Consent Laws
maine

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Defining Consent

Question	Answer

How is consent defined?	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.
	
	• "**Forcible compulsion**" means physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person. Arkansas Code § 5-14-101(3).
	• "**Mentally defective**" means that a person suffers from a mental disease or defect that renders the person:
	  • incapable of understanding the nature and consequences of a sexual act; or
	  • unaware a sexual act is occurring.
	  • Note: a determination that a person is mentally defective shall not be based solely on the person's IQ. Arkansas Code § 5-14-101(5).
	• "**Mentally incapacitated**" means that a person is temporarily incapable of appreciating or controlling the person's conduct as a result of the influence of a controlled or intoxicating substance:
	  • administered to the person without the person's consent; or
	  • that renders the person unaware a sexual act is occurring. Arkansas Code § 5-14-101(6).
	• "**Physically helpless**" means that a person is:
	  • unconscious;
	  • physically unable to communicate a lack of consent; or
	  • rendered unaware that a sexual act is occurring. Arkansas Code § 5-14-101(8).
	  • A nursing home patient was unable to communicate lack of consent and, thus, was "physically helpless" within meaning of statute for attempted rape purposes; victim was blind, unable to speak, and confined to bed or wheelchair, and victim could only grunt, raise her hand, and shake her head from side to side to communicate. *Dabney v. State*, 930 S.W.2d 360, 326 Ark. 382 (1996).
	• Note: When criminality of conduct depends on a victim's being incapable of consent because he or she is mentally defective or mentally incapacitated, it is an affirmative defense that the actor reasonably believed that the victim was capable of consent. Arkansas Code § 5-14-102(e).
	
	The existence of forcible compulsion in a rape case does not depend on the quantum of force that is applied but rather on whether the act is consummated against the victim's will. *Hillman v. State*, 569 S.W.3d 372 (Arkansas 2019).

How is consent defined?	Consent has been interpreted to mean “acquiescence or compliance [with the proposition of another].” *Ex parte Gordon*, 706 So. 2d 1160, 1163 (Ala. 1997). Lack of consent results from: 1. forcible compulsion; or 2. being incapable of consent. Ala. Code § 13A-6-70(b). In addition, “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.” Ala. Code § 13A-6-70(d). “**Forcible compulsion**” means use or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Factors to be considered in determining an implied threat include, but are not limited to, the respective ages and sizes of the victim and the accused; the respective mental and physical conditions of the victim and the accused; the atmosphere and physical setting in which the incident was alleged to have taken place; the extent to which the accused may have been in a position of authority, domination, or custodial control over the victim; or whether the victim was under duress. Forcible compulsion does not require proof of resistance by the victim. Ala. Code § 13A-6-60(1). Existence of forcible compulsion is conclusive presumptive evidence of lack of consent, but lack of consent can also exist without forcible compulsion. *Ex parte Gordon*, 706 So.2d 1160, 1163 (Ala.1997).
How is consent defined?	“**Without consent**” means that, under the totality of the circumstances surrounding the offense, there was not a freely given, reversible agreement specific to the conduct at issue; in this paragraph, “freely given” means agreement to cooperate in the act was positively expressed by word or action. Alaska Stat. § 11.41.470(10). The phrase “without consent” in statute refers to a particular type of unwanted sexual activity: unwanted sexual activity that is coerced by force or the threat of force. *Inga v. State*, 440 P.3d 345, 349 (Alaska Ct. App. 2019).
How is consent defined?	“**Without consent**” includes any of the following: 1. the victim is coerced by the immediate use or threatened use of force against a person or property; 2. the victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant (see definition of “mental defect” below); 3. the victim is intentionally deceived as to the nature of the act; or 4. the victim is intentionally deceived to erroneously believe that the person is the victim’s spouse. Arizona Revised Statute § 13-1401(A)(7).

How is consent defined?	"Consent" is defined to mean positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. California Penal Code § 261.6.
How is consent defined?	"Consent" means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship is not sufficient to constitute consent. Submission under the influence of fear does not constitute consent. Colorado Revised Statutes Annotated § 18-3-401(1.5).
How is consent defined?	Lack of consent results from forcible compulsion, incapacity to consent, or, if the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct. W. Va. Code Ann. § 61-8B-2(b). A person cannot consent to sexual intercourse if they are less than 16 years old; mentally defective; mentally incapacitated; physically helpless; or subject to incarceration, confinement or supervision by a state, county, or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact pursuant to § 61-8B-10 of this code. W. Va. Code Ann. § 61-8B-2(c).
How is consent defined?	"**Consent**" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. A person is presumed (but the presumption may be rebutted by competent evidence) incapable of consent to sexual contact or sexual intercourse in circumstances where: • (a) the person suffers from a mental illness or defect which impairs capacity to appraise personal conduct; or • (b) the person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. Wis. Stat. Ann. § 940.225(4).
How is consent defined?	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).
How is consent defined?	Consent means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the victim or that the victim failed to resist a particular sexual act. 9 G.C.A. § 25.10(a)(2). A person who is mentally incapacitated or physically helpless as defined by the Guam statute cannot consent to a sexual act. 9 G.C.A. § 25.10(a)(2)(A). Corroboration of the victim's testimony is not required to show lack of consent. 9 G.C.A. § 25.10 (a)(2)(B). A victim need not resist the actor for a proper prosecution. 9 G.C.A. § 25.45.

How is consent defined?	Consent is not specifically defined. However, there is no consent in circumstances when: • (a) a person's resistance is prevented by fear of immediate and great bodily harm (*Williams v. Virgin Islands*, No. CRIM. 2007-0008, 2011 WL 4072738 (V.I. Sept. 12, 2011)); or • (b) either force, intimidation, or abuse of a position of authority is used to accomplish a sexual act. *Francis v. People*, No. S.CT.CRIM. 2015-0002, 2015 WL 6460074 (V.I. Oct. 23, 2015); or • (c) the victim is 13, 14 or 15 years old even if force, intimidation or abuse of a position of authority was not used to accomplish the sexual act. *Francis v. People*, No. S.CT.CRIM. 2015-0002, 2015 WL 6460074 (V.I. Oct. 23, 2015).
How is consent defined?	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: • If the victim has not yet reached the age of sixteen (16) at the time of the event; • If due to mental disability or illness, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission; • If the victim has been compelled into the act by means of physical force, violence, intimidation or the threat of serious and immediate bodily harm; • If the victim's capability to consent has been annulled or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances; • When at the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused; • If the victim submits to the act by means of deception, trickery, simulation or cover up with respect to the identity of the person accused; • If the victim is forced or induced by means of abuse or physical or psychological violence into participating or becoming involved in unwanted sexual relations with third parties; • If the accused person is a relative of the victim, by ascendancy or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree; or • When the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or psychotherapeutic treatment, or any type of counseling, or because there is a relationship with the victim as the leader of his/her religious belief. Puerto Rico Stat. tit. 33 § 4770.
How is consent defined?	Tennessee does not provide a definition for consent, but it provides that rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances: • (1) Force or coercion is used to accomplish the act; • (2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or

	has reason to know at the time of the penetration that the victim did not consent; • (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, 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 • (4) The sexual penetration is accomplished by fraud. Tenn. Code Ann. §39-13-503. Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances: • (1) Force or coercion is used to accomplish the act; • (2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent; • (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or (4) The sexual contact is accomplished by fraud. For purposes of the crime of sexual battery a victim is incapable of consent if (1) the sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services described in (2); and (2) the defendant, whether licensed by the state or not, is a member of the clergy, healthcare professional, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Tenn. Code Ann. §39-13-505.
How is consent defined?	Under Texas law, sexual assault “without the consent” of the other person arises when: • (1) the actor compels the other person to submit or participate by the use of physical force, violence, or coercion; • (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat; • (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; • (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it; • (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring; • (6) the actor has intentionally impaired the other person’s power to appraise or control the other person’s conduct by administering any substance without the other person’s knowledge; • (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat; • (8) the actor is a public servant who coerces the other person to submit or participate;

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

Texas Penal Code Ann. §22.011(b).

For offenses committed after September 1, 2025:

(b) A sexual assault is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force, violence, or coercion;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor knows that the other person is intoxicated or impaired by any substance to the extent that the other person is incapable of consenting;

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;

(8) the actor is a public servant who coerces the other person to submit or participate;

	(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor; (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; (11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code; (12) the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor; (13) the actor is a coach or tutor who causes the other person to submit or participate by using the actor's power or influence to exploit the other person's dependency on the actor; or (14) the actor is a caregiver hired to assist the other person with activities of daily life and causes the other person to submit or participate by exploiting the other person's dependency on the actor. Texas Penal Code Ann. §22.011(b) (emphasis added for new language) “Consent” means assent in fact, whether express or apparent. Tex. Penal Code Ann. § 1.07(a)(11).

How is consent defined?	Under Utah law, sexual offenses “without consent” of the victim arise when:
	
	• (a) the victim expresses lack of consent through words or conduct;
	• (b) the actor overcomes the victim through the actual application of physical force or violence;
	• (c) the actor is able to overcome the victim through concealment or by the element of surprise;
	• (d)
	  • (i) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or
	  • (ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;
	  • (“to retaliate” includes threats of physical force, kidnapping, or extortion)
	• (e) the actor knows the victim is unconscious, unaware that the act is occurring, or is physically unable to resist;
	• (f) 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;
	• (g) the actor knows that the victim participates because the victim erroneously believes that the actor is someone else;

	• (h) the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge; • (i) the victim is younger than 14 years of age; • (j) 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; • (k) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (b) or (d) above; or • (l) the actor is a health professional or religious counselor, the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested. • Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent may be initially given but may be withdrawn through words or conduct at any time prior to or during sexual activity. Utah Code Ann. §76-5-406(2)-(3).
How is consent defined?	"**Consent**" means the affirmative, unambiguous, and voluntary agreement to engage in a sexual act, which can be revoked at any time. 13 Vermont Stat. Ann. §3251(3). "Incapable of consenting" means the person: (A) is incapable of understanding the nature of the conduct at issue; (B) is physically incapable of resisting, declining participation in, or communicating unwillingness to engage in the conduct at issue; or (C) lacks the mental ability to make or communicate a decision about whether to engage in the conduct at issue. 13 Vermont Stat. Ann. §3251(10). In addition, a sleeping or unconscious person cannot consent. *Id.* §3254(4). Additionally, a person will be deemed to have acted without the consent of the other person where the actor: • (A) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or lewd and lascivious conduct; • (B) knew or reasonably should have known that the other person was unaware that a sexual act or lewd and lascivious conduct was being committed; or • (C) knew or reasonably should have known that the other person was incapable of consenting to the sexual act or lewd and lascivious conduct with the actor because the person was substantially impaired by alcohol, drugs, or other intoxicants. Lack of consent may be shown without proof of resistance. Submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent. 13 Vermont Stat. Ann. §3254.

How is consent defined?	Virginia does not provide a definition for consent, but defines rape as sexual intercourse (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, and sexual battery as sexual abuse against the will of the complaining witness, by force, threat, intimidation or ruse. VA Code Ann. §§18.2-61; 18.2-67.4.
How is consent defined?	"Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. Wash. Rev. Code Ann. § 9A.44.010(2).
How is consent defined?	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.
How is consent defined?	Oregon does not specifically define "consent." However, a person is considered incapable of consenting to a sexual act if the person is: • (a) under 18 years of age; • (b)incapable of appraising the nature of the person's conduct; • (c) mentally incapacitated; or • (d) physically helpless. A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence. A person is incapable of appraising the nature of the person's conduct if: • (a) the person is unable to understand the nature of the conduct; • (b) the person is unable to understand the right to choose whether and how to engage in conduct, including the right to revoke a prior decision to engage in conduct; or • (c) the person is unable to communicate a decision to engage in conduct. Or. Rev. Stat. § 163.315.

How is consent defined?	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: • By forcible compulsion; • By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; • Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring; • Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance; or • Who suffers from a mental disability which renders the complainant incapable of consent. • 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. 18 Pa.C.S.A. § 3121; § 3123. "**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.
How is consent defined?	Rhode Island does not specifically define "consent." "**Force or coercion**" is defined and 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) Coerces the victim to submit by threatening to use force or violence on the victim and the victim reasonably believes that the accused has the present ability to execute these threats; or • (iv) Coerces the victim to submit by threatening to at some time in the future murder, inflict serious bodily injury upon or kidnap the victim or any other person and the victim reasonably believes that the accused has the ability to execute this threat. R.I. Gen Laws § 11-37-1(2).
How is consent defined?	South Carolina does not specifically define "consent." A person is guilty of criminal sexual conduct in the **first degree** if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven: • (a) The actor uses aggravated force to accomplish sexual battery; • (b) The 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, burglary, housebreaking, or any other similar offense or act; or • (c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any

	intoxicating substance. S.C. Code Ann. § 16-3-652. "**Aggravated force**" means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon. S.C. Code Ann. § 16-3-651(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 that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person. S.C. Code Ann. § 16-3-651(b). A person is guilty of criminal sexual conduct in the **third degree** if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven: • (a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances; or • (b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. S.C. Code Ann. § 16-3-654. "**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).
How is consent defined?	In 2023, South Dakota defined consent to mean "a person's positive cooperation in act or attitude pursuant to the person's exercise of free will." S. D. Code §22-22-1.5 (1). Prior to 2023, South Dakota did not provide a definition for consent, but it provided that no consent exists for an act of sexual penetration accomplished with any person under the following circumstances: • (1) If the victim is less than thirteen years of age; • (2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution;

	• (3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; • (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or • (5) If the victim is 13 years of age, but less than 16 years of age, and the perpetrator is at least 3 years older than the victim. S.D. Code §22-22-1. As of 2023, in addition to the five circumstances above, South Dakota also defines rape as an act of sexual penetration without the victim's consent and the perpetrator knows or reasonably should have known the victim is not consenting. S.D. Code §22-22-1. No person fifteen years of age or older may knowingly engage in sexual contact with another person other than his or her spouse who, although capable of consenting, has not consented to such contact. S.D. Code §22-22-7.4.
How is consent defined?	New Jersey's criminal code includes a generally applicable definition of consent as follows: 1. **In general**: The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense. 2. **Consent to bodily harm**: When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if: 1. The bodily harm consented to or threatened by the conduct consented to is not serious; or 2. The conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity of a kind not forbidden by law; or 3. The consent establishes a justification for the conduct under chapter 3 of the code. 3. **Ineffective Consent**: Unless otherwise provided by the code or by the law defining the offense, assent does not constitute consent if: 1. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or 2. It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known 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. N.J. Stat. Ann. § 2C:2-10.
How is consent defined?	New Mexico does not specifically define "consent." However, New Mexico defines "force or coercion" as: • (1) the use of physical force or physical violence; • (2) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats; • (3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the

	threats; • (4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or • (5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy. Physical or verbal resistance of the victim is not an element of force or coercion. New Mexico Statutes §30-9-10.
How is consent defined?	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 as defined in subdivision seven, eight or nine of section 130.25, or a crime formerly defined in subdivision three of section 130.40 (criminal sexual act in the 3rd degree), in addition to forcible compulsion, circumstances under which, at the time of the act of vaginal sexual contact, 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.
How is consent defined?	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. Morrison*, 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. Ricks*, 34 N.C. App. 734, 735, 239 S.E.2d 602, 603 (1977); *see also State v. Keane*, 235 N.C. App. 656, 7 (2014) ("Consent induced by violence or fear of violence is not effective to preclude a rape conviction."). A child under the age of 12 is presumed incapable of consent. *See State v. Summit*, 45 N.C. App. 481 (1980).

How is consent defined?	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 qualification to become a member or associate of any criminal street gang.
	
	The statute defines “**coercion**” in §12.1-20-02 as:
	
	• to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.
	
	Additionally, “gross sexual imposition” is a crime defined in § 12.1-20-03 as:
	
	• A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
	  • That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
	  • That person or someone with that person’s knowledge has substantially impaired the victim’s power to appraise or control the victim’s conduct by administering or employing without the victim’s knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;
	  • That person knows or has reasonable cause to believe that the victim is unaware that a sexual act is being committed upon him or her;
	  • That victim is less than fifteen years old; or
	  • That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.

How is consent defined?	Ohio does not specifically define “consent.” However, submission to sexual conduct as a result of fear may be sufficient in proving lack of consent as physical force or threat of physical force need not be shown to prove rape, merely the overcoming of the victim's will by fear or duress. In re Adams (Ohio Ct.Cl. 1990) 61 Ohio Misc.2d 571, 575, 580 N.E.2d 861, 863.
How is consent defined?	Not defined.
How is consent defined?	Consent is not specifically defined. However, Missouri law provides that rape in the first degree is committed if the offender has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim’s knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making

	an informed consent to sexual intercourse. Mo. Rev. Stat. § 566.030.

How is consent defined?	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 accused in the conduct at issue does not constitute consent; and
	• Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.
	
	The victim is incapable of consent because the victim is:
	• mentally disordered or incapacitated;
	• physically helpless;
	• overcome by deception, coercion, or surprise;
	• less than 16 years old;
	• 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;
	  • this does not apply if the individuals are married to each other, and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.
	• receiving services from a youth care facility, and the perpetrator:
	  • has supervisory or disciplinary authority over the victim or is providing treatment to the victim; andemployee, contractor, or volunteer of the youth care facility; or
	  • is an employee, contractor, or volunteer of the youth care facility; or
	  • (This does not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community based service.)
	
	• admitted to a mental health facility, a community-based facility or a residential facility, or is receiving community-based services and the perpetrator:
	  • has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
	  • is an employee, contractor or volunteer of the facility or community-based service.
	  • (This does not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community based service.)
	• a program participant in a private alternative adolescent resident or outdoor program and the perpetrator

	is a worker affiliated with the program: • (This does not apply if the individuals are married to each other and one of the individuals involved is a program participant and the other individual is a worker affiliated with the program.) • a client receiving psychotherapy services and the perpetrator: • Is providing or purporting to provide psychotherapy services to the victim; or • Is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim; • (This does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client.) • a student of an elementary, middle, junior high or high school, whether public or nonpublic, and the perpetrator is not a student of an elementary, middle, junior high or high school and is an employee, contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other authority over the student in a school setting: • (This does not apply if the individuals are married to each other.) • a 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; • (This does not apply if the individuals are married to each other.) • a parent or guardian involved in a child abuse or neglect proceeding and the perpetrator is: • Employed by the department of public health and human services for the purposes of carrying out the department's duties and • Directly involved in the parent or guardian's case or involved in the supervision of the case. Mont. Code Ann. § 45-5-501(1).
How is consent defined?	Consent itself is not defined, however "**without consent**" means: • (a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor; • (b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and • (c) A victim need not resist verbally or physically where it would be useless or futile to do so. Neb. Rev. Stat. §28-318(8).
How is consent defined?	Consent is not defined by statute. However, it is an element of the crime of sexual assault that the crime was committed against the will of the victim. Nev. Rev. Stat. Ann. § 200.366.
How is consent defined?	The term consent is not defined by statute.

How is consent defined?	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 is a person with a disability; • (7) when the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape; • (8) when the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim; • (9) when the victim is incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity; • (10) when the victim, through unsoundness of mind, is temporarily or permanently incapable of understanding the nature of the act and the offender knew or should have known of the victim's incapacity; • (11) when the victim submits under the belief that the person committing the act is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the offender. LSA-R.S. 14:42, LSA-R.S. 14:42.1, LSA-R.S. 14:43, LSA-R.S. 14:43.1. Further, a person is deemed incapable of consent when the person is under arrest or otherwise in the actual custody of a police officer or other law enforcement official and the offender is a police officer or other law enforcement official who either: (1) arrested the person or was responsible for maintaining the person in actual custody; (2) knows or reasonably should know that the person is under arrest or otherwise in actual custody. LSA-R.S. 14:41.1.
How is consent defined?	"Consent" means a word or action by a person that indicates a freely given agreement. 17-A MRSA § 251.
How is consent defined?	"Consent" means the clear and voluntary agreement by an individual to engage in vaginal intercourse, a sexual act, or sexual contact. MD Code, Criminal Law, § 3-301.1. Prior to October 2024, consent was not specifically defined. In addition: (1) the existence of consent, lack of consent, or withdrawal of consent shall be determined based on a totality of the circumstances, including the words and conduct of the victim and the defendant;

(2) consent may be withdrawn before or during vaginal intercourse, a sexual act, or sexual contact;

(3) the lack of consent may be communicated through words or conduct;

(4) a current or previous dating, social, or sexual relationship by itself does not constitute consent;

(5) submission as a result of fear, threat, or coercion does not constitute consent if the individual alleged to have performed the act in violation of this subtitle knows or reasonably should know that the victim would submit as a result of fear, threat, or coercion; and

(6) the manner of dress of an individual does not constitute consent.

MD Code, Criminal Law, § 3-301.1.

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.

*§ 3-304 was amended in October 2024 so that a sex crime (rape in the second decree) occurs whether or not there is force or threat of force if it is done without the consent of the other.

Evidence of physical resistance by the victim is not required. MD Code, Criminal Law, § 3-319.1

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

(1) appraising the nature of the individual’s conduct; or

(2) resisting vaginal intercourse, a sexual act, or sexual contact. MD Code, Criminal Law, § 3-301.

“**Physically helpless individual**” means an individual who:

(1) is unconscious; or

(2)

(i) does not consent to vaginal intercourse, a sexual act, or sexual contact; and

(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;

(2) resisting vaginal intercourse, a sexual act, or sexual contact; or

(3) communicating unwillingness to submit to vaginal intercourse, a sexual act, or sexual contact. MD Code, Criminal Law, § 3-301.

Maryland law also provides that a person may not engage in sexual contact with another:

(1) if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or

(2) if the victim is under the age of 14 years, and the person performing the sexual contact 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. *Travis v. State*, 218 Md. App. 410, 428, 98 A.3d 281, 291 (2014).

It is well settled that the terms "against the will" and "without the consent" are synonymous in the law of rape. *State v. Rusk*, 289 Md. 230, 241, 424 A.2d 720, 725 (1981).

Given the fact that consent must precede penetration, it follows in our view that although a woman may have consented to a sexual encounter, even to intercourse, if that consent is withdrawn prior to the act of penetration, then it cannot be said that she has consented to sexual intercourse. On the other hand, ordinarily if she consents prior to penetration and withdraws the consent following penetration, there is no rape. *Battle v. State*, 287 Md. 675, 684, 414 A.2d 1266, 1270 (1980).

How is consent defined?	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.
How is consent defined?	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.
How is consent defined?	"**Consent**" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act. Further: • A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act. • Corroboration of the victim’s testimony is not required to show lack of consent. Minn. Stat. § 609.341(4).
How is consent defined?	Consent is not specifically defined. However, Idaho law references consent in its definition of certain circumstances that constitute “rape”. Rape is defined as “the penetration, however slight, of the oral, anal or vaginal opening with a penis” accomplished under any one of the following circumstances: • the victim is under the age of sixteen and the perpetrator is eighteen years of age or older, and the victim is not lawfully married to the perpetrator; • the victim is sixteen or seventeen years of age and the perpetrator is three years or more older than the victim, and the victim is not lawfully married to the perpetrator; • **the victim is incapable, through any unsoundness of mind, due to any cause, including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent**; • the victim resists but the resistance is overcome by force or violence; • the victim is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution, **or is unable to resist due to any intoxicating, narcotic, or anesthetic substance**; • the victim is prevented from resistance due to an objectively reasonable belief that resistance would be futile or that resistance would result in force or violence beyond that necessary to accomplish the prohibited contact; • **the victim is at the time unconscious of the nature of the act (“unconscious of the nature of the act” means incapable of resisting because the victim was unconscious or asleep, or was not aware, knowing, perceiving, or cognizant that the act occurred**); • the victim submits under the belief that the person committing the act is the victim’s spouse or someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused with intent to induce such belief;

	• the victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to some person in the future, cause damage to property, engage in other conduct constituting a crime, accuse any person of a crime or cause criminal charges to be instituted against the victim, or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule. Idaho Statutes § 18-6101.
How is consent defined?	"**Consent**" means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent. 720 ILCS 5/11-0.1. A person who initially consents to sexual penetration or sexual conduct is not deemed to have consented to any sexual penetration or sexual conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct. 720 ILCS 5/11-1.70. "The focus is on what the defendant knew or reasonably should have known regarding the victim's willingness or ability to give knowing consent." *People v. Roldan*, 2015 IL App (1st) 131962, ¶ 19. "**Unable to give knowing consent**" includes when the accused administers any intoxicating or anesthetic substance, or any controlled substance causing the victim to become unconscious of the nature of the act and this condition was known, or reasonably should have been known by the accused. "Unable to give knowing consent" also includes when the victim has taken an intoxicating substance or any controlled substance causing the victim to become unconscious of the nature of the act, and this condition was known or reasonably should have been known by the accused, but the accused did not provide or administer the intoxicating substance. As used in this paragraph, "**unconscious of the nature of the act**" means incapable of resisting because the victim meets any one of the following conditions: 1. was unconscious or asleep; 2. was not aware, knowing, perceiving, or cognizant that the act occurred; 3. was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact; or 4. 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. 720 ILCS 5/11-0.1. A victim is **presumed "unable to give knowing consent"** when the victim: 1. is committed to the care and custody or supervision of the Illinois Department of Corrections (IDOC) and the accused is an employee or volunteer who is not married to the victim who knows or reasonably should know that the victim is committed to the care and custody or supervision of such department; 2. is committed to or placed with the Department of Children and Family Services (DCFS) and in residential care, and the accused employee is not married to the victim, and knows or reasonably should know that

	the victim is committed to or placed with DCFS and in residential care; 3. is a client or patient and the accused is a health care provider or mental health care provider and the sexual conduct or sexual penetration occurs during a treatment session, consultation, interview, or examination; 4. is a resident or inpatient of a residential facility and the accused is an employee of the facility who is not married to such resident or inpatient who provides direct care services, case management services, medical or other clinical services, habilitative services or direct supervision of the residents in the facility in which the resident resides; or an officer or other employee, consultant, contractor or volunteer of the residential facility, who knows or reasonably should know that the person is a resident of such facility; or 5. is detained or otherwise in the custody of a police officer, peace officer, or other law enforcement official who: (i) is detaining or maintaining custody of such person; or (ii) knows, or reasonably should know, that at the time of the offense, such person was detained or in custody and the police officer, peace officer, or other law enforcement official is not married to such detainee. 720 ILCS 5/11-0.1.
How is consent defined?	Consent is not specifically defined under the current law. However, Indiana law provides that a person commits a sex crime if: (1) the victim is compelled by force or imminent threat of force; (2) the victim is unaware that the sexual intercourse or other sexual conduct is occurring; (3) the victim is so mentally disabled or deficient that consent to sexual intercourse or other sexual conduct cannot be given; or (4) the person disregarded the victim's attempts to physically, verbally, or by other visible conduct refuse the person's acts. IC §§ 35-42-4-1; 35-42-4-8. Capacity to consent presupposes an intelligence capable of understanding the act, its nature, and possible consequences. *Stafford v. State*, 455 N.E.2d 402, 406 (Ind. Ct. App. 1983). Consent of a woman from fear of personal violence is void. *Parrett v. State*, 200 Ind. 7, 159 N.E. 755, 760 (1928).
How is consent defined?	Consent is not specifically defined. However, Iowa law defines "sexual abuse" as any sex act between persons where: • the sexual act is done by force or against the will of the other (if the consent or acquiescence of the victim is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other); or • the victim is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters; or • the other person is a child. 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. § 709.5.
How is consent defined?	Consent is not specifically defined. However, Kansas law provides that a person commits rape when a person knowingly engages in sexual intercourse with a victim who does not consent under any of the following circumstances: • (1) the victim is overcome by force or fear; • (2) the victim is unconscious or physically powerless; • (3) the victim is incapable of giving consent because of mental deficiency or disease, or because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender; • (4) the victim is under the age of 14; • (5) the victim's consent was obtained through a knowing misrepresentation that the sexual intercourse was a medically or therapeutically necessary procedure; or • (6) the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority. K.S.A. 21-5503. See also: The test for consent under that provision is whether the individual understands the nature and consequences of the proposed act. *State v. Ice*, 27 Kan. App. 2d 1, 4, 997 P.2d 737, 740 (2000). The Kansas rape statute does not require proof that the defendant intended to have nonconsensual intercourse. The statute requires proof that the defendant had sexual intercourse without the victim's consent when the victim was overcome by force or fear. *State v. Plunkett*, 261 Kan. 1024, 1030–31, 934 P.2d 113, 118 (1997). If an individual can comprehend the sexual nature of the proposed act, can understand he or she has the right to refuse to participate, and possesses a rudimentary grasp of the possible results arising from participation in the act, he or she has the capacity to consent. *State v. Ice*, 27 Kan. App. 2d 1, 5, 997 P.2d 737, 740 (2000). A person may be convicted of rape if intercourse begins consensually but consent is withdrawn after penetration, that withdrawal is communicated to the defendant, and the intercourse continues by force or fear. *State v. Flynn*, 299 Kan. 1052, 1053, 329 P.3d 429, 430 (2014). The "force" required to sustain a rape conviction in this state does not require that a rape victim resist to the point of becoming the victim of other crimes such as battery or aggravated assault. The Kansas rape statute does not require the State to prove that a rape victim told the offender she did not consent, physically resisted the offender, and then endured sexual intercourse against her will. It does not require that a victim be physically overcome by force in the form of a beating or physical restraint. It requires only a finding that she did not give her consent and that the victim was overcome by force or fear to facilitate the sexual intercourse.

	State v. Borthwick, 255 Kan. 899, 914, 880 P.2d 1261, 1271 (Kan. 1994).
How is consent defined?	"**Lack of consent**" results from: • (1) forcible compulsion; • (2) incapacity to consent; or • (3) if the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct. KRS § 510.020. A person is also "**deemed incapable of consent**" when he or she is • (1) less than 16 years old; • (2) 16 or 17 years old and the actor is at least 10 years older than the victim at the time of the sexual act; • (3) an individual unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to an intellectual disability or a mental illness; • (4) mentally incapacitated; • (5) physically helpless; or • (6) under the care or custody of state or local agency pursuant to court order and the actor is employed or working on behalf of the state or local agency, except where the persons are lawfully married to each other and there is no court order in effect prohibiting contact between the parties. KRS § 510.020. "**Mental illness**" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association. KRS § 510.010. "**Individual with an intellectual disability**" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. KRS § 510.010. "**Mentally incapacitated**" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of an intoxicating substance administered to him or her without his or her consent or as a result of any other act committed upon him without his or her consent. KRS § 510.010. "**Physically helpless**" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to act as well as a person who has been rendered unconscious or for any other reason is physically unable to communicate an unwillingness to an act as a result of the influence of a controlled substance or legend drug. KRS § 510.010. Actual physical force is not needed to prove forcible compulsion and in determining whether a victim submitted because of an implied threat which placed him or her in fear, a subjective rather than an objective standard must be applied. Yarnell v. Com. 833 S.W.2d 834, 836 (KY. 1992).

How is consent defined?	Lack of consent to sexual activity exists where: 1. the accused compels the victim to engage in sexual activity by the use or threat of force against the victim or against a third person, which reasonably causes the victim to fear physical injury to himself or herself or a third person; 2. the victim is mentally incapacitated or impaired because of mental disability or disease to the extent that the person is unable to consent to sexual activity; or 3. the victim is physically helpless. Connecticut General Statutes Annotated §§ 53a-65; 53a-70; 53a-71; 53a-72a; 53a-73a. "**Mentally incapacitated**" means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent. Connecticut General Statutes Annotated § 53a-65(5). "**Impaired because of mental disability or disease**" means that a person suffers from a mental disability or disease which renders such person incapable of appraising the nature of such person's conduct. Connecticut General Statutes Annotated § 53a-65(4). "**Physically helpless**" means that a person is unconscious or for any other reason is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact. Connecticut General Statutes Annotated § 53a-65(6).
How is consent defined?	"**Without consent**" means any of the following: • The defendant compelled the victim to submit by an act of coercion or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. The victim need resist only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant, unless such resistance would be futile or foolhardy. • The defendant knew the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed. • The defendant knew the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting. • Where the defendant is a health professional, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. • The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.

	Note: “health professional” includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists. Note: “cognitive disability” means a developmental disability that substantially impairs an individual's cognitive abilities including, but not limited to, delirium, dementia and other organic brain disorders for which there is an identifiable pathologic condition, as well as nonorganic brain disorders commonly called functional disorders. “Cognitive disability” also includes conditions of mental retardation, severe cerebral palsy, and any other condition found to be closely related to mental retardation because such condition results in the impairment of general intellectual functioning or adaptive behavior similar to that of persons who have been diagnosed with mental retardation, or such condition requires treatment and services similar to those required for persons who have been diagnosed with mental retardation. 11 Delaware Code § 761.
How is consent defined?	“**Consent**” means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent. D.C. Code § 22-3001(4). “Force” means the use or threatened use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim. D.C. Code § 22-3001(5).
How is consent defined?	“**Consent**” means intelligent, knowing, and voluntary consent and does not include coerced submission. “Consent” shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender. Florida Statutes § 794.011(1)(a).
How is consent defined?	The State of Georgia does not define consent in reference to sexual activity. The offense of rape occurs when it is against “a female forcibly and against her will” or “a female who is less than ten years of age”. Georgia Code § 16-6-1. The phrase “against her will” means without consent. *Wightman v. State*, 289 Ga.App. 225, 656 S.E.2d 563 (2008).
How is consent defined?	Consent is not defined by statute. However, Hawaii law provides that a person commits a sex crime if: • the person knowingly subjects another person to a sexual act by compulsion; or • the person knowingly subjects to a sexual act another person who is mentally defective, mentally incapacitated, or physically helpless. HRS §§ 707-730; 707-731; 707-732. “**Compulsion**” means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss. HRS § 707-700.

	"**Mentally defective**" means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct. HRS § 707-700. "**Mentally incapacitated**" means a person rendered temporarily incapable of appraising or controlling the person's conduct as a result of the influence of a substance administered to the person without the person's consent. HRS § 707-700. "**Physically helpless**" means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act. HRS § 707-700. See also: "**Consent signifies voluntary agreement or concurrenc**e . . . [c]onsent may be express or implied." *State v. Adams*, 10 Haw. App. 593, 605, 880 P.2d 226, 234 (1994). Evidence that victim rebuffed offender's sexual advances by repeatedly telling offender to stop, attempting to pull way, and telling offender that she did not want to be touched was sufficient to establish absence of consent. *State v. Jackson*, 81 Haw. 39, 46, 912 P.2d 71, 78 (1996).
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No. Ala. Code § 13A-6-70.
Does the definition require "freely given consent" or "affirmative consent"?	Yes. Alaska Stat. § 11.41.470(10).
Does the definition require "freely given consent" or "affirmative	No.

consent"?	
Does the definition require "freely given consent" or "affirmative consent"?	Yes. California Penal Code § 261.6.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	Yes, consent must be “freely given.” Wis. Stat. Ann. § 940.225(4).
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	Yes – “consent” 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).

Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No, consent is not defined.
Does the definition require "freely given consent" or "affirmative consent"?	For acts occurring after September 1, 2025, “consent” means assent in fact, whether express or apparent. Tex. Penal Code Ann. § 1.07(a)(11).
Does the definition require "freely given consent" or "affirmative consent"?	No. “[T]he 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).
Does the definition require "freely given consent" or "affirmative consent"?	Yes.

Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	Yes. Wash. Rev. Code Ann. § 9A.44.010(2). A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person where the victim did not consent to sexual intercourse with the perpetrator or where there is a threat of substantial unlawful harm to property rights of the victim. Wash. Rev. Code Ann. § 9A.44.060(1). “Consent” means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. Wash. Rev. Code Ann. § 9A.44.010(2).
Does the definition require "freely given consent" or "affirmative consent"?	Yes. The term “consent” means the affirmative, unambiguous and voluntary agreement to engage in a specific sexual activity during a sexual encounter which can be revoked at any time. Okla. Stat. tit. 21, § 113.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	N/A.

Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No, but “positive cooperation” is required. In 2023, South Dakota defined consent to mean “a person’s positive cooperation in act or attitude pursuant to the person’s exercise of free will.” S. D. Code §22-22-1.5 (1).
Does the definition require "freely given consent" or "affirmative consent"?	In order to establish effective consent by the putative victim of a sexual assault, a defendant must demonstrate the presence of “affirmative and freely-given permission....” *State v. Cuni*, 733 A.2d 414, 424, 159 N.J. 584, 603 (1999).
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No.

Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	Not specified.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	Yes, consent is defined to mean words or overt actions indicating a '"freely given agreement" to have sexual intercourse or contact. Mont. Code Ann. § 45-5-501(1)(a). In addition, resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent. Mont. Code Ann. § 45-5-511(5).
Does the definition require "freely given consent" or "affirmative consent"?	No. Neb. Rev. Stat. §28-318.

Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	Yes, for some crimes. A person commits aggravated felonious sexual assault if he or she engages in sexual penetration with a person that indicates by speech or conduct that there is not freely given consent to performance of the sexual act. N.H. Rev. Stat. Ann. § 632-A:2(I)(m).
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	Yes. “Consent” means a word or action by a person that indicates a freely given agreement. 17-A MRSA § 251.
Does the definition require "freely given consent" or "affirmative consent"?	No. “Consent” means the clear and voluntary agreement by an individual to engage in vaginal intercourse, a sexual act, or sexual contact. MD Code, Criminal Law, § 3-301.1.
Does the definition require "freely given consent" or "affirmative consent"?	Not specified.

Does the definition require "freely given consent" or "affirmative consent"?	Not specified.
Does the definition require "freely given consent" or "affirmative consent"?	Yes, the definition requires words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	Yes, it requires “freely given agreement” to the act of sexual penetration or sexual conduct in question. 720 ILCS 5/11-0.1.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No.

Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	Yes. Consent to the sexual act or contact in question must be freely given agreement. D.C. Code § 22-3001(4).
Does the definition require "freely given consent" or "affirmative consent"?	Yes – the statute requires that consent be “voluntary”. Florida Statutes § 794.011(1)(a).

Does the definition require "freely given consent" or "affirmative consent"?	No.
Does the definition require "freely given consent" or "affirmative consent"?	Not in statute, though please see *State v. Adams* above for more information.

Capacity to Consent

Question	Answer
At what age is a person able to consent?	Generally, 16 years old, subject to various close-in-age exemptions (see below). Arkansas Code § 5-14-127(a)(1).
At what age is a person able to consent?	16 years old, subject to a close in age exception. Ala. Code § 13A-6-70(c).
At what age is a person able to consent?	• 16 years old, subject to certain close-in-age and “position of authority” exceptions (described below). Alaska Stat. §§ 11.41.436, 11.41.438.
At what age is a person able to consent?	18 years old; or 15 years old if the defendant is under 19 years old or attending high school and is no more than two years older than the victim. Arizona Revised Statute § 13-1405(A), 13-1407(E).
At what age is a person able to consent?	18 years old. California Penal Code § 261.5.
At what age is a person able to consent?	17 years old, subject to certain close-in-age exemptions (described below). Colorado Revised Statutes Annotated § 18-3-402(1)(d)-(e).

At what age is a person able to consent?	16 years old. W. Va. Code Ann. §§ 61-8B-2, 61-8B-9.
At what age is a person able to consent?	18 years old. Wis. Stat. Ann. § 948.01(1). Wis. Stat. Ann. § 948.09.
At what age is a person able to consent?	17 years old. Wyo. Stat. Ann. § 6-2-316.
At what age is a person able to consent?	16 years old. 9 G.C.A. §§ 25.15; 25.20; 25.25.
At what age is a person able to consent?	18 years old, unless legally married. 14 V.I.C. § 1702.
At what age is a person able to consent?	16 years old. Puerto Rico Stat. tit. 33 § 4770(a).
At what age is a person able to consent?	18 years old. Tenn. Code Ann. §39-13-528.
At what age is a person able to consent?	17 years old. Texas Penal Code Ann. §22.011(a) & (c); Texas Penal Code Ann. §21.11.
At what age is a person able to consent?	18 years old. Utah Code Ann. §76-5-406.
At what age is a person able to consent?	16 years old. 13 Vermont Stat. Ann. §3252.
At what age is a person able to consent?	15 years old. VA Code Ann. §18.2-63.
At what age is a person able to consent?	16 years old, however, there are exceptions for persons in positions of trust, such as school employees and foster parents. Wash. Rev. Code Ann. §§ 9A.44.093; 9A.44.096.

At what age is a person able to consent?	16 years old. Okla. Stat. tit. 21, § 1111(A)(1).
At what age is a person able to consent?	18 years old. Or. Rev. Stat. § 163.315. Additionally: • It is rape in the first degree to have sexual intercourse with a victim under the age of 12 or if the victim is under the age of 16 and is the person's sibling, child, or spouse's child. Or. Rev. Stat. §§ 163.375(1)(b), (1)(c). • It is rape in the second degree to have sexual intercourse with a person under the age of 14. Or. Rev. Stat. § 163.365(1). • It is rape in the third degree to have sexual intercourse with another person under 16 years of age. Or. Rev. Stat. § 163.355(1). • It is sodomy in the first degree to engage in oral or anal sexual intercourse with a victim under the age of 12 or if the victim is under the age of 16 and is the person's sibling, child, or spouse's child. Or. Rev. Stat. §§ 163.405(1)(b), (1)(c). • It is sodomy in the second degree to engage in oral or anal sexual intercourse with a person under age 14. Or. Rev. Stat. § 163.395(1). • It is sodomy in the third degree to engage in oral or anal sexual intercourse with another person under 16 years of age. Or. Rev. Stat. § 163.385(1). • It is sexual abuse in the first degree to subject another person to sexual contact if the victim is less than 14 years of age or to intentionally cause a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person. Or. Rev. Stat. § 163.427(1)(a)(A), 1(b).
At what age is a person able to consent?	16 years old. 18 Pa.C.S.A. § 3122.1. Mistake of Age Defense – It is no defense that the defendant did not know the age of the child or reasonably believed the child to be the age of 14 years or older whenever criminality of conduct depends on a child being below the age of 14 years. However, when criminality depends on the child's being below a critical age older than 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. § 3102. A person commits the offense of rape of a child when the person engages in sexual intercourse with a complainant who is less than 13 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 13 years of age. 18 Pa.C.S.A. § 3123(b). It is aggravated 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), (c)(1). It is aggravated indecent assault of a child in the first degree if the complainant is less than 13 years of age and

	if: (1) the person does so without the complainant's consent; (2) the person does so by forcible compulsion; (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; (4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring; (5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance; or (6) the complainant suffers from a mental disability which renders him or her incapable of consent. 18 Pa.C.S.A. § 3125. It is deviate sexual intercourse in the first degree if the complainant is under 16 and the person is four or more years older than the complainant and the complainant and person are not married to one another. 18 Pa.C.S.A. § 3123(a)(7).
At what age is a person able to consent?	16 years old. R.I. Gen. Laws § 11-37-6.
At what age is a person able to consent?	16 years old. S.C. Code Ann. § 16-3-655.
At what age is a person able to consent?	16 years old. S.D. Code §§ 22-22-7; 22-22-7.3.
At what age is a person able to consent?	16 years old. N.J. Stat. Ann. § 2C:14-2(c)(3).
At what age is a person able to consent?	16 years old. New Mexico Statutes §30-9-11G(1). Sexual intercourse with a 16-year-old does not constitute criminal sexual penetration under statute defining such crime as an unlawful and intentional intercourse “perpetrated on a child thirteen to sixteen years of age.” State ex rel. Children, Youth and Families Dept. v. Paul P., Jr., 1999, 127 N.M. 492, 983 P.2d 1011.
At what age is a person able to consent?	17 years old. New York Penal Law §130.05.
At what age is a person able to consent?	16 years old. North Carolina General Statutes Annotated §14-27.25; §14-27.30.
At what age is a person able to consent?	Depending on the crime, either an “adult” or fifteen (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 (15) years old. § 12.1-20-03(1)(d). However, a minor between the ages of fifteen to eighteen may consent to activity with

	another person who is no more than three years older than the minor. § 12.1-20-01(3). *See also* § 12.1-20-03(1)(d), 05(1), & 07(1)(f). A person commits sexual assault if they knowingly have sexual contact with another person, or cause another person to have sexual contact with that person, if the other person is a minor, fifteen years of age or older, and the actor is an adult. § 12.1-20-07(1)(f). The NDCC 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. Klein*, 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.").
At what age is a person able to consent?	At age 16 a person can consent. No person who is eighteen years or older shall engage in sexual conduct with another person when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard. Ohio Rev. Code Ann. § 2907.04(A). However, there is an exception for married persons between the ages of thirteen and sixteen and for sexual conduct where the offender is less than reckless regarding their knowledge of the minor's age. *Id.* Ohio imposes strict liability with respect to the victim's age if: 1. A person engages in sexual conduct or sexual contact with another who is less than thirteen years of age, whether or not the offender knows the age of the other person. Ohio Rev. Code Ann. § 2907.02(A)(1)(b) (crime of rape applies for sexual conduct); 2907.05(A)(4) (crime of gross sexual imposition for sexual contact). 2. A person knowingly touches the genitalia of another, when the touching is not through clothing, the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, degrade, or arouse or gratify the sexual desire of any person. Ohio Rev. Code Ann. § 2907.05(B). *But see In re D.B.*, 2011-Ohio-2671, 129 Ohio St. 3d 104, 950 N.E.2d 528 (statutory rape provision, Ohio Rev. Code Ann. § 2907.02(A)(1)(b), as applied to child under the age of 13 who engages in sexual conduct with another child under the age of 13, is unconstitutionally vague).
At what age is a person able to consent?	16 years old, unless (i) the other person is in a position of trust or authority over the child, in which case the age of consent is 18 years old or (ii) the other person is 36 or fewer months older than the victim, in which case the age of consent is 14. Miss. Code Ann. § 97-3-95, Miss. Code Ann. § 97-3-65.
At what age is a person able to consent?	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 actor 21 years old or older having sexual intercourse with another person who is less than 17 years old. Mo. Rev. Stat. § 566.034 (statutory rape in the second degree).
At what age is a person able to consent?	16 years old. Mont. Code Ann. § 45-5-501(1)(b)(iv).
At what age is a person able to consent?	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)(c).

At what age is a person able to consent?	16 years old. Nev. Rev. Stat. Ann. § 200.366(3).
At what age is a person able to consent?	16 years old. N.H. Rev. Stat. Ann. § 632-A:3(II).
At what age is a person able to consent?	17 years old. LSA-R.S. 14:80.
At what age is a person able to consent?	16 years old. 17-A M.R.S.A. 254.
At what age is a person able to consent?	16 years old. MD Code, Criminal Law, § 3-308.
At what age is a person able to consent?	16 to 18 years old depending on the crime below. • Statutory rape is defined as sexual intercourse or unnatural sexual intercourse with a child under 16. Mass. Gen. Laws. Ann. ch. 265, § 23. • It is a crime to induce a person under 18 of chaste life to have unlawful sexual intercourse. Mass. Gen. Laws. Ann. ch. 272 §4. • A child under the age of 14 shall be deemed incapable of consent to contact of a sexual nature with a law enforcement officer while under detention. Mass. Gen. Laws. Ann. ch. 265, §13H 1/2.
At what age is a person able to consent?	16 years old, unless such person is employed at the victim's school in which case the age of consent is 18 years old. Mich. Comp. Laws. Ann. § 750.520b – e. (notably (d))
At what age is a person able to consent?	With respect to first or second degree criminal sexual misconduct: • If the younger party is under the age of 14, the older party must be no more than 36 months older. • If the younger party is 14 or 15 years old, the other person must be (i) no more than 36 months older and (ii) in a current or recent position of authority over the younger party. • 16 years old, unless the actor is in a current or recent position of authority or has a significant relationship with the victim in which case the age of consent is 18 years old. Minn. Stat. § 609.342–345. With respect to third or fourth degree criminal sexual misconduct: • If the younger party is under the age of 14, the older party must be no more than 36 months older. • 16 years old, unless the actor is in a current or recent position of authority or has a significant relationship with the victim in which case the age of consent is 18 years old.

	"**Current or recent position of authority**" includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of or within 120 days immediately preceding the act. This includes a psychotherapist. Minn. Stat. § 609.341(10). "**Significant relationship**" means a situation in which the actor is: (1) the complainant's parent, stepparent, or guardian; (2) any of the following persons related to the complainant by blood, marriage, or adoption: 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 who is not the complainant's spouse; or (4) an adult who is or was involved in a significant romantic or sexual relationship with the parent of a complainant. Minn. Stat. § 609.341(15).
At what age is a person able to consent?	18 years old. Idaho Statutes §§ 18-6101.
At what age is a person able to consent?	17 years old. 720 ILCS 5/11-1.60. 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.
At what age is a person able to consent?	16 years old. IC §§ 35-42-4-9.
At what age is a person able to consent?	16 years old. I.C.A. § 709.4.
At what age is a person able to consent?	16 years old. K.S.A. 21-5505; 5506; 5507*. ***Note:** KSA 21-5507 was held to violate the equal protection provisions of the Fourteenth Amendment to the United States Constitution and§ 1 of the Kansas Constitution Bill of Rights to the extent that it results in a punishment for unlawful voluntary sexual conduct between members of the opposite sex that is less harsh than the punishment for the same conduct between members of the same sex. The court struck the phrase "and are members of the opposite sex" from the statute. *State v. Limon*, 280 Kan. 275, 276, 122 P.3d 22, 24 (2005).
At what age is a person able to consent?	Generally, at age 16. 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 victim at the time of the sexual act. KRS § 510.020.

At what age is a person able to consent?	16 years old. Connecticut General Statutes Annotated § 53a-71.
At what age is a person able to consent?	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(a)(1)-(2). If the victim is at least 12 years old and the defendant is no more than 4 years older than the victim, it is an affirmative defense if the victim consented to the act “knowingly." 11 Delaware Code § 762(d). A person acts “knowingly” with respect to an element of an offense when: (1) If the element involves the nature of the person’s conduct or the attendant circumstances, the person is aware that the conduct is of that nature or that such circumstances exist; and (2) If the element involves a result of the person’s conduct, the person is aware that it is practically certain that the conduct will cause that result. 11 Delaware Code § 231(c).
At what age is a person able to consent?	16 years old. D.C. Code § 22-3001(3).
At what age is a person able to consent?	18 years old, subject to a close-in-age exception. Florida Statutes §§ 794.011; 794.05.
At what age is a person able to consent?	16 years old. Georgia Code § 16-6-3(a).
At what age is a person able to consent?	16 years old. HRS §§ 707-730; 707-731; 707-732.

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, the difference in age between the victim and actor in a prosecution of certain sexual offenses impacts whether the victim is capable of consenting to sexual activity:
	
	• Non-forcible Rape: A person under the age of fourteen (14) is incapable of consenting to engage in sexual intercourse or deviate sexual activity with a person more than three (3) years older than the victim. Arkansas Code § 5-14-103(a)(3).
	• Sexual Assault (2nd Degree):
	  • A person under the age of fourteen (14) is incapable of consenting to engage in sexual contact with a person eighteen (18) years of age or older. Arkansas Code § 5-14-125(a)(3).
	  • A person under twelve (12) years old is incapable of consenting to engage in sexual contact with a minor who is older by more than three (3) years. Arkansas Code § 5-14-125(a)(5)(B)(i).
	  • A person between the ages of twelve (12) and thirteen (13) years old is incapable of consenting to engage in sexual contact with a minor who is older by more than four (4) years. Arkansas Code § 5-14-125(a)(5)(B)(ii).
	• Sexual Assault (3rd Degree)

	• A person under fourteen (14) years old is incapable of consenting to engage in sexual intercourse or deviate sexual activity with a minor who is older by more than three (3) years. Arkansas Code § 5-14-126(a)(2). • Sexual Assault (4th Degree) • A person under the age of sixteen (16) is incapable of consenting to engage in sexual intercourse, deviate sexual activity or sexual contact with a person twenty (20) years of age or older who is not the person's spouse. Arkansas Code §§ 5-14-127(a)(1). However, certain age differences can be asserted by the actor as an affirmative defense that may negate any criminal liability of the actor in a prosecution for certain non-forcible rape or sexual assault in the first through third degree. Arkansas Code §§ 5-14-103(a)(3)(B) & (a)(4)(B), 5-14-124(c), 5-14-125(a)(5)(B), 5-14-126(a)(2)(B). In certain cases, it is also an affirmative defense that the actor reasonably believed the child to be of the critical age or above. Arkansas Code § 5-14-102.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes – there is an exemption for consensual sexual intercourse or sodomy between a minor who is at least 12 years of age, but less than 16 years of age, and a defendant who is less than two years older than the younger minor. Ala. Code § 13A-6-62, and §13A-6-64. Where the victim is a child and the actor is an adult, courts may also apply a different standard when determining whether forcible compulsion is present. *C.M. v. State*, 889 So.2d 57, 63-64 (Ala.Crim.App.2004). For sex crimes against children the force required to consummate the crime differs from the force required to consummate those crimes against a mature female.*Powe v. State*, 597 So.2d 721, 725 (Ala.1991), rehearing denied, on remand 597 So.2d 730.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes: • There are exceptions for consensual sexual contact between minors: (i) consensual sexual penetration or sexual contact between minors who are less than 4 years apart in age when both minors are at least 13 years old, or (ii) consensual sexual contact between a minor 12 years or younger and another minor who is younger than 16 and less than 3 years older than the younger minor. Alaska Stat. §§ 11.41.434, 11.41.436, 11.41.438, 11.41.440. • The following constitutes sexual abuse of a minor in the first degree: • A person 16 years or older (x) engaging in sexual penetration with a person who is under 13 years of age or (y) aiding, inducing, causing, or encouraging a person who is under 13 years of age to engage in sexual penetration with another person. Alaska Stat. § 11.41.434(a)(1); • A person 18 years of age or older engaging in sexual penetration with a person who is under 18 years of age and is the victim's natural parent, stepparent, adopted parent, or legal guardian. Alaska Stat. § 11.41.434(a)(2); and • A person 18 years of age or older engaging in sexual penetration with a person under 16 years of age that resides in the same household as the victim and has authority over the victim, or the offender occupies a position of authority in relation to the victim. Alaska Stat. § 11.41.434(a)(3); • Note: "**position of authority**" means one of the following, or a person in a substantially similar position:

	an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, babysitter, police officer, correctional employee, juvenile facility staff, staff member of a treatment institution, or juvenile or adult probation officer other than when the officer or staff member is exercising custodial control over a minor. Alaska Stat. § 11.41.470(6). In determining whether the position-of-authority element of first-degree sexual abuse of a minor has been proved, a jury may consider a broader list of authority figures and roles in its deliberation than that set forth in the statute defining "position of authority," but the figures and roles must be substantially similar, not slightly similar, to the list in the statute. *State v. Thompson*, 435 P.3d 947 (Alaska 2019).
	• The following constitutes sexual abuse of a minor in the second degree:
	  • A person 17 years of age or older engaging in sexual penetration with a person who is 13, 14, or 15 years of age and at least four years younger than the offender, or aids, induces, causes, or encourages a person who is 13, 14, or 15 years of age and at least four years younger than the offender to engage in sexual penetration with another person. Alaska Stat. § 11.41.436(a)(1).
	  • A person 18 years of age or older engaging in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim. Alaska Stat. § 11.41.436(a)(6).
	  • A person under 16 years of age engages in sexual penetration with a person who is under 13 years of age and at least three years younger than the offender. Alaska Stat. § 11.41.436(a)(7).
	• The following constitutes sexual abuse of a minor in the third degree:
	  • A person 17 years of age or older engaging in sexual contact with a person who is 13, 14, or 15 years of age and at least four years younger than the offender. Alaska Stat. § 11.41.438(a).
	• The following constitutes sexual abuse of a minor in the fourth degree:
	  • A person under 16 years of age engaging in sexual contact with a person who is under 13 years of age and at least three years younger than the offender. Alaska Stat. § 11.41.440(a)(1).
	  • A person 18 years of age or older engaging in sexual contact with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim. Alaska Stat. § 11.41.440(a)(2).

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, it is a defense to a prosecution for sexual conduct with a minor under section 13-1405, child enticement under section 13-1430, sexual exploitation of a minor under section 13-3553(A)(4), and aggravated luring of a minor for sexual exploitation under section 13-3560 if the victim is fifteen, sixteen or seventeen years of age, the defendant is under nineteen years of age or attending high school and is no more than twenty-four months older than the victim and the conduct is consensual. Arizona Revised Statute § 13-1407(E).
Does difference in age between the victim and actor impact the victim's ability to	No, but the punishments for unlawful sexual intercourse with a person under 18 years old, under section 261.5, and the commission of aggravated sexual assault of a child, under section 269, depend on the difference in age between the victim and actor. California Penal Code §§ 261.5; 269(a).

consent?	

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, there are exceptions providing that: (i) children under the age of 15 can consent to sex with a person within 4 years of his or her age, and (ii) persons 15 or 16 years of age can consent to sex with an individual within 10 years of their age:
	• The following constitutes Sexual Assault (Colorado Revised Statutes Annotated § 18-3-402(1)(d)-(e)):
	  • Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim if:
	  • At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim.
	  • At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim.
	• The following constitutes Sexual Assault on a Child (Colorado Revised Statutes Annotated § 18-3-405(1)):
	  • Any actor who knowingly subjects another person that is not his or her spouse to any sexual contact commits sexual assault on a child if the victim is less than fifteen years of age and the actor is at least four years older than the victim.

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, a person is guilty of sexual assault in the first degree if a person that is 14 or older engages in sexual intercourse or sexual intrusion with another person who is younger than 12 years old and is not married to that person. W. Va. Code Ann. § 61-8B-3. A person would be guilty of sexual assault in the third degree if that person is 16 or older and engages in sexual intercourse or sexual intrusion with another person who is less than 16 years old and who is at least 4 years younger than the defendant. W. Va. Code Ann. § 61-8B-5. A person would be guilty of sexual abuse in the first degree if the person is 14 or older and subjects another person who is younger than 12 years old to sexual contact. W. Va. Code Ann. § 61-8B-7. A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter’s consent, when such lack of consent is due to the victim’s incapacity to consent by reason of being less than 16 years old. It is a defense to a prosecution for sexual abuse in the third degree that the defendant was less than 16 years old or defendant was less than 4 years older than the victim. W. Va. Code Ann. § 61-8B-9.
Does difference in age between the victim and actor impact the victim's ability to consent?	Depending on the age difference between the victim and actor, may affect whether the actor is guilty of a misdemeanor instead of a felony. An actor who has sexual contact with a child who is 15 but less than 16, or an actor who has sexual intercourse with a child who has attained age 15, is guilty of a Class A misdemeanor if the actor is less than 19 years old at the time of the sexual contact or sexual intercourse. Wis. Stat. Ann. § 948.093. An actor who has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor if the defendant has attained the age of 19 years when the violation occurs. Wis. Stat. Ann. § 948.09.

Does difference in age between the victim and actor impact the victim's ability to consent?	Depending on the age difference between the victim and actor, the actor may be guilty of sexual abuse of a minor in varying degrees:
	• Sexual abuse of a minor in the first degree. Wyo. Stat. Ann. § 6-2-314.
	  • An actor commits the crime of sexual abuse of a minor in the first degree if:
	  • Being 16 years of age or older, the actor inflicts sexual intrusion on a victim who is less than 13 years of age;
	  • Being 18 years of age or older, the actor inflicts sexual intrusion on a victim who is less than 18 years of age, and the actor is the victim's legal guardian or an ancestor or descendant or a brother or sister of the whole or half-blood;
	  • Being 18 years of age or older, the actor inflicts sexual intrusion on a victim who is less than 16 years of age and the actor occupies a position of authority in relation to the victim.
	• Sexual abuse of a minor in the second degree. Wyo. Stat. Ann. § 6-2-315.
	  • An actor commits the crime of sexual abuse of a minor in the second degree if:
	  • Being 17 years of age or older, the actor inflicts sexual intrusion on a victim who is 13, 14 or 15 years of age, and the victim is at least 4 years younger than the actor;
	  • Being 16 years of age or older, the actor engages in sexual contact of a victim who is less than 13 years of age;
	  • Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 18 years of age and the actor is the victim's legal guardian, an ancestor or descendant or a brother or sister of the whole or half-blood; or
	  • Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 16 years of age and the actor occupies a position of authority in relation to the victim.
	• Sexual abuse of a minor in the third degree. Wyo. Stat. Ann. § 6-2-316.
	  • An actor commits the crime of sexual abuse of a minor in the third degree if:
	  • Being 17 years of age or older, the actor engages in sexual contact with a victim who is 13, 14 or 15 years of age, and the victim is at least 4 years younger than the actor;
	  • 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;
	  • Being less than 16 years of age, the actor inflicts sexual intrusion on a victim who is less than 13 years of age, and the victim is at least 3 years younger than the actor; or
	  • Being 17 years of age or older, the actor knowingly takes immodest, immoral or indecent liberties with a victim who is less than 17 years of age and the victim is at least 4 years younger than the actor.
	• Sexual abuse of a minor in the fourth degree. Wyo. Stat. Ann. § 6-2-317.
	  • An actor commits the crime of sexual abuse of a minor in the fourth degree if:
	  • Being less than 16 years of age, the actor engages in sexual contact with a victim who is less than 13 years of age, and the victim is at least 3 years younger than the actor; or
	  • 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. If criminality of conduct depends on a victim being under 16 years of age, it is an affirmative defense that the actor reasonably believed that the victim was 16 years of age or older. However, if the criminality of conduct depends on a victim being under 12 years of age or under 14 years old, it is no defense that the actor did not know the victim's age, or that he reasonably believed that the victim was 12 years or 14 years of age or older. Wyo. Stat. Ann. § 6-2-308.
Does difference in age between the victim and actor impact the victim's ability to consent?	No.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, if someone under 18 but over 16 years old has sexual intercourse or commits sodomy with a person who is 13-15 years of age, that person is guilty of rape in the third degree. 14 V.I.C. § 1703. If someone over 18 years old has sexual intercourse or commits sodomy with a person who is 16-17 years old, and the perpetrator is 5 years or more older than the victim, that person is guilty of rape in the second degree. 14 V.I.C. § 1702. If someone over 18 years old engages in sexual contact with a person who is 13-15, that person is guilty of unlawful sexual contact in the second degree. 14 V.I.C. § 1709.
Does difference in age between the victim and actor impact the victim's ability to consent?	If the victim has not yet reached the age of sixteen (16) at the time of the event, and the conduct is conducted by a minor who has not yet reached the age of eighteen (18), the offender shall incur a third degree felony if prosecuted as an adult (as opposed to a severe second degree felony). Puerto Rico Stat. tit. 33 § 4770. Further, when considering the circumstances of a crime of sexual assault, the point of view of a person of equal age and gender as the victim shall be taken into consideration. Puerto Rico Stat. tit. 33 § 4771.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. • Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim, when the victim is at least 15 years old but less than 18 years old and the defendant is at least 4 but not more than 5 years older than the victim. • Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when: (1) the victim is at least 13 years old but less than 15 years old and the defendant is at least 4 years but less than 10 years older than the victim; or (2) the victim is at least 15 but less than 18 years old and the defendant is more than 5 but less than 10 years older than the victim. • Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim, when the victim is at least 13 years old but less than 18 years old and the

	defendant is at least 10 years older than the victim. • Rape of a child is the unlawful sexual penetration of a victim by the defendant, or of the defendant by a victim, if the victim is more than eight years of age but less than 13 years of age. Tenn. Code Ann. §§39-13-506; 39-13-522.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, it is an affirmative defense if the victim was a child of 14 years of age or older and the actor was not more than 3 years older than the victim at the time of the offense. Texas Penal Code Ann. §22.011(e).
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, a sexual offense is considered to occur without consent of the victim if: • the victim is younger than 14 years old; or • 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. Utah Code Ann. §§76-5-406(2)(i) and (k). An actor commits the offense of unlawful sexual conduct with a minor ("minor" is defined as someone who is 16 years old or older but younger than 18 years old) if under circumstances not amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault or an attempt to commit the foregoing, the actor: • (1)(a) is 7 or more years older but less than 10 years older than the minor at the time of the sexual conduct, (b) engages in any of the specified sexual conduct with the minor; and (c) knew or reasonably should have known the age of the minor; or • (2)(a) is 10 or more years older than the minor at the time of the sexual conduct and engages in any of the specified sexual conduct with the minor. Utah Code Ann. §76-5-401.2. Sexual activity between individuals 12 years or older but younger than 18 years old (when the actor is not the biological sibling of the adolescent and both the actor and the adolescent agree to the sexual activity) but not amounting to rape, object rape, forcible sodomy, aggravated sexual assault, incest or an attempt to commit any of the foregoing is unlawful. It is punished as: • third degree felony if a 17 year old engages in unlawful adolescent sexual activity with an adolescent who is 13; • third degree felony for a 16 year old to engage in unlawful sexual activity with an adolescent who is 12; • class A misdemeanor for a 16 year old to engage in unlawful sexual activity with an adolescent who is 13; • class A misdemeanor for an actor who is 14 or 15 to engage in unlawful adolescent sexual activity with an adolescent who is 12; • class B misdemeanor for an actor who is 17 years old to engage in unlawful adolescent sexual activity with

an adolescent who is 14;

- class B misdemeanor for an actor who is 15 years old to engage in unlawful adolescent sexual activity with an adolescent who is 13;
- class C misdemeanor for an actor who is 12 or 13 years old to engage in unlawful adolescent sexual activity with an adolescent who is 12 or 13;
- class C misdemeanor for an actor who is 14 years old to engage in unlawful adolescent sexual activity with an adolescent who is 13.

An actor commits unlawful sexual activity with an adolescent who is 13 and the actor is 18 and enrolled in high school at the time the activity occurred and the actor is not the biological sibling of the adolescent and the actor and the adolescent mutually agree to the activity. It is punished as a third degree felony.

The actor and the adolescent do not mutually agree to the sexual activity under Subsection (2) if:

(a) the adolescent expresses lack of agreement to the sexual activity through words or conduct;

(b) the actor overcomes the adolescent's will through:

(i) threats to the adolescent or any other individual;

(ii) force;

(iii) coercion; or

(iv) enticement;

(c) the actor is able to overcome the adolescent through concealment or by the element of surprise;

(d) the actor knows, or reasonably should know, that the adolescent has a mental disease or defect, which renders the adolescent unable to:

(i) appraise the nature of the act;

(ii) resist the act;

(iii) understand the possible consequences to the adolescent's health or safety; or

(iv) appraise the nature of the relationship between the actor and the adolescent;

(e) the actor knows that the adolescent participates in the sexual activity because the adolescent erroneously believes that the actor is someone else; or

(f) the actor intentionally impaired the power of the adolescent to appraise or control the adolescent's conduct by administering any substance without the adolescent’s knowledge.

	Utah Code Ann. §76-5-401.3.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, if the child is at least 15 years old and the actor is less than 19 years old, consent can be given. 13 Vermont Stat. Ann. §3252.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. • Any person 18 years or older who engages in a consensual sexual act with a child 15 years or older will be guilty of a misdemeanor. VA Code Ann §18.2-371. If any person carnally knows, without the use of force, a child 13 years old but under 15 years old who consents to sexual intercourse and the accused is a minor and such consenting child is three or more years the accused's junior, the accused will be guilty of a felony. If the consenting child is less than three years the accused junior, the accused will be guilty of a misdemeanor. VA Code Ann. §18.2-63.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, in circumstances where an actor has sexual intercourse with a victim, the actor may be guilty of the following crimes depending on the age difference between the victim and actor: • Rape of a child in the first degree when the victim is less than 12 years old and the perpetrator is at least 24 months older than the victim. Wash. Rev. Code Ann. § 9A.44.073. • Rape of a child in the second degree when the victim is 12 or 13 years old and the perpetrator is at least 36 months older than the victim. Wash. Rev. Code Ann. § 9A.44.076. • Rape of a child in the third degree when the victim is 14 or 15 years old and the perpetrator is at least 48 months older than the victim. Wash. Rev. Code Ann. § 9A.44.079. A person may be guilty of sexual misconduct with a minor in the first degree when: • (a) the person has, or knowingly causes another person under the age of 18 to have, sexual intercourse with another person who is 16 or 17 years old if the perpetrator is at least 60 months older than the victim, is in a significant relationship (defined below) to the victim, and abuses a supervisory position within that relationship in order to engage in, or cause another person under the age of 18 to engage in, sexual intercourse with the victim; • (b) the person is a school employee who has, or knowingly causes another person under the age of 18 to have, sexual intercourse with an enrolled student of the school who is 16-21 years old if the employee is at least 60 months older than the student; or • (c) the person is a foster parent who has, or knowingly causes another person under the age of 18 to have, sexual intercourse with his or her foster child who is at least 16.Wash. Rev. Code Ann. § 9A.44.093. A person may be guilty of sexual misconduct with a minor in the second degree when: • (a) the person has, or knowingly causes another person under the age of 18 to have, sexual contact with

	another person who is 16-17 years old if the perpetrator is at least 60 months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in, or cause another person under the age of 18 to engage in, sexual contact with the victim; • (b) the person is a school employee who has, or knowingly causes another person under the age of 18 to have, sexual contact with an enrolled student of the school who is 16-21 years old, if the employee is at least 60 months older than the student; or • (c) the person is a foster parent who has, or knowingly causes another person under the age of 18 to have, sexual contact with his or her foster child who is at least 16. Wash. Rev. Code Ann. § 9A.44.096. A "significant relationship" means a situation in which the perpetrator is: • (a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors; • (b) A person who in the course of his or her employment supervises minors; or • (c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW, but not including a consensual sexual partner. Wash. Rev. Code Ann. § 9A.44.010(15).
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. A person under the age of 18 may have sex with someone over the age of 14 with his or her consent. Okla. Stat. tit. 21, § 1112.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. For prosecution under the following rape and related crime statutes in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, it is a defense that the actor was less than three years older than the victim at the time of the alleged offense: • rape in the 2nd and 3rd degree; • sodomy in the 2nd and 3rd degree; • sexual abuse in the 1st, 2nd, and 3rd degree; • contributing to the delinquency of a minor; • unlawful sexual penetration in the second degree when the object used to commit the unlawful act was the hand or any part thereof of the actor; and • sexual misconduct if the victim was at least 15 years of age at the time of the alleged offense. Or. Rev. Stat. § 163.345.

Does difference in age between the victim and actor impact the victim's ability to consent?	No, it only impacts severity of the punishment. It is second degree statutory sexual assault if the complainant is under the age of 16 years, is not married to the defendant, and the defendant is either (1) four years older but less than eight years older than the complainant or (2) eight years older but less than 11 years older than the complainant. 18 Pa.C.S.A. § 3122.1(a). It is first degree statutory sexual assault if the complainant is under the age of 16 years and defendant is 11 or more years older than the complainant and the complainant and the person are not married to each other. 18 Pa.C.S.A. § 3122.1(b) It is deviate sexual intercourse in the first degree if the victim is under 16 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. § 3123(a)(7). It is indecent assault or aggravated indecent assault for certain acts if 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)(8) & 3126(a)(8).

