

Comparison of consent language

Federal Law	H.183
<p>10 U.S.C. 910</p> <p>(7) Consent.</p> <p>(A) The term “consent” means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance does not constitute consent. Submission resulting from the use of force, threat of force, or placing another person in fear also does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent.</p> <p>(B) A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or in fear or under the circumstances described in subparagraph (B) or (C) of subsection (b)(1).</p> <p>(C) All the surrounding circumstances are to be considered in determining whether a person gave consent.</p>	<p>13 V.S.A. § 3251</p> <p>(3) “Consent” means words or actions by a person indicating a knowing and voluntary agreement to engage in a sexual act.</p> <p>13 V.S.A. § 3254</p> <p>(1) Lack of verbal or physical resistance does not constitute consent.</p> <p>(2) An expression of lack of consent through words or conduct means there is no consent.</p> <p>(3) Submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent.</p> <p>(4) Consent shall not be demonstrated by evidence prohibited under section 3255 of this title.</p> <p>(5) A sleeping or unconscious person cannot consent.</p>

<p>10 U.S.C. 910</p> <p>(8) Incapable of consenting.</p> <p>The term “incapable of consenting” means the person is—</p> <p>(A) incapable of <u>appraising</u> the nature of the conduct at issue; or</p> <p>(B) physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act at issue.</p>	<p>13 V.S.A. § 3251</p> <p>(10) “Incapable of consenting” means the person:</p> <p>(A) is incapable of <u>understanding</u> the nature of the conduct at issue;ⁱⁱ</p> <p>(B) is physically incapable of resisting, declining participation in, or communicating unwillingness to engage in the conduct at issue; orⁱⁱⁱ</p> <p>(C) lacks the mental ability to make or communicate a decision about whether to engage in the conduct at issue.^{iv}</p>
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ⁱ 13 V.S.A. § 3255 is Vermont’s Rape Shield Law which prohibits (with some exceptions) evidence of prior sexual conduct of the complaining witness.

ⁱⁱ Same except H.183 uses “understanding” instead of “appraising”

ⁱⁱⁱ Current Vermont law, § 3254(2)(B) “person *is not physically capable of resisting*” and the rest is the same as Federal law

^{iv} Reworking of current Vermont law, § 3254(2)(A) “person is *mentally incapable of understanding* the nature of the...act” and (D) “person is *mentally incapable of resisting, or declining consent*”