

**CAPACITY TO CONSENT/LACKS CAPACITY TO CONSENT DEFINITIONS:
PROVISIONS AND CITATIONS IN ADULT PROTECTIVE SERVICES LAWS, BY STATE**

(Laws current as of 12/31/06)

Prepared by Lori Stiegel and Ellen Klem of the American Bar Association Commission on Law and Aging¹ for the National Center on Elder Abuse²
Copyright © American Bar Association Commission on Law and Aging (2007)
Research conducted on Westlaw compliments of West Group

CAUTION: Read the explanation of this chart before relying upon the chart. You can find the explanation online at <http://www.abanet.org/aging/about/elderabuse.shtml>.

STATE	STATUTORY PROVISION(S) AND CITATION(S)
Florida	<p>"Capacity to consent" means that a vulnerable adult has sufficient understanding to make and communicate responsible decisions regarding the vulnerable adult's person or property, including whether or not to accept protective services offered by the department. Fla. Stat. Ann. § 415.102(3)</p> <hr/> <p>"Lacks capacity to consent" means a mental impairment that causes a vulnerable adult to lack sufficient understanding or capacity to make or communicate responsible decisions concerning person or property, including whether or not to accept protective services. Fla. Stat. Ann. § 415.102(14)</p>
Hawaii	'Capacity' means the ability to understand and appreciate the nature and consequences of making decisions concerning one's person or to communicate such decisions. Haw. Rev. Stat. § 346-222
Louisiana	"Capacity to consent" means the ability to understand and appreciate the nature and consequences of making decisions concerning one's person, including but not limited to provisions for health or mental health care, food, shelter, clothing, safety, or financial affairs. This determination may be based on assessment or investigative findings, observation, or medical or mental health evaluations. La. Rev. Stat. Ann. § 14:403.2(4)
Mississippi	"Lacks the capacity to consent" means that a vulnerable adult, because of physical or mental incapacity, lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including, but not limited to, provisions for health care, food, clothing or shelter. This may be reasonably determined by the department in emergency situations; in all other instances, the court shall make the determination following the procedures in Sections 43-47-13 and 43-47-15 or as otherwise provided by the general laws of the state. Miss. Code Ann. § 43-47-5(j)
North Carolina	The words "lacks the capacity to consent" shall mean lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to provisions for health or mental health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician's or psychologist's assistance in making this determination. N.C. Gen. Stat. § 108A-101(l)
Tennessee	"Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts. A decision itself to refuse services cannot be the sole evidence for finding the person lacks capacity to consent; Tenn. Code Ann. § 71-6-102(4)

STATE	STATUTORY PROVISION(S) AND CITATION(S)
Utah	"Lacks capacity to consent" has the meaning as provided in Section 76- 5-111 ["Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a vulnerable adult lacks sufficient understanding of the nature or consequences of decisions concerning the adult's person or property. Utah Code Ann. § 76-5-111(m)]. Utah Code Ann. § 62A-4-301(16)
Washington	"Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary. Wash. Rev. Code Ann. § 74.34.020(3)
Wyoming	"Capacity to consent" means the ability to understand and appreciate the nature and consequences of making decisions concerning one's person, including, provisions for health or mental health care, food, shelter, clothing, safety or financial affairs. This determination may be based on assessment or investigative findings, observation or medical or mental health evaluations; Wyo. Stat. Ann. § 35-20-102(xiv)

¹ The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

² This document was completed for the National Center on Elder Abuse and supported in part by a grant, No. 90AM2792, from the Administration on Aging, U.S. Department of Health and Human Services. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration on Aging policy.