

Montana Department of Justice

Sexual Assault Kit Initiative

Course “Legal Considerations”

Intro

Slide 2: Welcome to the course, Legal Considerations.

Slide 3: Content Warning: We will be talking about sexual violence, which may trigger personal feelings. Please remember to take care of yourself and do what you need to help yourself.

Slide 4: Disclaimer: This project was supported by Grant No. 2017-AK-BX-0022 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice."

Slide 5: In this course, we will help you understand the elements of sexual crimes, the definitions surrounding sexual assault, and how to apply these elements to your investigation.

Slide 6: Public policy can be a dry topic and you might be wondering why you should care. Here is why: When sexual assault occurs, survivors deserve competent and compassionate investigations. As a sworn law enforcement officer, your primary functions are to gather facts and evidence to establish whether or not a crime has been committed, to protect life and property, to enforce the law when it has been violated, and to resolve conflicts of those in crisis. The very foundation of your role as an effective and respected law enforcement officer is being knowledgeable in the laws you are entrusted to enforce, without prejudice or bias.

Slide 7: As you learn about the definitions and elements relevant to sexual assault, bear in mind that your understanding of these terms and concepts is essential to conducting an accurate and thorough investigation. In the course of your work, you will uncover details and nuances that will be pertinent to terms like "consent," "sexual contact," and "knowingly." To recognize facts and evidence as relevant, you must understand these terms and concepts.

Slide 8: Definitions

Forcible Felony- 45-2-101 (24): "Forcible Felony" means a felony that involves the use or threat of physical force or violence against any individual.

Knowingly- 45-2-101 (35): The term knowingly, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

For an exact quote on this definition, visit 45-2-101 (35).

In the case of sexual assault, an offender will take voluntary actions (such as placing their hands on the victim, physically pressing against the victim, or displacing clothing) to engage in sexual contact. Such actions demonstrate the offender has thought about what to do to engage in sexual conduct and has acted "knowingly," in both awareness of their own conduct and the likely result of that conduct.

Knowingly making sexual contact without consent is a crime.

Penetration- 45-2-101 (68): For purposes of “Sexual intercourse” as described in subsection 68(a), any penetration, however slight, is sufficient.

For more information on this definition, visit 45-2-101 (68b)

Purposely- 45-2-101 (65): With a deliberate, conscious, or express purpose; intentionally.

Equivalent terms, such as “purpose” and “with the purpose”, have the same meaning.

For an exact quote on this definition, visit 45-2-101 (65).

Sexual Contact- 45-2-101 (67): "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

- (a) cause bodily injury to humiliate, harass, or another; or
- (b) arouse or gratify the sexual response or desire of either.

Sexual Intercourse- 45-2-101 (68): “Sexual intercourse” means penetration (*any penetration, however slight, is sufficient for this element to apply*) of the vulva, anus, or mouth of one person by the penis of another, a body member of another, or by a foreign instrument or object manipulated by another person.

- Vulva (*vaginal components*)
- Anus (*either the suspect’s or the survivor’s during intercourse*)
- Mouth (*either the suspect’s or the survivor’s during intercourse*)
- Causes bodily harm (*pain, bruising*)
- Humiliates, harasses, or degrades (*survivor’s perception, suspect’s actions*)
- Arouse, gratify the sexual response or desire of either party (*arousal, stimulation, comments, bodily reaction of either party*)

Force- 45-5-501 (2): As used in MCA 45-5-508, Aggravated Sexual Intercourse without Consent, the term FORCE is defined as:

- The infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender
- Or the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat. (*In other words, the survivor’s decision-making process is compromised for fear of harm to themselves or others.*)
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Consent- MCA 45-5-501 (1): As defined in MCA 45-5-501, (1) (a), and used in 45-5-502, 45-5-503, and 45-5-508, the term “consent” means words or overt actions (yes, sure/showing readiness to have sex) indicating a freely given agreement to have [sexual intercourse](#) or [sexual contact](#) and is further defined, but not limited by the following:

- “An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn.” The word no, stop. Not engaging, whimpering, crying, not reciprocating, freezing/non-participation, moving away, fighting, silence.

- “A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent.” Just because you’re dating doesn’t mean consent; it doesn’t matter what they wear.
- “Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.” Consent means not just at the time of intercourse: it’s before (what happens before that leads up to the sexual intercourse), during (what is happening at the time that the intercourse is taking place), and after (what are the actions that are happening afterward).

