According to the National Registry of Exonerations, New York ranks as one of the worst states in the country in terms of wrongful convictions. Last year, 18 men in New York were exonerated of crimes that they did not commit.[[1]](#footnote-1)

Remember the Central Park Five? The common thread of these cases is that police, prosecutors, and jury members ignored the Presumption of Innocence.[[2]](#footnote-2)

Indeed, the Presumption of Innocence is a bedrock principle of the American criminal system. The presumption of innocence places the burden of proof on the government to reach a conviction, and promotes fairness and due process.

**Wrongful Convictions of Sexual Assault and the ‘Willingness’ Standard**

Most sexual assault cases revolve around the question of “consent.” The accepted standard for consent to sex is the “willingness” standard, which has been endorsed by the American Law Institute.[[3]](#footnote-3)

The willingness standard means a person can be willing to engage in sexual activities without specific words or actions. This standard is consistent with the Presumption of Innocence.

**Activists Want to Eliminate the Presumption of Innocence, and Impose a Presumption of *Guilt***

Unfortunately, activists are trying to eviscerate the Presumption of Innocence by pushing a so-called “affirmative consent” approach. S2115 seeks to amend Subdivision 7 of section 130.00 of the penal law to read as follows: [[4]](#footnote-4)

"Physically helpless" means that a person is unconscious or for any reason is physically unable to communicate affirmative consent to an act. Such affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in sexual activity."

**Prove It To Yourself**

Perjury or false allegations are the leading contributing factor to wrongful convictions, occurring in 61% of such cases.[[5]](#footnote-5)

So the Center for Prosecutor Integrity invites you to try the proposed Affirmative Consent standard for yourself to see if it really works:

*The next time you have intimate relations, try out the Affirmative Consent approach as outlined by S2115.*

By Tuesday, May 17, send me an email to answer the yes-or-no questions,

* Did the Affirmative Consent method actually work?
* Would Affirmative Consent protect you from a false allegation of sexual assault?

All emails will be treated as private and confidential. I look forward to hearing from you.



[*www.prosecutorintegrity.org*](http://www.prosecutorintegrity.org)

1. <https://www.law.umich.edu/special/exoneration/Pages/about.aspx> [↑](#footnote-ref-1)
2. <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6537&context=faculty_scholarship> [↑](#footnote-ref-2)
3. <http://www.prosecutorintegrity.org/sa/ali/> [↑](#footnote-ref-3)
4. <https://www.nysenate.gov/legislation/bills/2021/S2115> [↑](#footnote-ref-4)
5. <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx> [↑](#footnote-ref-5)