

YES, NO, MAYBE SO

A Conversation About Consent



PATHWAYS

PORCHLIGHT



is one of Kentucky's 13 state-designated Rape Crisis Centers. We provide advocacy, counseling, and violence prevention services within our community.



INTRODUCTION

Megan Rookard (she/they) is a Coordinator & Advocate at Pathways Porchlight in the Fivco region, and has been serving in this position for three years.

Morgan Ferguson (she/her) is a Coordinator & Advocate at Pathways Porchlight in the Gateway region, and has been serving in this position for one year.



NOTICE:

This discussion will include topics of a sensitive nature, including sexual assault. Please feel free to step out at any time, if necessary.

SURVIVOR/ALLY RESOURCES:

Pathways Porchlight: 606.326.2875

Pathways 24/7 Crisis Line: 1.800.562.8909

The Kentucky Association of Sexual Assault Programs: kasap.org

National Sexual Assault Hotline: 1.800.656.4673

Rape, Abuse, & Incest National Network: rainn.org

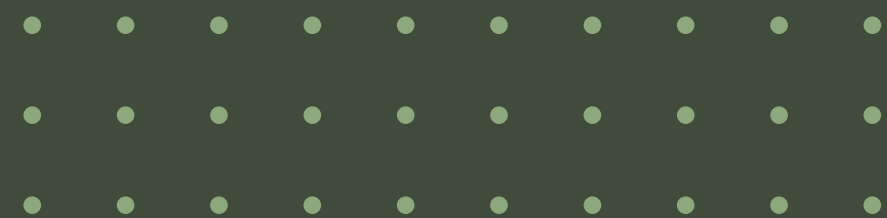
THE SITUATION

You are on a jury for a case involving an alleged sexual assault.

When testifying to the events that took place, the defendant says:

“I don’t hear her say anything. And I don’t feel her say anything. And so I continue and I go into the area that is somewhere between permission and rejection. I am not stopped.”

Later, during deliberation, your fellow jurors wonder aloud whether, if the victim did not say no...does that constitute consent?



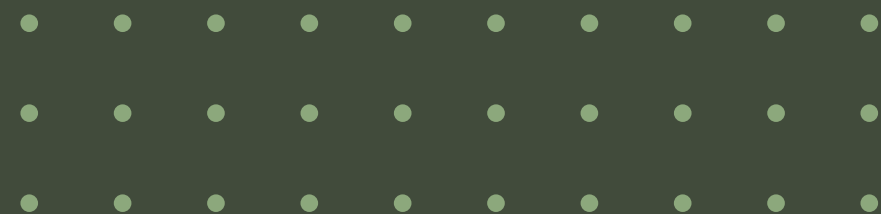
THE SITUATION

As a group, you decide to ask the judge for the legal definition of consent, so you can decide whether or not the law was broken.

The judge responds:

“[There is no legal definition under our state law.] You, as reasonable people, have to come up with your own definition.”

So let's take five minutes to do that.



THE COSBY TRIAL--

Cheryl Carmel

“When the judge could not provide a legal definition, Ms. Carmel, 62, stepped forward as forewoman. She had a bit of background in the subject because she works in cybersecurity and privacy for an emergency notifications company. At the time, she was helping her company meet new European data protection regulations that require companies to obtain the positive consent of people visiting their websites before using their personal information.

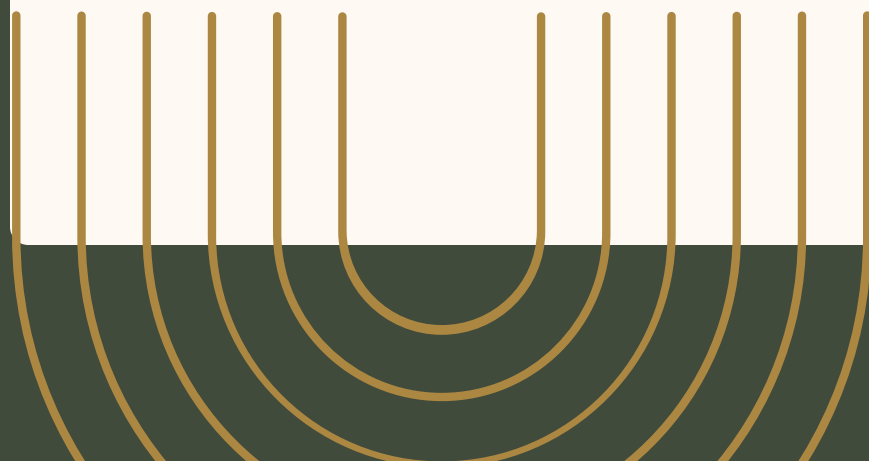
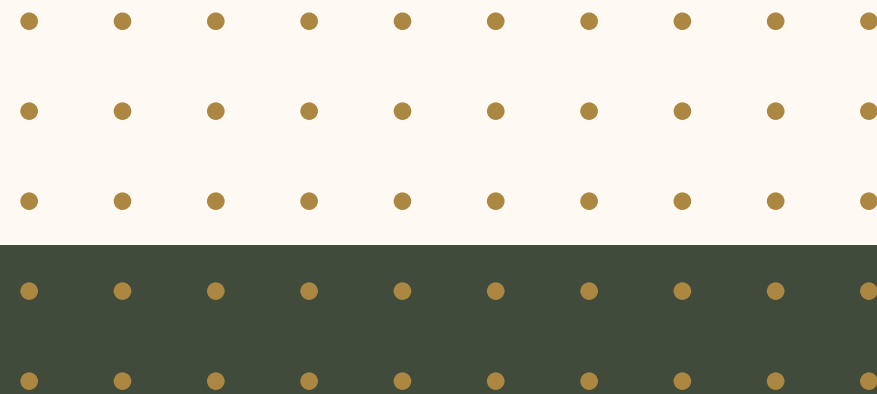
“She told her fellow jurors how the data protection rules say that consent must be freely given by a clear affirmative act, be specific, informed and unambiguous, and that it can be withdrawn.

‘By providing that kind of framework it helped everybody get over the hump of she didn’t say no,’ Ms. Carmel said. ‘It helped the conversation move on.’

Bowley, Graham. “For One Bill Cosby Juror, the Work Did Not End With the Trial.”
The New York Times. October 10, 2021

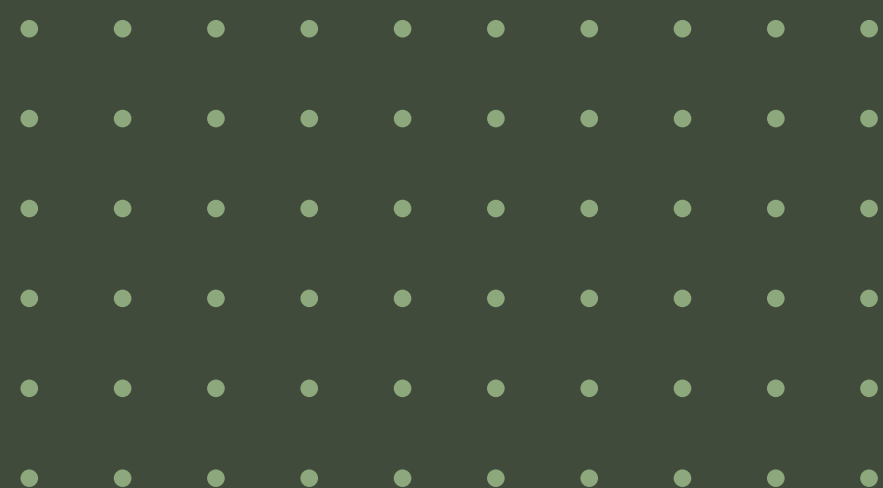


- Kentucky currently has no legal definition of consent.
- MOST states in the U.S. do not have a legal definition of consent.
- Those that do have some form of a definition typically characterize it as the absence of a “no”.
- By most standing legal definitions, if there wasn't a “no” and/or active, demonstrable resistance--the encounter enters a legal gray area where the presence of consent can be assumed.



