



# ADDRESSING STRANGULATION IN FLORIDA COURTS: **A CRITICAL RESOURCE**

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## **Addressing Strangulation in Florida Courts: A Critical Resource**

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## FOREWORD

The Honorable Lynn Tepper, (Retired) Florida 6<sup>th</sup> Circuit Court Judge

**“Strangulation is deadly force and stranglers are dangerous. Men who strangle women are the most dangerous men on the planet and many professionals continue to miss this truth. The research is clear: If a man strangles a woman one time in an abusive relationship, she is 750% more likely to later be killed by him than a woman who is . . . punched or slapped by her partner.<sup>1</sup> The majority of mass shooters, cop killers, domestic terrorists, and domestic violence killers in this country have two things in common: A history of childhood trauma and a prior history of strangulation assault against women before they kill women or others.”<sup>2</sup>**

The significant impact of strangulation on victims and the likelihood the strangler will go on to kill others makes it clear that this extensive resource is needed by *all* Court partners. Indeed:

**“Accountability Matters:** Judicial officers should not continue to hear the words “He choked me” and treat this assault as if it were a slap in the face or a punch to the arm. **Today, it is understood unequivocally that strangulation is the calling card of a killer; it is one of the most lethal forms of domestic violence and more prevalent than we once realized.** Strangulation can have immediate, delayed and long-term consequences, including death.<sup>3</sup> It is most often perpetrated by men against their intimate partners.”<sup>4</sup>

The long-term impact of near fatal strangulation on victims can be shockingly devastating. Nonetheless it is stunning to learn that strangulation is potentially *more lethal* than waterboarding! Above all else, the statistics found throughout this resource are impactful: as judges, we truly have opportunities to reverse those statistics at various stages of court proceedings. Moreover, the numerous links to model resources and tools found throughout this invaluable resource are easily downloaded and truly can change the trajectory of cases within our communities. Indeed, lives can be saved.

The chapters on “Medical Dynamics” and “Understanding the Evidence” contain invaluable

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1 Glass N, Laughon K, Campbell J, Block CR, Hanson G, Sharps PW, Taliaferro E. Non-fatal strangulation is an important risk factor for homicide of women. *Journal of Emergency Medicine*, 2008 Oct;35(3):329-35.

2 Gwinn C, Hellman C, Hope Rising: How the Science of Hope Can Change Your Life (2018).

3 Patch M, Anderson JC, Campbell J, Injuries of Women Surviving Intimate Partner Strangulation and Subsequent Emergency Health Care Seeking: An Integrative Evidence Review. *Journal of Emergency Nursing*, Jul;44(4):384-393 (2018).

4 Strack, G, McClane G, Hawley D, A Review of 300 Attempted Strangulation Cases Part 1: Criminal Legal Issues, *Journal of Emergency Medicine*, Vol, 21, No. 3, 303-309 (2001).



information, regardless of whether the case is a bench trial (such as a domestic violence injunction) or a jury trial. The potential positive impacts for victims are numerous and significant.

Once you read those chapters, you may be inclined to encourage local law enforcement and child welfare investigators to read this resource and print out the extensive “Strangulation Assessment Sheet” to serve as a checklist and review as they collect evidence and complete investigations and interviews. The guidance and scientific bases are extensive. Consider just a bit of what may otherwise be missed:

- “Body Worn Cameras (BWC) are particularly useful in domestic violence cases given the level of intimidation by offenders and recantation by victims. . . Recent studies show that BWCs are holding offenders more accountable; there are more arrests, fewer cases are being dismissed, and convictions are increasing.”
- The use of medical witnesses can be critical in clarifying whether a victim, who may appear to be under the influence of drugs or alcohol, actually has stroke-related symptoms. What may be seen as deficiencies in a victim’s statement may be evidence of the trauma they endured.

This resource makes the connection crystal clear between past stranglers and their history of childhood trauma, which frankly also points the way for members of the Florida Courts to do more *upfront* so that children do not suffer trauma and those that do, after more thorough investigations, are believed and given every opportunity to heal. Consider this connection to a history of trauma: “Jim Henderson, a former probation officer in Ann Arbor, Michigan, and now a batterers’ intervention program (BIP) coordinator, has been conducting his own research involving his BIP clients. In a small sample, he has discovered that most stranglers have a high ACE (Adverse Childhood Experiences) score.

More significantly, the common factors with the men in his group who strangled included prior child sexual assault (90%) and 80% of them said when they disclosed the sexual assault as a child to their mothers, she did not believe them.”<sup>5</sup>

That should be a stunning wake up call for each of us. I know in my 30 years as a 6<sup>th</sup> Circuit Court Judge, when I reviewed extensive background reports that included *all* DCF abuse calls, regardless of whether they were “founded” or not, it was not uncommon that calls of child sex abuse resulted in no action because of a “recantation” or claim by a parent that “it never happened.” In time I would learn that indeed it *did*. Further, I presided over cases involving men convicted of murder but were spared a jury recommendation of death after it was disclosed during the penalty phases that they endured a childhood of hideous and long-term unmitigated child abuse.

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<sup>5</sup> Keynote address by James Henderson at the 25th Annual International Family Justice Center Conference, San Diego, CA, April 30, 2025.



Understanding the devastating impact of strangulation in all cases is critical. However, judges and those in the justice system who are involved in any aspect of child abuse must understand that ***we actually have the ability to reduce the staggering number of stranglers from coming into existence at all:*** if we can stop one child who was sexually assaulted from being silenced, and suffering as a result; provide safety and judicial intervention; provide healing and evidence-based trauma therapy, we truly can expect that another strangler, high risk offender, or police killer will not evolve. If we are to assure that justice is done, and actually assist in reduction of the “creation” of perpetrators of fatal and near fatal strangulation, it is absolutely *essential* that in every case, judicial officers assure the following practices are in place:

- Trauma assessments by qualified providers are done in all dependency cases;
- Local law enforcement and child welfare, in conducting investigations of allegations of child sex abuse, follow best practices:
  - Utilize local Children Advocacy Centers<sup>6</sup> to conduct forensic exams and interviews,
  - Follow protocols to assure that the alleged victim is not being manipulated or intimidated,
  - The alleged perpetrator does not have any form of access to the alleged victim during the investigation and any prosecution.

**The significant role of judges: scrutinize the history of men who strangle women.**

“Whether that history is documented or provided to the court by the victim or others familiar with the defendant’s prior conduct, it is imperative that judges probe deeply into the potential risk of a strangler to the current victim, future partners, or the public. **There is more than enough research to now suggest that stranglers are high risk offenders with the potential for lethal violence.**”

Florida judges: this is not about “something else to try.” The established protocols in this resource *are effective*. It’s about saving lives. Be part of it.

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<sup>6</sup> National Children’s Advocacy Center, [nationalcac.org](http://nationalcac.org), Forensic Interviewing Training Model – National Children’s Advocacy Center.

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## **CHAPTER 1**

Introduction and Overview  
of Strangulation and Suffocation Assaults

## CHAPTER 1

### Introduction and Overview of Strangulation and Suffocation Assaults

*“Actually, when I came out of that [strangulation incident], I was more submissive—more terrified that the next time I might not come out—I might not make it. So, I think I gave him all my power from there because I could see how easy it was for him to just take my life like he had given it to me.”*

*Survivor of Strangulation (2010)*

#### INTRODUCTION

This is the most comprehensive guide ever prepared for judges to evaluate and adjudicate strangulation assaults. We now know enough about strangulation assaults to write an entire guide to help assist judges, magistrates, and other court personnel in their role in the administration of justice in handling these complex cases.

The research is indisputable; men who strangle women are the most dangerous men on the planet and many professionals continue to miss this truth. The majority of mass shooters, cop killers, domestic terrorists, and domestic violence killers in this country have two things in common: a history of unmitigated childhood trauma, and a prior history of strangulation assault against women before they kill women or others.<sup>1</sup> We often say in our trainings, when the stranglers of America apply pressure to a woman’s neck, they are raising their hand and identifying themselves as killers. Why? What is the connection between strangulation and the mass shooters and cop killers of America? The reasons are complex, but the rage of stranglers, soaked in misogyny, appears to produce what we now refer to as a “loaded God-complex.” Stranglers want their victims to know that they have complete control over whether their victims live or die. Stranglers literally hold victims’ lives in their hands. It makes sense that such rage-filled entitlement increases the likelihood that a strangler will kill a police officer or attack others when his power is questioned or challenged.

In failing to understand these complex connections, law enforcement officers, women, mass shooting victims, and many in the general public are dying because of our failed interventions with stranglers. The courtroom is where justice keeps its promise.

Court professionals cannot continue to hear the words “He choked me” and treat this

<sup>1</sup> *Gwinn C, Hellman C, Hope Rising: How the Science of Hope Can Change Your Life (2018).*

assault like we would a slap or a punch. The difference between life and death in most strangulation assaults is only a matter of seconds. We have an opportunity to stop most stranglers before they kill, but to do so, we must recognize strangulation assaults as a precursor to homicide.

Prosecutors are filing more non-fatal and near-fatal strangulation assaults as felony offenses even with little or no external visible injuries. Allegations of strangulation assault are regularly being presented in family, civil, and juvenile court cases. The challenge, then, in this guide is not to understand whether stranglers are dangerous; the challenge is to properly evaluate and adjudicate these cases even where the evidence is nuanced and subtle. The challenge is to ask the proper questions with self-represented litigants and rule thoughtfully on evidentiary issues when admissibility must be determined. As criminal cases begin to go forward with or without victim participation or testimony, judges must have the right tools and adequate guidance in adjudicating these cases. *See Appendix 1: Florida Bench Card and Appendix 2: The Family Court Judicial Checklist - Virginia.*

The goal of this guide is to provide Florida judges and court personnel with the most current information, research, case law, and resources available at this time to enhance their practice, hold offenders accountable, and increase victim safety. Recently, we have seen tremendous progress with new statutory laws, research, case law, resources, protocols, and the development of multi-disciplinary response teams in the handling of strangulation and suffocation cases. Our rapidly expanding understanding has produced the need for more specialization, advanced training, and more experts to testify in strangulation cases. We encourage judicial officers and stakeholders alike to dive in and learn more about this deadly crime to effectively handle these cases in any courtroom.

## **OVERVIEW: THE SCOPE OF STRANGULATION**

Strangulation impacts all professionals working on sexual assault, domestic violence, child abuse, elder abuse, animal abuse, and human trafficking cases. Strangulation is external pressure to the neck, by any means, that impedes air flow or blood flow, or both. Suffocation is the obstruction of air flow to and from the lungs making it difficult to breathe. Continuous pressure and obstruction of blood flow and/or air flow can lead to unconsciousness within seconds and death within minutes. *See Appendix 3: Strangulation Infographic and Appendix 4: Five Myths About Strangulation.*

**Terminology:** Some use the terms “strangulation” and “suffocation” interchangeably, but they are distinctively different. While many victims call it “choking,” it is not “choking.” Choking is usually accidental, most often the result of food lodged in the throat. Strangulation is intentional, lethal, and deadly. The term “strangulation” should always be used when external pressure is applied to the neck, even when a victim’s statement describes it as being “choked.”<sup>2</sup>

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<sup>2</sup> Taliaferro, E., Hawley, D., McClane, G., & Strack, G. (2009). Strangulation in intimate partner violence, Chapter 16, In C. Mitchell & D. Anglin (Eds.), *Intimate partner violence: A health-based perspective* (pp. 217–235). Oxford University Press.



**Prevalence:** One in three women will experience intimate partner violence in their lifetime. The prevalence of non-fatal strangulation by their partners varies between 68% to 80% for high-risk victims.<sup>3</sup> Strangulation is common among high-risk survivors who call the police, seek shelter, go to court for protection orders, or access services at a Family Justice Center or Domestic Violence Center. Strangulation is also a gendered crime with virtually all perpetrators being male (299/300).<sup>4</sup> Most women will be manually strangled with hands or arms;<sup>5</sup> 38% report losing consciousness,<sup>6</sup> and between 70% to 99% of strangled women believed they would die.<sup>7</sup>

**Inherently Dangerous:** Strangulation is one of the most lethal forms of domestic violence. Victims may have no visible injuries—but because of underlying brain damage or other internal injuries due to the lack of oxygen during the strangulation assault—they may sustain serious internal injuries. They may even die days or weeks after the attack due to a stroke, suffer a traumatic brain injury, or experience other long-term physical and mental health consequences. Strangulation is also considered deadly force by law enforcement. Many states have now banned the use of neck restraints by law enforcement and in many states, it is a felony to apply a neck restraint on a criminal suspect.

**Predictor of a Homicide:** When a victim is strangled, she is at the edge of a homicide. Strangulation is one of the most accurate predictors of the subsequent homicide of victims of domestic violence. One study showed that “the odds of becoming an attempted homicide victim increased by about seven-fold for women who had been strangled by their partner.”<sup>8</sup> Women who are strangled multiple times are at even higher risk.<sup>9</sup> Another qualitative study, found that 100% of murdered domestic violence victims were strangled before they were killed, making strangulation often “the last warning” before a homicide occurs.<sup>10</sup> See Appendix 5: Power and Control Wheel and Appendix 10: Danger Assessment 11.

**Deadly Link to Other Crimes:** Strangulation has also been linked to officer-involved critical incidents, officers killed in the line of duty in intentional homicides, and mass murders.<sup>11</sup> The research shows the need for all professionals to improve their screening and

3 Wilbur L, Higley M, Hatfield J, Surprenant Z, Taliaferro E, Smith D, Paolo A. Survey Results of Women Who Have Been Strangled While in an Abusive Relationship, *Journal of Emergency Medicine*, 2001; 21(3): 297-302; Messing, et al, Differentiating among Attempted, Completed and Multiple Strangulations in Women Experiencing Intimate Partner Violence, *Women's Health Issues*, 20-1, 104-111 (2018).

4 Strack, G, McClane G, Hawley D, A Review of 300 Attempted Strangulation Cases Part 1: Criminal Legal Issues, *Journal of Emergency Medicine*, Vol, 21, No. 3, 303-309 (2001).

5 Id.

6 Shields L, Corey T, Weakley-Jones B, Steward D, Living Victims of Strangulation: A 10-Year Review of Cases in a Metropolitan Community, *Am J Forensic Med Pathol*, 31(4):320-235 (2010).

7 Wilbur; Thomas K, Joshi M, Sorenson S, “Do You Know What It Feels Like to Drown?": Strangulation as Coercive Control in Intimate Relationships, *Psychology of Women Quarterly*, Vol. 38(1), 124-137 (2013).

8 Glass, N, Laughon, K, Campbell, J, Block, C, Hanson, G, Sharps, P, Taliaferro, E, Non-fatal strangulation as an important risk factor for homicide of women, *Journal of Emergency Medicine*, 35(3), 329-335 (2008).

