
LEGAL DEFINITIONS OF RAPE AND CONSENT

What is Rape?

Rape is legally defined as the penile penetration of the vagina, anus or mouth of another person without the person's consent or a reasonable belief in the person's consent.

What is Assault by penetration?

Penetration of the vagina or anus with an object or part of the body without the person's consent or a reasonable belief in the person's consent.

What is Sexual Assault?

Deliberate touching of another person, which is sexual and occurs without the person's consent or a reasonable belief in the person's consent.

What is Consent?

Consent is legally defined as **agreeing by choice** and having the **freedom** and **capacity** to make that choice.

Children 12 years and under CANNOT legally give consent. All penile penetration of a child under 13 years is rape.

This means that consent is active and includes the presence of a freely given and informed yes, verbally and through actions and body language.

- **Freedom to consent**

A person is **free** to make a choice if nothing bad would happen to them whatever they choose. For example, a person is **not** making a free choice if:

- they or someone else is being threatened and/or intimidated through fear and violence
- they felt forced or pressured/coerced into making a decision, e.g. "If you loved me you would."
- they are being blackmailed in some way, e.g. using images or social sabotage
- there is a power imbalance between two people; this could be due to age, status/position and/or authority or some kind of dependency (e.g. drug/alcohol use, financial control)

Having the freedom to consent means doing something because you **WANT** to, not because something or someone is pressuring you one way or the other.

- **Capacity to consent**

Capacity is about whether you are physically and/or mentally able to make a choice and to be fully aware and understand the consequences of that choice. For example, a person **does not have the capacity** to give consent if:

- they are drunk or high on drugs
- they are asleep or unconscious
- they are under 13 years old

A person may also not have capacity to give consent if they have a disability of some kind, which results in them being unable to make a fully informed decision and give informed and legal consent at that time. Someone's mental health, particularly where there is an additional need can also mean that someone's ability to consent is affected.

- **Consent is not ongoing:** consent needs to be negotiated every time you have sex and also during sex as you start to do different things. Any prior sexual activity or relationship, does not, in and on itself, constitute consent regardless of any previous sexual activity that has taken place on that occasion or at any other time
- Consent is an enthusiastic and positive agreement between participants to engage in specific sexual activity
- Consensual sexual activity means the people involved have the freedom and capacity to make that choice
- Consent may be withdrawn at any time (including during sex) and can never be implied, assumed or coerced

The legal definition of consent is the bare minimum expected and required for any and all sexual activity. We have a responsibility to go beyond this and create open, positive, mutual, reciprocal, ethical sexual practices and experiences.

How do you know if someone wants to do something? This includes verbal consent, body language, actions, and reciprocity.

An enthusiastic yes = enthusiastic consent