Stat. § 11.41.440(a)(3).

- Yes, “without consent” means that a person is incapacitated as a result of an act of the defendant. Arizona Stat. §§ 11.41.470(10)(B). In addition, sexual assault includes sexual penetration or contact with a person who is incapacitated. Arizona Stat. § 11.41.420(c)(7)(b). Incapacitated means temporarily incapable of appraising the nature of one’s own conduct or physically unable to express unwillingness to act. Arizona Stat. § 11.41.470(C). 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.

The Alaska Statute does not directly address intoxication, but a person who is incapacitated may invalidate consent.

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

- The following constitutes sexual assault in the first degree:

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

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

  - The following constitutes sexual assault in the second 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)(3).

  - The following constitutes sexual assault in the third degree:

  - A person engaging in sexual contact with a person who is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.425(a)(1).

Mentally incapable means suffering from a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person’s conduct, including the potential for harm to that person. Alaska Stat. § 11.41.470(A). A person is incapable of appreciating or understanding the nature and consequences of the act of sexual penetration for purposes of determining whether that person is “mentally incapable” of consenting, where that person does not have the capacity to understand the full range of ordinary and foreseeable social, medical, and practical consequences that the act entails. Jackson v. State, 890 P.2d 587 (Alaska Ct. App. 1995).

Yes, a victim can be incapacitated by reason of sleep or any other similar impairment of cognition as long as such condition is known or should have reasonably been known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).

Yes, a victim can be incapable of consent by reason of drugs, alcohol or any other similar impairment of cognition as long as such condition is known or should have reasonably been known to the defendant. Arizona Revised Statute § 13-1401(A)(7)(b).

Yes, for certain crimes. Spousal status is a defense to a prosecution for sexual assault with a minor under section 13-1405 if the victim is the other person at the time of the commission of the act. Spousal status is not a defense to a prosecution for sexual assault under section 13-1406. Arizona Revised Statute § 13-1407(D).

In addition:

- A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person who is fifteen, sixteen or seventeen years of age, the offender is the victim’s natural parent, stepparent, adopted parent, or legal guardian. Alaska Stat. § 11.41.444(a)(2).

- A person who is 18 years of age or older engages in sexual penetration with a person who is 18 years of age or older in the same household as the offender or the offender and the victim are living in the same household.

- The minor’s parent, stepparent, adoptive parent, or legal guardian.

- The minor’s coach or instructor.

- The minor’s teacher or any school employee who is 18 years of age or older.

- The minor’s clergyman or priest or any member of the clergy.

- The minor’s coach or instructor.

- The minor’s school principal or any volunteer at the minor’s school who is 18 years of age or older.

- The minor’s parent, stepparent, adoptive parent, legal guardian, aunt, uncle or foster parent.

- The minor’s employer or any employee of the minor’s employer.

- The minor’s school principal or any volunteer at the minor’s school who is 18 years of age or older.

- The minor’s teacher or any school employee who is 18 years of age or older.

- The minor’s coach or instructor.

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- The minor’s teacher or any school employee who is 18 years of age or older.

- The minor’s coach or instructor.

- The minor’s clergyman or priest or any member of the clergy.
Arkansas

Generally, 16 years old, subject to various close-in-age provisions (below): Arkansas Code § 5-14-127(a)(1).

Yes, a person can be incapable of consent because he or she is mentally defective or incapacitated. Arkansas Code §§ 5-14-103(a)(2); 5-14-125(a)(2).

Yes, a person that is unconscious is deemed “physically helpless” and unable to give consent. Arkansas Code § 5-14-101(6)(A).

Yes, a person that is temporarily incapacitated is unable to give consent. Arkansas Code § 5-14-101(6)(B).

Yes, in a prosecution for forcible rape and sexual assault in the first through third degree, the victim cannot consent if certain relationships, listed below, exist between the victim and offender. These include:

- a member of minor-victim’s family (including by adoption);
- an employee of the correctional facility where a minor-victim is in custody; or
- a teacher, athletic coach, counselor or a caretaker.

Arkansas Code §§ 5-14-103; 5-14-124; 5-14-125; 5-14-126; 5-14-127.

Criminal liability is not typically imposed where the actor commits any degree of sexual assault on his or her spouse (other than with respect to forcible compulsion). Arkansas Code §§ 5-14-124(a)(1); 5-14-125(a); 5-14-126(a); 5-14-127(a)(1).

California

18 years old: California Penal Code § 261.5.


Yes, the accused is guilty of rape if engaging in an act of sexual intercourse where the other person is at the time unconscious of the nature of the act and it is known to the accused. California Penal Code § 261(a)(6).

This unconscious of the nature of the act” means incapable of resisting because the victim meets any one of the following conditions:

- was unconscious or asleep;
- was not aware, knowing, perceiving or cognizant that the act occurred;
- was not aware, knowing, perceiving or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact; or
- was not aware, knowing, perceiving or cognizant of the essential characteristics of the act due to the perpetrator’s fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

Yes, the accused is guilty of rape if engaging in an act of sexual intercourse where the other person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the defendant. California Penal Code § 261(a)(8).

Yes, a minor is capable of consenting to sexual intercourse with an adult who is the minor’s spouse. California Penal Code § 261(a). However, a current or previous dating or marital relationship is not sufficient to constitute consent if consent is at issue in a prosecution for rape. 261.6(b).

Colorado

17 years old, subject to certain close-in-age provisions (described below): Colorado Revised Statutes Annotated § 18-3-402(1)(a)-(e).

Yes, the actor may be guilty of sexual assault and/or unlawful sexual contact when the victim is incapable of appraising the nature of the victim’s conduct. Colorado Revised Statutes Annotated §§ 18-3-402(1)(b); 18-3-404(1)(b).

Yes, unconsciousness falls within the definition of “physically helpless” and therefore the actor may be guilty of sexual assault and/or unlawful sexual contact when the victim is unconscious and the actor knows the victim is unconscious and the victim has not consented. Colorado Revised Statutes Annotated § 18-3-401.

In addition, the sexual assault statute prohibits sexual intrusion or penetration if actor knows that victim is incapable of appraising nature of victim’s conduct may extend to victims who are paternally asleep: People v. Platt, 770 P.2d 802 (Colo. App. 2007).

Yes, any actor who knowingly subjects a victim to sexual contact commits unlawful sexual contact if the actor has substantially impaired the victim’s power to apprise or control the victim’s conduct by employing, without the victim’s consent, any drug, intoxicant, or other means for the purpose of causing submission. Colorado Revised Statutes Annotated § 18-3-404(1)(d).

In addition, in People In Interest of J.B., 2016 WL 2436823 (Colo. App. 2018), the court held that evidence that a sexual assault victim was incapacitated during sexual intercourse, and was for that reason incapable of appraising nature of her conduct, was sufficient to support a sexual assault conviction.

Yes.

Married spouses: Yes.

There are certain marital exemptions when there is a marital relationship between an actor and a victim where the elements of the unlawful sexual behavior offense specifically excludes a spouse, such as certain age-related sexual assault offenses, sexual assault on a child (person under the age of eighteen (18)), and sexual assault on a child by a person of trust. Colorado Revised Statutes Annotated §§ 18-3-402; 18-3-404; 18-3-405(1), 18-3-409.

In the custody of law enforcement: Yes.

A victim who is in custody of law or detained in a hospital or other institution cannot consent to any sexual intrusion or sexual penetration with a person who has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search. Colorado Revised Statutes Annotated § 18-3-402(1)(c).

Therapist and client: Yes.

