

Sexual Consent Discussion Guide

Talking about Consent

Consent is a complex concept made up of several elements. Therefore, it can be difficult to talk to youth about consent. Prepare yourself for the conversation by understanding all of the facts about and elements of consent so that you can thoroughly pass this information on to youth. This guide will assist you in doing this confidently.

This guide is intended to be used as a reference during discussion of the **Sexual Consent Handout** and the **Sexual Consent Flowchart**.

Understanding and Explaining Consent

The Sexual Consent Handout and Flowchart break down consent into its legal and social components.

Definition¹: Sexual Consent is the presence of an affirmative, communicated, mutual agreement between participants who are of age, of equal power, and able to freely make a choice without pressure.

What is Consent?

- Consent is **MUTUAL**: All agree to make a decision and feel comfortable
- Consent is a **CHOICE**: All are aware (conscious and knowingly) and want to engage in sexual activity
- Consent is **COMMUNICATED**: Actively and thoroughly discussed by participants
- Consent is **INFORMED**: Risks and safety are discussed and understood by both parties. Participants feel safe physically and mentally
- Consent is given **WITHOUT FEAR**: There are no pressure, threats, coercion, bargaining, or manipulation

Consent is needed for:

- **EVERY TIME** you engage in sexual activity. Just because someone engaged in sexual activity in the past, that does not mean that they consented to all future sexual activity.
- **SPECIFIC** sexual activity, for each sexual act.
- **INCREASED** sexual activity/changes in sexual activity. Just because someone consented to kissing does not mean they have consented to having their shirt taken off.
- **RECURRING** sexual activity, any time, even if consent was previously given. If someone gives consent to sexual activity with one person, that does not mean they have consented to all future sexual activity with that same person. Consent must be given each time, even within a steady romantic relationship

Consent can be withdrawn at any time for any reason.

Legal Components of Consent

Sexual Consent Handout

This information is on the side of the Sexual Consent Handout titled “Sexual Consent in New Jersey”

1. If a child under the age of 13 (12 and under) is engaging in sexual activity, the protocol for this situation is to report this information to DCP, the Child Abuse Hotline # (1-877-NJ-ABUSE).

¹ Sexual Consent as defined by Prevent Child Abuse – New Jersey

Everyone in NJ is a mandatory reporter. This protocol stands up until the day before the child's 13th birthday.

2. According to the Statutory Rape law, anyone between 13 years old and 15 years old (a day before their 16th birthday) cannot consent to engage in sexual activity with anyone who is more than 4 years older than them. This is determined by the exact date of birth of both parties. This means:

- The "13-15 years old" standard is applicable up until the day before one's 16th birthday.

Even if one party is 4 years and 1 day older than the other, sexual contact would still be considered Statutory Rape. Here are some scenarios to give as an example:

- *Youth, age 13, is dating someone who is 17. Is this a legal concern?*
 - Yes, this is something to look into. Even though the youth are seemingly within 4 years, they may have birthdays in which they are actually older than 4 years. If the date is 3/1/2019, a Youth age 13 whose birthday is 3/1/2006, and a 17 year old whose birthday is 2/29/2002. This person is 4 years and a day older which constitutes for Statutory Rape even if this person is also a minor.
- *Youth age 15 is dating an 18-year-old.*
 - This is legal. The younger person is within the 13-15 range, and by law, the other party must be within 4 years older. Therefore, even though the 18-year-old is considered an adult, they are still only 3 years apart and sexual contact is legal.

A 16-year-old can consent to have sex with a person of any age as long as the following exceptions are not present.

3. **Commercial Sex.** Those under the age of 18 who are involved in commercial sex (sex in exchange for anything of value: money, clothes, etc.) are considered **victims of sex trafficking**, even if they claim to have consented. Youth do not require a trafficker in order to be considered a victim, nor do they need to prove force, fraud, or coercion. The person exchanging something of value for sexual acts from a youth (the buyer) can automatically be criminally liable.
4. **Someone of Authority.** Those under the age of 18 cannot legally consent to anyone who has authority over them. Examples of those with authority include: family members (certain specifications are in the law), those in supervisory roles, coaches, teachers, religious leaders, group home staff, babysitters, etc.
5. **Consent cannot be given at any age when one of the parties is incapacitated due to drugs or alcohol, unconscious or sleeping, has a lack of understanding due to a disability, or has a disability AND engaging with an authority figure/governmental caregiver, or if someone has been physically forced or coerced.** Here are some potential points to go over:
 - **Drugs and alcohol:** Levels of impairment can be subjective. Talk with your youth about at what point someone is too impaired to give consent. A good point of reference might be "At what point do you start to feel different than normal?" It is on the actor in this case whether they "know" or "should have known" that this

person was impaired enough not to be able to consent. Encourage youth to be aware of this.

- **Unconscious or sleeping:** This applies even if one of the parties was awake when the sexual contact began and then fell asleep at some point during.
- **Lack of understanding due to a disability:** Being disabled does not mean someone cannot have a sexual relationship. However, if a disabled person does not have the ability to understand sexual consent as a result of their disability – and the other person knows or should have known this – this situation would be considered to have lacked consent.
- **Physically forced or coerced:** Review force and coercion with the youth. Explain to them that being threatened into having sex is not consent. Being convinced or guilted into having sex is not consent. Having sex out of fear is not consent. It would be helpful to offer some hypothetical examples of this.