9 Messing, J, Campbell, J, Webster, J, Brown, D, Patchell, B, Wilson, S, The Oklahoma lethality assessment study: A quasi-experimental evaluation of the lethality assessment program, *Social Service Reviews*, 89(3), 499-530 (2015).

10 Sheehan B, Murphy S, Moynihan M, Dudley-Fennessey E, Stapleton J, Intimate partner homicides: new insights for understanding lethality and risks, *Violence Against Women* (2015).

11 Gwinn C, “Men who strangle women also kill cops”, *Domestic Violence Report*, Civic Research Institute, Vol. 19, No.

documentation of strangulation cases. When working with a known strangled victim, it is imperative to make good use of risk assessment tools, encourage medical treatment, create personalized safety plans, and offer long-term follow-up.

**Power and Control:** Strangulation is also a form of power and control that can have devastating psychological effects on victims in addition to potentially fatal outcomes, including suicide.<sup>12</sup> While most abusers do not strangle to kill their partner, they want them to know that they can kill them at any time. Most victims who survived being strangled believed they were going die and at least 31% of those victims later contemplated suicide.<sup>13</sup> The inability to breathe is one of the most terrifying events a person can endure. Survivors of non-fatal strangulation have known for years what many professionals are only recently learning—many domestic violence perpetrators use strangulation and suffocation to silence their victims, gain control, torture, and kill them. Strangulation has now been recognized as the equivalent of waterboarding.<sup>14</sup> The unique nature of non-fatal strangulation assault makes it a particularly effective tool of coercive control. With non-fatal strangulation, it is possible to bring someone to the point of believing death is imminent, but then stop, either before or immediately after they lose consciousness.<sup>15</sup>

In doing so, the strangler conveys a very powerful and credible threat of imminent death, which is an essential element of establishing and maintaining coercive control.<sup>16</sup>

Evan Stark has described coercive control as resulting in a “condition of unfreedom and a feeling of entrapment for survivors.”<sup>17</sup> Strangulation survivors learn to comply with their abusive partner’s subsequent demands as a survival strategy, while abusers realize they can get away with it and it soon becomes their weapon of choice.

**Health Consequences:** Repeated injuries, concussions, and anoxic brain injuries will eventually take their toll.<sup>18</sup> It is estimated that one in five victims of domestic violence has threatened or attempted suicide during their lifetime.<sup>19</sup> The Centers for Disease Control estimates suicide is among the ten leading causes of death among women aged 10 to 54

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6, 81-100 (2014); Gwinn C, Hellman C, *Hope Rising: How the Science of Hope Can Change Your Life* (2018); Alliance for HOPE Family Justice Center International Conference, Gwinn, C, *Strangulation Plenary Session Presentation*, March 2019 (Available upon request).

12 Strack G, Gwinn C, *On the Edge of Homicide: Strangulation as a Prelude*, 26 *Fall Criminal Justice* 32 (2011); Pritchard A, Reckdenwald A, Nordham C, Holton J, *Nonfatal strangulation as part of domestic violence: A review of research. Trauma, Violence & Abuse*, 1-18 (2015).

13 Wilbur, *supra*, Note 3.

14 Sorenson S, Joshi M, Sivitz E, *A systematic review of the epidemiology of nonfatal strangulation, a human rights and health concern. American Journal of Public Health*, 104(11), e54-361 (2014).

15 McClane G, Strack G, Hawley D, *A review of 300 attempted strangulation cases Part II: Clinical evaluation of the survivor victim*, *Journal of Emergency Medicine*, 21(3), 311-315 (2001); Vella S, *Cognitions and behaviors of strangulation survivors of intimate terrorism*. PsyD. Dissertation (2013).

16 Thomas K, Joshi, M, Sorenson S, *Do you know what it feels like to drown?* *Psychology of Women Quarterly*, 38(1), 124-137 (2013).

17 Stark E, *Coercive Control: How Men Entrap Women in Personal Life* (2009).

18 Voelker, R, *For Survivors of Intimate Partner Violence Overlooked Brain Injuries Take a Toll*, *American Medical Association, News & Analysis*, 2018; [jamanetwork.com/journals/jama/article-abstract/2694976](https://jamanetwork.com/journals/jama/article-abstract/2694976).

19 Cavanaugh C, Messing J, Del-Colle M, O-Sullivan C, Campbell J, *Prevalence and Correlates of Suicidal Behavior among Adult Female Victims of Intimate Partner Violence*, *Suicide Life Threat Behav.*, 41(4), 372-383 (2011).

in the United States (CDC, 2009). But why does a survivor of strangulation assault become suicidal after living through the scariest ordeal of their lives? The near-death experience of strangulation robs victims of hope.

**Robber of Hope:** Hope is the belief that the future can be brighter than the past and that an individual plays a role in making it happen. Hope is a future orientation with goal setting, motivation to pursue those goals, and the strategic thinking skills to overcome obstacles to achieve those goals. The opposite of hope is apathy. Apathy occurs when we feel as though we cannot control anything in our lives, and we begin to feel that “nothing will ever change” or “nothing that I want in life can happen.”<sup>20</sup> A woman being strangled by the person she loves, realizing that the man on top of her with his hand or hands around her neck holds all the power over her life has been robbed of all hope, of any ability to set goals, of the ability to have dreams for the future, or to think strategically about ways to achieve her dreams. Robbed of all hope, survivors often begin to feel there is no way out and suicide becomes a way to stop the pain and end the terrifying reality of living with a strangler. Strangulation adds a life and death terror unparalleled in most other types of domestic and sexual violence assaults, which is why judges need to take strangulation cases more seriously.<sup>21</sup>

**A Gendered Crime Filled with Rage:** Strangulation is most often perpetrated by men against their intimate partners. In our original 1995 San Diego Study, 99% of perpetrators were men.<sup>22</sup> For the rage-filled, “loaded God-complex” man, strangulation is the weapon of choice. The experienced batterer knows that without visible injury, an untrained officer is less likely to find probable cause to arrest; and therefore, the chance of being arrested goes down dramatically. Indeed, most visible injuries may end up on the perpetrator as the victim fights for her life, increasing the odds that the victim is the one who will be arrested when untrained officers arrive. Who is going to believe a potentially hypoxic victim who appears hostile and combative victim with no visible injuries, especially if the batterer has scratch marks and bite marks from the victim trying to defend herself? Domestic violence perpetrators who use strangulation to silence their victims to the point of unconsciousness not only commit a felonious assault but should be charged for an attempted murder and even torture.<sup>23</sup>

**Need for Accountability:** Given the lethality and seriousness of non-fatal strangulation, it is critical that courts hold the most dangerous offenders accountable for the felonious crimes they commit and pay special attention to victim safety issues from the bail hearing, to sentencing, and through the entire period of probation and/or parole. Stranglers are different. They pose a higher risk to their victim and the public in general. Reducing

<sup>20</sup> Gwinn & Hellman, *supra*, note 1.

<sup>21</sup> Strack G, Gwinn G, *Robbed of Hope: Is the Suicide of a Battered Woman Murder? Domestic Violence Report*, Civic Research Institute, Vol. 24, No. 6, August/September 2019.

<sup>22</sup> Strack, et al, *supra*, note 4; Wolfgram H, *The Impact of Minnesota's Felony Strangulation Law (2007)*, <https://www.theadvocatesforhumanrights.org/Publications/A/Index?id=364>.

<sup>23</sup> *People v. Vicary* (2014) Cal. App. Unpub. Lexis 3602; *People v. Vanderwood* (2019) Cal.App. Unpub. LEXIS 2345.



strangulation charges to misdemeanors or allowing stranglers to divert out of the criminal justice system sends the wrong message to offenders, victims, and the public.

## **WHAT HAPPENS WHEN A VICTIM IS STRANGLED?**

**Physiology of Strangulation/Suffocation:** When a victim is strangled, unconsciousness can occur within seconds and death within minutes. Victims may lose consciousness by any of the following methods: blocking of the carotid arteries in the neck (depriving the brain of oxygen), blocking of the jugular veins (preventing deoxygenated blood from exiting the brain), or closing off the airway (making breathing impossible). With continuous pressure after unconsciousness, urination has been reported to occur within 15 seconds, and defecation within 30 seconds. Seizures have also been reported after pressure has been released, as well as during the application of pressure. *See Appendix 12: Timeline of Physiological Consequences of Strangulation.*

**Anatomy:** The neck is extremely vulnerable. Very little pressure on both carotid arteries for less than 10 seconds is all that is necessary to cause unconsciousness. If the veins are compressed while the arteries are open and pumping blood, little red spots called petechiae may result from build-up of venous pressure. Petechiae is evidence of obstruction of blood flow. Petechiae are smooth to the touch and provide evidence of internal injuries even though most visible petechiae will be on the surface of the skin—above the pressure of the chokehold (and even in the eyes). They form immediately or within seconds. If the pressure is immediately released, consciousness will be regained within 10 seconds. To completely close off the trachea (windpipe), more pressure is required. Brain death will occur in minutes if strangulation persists. It is important to remember that often in strangulation cases there are no visible external injuries, even in fatal cases.<sup>24</sup> *See Appendix 11: Vital Neck Structures.*

## **HOW DID WE ALL MISS THE SERIOUSNESS OF STRANGULATION?**

For many years, medical training to identify domestic violence injuries—including strangulation—for law enforcement officers, judges, prosecutors, advocates, and court professionals—was not included in core training. **It wasn't until the deaths of 17-year-old Cassondra Stewart and 16-year-old Tamara Smith in 1995 that the San Diego criminal justice system first began to understand the lethality and seriousness of "choking" cases.** The deaths of these two teenagers were a sobering reminder of the reality of interpersonal violence, prompting the San Diego City Attorney's Office to study existing "choking" cases being prosecuted within the office. **Our published study revealed that, on a regular basis, victims had reported being "choked," and, in many of those cases, there was very little visible injury or evidence to corroborate the "choking" incident.** The lack of physical evidence caused the criminal and civil justice systems to treat many

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<sup>24</sup> Hawley D, McClane G, Strack G, *A review of 300 attempted strangulation cases Part III: Injuries in fatal cases, Journal of Emergency Medicine, 21(3), 317-322 (2001).*

“choking” cases as minor incidents, much like a slap to the face where only redness may appear. These two horrific deaths ultimately changed the course of history and launched an aggressive national awareness and education campaign to recruit experts and improve the criminal justice system’s response to the handling of “choking” cases, which are now referred to as “non-fatal” or “near-fatal strangulation” cases. The momentum for specialized training has now spread around the country, including within the Florida court system.<sup>25</sup>

**Legal Reform:** As a result of those early efforts, many strangulation cases are now being elevated to felony-level prosecution due to professionals understanding the lethality of strangulation. The momentum for change has spread nationwide, and even worldwide. As of May 2025, all 50 U.S. states have passed some form of a felony strangulation and suffocation law. There are strangulation and suffocation statutes in federal law and the Uniform Code of Military Justice, three U.S. territories (Guam, Virgin Islands, and Puerto Rico) and at least 20 Tribal Codes. Australia, New Zealand, Canada, the UK/ Wales, and Ireland have also passed new strangulation laws, with other countries not far behind. For a complete and updated list of existing strangulation laws and related case law, visit [strangulationtraininginstitute.com](http://strangulationtraininginstitute.com) and review the site’s [Legislative Map of Strangulation Statutes](#).

In 2017, California passed one of the most life-saving statutes in America. Penal Code Section 13701 now mandates law enforcement officers to warn victims that strangulation can cause serious internal injuries and urge them to seek immediate medical attention and contact an advocate (Duty to Warn). PC13730 also requires law enforcement agencies to modify their reporting forms to document when strangulation and/or suffocation has occurred during a domestic violence incident (Duty to Track).

These new laws, protocols, and practices have created a demand for further specialization and expert witnesses. There are many more research articles, publications, resolutions, and published and unpublished cases on strangulation to assist professionals in their practice. Doctors, forensic nurses, and detectives are regularly being utilized as experts and testify in court about strangulation. Communities are now implementing county-wide or state-wide protocols and use forensic nurses to assess and document signs and symptoms of strangulation. Despite dramatic changes in law, policy, and practice, however, there is still much more communities can do to improve their response to this deadly and devastating crime. There is no doubt that strangulation laws are important, but training and implementation is vital.

**Need for Training:** Strangulation training for all professionals (including judges) is provided at state and national conferences, some regional police training academies, and in hospital grand rounds. Further training is also available via webinars and online programs in the resource library at [strangulationtraininginstitute.com](http://strangulationtraininginstitute.com). The Training Institute on

<sup>25</sup> Pritchard A, Reckdenwald A, Nordham C, Holton J, *Nonfatal strangulation as part of domestic violence: A review of research. Trauma, Violence & Abuse, 1-18 (2015).*

Strangulation Prevention was launched in October 2011, as a program of the Alliance for HOPE International (Alliance). The Alliance serves as the comprehensive training and technical assistance provider for the United States Department of Justice for Office on Violence Against Women (OVW) grantees. The Training Institute provides training, technical assistance, web-based education programs, an online directory of national trainers and experts, and serves as a clearinghouse for all research related to domestic violence and sexual assault strangulation crimes.

The goals of the Training Institute on Strangulation Prevention are to: (1) enhance the knowledge and understanding of professionals working with victims of domestic and sexual violence who are strangled; (2) improve policy and practice among the legal, medical, and advocacy communities; (3) maximize capacity and expertise; (4) increase offender accountability; and (5) ultimately enhance victim safety.

Many professionals, including judges and court personnel, working with victims of violent crime rarely receive medical training concerning the identification and documentation of injuries or the signs and symptoms associated with strangulation. Providing these trainings on a regular basis will help institutionalize our understanding of strangulation, increase the capacity of professionals to handle these cases effectively, and ultimately save lives.

## CONCLUSION

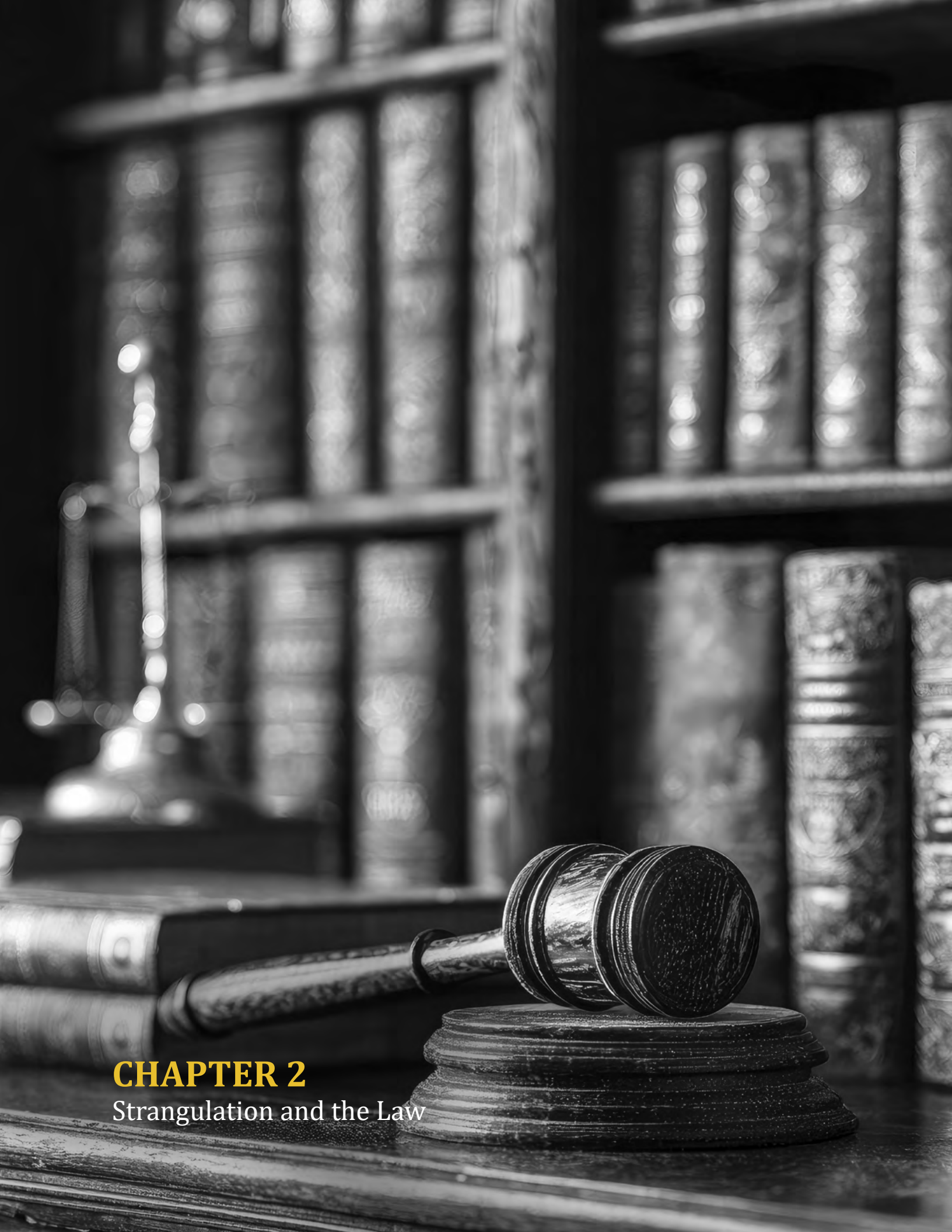
This guide covers key topics that judges and court personnel need to know to properly evaluate and adjudicate cases involving allegations of strangulation and/or suffocation assaults. This Chapter (**Chapter 1**) provides an introduction and overview of strangulation and suffocation assaults. **Chapter 2** covers strangulation and the law, including case law in Florida and rulings from other states, which may assist judges in handling cases of first impression in Florida. **Chapter 3** provides an overview of the physiology of strangulation, including what judges need to know in evaluating medical testimony. **Chapter 4** focuses on understanding the evidence and being aware of the types of evidence which may exist in cases, particularly if prosecutors are seeking to prove cases without the victim's participation. **Chapter 5** focuses on survivor considerations with a particular focus on victim recantation. **Chapter 6** delves into court considerations regarding bail and risk assessment processes, potential defenses, sentencing, and victim restitution.

**Chapter 7** focuses on the use of expert witnesses and what judges should expect to hear from expert witnesses. **Chapter 8** delves into the rage and anger of stranglers and what judges may be likely to hear and observe when evaluating those charged with strangulation offenses in the criminal context, and considerations of in-custody matters when strangulation is alleged and proven. **Chapter 9** focuses on emerging issues including children witnessing strangulation, pediatric strangulation, the rough sex defense, and suspicious death cases. **Chapter 10** focuses on promising or inspiring practices in addressing strangulation cases that could be implemented in Florida with judicial



leadership. **Chapter 11**, written by The Honorable Mary Evans, Florida 20<sup>th</sup> Circuit Court Judge, focuses on strangulation dynamics in the context of parenting and family law. The sixteen items in the Appendices supplement the information provided in each chapter of the guide and their relevance is noted in each chapter.

Cassondra Stewart and Tamara Smith did not die in vain in San Diego in 1995. Their tragic deaths have clearly led to measurable changes in California, across the country, and around the world. Unfortunately, their cases never made it to the courtroom where the escalating violence could have been stopped, and homicides prevented. But now judges have a role to play in addressing victim safety and offender accountability. With strangulation laws on the books and more aggressive enforcement in Florida and across the country, the court system must be aware of the issues to be evaluated and the complex dynamics of strangulation assault cases.



## **CHAPTER 2**

### Strangulation and the Law

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### Strangulation and the Law

*“Every survivor will tell you the same story. The inability to breathe is terrifying. It is fundamentally terrifying. It is so basic to our ability to survive. Being hit is bad but losing the ability to breathe (because of strangulation) is worse in a whole host of ways. I urge you to understand what those who are subjected to this behavior go through...and move forward with this bill to protect all of us who have been and will be victims of strangulation.”*

*Former Oregon State Senator Elizabeth Steiner Hayward  
(Survivor of Strangulation and a Physician), Advocating for a Felony Strangulation Statute in Oregon, SB 1562,  
Feb 2018*

## INTRODUCTION

For many years, professionals across the nation have failed to treat non-fatal strangulation assaults as serious crimes. The lack of physical evidence, experts, training, laws, and protocols caused well-meaning professionals to unintentionally minimize one of the most lethal forms of domestic violence. Often, strangulation cases were not prosecuted at all and even if they were, they were treated as low-level misdemeanors due to the lack of visible injuries. In the civil context, allegations of strangulation were relegated to “he said, she said” allegations and minimized and ignored. Thirty years after the deaths of two teenagers in San Diego, the criminal and civil justice response has made tremendous progress.

While this chapter will mainly focus on understanding Florida’s strangulation law, it also provides a national and global overview of strangulation statutes and case law to assist judges in making informed decisions where there are gaps. This chapter summarizes the key points on why suffocation, non-fatal and near-fatal strangulation are now considered a felony. *See Appendix 16: Strangulation Fact Sheet.*

**Evolution of Strangulation Laws:** The first strangulation stand-alone law in the United States was passed in 2000 in Missouri. By 2014, 37 states and one U.S. Territory (Virgin Islands) had passed some form of a felony strangulation and suffocation law. Today, all 50 states, DC, and three U.S. Territories (Virgin Islands, Guam, and Puerto Rico) have added strangulation and/or suffocation assaults to their criminal codes, including the federal and Uniform Code of Military Justice (UCMJ). Most states have simply added strangulation and suffocation to their existing aggravated assault statutes.

Sixteen states have passed separate stand-alone strangulation and suffocation statutes. A few states have changed their definition of bodily injury or added a definition of strangulation and suffocation under a separate code section, thereby allowing prosecutors to charge strangulation as a felony. Most strangulation statutes protect any person while others limit strangulation laws to family members and/or a dating relationship. Strangulation has been recognized as a general intent crime. Visible injury is explicitly not required to prove the crime in the federal Violence Against Women Act (VAWA), the UCMJ, Delaware, Hawaii, Idaho, Nebraska, Pennsylvania, and Tennessee.

Federal law has one of the most comprehensive definitions of strangulation and suffocation. Under Federal law, Title 18 USC § 113, strangling, suffocating, or attempting to strangle or suffocate, means “intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.” A violation of this code section is a felony and punishable up to 10 years. Only five states include consent as an element in their strangulation statute: Florida, Virginia, Pennsylvania, West Virginia, and Kentucky.<sup>1</sup> **Even in states that have included consent as an element, including Florida, an individual still cannot legally consent to an act that is considered an aggravated battery, can cause serious injury, or poses a risk of death or causes death, such as strangulation.**<sup>2</sup> The effort to understand the significance of strangulation and suffocation in the United States didn’t go unnoticed by other countries. Countries such as Australia (2016)<sup>3</sup>, New Zealand (2018)<sup>4</sup>, Canada (2019)<sup>5</sup>, the United Kingdom (2021)<sup>6</sup>, and Ireland (2023)<sup>7</sup> have all passed similar stand-alone strangulation laws.

## FLORIDA LAW

In 2007, Florida passed its own felony strangulation and suffocation law without any legislative findings. Section 784.041(2)(a), Fla. Stat., “felony battery: domestic battery by strangulation” reads:

<sup>1</sup> Section 784.041, Fla. Stat., (against the will of another); Virginia Code Annotated Section 18.2-51.6 (without consent); Pennsylvania Section 2718 (without a person’s consent is an affirmative defense); West Virginia Code Section 61-2-9d (without the person’s consent); and Kentucky Revised Statutes, Chapter 508, Section 508.170.

<sup>2</sup> See Florida Domestic Violence Benchbook, May 2023, Domestic Violence Definition, p. 5, citing to *State v. Conley* 799 So.2d 400 (Fla. 4th DCA 2001); *Lopez-McCay v. State*, 273 So.3d 248 (Fla. 3rd DCA 2019); *McWatters v. State*, 36 So.3d 613 (Fla. 2010)..

<sup>3</sup> A Red Flag for a Homicide. Should Non-Fatal Strangulation be made a stand-alone offense? Heather Douglas, 2018. <https://www.policyforum.net/red-flag-homicide/>.

<sup>4</sup> Strangulation: The Case for a New Offense, Report 138, Wellington, New Zealand, March 2016, <https://www.lawcom.govt.nz/assets/Publications/Reports/NZLC-R138.pdf>.

<sup>5</sup> The Hidden, Deadly Epidemic in Partner Violence, Mary Fowles, February 8, 2022. <https://www.thetyee.ca/News/2022/02/08/BC-New-Police-Training-Help-Women-Risk-Strangulation/>.

<sup>6</sup> Strangulation and Suffocation, Policy Paper, Updated January 2024; <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/strangulation-and-suffocation#:~:text=Other%20jurisdictions%20had%20recognised%20this,enabling%20justice%20to%20be%20served>.

<sup>7</sup> Non-Fatal Strangulation Law Comes Into Effect in Northern Ireland, Eve Rosato, June 26, 2023; <https://www.bbc.com/news/uk-northern-ireland-66000301>.

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 he or she is 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.

Under § 784.041(2)(b)1., Fla. Stat., a “family or household member” has the same meaning as in § 741.28, Fla. Stat.

Under § 784.041(2)(b)2., Fla. Stat., a “dating relationship” is defined as “a continuing and significant relationship of a romantic or intimate nature.”

Under § 784.041(3), Fla. Stat., a person who commits felony battery or domestic battery commits a felony of the third degree, punishable as provided in §§ 775.082, 775.083 or 775.084, Fla. Stat.

There are two available jury instructions for these code sections: Jury Instruction 8.5(a) Domestic Battery by Strangulation and 8.5(b) Battery by Strangulation.<sup>8</sup>

There are two published cases under this statute that provide guidance. In *Lopez-Macaya v. State*, 278 So.3d 248 (Fla. 3d DCA 2019), 278 So.3d 248 (Fla. 3<sup>rd</sup> DCA 2018), the Appellate Court held that the state need not prove great bodily harm to establish the crime of domestic battery by strangulation. The state can prove this crime by establishing defendant’s actions created a risk of great bodily harm.

In *Dennis v. State*, 338 So.3d 279 (Fla. 4th DCA 2022), the Appellate Court held there was sufficient evidence to show the defendant intentionally impeded the victim’s breath, as required to prove the offense of battery by strangulation. And, the felony-battery statute merely required that defendant impede the victim’s breath, not cut it off entirely. In this case, the defendant suspended the victim’s entire body weight off the ground by holding her in the crook of his arm. The victim testified that she was trying to get a breath.

In 2023, Florida passed “Battery by Strangulation.” Under § 784.031 (1), Fla. Stat., A person commits battery by strangulation if he or she knowingly and intentionally, against the will of another person, impedes the normal breathing or circulation of the blood of that person 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 subsection does not apply to any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state. Under section (2), a person who violates subsection (1) commits a felony of the third degree, punishable as provided in §§ 775.082, 775.083, or 775.084.

<sup>8</sup> <https://www.floridabar.org/rules/florida-standard-jury-instructions/criminal-jury-instructions-home/criminal-jury-instructions/sji-criminal-chapter-8/>.



There are no published cases under this statute. Under these circumstances, it is important to look to legislative intent, jury instructions, other case law from Florida, and case law from other states, including unpublished cases. Since 2007, Florida courts have recognized the seriousness of strangulation. In *Johnson v. State*, 969 So. 2d 938, 956-957 (Fla. 2007), the Supreme Court 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. It also held that a murder victim’s statement to defendant as she was being strangled that she “wanted her children” was admissible under the excited utterance hearsay exception. *See Appendix 1: Florida Bench Card on Strangulation.*

### LEGISLATIVE FINDINGS FROM OTHER JURISDICTIONS

The Florida legislature did not include any legislative findings when it passed “Domestic Battery by Strangulation,” however, there is guidance from New York, Washington, Hawaii, and federal case law. State legislatures have played a profound role by adding legislative intent to their strangulation statutes. It helps professionals determine why this law is necessary, the goals for the new law, as well as provides guidance to professionals on the elements or evidence needed to prosecute to achieve their goals of homicide prevention and prevention of harm to individuals. For non-fatal strangulation, laws have been passed mostly to bring awareness, prevent future harm, and prevent homicides.

**New York:** In *People v. Figueroa*, 968 N.Y.S.2d 866 (N.Y. City Ct. 2013), the Appellate Court discussed the rationale for New York’s new strangulation law by stating: “The intentional obstruction of a person’s breathing or circulation is among the most potentially lethal forms of domestic violence. These acts send a message to the victim that the batterer holds the power to take the victim’s life, with little effort, in a short period of time, and in a manner that may leave little evidence of an altercation. The suffering endured by these victims often includes torment caused by the blocking of blood flow or near asphyxiation.

It is not necessarily limited to pain alone. The law’s purpose was to increase penalties for intentional impeding or impairing of another person’s breathing, including but not limited to circumstances where such conduct leads to unconsciousness for any period or any other physical injury or impairment.”<sup>9</sup>

**Washington:** The Washington legislature found “Assault by strangulation may result in immobilization of a victim, may cause a loss of consciousness, injury, or even death, and has been a factor in a significant number of domestic violence fatalities.” Strangulation is one of the most lethal forms of domestic violence. The particular cruelty of this offense and its potential effects upon a victim, both physically and psychologically, merits its categorization as a ranked felony offense.<sup>10</sup>

**Federal Case Law:** In *US v. Lamont*, 831 F. 3d 1153 (9th Cir. 2016), the United States

<sup>9</sup> *People v. Figueroa*, 968 N.Y.S.2d 866 (N.Y. City Ct. 2013). No published appellate decision in the country has contradicted the finding in *Figueroa* that the crime of strangulation can be committed in a matter of seconds.