Slide 9: It is also important to mention the following statutes. For more information and details, select the linked statute.

[45-5-504 Indecent Exposure](#)

[45-5-507 Incest](#)

[45-5-625 Sexual Abuse of Children](#)

[45-5-627 Ritual Abuse of Minor \(not enacted until 1993\)](#)

[45-5-704 Sexual Servitude](#)

[45-5-705 Patronizing Victim of Sexual Servitude](#)

Slide 10: In 2019, Montana enacted Senate Bill 52, which was codified into Montana Code Annotated 46-15-404 generally revising laws relating to sexual assault evidence kits. When a victim chooses to have a sexual assault forensic examination and report the case to law enforcement the following timetable applies:

- 1) Law Enforcement agencies have to be notified within 24 hours after a kit is collected. Agencies then take control of that kit within five days and submit the kit to a crime lab for testing within 30 days of receipt.
- 2) For kits without consent to test, the kits will be stored at DOJ for a minimum of one year.
- 3) DOJ must log each kit with consent to test in the statewide sexual assault evidence kit tracking system, KitTrack, which allows survivors to access the system anonymously.
- 4) Lastly, DOJ created a victim’s rights card, which is included in the sexual assault evidence kit. This information card has two sides: a front and a back. The front of the card gives the individual detailed instructions on how to check their kit’s status. The back of the card lists the victim’s rights.

Slide 11: Note, that if a survivor chooses to have a sexual assault forensic examination and decides NOT to report the sexual assault to law enforcement, then the completed kit will be sent to the Office of Victim Services FREPP program. For more information, take a look at our FREPP course.

Slide 12: For more information on evidence in cases involving sexual offenses, select the linked statutes.

[46-15-404 Sexual assault evidence kit collection and storage – consent of patient – notice to law enforcement](#)

[46-15-405 Statewide sexual assault evidence kit tracking system – rulemaking](#)

[46-15-406 Notice of rights for victims of sexual assault](#)

[46-15-411 Payment for medical evidence -- alleged sexual offenses](#)

[46-15-412 Testing of sexual assault evidence kits](#)

Slide 13: To complete a thorough investigation, you need to understand the elements surrounding sexual crimes. To fulfill all elements of a sexual crime, the following must be met:

- 1) A sexual assault took place; and
- 2) The act of sexual assault or intercourse was without the consent of the survivor; and
- 3) The suspect acted knowingly.

Let's take a closer look and understand each of these elements.

Elements of Sexual Crimes Menu

Slide 14: Select a tile to learn more about Elements of Sexual Crimes:

- [What constitutes sexual assault?](#)
- [What is Consent?](#)
- [What does knowingly mean?](#)

What constitutes sexual assault?

Slide 15: Sexual assault is an umbrella term that describes any type of sexual activity **without consent**.

This includes:

- Sexual contact, such as fondling or unwanted sexual touching
- Sexual intercourse, such as oral sex, penetrating the perpetrator's body, penetration of the victim's body
- Aggravated sexual intercourse without consent, which adds the element of force

Slide 16: Sexual Contact: The legal definition of sexual contact within MCA 45-2-404 (67) is:

Touching of the sexual or other intimate parts of the person of another directly or through the clothing in order to

- Purposely or knowingly cause bodily injury (pain, bruising)
- Purposely or knowingly humiliate (survivor's perception), harass (repetitive, annoying), degrade (power, control, demean, with or without an "audience")
- Arouse or gratify the sexual response or desire of either party (arousal, stimulation, comments, bodily reaction).

Sexual or intimate parts of the body can include but is not limited to the breasts, buttocks, thighs, groin, vagina, and penis. Other parts of the body can be classified as intimate or sexual if the contact stimulates either person (for example fetishes such as feet, toes, neck, etc.)

Slide 17: Example

Slide 18: Video: An adult female is with friends at a bar when a drunk male comes up behind the female and grabs her buttocks and states “Nice ass, lady.” The comment and action is heard and seen by the female’s friends, as well as others in the bar. The female is upset and begins crying.