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes.
	
	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(b)(1).
	• (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
	  • 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)(2).
	
	"**Position of authority**" means and includes, but is not limited to, any person who is acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities to a person under the age of eighteen (18) years, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a person under the age of eighteen (18) years, either independently or through another, no matter how brief, at the time of the act. R.I. Gen. Laws § 11-37-6(a).
	
	Sexual penetration with a person 14 years of age or under by an actor of any age is first degree child molestation. Sexual contact with a person 14 years of age or under is second degree child molestation. R.I. Gen Laws §§ 11-37-8.1, 11-37-8.3.

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. A person is guilty of criminal sexual conduct with a minor in the second degree if the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or the actor engages in sexual battery with a victim who is at least 14 years of age but who is less than 16 years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is 18 years of age or less when he engages in consensual sexual conduct with another person who is at least 14 years of age. S.C. Code Ann. § 16-3-655(B). A person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over fourteen years of age and the actor willfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child. However, a person may not be convicted of a violation of the provisions of this subsection if the person is eighteen years of age or less when the person engages in consensual lewd or lascivious conduct with another person who is at least fourteen years of age. S.C. Code Ann. § 16-3-655(C).
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, if the victim is at least 13 years old, but less than 16 years old and the perpetrator is at least 3 years older than the victim then consent will not be deemed given. S.D. Code §22-22-1. If the victim is at least 13 years old and the actor is less than 5 years older than the victim, the penalty is reduced. S.D. Code §22-22-7.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. An actor commits sexual assault if he or she commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim. N.J. Stat. Ann. § 2C:14-2(b). An actor commits sexual assault if he or she commits an act of sexual penetration with a victim that is 13, 14, or 15 years old and the actor is at least four years older than the victim. N.J. Stat. Ann. § 2C:14-2(c)(4).
Does difference in age between the victim and actor impact the victim's ability to consent?	Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration: 1. not defined in Subsections D through F of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child; or 2. perpetrated on a child thirteen to eighteen 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 eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school. New Mexico Statutes §30-9-11(G).

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, there is an affirmative defense to rape in the 2nd degree that the defendant was less than four years older than the victim at the time of the act. New York Penal Law §130.30. The fact that the victim is more than 14 years old and the defendant is less than five years older than the victim is an affirmative defense to sexual abuse in the 3rd degree where lack of consent is due solely to incapacity to consent for being less than 17 years old. New York Penal Law §130.55. Sexual abuse in the second degree applies where the sexual contact is with a victim who is less than 14 years old. New York Penal Law §130.60. Sexual abuse in the first degree applies when sexual contact is made by the defendant with a victim who is less than 11 years old; or when the victim is less than 13 years old and the actor is 21 or older. New York Penal Law §130.65. No exceptions apply for rape in the first degree for victims who are less than 11 years old or where the victim is less than 13 years old and the actor is 18 or older. §130.35. No exceptions apply for aggravated sexual abuse in the third degree for victims who are less than 11 years old or where the victim is less than 13 years old and the actor is 18 or older. New York Penal Law §130.66. No exceptions apply for aggravated sexual abuse in the first or second for victims who are less than 11 years old. New York Penal Law §§130.67; 130.70.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, a minor may consent to having sex with someone who is no more than four years older than the minor. North Carolina General Statutes Annotated §14-27.25.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, when criminality depends on the victim being a minor 15 years or older, the actor is guilty of an offense only if the actor is at least three years older than the minor. § 12.1-20-01(3).
Does difference in age between the victim and actor impact the victim's ability to	No, it only impacts the severity of the punishment. Ohio Rev. Code Ann. § 2907.04(B)(1)–(3). The exceptions are if the minor is age thirteen to sixteen and if the offender is less than reckless regarding their knowledge of the minor's age. Ohio Rev. Code Ann. § 2907.04(A).

consent?	

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes.
	
	A person is guilty of sexual battery if he or she engages in sexual penetration with:
	
	• A child at least 14 but under 16 years of age, if the person is 36 or more months older than the child, or
	• A child under 14 years of age, if the person is 24 or more months older than the child.
	
	Miss. Code Ann. § 97-3-95.
	
	The crime of statutory rape is committed when:
	
	• Any person 17 years of age or older has sexual intercourse with a child who:
	  • Is at least 14 but under 16 years of age; and
	  • Is 36 months or more younger than the person; and
	  • Is not the person's spouse; or
	• A person of any age has sexual intercourse with a child who:
	  • Is under 14 years of age; and
	  • Is 24 or more months younger than the person.
	
	Miss. Code Ann. § 97-3-65.

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, if the actor is at least 21 years old and the victim is less than 17 years old it is statutory rape in the second degree. Mo. Rev. Stat. § 566.034. It is child molestation in the fourth degree if a person, being more than four years older than a child who is less than seventeen years of age, subjects the child to sexual contact. Mo. Rev. Stat. § 566.071. Whenever the criminality of conduct depends upon a child being less than 14 years of age, it is no defense that the defendant believed the child to be older. Whenever the criminality of conduct depends upon a child being under 17 years of age, it is an affirmative defense that the defendant reasonably believed that the child was 17 years of age or older. However, consent is not a defense if the alleged victim is less than fourteen years of age. Mo. Rev. Stat. § 566.020.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. Consent is ineffective under the sexual assault statute (Mont. Code Ann. § 45-5-502) if the victim is less than 14 years old and the offender is 3 or more years older than the victim. Mont. Code Ann. § 45-5-502(5)(a)(ii).
Does difference in age between the victim and actor impact	No, the difference in age does not impact the victim's ability to consent. However, the specific age of the actor does impact the nature of the crime committed, if any. <u>Sexual Assault in the First Degree</u>

the victim's ability to consent?	If the actor is 19 or older and the victim is at least 12 but less than 16 years of age, then the actor is guilty of sexual assault in the first degree. Neb. Rev. Stat. §28-319(1)(c). Sexual Assault of a Child; First Degree A person commits sexual assault of a child in the first degree: (a) when he or she subjects another person under 12 years of age to sexual penetration and the actor is at least 19 years of age or older; or (b) when he or she subjects another person who is at least 12 years of age but less than 16 years of age to sexual penetration and the actor is 25 years of age or older. Neb. Rev. Stat. §28-319.01(1). Sexual Assault of a Child; Second or Third Degree A person commits sexual assault of a child in the second or third degree if he or she subjects another person 14 years of age or younger to sexual contact and the actor is at least 19 years of age or older. Neb. Rev. Stat. §28-320.01(1). Thus, a so-called “Romeo and Juliet” rule exists such that persons between the ages of 12 and 18 engaging in consensual sexual relations are not subject to prosecution for sexual assault §28-320.01(1).
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. An element of the crime of “statutory sexual seduction” is that the perpetrator be 18 years of age or older and the victim be 14 or 15 years old and at least 4 years younger than the perpetrator. Nev. Rev. Stat. Ann. § 200.364(10). A perpetrator under the age of 18 is not guilty of sexual assault of a child under the age of 14 if the perpetrator is not more than 2 years older than the victim, unless the perpetrator uses force or the threat of force or knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct. Nev. Rev. Stat. Ann. § 200.366(5). Reasonable mistake of fact as to age of victim is not a defense to crime of statutory sexual seduction. *Jenkins v. State*, 110 Nev. 865, 865 P.2d 1063, 1063 (1994).
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. Consent of the victim shall not be considered a defense to the following crimes: • Aggravated felonious sexual assault when the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim N.H. Rev. Stat. Ann. § 632-A:2(I)(k). • When a person engages in sexual contact with a person who is (1) under 13 years of age; (2) 13 years of age or older and under 18 years of age when the actor is in a position of authority over the victim and is more than 4 years older than the victim; or (3) when the actor is an employee, contractor, or volunteer at a primary or secondary educational institution and the victim is a student and up to 10 months after the student’s graduation or departure. N.H. Rev. Stat. Ann. § 632-A:3(III). The specific age of the actor does impact the nature of the crime committed, if any, as follows: • Aggravated Felonious Sexual Assault: • A person is guilty of aggravated felonious sexual assault when the victim is less than 13 years of

	age. N.H. Rev. Stat. Ann. § 632-A:2(I)(l).
	• Felonious Sexual Assault:
	  • A person is guilty of felonious sexual assault if such person engages in sexual penetration with a person, other than his legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or more. N.H. Rev. Stat. Ann. § 632-A:3(II).
	• Sexual Assault:
	  • A person is guilty of sexual assault if the actor subjects to sexual contact a person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 5 years or more. N.H. Rev. Stat. Ann. § 632-A:4(I)(b).
	
	A person is guilty of sexual assault if the actor engages in sexual penetration with a person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or less. N.H. Rev. Stat. Ann. § 632-A:4(I)(c).

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. It is not a crime if a person between 13 and 16 years old engages in consensual sex with a person who is no more than two years older than they are. LSA-R.S. 14:80.1. Sexual battery is a crime when the victim is under 15 years of age and is at least three years younger than the offender. LSA-R.S. 14:43.1
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. A person is guilty of sexual abuse of a minor if the person engages in a sexual act with another person, not the actor's spouse, where: • The other person is either 14 or 15 years of age and the actor is at least 5 years older (Class D crime) or the actor is at least 10 years older (Class C crime); • The actor is at least 21 and the other person is 16 or 17 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). 17-A M.R.S.A. 254. A person is guilty of unlawful sexual contact if the actor intentionally subjects another person who is not their spouse to any sexual contact where: • The other person is less than 14 years old, and the actor is at least 3 years older (Class C crime); • The other person is less than 12 years old, and the actor is at least 3 years older (Class B crime);

	• The other person is less than 14 years old, and the actor is at least 3 years older and the sexual contact includes penetration (Class B crime); • The other person is less than 12 years old, and the actor is at least 3 years older and the sexual contact includes penetration (Class A crime); • The other person is either 14 or 15 years old and the actor is at least 10 years older than the other person (Class D crime); • The other person is less than 18 years old, and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person (Class C crime); • The other person is less than 18 years old and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person and the sexual contact includes penetration (Class B crime); • The other person is less than 18 years old and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class E crime); • The other person is less than 18 years old and is a student enrolled in a private or public elementary, secondary, or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled and the sexual contact includes penetration (Class D crime). 17-A M.R.S.A.255-A A person is guilty of unlawful sexual touching if the actor intentionally subjects another person who is not their spouse to any sexual touching where: • The other person is less than 14 years old, and the actor is at least 5 years older (Class D crime); • The other person is 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 person (Class D crime); • The other person is less than 18 years old and is a student enrolled in a private or public elementary, secondary, or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (Class E crime). 17-A M.R.S.A. 260.
Does difference in age between the victim and actor impact the victim's ability to	Yes. A person that is under the age of 14 can engage in consensual sexual activity with a person that is less than 4 years older. Also, a person that is 14 or 15 years old can engage in consensual sexual activity with a person that is less than 4 years older. MD Code, Criminal Law, § 3-304(a)(3); 3-307(a)(3)-(4); 3-308(b)(2)-(3).

consent?	
Does difference in age between the victim and actor impact the victim's ability to consent?	Difference in age may impact the punishment for the defendant but does not impact the ability of the victim to consent. Whoever unlawfully has sexual intercourse or unnatural sexual intercourse with a child under 16, and (a) there exists more than a 5 year age difference between the defendant and victim and the victim is under 12 or (b) there exists more than a 10 year age difference between the defendant and the victim and the victim is between 12 and 16, shall be punished by imprisonment for a minimum of ten years. Mass. Gen. Laws. Ann. ch. 265, §23A.
Does difference in age between the victim and actor impact the victim's ability to consent?	No, but it will impact the punishment for the actor. Criminal sexual conduct in the fourth degree occurs if the actor engages in sexual contact with a person at least 13 but less than 16 and the actor is 5 or more years older. Mich. Comp. Laws. Ann. § 750.520e(1)(a).
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. The following acts constitute criminal sexual conduct in the first or second degree: • Complainant is under 14 years of age and actor is more than 36 months older than the complainant (neither mistake as to the complainant's age nor consent to the act by the complainant is a defense). • Complainant is at least 14 but less than 16 years of age and 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). • The actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration or contact (neither mistake as to the complainant's age nor consent to the act by the complainant is a defense). • The actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration or contact, and the actor or an accomplice used force or coercion to accomplish the act, the complainant suffered personal injury, or the sexual abuse involved multiple acts committed over an extended period of time (neither mistake as to the complainant's age nor consent to the act by the complainant is a defense). Minn. Stat. § 609.342, Minn. Stat. § 609.343. The following acts constitute criminal sexual conduct in the third or fourth degree: • Complainant is under 14 years of age and the actor is no more than 36 months older than the complainant (neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense). • Complainant is at least 14 but less than 16 years of age and the actor is more than 24 months older than the complainant. • If the actor is no more than 60 months older than the complainant, it shall be an affirmative defense

(which must be proved by a preponderance of the evidence) that the actor reasonably believes the complainant to be 16 years of age or older.
    - In all other cases, mistake as to age shall not be a defense.
- Consent is not a defense. If the actor is no more than 36 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years or a fine of not more than $30,000, or both.
- Complainant is at least 16 but less than 18 years of age and the actor is more than 36 months older than the complainant and in a current or recent position of authority over the complainant (neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense).
- The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact (neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense).
- The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact, and the actor or accomplice used force or coercion to accomplish the act, the complainant suffered personal injury, or the sexual abuse involved multiple acts committed over an extended period of time (neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense).

Minn. Stat. § 609.344, Minn. Stat. § 609.345.

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

- Complainant is under 14 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced.
- Complainant is at least 14 but less than 16 years of age and the actor is more than 36 months older than the complainant or in a current or recent position of authority over the complainant. Consent by the complainant to the act is not a defense. Mistake of age is not a defense unless actor is less than 60 months older. In any such case, if the actor is no more than 60 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense.
- Complainant is at least 16 but less than 18 years of age and the actor is more than 36 months older than the complainant and in a current or recent position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.
- The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense.
- The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact, and the actor or accomplice used force or coercion to accomplish the act, the complainant suffered personal injury, or the sexual abuse

	involved multiple acts committed over an extended period of time. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense. Minn. Stat. § 609.345.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, a person may engage in consensual sexual acts with a partner that is 16 or 17 years of age provided that the person is less than 3 years older than the minor. Idaho Statutes § 18-6101(2).
Does difference in age between the victim and actor impact the victim's ability to consent?	No.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. It is defense to sexual misconduct with a minor (where the victim is at least 14 years of age but less than 16 years of age) if all the following apply: 1. the person is not more than 4 years older than the victim; 2. the relationship between the person and the victim was a dating relationship or an ongoing personal relationship; 3. the crime: a. was not committed by a person who is at least 21 years of age; b. was not committed by using or threatening the use of deadly forcee; c. was not committed while armed with a deadly weapon; d. did not result in serious bodily injury; e. was not facilitated by furnishing the victim, without the victim's knowledge, with a drug or a controlled substance or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and f. was not committed by a person having a position of authority or substantial influence over the victim 4. the person has not committed another sex offense against any other person; and 5. the person is not promoting prostitution with respect to the victim. IC § 35-42-4-9.

	"[C]apacity to consent presupposes an intelligence capable of understanding the act, its nature and possible consequences." *Stafford v. State*, 455 N.E.2d 402, 405 (Ind. Ct. App. 1983); *see also id.* (victim was incapable of giving consent "by reason of her limited intelligence, mental age of six to seven years, and the consequential limitation on her judgment"). The state does not have to prove "any knowledge on the part of a defendant. Rather, the intent element is expressed with respect to the defendant's purpose in arousing or satisfying sexual desires where such touching is not consented to or cannot be consented to." *Johnson v. State*, 31 N.E.3d 40, 2015 WL 1407768 (Ind. App. 2015) (unpublished opinion) (18 year old with IQ between 50-70 who could not cook, drive, be left alone overnight and was easily influenced held unable to consent)
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. A person may engage in consensual sexual acts with a person that is 14 or 15 years old provided that the person is less than four years older than the minor. I.C.A. § 709.4.
Does difference in age between the victim and actor impact the victim's ability to consent?	No.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. A person is guilty of sexual abuse in the second degree when he or she is at least 18 years old but less than 21 years old and subjects another person who is less than 16 years old to sexual contact. However, it is a defense that the other person's lack of consent was due solely to incapacity to consent by reason of being less than 16 years old, and the other person was at least 14 years old, and the actor was less than 5 years older than the other person. KRS § 510.120. In addition, A person is deemed incapable of consent when he or she is sixteen (16) or seventeen (17) years old and the actor at least ten (10) years older than victim at the time of the sexual act. KRS § 510.020. A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent. However, it is a defense that the other person's lack of consent was due solely to incapacity to consent by reason of being less than 16 years old, the other person was at least 14 years old, and the actor was less than 18 years old. KRS § 510.130.

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes, an individual under 16 years of age, but 13 years of age or older, can consent to sexual acts with another individual not more than three years older than the individual. Connecticut General Statutes Annotated § 53a-71(a)(1). See also "*Does the relationship between the victim and actor impact the victim's ability to consent?*" below.
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes: • As to sexual offenses in which the victim's age is an element of the offense because the victim has not yet reached that victim's 16th birthday, where the person committing the sexual act is no more than 4 years older than the victim (and the victim is at least 12 years old), it is an affirmative defense that the victim consented to the act "knowingly". 11 Delaware Code § 762(d). • A person that is 30 years of age or older may not have sexual intercourse with a victim that has not yet reached 18 years old, except if the victim and person are married at the time of intercourse. 11 Delaware Code § 770(a)(2). • A person that is at least 4 years older than a child who has reached 16 years old but has not yet reached 18 years old and 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 a child, may not engage in sexual intercourse or penetration with that child. 11 Delaware Code § 778(3).

Does difference in age between the victim and actor impact the victim's ability to consent?	Yes.
	• Sexual Abuse of a Child
	  • A child, defined as a person under the age of 16, cannot consent to sexual acts or sexual contact with a person who is 4 or more years older. D.C. Code §§ 22-3001(3), 22-3008, 22-3009; *In re M.S.*, 171 A.3d 155 (D.C. 2017).
	• Sexual Abuse of a Minor
	  • A minor, defined as a person under the age of 18, in a "significant relationship" with a person who is over 18, cannot consent to sexual acts or sexual contact with such person. D.C. Code §§ 22-3001(5A), 22-3009.01, 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 spouse, domestic partner, or paramour of the person who is charged with any duty or responsibility for the health, welfare, or supervision of the victim at the time of the act; and
	  • Any employee, contractor, consultant, or volunteer of a school, religious institution, or an educational, social, recreational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver,

	administrator, or support staff, or any other person in a position of trust with or authority over a child or a minor. D.C. Code § 22-3001(10).
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. A person aged 16 or 17 can consent to sexual activity with someone aged 23 or less. Florida Statutes § 794.05(1).
Does difference in age between the victim and actor impact the victim's ability to consent?	No, but it can impact the punishment. The offense of statutory rape is mitigated from a felony to a misdemeanor where the victim is at least 14 but less than 16 years of age and the person convicted of statutory rape is 18 years of age or younger and is no more than four years older than the victim. Georgia Code § 16-6-3(c). A person who is 21 years or older and convicted of the offense of statutory rape must serve not less than ten years in prison. Georgia Code § 16-6-3(b).
Does difference in age between the victim and actor impact the victim's ability to consent?	Yes. A person may engage in consensual sexual acts with a person 14 years old or greater but less than 16 years old provided that the person is less than 5 years older than the minor or legally married to the minor. HRS §§ 707-730; 707-731; 707-732.
Does elderly age impact the victim’s ability to consent?	No.
Does elderly age impact the victim’s ability to consent?	No. Ala. Code § 13A-6-70.
Does elderly age impact the victim’s ability to consent?	No.

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Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No, but can impact whether the actor is guilty of First Degree Sexual Assault or Second Degree Sexual Assault. Wis. Stat. Ann. § 940.225(1)(d). A person who commits a violation that would otherwise classify as second degree sexual assault is guilty of first degree sexual assault if the victim is 60 years of age or older. *Id.* This applies irrespective of whether the defendant had actual knowledge of the victim's age; a mistake regarding the victim's age is not a defense to a prosecution under this paragraph. *Id.*
Does elderly age impact the victim's ability to consent?	No.
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Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.

Does elderly age impact the victim's ability to consent?	No. However, it is a sexual offense to knowingly sexually exploit an elderly adult. Tenn. Code Ann. §39-15-512. An "elderly adult" means a person 70 years of age or older. Tenn. Code Ann. §39-15-501(6). "Sexual exploitation" means an act committed upon or in presence of an elderly or vulnerable adult, without that adult's effective consent, that is committed for the purpose of sexual arousal or gratification, or for the purpose of dissemination to others by a person who knew or should have known the act would offend or embarrass a reasonable person. "Sexual exploitation" includes, but is not limited to, sexual contact; exposure of genitals to an elderly or vulnerable adult; exposure of sexual acts to an elderly or vulnerable adult; exposure of an elderly or vulnerable adult's sexual organs; an intentional act or statement by a person intended to shame, degrade, humiliate, or otherwise harm the personal dignity of an elderly or vulnerable adult; or an act or statement by a person who knew or should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of an elderly or vulnerable adult. "Sexual exploitation" does not include any act intended for a valid medical purpose, or any act reasonably intended to be a normal caregiving act, such as bathing by appropriate persons at appropriate times. Tenn. Code Ann. §39-15-501(13).
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	Yes, an actor is guilty of rape in the second degree if they have sexual intercourse with a person who is a frail elder or vulnerable adult and the perpetrator (i) has a significant relationship with the victim, or (ii) was providing transportation, within the course of his or her employment, to the victim at the time of the offense. Wash. Rev. Code Ann. § 9A.44.050. A "frail elder or vulnerable adult" means a person 60 years old or older who has the functional, mental, or physical inability to care for himself or herself and also includes a person who has been placed under a guardianship under RCW 11.130.265 or a conservatorship under RCW 11.130.360, a person over 18 years old

	who has a developmental disability under chapter 71A.10 RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW. Wash. Rev. Code Ann. § 9A.44.010(4).
Does elderly age impact the victim's ability to consent?	No
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
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Does elderly age impact the victim's ability to consent?	No.

Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	Yes, no person shall engage in sexual conduct or sexual contact with another if the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age. Ohio Rev. Code Ann. § 2907.02(A)(1)(c) (crime of rape applies for sexual conduct); 2907.05(A)(5) (crime of gross sexual imposition for sexual contact).
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No, nothing in statutory or case law to suggest an impact.
Does elderly age impact the victim's ability to consent?	No, no statutory or case law suggests this impact.
Does elderly age impact the victim's ability to consent?	No, there is no statutory or case law basis to suggest an impact.

Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	Yes. A person is guilty of a sex crime if that person engages in a "sexual act/contact/touching" with another person and the 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. 17-A M.R.S.A. 253, 255-A, 260.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No. However, the punishment for indecent assault and battery on an elder (a person sixty years of age or older) is more severe. Mass. Gen. Laws. Ann. ch. 265, §13H. A person over the age of sixty is deemed incapable of consent to sexual contact with a law enforcement officer while the person is under detention. Mass. Gen. Laws. Ann. ch. 265, §13H 1/2.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No. However, the crime and punishment is more severe if the victim is 60 years of age or older. 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.60.

Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No.
Does elderly age impact the victim's ability to consent?	No, but it can impact the offenses. See e.g., Florida Statutes § 825.1025 (providing that a person who commits lewd or lascivious battery on an elderly person constitutes a second degree felony if the offender knows or reasonably should know that the elderly person lacks the capacity to consent or fails to give consent).
Does elderly age impact the victim's ability to consent?	No.

Does elderly age impact the victim's ability to consent?	No.
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, a person can be incapable of consent because he or she is mentally defective or mentally incapacitated. Arkansas Code §§ 5-14-103(a)(2); 5-14-125(a)(2).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, a person is deemed incapable of consenting if he or she is incapacitated. Ala. Code § 13A-6-70(c). "**Incapacitated**" means (among other things) that (a) a person suffers from a mental or developmental disease or disability which renders the person incapable of appraising the nature of his or her conduct or (b) a person who is unable to give consent or is unable to communicate an unwillingness to an act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate. Ala. Code § 13A-6-60(2)(a) & (c).

Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Although it does not directly affect consent, lack of consent is not an element of the following crimes (meaning the offender is responsible regardless of whether the victim consented):
	
	• The following constitutes sexual assault in the first degree:
	  • A person engaging in sexual penetration with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.410(a)(3).
	• The following constitutes sexual assault in the second degree:
	  • A person engaging in sexual contact with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.420(a)(2).
	  • A person engaging in sexual penetration with a person who is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(3).
	• The following constitutes sexual assault in the third degree:
	  • A person engaging in sexual contact with 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(5). 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).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, a victim can be incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, 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). "Mental defect" means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another. Arizona Revised Statute § 13-1401(A)(7)(b).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, a person can be incapable of giving legal consent because of a mental disorder or developmental disability, and this is known or reasonably should be known to the person committing the act. California Penal Code § 261(a)(1).*See People v. Vukodinovich*, 238 Cal.App.4th 166 (Cal. Ct. App. 2015).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, the actor may be guilty of sexual assault and/or unlawful sexual contact when the actor knows that 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).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	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 assault in the third degree when the person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated. W. Va. Code Ann. §§ 61-8B-5. 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.

	"Mentally defective" means that a person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct. W. Va. Code Ann. § 61-8B-1(2).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, a person suffering from a "mental illness or defect" is presumed incapable of consent. Wis. Stat. Ann. § 940.225(4). "Mental illness or defect" is not defined in the statute, but has a "meaning within the common understanding of the jury" under Wisconsin case law. *State v. Perkins,* 689 N.W.2d 684, 277 Wis.2d 243 (Wis. Ct. App. 2004).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, any actor who inflicts sexual intrusion on a victim commits a sexual assault in the first degree if the actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim's conduct. Wyo. Stat. Ann. § 6-2-302.
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. A person commits a sex crime if the person engages in sexual penetration (or in certain circumstances, sexual contact) with another person and the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless. 9 G.C.A. §§ 25.15; 25.20; 25.25; 25.30. "**Mentally Impaired**" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct. 9 G.C.A. § 25.10(a)(5). "**Mentally Incapacitated**" means (A) that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent or (B) that a person is voluntarily 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. 9 G.C.A. § 25.10(a)(6). A person who is mentally incapacitated cannot consent to a sexual act. 9 G.C.A. § 25.10(a)(2)(A).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, an actor who engages in sexual contact with a person when the other person is unconscious or physically helpless, or that person's mental defect or incapacity is known to the actor, is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1708. An actor who perpetrates an act of sexual intercourse or sodomy with a person when through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, the person is incapable of giving consent, is guilty of rape in the first degree. 14 V.I.C. § 1701.

Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental, commits a severe second degree felony if due to mental disability or illness, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission. Puerto Rico Stat. tit. 33 § 4770(b).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, "**mentally incapacitated**" means that a person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent. Tenn. Code Ann. §39-13-501(4). "**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 the person's conduct. Tenn. Code Ann. §39-13-501(3). A **vulnerable adult** is 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. Tenn. Code Ann. §39-15-501(14). Rape is an unlawful sexual penetration of a victim by the defendant or of the defendant by a victim when the defendant knows or has reason to know that the victim is **mentally defective** or **mentally incapacitated** or **a vulnerable adult with an intellectual disability**. Tenn. Code Ann. §39-13-503(3) (emphasis added). Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim if the defendant knows or has reason to know that the victim is mentally defective or mentally incapacitated. Tenn. Code. Ann. § 39-13-505. It is an offense for any person to knowingly sexually exploit a vulnerable adult. Tenn. Code Ann. §39-15-512.
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	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 either of appraising the nature of the act or of resisting it. Texas Penal Code Ann. §22.011(b)(4). In considering whether a person is incapable of resisting a sexual act due to mental disease or defect, we focus on whether he has the presence of mind or force of will to resist. Though a person may have the physical capability to resist, the question is whether he has the mental wherewithal to harness that capability. *Hopkins v. State*, 615 S.W.3d 530, 541 (Tex. App. 2020).

Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, a sexual offense is considered to occur without consent of the victim if the actor knows or reasonably should know that the victim has a mental disease or defect, which renders the victim unable to(i) appraise the nature of the act, (ii) resist the act, (iii) understand the possible consequences to the victim's health or safety, or (iv) appraise the nature of the relationship between the actor and the victim. Utah Code Ann. §76-5-406(2)(f).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	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 lewd and lascivious conduct. 13 Vermont Stat. Ann. §3254. "Incapable of consenting" means the person: (A) is incapable of understanding the nature of the conduct at issue; (B) is physically incapable of resisting, declining participation in, or communicating unwillingness to engage in the conduct at issue; or (C) lacks the mental ability to make or communicate a decision about whether to engage in the conduct at issue. 13 Vermont Stat. Ann. §3251(10).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, a person is guilty of rape if the person has sexual intercourse with a complaining witness through the use of the complaining witness's mental incapacity or physical helplessness. VA Code Ann. §§18.2-61; 67.10(3). "**Mental incapacity**" means that condition of the complaining witness existing at the time of an offense which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known.
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, an actor is guilty of rape in the second degree if they have sexual intercourse with a person who incapable of consent by reason of being mentally incapacitated. Wash. Rev. Code Ann. § 9A.44.050. A person who is unable to understand the nature or consequences of sexual intercourse at the time of the offense, whether that condition is produced by illness, defect, the influence of a substance or from some other cause, is "**mentally incapacitated**." Wash. Rev. Code Ann. § 9A.44.010(7). In any prosecution which lack of consent is based on solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless. Wash. Rev. Code Ann. §§ 9A.44.030. An actor is guilty of rape in the second degree if they have sexual intercourse with a person with a developmental disability and the actor (i) has supervisory authority over the victim or (ii) was providing transportation, within the course of his or her employment, to the victim at the time of the offense. Wash. Rev. Code Ann. § 9A.44.050.

	"Person with a developmental disability," means a person with a developmental disability as defined in RCW 71A.10.020. Wash. Rev. Code Ann. § 9A.44.010 (8).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. Rape in the first degree includes an act of sexual intercourse involving vaginal or anal penetration where the victim is incapable through mental illness or any other unsoundness of mind, temporary or permanent, of giving legal consent. Okla. Stat. tit. 21, § 1111(A)(2).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. A person is incapable of consenting to a sexual act if they are mentally incapacitated or incapable of appraising the nature of the person's conduct. Or. Rev. Stat. § 163.315. 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(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). A person who engages in oral or anal intercourse with another person or causes another to engage in oral or anal intercourse commits the crime of sodomy in the first degree if the victim in incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct. Or. Rev. Stat. § 163.405. 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.
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. It is rape to have sexual intercourse with a complainant who suffers from a mental disability which renders the complainant incapable of consent. 18 Pa.C.S.A. § 3121(a)(5). It is indecent assault or aggravated indecent assault for certain acts if the complainant suffers from a mental disability which renders him or her incapable of consent. 18 Pa.C.S.A. §§ 3125(a)(6) and 3126(a)(6). It is deviate sexual intercourse in the first degree if the complainant suffers from a mental disability which renders him or her incapable of consent. 18 Pa.C.S.A. § 3123(a)(5).

Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if the accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless. R.I. Gen. Laws § 11-37-2(1). A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and the accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless. R.I. Gen. Laws § 11-37-4(1). "**Mentally incapacitated**" means "a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or who is mentally unable to communicate unwillingness to engage in the act." R.I. Gen Laws § 11-37-1(5). "**Mentally disabled**" means a "person who has a mental impairment which renders that person incapable of appraising the nature of the act." R.I. Gen Laws § 11-37-1(4). "**Physically helpless**" means a person "who is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act." R.I. Gen Laws § 11-37-1(6).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	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 aggravated force or aggravated coercion was not used to accomplish sexual battery. S.C. Code Ann. § 16-3-654(1)(b). • "**Mentally defective**" means that a "person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct." • "**Mentally incapacitated**" means that a "person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause." • "**Physically helpless**" means that a "person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act." S.C. Code Ann. § 16-3-651(e)-(g).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, a person can be deemed incapable of consenting to sexual contact because of mental incapacity. S.D. Code §22-22-7.2. "Mental incapacity" means "a mental or developmental disease or disability that renders a person incapable of appraising the nature of the person's conduct." S.D. Code §22-22-1.5.

Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, it is aggravated sexual assault to commit an act of sexual penetration with a person that the actor knew or should have known at the time of the sexual penetration was physically helpless or intellectually or mentally incapacitated, or has a mental disease or defect which renders the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent or incapable of understanding or exercising the right to refuse to engage in the conduct. N.J. Stat. Ann. § 2C:14-2(a)(7). Consent is ineffective if: 1. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or 2. It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or 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. N.J. Stat. Ann. § 2C:2-10
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, engaging in a sexual act when the perpetrator knows or has reason to know that the victim suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act is a criminal offense. New Mexico Statutes §30-9-10(A); §30-9-11.
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	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. Cratsley*, 86 N.Y.2d 81, 86, 653 N.E.2d 1162, 1165 (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(5). • "**Mentally incapacitated**" means a person that is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent. New York Penal Law §130.00(6).
Does developmental disability and/or mental incapacity	Yes, it is a crime to engage in sexual activity with a person who has a mental disability or who is mentally incapacitated when the person performing the act knows or should have reasonably known the other person has a mental disability or is mentally incapacitated. North Carolina General Statutes Annotated §14-27.22; §14-27.27; §14-27.33.

incapacity impact the victim's ability to consent?	"**Person who has a mental disability**" means a victim who has an intellectual disability or a mental disorder that temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act. North Carolina General Statutes Annotated §14-27.20. "**Mentally incapacitated**" means a victim who due to 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.
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if that person 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. NDCC § 12.1-20-03(1)(e). A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of sexual assault if that person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct. NDCC § 12.1-20-07(1)(b).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, no person shall engage in sexual conduct or sexual contact with another if the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age. Ohio Rev. Code Ann. § 2907.02(A)(1)(c) (crime of rape applies for sexual conduct); 2907.05(A)(5) (crime of gross sexual imposition for sexual contact).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. A person is guilty of sexual battery if he or she engages in sexual penetration with a mentally defective, mentally incapacitated or physically helpless person. Miss. Code Ann. § 97-3-95. "**Mentally defective person**" means one who suffers from a mental disease, defect or condition which renders that person temporarily or permanently incapable of knowing the nature and quality of his or her conduct. Miss. Code Ann. § 97-3-97(b). "**Mentally incapacitated person**" means one rendered incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent. Miss. Code Ann. § 97-3-97(c).