A client cannot consent to any sexual intrusion, sexual penetration or sexual contact with the client’s psychotherapist. Colorado Revised Statutes Annotated § 18-3-405.5.

Child and any non-parent person in a position of trust over the child: Yes.

A child cannot consent to sexual contact with a person who is not the child’s spouse and where such person is in a position of trust with respect to the child. Colorado Revised Statutes Annotated § 18-3-405.7(1).

- 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-64; 53a-70; 53a-71.

- However, there is an affirmative defense that the actor, at the time of the conduct constituting the criminal offense, did not know of such condition of the victim. Connecticut General Statutes Annotated § 53a-67(a).

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

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

- 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. Connecticut General Statutes Annotated § 53a-65(6).

- Yes, physically helpless means that a person is unconscious or for any other reason is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact. Connecticut General Statutes Annotated § 53a-65(4).

- In addition, a victim may be considered "physically helpless" if he or she is unable to communicate lack of consent because the victim is heavily intoxicated. 180 Conn. App. 799, 801; 185 A.3d 654, 659 cert. denied 324 Conn. 941, 184 A.3d 760 (2018).

- 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, or
  - such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or
  - the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception, or
  - the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional; or
  - the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or
  - the actor is a coach in an athletic activity or a person who provides intensive, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under 18 years of age; or
  - the actor is 20 years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity; 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: 18 years old, but 16 and 17 year-olds may consent to intercourse if the other partner is younger than 30. 11 Delaware Code §§ 770(1) and 781(1). 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(k)(3) and 782(b). 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).

- 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 incapable of communicating unwillingness to the act being performed. 11 Delaware Code § 761(k)(2).

- Yes, but not in all circumstances. There is no consent if the defendant has substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance. 11 Delaware Code § 761(k)(3).

- Yes, if the victim and perpetrator are married:

  - There is a marital exception to rape in the fourth degree which criminalizes sexual intercourse between another person who has not yet reached his or her eighteenth birthday, and a person who is 30 years of age or older. Such exception will not be unlawful if the victim and person are married at the time of such intercourse. 11 Delaware Code § 770.

- When the perpetrator is in a position of trust over the victim:

  - A person is guilty of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree when such person:
    1. Intentionally engages in sexual intercourse or sexual penetration with a child under the age of 16 and the person stands in a position of trust, authority or supervision over the child (11 Delaware Code § 778(12));
    2. Intentionally engages in sexual intercourse or sexual penetration with a child under the age of 16 and under the age of 18, 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 § 781(1));
    3. Engages in an act of sexual extortion, as defined in § 774, against a child under the age of 16 and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee

One in a "position of trust" includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act. Colorado Revised Statutes Annotated § 18-3-401(5).
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, implores 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;

- Any other person who because of that person’s familial relationship, profession, employment, occupation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children. 11 Delaware Code § 761(e).

Health Professional or Religious Figure

Where the defendant is a health professional, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. 11 Delaware Code § 761(e)(4).
A person is unable to consent to engaging in a sexual act if such person is incapable of appraising the nature of the conduct. D.C. Code §§ 22-3003(2)(A)-(C), 22-3005(2)(A)-(C).

Yes. A person is unable to consent to engaging in a sexual act if such person is:
- Incapable of appraising the nature of the conduct;
- Incapable of declining participation in that sexual act; or
- Incapable of communicating unwillingness to engage in that sexual act.


Yes. A person is unable to consent to engaging in a sexual act if such person is:
- Incapable of appraising the nature of the conduct;
- Incapable of declining participation in that sexual act; or
- Incapable of communicating unwillingness to engage in that sexual act.


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

Yes. A minor, defined as a person under the age of 18, in a "significant relationship" with a person who is over 18 cannot consent to sexual acts or sexual contact with such person. D.C. Code §§ 22-3009.91, 22-3009.02. "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 person’s domestic partner, or paramour of the person who is charged with any duty or responsibility for the health, welfare, or supervision of the victim at the time of the act; and
- Any employee or volunteer of a school, church, synagogue, mosque, or other religious institution, or an educational, social, recreational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver, administrator, or support staff, or any other person in a position of trust or with authority over a child or a minor. D.C. Code § 22-3001(10).

Sexual Abuse of a Secondary Education Student:
- A student under the age of 20 years enrolled in a secondary level school cannot consent to sexual acts or sexual contact with any teacher, staff, or any other person who is a principal, coach, 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, volunteer or individual 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 psychological, 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 are 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 the or she is licensed as a particular type of professional; or
  - (4) The sexual act or sexual contact occurs during the course of a consultation, examination, treatment, therapy, or other provision of professional services.

D.C. Code §§ 22-3015, 22-3016.

Florida

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 incapacitated 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. Florida Statutes § 794.011(1)(c).

Yes, a person that 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 an act. Florida Statutes § 794.011(1)(d).

"Mentally incapacitated" means temporarily incapacitated of appraising or controlling a person’s own conduct due to his or her consent or due to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(d).

Yes, a person that is mentally incapacitated may not be able to provide intelligent, knowing, and voluntary consent. "Mentally incapacitated" means temporarily incapacitated 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 intoxication or incapacitation based on the facts, can lead to a finding of voluntary sexual conduct or physical incapacitation such that the victim may not give consent. Arroyo 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 certified or is an elected official exempt from such certification or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the officer is in a position of control or authority as an agent or employee of government. Florida Statutes § 794.011(8).

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

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).

Florida Statutes §§ 794.011, 794.05.

Florida Statutes §§ 794.011, 794.05.

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Florida Statutes §§ 794.011, 794.05.

Yes, an adult who is physically helpless or mentally incapacitated may not be able to provide intelligent, knowing, and voluntary consent.

"Mentally incapacitated" means temporarily incapacitated of appraising or controlling a person’s own conduct due to his or her consent or due to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(d).

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

"Mentally incapacitated" means temporarily incapacitated of appraising or controlling a person’s own conduct due to his or her consent or due to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(d).

Florida Statutes §§ 794.011, 794.05.

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Florida Statutes §§ 794.011, 794.05.

Florida Statutes §§ 794.011, 794.05.

Florida Statutes §§ 794.011, 794.05.
Yes. A person who is mentally defective or mentally incapacitated. HRS §§ 707-700; 707-730; 707-731; 707-732.

The state must show that the victim was "mentally defective" (a person suffering from a disease, disorder, or defect which renders the person incapable of appreciating 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. 1991).

Yes. The victim is mentally incapacitated if the victim is unconscious. HRS §§ 707-700; 707-730; 707-731; 707-732.

The state must show that the victim is unconscious. Houston v. State, 596 So. 2d 1305 (Fla. 1991).

Yes. The state must show that the victim is unconscious. HRS §§ 707-700; 707-730; 707-731; 707-732.

An employee or agent engages in improper sexual contact in the first degree if that employee or agent engages in sexually explicit conduct with a person they knew or reasonably should have known is incompetent to consent.
Illinois

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

Yes. A person commits a sex crime if the victim is incapable, through any unsoundness of mind, due to any cause, including, but not limited to, mental illness, mental disability, or developmental disability, whether temporary or permanent, of giving legal consent. Illinois Statutes § 18-101(3).

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

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

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

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

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

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

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

Yes. A person commits a sex crime if the victim is unable to resist due to any intoxicating, narcotic, or anesthetic substance. Illinois Statutes § 18-6101(5).

Yes.

Yes. A person commits a sex crime if the victim is incapable of giving legal consent; 720 ILCS 5/11-1.60.

