

"YES MEANS YES": ADVOCATING FOR AN AFFIRMATIVE CONSENT STANDARD IN THE UNITED STATES

Applied Policy Project
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RAINN



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DISCLAIMER

The author conducted this study as part of the program of professional education at the Frank Batten School of Leadership and Public Policy, University of Virginia. This paper is submitted in partial fulfillment of the course requirements for the Master of Public Policy degree. The judgements and conclusions are solely those of the author, and are not necessarily endorsed by the Batten School, by the University of Virginia, or by any other agency.

On my honor as a student, I have neither given nor received unauthorized aid on this assignment.

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EXECUTIVE SUMMARY

Sexual violence is a prevalent and pervasive problem in the United States. Every 2.5 minutes another American is sexually assaulted, and on average, 204,370 Americans are victims of sexual assault each year (RAINN, 2005). Sexual assault results in severe psychological, emotional, physical, and financial consequences for survivors and for society at large. As a voice for sexual assault survivors across the country, RAINN has the unique opportunity to advocate for changes to the way sexual assault policy is created and implemented, as they continue to advocate for survivor-centric policy nationwide.

Although rape and sexual assault are illegal throughout the United States, each state has its own respective definition of consent, resulting in different courses of action for victims, and different repercussions for perpetrators. **As illustrated by the high numbers of sexual assault victims, existing local, state, and federal level policy is insufficient and must be amended to properly to advocate for, and support survivors.** The variation in the states' sexual assault policies that provide the foundation of their legal statutes holds undeniable consequences for survivors in achieving a just outcome. The viability of legal prosecution and subsequent, perpetrator accountability, differs state to state, and does not always result in justice. There is certain ambiguity and abstruseness embedded into United States legal code that creates vast variation of outcomes.

The literature suggests three primary ways that states analyze consent in relation to sexual acts. An affirmative consent standard is the strongest, clearest, most survivor-centric legal framework. It legally acknowledges both partners' willingness to consent in a sexual interaction, and that their input is understood.

This report proposes and explores four policy alternatives to best advocate for the standard, against four criteria: equity, political feasibility, effectiveness, and cost. The alternatives are:

1. School-Based Programming—Expanding “Shifting Boundaries”
2. Integrating Consent Education into Grade School Curriculums (K-12)
3. Advocating for a New Definition of Consent
4. Modeling Legislation after the California Affirmative Consent Law

This report recommends **Policy Alternative #2: Integrating Consent Education into Grade School (K-12) Curriculums**. Consent education performs the best against the aforementioned criteria—proving to be equitable, politically feasible, and effective, at a low cost. Finally, this report suggests an implementation strategy that utilizes RAINN’s policy advocacy expertise in conjunction with that of other organizations to ensure ease and efficacy of implementation. By forming a coalition of organizations, RAINN and partners may be able to preemptively quell any potential parental dissent—the biggest barrier to adoption and implementation.

CLIENT OVERVIEW

RAINN (Rape, Abuse & Incest National Network) is the largest anti-sexual violence organization in the United States. RAINN operates the National Sexual Assault Hotline, and carries out programs to prevent sexual assault, helps abuse victims, and ensures that rapists are brought to justice.

RAINN has a long history of advocacy and legislative influence. RAINN's staff works closely with members of Congress, the Justice Department, White House, and coalition partners on legislation affecting sexual assault laws. For instance, the organization spearheaded a successful national campaign to pass the Debbie Smith Act in 2004, which provides for testing DNA evidence from 221,000 open rape cases and is expected to solve as many as 67,000 of these crimes.

In the context of this project, RAINN hopes to identify pitfalls in existing law, particularly relating to the statute of limitations, loopholes in marital rape law, and addressing incapacitation— definitions and repercussions of which vary state to state. This report will be focusing on consent in particular, as it is the legal foundation for all sexual activity and the common thread among these specific statutes. In the context of the statute of limitations, marital rape, and incapacitation, consent is defined differently. This report seeks to uncover the consequences of these pitfalls.

INTRODUCTION

Consent is an agreement between participants to engage in sexual activity. There are many ways to give consent, both verbally and physically. Someone consents when they clearly demonstrate that they agree to a sexual act— they have not been coerced or threatened in any way, they are old enough to legally agree, and they have the physical and mental ability to say yes or no (RAINN, 2017). Consent may be withdrawn at any point, as it is an ongoing process. Consent is an essential prelude to sexual activity, and lack thereof is sufficient grounds to consider an experience to be sexual harassment, sexual assault, or rape.

Though it has been socially defined through norms and values, there is no uniform legal definition of consent. Only a handful of states, among them California and New Jersey, have a codified definition of consent. Far more than that—about half of all states, incl. Louisiana, Mississippi, and Georgia—do not define consent at all in their sexual assault laws (RAINN, 2021). Many of these states distinguish the use force, rather than lack of consent, as a standard for deciding whether an assault occurred (Noveck 2019).

This report will examine the pitfalls in existing sexual violence law, and seek to propose survivor-centric policy alternatives. It will define the scope of the problem, provide background information, analyze evidence that will inform future policy alternatives, define criteria important to the creation of policy alternatives, offer policy alternatives and a recommendation, and suggest routes to implementation. As my client, the Rape, Abuse, and Incest National Network (RAINN) is seeking to identify ways in which U.S. legal code can be more survivor-centric, the final report will likely take on a different format than the traditional Applied Policy Project. It will seek to identify the effectiveness of different existing legal codes, three of which will be elaborated upon in the literature review of this report. It will also seek to identify ways in which policy can be created to reflect the survivor-centric vision of the client within legal bounds. The report will be drawing upon legal codes and frameworks to advocate for policy change, although the final recommendation will not necessarily take on a legal framework.

PROBLEM STATEMENT

Although rape and sexual assault are illegal throughout the United States, each state has its own respective definition of consent, resulting in different courses of action for victims and different repercussions for perpetrators. **Considering the high numbers of sexual assault victims, local, state, and federal level policy has proven insufficient, and must be amended to properly to advocate for and support survivors.** The variation in sexual assault policy on a state-by-state basis, embedded in legal statutes, holds undeniable consequences for sexual assault survivors. Thus, the viability of legal prosecution and subsequently, perpetrator accountability, differs state to state, and does not always result in justice. There is ambiguity and abstruseness embedded into United States legal code that creates vast variation of outcomes.

BACKGROUND

As sexual assault is incredibly prevalent in the United States, it is important to define the scope of the problem, and address the subsequent consequences. Considering the massive scope of the issue and the severe consequences it entails, the information provided below will explain to policymakers why survivor-centric policy is important, and how changes to policy must be made now to protect and advocate for the thousands of Americans that are victims of sexual assault each year.

Scale of the Problem

Every 2.5 minutes, another American is sexually assaulted. On average, 204,370 Americans are victims of sexual assault each year, according to the U.S. Department of Justice (RAINN, 2005).

Despite the shocking statistics, sexual assault is horrifically underreported. In a study published by the Bureau of Justice Statistics, 63% of attempted rapes, and 74% of completed and attempted sexual assaults were not reported to the police (Rennison, 2002). According to a report by the Department of Justice, of the sexual crimes not reported to police between 2005 and 2010, victims claimed they did not report because they feared retaliation, did not believe the police would do anything to help, and even believed their rape or sexual assault was not important enough to report (RAINN, 2021).

Though there is little data reporting on the number of sexual assaults in 2021 as of present, evidence shows that rates of sexual violence increase during states of emergency, including natural disasters, active conflict, and health crises, such as the COVID-19 pandemic. The stress, fear and sense of helplessness associated with emergencies tend to increase risk factors for perpetration of sexual violence (Walker, 2020).

In addition, a 2016 Gallup poll found that 34% of U.S. women say they worry “frequently” or “occasionally” about being sexually assaulted (Jones, 2016). Comparatively, relatively few men (5%) worry about being sexually assaulted (Jones, 2016). These statistics reflect the hold sexual violence has on the American psyche.

Every 2.5 minutes, another American is sexually assaulted.

Consequences

Survivors of sexual violence can experience a plethora of psychological, emotional, social, physical, and financial hardships as a result of their assault. It is important to identify these consequences, as they not only effect individuals, but society at large.

Psychological and Emotional Consequences

Sexual violence can have severe psychological, emotional, and physical effects on a survivor. Not all survivors of sexual violence are the same, nor will any act of sexual violence affect two people in the same way. Many survivors report flashbacks of their assault, as well as feelings of shame, isolation, shock, confusion, and guilt (Mental Health America, 2021). People who were victims of rape or sexual assault are at an increased risk for developing substance use disorders, eating disorders, anxiety, depression, and PTSD (Mental Health America, 2021).

Approximately 70% of survivors experience moderate to severe distress, a larger percentage than for any other violent crime (RAINN, 2021). The psychological and emotional toll sexual violence takes on survivors leads to increase pressure on social services and the healthcare system.

Societal Consequences

Studies demonstrate that many perpetrators of sexual violence are repeat offenders (Lisek & Miller, 2002). One study found that repeat rapists averaged 5.8 rapes each. Of the sample of 120 rapists, 1,225 separate acts of interpersonal violence ensued, including rape, battery, and child physical and sexual abuse. This holds horrific societal implications in the realm of public safety. As many instances of sexual violence go unreported, perpetrators remain free, and often, reoffend (Lisek & Miller, 2002).

Physical Consequences

The national rape-related pregnancy rate is 5.0% per rape among victims of reproductive age (between 12 and 45). Among adult women, an estimated 32,101 pregnancies result from rape each year. In a study surveying 34 cases of rape-related pregnancy, only 11.7% of these victims received immediate medical attention after the assault, and 47.1% received no medical attention related to the rape. 32.4% of the victims did not discover they were pregnant until they had already entered the second trimester; 32.2% opted to keep the infant, 50% underwent abortion, and 5.9% placed their infant for adoption. An additional 11.8% had spontaneous abortion (Holmes et al., 1996). This consequence is largely interconnected with psychological and societal consequences of sexual assault—compounding psychological consequences, and placing additional burdens on the healthcare and social services systems.

Economic Consequences

Although sexual assaults take a heinous toll on their victims and cause terrible psychological damage, there is also a cost on society in financial terms. According to a 2017 study, the estimated lifetime cost of rape is \$122,461 per victim, or a population economic burden of nearly \$3.1 trillion. This estimate included \$1.2 trillion in medical costs; \$1.6 trillion in lost work productivity among victims and perpetrators; \$234 billion in criminal justice activities; and \$36 billion in other costs, including victim property loss or damage. Government sources pay an estimated \$1 trillion of the lifetime economic burden (Peterson et al., 2021).

Sub-Populations and Vulnerable Groups

Although sexual assault is prevalent throughout the United States, certain demographic groups are impacted at disproportionate rates. It is important to clarify who those groups are, and propose policy that advocates for those who need it most.

Victims of Sexual Violence

Although there is no “typical victim” of sexual assault, certain groups are disproportionately affected by sexual violence. Approximately 91% of the victims of rape and sexual assault are female, and 9% are male. Additionally, 46.4% of lesbians, 74.9% of bisexual women, and 43.3% of heterosexual women reported sexual violence other than rape during their lifetimes, while 40.2% of gay men, 47.4% of bisexual men and 20.8% of heterosexual men reported sexual violence other than rape during their lifetimes (NSVRC, 2012). Finally, those between the ages of 12 and 34 are at the highest risk years for rape and sexual assault (RAINN, 2021).

Environment also appears to play a significant factor in the facilitation of sexual violence as well. For instance, an estimated 80,600 inmates each year experience sexual violence while in prison or jail (RAINN, 2021). Additionally, 6,053 military members reported experiencing sexual assault during military service in fiscal year 2018, although the Department of Defense estimates about 20,500 service members experienced sexual assault that year (RAINN, 2021).

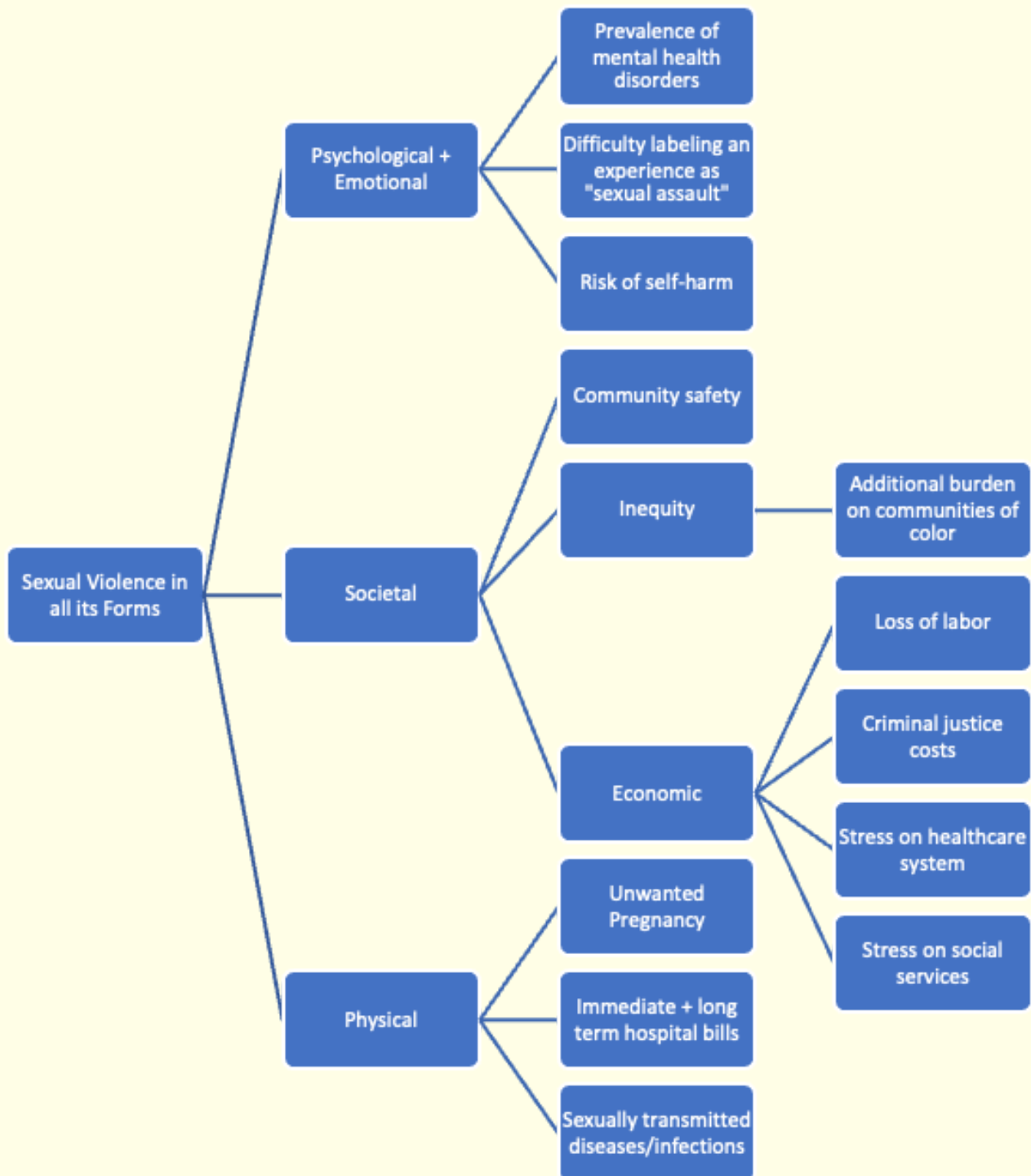
Reporting

Women of color have been found to be less likely than white women to disclose or seek help in the aftermath of a sexual assault (Tillman, et al., 2010). Although each community of color has challenges and circumstances that are unique to their community, there are common factors that account for many of the barriers survivors of color face as they seek help (Oregon Commission Against Domestic and Sexual Violence, 2005).

Black women in particular face stereotypes regarding their own sexuality, including terms like “black jezebel,” “promiscuous,” and “exotic,” perpetuating the notion that African American women are willing participants in their own victimization. However, these myths only serve to demean, obstruct appropriate legal processes, and minimize the seriousness of sexual violence perpetrated against African American women (Maryland Coalition Against Sexual Assault, 2010).

In addition, black survivors cite strong loyalty that binds race, culture, and family; lack of service providers that look like the survivor or share common experiences; lack of trust based on history of racism and classism in the United States; fear that their experience will reflect on and confirm the stereotypes placed on their ethnicity; assumptions of providers based on ethnicity; legal status; and attitudes and stereotypes about the prevalence of domestic violence and sexual assault in communities of color are barriers to reporting (Oregon Commission Against Domestic and Sexual Violence, 2005). Additionally, African American women’s decisions not to report their sexual assaults may be influenced by the criminal justice system’s history of treating white perpetrators and victims differently than perpetrators and victims of color (Maryland Coalition Against Sexual Assault, 2010).

Consequences Resulting from Sexual Violence



KEY FINDINGS FROM THE LITERATURE

In general, there are three primary ways that states analyze consent in relation to sexual acts. Identifying these three frameworks will help to provide insight into the effectiveness of each policy alternative, providing evidence as to why RAINN should continue to advocate for survivor-centric policy frameworks. Along with presenting the frameworks, limitations of the research will be discussed as well. Research has been gathered from case studies, law libraries, and sociology and psychology journals.

Policy Framework #1: Capacity to Consent

A person's capacity, or ability, to legally consent to sexual activity can be based on a number of factors which vary from state to state. In a criminal investigation, a state may use these factors to determine if a person who engaged in sexual activity had the capacity to consent. If not, the state may be able to charge the perpetrator with a crime. Examples of some factors that may contribute to someone's capacity to consent include age, developmental disability, intoxication, physical disability, relationship of victim/perpetrator, unconsciousness, and vulnerable adult (RAINN, 2021). Though some states have explicit protections on some of these factors, others are left unaddressed—providing legal loopholes to perpetrators.

Intoxication and Incapacitation

Several state codes suggest that a person cannot be found guilty of sexually assaulting someone who is mentally incapacitated due to intoxication if that person became intoxicated by voluntarily ingesting drugs or alcohol (Elbeshbishi, 2021). In order to be mentally incapacitated under codes such as these, the substance must be given to the person without that person's agreement.

Instances of intoxication in rape trials have profound consequences for all parties with very different roles in the justice system. From the defense perspective, it seems reasonable to be allowed to explore the conditions and mental state of the complainant at the time of the sexual act (Burgin 2019). Considering that alcohol is present in over a third of rape cases, it must be assessed fairly as an impediment to rational thought. Though U.S. police have generally maintained a victim-centered approach to speaking with those who believe they have been

sexually assaulted—believing victims upon their report—the courts do not (Subotnik, 2007). As they are only to convict a perpetrator if an assault has been proven beyond a reasonable doubt, consumption of drugs and alcohol complicate the story furthermore.

Relationship to Offender: Marriage

The common law rule of marital rape exemption is based in the cultural view that marriage makes a woman part of her husband's property, such that forced sexual intercourse is but a husband making use of his property (Freeman, 1981). This sentiment is reflected in spousal exemption laws (Swilley, 2021). The exemption considers the woman's consent to marriage as consent to sexual intercourse throughout the marriage. Other arguments, such as the inappropriateness of using the criminal law in disputes between spouses, the difficulty of proving marital rape, and the possibility of malicious prosecution by the wife are used to justify the exemption (Freeman, 1981).

Policy Framework #2: Freely Given Consent

At its core, freely-given consent refers to the question of whether consent is offered of the person's own free will, without being induced by fraud, coercion, violence, or threat of violence (RAINN, 2021). However, several state laws consider nonviolent sexual coercion permissible, and it even condones many forms of physical force—prohibiting only excessive force (Ehrlich, 2016).

The issue of freely given consent is problematic upon the withdrawal of consent after penetration, or when consent is given ambivalently and/or reluctantly. This implicit “no means no” framework fails to consider the contexts in which assertively saying “no” is unclear, or a someone's mind changes during the act (Ehrlich 2016). Laws have been overturned to recognize that one's decision about consent may change over time, however not in every state.

Policy Framework #3: Affirmative Consent

Affirmative consent refers to whether a person expresses overt actions or words indicating agreement for sexual acts (RAINN, 2021). An affirmative consent standard requires that, for sex to be considered consensual, it must have been consented to by both parties in advance. In the absence of such consent, the activity cannot be seen as voluntary (Little, 2005).

Affirmative consent standards are popular on state university campuses across the U.S. The standard not only brings the law of sexual interaction in line with other forms of social behavior, but can be justified to the extent that it encourages both men and women in the dating environment to give their words meaning. However, this “yes means yes” framework has been criticized for serving as an attack on intimacy and serving as grounds for false allegations, though

there is little evidence to confirm (Little, 2005).

An affirmative consent standard is the strongest, clearest way to legally recognize that both partners are equal in any sexual interaction, and that their input is acknowledged and understood. This standard would bring rape law into line with the rest of criminal law, as using legal procedure to decide these cases is more than just the desirability of the norm. It is also about putting the weight of the state and of punishment behind the norm (Halley 2016).

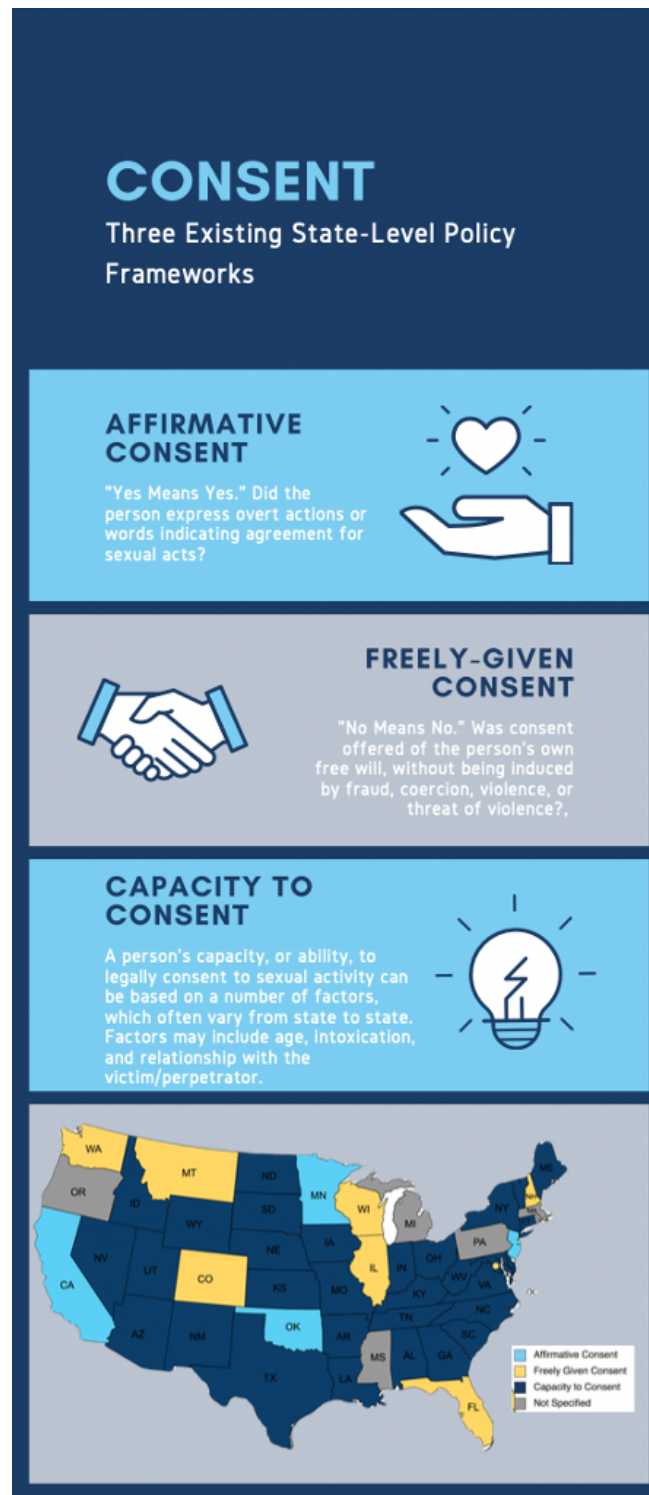


Figure 1: Three Existing State-Level Policy Frameworks
Source: RAINN, 2021

Limitations of the Frameworks

As the research above is largely based off case studies and sociological and psychological principles, it has rarely been quantified. The effects of the success of these policies in each state, or lack thereof, is seldom explored let alone measured. Thus, it is ultimately difficult to ascertain the extent to which these policies are successful. Similarly, it is difficult to determine how frequently these laws are being used, and the frequency of which certain statutes uphold outdated law.

Much of the literature was focused on debunking myths about rape. Although the literature was important to a greater understanding to the subject matter at large, it was not pertinent to understanding state policy more specifically. Additionally, the literature surveyed did not consider LGBTQ+ persons. Considering the equity implications of sexual assault and the disproportionate effects on the LGBTQ+ community, the heteronormative lens of the existing literature does not convey the entire picture.

Analysis of Take-Aways and Conclusions

Though each of the three current policy frameworks suggest different approaches to preventing rape and sexual assault, state policy will be most effective if it reflects the values embedded in affirmative consent policies.

However, affirmative consent policies have been scrutinized by the American Bar Association (ABA) House of Delegates, who in 2019 voted by a margin of 256-165 to postpone indefinitely Resolution 114 (Ginsburg 2019). The resolution was designed to urge state legislatures to adopt affirmative consent requirements that redefined consent 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 circumstances...” (Ginsburg 2019). The National Association of Criminal Defense Lawyers was among the opposition, as it argued that the resolution shifted the burden of proof by requiring an accused person to prove affirmative consent to each sexual act rather than requiring the prosecution to prove lack of consent. An affirmative consent standard would turn traditional American principles of justice on their head by placing the burden on the defendant to disprove his or her guilt (Ginsburg 2019).

Though affirmative consent is the most victim-centered approach to addressing sexual assault through a “yes means yes” framework, legally it is difficult to prosecute. Moving forward, policy alternatives should suggest pursuing an affirmative consent standard, but recognize its legal bounds.

Key Lessons Learned

With these limitations in mind, there are several takeaways to consider from the literature surrounding sexual violence:

- Survivors of sexual violence face a plethora of barriers to justice, and sexual assaults are largely underreported.
- An affirmative consent standard is the strongest, clearest, most survivor-centric legal framework. It legally acknowledges both partners' willingness to consent in a sexual interaction, and that their input is understood.
 - However, violations of affirmative consent are particularly hard to prosecute.
- Although affirmative consent has become a cultural norm, there is little to no legal backing, and is legally present in very few states.
- Equitable, effective, and feasible policy alternatives will be made to advocate for a national affirmative consent standard, providing RAINN with different avenues to advocate for change.

EVALUATIVE CRITERIA

Criteria outlined below will be used to evaluate the subsequent policy alternatives. Criteria will include equity, political feasibility, effectiveness, and cost. These criteria have been selected to reflect the client's values, while maintaining consideration of constraints faced by the organization. Each criterion will be given equal weight in determining the final recommendation.

Equity

Considering that sexual assault disproportionately affects women and marginalized communities, equity will be a highly essential criterion. Equity measures will consider accessibility and demographic populations impacted. Equitable policy will benefit those who need it most.

Scoring: Policy alternatives tailored to positively impact the demographics that bear the brunt of the consequences related to sexual violence will be rated high in terms of equity.

Political Feasibility

Particularly for alternatives advocating for a law change or reform, political feasibility will be an important consideration. Political feasibility will consider the legislative challenges associated with the implementation of each alternative, and identify windows of opportunity that may exist for legislative change. As the four alternatives require efforts from different levels of government, the analysis below will explicitly state if the alternative is to be tailored to local, state, or federal government efforts.

Scoring: Alternatives that have a high likelihood of being accepted by the relevant level of government will be rated high in terms of political feasibility.

Effectiveness

This criterion seeks to assess the extent to which the programs work. This criterion will ask if programs are targeting the intended populations, and identify the extent to which there are tangible outcomes. This will be operationalized by considering the number of cases reported (which may look different at school-level interventions) and type of cases reported, reflecting

metrics that have been used to determine effectiveness in previous studies. Data will be coming from the FBI, the Bureau of Justice Statistics, and through school-level research studies.

Scoring: Alternatives that decreases the rate of sexual violence and maintain a survivor-centric framework will be rated high in terms of effectiveness.

Cost

The cost criterion will consider the dollar amount costs associated with each alternative. Costs will consider the price tag of the original program, and consider how many additional resources (in dollars) would be required to expand these existing programs. It will also consider the costs incurred by RAINN and other NGOs who would partake in lobbying efforts at the state-level.

Scoring: Alternatives will be rated in absolute terms. Those low in cost assuming an absolute rating of low, and those high in cost assuming a rating of high.

POLICY ALTERNATIVES

The Nature of Sexual Violence Interventions

Sexual violence treatment interventions are most often divided into individual and community-level interventions. Individual-level interventions, such as counseling, focus on the individual, whereas community-level interventions represent more system-oriented interventions, such as criminal justice reform. Individual-level interventions seek to better the consequences of individual victimization, while community-level interventions seek to change systems' responses to victims (Crowell & Burgess, 1996). Although these treatment services are necessary and effective in supporting victims through the recovery process, researchers continue to emphasize the need for interventions that focus on the prevention of sexual assault in the first place.

From a public health perspective, there are three levels of preventative interventions: primary, secondary, and tertiary. Primary prevention aims to reduce the number of new cases; secondary prevention aims to lower the prevalence; and tertiary prevention aims to decrease the resulting disability (Meyer, 2000). This report will consider primary and secondary prevention treatment interventions. Although in the past, most efforts to prevent sexual assault have been directed to tertiary prevention interventions, this report seeks to identify programs that seek to decrease the number of instances in which sexual assault occurs, and therefore, will leverage policy alternatives that reflect primary and secondary prevention strategies.

The findings detailed below seek to elaborate upon several survivor-centric policy alternatives that may be implemented to advocate for an affirmative consent standard. They will consider four different policy alternatives—expanding “Shifting Boundaries,” integrating consent education into grade-school curriculums, advocating for a new definition of “consent,” and advocating for legislation modeled after California’s Affirmative Consent Law. All four alternatives will be measured in terms of equity, political feasibility, effectiveness, and cost, on a scale from low to high. How these alternatives are scored will have implications for the recommendation of a final alternative. Scores of “low” for each criterion besides cost will reflect poor performance, and scores of “high” for each criterion besides cost will reflect excellent performance. A score of “low” or “high” in terms of cost will reflect the financial cost borne to RAINN and/or the level of government in which the alternative is to be implemented, and will be scored absolutely.

Alternative #1: School-Based Programming—Expanding “Shifting Boundaries”

The Violence Against Women Act of 1994 established the Rape Prevention and Education (RPE) program at the Center for Disease Control (CDC). The RPE program funds state health departments throughout the country. RPE grantees collaborate with state sexual violence coalitions, educational institutions, law enforcement entities, community organizations, and other stakeholders to implement state sexual violence prevention programs. These collaborations strengthen state sexual violence prevention systems by leveraging resources and enhancing prevention opportunities. CDC experts provide intensive training and technical assistance to RPE grantees to support their prevention activities and ensure evidence-based practices across the country (CDC, 2022).

Among RPE-funded efforts is “Shifting Boundaries”—an evidence-based, multi-level prevention program for grade school students on sexual harassment and dating violence. The program is unique in that it embraces an environmental approach that identifies multiple strategies to support young people, employing both school building-wide interventions and classroom lessons (Taylor et. al., 2011).

“Shifting Boundaries” aims to increase knowledge and awareness of sexual abuse and harassment, promote prosocial attitudes and a negative views of dating violence and sexual harassment, promote nonviolent behavior in bystanders, reduce the occurrence of dating violence and peer violence, and reduce the occurrence of sexual harassment (National Institute of Justice, 2012). Research suggests that adolescents can experience dating violence and sexual harassment as young as sixth grade (National Institute of Justice, 2012). Thus, “Shifting Boundaries” is designed for middle school students in sixth and seventh grades. Currently, there is significant variation across states in terms of sexual assault prevention efforts, and this alternative seeks to provide states a baseline standard in pursuing such efforts.

This intervention should be implemented at the county-level, with funding for the programming and for the instructors derived from the state’s RPE grants. This alternative would be strongly encouraged state-wide through access to these grants. The CDC currently considers this program to be “Promising,” based on evidence that includes only one high quality randomized controlled trial at the school-level.

Classroom Curriculum

The classroom curriculum has six lessons that cover 1) the construction of gender roles, 2) the setting and communicating of boundaries in interpersonal relationships, 3) healthy relationships, 4) the role of the bystander as intervener, 5) the consequences of perpetrating, and 6) the state and federal laws related to dating violence and sexual harassment (National Institute of Justice, 2012). The lessons are adaptable to current school schedules, and taught by

intervention specialists over the course of six to ten weeks.

School-wide Intervention

This intervention considers the entire school environment, and consists of encouraging schools to revise their protocols for identifying and responding to dating violence and sexual harassment, the introduction of temporary school-based restraining orders, and the installation of fliers in the school to increase awareness and reporting of dating violence/harassment. An additional component helps schools work with students to identify any unsafe areas of the building through hotspot mapping. The classroom curriculum and the school-wide intervention are linked, as the hotspot maps of unsafe areas in school created by students are used to determine the placement of faculty or school security for greater surveillance of those areas (National Institute of Justice, 2012).

Evaluation

Equity

“Shifting Boundaries” is to be nationally funded, and implemented at the school-district level, thus targeting the intervention to all middle grade-school students in public schools. Though this intervention may be applicable to private schools as well, current research is isolated to the effectiveness of the program in public school settings.

The existing study conducted on “Shifting Boundaries” took place in New York City, the largest school district and one of the most ethnically, linguistically, and racially diverse populations in the United States. Thus, this intervention is proven to be effective among students of all backgrounds. Because the intervention is implemented at the school level, all students will be subject to the intervention, thus targeting those who may be more susceptible to sexual violence, but also those who may be at risk of becoming a perpetrator of sexual violence. This alternative will be rated to be high in equity, considering its broad reach.

Political Feasibility

There are currently two federal funding streams for sex education: the Teen Pregnancy Prevention Program (TPPP) and the Personal Responsibility Education Program (PREP). The Division of School and Adolescent Health (DASH) also funds school-based sex education (Planned Parenthood, 2022). Because the funding already exists, the main political fight will be at the school-district level, which will ultimately determine if the alternative is to be implemented.

Expanding “Shifting Boundaries” will rely heavily on the support of local school districts. At this present moment, the United States is witnessing a movement by parents to have greater

control of what their kids learn in schools. Some parents have been vociferous in expressing their strong opinions about mask mandates, critical race theory, and class discussions about sexual orientation and gender identity. Because “Shifting Boundaries” entails both the classroom curriculum and school-wide intervention pieces, however, the adoption of “Shifting Boundaries” can be framed in several ways—as a safety intervention in states that may have more difficulty enacting changes to a sex education curriculum, and as an amelioration to sex education in states that already have comprehensive sex education in schools. The malleable framing will allow this alternative to be rated as medium, considering school districts can mend the proposed plan, and that there is no need for additional funding.

Effectiveness

Behaviors improved as a result of the implementation of “Shifting Boundaries.” The combined building and curriculum-level interventions were effective in reducing sexual violence victimization involving either peers or dating partners immediately post-treatment and at 6-months post-intervention (Taylor et al., 2012). While the preponderance of results indicates that the interventions were effective, an anomalous result— an increase in sexual harassment victimization reports that was contradicted by lower frequency estimates— did emerge.

Immediately post-treatment, the results indicate a 32% reduction in the prevalence of sexual victimization by a peer for students in the combined intervention arm of the study compared to students in the control group. Immediately post-treatment, the estimated frequency of sexual victimization by a peer was also significantly lower, by 34%, for students in the combined intervention arm compared to students in the control group (Taylor et al., 2012).

The findings persist six months post intervention, as after the interventions were implemented, the frequency of sexual harassment victimization reported by students receiving the combined classroom and building intervention was 26% lower than the reported frequency of sexual harassment victimization in the control group (Taylor et al., 2012). Therefore, this alternative has demonstrated its potential to be highly effective.

However, research suggests that adolescents can experience dating and sexual violence as young as sixth grade. Because Shifting Boundaries is designed primarily for middle school students in grades 6, 7 and 8, some adaptations of the program may be adopted at lower grade levels (Youth.gov, 2012). Material can be adapted to be developmentally appropriate for elementary school students, or new interventions may need to be designed. Knowledge regarding developmental patterns in dating violence is currently limited, however more research would help to inform which lower grade levels would benefit from the implementation of Shifting Boundaries (Taylor et. al., 2012).

Cost

There is little available data regarding the costs of implementation of the program, but available studies boast very few extra costs to schools. The only concrete cost of the program is teachers' time—time undergoing training, and time embedding Shifting Boundaries into preexisting lesson plans, which would be an annual cost. A virtual training is accessible to all teachers and to the public for free which is an hour and a half in duration, though some local nonprofits have been certified to perform the training as well if teachers so choose (ValorUS, 2013). All the materials required for the implementation of Shifting Boundaries are available for free online through preventconnect.org. Materials include the Shifting Boundaries curriculum, advocacy posters, a “flirting or hurting” DVD, and a slideshow presentation.

Additionally, adaptations of Shifting Boundaries, including having the building-only intervention have yielded successful results, though not as successful as the program in its entirety. The building-only intervention saw a 30.5% reduction of sexual harassment victimization reported by students, compared to the 34% reduction experienced by the combined intervention arm (Taylor et. al., 2012). The building-only alternative alone is intriguing as it allows schools with even fewer financial resources to implement Shifting Boundaries. The accessibility of an effective building intervention requiring fewer resources in terms of teacher time, class time, and materials may be particularly cost effective to school districts with constrained resources. However, for maximum effectiveness, Shifting Boundaries should be implemented in its entirety to achieve maximum effectiveness. School districts might consider a scaled approach, growing the program gradually from the building-level to the classroom, if resources are limited (Taylor et. al., 2012).

Summary Matrix

Equity	Political Feasibility	Effectiveness	Cost
High	Medium	High	Low

Alternative #2: Integrating Consent Education into Grade School Curriculums (K-12)

Sex education programming varies widely across the United States. Currently, 24 states and the District of Columbia mandate sex education. Although almost every state has some guidance on how and when sex education should be taught, decisions are often left up to individual school districts (Planned Parenthood, 2022).

Recent years have seen 38 states and DC enact new laws on sex education—and requiring consent education has been one top trend—spurred by a growing cultural awareness of the importance of sexual consent. The goal of this education is to promote healthy expectations of sex for young people by making them understand consent as affirmative and truly voluntary (Naide, 2020).

Consent conversations matter in K-12 education because schools can reach young people broadly and at a formative stage of development. Schools provide a basis for understanding consent when teaching young children the difference between a “good touch” and a “bad touch” (Naide, 2020). Sexual consent education should be a natural continuation of these early lessons, helping students gain tools to explore their growing sexuality in a healthy and respectful way (Guttmacher, 2020).

Similar to the alternative suggested by the expansion of Shifting Boundaries, consent education should be implemented at the county-level, with funding from the state’s RPE grants. However, one important consideration is that the movement toward consent education contrasts sharply with what is taught under abstinence-only programs taught in some states (Naide, 2020). Therefore, this alternative should be reflected by a state-wide policy, with the ability of local school districts to tailor their lessons to local conditions and preferences.

Evaluation

Equity

There currently exists persistent inequity in who is receiving consent education in schools (Tatter, 2018.) There is tremendous variation in who is receiving comprehensive sex education, abstinence-only sex education, HIV/AIDS education, and sex education that integrates conversations of consent.

However, consent education can be implemented in numerous ways. For instance, the Harvard Graduate School of Education has offered a model of consent education that is embodied in various strategies that offer the potential to reach a broad range of students differing in age and in backgrounds. The model offers different strategies to engage different groups of students—and not all lessons are to be conducted in formal sex education classrooms, which gives school districts significant leeway in implementation.

Harvard Graduate School of Education Consent Model

Early Education	<ul style="list-style-type: none">• Develop a shared vocabulary• Lay the social-emotional groundwork• Focus on tone of voice• Model consent and empower students
Elementary School	<ul style="list-style-type: none">• Break down what consent is (outside of a sexual context)• Respect and discuss what students already know• Focus on tone of voice• Keep the conversation going
Middle School	<ul style="list-style-type: none">• Meet students where they are• Start defining what sexual harassment is• Emphasize the importance of talking with a trusted adult• Begin talking about romantic relationships
High School	<ul style="list-style-type: none">• Asking for consent isn't just for straight boys• Talk about consent and alcohol• Think about consent across disciplines

Source: Consent at Every Age, Grace Tatter, 2018

The model recognizes that consent education should not be limited to straight boys, but that anyone can perpetuate sexual violence and misconduct. Just as geographic factors play a role in who receives comprehensive sex education, individuals holding certain identities are disparately impacted by sexual violence, and students need to be aware of these inequities as they learn to navigate sex and consent (Weyrick, 2021). The adaptations of consent education which can apply to many different grade levels in public schools will allow this policy alternative to be far reaching in terms of age, race, income, and other demographic indicators. Thus, this policy alternative will be rated as high in terms of equity.

Political Feasibility

Currently, only eight states and Washington, D.C. require students to learn about consent. Of these, seven passed their requirements within the last four years. In just 2019, four jurisdictions passed consent education requirements and nine more states introduced similar legislation (Weyrick, 2021). Kentucky, Rhode Island, Missouri, Idaho, Minnesota, and Maryland, though they vary greatly by political affiliation, have demonstrated recent initiatives

to integrate consent and healthy dating lessons into sex education. Though these policies are at varying stages of the legislative process— some states having just introduced the bill, and others having a bill pass one of the legislative chambers— all six of these states may prove to be effective targets of advocacy efforts (Shapiro & Brown, 2018).

Consent education caught lawmakers' attention from a growing public conversation surrounding gender-based violence, including the #MeToo Movement and student advocates' advancement of an affirmative consent standard on college campuses. Voices from professional organizations such as the American College of Obstetricians and Gynecologists and the American Academy of Pediatrics have also placed pressure on lawmakers for the inclusion of consent in sex education (Naide, 2020).

Despite widespread parental support for sex education in public schools, comprehensive sex education programs do face opposition (Planned Parenthood, 2015). Some of the opposition stems from those who have inadequate information or misinformation about the programs, and their concerns are usually dispelled through education about the content and aims about the program.

Other opposition comes from groups that are opposed in principle to comprehensive sex education in public schools. They argue that such education usurps parental rights and encourages premarital sex and promiscuity in the young. National organizations that have publicly criticized comprehensive sex education in schools include Focus on the Family, Citizens for Excellence in Education, the American Family Association, Concerned Women for America, the Christian Coalition, the National Coalition for Abstinence Education, the Medical Institute for Sexual Health, and the National Monitor of Education. These groups employ a wide variety of tactics, from censoring library books to attempting to pack school board meetings in order to control curricular decisions (ACLU, 2022). Organizations that support comprehensive sex education include the ACLU, the Center for Reproductive Rights, Advocates for Youth, Healthy Teen Network.

However, because this alternative is malleable, it may be able to bypass the politics of sex education. Paralleling the lessons derived from Harvard's Graduate School of Education model, consent can be taught outside of a sex education setting, employed through lessons throughout the lifetime of a student, and has overwhelming support in the context of existing sex education curriculums as well (Planned Parenthood, 2015). Thus, this allows school districts and states the leeway to implement lessons in consent in a variety of ways, allowing this alternative to be rated as high in terms of political feasibility.

Effectiveness

A study conducted by Columbia University found that those who received formal education in how to refuse sexual advances were less likely to be sexually assaulted in college. The study found that formal instruction in high school about refusing sex (and how to say no to sex) was associated significantly with reduced risk for sexual assault overall (8%), and among women (10%) (Santelli et. al., 2018). There was no similar correlation between abstinence-only sex education and sexual assault (Santelli et. al., 2018). It is important to note however, that of those who received instruction in refusal skills also received other forms of sexual education. This study demonstrated that equipping students with the ability to set their own boundaries is important, but teaching students to recognize and respect those boundaries in others is just as fundamental to the prevention of sexual violence. Giving students the tools to help them recognize a potentially dangerous situation is not enough, because it does not express the importance of consent in sexual interactions. These findings are consistent with recent research on sexual assault prevention, including feminist self-defense and resistance training among high school and college students. A recent review suggests that K-12 sex education has the qualities of effective prevention programs and has the potential to mitigate the risk factors associated with sexual violence perpetration, by starting prevention early in one's life course (Schneider & Hirsch, 2018).

For young children, consent education reassures them that they have a say in what happens to their bodies, and teaches them to respect other peoples' wishes as well. As students age, understanding consent as a concept allows them to form fundamental understandings of what healthy relationships look like. Beyond a reduction in sexual violence and misconduct, there are positive spillover effects that will manifest into life skills that reach beyond sexual situations.

Students having received formal education about how to say no to sex before age 18 was a protective factor against penetrative sexual assault in college; it is important to note that the vast majority of those who received instruction in refusal skills also received other forms of sexual education (Santelli et. al., 2018). Other aspects of sexuality education and receipt of abstinence-only instruction were not significantly related to sexual assault.

Cost

The typical cost for a school-based sex education curriculum is roughly \$200, which include the training of teachers, lesson planning, and the one-time cost of creating the materials (Bass, 2016) and promotion. In 2012, there were approximately 24,000 US public secondary schools (NCES, 2021). If each of these schools implemented a sex education curriculum, it would cost around \$4.8 million annually to educate teens about sex. However, because many of

these programs already exist and this alternative serves as an amendment to existing programs, the cost is expected to be considerably lower.

This estimate only considers secondary schools due to the occurrence of their more formalized sex education. However, at lower grade levels, consent education can be integrated into lesson plans. For example, discussions surrounding how sharing and borrowing things involves consent. Implementation at lower grade levels, though there is little cost data, can occur at very little costs to school districts and/or the state. Therefore, this alternative will be rated low in terms of cost.

Summary Matrix

Equity	Political Feasibility	Effectiveness	Cost
High	High	High	Low

Alternative #3: Advocating for a New Definition of Consent

Though it has been socially defined through norms and values, there is no uniform legal definition of consent. Very few states, among them California, have an affirmative consent standard on the books (RAINN, 2021). Far more than that—about half of all states, incl. Louisiana, Mississippi, and Georgia—do not define consent at all in their sexual assault laws (RAINN, 2021). This alternative suggests that an effective tool to promote an affirmative consent standard lies within the establishment of a national definition, and lessons can be learned from the definition change of “rape” in 2013.

It is now well-established in the laws of all fifty states that the non-consensual sexual penetration of any person is a serious sex crime. The legal change is reflected by the FBI’s broadening of the Uniform Crime Report (UCR) definition of rape in 2013. Prior to 2013, the FBI defined forcible rape as “the carnal knowledge of a female, forcibly and against her will” (Monaco, 2012). This old definition includes only forcible penile penetration of the female vagina. The post-2013 definition defines rape as “penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim” (FBI, 2014). This alternative will examine potential consequences of a similar federal definition change for the term “consent.”

Evaluation

Equity.

If this alternative is to be implemented, all U.S. citizens will be subject to the parameters of the definition. As there is no national definition of consent, and there is little consensus of a definition in state policy, this policy alternative will require action from the Federal Bureau of Investigation (FBI), who implemented a similar change to the definition of rape in 2013, rather than Congress or state legislatures. Because this definition change would fall under the FBI’s Uniform Crime Reporting (UCR) Program, state level UCR Programs will then forward data to the national UCR programs (FBI, 2010). The definition change is to be promoted to the public in the form of a press release from the Director of the FBI. In theory, the institution of a new definition should be rated as high in terms of equity; however, there are many caveats that ultimately result in this policy alternative being rated as low.

Although this intervention is designed as survivor centric policy, the definition itself must be carefully constructed as not to worsen present conditions. Additionally, this policy alternative lacks consideration for issues of marital rape, incapacitation, and power imbalances in many states, whom have loopholes for such instances of sexual violence. Therefore, this alternative will fare as low in terms of equity.

Political Feasibility

Derived from lessons learned in the definition change of “rape,” this policy alternative would require that advocacy efforts stem from a coalition of survivor advocacy groups in conjunction with law enforcement partners. Important to consider, however, is that there may be a window of opportunity for this change, as President Joe Biden has served as an important legislative figure in the promotion and adoption of survivor-centric policy. As a Senator, he was Chief Sponsor of the Violence Against Women Act, and as Vice President under Obama, the two wrote a letter to the FBI requesting the definition change of “rape,” which the Director of the FBI later approved.

Additionally, several survivor-centric policies are currently being considered in Congress, including Senate Bill 2342, the Ending Forced Arbitration of Sexual Assault Act (117th Congress, 2021). The bill has garnered significant bipartisan support, and has received co-sponsorships from Republicans such as Lindsey Graham, and Democrats such as Cory Booker, alike. Therefore, there may be a window of opportunity under the current Presidential administration to enact such a change at the federal level (Savage, 2012).

Despite the potential window of opportunity, advocacy efforts must consider the current political environment, with the Build Back Better Act on the forefront of Congress’ political agenda. The current window of opportunity coinciding with a tumultuous Congressional session will leave this policy alternative to be rated as medium in terms of political feasibility.

Effectiveness

Although most states have more expansive definitions of rape in their criminal codes, they have had to report a smaller number of crimes falling under the initial FBI UCR Program definition. This means that the statistics reported nationally were both inaccurate and undercounted. A study by University of Kansas law professor Corey Rayburn Yung suggested that more than 796,000 rapes were not included in the FBI’s count between 1995 and 2012, in part because the way jurisdictions handled cases did not meet the Bureau’s definition of a rape, or rape victim (Urbina, 2019). Concurrently, an estimated 40% of rapes (incl. rapes of men, rape with an object, and non-vaginal rape) were left out of FBI statistics until the definition was changed in 2013 (Lind, 2014). Because the new definition is more inclusive, reported crimes of rape are likely to increase, not necessarily because the instances of rape have increased, but because it is being more accurately reported (Monaco, 2012).

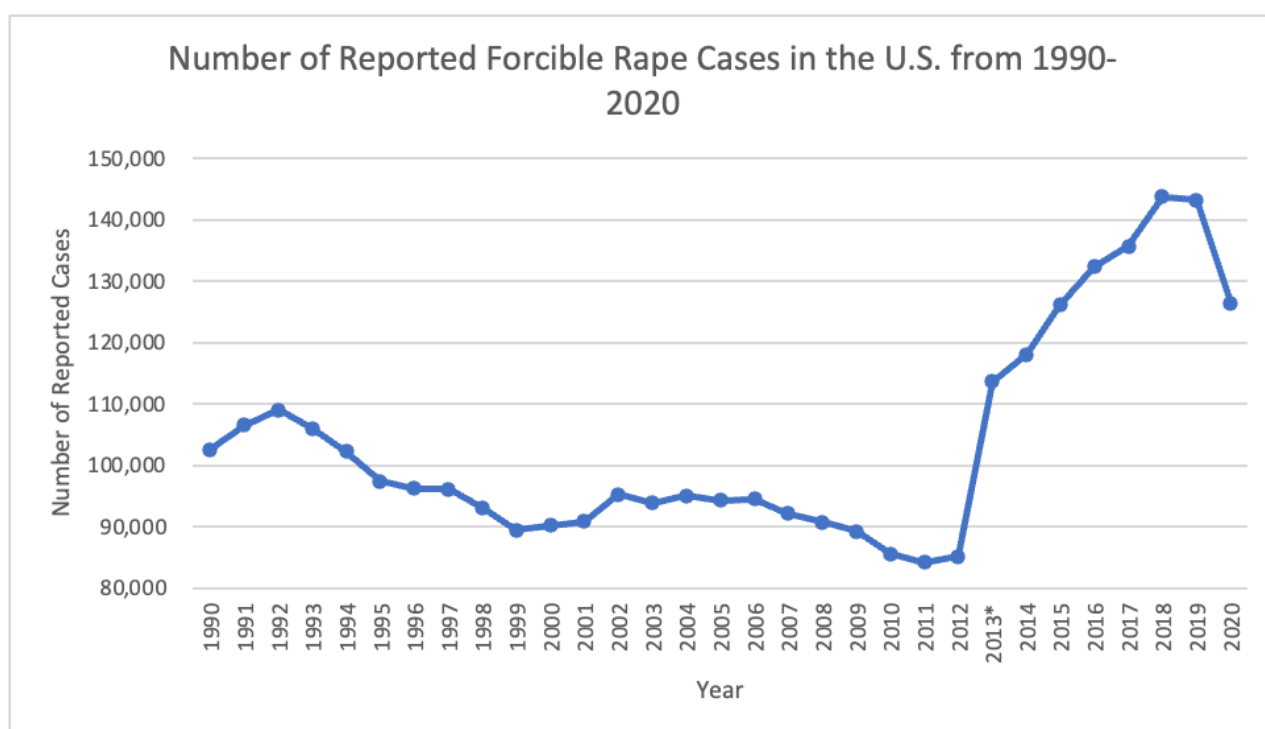


Figure 2: Number of Reported Forcible Rape Cases in the U.S. from 1990-2020

Source: Statistica, FBI Uniform Crime Reporting Program, 2021

As demonstrated in Figure 2, an increase in formalized reporting due to the “rape” definition change will likely result in more official investigations and subsequently, more convictions. However, that is speculative, since local jurisdictions should already be prosecuting cases.

Cost

Amending the current definition of consent itself will not require any additional cost to states beyond the legislative and administrative expenses to formalize the definition. However, to bring this policy alternative to fruition will require costs from RAINN and other NGO partners to bring the issue to the forefront of the political agenda.

As an organization, RAINN is equipped with a public policy team, working nationally and closely at the state level in five states. In 2020, RAINN reported \$15.8 million in total revenue, with \$11.6 million in total expenses. Its largest program expenditures include victim services (67% of program expenses), public education (17% of program expenses) and consulting services (11%) in program expenses (Charity Navigator, 2022).

This policy alternative will not increase the expenses, as the infrastructure is already embedded in RAINN’s organizational structure and are reflected in the focus of resources towards victim services, public education, and consulting services. However, RAINN may choose to release a statement surrounding the implementation of a new definition to educate the public of the change, though this will pose no significant additional cost. Similarly, this

alternative poses no additional cost to any level of government beyond those required for administrative changes, considering it does not develop any new programs or services, but rather illustrates a shift in the country's psyche. However, because this program requires that local and state law enforcement agencies comply with the new definition, it may pose an additional burden onto their departments as they may experience an increase in official, actionable reports and incorporation in their training curriculum. Therefore, this policy alternative will be rated as medium in terms of cost, as it will still require time and for the program expenditures to persist, and may require more involvement from law enforcement.

Summary Matrix

Equity	Political Feasibility	Effectiveness	Cost
High	Medium	Medium	Medium

Alternative #4: Modeling after the California Affirmative Consent Law

The California Affirmative Consent Law, enacted in 2014, requires institutions of higher education to “adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking... involving a student, both on and off campus” that must abide by certain criteria, including an affirmative consent standard, in order to receive state funding (California State Senate, 2014). The law explicitly states that it “shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under [several circumstances, incl. intoxication, incapacitation, unconsciousness, and inability to communicate due to a mental or physical condition]” (California State Senate, 2014). The law explicitly requires colleges to have policies covering more than a dozen situations that can arise in sexual assault or domestic violence cases, leaving little leeway for interpretation (Chappell, 2014). This policy alternative will examine the expansion of affirmative consent laws to institutes of higher learning in different states.

Evaluation

Equity

University students make up approximately 2.7 million of California’s 40 million residents (UnivStats, 2022). Although 2.7 million is no insignificant number, this means, however, that not all Californians are subjected to the Affirmative Consent Law.

Despite the student population being diverse in race, income, sexual orientation, and otherwise, the age demographic remains relatively consistent, with most college students ranging between the ages of 18-24. However, it is important to note that women between the ages of 18 and 24 who are college students are three times more likely than women in general to experience sexual violence (RAINN, 2020). Therefore, in terms of equity, it is important that the policy alternative has an effect on the groups that are most vulnerable. This policy alternative will be rated as medium in terms of equity, considering that it does target a particularly vulnerable group, but is limited in scope.

Political Feasibility

Though adopted in several states, the disparities between states on issues of sexual violence are tremendous. To implement this policy on a national scale is unlikely, considering nearly half of all states do not explicitly define consent in their state statutes and/or legal codes, let alone affirmative consent (Lawson, 2018).

However, some states such as New York and Connecticut hold some level of affirmative consent laws, demonstrating that it is possible to expand the scope to states other than California. In terms of political feasibility, this policy would be most effective if efforts were

targeted to states that have a similar political landscape, and/or have survivor-centric language embedded in their state statutes. Colorado, Washington, Montana, New Hampshire, and Wisconsin, because of the relative strength of their existing state-level definitions of consent which comply with the freely-given consent framework, may eventually prove to be receptive to adopting an affirmative consent standard. Ultimately, however, the political feasibility of this alternative is to be rated as low.

Effectiveness

Despite the good intentions offered by this policy alternative, it is unclear if the California Affirmative Consent Law will be an effective tool in decreasing rates of sexual violence. The Clery Act requires colleges and universities to disclose crime statistics that happen on, or adjacent to, or within campus both in their public crime log and the school's Clery Report. However, data from the Clery Act does not effectively reflect the state of sexual violence in California.

According to Clery Act data, 955 sex crimes (incl. rape, fondling, and statutory rape) were committed in the year 2020, based off of a sample of 662 institutions with 1,038 campuses. As cited above, there are approximately 2.7 million university students in the state of California. However, knowing that approximately one in six women and one in thirty-three men have experienced sexual assault in their life, Clery Act data does not sufficiently capture the extent of sexual assault on college campuses in the state of California. Additionally, measurement difficulties arise as Clery Act data is not aggregated for all California colleges and universities until the year 2018, making it difficult to ascertain the extent to which sexual violence was a problem on California campuses in years prior to the adoption of the Affirmative Consent law (California State Auditor, 2018). Though the data is referenced in other studies, the raw data does not appear to be publicly available. Therefore, there is insufficient evidence to conclude that the Affirmative Consent Law has a significant effect on decreasing rates of sexual assault.

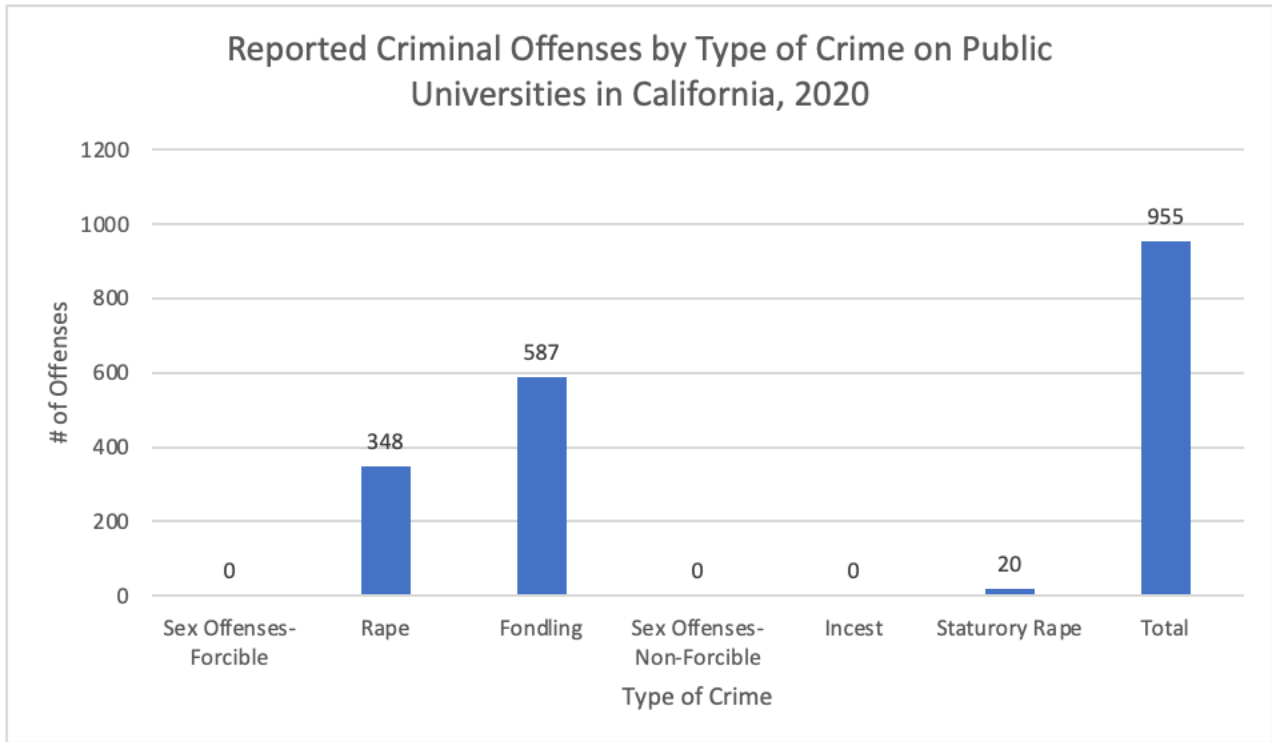


Figure 3, Reported Criminal Offenses by Type of Crime on Public Universities in California, 2020
Source: U.S. Department of Education, Office of Postsecondary Education, Campus Safety and Security Survey

Cost

Paralleling cost estimates for Alternative #3, this policy alternative will bear no additional financial costs to RAINN itself, or to the federal government. The costs of implementing this alternative will lie largely in advocacy costs, which are already a main function of the organization. However, this alternative will require more time spent by local police districts if number of reports are to rise. Therefore, this alternative will be rated as medium in terms of cost.

Summary Matrix

Equity	Political Feasibility	Effectiveness	Cost
Medium	Low	Inconclusive	Medium

OUTCOMES MATRIX

	School-Based Programming —Expanding “Shifting Boundaries”	Consent Education in Grade School Curriculums (K-12)	Advocating for a New Definition of Consent	Modeling Legislation after the California Affirmative Consent Law
Equity	High	High	High	Medium
Political Feasibility	Medium	High	Medium	Low
Effectiveness	High	High	Medium	Inconclusive
Cost	Low	Low	Medium	Medium

RECOMMENDATION

Considering the ratings of high equitability, political feasibility, and effectiveness in conjunction with low cost, advocating for consent education in grade school (K-12) curriculums will prove to be the best policy alternative to pursue in achieving lower rates of sexual violence and in advocating an affirmative consent standard.

Legal routes to advocating an affirmative consent standard, including advocating for a new definition of consent and modeling legislation after the California Affirmative Consent Law, appear to be less feasible than other proposed policy alternatives, and likely yield less impactful results.

Shifting Boundaries, however, yields incredibly similar results to implementing consent education in grade school curriculums, with a slight distinction in terms of political feasibility. Both alternatives are rated high in terms of equity and effectiveness, and low in cost; however, it will be easier for school districts to adopt an amendment to existing programming in grade school curriculums, rather than implement a new one altogether. Because of this, consent education in grade school curriculums is rated as high in terms of political feasibility, and Shifting Boundaries is rated as medium. Both alternatives however, risk the threat of dissent from parents.

IMPLEMENTATION

As noted above, integrating consent education into grade school curriculums will be the most effective policy alternative in building and advocating towards an affirmative consent standard, and preventing further sexual violence in the future. Because consent education may lie outside of the traditional sexual education boundaries, this policy will likely be less contentious at the school-district level, and yield highly effective results.

In order to move this recommendation forward, policymakers can look to the state of Washington, which, in 2020, passed Washington State Senate Bill 5395. The law requires all public schools to provide comprehensive sexual health care, which include affirmative consent and consent more broadly, by the 2022-2023 school year with some requirements beginning in the 2021 school year (Washington Office of Superintendent of Public Instruction, 2020). Considering that not all states have laws requiring comprehensive sex education, the implementation plan may be modified state-to-state to account for differences in sex education policies. However, the piece on consent should be required despite the status of sex education in the state. This proposed modified implementation plan is outlined below.

<p>Beginning in the 2022-2023 School Year</p>	<ul style="list-style-type: none"> • Schools already providing Comprehensive Sexual Health Education (CSHE) must include age-appropriate information about affirmative consent and bystander training • Schools not already providing CSHE must begin preparing to incorporate age-appropriate instruction on affirmative consent and bystander training • Schools not already providing CSHE must consult with parents and guardians, local communities, and school board executives about CSHE requirements
<p>Beginning in the 2023-2024 School Year</p>	<ul style="list-style-type: none"> • Schools must begin providing CSHE education at least twice in grades 6-8 and at least twice in grades 9-12. “Twice” will generally be two units of instruction in at least two grades per grade band, with enough instruction to address required content and skill development as reflected in the state’s Health Education K-12 Learning Standards • Instruction must include age-appropriate information about affirmative consent and bystander training • Instruction must include language and strategies that recognize all members of protected classes
<p>Beginning in the 2024-2025 School Year</p>	<ul style="list-style-type: none"> • Schools must provide social-emotional learning to students in grades K-3. There is no sexual health content required for students in grades K-3. • Schools must begin providing sex education at least once in grades 4-5. “Once” will generally be a unit of instruction in at least one grade, with enough instruction to address required content and skill development as reflected in the state’s Health Education K-12 Learning Standards.

Source: Washington Office of Superintendent of Public Instruction, 2020

This plan allows for school districts to modify the consent curriculum in accordance with their state’s sex education standards in policies. The plan notes that even those without comprehensive sex education can still introduce consent education and bystander training into their school’s ecosystem.

In order to advocate for the implementation of this policy alternative, RAINN would benefit from establishing a coalition with other organizations in this policy space, such as the

Guttmacher Institute, Advocates for Youth, the Sexuality Information and Education Council of the United States, and the National Coalition to Support Sexuality Education to ensure that the issue is garnering national attention. As a coalition, these organizations would benefit from an advocacy campaign— highlighting successes of consent education programs in places such as Washington state, dispelling any fears surrounding explicit conversations of consent in sex education classrooms, and calling attention to the ways in which all stakeholders benefit from its implementation. Costs of facilitating such a campaign will include the development of outreach materials, staffing and hiring considerations, training, event costs as applicable, and printing and communications costs.

Though outside the scope of this research, campaigns as referenced above have garnered success at the international level, such as the Foundation of Life and Love (#CSEandMe) campaign by the United Nations Educational, Scientific, and Cultural Organization (UNESCO). The #CSEandMe campaign sought to highlight the benefits of good quality comprehensive sex education for all young people, emphasizing the notion that comprehensive is not just about sex, but is about relationships, gender, puberty, consent, and sexual reproductive health for all young people (UNESCO, 2021). The campaign offers written material, videos, and various ways to engage in activism and volunteering efforts. A coalition by RAINN and other partners to formulate such a campaign has the potential to achieve similar success at the national-level, and would draw positive attention to the importance and value of consent education in grade schools.

Stakeholders in the implementation process will include the individual states and counties, local school districts, students, and their parents. The local school districts and states will have the most significant role in implementing the policy, as they will be state and federal-funded and locally-directed. However, the greatest barrier to implementation will likely be the parents, who are currently undergoing a movement of parental rights in education— having expressed great concern over subject matter taught in public schools. Because pieces of the consent education framework are sexual in nature, parents may express dissent towards having consent taught in schools, particularly in lower grade levels, though in practice, consent education will not be sexual in nature until older, age-appropriate grade levels. Instruction for students in kindergarten through grade three must be social-emotional learning, with no sexuality content or instruction. All instruction and materials used to teach grades 4-12 must be age appropriate, inclusive, and consistent with state guidelines. Because parental dissent is one of the greatest risks to implementation, states should be prepared to demonstrate the effectiveness of the policy alternative, and illustrate that consent is fundamental to safety and autonomy, and holds value outside of a sexual context.

In order to mitigate some parental concern in the context of sex education, parents will be

allowed to opt their child out of receiving sex education. Under an opt-out policy, school districts will be required to send written notification to parents before sex education lessons are taught, including information on what is being taught and who will be teaching the class. However, under this opt-out system, it is the responsibility of the parents to inform the school district in writing that they do not want their child to attend those lessons. Additionally, the opt-out system has been proven to be more efficient and less costly than an opt-in system, which will also be of interest to the school system. (McQuinn, 2017). Most states and school districts rely on opt-out policies, which ensure higher take-up rates, so that a larger number of young people receive the benefits of sex education. These also provides parents with an opportunity to review the sex education curriculum if they are unsure whether to opt their child out. The opt-out form is to define the curriculum day-by-day, presenting parents with the opportunity to allow their child to receive lessons and material on the day consent is presented, even as the parent remains skeptical on other sex education materials (SIECUS, 2018).

Students have a great stake in the process as well. Evidence shows that they will be better off if equipped with the tools and language to garner a greater understanding of themselves, their bodies, and their own autonomy, all of which is facilitated by access to consent education in public schools.

CONCLUSION

Sexual violence is a pervasive problem in the United States. On average, 204,370 Americans are victims of sexual assault each year, according to the U.S. Department of Justice (RAINN, 2005). These high numbers of sexual assault survivors demonstrate that local, state, and federal level policy has proven inadequate in addressing the scourge affecting so many, and must be amended to properly advocate for and support survivors.

The literature has illustrated that an affirmative consent standard in which a person expresses overt actions or words indicating agreement for sexual acts is the most survivor-centric policy framework. In order to advocate for this “yes means yes framework,” four policy alternatives were considered, weighed against the criteria of equity, political feasibility, effectiveness and cost. **Against these criteria, Alternative #2: Integrating Consent Education into Grade School Curriculums, performed the strongest.**

Despite the contentious nature of sex education, particularly in recent years, consent education can be adapted to live outside of the sex education curriculum, eliminating many

barriers to implementation. This policy alternative has fared strongly in terms of four criteria—equity, political feasibility, effectiveness, and cost, and therefore has the potential to positively impact the lives of a large number of students, with minimal costs. If states and local school districts can effectively mitigate parental dissent by highlighting safety and effectiveness, efforts which can be bolstered by the advocacy work of RAINN and partners, implementing consent education in grade school curriculums will prove to be an effective way of reducing instances of sexual assault, and formalizing affirmative consent.

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