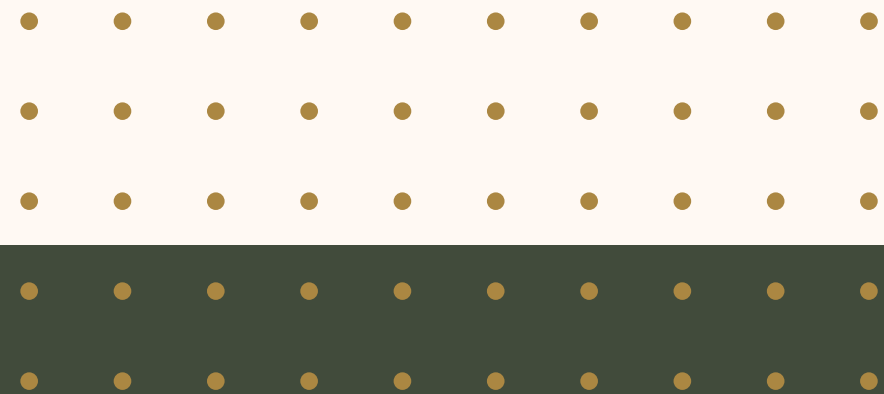


LET'S TALK ABOUT WHY THAT'S
PROBLEMATIC & BASICALLY INSANE



3 TYPES OF AGREEMENTS

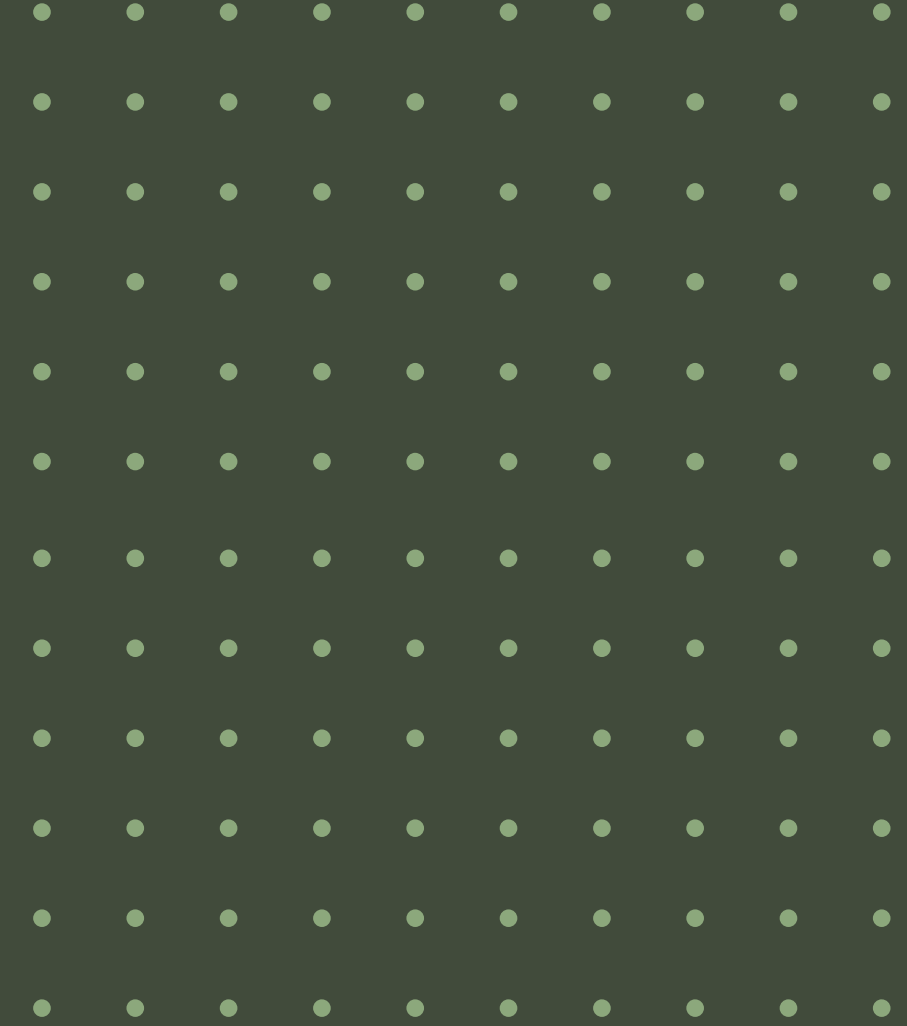
- CONSENT
- ASSENT
- ACQUIESCENCE



CONSENT

“The person involved should have legal capacity to exercise free power of choice without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge (of the subject matter involved) as to enable him (or her) to make an understanding and enlightened decision.”

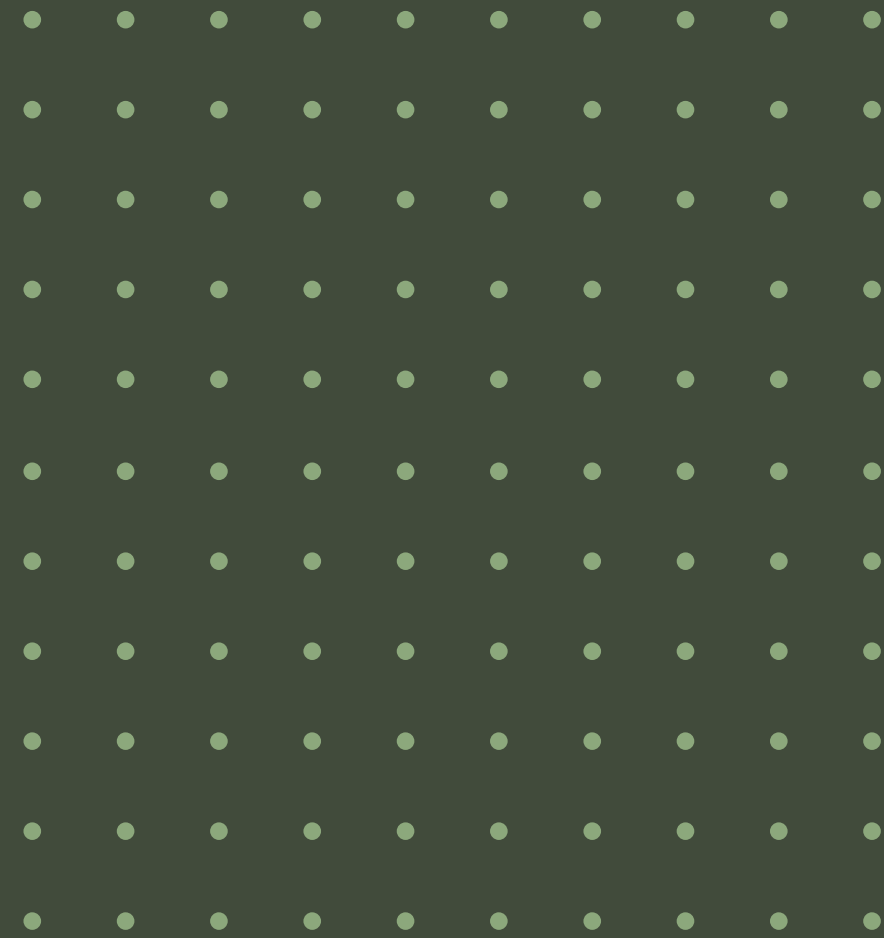
-- excerpt from Nuremberg Code, the accepted definition that regulates medical experiments & researching using human subjects.



CONSENT

Freely given, knowledgeable,
informed agreement.