<sup>10</sup> Cited in *State v. Rodriguez*, 187 Wash. App. 922 (2015).

Court of Appeals for the Ninth Circuit carefully reviewed the legislative intent and cited to three reasons for its holding that assault by strangulation was a general intent crime. It also held that Defendant's intoxication was irrelevant. The three reasons included:

1) Congress intended assault by strangulation to be a general intent statute in part to "decrease the incidence of violent crimes against Indian women." Compared to all other groups in the United States, Native American women experience the highest rates of domestic violence. 2) Congress was concerned with the gradual escalation of seriousness associated with domestic violence offenses and sought to protect Native women from an epidemic of domestic violence by allowing federal prosecutors to seek tougher sentences for perpetrators who strangle or suffocate their spouses or partners. 3) Congress was focused broadly on the act of domestic violence against Native women, not on the mindset of defendants.<sup>11</sup> The Court also stated **"Many domestic violence offenders and rapists do not strangle their partners to kill them. They strangle them to let them know they can kill them at any time they wish."**<sup>12</sup>

**Hawaii:** Then in 2019, the Hawaii legislature found that "Strangulation is a highly dangerous and potentially deadly form of abuse that frequently precedes other acts of violence. In addition, successfully prosecuting perpetrators of strangulation can be difficult because only fifty percent of strangulation victims have visible injuries. The legislature noted that although Act 175 explicitly provided that bodily injury need not be visible to establish the offense, it was not the intention of the legislature that other offenses that include bodily injury as an element be construed to require visible bodily injury."<sup>13</sup>

**The Importance of Unpublished Cases:** Florida's strangulation law was passed in 2007, yet there are very few published strangulation cases under felony domestic battery, which is typical across the country when new laws pass. However, there are many helpful unpublished cases in Florida and across the United States that could assist judges in making important rulings and decisions.<sup>14</sup> It is well understood that most courts disfavor the citation of unpublished cases unless the party believes the unpublished opinion persuasively addresses a material issue in the appeal and no published opinion from the court adequately addresses the issue.<sup>15</sup> As such, it may be helpful to track unpublished strangulation cases and consider requesting publication in the furtherance of justice, consistency, and clarification.

<sup>11</sup> *United States v. Lamont*, 831 F.3d 1153 (9th Cir. 2016).

<sup>12</sup> Citing Strack, G., Gwinn, C., Editors, *The Investigation and Prosecution of Strangulation Cases* (2013), "Strangulation and the Law", Chapter 2, p. 12. The first edition of our manual is still available online at: [evawintl.org/wp-content/uploads/California-Strangulation-Manual\\_web3.pdf](http://evawintl.org/wp-content/uploads/California-Strangulation-Manual_web3.pdf). Accessed August 23, 2024. The second edition of the manual, published in 2020 is available to attendees of our Advanced Course on Strangulation Prevention offered by the Training Institute on Strangulation Prevention multiple times each year across the United States. It is also available to judges, upon request, by sending a request to [institute@allianceforhope.com](mailto:institute@allianceforhope.com).

<sup>13</sup> HI Rev Stat § 709-906 (2024).

<sup>14</sup> Strack G., Gwinn C., *Trends in Strangulation Case Law, Family & Intimate Partner Violence Quarterly*, Vol. 13, No. 1 (2020).

<sup>15</sup> *Federal and State Court Rules Governing Publication and Citation in Opinions*, *Journal of Appellate Practice and Process*, Fall, 2004, 6 J. App. Prac. & Process 349.

**Why Non-Fatal Strangulation Cases Should Be Treated as Felonies:** There are clear reasons why strangulation assaults in domestic violence cases should be treated as felonies and not as misdemeanor offenses. These reasons have been articulated during legislative hearings across the country as statutes have been passed over the last 25 years, as well as in numerous published and unpublished cases. Court professionals should be familiar with the arguments that led to Florida's strangulation and suffocation law. Those arguments are listed in the *Appendix 16: Why Non-fatal Strangulation Cases Should be Treated as Felonies* (2021). This document can be used in various hearings and reports to help professionals understand the seriousness and lethality of strangulation assaults. Key points are separated into bullet points to make it easy for professionals to use. Since the publication of this document, additional and compelling position statements have been published:

- The American College of Emergency Physicians Policy Statement on Strangulation and Neck Compression of 2021 recognized the seriousness of strangulation and neck compression, particularly in cases of violence. The policy statement emphasized the need for emergency physicians to assess for strangulation in victims of intimate partner violence, child and elder abuse, and other contexts. It also called for increased education and training on strangulation recognition, assessment, and intervention within emergency medical services, medical schools, and emergency medicine residency programs.<sup>16</sup>
- Also in 2021, the American Academy of Neurology (AAN) issued a new policy statement on the use of neck restraints in law enforcement. "Because there is no amount of training or method of application of neck restraints that can mitigate the risk of death or permanent profound neurologic damage with this maneuver," the AAN recommends prohibiting the use of neck restraints. AAN further stated that the medical literature and the cumulative experience of neurologists clearly indicate that restricting cerebral blood flow or oxygen delivery, even briefly, can cause permanent injury to the brain, including stroke, cognitive impairment, and even death. Unconsciousness resulting from such maneuvers is a manifestation of catastrophic global brain dysfunction.<sup>17</sup>

**Rarely are victims just strangled, many are beaten, raped, and stalked:** In addition to being strangled and/or suffocated, many victims are also threatened with death and believe they are going to die. The act of strangulation itself is a way to exert power and control over the victim. Such attempts to coercively control the victim are also exhibited by stalking perpetrators.<sup>18</sup> Stalking generally is defined as a behavior in which a person repeatedly contacts, follows, or intrudes on a victim, leading to the victim feeling fear or distress because of the repetitive intrusion. In Florida, *stalking* means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another person, § 784.048(2), Fla. Stat.

<sup>16</sup> [https://www.annemergmed.com/article/S0196-0644\(21\)01530-4/pdf](https://www.annemergmed.com/article/S0196-0644(21)01530-4/pdf).

<sup>17</sup> <https://www.aan.com/advocacy/use-of-neck-restraints-position-statement>.

<sup>18</sup> Thomas K, Joshi M & Sorenson S, Do You Know What It Feels Like to Drown?: Strangulation as Coercive Control in Intimate Relationships, *Psychology of Women Quarterly*, Vol. 38(1), 124-137 (2014).

The link between domestic violence and stalking is well established.<sup>19</sup> Researchers from Australia analyzed close to 10,000 cases of domestic violence that involved stalking and found that at least 16.6% (or 1,634) of those victims also experienced non-fatal strangulation. They recognized that this may be a low number, as often, strangulation is missed due to a lack of training, visible injuries, and/or reporting. Strangulation victims are also physically or sexually assaulted, restrained, kidnapped, intimidated to not call the police nor participate in the prosecution of the case. In the Oklahoma Study, victims reported severe violence by their abusive partners (63.39%), sexual abuse (17.66%), and/or sexual assault (29.46%).<sup>20</sup> There may also be other victims and other crimes such as use of firearms or deadly weapons, animal abuse, child endangerment, and other related crimes.

**Strangulation as Attempted Murder:** Recently, statutes, case law and researchers have come to recognize that strangulation cases should be charged as attempted murder in certain circumstances. In 2021, researchers reviewed 130 cases of non-fatal strangulation cases to determine whether case characteristics and themes across survivors' on-scene statements can help prosecutors combat common legal defenses raised when victims are unavailable. Researchers found that only 6% of the perpetrators stopped strangling victims on their own, which suggested that non-fatal strangulation complaints should be investigated as attempted homicide until the evidence suggests otherwise.<sup>21</sup>

In 2023, the Tennessee legislature added a new subdivision to their penal code, allowing prosecutors to charge attempted first-degree murder when the victim loses consciousness due to strangulation under § 39-13-202, or attempted second-degree murder under § 39-13-210. The difference between strangulation as an aggravated assault and strangulation as attempted murder is strangulation is a general intent crime and attempted murder is a specific intent crime. However, when a victim is threatened with death, strangled multiple times, whether manually and/or with a use of a ligature, and loses consciousness, prosecutors should consider charging for attempted murder. There is no reason to continue applying pressure to a limp and unconscious individual unless the intent is to cause death. Continuing to apply pressure after loss of consciousness significantly increases the chances of brain damage and/or death.

In *People v. Vicary*, D063404, 2014 LEXIS 3602, (Cal. App. 2014), the Defendant was convicted of attempted murder of his wife under PC166/187 where the victim was strangled to the point of unconsciousness, not breathing, mouth open, and eyes rolled back into her head. Defendant did not let go until an independent witness yelled at the

<sup>19</sup> Bendlin M & Sheridan L, *Nonfatal Strangulation in a Sample of Domestically Violent Stalkers*, *Criminal Justice and Behavior*, Vol. 46, No. 11 (2019).

<sup>20</sup> Messing JT, Patch M, Wilson JS, Kelen GD, Campbell J. *Differentiating among Attempted, Completed, and Multiple Nonfatal Strangulation in Women Experiencing Intimate Partner Violence*. *Womens Health Issues*, (2018) Jan-Feb; 28(1):104-111.

<sup>21</sup> P Brady, A Fansher and S Zedaker, *How Victims of Strangulation Survived: Enhancing the Admissibility of Victim Statements to the Police When Survivors are Reluctant to Cooperate*, *Violence Against Women*, 1-12 (2021).

Defendant at which point he said, “She was going to leave.” He then ran off. The witness, in an attempt to resuscitate the victim, repeatedly shook her until she started coughing and breathing again. The victim was then transported to the hospital. The victim also presented with petechiae, slight bruising on her neck, redness in her eyes, and neck and throat pain.

In *People v. McCann*, 126 A.D.3d 1031 (N.Y. App. Div. 2015), the Appellate Court found sufficient evidence of attempted murder in the second-degree where the victim testified that the defendant choked her for two to three minutes, causing her to black out. The strangulation left her unable to lift her head or swallow, caused hematomas in her eyes, impaired her vision for several days, caused chronic neck pain and an altered voice. The pathologist testified that the victim lost consciousness because the blood supply to her brain had been cut off from choking and that, had the defendant not released her, she would have died a minute or two later.

In *Witham v. State*, 49 N.E.3d 162, 168 (Ind. Ct. App. 2015), the defendant strangled the victim with a ligature until she passed out. Prosecutor argued there is only one reason a person would put a ligature around someone’s neck and that’s to kill them. It was not an accident. Defendant was acting with a conscious object to kill and to “close the deal.”

In *State v. Fox*, 184 So.3d 886, (La. App. 3 Cir. 2016), the act of choking someone after the point of unconsciousness was a disproportionate use of force that went beyond self-defense. The act of choking another person was indicative of a specific intent to kill.

In *People v. Ryder*, 44 N.Y.S.3d 598, (N.Y. App. Div. 2017), attempted murder was upheld where the defendant strangled his mother while she begged for her life and until she lost consciousness. Defendant also threatened he was going to get a gun and kill her. The victim testified she saw black spots and lights flashing before “it all went black.” She lost bladder function and thought she was going to die. The absence of long-term serious injury to the mother did not preclude the finding of life-threatening actions by the defendant. Court found that defendant’s actions demonstrated an intent to kill.

In *State v. Diaz*, 410 So.3d 188, (La. App. 4 Cir. 2017), strangulation was upheld as attempted manslaughter where the victim was strangled twice, lost consciousness, had a garbage bag stuffed into her throat, and was threatened with death.

In *State v. Pacheco*, A-5042-16T4, 2019 WL 1567812 (N.J. Super. App. Div. 2019), the Appellate Court found there was sufficient evidence to prove attempted murder where the defendant told the victim “to die, to die already” and “die, die” while choking her twice to the point that she had difficulty breathing. He also repeatedly punched and kicked the victim. The Appellate Court held that the defendant’s words combined with the prolonged period of intense choking, demonstrated the defendant’s intent to kill the victim.

In addition the victim begged the defendant not to kill her. “Please don’t kill me. Look at my boy that is right there. Take anything you want, but don’t kill me. I have children.”



In *People v. Sotomayor-Quan*, Ill. App. (1st) 181617-U (unpublished), Defendant's conviction for attempted first-degree murder was affirmed. The victim testified she had been dating the Defendant. They had been arguing for three days. On the day of the incident, the defendant had a "look of anger" she had never seen before. Defendant strangled the victim twice causing everything to "get blurry, go black, and her body go limp." She repeatedly tried to break free, while the defendant repeatedly told her he was going to kill her, that she deserved to die, and that she was going to die that day. The victim was eventually able to escape and ran a block and a half. The defendant followed her in his car. The victim was able to ask a woman to call her mother, meanwhile she hid until her mother arrived. Her mother then took her to the hospital and took pictures of her. At the hospital, the victim spoke to police.

The defendant also testified. He denied most of the victim's statements, claimed self-defense, and said he had no intent to kill the victim. The Trial Court, in a bench trial, found the defendant guilty. The Court stated, regarding the attempted first degree murder charge, "[i]t is probably the hardest crime to prove, because one has to prove an intentional desire and intent to kill another person." The Court found that the State had proved that intent beyond a reasonable doubt.

In making this finding, the Court explained that it relied on the combination of the defendant's actions and words. Specifically, the Court highlighted that the defendant put his hands around the victim's throat and strangled her while repeatedly stating that he wanted to kill her, "I'm going to kill you, you deserve to die, you're going to die today," repeatedly saying "you are going to die," during a lengthy ordeal. Court also stated "When you put your hands on another human being's throat and squeeze, that's intent. When you grab somebody around the throat, you are making a statement. When you keep your hands around the throat, you are making a stronger statement, and then when you throw in and add to the mix the language that was used here, which demonstrated an intent to take the victim's life, it's not an accident." The Court also observed that the defendant may not have had the constant intent to kill the victim "every single one of those moments" through the "lengthy ordeal that the complaining witness endured" but explained that this was not necessary for a finding of intent.

The Appellate Court upheld the defendant's conviction, finding the defendant's intent to kill can be inferred from his conduct through the attack. Once the elements of attempted murder are completed, abandonment of the criminal purpose is no defense. "Suffocation is different. Choking someone with one's hands is a continuous act with an indeterminate point at which death may occur. **Whether the assailant completely blocks the airway or only partially does so, how long the victim can survive without oxygen—it is impossible to be certain when death will result.** And we know from the victim's testimony that she was on the verge of death or at least blacked out twice. So, unlike the

irreversible decision to shoot someone, for example, intending to kill someone by choking is reversible—one can intend to suffocate someone but then later change one’s mind before it’s too late. The Trial Court, considering all the evidence, found that the defendant did, in fact, intend to kill the victim at some point in time while he waffled between rage and restraint, though he obviously later retreated from that decision.”

