

# **The Ohio Association of Criminal Defense Lawyers**

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August 7, 2019

The Ohio Association of Criminal Defense Lawyers (OACDL) is an organization representing about 700 criminal defense practitioners in Ohio.

The OACDL has been advised that the ABA delegates will be voting on ABA Resolution 114 that is as follows:

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.

The OACDL opposes ABA Resolution 114, which seeks to redefine consent in criminal sexual allegations.

As proposed, this resolution alters existing definitions and, as a practical matter, shifts the burden of proof from the State to the accused to prove consent. This would have a profound effect on those accused of these serious offenses and would create a greater potential for wrongful convictions. Adopting the proposed definition for use in a criminal trial would violate the deeply-rooted principles of the Due Process clauses: the presumption of innocence, and the burden of proof.

We stand with our national affiliate, the National Association of Criminal Defense Lawyers (NACDL), in opposing ABA Resolution 114. The NACDL statement contains a suggestion of alternate language which reaffirms the foundational legal standard that the burden of proof on the question of consent never shifts from the prosecution.

The ABA House of Delegates will vote on this resolution on August 12, 2019. The OACDL asks Ohio's Delegates to vote No on ABA Resolution 114.

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