In addition, a person commits sexual misconduct with a minor if the victim is incapable of giving legal consent, or by threat or deception induces the victim to give knowing consent; 720 ILCS 5/11-1.50.

Marriage:

- No person can be convicted of rape for any act or acts with that person's spouse, except where:
  - the victim resists but resistance is overcome by force or violence;
  - it is 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; or
  - 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, accuse a person of a crime or cause criminal charges to be instituted against the victim, or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule. Illinois Statutes §§ 18-6101.

State officers:

- It is a felony for any employee of the Idaho department of correction, Idaho department of juvenile corrections, or any officer, employee or agent of a state, local, or private correctional facility to have sexual contact with a prisoner or juvenile offender, not their spouse, whether an in-state or out-of-state prisoner or juvenile offender;
- It is a felony for any supervising officer to knowingly have sexual contact with any parolee or probationer who is not the person's spouse. Idaho Statutes § 18-6110.

Idaho

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

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

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

- Victim had a passive personality with an IQ of 71, placing her in the lowest 2.3% of the population;
- Victim could not perform any menial tasks and could only perform menial tasks and then only under close supervision;
- Victim could not perform menial tasks and could only perform menial tasks and then only under close supervision;
- Victim had a passive personality with an IQ of 71, placing her in the lowest 2.3% of the population;
- Victim could not perform menial tasks and could only perform menial tasks and then only under close supervision;
- Victim had not completed special education courses in high school.

Yes. A person commits a sex crime if that person knows that the victim is incapable of giving legal consent. Idaho Statutes § 18-6110.

Yes. A person commits a sex crime if the victim is not less than 5 years older than the minor, and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor; provided that: (i) the person is not less than 5 years older than the minor, and (ii) the person is not legally married to the minor. HRS § 707-731.

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

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

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

Yes. A person commits custodial sexual misconduct when:

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

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

The consent of the probationer, parolee, releasee, or person serving a term of conditional release who is under the supervisory, disciplinary, or custodial authority of the officer or agent or employee engaging in the sexual conduct or sexual penetration shall be ineffective if the person is less than 16 years of age, or if the person is less than 18 years of age and not emancipated by marriage. HRS § 707-733.2.

The consent of the probationer, parolee, releasee, or person serving a term of conditional release who is under the supervisory, disciplinary, or custodial authority of the officer or agent or employee engaging in the sexual conduct or sexual penetration shall be ineffective if the person is less than 16 years of age, or if the person is less than 18 years of age and not emancipated by marriage. HRS § 707-733.2.

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

- he or she is an employee [as defined in the statute] and knowingly engages in sexual conduct or sexual penetration with a person with a disability who is under the care and custody of the Department of Human Services at a State-operated facility; or
- he or she is an employee of a community agency funded by the Department of Human Services and knowingly engages in sexual conduct or sexual penetration with a minor with a disability when:
  - he or she is an employee [as defined in the statute] and knowingly engages in sexual conduct or sexual penetration with a person with a disability who is under the care and custody of the Department of Human Services at a State-operated facility; or
  - he or she is an employee of a community agency funded by the Department of Human Services and knowingly engages in sexual conduct or sexual penetration with a minor with a disability when:
    - he or she is an employee [as defined in the statute] and knowingly engages in sexual conduct or sexual penetration with a person with a disability who is under the care and custody of the Department of Human Services at a State-operated facility; or
    - he or she is an employee of a community agency funded by the Department of Human Services and knowingly engages in sexual conduct or sexual penetration with a minor with a disability when:
Yes. If the intercourse causes the victim to be unreasonably afraid of imminent bodily harm, the crime is a sex crime occurring with a threat of violence. I.C. § 35-42-4-8.

In addition, the crime and punishment is more severe if the offense is facilitated by furnishing a controlled substance or misprision of a controlled substance. I.C. § 35-42-4-7.

Yes, if the intoxication causes the victim to be unreasonably afraid of imminent bodily harm, the crime is a sex crime occurring with a threat of violence. I.C. § 35-42-4-8.

In addition, the crime and punishment is more severe if the offense is facilitated by furnishing a controlled substance or misprision of a controlled substance. I.C. § 35-42-4-7.

Yes. A person commits a sex crime if the other person is unaware that the sexual intercourse or other sexual conduct is occurring. I.C. §§ 35-42-4-1; 35-42-4-4.

In addition, the crime and punishment is more severe if the offense is facilitated by furnishing the victim, without the victim’s knowledge, with a drug or a controlled substance knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. I.C. § 35-42-4-8; 35-42-4-8.

Yes. A person commits a sex crime if the other person is unaware that the sexual intercourse or other sexual conduct is occurring. I.C. §§ 35-42-4-1; 35-42-4-4.

In addition, the crime and punishment is more severe if the offense is facilitated by furnishing the victim, without the victim’s knowledge, with a drug or a controlled substance knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. I.C. § 35-42-4-8; 35-42-4-8.

Yes. A person commits a sex crime if the other person is unaware of the sex crime. I.C. § 35-42-4-8.

In addition, the crime and punishment is more severe if the offense is facilitated by furnishing the victim, without the victim’s knowledge, with a drug or a controlled substance knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge. I.C. § 35-42-4-8; 35-42-4-8.

Yes, if the intoxicated causes the victim to be unreasonably afraid of imminent bodily harm, the crime is a sex crime occurring with a threat of violence. I.C. § 35-42-4-8.

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Yes, if the intoxicated causes the victim to be unreasonably afraid of imminent bodily harm, the crime is a sex crime occurring with a threat of violence. I.C. § 35-42-4-8.
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 a normal sexual intercourse as well as consider any expert testimony concerning the individual’s mental deficiency.”

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

In addition, a person commits a sex crime when:

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

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

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

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

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

6. the offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide direct supervision and offender control services to the department of corrections and: (A) the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been: (i) released on conditional release from a juvenile correctional facility under the supervision and control of the department of corrections or juvenile community supervision agency; or (ii) placed in the custody of the department of corrections under the supervision and control of the department of corrections or juvenile community supervision agency; and (B) the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision;

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

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

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

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

11. the offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or
Kentucky

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

Yes. A person is deemed incapable of consent when he or she is an individual with an intellectual disability or an individual that suffers from a mental illness. KRS §§ 510.010. See also Hillebrandt v. Commonwealth, 2015 WL 6212240 (Ky App. 2015). "In determining whether a woman is incapable of granting consent because she is mentally defective, the sole question is whether she is capable of appreciating the nature of the sexual act being performed prior to the time that the sexual act occurred.

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

Yes. A person is deemed incapable of consent when he or she is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person to whom the person is married or other person with whom the person is in a position of special trust or authority. Such behavior is sexual abuse. KRS § 510.060.

Louisiana

A person is deemed incapable of consent to be without the lawful consent of the victim:

1. When the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing such resistance ("mental infirmity" means a person with an intelligence). LSA-R.S. 14:40.

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

1. When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind, which would likely include unconsciousness, produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender to the victim. LSA-R.S. 14:80.

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

1. When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person to whom the person is married or other person with whom the person is in a position of special trust or authority. Such behavior is sexual abuse. LSA-R.S. 14:40.

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

1. When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person to whom the person is married or other person with whom the person is in a position of special trust or authority. Such behavior is sexual abuse. LSA-R.S. 14:40.

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

1. When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person to whom the person is married or other person with whom the person is in a position of special trust or authority. Such behavior is sexual abuse. LSA-R.S. 14:40.

