



CONSENSUAL SEX AND AGE OF SEXUAL CONSENT

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Most states, including Colorado, do not define the term "age of sexual consent." States' statutes, including Colorado, do say that, based on age, certain individuals do not have the legal capacity to consent to having sex. The age of consent is then determined by what is *not* considered a criminal act. The age of consent in Colorado is 17, with exceptions for minors less than 17 years old under certain circumstances. This *Issue Brief* discusses consensual sex and the age of sexual consent in Colorado and other states, including a history of consensual sex and the age of sexual consent in Colorado.

Colorado — Consensual Sex and Age of Sexual Consent

Consensual sex. Two Colorado laws criminalize sex between adults and minors, and between minors regardless of consent. A person commits the crime of sexual assault if he or she is 10 years older than a minor who is 15 or 16 years old.¹ A person convicted of this crime is guilty of class 1 misdemeanor sexual assault. Sexual assault is considered an "extraordinary risk crime," which allows for a more severe sentence. The enhanced sentence for this extraordinary risk crime ranges from six to 24 months in jail or a fine of \$500 to \$5,000 or both.

A person commits class 4 felony sexual assault if he or she is at least 4 years older than a minor who is 14 years old or younger.² This extraordinary risk crime has a sentence range of two to eight years in prison or a \$2,000 to \$500,000 fine or both.

It is important to note that a nonconsensual sexual act involving extenuating circumstances such as force, kidnaping, or threats of retaliation is a crime. These acts are prosecutable under Colorado law and have nothing to do with the age of sexual consent or consensual sex.

Age of sexual consent. State law does not criminalize consensual sex when both parties are 17 years of age or older. Further, the law does not criminalize consensual sex with a minor less than 17 years old under certain circumstances. It is not a crime for a 15- or 16-year-old to have consensual sex with someone who is less than 10 years older. It is also not a crime for a minor who is 14 years old or younger to have consensual sex with another person who is less than four years older.

¹ Section 18-3-402 (1) (e), C.R.S.

² Section 18-3-402 (1) (d), C.R.S.

Table I illustrates the possible crimes with regard to consensual sex involving a minor and how they differ depending on the parties' ages. The table further illustrates where the law does not criminalize consensual sex between minors and between minors and adults.

Table I
Consensual Sex — Criminal Penalty

		Age of Party							
		10	11	12	13	14	15	16	17
	10	NC	NC	NC	NC	4F	4F	4F	4F
	11	NC	NC	NC	NC	NC	4F	4F	4F
	12	NC	NC	NC	NC	NC	NC	4F	4F
Age of Party	13	NC	NC	NC	NC	NC	NC	NC	4F
	14	4F	NC	NC	NC	NC	NC	NC	NC
	15	4F	4F	NC	NC	NC	NC	NC	NC
	16	4F	4F	4F	NC	NC	NC	NC	NC
	17	4F	4F	4F	4F	NC	NC	NC	NC
	18	4F	4F	4F	4F	4F	NC	NC	NC
	19	4F	4F	4F	4F	4F	NC	NC	NC
	20	4F	4F	4F	4F	4F	NC	NC	NC
	21	4F	4F	4F	4F	4F	NC	NC	NC
	22	4F	4F	4F	4F	4F	NC	NC	NC
23	4F	4F	4F	4F	4F	NC	NC	NC	
24	4F	4F	4F	4F	4F	NC	NC	NC	
25	4F	4F	4F	4F	4F	1M	NC	NC	
26	4F	4F	4F	4F	4F	1M	1M	NC	

Code: NC=No Crime; 4F=Class 4 Felony; and 1M=Class 1 Misdemeanor.

State Comparison

Like Colorado, the age of consent is not always defined in other states' statutes, and the age of consent depends on the age difference between partners. The legal age of sexual consent across the country ranges from 14 to 18 years of age. The average age of consent is 16.5 years. In Wyoming, it is not a crime for an individual who is less than four years older than a minor who is under the age of 16 to have consensual sex. In Utah, an individual who is 16 or 17 years old may consent to having sex with an individual who is less than ten years older.

Consensual Sex and Age of Sexual Consent in Colorado — An Historical Perspective

Prior to 1975, consensual sex between a female aged 15 or younger and an offender at least two years older was classified as rape and was a class 4 felony. Therefore, the age of consent was 16.

In 1975, the law was rewritten. Sexual assault in the second degree involved sexual penetration or intrusion of a victim aged 14 or younger and an offender at least four years older than the victim, regardless of consent. Between 1975 and 2000, the age of consent was 15 years of age.

The sexual assault statutes were modified again in 2000. In addition to the law related to those 14 and under, the law made it a crime to have sex with a person who is a 15- or 16-year-old if the actor is at least 10 years older, regardless of consent. Therefore, the age of consent in Colorado is 17.