

Safe Community Challenge 38-Point Analysis Framework Explanation

The Safe Community Challenge is designed to equip advocates, lawmakers, and citizens with the information they need to make their communities safer. Developed with independent research and focusing on best practices, the Safe Community Challenge helps to understand how states compare in terms of community safety while providing opportunities to learn from their individual successes and failures. This national program provides all states with the opportunity to see what they can do to improve the safety of their citizens.

In the Safe Community Challenge, every state receives a grade through a scorecard that assesses the state on 6 key legal areas that impact the safety of citizens. Additionally, states are provided a detailed analysis of the 6 areas and can improve their laws by following recognized best practices. The Challenge focuses on the following: 1) child marriage; 2) consent to sexual contact; 3) hate crimes; 4) sexual assault kit processing; 5) spousal rape; and 6) statutes of limitation for sexual crimes. The Safe Community Challenge utilizes a 38-Point framework for analysis of state laws. The framework outline below shows the areas examined with an accompanying explanation for why these areas are important. Many areas of law impact community safety and this is not a comprehensive list of all areas. These 6 areas have been identified as under addressed and in need of reform. This analysis may be expanded in the future to include more topics. Some areas of law were not included because other programs already exist pushing for comprehensive reform for those topics.

The Safe Community Challenge is a program of the Public Policy Institute of the Rockies. The Public Policy Institute of the Rockies is guided by its mission to create transformational change on under addressed issues through conducting research, initiating reforms, and providing legal advocacy. Learn more about their work and team at www.publicpolicyinstituteoftherockies.com.

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ISSUE 1: CHILD MARRIAGE:

- 1.1 *What is the youngest age one can marry?*
- 1.2 *Is parental approval required?*
- 1.3 *Is judicial approval required?*
- 1.4 *Is there a lower age limit if one of the participants is pregnant?*
- 1.5 *Is there a lower age limit if the minor has been married before?*
- 1.6 *Is there a lower age limit if the participant is in the military?*
- 1.7 *Is there a gender difference in the lowest age limit permitted?*

Background:

Child marriage exists in the United States. Child marriage is marriage for any individual when they are under 18 years of age. Between 2000 and 2010, approximately 248,000 children were married. Some were as young as 12 years old. Most of the minors married adults between 18 and 25 years of age. However, several hundred children were legally married to adults in their 40s, 50s, 60s, and 70s.

Every state has its own marriage laws. Most states have a minimum marriage age of 18 years old, but loopholes exist that allow marriage at younger ages, some as low as 12 years of age. States have their own laws regarding the age youth can marry and the procedures for marriage. State law also generally provides that a child who has not reached 18 years of age cannot enter into legal contracts or apply for a loan or credit card.

International law provides guidance against child marriage. Article XVI of the Universal Declaration of Human Rights states marriage should be entered into freely and that persons must be of full age in order to legally marry. The United Nations declared that children are defined as individuals who are below 18 years of age (as recognized by Article I of the Convention on the Rights of the Child). Further protection for children is provided in Article 16 of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women that requires the minimum age for marriage be specified and that child marriage be declared illegal.

Child marriage is considered a human rights violation because of its negative, multi-faceted impact on children. Child marriage denies children regular childhood experiences and disrupts their education (negatively impacting their economic opportunities). It stops children from bonding with others their own age. Child marriage can even prevent a child from choosing her own spouse. Child marriage puts the child at risk of domestic violence and abuse, increases risk of contracting sexually transmitted infections, and increases early pregnancies (which can endanger the health and life of the mother). The health of the baby is also jeopardized because the growth of the fetus competes with the growth of the child mother, leading to underweight newborns that are more likely to have health complications. All of these health issues lead to increased community health care costs.

Children under 18 years of age have a right to be protected from harm and abuse. Our state laws reflect this right. Our states should protect children who frequently lack the experience and

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maturity to understand right from wrong or to understand consequences of their actions. That is providing strong protections in child marriage laws is important.