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

1. When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person to whom the person is married or other person with whom the person is in a position of special trust or authority. Such behavior is sexual abuse. LSA-R.S. 14:40.

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

1. When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person to whom the person is married or other person with whom the person is in a position of special trust or authority. Such behavior is sexual abuse. LSA-R.S. 14:40.

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

1. When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person to whom the person is married or other person with whom the person is in a position of special trust or authority. Such behavior is sexual abuse. LSA-R.S. 14:40.

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

1. When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person to whom the person is married or other person with whom the person is in a position of special trust or authority. Such behavior is sexual abuse. LSA-R.S. 14:40.

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

1. When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person to whom the person is married or other person with whom the person is in a position of special trust or authority. Such behavior is sexual abuse. LSA-R.S. 14:40.

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

1. When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person to whom the person is married or other person with whom the person is in a position of special trust or authority. Such behavior is sexual abuse. LSA-R.S. 14:40.

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

1. When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the person to whom the person is married or other person with whom the person is in a position of special trust or authority. Such behavior is sexual abuse. LSA-R.S. 14:40.
A person is guilty of a sex crime if that person engages in "sexual act/contact/touching" with another person and:

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

2. the actor owns, operates or is an employee of an organization, program or residence that is operated, maintained, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes the other person as a person with an intellectual disability or autism;

3. the other person 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 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee, substitute teacher or other official having instructional, supervisory or disciplinary authority over the other person;

4. the other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, child care facility, facility operated by a family child care provider, children's residential care facility, drug treatment center, youth camp licensed or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee, substitute teacher or other official having instructional, supervisory or disciplinary authority over the other person;

5. the other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, child care facility, facility operated by a family child care provider, children's residential care facility, drug treatment center, youth camp licensed or similar school, facility or institution regularly providing care or services for children, and the actor involves the other person in or in the virtual or physical presence of the school or the school where the educator is assigned, employed, or working at the time of offense;

6. the actor commits any sexual or lascivious act upon a student who is 15 years of age or older, but less than 21 years of age, where there is an age difference of greater than 4 years between the two persons, with the intention of gratifying the sexual desires of either person, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense;

7. an educator engages in a sexual act/contact/touching with a student who is 17 years of age or older, but less than 21 years of age, where there is an age difference of greater than 4 years between the two persons, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense using any instrumentality or any part of the body of the student.

The consent of a student, whether or not that student is 17 years of age or older, is not a defense. L.S.A.-R.S. 14:81.4.

A person is deemed incapable of consent when the person is under arrest or otherwise in the actual custody of a police officer or other law enforcement official and the offender is a police officer or other law enforcement official who either: (1) arrested the person or was responsible for maintaining the person in actual custody; or (2) knows or reasonably should know that the person is under arrest or otherwise in actual custody. L.S.A.-R.S. 14:41.1.
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 or a mentally incapacitated individual; and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired or mentally incapacitated individual. Md. Code, Criminal Law, §§ 3-304, 3-307.

See also Rekst 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 incapacible of appraising or controlling his or her 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 or mentally incapacitated individual and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired or mentally incapacitated individual. Md. Code, Criminal Law, § 3-304, 3-307.

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

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

Maryland

16 to 18 years old depending on the crime below.

- It is a crime to induce a person under 18 of a chargeable age to have unlawful sexual intercourse. Mass. Gen. Laws Ann. ch. 272 § 4.

Yes, if the victim was incapable of consenting due to such developmental disability and/or mental incapacity. Conn. 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 disability is a term of imprisonment not exceeding seven years.

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

Yes, if such intoxication renders the person incapable of giving consent. Conn. v. Urbana, 880 N.E.2d 735, 450 Mass. 606 (2008).

Sexual intercourse. "Sexual act." "vaginal intercourse," a "sexual act," or "sexual contact" with another if the victim is a substantially cognitively impaired or mentally incapacitated individual and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired or mentally incapacitated individual. Md. Code, Criminal Law, § 3-304, 3-307.

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 retarded individuals. Md. Code, Criminal Law, § 3-318.

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

Massachusetts

Yes. A person is guilty of criminal sexual conduct in the third degree if the actor is a substantially cognitively impaired or a mentally incapacitated person; or contact and the actor knows or has reason to know that the victim is a substantially cognitively impaired or physically helpless person;

Yes. A person is guilty of criminal sexual conduct in the fourth degree if the actor is a substantially cognitively impaired or a physically helpless person;

Yes. A person is guilty of criminal sexual conduct in the fourth degree if the actor is a substantially cognitively impaired or a physically helpless person.

A person engaged 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 retarded individuals. Md. Code, Criminal Law, § 3-318.

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

Michigan

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


Yes. A person may not engage in "vaginal intercourse," a "sexual act," or "sexual contact" with another if the victim is a substantially cognitively impaired or physically helpless person; or contact and the actor knows or has reason to know that the victim is a substantially cognitively impaired or physically helpless person. Mich. Comp. Laws, Ann. §§ 750.520(1)(d)(i), 750.520(1)(e)(i), 750.520(1)(c), 750.520(1)(c).

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 facility for mentally retarded individuals. Mich. Comp. Laws, Ann. § 750.520(1)(c).

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. Mich. Comp. Laws, Ann. § 750.520(1)(c).

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. Mich. Comp. Laws, Ann. § 750.520(1)(c).

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. Mich. Comp. Laws, Ann. § 750.520(1)(c).

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. Mich. Comp. Laws, Ann. § 750.520(1)(c).

Yes. A person may not engage in "vaginal intercourse," a "sexual act," or "sexual contact" with another if the victim is a substantially cognitively impaired or mentally incapacitated individual. Mich. Comp. Laws, Ann. § 750.520(1)(c).

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. Mich. Comp. Laws, Ann. § 750.520(1)(c).

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. Mich. Comp. Laws, Ann. § 750.520(1)(c).

Criminal sexual conduct in the first or second degree if the victim is 16 years of age or (2) the victim is at least 16 but less than 26 and is a student at the 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:

- The actor is a member of the same household as the victim.
- The actor is related to the victim by blood or affinity to the fourth degree.
- The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
- The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.
- The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or 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
- 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. § 750.520 c &
Minnesota

With respect to first or second degree criminal sexual misconduct:

1. The younger party is under the age of 14, the older party must be no more than 36 months older, unless the actor is in a current or recent position of authority with the younger party.

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

With respect to third or fourth degree criminal sexual misconduct:

1. The younger party is under the age of 14, the older party must be no more than 36 months older, unless the actor is in a current or recent position of authority or has a significant relationship with the victim in which case the age of consent is 18 years old.

"Current or recent position of authority" means that a person is:

(a) asleep or not physically capable of resisting the act; (b) unable to withdraw consent or to communicate nonconsent 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. § 609.341.10.

"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 by blood, marriage, adoption or similar relationship: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; (3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and is not the complainant's spouse; or (4) an adult who is or was involved in a significant romantic or sexual relationship with the parent of a complainant. Minn. Stat. § 609.341.15.

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

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. §§ 609.341, 609.343, 609.344, 609.345.

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

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

"Physically helpless" means that a person is: (a) asleep or not conscious; (b) unable to withdraw consent or to communicate nonconsent 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, if such intoxication results in the victim becoming mentally incapacitated or physically helpless. But, see case law regarding voluntary intoxication discussed below.

