

Consent for Groups

by



national coalition for sexual freedom inc.

About the NCSF

- Founded in 1997
 - New York based grassroots movement to fight for sexual freedom & privacy rights for all adults who engage in safe, sane and consensual behavior.
- Today
 - More than 50 Coalition Partners
 - Alliances with
 - Free Speech Coalition
 - The ACLU
 - American Association of Sex Educators Councilors and Therapists
 - Society for the Scientific Study of Sexuality
 - National Gay and Lesbian Task Force
 - Gay and Lesbian Activist Alliance and more

Key Accomplishments

- Pioneered Incident Response Program
 - Initially as a resource for people being discriminated against for being kinky; expanded to address consent violation allegations
- Consent Counts project
 - Nationwide, multifaceted education and activism program to impact public and court views of BDSM; includes interactive workshops on informed consent.
- DSM-5 Revision Project
 - depathologize BDSM in the American Psychiatric Associations' Diagnostic and Statistical Manual
- American Law Institute project
 - Working to change the Model Penal Code on sexual assault and related offenses to decriminalize BDSM activities.

Programs & Resources

- Kink Aware Professionals Directory
 - psychotherapeutic, medical, legal and other professionals who are knowledgeable & sensitive to diverse expressions of sexuality
- Incident Reporting & Response
 - For those who engage in BDSM, fetishes or non-monogamy and
 - Are being persecuted or discriminated against because of it
 - Are being denied public services because of it
 - Your group or business needs help with outreach to local officials
 - You or your group needs help with a consent violation or sexual assault

Programs & Resources

(cont.)

- Consent Counts
 - **Community Assistance Guide for Groups**
 - Trauma Pamphlet
 - Sample Consent
 - Policy Liability Issues for Groups or Events
 - Dealing with Consent
 - Drawing the Line

Resources for you; (* Denotes Recently Added)

*American Law Institute (ALI) Project

Introduction

Letter to ALI from NCSF

Discuss on FeLife

Sign the Petition

Consent and BDSM: The State of the Law - BDSM activity, even where clearly consensual, can be and frequently is prosecuted under state criminal laws dealing with assault, aggravated assault, sexual assault or sexual abuse.

Consent Counts Statement

Consent Counts Statement

Consent Counts Statement Summary

Power Exchange Statement

Power Exchange Statement

Consent Counts Mission

Mission Statement

Next Chapter for Consent Counts - Press Release

Consent Counts Legal Issues

CLE Overview and Outline

Legal Cases and Law Review Articles Dealing with Consent

State by State Assault Laws

"Consent Counts or Does It?" by Judy Guerin

Community Assistance Guide for Groups

Trauma Pamphlet - Trauma is an injury caused by an outside, usually violent event or experience.

Sample Consent Policy - Sample Consent Policy for groups involved in BDSM - Leather Fetish, swinging, and polyamory lifestyles

Liability Issues for Groups or Events - Some of the ways a criminal or civil court case can impact your group when a consent violation happens at your play party or event.

Dealing with Consent Incidents - Guide for groups in dealing with consent incidents

Drawing the Line - Some things your group or club can consider when trying to determine if a member should be disciplined or banned

Community Assistance Guides for Individuals

Consent and BDSM: The State of the Law - BDSM activity, even where clearly consensual, can be and frequently is prosecuted under state criminal laws dealing with assault, aggravated assault, sexual assault or sexual abuse.

Is This Assault - Guide for determining whether a consent violation can legally be considered assault

Dealing with Assault - understand your rights and options when it comes to consent violations.

Kink Aware Victim Services - Victim Services associated with the National Coalition of Anti-Violence Projects that are kink-aware

BDSM vs Assault Wallet Card - Text for a wallet-sized card that explains consent on the context of BDSM

In the Aftermath - A guide for victims of sexual assault and/or intimate partner violence in the BDSM community

When The Levee Breaks - A guide to dealing with and avoiding arrest and prosecution in BDSM scenes.