The analysis used for child marriage in the Safe Community Challenge includes best practices and factors identified for determining the protective capacity of state child marriage laws. Independent analysis, utilizing the following sources and other factors, were utilized in creating the Safe Community Challenge Analysis Framework.

Additional Sources:

Equality Now. "5 Things You Should Know About Child Marriage and the Law in the United States."

https://www.equalitynow.org/5_things_you_should_know_about_child_marriage_the_us. (May 24, 2019).

FindLaw. "State-by-State Marriage Age of Consent Laws." *Family.findlaw.com*.

<https://family.findlaw.com/marriage/state-by-state-marriage-age-of-consent-laws.html>. (Last accessed on Dec. 13, 2020).

Girls not brides. *Girls Not Brides.org*.

<https://www.girlsnotbrides.org/child-marriage/united-states/>. (Last accessed on Dec. 13, 2020).

Legal Information Institute, "Marriage laws." *Law.cornell.edu*.

https://www.law.cornell.edu/wex/table_marriage. (Last accessed on Dec. 13, 2020).

Ochieng, Sarah (2020). "Child Marriage in the U.S.: Loopholes in State Marriage Laws Perpetuate Child Marriage," *Immigration and Human Rights Law Review: Vol. 2 : Iss. 1* , Article 3. Available at: <https://scholarship.law.uc.edu/ihr/vol2/iss1/3>.

Schuman, Rachel L. (2019). "State Regulations Are Failing Our Children: An Analysis of Child Marriage Laws in the United States." 60 *Wm. & Mary L. Rev.* 2337. Available at:

<https://scholarship.law.wm.edu/wmlr/vol60/iss6/7>.

Selby, Daniele. "Child Marriages Happen in the US, Too. Here's Everything You Need to Know." *Global Citizen.org*. <https://www.globalcitizen.org/en/content/child-marriage-in-the-us-what-to-know/> (Sept. 3, 2019).

Unchained at Last. "Laws to End Child Marriage." *Unchainedatlast.org*.

<https://www.unchainedatlast.org/laws-to-end-child-marriage/>. (Last accessed on Dec. 13, 2020).

Unchained At Last. "Child Marriage – Shocking Statistics." *Unchainedatlast.org*.

<https://www.unchainedatlast.org/child-marriage-shocking-statistics/> (2019).

United Nations Population Fund, "End Child Marriage." *UNFPA.org*.

<https://www.unfpa.org/end-child-marriage> (2012).

ISSUE II: CONSENT TO SEXUAL CONTACT

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- 2.1 *What is the definition of “consent”?*
- 2.2 *Is freely given or affirmative consent required?*
- 2.3 *What is the youngest age for a person to consent to sexual contact?*
- 2.4 *Is a difference in age accounted for when considering consent?*
- 2.5 *Does the law recognize that a developmental disability and/or mental incapacity can impact the ability to consent?*
- 2.6 *Does the law recognize that consciousness can impact a person’s ability to consent?*
- 2.7 *Does intoxication impact the victim’s ability to consent?*
- 2.8 *Is an individual’s ability to consent impacted by their relationship with the perpetrator?*

Background:

For individuals to freely and lawfully engage in sexual activity, they must consent to this activity. Consent involves what boundaries individuals are comfortable with regarding sexual contact. Consent is an ongoing process and an individual can withdraw their consent at any time. Consent is important because it determines whether a crime has occurred. No one single definition of consent exists. Every state has its own definition of criminal terms like rape, sexual assault, and sexual abuse, as well as consent. Consent is involved with all of these crimes. Consent must be freely given, affirmative, and both individuals must have the capacity to consent. An individual’s ability and capacity to consent in sexual activity depends on many factors. These include age, developmental disability, intoxication, consciousness, physical disability, and the relationship between the victim and perpetrator.

The analysis used for consent to sexual contact in the Safe Community Challenge includes best practices and factors identified for determining the protective capacity of state consent for sexual contact laws. Independent analysis, utilizing the following sources and other factors, were utilized in creating the Safe Community Challenge Analysis Framework.