--the synthesis of several widely
accepted legal consent provisions:
Model Penal Code, General Data
Protection Regulation, and federal
Nuremberg Code



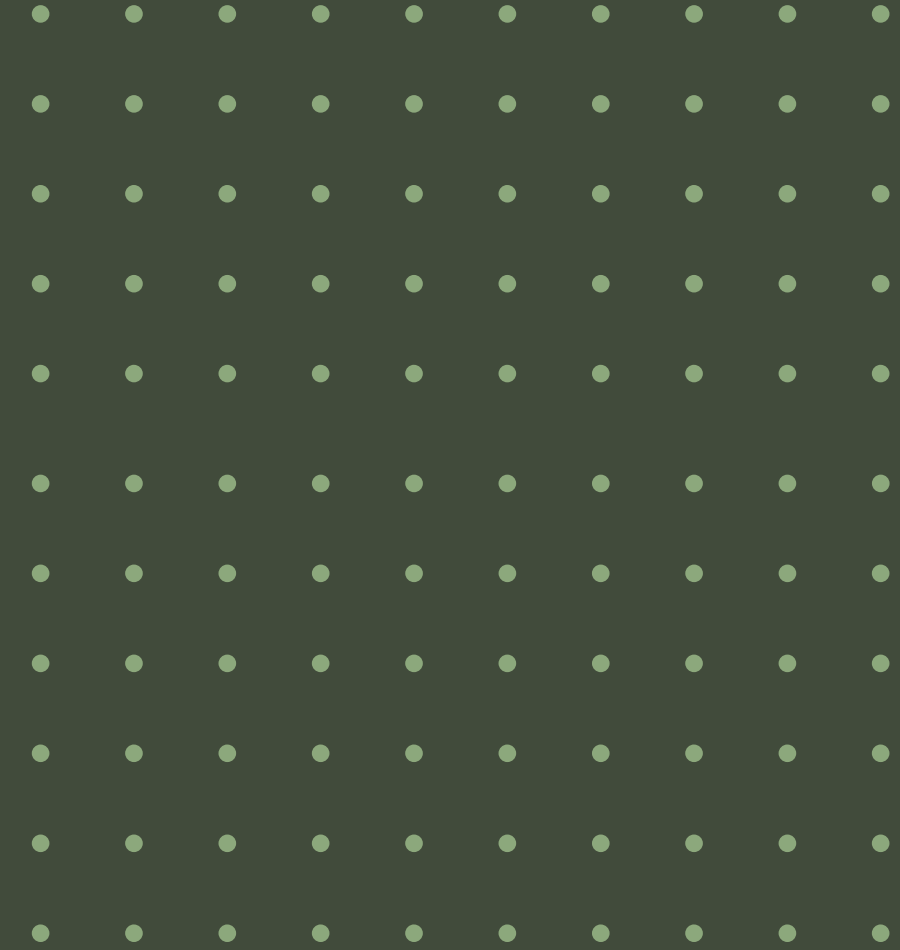
ASSENT

Agreement on the face of it.

"I agree based on the information I have currently, or the information being presented to me."

Sexual assault by fraud--
is information being intentionally withheld or misrepresented w/ the intent to:

- a. elicit a yes
- b. avoid a no



ACQUIESCENCE

Agreement under duress.

We acquiesce when, through means explicit or implicit, our consent cannot be:

- a. freely & knowledgeably given
- b. retracted/revoked

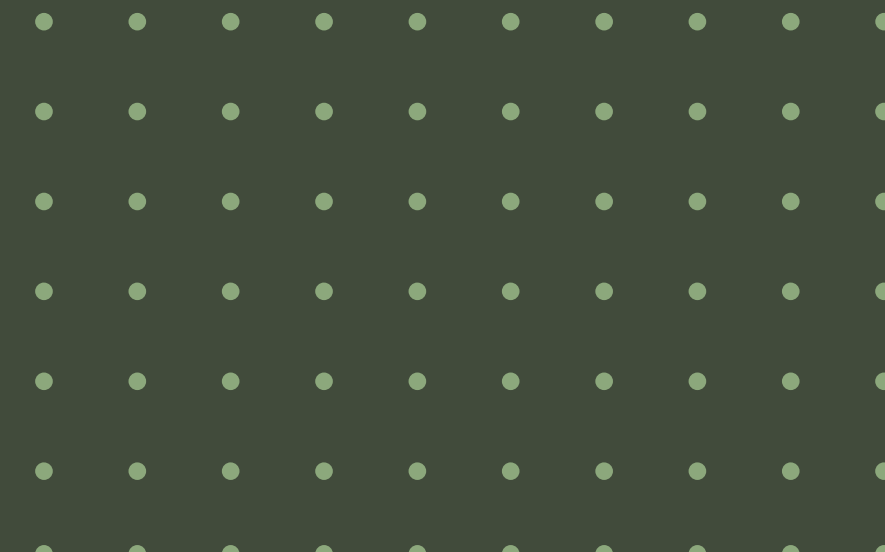
These means may be, but are not limited to:

- power differentials
- threat of physical/social/financial harm
- incapacitation

We acquiesce when we cannot say no.



But saying no is easy—right?
Why would someone NOT say no?



THE SCIENCE OF ACQUIESCENCE:
why no doesn't always happen

~~FIGHT OR FLIGHT~~



REFLEXES & HABITS



Dr. Jim
Hopper

THE SCIENCE OF ACQUIESCENCE: why no doesn't always happen

CASE STUDY:

A former sex worker encounters a serial rapist.
When it becomes clear that the assault is
inescapable, she says:

"If this is going to happen, I need a shot [of alcohol]
and you need to wear protection."

In court, the jury decides that this constitutes a
consensual agreement between the two parties.

What happens when a survivor's response cannot be
described as fight or flight? Or fawn or faint, for that matter?



THE SCIENCE OF ACQUIESCENCE:
why no doesn't always happen



“Fight or flight” =
physiology, not behavior

When talking about the physiology of survivor responses, we're talking about the things that happen to prepare us to deal with danger--things that happen reflexively, without our control.

THE SCIENCE OF ACQUIESCENCE: why no doesn't always happen

Our survival reflexes help us respond to danger-- and they are much more varied than “fight or flight.”

- Freeze: the brain halts all other operations to begin taking in as much information as possible.
- Tonic immobility: the body is literally paralyzed & muscles go rigid.
- Collapsed immobility: blood pressure & heart rate drop, the muscles go limp; the person may feel faint or even pass out.
- Dissociation: awareness is automatically & involuntarily disconnected from unwanted sensations and/or emotions.



THE SCIENCE OF ACQUIESCENCE: why no doesn't always happen

Habit behaviors are key.

"HABIT BEHAVIORS are often old habits learned during prior experiences of abuse, assault, exploitation, or domination. Especially for girls & women, being sexually assaulted can trigger polite & passive habits they have learned to resist unwanted sexual advances without causing a scene or bruising an ego.

Neuroscience has revealed a great deal about the responses that are predominantly governed by the defense circuitry, which is hard-wired into our brains..But habits themselves are learned behaviors (not hard-wired), and they involve many different social & emotional aspects, so their variety and complexity are vast."



THE SCIENCE OF ACQUIESCENCE: why no doesn't always happen

- What's worked in the past--what behaviors kept a person safe in other situations?
- What social or cultural influences are at play?

Importantly, these elements also factor into a survivor's behavior after an assault has occurred. This is why it's so damaging to project "expected" behavior onto a survivor--responses can be varied and unpredictable. Laughing, crying, unresponsiveness, or being completely "fine"--all are perfectly valid and should not affect the "believability" of a survivor's story.



Recentering Consent

Verbal
Ongoing
Enthusiastic
Mandatory

Determines criminality based
on the actions of the survivor

Fear
Force
Fraud
Exploitation

Determines criminality based on
the actions of the perpetrator.



Recentering Consent

CONSENT



Freely Given
Reversible
Informed
Enthusiastic
Specific

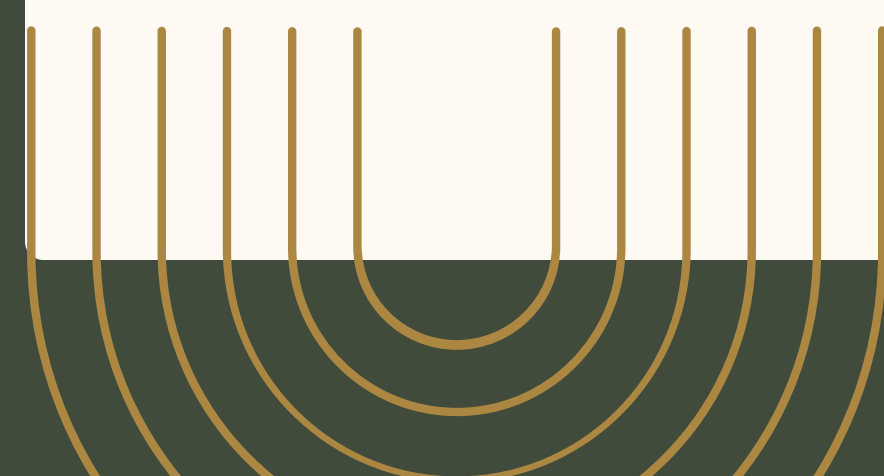
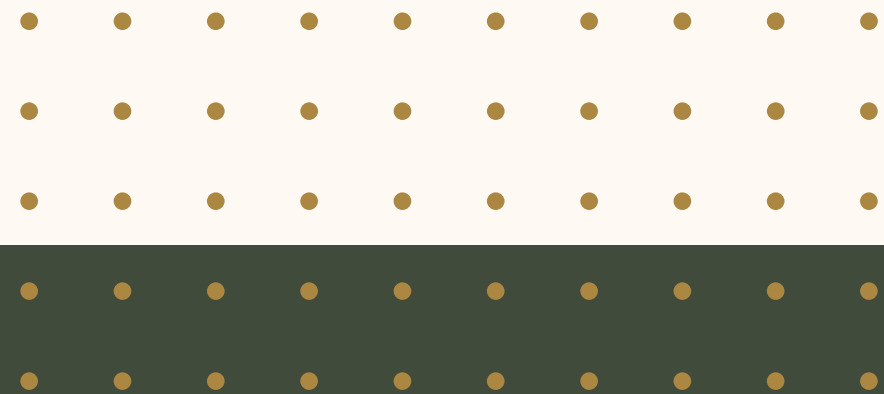
 Planned Parenthood®



Let's practice.