Consent Counts FAQ

Surveys on Consent

Consent Violations Survey - NCSF's survey launched in 2014 to gather details about consent violations in a BDSM context

Consent Counts Survey - NCSF Survey to gauge respondents' views on consent in a BDSM context.

Community Resources

Consent Counts on FeLife

2016 Election Questions

Action Alert Local Candidates

Download Candidate Cover Letter

Download Candidate Questions

Letter sent to Presidential Candidates by the NCSF

Trauma

- Trauma is injury inflicted by a physically, mentally, emotionally, psychologically, and/or spiritually violent event or experience.
- Trauma disrupts one's sense of safety, security, and wellbeing and may distort one's belief and reality.
- Everyone perceives experiences differently
- People react to trauma in many varied ways

Short Term Reactions

- Shock
- Denial: “It never happened.” “I am overreacting.”
- Self-blame or guilt: “If I had not____, they would not have____”
- Fear of judgment or retaliation or reoccurrence
- Avoidance
- Laughing
- Numbness
- Freezing
- Doubt
- Memory loss
- Shaking
- Anger
- Fear
- Revenge
- Shame or embarrassment or humiliation
- Crying or yelling or screaming
- Feelings of unreality or detachment from feelings

Long Term Reactions

- Not feeling safe, even when with friends or at home
- Isolation or withdrawal
- Decreased concentration
- Change in sleeping habits
- Anxiety or panic attacks (increased startled response)
- Feelings of helplessness
- Changes in appetite or eating habits
- Changes in sexual behaviors
- Difficulty with trust or uncharacteristically over trusting
- Flashbacks
- Engaging in high risk behaviors
- Increased use of alcohol, drugs or other escapes and distractions
- Suicidal thoughts or self-harming behaviors
- Increased volatile and aggressive verbal or physical behavior

PTSD

To be diagnosed with PTSD, an adult must have all of the following for at least 1 month: *Source: National Institute for Mental Health*

- At least one re-experiencing symptom
 - e.g. flashbacks or nightmares
- At least one avoidance symptom
 - e.g. Staying away from places, events, or objects that are reminders of the traumatic experience; avoiding thoughts or feelings related to the traumatic event
- At least two arousal and reactivity symptoms
 - e.g. easily startled, feeling tense or “on edge”, difficulty sleeping, angry outbursts
- At least two cognition and mood symptoms
 - e.g. Trouble remembering key features of the traumatic event, negative thoughts about oneself or the world, distorted feelings like guilt or blame, loss of interest in enjoyable activities.

Traumatic Bonding

- **Bonding** is a natural occurrence that grows over time; strengthened by doing things together, participating in major life events and experiencing good and bad times together.
- **Trauma Bonding** occurs when ongoing abuse includes intermittent cycles of reward and punishment to create powerful emotional bonds.

Liability Issues

NCSF has seen a dramatic rise in kinky people...

- reporting assault and sexual assault to the police
- suing for medical expenses and libel in civil court

Criminal Complaints

- Witnesses may be subpoenaed in criminal trials
- The Board of Directors, Dungeon Monitors and any other staff member may be...
 - interviewed by a detective as part of an investigation.
 - called into court as a witness to the activity
 - have to testify as to your group's consent policy and rules
 - have to discuss how you dealt with the incident when it was reported.
- You could lose your venue.

Civil Lawsuits

- If you are aware that someone has committed a consent violation that resulted in physical injury, your group can be sued by someone who is injured at your event by that person.
- General Liability (CGL) policies and D&O insurance may not cover a civil lawsuit if the organization was aware that a member or attendee had committed a consent violation that resulted in injury, yet allowed that person to remain a member or attendee
- If your group is aware that a Board Member, Dungeon Monitor or staff member has violated someone's consent, and are allowed to remain in a position of authority, the group and Board may be held civilly liable if that person injures someone whom they meet through the group.
- The Volunteer Protection Act does not prohibit lawsuits against volunteers nor does it provide any protection for nonprofits.

