

WAC 504-26-221 Sexual assault. (1) Sexual assault is an egregious form of sex-based harassment. Sexual assault is defined as follows. (Note: The following sexual assault definitions are updated in the National Incident-Based Reporting System (NIBRS) User Manual which is available online on the Federal Bureau of Investigation (FBI) UCR Technical Specifications website at <https://le.fbi.gov/informational-tools/ucr/>. Where the definitions are updated in the NIBRS User Manual, the updated definitions apply.)

(a) Sex offense. Any sexual act directed against another person, without the consent of the complainant, including instances where the complainant is incapable of giving consent.

(b) Rape (except statutory rape). Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(c) Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(d) Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(e) Statutory rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(2) Consent. Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, and throughout the sexual contact, all parties actively express words or conduct that a reasonable person would conclude demonstrates clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Consent is active; silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity.

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. When an individual makes it clear through words or actions that the individual does not want to engage in sexual contact, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail or extortion to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate their unwillingness to engage in sexual activity; or

(c) A reasonable person would or should know that the other person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid

consent if the individual cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or the individual lacks the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(3) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

[Statutory Authority: RCW 28B.30.150. WSR 24-23-093, s 504-26-221, filed 11/19/24, effective 12/20/24; WSR 21-07-057, § 504-26-221, filed 3/15/21, effective 4/15/21; WSR 17-13-049, § 504-26-221, filed 6/15/17, effective 7/16/17; WSR 14-11-025, § 504-26-221, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-221, filed 11/22/06, effective 12/23/06.]