

Vermont State Colleges System

# Understanding Consent

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\*\*\*This is an illustrative guide with examples. Each situation will be evaluated based on its own unique facts.\*\*\*



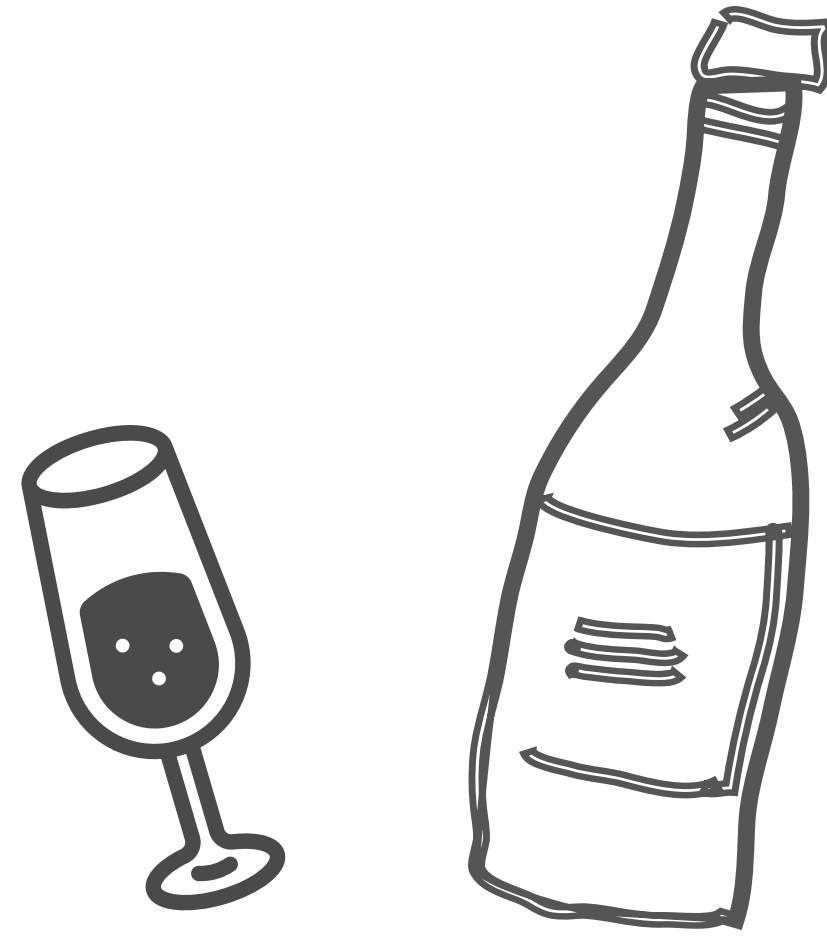
# What is consent?

For purposes of VSCS Policy 311-A, valid consent means words (e.g. "yes!" "I like that!" "let's keep going!") or actions (e.g. reciprocating or initiating sexual activity, removing clothing) that demonstrate to a reasonable person a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity.



## Valid Consent:

- Valid consent cannot be gained by threat, force, coercion or intimidation or by ignoring words or actions that indicate a lack of consent or objection to the activity.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be rescinded at any time. For example, just because someone agrees to kissing does not mean they are agreeing to sex.
- It is the responsibility of the person who wants to engage in the sexual activity to ensure that he or she has valid consent from any other person involved.
- Silence, lack of protest, or lack of resistance are not sufficient standing alone to establish consent. The fact that they didn't say "no" does not equal consent.
- The actions of the individuals involved and the context in which those actions occurred will be considered in determining whether or not there was consent.
- The existence of a dating relationship or a past sexual relationship between the persons involved is not a sufficient basis to assume consent.
- Past consent between two individuals does not imply present or future consent to sexual activity. If someone agrees to have sex on Thursday, it does not necessarily mean that they will want to have sex on Sunday as well.



# Invalid Consent

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## When is consent not valid?

Consent is not valid when a person is incapable of giving consent: (1) due to the person's use or consumption of drugs or alcohol; (2) when intimidation, threats, physical force, or other actions (e.g. a power dynamic) that are coercive are applied; (3) when a physical or mental condition is present such that the person cannot knowingly or voluntarily give consent; or (4) when a person is under the age of 16.

Alcohol-related incapacity results from a level of alcohol ingestion that is more severe than mere impairment, being under the influence, drunkenness or intoxication. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The question of incapacitation is determined on a case-by-case basis

and includes an analysis of the objective behaviors (such as their motor skills) of the person alleging sexual misconduct and whether the accused person knew or reasonably should have known that the other person was incapacitated, or if the accused person provided the alcohol or drugs with the intent of incapacitating the other person.



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### When is consent invalid? (continued):

Whether the accused person knew or reasonably should have known the other person was incapacitated will be assessed in light of all relevant circumstances. Objective physical indications of incapacity include slurred speech, difficulty walking or standing, vomiting, and losing consciousness.

The use of alcohol or other drugs does not make a victim at fault for sexual misconduct.



The use of alcohol or other drugs does not minimize or excuse a person's responsibility for committing sexual misconduct. Nor does the use of alcohol or other drugs minimize or excuse a person's responsibility for determining whether another person is capable of giving consent, as described above.

# Illustrative Examples

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**Q:** Two students consume a case of beer. Student A passes out after beginning to kiss Student B. Can Student A consent to sexual activity with Student B?

**A:** No. Student A is unconscious and is unable consent to further sexual activity.

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**Q:** Three staff members meet for cocktails after work. After having an alcoholic drink each and a meal, they walk back to C's house where they engaged in a consensual threesome. The following day, B's partner finds out about the threesome and becomes upset. B tells his partner that he was unable to consent because he had consumed a drink at dinner. Was B's consent valid?

**A:** Although each case depends on multiple factors, there is nothing about this particular set of facts to indicate that B was incapable of giving valid consent. Under Policy 311-A, consent can be given even if someone has consumed alcohol or is intoxicated. However, a person cannot give valid consent if they are incapacitated (unconscious, difficulty walking/talking, vomiting, etc.) by the amount of alcohol consumed.

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**Q:** Student A and Student B get together one evening to watch a movie. Half-way through the movie they begin kissing, and Student A asks Student B if she would like to have sex. Student B does not verbally respond, but instead removes her own clothing and passionately kisses Student B. Did Student B consent to sex?

**A:** Under Policy 311-A, effective consent can be given through words or actions. In this case, although Student B did not use the word, "yes" or verbalize her agreement to the sexual activity, her actions (removing her clothing and passionately kissing Student A) demonstrated her consent. Equally, she could withdraw her consent through her words or actions as the sexual activity continues.