

Consent Laws

New Mexico

Last Updated: December 2017

Question	Answer
At what age is a person able to consent?	17 years old. New Mexico Statutes §30-9-11.
How is consent defined?	<p>New Mexico does not specifically define “consent.” However, New Mexico defines “force or coercion” as:</p> <ul style="list-style-type: none"> • (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. <p>Physical or verbal resistance of the victim is not an element of force or coercion. New Mexico Statutes §30-9-10.</p>
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), 4 th degree criminal sexual penetration (offense predicates guilt on age differences), or 3 rd degree criminal sexual penetration (offense involves physical force or coercion). New Mexico Statutes §30-9-11
Is voluntary intoxication a defense to sex crimes?	No.
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 minor, who is 13 or older may have sex with another minor under the age of 18 (who is also less than four years older than the younger minor) without punishment. New Mexico Statutes §30-9-11.
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, 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; §30-9-11.
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; §30-9-11.
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; §30-9-11.
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 the relationship between the victim and actor impact the victim's ability to consent?	<p>Yes, sexual activity between an adult and a minor is permitted if the couple is married. New Mexico Statutes §30-9-11.</p> <p>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).</p> <p>Additionally, 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).</p>