



## Consent Counts Project - Consent Statement Summary

### **NCSF seeks to decriminalize consensual BDSM that does not result in the infliction of serious bodily injury.**

This statement reflects both the recent extensive study by NCSF of the state of the law in the U.S. and the 5000+ results of NCSF's Consent Counts Survey. Its objective is twofold: increase the understanding of BDSM as well as the importance of informed consent in BDSM practices and relationships.

Consent is an informed, voluntary agreement by two or more people to engage in a particular BDSM activity. An agreement to enter into a BDSM, D/s or M/s relationship may also constitute consent to specified BDSM activities unless that consent is withdrawn at the time of engaging in such activity.

**Consent as an ethical principle:** BDSM activities are based on the ethical principle that what we do is done by informed agreement amongst all of the participants, which means all the participants communicate what they agree to do and not to do, as well as the nature of the relationship that they agree to enter.

Consent is agreement in advance to something that hasn't happened yet. It is impossible to eliminate the risk that the activity or relationship may turn out differently than everyone involved anticipated. Though it may not be possible to entirely avoid the risks of BDSM, that doesn't alter either the ethical or legal responsibility to ensure that BDSM activities and relationships are consensual.

**Consent as a legal principle:** The legal issue arises when someone is harmed or injured by a BDSM act, and the person who committed that act denies criminal liability on the ground that the other person gave prior consent to the act in question.

The extent to which such consent—even if clearly given—is a defense to criminal prosecution, has been greatly limited by U.S. courts. The courts have found that minor harm, such as redness from dripping hot wax or the pain of nipple clamps, is enough to be “serious bodily injury.” However, the Model Penal Code, which has been adopted in some form by many states, defines serious bodily injury as harm “which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.”

### **Consent is:**

- 1. Consent is choice.** The people giving consent to engage in a BDSM scene or enter into a power exchange relationship must do so voluntarily, without being subjected to threats, fraud, coercion or deceit.
- 2. Consent is informed.** Everyone involved must know enough so that the consent is given on an informed basis to the BDSM activities that are planned or to the power exchange relationship.
- 3. Consent is given by an adult with a sound mind.** BDSM takes place among consenting adults. A person must have sufficient mental capacity to give consent, and each person has a legal obligation to make sure that this is the case with all of their partners. In order to consent you must be in a clearheaded state of mind, not impaired by alcohol, prescription medicine or recreational drugs.
- 4. Consent is given within limits.** Consent is not a blank check. Consent must be clear as to what BDSM activities and/or what type of power exchange relationship is being agreed to
- 5. Consent is revocable.** Anyone can revoke consent to anything at any time during the activity. If a pre-negotiated and agreed upon safe word or safe sign—or any other pre-negotiated expression of a withdrawal of consent—is ignored, consent has been violated.
- 6. Consent is communication.** It is ethically and legally important in any scene that there should be a mutually understood means of communication between the participants, whether it's plain speech, safe word or safe sign.
- 7. Consent is not a defense for causing serious injury.** When “serious bodily injury” occurs during a scene, it is possible that criminal prosecution for assault will take place even when consent was clearly and validly given for the BDSM activity that caused the injury. Refer to “Consent as a legal principle” above. [www.ncsfreedom.org](http://www.ncsfreedom.org)