## IMPLEMENTATION OF STRANGULATION LAWS—RELIANCE ON VICTIM PARTICIPATION

Even with the passage of new laws, felony convictions have proven challenging. Many states have difficulties in effectively implementing their laws ([New York Times](#), 2013; [Massachusetts](#), 2015; Texas, 2016;<sup>22</sup> [Iowa](#), 2017). In some jurisdictions, prosecutors outright refuse to prosecute serious cases of domestic violence and non-fatal strangulation unless the victim fully agrees to prosecute, regardless of the evidence obtained by police investigations (Pinellas County Domestic Violence Task Force, Tampa, Florida). Why is this happening after laws have passed, protocols have been written, and thousands of professionals have been trained? Communities fail to develop an implementation plan. Implementation is one of the most critical steps to affect change which takes leadership, teamwork, and a lot of hard work.

Local researchers from the University of Florida recognize that legal outcomes in domestic violence and non-fatal strangulation incidents are complicated by a multitude of factors.<sup>23</sup> For strangulation cases, the challenges include the lack of: external visible injuries, medical treatment, forensic evidence, training, county-wide protocols, forensic nurses to conduct forensic exams, experts to testify in court, and victim participation.<sup>24</sup>

Victim recantation also includes a multitude of reasons and factors: fear, intimidation, coercion, brain injury, lack of trust in the criminal justice system, continuances in the criminal case, suspect released from custody after arrest due to no bail or low bail, lack of victim support and services, housing, and/or overall safety concerns.<sup>25</sup> Yet, when protocols are in place, professionals are trained, and evidence is collected by law enforcement or forensic nurses, prosecution and accountability does increase.<sup>26</sup>

## CONCLUSION

Florida judges do not currently have many published cases to rely upon in adjudicating issues in strangulation assault cases, but there are many cases, both published and unpublished across the country, which may provide guidance and assistance. Cases of first

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22 *Investigation and Prosecution of Strangulation Cases*, ch. 2, at 37 (CDAA Strangulation Manual, CDAA 2020) (citing Jazmin Ulloa, *New Laws, Same Old Cycle*, *Austin Am.-Statesman*, June 29, 2016).

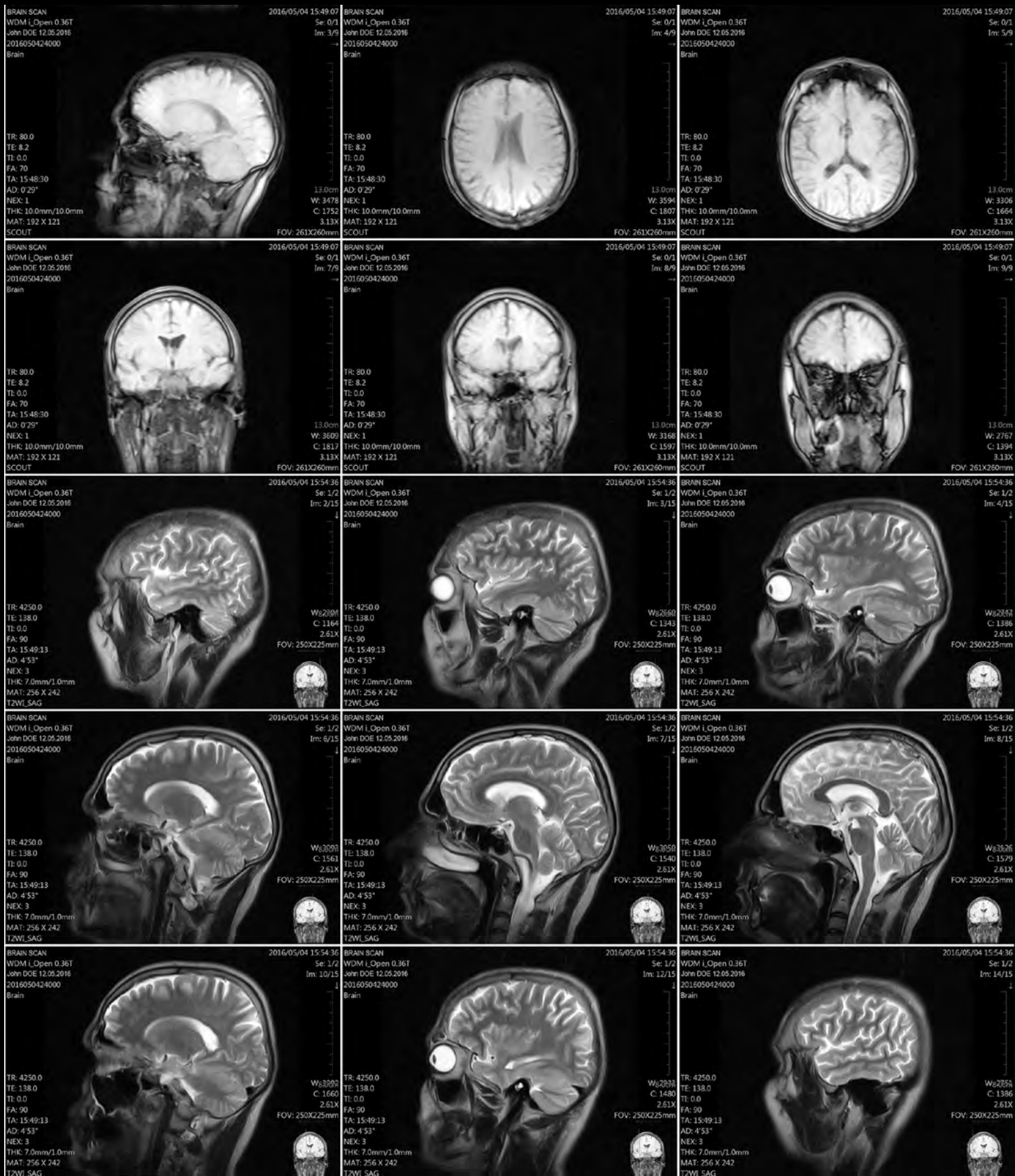
23 Reckdenwald A, Szalewski A, Mandes C, Peeble C, *Factors Associated with Legal Decisions of Nonfatal Strangulation Cases with Forensic Evidence*, *Criminal Justice Policy Review*, Vol. 35(5-6): 273-294 (2024).

24 Strack G, Gwinn C, *On the Edge of Homicide: Strangulation as a Prelude*, *Criminal Justice*, 26:3 (2011).

25 Douglas H, Fitzgerald R, (2025) *Prosecuting Strangulation Offenses: Understanding Complainant Withdrawal using a Social Entrapment Lens*, *Current Issues in Criminal Justice*, 37:1, 1-18 (2025); Geist K, *Applying Pressure: Improving Enforcement of Strangulation Laws*, *University of Toledo Law Review*, Vol. 55, 51-76 (2023).

26 Reckdenwald, et al, *supra*, note 21.

impression are to be expected in states where strangulation training is raising awareness for law enforcement professionals and prosecutors, as is currently happening in Florida.



## CHAPTER 3

### The Medical and Physiological Dynamics of Strangulation

## CHAPTER 3

### The Medical and Physiological Dynamics of Strangulation

*“There are fundamentally two kinds of strangulation victims  
–dead ones and near misses.”*

*Dr. William Green*

#### INTRODUCTION

Strangulation is a very dangerous and potentially lethal form of domestic and sexual violence. Unfortunately, it is also common. The rate of strangulation in domestic violence cases is estimated to range from 27-68%, depending on the study.<sup>1</sup> Sexual assault victims report being strangled by their assailants at rates of 13-18%, though this number may be much higher.<sup>2</sup> If the sexual assault occurs in the context of an abusive relationship, the strangulation rate climbs to 23-28.5%.<sup>3</sup> Minimal pressure on the neck can cause serious injury, but even in fatal cases of strangulation, there are no visible external injuries in 40% of homicides.<sup>4</sup> While a great deal of research has been done to understand the physiological dynamics of strangulation, there is no way to safely do studies where pressure is applied to the neck of human beings, and the impacts studied.

One study, the Rossen Study from 1944, yields data that is invaluable to experts in the field of strangulation assaults, but it can never be replicated.<sup>5</sup> It is regularly cited in court to help educate judges and juries on the average time to unconsciousness from strangulation (6.8 seconds) and other signs and symptoms experienced by strangulation assault victims.

Judges should expect to hear from experts in strangulation assault cases, whether fatal or non-fatal. Experts can provide a wealth of information to the court and trier of fact given the large body of published research now available on strangulation assaults. This chapter is designed to provide judges with the most basic, minimal, medical, and physiological

<sup>1</sup> Seifert D, Lambe A, Anders S, Pueschel K, Heinemann A. Quantitative analysis of victim demographics and injury characteristics at a metropolitan medico-legal center. *Forensic Sci Int.* 2009;188(1-3):46–51.

<sup>2</sup> Seifert, *ibid*, at 46-51.; De Boos J. Review article: Non-fatal strangulation: Hidden injuries, hidden risks. *Emerg Med Australas.* 2019;31(3):302–308.

<sup>3</sup> Shields LB, Corey TS, Weakley-Jones B, Stewart D. Living victims of strangulation: a 10-year review of cases in a metropolitan community. *Am J Forensic Med Pathol.* 2010;31(4):320–325; Sugar NF, Fine DN, Eckert LO. Physical injury after sexual assault: findings of a large case series. *Am J Obstet Gynecol.* 2004;190(1):71–76.

<sup>4</sup> Gill JR, Cavalli DP, Ely SF, Stahl-Herz J. Homicidal neck compression of females: autopsy and sexual assault findings. *Acad Forensic Pathol.* 2013;3(4):454-457.

<sup>5</sup> Smith BA, Clayton EW, Robertson D. Experimental arrest of cerebral blood flow in human subjects: the red wing studies revisited. *Perspect Biol Med.* 2011 Spring;54(2):121-31.



dynamics of strangulation. The full medical chapter spans more than 80 pages, but the fundamentals—and the key points an expert witness should be able to address in court—remain essential for judges to understand.

There are two types of strangulation—manual and ligature. Manual strangulation is generally done with an arm, hand (one hand or two), leg, or other body part. Ligature strangulation is generally done with a rope, cord, piece of jewelry, article of clothing, or other object. Judges should ensure that the jury gets adequate information to determine what type of strangulation has occurred and if external pressure was applied to the neck of another person that blocked air flow, blood flow, or both.

**Not All Injuries Are Visible:** Strangulation is a form of asphyxia characterized by external pressure to the neck, by any means, that occludes blood vessels and/or air passages of the neck.<sup>6</sup> Judges often must make determinations about guilt or innocence as triers of fact, and must make rulings related to appropriate testimony from experts in strangulation cases. When someone has a gunshot or knife wound, the injuries are obvious. When someone has been strangled, it may be much more complicated. A victim can be strangled to death and have no external visible injuries. This means a person can be strangled almost to death and have no external visible injuries. If the victim fights back while thinking she is going to die, the injuries often include scratches, bite marks, or other injuries on the strangler. This can mislead police officers, prosecutors, judges, and juries. As a result, clinical forensic evaluation is important in most non-fatal strangulation cases.

Health care providers working the field of clinical forensic medicine commonly examine victims who were assaulted either by domestic violence, sexual assault, and/or strangulation. In some communities, this will simply be an emergency room physician or nurse, or perhaps a police officer or detective. The strangled patient presents multiple challenges and questions. Some of these questions relate directly to the medical care of the strangled patient. Other questions are directed to the needs of the criminal justice system. Did strangulation occur? Can the forensic examination help confirm the identity of the assailant? What was the intensity and duration of the assault? Was the strangulation assault a life-threatening event? Any professional, whether in health care or the criminal justice system, that interacts with the strangled patient/victim, must keep these basic concepts in mind:

- Strangulation is a very dangerous (and *often life-threatening*) form of interpersonal violence.
- Strangulation *always* includes both medical and forensic aspects.
- Victims may not remember a chronology of events.
- Victims may have major brain impacts along with trauma impacts.

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<sup>6</sup> Sauvageau A, Boghossian E. Classification of asphyxia: the need for standardization. *J Forensic Sci.* 2010;55(5):1259–1267.

- Lack of memory may be evidence of internal injuries to the brain.
- Lack of memory may be evidence of major trauma to the body.
- Strangulation requires careful medical evaluation. Documentation must be thorough and complete.

A clarification of terms is important for the purposes of context in this discussion. The term “**forensic**,” refers to the interface between the law and medicine. “**Forensic pathology**” is the medical discipline that deals with the evaluation of *dead* victims. This differs from “**clinical forensic medicine**,” which is the medical discipline that deals with the evaluation and care (both medical and forensic) of living victims. Clinical forensic medicine includes attention to patient care needs, while forensic pathology does not.

The term “**clinical**” refers to any information or activity related to patient care. Both “**victim**” and “**patient**” will be used to describe the individual who has been strangled. “**Victim**” has a criminal justice system connotation and “**patient**” is appropriate in a medical context.

Signs and symptoms are both important in documentation of a strangulation assault, though a victim may have been strangled and still have very few, if any, signs or symptoms.<sup>7</sup> Signs are objective, observable, visible injuries and symptoms are subjective experiences reported by the victim. Photographic evidence gathered by law enforcement officers, medical professionals, the victim, or friends of the victim are often helpful in the evaluation of strangulation cases in court. Often visible injuries may take hours or days to appear after a strangulation assault. Even in a serious, life-threatening assault, visible injuries may not be present at the time of the assault in as many as 50% of cases. Many victims do not seek medical attention, making the documentation of signs and symptoms more difficult even if a case is later filed.<sup>8</sup>

Judges should not minimize the seriousness of a strangulation case simply because there were no visible injuries immediately after the assault. Observable signs may include:

### **STRANGULATION 101 – THE MEDICAL BASICS**

Whether evaluating a strangled patient, investigating a strangulation case, or prosecuting a strangulation assault, everyone involved, including the jury, needs to understand the fundamental nature of strangulation, including:

- basic physiology and anatomy;
- medical terminology;
- definitions and mechanisms;
- pathophysiology (abnormal functioning);
- clinical; and
- clinical findings and signs.

<sup>7</sup> Strack, G., McClane, G., Hawley D. A Review of 300 Attempted Strangulation Cases. Part I: Criminal Legal Issues, *J Emerg Med*, Vol. 21(3):303-9 (2001).

<sup>8</sup> *Id.*

This starts with basic anatomy (structure of the body) and physiology (bodily functioning).