Definitions of Sexual Violence and Sexual Assault

- The Sexual Consent Handout provides the definitions of Sexual Violence and Sexual Assault. Explain the differences between the two and address any questions.
- Sexual Violence Hotline: Explain to youth that they can use this hotline if they feel like they have been the victims of sexual violence or sexual assault.
- CONSENT IS MORE THAN LEGALITIES
 - Consent is much more than legal considerations and much more than gauging someone else’s comfort. It is also about self-reflection and gauging your own comfort level.
 - Why am I deciding to have sex? Do I want to and feel ready, or is there some reason why I feel like I should (I should have sex by 16, I should have sex to keep my boyfriend, I should have sex because my friends are, etc.)?
 - Is this the right time? The right person? Do I trust this person? Do I feel safe?
 - Am I aware of risk? Is my partner aware of risk? Are we protecting each other’s health?
 - Just because I’m 13, my partner is 16, and I can legally consent, does not mean I should necessarily engage in sexual behavior with this person.

Sexual Consent Flowchart

One side of the Sexual Consent Flowchart is designed to guide the youth in the process of determining whether sexual consent can legally be obtained given a specific scenario. Use the information above to expand on the flowchart steps.

The **stop signs** indicate a point at which consent cannot be obtained. This means that the scenario being observed cannot legally result in any kind of sexual activity. NOTE: Exploring legalities is not the only determining factor for engaging in sexual contact with another person. We must also explore and discuss the social component of sexual consent.

Social Components of Sexual Consent

Sexual Consent Handout

This information is on the side of the Sexual Consent Handout titled “Steps of Consent.”

STEP 1: Direct Communication:

- Direct, verbal communication is the best way to know whether someone else is comfortable. The handout provides some examples of how to give consent and how to obtain consent. Encourage youth to role play or ask them if there are any other ways to verbally communicate about consent that are not listed.
 - It is likely that some of the youth will have questions about nonverbal consent and body language. Explore this topic with the youth if it comes up. Talk about the ways in which body language can be misunderstood.

STEP 2: Listen to the response.

- Listening to the other person when talking about consent is key to effective two-way communication. The handout lists some examples of what someone might say when they are giving consent and some examples of what someone might say if they are not giving consent or if they are unsure about giving consent
 - NOTE: Uncertainty means NO CONSENT.

STEP 3: Respect one another's boundaries or comfort levels.

- The youth should understand that if they are discussing consent with somebody, and that person seems unsure or says they don't want to, they should not attempt to convince or persuade them. The respectful response in this scenario is "It's okay if you're unsure. We don't have to do anything right now. If/when you do feel comfortable talking about this again, I'm open to it."

STEP 4: Check in by communicating before and during any types of sexual activity, every time.

- Everyone has the right to say no or that they do not want to continue. Respecting and asking about the other person's limits at all times is required to engaging in healthy sexual activity.

Sexual Consent Flowchart

One side of this flowchart is meant to guide the youth through the process of determining whether or not they are ready to engage in sexual activity and whether this would be a healthy interaction.

Youth are often under the impression that the legalities behind sexual consent are the only thing to be considered when deciding to have sex. It is important to also give them the tools they need to self-reflect on whether engaging in sexual activity is actually something they are ready for.

The steps in this portion of the flowchart include self-reflective questions as well as questions that instruct the youth to reflect on the dynamic between themselves and the other person. This may require an expansion to one of more conversations about the following:

- what it means to trust someone else
- what safety looks like
- what pressures they may be experiencing
- the risks involved in engaging in sexual activity
- communicating about consent (You can also use the guidelines above for the portions that refer to healthy communication.)

Reporting Questions:

In the state of New Jersey, we are all mandated reporters of child abuse and neglect.

New Jersey law mandates reporting of child abuse in the following scenarios regarding sexual activity. If these have occurred, call 1-877-NJABUSE :

- If the youth is 12 years old or younger and any sexual contact has been made by anyone (including by other children).
- If the youth is any age under 18 and the actor is in a supervisory position or is an authority figure. This includes parents, guardians, caregivers, teachers, coaches, religious leaders, community leaders, healthcare providers, etc.

IMPORTANT NOTE for youth 13-15 years old:

If the youth is 13-15 years old and the actor *is not* in a supervisory position nor an authority figure, New Jersey law *does not* mandate a report. This is because youth within the ages of 13-15 fall within a category of youth that can legally consent to sexual activity with those older than them by 4 years or less. Because they fall within an age range that can consent to sexual activity in some capacity, though limited, they are legally granted **victims' rights**, which gives them the **power to choose** whether they want to report a sexual encounter or assault, *even if it was with someone over 4 years older than them*. It is important to consult with the youth about reporting.

If you are unsure about an event that may or may not mandate a report, you can contact the Statewide 24 Hour Sexual Violence Hotline 800-601-7200. They can provide you all the information you need and explain the services that are available for the specific case you have.

****Please note that legislative interpretation of consent laws can change over time. It is important to keep yourself informed on the most up-to-date information. When in doubt, call the Statewide 24 Hour Sexual Violence Hotline at 800-601-7200.***