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## Sexual Violence Prevention Campaign

### Consent: Comparing State By State

*All definitions of consent have been defined by the nation's largest anti-sexual violence organization, RAINN (Rape, Abuse & Incest National Network). All definitions were updated last on December 2016.*

#### Alabama

Consent has been interpreted to mean “acquiescence or compliance with the proposition of another.”

#### Alaska

“Without consent” means that a person: 1.with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or 2.is incapacitated as a result of an act of the defendant.

#### Arizona

“Without consent” means 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; 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.

#### Arkansas

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.

#### California

“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.

#### Colorado

“Consent” means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act.

#### Connecticut

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; 2.the victim is mentally incapacitated or mentally defective to the extent that the person is unable to consent to sexual activity; or 3.the victim is physically helpless.



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### Delaware

“Without consent” means any of the following: 1. 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. 2. The defendant knew the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed. 3. 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. 4. 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. 5. 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.

### District of Columbia

“Consent” means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent.

### Florida

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

### Georgia

The State of Georgia does not define consent in reference to sexual activity. However, consent has been implicitly interpreted as the “permission” of a person who is capable of giving such permission.

### Hawaii

Consent is not defined by statute. However, Hawaii law provides that a person commits a sex crime if: 1. the person subjects another person to a sexual act by compulsion; or 2. the person subjects to a sexual act another person who is mentally defective, mentally incapacitated, or physically helpless. Decided in State v. Adams, “Consent signifies voluntary agreement or concurrence . . . [c]onsent may be express or implied.”



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### Idaho

Consent is not specifically defined. However, Idaho law provides that a person commits a sex crime if the person engages in a sexual act with a female and: 1. 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; 2. the victim resists but the resistance is overcome by force or violence; 3. the victim is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; 4. the victim is unable to resist due to any intoxicating, narcotic, or anesthetic substance; 5. 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; 6. the victim is unconscious of the nature of the act; 7. 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; 8. 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 the 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; 9. the victim is under the age of sixteen and the perpetrator is eighteen years of age or older; or 10. the victim is sixteen or seventeen years of age and the perpetrator is three years or more than the victim.

### Illinois

"Consent" means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent. 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.

### Indiana

Consent is not specifically defined. However, Indiana law provides that a person commits a sex crime if: 1. the victim is compelled by force or imminent threat of force, 2. the victim is unaware that the sexual intercourse or other sexual conduct is occurring, or 3. the victim is so mentally disabled or deficient that consent to sexual intercourse or other sexual conduct cannot be given.

### Kansas

Consent is not specifically defined. However, Kansas law provides that a person commits a sex crime when: 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's consent was obtained through a knowing misrepresentation that the sexual intercourse was a medically or therapeutically necessary procedure; 5. 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



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authority. Decided in State v. Flynn, “A person may be convicted of rape if intercourse begins consensually but consent is withdrawn after penetration and the intercourse continues by force or fear.”

### Kentucky

“Lack of consent” results from: 1. forcible compulsion; 2. incapacity to consent; or 3. if the offence 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.

A person is also “deemed incapable of consent” when he or she is 1. an individual with an intellectual disability or an individual that suffers from mental illness; 2. mentally incapacitated; 3. physically helpless; or 4. 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.

### Louisiana

Consent is not defined. However, Louisiana law provides that a person commits a sex crime: 1. when the victim resists the act to the utmost, but whose resistance is overcome by force; 2. when the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution; 3. when the victim is prevented from resisting the act because the offender is armed with a dangerous weapon; 4. when two or more offenders participated in the act; 5. when the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing such resistance (“mental infirmity” means a person with an intelligence quotient of seventy or lower; “physical infirmity” means a person who is a quadriplegic or paraplegic); 6. 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; 7. 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; 8. 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; 9. 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; 10. when the female victim submits under the belief that the person committing the act is her husband and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the offender.

### Maine

Consent is not specifically defined. However, Maine law provides that a person is guilty of a sex crime if that person engages in a “sexual act” with another person and: 1. the other person submits as a result of compulsion; 2. the other person, not the actor’s spouse, has not in fact attained the age of 14 years; 3. the other person, not the actor's spouse, has not in fact attained 12 years of age; 4. the actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by furnishing, administering or employing drugs, intoxicants or other similar means; 5. the actor compels or induces the other person to engage in the sexual act by any threat; 6. the other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of



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understanding that the person has the right to deny or withdraw consent; 7. the other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act; 8. the other person, not the actor's spouse, is either 14 or 15 years of age and the actor is at least 5 years older than the other person; 9. the actor is at least 21 years of age and engages in a sexual act with another person, not the actor's spouse, who is either 16 or 17 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. A person is also guilty of a sex crime if the actor intentionally subjects another person to any "sexual contact" and: 1. the other person has not expressly or impliedly acquiesced in the sexual contact; 2. the other person is unconscious or otherwise incapable of resisting and has not consented to the sexual contact ; 3. the other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older; 4. the other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older; 5. the other person, not the actor's spouse, is in fact either 14 or 15 years of age and the actor is at least 10 years older than the other person; 6. the other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent. The same is applied to any "sexual touching."