Additional Sources:

AgeOfConsent. “Age of Consent Laws by State.” *FamilyFindLaw.com*.
<https://www.ageofconsent.net/states> (last updated Dec. 11, 2020).

Beitsch, Rebecca. “#MeToo Movement Has Lawmakers Talking About Consent.”
PewTrusts.org.
<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/01/23/metoo-movement-has-lawmakers-talking-about-consent> (Jan. 23, 2018).

FindLaw. “State-by-State Marriage ‘Age of Consent’ Laws.” *Family.findlaw.com*.
<https://family.findlaw.com/marriage/state-by-state-marriage-age-of-consent-laws.html> (last updated Sept. 15, 2020).

Rape, Abuse & Incest National Network. “Consent Laws.” *Rainn.org*.

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<https://apps.rainn.org/policy/compare/consent-laws.cfm> (last updated March of 2020).

Rape, Abuse & Incest National Network. "Legal Role of Consent." *Rainn.org*.
<https://www.rainn.org/articles/legal-role-consent> (last accessed on Dec. 11, 2020).

Rape, Abuse & Incest National Network. "What Consent Looks Like." *Rainn.org*.
<https://www.rainn.org/articles/what-is-consent> (last accessed on Dec. 11, 2020).

ISSUE III: HATE CRIMES LAW

- 3.1 *Does the state have a hate crimes law?*
- 3.2 *Does the hate crimes law require data collection on hate crimes?*
- 3.3 *Does the state criminalize interference with religious worship?*
- 3.4 *Does the state have a criminal penalty enhancement for crimes or have a separate crime for crimes motivated by race, religion, or ethnicity?*
- 3.5 *Do criminal penalty enhancements exist for crimes motivated by sexual orientation?*
- 3.6 *Do criminal penalty enhancements exist for crimes motivated by gender?*
- 3.7 *Do criminal penalty enhancements exist for crimes motivated by gender identity?*
- 3.8 *Do criminal penalty enhancements exist for crimes motivated by disability?*
- 3.9 *Do criminal penalty enhancements exist for crimes motivated by political affiliation?*
- 3.10 *Do criminal penalty enhancements exist for crimes motivated by age?*

Background:

Hate crimes are generally crimes committed on the basis of a person's perceived or actual race, color, religion, national origin, sexual orientation, gender, gender identity, or disability according to federal law. The term "hate" means bias against a person or group of individuals with these specific characteristics. States may have their own hate crime laws in addition to the federal law and provide additional protections.

Experts estimated that between 2004 and 2015, an average of 250,000 hate crimes were committed annually in the U.S. These are estimates because the majority of these crimes were not reported to law enforcement.

Hate crime laws are important because a hate crime has a broader impact than many other types of crimes. Hate crimes have broad reaching impact, affecting the victim, but also families, communities, the nation, and even the world. The victims of a hate crime are not the only victims of the crime - others who identify with the targeted characteristics of the victim are also impacted, intimidated, and threatened by the crime. Having a strong state crime law is important to not only create safe communities and show support for victims, but to also send a clear message that a community does not and will not tolerate this kind of hate-inspired crime.

The analysis used for hate crimes in the Safe Community Challenge includes best practices and factors identified for determining the protective capacity of state hate crimes laws. Independent analysis, utilizing the following sources and other factors, were utilized in creating the Safe Community Challenge Analysis Framework.

Additional Sources:

Brennan Center for Justice. "State Hate Crimes Statutes." *Brennan Center.org*.
<https://www.brennancenter.org/our-work/research-reports/state-hate-crimes-statutes> (July 1, 2019).

Movement Advancement Project. "Hate Crimes Laws." *Lgbtmap.org*.
<https://www.lgbtmap.org/img/maps/citations-hate-crime.pdf> (last updated July 7, 2020).

National Association for the Advancement of Colored People. "State-by-State Hate Crime Laws." *NAACP.org*.
<https://www.naacp.org/wp-content/uploads/2017/09/Hate-Crimes-laws-by-state.pdf> (2017).

U.S. Dept. of Justice. "Learn About Hate Crimes." *Justice.gov*.
<https://www.justice.gov/hatecrimes/learn-about-hate-crimes> (last accessed Dec. 8, 2020).

ISSUE IV: SEXUAL ASSAULT KIT TESTING

- 4.1 *Has the state conducted an inventory of untested rape kits (also called sexual assault evidence kits)?*
- 4.2 *Has the state conducted testing of the backlog of untested sexual assault kits?*
- 4.3 *Is there mandatory testing of all new sexual assault kits?*
- 4.4 *Has a sexual assault kit tracking system been implemented?*
- 4.5 *Does the state have a Survivors' Right to Notice?*
- 4.6 *Has the State provided funding for rape kit reform?*

Background:

Too many individuals are attacked and subjected to sexual assault. When an individual seeks medical help after the assault, an evidence kit, called a sexual assault evidence kit (or rape kit), is used to collect evidence about the crime. This evidence may be used for prosecution of the assault. In recent years, states have realized that their procedures are insufficient to ensure justice occurs.

These insufficient procedures have caused many states to have a backlog of untested evidence kits. This backlog jeopardizes the ability of a survivor of the assault from finding justice. Importantly, it also places other individuals at risk because studies have shown that one sexual assault is a rare occurrence - the person perpetuating the assault has either assaulted before or they will assault again. Processing the evidence kit allows DNA evidence to be catalogued and

compared to other DNA in databases. This allows serial predators to be identified and captured, hopefully stopping assaults from occurring.

No universal laws exist for handling of evidence kits. States have their own laws regarding how the sexual assault evidence kits are handled. Many states have implemented reforms to deal with the insufficient state procedures for handling sexual assault evidence kits.

The analysis used for sexual assault evidence kits in the Safe Community Challenge includes best practices and factors identified for determining the protective capacity of state sexual assault evidence kit laws. Independent analysis, utilizing the following sources and other factors, were utilized in creating the Safe Community Challenge Analysis Framework.

Additional Sources:

Coble, Christopher. "State Rape Kit Laws Overview." *Findlaw.com*.
<https://blogs.findlaw.com/blotter/2018/05/state-rape-kit-laws-overview.html> (May 30, 2018).

Joyful Heart Foundation. "Comprehensive Rape Kit Reform: A Legislative Handbook." Campaign to End the Backlog. (Jan. 20, 2020).
<http://www.endthebacklog.org/sites/default/files/JHF%20Legislative%20Handbook%20-%20January%202020%20-%20v2010-01-12.pdf>

Joyful Heart Foundation. (2016). "Drafter's Checklist for Rape Kit Reform." End the Backlog Initiative.
<http://www.endthebacklog.org/ending-backlog-government-responses-state/drafters-checklist-rape-kit-reform>.

National Conference of State Legislators. "Sexual Assault Kit Tracking System." *NCSL.org*. (Jan. 16, 2019).

National Conference of State Legislators. "Sexual Assault Kit Training, Testing, and Procedures." *NCSL.org*. (Jan. 1, 2019).

U.S. Dept. of Justice, Office of Justice Programs & the National Institute of Justice. "National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach."
<https://www.ncjrs.gov/pdffiles1/nij/250384.pdf> (last accessed on Dec. 13, 2020).

ISSUE V: SPOUSAL RAPE

5.1 *Is spousal rape, when a spouse rapes a partner who is unconscious, drugged, or otherwise incapacitated, treated differently than if the individuals are not spouses?*

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5.2 *Does an exception for spousal rape exist under laws criminalizing statutory rape?*

5.3 *Does an exception for sexual contact under laws criminalize certain sexual contact between people with a supervisory relationship?*

Background:

Spousal rape, also called marital rape, is an incredibly common crime and not discussed frequently enough as a part of intimate partner abuse. This type of rape occurs when a person who is married sexually assaults or rapes his or her spouse. Many do not know how prevalent this is or about the need for stronger laws criminalizing it. Marital rape was not a crime in every state until 1993 but loopholes still exist in many state's sexual assault laws.

