

# Capacity To Consent

Capacity to consent is a person's ability to consent to sexuality activity. The ability to do so differs by person and the rules around capacity to consent differ by state. It generally depends on knowledge and social understanding<sup>1</sup>.

- Most often, an adult is considered to have the capacity to consent if the following three traits are present.<sup>2</sup>
  - First, they should have the ability to evaluate and make knowledgeable decisions.
  - Second, they should have knowledge about sexuality.
  - Third, they should be able to discuss a plan on how to protect themselves and recognize if abuse has taken place.
- A person's capacity can change over time. A person can gain capacity if they receive training and education to fill in their knowledge gaps.<sup>2</sup>
- Examples of knowledge topic areas:
  - Pregnancy
  - Sexually transmitted diseases
  - Contraception, such as birth control
  - Knowing when a person ready to be in a relationship
  - Knowing that capacity to consent can be improved with practice
- Capacity to consent varies by state.<sup>2</sup>
  - In New Jersey, a person must understand the sexual behavior.
  - In Arizona, Illinois, Indiana, Iowa, Kansas, and Louisiana a person needs to understand the sexual behavior and the potential consequences of the sexual conduct.
  - In Alabama, Colorado, Hawaii, Idaho, New York, and New Mexico a person needs to understand the sexual behavior, potential consequences and moral implications.
- Even when the guardian has complete legal control an individual can still be found to have a capacity to consent.<sup>2</sup>
- If the guardian is not allowing the person to be in a relationship because they feel they do not have the capacity they can go to a licensed health care professional to be evaluated.<sup>2</sup>

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<sup>1</sup> Sexuality and Intellectual Disability. *American Association on Intellectual and Developmental Disabilities*. Retrieved from [http://aaidd.org/content\\_198.cfm](http://aaidd.org/content_198.cfm)

<sup>2</sup> Lyden, Martin. (2007). Assessment of sexual consent capacity. *Sexuality and Disability*, 25(1). 3-20.