### Maryland

Consent is not specifically defined.

However, Maryland law provides that a person commits a sex crime if that person engages in "vaginal intercourse" or "sexual act" with another:

- (1) by force, or the threat of force, without the consent of the other;
- (2) if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual;
- (3) if the victim is under the age of 14 years, and the person performing the act is at least 4 years older than the victim;
- (4) if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old;
- (5) if the victim is 14 or 15 years old, and the person performing the act is at least 4 years older than the victim.
- MD Code, Criminal Law, § 3-304; § 3-306; § 3-307.

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 individual, a mentally incapacitated individual, or a physically helpless individual;
- (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. MD Code, Criminal Law, § 3-307.



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### Massachusetts

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

### Michigan

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

### Minnesota

"Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act. Further:

- 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.

### Mississippi

Not specified

### Missouri

Consent is not specifically defined.

However, Missouri law provides that rape in the first degree is committed if the offender has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse. Mo. Rev. Stat. § 566.030.

### Montana

"Without consent" means:

- the victim is compelled to submit by force against the victim or another; or
- 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;
  -



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- 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:
  - (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 is admitted to 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\(1\)\(a\).](#)

### Nebraska

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

- (a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;
- (b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; 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.](#)

### Nevada

Lack of consent results from:

- (1) force;
- (2) threat of force; or
- (3) physical or mental incapacity of the victim. Nev. Rev. Stat. Ann. § 200.366(1).

Physical force is not necessary element in commission of crime of rape; statute requires only commission of act of sexual penetration against will of victim. *McNair v. State*, 825 P.2d 571, 108 Nev. 53 (1992).



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### New Hampshire

For purposes of the crime of aggravated felonious sexual assault, lack of consent can result from:

- (1) physical force;
- (2) physical helplessness to resist;
- (3) coercion through physical force or threat of force;
- (4) coercion through threat of retaliation;
- (5) false imprisonment, kidnapping or extortion;
- (6) administration of any intoxicating substance which mentally incapacitates the victim;
- (7) disability;
- (8) concealment or surprise;
- (9) filial affinity;
- (10) authority over victim; or
- (11) age.

N.H. Rev. Stat. Ann. § 632-A:2.

For purposes of the crime of felonious sexual assault and sexual assault, lack of consent can result from:

- (1) age; or
- (2) coercion by a person in a position of authority.

N.H. Rev. Stat. Ann. §§ 632-A:3; 632-A:4.

### New Jersey

Lack of consent results from:

- (1) physical force or coercion;
- (2) use or threat of weapons;
- (3) physical helplessness or incapacity;
- (4) intellectual or mental incapacity;
- (5) supervisory or disciplinary power over victim;
- (6) the actor stands in loco parentis. [N.J. Stat. Ann. § 2C:14-2.](#)

### New Mexico

New Mexico does not provide a definition for consent, but it does provide a definition for “force” or “coercion”, which means:

- (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



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- 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](#).

### New York

Lack of consent results from:

- (1) forcible compulsion;
- (2) incapacity to consent;
- (3) where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or
- (4) where the offense charged is rape in the 3rd degree or criminal sexual act in the 3rd degree, in addition to forcible compulsion, circumstances under which, at the time of the sexual act, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances. [New York Penal Law §130.05](#).

### North Carolina

North Carolina does not define consent. The concept of “force” and “against the will of the other person” are used in the statute, but these terms are also not defined.

However, 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.”).



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### North Dakota

North Dakota does not provide a definition for “consent” but it does provide a definition for “coercion,” which means:

- “to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.” [N.D. Century Code Chapter 12.1-20-02](#).

### Ohio

Ohio does not provide a definition for 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.

### Oklahoma

Consent is not specifically defined. However, case law suggests that a lack of consent exists if, for any cause, the victim is not in a position to exercise any judgment about the matter. [Ex Parte Childers](#), 310 P.2d 776 (Crim. Ct. App. 1957).

Additionally, rape is defined as an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

1. Where the victim is under sixteen (16) years of age;
2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person;
4. Where 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;
5. Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;
6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape;
7. 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;



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8. 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; or
9. 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.

Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person. [Okla. Stat. tit. 21, § 1111.](#)

### Oregon

A person is considered incapable of consenting to a sexual act if the person is:

- (a) under 18 years of age;
- (b) mentally defective;
- (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.

Or. Rev. Stat. § 163.315.

### Pennsylvania

A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:

- (1) By forcible compulsion.
  - (2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
  - (3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
  - (4) Where the person has substantially impaired the complainant's 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.
  - (5) Who suffers from a mental disability which renders the complainant incapable of consent.
- 18 Pa.C.S.A. § 3121.



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“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.

### Rhode Island

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

- (1) The accused, not being the spouse, knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.
- (2) The accused uses force or coercion.
- (3) The accused, through concealment or by the element of surprise, is able to overcome the victim.
- (4) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation. [18 R.I. Gen. Laws § 11-37-2.](#)

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

- (i) Uses or threatens to use a weapon, or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;
- (ii) Overcomes the victim through the application of physical force or physical violence;
- (iii) 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;
- (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. [18 R.I. Gen Laws § 11-37-1.](#)

### South Carolina

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.
- (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.



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“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.

- (1) 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.
- (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.

### South Dakota

South Dakota does not provide a definition for consent, but it provides that no consent exists for an act of sexual penetration accomplished with any 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 thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim. S.D. Code §22-22-1.

### Tennessee

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 or physically helpless; 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;



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- (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. Tenn. Code Ann. §39-13-505.

### Texas

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

- (1) the actor compels the other person to submit or participate by the use of physical force or violence;
- (2) the actor compels the other person to submit or participate by threatening to use force or violence against 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; or
- (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. [Texas Code Ann. §22.011\(b\)](#).

### Utah

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

- (1) the victim expresses lack of consent through words or conduct;
- (2) the actor overcomes the victim through the actual application of physical force or violence;



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- (3) the actor is able to overcome the victim through concealment or by the element of surprise;
- (4)(a)(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;
- (5) the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;
- (6) the actor knows that as a result of mental disease or defect, or for any other reason the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it;
- (7) the actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim's spouse;
- (8) 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;
- (9) the victim is younger than 14 years of age;
- (10) 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;
- (11) 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 (2) or (4); or
- (12) 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.](#)

### Vermont

“Consent” means words or actions by a person indicating a voluntary agreement to engage in a sexual act. 13 Vermont Stat. Ann. §3251(3).

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

- (A) knows that the other person is mentally incapable of understanding the nature of the sexual act or lewd and lascivious conduct; or
- (B) knows that the other person is not physically capable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct; or



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- (C) knows that the other person is unaware that a sexual act or lewd and lascivious conduct is being committed; or

(D) knows that the other person is mentally incapable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct, due to a mental condition or a psychiatric or developmental disability. 13 Vermont Stat. Ann. §3254.

### Virginia

Virginia defines rape and sexual battery as sexual intercourse or sexual abuse, respectively, of a complaining witness against her will. [VA Code Ann. §§18.2-61; 18.2-67.4](#).

### Washington

Consent requires that there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact at the time of the act. [Wash. Rev. Code Ann. § 9A.44.010\(7\)](#).

### West Virginia

Lack of consent results from forcible compulsion, incapacity to consent, or if 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, 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 suffer from a mental disease or defect which renders the person incapable of appraising the nature of his or her conduct. W. Va. Code Ann. §§ 61-8B-2(c).

### Wisconsin

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

A person cannot 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;
- (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).

### Wyoming

Consent is not defined by statute. However, case law suggests that in order for a person to consent to sexual intercourse, the person must be in a position to exercise independent judgment about the matter.

### Guam

Consent is not specifically defined. However, Guam law provides that a person commits a sex crime if the person engages in sexual penetration or sexual contact with another person and: 1.force or coercion is used to accomplish



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the sexual penetration or sexual contact; or 2.the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

### Virgin Islands

There is no consent in circumstances when: 1.a person's resistance is prevented by fear of immediate and great bodily harm, or 2.either force, intimidation, or abuse of a position of authority is used to accomplish a sexual act.

### Puerto Rico

Consent is not explicitly defined. Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental under any of the following circumstances commits a severe second degree felony: 1. If the victim has not yet reached the age of sixteen at the time of the event. 2. 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. 3 .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. 4. 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. 5.When at the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused. 6. If the victim submits to the act by means of deception, trickery, simulation or cover up with respect to the identity of the person accused. 7. If the victim is forced or induced by means of abuse or physical or psychological violence into participating or becoming involved in unwanted sexual relations with third parties. 8. If the accused person is a relative of the victim, by ascendancy or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree. 8.When the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or psychotherapeutic treatment, or any type of counseling, or because there is a relationship with the victim as the leader of his/her religious belief.