Stout v. Berres, 788 N.W.2d 655, App. 2010 (finding that evidence was sufficient to support finding that complainant was physically helpless, thus supporting charge of third degree criminal sexual conduct relating to sexual encounter between defendant and complainant, where complainant testified that she was severely intoxicated and that she was unconscious when defendant penetrated 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:

1. Complainant is at least 14 but less than 18 years of age and the actor is more than 36 months older than the complainant and in a current or recent position of authority over the complainant (neither mistake as to the complainant’s age nor consent to the act by the complainant is a defense).

2. The actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration or contact, and the actor or an accomplice used force or coercion to accomplish the act, the complainant suffered personal injury, or the sexual abuse involved multiple acts committed over an extended period of time (neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense).

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

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

1. The actor performed massage or other bodywork for hire, the sexual penetration or sexual contact occurred during or immediately before or after the act performed or was hired to perform one of those services for the complainant, and the sexual penetration or sexual contact was nonconsensual; or
2. The actor and the complainant were in the following occupational relationships at the time of the act:
   - 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 therapeutic deception;
   - The actor was or falsely impersonated a provider of medical services to the complainant and the sexual penetration or sexual contact occurred by means of deception or false representation that the sexual penetration or sexual contact was for a bona fide medical purpose;
   - The actor 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 at a time or place where the actor was not pursuant to a lawful search or lawful use of force;
   - 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 625.84, the actor physically or constructively restrained the complainant or the complainant did not reasonably feel free to leave the actor’s presence, and the sexual penetration or sexual contact was not pursuant to a lawful search or lawful use of force;
   - The actor was an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopath personalities, including but not limited to jails, prisons, detention centers, or...
A person is guilty of sexual battery if he or she engages in sexual penetration or contact with a physical helpless person, which includes a person that is physically helpless, as defined in Mississippi Code Annotated § 97-3-95. Consent by the victim is not a defense.

A 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. Consent by the victim is not a defense.

A 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. Consent by the victim is not a defense.

A person is guilty of sexual battery if he or she engages in sexual penetration with a child under 18 years of age if the actor has a significant relationship to the victim, or is in a current or recent position of authority over the victim. Consent of the victim is not a defense.

Sexual acts perpetrated by an actor in a “prohibited occupational relationship” are prohibited. Consent by the victim is not a defense.

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

Yes. A person is guilty of sexual battery if he or she engages in sexual penetration with a physically helpless person, which includes a person that is physically helpless, as defined in Minn. Stat. § 609.341. Consent by the victim is not a defense.

Yes. A person is guilty of sexual battery if he or she engages in sexual penetration with a person temporarily or permanently incapable of knowing the nature and quality of his or her conduct, as defined in Minn. Stat. § 609.342. Consent by the victim is not a defense.

Yes. A person is guilty of sexual battery if he or she engages in sexual penetration or contact with a physical helpless person, which includes a person that is physically helpless, as defined in Minn. Stat. § 609.344; and § 609.345; see also Minn. Stat. § 609.346(2). Consent by the victim is not a defense.
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 committed by a person who is less than 17 years old. Mo. Rev. Stat. § 566.034 (statutory rape in the second degree).

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

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

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Yes, a person commits the crime of sexual contact with a student if he or she has sexual contact with a student of a school and is:  
- a teacher;  
- a student teacher;  
- an employee of the school;  
- a volunteer of the school or of an organization working with the school on a project or program who is not a student at the school;  
- an elected or appointed official of the school district;  
- a person employed by an entity that contracts with the school or school district to provide services.

It is not a defense that the student consented to the sexual contact. Mo. Rev. Stat. § 566.086.

It is also a crime for sexual conduct to take place between:  
- caretakers and nursing facility residents;  
- mental health providers and vulnerable persons; and  
- corrections officers and inmates.


Montana


Yes, "without consent" means the victim is incapable of consent because the victim is mentally disordered or incapacitated. Mont. Code Ann. § 45-3-501(1)(b)(i).

Yes, "without consent" means the victim is incapable of consent because the victim is mentally disordered or incapacitated. Mont. Code Ann. § 45-3-501(1)(b)(i).

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

Yes. For purposes of sexual intercourse without consent statute (Mont. Code Ann. § 45-5-503), "without consent" means the victim is incapable of consent because the victim is:  
- incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation, conditional release, or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;  
- receiving services from a youth care facility and the perpetrator:  
  - (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and  
  - (II) is an employee, contractor, or volunteer of the youth care facility; or  
- admitted to a mental health facility, a community-based facility or a residential facility or is receiving community-based services and the perpetrator:  
  - (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and  
  - (II) is an employee, contractor, or volunteer of the facility or community-based service.

Mont. Code Ann. § 45-5-501(1)(b)(ii), (vii). However, the above do not apply if the individuals are married, and:  
- one of the individuals involved is on probation, conditional release, or parole and the other individual is a probation or parole officer of a supervising authority; or  
- 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.


Similarly, consent is ineffective under the sexual assault statute (Mont. Code Ann. § 45-5-502(b)) if the victim is:  
- incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;  
- receiving services from a youth care facility and the perpetrator:  
  - (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and  
  - (B) is an employee, contractor, or volunteer of the youth care facility; or  
- admitted to a mental health facility, a community-based facility or a residential facility or is receiving community-based services and the perpetrator:  
  - (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and  
  - (B) is an employee, contractor, or volunteer of the facility or community-based service.

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

Additionally, consent is ineffective under the sexual assault statute (Mont. Code Ann. § 45-5-501) if the victim is:  
- a witness in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer who is involved with the case in which the victim is a witness or is being investigated;  
- a program participant in a private alternative education resident or outdoor program and the perpetrator is a worker affiliated with the program;  
- 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 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;  
- a child or guardian involved in a child abuse or neglect proceeding and the perpetrator is:  
  - employed by the department of public health and human services for the purposes of carrying out the department's duties; and  
- directly involved in the parent or guardian's case or involved in the supervision of the case;  
- a client receiving psychotherapy services and the perpetrator is:  
  - providing or purporting to provide.
Yes. A person is deemed incapable of consent if he or she is "mentally or physically incapable of resisting or understanding the nature of his or her conduct." Nev. Rev. Stat. Ann. § 200.366(1).

### Nebraska

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

Yes. Any person who subjects another person to sexual penetration who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, is guilty of "498 first degree sexual assault." In re Gabriel P., 20 Neb. App. 432, 438-95, 954 N.W.2d 305, 311 (2021). A victim's lack of consent is not an element of the crime when the victim is incapable of resisting or appraising the nature of his or her conduct. Id. Under § 26-319(1)(b), the two-part analysis requires a significant abnormality, such as severe intoxication or other substantial mental or physical impairment, on the part of the alleged victim, and knowledge of the abnormality on the part of the alleged attacker. Id.

### Montana


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

### Nevada


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

### New Hampshire


Yes. Although not expressly mentioned in the statute, evidence that the engaged in sexual penetration was mentally or administered "any intoxicating substance," without the knowledge or consent of the victim. N.H. Rev. Stat. Ann. § 632-A:2(1)(c).

### New York


Yes. From the statute, a person is deemed incapable of consent if he or she is "mentally incapacitated." N.Y. Rev. Stat. Ann. § 135.6(1).

### Ohio

16 years old. Ohio Rev. Code Ann. § 2907.02(A).

Yes. A person is deemed incapable of consent if he or she is "mentally incompetent or incapable of understanding the nature of his or her conduct." Ohio Rev. Code Ann. § 2907.02(A).

### Oregon


Yes. Any person who subjects another person to sexual penetration who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree. O.Rev. Stat. § 163.355(4).

