

Consent and Incapacitation

What is Consent?

- The University defines consent as freely given agreement by a person with capacity to engage in the sexual activity at issue. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate.

Indications that consent is not present include:

- physical force is used or there is a reasonable belief of the threat of physical force; when duress is present;
- when one person overcomes the physical limitations of another person; and
- when a person is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the person is in a state of incapacitation.

Consent: Important Points

- Consent to one act does not constitute consent to another act.
- Consent on a prior occasion does not constitute consent on a subsequent occasion.
- The existence of a prior or current relationship does not, in itself, constitute consent.
- Consent can be withdrawn or modified at any time.
- Consent is not implicit in a person's manner of dress.

Consent: Important Points cont.

- Accepting a meal, a gift, or an invitation for a date does not imply or constitute consent.
- Silence, passivity, or lack of resistance does not necessarily constitute consent.
- Initiation by someone who a reasonable person knows or should have known to be deemed incapacitated is not consent.
- Consent is voluntary. It must be given without coercion, force, threats, or intimidation. Consent is an expression of free will.
- Consent cannot be given when a person is incapacitated.

What is Incapacitation

The state in which a person cannot make rational decisions as to whether or not to engage in sexual activity because the person lacks the ability to give knowing Consent (i.e., to understand the "who, what, when, where, why, or how" of the sexual interaction). The inability, temporarily or permanently, to give consent, because the individual is mentally and/or physically helpless due to drug or alcohol consumption, either voluntarily or involuntarily, or the individual is unconscious, asleep or otherwise unaware that the sexual activity is occurring.

What is Incapacitation cont.

- In addition, an individual is incapacitated if he/she/they demonstrate that they are unaware of where they are, how they got there, or why or how they became engaged in a sexual interaction. Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication.

indicators of incapacitation*

- lack of control over physical movements,
- lack of awareness of circumstances or surroundings,
- or the inability to communicate for any reason.

*not limited to

indicators of incapacitation*

- An individual may experience a blackout state in which he/she/they appear to be giving consent, but do not actually have conscious awareness or the ability to consent. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. The relevant standard that will be applied is whether the Respondent knew, or a sober reasonable person in the same position should have known, that the other party was incapacitated and therefore could not consent to the sexual activity.

* Not limited to

NO:How it sounds and What it looks Like*

- No
- Stop
- I'm not ready
- I changed my mind
- Not now
- Maybe later
- Pushing away
- I have a
boyfriend/girlfriend/someone
- I'd rather be alone right now
- Don't touch me
- Let's just go to sleep
- I really like to but
- I don't feel like it
- Screaming

*Include but not limited to

No: How it sounds and What it looks Like*

- Pushing away
- Crying
- Turning away
- Lying there in fear
- Passed out
- Silence

* includes but not limited to

Confidential Resources

- PEACC
- Counseling Center
- Campus Health Services