Slide 19: Quiz: Would this scenario fall under the legal definition of sexual contact? “Touching of the sexual or other intimate parts of the person or another directly or through the clothing in order to purposely or knowingly cause bodily injury; purposely or knowingly humiliate, harass, degrade; arouse or gratify the sexual response or desire of either party.”

- Yes
- No

Slide 20: Yes, this scenario falls under the legal definition of sexual contact. The man touched her buttocks, which purposely or knowingly humiliated, harassed, or degraded her. It might also have aroused or gratified his sexual response or desire.

Slide 21: Sexual intercourse without consent: The legal definition of sexual intercourse without consent within MCA 45-5-503 is:

Penetration (any penetration, however slight, is sufficient for this element to apply) of the vulva, anus, or mouth of one person by the penis of another, a body member of another, or by a foreign instrument or object manipulated by another.

- Vulva (vaginal components)
- Anus (either the suspect’s or the survivor’s during intercourse)
- Mouth (either the suspect’s or the survivor’s during intercourse)
- Causes bodily harm
- Humiliates, harasses, or degrades (survivor’s perception, suspect’s actions)
- Arouse, gratify the sexual response or desire of either party (arousal, stimulation, comments, bodily reaction of either party)

Sexual intercourse without consent is always a felony offense. A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent.

Slide 22: Example

Slide 23: Video: A father called law enforcement after finding out his 15-year-old daughter had met a 22-year-old male through friends at a party the prior night. During the party, the female consumed a few alcoholic beverages. The male and female took a mutual attraction to one another and struck up a conversation and learned the female was 15-years old. The male asked the female to engage in sex, the female agreed. They went to a bedroom where they engaged in penis to vagina sexual intercourse. After

engaging in sexual intercourse the male told the female he wanted nothing to do with her. The female came home after the party. The next morning she tells her parents what happened the night before.

Slide 24: Quiz: Would this scenario fall under the legal definition of sexual intercourse without consent?

- Yes
- No

Slide 25: Yes, this scenario depicts sexual intercourse without consent, because the male of 22-years of age knowingly had sexual intercourse (vaginal intercourse with his penis) with a girl under 16 years of age. Under Montana law, a person under the age of 16 is unable to consent to sexual contact or sexual intercourse.

Slide 26: Aggravated Sexual intercourse without consent: Aggravated Sexual intercourse without consent is always a felony offense. This section builds upon your initial investigation into Sexual Intercourse Without Consent, which touches on the elements of whether it was “aggravated.” When a crime rises to the level of an aggravated offense, the circumstances are more serious, and the punishment is more severe.

The legal definition of aggravated sexual intercourse without consent within MCA 45-5-508 (1)(2) is:

“A person who uses force while knowingly having sexual intercourse with another person without consent or with another person who is incapable of consent.

Slide 27: Example

Slide 28: Video: A 25-year-old woman, Abby, leaves her son with a babysitter to go on a date with David, a 22-year-old male. There has been no sexual contact or intercourse to this point. David picks up Abby, they go out to dinner, then he drives her back home. The two chat in David’s car and he asks to come inside to continue the evening and “maybe fool around a bit.” Abby feels uncomfortable about this because she’s got her son at the house, so she denies David. David gets impatient and pulls out a semi-automatic pistol to show Abby. “Your son seems like a good boy, but it might be best if we go inside. I’d hate to see anything happen to anybody.” Abby changes her mind and agrees to have David come in. David an Abby doesn’t bring the pistol with him, but they engage in sexual intercourse.

Slide 29: Quiz: Would this scenario fall under the legal definition of aggravated sexual intercourse without consent? “A person who uses force while knowingly having sexual intercourse with another person without consent or with another person who is incapable of consent.”

- Yes
- No

Slide 30: Yes, this is aggravated sexual intercourse without consent. David threatened Abby with a gun inside the car. Although he did not bring the gun with him to the bedroom, the perceived threat of harming her family under the element of substantial retaliatory action let Abby believe he could harm her or her son.

Slide 31: It is important to know and remember that the Statute of Limitations for sex crimes, as described in [45-1-205\(b\)\(c\)](#) and (9), is 10 years, unless the victim was a minor at the time of the crime.

An addition to the Statute of Limitations is paragraph (9), which states that if a suspect is conclusively identified by DNA testing after a case has expired, the suspect can still be prosecuted within 1 year after DNA identification. For more information, take a look at this Statute of Limitations sheet.

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What is Consent?

