Conceptual Organization of Sexual Assault Laws, Typical Defenses, and Investigative Strategies

Sexual penetration versus sexual contact

Force, threat or fear is present in the situation

Situation in which no force is required
Sexual assault offenses based on the presence of force, threat or fear

Sexual penetration versus sexual contact

Presence of force, threat, or fear

Assailant is an acquaintance or intimate of the victim

Defense is most likely to claim that the victim consented to the sexual activity in question

Requires evidence to establish that force, threat, or fear was present in the situation

Assailant is a stranger to the victim

Defense is most likely to claim that the victim mistakenly identified the suspect

In addition to proving force, threat or fear, the evidence must establish the identity of the suspect and the appropriateness of police procedures

Successfully Investigating Acquaintance Sexual Assault: A National Training Manual for Law Enforcement
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Situations in which no force is required to establish a sexual assault offense

Sexual penetration versus sexual contact

Vicinity in which no force is required

Victim is Unconscious

Defense will most likely (1) deny the victim’s lack of consciousness and (2) raise a traditional consent defense

Requires evidence to document the victim’s state at the time of the assault

Victim is Incapacitated

Defense will most likely (1) deny the victim’s incapacity and (2) raise a traditional consent defense

Requires evidence to document the victim’s state at the time of the assault

Victim has a Disability Affecting Cognition or Communication

Defense will most likely (1) contest the victim’s inability to give consent and (2) raise a traditional consent defense

Requires evidence to document the victim’s level of disability

Statutory Rape

(Based on Age/Position)

Defense will likely (1) contest the victim’s age OR (2) assert that the suspect made a reasonable mistake of fact in judging the victim’s age

Requires evidence to (1) establish the victim’s age or (2) prove that the suspect knew or should have known the victim’s age