>Pick a partner.

>Ask "Can I" questions.



Other ways to practice consent.

Make a list!

By yourself, or with a partner, make a list of:

- Things I'm Comfortable Doing
- Things I Absolutely Will Not Do Under Any Parameters
- Things I May Be Comfortable Doing Under Specific Parameters



My Sexual Interests

What kind of sexual activities do I enjoy? Which ones are off limits? Use this activity to reflect more on your wants, desires and boundaries.

	Giving	Receiving
Activities I Enjoy		
Activities I'm Open To If My Sexual Partner Enjoys		
Activities I Don't Like		
Activities I'd Like To Try		



Examples

- Cuddling
- Biting
- Kissing Neck
- Oral Sex
- Edging
- Genital or Anal Stimulation
- Sexual Penetration
- Sexting
- Dirty Talk
- Sweet/Romantic Talk
- Roleplays
- Shower Sex
- Using Sex Toys
- Watching Porn Together
- Positions: Doggy Style, 69, Scissoring, Missionary, etc.
- Spanking/Impact Play
- Blindfolds
- Bondage
- Wax Play
- Partnered Masturbation



Self-Assessment



Growing up, what messages did I receive about sex from my family, peers, the media, and/or porn?

How does my culture, identity, upbringing and/or the messages I received growing up impact my relationship to sex?

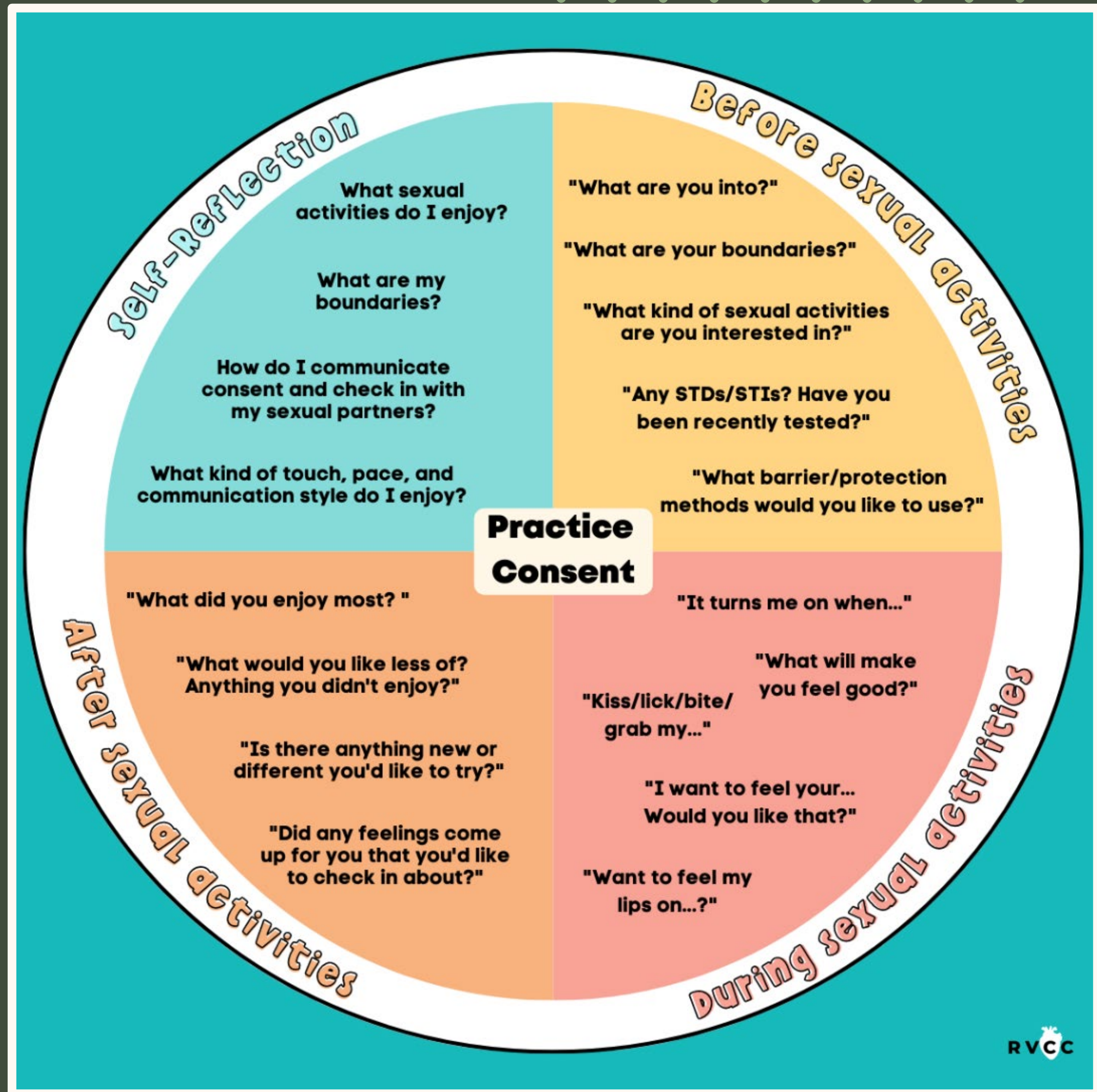
How comfortable am I with expressing my desires and boundaries with my sexual partners? What factors impact my comfort levels (ex. the person I'm with)?

If I struggle with sexual communication, what barriers do I experience to communicating my wants and boundaries? What makes it challenging?

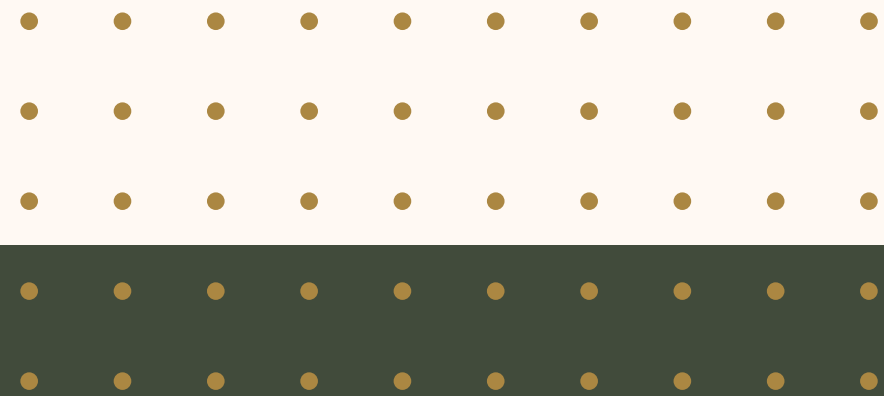
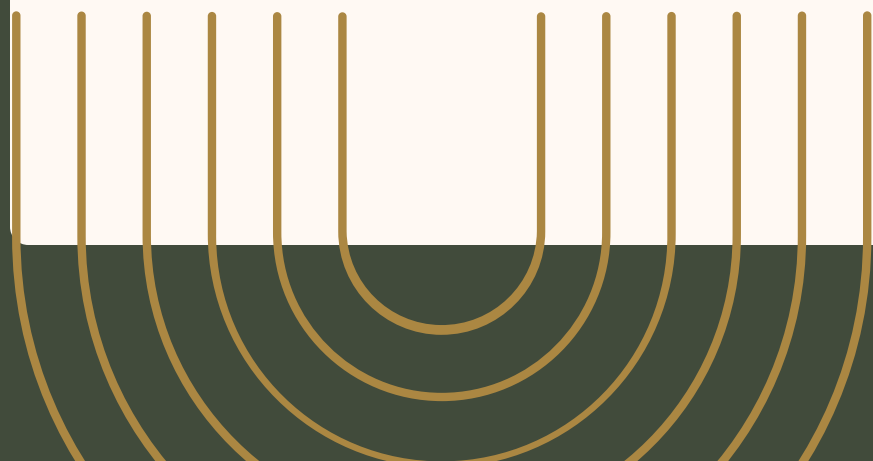
What areas do I want to work on when it comes to communicating my wants and boundaries with my sexual partners, and/or listening and checking in about theirs?