Slide 32: What is the most important part of engaging in sexual activity? Consent. So, what is consent? In the simplest of terms, consent is when somebody agrees to sexual activity with another person. But the legal definition of consent is a bit more complex.

Slide 33: True consent constitutes the following:

- 1) Consent is enthusiastic, freely given, and continuous.
- 2) Consent cannot be coerced.
- 3) Consent cannot be gained through deceit.
- 4) Consent can only be given when sober and conscious.
- 5) Consent can be revoked at any time.
- 6) Consent is given before, during, and after sexual activity

Slide 34: To be more specific: as defined in MCA 45-5-501, (1) (a), and used in 45-5-502, 45-5-503, and 45-5-508, the term “consent” means words (yes/sure) or overt actions (showing readiness to have sex) indicating a freely given agreement to have sexual intercourse or sexual contact. For more information select the consent infographic, which you can easily print out. Or read more in the Investigating Sexual Assault Field Guide.

Slide 35: To refine your determination of whether or not consent was given, you can use the VIK test. Was consent Voluntary, Informed, and Knowledgeable?

- Voluntary: one’s own choice and the choice being freely given (*not forced or coerced*).
- Informed: aware and understanding of what was being consented to.
- Knowledgeable: aware and understanding of the circumstances.

Slide 36: Now that we have gotten a better understanding of what consent means, we also need to determine if sexual intercourse or sexual contact happened without consent. Let’s take a closer look at the criminal elements of “without consent.”

Slide 37: The victim is incapable of giving consent due to a mental disorder or being incapacitated. This includes:

- Developmentally disabled (*professional diagnosis*)
- Injury impairing normal thinking (*concussion, can they make an informed decision?*)
- Drug facilitation (*can the person act knowledgeably?*)
- Intoxication (*impaired vs. intoxicated*)
- Medically incapable (*in treatment*)
- Neurological impairments (*Alzheimer’s or dementia*)

Slide 38: Let's take a look at this example of non-consent. Pay close attention and ask yourself, is the female character able to give consent?

Slide 39: Video: **ANIMATION of intoxication**

Slide 40: Was the female's consent voluntary, informed, knowledgeable?

- Yes
- No

Slide 41: No, she was not able to give consent. Ask yourself: Was consent given voluntarily? No, she did not give consent freely. Was informed consent given? No, she was unaware of the sexual act, because she was incapacitated. Was consent given knowledgeably? No, she was unaware of the circumstances.

Slide 42: A victim can also be incapable of giving consent due to being or feeling physically helpless. Let's take a look at this video example.

Slide 43: The survivor's perception may include the suspect's size, physical location of the sexual act, constant pressuring by the suspect, body language of the suspect, or intimidating actions of the suspect. **ANIMATION of feeling helpless.**

Slide 44: The victim is incapable of giving consent due to being overcome by deception, coercion, or surprise. *(The sexual act itself occurs before the victim can make an informed decision consenting to the sexual activity.)*

Slide 45: The victim is incapable of giving consent due to being less than 16 years of age. *(Important! This applies for both sexual intercourse and sexual assault.)*

Slide 46: The victim is incapable of giving consent because the victim is a student of an elementary, middle, junior high, or high school, whether public or nonpublic, and the perpetrator is not a student of an elementary, middle, junior high, or high school and is an employee, contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other authority over the student in a school setting.

Slide 47: The victim is incapable of giving consent because the victim is a witness in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer who is involved with the case in which the victim is a witness or is being investigated.

Slide 48: The victim is incapable of giving consent because the victim is confined or incarcerated in a correctional facility, detention facility, or treatment facility or is on probation/parole. *(It's important to understand that a person does not need to be specifically imprisoned, only that their liberties have been restricted. In this sense, restricted liberty means the person is required to obey the rules of a facility or terms of probation. Failing to do so could result in punishment. As mentioned above, a person under the supervision of authority is deemed unable to voluntarily consent because they could reasonably fear punishment if they refuse sexual activity. In short, a potentially coercive situation exists.)*

Slide 49: The victim is receiving services from a youth care facility. *(Examples could be a children's hospital, group homes, foster homes, or foster care. This element includes anyone in a position of redirecting, correcting, or reporting on the victim's behavior or activity.)*

Slide 50: The victim is admitted to a mental health facility, community-based facility, or residential facility or is receiving community-based services. *(This section can include protected populations in those facilities such as the elderly and those with mental health concerns.)*

Slide 51: The victim is incapable of giving consent due to Aggravated Sexual Intercourse Without Consent. As used in MCA 45-5-508, Aggravated Sexual Intercourse Without Consent, the term Force is defined in MCA 45-5-501, (2)(a)(b) as "the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat." *(Such force alters the victim's decision-making process through fear of harm to themselves or others.)*

Slide 52: If you're still not sure about consent, take a look at this linked video: Tea and Consent.

