

Consent in the Criminal Justice System in New York State is Defined by the New York State Penal Law

The factors related to consent to engage in sexual activity in the criminal justice system are different than those defined in the “**Affirmative Consent**” standard.

To constitute a violation of criminal law, a sexual offense based on **lack of consent**, results from:

- Being forced;
- Drugged without consent;
- Being physically helpless (unconscious, asleep, otherwise unable to say no);
- Any circumstance under which a victim had clearly expressed, in words or actions, that the victim did not consent, and that a reasonable person in that situation would have understood the victim’s words or acts as an expression of lack of consent;
- Any circumstance involving the touching of sexual or other intimate parts, directly or through clothing, in which the victim did not expressly or impliedly agree to the sexual contact.

Except for circumstances in which the law deems a victim incapable of consent, in order to constitute a violation of the NYS Penal Law for rape, or oral or anal criminal sexual act, the law places the responsibility on the victim to clearly express in words or actions that the victim does not consent.

No Means No!

In “**Affirmative Consent**”, the responsibility is on the initiator of sexual activity to get a “yes” or otherwise ensure that consent is accepted.

For a full definition of **Consent** in the New York State Penal Law, go to: troopers.ny.gov/enoughisenough



Affirmative Consent

Affirmative consent: a knowing, voluntary, mutual decision to engage in sexual activity.

Consent can be words or actions, as long as it creates clear permission.

Silence or lack of resistance, in and of itself, does not demonstrate **Consent**.

Consent may be withdrawn at any time.

When **Consent** is withdrawn or can no longer be given, sexual activity must stop.

Consent cannot be given when a person is incapacitated.

Incapacitation = lack of consciousness, being asleep, involuntarily restrained, intoxicated such that one cannot knowingly choose to participate in sexual activity, or if a person otherwise cannot **Consent**.

Consent to any sexual act or prior consensual sexual activity does not necessarily constitute **Consent** to any other sexual act.

Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

The definition of **Consent** does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.

Yes Means Yes!

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