One in ten women, between 10 and 14% of married women, will experience marital rape according to data from the National Coalition Against Domestic Violence (NCADV). The harm is not only to the crime victim - children are also harmed. Nearly one in five (18%) female marital rape survivors stated their children witnessed the assault according to data from NCADV.

A 2002 report from the U.S. Department of Justice Bureau of Justice Statistics showed this type of rape is also largely unreported to law enforcement. Seventy-seven percent of women raped by a husband or boyfriend not reporting the crime, as compared to reporting rates of 61% of women who were raped by a friend and 54% of women raped by a stranger reporting.

The analysis used for spousal rape in the Safe Community Challenge includes best practices and factors identified for determining the protective capacity of state spousal rape laws. Independent analysis, utilizing the following sources and other factors, were utilized in creating the Safe Community Challenge Analysis Framework.

Additional Sources:

National Coalition Against Domestic and Sexual Violence. Rape and Sexual Assault Analyses and Law. "AEquitas: The Prosecutors' Resource on Violence Against Women, a project of the Pennsylvania Coalition Against Rape."
http://www.ncdsv.org/images/AEquitas_RapeAndSexualAssaultAnalysesAndLaws_7-2012.pdf (July 2012).

National Coalition Against Domestic Violence. "National Statistics." *NCADV.org*.
<https://ncadv.org/statistics> (last accessed on Dec. 9, 2020).

National Coalition Against Domestic Violence (2020). "Domestic Violence." Retrieved from https://assets.speakcdn.com/assets/2497/domestic_violence-2020080709350855.pdf?1596811079991.

Smith, Erika W. "5 Statistics That'll Change How You Think About Marital Rape." *Refinery29.com*. <https://www.refinery29.com/en-us/marital-rape-in-relationships-statistics> (Oct. 4, 2019).

Smyth, Julie Carr & Karnowski, Steve. "Some states seek to close loopholes in marital rape laws." <https://apnews.com/article/3a11fee6d0e449ce81f6c8a50601c687> (May 4, 2019).

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Mahoney, Patricia & Williams, Linda M. "Sexual Assault in Marriage: Prevalence, Consequences, and Treatment of Wife Rape." *Psychology* (2007), available at http://www.ncdsv.org/images/nfr_partnerviolence_a20-yearliteraturereviewandsynthesis.pdf.

ISSUE VI: STATUTE OF LIMITATIONS FOR SEXUAL CRIMES

- 6.1 *Has this state eliminated the statute of limitations for all felony sex crimes?*
- 6.2 *In cases when a victim chooses not to report or delays reporting the crime, is the statute of limitations reduced?*
- 6.3 *Is the statute of limitations impacted by DNA evidence?*
- 6.4 *What is the state's statute of limitations for its most serious felony sex crimes?*

Background:

When a crime occurs, a specified amount of time exists after that crime occurs during which a criminal prosecution can be had. A criminal prosecution is when law enforcement investigates a crime and turns that crime over to a prosecuting attorney's office for charging the person with a crime and the resulting criminal trial.

Different crimes have different time limitations based on the seriousness of the crime and the harm that has occurred. These time limitations are called the statutes of limitation. No universal statute of limitations exists. Each state has its own statute of limitations for crimes covered by state law, different for different crimes.

The analysis used for statutes of limitation for sexual crimes in the Safe Community Challenge includes best practices and factors identified for determining the protective capacity of state statute of limitations for sexual crimes laws. Independent analysis, utilizing the following sources and other factors, were utilized in creating the Safe Community Challenge Analysis Framework.

Additional Sources:

Rape, Abuse & Incest National Network. "Statute of Limitations." *Rainn.org*. <https://www.rainn.org/statutes-limitations> (last accessed on Dec. 13, 2020).

Rape, Abuse & Incest National Network. "Statute of Limitations Report." *Rainn.org*. <https://apps.rainn.org/policy/compare/statutes.cfm> (last updated in March of 2020).