Other ways to practice consent.

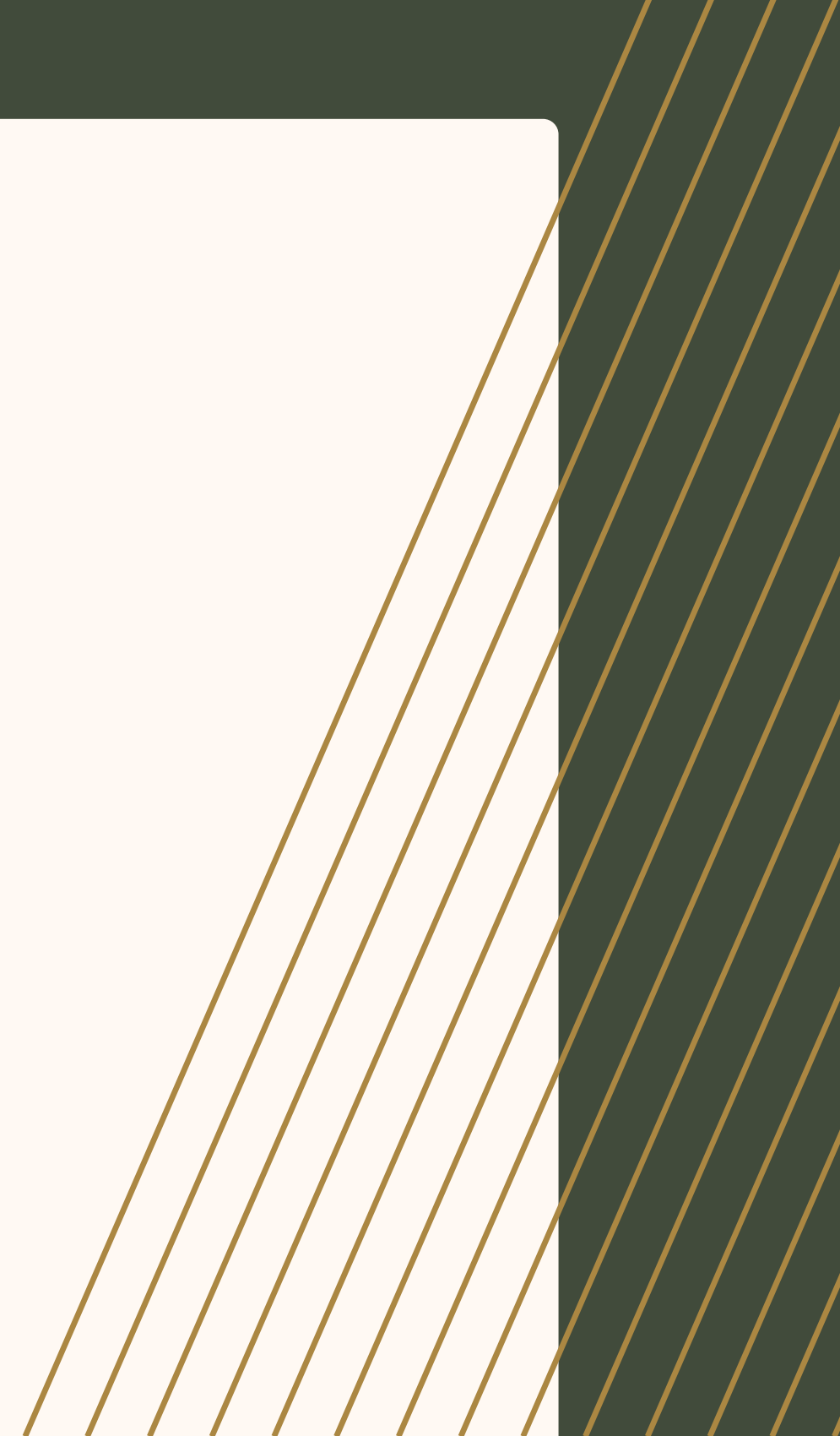
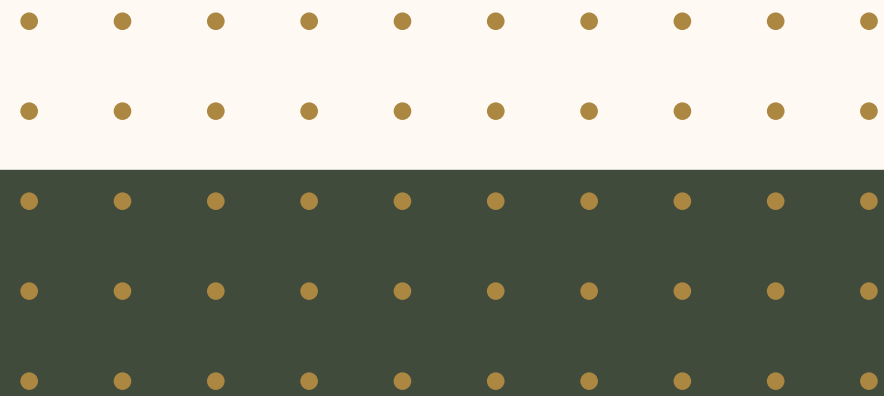


Let's
discuss.



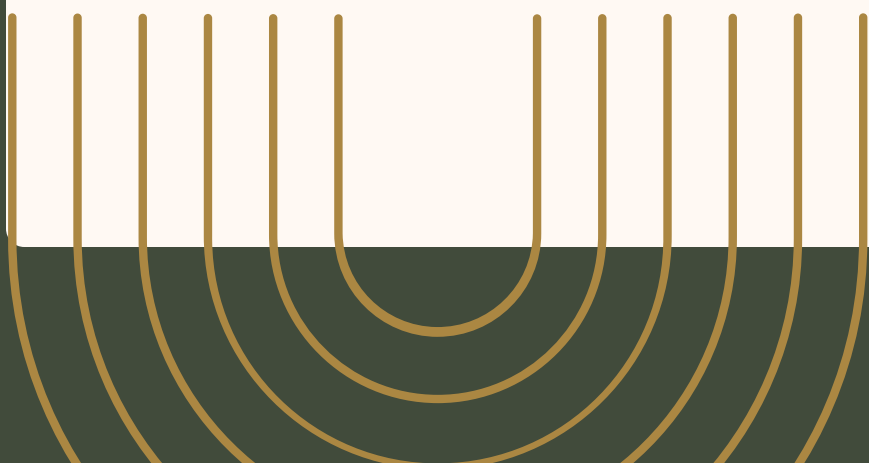
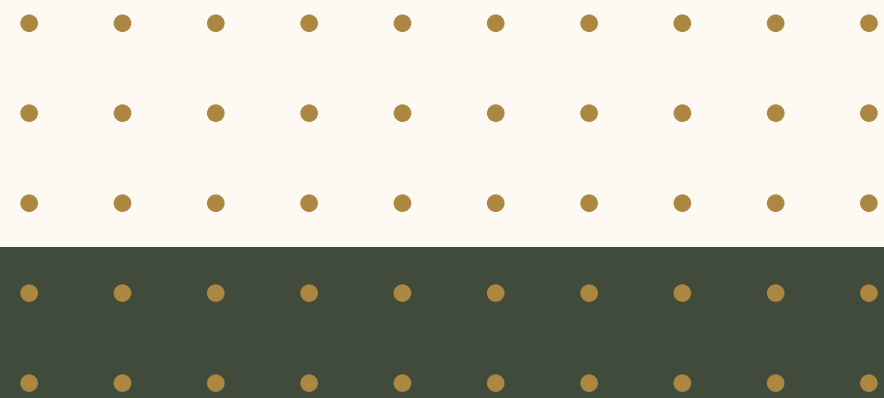
agree or disagree?

