



Sexuality, Consent and Its Complexities

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OBJECTIVES

- To learn and understand the principles of consent
- Learn how to determine consent
- Develop an understanding of capacity
- Laws about consent in Pennsylvania
- Assessments and their use
- Learn how to develop sexuality guidelines that are responsible in efforts to protect the rights of people, “cause no harm”, and provide safety for all.

ASSUMPTIONS

- We are all sexual beings.
- All people have sexual feelings, attitudes, and have the right to engage in sexual behavior.
- Individuals with Intellectual Disabilities and Autism with other co-occurring disorders have a right to sexual expression like any other human being.

BELIEF SYSTEM

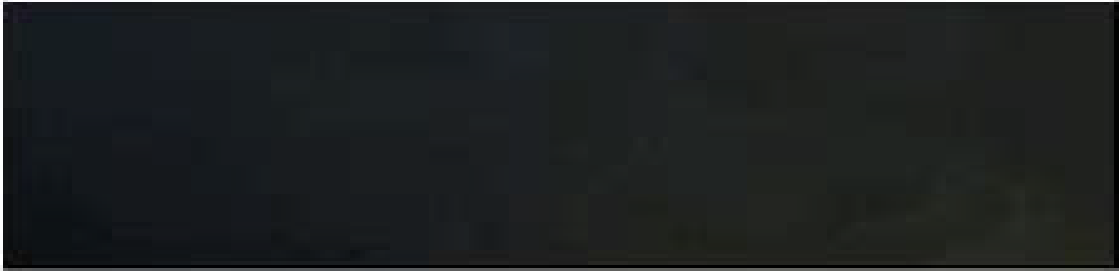
UNITED STATES SURGEON GENERAL'S CALL TO ACTION in 2001:

“We must understand that sexuality encompasses more than sexual behavior, that the many aspects of sexuality include not only the physical, but the mental and spiritual as well, and that sexuality is a core component of personality.”

(David Satcher, M.D., Ph.D., 2001)

Consent

- Under Pennsylvania law, sexual contact with an individual who has a “mental disability” that renders him or her “incapable of consent” constitutes a felony, regardless of whether force was used (18 Pa.C.S.A, 3121(a)(5), 3123(a)(5), 3125(a)(6), 3126(a)(6))
- It is critical to remember that a diagnosis of ID, by itself, does not automatically mean that a person lacks capacity to consent to sexual activity.
- This presumption that a person with ID who engages in sexual activity is a victim would essentially nullify the sexual rights of people with ID



Silence isn't golden and it
surely doesn't mean consent,
so start practicing the art of
communication.

T. D. Jakes

PICTUREQUOTES.COM



PICTUREQUOTES

SEXUALITY AND CONSENT

- The person demonstrates an awareness of the nature of the sexual act and demonstrates the ability to make a choice to engage in or abstain from the type of sexual act.
- The person demonstrates an understanding of how to prevent unwanted pregnancies and sexually transmitted infections or diseases.
- The person demonstrates an understanding of the need to restrict sexual behavior to certain times and places.



SEXUALITY AND CONSENT

- The person demonstrates an understanding that certain sexual behaviors are illegal in this state.
- Demonstrates the ability to identify harmful situations and to avoid being exploited and harmed.

INFORMED CONSENT

Three conditions must be met for consent to be informed

1. **Capacity:** The Individual is able to make rational decisions
2. **Comprehension:** The individual is given adequate information and understands the information sufficiently to make a an informed decision
3. **Voluntariness:** The individual has given consent freely (without Coercion)



INFORMED CONSENT

In the United States:

Adults are considered competent to provide informed consent unless it has been legally determined that they are not capable of doing so. If unsure, a shared decision making process is recommended with the individual's parents/guardians, other caregivers and clinicians (Fisher, 2003; Knapp & VaneCreek, 2003)

[This Photo](#) by Unknown Au



INFORMED CONSENT

When the individual is a minor or person assessed not legally capable of giving consent, the person is provided with an explanation, seek the individual's assent (agreement) and obtain permission from a legally authorized person.

(Fisher, 2003; Knapp & VandeCreek, 2003)



CAPACITY

“In practice, an assessment of capacity will usually include cognitive assessment/s augmented by clinical interview, and information from secondary sources, such as previous reports and carers. A multi-element assessment approach is recommended, because no single method will yield sufficient information to allow accurate formulations. Although a cognitive assessment will provide important overarching information, it is a general measure of a person’s capacity for thinking and problem solving. Assessing a person’s capacity to make informed decisions around a specific issue will require ‘drilling down’ using clinical interview and, where available, content specific tests (e.g., risk assessment tests).” <https://www.psychology.org.au/inpsych/2015/august/>

CAPACITY

Key questions for assessing the capacity to make a specific decision might include whether the person

- Understands information about the decision
- Is making the decision voluntarily without duress
- Normally makes decisions of this type
- Understands the potential benefits and risks in making the decision

CAPACITY

- Has an appreciation of the impact on others in making the decision;
- Has had sufficient time to consider or weigh up the decision
- Is aware of where to go for more information, or about relevant complaint processes.



Capacity

Capacity can change at any given time for many different reasons:

- Mental health symptoms increase
- Grief and Loss issues
- Trauma that can change people's view of the world
- Stress of any kind
- Medical issues that arise (i.e. experiencing chronic pain)
- Other occurrences such as drug/alcohol consumption or active addictions

ASSESSING A PERSON'S CAPACITY – PCAR, 2017

Does the person understand the nature of the sexual contact?

- What is their knowledge about sexual activity in general?
- What is their knowledge about the specific type of sexual activity in which they engaged?
- Has the person had access to sex education?
- Does the person have support – family, friends, advocates, providers – with whom the person can discuss issues of sexuality?

