

# Victim Advocacy and Violence Prevention

## CONSENT, COERCION, AND INCAPACITY UNDER USF POLICY

**CONSENT** means an informed, knowing, and voluntary agreement to engage in sexual activity. Consent to engage in sexual activity must exist from beginning to end of each instance of sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in a specific sexual activity.

Silence or an absence of resistance alone, without actions evidencing permission, does not imply consent.

- (a) To give consent, a person must be of legal age.
- (b) Someone who is incapacitated cannot consent.
- (c) Assent does not constitute consent if obtained through coercion or from an individual whom the alleged offender knows or reasonably should know is incapacitated.
- (d) The responsibility of obtaining consent rests with the person initiating sexual activity.
- (e) Use of alcohol or drugs does not diminish one's responsibility to obtain consent.
- (f) Consent to engage in sexual activity may be withdrawn at any time. Once withdrawal of consent has been expressed, the sexual activity must cease.
- (g) Consent is automatically withdrawn by a person who is no longer capable of giving consent.
- (h) A current or previous consensual dating or sexual relationship between the parties does not, in and of itself, imply consent or preclude a finding of responsibility.
- (i) Past consent to sexual activity does not imply ongoing future consent to sexual activity with that person.
- (j) Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.
- (k) There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used.

**COERCION** is the use of express or implied threats, intimidation, physical force, or duress which places an individual in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity. Coercion also includes administering a drug, intoxicant, or similar substance with the intent to impair that person's ability to consent prior to engaging in sexual activity.

**INCAPACITATION.** An individual is considered to be incapacitated if, by reason of mental or physical condition, the individual is manifestly unable to make a knowing and deliberate choice to engage in sexual activity. Someone who has consumed alcohol or intoxicants is not necessarily incapacitated. For instance, individuals who are asleep or unconscious are incapacitated. Other indicators that an individual may be incapacitated include, but are not limited to, inability to communicate coherently, inability to dress/undress without assistance, inability to walk without assistance, slurred speech, loss of coordination, vomiting, or inability to perform other physical or cognitive tasks without assistance.