



Consent, Force, and Coercion: How to know the difference

What is consent?

Consent is defined by state statute as “words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor.” **Simply put, consent means a behavior which clearly shows that the person agrees to perform a sexual act at the time it is performed.**

What is NOT consent?

- Minnesota statute clearly says that consent is not just the existence of a current or prior relationship between the individuals. In other words, just having dated or been married to someone does not automatically mean a person has consented to sex every time.
- Failing to resist a sex act is not understood as consent! “Freezing” – or failing to fight to keep the person from performing an unwanted act is also not consent. “Frozen fear” – where the person is so afraid they cannot move – is very common in sexual assault cases. It should never be thought of as consent.
- A person can give consent at first, and then change their mind. Consent must be ongoing throughout the act, and if one person decides to withdraw consent, they may do so and the act must end or it will be without consent.
- **Giving in is also not the same as giving consent!** If one is seriously pressured or even threatened and decides to give in to the pressure that is not the same as willingly engaging in sexual contact.

What is force?

Minnesota statute defines force as the threat of bodily harm which causes the individual to reasonably believe that the threat could be carried out immediately, or the infliction of bodily harm, either of which cause the individual to submit to unwanted sexual behavior.

What is coercion?

Statute defines coercion as words or circumstances that cause a person to fear that the other will inflict bodily harm, or confine the person. It also means the use of physical size or strength which causes the person to submit to an unwanted sexual act.

A victim/survivor may experience circumstances that feel coercive but may not rise to the level of criminal coercion. Examples include extreme peer pressure, threats to “out” a person’s sexual orientation or gender identity, threats to start rumors about the person, badgering and bribing, etc. While circumstances may preclude a criminal charge, the sense of violation a victim/survivor feels is real.

What if someone drinks too much?

State statute addresses drinking in two different ways:

A person is considered “mentally incapacitated” if they were under the influence of drugs or alcohol which they were given *without their agreement*. In this situation, the person is legally unable to give consent to sexual activity.

A person who voluntarily and knowingly used drugs or alcohol might be considered “physically helpless” if they were asleep or unconscious, too drunk to withhold consent, or unable to communicate – and the other should have known this from the circumstances. It is unlawful to perform sexual acts on a person in this condition.

An individual (ie., the suspect) who performs sex acts without the permission of the other person most often cannot claim to be too drunk to know what they were doing. In most cases of forcible/coercive sexual assault, the suspect will not be permitted to argue that they were too drunk to be responsible.

In addition to being under the influence of drugs or alcohol, there are additional circumstances when a person cannot give consent. Please see our website for additional information.

To learn more:

Under the “Find Help” heading on the www.mncasa.org website you will find a list of advocacy programs organized by county. They have 24 hour phone lines for immediate assistance.

For more information on consent, check the SVJI Fact Sheet titled “The Defense of Consent in Criminal Sexual Conduct Cases” on MNCASA website. Consider checking other fact sheets on mncasa.org to learn more about sexual assault and its effects on victim/survivors.

For more information, please contact:

