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RAINN's Recommendations on Immunity for Sexual Violence Reporting

Self-blame and fear of being punished for misdemeanor alcohol or drug use deters victims from reporting. Rape and crimes of sexual violence are chronically underreported, with only 21.4% of victims reporting to law enforcement.¹ Only ten percent of child sex abuse victims who report (approximately only one in five) do so to legal authorities.² Additionally, as high as 84% of sexual assaults involved the use of drugs or alcohol by the victim.³ The focus of any investigation of sexual violence should be on the perpetrator's disregard of the victim's lack of consent, and not on any of the victim's possible misdemeanor crimes. Providing immunity for misdemeanor alcohol and drug crimes makes clear that the law prioritizes victims reporting a sex crime and holding a violent offender accountable. Victims are never at fault for assault, regardless of what substances they've been involved with.

State laws disincentivize people from reporting sex offenses. As a result, rapists and child abusers get away with their crimes and can repeat their offenses. The fear of repercussions for alcohol and drug misdemeanors incentivizes perpetrators to harm individuals who are under the influence of drugs or alcohol since they are less likely to go to the authorities. Children are especially vulnerable to perpetrators who use drugs and alcohol to groom and control their victims. Providing drugs or alcohol lowers the victims' inhibitions and then once they use the substances, perpetrators silence their victims by threatening to expose their alcohol or drug use if they disclose the sexual violence committed. It is time for the law to reflect that sexual assault survivors are not to blame for what happened to them and encourage

¹ <https://bjs.ojp.gov/document/cv22.pdf>

² Delayed Disclosure Child USA 2024 Factsheet, A Comprehensive Report on Delayed Disclosure in Cases of Child Sexual Abuse, Insights, Implications, and Pathways Forward, <https://childusa.org/wp-content/uploads/2024/06/Delayed-Disclosure-2024.pdf>

³ Basile KC, Smith SG, Liu Y, Lowe A, Gilmore AK, Khatiwada S, Kresnow MJ. Victim and perpetrator characteristics in alcohol/drug-involved sexual violence victimization in the U.S. *Drug Alcohol Depend.* 2021 Sep 1;226:108839. doi: 10.1016/j.drugalcdep.2021.108839. Epub 2021 Jun 24. PMID: 34216864; PMCID: PMC8355168. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8355168/#R4>

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survivors to report assault. Improving reporting of sexual violence is a critical step towards achieving justice for survivors and ensuring public safety.

Immunity is a Successful Legislative Policy

Many states and colleges already provide immunity for drug or alcohol use to increase reporting of crimes. They accomplish this without increasing drug or alcohol use. Immunity policies support victims and witnesses to feel more comfortable coming forward with information and seeking medical attention.⁴

College Campus Models

Colleges changed their policies to provide immunity to victims of sexual violence to combat the high rates of sexual violence on campuses. These immunity policies prohibit schools from disciplining someone for drug or alcohol use when they experience a sexual assault. Given the age of college students, it is not uncommon for drinking to be underage. These students fear school discipline and criminal charges and are therefore less likely to report, access justice, and receive medical care.

The overall rate of nonconsensual sexual contact on college campuses was thirteen percent in 2020.⁵ This number was even higher for women, finding that 25.95% (one in four) of female students reported nonconsensual sexual contact. Alcohol is highly associated with campus sexual violence⁶ and “nearly three-quarters (72%) of victims experienced rape while intoxicated.”⁷

⁴ Ibid.

⁵ Cantor, D., et al. (2020, January 17). Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct, Association of American Universities, <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20and%20appendice>.

⁶ Ellyson, A., Ortega, A., & Bedard-Gilligan, M. (2023, January). Institution of Higher Education Substance Use Amnesty Policies and Sexual Violence Reporting, *Journal of Interpersonal Violence* 2023 38:1-2, 212-236, <https://journals.sagepub.com/doi/epub/10.1177/08862605221080156>.

⁷ Mohler-Kuo, M., Dowdall, G. W., Koss, M. P., & Wechsler, H. (2004). Correlates of rape while intoxicated in a national sample of college women. *Journal of studies on alcohol*, 65(1), 37-45. <https://doi.org/10.15288/jsa.2004.65.37>.

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However, these staggering instances of sexual violence are rarely reported. Less than five percent of completed or attempted rapes of women on college campuses are reported to law enforcement, while up to two-thirds of victims did tell another person about the rape.⁸ 30.9% of those who did not report cited their reason for not reporting as fear of hostile treatment from the police or other parts of the justice system.⁹ Part of this fear emerges from the risk of punishment for alcohol and drug use. While student victims carry the impact of an assault for a lifetime, perpetrators walk free, allowing them to continue victimizing others. Studies have shown that between four and sixteen percent of college men have admitted to committing rape, and of those, two-thirds are repeat rapists.¹⁰

Campus immunity policies successfully contribute to improved reporting: the rate of reporting of these serious violent crimes is higher at schools that have immunity policies.¹¹ As a result, more survivors have sought medical attention, contributed to investigations, and received needed support. Immunity policies are crucial to promoting public health and safety on college campuses. By empowering students to seek medical support and justice without fear, these policies unequivocally affirm that survivors are never to blame for their sexual assault.

Good Samaritan Model

48 states have enacted “Good Samaritan” laws that create immunity for people who seek assistance for a drug-related overdose. Police involvement is consistently the primary reason people do not call for medical assistance during an overdose.¹² As a

⁸ Fisher, B., Cullen, F., & Turner, M. (2000). The sexual victimization of college women (NCJ 182369). Retrieved from the National Criminal Justice Reference Service: <https://www.ncjrs.gov/pdffiles1/nij/182369.pdf>

⁹ Ibid.

¹⁰ Hopper, Jim (accessed 9/5/2024) Repeat Rape by College Men. <https://jimhopper.com/topics/sexual-assault-and-the-brain/repeat-rape-by-college-men/>

¹¹ Ibid.

¹² United States Government Accountability Office, 2021, DRUG MISUSE: Most States Have Good Samaritan Laws and Research Indicates They May Have Positive Effects <https://www.gao.gov/assets/gao-21-248.pdf>

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result, less than 50% of overdoses result in a call for help.¹³ “Good Samaritan” policies have been found to result in a 15% reduction in overdose rates and no increase in drug use.¹⁴

Before the implementation of “Good Samaritan” drug laws, people were left with an impossible reality: access to medical care for an overdose could also result in their arrest. The immunity offered through “Good Samaritan” drug laws prioritizes the importance of public health and results in the accessibility of life-saving treatment.

Similarly, survivors of sexual violence must prioritize reporting a sexual assault and receiving a rape kit when under the influence of drugs or alcohol. Such action continues to prioritize public health and safety. Adding those seeking to report a sexual offense to existing immunity statutes helps improve the reporting of violent crimes, supports victims in accessing urgent medical care, and prioritizes public safety.

The Need for Reform

Protection for survivors should not be limited to students on a college campus. Laws must encourage reporting sexual violence, not create barriers for victims. Providing sexual assault survivors and witnesses immunity for misdemeanor drug and alcohol crimes encourages them to come forward. Additionally, these laws help law enforcement catch violent offenders and prevent serial perpetration. By implementing immunity for sexual assault victims, lawmakers have a chance to support victims and hold sexual offenders accountable. Below we offer recommendations and sample statutory language to do so.

¹³ Koester, S., Mueller, S. R., Raville, L., Langegger, S., & Binswanger, I. A., [“Why are some people who have received overdose education and naloxone reticent to call Emergency Medical Services in the event of overdose?”](#) *International Journal of Drug Policy*, 48, October 2017.

¹⁴ National Bureau of Economic Research, [“A Little Help from my Friends: The Effects of Naloxone Access and Good Samaritan Laws on Opioid-Related Deaths,”](#) NBER Working Paper Series, February 2017.

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RAINN's Recommendations

RAINN offers the following recommendations to policymakers to ensure state laws support victims and prioritize public safety.

1. Extend protections to both victims and other individuals seeking to report a sexual offense, but not for the person alleged to have committed the sexual offense.
2. Any definition of sexual offense should be broad enough to encompass sexual offenses where a victim's use of drugs or alcohol may inhibit reporting.
3. Prioritize investigations of violent offenses over the non-violent crimes of using drugs or alcohol during the sexual offense or at the time of reporting.
4. Remove criminal justice ramifications, including post-sentencing consequences, that inhibit reporting.
5. Eliminate any requirements that a victim remain at the scene of the crime or cooperate to obtain immunity.

Similar changes in college campus policies have demonstrated the efficacy of these reforms, and removing sexual offenders protects the community.

In addition to recommended actions, we provide examples of statutory text. Note that most states can modify their existing good samaritan laws, and as such the sample text should suffice. However, if a stand alone bill is needed, we provide a model bill below.

This is not an exhaustive list of considerations, but it highlights components of effective statutes. We recognize that each state's code is unique and complicated. RAINN's policy department can work hand-in-hand with lawmakers and their staff to tailor these recommendations to meet each state's specific needs.

RAINN Recommends:

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Extending protections to include both victims and other individuals seeking to report a sexual offense. Similar to the Good Samaritan laws, the purpose of immunity is to encourage the reporting of sexual offenses. Because most victims do not report to law enforcement,¹⁵ states should encourage anyone who becomes aware of a sexual offense to report to law enforcement, without negative consequences for their own drug or alcohol use. However, the protections should not extend to the person alleged to have committed the sexual offense.

Sample Statutory Language:

“Such individual in good faith, seeks or obtains assistance for themselves or another individual from a medical provider or a law enforcement officer for a sexual offense or seeks to report a sexual offense for themselves or another individual, but does not include an individual alleged to have committed the act of sexual violence”

“The person in good faith seeks to report a sexual offense, request assistance for a victim of a sexual offense, or is a victim of or witness to a sexual offense and:

- (a) the evidence for the drug offense or alcohol offense was obtained as a result of the report or request for assistance related to the sexual offense; or*
- (b) the person committed the drug offense or alcohol offense at the time that the person was the victim of or witness to the sexual offense; and*

¹⁵ Most victims of sexual assault, 58-94%, seek help informally from friends and family members, and “[f]or adolescents especially, their first disclosure of sexual assault victimization is typically made to a friend or family member, not a formal service provider.”

https://ww1.odu.edu/content/dam/odu/offices/police/docs/2019-6_TB_Improving-Responses-to-SA-Disclosures.pdf

f; “About two-thirds of sexual assault survivors disclose to informal sources such as friends, family, or significant others in search of support.” Kirkner A, Lorenz K, Ullman SE, Mandala R. A Qualitative Study of Sexual Assault Disclosure Impact and Help-Seeking on Support Providers. *Violence Vict.* 2018 Aug;33(4):721-738. doi: 10.1891/0886-6708.VV-D-17-00059. PMID: 30567770; PMCID:

PMC6309334.<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6309334/#:~:text=About%20two%2Dthirds%20of%20sexual,Filipas%20%26%20Ullman%2C%202001>).

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the person is not alleged to have committed the sexual offense.”

RAINN Recommends:

Any definition of “sexual offense” should be broad enough to encompass all sexual offenses where a victim’s use of drugs or alcohol inhibits reporting. Besides the drug or alcohol-facilitated rape previously discussed, perpetrators often use drugs or alcohol to facilitate other sexual offenses, including by controlling or manipulating minors. Sexual offenders often use drugs or alcohol either as an enticement¹⁶ to get the victim to participate or to threaten and coerce a victim based on the victim’s use of drugs or alcohol.¹⁷ Because of this, more than just rape should be included in a definition.

Sample Statutory Language:

“Sexual offense” means any alleged violation, whether or not a civil or criminal action arises as a result of the alleged violation, of any offense in [chapter/title] involving sexual contact or sexually explicit conduct.

Crimes to consider:

1. Sexual Exploitation
2. Human trafficking
3. Incest
4. Sexual Assault/Rape
5. Forcible Sodomy

¹⁶ Individuals “provide gifts or bribes to persuade, desensitize or coerce minor victims as part of the grooming process” and this includes supplying drugs or alcohol to victims. Kirk-Provencher KT, Jeglic EL, Calkins C, Spillane NS. The use of substances in sexual offending in a United States sample. *Psychiatr Psychol Law*. 2021 Apr 27;29(1):53-67. doi: 10.1080/13218719.2021.1904445. PMID: 35693381; PMCID: PMC9186352. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9186352/>

¹⁷ Ian A. Elliott. A Self-Regulation Model of Sexual Grooming. *Trauma, Violence, & Abuse*. 2015. DOI: 10.1177/1524838015591573. <https://www.nationalcac.org/wp-content/uploads/2019/05/a-self-regulation-model-of-sexual-grooming.pdf>

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6. Sexual Battery
7. Sexual Abuse of a Child

RAINN Recommends:

Prioritize investigations of violent offenses over the non-violent crimes of using drugs or alcohol during the sexual offense or at the time of reporting. Removing the fear of being arrested, prosecuted, or even blamed for drug or alcohol use will increase the reporting of these crimes. Because drug and alcohol-facilitated sexual abuse is so prevalent, the circumstances should not be used to further inhibit victims and witnesses from reporting.

Sample Statutory Language:

“No individual shall be issued a citation for, arrested, charged, prosecuted, penalized or convicted of the following offenses if that offense is related to the sexual offense that the person is reporting[see above]”

RAINN Recommends:

Removing criminal justice ramifications, including post-sentencing consequences, that inhibit reporting. Victims are often afraid of being blamed or punished for consuming drugs or alcohol, and those fears go beyond prosecution. These collateral consequences can also inhibit disclosures. Giving victims immunity encourages truthful disclosures about sexual assaults, which allows victims to access care and helps investigators remove sexual offenders from the community..

Sample Statutory Language:

“A person’s pretrial release, probation, furlough, supervised release, or parole shall not be revoked based on an incident for which the person would be immune from prosecution under subsection [X] of this section.”

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RAINN Recommends:

Eliminating any requirements that a victim remains at the scene of the crime or cooperates to obtain immunity. Most Good Samaritan laws condition immunity on remaining with the victim who is suffering an overdose. However, requiring a victim or witness of sexual offenses to stay at the crime scene can be both physically unsafe (because the perpetrator may still be on scene) and emotionally unsafe (requiring a victim to remain at the location of a traumatic event). Instead, individuals obtaining immunity should identify themselves and provide information sufficient to determine that a sexual offense may have occurred. Additionally, victims may be unable to decide whether they want to be involved in the criminal justice system immediately after a traumatic event, but immediate reporting is important to the collection of evidence. Requiring full cooperation immediately after the traumatic event can inhibit victim reporting and future cooperation, and is not trauma-informed.¹⁸ Laws should exempt sexual offense victims or those seeking to help the victims from those provisions contained in current Good Samaritan laws or by adding stand-alone requirements for sexual offense reporters.

Sample Statutory Language:

“the person provides their full name, contact information and sufficient information to determine that a sexual offense may have occurred”

Model Standalone Bill

Most states can use the above statutory text to modify their existing good samaritan laws. If lawmakers prefer a standalone bill, however, we offer model legislation below.

(1) For purposes of this section:

¹⁸ This is not unique in the sexual violence space. Under federal law, states who receive STOP Violence Against Women Formula Grant funding cannot condition payments for sexual assault exams on the victim's cooperation with law enforcement. <https://www.justice.gov/ovw/page/file/1008816/dl>

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- (a) “Alcohol offense” means any offense involving the possession or consumption of alcoholic beverages under [insert state-specific offenses – including public intoxication and consumption by a minor]
 - (b) “Drug offense” means any offense involving the possession or consumption of drugs under [insert state-specific offenses – include drug paraphernalia]
 - (c) “Sexual offense” means any offense involving sexual contact or sexually explicit conduct, whether or not a civil or criminal action arises as a result of the alleged violation, and includes any offense under [insert state-specific offenses – include Rape, Sexual Offenses Against Children, Trafficking, Incest, Sexual Exploitation, Sexual Battery, Sexual Harassment, Exploitation (Electronic)]
- (2) A person shall not be issued a citation, taken into custody, arrested, charged, prosecuted, penalized, or convicted for a drug offense or alcohol offense, if:
- (a) the person in good faith seeks to report a sexual offense, request assistance for a victim of a sexual offense, or is a victim of or witness to a sexual offense and:
 - (i) the evidence for the drug offense or alcohol offense was obtained as a result of the report or request for assistance related to the sexual offense; or
 - (ii) the person committed the drug offense or alcohol offense at the time that the person was the victim of or witness to the sexual offense;
 - (b) the person provides their full name, contact information and sufficient information to determine that a sexual offense may have occurred; and
 - (c) the person is not alleged to have committed the sexual offense;
- (3) A person’s pretrial release, probation, furlough, supervised release, or parole shall not be revoked based on an incident for which the person would be immune from prosecution under subsection (2) of this section.
- (4) Nothing in this section shall:
- (a) be construed to bar the admissibility of any evidence obtained in connection with the investigation and prosecution of other crimes or

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violations committed by a person who otherwise qualifies for limited immunity under this section; or

(b) preclude prosecution of a person on the basis of evidence obtained from an independent source.

(5) The act of providing assistance to a sexual assault victim may be used as a mitigating factor in a criminal prosecution for which immunity is not provided.

Next Steps:

For more information about the laws in your state, please see RAINN's state law database. For additional information about involuntary pelvic exams generally, please visit RAINN's website. To schedule a call with someone on RAINN's policy team, email policy@rainn.org.