So long as they eventually
say yes, it's okay.



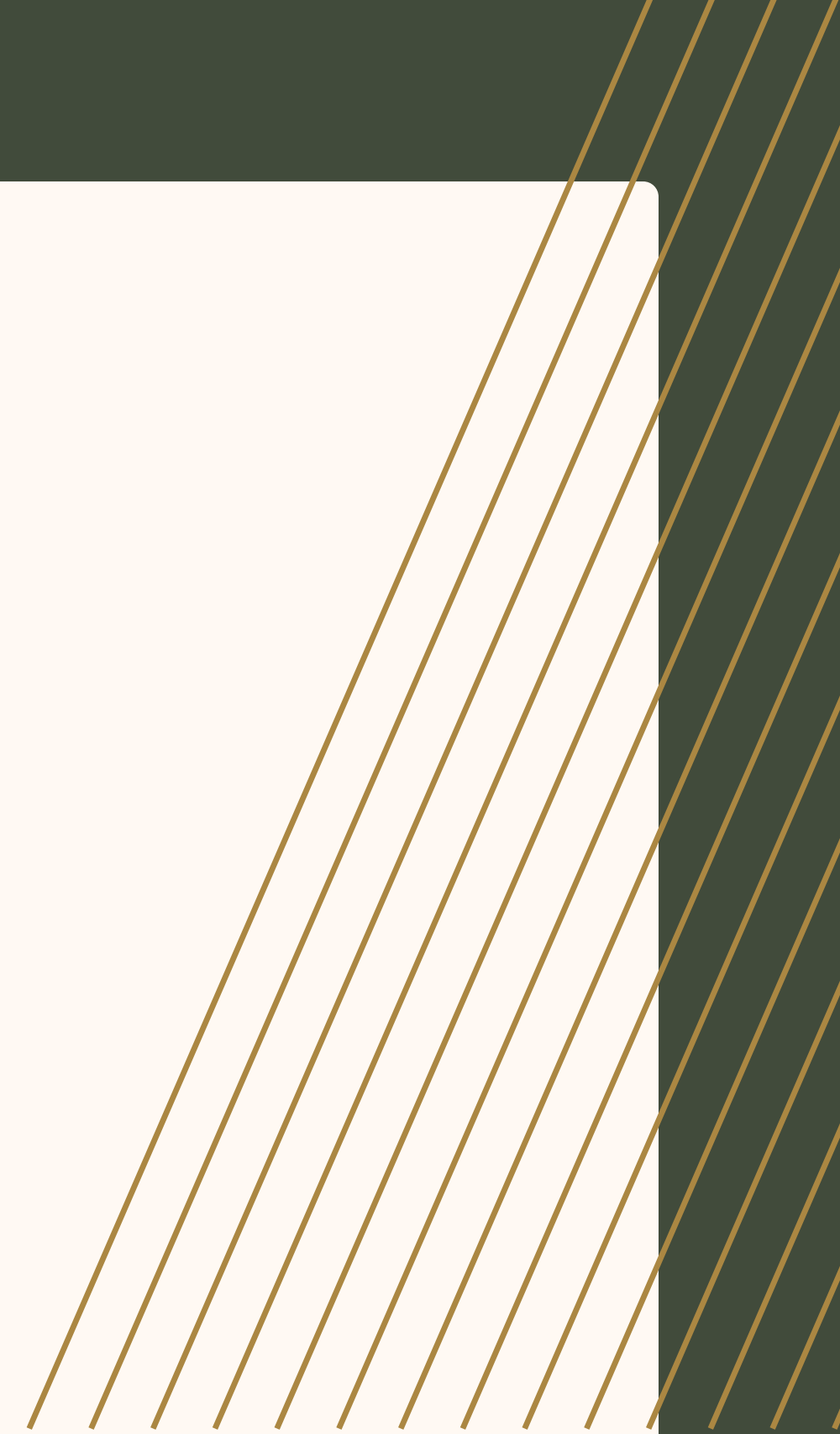
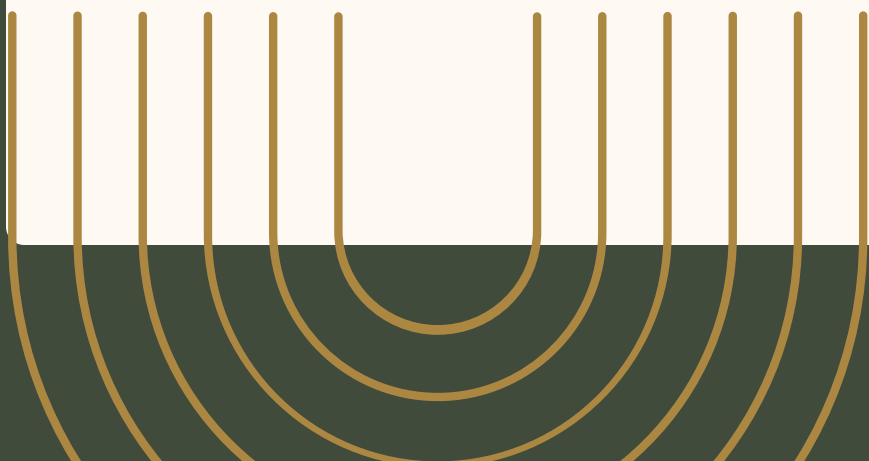
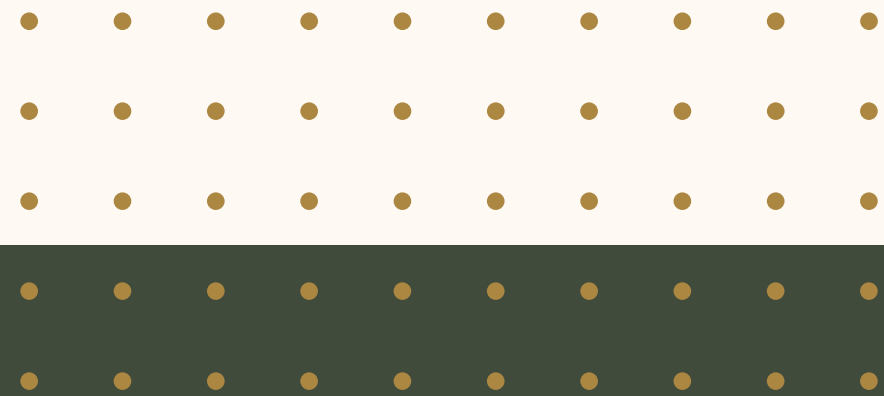
agree or disagree?

Asking for consent ruins the mood.



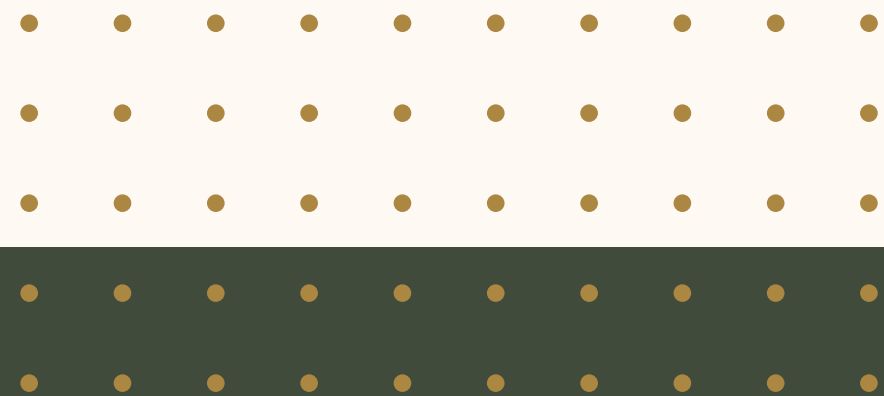
agree or disagree?

It's possible to give/receive
non-verbal consent.



agree or disagree?

