

## **Guidelines Regarding Consent and Coercion as they relate to Sexual Offenses:**

### **Consent**

The following consent and coercion definitions and descriptions were taken from:

Sokolow, B. and Schuster, S. (2004). *The 2004 NCHERM Campus Sexual Misconduct Judicial Training Video Seminar*. The National Center for Higher Education Risk management.

As Printed in:

Handeyside, A. and Wickliffe, S. (2009). *Striving for Justice: A Toolkit for Judicial Resolution Officers on College Campuses. Responding to Sexual Assault and Dating and Domestic Violence*.

In terms of the law, a majority of states now have adopted consent-based definitions of sexual assault. Force may be an aggravating factor, or may serve as additional proof, but it is increasingly being abandoned as the *sine qua non* of rape. Where codes previously provided that sex against one's will constituted rape, modern revision now holds that rape is sexual intercourse without one's consent.

This shift represents a subtle yet all-important change. The onus of giving consent is taken away from the object of the sexual initiator, instead requiring that the initiator gain that consent from the object of the sexual attention before any sexual activity may take place.

This re-emergence of consent-based doctrine recognizes and ratifies a simple principle of common law – our personal sovereignty. We have the right not to be acted upon by someone else unless we wish to be acted upon, and communicate that to the actor. Our silence is not our permission. You may not take my wallet simply because I have not said that you cannot have it. Moreover, this restoration of the common law principles of consent aids in the uniform application of the laws. A murder victim need not resist an attacker in order to prove it was a murder. A mugging victim need not resist a thief in order for the theft to occur. So, this reformulation restores a sense of symmetry to sex crime codes where anomaly has heretofore reigned.

Everything you need to know about consent.

- Consent IS when someone agrees, gives permission or says yes to sexual activity with someone else. It is always freely given and both people in a sexual situation must feel that s/he is able to say “yes” or “no” at ANY point during sexual activity.
- At the heart of the idea of consent is the idea that every person, man or woman, has the right to personal sovereignty – not to be acted upon by someone else in a sexual manner unless he or she gives clear permission to do so.
- Consent to one form or sexual activity does not automatically imply consent to other forms of sexual activity.
- Consent means you can't make assumptions about what your partner does or does not want. **Absence of clear signals means that you CAN'T touch someone else, not that you CAN.**

- Consent means two people (or more) deciding together to do the same thing, at the same time, in the same way, with each other.
- The idea of consent completely rules out any need to show the use of force, or any type of resistance.
- Consent requires that the person initiating the sexual activity get permission to do so, and that permission does not exist in the absence of resistance.
- There are circumstances, as well, where even when consent is given, it is not valid. Consent would be invalid when forced, threatened, intimidated, coerced, when given by a mentally or physically incapacitated person, or when given by a minor.
- We can't play the game of, "If she [he] doesn't want it she'll stop me." That's based on antiquated resistance requirements. It's not her [his] job to resist, but yours to respect her [his] boundaries, and find out what they are if they are unclear.
- No means no, but nothing also means no. Silence and passivity do not equal permission.
- Consent can be withdrawn at any time.
- Where you see assumptions being made by someone in a sexual context, this is an alarm. Look at those assumptions and see if they are reasonable. Unreasonable assumptions are usually policy violations.
- If you get a "no" and keep right on pressuring and continuing to interact sexually, you run the risk that your behaviors are a coercive influence on the other party.
- Respect for another member of the community is an expectation that all members are expected to uphold at all times, including in the context of sexual interaction. Respect means paying heed to verbal and nonverbal cues, desires, boundaries, and behaviors of others.

## Coercion

- Coercion is a tactic used by perpetrators to intimidate, trick or force someone to have sex with him/her *without* physical force.
- Coercion is an issue of power and control.
- A perpetrator who uses coercive tactics knows that his or her victim neither wants nor enjoys this sexual interaction.
- Assailants use many forms of coercion, threats, and manipulation to rape including alcohol and drugs. Alcohol, Rohypnol, and other drugs are often used to incapacitate victims.
- Men who have committed sexual assault also frequently report getting their victims drunk as a way of making it easier to talk or force him or her into having sex (Abbey, McAuslan and Ross, 1998).
- Although the media has labeled drugs such as Rohypnol and GHB as the date-rape drugs of the present, these are only two of the many drugs used to incapacitate a victim. Of the 22 substances used in drug-facilitated rapes, alcohol is the most common. (LeBeau, M., 1999).
- Examples of coercive statements:
  - "If you really loved me, you'd have sex with me."
  - "I didn't think you were such a prude."
  - "But we've had sex before."

- “If you don’t have sex with me, I’ll find someone who will.”
- “I’ll tell everyone that you’re gay if you don’t have sex with me.”
- “I’ll spread rumors about you if you don’t have sex with me.”
- “But you have been flirting with me the whole night.”