<https://www.youtube.com/watch?v=pZwvrxVavnQ>

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What does Knowingly mean?

Slide 53: Knowingly or intentionally determines the state of mind of the offender before, during, or after the sexual activity. To be more exact:

A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct.

Slide 54: In the case of sexual assault, an offender will take voluntary actions (such as placing their hands on the victim, physically pressing against the victim, or displacing clothing) to engage in sexual contact. Such actions demonstrate the offender has thought about what to do to engage in sexual conduct and thus acted "knowingly," in both awareness of their own conduct and the likely result of that conduct. Knowingly making sexual contact without consent is a crime.

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Application

Slide 55: Let's review how you can apply your knowledge to an investigation. How do you determine the type of sexual contact? How do you identify if the sexual contact was with or without consent? And what about the offender- did they act knowingly?

During this application, feel free to consult the Sexual Assault checklist, found within the Investigating Sexual Assault Field Guide.

Slide 56: Determine Sexual Assault

Slide 57: Application: Use your knowledge during this simulated scenario. In this scenario, Lisa is sexually assaulted at a bar. The bartender calls 911 and you investigate the incident. Can you help Lisa? If you need help to understand sexual assault, download and print this sexual assault infographic.

Slide 58: Officer: Hi, I'm officer Daniels, I'm with the Great Falls Police Department, nice to meet you.

Lisa: What are you doing here?

Officer: We were called to respond to a situation here at the bar. Do you know anything about that?

Lisa: I don't know what situation you were called to, but I didn't call police.

Officer: The bartender called us, actually. He mentioned a man assaulted you. I want you to know you're safe and I'm here for you. Okay? Can you tell me your name?

Lisa: My name is Lisa Cornfoot.

Officer: Okay, may I call you Lisa?

Lisa: Yes.

Officer: I know you've experienced something difficult, Lisa. Is there anybody that I need to worry about coming to harm you?

Lisa: I don't think so. I don't know the guy who grabbed me, but he's still inside, I think. I'm getting ready to leave here as soon as my friends come out.

Officer: Hold on. You said a man grabbed you? Where did he grab you?

Lisa: My butt. Out of nowhere! I was just having fun with my friends when he comes up and grabs my butt really hard. I didn't even see him coming.

Officer: Okay, he grabbed your butt. Did he hurt you anywhere else?

Lisa: No, he just grabbed my butt and said "Nice ass, lady." Like an animal. Who does that?

Officer: You're safe, Lisa, and I'm here for you. What happened after he grabbed your butt?

Lisa: I was in total shock. Everyone stared at me. He was laughing with his friends. I just cried out and ran. I'm still so embarrassed.

Officer: I can see its upsetting to you. Thank you for sharing with me what happened to you. Let me just briefly repeat what you've told me, to make sure I'm getting everything right. You said you were having fun with your friends tonight at this bar...

Slide 59: Establish Consent: Was Lisa consenting?

- No, Lisa never had the chance to consent because the suspect used the element of surprise.
- Sure! Lisa should have expected advances from men at a bar, even a clap on the butt.
- Yes, she was clearly asking for it with the short dress she was wearing.

Correct Response: Correct. Lisa never had the chance to consent because the suspect used the element of surprise. Click anywhere or press 'y' to continue.

Incorrect Response: no, that's incorrect. Lisa never had the chance to consent because the suspect used the element of surprise. Click anywhere or press 'y' to continue.

Slide 60: What other factors should be considered?

- Alcohol Consumption
- Humiliation, Harassment, or Degradation
- Arousal or Gratification
- Victim was under the age of 16

Correct Response: That's right. You should consider Alcohol Consumption, Humiliation, Harassment, or Degradation, and Arousal or Gratification. Click anywhere or press 'y' to continue.