Let's Talk About Consent

- Legally, you cannot consent to assault
- Technically, BDSM activities are assault
- NCSF is working to decriminalize BDSM that does not inflict serious bodily injury

What is Consent?

An informed, voluntary agreement
by two or more people
to engage in a particular BDSM activity
or to enter into a BDSM, D/s or
M/s relationship.

Ethical vs. Legal

As an ethical principle:

- Consent is a mutually informed agreement
 - Each participant is equally responsible to reach as complete an understanding as possible of the desires and limits of the other participants.
 - Ethical responsibility is equally shared between tops & bottoms

As a legal principle:

- Consent is much narrower & more specific
 - Legal issues arise when harm or injury results from a BDSM act, and the person who committed the act denies criminal liability because consent was granted.
 - In criminal law, an injured bottom is viewed as the “victim,” not a party that commits a crime.
 - legal responsibilities and obligations fall solely on tops

Ability to Consent

- Only adults can legally give consent.
- A person must have sufficient mental capacity to give consent: ethically & legally
 - Each person is legally obligated to be sure their BDSM partners possess that capacity.
- Legal consent cannot be granted by someone impaired by alcohol, recreational drugs or prescription medicine

Consent Policy

Groups are ethically responsible for creating a culture that values consent. That responsibility includes:

- Regularly providing education about consent to help prevent incidents at your events.
- Having clearly marked delegates available in case there is a consent incident.
- Establish a consent policy for events and parties

Sample Policy

<https://www.ncsfreedom.org/89-uncategorised/642-community-assistance-guide-for-groups>

Community Assistance Guide for Groups

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Dealing with an Incident

1. Is medical attention needed?
2. Does the person want to file a police report?

In the absence of 1 & 2...

3. Have 2 staff members speak with reporter, anyone directly involved and eye witnesses.
4. Record names & contact info of those parties
5. Ask each person “what happened” & “what would you like to happen now”

Dealing with an Incident_(cont.)

6. Listen for consistencies or discrepancies in these areas:

- What did they negotiate?
- What limits were communicated?
- Did the bottom safeword or withdraw consent?
- Is there anything that might negate consent such as impaired thinking or a mental health issue?
- What is the history of interaction between the participants?
- How much experience do the parties have with the activities involved?
- Was there an injury caused that exceeded negotiated limits?

7. Don't bring everyone involved together to discuss the incident.

8. Empower 1 or more people with immediate decision making authority

- Issuing warnings
- Asking someone to leave
- Applying sanctions

Sanctions

- Ongoing safety and consent education is your best friend.
- Immediate enforcement of your policy when rules are broken is best.
- Rules/policy should apply universally – including volunteers and staff.

Considerations

- Seriousness – was medical attention required
- Intent –
 - Deliberate?
 - Coercive?
 - Accidental?
 - Misunderstanding?
 - Lack of skill?
- Multiple accusations – is there a pattern
- Is there a police report or restraining order
- Confession – genuine or excuse-laden

Types of Sanctions

- Education – accidents can be teachable moments
- Warning System
 - Strike system for minor incidents
 - Add to a watch list
 - Ask them to leave the event
 - Remove presenting privileges
 - Temporarily suspend attendance privileges
- Banning – permanent or long term
 - State that your group/event reserves the right to refuse membership/attendance for any reason.
 - Don't give a specific reason - "We're sorry but we don't feel you're a good fit."
 - Don't name a person or allegations of criminal acts as factual events. Ok to say, "It's been reported to us that you've committed a consent violation that goes against our Consent Policy."
 - At a public event like a munch, you can ask someone to leave the area but the owner may allow that person to stay on the premises.

Use the NCSF

Their website is rich with resources

ncsfreedom.org

When in doubt, email Susan

susan@ncsfreedom.org