

What Is and What Isn't Sexual Consent

In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing, and voluntary consent prior to and during sexual activity. Consent is sexual permission. It doesn't matter what you have done before, or even if you said yes earlier, but later change your mind.

Consent is never implied by things like your past behavior, what you wear, or where you go.

Important Aspects of the Definition of "Consent"

- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.
- Consent can be given by words or actions, as long as those words or actions create mutually understandable, clear permission regarding willingness to engage in, and the conditions of, sexual activity. Non-verbal consent is not as clear as talking about what you want sexually and what you do not.
- Consent cannot be given by someone who is under the legal age of an adult (at least 18 years old).
- If coercion, intimidation, threats, and/or physical force are used, there is no consent.
- If a person is mentally or physically incapacitated or impacted by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent.
- If a person is asleep or unconscious, there is no consent.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent to past sexual activity does not imply consent to other forms of sexual activity.
- Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another; and
- Consent can be withdrawn by verbal or physical conduct that a reasonable person would understand to indicate a desire to stop or not engage in the sexual conduct at issue. A person is deemed not to have consented to any sexual activity that occurs after they withdraw consent.

Additionally, the following definitions must be considered when evaluating consent:

1. **Coercion** - Coercion is direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person's words or conduct cannot amount to coercion unless they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity. When a person makes it clear that the person does not want to engage in sexual activity, that the person wants to stop, or that the person does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive.
2. **Force** - Force is the use of physical violence and/or physical intimidation to gain sexual access. Force also includes threats, intimidation, implied threats, and coercion that

overcome resistance or produce acquiescence. There is no requirement that a person resists a sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

3. **Incapacitation** - Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual activity is occurring.

Incapacitation can only be found when the respondent knew or should have known that the complainant was incapacitated when viewed from the position of a sober, reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual’s decision-making ability, awareness of consequences, ability to make informed judgments, and capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone is incapacitated may include: slurred speech, confusion, shaky balance, stumbling, falling down, vomiting, and unconsciousness.

Communicate With Your Partner

- Asking permission before you change the type or degree of sexual activity with phrases like “Is this OK?”
- Confirming that there is reciprocal interest before initiating any physical touch.
- Letting your partner know that you can stop at any time.
- Periodically checking in with your partner, such as asking “Is this still okay?”
- Providing positive feedback when you’re comfortable with an activity.

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