Incorrect Response: No, that's not right. You should consider Alcohol Consumption, Humiliation, Harassment, or Degradation, and Arousal or Gratification. Click anywhere or press 'y' to continue.

Partially Correct: You've got it almost right. You should consider Alcohol Consumption, Humiliation, Harassment, or Degradation, and Arousal or Gratification. Click anywhere or press 'y' to continue.

Slide 61: To determine if sexual assault occurred in this incident, what evidence should you document?

- Kissing
- Penis to vagina penetration, or any orifice, however slight
- Sexual contact directly or through the clothing, i.e. the butt
- No sexual intercourse took place, so no sexual assault occurred

Correct Response: Correct! You should document the sexual contact through clothing, in this case the butt. Click anywhere or press 'y' to continue.

Incorrect Response: No, that's wrong. You should document the sexual contact through clothing, in this case the butt. Click anywhere or press 'y' to continue.

Slide 62: Determine Sexual Intercourse Without Consent.

Slide 63: Application: Use your knowledge during this simulated scenario. In this scenario, Alyssa, a rape survivor, comes to the police station to report the incident. After she gives her statement, analyze if you can help her. Pay close attention!

If you need help to understand Sexual Intercourse Without Consent, download and print this Sexual Intercourse Without Consent infographic.

Slide 64: Officer: Hello, I'm Officer Buckner, I'm with the Helena Police Department. You can call me Julian, if you'd like. Nice to meet you.

Alyssa: I'm Alyssa.

Officer: I admire your courage for seeking help. I know this will be difficult to talk about. I know the circumstances are intimate and we may talk about sensitive things, but the conversation is not to make you feel bad and I thank you for being willing to talk to me about it. I'd like to start by asking, can you tell me what happened at dinner and how it progressed until you called law enforcement?

Alyssa: Jack had asked me out to dinner last night. He is around my age, 30, and I thought he was nice. We had a few drinks at the restaurant, although I initially didn't want to drink, and I told him that. I just am not good with alcohol. But Jack insisted and just ordered drinks anyway. I didn't want to drink it, but Jack was very persistent and said it would hurt his feelings if I didn't drink with him. I didn't want to be rude, so I went ahead and drank the first glass. Before I could ~~even~~ finish I had another glass in front of me. He made me drink that one as well, although I told him I didn't want to. But I drank it anyway. I could already feel myself getting drunk, so I didn't drink any more.

After dinner I decided Jack and I weren't a good fit, so I wanted to end the date and told him to take me home. Jack got frustrated, but he agreed to drive me home so I got into his car and we began to drive. At some point I lost all sense of direction and didn't recognize where I was. He pulled over behind some abandoned building. He asked me flat out to have sex, but I told him "no." He got angry and told me I owed him that much. All of a sudden, he leaned over and began kissing me. I accepted the kiss but that was it. I pushed him away, but he didn't take no for an answer and said "Just let me do what I want."

Alyssa pauses.

Officer: If you would like to take a break, we can. You are in control of this interview.

Alyssa: No, it's okay. Jack then grabbed my breasts and took off my clothes and had sex with me. Once he was done, he told me to put my clothes back on, then he drove me home.

Officer: Thank you for telling me that. You said he had sex with you. Where did he penetrate you?

Alyssa: He put his penis in my vagina.

Officer: Were you penetrated anywhere else?

Alyssa: No.

Officer: Were you injured? Were you in pain?

Alyssa: No.

Officer: Are you in pain now?

Alyssa: No.

Officer: Thank you for sharing with me what happened to you.

Slide 65: ESTABLISH CONSENT: Was Alyssa consenting? (Mark all that apply)

- A) No, Alyssa used non-verbal expression to indicate her unwillingness to engage in the sexual act. She pushed Jack away, etc.

- B) No, Alyssa used verbal-expressions to indicate her unwillingness to engage in the sexual act. She said “No” multiple times.
- C) Yes, Alyssa did not have any evidence of injury. She should have fought harder.
- D) Yes, there is no indication that Alyssa was not consenting to the sexual act.

Correct Response: Correct! Alyssa did not consent. She used non-verbal and verbal expressions to indicate her unwillingness to engage in sexual intercourse. Click anywhere or press ‘y’ to continue.