Does developmental disability and/or mental incapacity impact the victim's ability to consent?	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.
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. "Without consent" means the victim is incapable of consent because the victim is mentally disordered or incapacitated (note that "mentally disordered" and "incapacitated" are not defined in the statute). Mont. Code Ann. § 45-5-501(1)(b)(i).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. Any person who subjects another person to sexual penetration who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree. Neb. Rev. Stat. §28-319(1)(b). Determining incapacity to consent requires an "individualized inquiry" into the victim's capacity and does not necessarily require the victim to suffer from a mental or physical impairment such as severe intoxication. State v. Npimnee, 316 Neb. 1, 2 N.W.3d 620 (Neb. S. Ct. 2024). Any person who subjects another person to sexual contact who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree. Neb. Rev. Stat. §28-320(1)(b). "[A]ny person who subjects another person to sexual penetration, who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct, is guilty of first degree sexual assault." *In re Gabriel P.*, 29 Neb. App. 431, 438–39, 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 § 28-319(1)(b), the two-part analysis requires a significant abnormality, such as severe intoxication or other substantial mental or physical impairment, on the part of the alleged victim, and knowledge of the abnormality on the part of the alleged attacker." *Id.*
Does developmental disability and/or mental incapacity	Yes. A person is deemed incapable of consent if he or she is "mentally ... incapable of resisting or understanding the nature of his or her conduct." Nev. Rev. Stat. Ann. § 200.366(1).

impact the victim's ability to consent?	
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. A person is deemed unable to consent if he or she has a disability that renders him or her incapable of freely arriving at an independent choice as to whether or not to engage in sexual conduct, and the actor knows or has reason to know that the victim has such a disability. N.H. Rev. Stat. Ann. § 632-A:2(I)(h).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. The following are deemed to be without the lawful consent of the victim: • (1) when the victim is prevented from resisting the act because the victim suffers from a disability (which "means a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for his or her own care or protection"); • (2) 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. LSA-R.S. 14:42, LSA-R.S. 14:42.1, LSA-R.S. 14:43. *See also State v. Ward*, 903 So.2d 480 (La. App. 2005) (the applicable test for evaluating mental capacity to consent is whether the " the victim was incapable of understanding the nature of the act").
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. A person is guilty of a sex crime if that person engages in a "sexual act/contact/touching" with another person and: • (1) the other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent; • (2) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes the other person as a person with an intellectual disability or autism; • (3) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor; or • (4) the actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect. 17-A M.R.S.A. 253, 255-A, 260.

	Mental disability can be either “reasonably apparent” or “known to the actor” and thus the statute allows for either “subjective awareness or an objective manifestation of the required disability.” *State v. Chabot*, 478 A.2d 1136, 1138 (Maine 1984).
Does developmental disability and/or mental incapacity impact the victim’s ability to consent?	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 Boyd 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 incapable of ‘appraising the nature of the individual's conduct’”).
Does developmental disability and/or mental incapacity impact the victim’s ability to consent?	Yes, if the victim was incapable of consenting due to such developmental disability and/or mental incapacity. *Com. v. Fuller*, 845 N.E.2d 434, 66 Mass.App.Ct. 84 (2006). The punishment for indecent assault and battery on a person with a disability (a person with a permanent or long-term physical or mental impairment that prevents or restricts the individual’s ability to provide for his or her own care or protection) is more severe. Mass. Gen. Laws. Ann. ch. 265, §13H and §13K (defining “person with a disability”). A person known to a law enforcement officer as having an intellectual or physical disability is deemed incapable of consent to sexual contact with a law enforcement officer while the person is under detention. Mass. Gen. Laws. Ann. ch. 265, §13H 1/2.
Does developmental disability and/or mental incapacity impact the victim’s ability to consent?	Yes. A person is guilty of criminal sexual conduct if the person engages in sexual penetration or contact and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless. Mich. Comp. Laws. Ann. §§ 750.520b(1)(d)(i), 750.520c(1)(d)(i), 750.520d(1)(c), 750.520e(1)(c). “**Mentally incapable**” means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct. Mich. Comp. Laws. Ann. § 750.520a(j). “**Mentally incapacitated**” means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, alcohol, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent. Mich. Comp. Laws. Ann. § 750.520a(k).
Does developmental disability and/or mental incapacity impact the	Yes. A person who is mentally impaired, mentally incapacitated or physically helpless cannot consent to a sexual act. Minn. Stat. § 609.341(4). It constitutes criminal sexual conduct if the actor commits sexual penetration or contact and knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless. Minn. Stat. §§ 609.342, 609.343, 609.344, 609.345.

impact the victim's ability to consent?	• "**Mentally incapacitated**" means (1) that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration, or (2) that person is under the influence of any substance or substances to a degree that renders them incapable of 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 withhold consent or to withdraw consent because of a physical condition; or (c) unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor. Minn. Stat. § 609.341.
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, a person commits a sex crime if the victim is incapable, through any unsoundness of mind, due to any cause, including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent. Idaho Statutes § 18-6101(3). *See also State v. Soura*, 796 P.2d 109 (Idaho 1990). In determining whether the victim had the capacity to consent, the court stated that the applicable test was whether the victim "understood and appreciated the physical, emotional and moral consequences of sexual intercourse with the defendant." The court in *Soura* looked at several factors, including that: • Victim had a passive personality with an IQ of 71, placing her in the lowest 2 ½ percent of the population; • Victim had never held a job and could only perform menial tasks and then only under close supervision; • Victim could not perform domestic work or take trips without close supervision; • Victim had not completed special education courses in high school.
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. See definitions above of "**unable to give knowing consent**" and "**unconscious of the nature of the act**." 720 ILCS 5/11-0.1. 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 5/11-1.30, 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. Whitten*, 647 N.E.2d 1062 (Ill. App.1995) ("to support a guilty verdict based upon the victim's inability to understand the nature of the act and to give knowing consent, the State must show that the victim had insufficient intelligence to understand the act, its nature, and possible consequences.")

Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. A person commits a sex crime if the victim is so mentally disabled or deficient that consent to sexual intercourse or sexual conduct cannot be given. IC §§ 35-42-4-1; 35-42-4-8.
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. Sexual abuse is defined to include any sex act between persons where the other person is suffering from a mental defect or incapacity which precludes giving consent or lacks the mental capacity to know the right and wrong of conducts in sexual matters. I.C.A. § 709.1. In addition, a person commits sexual abuse in the third degree if: • (1) the sex act is between persons who are not cohabitating as husband and wife and the other person is suffering from a mental defect or incapacity which precludes giving consent; I.C.A. § 709.4(b)(1) or • (2) the sex act is performed while the other person is mentally incapacitated. I.C.A. § 709.4(d). "**Mentally incapacitated**" means that a person is temporarily incapable of appraising or controlling the person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance. I.C.A. §709.1A. The key issue is whether the mental strength of the victim is so far below the normal that it precludes effective resistance. *State v. Sullivan*, 298 N.W.2d 267, 272 (Iowa 1980). Persons who are so mentally incompetent or incapacitated as to be unable to understand the nature and consequences of the sex act are incapable of giving consent. *Id.*
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. A person commits a sex crime where the person otherwise meets the elements of the sex crime and the victim is incapable of giving consent because of mental deficiency or disease, which condition was known by the offender or was reasonably apparent to the offender. K.S.A. 21-5503. *See also State v. Jaurez*, 861 P.2d 1382 (Kan. App. 1993) ("When a mentally deficient individual's capacity to consent to a sexual act is at issue, the jury is capable of determining whether that individual is able to understand the nature and consequences of engaging in such an act. In reaching its determination, the jury should evaluate the individual's behavior in normal social intercourse as well as consider any expert testimony concerning the individual's mental deficiency.")
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	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,* 2013 WL 6212240 (Ky.App. 2013) ("In determining whether a woman is incapable of granting consent because she is mentally defective, the sole question is whether she is capable of appraising the nature of the sexual act being performed" prior to the time that the sexual act occurred)

Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, a person can be mentally incapacitated or impaired because of mental disability or disease to the extent that the person is unable to consent to sexual activity. Connecticut General Statutes Annotated §§ 53a-65; 53a-70; 53a-71; 53a-72a. However, there is an affirmative defense that the actor, at the time of the conduct constituting the criminal offense, did not know of such condition of the victim. Connecticut General Statutes Annotated § 53a-67(a). "**Impaired because of mental disability or disease**" means that a person suffers from a mental disability or disease which renders such person incapable of appraising the nature of such person's conduct. Connecticut General Statutes Annotated § 53a-65(4). "**Mentally incapacitated**" means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent. Connecticut General Statutes Annotated § 53a-65(5).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, there is no consent if the defendant knew that 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. 11 Delaware Code § 761(k)(3).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. A person is unable to consent to engaging in a sexual act or sexual contact if such person is (A) incapable of appraising the nature of the conduct, (B) incapable of declining participation in that sexual act or sexual contact; or (C) incapable of communicating unwillingness to engage in that sexual act or sexual contact. D.C. Code §§ 22-3003(2)(A)-(C), 22-3005(2)(A)-(C).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, any developmental disability and/or mental incapacity may impair the victim's ability to intelligently, knowingly, and voluntarily consent. Florida Statutes § 794.011(1)(c)-(d). In addition, there are increased penalties for a sexual battery carried out on a victim that the accused either knows or has reason to believe is mentally defective. "**Mentally defective**" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. Florida Statutes § 794.011(1)(c). "**Mentally incapacitated**" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent due

	to any other act committed upon that person without his or her consent." Florida Statutes § 794.011(1)(d).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes, a victim who has a developmental disability or lacks the mental capacity to make ordinary judgments on his or her own is unable to give consent to sexual acts. *Baise v. The State*, 502 S.E.2d 492, 232 Ga. App. 556 (1998).
Does developmental disability and/or mental incapacity impact the victim's ability to consent?	Yes. A person commits a sex crime if the person knowingly subjects to a sexual act another person who is mentally defective or mentally incapacitated. HRS §§ 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 appraising the nature of the person's conduct) and that Defendant knew that Complaining Witness was mentally defective. *In Interest of Doe*, 918 P.2d 254 (Hawaii App. 1996).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a person can be incapable of consent because he or she is physically helpless. Arkansas Code §§ 5-14-103(a)(2); 5-14-125(a)(2).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a person is deemed incapable of consenting if he or she is incapacitated. Ala. Code § 13A-6-70(c). "**Incapacitated**" means (among other things) that (a) a person suffers from a mental or developmental disease or disability which renders the person incapable of appraising the nature of his or her conduct or (b) a person who is unable to give consent or is unable to communicate an unwillingness to an act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate. Ala. Code § 13A-6-60(2)(a) & (c).

Does physical disability, incapacity or helplessness impact the victim's ability to consent?	"**Incapacitated**" means temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Alaska Stat. § 11.41.470(2). Lack of consent is not an element of many sex crimes involving incapacity (meaning the offender is responsible regardless of whether the victim consented):
	
	• The following constitutes sexual assault in the second degree:
	  • A person engaging in sexual penetration with a person who is mentally incapable, incapacitated, or unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(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).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	No.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a person can be incapable of giving legal consent because of a physical disability, and this is known or reasonably should be known to the person committing the act. California Penal Code § 261(a)(1).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, the actor may be guilty of sexual assault and/or unlawful sexual contact when the victim is "physically helpless" and the actor knows the victim is physically helpless and the victim has not consented. Colorado Revised Statutes Annotated §§ 18-3-402(1)(h); 18-3-404(1)(c). "**Physically helpless**" means unconscious, asleep, or otherwise unable to indicate willingness to act. Colorado Revised Statutes Annotated § 18-3-401(3).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a person who is "physically helpless" cannot give consent. W. Va. Code Ann. § 61-8B-2(c). A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless. W. Va. Code Ann. § 61-8B-4. A person is guilty of sexual abuse in the first degree when such person subjects another person to sexual contact who is physically helpless. W. Va. Code Ann. § 61-8B-7. "**Physically helpless**" means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act. W. Va. Code Ann. § 61-8B-1.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a person who is physically unable to communicate unwillingness to an act is presumed incapable of consent. Wis. Stat. Ann. § 940.225(4).

Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, any actor who inflicts sexual intrusion on a victim commits a sexual assault in the first degree if the victim is physically helpless, and the actor knows or reasonably should know that the victim is physically helpless and that the victim has not consented. Wyo. Stat. Ann. § 6-2-302. "**Physically helpless**" means unconscious, asleep or otherwise physically unable to communicate unwillingness to act. Wyo. Stat. Ann. § 6-2-301.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person commits a sex crime if the person engages in sexual penetration (or in certain circumstances, sexual contact) with another person and the actor knows or has reason to know that the victim is mentally impaired, mentally incapacitated, or physically helpless. 9 G.C.A. § 25.15; 25.20; 25.25; 25.30. "**Physically Helpless**" means that a person is unconscious, asleep, unable to withhold consent or withdraw consent because of a physical condition, or for any other reason is physically unable to communicate unwillingness to an act. 9 G.C.A. § 25.10(a)(7). A person who is physically helpless as defined by the Guam statute cannot consent to a sexual act. 9 G.C.A. § 25.10(a)(2)(A).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, an actor who engages in sexual contact with a person when the other person is unconscious or physically helpless, or that person's mental defect or incapacity is known to the actor, is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1708. An actor who perpetrates an act of sexual intercourse or sodomy with a person who by reason of mental or physical weakness or immaturity or any bodily ailment, the person does not offer resistance, is guilty of rape in the first degree. 14 V.I.C. § 1701.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental, commits a severe second degree felony if the victim's capability to consent has been annulled or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances. Puerto Rico Stat. tit. 33 § 4770(d).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, "**physically helpless**" means that a person is unconscious, asleep or for any other reason physically or verbally unable to communicate unwillingness to do an act. Tenn. Code Ann. §39-13-501(5). Rape is an unlawful sexual penetration of a victim by the defendant or of the defendant by a victim when the defendant knows or has reason to know that the victim is **physically helpless**. Tenn. Code Ann. §39-13-503(3) (emphasis added). Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim if the defendant knows or has reason to know that the victim is physically helpless. Tenn. Code. Ann. § 39-13-505.

Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a sexual assault is considered to occur without the consent of the other person if the actor knows the other person is physically unable to resist. Texas Penal Code Ann. §22.011(b)(3).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a sexual offense is considered to occur without consent of the victim if the actor knows the victim is physically unable to resist. Utah Code Ann. §76-5-406(2)(e).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	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 lewd and lascivious conduct. 13 Vermont Stat. Ann. §3254. "Incapable of consenting" means the person: (A) is incapable of understanding the nature of the conduct at issue; (B) is physically incapable of resisting, declining participation in, or communicating unwillingness to engage in the conduct at issue; or (C) lacks the mental ability to make or communicate a decision about whether to engage in the conduct at issue. 13 Vermont Stat. Ann. §3251(10).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a person is guilty of rape if the person has sexual intercourse with a complaining witness through the use of the complaining witness's physical helplessness. VA Code Ann. §§18.2-61; 67.10(4). "**Physical helplessness**" means unconsciousness or any other condition existing at the time of an offense which otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, an actor is guilty of rape in the second degree if they have sexual intercourse with a person who is incapable of consent by reason of being physically helpless. Wash. Rev. Code Ann. § 9A.44.050. A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act is "**physically helpless**." Wash. Rev. Code Ann. § 9A.44.010(12). In any prosecution in which lack of consent is based solely upon the victim's mental incapacity or upon the victim being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless. Wash. Rev. Code Ann. §§ 9A.44.030.

Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Maybe. If a victim is incapacitated, this may classify as being unconscious, which would then qualify as rape (see below). If not, then the answer is no. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female within or without the bonds of matrimony who may be of the same or the opposite sex as the perpetrator where the victim is at the time unconscious of the nature of the act and this fact is known to the accused. Okla. Stat. tit. 21, § 1111(A)(5).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person is incapable of consenting to a sexual act if they are physically helpless. Or. Rev. Stat. § 163.315. "**Physically helpless**" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. Or. Rev. Stat. § 163.305(4). A person who engages in oral or anal intercourse with another person or causes another to engage in oral or anal intercourse commits the crime of sodomy in the first degree if the victim in incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct. Or. Rev. Stat. § 163.405. 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.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. It is rape to have sexual intercourse with a complainant who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring. 18 Pa.C.S.A. § 3121(a)(3). It is indecent assault or aggravated indecent assault for certain activities if the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring or if the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance. 18 Pa.C.S.A. §§ 3125(a)(4-5) and 3126(a)(4-5). It is deviate sexual intercourse in the first degree if the complainant is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring or the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance. 18 Pa.C.S.A. § 3123(a)(4).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if the accused knows or has reason to know that the victim is physically helpless. R.I. Gen. Laws § 11-37-2(1). A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and the accused knows or has reason to know that the victim is physically helpless. R.I. Gen. Laws § 11-37-4(1). "**Physically helpless**" means a person "who is unconscious, asleep, or for any other reason is physically unable

	to communicate unwillingness to an act." R.I. Gen Laws § 11-37-1(6).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. S.C. Code Ann. § 16-3-654(1)(b).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a person can be deemed incapable of consenting to sexual contact because of physical incapacity. S.D. Code §22-22-7.2. "Physical incapacity," means "a person's incapability of resisting because the person is unconscious, asleep, or is subject to another physical condition that prevents the person from giving consent or resisting." S.D. Code §22-22-1.5.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, it is aggravated sexual assault to commit an act of sexual penetration with any person whom the actor knew or should have known at the time of the sexual penetration was physically helpless or incapacitated, intellectually or mentally incapacitated or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent. N.J. Stat. Ann. § 2C:14-2(a)(7). Physically helpless includes when a person is unconscious or is physically unable to flee or is physically unable to communicate unwillingness to act. N.J. Stat. Ann. § 2C:14-1(g). Consent is ineffective if: 1. 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 2. It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense. N.J. Stat. Ann. § 2C:2-10
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, engaging in a sexual act when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless is a criminal offense. New Mexico Statutes §30-9-10(A); §30-9-11.

Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a physically helpless person is incapable of giving consent. New York Penal Law §130.05(3)(d). "**Physically helpless**" means a person that is unconscious or for any other reason physically unable to communicate unwillingness to an act. New York Penal Law §130.00(7).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, it is a crime to engage in sexual activity with a physically helpless person when the person performing the act knows or should have reasonably known the other person was physically helpless. North Carolina General Statutes Annotated §14-27.22; §14-27.27; §14-27.33. "**Physically helpless**" means: • (i) a victim who is unconscious; or • (ii) a victim who is physically unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act. North Carolina General Statutes Annotated §14-27.20.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, 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 gross sexual imposition if that person knows or has reasonable cause to believe that the victim is unaware that a sexual act or sexual contact is being committed upon him or her. NDCC § 12.1-20-03(1)(c) & (2)(c).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, no person shall engage in sexual conduct or sexual contact with another if the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age. Ohio Rev. Code Ann. § 2907.02(A)(1)(c) (crime of rape applies for sexual conduct); 2907.05(A)(5) (crime of gross sexual imposition for sexual contact).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a person is guilty of sexual battery if he or she engages in sexual penetration with a physically helpless person. Miss. Code Ann. § 97-3-95. "**Physically helpless person**" means one who is unconscious or one who for any other reason is physically incapable of communicating an unwillingness to engage in an act. Miss. Code Ann. § 97-3-97(d).

Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse. Mo. Ann. Stat. § 566.030.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. "Without consent" means the victim is incapable of consent because the victim is physically helpless (note that "physically helpless" is not defined in the statute). Mont. Code Ann. § 45-5-501(1)(b)(ii).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. Any person who subjects another person to sexual penetration who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree. Neb. Rev. Stat. §28-319(1)(b). Determining incapacity to consent requires an "individualized inquiry" into the victim's capacity and does not necessarily require the victim suffer from a mental or physical impairment such as severe intoxication. State v. Npimnee, 316 Neb. 1, 2 N.W.3d 620 (Neb. S. Ct. 2024). Any person who subjects another person to sexual contact who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree. Neb. Rev. Stat. §28-320(1)(b). Nebraska criminal law is consistent with the legal test for effective consent which examines whether an adult cannot give effective consent because the person suffers from a temporary or permanent abnormality. The abnormality may be an inability to resist or the lack of understanding of the nature of sexual relations. *State v. Collins*, 7 Neb. App. 187, 197 (1998).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	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).

Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person is deemed unable to consent if he or she is physically helpless to resist. N.H. Rev. Stat. Ann. § 632-A:2(I)(b).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. It is deemed without the lawful consent of the victim when the victim is prevented from resisting the act because the victim suffers from a disability (which "means a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for his or her own care or protection"). LSA-R.S. 14:42. Also, a person commits a sex crime where the sex act is without consent of the victim, and the victim is prevented from resisting the act because the victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability. LSA-R.S. 14:43.1.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person is guilty of a sex crime if that person engages in a "sexual act/contact/touching" with another person and: • (1) the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act; or • (2) 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. 17-A M.R.S.A. 253, 255-A, 260.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person may not engage in "vaginal intercourse," a "sexual act," or "sexual contact" with another if the victim is a physically helpless individual and the person performing the act knows or reasonably should know that the victim is a physically helpless individual. MD Code, Criminal Law, § 3-304; 3-307. "**Physically helpless individual**" means an individual who: (1) is unconscious; or (2) (i) does not consent to vaginal intercourse, a sexual act, or sexual contact; and (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;

	(2) resisting vaginal intercourse, a sexual act, or sexual contact; or (3) communicating unwillingness to submit to vaginal intercourse, a sexual act, or sexual contact. MD Code, Criminal Law, § 3-301.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	See above.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person is guilty of criminal sexual conduct if the person engages in sexual penetration or contact and the actor knows or has reason to know that the victim is physically helpless. Mich. Comp. Laws. Ann. §§ 750.520b(1)(d)(i), 750.520c(1)(d)(i), 750.520d(1)(c), 750.520e(1)(c).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person who is physically helpless cannot consent to a sexual act. Minn. Stat. § 609.341. It constitutes criminal sexual conduct if the actor commits sexual penetration or contact and knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless. Minn. Stat. §§ 609.342, 609.343, 609.344, 609.345.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a person commits a sex crime if the victim is a "vulnerable adult." "Vulnerable adult" means "a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources." Idaho Statutes § 18-1505(4)(e).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. Physical incapacity can impact the victim's ability to consent. See definitions above of "**unable to give knowing consent**" and "**unconscious of the nature of the act.**" 720 ILCS 5/11-0.1. Additionally, the crime and punishment is more severe if the victim is a person with a physical disability. 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.60.

Does physical disability, incapacity or helplessness impact the victim's ability to consent?	No.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. Sexual abuse is defined to include any sex act between persons when the other person is suffering from a mental defect or incapacity which precludes giving consent. I.C.A. § 709.1. Sexual abuse in the third degree occurs when a sex act is performed while the other person is physically incapacitated or physically helpless. I.C.A. § 709.4. "**Physically helpless**" means that a person is unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited. I.C.A. §709.1A. "**Physically incapacitated**" means that a person has a bodily impairment or handicap that substantially limits the person's ability to resist or flee. I.C.A. §709.1A.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person commits a sex crime where the person otherwise meets the elements of the sex crime and the victim is unconscious or physically powerless. K.S.A. 21-5503.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person is deemed incapable of consent when he or she is physically helpless. KRS §§ 510.010.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, engaging in sexual activity with another person when that other person is physically helpless is a criminal offense. Connecticut General Statutes Annotated §§ 53a-65; 53a-71(a)(3); 53a-73a(a)(1)(C). 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). "**Physically helpless**" means that a person is unconscious or for any other reason is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact. Connecticut General Statutes Annotated § 53a-65(6).

Does physical disability, incapacity or helplessness impact the victim's ability to consent?	No.
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person is unable to consent to engaging in a sexual act or sexual contact if such person is: • Incapable of declining participation in that sexual act or sexual contact; or • Incapable of communicating unwillingness to engage in that sexual act or sexual contact. D.C. Code §§ 22-3003(2)(B)-(C), 22-3005(2)(B)-(C).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, a person that is physically helpless or physically incapacitated may not be able to provide intelligent, knowing, and voluntary consent. Florida Statutes § 794.011. "**Physically helpless**" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act. Florida Statutes § 794.011(1)(f). "**Physically incapacitated**" means bodily impaired or handicapped and substantially limited in ability to resist or flee. Florida Statutes § 794.011(1)(d).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes, for a victim who is physically or mentally incompetent of knowingly and intelligently giving consent to sexual acts, the requirement of force is found in what is called constructive force. *Durr v. State*, 493 S.E.2d 210 (1997), 229 Ga. App. 103 (1997).
Does physical disability, incapacity or helplessness impact the victim's ability to consent?	Yes. A person commits a sex crime if the person knowingly subjects to a sexual act another person who is physically helpless. HRS §§ 707-730; 707-731; 707-732.

Does consciousness impact the victim's ability to consent?	Yes, a person that is unconscious is deemed "physically helpless" and unable to give consent. Arkansas Code § 5-14-101(8)(A).
Does consciousness impact the victim's ability to consent?	Yes, a person is deemed incapable of consenting if he or she is incapacitated. Ala. Code § 13A-6-70(c). "**Incapacitated**" means (among other things) that a person is unable to give consent or unable to communicate an unwillingness to an act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate. Ala. Code § 13A-6-60(2)(c).

Does consciousness impact the victim's ability to consent?	Yes, "**without consent**" means that, under the totality of the circumstances surrounding the offense, there was not a freely given, reversible agreement specific to the conduct at issue; in this paragraph, "freely given" means agreement to cooperate in the act was positively expressed by word or action. Alaska Stat. § 11.41.470(10). In addition, sexual assault includes sexual penetration or contact with a person who is incapacitated. Alaska Stat. § 11.41.420(a)(3)(B) and § 11.41.425(a)(1)(B). "**Incapacitated**" means temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act. Alaska Stat. § 11.41.470(2). An individual that is unconscious would be both incapable of appraising the nature of one's own conduct and temporarily physically unable to express unwillingness to act. *King v. State*, 978 P.2d 1278 (Alaska Ct. App. 1999). Pursuant to *King*, a person who is asleep is incapacitated.
	
	In addition, lack of consent is not an element for many crimes where an individual would be unaware that a sexual act is being committed (meaning the offender is responsible regardless of whether the victim consented):
	
	• The following constitutes sexual assault in the first degree:
	  • A person engaging in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and the offender is a health care worker and the offense takes place during the course of professional treatment of the victim. Alaska Stat. § 11.41.410(a)(4).
	• The following constitutes sexual assault in the second degree:
	  • A person engaging in sexual penetration with a person who is unaware that a sexual act is being committed. Alaska Stat. § 11.41.420(a)(3).
	  • A person engaging in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and the offender is a health care worker and the offense takes place during the course of professional treatment of the victim. Alaska Stat. § 11.41.420(a)(4).
	• The following constitutes sexual assault in the third degree:
	  • A person engaging in sexual contact with a person who is unaware that a sexual act is being committed. Alaska Stat. § 11.41.425(a)(1).

Does consciousness impact the victim's ability to consent?	Yes, a victim can be incapable of consent 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).

Does consciousness impact the victim's ability to consent?	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)(4). "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. California Penal Code § 261(a)(4).
Does consciousness impact the victim's ability to consent?	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(3). In addition, the sexual assault statute prohibiting sexual intrusion or penetration if actor knows that victim is incapable of appraising nature of victim's conduct may extend to victims who are partially asleep. *People v. Platt*, 170 P.3d 802 (Colo. App. 2007).
Does consciousness impact the victim's ability to consent?	Yes, a person who is unconscious is "physically helpless" and cannot give consent. W. Va. Code Ann. §§ 61-8B-2(c), 61-8B-1, 61-8B-4; 61-8B-7.
Does consciousness impact the victim's ability to consent?	Yes, a person who is unconscious is presumed incapable of consent. Wis. Stat. Ann. § 940.225(4).
Does consciousness impact the victim's ability to consent?	Yes, a person who is unconscious is deemed to be "physically helpless" and not capable of consenting. Wyo. Stat. Ann. § 6-2-302; Wyo. Stat. Ann. § 6-2-301.
Does consciousness impact the victim's ability to consent?	Yes. A person commits a sex crime if the person engages in sexual penetration (or in certain circumstances, sexual contact) with another person and the actor knows or has reason to know that the victim is physically helpless, which includes a person that is unconscious or asleep. 9 G.C.A. §25.10(a)(7); 25.15; 25.20; 25.25; 25.30.

Does consciousness impact the victim's ability to consent?	Yes, an actor who engages in sexual contact with a person when the other person is unconscious or physically helpless, or that person's mental defect or incapacity is known to the actor, is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1708. An actor who perpetrates an act of sexual intercourse or sodomy with a person who is, at the time, unconscious of the nature of the act and this is known to the actor is guilty of rape in the first degree. 14 V.I.C. § 1701.
Does consciousness impact the victim's ability to consent?	Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if at the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused. Puerto Rico Stat. tit. 33 § 4770(e).
Does consciousness impact the victim's ability to consent?	Yes, unconsciousness falls within the definition of "physically helpless." Tenn. Code Ann. §39-13-501(5).
Does consciousness impact the victim's ability to consent?	Yes, a sexual assault is considered to occur without the consent of the other person if the other person has not consented and the actor knows the other person is unconscious or if the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring. Texas Penal Code Ann. §§22.011(b)(3) & (5).
Does consciousness impact the victim's ability to consent?	Yes, a sexual offense is considered to occur without consent of the victim if the actor knows the victim is unconscious, unaware that the act is occurring or is physically unable to resist. Utah Code Ann. §76-5-406(2)(e).
Does consciousness impact the victim's ability to consent?	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 unaware that a sexual act or lewd and lascivious conduct was being committed. A sleeping or unconscious person cannot consent. 13 Vermont Stat. Ann. §3254. No person shall engage in a sexual act with another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring. 13 Vermont Stat. 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 substantial impairment by alcohol, drugs, or other intoxicants and that condition is known or reasonably should be known by the person. 13 Vermont Stat. Ann. §3252.

Does consciousness impact the victim's ability to consent?	Yes, a person who is unconscious is deemed physically helpless. A person is guilty of rape if the person has sexual intercourse with a complaining witness through the use of the complaining witness's physical helplessness. VA Code Ann. §§18.2-61; 67.10(4).
Does consciousness impact the victim's ability to consent?	Yes, a person who is unconscious is physically helpless. An actor is guilty of rape in the second degree if they have sexual intercourse with a person who is incapable of consent by reason of being physically helpless. Wash. Rev. Code Ann. §§ 9A.44.010(12); 9A.44.050. In any prosecution in which lack of consent is based solely upon the victim's mental incapacity or upon the victim being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless. Wash. Rev. Code Ann. §§ 9A.44.030.
Does consciousness impact the victim's ability to consent?	Yes. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female within or without the bonds of matrimony who may be of the same or the opposite sex as the perpetrator where the victim is at the time unconscious of the nature of the act and this fact is known to the accused. Okla. Stat. tit. 21, § 1111(A)(5).
Does consciousness impact the victim's ability to consent?	Yes. The definition for "physically helpless" includes that the person is unconscious. Or. Rev. Stat. § 163.305(4). "**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). A person is considered incapable of consenting to a sexual act if the person (among other things) is "incapable of appraising the nature of the person's conduct", including: • (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). A person who engages in oral or anal intercourse with another person or causes another to engage in oral or anal intercourse commits the crime of sodomy in the first degree if the victim in incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct. Or. Rev. Stat. § 163.405. 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.

Does consciousness impact the victim's ability to consent?	Yes. It is rape to have sexual intercourse with a complainant who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring. 18 Pa.C.S.A. § 3121(a)(3). It is indecent assault or aggravated indecent assault for certain activities if the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring or if the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance. 18 Pa.C.S.A. §§ 3125(a)(4-5) and 3126(a)(4-5). It is deviate sexual intercourse in the first degree if the complainant is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring or the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance. 18 Pa.C.S.A. § 3123(a)(3), (a)(4).
Does consciousness impact the victim's ability to consent?	Yes. A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if the accused knows or has reason to know that the victim is physically helpless, which includes unconsciousness. R.I. Gen. Laws § 11-37-2(1). A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and the accused knows or has reason to know that the victim is physically helpless, which includes unconsciousness. R.I. Gen. Laws § 11-37-4(1).
Does consciousness impact the victim's ability to consent?	Yes. A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and the actor knows or has reason to know that the victim is physically helpless, which includes unconsciousness. S.C. Code Ann. § 16-3-654(1)(b).
Does consciousness impact the victim's ability to consent?	Yes, a person can be deemed incapable of consenting to sexual contact because of physical incapacity, which may occur when a person is unconscious. S.D. Code §22-22-7.2. "Physical incapacity," means "a person's incapability of resisting because the person is unconscious, asleep, or is subject to another physical condition that prevents the person from giving consent or resisting." S.D. Code §22-22-1.5.
Does consciousness impact the victim's ability to consent?	Yes, a person that is unconscious is physically helpless, and it is aggravated sexual assault to commit an act of sexual penetration with a person that the actor knew or should have known was physically helpless. N.J. Stat. Ann. § 2C:14-2(a)(7); N.J. Stat. Ann. § 2C:14-1(g). Consent is ineffective if: 1. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; 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. N.J. Stat. Ann. § 2C:2-10
Does consciousness impact the victim's ability to consent?	Yes, engaging in a sexual act when the perpetrator knows or has reason to know that the victim is unconscious or asleep is a criminal offense. New Mexico Statutes §30-9-10(A); §30-9-11.
Does consciousness impact the victim's ability to consent?	Yes, a physically helpless person, which includes a person who is unconscious, is incapable of giving consent. New York Penal Law §130.00(7); §130.05(3)(d).
Does consciousness impact the victim's ability to consent?	Yes, it is a crime to engage in sexual activity with a physically helpless person, which includes a person who is unconscious, when the person performing the act knows or should have reasonably known the other person was physically helpless. North Carolina General Statutes Annotated §14-27.22; §14-27.27; §14-27.33.
Does consciousness impact the victim's ability to consent?	Yes, 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 gross sexual imposition if that person knows or has reasonable cause to believe that the victim is unaware that a sexual act or sexual contact is being committed upon him or her. NDCC § 12.1-20-03(1)(c) & (2)(c).
Does consciousness impact the victim's ability to consent?	Yes, no person shall engage in sexual conduct or sexual contact with another if the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age. Ohio Rev. Code Ann. § 2907.02(A)(1)(c) (crime of rape applies for sexual conduct); 2907.05(A)(5) (crime of gross sexual imposition for sexual contact). Additionally, no person shall engage in sexual conduct with another person if the offender knows that the other person submits because the other person is unaware that the act is being committed. § 2907.03(A)(3).
Does consciousness impact the victim's ability to consent?	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 unconscious. Miss. Code Ann. § 97-3-95.

