

California Penal Code - § 261.6

In prosecutions under Section 261, 262, 286, 287, or 289, or former Section 288a, in which consent is at issue, **“consent” shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.**

A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in a prosecution under Section 261, 262, 286, 287, or 289, or former Section 288a.

Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of consent.

Colorado Revised Statute § 18-3-401(1.5)

“Consent” for sexual activity means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship shall not be sufficient to constitute consent. Submission under the influence of fear shall not constitute consent.

Illinois 720 ILCS 5/11-1.70

(a) "Consent" means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent.

Kansas Statutes Annotated 21-5503

(Theories of sexual assault)

A person knowingly engages in sexual intercourse and:

- (1) the victim is overcome by force or fear;
- (2) the victim is unconscious or physically powerless;
- (3) the victim is incapable of giving consent because of mental deficiency or disease, or because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;**

(4) the victim's consent was obtained through a knowing misrepresentation that the sexual intercourse was a medically or therapeutically necessary procedure; or

(5) the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.

New Hampshire Criminal Code, Title LXII § 632-A:6

I. The testimony of the victim shall not be required to be corroborated in prosecutions under this chapter.

II. Prior consensual sexual activity between the victim and any person other than the actor shall not be admitted into evidence in any prosecution under this chapter.

II-a.

(a) Proffered evidence excluded under this section, and related pleadings, shall remain under seal and exempt from public disclosure unless and until the New Hampshire supreme court overturns the trial court's evidentiary ruling, in which case only the evidence that the supreme court rules admissible would be subject to public disclosure.

(b) For purposes of this section, "sexual activity" includes any conduct or behavior relating to sexual activities of the victim, including but not limited to, previous or subsequent experience of sexual penetration or sexual contact, sexual predisposition, thoughts or expressions related to sexual issues, use of contraceptives, sexual activities reflected in medical and counseling records, living arrangements, and lifestyle.

III. Consent is no defense if, at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act. A jury is not required to infer consent from a victim's failure to physically resist a sexual assault.

III-a. The victim's manner of dress at the time of the sexual assault shall not be admitted as evidence in any prosecution under this chapter to infer consent.

a. In general. The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

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c. Ineffective consent. Unless otherwise provided by the code or by the law defining the offense, assent does not constitute consent if:

(1) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

(2) It is given by a person who by reason of youth, mental disease or defect **or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged** to constitute an offense; or

(3) It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

Oklahoma Statutes §21-113

The term "consent" means the affirmative, unambiguous and voluntary agreement to engage in a specific sexual activity during a sexual encounter which can be revoked at any time. Consent cannot be:

1. Given by an individual who:

a. is asleep or is mentally or physically incapacitated either through the effect of drugs or alcohol or for any other reason, or

b. is under duress, threat, coercion or force; or

2. Inferred under circumstances in which consent is not clear including, but not limited to:

a. the absence of an individual saying "no" or "stop", or

b. the existence of a prior or current relationship or sexual activity.

Oregon Revised Statutes 163.315

(1) A person is considered incapable of consenting to a sexual act if the person is:

(a) Under 18 years of age;

(b) Mentally defective;

(c) Mentally incapacitated; or

(d) Physically helpless.

(2) A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence