RESOLUTION

RESOLVED, That the American Bar Association urges legislatures and courts to define consent in sexual assault cases as the assent of a person who is competent to give consent to engage in a specific act of sexual penetration, oral sex, or sexual contact, to provide that consent is expressed by words or action in the context of all the circumstances, and to reject any requirement that sexual assault victims have a legal burden of verbal or physical resistance.

RESOLVED, that the American Bar Association urges legislatures to enact legislation and urges courts to adopt court rules and instructions that require the following:

1. Consent may be inferred from words or action or it may be inferred from behavior – both action and inaction – in the context of all the circumstances;

2. The presence or absence of physical or verbal resistance may be considered by the jury in the context of all the facts and circumstances to determine whether the prosecution has proven lack of consent beyond a reasonable doubt; and

3. The prosecution must prove all elements of a charged offense, including the absence of consent, beyond a reasonable doubt.

Deletions struck through; additions underlined