Does consciousness impact the victim's ability to consent?	Yes, a person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse. Mo. Ann. Stat. § 566.030.
Does consciousness impact the victim's ability to consent?	Yes. "Without consent" means the victim is incapable of consent because the victim is mentally disordered or incapacitated. Mont. Code Ann. § 45-5-501(1)(b)(i).
Does consciousness impact the victim's ability to consent?	Yes. Any person who subjects another person to sexual penetration who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree. Neb. Rev. Stat. §28-319(1)(b). Any person who subjects another person to sexual contact who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree. Neb. Rev. Stat. §28-320(1)(b). Determining incapacity to consent requires an "individualized inquiry" into the victim's capacity and does not necessarily require the victim to suffer from a mental or physical impairment such as severe intoxication. State v. Npimnee, 316 Neb. 1, 2 N.W.3d 620 (Neb. S. Ct. 2024).
Does consciousness impact the victim's ability to consent?	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).
Does consciousness impact the victim's ability to consent?	Yes. Although not expressly mentioned in the statute, evidence that the victim was unconscious may support a conclusion that victim was physically unable to resist. *State v. Grimes*, 876 A.2d 753, 756 (2005).
Does consciousness impact the victim's ability to consent?	Yes. The following are deemed to be without the lawful consent of the victim: • (1) when the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind, which would likely include unconsciousness, produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim; • (2) when the victim is incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent or any cause, which would likely

	include unconsciousness, and the offender knew or should have known of the victim's incapacity. LSA-R.S. 14:42.1, LSA-R.S. 14:43.
Does consciousness impact the victim's ability to consent?	Yes. A person is guilty of a sex crime if that person engages in a "sexual act/contact/touching" with another person and the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act. 17-A M.R.S.A. 253, 255-A, 260.
Does consciousness impact the victim's ability to consent?	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 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. "**Substantially cognitively impaired individual**" means an individual who suffers from an intellectual disability or a mental disorder, either of which temporarily or permanently renders the individual substantially incapable of: (1) appraising the nature of the individual's conduct; (2) resisting vaginal intercourse, a sexual act, or sexual contact; or (3) communicating unwillingness to submit to vaginal intercourse, a sexual act, or sexual contact. MD Code, Criminal Law, § 3-301. "**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.
Does consciousness impact the victim's ability to consent?	Yes, if the victim is so impaired as to be incapable of consenting to intercourse. *Com. v. Blache*, 880 N.E.2d 736, 743, 450 Mass. 583, 592 (2008).
Does consciousness impact the victim's ability to consent?	Yes. A person is guilty of criminal sexual conduct if the person engages in sexual penetration or contact and the actor knows or has reason to know that the victim is physically helpless, which includes unconsciousness. Mich. Comp. Laws. Ann. §§ 750.520b(1)(d)(i), 750.520c(1)(d)(i), 750.520d(1)(c), 750.520e(1)(c). "**Physically helpless**" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act. Mich. Comp. Laws Ann. § 750.520a(m).

Does consciousness impact the victim's ability to consent?	Yes. A person who is physically helpless (which includes unconsciousness) cannot consent to a sexual act. Minn. Stat. § 609.341. It constitutes criminal sexual conduct if the actor commits sexual penetration or contact and knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless. Minn. Stat. §§ 609.342, 609.343, 609.344, 609.345.
Does consciousness impact the victim's ability to consent?	Yes. A person commits a sex crime if the victim at the time is unconscious of the nature of the act due to being: • unconscious or asleep; or • not aware, knowing, perceiving, or cognizant that the act occurred. Idaho Statutes § 18-6101(7).
Does consciousness impact the victim's ability to consent?	Yes. See definitions above of "**unable to give knowing consent**" and "**unconscious of the nature of the act**." 720 ILCS 5/11-0.1. 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.
Does consciousness impact the victim's ability to consent?	Yes. A person commits a sex crime if the other person is unaware that the sexual intercourse or other sexual conduct is occurring. IC §§ 35-42-4-1; 35-42-4-8.
Does consciousness impact the victim's ability to consent?	Yes. Sexual abuse is defined to include any sex act between persons that is done against the will of the other, which includes an act that is done while the other person is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness. I.C.A. § 709.1. In addition, a person commits sexual abuse in the third degree if: • (1) the sex act is between persons who are not cohabitating as husband and wife and the other person is suffering from a mental defect or incapacity which precludes giving consent; or • (2) the act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless. I.C.A. § 709.4. "**Physically helpless**" means that a person is unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited. I.C.A. §709.1A.
Does consciousness impact the victim's ability to consent?	Yes. A person commits a sex crime where the person otherwise meets the elements of the sex crime and the victim is unconscious or physically powerless. K.S.A. 21-5503.

Does consciousness impact the victim's ability to consent?	Yes. A person is deemed incapable of consent when he or she is physically helpless, which includes unconsciousness. KRS §§ 510.010.
Does consciousness impact the victim's ability to consent?	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(6).
Does consciousness impact the victim's ability to consent?	Yes, there is no consent if the defendant knew the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed. 11 Delaware Code § 761(k)(2).
Does consciousness impact the victim's ability to consent?	Yes. A person is unable to consent to engaging in a sexual act or sexual contact if such person is: • Incapable of appraising the nature of the conduct; • Incapable of declining participation in that sexual act or sexual contact; or • Incapable of communicating unwillingness to engage in that sexual act or sexual contact. D.C. Code §§ 22-3003(2)(A)-(C), 22-3005(2)(A)-(C).
Does consciousness impact the victim's ability to consent?	Yes, a person that is physically helpless or mentally incapacitated may not be able to provide intelligent, knowing, and voluntary consent. Florida Statutes § 794.011. "**Physically helpless**" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act. Florida Statutes § 794.011(1)(f). "**Mentally incapacitated**" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(d).
Does consciousness impact the victim's ability to consent?	Yes, a victim whose will is temporarily lost due to unconsciousness arising from use of drugs or other cause, or sleep is unable to consent to sexual activity. *Gore v. State*, 119 Ga. 418 (1904); *Evans v. State*, 67 Ga. App. 631 (1942).

Does consciousness impact the victim's ability to consent?	Yes. A person commits a sex crime if the person knowingly subjects to a sexual act another person who is physically helpless, which includes a person who is unconscious. HRS §§ 707-700; 707-730; 707-731; 707-732.
Does intoxication impact the victim's ability to consent?	Yes, a person that is temporarily incapable of appreciating or controlling the person's conduct as a result of the influence of a controlled or intoxicating substance: • administered to the person without the person's consent; or • that renders the person unaware a sexual act is occurring, is deemed "mentally incapacitated" and unable to give consent. Arkansas Code § 5-14-101(6).
Does intoxication impact the victim's ability to consent?	Yes, a person is deemed incapable of consenting if he or she is incapacitated. Ala. Code § 13A-6-70(c). "**Incapacitated**" means (among other things) that a person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance and the condition was known or should have been reasonably known to the offender. Ala. Code § 13A-6-60(2)(b).
Does intoxication impact the victim's ability to consent?	The Alaska Statute does not directly address intoxication, but intoxication that causes an individual to be "unaware that a sexual act is being committed" may invalidate consent.
Does intoxication impact the victim's ability to consent?	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).
Does intoxication impact the victim's ability to consent?	Yes, the accused is guilty of rape if engaging in an act of sexual intercourse where the other person is prevented from resisting by an intoxicating or anesthetic substance, or a controlled substance, and this condition was known, or reasonably should have been known, by the accused. California Penal Code § 261(a)(3).
Does intoxication impact the victim's ability to consent?	Yes, any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if the actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission. Colorado Revised Statutes Annotated § 18-3-404(1)(d). In addition, in *People In Interest of G.B.*, 433 P.3d 138 (Colo. App. 2018), the court held that evidence that a sexual assault victim was intoxicated during sexual intercourse, and was for that reason incapable of appraising nature of her conduct, was sufficient to support a sexual assault conviction.

Does intoxication impact the victim's ability to consent?	Yes. A person who is deemed **mentally incapacitated** cannot give consent. W. Va. Code Ann. §§ 61-8B-5, 61-8B-8. **"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).
Does intoxication impact the victim's ability to consent?	Yes, if the victim is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent. Wis. Stat. Ann. § 940.225(2).
Does intoxication impact the victim's ability to consent?	Yes, if the intoxication makes the victim "physically helpless" or have a mental illness, mental deficiency or developmental disability that makes them incapable of appraising the nature of their conduct. Wyo. Stat. Ann. § 6-2-301; Wyo. Stat. Ann. § 6-2-302.*CSC v. State of Wyoming*, 118 P.3d 970 (Wyo. 2005). Any actor who inflicts sexual intrusion on a victim commits a sexual assault in the second degree if the actor administers, or knows that someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to appraise or control his conduct. Wyo. Stat. Ann. § 6-2-303.
Does intoxication impact the victim's ability to consent?	Yes. A person commits a sex crime if the person engages in sexual penetration (or in certain circumstances, sexual contact) with another person and the actor knows or has reason to know that the victim is mentally incapacitated, which includes a person that is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent or a person that is voluntarily 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. 9 G.C.A. § 25.10(a)(6); 25.15; 25.20; 25.25; 25.30.
Does intoxication impact the victim's ability to consent?	Yes, a person who engages in sexual contact with a person when the other person's ability to consent to or resist the contact has been substantially impaired by an intoxicating, narcotic or anesthetic agent, is guilty of unlawful sexual contact in the first degree. 14 V.I.C. § 1708. A person who perpetrates an act of sexual intercourse or sodomy with a person when the person's resistance is prevented by stupor or weakness of mind produced by an intoxicating, narcotic or anesthetic agent, or when the person is known by the defendant to be in such a state of stupor or weakness of mind from any cause is guilty of rape in the first degree. 14 V.I.C. § 1701.
Does intoxication impact the victim's ability to consent?	Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if the victim's capability to consent has been annulled or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances. Puerto Rico Stat. tit. 33 § 4770(d).

Does intoxication impact the victim's ability to consent?	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).
Does intoxication impact the victim's ability to consent?	Yes, a sexual assault is considered to occur without the consent of the other person if the actor knows that the other person is intoxicated or impaired by any substance to the extent that the other person is incapable of consenting. Texas Penal Code Ann. §22.011(b)(6).
Does intoxication impact the victim's ability to consent?	Yes, a sexual offense is considered to occur without consent of the victim if the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge. Utah Code Ann. §76-5-406(2)(h).
Does intoxication impact the victim's ability to consent?	Yes, if the actor knew or reasonably should have known that the victim was incapable of consenting to the sexual act or lewd and lascivious conduct with the actor because the person was substantially impaired by alcohol, drugs, or other intoxicants. 13 Vermont Stat. Ann. §3254. No person shall administer any alcohol, drugs, or other intoxicants to another person without the person's knowledge or against the person's will and, while the person is impaired by the alcohol, drugs, or intoxicants, engage in a sexual act with that person. 13 Vermont Stat. Ann. §3252.
Does intoxication impact the victim's ability to consent?	Yes, "**mental incapacity**," a statutory term that applies to rape and other sex crimes, is not limited to a permanent condition and may extend to a transitory circumstance such as intoxication if the nature and degree of the intoxication has gone beyond the stage of merely reduced inhibition and has reached a point where the victim does not understand the nature or consequences of the sexual act; the cause of the victim's lack of ability to give consent is not dispositive. *Molina v. Comm*., 636 S.E.2d 470 (2006). It is well established that a transitory circumstance such as intoxication may result in mental incapacity if the nature and degree of the intoxication has gone beyond the state of merely reduced inhibition and has reached a point where the victim does not understand the nature and consequences of the sexual act. *Edwin Giovanni Chavez Macias v. Comm. of Virginia*, 2021 WL 4532487 (Va. Ct. App. Oct. 5, 2021).
Does intoxication impact the victim's ability to consent?	Yes, a person that is under the influence of a substance "which prevents a person from understanding the nature or consequences of the act of sexual intercourse" is "**mentally incapacitated**" and incapable of giving consent. Wash. Rev. Code Ann. § 9A.44.010(7). In any prosecution in which lack of consent is based solely upon the victim's mental incapacity or upon the victim being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless. Wash. Rev. Code Ann. §§ 9A.44.030.

	It is rape in the first degree when the sexual intercourse occurs after the perpetrator or an accessory knowingly furnishes the victim with a legend drug, controlled substance, or controlled substance analog without the victim's knowledge and consent which renders the victim incapable of consent to sexual intercourse due to physical helplessness or mental incapacitation. Wash. Rev. Code Ann. § 9A.44.040.
Does intoxication impact the victim's ability to consent?	Yes. The definition of rape includes an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female within or without the bonds of matrimony may be of the same or the opposite sex as the perpetrator where: (1) the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent; (2) the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; or (3) the victim is at the time unconscious of the nature of the act and this fact is known to the accused. Okla. Stat. tit. 21, § 1111(A)(2), (4), (5).
Does intoxication impact the victim's ability to consent?	Not explicitly. However, the definition for "physically helpless" includes that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. Or. Rev. Stat. § 163.305(4). Furthermore, a person is not capable of consent if they cannot appraise the nature of the person's conduct including: • (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). A person who engages in oral or anal intercourse with another person or causes another to engage in oral or anal intercourse commits the crime of sodomy in the first degree if the victim in incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct. Or. Rev. Stat. § 163.405. 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.
Does intoxication impact the victim's ability to consent?	Yes. It is rape to have sexual intercourse where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance. 18 Pa.C.S.A. § 3121(a)(4). It is indecent assault or aggravated indecent assault for certain activities if the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring or if the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of

	preventing resistance. 18 Pa.C.S.A. §§ 3125(a)(4-5) and 3126(a)(4-5). It is deviate sexual intercourse in the first degree if the complainant is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring or the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance. 18 Pa.C.S.A. § 3123(a)(3), (a)(4).
Does intoxication impact the victim's ability to consent?	Yes. A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if the accused knows or has reason to know that the victim is mentally incapacitated, including due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent. R.I. Gen. Laws § 11-37-1(5); 11-37-2(1). A person is guilty of second degree sexual assault if he or she engages in sexual contact with another person and the accused knows or has reason to know that the victim is mentally incapacitated, including due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent. R.I. Gen. Laws § 11-37-1(5); 11-37-4(1).
Does intoxication impact the victim's ability to consent?	Yes. A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and the actor causes the victim, without the 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(1)(c).
Does intoxication impact the victim's ability to consent?	Yes, a person can be deemed incapable of consenting to sexual penetration because of any intoxicating agent. S.D. Code §22-22-1(4). "[T]he State must prove the defendant knew or reasonably should have known that the complainant's intoxicated condition rendered her incapable of consenting." *State v. Jones*, 804 N.W. 2d 409, 414 (2011). In addition, a person can be deemed incapable of consenting to sexual contact because of physical incapacity. S.D. Code §22-22-7.2. "Physical incapacity," means "a person's incapability of resisting because the person is unconscious, asleep, or is subject to another physical condition that prevents the person from giving consent or resisting." S.D. Code §22-22-1.5. State v. Belt, 2024 S.D. 82, ¶39, 15 N.W.3d 732, 741 (intoxication is unquestionably a "physical condition,").
Does intoxication impact the victim's ability to consent?	Yes, it is aggravated sexual assault to commit an act of sexual penetration with a person that the actor knew or should have known was mentally incapacitated, which includes when he or she is under the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without his prior knowledge or consent. N.J. Stat. Ann. § 2C:14-2(a)(7); N.J. Stat. Ann. § 2C:14-1(i). 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. N.J. Stat. Ann. § 2C:2-10
Does intoxication impact the victim's ability to consent?	Yes, engaging in a sexual act when the perpetrator knows or has reason to know that the victim is unconscious or otherwise physically helpless is a criminal offense. New Mexico Statutes §30-9-10; §30-9-11.
Does intoxication impact the victim's ability to consent?	Yes, a mentally incapacitated person, which includes a person who is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, is incapable of giving consent. New York Penal Law §130.00(6); §130.05(3)(c). A person is guilty of facilitating a sex offense with a controlled substance when he or she: 1. knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and 2. commits or attempts to commit such conduct constituting a felony defined in this article. New York Penal Law §130.90.
Does intoxication impact the victim's ability to consent?	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 incapability of appraising the nature of a medical treatment, either because the patient is unconscious or under the influence of an impairing substance, including, but not limited to, alcohol, anesthetics, controlled substances, or any other drug or psychoactive substance capable of impairing a person's physical or mental faculties. North Carolina General Statutes Annotated §14-27.33A.
Does intoxication impact the victim's ability to consent?	Yes, if the intoxication is involuntary. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of gross sexual imposition if 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. NDCC § 12.1-20-03(1)(b). A person who knowingly has sexual contact with another, or who causes another person to have sexual contact with that person, is guilty of sexual assault if 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 for the purpose of preventing resistance. NDCC § 12.1-20-07(1)(c).
Does intoxication impact the victim's ability to consent?	Yes. **If the intoxication is involuntary:** An offender commits rape if they engage in sexual conduct with another if for the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception. § 2907.02(A)(1)(a). An offender commits gross sexual imposition if they engage in sexual contact with another; cause another to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when for the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception. § 2907.05(A)(2). **If the intoxication is voluntary:** An offender commits sexual imposition if they engage in sexual contact with another; cause another to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when the offender: • knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired, or • knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact. • 2907.06(A)(2-3). An offender commits gross sexual imposition if they engage in sexual contact with another; cause another to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when the offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery. § 2907.05(A)(3). Additionally, an offender commits a sexual battery if they engage in sexual conduct with another when the offender: • knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired; or

	• knows that the other person submits because the other person is unaware that the act is being committed. • 2907.03(A)(2)-(3). "[W]hen reviewing substantial impairment due to voluntary intoxication, there can be a fine, fuzzy, and subjective line between intoxication and impairment. Every alcohol consumption does not lead to a substantial impairment. Additionally, the waters become even murkier when reviewing whether the defendant knew, or should have known, that someone was impaired rather than merely intoxicated." *State v. Hatten*, 2010-Ohio-499, ¶ 23, 186 Ohio App. 3d 286, 295, 927 N.E.2d 632, 638–39.
Does intoxication impact the victim's ability to consent?	Yes, a person is guilty of sexual battery if he or she engages in sexual penetration is physically incapable of communicating an unwillingness to engage in an act, or (ii) a mentally incapacitated person, which includes a person who is rendered incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent. Miss. Code Ann. § 97-3-95.with (i) a physically helpless person, which includes a person who for any reason
Does intoxication impact the victim's ability to consent?	Yes, a person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse. Mo. Ann. Stat. § 566.030.
Does intoxication impact the victim's ability to consent?	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).
Does intoxication impact the victim's ability to consent?	Yes. Any person who subjects another person to sexual penetration who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the first degree. Neb. Rev. Stat. §28-319(1)(b). Any person who subjects another person to sexual contact who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree. Neb. Rev. Stat. §28-320(1)(b). Determining incapacity to consent requires an "individualized inquiry" into the victim's capacity and does not necessarily require the victim suffer from a mental or physical impairment such as severe intoxication. State v. Npimnee, 316 Neb. 1, 2 N.W.3d 620 (Neb. S. Ct. 2024). The evidence established that the victim was incapacitated by alcohol, and her assailant knew or should have known that she was mentally or physically incapable of resisting or appraising the nature of her conduct. *State v. Freeman*, 267 Neb. 737, 753 (2004); *see also State v. Mielak*, 33 Neb. App. 309, 322 (2025) (noting that

	ample evidence of victim's intoxication meant defendant knew or should have known that victim was incapable of providing consent).
Does intoxication impact the victim's ability to consent?	Although there is no specific mention of intoxication in the statute, a person is deemed incapable of consent if he or she is "mentally or physically incapable of resisting or understanding the nature of his or her conduct." Nev. Rev. Stat. Ann. § 200.366(1).
Does intoxication impact the victim's ability to consent?	Yes. A person is deemed unable to consent if he or she is "mentally incapacitated" after being administered "any intoxicating substance," without his or her knowledge or consent. N.H. Rev. Stat. Ann. § 632-A:2(I)(f).
Does intoxication impact the victim's ability to consent?	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 offender and without the knowledge of the victim; • (2) when the victim is incapable of resisting or of understanding the nature of the act by reason of a 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. LSA-R.S. 14:42.1, LSA-R.S. 14:43.
Does intoxication impact the victim's ability to consent?	Yes. A person is guilty of a sex crime if that person engages in a "sexual act" with another person and the actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by furnishing, administering or employing drugs, intoxicants or other similar means. 17-A M.R.S.A. 253. Please note that the above only applies if the perpetrator provides the intoxicants to the victim, but says nothing about instances in which the victim voluntarily consumed alcohol, that was not provided by the perpetrator, prior to the assault.
Does intoxication impact the victim's ability to consent?	Yes. A person may not engage in "vaginal intercourse," a "sexual act," or "sexual contact" with another if the victim is a mentally incapacitated individual, and the person performing the act knows or reasonably should know that the victim is a mentally incapacitated individual. MD Code, Criminal Law, § 3-304; 3-307. "**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.

Does intoxication impact the victim's ability to consent?	Yes, if such intoxication renders the person incapable of giving consent. *Com. v. Urban*, 880 N.E.2d 753, 450 Mass. 608 (2008). Fact of intoxication, by itself, does not necessarily mean that an individual is incapable of deciding whether to assent to a sexual encounter. *Id.*
Does intoxication impact the victim's ability to consent?	Yes, if the intoxication is as a result of a narcotic, anesthetic, alcohol, or other substance administered to that person without his or her consent. See definition of "**Mentally incapacitated**" Mich. Comp. Laws. Ann. § 750.520a(k).
Does intoxication impact the victim's ability to consent?	Yes, if such intoxication results in the victim becoming mentally incapacitated or physically helpless.But, see case law regarding voluntary intoxication discussed below. • *State v. Berrios*, 788 N.W.2d 135, 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).
Does intoxication impact the victim's ability to consent?	Yes. A person commits a sex crime if the victim is unable to resist due to any intoxicating, narcotic, or anesthetic substance. Idaho Statutes § 18-6101(5).
Does intoxication impact the victim's ability to consent?	Yes. See definitions above of "**unable to give knowing consent**" and "**unconscious of the nature of the act**." 720 ILCS 5/11-0.1. A person commits a sex crime if that person knows that the victim is unable to understand the nature of the act or is unable to give knowing consent. 720 ILCS 5/11-1.20; 720 ILCS 5/11-1.50. In addition, the crime and punishment is more severe if the accused delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception for other than medical purposes. 720 ILCS 5/11-1.30; 720 ILCS 5/11-1.60.
Does intoxication impact the victim's ability to consent?	Yes, if the intoxication causes the victim to be unaware that the sexual intercourse or other sexual conduct is occurring. IC §§ 35-42-4-1; 35-42-4-8. 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 or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge. IC §§ 35-42-4-1; 35-42-4-3; 35-42-4-5; 35-42-4-8; 35-42-4-9.

Does intoxication impact the victim's ability to consent?	Yes. See definitions above of **mentally incapacitated**, **physically helpless**, and **physically incapacitated**. A person commits sexual abuse in the third degree if: • (1) the sex act is performed while the other person is under the influence of a controlled substance which prevents that person from consenting to the act and the person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance; or • (2) the sex act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless. I.C.A. § 709.4.
Does intoxication impact the victim's ability to consent?	Yes. A person commits a sex crime where the person otherwise meets the elements of the sex crime and the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender. K.S.A. 21-5503.
Does intoxication impact the victim's ability to consent?	Yes. A person is deemed incapable of consent when he or she is mentally incapacitated, which includes intoxication, or if the intoxication causes the person to be physically helpless. KRS §§ 510.010.
Does intoxication impact the victim's ability to consent?	Yes, "**mentally incapacitated**" means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent. Connecticut General Statutes Annotated § 53a-65(5). 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. *State v. Davis*, 180 Conn. App. 799, 807, 185 A.3d 654, 659, cert. denied, 328 Conn. 941, 184 A.3d 760 (2018).
Does intoxication impact the victim's ability to consent?	It can, but not in all circumstances. There is no consent if the defendant has substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance. 11 Delaware Code § 761(k)(5).
Does intoxication impact the victim's ability to consent?	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 the victim to appraise or control his or her conduct, administered by the accused to the victim by force or threat of force, or without the knowledge or permission of the victim. D.C. Code § 22-3002, 22-3004(4).

Does intoxication impact the victim's ability to consent?	Yes, a person that is mentally incapacitated may not be able to provide intelligent, knowing, and voluntary consent. Florida Statutes § 794.011. "**Mentally incapacitated**" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. Florida Statutes § 794.011(1)(d). In addition, a victim's voluntary intoxication, depending on the facts, can lead to a finding of physical helplessness or physical incapacitation such that the victim may not give consent. *Arroyo v. State*, 252 So. 3d 374, 379 (Fla. Dist. Ct. App. 2018).
Does intoxication impact the victim's ability to consent?	Yes, a victim whose will is temporarily lost from intoxication, arising from use of drugs or other cause, is unable to consent to sexual activity. *Gore v. State*, 119 Ga. 418 (1904); *Evans v. State*, 67 Ga. App. 631 (1942).
Does intoxication impact the victim's ability to consent?	Yes. A person commits a sex crime if the person subjects to a sexual act another person who is mentally defective or mentally incapacitated, which includes a person who is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a substance administered to the person without the person's consent. HRS § § 707-700; 707-730; 707-731; 707-732.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes, in a prosecution for non-forcible rape and sexual assault in the first through fourth degree, the victim cannot consent if certain relationships, listed below, exist between the victim and offender. These include: • a minor's guardian; • a member of minor-victim's family (including by adoption); • an employee of the correctional facility where a victim is in custody; • a mandated reporter and is in as position of trust or authority over the minor; • a member of the clergy and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or • a teacher, principal, 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; 5-14-126(a); 5-14-127(a).
Does the relationship between the victim and actor impact the victim's	Yes, in certain cases: • In cases involving the sexual assault of a child by an adult, forcible compulsion may be found where the child knows and trusts the adult and the adult exercises authority and domination over the child sufficient to allow inference of an implied threat if the child did not comply.*R.E.N. v. State*, 944 So. 2d 981, 984 (Ala. Crim. App. 2006) (citing *Powe v. State*, 597 So.2d 721 (Ala.1991)).

the victim's ability to consent?	• 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, but not limited to, sexual intercourse, sodomy, or sexual contact) with such a student by "solicit[ing], persuad[ing], encourag[ing], harass[ing], or entic[ing] 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 § 15-25-1. Consent is not an element of the crime of incest for engaging in sexual intercourse with a family member (meaning the crime of incest occurs whether or not the parties consented to the act). Ala. Code § 13A-13-3.

Does the relationship between the victim and actor impact the victim's ability to 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. § 11.41.410(a)(4).
	• The following constitutes sexual assault in the second degree:
	  • A person engaging in sexual contact with another person who the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or program that is required by law to be licensed by the state. Alaska Stat. § 11.41.420(a)(2).
	  • A person engaging in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and the offender is a health care worker and the offense takes place during the course of professional treatment of the victim. Alaska Stat. § 11.41.420(a)(4).
	• The following constitutes sexual assault in the third degree:
	  • A person, while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engaging in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment. Alaska Stat. § 11.41.425(a)(2).
	  • A person engaging in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Family and Community Services and the offender is the legal guardian of the person. Alaska Stat. § 11.41.425(a)(3).
	• The following constitutes sexual abuse of a minor in the first degree:
	  • A person who is 18 years of age or older engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian. Alaska Stat. § 11.41.434(a)(2).
	  • A person who is 18 years of age or older engages in sexual penetration with a person who is under 16 years of age, and the victim is residing in the same household as the offender and the offender

	has authority over the victim or the offender occupies a position of authority in relation to the victim. Alaska Stat. § 11.41.434(a)(3).

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes, for certain crimes. Spousal status is a defense to a prosecution for sexual abuse under section 13-1404 or sexual conduct with a minor under section 13-1405 if the person was the spouse of the other person at the time of the commission of the act. Spousal status is not a defense 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 and the defendant is in a "position of trust," regardless of consent. Arizona Revised Statute §§ 13-1404(A), 13-1404(B).
	  • "Position of trust" means a person who is or was any of the following:
	  • The minor's parent, stepparent, grandparent, adoptive parent, legal guardian, aunt, uncle or foster parent.
	  • The minor's teacher or any school employee or volunteer at the minor's school who is eighteen years of age or older.
	  • The minor's coach or instructor, whether the coach or instructor is an employee or volunteer.
	  • The minor's clergyman or priest or any person who is at least eighteen years of age and who worked or volunteered for a religious organization that hosted events or activities where the minor was in attendance.
	  • Engaged in a sexual or romantic relationship with the minor's parent, adoptive parent, grandparent, aunt, uncle, legal guardian, foster parent, stepparent, step-grandparent or sibling.
	  • Related to the minor by blood or marriage within the third degree and is at least ten years older than the minor.
	  • The minor's employer.
	  • An employee of a group home or residential treatment facility where the minor resides or has previously resided.
	
	Arizona Revised Statute § 13-1401(A)(2)
	
	• An adult probation department employee or juvenile court employee commits unlawful sexual conduct if the employee knowingly coerces the victim to engage in sexual contact, oral sexual contact or sexual intercourse by either (a) threatening to negatively influence the victim's supervision or release status or (b) offering to positively influence the victim's supervision or release status. Arizona Revised Statute § 13-1409(A).
	• A peace officer commits unlawful sexual conduct by knowingly engaging in sexual contact, oral sexual contact or sexual intercourse with any person who is in the officer's custody or a person who the officer knows or has reason to know is the subject of an investigation. Arizona Revised Statute § 13-1412(A).
	• A licensed behavioral health professional, psychiatrist or psychologist commits sexual misconduct by intentionally or knowingly engaging in sexual intercourse with a client who is currently under the care or

	supervision of the licensed behavioral health professional, psychiatrist or psychologist. Arizona Revised Statute § 13-1418(A). • Employees, contractors, official visitors, volunteers or agency representatives of correctional facilities commit unlawful sexual conduct by intentionally or knowingly engaging in any act of a sexual nature with an offender who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail or with an offender who is under the supervision of either department or a city or county. Arizona Revised Statute § 13-1419(A).
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes, a minor is capable of consenting to sexual intercourse with an adult who is the minor's spouse. California Penal Code § 261.5(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).

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes.
	• Married spouses:
	  • There are certain marital exceptions when there is a marital relationship between an actor and a victim where the elements of the unlawful sexual behavior offense specifically excludes a spouse, such as certain age-related sexual assault offenses, sexual assault on a child (victim under the age of fifteen (15) and actor at least four (4) years older than the victim), and sexual assault on a child (victim under the age of eighteen (18)) by a person in a position of trust. Colorado Revised Statutes Annotated §§ 18-3-402; 18-3-405(1); 18-3-405.3(1); 18-3-409.
	• In the custody of law enforcement:
	  • A victim who is in custody of law or detained in a hospital or other institution cannot consent to any sexual intrusion or sexual penetration with a person who has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search. Colorado Revised Statutes Annotated § 18-3-402(1)(f).
	• Peace Officer:
	  • A victim cannot consent to sexual contact, intrusion, or penetration by a peace officer if (i) in the same encounter, the peace officer contacts the victim for the purpose of law enforcement or contacts the victim in the exercise of the officer's employment activities or duties, (ii) the peace officer knows that the victim is, or causes the victim to believe that he or she is, the subject of an active investigation, and the peace officer uses that knowledge to further the sexual contact, intrusion, or penetration, or (iii) in furtherance of sexual contact, intrusion, or penetration, the peace officer makes any show of real or apparent authority, in each case, unless the sexual contact or intrusion occurs incident to a lawful search. Colorado Revised Statutes Annotated § 18-3-405.7.
	• Therapist and client:
	  • A client cannot consent to any sexual intrusion, sexual penetration or sexual contact with the

	client's psychotherapist. Colorado Revised Statutes Annotated § 18-3-405.5.
	• Child and any person in a position of trust over the child:
	  • A child cannot consent to sexual contact with a person who is not the child's spouse and where such person is in a position of trust with respect to the victim. Colorado Revised Statutes Annotated § 18-3-405.3(1).
	  • One in a "position of trust" includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act. Colorado Revised Statutes Annotated § 18-3-401(3.5).

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes, a person is deemed incapable of consent when such person is 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 by a corrections or parole officer or working or volunteering in an alternative sentence program who supervises program participants. W. Va. Code Ann. §§ 61-8B-2, 61-8B-10. Any teacher, principal, counselor, coach, other employee, volunteer, or school resource officer of any private or public elementary or secondary school who engages in sexual intercourse, sexual intrusion, or sexual contact, as those terms are defined in § 61-8B-1 of this code, with any student enrolled in any private or public elementary or secondary school regardless of the age of the student is guilty of a felony. The fact that the student may have consented to the act is not a defense. W. Va. Code Ann. §§ 61-8B-11b.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes, there are several special relationships between the victim and actor that would impact the victim's ability to consent and therefore make it a crime to engage in sexual contact with a person. Special relationships include: • (a) a therapist-patient relationship; • (b) an employee of an adult family home, community-based residential facility, an in-patient health care facility, or a state treatment facility who has sexual contact or sexual intercourse with a patient or resident of the facility; • (c) an employee of certain "entities" as defined in 48.685(1)(b) and 50.065(1)(c) who has sexual contact or sexual intercourse with a client at the entity. Entity is defined under section 48.685(1)(b) to include a child welfare agency; foster home; interim caretaker; successor guardian; group home; shelter care facility; temporary employment agency; organization that facilitates delegations of the care and custody of children. Entity is defined under section 50.065(1)(c) to include a facility, organization or service that provides direct care or treatment services to clients or an agency that employs or contracts with an individual to provide personal care services, including a hospital, home health agency, temporary employment agency that provides caregivers to another entity, and the board on aging and long-term care; • (d) a correctional staff member who has sexual contact or sexual intercourse with an individual who is

	confined in a correctional institution (unless the person was sexually assaulted by the inmate); • (e) a probation, parole, or extended supervision agent who has sexual intercourse or sexual contact with the individual on parole, probation, or extended supervision who is supervised by him or her or a subordinate; and • (f) a law enforcement officer and has sexual contact or sexual intercourse with any person who is detained by any law enforcement officer or is in the custody of any law enforcement officer. Wis. Stat. Ann. §§ 940.22; 940.225; 940.295.
Does the relationship between the victim and actor 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, employer, custodian, health care provider or any other person who, by reason of his position, is able to exercise significant influence over a person. Wyo. Stat. Ann. § 6-2-301. A person commits a sexual assault in the second degree if: 1. the actor inflicts sexual intrusion on a victim and the actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit; 2. the actor inflicts sexual intrusion on a victim and the actor is an employee, independent contractor or volunteer of a state, county, city or town, or privately operated adult or juvenile correctional system, including but not limited to jails, penal institutions, detention centers, juvenile residential or rehabilitative facilities, adult community correctional facilities or secure treatment facilities and the victim is known or should be known by the actor to be a resident of such facility or under supervision of the correctional system; 3. the actor inflicts sexual intrusion on a victim and the actor is an employee or volunteer of an elementary or secondary public or private school who, by virtue of the actor's employment or volunteer relationship with the school, has interaction with the victim who is a student or participant in the activities of the school and is more than four (4) years older than the victim; or 4. the actor subjects another person to sexual contact or sexual intrusion in the actor's capacity as a health care provider in the course of providing care, treatment, services or procedures to maintain, diagnose or otherwise treat a patient's physical or mental condition. Wyo. Stat. Ann. § 6-2-303. Depending on the age difference between the victim and actor, an actor in a position of authority over a victim may be guilty of sexual abuse of a minor in varying degrees: • Sexual abuse of a minor in the first degree. Wyo. Stat. Ann. § 6-2-314. • An actor commits the crime of sexual abuse of a minor in the first degree if: • Being 18 years of age or older, the actor inflicts sexual intrusion on a victim who is less than 18 years of age, and the actor is the victim's legal guardian or an ancestor or descendant or a brother or sister of the whole or half-blood • Being 18 years of age or older, the actor inflicts sexual intrusion on a victim who is less than

	16 years of age and the actor occupies a position of authority in relation to the victim. • Sexual abuse of a minor in the second degree. Wyo. Stat. Ann. § 6-2-315. • An actor commits the crime of sexual abuse of a minor in the second degree if: • Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 18 years of age, and the actor is the victim's legal guardian or an ancestor or descendant or a brother or sister of the whole or half-blood • Being 18 years of age or older, the actor engages in sexual contact with a victim who is less than 16 years of age and the actor occupies a position of authority in relation to the victim. • Sexual abuse of a minor in the third degree. Wyo. Stat. Ann. § 6-2-316. • 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. • Sexual abuse of a minor in the fourth degree. Wyo. Stat. Ann. § 6-2-317. • 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.
Does the relationship between the victim and actor impact the victim's ability to consent?	No.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes, there are special rules for persons in positions of authority over the victim and for persons residing in the same household of the victim. • The term "position of authority" includes, but is not exclusive to, the following: an employer, youth leader, 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. § 1700a. • A person is guilty of aggravated rape in the first degree if they perpetrate an act of sexual intercourse or sodomy with a person who is under 16 years of age residing in the same household as the perpetrator and force, intimidation, or the perpetrator's position of authority over the victim is used to accomplish the sexual act. 14 V.I.C. § 1700. • A person is guilty of aggravated rape in the second degree if they perpetrate an act of sexual intercourse or sodomy with a person and the perpetrator's position of authority over the victim is used to accomplish the sexual act. 14 V.I.C. § 1700a. • A person is guilty of unlawful sexual contact in the 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. § 1708.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental commits a severe second degree felony if: • the accused person is a relative of the victim, by ascendancy or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree; or • the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or psychotherapeutic treatment, or any type of counseling, or because there is a relationship with the victim as the leader of his/her religious belief. Puerto Rico Stat. tit. 33 § 4770(h)-(i).