### Pennsylvania


Yes. A person is deemed incapable of consent if he or she is "mentally incapable of understanding the nature of his or her conduct." Pa. Stat. Ann. § 1804.4(1).
New Jersey


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

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


New Mexico

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

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


An actor is guilty of aggravated sexual assault if he or she engages in sexual contact with a victim over whom the perpetrator is in a position of authority (1) at a correctional institution, secure psychiatric unit, juvenile detention facility, or any other setting in which 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:3(IV).

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


New Mexico

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

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).

It is a crime if sexual penetration is perpetrated on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate. New Mexico Statutes §§30-9-11(E)(2).

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 four years older than the child and for the spouse of that child, learns while performing services in or
**New York**

Yes, a mentally disabled person or mentally incapacitated person is incapable of giving consent. New York Penal Law §130.05(3)(b)-(c).
The law does not presume that a person with mental retardation is unable to consent to sexual intercourse and proof of incapacity must come from facts other than mental retardation alone. People v. Gaines, 88 N.Y.2d 81, 86, 653 N.E.2d 1182, 1185 (1995).

- **Mentally disabled** means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct. New York Penal Law §130.00(6).
- **Mentally incapacitated** means a person that is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent. New York Penal Law §130.00(8).

**North Carolina**

Yes, it is a crime to engage in sexual activity with a physically helpless person, which includes a person who is unconscious, is incapable of giving consent, or is mentally incapacitated. North Carolina General Statutes Annotated §14-27.22; §14-27.27; §14-27.33.

- **Person who has a mental disability** means a victim who has a mental disability or a mental disorder that temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.
- **Mentally incapacitated** means that any act is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act. North Carolina General Statutes Annotated §14-27.20.

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- 1. knowingly and unlawfully possesses a controlled substance, or a prescription to obtain to administer such controlled substance, or any mixture or substance that requires a prescription to obtain, and with intent to administer such controlled substance, or any mixture or substance that requires a prescription to obtain, the person performing the act knows or should have reasonably known the other person was mentally incapacitated.
- 2. commits or attempts to commit such an act, constituting a felony defined in this article, and
- 3. the person performing the act knows or should have reasonably known the other person was mentally incapacitated.

New York Penal Law §130.90.

**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, or is incapable of giving consent. New York Penal Law §130.05(3)(b)-(c).**

- Yes, it is a crime to engage in sexual activity with a person who is unconscious, is incapable of giving consent, or is mentally incapacitated. New York Penal Law §130.05(3)(b)-(c).
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**North Carolina**

Yes, it is a crime to engage in sexual activity with a mentally disabled person or a mentally incapacitated person when the person performing the act knows or should have reasonably known the other person was mentally incapacitated.

- North Carolina General Statutes Annotated §14-27.22; §14-27.27; §14-27.33.

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- Yes, it is a crime to engage in sexual activity with a mentally incapacitated person when the person performing the act knows or should have reasonably known the other person was mentally incapacitated. North Carolina General Statutes Annotated §14-27.22; §14-27.27; §14-27.33.
- It is also a crime when a person who undertakes medical treatment of a patient engages in sexual contact or sexual penetration with the patient while the patient is incapacitated in the course of that medical treatment. In this section, "Incapacitated" is defined as a patient's incapacity of appraising the nature of a medical treatment, either because the patient is unconscious or under the influence of an impairing substance, including, but not limited to, alcohol, anesthetics, controlled substances, or a narcotic or psychoactive substance capable of impairing a person's physical or mental faculties. North Carolina General Statutes Annotated §14-27.33A.

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**North Carolina**

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**North Dakota**

Depending on the crime, either an "adult" or "minor" (15). A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act, is guilty of gross sexual imposition if the victim is less than fifteen years old, or if the offender knows or has reason to believe that the victim is unaware that the sexual act or sexual contact is being committed upon him or her.

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

- N.D. Century Code Chapter 12.1-20-03(1)(c) & (2)(c).

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

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

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

- Yes, if the intoxication is involuntary.

Yes, a person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act is guilty of a felony if that person or the other person's conduct is necessary for mental health treatment purposes; or

Yes, a person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act is guilty of a felony if that person or the other person's conduct is necessary for mental health treatment purposes.

- Yes, a person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act is guilty of a felony if that person or the other person's conduct is necessary for mental health treatment purposes.


**Ohio**

At age 16 a person can consent. No person who is eighteen years of age or older may engage in sexual conduct with another person (who is not at the time of the offense) or cause another person to have sexual contact with that person, if the other person is under fifteen years of age or older, unless the act is a misdemeanor.

- 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 reason 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.

- 12.1-20-01(3). The NDDC does not define "adult," which is the operative word in its statutory rape provisions.

- 12.1-20-01. The North Dakota Supreme Court seems to have defined it as eighteen years old, State v. Aitken, 200 N.W. 2d 288, 291 (N.D. 1972) ("proof of force is not necessary where the victim is under the age of eighteen years.")

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

- 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 reason 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 Rev. Code Ann. § 2907.03(A)(5)–(13); Ohio Rev. Code Ann. § 2907.06(A) & (B).

Yes, a person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act is guilty of a felony if the other person is in official custody or detained in a hospital, prison, or other institution and the act has supervisory or disciplinary authority over the other person.


A person who knowingly has sexual contact with another, or causes another person to have sexual contact with that person, is guilty of sexual assault if the person is in official custody or detained in a hospital, prison, or other institution and the act has supervisory or disciplinary authority over the other person.


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Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient while that person is under the influence of alcohol, drugs, or other means during any treatment, consultation, interview, or examination is guilty of sexual assault if the complained is not a defense under this section.

- "Psychology" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.

- § 12.1-20-06.1.

- 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 reason 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 rape does not include sexual contact between married couples, unless the spouses are "living apart and separated." Ohio Rev. Code Ann. § 2907.02(A)(1).

- Yes. in custody of the government, or in a position of authority:

- It is a crime (sexual battery) to engage in sexual conduct with another person who is not their spouse, unless the other person is a minor, fifteen years of age or older, and the act is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare. N.D. Century Code Ann. § 12.1-20-07.

- Yes.

- Yes.

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Yes. Rape includes an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same sex as the perpetrator or of the opposite sex as the perpetrator; the victim is under the age of 16 years of age and is the person's sibling, child, or spouse's child. Or. Rev. Stat. §§ 163.405(1)(c). It is custodial misconduct in the first or second degree for a person who has sexual intercourse with another person when the victim is under 16 years of age and is the person's sibling, child, or spouse's child. Or. Rev. Stat. §§ 163.405(1)(c).

Yes. A person is incapable of consenting to a sexual act if they are mentally incapacitated or incapable of appraising the nature of the person's conduct if: (a) the person is unable to understand the nature of the conduct; (b) the person is unable to understand the right to choose whether and how to engage in conduct, including the right to revoke a prior decision to engage in conduct; or (c) the person is unable to communicate a decision to engage in conduct. Or. Rev. Stat. § 163.315(3).

"Mentally incapacitated" means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense. Or. Rev. Stat. § 163.305(2). It is custodial misconduct in the first or second degree for a person who engages in oral or anal intercourse with another person under the age of 16 or if the victim is under the age of 16 and is the person's sibling, child, or spouse's child. Or. Rev. Stat. §§ 163.355(1), (2).

Yes. Rape in the first degree includes an act of sexual intercourse involving vaginal or anal penetration where the victim is under the age of 16 years of age and is the person's sibling, child, or spouse's child. Or. Rev. Stat. §§ 163.405(1)(c).