Incorrect Response: That’s not correct. Alyssa did not consent. She used non-verbal and verbal expressions to indicate her unwillingness to engage in sexual intercourse. Click anywhere or press ‘y’ to continue.

Partially Correct: You’re almost right. But the correct answer would be A and B. Alyssa did not consent. She used non-verbal and verbal expressions to indicate her unwillingness to engage in sexual intercourse. Click anywhere or press ‘y’ to continue.

Slide 66: ESTABLISH CONSENT: What other factors should be considered? (Mark all that apply)

- A) Alcohol Consumption
- B) Physically helpless, such as isolation of victim or physical location of sexual act
- C) There was more than one perpetrator
- D) Victim was under the age of 16

Correct Response: Yes, you should also consider alcohol consumption and if she was physically helpless. Click anywhere or press ‘y’ to continue.

Incorrect Response: No, you should also consider alcohol consumption and if she was physically helpless. Click anywhere or press ‘y’ to continue.

Partially Correct: You’re almost there. The correct answer should be A and B. You should also consider alcohol consumption and if she was physically helpless. Click anywhere or press ‘y’ to continue.

Slide 67: To determine if sexual intercourse occurred in this incident, what evidence should be documented? (Mark all that apply)

- A) Kissing
- B) Penis to vagina penetration, or any orifice, however slight
- C) Vagina with other body member
- D) No sexual intercourse took place

Correct Response: Correct! You should document that Alyssa was kissed and that penis to vagina penetration occurred. Click anywhere or press ‘y’ to continue.

Incorrect Response: Incorrect! You should document that Alyssa was kissed and that penis to vagina penetration occurred. Click anywhere or press ‘y’ to continue.

Partially Correct: You missed an answer. The correct choices should be A and B. You should document that Alyssa was kissed and that penis to vagina penetration occurred. Click anywhere or press ‘y’ to continue.

Slide 68: Determine Aggravated Sexual Intercourse Without Consent.

Slide 69: Application: In this scenario, Brenda, a rape survivor, is in the hospital. The hospital receptionist calls 911 and you are dispatched to handle the case. Will you be able to help Brenda? Pay close attention!

If you need help to understand Aggravated Sexual Intercourse Without Consent, download and print this Aggravated Sexual Intercourse Without Consent infographic.

Slide 70: Officer: Hi, I'm officer Herring, I'm with the Billings Police Department, nice to meet you.

Brenda: Hi.

Officer sees that Brenda is scared.

Officer: Hey, can you tell me your name?

Brenda: Brenda Kurtz.

Officer: Okay, Ms. Kurtz. May I call you Brenda?

Brenda: yes.

Officer: Brenda, I know I'm a big guy and I can be pretty intimidating. Would you like me to sit down?

Brenda: That would be nice, thank you.

Officer: Okay, that's better. Is this a good spot for you?

Brenda: yes, that's good.

Officer: Okay. I know we're here at the hospital, have you been seen by a nurse or doctor yet?

Brenda: A nurse came in and took my blood pressure earlier.

Officer: Okay, they will be back with you shortly. Are you injured anywhere?

Brenda: I'm hurting in a couple of spots.

Officer: Can you tell me where?

Brenda: My breasts, my thighs, between my legs... He pushed me out of the car and I scraped my elbow and knees, too.

Officer: You said you were injured between your legs, do you mean your vagina?

Brenda (embarrassed): yes.

Officer: Can you tell me if he penetrated your vagina?

Brenda: yes.

Officer: Can you tell me how?

Brenda cries.

Officer: Ok, we can come back to that. You mentioned he pushed you out of the car. Did you know him?

Brenda: Briefly. We've been chatting for a while, but I just met him tonight in-person. We- I feel so stupid.

Officer: Brenda, you're not stupid. Sometimes we don't know how some things can turn out. Can you tell me his name and how did you met him?

Brenda: His name is Peter Knight. We met through a dating app. I didn't even want to be on one. My kids pushed me to put myself out there. I'm 55, for Christ's sake. I shouldn't be dating anymore.

Officer: There is nothing wrong with not wanting to be alone and to look for a relationship. What happened tonight was not your fault. There is nothing you said or did that warranted his actions. Okay? So, you guys matched on a dating app and then you met him in-person. Where did you meet?

