

Minnesota Sexual Consent Law



Overview

Minnesota law defines consent to sexual conduct in the state. Minnesota's sexual consent laws are applied when prosecutors and law enforcement evaluate whether or not to charge people with criminal sexual conduct crimes.

The initiator of any sexual act has the responsibility to get clear consent from the other person. If the initiator is not given consent from the other person and continues to engage in sexual conduct, the initiator may be charged with a sex offense.

Consent means communicating every step of the way and not assuming the other party is comfortable with actions. Consent requires a clear and enthusiastic "yes"—meaning if someone seems unsure, stays silent, doesn't respond, or says "maybe," they aren't saying "yes."

If someone is found to be incapable of consenting or to have actively not consented, the other party may be charged with a sex offense. This factsheet outlines common questions and key aspects of Minnesota's sexual consent laws.

What is consent to sexual conduct under Minnesota law? ¹

Under Minnesota law, consent is words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with another.

¹ MN Stat. § 609.341 (4)(a)

² MN Stat. § 609.341(4)(a)

What is not consent to sexual conduct under Minnesota law? ²

Under Minnesota law:

- A prior or current social relationship between the parties involved does not equal consent to sexual conduct.
- Not resisting a particular sexual act is not consent to sexual conduct.
- People under the age of 14 cannot legally consent.
- Legal consent by people between the ages of 14-18 is restricted (see the section on minor consent in Minnesota below).

Who cannot legally consent to sexual conduct?

- Someone who is mentally incapacitated or physically helpless ³
- Someone who is mentally impaired ⁴
- People under the age of 14 ⁵
- People between the ages of 14-18 depending upon the age and relationships of the people involved (see the section on minor consent in Minnesota below)

What does it mean to be mentally incapacitated? ⁶

- Mentally incapacitated means that a person under the influence of alcohol, a narcotic, anesthetic, any other substance administered to that person without their agreement lacks the judgment to give a reasoned consent to sexual contact or sexual penetration. This rule refers to people who are involuntarily under the influence.
- Mentally incapacitated can also mean that a person is under the influence of any substance or substances to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling their conduct. This rule refers to people who are voluntarily under the influence.

³ MN Stat. § 609.341(4)(b)&(c)

⁴ MN St. 609.341(6)

⁵ MN Stat. §609.341 (11)(2)

⁶ MN St. 609.341(7)

What does it mean to be mentally impaired? ⁷

- Mentally impaired means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration.

What does it mean to be physically helpless? ⁸

"Physically helpless" means that a person is:

- asleep or not conscious
- unable to withhold or withdraw consent because of a physical condition
- unable to communicate regarding consent and their condition is known or should have reasonably been known to the other party

Can consent to sexual conduct change?

- Yes. Consent is a present agreement, and it must exist at the time of each specific sexual activity.
- Consent to a specific sexual activity does not equal consent to any and all sexual activity. Specific sexual acts should be consented to.
- Consent may be given initially and then withdrawn later during sexual activity.
- If consent is withdrawn, the sexual activity must stop.
- When consent is withdrawn, sexual activity that continues can be considered criminal.

What does the law say about consent by minors in Minnesota?

- In Minnesota, people under the age of 14 are considered legally incapable of consenting to sexual conduct. This means that even if someone under 14 intends to consent to sexual conduct, that sexual conduct is not legally allowed. ⁹ Someone

7 MN Stat 609.341(6)

8 MN St. 609.341(9)

9 MN ST. 609.344(1a)(a)

who engages in sexual conduct with a person under the age of 14 can be charged with crimes.

- People between the ages of 14-16 may only legally consent to sexual conduct with someone less than 24 months (2 years) older than them. This means that even if someone between the ages of 14-16 intends to consent to sexual conduct with someone who is more than 24 months older than them, that sexual conduct is not legally allowed.¹⁰ The older person can be charged with crimes.

Note: just because someone is legally allowed to consent to sexual conduct does not mean that they have to consent, or should consent. Consent is an individual choice.