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes.
	• It is an offense for a defendant to engage in unlawful sexual contact with a minor when the minor is less than 18 years old, the defendant is at least 4 years older than the victim, and either:
	  • (A) the defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the minor by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or
	  • (B) the defendant had, at the time of the offense, parental or custodial authority over the minor and used the authority to accomplish the sexual contact. Tenn. Code Ann. §39-13-509.
	• Statutory rape by an authority figure is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when the victim is at least 13 but less than 18 and the defendant is at least 4 years older than the victim, and either:
	  • (A) the defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the minor by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual penetration; or
	  • (B) the defendant had, at the time of the offense, parental or custodial authority over the minor and used the authority to accomplish the sexual penetration. Tenn. Code Ann. 39-13-532.
	• Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim if the victim was, at the time of the offense, 13 years old or older, but less than 18 years old, or the victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age, and either:
	  • (A) the defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or
	  • (B) the defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact. Tenn. Code Ann. §39-13-527.
	• For purposes of the crime of sexual battery a victim is incapable of consent if (1) the sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other

	provision of professional services described in (2); and (2) the defendant, whether licensed by the state or not, is a member of the clergy, healthcare professional, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. Tenn. Code Ann. §39-13-505. Note that in Tennessee, the spouse of the defendant can be a "victim" under the rape and sexual battery provisions of the code. Tenn. Code Ann. §39-13-501(8).

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes, a sexual assault is considered to occur without the consent of the other person where:
	
	• the actor is a public servant who coerces the other person to submit or participate;
	• the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
	• the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser;
	• the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under the Texas Family Code;
	• the actor is a health care services provider who, 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;
	• the actor is a coach or tutor who causes the other person to submit or participate by using the actor's power or influence to exploit the other person's dependency on the actor; or
	• the actor is a caregiver hired to assist the other person with activities of daily life and causes the other person to submit or participate by exploiting the other person's dependency on the actor. Texas Penal Code Ann. §§22.011(b)(8) – (14).
	
	Note that it is an affirmative defense to the offense of sexual assault of a child, which is a person under 17 years old, if the actor was the spouse of the child at the time of the offense. Texas Penal Code Ann. §22.011(e)(1).
	
	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;
	• (2) holds a position of teacher, teacher intern, teacher trainee, librarian, educational aide, administrator, educational diagnostician or school counselor and engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person the employee knows is:
	  • (A) enrolled in a public or private primary or secondary school, other than a school described in (1) above; or
	  • (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

	• (3) engages in online solicitation of a minor (under Texas Penal Code Ann. §33.021) with a person described in (1) above, or a person the employee knows is a person described in (2)(A) or (2)(B) above, regardless of the age of that person. Texas Penal Code Ann. §21.12(a). Note that it is an affirmative defense to improper relationship between educator and student if the actor was the spouse of the enrolled person at the time of the offense or the actor was not more than three years older than the enrolled person and, at the time of the offense, the actor and the enrolled person were in a relationship that began before the actor's employment at a public or private primary or secondary school. Texas Penal Code Ann. §21.12(b)
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes, a sexual offense is considered to occur without consent of the victim: • If the victim is younger than 18 years old 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 (which includes scout leaders, teachers, babysitters, coaches or volunteers in schools, etc.); or • If the actor is a health professional or religious counselor, the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested. Utah Code Ann. §§76-5-406(2)(j) and (l). Consent is not a defense to the crime of custodial sexual relations (where the victim is in custody) or the crime of custodial sexual misconduct with a youth receiving state services. Utah Code Ann. §§ 76-5-412.2; 76-5-413.2. Note that a female under 18 years of age does not by marriage become capable of consenting to illicit sexual intercourse so as to bar prosecution of male participant in such act under carnal knowledge statute. *State v. Huntsman*, 115 Utah 283 (Utah 1949).
Does the relationship between the victim and actor impact the victim's ability to consent?	• A correctional employee, contractor, or other person providing services to offenders on behalf of the Department of Corrections or pursuant to a court order or in accordance with a condition of parole, probation, supervised community sentence, or furlough shall not engage in a sexual act with (1) a person who the employee, contractor, or other person providing services knows is confined to a correctional facility; or (2) any offender being supervised by the Department of Corrections while on parole, probation, supervised community sentence, or furlough, where the employee, contractor, or other service provider knows or reasonably should have known that the offender is being supervised by the Department, unless the offender and the employee, contractor, or person providing servicers were married, parties to a civil union, or engaged in a consensual sexual relationship at the time of sentencing for the offense for which the offender is being supervised by the Department. 13 Vermont Stat. Ann. §3257. • 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, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors. 13 Vermont Stat. Ann. §3258.

	• No law enforcement officer shall engage in a sexual act or sexual conduct with a person whom the officer is detaining, arresting, or otherwise holding in custody or who the officer knows is being detained, arrested, or otherwise held in custody by another law enforcement officer. 13 Vermont Stat. Ann. §3259. • A sexual assault occurs if a person engages in a sexual act with child who is under the age of 16, except (1) where the persons are married to each other and the sexual act is consensual or (2) where the person is less than 19 years old, the child is at least 15 years old, and the sexual act is consensual. Vermont Stat. Ann. §13-3252(c). • A sexual assault occurs if a person engages in a sexual act with a victim who is under the age of 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). • A sexual assault occurs if a person engages in a sexual act with a victim who is under the age of 16 if (1) the victim is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child or stepchild; or (2) the actor is at least 18 years old, resides in the victim's household and serves in a parental role with respect to the victim. Vermont Stat. Ann. §13-3252(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(c).
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. • An accused is guilty of sexual battery if he sexually abuses (i) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with, the state or local correctional facility or regional jail; is in a position of authority over the inmate; and knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail, (ii) a probationer, parolee, or a pretrial defendant or post trial offender under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services or agency and the accused is an employee or contractual employee of, or a volunteer with, the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail; is in a position of authority over an offender; and knows that the offender is under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail; (iii) a person detained or arrested by a law-enforcement officer and the accused is a law-enforcement officer; is in a position of authority over the person detained or arrested; and knows that the person detained or arrested by a law-enforcement officer is in the custody of a private, local, or state law-enforcement agency; (iv) a pretrial defendant or posttrial offender and the accused is an owner or employee of the bail company that posted the pretrial defendant's or posttrial offender's bond and has the authority to revoke the pretrial defendant's or posttrial offender's bond; or (v) a person serving as a confidential informant and the accused is a law-enforcement officer; knows that such person is serving as a confidential informant for the law-enforcement agency where such officer is employed; and such person is serving as a confidential informant or is expected to testify in a criminal

case for which he assisted the law-enforcement agency with its investigation. VA Code Ann. §18.2-67.4.

- If any person providing services, paid or unpaid, to juveniles under the purview of the Juvenile and Domestic Relations District Court Law, or to juveniles who have been committed to the custody of the State Department of Juvenile Justice, carnally knows, without the use of force, any minor 15 years of age or older, when such minor is confined or detained in jail, is detained in any facility mentioned in § 16.1-249, or has been committed to the custody of the Department of Juvenile Justice pursuant to § 16.1-278.8, knowing or having good reason to believe that (i) such minor is in such confinement or detention status, (ii) such minor is a ward of the Department of Juvenile Justice, or (iii) such minor is on probation, furlough, or leave from or has escaped or absconded from such confinement, detention, or custody, he shall be guilty of a felony. VA Code Ann. §18.2-64.1.

- If a law-enforcement officer or an employee or contractual employee of, or a volunteer with, a state or local correctional facility or regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home as defined in § 16.1-228, a state or local court services unit as defined in § 16.1-235, a local community-based probation services agency, or a pretrial services agency who is in a position of authority over a person detained or arrested by a law-enforcement officer, inmate, probationer, parolee, juvenile detainee, or pretrial defendant or posttrial offender carnally knows, without the use of force, threat, or intimidation, (i) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail or (ii) a person detained or arrested by a law-enforcement officer, probationer, parolee, juvenile detainee, or pretrial defendant or posttrial offender in the custody of a private, local, or state law-enforcement agency or under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home as defined in § 16.1-228, a state or local court services unit as defined in § 16.1-235, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program, or any other parole/probationary or pretrial services program or agency and the accused knew that the person was detained, arrested, in custody or under the jurisdiction of a correctional facility, jail, Department of Corrections, Department of Juvenile Justice, secure facility, detention home, court services unit, community-based probation services agency or pretrial services agency, the accused shall be guilty of a felony. Further, a person is guilty of carnal knowledge of a pretrial defendant or posttrial offender if he (a) is an owner or employee of the bail bond company that posted the pretrial defendant's or posttrial offender's bond; (b) has the authority to revoke the pretrial defendant's or posttrial offender's bond; and (c) carnally knows, without use of force, threat, or intimidation, a pretrial defendant or posttrial offender. A law enforcement officer is guilty of carnal knowledge of a person serving as a confidential informant if he (1) knows that such person is serving as a confidential informant for the law-enforcement agency where such officer is employed; and (2) carnally knows, without use of force, threat, or intimidation, such confidential informant while such person is serving as a confidential informant or is expected to testify in a criminal case for which the confidential informant assisted the law-enforcement agency with its investigation. Such offense is felony.VA Code Ann. §18.2-64.2.

Note the rape statute applies “whether or not” the victim is the spouse of the actor. VA Code Ann. §18.2-61.

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes, there are several special relationships between the victim and actor that would impact the victim's ability to consent and therefore make it a crime to engage in sexual intercourse with a person. Special relationships include: • (a) a person in a significant relationship with the victim and abuses a supervisory position within that relationship; • (b) a school employee; • (c) a foster parent; • (d) a person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors, frail elders or vulnerable adults; • (e) a person who in the course of his or her employment supervises minors; • (f) long-term care facilities; • (g) home health, hospice, or home care agencies; • (h) a person providing transportation services within the course of his or her business; and • (i) physical and mental health care providers. • Wash. Rev. Code Ann. §§ 9A.44.093, 9A.44.050, 9A.44.096, 9A.44.010. A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person (a) when (i) the victim is a resident of a correctional facility or is under correctional supervision and (ii) the perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision, or (b) when the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer. Consent of the victim is not a defense to prosecution of this crime. Wash. Rev. Code Ann. § 9A.44.160.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. Rape includes an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female within or without the bonds of matrimony who may be of the same or the opposite sex as the perpetrator: • where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim. Stat. tit. 21, § 1111(A)(7). • where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system. Stat. tit. 21, § 1111(A)(8). "Employee of a school system" includes employed and contracted school resource officers and security guards. • where the victim is nineteen (19) years of age or younger and is in the legal custody of a state agency,

	federal agency or tribal court and engages in sexual intercourse with a foster parent or foster parent applicant. Okla. Stat. tit. 21, § 1111(A)(9).
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. A person who has sexual intercourse with another person commits the crime of rape in the first degree if the victim is under 16 years of age and is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child. Or. Rev. Stat. § 163.375(c). • See *State v. Risen*, 1951, 192 Or. 557, 235 P.2d 764. (Where submission of a girl to carnal knowledge is induced through coercion of one whom she is accustomed to obey, such as parentor one standing in loco parentis, conviction may be had for forcible rape without consent on showing of less than utmost physical resistance of which she was capable.) It is sodomy in the first degree to engage in oral or anal sexual intercourse with a victim under the age of 16 and is the person's sibling, child, or spouse's child. Or. Rev. Stat. §§ 163.405(1)(c). It is second degree sexual abuse if the offender is 21 years old or older, the victim is under 18 years of age, and at any time before the offense the offender was the victim's "coach," meaning they instruct or train an individual or members of a team in a sport or "teacher," meaning an employee of a school or school district who has direct responsibility for the instruction of students. Or. Rev. Stat. §§ 163.425, 163.426. It is custodial misconduct in the first or second degree for an individual to engage in specified sexual acts with another person when the other person is in the custody of a law enforcement agency following arrest, confined or detained in a correctional facility, participating in an adult in custody or offender work crew or work release, or on probation, parole, post-prison supervision, or other supervised release if that individual is employed by the agency that arrested the person, operates the correctional facility, or supervises the work release. Or. Rev. Stat. §§ 163.452, 163.454.

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes.
	• Institutional employee:
	  • A person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, detainee, patient or resident, and commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse, or indecent contact with an inmate, detainee, patient or resident who is under 18 years of age. 18 Pa.C.S.A. § 3124.2(a.1).
	• School employee or volunteer:
	  • A person who is a volunteer or an employee of a school or any other person who has direct contact with a student at a school commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a student of the school. 18 Pa.C.S.A. § 3124.2(a.2).
	• Children center employee or volunteer:

	• A person who is a volunteer or an employee of a center for children commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child who is receiving services at the center. 18 Pa.C.S.A. § 3124.2(a.3). • Peace officers: • A person who is a peace officer commits a felony of the third degree when the person engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child who is under official detention or in the custody of the person or is a confidential informant of the person. 18 Pa.C.S.A. § 3124.2(a.4)(2). • Caretakers: • A person who is a caretaker commits a felony of the third degree if the caretaker engages in sexual intercourse, deviate sexual intercourse or indecent contact with a care-dependent person who receives care, services or treatment in or from a facililty unless the victim and defendant are spouses, persons living as spouses or current sexual or intimate partners whose relationship preexisted the caretaking relationship. 18 Pa.C.S.A. § 3124.2(a.6)(1-2). • Sports official in a sports program: • A person who serves as a sports official in a sports program of a nonprofit association or a for-profit association commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child under 18 years of age who is participating in a sports program of the nonprofit association or for-profit association. 18 Pa.C.S.A. § 3124.3(a). • Nonprofit volunteer or employee who has contact with youth: • A volunteer or an employee of a nonprofit association having direct contact with a child under 18 years of age who participates in a program or activity of the nonprofit association commits a felony of the third degree if the volunteer or employee engages in sexual intercourse, deviate sexual intercourse or indecent contact with that child. 18 Pa.C.S.A. § 3124.3(b).
Does the relationship between the victim and actor impact the victim's ability to consent?	No.
Does the relationship between the victim and actor impact the victim's ability to consent?	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 for instances where sexual battery accomplished through use of aggravated force, defined as the use or the threat of use of a weapon or the use or threat of use of physical force or physical violence of a high and aggravated nature, by one spouse against the other spouse if they are living together. A person can then not be imprisoned more than ten years. See S.C. Code Ann. § 16-3-615(A). Additionally a person is guilty of criminal sexual conduct with a minor in the second degree if the actor engages

consent?	in sexual battery with a victim who is at least 14 years of age but who is less than 16 years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. S.C. Code Ann. § 16-3-655(B)(2). A person affiliated with a public or private secondary school in an official capacity who engages in sexual battery with a student enrolled in the school who is 16 or 17 years of age, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony. S.C. Code 1976 § 16-3-755(B). A person affiliated with a public or private secondary school in an official capacity that engages in sexual battery with a student enrolled in the school who is 18 years of age or older, where aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a misdemeanor. S.C. Code 1976 § 16-3-755(C). A person affiliated with a public or private secondary school in an official capacity and with direct supervisory authority over a student enrolled in the school who is 18 years of age or older, and the person affiliated with the public or private secondary school in an official capacity engages in sexual battery with the student, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony. S.C. Code 1976 § 16-3-755(D). • "**Sexual battery**" means "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes." S.C. Code 1976 § 16-3-755(A)(5). • "**Student**" means a person who is enrolled in a school. S.C. Code 1976 § 16-3-755(A)(6). § 16-3-755(B-D) do not apply if the person affiliated with a public or private secondary school in an official capacity is lawfully married to the student at the time of the act. S.C. Code 1976 § 16-3-755(E).
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes: • A person employed at any jail or juvenile correctional facility who knowingly engages in an act of sexual contact or sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a felony. S.D. Code §22-22-7.6. • Any psychotherapist who knowingly engages in sexual contact or sexual penetration with a person who is not his or her spouse and who is a patient who is emotionally dependent on the psychotherapist at the time of contact is guilty of a felony and consent by the patient is not a defense. S.D. Code §§22-22-28, 29. • The crime of sexual contact with a child under 16 does not apply where the victim is the actor's spouse. S.D. Code §22-22-7. • It is a felony to engage in sexual contact with a victim who is less than 18 years of age and not the person's spouse if the perpetrator is at least 18 years of age and 5 years older than the victim and is in a "position of authority" or is a family member related by consanguinity or affinity within the fifth degree to the victim. A person is in a position of authority if the person, at the time of the sexual contact, or within

	the one-hundred-twenty-day period immediately preceding the sexual contact, interacts, no matter how briefly, with the victim as a coach, child care provider, disability services provider, guardian ad litem, health care provider, law enforcement officer, mental health counselor, probation officer, religious leader, school administrator, social worker, teacher, therapist, or youth leader. S.D. Code § 22-22-7.8.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. It is sexual assault to commit an act of sexual penetration with a person that is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status. N.J. Stat. Ann. § 2C:14-2(c)(2). An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person who is less than 13 years old, or if the victim is 13, 14, or 15 years old and the actor is: • related to the victim by blood or affinity to the third degree, or • has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or • is a resource family parent, a guardian, or stands in loco parentis within the household. N.J. Stat. Ann. § 2C:14-2(a)(2). It is sexual assault to commit an act of sexual penetration with a person that is at least 16 years old but less than 18 years old, and • (1) the actor has supervisory or disciplinary power of any nature or in any capacity over the victim; • (2) the actor is related to the victim by blood or affinity to the third degree; or (3) the actor is the victim's guardian or otherwise stands in loco parentis. N.J. Stat. Ann. § 2C:14-2(c)(3).
Does the relationship between the victim and actor impact the victim's ability to consent?	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 18 years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least 18 years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school. New Mexico Statutes §30-9-11(G)(2). It is a crime if sexual penetration is perpetrated by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy. New Mexico Statutes §30-9-10(A) (defining "force or coercion" to cover sexual penetration perpetrated by a psychotherapist on a patient); §30-9-11.

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes.
	• Marriage:
	  • Marriage can be used as a defense when the victim's lack of consent is based solely on incapacity to consent because he/she was less than 17 years old, mentally disabled, a client or patient and the actor is a health care provider, detained or otherwise in custody of law enforcement, or committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital and the actor is an employee. New York Penal Law §130.10(4).
	• Victim is under the care of the government:
	  • A person is deemed incapable of consent when he or she is:
	  • (1) committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital, and the actor is an employee who knows or reasonably should know that such person is committed to the care and custody or supervision of such department or hospital;
	  • (2) committed to the care and custody of a local correctional facility, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such facility;
	  • (3) committed to or placed with the office of children and family services and in residential care, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to or placed with such office of children and family services and in residential care;
	  • (4) a client or patient and the actor is a health care provider or mental health care provider charged with rape in the third degree as defined in §130.25, criminal sexual act in the third degree as formerly defined in §130.40, aggravated sexual abuse in the fourth degree as defined in §130.65-a, or sexual abuse in the third degree as defined in §130.55, and the act of sexual conduct occurs during a treatment session, consultation, interview, or examination; or
	  • (5) a resident or inpatient of a residential facility operated, licensed or certified by:
	  • (i) the office of mental health;
	  • (ii) the office for people with developmental disabilities; or
	  • (iii) the office of alcoholism and substance abuse services, and the actor is an employee of the facility not married to such resident or inpatient.
	  • (6) detained or otherwise in the custody of a police officer, peace officer, or other law enforcement official and the actor is a police officer, peace officer or other law enforcement official who either: (i) is detaining or maintaining custody of such person; or (ii) knows, or reasonably should know, that at the time of the offense, such person was detained or in custody. New York Penal Law §130.05(3)(e) through (j).

Does the relationship between the victim and actor impact	Yes, a lawful marriage between a victim and defendant is a defense to certain sexual crimes regarding consent. North Carolina General Statutes Annotated § 14-27.32; 14-27-25; 14-27.30. However, a person may be prosecuted under this Article whether or not the victim is the person's legal spouse at the time of the commission of the alleged rape or sexual offense. § 14-27.34. Consent is not a defense to sexual crimes committed by a defendant who:

the victim's ability to consent?	Consent is not a defense to sexual crimes committed by a defendant who: • (1) has assumed the position of a parent in the home of a minor victim and engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age and engages in vaginal intercourse or a sexual act with such victim; • (2) is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student (except when defendant is married to the student); or • (3) is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student. North Carolina General Statutes Annotated §14-27.31; § 14-27.32.
Does the relationship between the victim and actor impact the victim's ability to consent?	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 actor has supervisory or disciplinary authority over the other person. NDCC § 12.1-20-06. A person who knowingly has sexual contact with another, or who causes another person to have sexual contact with that person, is guilty of sexual assault if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person. NDCC § 12.1-20-07. A person who knowingly has sexual contact with another, or who causes another person to have sexual contact with that person, is guilty of sexual assault if the other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare. NDCC § 12.1-20-07. 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 or client during any treatment, consultation, interview, or examination is guilty of a class C felony. Consent by the complainant is not a defense under this section. NDCC § 12.1-20-06.1. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction. NDCC § 12.1-20-06.1. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, addiction counselor, member of the clergy, or other person, whether licensed or not by the state, who performs or purports to perform psychotherapy. NDCC § 12.1-20-06.1.

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. • Incest, in custody of the government, or in a position of authority: • It is a crime (sexual battery) to engage in sexual conduct with another if: • the offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person; • the other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person; • the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school; • the other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution; • the other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person; • the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes; • the other person is confined in a detention facility, and the offender is an employee of that detention facility; • the other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric; or • the other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person. Ohio Rev. Code Ann. § 2907.03(A)(5)–(13); *but see State v. Mole*, 2016-Ohio-5124, 149 Ohio St. 3d 215, 74 N.E.3d 368 (statute prohibiting sexual conduct between a minor and a peace officer who is more than two years older than the minor was not rationally related to a legitimate governmental purpose, and thus statute violated equal protection). • An offender commits sexual imposition if they engage in sexual contact with another; cause another to have sexual contact with the offender; or cause two or more other persons to have sexual contact, when the offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes. Ohio Rev. Code Ann. §

	2907.06(A)(5).
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. A person is guilty of sexual battery if he or she engages in sexual penetration with a child under 18 years of age if the person is in a position of trust or authority over the child, including, without limitation, the child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach. Miss. Code Ann. § 97-3-95(2); *see also* Miss. Code Ann. § 97-29-3 (making sex between teacher and a pupil under 18 punishable by fine to *both* parties and subjecting the teacher to imprisonment, with no mention of consent).
Does the relationship between the victim and actor impact the victim's ability to consent?	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; or • a coach, assistant coach, director, or other adult with a school-aged (children under 18 year old) team, club, or ensemble, regardless of whether the group is connected with a school. 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 prisoners. Mo. Ann. Stat. §§ 566.115 & 566.145.
Does the relationship between the victim and actor impact the victim's ability to consent?	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)((v),(vi), (vii). However, the above do not apply if the individuals are married, and (1) 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 (2) 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. Mont. Code Ann. § 45-5-501(1)(c)-(d).

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

- incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation 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.
    - (This does not apply if the individuals are married to each other.)
- a program participant in a private alternative adolescent resident or outdoor program and the perpetrator is a worker affiliated with the program.
    - (This does not apply if the individuals are married to each other and one of the individuals involved is a program participant and the other individual is a worker affiliated with the program.)
- a 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
    - (This does not apply if the individuals are married to each other.)
- a parent or guardian involved in a child abuse or neglect proceeding and the perpetrator is:
    - Employed by the department of public health and human services for the purposes of carrying out

	the department's duties; and • Directly involved in the parent or guardian's case or involved in the supervision of the case. • a client receiving psychotherapy services and the perpetrator: • Is providing or purporting to provide psychotherapy services to the victim; or • Is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim. • (This does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client.) Mont. Code Ann. § 45-5-501(1(b)(viii)-(xi)
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes, for: • Inmates and parolees: • A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact. It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact. Neb. Rev. Stat. §28-322.01. • "Protected individuals" are those persons in the care or custody of the Department of Health and Human Services. • A person commits the offense of sexual abuse of a protected individual if the person subjects a protected individual to sexual penetration or sexual contact. It is not a defense to a charge under this section that the protected individual consented to such sexual penetration or sexual contact. Neb. Rev. Stat. §28-322.04(2). Not for married spouses. There is also no "spousal-exclusion" to sexual assault charges. *State v. Willis*, 223 Neb. 844, 844 (1986).
Does the relationship between the victim and actor impact the victim's ability to consent?	• Incest: • Consent is not an element of the crime of incest for engaging in sexual intercourse with a family member. Nev. Rev. Stat. Ann. § 201.180; *Douglas v. State*, 327 P.3d 492, 498 (2014). • Marriage • Marriage is not a defense to sexual assault crimes if assault is committed by force or threat of force. Nev. Rev. Stat. Ann. § 200.373. • Position of authority at school or other: • It is illegal for an employee or volunteer in a position of authority at a school and 21 years of age or older to engage in sexual conduct with a pupil that is 16 years of age or older, if the pupil was enrolled at the school and had contact with the perpetrator in his or her duties as an employee or volunteer, and the two are not married. Consent is not a defense. Nev. Rev. Stat. Ann. § 201.540(1),(2). • Position of authority at college or other:

	• It is illegal for an employee that is 21 years of age or older and in a position of authority at a college or university to engage in sexual conduct with a student that is 16 years of age or older who has not received a high school diploma, a general educational development certificate or an equivalent document and is enrolled at the college or university, and the two are not married. Consent is not a defense. Nev. Rev Stat. Ann. § 201.550. • Position of authority at entity which provides services to children: • It is illegal for an employee, contractor or volunteer in a position of authority at an entity which provides services to children to engage in sexual conduct with a person who is 16 years of age or older but less than 18 and (1) who is under the care, custody, control or supervision of the entity at which the person is employed or volunteering or of which the person is a contractor; and (2) with whom the person has had contact in the course of performing his or her duties as an employee, contractor or volunteer. Nev. Rev. Stat. Ann. § 201.555. • Law enforcement officer: • It is illegal for a law enforcement officer to voluntarily engage in sexual conduct with a person who is under arrest or is currently detained by the law enforcement officer or any other law enforcement officer. Consent is not a defense. Nev. Rev. Stat. Ann. § 201.465.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. • A person commits aggravated felonious sexual assault if he or she engages in sexual penetration with a victim when the person provides therapy, medical treatment, or examination of the victim and in the course of that relationship or within one year of termination of the relationship, the person acts unethically or uses that position to coerce the victim. N.H. Rev. Stat. Ann. § 632-A:2(I)(g). • A person commits aggravated felonious sexual assault if he or she engages is sexual penetration with a victim that is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and is more than 4 years older than the victim, or when the actor is an employee, contractor, or volunteer at a primary or secondary educational institution and the victim is a student and up to 10 months after the student's graduation or departure. Consent of the victim shall not be considered a defense. N.H. Rev. Stat. Ann. § 632-A:2(I)(k). • A person commits aggravated felonious sexual assault if he or she engages in sexual penetration with a victim that is over 13 but under 16 years old and the perpetrator is related by blood or a member of the same household. N.H. Rev. Stat. Ann. § 632-A:2(I)(j). • A person commits aggravated felonious sexual assault if he or she engages in sexual penetration with a victim that is less than 13 years of age. N.H. Rev. Stat. Ann. § 632-A:2(I)(l). • A person commits aggravated felonious sexual assault if he or she engages in sexual penetration with a victim over whom the perpetrator is in a position of authority (1) at a correctional institution, secure psychiatric unit, or juvenile detention facility; or (2) via direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation; and the perpetrator uses this authority to coerce the victim. Consent is not a defense. N.H. Rev. Stat. Ann. § 632-A:2(I)(n). • A person commits felonious 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 not free to leave; (2) via direct

	supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation; and the perpetrator uses this authority to coerce the victim. Consent is not a defense. N.H. Rev. Stat. Ann. § 632-A:3(IV). • A person commits sexual assault if he or she engages in sexual contact or sexual penetration with a victim over whom the perpetrator is in a position of authority (1) at a correctional institution, secure psychiatric unit, or juvenile detention facility; or (2) via direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation; and the perpetrator uses this authority to coerce the victim. Consent is not a defense. N.H. Rev. Stat. Ann. § 632-A:4(III)(a)-(b). • Unless expressly stated, marriage is not a defense. N.H. Rev. Stat. Ann. § 632-A:5.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. It is a defense to a charge of sexual battery with a child under the age of 15 or carnal knowledge of a juvenile that the actor is the child's spouse. LSA-R.S. 14:80; LSA-R.S. 14:80.1. Also, prohibited sexual conduct between an educator and a student is committed when: • (1) an educator has sexual intercourse with a person who is 17 years of age or older, but less than 21 years of age, where there is an age difference of greater than 4 years between the two persons, when the victim is not the spouse of the offender and is a student at the school where the educator is assigned, employed, or working at the time of the offense; • (2) an educator commits any lewd or lascivious act upon a student or in the virtual or physical presence of a student who is 17 years of age or older, but less than 21 years of age, where there is an age difference of greater than 4 years between the two persons, with the 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; or • (3) an educator intentionally engages in the touching of the anus or genitals of a student 17 years of age or older, but less than 21 years of age, where there is an age difference of greater than 4 years between the two persons, using any instrumentality or any part of the body of the educator, or the touching of the anus or genitals of the educator by a person 17 years of age or older, but less than 21 years of age, where there is an age difference of greater than 4 years between the two persons, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense using any instrumentality or any part of the body of the student. • The consent of a student, whether or not that student is 17 years of age or older, is not a defense. LSA-R.S. 14:81.4. A person is deemed incapable of consent when the person is under arrest or otherwise in the actual custody of a police officer or other law enforcement official and the offender is a police officer or other law enforcement official who either: (1) arrested the person or was responsible for maintaining the person in actual custody; or (2) knows or reasonably should know that the person is under arrest or otherwise in actual custody. LSA-R.S. 14:41.1.

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes.
	• Marriage is a defense to charges of gross sexual assault under 17-A M.R.S.A. 253, certain charges of sexual abuse of minors under 17-A M.R.S.A. 254, certain charges of unlawful sexual contact under 17-A M.R.S.A. 255-A, visual sexual aggression against child under 17-A M.R.S.A. 256, sexual misconduct with a child under 14 years of age under 17-A M.R.S.A. 258, and certain charges of unlawful sexual touching under 17-A M.R.S.A. 260.
	• Maine also criminalizes sex acts when there is a particular relationship between the actor and other person, regardless of consent. A person is guilty of a sex crime if that person engages in a sexual act or contact with another person and:
	  • (1) the other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person;
	  • (2) the other person, not the actor's spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee, substitute teacher or other official having instructional, supervisory or disciplinary authority over the student;
	  • (3) the other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, child care facility, facility operated by a family child care provider, children's residential care facility, drug treatment center, youth camp licensed or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee, substitute teacher or other person having instructional, supervisory or disciplinary authority over the other person;
	  • (4) the other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person;
	  • (5) the actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or purports to be a psychiatrist, 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;
	  • (6) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes the other person as a person with an intellectual disability or autism;
	  • (7) the actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor; or
	  • (8) 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. 17-A M.R.S.A. 253, 17-A M.R.S.A. 255-A; 17-A M.R.S.A. 260.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. A person of authority may not engage in sexual intercourse, sexual contact, or a sexual act with a minor enrolled in the school or participating in the program where the person of authority works if the minor is at least 6 years younger than the person of authority. "Person of authority" includes persons over the age of 21 who work in schools and persons over the age of 22 who work at programs. "Program" means an individual, a business, a religious or faith-based institution, or an organization that provides, on a for-profit or nonprofit basis, instructional, coaching, recreational, spiritual, character-building, or supervisory services or activities for minors. MD Code, Criminal Law, § 3-308. A correctional employee (and other related employees such as an employee of a contractor providing goods and services to a correctional facility) may not engage in "sexual contact," "vaginal intercourse," or a "sexual act" with an incarcerated individual. MD Code, Criminal Law, § 3-314. 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 juveniles. MD Code, Criminal Law, § 3-314. A court-ordered services provider may not engage in sexual contact, vaginal intercourse, or a sexual act with an individual ordered to obtain services while the order is in effect. MD Code, Criminal Law § 3-314. A law enforcement officer may not engage in sexual contact, vaginal intercourse, or a sexual act with a person:(i) who is a victim, witness, or suspect in an open investigation that the law enforcement officer is conducting, supervising, or assisting with if the law enforcement officer knew or should have known that the person is a victim, witness, or suspect in the investigation; (ii) requesting assistance from or responding to the law enforcement officer in the course of the law enforcement officer's official duties; or (iii) in the custody of the law enforcement officer, unless the law enforcement officer had a prior existing legal sexual relationship with the person; and did not act under the color or pretense of office or under color of official right when seeking consent for the sexual act. MD Code, Criminal Law § 3-314.
Does the relationship between the victim and actor impact the victim's ability to consent?	No. However, it is aggravated statutory rape (which carries a harsher punishment) for a person that is a "mandated reporter" at the time of the act to have sexual intercourse or unnatural sexual intercourse with a child under 16 years of age. Mass. Gen. Laws. Ann. ch. 265, §23A. "**Mandated reporter**" means a person who is: • (i) a physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath, allied mental health and human services professional licensed under section 165 of chapter 112, drug and alcoholism counselor, psychiatrist or clinical social worker;

	• (ii) a public or private school teacher, educational administrator, guidance or family counselor, child care worker, person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 15D that provides child care or residential services to children or that provides the services of child care resource and referral agencies, voucher management agencies or family child care systems or child care food programs, licensor of the department of early education and care or school attendance officer; • (iii) a probation officer, clerk-magistrate of a district court, parole officer, social worker, foster parent, firefighter, police officer, or animal control officer; • (iv) a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis; • (v) in charge of a medical or other public or private institution, school or facility or that person's designated agent; or • (vi) the child advocate. Mass. Gen. Laws. Ann. ch. 119, §21.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. Criminal sexual conduct in the third or fourth degree occurs if (1) the victim is at least 16 but less than 18 years of age or (2) the victim is at least 16 but less than 26 and is receiving special education services, and, in each case, is a student at a school where the actor is employed or volunteers. Mich. Comp. Laws Ann. § 750.520d & e. 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 is 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. § 750.520b & c.