ASSESSING A PERSON'S CAPACITY – PCAR, 2017

Does the person understand and are they capable of exercising the right to consent to or refuse the sexual activity?

- What is their ability to understand the facts and choices involved in the decision?
- Do they understand that they can say “no” to the sexual activity?
- What is their ability to weigh the consequences of the choices and understand how they may affect them?
- Are they capable of recognizing and reporting unwanted sexual advances or abuse?

Things to Remember

"No" is a
complete sentence.
It does not require
justification
or explanation.

ASSESSING A PERSON'S CAPACITY – PCAR, 2017

Is the person able to effectively communicate their decision to consent or refuse to consent to the sexual activity?

NOTE: [Remember that communication for people with ID can take many forms other than verbal communication.]

[One should not discount a person's capacity to consent to sexual activity because they do not communicate verbally]

Is the person familiar with the possible risks and consequences of the activity?

- Do they know about safe sex practices, such as how to avoid pregnancy and sexually-transmitted diseases?
- Do they understand the consequences of pregnancy and child bearing?

What is the context in which the sexual activity occurred?

- Do the circumstances suggest that coercion was involved? (e.g. were there threats to the individual or family members)
- Was it a situation in which there was undue pressure or an imbalance of power? [e.g. family member, staff, other person that holds authority]

WHO SHOULD ASSESS and WHY?

- Licensed Clinicians that have experience with people who have Intellectual Disabilities, Autism and other co-occurring disorders.
- A Master's level Clinician who works under the supervision of a Licensed Clinician who has taken at least one assessment class and human development/sexuality class/training/continuing education and has at least one year experience working with people with ID/A/MH.

WHO SHOULD ASSESS AND WHY?

- The Assessor must be comfortable with their own sexuality and should have Sexuality Guidelines that are formulated and followed.



WHO SHOULD ASSESS and WHY?

- Be familiar with the PA Department of Human Services, Office of Developmental Programs
2018 Bulletin 00-18-01 Guidelines Concerning Sexual Health, Personal Relationships, and Sexuality



CAREGIVERS NEED SUPPORT

- Guidelines are needed
- Training must occur on the guidelines
- Updates need to occur as society and culture changes
- Values must be differentiated from rights
- Resources for families are needed

LIABILITY AND RESPONSIBILITY

- It is important that all people understand the “cause no harm” ethical standard.
- It is important to know that if this knowledge is known regarding consent, capacity, informed consent, etc. and steps are not taken to follow responsibly ethical standards of practice harm can occur.
- It is important to know that a responsible manor means ensuring the rights of the person and ensuring the rights of others are taken into consideration.

SEXUALITY GUIDELINES

These are not easy decisions therefore, creating guidelines is important as a framework.

All agencies providing services should have Sexuality Guidelines that are person centered and are guided by Best Practices in the field of human sexuality.

SEXUALITY GUIDELINES

What should be included in sexuality guidelines?

- Purpose
- Description and Belief held by the agency/support circle
- Privacy
- Personal Sexual Expression
- Sexually Explicit Materials
- Inappropriate Sexual Expression
- Determination of Consent
- Consent Assessment
- Sexual Activity Between Consenting Adults
- Preventing Sexually Transmitted Infections

SEXUALITY GUIDELINES

- Request for Sexuality Information
- Sexuality Education
- Relationships and Dating
- Marriage
- Reproductive Health and Birth Control
- Pregnancy
- Parenting
- Sexual Expression Between Staff and Individuals
- Sexual Abuse
- Staff Training

SEXUALITY GUIDELINES

Needed updates:

Educational Resources and Links

Gender Inclusive Language

Applications and Internet Usage Pros and Cons

Physical Disabilities

Sexual Dysfunction

ASSESSMENTS

- There must be a purpose for any assessment
- Use the appropriate assessment for what is being measured
- There should never be only one assessment done regarding any issue
- One assessment does not tell the entire story
- “Don’t guess ... assess!” – Robin VanEerden,

VISCAT

- The Verbal Informed Sexual Consent Assessment Tool
- Measures the ability to consent
- Measures Sexual Knowledge to consent
- Developed by William J. Taverner, MA and Christopher DeMarco, Ph.D.

SSKAAT-R

The Socio-Sexual Knowledge and Attitudes Assessment Tool-Revised (SSKAAT-R) is a valuable tool for educators, counselors and social workers—both as an assessment and as an educational tool—for sex education issues. It is useful with individuals with Intellectual Disabilities, those whose language is limited, and with general populations. Suitable for ages 15 through adult developed by GRIFFITHS AND LUNSKY

CASE STUDIES





REFERENCES

Adults with Intellectual Disabilities Capacity to Consent to Sexual Activity, Pennsylvania Coalition Against Rape, 2017

Supporting Individuals' Right to Sexual Knowledge, 2015

Socio-Sexual Knowledge and Attitudes Assessment Tool – Revised (SSKAAT-R) (Griffiths & Lunsy, 2003)

<http://www.stoeltingco.com/stoelting/productlist>

Bulletin 00-18-01 PA Department of Human Services, Office of Developmental Disabilities, 2018

REFERENCES

Verbal Informed Sexual Consent Assessment Tool (VISCAT) (DeMarco & Taverner, 2006)

Taverner@ptd.net

Merakey Sexuality Guidelines (Berry, Potter, Borusiewicz, Kittell and VanEerden, 2007)

<https://www.psychology.org.au/inpsych/2015/august/>

<http://www.paproviders.org/wp-content/uploads/2018/04/00-18-01-Attachment-1-Sexual-Health-Personal-Relationships-and-Sexuality>