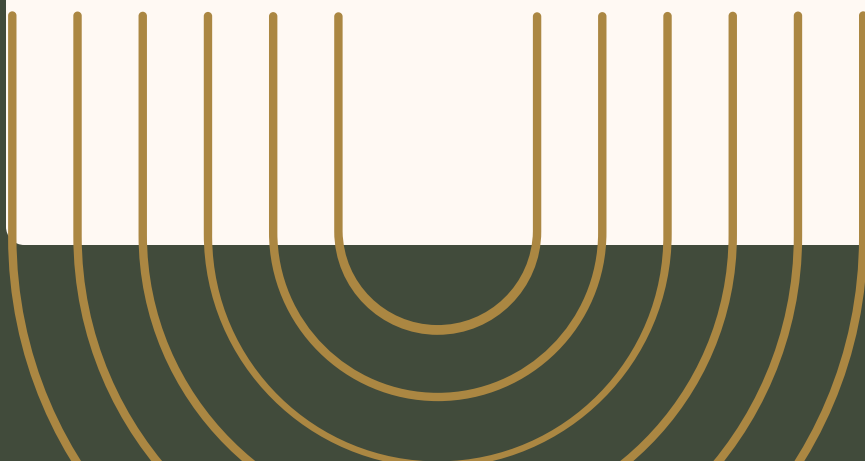
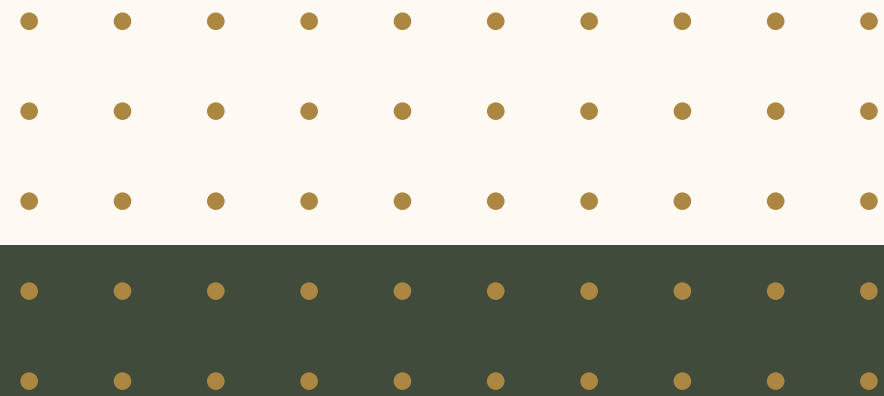
I should ask for consent every time.





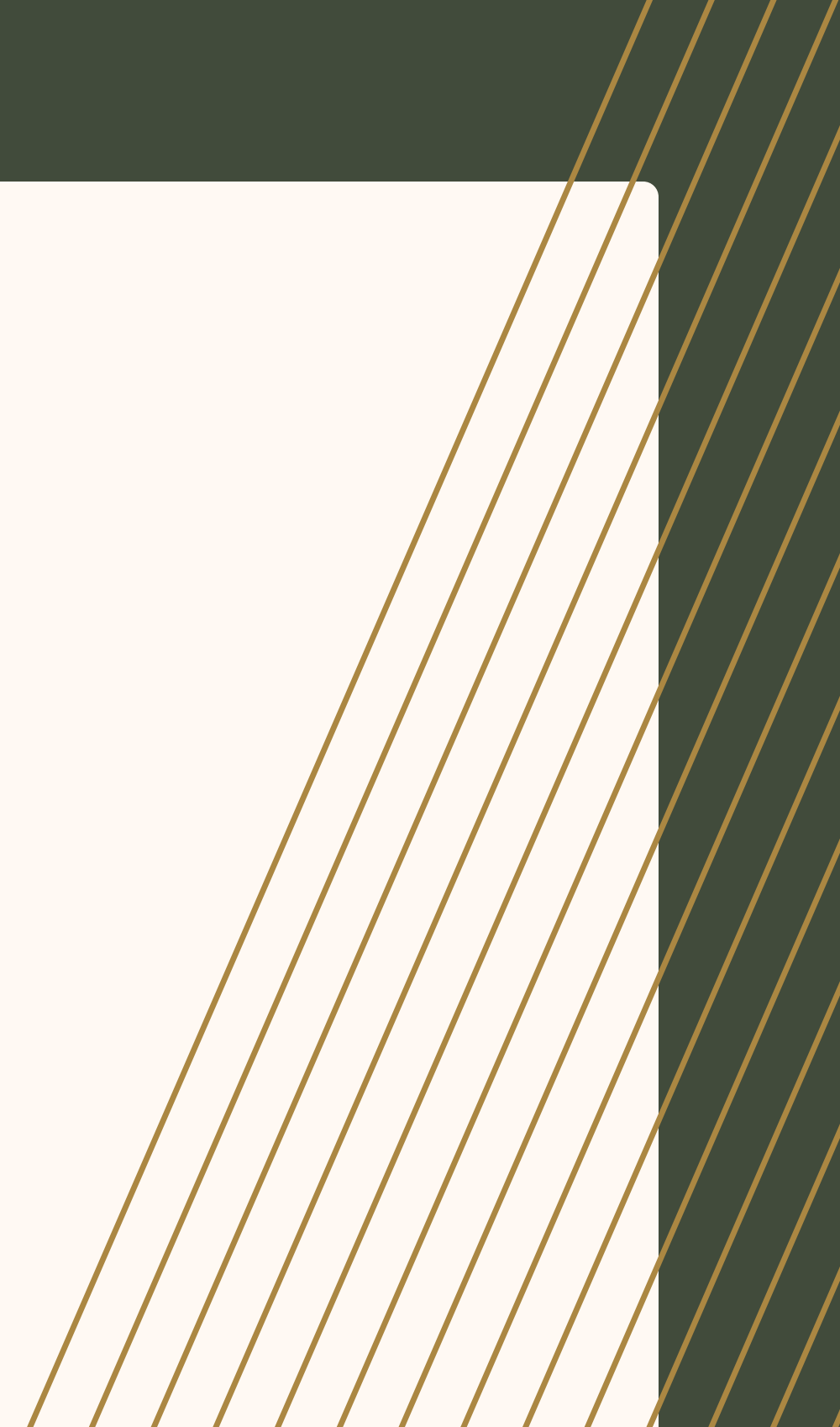
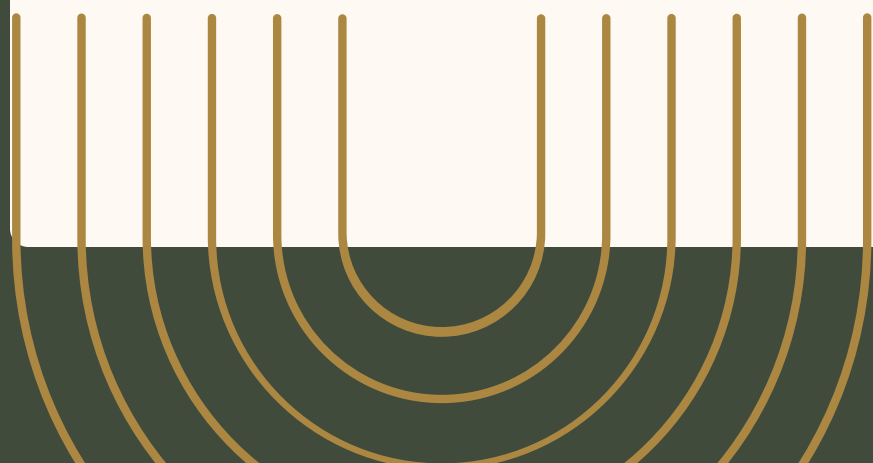
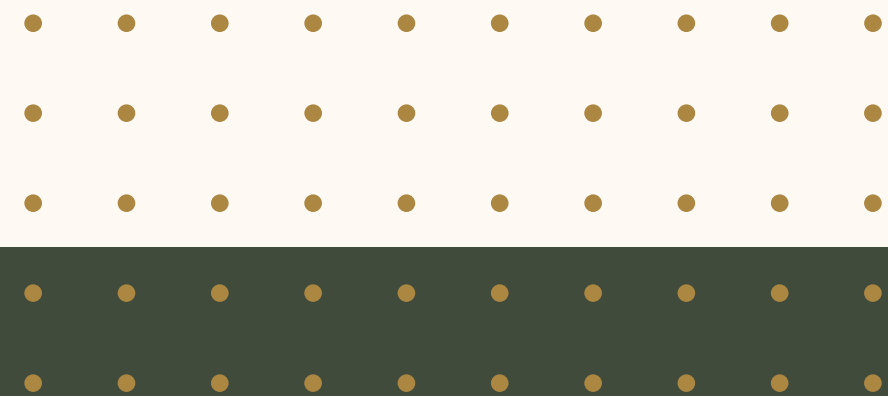
agree or disagree?