ANSWERING THE FUNDAMENTAL QUESTIONS	
SIGNS SUPPORTING STRANGULATION	SIGNS THAT MAY BE CONSISTENT WITH STRANGULATION
Scratches on the victim	Venous Congestion
Fingertip bruises	Aspiration (vomiting)
Petechiae (small red dots)	Rope/Ligature Marks
Bite marks on the perpetrator	Abrasions
Scratches on the perpetrator	Bruising behind the ear(s)
Facial palsy	Central clearing on the neck
General bruising or erythema on the neck	Petechiae (on other parts of the body if offender was sitting on the victim while the assault occurred)
Incontinence (urination or defecation)	

*See Appendix 6: Signs and Symptoms of Strangulation and Appendix 13: Strangulation Assessment Sheet.*

ANSWERING THE FUNDAMENTAL QUESTIONS	
SYMPTOMS SUPPORTING STRANGULATION	SYMPTOMS THAT MAY BE CONSISTENT WITH STRANGULATION
Neck pain or sore throat	Nausea and/or vomiting
Breathing changes or difficulties	Coughing
Voice changes (raspy) or inability to speak	Headache
Swallowing difficulties or pain	Changes in hearing (ringing or deafness)
Incontinence	Fear of death
Vision changes/blurred vision	Venous congestion (bloodshot eyes)
Focal neurologic weakness	Memory loss
Altered mental status or loss of consciousness	Feeling of generalized weakness or profound fatigue

The brain needs a continuous supply of oxygen. Without it, brain cells quickly malfunction and die. The brain is the most sensitive organ in the body when deprived of oxygen.

Within the brain, there is a spectrum of vulnerability with some areas being extremely sensitive and others more robust. When brain cells die, they do not regenerate, and the function they supported is permanently gone. To ensure continuous oxygen supply, two vital bodily systems must work perfectly and in unison: the **respiratory** (breathing) system and the **cardiovascular** (blood flow) system. Multiple areas of vulnerability exist in both of these systems, and the compromise of a single area can rapidly produce a very bad outcome.

**Oxygenation** is the process in the lungs that shifts oxygen gas from inhaled air into the bloodstream. Oxygen in the blood is then delivered to the brain cells. Once the oxygen is transferred to the cells, the blood is devoid of oxygen or **deoxygenated**. Carbon dioxide gas is the main waste product of respiration that is transferred from the cells into the bloodstream. The deoxygenated blood is now not only devoid of oxygen, but full of carbon dioxide. The carbon dioxide waste must now be removed from the body. **Respiration** delivers oxygen into the bloodstream. For the respiratory system to function normally, air must pass freely through the nose and mouth, through the upper air passages, through the upper and lower throat (**pharynx** and **hypopharynx**), through the voice box (**larynx**), into the windpipe (**trachea**), and finally into the lungs. Air must also pass freely out of the lungs, which allows the carbon dioxide gas to shift from the blood into air in the lungs and then be exhaled into the atmosphere. Normal breathing is the unobstructed in and out of air flow. The bones and muscles of the rib cage work with the **diaphragm** (large dome-shaped muscle between the chest cavity and the abdominal cavity) to create the mechanical “bellows” action that moves the air in and out. **Cardiovascular** refers to the system that includes the heart, arteries, and veins. The heart provides the pumping action that moves the blood through the lungs (for oxygenation and carbon dioxide removal) and to and from bodily tissues and organs. Arteries move blood away from the heart and veins move blood back toward the heart.

**Carotid arteries** (right and left) are the two main blood vessels in the neck that transport about 85% of the oxygenated blood to most of the brain cells. At the angle of the jaw, each **common carotid artery** divides into an **internal carotid** and an **external carotid** branch. **Jugular veins** (right and left; also with internal and external branches) are the thin-walled blood vessels in the neck that transport the oxygen—depleted, carbon dioxide-rich blood from the brain back to the lungs. **Vertebral arteries** (right and left) travel through bony passages in the bones of the neck (cervical vertebrae) to supply about 15% of the oxygenated blood to brain cells, mainly to the back (posterior) parts of the brain.

## MEDICAL TERMS IN THE COURTROOM IN STRANGULATION CASES

The most common medical terms judges will hear in a courtroom in strangulation cases include:

- **Hypoxia** is an oxygen deficiency in body tissue.
- **Anoxia** is the absence or lack of oxygen in body tissues.
- **Abrasion** refers to common visible injury in strangulation where the force applied damages superficial skin tissue and may remove layers of skin.
- **Asphyxia** is a broad term defined in forensic situations where a body does not receive or utilize adequate amounts of oxygen. In the context of strangulation, asphyxia occurs when brain cells do not receive adequate oxygen for normal functioning. This may result from respiration compromise (the lungs being deprived of oxygen) or cardiovascular compromise (the brain being deprived of blood flow). Asphyxia may result from a combination of problems in both systems.
- **Carotid Dissection** is vascular injury where the artery tears either internally or externally. Once a person experiences a dissection, the body forms a blood clot to stop the internal bleeding. This clot, once formed, has an immediate risk of breaking off and going to the brain, causing a stroke. Bilateral carotid dissections are also common in strangulation assaults, where the victim ends up with tears in both carotid arteries—creating a high risk of stroke without medical intervention. A stroke may lead to permanent disability or death.
- **Petechiae** are small, tiny capillaries that burst when arterial flow continues but venous return of the blood is blocked by external pressure. In a strangulation case, petechiae will always be above where pressure is applied to the neck. They can be visible on the surface of the skin but may also be inside the brain (not visible even with imaging in the surviving victim). One small dot is referred to as “petechia.” Multiple burst capillaries are referred to as “petechiae.” If both carotid arteries are simultaneously compressed (by any mechanism) to the point that all carotid blood flow to the brain is stopped, neurologic dysfunction will begin very quickly. Lightheadedness and dizziness will give way to loss of consciousness within 10 seconds or less. If the carotid arteries are flowing and the jugular veins are blocked, petechiae will begin after approximately 15 seconds of pressure.
- **Hippocampus** is the complex brain structure deep in the limbic system of the brain that plays a critical role in forming, organizing, and storing memories. The hippocampus is the most sensitive part of the brain to oxygen deprivation. Strangulation can damage cells in the hippocampus making it very difficult for a victim to recall events during the assault.
- **Ecchymosis** is the medical term for a bruise which occurs when blood leaks from



damaged blood vessels into the skin causing discoloration.

- Venous Congestion refers to the swelling of tissues caused by increased blood flow and pressure in the veins. In strangulation assaults, it is often a precursor to petechial hemorrhages.
- **Erythema** is redness of the skin or mucous membranes caused by hyperemia in the superficial capillaries under the skin. In a strangulation assault, erythema may disappear within minutes after the assault or may later turn into a bruise.
- **Tinnitus** is the perception of sound in the absence of acoustic stimuli and is commonly called “**ringing in the ears.**” Tinnitus has been mentioned as a symptom in strangulation literature and may be due to transient lack of oxygen to the acoustic structures, but it has many causes.
- **Traumatic/Acquired Brain Injury** can be long or short-term damage to the brain which results from the death of synapses and neurons in the brain due to trauma including blunt force and asphyxia trauma (such as strangulation). If brain cells die, they do not regenerate. This means there is a permanent damage to the brain which may or may not affect function, but brain injuries are also cumulative, so they can have profound long-term impacts on a victim.
- **Suffocation** is a broad term encompassing different causes of asphyxia associated with oxygen deprivation.
- **Smothering** is asphyxia by obstruction of air flow into the upper air passages including the nose, mouth, and pharynx (e.g., putting a pillow or hand over the victim’s nose and mouth, stuffing a rag into the victim’s throat).
- **Choking** is asphyxia by obstruction of air flow into the lungs at the level of the voice box (larynx) or windpipe (trachea). This occurs when an object (e.g. piece of food or other object) mechanically blocks the air flow internally. Victims in strangulation cases will refer to being “choked” ***but the trier of fact must learn or ask what exactly “choking” means to the person testifying.*** In common parlance, some will call strangulation “choking” when in fact they mean strangulation.
- **Mechanical or positional asphyxia** occurs when either external compression of the chest or abnormal body position stops or compromises normal breathing. If a strangler is sitting on the victim while applying neck pressure this can result in positional asphyxia and compromises normal breathing and blood flow to the lower extremities of the body.
- **Pulmonary edema** is a rare but medically significant cause of post-strangulation shortness of breath, which occurs when fluid gets into the small air sacks (alveoli) and surrounding tissue of the lungs. This problem develops because complete airway compression instinctively causes the victim to attempt repeated, forceful inspirations

(efforts to breathe). These attempts generate significant negative pressure within the lungs. After the obstruction is relieved, fluid from the capillaries in the lungs is drawn into lung tissue, which compromises normal oxygenation.

- **CTA Imaging** refers to computed tomography angiography imaging and is the gold standard for evaluating a strangulation victim for vascular injuries (such as a carotid dissection).
- **MRI Imaging** refers to magnetic resonance imaging and is a technique used in radiology to generate pictures inside the body. MRI scans are used more to evaluate strangulation injuries in Europe than in the United States. MRI scans identify more internal damage than CTA Imaging, but are considered more forensic in nature and are seldom used in forensic examinations in the United States.<sup>9</sup>

Experts in strangulation assaults should be able to define each of these terms though appropriate language may vary depending on the expert's background. A police officer with expertise might describe petechial hemorrhages as "tiny red spots" while a doctor or nurse may use more medical language such as referencing damage to capillaries from arterial flow and venous occlusion. Both descriptions are medically accurate but based on an expert's background, their language may be different.

## **THE LIFE-THREATENING NATURE OF STRANGULATION ASSAULTS**

Strangulation assaults often produce life-threatening impacts. Strangulation is the type of offense where if the offender continues the act for 1-2 minutes, the victim will die. Carotid dissections appear to be much more common than originally believed, leaving researchers to call for CTA Imaging for all strangulation victims in order to rule out vascular injuries.<sup>10</sup> Brain damage is also likely happening once victims experience unconsciousness from strangulation. Much of the data regarding brain injury is verified in the large body of stroke literature related to what happens to the brain once adequate blood flow is being reduced to the brain. *See Appendix 15: HELPS.*

## **ANSWERING THE BASIC FORENSIC QUESTIONS IN A STRANGULATION CASE**

Following the medical/forensic examination of the strangled patient, judges and other criminal and civil justice professionals should anticipate answers to the forensic questions posed in the introduction. Part of that anticipation is the expectation that the forensic examiner will be able to testify in court, using evidence-based answers to the questions, to help the jury understand what happened to the victim and the magnitude of the risks involved in the incident.

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<sup>9</sup> William Green, M.D., "Medical and Forensic Evaluation of Non-Fatal Strangulation Cases," Chapter 5, pp.115- 184, in Strack, G., Gwinn, C. eds., "The Investigation and Prosecution of Strangulation Cases," (2020), California District Attorneys Association.

<sup>10</sup> Khan MZ, Wain H, Khan A, Clarke DL. Vascular Imaging is the Only Reliable Method to Exclude Blunt Cerebrovascular Injury Post Hanging or Strangulation, *World J Surg*, Vol. 49(3):752-756 (2025).

### **Did Strangulation Occur?**

The subjective information will come from what the victim said to professionals involved in the response (e.g., the 911 dispatcher, law enforcement, emergency response personnel, the hospital nurses, the emergency physician, the forensic examiner).

The more consistent the documentation from each interview, statement, or history, the more credible and powerful the impact. The symptoms reported to medical providers offer consistency with the history of strangulation described by the victim. Some symptoms are more supportive of strangulation than others that are less specific. The thoroughness and accuracy of medical documentation also affects impact.

The most persuasive information supporting a recent strangulation event will be objective medical data. Traumatic physical exam findings (via written description and forensic photos) directly related to the documented mechanism(s) of injury are powerful. If visible findings are absent or minor, the examiner must be prepared to explain the statistics related to the lack of findings and the medical dangers of over-reliance on visible findings to confirm strangulation. The most compelling data to substantiate strangulation are injuries found on direct imaging, if available. *See Appendix 14: Medical Radiographic Recommendations.*

### **Who Was the Assailant?**

In the context of sexual assault, about 80 percent of victims know their assailant. In domestic violence, virtually all the assailants are known. In the event of an unknown assailant, the identity issue falls on the law enforcement investigation and crime scene evidence. In strangulation, the victim's body is technically part of the "crime scene" and DNA recovered from the victim (especially the neck) may provide a full profile. Investigators are always looking to see if that profile is in DNA database(s) and matches an individual. Generally, the identity of the assailant is not an issue in most strangulation cases handled in the context of domestic or sexual violence.

### **Was the Neck Compression Brief or Prolonged?**

Expert witnesses and well-trained investigators may be able to assist the court and/or trier of fact in answering this question. Forensic science has provided some reliable benchmarks based on physical findings:

- If there is petechiae above where pressure was applied, a minimum of 15 seconds of pressure was applied to occlude the jugular veins before capillaries began to burst
- If loss of consciousness occurred during the strangulation assault, then bilateral, simultaneous pressure occluded both carotid arteries for at least 7-10 seconds
- If the victim urinated or defecated, then bilateral, simultaneous pressure occluded both carotid arteries for at least 15 seconds for urination to occur and 30 seconds for defecation to occur.

- Based on the Rossen Study, an expert is likely to testify that pressure was still being applied after the victim lost consciousness.<sup>11</sup>

*See Appendix 12: Timeline of Physiological Consequences of Strangulation.*

### **Was This a Life-Threatening Event?**

This is usually the most important question for the criminal justice system and the jury. The victim has survived a strangulation assault. The fundamental issues are:

- Was there a mechanism of injury present that could create a lethal outcome?
- Were there symptoms or findings present that confirm the patient was on the path to death?

There are two basic lines of inquiry. First is the presence of geographic petechiae. Petechiae above the pressure of the neck compression confirm that bilateral, simultaneous occlusion pressure was present for at least 15-30 seconds. This is the requisite mechanism for the path to stagnant hypoxia and, if sustained, to death.

The next avenue is more complicated with wider possibilities. The final common pathway to death is asphyxia of the brain. Sustained asphyxia will lead to death. There are two mechanisms that lead from a normal state, to cerebral hypoxia, to fatal asphyxia:

**First is impairment of arterial blood flow to the brain.** Without adequate arterial blood flow, there will be inadequate oxygen for normal brain cell activity and cells will begin to malfunction.

Manifestations of brain cell malfunction include:

- Altered mental status (lightheadedness, dizziness, confusion, or hallucinatory phenomena)
- Loss of consciousness
- Incontinence (bladder and/or bowel)
- Vision loss or visual disturbance

These findings, individually or in combination, indicate the path toward death has begun. If the arterial blood flow interruption continues, death will follow.

**The second mechanism to brain asphyxia is airway compromise that interrupts arterial oxygenation.** Impaired oxygenation will eventually lead to the final common pathway of brain asphyxia with the same findings just described. But before that point, airway compromise has unique symptoms that indicate the mechanism is in place:

- inability to breathe;
- inability to speak;

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<sup>11</sup> See *State v. Delgado*, 232 Arizona 182 (App. 2013), where the court found an emergency room doctor with no specialized training in strangulation qualified to testify as an expert in a felony prosecution for strangulation.