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes, a "significant relationship" or "current or recent position of authority" can affect the age of consent.
	• The following acts constitute criminal sexual conduct in the first or second degree:
	  • Complainant is at least 14 but less than 16 years of age and 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).
	  • The actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration or contact (neither mistake as to the complainant's age nor consent to the act by the complainant is a defense).
	  • The actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration or contact, and the actor or an accomplice used force or coercion to accomplish the act, the complainant suffered personal injury, or the sexual abuse involved multiple acts committed over an extended period of time.
	Minn. Stat. § 609.342, Minn. Stat. § 609.343.
	• The following acts constitute criminal sexual conduct in the third degree:
	  • Complainant is at least 16 but less than 18 years of age and the actor is more than 36 months older than the complainant and in a current or recent position of authority over the complainant (neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense).
	  • The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact (neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense).
	  • The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact, and the actor or accomplice used force or coercion to accomplish the act, or the complainant suffered personal injury, or the sexual abuse involved multiple acts committed over an extended period of time (neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense).
	  • At the time of the act, the actor is in a prohibited occupational relationship with the complainant.
	Minn. Stat. § 609.344.
	A "**prohibited occupational relationship**" exists when the actor is in one of the following occupations and the act takes place under the specified circumstances:
	1. the actor performed massage or other bodywork for hire, the sexual penetration or sexual contact occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant, and the sexual penetration or sexual contact was nonconsensual; or
	2. the actor and the complainant were in one of the following occupational relationships at the time of the act. Consent by the complainant is not a defense:
	  1. 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;

2. the actor was a psychotherapist and the complainant was the actor's former patient who was emotionally dependent on the actor;
3. 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;
4. 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;
5. the actor was or falsely impersonated a member of the clergy, the complainant was not married to the actor, the complainant met with the actor in private seeking or receiving religious or spiritual advice, aid, or comfort from the actor, and the sexual penetration or sexual contact occurred during the course of the meeting or during a period of time when the meetings were ongoing;
6. 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;
7. the actor was or falsely impersonated a peace officer, as defined in section 626.84, the actor physically or constructively restrained the complainant or the complainant did not reasonably feel free to leave the actor's presence, and the sexual penetration or sexual contact was not pursuant to a lawful search or lawful use of force;
8. the actor was an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including but not limited to jails, prisons, detention centers, or work release facilities, and the complainant was a resident of a facility or under supervision of the correctional system;
9. the complainant was enrolled in a secondary school and:
    1. the actor was a licensed educator employed or contracted to provide service for the school at which the complainant was a student;
    2. the actor was age 18 or older and at least 48 months older than the complainant and was employed or contracted to provide service for the secondary school at which the complainant was a student; or
    3. the actor was age 18 or older and at least 48 months older than the complainant, and was a licensed educator employed or contracted to provide services for an elementary, middle, or secondary school;
10. the actor was a caregiver, facility staff person, or person providing services in a facility, and the complainant was a vulnerable adult who was a resident, patient, or client of the facility who was impaired in judgment or capacity by mental or emotional dysfunction or undue influence; or
11. the actor was a caregiver, facility staff person, or person providing services in a facility, and the complainant was a resident, patient, or client of the facility. This clause does not apply if a consensual sexual personal relationship existed prior to the caregiving relationship or if the actor

	was a personal care attendant.
	
	Minn. Stat. § 609.341.
	
	• The following acts constitute criminal sexual conduct in the fourth degree:
	  • Complainant is at least 14 but less than 16 years of age and the actor is more than 36 months older than the complainant or in a current or recent position of authority over the complainant. Consent by the complainant to the act is not a defense. Mistake of age is not a defense unless actor is less than 60 months older. In any such case, if the actor is no more than 60 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense.
	  • Complainant is at least 16 but less than 18 years of age and the actor is more than 36 months older than the complainant and in a current or recent position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.
	  • The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense.
	  • The actor has a significant relationship to the complainant and the complainant was at least 16 but less than 18 years of age at the time of the sexual penetration or contact, and the actor or accomplice used force or coercion to accomplish the act, the complainant suffered personal injury, or the sexual abuse involved multiple acts committed over an extended period of time. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense.
	
	Minn. Stat. § 609.345.
	
	• 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 complainant is not a defense to these sexual acts. These laws prohibit sexual acts perpetrated by an actor in a "prohibited occupational relationship."
	  • Minn. Stat. § 609.344 and § 609.345; *see also* Minn. Stat. § 609.341(24).

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes.
	
	• 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.

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. A victim is **presumed "unable to give knowing consent"** when the victim: 1. is committed to the care and custody or supervision of the Illinois Department of Corrections (IDOC) and the accused is an employee or volunteer who is not married to the victim who knows or reasonably should know that the victim is committed to the care and custody or supervision of such department; 2. is committed to or placed with the Department of Children and Family Services (DCFS) and in residential care, and the accused employee is not married to the victim, and knows or reasonably should know that the victim is committed to or placed with DCFS and in residential care; 3. is a client or patient and the accused is a health care provider or mental health care provider and the sexual conduct or sexual penetration occurs during a treatment session, consultation, interview, or examination; 4. is a resident or inpatient of a residential facility and the accused is an employee of the facility who is not married to such resident or inpatient who provides direct care services, case management services, medical or other clinical services, habilitative services or direct supervision of the residents in the facility in which the resident resides; or an officer or other employee, consultant, contractor or volunteer of the residential facility, who knows or reasonably should know that the person is a resident of such facility; or 5. is detained or otherwise in the custody of a police officer, peace officer, or other law enforcement official who: (i) is detaining or maintaining custody of such person; or (ii) knows, or reasonably should know, that at the time of the offense, such person was detained or in custody and the police officer, peace officer, or other law enforcement official is not married to such detainee. 720 ILCS 5/11-0.1. A person commits custodial sexual misconduct when: • he or she is an employee of a penal system and engages in sexual conduct or sexual penetration with a person who is in the custody of that penal system; • he or she is an employee of a treatment and detention facility and engages in sexual conduct or sexual penetration with a person who is in the custody of that treatment and detention facility; or • he or she is an employee of a law enforcement agency and engages in sexual conduct or sexual penetration with a person who is in the custody of a law enforcement agency or employee. 720 ILCS 5/11-9.2. Also, a probation or supervising officer, surveillance agent, or aftercare specialist commits custodial sexual misconduct 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 so engaging in the sexual conduct or sexual penetration. 720 ILCS 5/11-9.2. The consent of the probationer, parolee, releasee, inmate in custody of the penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act, or person in the custody of a law enforcement agency or employee shall not be a defense to a prosecution under section 5/11-9.2. A person is deemed incapable of consent, for purposes of section 5/11-9.2 when he or she is a probationer, parolee, releasee, inmate in custody of a penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act, or a person in the custody of a law enforcement agency or employee. 720 ILCS

	5/11-9.2. In addition, a person commits sexual misconduct with a person with a disability when: • he or she is an employee [as defined in the statute] and knowingly engages in sexual conduct or sexual penetration with a person with a disability who is under the care and custody of the Department of Human Services at a State-operated facility; or • he or she is an employee of a community agency funded by the Department of Human Services and knowingly engages in sexual conduct or sexual penetration with a person with a disability who is in a residential program operated or supervised by a community agency. 720 ILCS 5/11-9.5. • The consent of a person with a disability in custody of the Department of Human Services residing at a State-operated facility or receiving services from a community agency is not a defense. 720 ILCS 5/11-9.5 A person commits criminal sexual assault or aggravated sexual abuse with a victim who is at least 13 years of age but under 18 years of age and the person is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim. 720 ILCS 5/11-1.20, 1.60.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. It is a defense to sexual misconduct with a minor if the child is or has ever been married, except where the sexual misconduct is committed by using or threatening the use of deadly force or by furnishing the victim, without the victim's knowledge, with a drug or other controlled substance or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge. IC § 35-42-4-9. It also is a defense if the person is not more than 4 years older than the victim and the relationship between the person and the victim was a dating relationship or an ongoing personal relationship and the crime: was not committed by a person who is at least 21 years of age; was not committed by using or threatening the use of deadly force; was not committed while armed with a deadly weapon; did not result in serious bodily injury; was not facilitated by furnishing the victim, without the victim's knowledge, with a drug or a controlled substance or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; was not committed by a person having a position of authority or substantial influence over the victim; the person has not committed another sex offense against any other person; and the person is not promoting prostitution with respect to the victim. IC § 35-42-4-9. In addition, a person commits child seduction if: • (1) a person who is at least 18 years of age and is the guardian, adoptive parent, adoptive grandparent, custodian, stepparent, child care worker, or coach for a child less than 18 years of age engages in sexual acts with the child; • (2) a person who (i) has or had a professional relationship with a child less than 18 years of age whom the person knows to be less than 18 years of age; (ii) may exert undue influence on the child because of the person's current or previous professional relationship with the child; and (iii) uses or exerts the person's professional relationship to engage in sexual acts with the child; or • (3) a law enforcement officer who is at least 4 years older than a child who is less than 18 years of age, has contact with the child while acting within the scope of the law enforcement officer's official duties with respect to the child, and uses or exerts the law enforcement officer's professional relationship with

	the child to engage in sexual acts with the child. • (4) a workplace supervisor (except one who had a dating relationship with the child before the child was employed at the place of employment) who is at least 4 years older than a child who is less than 18 years of age, supervises the child at the child's place of employment and uses or exerts the workplace supervisor's supervisory relationship to engage in sexual acts with the child. IC § 35-42-4-7. A person has a professional relationship with a child if the person has a license issued by the state or a political subdivision on the basis of the person's training and experience that authorizes the person to carry out a particular occupation; or is employed in a position in which counseling, supervising, instructing, or recruiting children forms a significant part of the employment; AND the person has a relationship with a child that is based on the person's employment or licensed status as described in subdivision (1). IC § 35-42-4-7(i). *See also Benner v. State*, No. 18A-CR-2614, 2019 WL 3122467, at *3 (Ind. Ct. App. July 16, 2019) ([Section 35-42-4-7] clearly does not limit the criminal offense to a person who is currently in a professional relationship.)
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. If the sex act is between persons cohabitating as husband and wife at the time of the act and is done by force or against the will of the other person, it is sexual abuse in the third degree. I.C.A. § 709.4. I.C.A. § 709.8 provides a marriage exception for "lascivious acts with a child." I.C.A. § 709.12 provides a marriage exception for "indecent contact with a child." It is unlawful for a person of 18 years of age who is in a position of authority over a minor to force, persuade, or coerce a minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them. I.C.A. § 709.14. In addition, sexual exploitation by a counselor or therapist occurs when there is sexual conduct with: • (1) an emotionally dependent patient or client or emotionally dependent former patient or client; or • (2) a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist. I.C.A. § 709.15. Sexual exploitation by a school employee or an adult providing training or instruction occurs when there is sexual conduct with a student. I.C.A. § 709.15. Iowa also criminalizes sex acts by: • (1) any peace officer, or an officer, employee, contractor, vendor, volunteer, or agent of the department of corrections, or an officer, employee, or agent of a judicial district department of correctional services, with an individual committed to the custody of the department of corrections or a judicial district department of correctional services; or • (2) any peace officer, or an officer, employee, contractor, vendor, volunteer, or agent of a juvenile placement facility with a juvenile placed at such facility; or

	• (3) any peace officer, or an officer, employee, contractor, vendor, volunteer, or agent of a county with a prisoner incarcerated in a county jail. I.C.A. § 709.16.
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. It is a defense to a prosecution of rape for engaging in sexual intercourse with a child who is under 14 years of age if that the child was married to the accused at the time of the offense. K.S.A. 21-5503. It is a defense to a prosecution of criminal sodomy (for sodomy with a child 14 or more years of age but less than 16 years of age) and aggravated criminal sodomy (for sodomy with a child who is under 14 years of age) that the child was married to the accused at the time of the offense. K.S.A. 21-5504*. It is a defense to a prosecution of indecent liberties with a child (as defined in K.S.A. 21-5506 subsection (a)(1)) and aggravated indecent liberties with a child (as defined in subsections (b)(1), (b)(2)(A) and (b)(3)(A)) that the child was married to the accused at the time of the offense. K.S.A. 21-5506. ***Note:** K.S.A. 21–5504(a)(1) was held to be unconstitutional to the extent that it punished sex acts occurring between 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 is an inmate 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 l6 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 touching, or sodomy is a person 16 years of age or older who has been assigned to a community correctional services program under the supervision and control of community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of community corrections;
- (12) the offender is a surety or an employee of a surety 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 the subject of a surety or bail bond agreement with such surety 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 the subject of a surety or bail bond agreement with such surety; or • (13) the offender is a law enforcement officer and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is interacting with such law enforcement officer during the course of a traffic stop, a custodial interrogation, an interview in connection with an investigation, or while the law enforcement officer has such person detained. K.S.A. § 21-5512. It is a defense to each of the above offenses if the person is married to the offender.

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes.
	
	• Marriage
	  • A person who engages in sexual intercourse or deviate sexual intercourse with another person to whom the person is married, or subjects another person to whom the person is married to sexual contact, does not commit an offense under this chapter regardless of the person's age solely because the other person is less than sixteen (16) years old or an individual with an intellectual disability. KRS § 510.035.
	  • There is an exception to the provision deeming a person incapable of consent if they are under the care or custody of the state or local agency pursuant to court and the actor is employed by or working on behalf of the state or local agency if the two parties are married and there is no court order prohibiting contact. KRS § 510.020.
	• A person is guilty of sexual abuse in the first degree if he or she is a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate. KRS § 510.110.
	• A person is guilty of sexual abuse in the second degree if the person (1) is a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact; or (2) is a peace officer and while serving in his or her official capacity subject a person who the officer (a) arrested, held in custody, or investigated for commission of a traffic violation or criminal offense; or (b) knew or should have known was under arrest, held in custody, or being investigated to sexual contact. KRS § 510.120.
	• A person is guilty of rape in the third degree if the person is:
	  • (1) 21 years old or more, and he or she engages in sexual intercourse with another person less than

	18 years old and for whom he or she provides a foster family home; • (2) in a position of authority or position of special trust and he or she engages in sexual intercourse with a minor under 18 years old with whom he or she comes into contact as a result of that position; • (3) a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse; or • (4) a peace officer, while serving in his or her official capacity, subjects a person to sexual intercourse who the officer: (1) arrested, held in custody, or investigated for commission of a traffic or criminal offense; or (2) knew or should have known was under arrest, held in custody, or being investigated for commission of a traffic or criminal offense. KRS § 510.060. *See also Stinson v. Com.*, 396 S.W.3d 900, 906 (Ky. 2013) ("a minor cannot consent to sexual contact from a person who is in a position of special trust or authority. Such behavior is sexual abuse in the first degree, and does not require an additional showing of lack of consent.")
Does the relationship between the victim and actor impact the victim's ability to consent?	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(b). A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: • such other person is less than 18 years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare; or • such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or • the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception; or • the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional; or • the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or • the actor is a coach in an athletic activity or a person who provides intensive, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under 18 years of age; or

	• the actor is 20 years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and such other person is under 18 years of age; or • such other person is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person. Connecticut General Statutes Annotated § 53a-71.

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes.
	
	• If 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 intercourse will not be unlawful if the victim and person are married at the time of such intercourse. 11 Delaware Code § 770(a)(2).
	• 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:
	  • 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, 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 § 778(1)-(2));
	  • Intentionally engages in sexual intercourse or sexual penetration with a child over 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 § 778(3));
	  • Intentionally engages in sexual intercourse or sexual penetration with a child over the age of 16 and under the age of 18, 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 § 778(4));
	  • 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 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(a)(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(a)(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(a)(2)(b));
- Suggests, solicits, requests, commands, importunes 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(a)(3)).

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

- Health Professional or Religious Figure
  - Where the defendant is a health professional, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact,

	sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. 11 Delaware Code § 761(k)(4). 11 Delaware Code § 761(e) and § 761(k)(4).
Does the relationship between the victim and actor impact the victim's ability to consent?	Yes. Sexual Abuse of a Minor: • A minor, defined as a person under the age of 18, in a "significant relationship" with a person who is over 18 cannot consent to sexual acts or sexual contact with such person. D.C. Code §§ 22-3009.01, 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 spouse, domestic partner, or paramour of the person who is charged with any duty or responsibility for the health, welfare, or supervision of the victim at the time of the act; and • Any employee, contractor, consultant or volunteer of a school, religious institution, or an educational, social, recreational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver, administrator, or support staff, or any other person in a position of trust with or authority over a child or a minor. D.C. Code § 22-3001(10). Sexual Abuse of a Secondary Education Student: • A student under the age of 20 years enrolled in a secondary level school cannot consent to sexual acts or sexual conduct with any teacher, counselor, 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, Patient, Client, Arrestee, Detainee or Prisoner: • A ward, patient, client, arrestee, detainee or prisoner, as applicable, cannot consent to sexual acts or sexual contact with any staff member, employee, contract employee, consultant, or volunteer of a law enforcement agency or at a hospital, treatment facility, law enforcement 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, arrestee, detainee or prisoner to and from such institutions; or any official custodian of a ward, patient, client, arrestee,

	detainee or prisoner. D.C. Code §§ 22–3013, 22-3014.
	
	Sexual Abuse of a Patient or Client:
	
	• A patient or client cannot consent to sexual acts or sexual contact with any person who purports to provide, in any manner, professional services of a medical, therapeutic, or counseling (whether legal, spiritual, or otherwise) nature, or is otherwise in a professional relationship of trust with the patient/client if:
	  • (1) The actor represents falsely that the sexual act or sexual contact is for a bona fide medical or therapeutic purpose, or for a bona fide professional purpose for which the services are being provided;
	  • (2) The nature of the treatment or service provided by the actor and the mental, emotional, or physical condition of the patient or client 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 he or she is licensed as a particular type of professional; or
	  • (4) The sexual act or sexual contact occurs during the course of a consultation, examination, treatment, therapy, or other provision of professional services.
	
	D.C. Code §§ 22–3015, 22-3016.
	
	Marriage or domestic partnership between the defendant and the child or minor at the time of the offense is a defense, which the defendant must establish by a preponderance of the evidence, to a prosecution for child sexual abuse, enticing a child or minor, or sexual abuse of a minor under D.C. Code §§ 22-3008 to 22-3010.01, prosecuted alone or in conjunction with attempted sexual abuse under D.C. Code § 22-3018 or § 22-403, involving only the defendant and the child or minor. D.C. Code § 22–3011.

Does the relationship between the victim and actor impact the victim's ability to consent?	A person cannot consent to sexual activity with a law enforcement officer, correctional officer, or correctional probation officer, who is certified or is an elected official exempt from such certification or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government. Florida Statutes § 794.011(4)(e)(7) and (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). "**Sexual battery**" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose. Florida Statutes § 794.011(1)(j).

Does the relationship between the victim and actor impact the victim's ability to consent?	Yes.
	• An employee or agent engages in improper sexual contact in the first degree if that employee or agent knowingly engages in sexually explicit conduct with a person they knew or reasonably should have known is contemporaneously:
	  • enrolled as a student at a school of which he or she is an employee or agent;
	  • under probation, parole, a program or within a facility as a condition of probation or parole, accountability court, or pretrial diversion supervision of the office or court of which he or she is an employee or agent;
	  • being detained by or is in the custody of any law enforcement agency of which he or she is an employee or agent;
	  • patient in or at a hospital of which he or she is an employee or agent;
	  • in the custody of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, or a facility providing child welfare and youth services of which he or she is an employee or agent;
	  • the subject of such employee or agent's actual or purported psychotherapy treatment or counseling; or
	  • admitted for care at a sensitive care facility of which he or she is an employee or agent. Georgia Code § 16-6-5.1(b).
	• A person commits the offense of improper sexual contact by a foster parent when he or she is a foster parent and knowingly engages in sexually explicit conduct or sexual contact with his or her current foster child. Georgia Code §§ 16-6-5.1(b.1) & (c.1). "Foster parent" means the person or persons who provide care, lodging, supervision, and maintenance for one or more children in a foster care home used by a child-placing agency or in a foster care home approved and directly supervised by the Department of Human Services. Georgia Code § 16-6-5.1(a)(4.2)
	• In addition, a person commits the offense of improper sexual contact when a person in a "position of trust" engages in sexually explicit conduct or sexual contact with a minor for whom he or she has entered into an agreement entrusting him or her with the responsibility of education and supervision of such minor. Georgia Code §§ 16-6-5.1(b.2) & (c.2). "Person in a position of trust" means an individual with whom a parent, guardian, or other person standing in loco parentis of a minor has entered into an agreement entrusting such individual with the responsibility of education and supervision of such minor. Georgia Code § 16-6-5.1(a)(5.1).
	Consent is not a defense to offenses under section 16-6-5.1 (as summarized above). Georgia Code § 16-6-5.1(d).

Does the relationship between the victim and	Yes. • Marriage: • Marriage is a defense to certain sex crimes. HRS §§ 707-730; 707-731; 707-732; 707-733; 707-734. Marriage is a defense to certain charges of first or third degree sexual assault of a child

factor impact the victim's ability to consent?	that is 14 or 15 years of age (HRS §§ 707-730; 707-732), certain charges of second or fourth degree sexual assault (HRS §§ 707-731; 707-733), and indecent exposure (HRS § 707-734).
	• State correctional facility, elderly caretaker, law enforcement officer:
	  • A person commits a sex crime if the person, while employed in a state correctional facility, by a private company providing services at a correctional facility, by a private company providing community-based residential services to persons committed to the director of corrections and rehabilitation and having received notice of the statute at issue, by a private correctional facility operating in the State of Hawaii, or as a law enforcement officer, knowingly subjects to a sexual act an imprisoned person, a person confined to a detention facility, a person committed to the director of corrections and rehabilitation, a person residing in a private correctional facility operating in the State of Hawaii, a person in custody, a person who is stopped by a law enforcement officers; or a person who is being accompanied by a law enforcement officer for official purposes. HRS § 707-731; 707-732.
	  • *State v. Cardus,* 86 Haw. 426, 435, 949 P.2d 1047, 1056 (Ct. App. 1997) "The consent of an imprisoned person would therefore be ineffective and, consequently, not a defense under HRS § 707–731(1)(c) to the charge of sexual penetration."
	• Person acting in a professional capacity to instruct, advise, or supervise a minor:
	  • A person commits sexual assault in the second degree if the person knowingly subjects to sexual penetration 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 § 707-731.
	  • 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 years if the person either resides in the same home with a minor under the age of 14 or has recurring access to the minor, 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.

Defenses

Question	Answer

Is consent a defense to sex crimes?	Yes, consent is a defense to rape if the victim is capable of consent and to sexual assault in the second degree. See Arkansas Code §§ 5-14-103; 5-14-125(a)(1)-(2).
Is consent a defense to sex crimes?	Generally yes, since it is an element of every offense defined in this article that the sexual act was committed without consent of the victim. Ala. Code § 13A-6-70. See exceptions above. • A defendant may use consent as a defense even when the consent was implied, and not expressed, by the victim. If the conduct of the accuser is such "as to create in the mind of the defendant an honest and reasonable belief that [the accuser] consented to the act, then [the defendant] is entitled to be acquitted." *McQuirk v. State*, 84 Ala. 435 (1888); *Allen v. State*, 87 Ala. 107 (1889); *Taylor v. State*, 249 Ala. 130 (1947). Consent is not a defense to sexual abuse by a person over the age of 19 years with a person whose age is between 12 and 16 years. Ala. Code § 13A-6-67(a)(2).
Is consent a defense to sex crimes?	Yes, consent is a defense to sexual assault in the first degree for sexual penetration without consent, Alaska Stat. § 11.41.410(a)(1), and sexual assault in the second degree for sexual contact without consent. Alaska Stat. § 11.41.420(a)(1).
Is consent a defense to sex crimes?	Yes, for certain crimes. Consent is a defense to (a) sexual abuse for engaging in sexual contact without consent under section 13-1404, and (b) sexual assault for engaging in sexual intercourse or oral sexual contact without consent under section 13-1406. Arizona Revised Statute §§ 13-1404(A); 13-1406(A).
Is consent a defense to sex crimes?	Yes, consent is a defense to rape under section 261, abduction for marriage or defilement under section 265, abduction for prostitution under section 266a, and abduction to live in an illicit relation under section 266b. See California Penal Code §§ 261; 265; 266a; 266b.
Is consent a defense to sex crimes?	Yes, consent may act as a defense to the elements of certain sex crimes, including: • causing sexual intrusion or sexual penetration on a victim knowing the victim does not consent (§ 18-3-402(1)(a)); • knowingly subjecting a victim to any sexual contact knowing the victim does not consent (§ 18-3-404(1)(a)); • knowingly subjecting a victim to any sexual contact when the victim is physically helpless, the actor knows that the victim is physically helpless, and the victim has not consented (§ 18-3-404(1)(c)); and • knowingly subjecting a victim to any sexual contact when the actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission (§ 18-3-404(1)(d)). Colorado Revised Statutes Annotated § 18-3-408.5. Note: In *People v. Bertrand*, 342 P.3d 582 (Colo. App. 2014), the court held that consent was not a permissible defense to a charge for sexual assault based on defendant's knowledge that the victim was incapable of appraising her conduct, since victim's inability to appraise her conduct while defendant engaged in sexual intercourse with her necessarily negated her ability to consent.

Is consent a defense to sex crimes?	Yes, whether or not specifically stated, it is an element of every offense listed below that the sexual act was committed without the consent of the victim. W. Va. Code Ann. § 61-8B-2. • § 61–8B–3. Sexual assault in the first degree • § 61–8B–4. Sexual assault in the second degree • § 61–8B–5. Sexual assault in the third degree • § 61–8B–7. Sexual abuse in the first degree • § 61–8B–8. Sexual abuse in the second degree • § 61–8B–9. Sexual abuse in the third degree
Is consent a defense to sex crimes?	Yes, provided that the person is of age to consent, and did so through words or overt actions agreeing to the sexual activity. However, consent is not a defense to sex crimes if a defendant: • Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition; • Has sexual contact or sexual intercourse with a person who 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; • Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious; • Is an employee of an adult family home, a community-based residential facility, an inpatient healthcare facility, or a state treatment facility or program, and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program; • Has sexual contact or sexual intercourse with an individual who is confined in a correctional institution if the actor is a correctional staff member; • Has sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if the actor is a probation, parole, or extended supervision agent who supervises the individual, either directly or through a subordinate, in his or her capacity as a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agent's supervision of the individual; or • Is a law enforcement officer and has sexual contact or sexual intercourse wtih any person who is detained by any law enforcement officer or is in the custody of any law enforcement officer (which applies whether the custody is lawful or unlawful and whether the detainment or custody is actual or constructive). Wis. Stat. Ann. §§ 940.225(2) & (4).
Is consent a defense to sex crimes?	Yes, provided that: • (a) the victim voluntarily consented to the act by word or conduct, and the victim had the present ability to consent; or • (b) the defendant could not reasonably have known that victim lacked that ability. *Wilson v. State*, 655 P.2d 1246 (Wyo. 1982). Consent of the victim is not a defense to sexual assault in the second degree where the actor is an employee,

	independent contractor or volunteer of a state, county, city or town, or privately operated adult or juvenile correctional system, including but not limited to jails, penal institutions, detention centers, juvenile residential or rehabilitative facilities, adult community correctional facilities or secure treatment facilities and the victim is known or should be known by the actor to be a resident of such facility or under supervision of the correctional system. Wyo. Stat. Ann. § 6-2-307. Consent is not a defense to sexual assault in the third degree. Wyo. Stat. Ann. § 6-2-307.
Is consent a defense to sex crimes?	Yes, consent can be a defense to sex crimes. *See* 9 G.C.A. § 7.64(a). For example, consent of the victim is a defense to a charge of first degree criminal sexual conduct during the commission of a felony.
Is consent a defense to sex crimes?	Yes, if the actor and victim are legally married, spousal consent is an affirmative defense to: • Aggravated rape in the first degree. 14 V.C.C. § 1700. • Aggravated rape in the second degree. 14 V.C.C. § 1700a. • Rape in the first degree. 14 V.C.C. § 1701. • Rape in the second degree. 14 V.I.C. § 1702. • Rape in the third degree. 14 V.I.C. § 1703. • Unlawful sexual contact in the first degree. 14 V.I.C. § 1708. • Unlawful sexual contact in the second degree. 14 V.I.C. § 1709.
Is consent a defense to sex crimes?	Yes. The definition of "Sexual Assault" includes the concept of consent at least for certain components of the crime definition. *See e.g.,* Puerto Rico Stat. tit. 33 § 4770(d) ("If the victim's capability to consent has been annulled or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances."). *See also Pueblo v. Alamo Capeles*, No. ESVP20130272, 2014 WL 1806896, at 5 (P.R. Cir. Mar. 27, 2014) (noting that the crime of sexual assault is configured in general terms to include the element of consent; however, the element of consent does not apply where the victim at the time of the act has not turned sixteen (16) years of age).
Is consent a defense to sex crimes?	Generally, yes where consent is an element of the crime. "Under current law, a showing of lack of consent by the victim is sufficient to sustain a rape conviction." *State v. Marsh*, No. E199800057CCAR3CD, 2000 WL 555231, at *3 (Tenn. Crim. App. May 8, 2000) Additionally, consent to intercourse obtained by force or fear due to threats or force is void and the offense is rape. *Lundy v. State*, 521 S.W.2d 591, 594 (1974). If the alleged victim of a sexual penetration or sexual contact is less than 13 years old, the victim shall, regardless of consent, not be considered to be an accomplice to sexual penetration or sexual contact, and no corroboration of the alleged victim's testimony shall be required to secure a conviction if corroboration is necessary solely because the alleged victim consented. Tenn. Code Ann. § 40-17-121.

Is consent a defense to sex crimes?	Generally, yes where consent is an element of the crime such as with sexual assault. Texas Penal Code Ann. §22.011(b). However, a sexual assault is considered to be without consent where the actor is a public servant, mental health services provider or clergyman, employee of a facility where the other person is a resident, health care service provider performing an assisted reproduction procedure, coach or tutor or a caregiver hired to assist the other person with activities of daily life. Texas Penal Code Ann. §§22.011(b)(8) – (14). Persons under 14 years of age are legally incapable of giving consent to sexual intercourse. *May v. State*, 919 S.W.2d 422, 423 (Tex. Crim. App. 1996).
Is consent a defense to sex crimes?	Generally yes, since it is an element of the offenses that the sexual act was committed without the consent of the victim. Utah Code Ann. §76-5-406. *State v. Gasper*, 436 P.3d 200, 205 (Utah App. 2018). In prosecution of a sex offense for which "lack of consent" is an element, the jury is not prevented from determining that circumstances outside those statutorily listed amount to lack of consent, and can consider whether the totality of the evidence supports a finding of lack of consent under its common, ordinary meaning. *State v. Thompson*, 318 P.3d 1221, 1251 (Utah App. 2014).
Is consent a defense to sex crimes?	Yes, generally. The crime of "sexual assault" is defined in the context of consent: • No person shall engage in a sexual act with another: 1. without the consent of the other person; 2. by threatening or coercing the other person; 3. by placing the other person in fear that any person will suffer imminent bodily injury; or 4. when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring. Additionally, consent may 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; or • where the person is less than 19 years old, the child is at least 15 years old and the sexual act is consensual. Vermont Stat. Ann. §13-3252(c).
Is consent a defense to sex crimes?	Yes. In support of consent defense, defendant charged with rape may produce evidence of circumstances, including conduct or statements by victim, tending to prove consent and may testify as to his observations or perceptions of statements or conduct by victim suggesting consent, but the element to be proven by the state is the fact that intercourse was accomplished against victim's will, and, while the accused's perception may be evidence bearing on the sufficiency of the proof of this element, it is not itself an element of the crime to be proven by the state. *Clifton v. Comm.*, 22 Va.App. 178 (1996). The Commonwealth need not demonstrate that the complaining witness cried out or physically resisted the accused, but the absence of such resistance may be considered when relevant to show that the act alleged was

	not against the will of the complaining witness. VA Code Ann. § 18.2-67.6.
Is consent a defense to sex crimes?	Yes, a victim's consent is a defense under the general rape statutes. *State v. Weaville*, 162 Wash.App. 801 (2011). However, consent is not an affirmative defense to the charge of rape in the second degree where the State solely charges the defendant of having sexual intercourse with a person incapable of consent by reason of being physically helpless or mentally incapacitated. *State v. Lozano*, 189 Wash.App. 117 (2015). Consent is not a defense to first degree rape of a child under the age of 12 by a person more than two years older. *State v. Washington*, 139 Wash.App. 845 (2007). Consent is an affirmative defense to rape in the second degree if the defendant proves by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment, when the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. Wash. Rev. Code Ann. § 9A.44.050.
Is consent a defense to sex crimes?	Yes. See *Denham v. State*, 192 P. 241 (1919) ("where sexual intercourse is voluntarily had by an unmarried female within the age of consent, a prosecution for rape cannot be maintained").
Is consent a defense to sex crimes?	Yes. *State v. Leistiko*, 282 P.3d 857, 861-62 (Or. 2012) ("A defendant charged with first-degree rape by means of forcible compulsion may always raise consent as a defense, either in the sense that the sexual act occurred as a result of consent rather than as a result of forcible compulsion or in the sense that, to the extent force was involved, the victim consented to it.") Consent of the other person to sexual contact is not a defense to a prosecution for first or second degree custodial sexual misconduct. Or. Rev. Stat. § 163.454(2) and Or. Rev. Stat. § 163.452(2).
Is consent a defense to sex crimes?	Yes. *Commonwealth v. Rhodes*, 510 A.2d 1217 (1986) ("Effective consent to sexual intercourse will negate a finding of forcible compulsion."); 18 Pa.C.S.A. § 3107 ("The alleged victim need not resist the actor in prosecutions under this chapter: Provided, however, That nothing in this section shall be construed to prohibit a defendant from introducing evidence that the alleged victim consented to the conduct in question."); 18 Pa.C.S.A. § 311 ("The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense"). Consent is not a defense to institutional sexual assault when the person is an institutional employee, a school employee or volunteer, a children center employee or volunteer, a peace officer, or a caretaker. 18 Pa.C.S.A. § 3124.2(a.1-a.4 and a.6).
Is consent a defense to sex crimes?	Yes. See *State v. Lynch*, 19 A.3d 51, 60 (R.I.2011) (it is the state's burden to prove a lack of consent beyond a reasonable doubt).
Is consent a defense to sex crimes?	Yes, though a minor is unable to consent when under the age of 16. See *State v. Alexander*, 303 S.C. 377, 381, 401 S.E.2d 146, 149 (1991).

