

Supporting Survivors with Disabilities

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Defining the Terms: The Legal role of Consent

There is no single legal definition of consent. Each state sets its own definition, either in law or through court cases. In general, there are 3 main ways that states analyze consent in relation to sexual acts:

- **Affirmative Consent:** Did the person express overt actions or words indicating agreement for sexual acts?
- **Freely given consent:** Was the consent offered of the person's own free will, without being induced by fraud, coercion, violence, or threat of violence?
- **Capacity to consent:** Did the individual have the capacity, or legal ability, to consent?

Capacity to Consent

A person's capacity, or ability, to legally consent to sexual activity can be based on a number of factors, which often vary from state to state. In a criminal investigation, a state may use these factors to determine if a person who engaged in sexual activity had the capacity to consent. If not, the state may be able to charge the perpetrator with a crime. Examples of some factors that may contribute to someone's capacity to consent include:

- Age
- Developmental Disability (Does the person have a developmental disability or other form of mental incapacitation, such as a traumatic brain injury?)
- Intoxication
- Physical disability (Does the person have a physical disability, incapacity, or other form of helplessness?)
- Relationship of victim/perpetrator (Was the alleged perpetrator in a position of authority, such as a teacher?)
- Unconsciousness
- Vulnerable adults (is the person considered a vulnerable adult, such as an elderly or ill person? Is this adult dependent on others for care?)

Capacity to Consent

Lots of people assume that individuals with disabilities cannot consent

- Important to recognize the unique ways of communication; capacity to consent relies on circumstance and understanding

Biases!

- What presupposed notions do we have surrounding forms of communication and consent?

Agency & Pleasure

“Capacity”

- Capacity refers to the ability to make a particular decision at a particular time. It is wrong to refer to a person as having or lacking capacity for all decisions
- Assume capacity!
- Capacity can vary in the same person for different decisions and can fluctuate
- Capacity depends on understanding
- Understanding depends on effective communication and accessible information as well as cognitive abilities
- Consent can be shown behaviorally

The “capacity to consent to sex” is a somewhat misleading phrase, as sexuality may encompass a variety of different types of sexual acts, each of which may require its own capacity determination. Capacity must be evaluated in the particular context in which the decision takes place because the capacity for a decision may fluctuate depending on the situation in which the decision is taken or on the individuals involved. For example, a person with Alzheimer disease may experience an episode of heightened impairment brought on by the time of day. Thus, capacity determinations are highly contextual.

Disabilities

Physical Disabilities can affect mobility/walking and moving various parts of the body freely as well as muscles and bones and human body symptoms that include digestive, respiratory, circulatory, cardiovascular, endocrine, and nervous systems.

Cognitive or Intellectual Disabilities affect thinking, learning, reasoning, processing or new information, memory and concentration

Sensory Disabilities affect touch, taste, smell, hearing, and sight

Mental Illness refers to mental health disorders whose symptoms affect thoughts, moods, behaviors, and the impact on everyday functioning.

*Note: Many people who are deaf do not consider themselves as having a disability but instead, are deeply connected to a tightly knit and highly networked Deaf culture. Use of the capital letter D in Deaf refers to the cultural pride.

Statistics

People with disabilities are sexually assaulted at nearly three times the rate of people without disabilities. A 2005 survey of people with disabilities indicated that 60 percent of respondents had been subjected to some form of unwanted sexual activity. Almost half never reported the assault.

- 83% of women with disabilities will be sexually assaulted in their lives.
- Just 3% of sexual abuses involving people with developmental disabilities are ever reported.
- Women with a disability are far more likely to have a history of undesired sex with an intimate partner - 19.7% v. 8.2%
- Approximately 80% of women and 30% of men with developmental disabilities have been sexually assaulted -- half of these women have been assaulted more than 10 times.

Forced Intimacy

Forced intimacy is the opposite of access intimacy. It feels exploitative, exhausting, and at times, violating.

“Because I am physically disabled and use a manual wheelchair, I often experience intimacy when able-bodied people push my wheelchair without my consent or when I am in situations where I have to be pushed by people I do not feel safe with, know, or who are actively harassing me while pushing me”

Survivors with Disabilities

People with disabilities experience similar forms of overt and covert sexual assault and abuse as people without disabilities. For people with disabilities, sexual abuse can also take the form of lack of respect for privacy and unwanted exposure during personal care routines like bathing, dressing, and toileting; forced abortion, sterilization or pregnancy; and exploitation.

Many rape or sexual assault victims feel put on trial and victimized when they choose to prosecute their abuser. For abuse survivors with disabilities, the trial may further include questioning about whether or not the perpetrator knew about the person's disability and whether or not the survivor was capable of giving consent to the sexual act because of their disability.

In addition, individuals who have disabilities may also experience sexual assault and abuse by volunteer or professional care providers - those very people charged with providing assistance with daily life activities.

Unique Risk Factors

- People with developmental disabilities are trained to be compliant to the demands of people in authority. This training in submissive behaviors is often achieved through behavioral and classroom management and social skills development programming for people with a range of cognitive, intellectual, and developmental disabilities.
 - Early on, people with disabilities learn that compliance with various behavioral goals can be the pathway to privileges, recreational opportunities, or advances to less restrictive living environments.

Unique Risk Factors

- People may be desensitized to touch if they experience regular help with personal care like bathing and dressing or if they experience routine physical evaluations and treatments that involve touching
- People with disabilities may rely on others to meet basic needs, and the use of multiple caregivers increases opportunities for sexual abuse
- Social isolation results in limited exposure and lack of information about personal relationships and opportunity to disclose if sexual assault or abuse occurs
- People with cognitive disabilities may have a strong desire for friendship and connection, which can lead to increased vulnerabilities to be tricked/bribed into sexual acts if promised friendship or money
- Lack of social credibility for people with disabilities who report or disclose sexual violence

Unique Risk Factors

- Information about sex and sexuality may not be taught in special education classes or institutions
- Generally, society is not comfortable with people with disabilities having sexual desires, feelings, and needs
- Large number of people with disabilities in institutional settings and the physical and emotional contact of caregivers results in power imbalances between staff and residents
 - This imbalance of power increases risks for sexual assault, abuse, and exploitation
- Survivors with mental health disabilities may experience harmful or dismissive psychiatric and medical responses when they report a sexual assault

Barriers to Reporting

- Abusers can use an individual's disability to further exert power and control over the victim. An example of this could be a caretaker abusing a patient
- Abusers can use their power to remove a victim's access to hearing or other support devices necessary for communication and quality of life. This coercion adds another barrier to reporting an assault
- There are limited trauma informed services that address both sexual violence and limitations of the survivors' disability

Challenges to Reporting

Due to biases and stereotypes, the disability community is not taken seriously or believed when they report instances of sexual violence

- Because people with disabilities are often stereotyped as “not being sexual”, a survivor may face challenges having their story taken seriously
- Depending on the severity and type of disability, survivors may not have the support and adequate resources - such as an interpreter or proper equipment - to report their assault