

Guidelines for Consent in Intimate Relationships

Alan D. Berkowitz

www.alanberkowitz.com

Published in: *Campus Safety and Student Development*
Volume 4(3): 49-50, March/April 2002

One of the essential components of sexual assault prevention and risk reduction programs is the establishment of clear guidelines for consent. An understanding of the conditions necessary for consent will help prevent individuals from perpetrating unwanted sexual intimacy and will also help bystanders identify risky situations that require intervention.

A characteristic of healthy sexual intimacy is that it is mutual, uncoerced, and consenting. Many sexual assaults take place because one of the parties (usually the male if it is a heterosexual couple) thinks that he has consent when he doesn't. Academics and researchers call this "misperception of sexual intent" (see Berkowitz, 1992, for a discussion of relevant research). Establishing clear guidelines for ensuring that consent is present is thus an important goal of sexual assault prevention workshops to ensure that any intimacy that takes place is willing and with the explicit permission of both parties.

Consent can be defined as present if four conditions are met. These conditions are not absolutes, but the more they are present, the greater the chance that both parties are consenting. They can be used as guidelines for achieving mutual, uncoerced consent in intimate relationships and as a basis for discussion and education in workshops. These conditions are derived from a workshop developed by Berkowitz (1994) and explained in a recent book chapter (Berkowitz, 2003).

Guideline #1: Both people are fully conscious. College students usually laugh when they hear this guideline. It is commonly believed that most sexual activity in college takes place during "hook-ups" when both parties have been drinking, although research suggests that this is not the case. Thus many students cannot imagine two completely sober people having sex. In fact, most college students are not as sexually active as is thought, and most sexual activity involves very small quantities of alcohol or none at all. In any case, this guideline suggests that the more alcohol or other drugs are consumed, the greater the impairment of consent. Less alcohol or other drugs means that there is a greater chance that consenting intimacy is possible.

Discussion scenarios can be developed in which varying amounts of alcohol are used to engage students in a thoughtful application of this guideline. This condition does not mean that consent is not possible if alcohol has been consumed. It just means that it is less likely that consent is possible the more that alcohol has been consumed. This guideline forces students to grapple with and confront ambiguity, which is at the heart of managing healthy intimate relationships. In any case, alcohol use is never acceptable as an explanation or defense for sexual assault.

When hearing this guideline, men frequently complain that if women cannot consent when they are drunk, then men should not be held responsible for assault if they are also drunk. One answer

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to this question is that the person who initiates should take responsibility for ensuring that the intimacy is mutual. Since men often are the initiators in sexually intimate situations, alcohol impairment is not a sufficient excuse for not obtaining consent.

Guideline #2: Both people are equally free to act. The ability to consent implies that one is free to choose to not consent or to change one's mind. Thus, if I agree to be intimate without coercion, I must be free to choose other options that are equally possible. There are many factors that limit the ability to act freely that are often not known to a potential perpetrator. One factor is body size. A smaller person may fear bodily injury from a larger (possibly drunk) person, and comply to avoid hurt. A person who has been previously victimized may "freeze." Someone may not have a safe way to get home and be afraid to leave a coercive environment, or they may be in an unfamiliar environment that is difficult to negotiate. Each of these situations may result in passivity or acquiescence that is incorrectly interpreted as consent. Because consent is an active process, not saying "no" does not mean "yes." Threats to someone's reputation can also create a coercive situation (for instance, lying to friends about what happened, threatening to out a closeted gay person, etc.) and can undermine a person's ability to consent.

It is important that men, in particular, learn that many behaviors that we may not define as coercive can have an intimidating effect on a sexual partner. Thus, in some of these situations, the potential perpetrator may not be aware there are coercive forces at play that impair the other person's ability to consent. Lack of awareness of these conditions is not an excuse. If open and free communication is present, then there will no longer be a chance of coercion. It is the responsibility of both parties (but particularly the person who initiates) to create the type of healthy communication that allows for a discussion on intent and the willing participation of both individuals.

Guideline # 3: Both parties have clearly communicated their intent. It is fun to ask students how they know if someone is sexually interested in them. Many of the responses rely on guesswork and inference to determine sexual intent. In fact, sexual intent can only be determined by clear and unambiguous communication about what is desired. This communication may be impaired by cultural and gender differences and other factors. Clear intent can be communicated verbally and non-verbally. Non-action and passivity is not a sign of consent, only an active action

For example, if some degree of activity is present, does that imply consent to further activity? If one person brings a condom, does that signify agreement to intercourse? If one partner puts a condom on the other, does that signify that they are consenting to intercourse? There are inherent ambiguities in any discussion of intent. What is important is that students are aware of the ambiguity and learn to address and clarify it when the situation arises. To minimize confusion many colleges have adopted policies requiring clear verbal consent, which may be the best way to ensure that non-verbal behaviors are not misunderstood.

Well-developed scenarios that contain a certain amount of ambiguity about intent can be used to discuss and clarify this guideline. If there is time for a longer discussion, a scenario can address cross-cultural issues in communication by portraying individuals from a different culture or ethnic background who have culturally different ways of behaving and communicating intent.

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Guideline #4: Both persons are positive sincere in their desires. Honesty is the basis of a healthy relationship. Insincerity makes it impossible for the other person to respond with integrity and clarity. For example, saying things you don't mean to "get sex" undermines the possibility of freely consenting. When one person has a "hidden agenda" or is not honest, the other person is not able to act freely and may feel taken advantage of.

These four guidelines can be applied to any situation involving sexual activity that is mutual between two people. For example, are decisions about where to go out to dinner or what movie to see made with the full and equal participation of both parties? If I want to hold someone's hand, how do I know if it is mutual? Issues of consent extend beyond the issue of having sex. On some campus communities, or with younger audiences, it may be more effective to discuss consent in terms of these larger relationship issues.

Good sex and regretted sex. Two people can consent to be sexually intimate and feel bad about it or regret it afterwards. This is often called "regretted sex." It is not sexual assault, because both individuals consented, but it is not healthy sex, because one or both individuals feel guilty, uneasy, or unhappy about what happened afterwards. Sexual assault prevention typically focuses on ending unwanted sex, but a larger discussion of healthy intimacy can include discussions on the differences between "good" and "regretted" sex.

Scenarios that portray issues of consent can be integrated into interactive theatre presentations, or as part of a sexual assault prevention/education workshop that also addresses other issues. Finally, it can be the basis of a whole workshop or presentation. A discussion of consent is also an excellent way to portray and debunk rape myths about dress, intent, and provocation.

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Alan David Berkowitz is the Editor of The Report on Social Norms and is an independent consultant who helps colleges, universities, health departments, and communities design programs that address health and social justice issues. He is well known for his scholarship and innovative programming and is the recipient of five national awards.

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