



# What is Consent?

**Contact 9-1-1 in an emergency or if you are in imminent fear for your safety or the safety of another. Contact local law enforcement or the Glenville State University Campus Police to report criminal conduct.**

## Consent

Consent means the affirmative, unambiguous, and voluntary agreement to engage in each specific initiated sexual activity that may compose a sexual encounter. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. A clear verbal “yes” or other outward demonstration of free choice is necessary. Consent cannot be inferred from silence, passivity, lack of resistance, or a lack of active response. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Consent must be voluntarily given contemporaneous to the initiation of the sexual activity. Consent may not be valid if a person is being subjected to actions or behaviors that elicit emotional or psychological pressure, intimidation, or fear. It cannot be obtained by threat, coercion, or force. Consent:

- Cannot be gained by force, threats, intimidation, or coercion
- Cannot be inferred from silence or lack of resistance
- Cannot be implied by attire or inferred from money spent
- Can never be given by anyone under the age of 16
- Can never be given if the person is asleep, incapacitated or unconscious, whatever the reason including but not limited to the use of alcohol or drugs
- One type of sexual act does not imply consent for another act
- Once a person says no or communicates that they want to stop, it does not matter if or what type of sexual behavior occurred previously
- Being in a relationship does not mean that consent is always given. It is important to ask each time when engaging in sexual activities
- Consent can be withdrawn at any time

**The best way to know that you have consent is to ask before you act. Yes means Yes. No means No.**

## Incapacitation

Incapacitation means the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where drugs or alcohol are involved, one does not have to be intoxicated, drunk or high to be considered incapacitated. Rather, incapacitation is determined by how the alcohol consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments.<sup>1</sup> The question is whether the accused student knew, or a sober, reasonable person in the position of the accused student should have known, that the Complainant was incapacitated. Because

Incapacitation may be difficult to discern, you are strongly encouraged to err on the side of caution; i.e., when in doubt, assume that another person is incapacitated and therefore unable to give effective Consent.

## **Sexual Assault Forcible Sex Offenses (20 U.S.C. 1092(f)(6)(A))**

Any sexual act directed against another person, forcibly and/or against that persons will; or not forcibly or against the persons will where the victim is incapable of giving consent. Forcible sex offenses are examples of sexual harassment prohibited by Title IX, Title VII and Glenville State College Policies 6 and 6A.

### **Forcible Rape**

The carnal knowledge of a person, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving Consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

### **Forcible Sodomy**

Oral or anal sexual intercourse with another person, forcibly and/or against that persons will; or not forcibly against that persons will where the victim is incapable of giving Consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

### **Sexual Assault With An Object**

The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that persons will; or not forcibly against the persons will where the victim is incapable of giving Consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

### **Forcible Fondling**

The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving Consent because of his/her youth or because of his/her temporary mental incapacity.

## **Dating Violence (34 U.S.C. 12291(a)(10))**

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on consideration of the following factors: the length of the relationship; the type of the relationship; and the frequency of interaction between the persons involved in the relationship. Dating violence includes but is not limited to Sexual Assault. Dating Violence is sexual harassment prohibited by Title IX, Title VII and College policy.

## **Domestic Violence (34 U.S.C. 12291(a)(8))**

Domestic violence is any conduct that would constitute a felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of West Virginia, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of West Virginia. Domestic violence is sexual harassment prohibited by Title IX, Title VII and College policy.

## **University Policy Violation Reporting and Formal Complaints**

Reports and formal complaints of conduct prohibited by University Policy 6 and/or 6A including but not limited to Title IX or Title VII sexual harassment may be made in person, by mail, telephone or electronic mail, to the Title IX Coordinator. Please see the Title IX and Title VII Sexual Harassment brochures for confidential reporting options and contact information for local law enforcement for reporting criminal conduct.



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*The University's sexual harassment and Title IX/Title VII policies and procedures are available in the Title IX Coordinator's office and online at: <https://www.glenville.edu/about-us/title-ix/policies>*