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## STEALTHING

### AAFP Position

The AAFP believes that [sexual assault is a serious public health issue](#). The AAFP [supports the rights of survivors of sexual assault](#), including the right to protection from their offender and from re-victimization in the legal and criminal justice systems. Sexual assault is a crime of sexual violence that encompasses any non-consensual sexual activity, including sexual coercion, contact abuse (unwanted kissing, touching, or fondling), the intentional removal or damaging of a condom during sex ("stealthing"), and rape. The AAFP recommends that family physicians discuss with and educate patients on the concept of sexual consent, including the resources and support available to survivors of stealthing and other forms of sexual assault.

### The Issue

Stealthing is the intentional, non-consensual removal or damaging of a condom during sexual intercourse. Stealthing can turn otherwise consensual sexual activity into non-consensual sexual activity. While some individuals that experience stealthing may see their partners remove or damage the condom during intercourse, others may be completely unaware. In addition to violating a sexual partner's consent, stealthing exposes that individual to increased risk of unintended pregnancy and transmission of sexually transmitted infections (STIs), and may result in lasting physical, emotional, and psychological trauma for those affected. Those who practice stealthing do so as a willful act of deception, and in some cases as an act of reproductive coercion or deliberate HIV transmission.<sup>1</sup>

Federal action to address stealthing remains limited. In October 2017, Representatives Ro Khanna (D-CA) and Carolyn Maloney (D-NY) [wrote](#) to House Judiciary Committee leadership requesting a hearing on stealthing. No legislation to address stealthing has been introduced since then.

### State Action

While all states currently have laws criminalizing sexual assault, no state has explicitly addressed stealthing. Existing state statutes all require a lack of consent for an act to constitute sexual assault, although the definition of consent varies from state to state. Because no state has prosecuted a case involving stealthing, it remains unclear whether stealthing would constitute sexual assault under existing state definitions of consent.

California's existing consent [law](#) relies on "affirmative consent," or the explicit, voluntary understanding between partners to engage in a predetermined form of sexual activity.<sup>2</sup> Given this standard, it is possible that the lack of explicit consent inherent to stealthing would constitute sexual assault under the existing law. In other states, definitions of consent may not depend on explicit communication between partners. In Pennsylvania, for example, consent isn't even defined in the [sexual assault statute](#).

To address these legal gaps, some states have introduced legislation to criminalize the act of stealthing. New Jersey's [AB 2748](#) would make anyone who engages in stealthing – including removing a condom, tampering with or damaging a condom, or knowingly using a condom that has been

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<sup>1</sup> Ebrahim S. (2019). "I'm Not Sure This Is Rape, But: An Exposition of the Stealthing Trend." *SAGE Open*. Web.

<sup>2</sup> Blanco M. (2019). "Sex Trend or Sexual Assault?: The Dangers of "Stealthing" and the Concept of Conditional Consent." *Penn State Law Review*. Web.



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tampered with or damaged – subject to up to three to five years in prison, a fine of up to \$15,000, or both. Similar bills have been introduced in other states (CA, NY, WI), although none have passed.