

Consent, Incapacitation, Coercion, Force, and Age of Consent

Consent is clear, knowing and voluntary. 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. The clearest consent is *affirmative* and *active*.

- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- In order to give effective consent, one must be of legal age.

Incapacitation is a state where someone cannot make reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). Consumption of alcohol or drugs alone is insufficient to establish incapacitation. The question of incapacitation is determined on a case-by- case basis. It will include an analysis of whether the responding party knew, or should have known, that the complaining party was incapacitated, or if the responding party played a role in creating the circumstance of incapacity.

- Sexual activity with someone whom one should know to be or based on the circumstances should reasonably have known to be mentally or physically incapacitated by alcohol or other drug use leading to unconsciousness or blackout constitutes a violation of this policy.
- This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs if the responding party knew, or should have known, of the incapacitating condition or was the cause thereof.
- Possession, use and/or distribution of any of these substances, including but not limited to Rohypnol, Ketomine, GHB, Burundanga, etc., is prohibited, and administering one of these drugs to another student is a violation of this policy.

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another.

When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation and/or implied threats and coercion that overcome resistance or produce consent.

- Example one: "Have sex with me or I'll make you." Response: "Okay".
- Example two: "You're making this difficult. It's going to hurt more if you don't cooperate." Response: Silence while thinking, "I just want this over."

The Age of Consent in the State of Texas is 17 years old. The age of consent is gender neutral and applies the same to both heterosexual and homosexual conduct. Texas does not enforce harsh penalties for individuals who has sex with someone under 17 as long as that person is not more than 3 years older than the minor.

There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The absence of resistance does not demonstrate the absence of force. All forced sexual activity is by definition non-consensual, but not all non-consensual sexual activity is by definition "forced."