

Consent Laws Idaho

Last Updated: April 2023

Question	Answer
At what age is a person able to consent?	18 years old. Idaho Statutes §§ 18-6101.
How is consent defined?	<p>Consent is not specifically defined.</p> <p>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:</p> <ul style="list-style-type: none">• 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.
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. <i>State v. Palin</i> , 106 Idaho 70, 675 P.2d 49 (Ct. App. 1983).
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.” <i>State v. Lopez</i> , 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.
Does the definition require "freely given consent" or "affirmative consent"?	No.
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 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 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). <i>See also State v. Soura</i> , 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 <i>Soura</i> looked at several factors, including that: <ul style="list-style-type: none"> • 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 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 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: <ul style="list-style-type: none">• unconscious or asleep; or• not aware, knowing, perceiving, or cognizant that the act occurred. Idaho Statutes § 18-6101(7).
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 the relationship between the victim and actor impact the victim's ability to consent?	Yes. <ul style="list-style-type: none">• State officers:<ul style="list-style-type: none">• 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.