- hoarseness or change in voice; and
- shortness of breath or difficulty breathing.

If airway compromise is sustained, oxygenation will fail, brain asphyxia will progress, and death will ensue. ***There are fundamentally only two kinds of strangulation victims: dead ones and near misses. The line between survival and death rests on the degree of force applied and the duration of that force.***

### **SPECIAL NOTE: SEXUAL CHOKING/EROTIC ASPHYXIA**

As this Benchbook goes to publication, there is strong evidence of a growing trend in today's culture known as "sexual choking" or erotic asphyxia—which is strangulation during intimacy or sexual intercourse in intimate relationships.<sup>12</sup> Medical experts in strangulation cases in court where "consent" or "agreement" to sexual choking is alleged should be able to testify that there is no physiological difference between erotic asphyxia and strangulation during violent assaults. The potential short and long-term medical consequences are identical.

The newest study by Dr. Debbie Herbenick and colleagues has found brain changes in women experiencing strangulation during sex compared to sexually active women not being strangled during sex.<sup>13</sup> Courts across the country are finding, based on law and public policy, that a person cannot legally consent to something that can cause serious bodily injury, poses a substantial risk of death, or ultimately kills them. Medical professionals are finding no physiological differences between a violent, rage-filled strangulation assault and a so-called "consensual" sexual choking or erotic compression of the neck.

### **CONCLUSION**

Expert witnesses in strangulation cases in Florida should be able to testify in court to the physiological and psychological impacts of strangulation assaults. Judges should be prepared to ask questions of self-represented litigants and even ask clarifying questions in criminal cases related to the physiology of strangulation assaults when presiding over jury trials or functioning as the trier of fact. There are a host of myths and misconceptions about strangulation that judges and juries must be able to evaluate in order to ensure informed decision making in these cases. Some of those myths are identified in *Appendix 4: Five Myths about Strangulation*.

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<sup>12</sup> Herbenick, D, Guerra-Reyes, L, Patterson, C, Rosenstock Gonzalez, YR, Wagner, C, & Zounlome, NO, "If Their Face Starts Turning Purple, You Are Probably Doing Something Wrong": Young Men's Experiences with Choking During Sex. *Journal of Sex & Marital Therapy*, 48(5), 502-519 (2022).

<sup>13</sup> Hou J, Huibregtse ME, Alexander IL, Klemsz LM, Fu TC, Rosenberg M, Fortenberry JD, Herbenick D, Kawata K. Structural brain morphology in young adult women who have been choked/strangled during sex: A whole-brain surface morphometry study, *Brain Behav*, Aug;13(8):e3160 (2023).





## CHAPTER 4

Understanding the Evidence

## CHAPTER 4

### Understanding the Evidence

*“He choked me.” “He grabbed my neck.”  
“He pinned me against the wall.” “He wouldn’t let me go.”  
“He grabbed my face.” “I couldn’t breathe.” “I felt dizzy.”  
“I thought I was going to pass out.” “I wet my pants.”  
“Everything went dark.” “I saw stars.” “He said he was going to kill me.”  
“I thought I was going to die.” “I thought of my kids.”*

*Quotes from the San Diego Strangulation Study*

#### INTRODUCTION

This chapter focuses on understanding the evidence collected by first responders, medical professionals, or detectives conducting follow-up investigation. It also discusses the evidence that can be identified by court personnel even without legal or medical intervention. Many victims of domestic violence do not call the police, nor do they seek medical attention. It is common for victims of strangulation to be unrepresented, pro se litigants at family court hearings. As such, it is important for judges to know the kinds of evidence they can ask about with or without lawyers present in court. This chapter also discusses important terminology, the use of specialized forms, protocols and bench cards as well as key questions to ask to identify the signs and symptoms previously discussed in the medical chapter.

**Language Is Important:** Special attention should be paid to vocabulary. While most victims will continue to report they were “choked” or grabbed by the neck—and it is important to use words the victim is most comfortable using—responders and court personnel need to acknowledge the seriousness of the abuse that occurred. “Cahoking” is accidental. Strangulation is intentional. Choking can be intentional when a suspect forcibly lodges an object down a victim’s throat such as a plastic bag, telephone, a fist or other objects. Choking means having the windpipe blocked entirely or partly by some foreign object, such as food. Strangulation means to obstruct the normal breathing of a person or to inhibit the circulation of blood into, or out of, the brain by applying external pressure to the person’s neck. Suffocation refers to obstruction of the airway at the nose or mouth and can occur accidentally or intentionally. Suffocation can even include applying weight or pressure on

someone's torso/chest such as positional asphyxia.<sup>1</sup> The word "choking" minimizes the severity of non-fatal strangulation for victims and all professionals working in the justice system.

For many years, medical experts and researchers referred to strangulation assaults as "attempted strangulation." This represented an inadequate understanding of the nature of the assault. Indeed, even in our seminal San Diego Strangulation Study, we used "Attempted Strangulation" language. The belief, though unstated in most research, was that strangulation meant death. If a victim survived, it must not have been strangulation; it must have only been "attempted strangulation." Sadly, this language is still used by some courts, professionals, media outlets and/or even in statutes. Based on the current state of the law and research, any intentional effort to apply pressure to the neck, by any means, should be viewed as a strangulation assault, not merely a "choking." It takes very little pressure to impede/occlude air or blood flow or airflow. Both signs and/or symptoms can corroborate a strangulation assault. As such, the perpetrator does not "attempt" the assault. The act of strangulation is completed at the time pressure is applied and there is evidence of obstruction of airflow or blood flow. For court purposes and report writing, professionals should correctly memorialize the words used by the victim, preferably noting their words in direct quotes. Professionals should consider asking a few questions included in the Florida Bench Card on Strangulation. *See Appendix 1: Florida's Bench Card*. By asking the victim questions related to strangulation, the victim's statement could go from "He choked me" to this sample police report from San Diego, after training:

"The victim told me she was choked. She said her husband applied continuous pressure to her neck. He used both of his hands. She didn't know how long, but it felt like forever. She saw his eyes were black and he was full of rage. He had the eyes of a demon. She reported she could not breathe, felt dizzy and thought she was going to die. The next thing she remembers is waking up and her pants were wet. She doesn't remember how she got from the kitchen, where the argument started, to the bedroom where she woke up. The victim said she had no visible injuries to her neck, but when she looked in the mirror; her eyes were red and stayed red for days. Based on the victim's description of the assault, I concluded that her signs and symptoms were consistent with strangulation."

In addition to using the term "strangulation," it may be appropriate to use "suffocation," "near-fatal strangulation," and "non-fatal strangulation" depending on the circumstances. When there is evidence of unconsciousness, petechiae, urination and/or defecation, near-fatal strangulation would more accurately describe the assault.<sup>2</sup>

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<sup>1</sup> Taliaferro, E, Hawley, D, McClane, G, & Strack, G, *Strangulation in Intimate Partner Violence, Chapter 16*, In Mitchell, C & Anglin, D (Eds.), *Intimate partner violence: A health-based perspective*, pp. 217–235, Oxford University Press, (2009).

<sup>2</sup> *Talbott v. State*, 204 N.E.3d 288 (Ind. App. 2023).

**Use of Specialized Forms, Protocols, Manuals and Bench Cards:** Today most law enforcement agencies have developed specialized domestic violence reporting forms, checklists and protocols to investigate domestic violence cases.<sup>3</sup> It is expected that officers arriving at the scene of a domestic violence case will conduct a thorough investigation and prepare written reports describing all incidents of domestic violence involving the victim and perpetrator, as well as documenting all crimes committed by the perpetrator.

Over the last 13 years, countywide protocols in the handling of strangulation and suffocation cases were first adopted in communities starting with Maricopa County, Arizona (2012), Brevard County, Florida (2015) and San Diego, California (2017). These jurisdictions are not only using specialized reporting forms for domestic violence cases, but they are also utilizing specialized reporting forms for strangulation cases. Some jurisdictions have included questions about strangulation and suffocation into their domestic violence or sexual assault forms. Strangulation/suffocation protocols are spreading across the United States.<sup>4</sup> Most recently in 2023, statewide strangulation protocols have emerged in the states of Indiana,<sup>5</sup> Delaware,<sup>6</sup> and New Jersey.<sup>7</sup>

To enhance statewide implementation of strangulation laws, multiple states have published manuals on the handling of strangulation cases in collaboration with our Training Institute on Strangulation Prevention including California (2014, 2020),<sup>8</sup> Alaska (2015),<sup>9</sup> and Kentucky (2024).<sup>10</sup> Judicial Bench Cards on strangulation and suffocation have also been developed across the United States in various states including Minnesota, Virginia, Florida, Arizona, and Ohio. Florida's Bench card contains 18 things judges need to know. *See Appendix 1: Florida Bench Card.* As part of Florida's Bench card, Section 16 lists **15 Questions to Consider Asking in Court**, judges should consider asking victims in evaluating a strangulation case. Many more questions are available in various manuals. *See Appendix 6: Signs and Symptoms of Strangulation.*

1. Did anyone apply pressure to your neck, by any means?
2. Did the attacker use one hand or two?
3. Did the attacker use something other than his hands?

<sup>3</sup> San Diego County, *Domestic Violence and Children Exposed to Domestic Violence Law Enforcement Protocol* (2008); Robert T. Jarvis, *A Proposal for a Model Domestic Violence Protocol*, 47 *Loy.L.Rev.* 513 (2001).

<sup>4</sup> See webinar on "How to Implement a Strangulation Protocol in Less than Six Months," published 7-28-24. <https://www.allianceforhope.org/training-institute-on-strangulation-prevention/resources/how-to-implement-a-strangulation-protocol-in-less-than-six-months>.

<sup>5</sup> <https://icadvinc.org/wp-content/uploads/2023/11/icadv-strangulation-response-protocol-final-1.pdf>.

<sup>6</sup> <https://dvcc.delaware.gov/wp-content/uploads/sites/87/2024/11/APPROVED-State-of-Delaware-Strangulation-Protocol-1.pdf>.

<sup>7</sup> <https://www.nj.gov/njsp/division/operations/Strangulation-Smothering.shtml>.

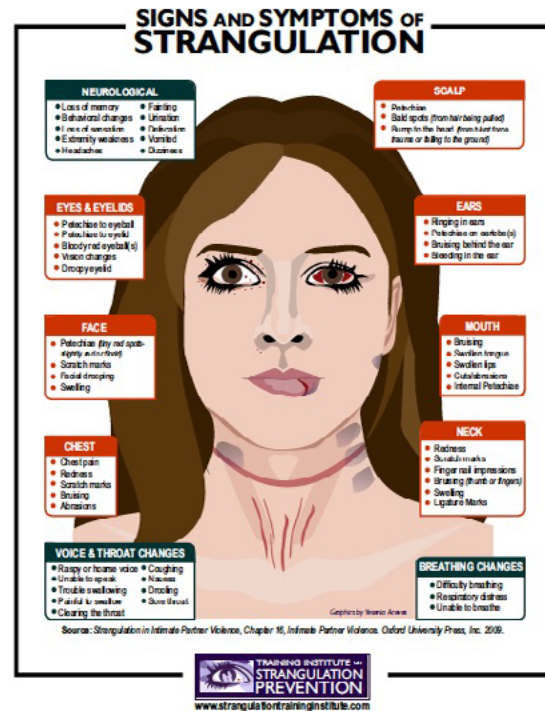
<sup>8</sup> <https://www.allianceforhope.org/training-institute-on-strangulation-prevention/resources/cdaa-investigation-and-prosecution-of-strangulation-cases-manual>.

<sup>9</sup> <https://www.allianceforhope.org/training-institute-on-strangulation-prevention/resources/responding-to-strangulation-in-alaska-guidelines-for-law-enforcement-health-care-providers-advocates-and-prosecutors>.

<sup>10</sup> <https://www.ag.ky.gov/Press%20Release%20Attachments/Responding%20to%20Strangulation%20in%20Kentucky%201.15.25.pdf>.



4. Did the attack take place from the front, behind, or both?
5. How long did it last? (Trauma may impact a victim's ability to tell time.)
6. Did you have marks or bruises on your neck at the time of assault or after?
7. Did you have trouble breathing?
8. Did you have trouble swallowing?
9. Did you have a sore throat?
10. Did your voice change?
11. Did you have trouble speaking?
12. How did you feel when pressure was being applied?
13. Is it possible you may have lost consciousness?
14. Any vision changes?
15. Did you see stars or spots? (But be aware, the victim may not know.)



Recently, in *Larson v. Gibson*, No. 344, 2024, 2025 WL 1554872 (Del. 202, the Appellate Court found it was appropriate for a Family Court Commissioner to use questions from a bench card related to coercion, strangulation and oral sex to examine the respondent's expert witness.

**The Signs and Symptoms of Strangulation:** Learning how to identify, document, and understand these signs and symptoms of strangulation and/or suffocation requires special training and special consideration.<sup>11</sup> Without training for all professionals handling these assaults, very few criminal cases will ever make it to the courtroom. Recently, Florida researchers analyzed 63 non-fatal strangulation cases by reviewing law enforcement reports, forensic medical examinations and legal outcomes. They concluded less than 50% were ever charged.<sup>12</sup> Knowing which questions to ask will assist in identifying evidence consistent with strangulation starting from the 911 call, to body worn cameras, to the statements of the victim, the suspect, and other witnesses. Evidence of strangulation can also be found at the scene, documented in photos, impounded evidence, medical documentation, the prior history of abuse, follow-up interviews with victims and witnesses, and jail calls by the offender. Forensic evidence collected by specially trained

<sup>11</sup> Reckdenwald, A, et al, *Factors Associated with Legal Decisions of Nonfatal Strangulation Cases with Forensic Evidence*, *Criminal Justice Policy Review*, Vol. 35 (5-6) 273-294 (2024).

<sup>12</sup> Reckdenwald A, King D, Pritchard A, *Prosecutorial Response to Nonfatal Strangulation in Domestic Violence Cases, Violence and Victims*, Vol. 35, No. 2, Spring Publishing Company (2020).



forensic nurses and physicians can corroborate non and near-fatal strangulation cases and dramatically increase the prosecution of such cases.<sup>13</sup>

**Understanding Symptoms of Strangulation:** As discussed in Chapter 3, *The Medical and Physiological Dynamics of Strangulation*, the signs of strangulation injuries are not always visible; however, most victims will have at least one or more symptoms of strangulation which includes neurological, voice, swallowing and breathing changes.<sup>14</sup> Symptoms provide corroborating evidence of strangulation and/or suffocation. Symptoms of strangulation can be revealed in 911 calls, body worn camera footage, paramedic reports, medical records, law enforcement investigations, statements from friends, family members, coworkers, neighbors, in petitions for restraining orders, conversations with child protection service workers, observations from the court and from the victim herself. Knowing what to look and/or listen for will help the court understand the severity of the crime. Strangulation is a type of crime that is often missed, minimized and/or misunderstood.

