between them, should never by itself be assumed to be an indicator of consent. An individual who is inebriated or under the influence of narcotics is considered to be incapable of consent and the fact that the individual accused of sexual assault is intoxicated is not a defense.

This legal standard does not modify the legal standard followed in prosecutions in the criminal or civil justice systems.

Affirmative consent is ongoing, meaning that the fact that two individuals were in a relationship or have engaged in sexual activity in the past is not a defense. Consent may be revoked at any time. In adjudicating guilt, disciplinary committees are required by the U.S. Department of Education to apply a "preponderance of the evidence" standard (51 percent) rather than the "beyond a reasonable doubt" standard that is followed in the criminal justice process.

The rationale for the affirmative consent standard is that the traditional requirement that the assailant must use a degree of force inconsistent with consent in most instances requires women to say "no" and to resist in order to successfully establish a sexual assault. The California and New York laws by requiring that that an individual provide affirmative consent are thought to provide a needed degree of restraint on overly aggressive sexual partners, particularly when one or both of the partners are inebriated.

Proponents of the affirmative consent law argue that there is a need for a clear standard that will prevent misunderstandings between the individuals involved in a sexual interaction and that is easily applied by university panels. The affirmative consent standard also will provide greater confidence in the fairness of the process of adjudicating sexual assaults on campus.

Critics assert that the law is unworkable because there is a lack of certainty regarding what is required to establish affirmative consent and as a result individuals will be subject to liability without definite standards. Legally regulating sexual relationships between young people is bound to fail. Sexual interactions are not based on contract negotiations and often are spontaneous without either party asking for the consent of the other. A university panel will find it almost impossible to reconstruct the sexual interaction between the individuals and to disentangle conflicting versions of what transpired.

Critics also point out that the consequences of a student being held liable for sexual assault are too serious for guilt to be based on a "more likely than not" rather than "beyond a reasonable doubt" standard. Application of the "more likely than not" standard in the past has led to a number of legal actions against universities by individuals who have been determined to be responsible for sexual assault and expelled or suspended by college disciplinary committees.

In the last analysis, critics contend that the affirmative consent law is part of a trend toward the introduction of an unhealthy degree of political correctness on college campuses. Do you support the California affirmative consent law?