"Physically helpless" means the person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. Or. Rev. Stat. § 163.305(4).

"Phyically helpless" includes a person that a person is unconscious. Or. Rev. Stat. § 163.305(4). It is custodial misconduct in the first or second degree for a person who engages in sexual contact with any other person or one of the other persons is a minor, a peace officer who is more than two years older than the minor was not rationally related to a legitimate governmental purpose or statute (isolated equal protection).

A person commits sodomy in the second degree if: (a) the person commits sexual penetration or penetration with a foreign body; or (b) the person commits sodomy in the first degree.

Yes. Rape is an act of sexual intercourse involving vaginal or anal penetration where the victim is under the age of 16 years of age and is the person's sibling, child, or spouse's child. Or. Rev. Stat. §§ 163.405(1)(c).

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18 Pa.C.S.A. § 3125(a)(7), to each other. 18 person are not married complainant and the complainant and the age and the person is than 13 years of age complainant is less child in the second indecent assault of a It is aggravated age older than 14 years. However, when consent depends on the child's being below a critical age 14 years, it is a defense for the defendant to prove by a preponderance of the evidence that he or she reasonably believed the child to be above the critical age. 18 Pa.C.S.A. § 3121(c).

A person commits the offense of rape of a child when the person engages in sexual intercourse with a complainant who is less than 15 years of age. 18 Pa.C.S.A. § 3121(c).

A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 15 years of age. 18 Pa.C.S.A. § 3123(a)(1).

It is aggravating indecent assault of a child in the second degree if the complainant is less than 13 years of age or the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other. 18 Pa.C.S.A. § 3125(a)(7), (a)(8), (a)(10).

physical helplessness or incapability of appraising the nature of the victim's conduct. Or. Rev. Stat. § 163.405. A person commits the crime of sexual abuse in the first degree when that person subjects another person to sexual contact and the victim is incapable by reason of being mentally incapacitated, physically helpless or incapable of appraising the nature of the victim's conduct. Or. Rev. Stat. § 163.427. 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
<table>
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<tr>
<th>Location</th>
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<td>Puerto Rico</td>
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**South Carolina**

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

**Mentally defective** means that a "person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct." S.C. Code Ann. § 16-3-651(1)(g).  

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

**Physically helpless** means that a person is unconscious, asleep, or from some other cause. S.C. Code Ann. § 16-3-651(c)(g).

**South Dakota**


**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 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**


**Physically helpless** 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).

**Tennessee**

18 years old. Tenn. Code Ann. §39-13-528. 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).

**Tennessee**

18 years old. Tenn. Code Ann. § 39-13-527. 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 occurred through the use of force or physical violence of a high and aggravated nature, or by one spouse against the other spouse if the sexualbattery occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services described in (2) and
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<td>Texas</td>
<td>Yes, a sexual assault is considered to occur without the consent of the other person where the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable of appraising the nature of the conduct at issue; or (ii) the actor is a healthcare provider who causes the other person to engage in a sexual act by administering any substance without the other person's knowledge.</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. §39-13-501(8). Note that in Tennessee, the spouse of the defendant can be a &quot;victim&quot; under the rape and sexual battery provisions of code. Tenn. Code Ann. §39-13-501(7).</td>
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<td>Vermont</td>
<td>Yes, a sexual offense is considered to occur without the consent of the other person if the actor knew the other person is unconscious, incapacitated, or is engaged in the activity; or</td>
<td>(1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is an employee, contractor, or other person who the employee, contractor, or other person has not expressly consented to the use of their body material from that donor; or (2) holds a position of teacher, teacher intern, teacher trainer, librarian, educational aide, administrator, educational diagnostician or school counselor and engages in sexual contact, sexual intercourse or deviate sexual intercourse with a person the employer knows is: (i) enrolled in a public or private primary or secondary school, other than a school described in (1) above; or (ii) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if students enrolled in a public or private primary or secondary school are the primary participants in the activity; or (3) engages in online solicitation of a minor (under Texas Code Ann. §33.021) with a person described in (1) above, or a person the employer knows is a person described in (2)(A) or (2)(B), regarding the age of that person. Texas Code Ann. §22.011(e)(1).</td>
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<td>Utah</td>
<td>Yes, a sexual offense is considered to occur without the consent of the victim if the actor intentionally imparted the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge.</td>
<td>An employee of a public or private primary or secondary school commits the felony offense of an Improper Relationship Between Educator and Student if the employee: (1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works; or (2) holds a position of teacher, teacher intern, teacher trainer, librarian, educational aide, administrator, educational diagnostician or school counselor and engages in sexual contact, sexual intercourse or deviate sexual intercourse with a person the employer knows is: (i) enrolled in a public or private primary or secondary school, other than a school described in (1) above; or (ii) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if students enrolled in a public or private primary or secondary school are the primary participants in the activity; or (iii) engages in online solicitation of a minor (under Texas Code Ann. §33.021) with a person described in (1) above, or a person the employer knows is a person described in (2)(A) or (2)(B), regarding the age of that person. Texas Code Ann. §22.011(e)(1).</td>
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<td>Vermont</td>
<td>Yes, a person shall be deemed to have acted without the consent of the victim where the actor knew or reasonably should have known that the other person was incapable of consenting to the sexual act or knew that the other person was unconscious, incapacitated, or is engaged in the activity; or communicating unwillingness</td>
<td>(B) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if students enrolled in a public or private primary or secondary school are the primary participants in the activity; or (C) a school commits the felony offense of an Improper Relationship Between Educator and Student if the employee: (1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works; or (2) holds a position of teacher, teacher intern, teacher trainer, librarian, educational aide, administrator, educational diagnostician or school counselor and engages in sexual contact, sexual intercourse or deviate sexual intercourse with a person the employer knows is: (i) enrolled in a public or private primary or secondary school, other than a school described in (1) above; or (ii) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if students enrolled in a public or private primary or secondary school are the primary participants in the activity; or (iii) engages in online solicitation of a minor (under Texas Code Ann. §33.021) with a person described in (1) above, or a person the employer knows is a person described in (2)(A) or (2)(B), regarding the age of that person. Texas Code Ann. §22.011(e)(1).</td>
</tr>
<tr>
<td>Utah</td>
<td>Yes, a sexual offense is considered to occur without the consent of the victim if the actor intentionally imparted the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge.</td>
<td>Note that in Tennessee, the spouse of the defendant can be a &quot;victim&quot; under the rape and sexual battery provisions of code. Tenn. Code Ann. §39-13-501(8).</td>
</tr>
<tr>
<td>Vermont</td>
<td>Yes, a sexual offense is considered to occur without the consent of the other person if the other person knows or reasonably should have known that the sexual act or foul play was not consensual.</td>
<td>A correctional employee, contractor, or other person providing services to others is considered to have committed the felony offense of an Improper Relationship Between Educator and Student if the employee: (1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is an employee, contractor, or other person who the employee, contractor, or other person has not expressly consented to the use of their body material from that donor; or (2) holds a position of teacher, teacher intern, teacher trainer, librarian, educational aide, administrator, educational diagnostician or school counselor and engages in sexual contact, sexual intercourse or deviate sexual intercourse with a person the employer knows is: (i) enrolled in a public or private primary or secondary school, other than a school described in (1) above; or (ii) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if students enrolled in a public or private primary or secondary school are the primary participants in the activity; or (iii) engages in online solicitation of a minor (under Texas Code Ann. §33.021) with a person described in (1) above, or a person the employer knows is a person described in (2)(A) or (2)(B), regarding the age of that person. Texas Code Ann. §22.011(e)(1).</td>
</tr>
<tr>
<td>Utah</td>
<td>Yes, a sexual offense is considered to occur without the consent of the victim if the actor intentionally imparted the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge.</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. §39-13-501(8). Note that in Tennessee, the spouse of the defendant can be a &quot;victim&quot; under the rape and sexual battery provisions of code. Tenn. Code Ann. §39-13-501(7).</td>
</tr>
</tbody>
</table>

Note: The legal text provided is a summary and may not include all the details and nuances of the statutes. It is intended to provide an overview of the legal requirements and exceptions for each state regarding sexual offenses.
to engage in the conduct at issue; or (C) lacks the mental ability to make a decision about whether to engage in the conduct at issue. 13 Vermont Stat. Ann. §3252(i).}

Ann. §3252. No person shall engage in a sexual act with another person when the other person is incapable of consenting to the sexual act due to the use of alcohol, drugs, or other intoxicants and that condition is reasonably known or reasonably should be known by the minor. 13 Vermont Stat. Ann. §3252(a).

