



WHAT FLORIDA JUDGES SHOULD KNOW

When Faced with NON-FATAL STRANGULATION

1. FLORIDA LAW.

Felony battery; domestic battery by strangulation.-

(1) A person commits felony battery if he or she:

- (a) Actually and intentionally touches or strikes another person against the will of the other; and
- (b) Causes great bodily harm, permanent disability, or permanent disfigurement.

(2)(a) A person commits domestic battery by strangulation if the person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom they are in a dating relationship, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person. This paragraph does not apply to any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state.

(b) As used in this subsection the term:

1. "Family or household member" has the same meaning as in s. 741.28.
2. "Dating relationship" means a continuing and significant relationship of a romantic or intimate nature.

(3) A person who commits felony battery or domestic battery by strangulation commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

s. 784.041, F.S.

2. CASE LAW.

Johnson v. State, 969 So. 2d 938, 956-957

(Fla. 2007) held that strangulation of a conscious victim is prima facie evidence that a murder is "heinous, atrocious, or cruel", and is an aggravator supporting the imposition of the death penalty as punishment.

Lopez-Macaya v. State, 278 So. 3d 248 (Fla. 2019) held that there is no need to prove a victim suffered great bodily harm to establish the crime of strangulation; instead, the crime can be proved by establishing the perpetrator's actions created a risk of great bodily harm.

3. BAIL.

Pretrial detention and release.-

a. Legislative Intent.

It is the policy of this state that persons committing serious criminal offenses, posing a threat to the safety of the community or the integrity of the judicial process, or failing to appear at trial be detained upon arrest. However, persons found to meet specified criteria shall be released under certain conditions until proceedings are concluded and adjudication has been determined. The Legislature finds that this policy of pretrial detention and release will assure the detention of those persons posing a threat to society while reducing the costs for incarceration by releasing, until trial, those persons not considered a danger to the community who meet certain criteria. It is the intent of the Legislature that the primary consideration be the protection of the community from risk of physical harm to persons.

s. 907.041(1), F.S.

b. Release on non-monetary conditions.-

It is the intent of the Legislature to create a presumption in favor of release on non-monetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime as defined in

subsection (4). Such person shall be released on monetary conditions if it is determined that such monetary conditions are necessary to assure the presence of the person at trial or at other proceedings, to protect the community from risk of physical harm to persons, to assure the presence of the accused at trial, or to assure the integrity of the judicial process.

s. 907.041(3)(a), F.S.

4. TERMINOLOGY.

Parties, witnesses, and court staff may use the word “choke” rather than the correct legal and medical term “strangulation.” Judges should focus on the facts described - not the terminology.¹

5. WHAT IS STRANGULATION?

Strangulation is external compression of the neck that impedes blood flow (through veins/arteries) and/or airflow (through the trachea).

6. LACK OF VISIBLE INJURIES.

On average, only 50% of strangulation victims have visible injuries, and only 15% have injuries that can be photographed at the time police respond.² Research has shown that most victims of adult non-fatal strangulation are women.³

7. SERIOUS INJURIES OCCUR QUICKLY.

A victim of strangulation can become unconscious in 5-10 seconds and can die within minutes.⁴ It takes very little pressure to block off vital structures in the neck. The neck is an extremely vulnerable part of the human body where serious injury can occur.

8. BRAIN AND NEUROLOGICAL IMPACT.

Strangulation is a form of asphyxia that usually deprives the victim’s brain of oxygen.⁵ Millions of brain cells die every second the brain is deprived of oxygen. The consequences of this include, but are not limited to, loss of memory,

inability to concentrate, behavior changes, brain damage, and difficulty speaking.⁶ As a result, victims are often unable to describe a near-death experience calmly and chronologically.

9. PRETRIAL DETENTION.

A court can hold a defendant in pre-trial detention for “dangerous crimes” listed under **s. 907.041(4), F.S.**, including an act of domestic violence under **s. 907.041(4)(a)18, F.S.**, or an act of stalking or aggravated stalking under **s. 907.041(4)(a)17, F.S.**

The state attorney has the burden of showing the need for pretrial detention. **s. 907.041(4)(g), F.S.**

10. LETHALITY.

In almost every assessment, strangulation is a high-risk factor for lethality. The most dangerous domestic violence offenders strangle their victims.⁷ The violence will not decrease, and the next step may be homicide.⁸

11. HIDDEN DANGERS.

Strangulation may typically cause internal injuries: immediate, delayed, and/or long-term consequences. Of most concern, is injury to the carotid artery, including a carotid dissection leading to stroke or death days or weeks after the assault.⁹

12. FUTURE RISK OF HOMICIDE.

A woman who has suffered a non-fatal strangulation by her intimate partner is 750% more likely to be killed by that partner.¹⁰

13. MEDICAL ATTENTION.

Victims often do not seek medical attention for their injuries and may be unaware of any internal injuries. In the event the victim is exhibiting any signs or symptoms of injuries consistent with strangulation, he or she should be encouraged to seek medical attention.¹¹

14. REFERRAL TO VICTIM ADVOCACY CENTER.

Under the guidelines for fair treatment of victims and witnesses, victims should be given written information about their rights, available services, and referred to a local advocacy center.

s. 960.001(1)(a), F.S.

