# SEXUAL ASSAULT

**Sexual assault** is defined as sexual contact, including but not limited to penetration, without consent. Sexual assault is a form of sexual violence and a severe form of sexual harassment. Sexual assault includes, but is not limited to rape (the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim); fondling (the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim); incest; and statutory rape.

# CONSENT

**Consent** means words or overt actions by a person indicating a freely given, present agreement to perform or engage in a particular sexual act with the person initiating sexual contact. Consent must be informed and freely and actively given.

* Consent requires more than the existence of a prior or current social or sexual relationship between the parties. In cases involving prior or current social or sexual relationships, the manner and nature of prior communications between the parties and the context of the relationship may be factors in determining whether there was consent.
* Consent to one sexual act does not, by itself, imply consent to another. Consent has to be specific to the act and persons involved, at the time of the act. Past consent to sexual activity does not imply ongoing future consent. Consent can be withdrawn at any time. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent.
* Simple silence, the lack of a negative response, or failure to resist, in and of itself, is not consent. It is the responsibility of the person initiating sexual contact to obtain consent to any and all sexual contact that person initiates.
* Whether an individual actively and willingly participates in conduct may be a factor in determining whether there was consent.
* The use or threatened use of force or other forms of coercion or intimidation take away a person's ability to give consent to sexual contact. Coercion refers to conduct or intimidation that would compel an individual to do something against his or her will by (1) the use of pressure that would cause a reasonable person to fear severely damaging consequences, (2) the use of physical force, or (3) threats of severely damaging consequences. Coercion is more than an effort to persuade or attract another person to engage in sexual activity. Coercive behavior differs from seductive behavior based on the degree and type of pressure someone used to obtain consent from another.
* A person who is incapacitated cannot give valid consent to sexual contact. Incapacitation means the inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol.
  + With respect to incapacitation due to the influence of drugs or alcohol, incapacitation requires more than being under the influence of drugs or alcohol; a person is not incapacitated simply because he or she has been drinking or using drugs.
  + Where drugs and/or alcohol are involved, incapacitation is determined based on the facts and circumstances of the particular situation looking at: (1) whether the individual was able to understand the fact, nature, or extent of the sexual situation, (2) whether the individual was able to communicate decisions regarding consent, non-consent, or the withdrawal of consent, and (3) whether such condition was known or reasonably known to the respondent or a sober, reasonable person in respondent's position. Use of drugs or alcohol by the respondent is not a defense against allegations of sexual misconduct and does not diminish personal accountability or criminal liability.
* A person who has not reached the legal age of consent cannot give consent. The legal age of consent may vary depending on the circumstances and the applicable state law. In Minnesota, the age of consent is 16.
* Where there is otherwise credible evidence to support a finding of non-consent, corroborating testimony is not required.

**Consent is not present when the other person:**

* Is incapacitated by the use of alcohol or drugs *(see above for more information about incapacitation)*
* Lacks full knowledge or awareness of what is happening
* Fears the consequences of not consenting
* Feels threatened or intimidated
* Is coerced (compelled to submit through intimidation, threats, misuse of authority, manipulation, tricking, or bribing with actions and words)
* Says no, either verbally or physically (e.g., crying, kicking or pushing away)
* Is not an active participant in the activity
* Is below the legal age of consent (16 in Minnesota)
* Has a disability or mental impairment that prevents the person from making an informed choice

We must understand sexual activity as a choice and as consensual. Consensual sexual activity involves the presence of the word “yes” without incapacitation of alcohol or other drugs, pressure, force, threat, or intimidation. Consent is about saying “yes” much more than it is about not hearing “no”.

**Breaking down what CONSENT means:**

1. **OVERT ACTIONS:** Both parties understand the fact, nature or extent of the sexual situation, and are clearly expressing, through their actions, a desire to participate in the sexual activity. Keep in mind that a lot of overt actions like kissing, sexual touching, and partial nudity, while being overt, may only communicate that your partner wants to get physical, without engaging in specific sexual activity. Consent must be present for each type of sexual activity. Consent for one level of sexual contact does not mean the person is giving consent for more advanced sexual contact.
2. **WORDS:** While this may sound obvious, the word you’re looking for is in the family of “yes.” Think about it. The alternative is waiting for someone to scream, “No! You’re hurting me!” It’s way more empowering to hear the positive stuff. More importantly, when someone is being very quiet and passive during any sexual activity that you’ve initiated, it’s your responsibility to find out why, and stop if you find out they’re confused or don’t want to continue.
3. **FREELY GIVEN:** This can sometimes be hard for some people to figure out. Thoughts like, “Well, I’m not being violent, so I guess the “yes, do this,” is freely given. That’s not always the case. “Freely given” means that you’re not threatening or intimidating the person you want to have sex with in ANY way. Intimidation takes many forms. For some people, having a person larger than them be on top of them can be very scary; other people are intimidated by a partner who refuses to stop pushing for sex, even when they say that they are not interested. Keep in mind that the act of successfully wearing someone down and breaking their spirit is not getting consent. And while this last part should be obvious, threatening your potential partner, or their friends or family, if they fail to have sex with you, is not only bad behavior – it is also illegal.

***The bottom line: Both of you must have the option to choose to be intimate or not ‐ this means you should be free to change “yes” to “no” at any time. If your “partner” allows the act because they are intimidated or scared in any way, you don’t have consent*.**

1. **THE PRESENT:** This means on your date, right now. It doesn’t matter if the two of you went all the way yesterday, or this morning, or ten minutes ago. You and your partner make new sexual agreements as they happen OR don’t happen. If your partner doesn’t want to have sex when you do, you don’t have consent.
2. **A PARTICULAR SEXUAL ACT:** There’s a helpful phrase to keep in mind – just because your partner was willing to engage in some sexual activity, doesn’t guarantee they want to have other kinds of sexual contact with you. You have got to be solidly sure that they want to do each and every thing you come up with.
3. **THINK YOU’RE GETTING “MIXED MESSAGES?”** Sometimes the person you’re messing around with may say “no”, but you’re confident with how they’re responding physically that they could mean, “yes.” This is what makes guessing about consent a tricky thing. If you feel that the person is sending you some contradictory signals, it’s even more important than ever that you stop and check in as to what they want.

Just because it’s clear to you what “will happen next” on your encounter, doesn’t mean it’s clear to the other person. Rape is not a penalty for stupidity. Regardless of how drunk and stupid any person may be, NO ONE deserves to be violated.

“We were both really wasted” doesn’t constitute consent. While some state laws vary, they’re all in agreement that any person who is mentally incapacitated or physically helpless cannot consent to a sexual act. **That means any person who does not have the ability to understand the fact, nature or extent of the sexual situation cannot give consent to sexual contact. A person who is incapacitated due to the influence of drugs or alcohol, mental or physical disability, sleep, unconsciousness, or physical restraint cannot give consent. PERIOD.**  It’s sometimes hard to tell when someone is drunk so when in doubt, don’t go ahead with sexual intimacy. If you’re drunk, it’s harder for you to understand whether you have consent.