Ann. §3252. No person shall engage in a sexual act with a minor and the actor is at least 48 months older than the minor and the actor is in a position of power, authority or supervision over the minor by virtue of the actor's undertaking the responsibility of guidance professionally or voluntarily, to provide for the health or welfare of the minor, or guidance, instruction, or organized recreational activities for minors. 13 Vermont Stat. Ann. §3258.

A sexual assault occurs if a person engages in a sexual act with a child who is under the age of 18; (1) where the persons are married to each other and the sexual act is consensual or (2) where the person is less than 10 years old, the child is at least 18 years old, and the sexual act is consensual. Vermont Stat. Ann. §13-3252(c).

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

The term "position of authority" includes, but is not exclusive to, the following: an employer, principal, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, baby sitter, 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. § 1704(a).

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 resulting 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. § 1704(b).

A person is guilty of unlawful sexual contact in the first degree if they engage in sexual contact with a person who is under 16 years old and resides in the same household as the perpetrator, and force, intimidation or the perpetrator's position of authority over the victim is used to accomplish the sexual contact. 14 V.I.C. § 1704(c).

Yes. An accused is guilty of sexual battery if the sexual act is achieved (i) by an intoxicated, 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(b).

A sexual assault occurs if a person engages in a sexual act with a child who is under the age of 18 and is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild. Vermont Stat. Ann. §13-3252(d).

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

However, for married persons, consent can be a defense where a person engages in a sexual act with a child who is under 16 years old and the persons are married to each other and the sexual act is consensual. 13 Vermont Stat. Ann. §3252(f).

Yes. An accused is guilty of sexual battery if the sexual act is achieved (i) by an intoxicated, 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(c).

The term "sexual assault" means that conduct at issue. 13 Vermont Stat. Ann. §3252(f).
Wash. Rev. Code Ann. §§ 9A.44.030, 9A.44.050. Yes, a person who is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent, or if the person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct, that person is incapable of giving consent for sexual intercourse or sexual intrusion. W. Va. Code Ann. §§ 61-8B-1(3) & (4), 61-8B-2(c).

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

West Virginia


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

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


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


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

Yes, a person is deemed 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.

Yes, a person suffering from a mental illness or defect is presumed incapable of giving consent. Wis. Stat. Ann. § 940.22(4).

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

Yes, a person who is unconscious is presumed incapable of giving consent. Wis. Stat. Ann. § 940.22(4).

Yes, 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. § 940.22(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 employee of a home, community-based residential facility, a day treatment facility, a health care facility, 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 48.85(1)(v) and 50.065(1)(c) who has sexual contact or sexual intercourse with a client at the entity. Entity is defined under section 48.85(1)(v) to include a health care agency; foster home; intermediate care facility for the mentally retarded; board and care facility; (d) a correctional staff member who has sexual contact or sexual intercourse with an individual who is confined in a correctional institution; (e) a probation, parole, or extended supervision agent who has sexual intercourse or sexual contact with the individual on parole, probation, or extended supervision who is supervised by him or her or a subordinate; and
(f) a law enforcement officer and has sexual contact or sexual intercourse with any person who is detained by any law enforcement officer or is in the custody of any law enforcement officer. Wis. Stat. Ann. §§ 940.22; 90.225; 940.265.

Yes, if the victim is under the age of 16 years and the actor is in a position of authority over the victim and uses this position of authority to cause the victim to enter into any sexual conduct or to engage in sexual conduct with the victim, the actor is guilty of sexual abuse of a minor in various degrees.

Sexual abuse of a minor in the first 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 enter into any sexual conduct or to engage in sexual conduct with the victim; or
2. the actor inflicts sexual intrusion on a victim and the actor is in a position of authority and uses this position of authority to cause the victim to enter into any sexual conduct or to engage in sexual conduct with the victim; or
3. 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 and uses this position of authority to cause the victim to enter into any sexual conduct or to engage in sexual conduct with the victim may be guilty of sexual abuse of a minor in varying degrees:

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 descendant on a brother or sister of the whole or half-blood.
• Being 18 years of age or older, the actor inflicts sexual intrusion on a victim who is less than 16 years of age and the actor occupies a position of authority in relation to the victim.

Sexual abuse of a minor in the second degree if:
• An actor commits the crime of sexual abuse of a minor in the second degree if:
• Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 18 years of age and the actor occupies a position of authority over the victim.

Yes, any actor who inflicts sexual intrusion or sexual contact 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 apprising the nature of the victim’s conduct. Wyo. Stat. Ann. § 6-2-302.

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

Yes, a person who is unconscious is deemed to be “physically helpless” and not capable of giving consent. Wyo. Stat. Ann. § 6-2-302.


An actor commits the crime of sexual abuse of a minor in varying degrees:

Sexual abuse of a minor in the first degree if:
• Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 18 years of age and the actor occupies a position of authority over the victim.

Sexual abuse of a minor in the second degree if:
• An actor commits the crime of sexual abuse of a minor in the second degree if:
• Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 18 years of age and the actor occupies a position of authority over the victim.

Sexual abuse of a minor in the third degree if:
• 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 18 years of age and the actor occupies a position of authority over the victim.

Sexual abuse of a minor in the fourth degree if:
• An actor commits the crime of sexual abuse of a minor in the fourth degree if:
• Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 18 years of age and the actor occupies a position of authority over the victim.

Wisconsin

Yes, an employee of an adult family home, a community-based residential facility, a state treatment facility who has sexual contact or sexual intercourse with a patient or resident of the facility.

Position of authority

“position of authority” over the victim that will impact the victim’s ability to consent.

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 enter into any sexual conduct or to engage in sexual conduct with the victim; or
2. the actor inflicts sexual intrusion on a victim and the actor is in a position of authority and uses this position of authority to cause the victim to enter into any sexual conduct or to engage in sexual conduct with the victim; or
3. 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.

Wisconsin

Yes, a person suffering from a “mental illness or defect” is presumed incapable of giving consent. Wis. Stat. Ann. § 940.22(4).

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

Yes, an employee of an adult family home, a community-based residential facility, a state treatment facility who has sexual contact or sexual intercourse with a patient or resident of the facility.

Yes, an employee of certain “entities” as defined in 48.85(1)(v) and 50.065(1)(c) who has sexual contact or sexual intercourse with a client at the entity. Entity is defined under section 48.85(1)(v) to include a health care agency; foster home; intermediate care facility for the mentally retarded; board and care facility;
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.