Is consent a defense to sex crimes?	If a victim freely and voluntarily consents without force, coercion, or threat, then consent is a defense to forcible rape. *State v. Roach*, 825 N.W.2d 258, 263 (2012). However, consent by a patient is not a defense regarding sexual contact or sexual penetration by a psychotherapist. S.D. Code §§22-22-28, 29.
Is consent a defense to sex crimes?	Yes. Consent is an affirmative defense if it negates an element of the offense. In order to establish effective consent by the putative victim of a sexual assault, a defendant must demonstrate the presence of "affirmative and freely-given permission...." *State v. Cuni*, 733 A.2d 414, 424, 159 N.J. 584, 603 (1999).
Is consent a defense to sex crimes?	Yes, consent is generally a defense to sexual crimes, but it is not available to a defendant charged with: • criminal sexual penetration of a minor (lack of consent is not an element of the crime), *State v. Gillette*, 1985-NMCA-037, ¶17, 102 N.M. 695, 700, 699 P.2d 626,631; • 4th degree criminal sexual penetration (offense predicates guilt on age differences), *State v. Perea*, 2008-NMCA-147, ¶11, 145 N.M. 123, 125, 194 P.3d 738, 740; or, • 3rd degree criminal sexual penetration (offense involves physical force or coercion), *State v. Perea,* 2008-NMCA-147, ¶9, 145 N.M. 123, 125, 194 P.3d 738, 740. New Mexico Statutes §30-9-11.
Is consent a defense to sex crimes?	Yes. Whether or not specifically stated, it is an element of every sexual offense that the sexual act was committed without consent of the victim. New York Penal Law §130.05(1). Where the victim's lack of consent is based solely on incapacity to consent because he/she was mentally disabled, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he or she engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent. New York Penal Law §130.10(1). In any prosecution for the crime of rape in the third degree, crime formerly defined as a criminal sexual act in the third degree, aggravated sexual abuse in the fourth degree, or sexual abuse in the third degree, it shall be an affirmative defense that the client or patient consented to such conduct charged after having been expressly advised by the health care or mental health care provider that such conduct was not performed for a valid medical purpose. New York Penal Law §130.10(3).
Is consent a defense to sex crimes?	Yes, except there are certain defendants for which consent is not a defense: • a substitute parent of a minor victim; • a person having custody of a victim of any age; • a person who is an agent or employee of any person or institution having custody of a victim of any age; • a teacher, school administrator, student teacher, school safety officer, or coach at any time during or after the defendant and victim were present together in the same school, but before the victim ceased to be a student; and • other school personnel at any time during or after the defendant and victim were present together in the

	same school, but before the victim ceased to be a student. North Carolina General Statutes Annotated §14-27.31; § 14-27.32. Consent is also not a defense for offenses involving minors as follows: • § 14-27.23. Statutory rape of a child by an adult • § 14-27.24. First-degree statutory rape • § 14-27.25. Statutory rape of person who is 15 years of age or younger • § 14-27.30. Statutory sexual offense with a person who is 15 years of age or younger
Is consent a defense to sex crimes?	Not in all cases. There is strict liability for cases where the victim is less than 15 years old. NDCC § 12.1-20-03(1)(d) & (2)(a). Consent is not a defense to the crime of sexual exploitation by a therapist. NDCC § 12.1-20-06.1. Lack of consent does not appear to be an element of the crime of sexual abuse of wards. NDCC § 12.1-20-06.
Is consent a defense to sex crimes?	Consent is not specifically identified in the statutes as a defense. However, case law indicates that consent in a prosecution for rape is a complete defense. *State v. Driscoll*, 106 Ohio St. 33, 40, 138 N.E. 376, 378 (1922) ("Consent or nonresistance in a prosecution for rape is a complete defense, just as insanity, or an alibi, would be; and, furthermore, consent would be a complete defense to the included offenses of assault and battery and assault."). NOTE: *State v. Driscoll* was superceded by rule on other grounds as stated in *State v. Morgan*, Ohio, September 13, 2017. The superseding rule pertained to criminal rule of procedure 52(B) and had nothing to do with the Driscoll court's statement regarding consent. Baldwin's Oh. Prac. Crim. L. § 91:11 (3d ed.) (2017) offers a clearer understanding of the role of consent as a defense to sex crimes in Ohio: "Generally, consent is a defense only when 'lack of consent' is an element of the crime. For example, most types of rapes . . . require, in effect, lack of consent . . . . In these circumstances, consent is not an affirmative defense. The prosecution, for example, must establish lack of consent, beyond a reasonable doubt, in a rape case. If consent is a 'defense' to a crime, it must be (1) freely given (without compulsion or duress); (2) by a person legally capable of consenting; and (3) not based on fraud."
Is consent a defense to sex crimes?	Consent is a defense to a charge of sexual battery committed with a person 14 years of age or over. Miss. Code Ann. § 97-3-95; *Coates v. State*, 495 So. 2d 464, 465 (Miss. 1986).
Is consent a defense to sex crimes?	Lack of consent is an element that must be proved by the prosecution in the offense of rape in the second degree, which is the offense of sexual intercourse with another person when the perpetrator knows that he or she does so without the victim's consent. Mo. Rev. Stat. § 566.031. Consent is not an affirmative defense to any sexual offense if the alleged victim is less than 14 years of age. Mo. Rev. Stat. § 566.020.

Is consent a defense to sex crimes?	Yes. The consent of a victim to conduct charged to constitute an offense or to the result thereof is a defense. Mont. Code Ann. § 45-2-211(1). However, consent is "ineffective" if: • it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; • it is given by a person who by reason of youth, mental disease or disorder, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; • it is induced by force, duress, or deception; • it is against public policy to permit the conduct or the resulting harm, even though consented to; or • for offenses under 45-5-502 (sexual assault), 45-5-503 (sexual intercourse without consent), 45-5-508 (aggravated sexual intercourse without consent), 45-5-601 (patronizing prostitute), or Title 45, chapter 5, part 7 (human trafficking) if it is given by a person who the offender knew or reasonably should have known was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred. When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old. Mont. Code Ann. § 45-5-511(1). Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent. Mont. Code Ann. § 45-5-511(5). In addition, the defendant must have knowledge that the conduct is without consent, which a jury may infer from the facts and circumstances of the case. *State v. Hamernick*, 414 Mont. 307, 545 P.3d 666 (Mont. S. Ct. 2023).
Is consent a defense to sex crimes?	Yes, depending on the crime at issue. If the victim is over the age of consent (16 years of age), then consent may be a defense. If the victim is under the age of 12, then consent is never a defense. If the victim is between the ages of 12 and 16, then consent is not a defense (although the actor cannot be convicted of sexual assault if the actor is 18 years of age or younger). Neb. Rev. Stat. §28-319. It is not a defense that the perpetrator mistook the victim's age or the victim concealed or misrepresented his or her age.*State v. Campbell*, 239 Neb. 14, 19 (1991). Consent or reasonable mistake as to the age of the victim is not a defense to first degree sexual assault upon a child. *State v. Campbell*, 239 Neb. 14, 19 (1991) (citing *State v. Navarette*, 221 Neb. 171, 171 (1985)). *see also State v. Heitman,* 262 Neb. 185, 203, 629 N.W.2d 542, 557 (2001) (citing *State v. Campbell*).
Is consent a defense to sex crimes?	Generally, yes. It is an element of the crime of sexual assault that the crime was committed against the will of the victim. Nev. Rev. Stat. Ann. § 200.366. Nevada law also supports a defense of reasonable mistaken belief of consent in sexual assault cases. *Honeycutt v. Donat*, 2009 WL 2177059 (D. Nev., July 21, 2009); *see also Hardaway v. State*, 926 P.2d 288 (1996).

Is consent a defense to sex crimes?	Yes, generally. The criminal code provides for the following principles with regard to consent as a defense: 1. The consent of the victim to conduct constituting an offense is a defense if such consent negatives an element of the offense or precludes the harm sought to be prevented by the law defining the offense. 2. When conduct constitutes an offense because it causes or threatens bodily harm, consent to the conduct is a defense if the bodily harm is not serious; or the harm is a reasonably foreseeable hazard of lawful activity. 3. Consent is no defense if it is given by a person legally incompetent to authorize the conduct or by one who, by reason of immaturity, insanity, intoxication or use of drugs is unable and known by the actor to be unable to exercise a reasonable judgment as to the harm involved. N.H. Rev. Stat. Ann. § 626:6 However, consent is not a defense to the following crimes: • Aggravated felonious sexual assault when (1) the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit or (2) the actor is an employee, contractor, or volunteer at a primary or secondary educational institution and the victim is a student and up to 10 months after the student's graduation or departure. N.H. Rev. Stat. Ann. § 632-A:2(I)(k). • Aggravated felonious sexual assault when, at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act. N.H. Rev. Stat. Ann. § 632-A:2(I)(m). • Aggravated felonious sexual assault when the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit and the actor either (1) has direct supervisory, disciplinary, or other authority authorized by law over, or direct responsibility for maintaining detention of, the victim by virtue of the victim being detained or incarcerated in a correctional institution, the secure psychiatric unit, a juvenile detention facility, or any other setting in which the victim is not free to leave; or (2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation. N.H. Rev. Stat. Ann. § 632-A:2(I)(n). • When a person engages in sexual contact with a person who is (1) under 13 years of age; (2) 13 years of age or older and under 18 years of age when the actor is in a position of authority over the victim and is more than 4 years older than the victim; or (3) when the actor is an employee, contractor, or volunteer at a primary or secondary educational institution and the victim is a student and up to 10 months after the student's graduation or departure. N.H. Rev. Stat. Ann. § 632-A:3(III). • A person is guilty of a misdemeanor if such person engages in sexual contact or sexual penetration with another person, or causes the person to engage in sexual contact on himself or herself in the presence of the actor, when the actor is in a position of authority over the person under any of the following circumstances: • (1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile

	detention facility where the actor is employed; or • (2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation. N.H. Rev. Stat. Ann. § 632-A:3(IV). • A person is guilty of a class B felony if such person (a) engages in sexual contact with the person, or causes the person to engage in sexual contact on himself or herself in the presence of the actor, when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances: (1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or (2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation. • (b) Consent of the victim under any of the circumstances set forth in this paragraph shall not be considered a defense. N.H. Rev. Stat. Ann. § 632-A:4(III). To obtain a conviction for aggravated felonious sexual assault, the State has an affirmative obligation to prove beyond a reasonable doubt that the victim did not consent. *State v. Hunter*, 567 A.2d 564, 564 (1989).
Is consent a defense to sex crimes?	Yes, but not as to: (i) the offense of felony carnal knowledge of a juvenile (*State v. Armstead*, 159 So.3d 502 (La. Ct. App. 2015)) or (ii) any violation of L.S.A.-R.S. 14:81.4 (prohibited sexual conduct between educator and student).
Is consent a defense to sex crimes?	Yes, but consent is not a defense to sex crime of having carnal knowledge of female between 14 and 16. *State v. Morang*, 132 Me. 443, 172 A. 431 (Me., 1934). Consent is also not a defense to charge of taking indecent liberties with the sexual organs of certain minors. *State v Deveau*, 354 A.2d 389 (Me. 1976). Consent is not a defense if: (1) it is given by a person who, by reason of intoxication, physical illness, mental illness or mental defect, including, but not limited to, dementia and other cognitive impairments, or youth, is manifestly unable, or known by the defendant to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the crime; or (2) it is induced by force, duress or deception or undue influence. 17A M.R.S.A. § 109.
Is consent a defense to sex crimes?	Yes, but not as to a charge of statutory rape. “We decline to deviate from the majority rule and uphold the legislature’s intent, as determined in Garnett, to make statutory rape a strict liability crime.” *Owens v. State*, 352 Md. 663, 688, 724 A.2d 43, 55 (1999).

Is consent a defense to sex crimes?	Under indictment charging rape, the prosecution has the affirmative duty to prove beyond a reasonable doubt that sexual intercourse was performed against the will of the victim and without consent, and consent is therefore an issue in every rape prosecution for intercourse to which victim could have legally consented, even where defendant denies that intercourse involving him has taken place. *Com. v. Chretien*, 417 N.E.2d 1203, 383 Mass. 123 (1981). Consent is not a defense to statutory rape; it is a strict liability crime. *Com. v. Knap*, 592 N.E.2d 747, 412 Mass. 712 (1992).
Is consent a defense to sex crimes?	Yes. In the context of the criminal sexual conduct statutes, consent can be utilized as a defense to negate the elements of force or coercion. *People v. Waltonen*, 728 N.W.2d 881, 272 Mich.App. 678 (2006). Sexual penetration with a person under 13 years of age constitutes first-degree criminal sexual conduct irrespective of the victim's consent or experience. *People v. Benton*, 817 N.W.2d 599, 294 Mich.App. 191 (2011), appeal denied 813 N.W.2d 286, 491 Mich. 917.
Is consent a defense to sex crimes?	Consent can be a defense to sex crimes provided the complainant meets the statutory age to consent as described above. Minn. Stat. § 609.342–345.
Is consent a defense to sex crimes?	Yes, consent may be a defense to rape if the victim is capable of consent. Idaho Statutes §§ 18-6101. Consent is not a defense to statutory rape. *State v. Palin*, 106 Idaho 70, 675 P.2d 49 (Ct. App. 1983).
Is consent a defense to sex crimes?	Yes, consent is a defense to criminal sexual assault under section 11-1.20, aggravated criminal sexual assault under section 11-1.30, predatory criminal sexual assault of a child under section 11-1.40, criminal sexual abuse under section 11-1.50, or aggravated criminal sexual abuse under section 11-1.60 of the ILCS where force or threat of force is an element of the offense. 720 ILCS 5/11-1.70.
Is consent a defense to sex crimes?	Yes, but consent is not an element to be proved in child molesting cases or defense to child molestation charge. *Thompson v. State*, 555 N.E.2d 1301 (Ind. Ct. App. 1990).
Is consent a defense to sex crimes?	Yes, but not as to statutory rape where prosecutrix is under the statutory age. *State v. Brooks*, 165 N.W. 194, 181 Iowa 874 (1917).
Is consent a defense to sex crimes?	Yes, but not as to sexual intercourse with a child who is under 14 years of age. K.S.A. §21-5503. It is not a defense that the offender did not know or have reason to know that the victim did not consent to the sexual intercourse, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless. K.S.A. 21-5503(e).
Is consent a defense to sex crimes?	Yes, Kentucky Revised Statutes (KRS) 510.020(1) provides that lack of consent by the victim is an element of all the offenses contained in KRS Chapter 510, which includes rape and sodomy, but not as to sex crimes where the victim has not yet reached the age of consent. Consent is not a defense to a rape prosecution where victim was of such age that she could not legally do so. *Hamilton v. Com.*, 57 S.W.2d 516, 247 Ky. 579 (1933). However, in any prosecution in which the victim’s lack of consent is based solely on his or her incapability to consent

	because he or she was, at the time of the offense: • Less than 16 years old, • 16 or 17 years old and the defendant was at least 10 years older than the victim, • An individual with an intellectual disability, • Mentally incapacitated, or • Physically helpless, it is a defense if the defendant can prove that at the time of the conduct, he or she did not know of the facts or conditions responsible for such incapacity to consent. KRS § 510.030.
Is consent a defense to sex crimes?	Yes, consent is a defense to sexual assault in the first degree for compelling a person to submit to sexual intercourse under section 53a-70, sexual assault in the third degree for compelling a person to submit to sexual contact under section 53a-72a, and sexual assault in the fourth degree for sexual contact without consent under section 53a-73a. See Connecticut General Statutes Annotated §§ 53a-70; 53a-72a; 53a-73a.
Is consent a defense to sex crimes?	Yes, consent is a defense to unlawful sexual contact in the third degree for sexual contact without consent under section 767 and rape for sexual penetration or sexual intercourse without consent under sections 770, 771, 772, and 773. 11 Delaware Code §§ 767; 770(a)(3); 771; 772; 773.
Is consent a defense to sex crimes?	Yes. Consent by the victim is a defense to sex crimes (including attempted sexual abuse under D.C. Code §§ 22–3018 or 22-401 & 22-403) other than crimes involving: • child sexual abuse; or • sexual abuse of a minor. D.C. Code §§ 22–3007, 22–3011.

Is consent a defense to sex crimes?	Yes, consent is a defense to sexual battery, except in the following instances:
	• Where a person who is in a position of familial or custodial authority to a victim less than 18 years of age:
	  • solicits that victim to engage in any act that would constitute sexual battery;
	  • engages in any act that would constitute sexual battery with the victim while the person is 12 years of age or older but younger than 18 years of age; or
	  • engages in any act that would constitute sexual battery with the victim while the person is less than 12 years of age. Florida Statutes § 794.011(8).
	• Acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position. Florida Statutes § 794.011(9).

Is consent a defense to sex crimes?	Yes, consent is a defense to claims of: • rape of a female more than ten years of age (although if the female is at least 10 but less than less than 16 years of age, it is considered statutory rape, to which consent is not a defense (see below)); • sexual battery; and

	• aggravated sexual battery. Georgia Code §§ 16-6-1(a), 16-6-22.1(b), 16-6-22.2(b). Consent is not a defense to claims of statutory rape under Georgia Code § 16-6-3 or claims of improper sexual contact (relating to supervisory or disciplinary relationships, foster parents, or "positions of trust" as described above) under Georgia Code § 16-6-5.1. A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the victim. Georgia Code § 16-6-3(a). If the victim is at least 14 but less than 16 years of age and the person convicted of statutory rape is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor. Georgia Code § 16-6-3(c).
Is consent a defense to sex crimes?	Yes, but not as to certain sex crimes. Children under the age of 14 and persons who are mentally defective, mentally incapacitated, or physically helpless are unable to consent to sexual activities. Also, an imprisoned person's consent to sexual penetration by a correctional facility employee is not a defense. *State v. Cardus*, 1997, 86 Hawai'i 426, 949 P.2d 1047. *See also* HRS § 702-235: Unless otherwise provided by this Code or by the law defining the offense, consent does not constitute a defense if: (1) It is given by a person who is legally incompetent to authorize the conduct alleged; (2) It is given by a person who by reason of youth, mental disease, disorder, or defect, or intoxication is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct alleged; (3) It is given by a person whose improvident consent is sought to be prevented by the law defining the offense, or (4) It is induced by force, duress, or deception. Ignorance or mistake as to lack of consent can also be a defense to sex crimes, insofar as it negates the element of compulsion. *See State v. Adams*, 10 Haw. App. 593, 605-07, 880 P.2d 226, 234-35 (1994); *accord State v. McFadden*, 136 Haw. 190, 358 P.3d 759 (Ct. App. 2015).
Is voluntary intoxication a defense to sex crimes?	No. *White v. State*, 290 Ark. 130, 717 S.W.2d 784 (1986).

Is voluntary intoxication a defense to sex crimes?	Voluntary intoxication by the defendant is a defense for the attempt of a sex crime that requires intent to commit the offense under Ala. Code § 13A-4-2(a), only if it amounts to "insanity" and is "of such character and extent as to render [the defendant] incapable of consciousness that he is committing a crime." *Wesson v. State*, 644 So.2d 1302, 1313 (Ala. Crim. App. 1994).
Is voluntary intoxication a defense to sex crimes?	Not generally, but for certain elements of sexual crimes voluntary intoxication can negate intent*, see, Guertin v. State*, 854 P.2d 1130, 1133 (Alaska Ct. App. 1993).
Is voluntary intoxication a defense to sex crimes?	No. Arizona Revised Statute § 13-503; *see also State v. Gallegos,* 178 Ariz. 1, 870 P.2d 1097 (1994).
Is voluntary intoxication a defense to sex crimes?	No. California Penal Code § 29.4.
Is voluntary intoxication a defense to sex crimes?	No. *People v. Vigil*, 43 Colo. App. 121, 122, 602 P.2d 884, 885 (1979)
Is voluntary intoxication a defense to sex crimes?	No, but in some circumstances evidence of intoxication may negate a mental state that is a necessary element of the crime. *State v. Keeton*, 166 W.Va. 77, 272 S.E.2d 817 (1980).
Is voluntary intoxication a defense to sex crimes?	An intoxicated or a drugged condition of the actor is a defense only if such condition is involuntarily produced and does one of the following: (1) Renders the actor incapable of distinguishing between right and wrong in regard to the alleged criminal act at the time the act is committed; (2) Negatives the existence of a state of mind essential to the crime. Wis. Stat. Ann. §939.42. Yes, for sex crimes in which specific intent is an element of the crime, voluntary intoxication can serve to negate specific intent if the defendant's mental faculties are so overcome by intoxicants that the defendant is incapable of forming the intent requisite to satisfy the specific intent element of the crime or that the intoxication was so extreme as to suspend entirely the power of reason.*U.S. v. Boyles*, 57 F.3d 535 (7th Cir. 1995).
Is voluntary intoxication a defense to sex crimes?	Self-induced intoxication of the defendant is not a defense to a criminal charge except to the extent that in any prosecution evidence of self-induced intoxication of the defendant may be offered when it is relevant to negate the existence of a specific intent which is an element of the crime. Wyo. Stat. Ann. § 6-1-202; *Brown v. State*, 450 P.3d 208 (Wyo. 2019)

Is voluntary intoxication a defense to sex crimes?	No. Self-induced intoxication is not a defense to a criminal charge. *See* 9 G.C.A. § 7.58(b).
Is voluntary intoxication a defense to sex crimes?	No act committed while in a state of voluntary intoxication is less criminal because committed while in such state. However, the court or jury may take into consideration the fact that the accused was intoxicated at the time in determining the purpose, motive or intent with which he committed the act whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime or offense. 14 V.I.C. § 16.
Is voluntary intoxication a defense to sex crimes?	No. Voluntary drunkenness or voluntary intoxication with drugs or narcotic, stimulant or depressant substances, or any similar substances shall not be grounds for criminal nonliability; however, whenever the actual existence of any particular purpose, motive or intent is an essential element to constitute a particular species or degree of crime, the judge may take into consideration the fact that the accused was drunk or intoxicated at the time of deciding the purpose, motive or intent with which the crime was committed. Puerto Rico Stat. tit. 33 § 4669
Is voluntary intoxication a defense to sex crimes?	Intoxication itself is not a defense to prosecution for an offense. However, intoxication, whether voluntary or involuntary, is admissible in evidence, if it is relevant to negate a culpable mental state. Involuntary intoxication is a defense to prosecution, if, as a result of the involuntary intoxication, the person lacked substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform that conduct to the requirements of the law allegedly violated. Tenn. Code Ann § 39-11-503. Defendants' intoxication at time of their commission of rape will not mitigate crime, as no intent to commit crime, other than that evidenced by doing of acts constituting offense, is necessary in case of criminal assault. *Steele v. State*, 225 S.W.2d 260, 189 Tenn. 424 (1949).
Is voluntary intoxication a defense to sex crimes?	No, voluntary intoxication does not constitute a defense to the commission of crime. Evidence of temporary insanity by intoxication may be introduced by the actor in mitigation of the penalty attached to the offense for which he is being tried. Texas Penal Code Ann. §8.04. For temporary insanity by intoxication the question is whether there is evidence that the defendant was intoxicated to the point that defendant was unable to understand the wrongfulness of the conduct, not whether the conduct was out of character, without precedent, or without rational explanation. *McBurnett v. State*, 2021 629 W.W.3d 660, 665 (Tex. App. May 6, 2021).
Is voluntary intoxication a defense to sex crimes?	No, voluntary intoxication is not a defense to sexual offenses except enticing a minor to engage in sexual activity (§76-5-417), sexual battery (§ 76-5-418), lewdness (§76-5-419), and lewdness involving a child (§76-5-420). Utah Code Ann. §76-2-306.
Is voluntary intoxication a defense to sex crimes?	It can be. "When specific intent is an element of a crime, evidence of either voluntary or involuntary intoxication may be introduced to show that the defendant could not have formed the necessary intent." *State v. Joyce*, 139 Vt. 638, 639-40, 433 A.2d 271, 272 (1981)

Is voluntary intoxication a defense to sex crimes?	Except in cases of first degree and capital murder, where proof of voluntary intoxication may negate deliberation and premeditation, See Waye v. Commonwealth, 219 Va. 683, —-, 251 S.E.2d 202, 211 (1979), such intoxication, whether from drugs or alcohol, is no defense to a criminal charge. Griggs v. Commonwealth, 220 Va. 46, 52, 255 S.E.2d 475, 479 (1979).
Is voluntary intoxication a defense to sex crimes?	No, no act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his or her condition; however, when a particular mental state is a necessary element of a crime, the fact of his or her intoxication may be taken into consideration in determining such mental state. Wash. Rev. Code Ann. § 9A.16.090.
Is voluntary intoxication a defense to sex crimes?	No. See *Kitchen v. State*, 69 P.2d 411 (Crim. Ct. App. 1937) ("The principle is everywhere recognized that voluntary intoxication is no justification or excuse for crime, and is no excuse for rape"). No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition. Okla. Stat. tit. 21, § 153.
Is voluntary intoxication a defense to sex crimes?	No. See *State v. Stevens*, 806 P.2d 92, 108 (Or. 1991) (quoting jury instructions that included the statement that the "use of drugs or controlled substances, dependence on drugs or controlled substances, or voluntary intoxication shall not as such constitute a defense to a criminal charge.").
Is voluntary intoxication a defense to sex crimes?	No. *Commonwealth v. Plank*, 478 A.2d 872 (1984) ("an actor should not be insulated from criminal liability for acts which result from a mental state that is voluntarily self-induced") (quoting *Commonwealth v. Hicks*, 396 A.2d 1183, 1186 (Pa. 1979)).
Is voluntary intoxication a defense to sex crimes?	No.
Is voluntary intoxication a defense to sex crimes?	No. *State v. Vaughn,* 268 S.C. 119, 125 (S.C. 1977). ("[V]oluntary intoxication, where it has not produced permanent insanity, is never an excuse for or a defense to crime, regardless of whether the intent involved be general or specific.")
Is voluntary intoxication a defense to sex crimes?	No. But if the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time in determining the purpose, motive, or intent with which the accused committed the act. S.D. Code §22-5-5.
Is voluntary intoxication a defense to sex crimes?	Generally not, unless it negates an element of the offense: 1. Except as provided in subsection d. of this section, intoxication of the actor is not a defense unless it negatives an element of the offense. 2. When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

	3. Intoxication does not, in itself, constitute mental disease within the meaning of chapter 4. 4. Intoxication which (1) is not self-induced or (2) is pathological is an affirmative defense if by reason of such intoxication the actor at the time of his conduct did not know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong. Intoxication under this subsection must be proved by clear and convincing evidence. 5. **Definitions**. In this section unless a different meaning plainly is required: 1. "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body; 2. "Self-induced intoxication" means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of crime; 3. "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible. N.J. Stat. Ann. § 2C:2-8.
Is voluntary intoxication a defense to sex crimes?	Not explicitly. However, the definition of "force or coercion" includes "perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator **knows or has reason to know** that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act . . ." New Mexico Statutes §30-9-10. Therefore, voluntary intoxication of the defendant could potentially negate elements of the crime.
Is voluntary intoxication a defense to sex crimes?	Intoxication is not, as such, a defense to a criminal charge; but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged. NY Penal Law § 15.25. *See e.g.*, *People v. Flynn*, 165 A.D.3d 973, 86 N.Y.S.3d 518 (2018) (holding that defendant was not entitled to an intoxication jury charge in prosecution for aggravated sexual abuse in the third degree, where there was insufficient evidence to support an inference that defendant was so intoxicated as to be unable to form requisite criminal intent).
Is voluntary intoxication a defense to sex crimes?	No.
Is voluntary intoxication a defense to sex crimes?	It is not an affirmative defense to a criminal charge, "but evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged." *State v. Cummins*, 347 N.W. 2d 571, 572 (N.D. 1984) (appeal of jury instructions where defendant was convicted of gross sexual imposition). With regard to juveniles: 1. Intoxication is not a defense to a criminal charge. Intoxication does not, in itself, constitute mental disease or defect within the meaning of section 12.1-04-04. Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged.

	2. A person is reckless with respect to an element of an offense even though his disregard thereof is not conscious, if his not being conscious thereof is due to self-induced intoxication. NDCC § 12.1-04-02.
Is voluntary intoxication a defense to sex crimes?	As to the defendant, voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense. Voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense. Evidence that a person was voluntarily intoxicated may be admissible to show whether or not the person was physically capable of performing the act with which the person is charged. Ohio Rev. Code Ann. § 2901.21(E).
Is voluntary intoxication a defense to sex crimes?	No. In Mississippi, a defendant, capable of distinguishing between right and wrong when sober, is not entitled to an instruction submitting to the jury his inability to form the specific intent to commit an offense because of his voluntary intoxication at the time the offense was committed. *McDaniel v. State*, 356 So.2d 1151, 1156 (Miss.1978).
Is voluntary intoxication a defense to sex crimes?	Not specified. "[F]orcible compulsion can occur while one is incapacitated from voluntary intoxication under sections 566.030 and 566.060." *State v. King*, 626 S.W.3d 828, 836 (Mo. Ct. App. 2021), *transfer denied* (Aug. 31, 2021). Although the statute does not explicitly refer to voluntary intoxication, the legislature used the word "includes", thereby indicating the legislature's intent to allow what may be considered forcible compulsion to be expanded beyond merely involuntary intoxication or impairment. *Id.*
Is voluntary intoxication a defense to sex crimes?	No. *State v. Gould*, 273 Mont. 207, 219, 902 P.2d 532, 540 (1995).
Is voluntary intoxication a defense to sex crimes?	No. *State v. Rossbach*, 264 Neb. 563, 572 (2002).
Is voluntary intoxication a defense to sex crimes?	No.
Is voluntary intoxication a defense to sex crimes?	No.

Is voluntary intoxication a defense to sex crimes?	No. It is well settled that voluntary intoxication can be considered as a defense only in cases where specific intent is a necessary element of the crime; aggravated rape is a general intent crime. *State v. McDaniel*, 515 So. 2d 572, 575 (La. Ct. App. 1987) *writ denied*, 533 So. 2d 10 (La. 1988).
Is voluntary intoxication a defense to sex crimes?	It depends on whether the crime requires a person to intentionally or knowingly commit a crime. For example, the crime of unlawful sexual contact requires proof that that defendant "intentionally" subjects another person to any sexual contact; since the defendant could not have been found guilty of the crime unless he acted intentionally, voluntary intoxication is a valid defense. *State v. Crocker*, 387 A.2d 26, 27 (Me. 1978). *See also State v. Keaten*, 390 A.2d 1043, 1044 (Me. 1978) (the crime of gross sexual misconduct neither explicitly or implicitly required proof of intent or knowledge, and consequently, voluntary intoxication did not constitute a valid defense to that crime).
Is voluntary intoxication a defense to sex crimes?	Yes, voluntary intoxication of the actor is a defense to sex crimes under certain circumstances (i.e., where specific intent is an element of the crime). *See Holt v. State*, 438 A.2d 1386, 50 Md. App. 578 (1982) (failure of trial court to give requested instruction on voluntary intoxication mandated reversal of defendant's convictions for specific intent crimes of third-degree sexual offense and attempted third-degree sexual offense).
Is voluntary intoxication a defense to sex crimes?	No. Diminished capacity resulting from the voluntary use of intoxicating liquor is not a defense to rape.*Com. v. Rahilly*, 410 N.E.2d 1223, 10 Mass.App.Ct. 911 (1980).
Is voluntary intoxication a defense to sex crimes?	No. Voluntary intoxication is not a defense to crimes of criminal sexual conduct in first and second degrees since such conduct does not require a specific intent. *People v. Bell*, 300 N.W.2d 691, 101 Mich.App. 779 (1980).
Is voluntary intoxication a defense to sex crimes?	Yes, voluntary intoxication of the perpetrator is a defense to specific intent sex crimes (i.e., where "knows or has reason to know" is a mental state requirement). Minn. Stat. § 609.3469. Where the crime is treated as a specific intent crime, voluntary intoxication may be a defense to negate the element of intent. *State v. Hart*, 477 N.W.2d 732, 736 (Minn. Ct. App. 1991). Also note that "**mentally incapacitated**" means (1) that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, **administered to that person without the person's agreement**, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration, or (2) that person is under the influence of any substance or substances to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct. Minn. Stat. § 609.341 (emphasis added).
Is voluntary intoxication a defense to sex crimes?	It depends. For example, Defendant was not entitled to instruction that voluntary intoxication could negate element of specific intent in rape prosecution, as rape was not considered "specific intent crime." *State v. Lopez*, 126 Idaho 831, 892 P.2d 898 (Ct. App. 1995). However, voluntary intoxication may impact a defendant's culpability for sex crimes that are considered specific intent crimes.

Is voluntary intoxication a defense to sex crimes?	No. *See People v. Saunders*, 122 Ill. App. 3d 922, 935, 461 N.E.2d 1006, 1016 (1984)
Is voluntary intoxication a defense to sex crimes?	No, voluntary intoxication is generally not a defense. IC § 35-41-2-5.
Is voluntary intoxication a defense to sex crimes?	No, voluntary intoxication of the defendant is not a defense unless the sex crime involves specific intent. Voluntary intoxication is a defense to specific intent crimes. *See State v. Guerrero Cordero,* 861 N.W.2d 253, 258 (Iowa 2015), *overruled on other grounds by Alcala v. Marriott Intern., Inc*., 880 N.W.2d 707–08 (Iowa 2016) ("From the beginning, the [intoxication] defense has been applied in Iowa only to specific-intent crimes, not those of general intent" and "before intoxication could prevent a finding of specific intent, the offender not only had to be intoxicated, but so intoxicated that he or she could no longer reason and was incapable of forming a felonious intent."). Whether the victim was voluntarily intoxicated is not a defense. A sex crime can occur if the victim is mentally incapacitated, physically helpless, or physically incapacitated or if the victim is under the influence of a controlled substance and the actor knows or reasonably should have known this. I.C.A. § 709.4.
Is voluntary intoxication a defense to sex crimes?	Yes, voluntary intoxication of the defendant can be a defense to certain sex crimes under certain circumstances: • Aggravated indecent solicitation is a specific intent crime; voluntary intoxication defense can be used to negate the intent element of the crime. *State v. Brown*, 244 P.3d 267, 291 Kan. 646 (2011). • Knowledge requirement in Kansas rape statute (i.e., that condition of the victim's intoxication was known by the offender or was reasonably apparent to the offender) is a state of mind that is beyond the general criminal intent required for rape; such requirement justifies a voluntary intoxication defense.*State v. Smith*, 39 Kan. App. 2d 204, 211, 178 P.3d 672, 679 (2008). Whether the victim was voluntarily intoxicated is not a defense.
Is voluntary intoxication a defense to sex crimes?	No. Voluntary intoxication is not a defense to the crimes of forcible rape and sodomy (*Malone v. Com.*, 636 S.W.2d 647, 648 (Ky. 1982)) nor is it a defense to rape of a child under twelve years of age (*Isaacs v. Com*. (Ky. 1977) 553 S.W.2d 843). Intoxication of the defendant is a defense to a criminal charge only if such condition either: (1) Negatives the existence of an element of the offense; or (2) Is not voluntarily produced and deprives the defendant of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. KRS § 501.080.

Is voluntary intoxication a defense to sex crimes?	No. Although a general intent to do the proscribed act is required for a crime of commission like sexual assault, voluntary intoxication is deemed to be irrelevant to its presence or absence. *State v. Carter*, 458 A.2d 369, 189 Conn. 611 (1983).
Is voluntary intoxication a defense to sex crimes?	No. 11 Delaware Code § 421.
Is voluntary intoxication a defense to sex crimes?	No.
Is voluntary intoxication a defense to sex crimes?	No. *McCann v. State*, App. 2 Dist., 854 So.2d 788 (2003)
Is voluntary intoxication a defense to sex crimes?	No. Defendant's voluntary intoxication does not give rise to a defense in prosecution for rape, assault and battery absent evidence that defendant had inability to distinguish between right and wrong by virtue of mental impairment. *Height v. State*, 214 Ga.App. 570, 448 S.E.2d 726 (Georgia 1994).
Is voluntary intoxication a defense to sex crimes?	Yes, but only pathological intoxication, which is an affirmative defense if the defendant lacks substantial capacity to engage in the alleged conduct, to have the state of mind sufficient to establish an element of the offense, to appreciate the wrongfulness of the defendant's conduct, or to conform the defendant's conduct to the requirements of law. "**Pathological intoxication**" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the defendant does not know the defendant is susceptible and that results from a physical abnormality of the defendant. HRS § 702-230.