

Change 16-02 (Competent Person Defined In Light of Pease)

Add the following definitions to Note 7 to 3-45-13, Note 8 to 3-45-14, Note 6 to 3-45-15 and Note 7 to 3-45-16 following the paragraph that begins “Consent means a freely . . .”:

A “competent person” is a person who possesses the physical and mental ability to consent.

An “incompetent person” is a person who lacks either the mental or physical ability to consent because he or she is: (1) asleep or unconscious; (2) impaired by a drug, intoxicant or other similar substance; or (3) suffering from a mental disease or defect or a physical disability.

To be able to freely make an agreement, a person must first possess the cognitive ability to appreciate the nature of the conduct in question and then possess the mental and physical ability to make and to communicate a decision regarding that conduct to the other person. However, if the person has the ability to appreciate the conduct and communicate lack of consent, but does not do so out of fear or because of some other external influence counteracting voluntariness, the sexual conduct is not voluntary.

A person is “incapable of consenting” when (he) (she) lacks the cognitive ability to appreciate the sexual conduct in question or the physical or mental ability to make or to communicate a decision about whether (he) (she) agrees to the conduct.