



Carroll University Definitions¹

Consent

Consent is an agreement between participants to engage in sexual activity. There are many ways to give consent, and some of those are discussed below. Consent doesn't have to be verbal, but verbally agreeing to different sexual activities can help both you and your partner respect each other's boundaries.

How does consent work in real life?

When you're engaging in sexual activity, **consent is about communication**. And it should happen every time.

- Giving consent for one activity, one time, does not mean giving consent for increased or recurring sexual contact.
 - For example:
 - Agreeing to kiss someone doesn't give that person permission to remove your clothes.
 - Having sex with someone in the past doesn't give that person permission to have sex with you again in the future.

You can change your mind at any time.

You can withdraw consent **at any point** if you feel uncomfortable. It's important to clearly communicate to your partner that you are no longer comfortable with this activity and wish to stop. The best way to ensure both parties are comfortable with any sexual activity is to talk about it.

Positive consent can look like this:

- Communicating when you change the type or degree of sexual activity with phrases like "Is this OK?"
- Explicitly agreeing to certain activities, either by saying "yes" or another affirmative statement, like "I'm open to trying."
- Using physical cues to let the other person know you're comfortable taking things to the next level

It does **NOT** look like this:

- Refusing to acknowledge "no"
- Assuming that wearing certain clothes, flirting, or kissing is an invitation for anything more
- Someone being under the legal age of consent, as defined by the state
- Someone being incapacitated because of drugs or alcohol
- Pressuring someone into sexual activity by using fear or intimidation
- Assuming you have permission to engage in a sexual act because you've done it in the past

¹ Carroll University Student Code of Conduct



The legal role of consent

There is no single legal definition of consent. Each state sets its own definition, either in law or through court cases. In general, there are three main ways that states analyze consent in relation to sexual acts:

- **Affirmative consent:** Did the person express overt actions or words indicating agreement for sexual acts?
- **Freely given consent:** Was the consent offered of the person's own free will, without being induced by fraud, coercion, violence, or threat of violence?
- **Capacity to consent:** Did the individual have the capacity, or legal ability, to consent?

WI law on consent:

“**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).²

² <https://docs.legis.wisconsin.gov/statutes/statutes/940/11/225/4>



Capacity to consent

A person's capacity, or ability, to legally consent to sexual activity can be based on a number of factors, which often vary from state to state. In a criminal investigation, a state may use these factors to determine if a person who engaged in sexual activity had the capacity to consent. If not, the state may be able to charge the perpetrator with a crime. Examples of some factors that may contribute to someone's capacity to consent include:

- **Age:** Is the person at or above the age of consent for that state? Does the age difference between the perpetrator and victim affect the age of consent in that state?
- **Developmental disability:** Does the person have a developmental disability or other form of mental incapacitation, such as a traumatic brain injury?
- **Intoxication:** Was the person intoxicated? Different states have different definitions of intoxication, and in some states it matters whether you voluntarily or involuntarily became intoxicated.
- **Physical disability:** Does the person have a physical disability, incapacity, or other form of helplessness?
- **Relationship of victim/perpetrator:** Was the alleged perpetrator in a position of authority, such as such as a teacher or correctional officer?
- **Unconsciousness:** Was the person sleeping, sedated, strangled, or suffering from physical trauma?
- **Vulnerable adults:** Is the person considered a vulnerable adult, such as an elderly or ill person? Is this adult dependent on others for care?

Alcohol and Consent^{3 4}

Does intoxication impact someone's ability to consent?

Yes, Wisconsin law says that sexual assault takes place when all of the following are present:

- The victim is under the influence to the point that the person is incapable of freely giving consent
- The defendant knows the person is incapable of giving consent
- The defendant has sexual contact or attempts to have sexual contact with the person who is incapable of giving consent.

³ <https://docs.legis.wisconsin.gov/statutes/statutes/940/11/225/2>

⁴ <https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=Wisconsin&group=9>