

# Understanding Consent

Created by Lawrence V. Cosby, Esq. for Starting With Today

## Enthusiastic Consent

**Consent is a mutual verbal, physical, and emotional agreement that happens without manipulation, threats, or head games. Consent is a whole body experience. It is not just a verbal “yes” or “no” – it involves paying attention to your partner as a person and checking in with physical and emotional cues as well. Consent is also mutual (both people have to agree) and must be continuous. You can stop at any time, you can change your mind, and just because you said yes to one thing doesn’t mean you have consented to anything else.**

## Yes means Yes

### **How is consent defined?**

“**Consent**” means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent. D.C. Code § 22-3001.

### **Does the definition require “freely given consent” or “affirmative consent”?**

Yes. Consent to the sexual act or contact in question must be freely given agreement. D.C. Code § 22-3001.

## **Age of Consent**

16 years old. D.C. Code § 22-3001(5A).

16 years old. MD Code, Criminal Law § 3-308.

## **Ages Differences and Consent**

- Sexual Abuse of a Child
  - A child, defined as a person under the age of 16, cannot consent to sexual acts or sexual contact with a person who is at least 4 years older. D.C. Code §§ 22-3008, 22-3009.
- Sexual Abuse of a Minor
  - A minor, defined as a person under the age of 18, in a “significant relationship” (as defined below) with a person who is over 18, cannot consent to sexual acts or sexual contact with such person. D.C. Code §§ 22-3009.01, 22-3009.02.
  - “**Significant relationship**” includes:

# Understanding Consent p.2

- A parent, sibling, aunt, uncle, or grandparent, whether related by blood, marriage, domestic partnership, or adoption;
- A legal or de facto guardian or any person, more than 4 years older than the victim, who resides intermittently or permanently in the same dwelling as the victim;
- The person or the spouse, domestic partner, or paramour of the person who is charged with any duty or responsibility for the health, welfare, or supervision of the victim at the time of the act; and
- Any employee or volunteer of a school, church, synagogue, mosque, or other religious institution, or an educational, social, recreational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver, administrator, or support staff, or any other person in a position of trust with or authority over a child or a minor. D.C. Code § 22-3001(10).

## **Sexual Abuse of a Secondary Education Student:**

- A student under the age of 20 years enrolled in a secondary level school cannot consent to sexual acts or sexual conduct with any teacher, counselor, principal, coach, or other person of authority in that school or school system. D.C. Code § 22-3009.03.

## **Development Disability/Mental Incapacity and Consent**

A person is unable to consent to engaging in a sexual act if such person is incapable of appraising the nature of the conduct. D.C. Code §§ 22-3003(2)(A), 22-3005(2)(B)-(C).

## **Physical Disability/Incapacity/Helplessness/Consciousness and Consent**

- Incapable of declining participation in that sexual act; or
  - Incapable of communicating unwillingness to engage in that sexual act.
- D.C. Code §§ 22-3003(2)(B)-(C), 22-3005(2)(B)-(C).

## **Intoxication and Consent**

A victim's ability to consent is impacted by his/her intoxication due to a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct, given involuntarily or unknowingly given to the victim by the accused. D.C. Code §§ 22-3002.