- People between the ages of 16-18 may only consent to sexual conduct with someone less than 36 months (3 years) older than them. This means that even if someone between the ages of 16-18 intends to consent to sexual conduct with someone who is more than 36 months older than them, that sexual conduct is not legally allowed.¹¹ The older person can be charged with crimes. Just because someone is legally allowed to consent to sexual conduct does not mean that they have to consent, or should consent. Consent is an individual choice.

Even in situations where the age difference between the parties is legally allowed, consent may not legally be given if:

- There is a significant relationship between the parties. A significant relationship means that one person is the other person's: parent, stepparent, or guardian
- The following related by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt
- an adult who jointly resides intermittently or regularly in the same dwelling as a minor and who is not the minor's spouse (note: as of 2020 people under 18 are not allowed to get married in Minnesota. Some other US states do still allow some people under 18 to get married)
- an adult who is or was involved in a significant romantic or sexual relationship with the parent of a child

One party has a current or recent position of authority over the other. A current or recent position of authority (including but is not limited to):

- any person who is a parent or acting in the place of a parent and charged with or assumes any of a parent's rights, duties or responsibilities to a child
- a person who is charged with or assumes any duty or responsibility for the health,

¹⁰ MN ST. 609.344(1a)(b)

¹¹ MN ST. 609.344(1a)(e)

welfare, or supervision of a child, either independently or through another, no matter how brief at the time of or within 120 days immediately preceding the act

Why does it matter if someone does not consent, or cannot legally consent?

Under Minnesota law:

- it is illegal for a person to engage in sexual conduct with another person who does not or cannot legally consent.
- Someone who engages in sexual conduct with a person who does not or cannot legally consent can be charged with crimes, such as Criminal Sexual Conduct.
- Not resisting a particular sexual act is not consent to sexual conduct.
- People under the age of 14 cannot legally consent.
- Legal consent by people between the ages of 14-18 is restricted (see the section on minor consent in Minnesota below).

Note: The person who does not or cannot consent should not be charged with crimes.

What if an initiator thinks there is consent, when there is not?

- In most cases, the accused's state of mind is irrelevant to whether there was a crime. It does not matter what they believed.¹²

Does a victim/survivor get to decide if someone is prosecuted for criminal sexual conduct?

- No. However, a victim/survivor gets to decide if they want to make a report of their abuse to law enforcement.
- A victim/survivor also gets to decide if they want to participate in prosecution of a case against their abuser (by testifying, providing evidence, or otherwise cooperating with law enforcement and prosecution) or not.
- Once a report of abuse has been made, decisions about the next steps are made by law enforcement and prosecutors. The next steps could be more investigation, arrest, charging, detention, prosecution, or no action at all.

¹² MN. Stat. 609.342 (1a)(e)&(g)&(h); 609.343 (1a)(e)&(f)&(g); 609.344(1a)(a)&(b)&(e)&(f)&(g); 609.345(1a)(a)&(b)&(e)&(f)&(g); 609.345(1a)(a)&(b)&(e)&(f)&(g).

Does a victim/survivor get to decide what the punishment is for their abuser?

- No. If someone is convicted of a crime of criminal sexual misconduct, the sentence, or punishment, for that conviction is decided by a judge. A victim/survivor may have their voice heard by the judge in court before the judge makes a decision.

Does meeting the standards for legal consent mean that the other party has consented to sexual activity?

- Not necessarily. Legal consent may prevent someone from being charged with a crime, but legal consent is not the same as tangible, personal consent to sexual activity. Consent means communicating every step of the way and not assuming the other party is comfortable with actions. Consent requires a clear and enthusiastic yes—meaning if someone seems unsure, stays silent, doesn't respond, or says "maybe," they aren't saying yes. [Learn more about consent.](#)

Questions?

Contact Minnesota Coalition Against Sexual Assault Staff Attorney [Kate Hannaher](#).

