

WAC 478-121-150 Sexual assault. Sexual assault includes sexual contact with another person without, or that exceeds, that person's consent.

For the purposes of this subsection, "sexual contact" includes:

(1) Any intentional touching of the intimate parts of another person's clothed or unclothed body, including but not limited to the mouth, neck, buttocks, anus, genitalia, or breast;

(2) Causing another person to touch their own or another's body in the manner described above; or

(3) Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral-genital contact.

For the purposes of this subsection, "consent" means that at the time of and throughout the sexual contact, there are words or conduct that reasonably communicate freely given agreement between or among the parties to engage in the sexual contact. In addition:

(4) Consent cannot be obtained when force or threat is used to gain consent;

(5) Consent cannot be obtained where the respondent knew or reasonably should have known that the other person was incapacitated; or

(6) Consent cannot be given or granted by a person who is under the statutory age of consent in accordance with the criminal code of Washington, chapter 9A.44 RCW, Sex offenses.

A respondent's use of alcohol or drugs is not a valid defense to a charge of sexual assault, and a respondent will be held to the standard of a reasonable sober person in evaluating whether the respondent knew or reasonably should have known that the complainant was incapacitated.

[Statutory Authority: RCW 28B.20.130. WSR 17-15-068, § 478-121-150, filed 7/14/17, effective 8/18/17.]