

# DETERMINE CONSENT



## FORCE

If FORCE is deemed to have been used and meets the statutory element, then consent is deemed to have not been given. The correct statute will then be Aggravated Sexual Intercourse Without Consent, in violation of MCA 45-5-508.

## VERBAL EXPRESSION

Did the survivor verbally express their unwillingness to engage in the sexual act? Remember, a person only has to say "no" in some form once: "no," "stop," "don't," etc.



## NON-VERBAL CONDUCT

Examples of non-verbal conduct are "frozen with fear," crying, "unable to do anything," resistance, fearful of being harmed, retreating to a defensive body posture, lack of non-sexual contact during the act, "had to give in," etc.

## INCAPABLE OF PROVIDING CONSENT

Examples of being incapable of providing consent are developmental disability, injury, drug facilitation, alcohol consumption, medically incapable, neurological impairments, etc.

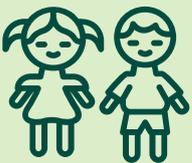


## PHYSICALLY HELPLESS

Consider the survivor's perception of the suspect's size relative to the survivor, physical location of the sexual act, such as isolation, constant pressuring by the suspect, body language of the suspect, more than one suspect, etc.

## DECEPTION, COERCION, SURPRISE

You may learn that the survivor engaged in sexual intercourse under a false pretense. Often, the suspect is a person of some authority over the survivor, such as a supervisor.



## UNDER 16 YEARS OF AGE

If the survivor is under 16 years of age, consent can't legally be given to sexual intercourse or sexual contact.

## CONFINED, INCARCERATED, PROBATION/PAROLE

If the survivor was sexually assaulted during incarceration in a correctional, detention, or treatment facility, or on probation or parole, then by law consent cannot be given.