15. RECANTATION.

Victims of domestic violence often recant. This may be due to witness intimidation, which research has shown occurs in many domestic violence cases.¹² Ensure that the victim is linked with a domestic violence advocate who can speak with the victim in private about threats and intimidation. If this has occurred, the evidentiary principle of forfeiture by wrongdoing may apply and allow for admission of hearsay statements.

16. QUESTIONS TO CONSIDER ASKING IN COURT.

Victims of strangulation often minimize what occurred. Trauma will also affect the ability to recall exact details. It is very important to ask additional questions, such as:

- Did anyone apply pressure, by any means, to your neck?
- Did the attacker use one hand or two?
- Did the attacker use something other than his hands?
- Did the attack take place from the front, behind, or both?
- How long did it last? (Trauma may impact a victim's ability to tell time.)
- Did you have marks or bruises on your neck at the time of assault or after?

- Did you have trouble breathing or swallowing?
- Did you have a sore throat?
- Did your voice change? Did you have trouble speaking?
- How did you feel when pressure was being applied?
- Is it possible you may have lost consciousness? Any vision changes? Did you see stars? (The victim may not know.)

17. USE OF EXPERTS.

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

- (1) The testimony is based upon sufficient facts or data;
- (2) The testimony is the product of reliable principles and methods; and
- (3) The witness has applied the principles and methods reliably to the facts of the case.

s. 90.702, F.S.

18. RESTITUTION.

In many strangulation cases, the victim has incurred medical bills, counseling bills, loss of work, and destruction of property. The victim is entitled to restitution for these economic losses, and restitution should be addressed in both criminal and civil injunction cases. Section 741.30(6)(a)8, F.S. provides that in an injunction, the court may award any other relief the court deems necessary for the protection of a victim of domestic violence.

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- ¹ Strack and Gwinn, On the Edge of Homicide: Strangulation as a Prelude, ABA Criminal Justice, 26:3 (2011).
- ² Strack, McClane & Hawley, A Review of 300 Attempted Strangulation Cases: Part 1: Criminal Legal issues, Journal of Emergency Medicine, 21(3):303-309, (2001); <https://pubmed.ncbi.nlm.nih.gov/11604294/>.
- ³ Note: This document is gender-neutral, but strangulation is an extremely gendered crime. See Pritchard, et al., Nonfatal Strangulation as Part of Domestic Violence: A Review of Research, where 99% of stranglers were men in the San Diego Study; Trauma Violence Abuse, 18(4):407-424 (2017); <https://pubmed.ncbi.nlm.nih.gov/26721886/>.
- ⁴ Stapczynski, Strangulation Injuries, Emergency Medicine Reports (2010); https://www.researchgate.net/publication/285895823_Strangulation_injuries.
- ⁵ Saver, Time is Brain – Quantified, Stroke, 37:263-266 (2006); <https://www.ahajournals.org/doi/full/10.1161/01.str.0000196957.55928.ab>
- ⁶ Valera & Kucyi, Brain Injury in Women Experiencing Intimate Partner Violence: Neural Mechanistic Evidence of an “Invisible” Trauma, Brain Imaging and Behavior, 11:1664-1677 (2017); <https://pubmed.ncbi.nlm.nih.gov/27766587/>; Rosenthal, Three Ways Trauma Affects Your Brain, Healthyplace.com.
- ⁷ Gwinn, Men who strangle women also kill cops, Domestic Violence Report, Civil Research Institute (2014); https://www.civresearchinstitute.com/online/article_abstract.php?pid=6&iid=1116&aid=7316
- ⁸ Glass, et al, Non-Fatal Strangulation is an Important Factor for Homicide of Women, Journal of Emergency Medicine, 35(3):329-335 (2008); <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2573025/pdf/nihms71435.pdf>
- ⁹ Claret, et al, Fatal and Non-fatal Bilateral Delayed Carotid Artery Dissection after Manual Strangulation, Forensic Science International, 149(2-3):143-50 (2005); https://www.researchgate.net/publication/7985567_Fatal_and_non-fatal_bilateral_delayed_carotid_artery_dissection_after_manual_strangulation
- ¹⁰ Glass, et al, (2008), supra.
- ¹¹ Patch, et al, Injuries of Women Surviving Intimate Partner Strangulation and Sequent Emergency Health Care Seeking: An Integrative Evidence Review, Journal Emergency Nursing, 44(4): 384-393 (2018); <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6026083/pdf/nihms926231.pdf>.
- ¹² Bonomi, et al, Meet Me at the Hill Where We Use to Park: Interpersonal Processes Associated with Victim Recantation, Social Science & Medicine, 73(7):1054-1061; <https://www.sciencedirect.com/science/article/abs/pii/S027795361100445X?via%3Dihub>.

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