Some people, especially women
& feminine-presenting folks,
like having their consent violated.



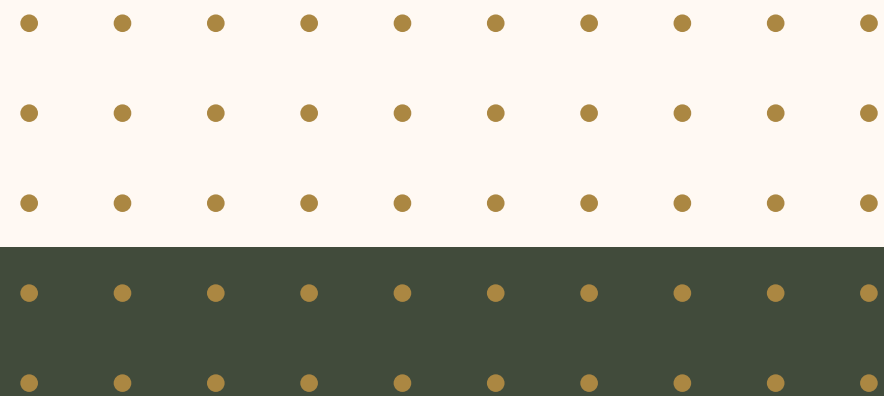
agree or disagree?

If my partner's body exhibits a physical reaction of arousal, that counts as consent.



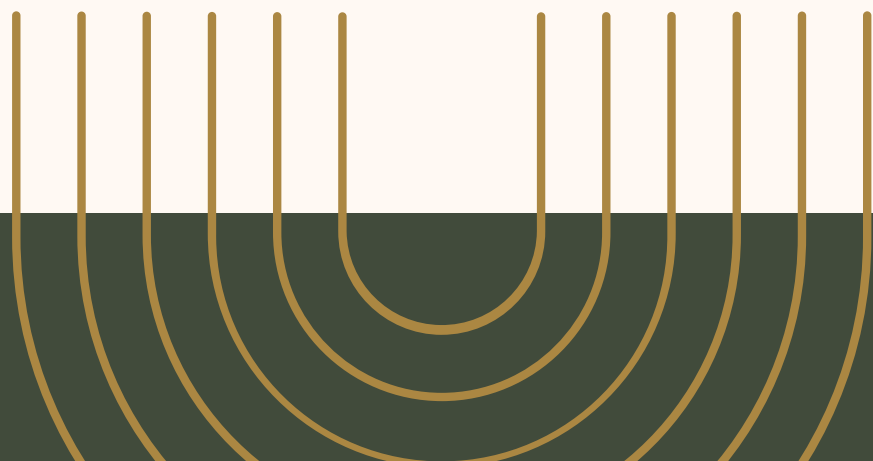
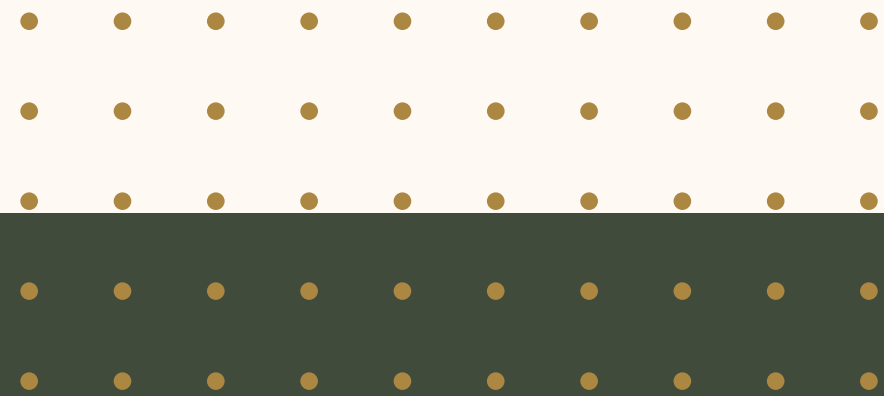
agree or disagree?

Consent means saying "no"
when you're uncomfortable.



agree or disagree?

The "guy" has to ask for consent;
the "girl" has to give it.



Finally (I promise):

Remember that consent
doesn't just apply to sex--
we use consent every day.

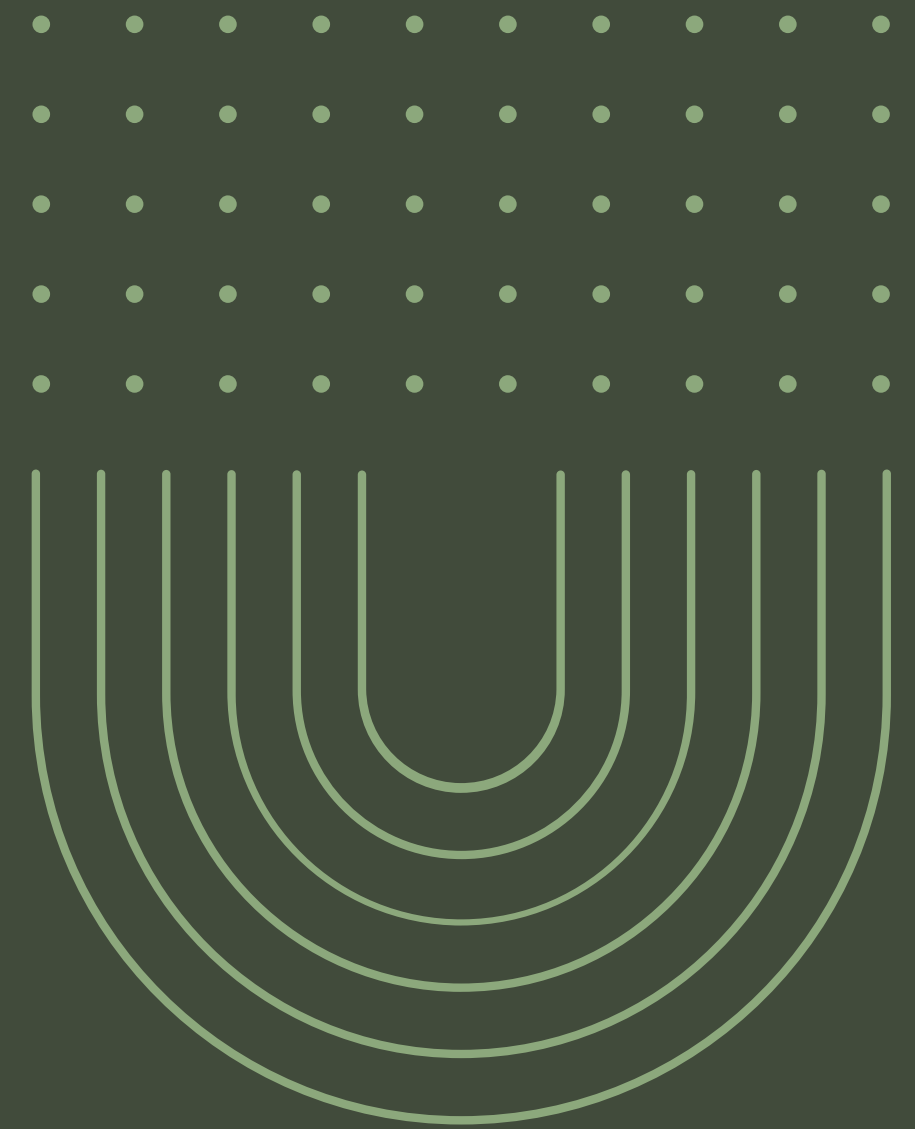


Thinking about consent is a great way to monitor all kinds of relationships and help us determine where we need better boundaries.

When we set boundaries--
and recognize the
boundaries of others--
we're practicing consent.

Every decision we make should be:

Freely given, reversible,
informed, enthusiastic,
and specific.



THANK YOU FOR YOUR TIME.

For further questions, comments, or concerns,
please feel free to reach out to us at any time.

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Sources

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