Brenda: At this bar. I even brought my friend Linda. We had a great time. Linda thought he was nice too. After about an hour I told her she could go home. Peter and I had a good time! We had a few drinks and chatted about everything. It felt good to be seen again. Then, we went outside to smoke.

Brenda pauses.

Officer: Would you like to take a break?

Brenda: No, I want to get this over with.

Officer: I understand. What happened after you guys smoked?

Brenda: We went for a walk. It was really cold, so he suggested we sit in his truck. After a while we kissed and made out. But then...

Officer pauses, gives her time.

Brenda: He grabbed my arms and leaned into me. I told him "No," but he just ignored me. He grabbed my breasts and pinched so hard I screamed. That really seemed to get him going, cause he got on top of me and pinned me to the seat.

Brenda cries.

Officer: Breathe, Brenda. You're safe now. Breathe.

Brenda breathes and continues: While he was on top of me he pulled down my pants and panties. It hurt, because he was so rough. Then he grabbed my legs and shoved his fingers inside of me. I just froze, I couldn't fight him, he was so much heavier. I just froze and then... he raped me.

Brenda pauses. Officer lets her pause.

Brenda: After he was done with me he pushed me out of the truck and took off. When I got back home I saw all the bruises and saw that I was bleeding, so I came here.

Officer: Where were you bleeding?

Brenda: From my vagina.

Officer: When you mentioned he raped you, did you mean he penetrated your vagina?

Brenda: Yes.

Officer: Can you tell me what he used to penetrate you?

Brenda: His fingers in the beginning, then his penis.

Officer: I'm sorry, Brenda. I know this is hard for you, but I need to ask you if he penetrated you anywhere else?

Brenda: No, just down there.

Officer: Okay, and do you know if he ejaculated?

Brenda: Yes, he did.

Officer: Thank you for telling me this. Brenda. I know this was hard, but I admire your courage. I would really like you to get a medical exam soon, okay? I'm going to check on the nurse and doctor here in a minute.

Slide 71: Establish Consent: Was Brenda consenting? (mark all that apply)

- A) No, since force was used to have sex with Brenda, she was incapable of giving consent.
- B) No, Brenda gave verbal (she said "No") and non-verbal cues (she stated she froze).
- C) Yes, Brenda and Peter were on a date and she willingly sat in his truck.
- D) Yes, Brenda and Peter were making out before the sexual intercourse.

Correct Response: Yes, that's right. Brenda was not consenting since force was used and she gave verbal and non-verbal cues. Click anywhere or press 'y' to continue.

Incorrect Response: No, that's incorrect. Brenda was not consenting since force was used and she gave verbal and non-verbal cues. Click anywhere or press 'y' to continue.

Partially Correct: Not quite. Answers A and B should be correct. Brenda was not consenting since force was used and she gave verbal and non-verbal cues. Click anywhere or press 'y' to continue.

Slide 72: What other factors of force should you consider? (mark all that apply)

- Infliction of injury
- Commission of forceable felony
- Threat of substantial retaliatory action
- Threatened infliction of injury

Correct Response: That's right. You should also consider any infliction of injury and the commission of a forceable felony. Click anywhere or press 'y' to continue.

Incorrect Response: No, that's incorrect. You should also consider any infliction of injury and the commission of a forceable felony. Click anywhere or press 'y' to continue.

Partially Correct: Almost. Answers A and B would be correct. You should also consider any infliction of injury and the commission of a forceable felony. Click anywhere or press 'y' to continue.

Slide 73: To determine if sexual intercourse occurred in this incident, what evidence should you document? (mark all that apply)

- Kissing
- Penis to vagina penetration, or any orifice, however slight
- Vagina with other body member
- No sexual intercourse took place

Correct Response: Correct. You should document the following evidence: Kissing and Penis to vagina penetration. Click anywhere or press 'y' to continue.

Incorrect Response: Incorrect. You should document the following evidence: Kissing and Penis to vagina penetration. Click anywhere or press 'y' to continue.

Partially Correct: You're missing something. Answers A, B, and C should be your choices. You should document the following evidence: Kissing and Penis to vagina penetration. Click anywhere or press 'y' to continue.

Slide 74: Quiz Results

Slide 75: In this course, you have learned about the elements of sexual crimes, the definitions surrounding sexual assault, and how to apply these elements to your investigation.

Slide 76: Thank you for completing this course. Select "Close" to exit.