**The Emergency 911 Call:** Emergency 911 recordings provide key evidence and corroboration to strangulation assaults. 911 calls capture the victim's emotional state and often include: (1) statements about the incident; (2) the domestic violence history in the relationship; (3) the victim's physical condition; (4) the victim's and/or suspect's level of intoxication and/or use of drugs; (5) the presence of witnesses; (6) the presence of weapons; (7) the existence of protective orders and other corroborating evidence. The 911 call is a microphone into the violent incident and often records statements from children, witnesses, and/or the abuser. Here is a 911 call from the original San Diego Study:

**Caller:** Hello?

**911:** Yeah, Michelle. This is Lynn at San Diego Police Department. Is this your husband or boyfriend?

**Caller:** My husband.

**911:** It's your husband?

**Caller:** Yes.

**911:** Okay. Does he have any weapons at all?

**Caller:** No.

**911:** What did he do to you?

**Caller:** He—

**911:** Okay, I want you to try to take a deep breath and calm down.

**Caller:** He tried to break my neck.

**911:** He did what?

**Caller:** He tried to break my neck and suffocated me. And he— (unclear speech)

**911:** Okay, do you need a paramedic? Okay, Michelle, do you need a paramedic?

**Caller:** No.

**911:** Are you sure?

**Caller:** Yes, I'm sure.

<sup>13</sup> Reckdenwald A, Powell K, Martins T, *Forensic Documentation of Non-Fatal Strangulation*, J Forensic Sci. 67:588-595, American Academy of Forensic Sciences (2021).

<sup>14</sup> Taliaferro E, et al., *supra*, at Note 1; Zilkens R, Phillips M, Kelly M, Mukhtar S, Semmens J, Smith D, *Non-Fatal Strangulation in Sexual Assault: A Study of Clinical and Assault Characteristics Highlighting the Role of Intimate Partner Violence*, Journal of Forensic and Legal Medicine, 43:1-7 (2016).

**911:** *Okay. He's inside your house alright. He's not there with you?*

**Caller:** *He might have taken off in the car right now.*

**911:** *What kind of car would it be? Hey, Michelle, I want you to take a deep breath and try to calm down, okay? He's not right there, so he- (audio cuts out)*

**Caller:** *He— (unclear speech)*

**911:** *Okay, Michelle?*

**Caller:** *Yeah?*

**911:** *Okay.*

**Caller:** *I—I—I'm not crying. I just can't breathe very well.*

**911:** *Alright. Do you want a paramedic?*

**Caller:** *No, I'm o— I'm okay.*

**911:** *Are you sure? If you can't breathe...*

**Caller:** *How come I can't—How come I can't breathe? How come I can't—I can't—*

This 911 call provides critical information about the strangulation assault and the need for medical attention. The call demonstrates why training dispatchers and other professionals on the medical signs and symptoms of strangulation is imperative. First responders can explain to victims the need for medical attention. Otherwise, many victims tend not to seek medical attention. There are many reasons why injured victims decline medical attention: fear of retaliation, to protect her abuser, lack of childcare, potential involvement of the Department of Children and Families, work obligations, financial limitations, more concern for immediate safety than health, not wanting to disclose the abuse, not trusting that anyone can or would help and/or a perceived lack of time. In many cases, victims simply do not understand the need for medical care. Victims tend to underestimate the seriousness of non-fatal strangulation and the need for medical care. In the San Diego Study, only 5% of the victims who called 911 for help sought medical attention.<sup>15</sup> Nationally today, with training and encouragement from professionals, more victims are seeking medical attention with ranges from 50% to 69% depending on the study.<sup>16</sup>

911 calls often contain spontaneous and/or excited utterances from the victim. Under Florida Evidence Code s. 90.803 (1) and (2), Fla.Stat., spontaneous statements and excited utterances are exceptions to the hearsay rule as these statements are made by victims or witnesses at and/or shortly after witnessing an assault or being assaulted. Courts view spontaneous statements or excited utterances as trustworthy, reliable, and admissible as an exception to the hearsay rule.<sup>17</sup> A computer-aided dispatch (CAD) printout of the 911 call will also show when the call was made, who made the call, where the call was made from, when and how many officers were dispatched, when officers arrived at the scene, whether or not paramedics were also dispatched, and if the situation escalated to the point

<sup>15</sup> Strack G, McClane G, Hawley D, *A Review of 300 Attempted Strangulation Cases Part1: Criminal Legal Issues*, *The Journal of Emergency Medicine*, Vol. 21, No. 3, 303-309 (2001).

<sup>16</sup> Patch M, Anderson J, Alexander K, Somoano F, Kelen G, Holbrook D, Campbell J, *Didn't Put a Label on It: Examining Intimate Partner Strangulation within a Diagnostic Framework*, *J Adv Nurs*. (2022) and Wilkes N, *The Pursuit of Medical Care for Female Victims of NonFatal Strangulation at the time of Police Response*, *Violence Against Women*, Vol. 29(2) 388-405 (2022).

<sup>17</sup> *Barron v. State*, 990 So.2d 1098 (Fla. 3d DCA 2007) and *Rodriguez v. State*, 696 So.2d 533 (Fla. 3d DCA1997).

hostage negotiators and/or the SWAT team were called to the scene. Approximately 50% of strangulation victims experience voice changes, which is another reason to obtain a copy of the 911 recording. If the victim called 911 to report the incident, the recording may contain evidence of a voice change or evidence concerning the victim's other signs and symptoms.<sup>18</sup>

**Body Worn Cameras:** The use of a body worn camera (BWC) by law enforcement officers is a powerful tool to collect evidence, analyze the evidence, corroborate victim and witness statements and/or the conduct of a police officer in responding to 911 calls.<sup>19</sup> A BWC allows officers to document the crime scene, record video and audio statements of involved parties, and record the actions of all officers at the scene. Judges and jurors can objectively see the scene through the eyes of responding officers from the moment they arrive, exit their police vehicle, view the interactions between all of those involved, and hear the emotional statements of survivors, suspects, children, and witnesses. Because everything is recorded, BWCs are of immense value to the civil and criminal justice system.

BWCs are particularly useful in domestic violence cases given the level of intimidation by offenders and recantation by victims. The use of BWCs in domestic violence investigations has allowed many cases to proceed even where victims have recanted or have been too afraid to testify. BWCs can also capture the subtle signs and symptoms of strangulation such as redness to face and neck, voice changes, and/or difficulty breathing that is nearly impossible to document without an audio recording. It is also a perfect tool to accurately document the entire scene of the incident as an officer walks around each room of the crime scene, views it from different angles, captures the layout and distances between rooms, and appreciates the relative level of violence.

Recent studies show that BWCs are helping courts hold offenders more accountable. There are more arrests, fewer cases are being dismissed, and convictions are increasing. It may even relieve the pressure and stress of victims having to testify in court and ultimately enhance victim safety.<sup>20</sup> In *State v. Richards*, 928 N.W.2d 158 (Iowa Ct. App. 2019), the body camera recording of the strangled victim, recorded two hours after the actual incident, was ruled admissible as a spontaneous statement and made during an ongoing emergency. The Victim stated, "He tried to choke me again, but I felt like I could breathe this time." The Appellate Court held the Iowa strangulation statute does not require the state to prove the victim's breathing stopped or that she lost consciousness. Rather, it requires the state to prove the defendant impeded the victims normal breathing by applying pressure to the throat or neck citing to *State v. Kimbrough*, No. 16-1280, 2017 WL 2876244 (Iowa Ct. App. 2017). The evidence in *Richards* showed the defendant caused some level of blood flow or breathing to be impeded, though it may have only been momentary or slight.

<sup>18</sup> See *Florida Domestic Violence Bench Book, Hearsay Exceptions* 90.803, pages 10-17 (May 2024).

<sup>19</sup> *State v. Perez*, 402 So.3d 1130 (Fla. 1st DCA 2025); *State v. Howard*, 411 So.3d 558 (Fla. 5th DCA 2025).

<sup>20</sup> Corbin Carson, "Case Study: Police Body Cams Helping Prosecute Domestic Violence Cases" (Nov. 15, 2017) KTAR News. <https://ktar.com/story/1832473/case-study-police-body-cams-helping-prosecute-domestic-violence-cases/>.

**Victim Statements:** Victims who have been strangled, suffocated, assaulted, raped and/or traumatized may not be able to remember all the details of an assault. They could have difficulty describing distance and time and difficulty describing the assault in chronological order. This is normal and expected for several reasons.<sup>21</sup> In strangulation cases, a lack of memory could be related to the mechanism of the strangulation assault that inhibited blood flow to the victim's brain, altered consciousness or rendered the victim entirely unconscious, thereby unable to form memories. The body needs a constant flow of oxygen to survive. Airway from the mouth and nose allows oxygen to travel to lungs for oxygenated blood supply. Oxygen-rich blood is delivered to the brain by the arteries and the veins return de-oxygenated blood back to the lungs for more oxygen. The brain needs a continuous flow of oxygenated blood to function properly. A lack of blood flow and/or airflow can cause hypoxia or anoxia and lead to unconsciousness, brain damage and/or death.

"I could hear my heartbeat in my head. I couldn't breathe. Everything started going black. There was pressure to both sides of my neck...It felt like I was drowning without water. I think I lost consciousness, but I cannot say for sure. The next thing I remember is that I'm on the ground, on my knees, bleeding and gasping for air. I could feel the deck shaking." *Dawson v. Commonwealth*, 758 S.E.2d 94 (Va. App. 2014).

**Unconsciousness Can Happen Quickly:** Experts can also provide evidence on the physiology of strangulation. When a victim is strangled, unconsciousness may occur within seconds and death within minutes. Victims may lose consciousness by any of the following methods: blocking of the carotid arteries in the neck (depriving the brain of oxygen), blocking of the jugular veins (preventing deoxygenated blood from exiting the brain), or closing off the airway (making breathing impossible). When blood flow is obstructed, loss of consciousness generally happens under 10 seconds. When air flow is obstructed, like drowning, it can take longer to pass out. If obstruction of air flow and blood flow occur simultaneously, loss of consciousness will likely happen quickly. But it will depend on the amount of pressure applied, where the pressure is applied, how pressure is applied (method) and how long pressure is applied. As discussed in the Medical Chapter, it does not take much pressure to obstruct vital neck structures. To completely close off the vein(s), only 4 pounds of pressure is required. The carotid arteries require a little more, approximately 11 pounds of pressure. The trachea (windpipe) requires 33 pounds of pressure. However, this is not much pressure when you consider the average handshake is 80-100 pounds of pressure per square inch which explains why the neck is vulnerable to injury. **Unconsciousness is a sign of an anoxic brain injury and a life-threatening injury.** It is common for strangled victims to have anoxic seizures because of lack of oxygen to the brain. The body has an automatic reaction to being deprived of oxygen and blood to the brain. It knows when it is about to die. If pressure is immediately released,

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21 See Florida's Sexual Violence Benchbook, July 2023, Victim Issues, pages 39-42.

consciousness will be regained within 10 seconds. If pressure is not released, urination may occur within 15 seconds and defecation may occur within 30 seconds. Brain death will occur within minutes depending on the method of strangulation.<sup>22</sup> See *Appendix 12: Timeline of Physiological Consequences of Strangulation*.

**Evidence of Unconsciousness:** There is no definitive test to determine unconsciousness. Evidence of unconsciousness is generally determined by victim statements, witness statements, medical evaluation and/or other corroborating evidence. It is an evaluation of the collective evidence of unconsciousness. It may also include what the victim remembers as well as what the victim doesn't remember. The first step is to look for symptoms of hypoxia (a lack of oxygen to the brain) or asphyxia (the result of having no oxygen to the brain or body). Because unconsciousness can happen quickly, it is important to look for evidence of altered state of conscious.

**Evidence of Altered State of Consciousness:** Altered state of consciousness may cause vision changes such as seeing stars or spots, going from color to black and white or everything going dark. Victims may experience feeling dizzy, nauseous or like they are going to pass out. It may also include hearing changes or changes in behavior. Lack of oxygen to the brain may cause the victim to be restless or hostile at the scene. The victim may appear to be under the influence of drugs or alcohol, but it may be stroke-related symptoms. The victim may have urinated or defecated, changed her clothes or even failed to mention urination or defecation to anyone due to embarrassment. Petechiae is evidence of blood obstruction which generally takes 20 to 30 seconds and likely means there is also evidence of unconsciousness. If a victim does in fact lose consciousness, she may not remember having passed out. As discussed in the Medical Chapter, the hippocampus, a part of the brain important to the formation of memories, is particularly sensitive to hypoxia and anoxia. As a result, formation of memories may be impaired by these conditions, even if the victim is not rendered wholly unconscious.

**Denial of Loss of Consciousness:** In a recent study, researchers found that even when 50% of the victims denied loss of consciousness, they nevertheless reported hypoxia symptoms followed by amnesia. Leading them to conclude their patients most likely lost consciousness and suffered an anoxic brain injury and didn't know it.<sup>23</sup> In *Time is Brain*, an anoxic brain injury results in the death of 1.9 million neurons and 14 billion synapses per minute.<sup>24</sup> Brain cells located within the hippocampus (in the limbic system of the brain) and prefrontal cortex are particularly susceptible to damage due to their location and

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<sup>22</sup> Rossen R, Kabat H, Anderson J, *Acute Arrest of Cerebral Circulation in Man*, *Archives of Neurology and Psychiatry*, 50:510-528 (1943); Hawley D, McClane G, Strack G, *A Review of 300 Attempted Strangulation Cases Part III: Injuries in Fatal Cases*, *the Journal of Emergency Medicine*, Vol. 21, No. 3, 317-322(2001); Sauvageau A, Ambrois C, Kelly S, *Three Nonlethal Ligature Strangulations Filmed by an Autoerotic Practitioner*, *Am J Forensic Med Pathol*, Vol. 33, No. 4 (2012).

<sup>23</sup> Dugan S, Patch M, Hoang T, Anderson J, *Anoxic Brain Injury: A Subtle and Often Overlooked Finding in Non-Fatal Intimate Partner Strangulation*, *Journal of Emergency Medicine*, 1-9 (2024).

<sup>24</sup> Saver J, *Time is Brain – Quantified*, *Stroke*, 37(1):263-6 (2005).



high metabolic demand<sup>25</sup> Non-fatal strangulation can result in pathological, neurological, cognitive, psychological and behavioral outcomes. Pathological changes include arterial dissection and stroke.<sup>26</sup> Neurological consequences include loss of consciousness, indicating at least mild acquired brain injury, seizures, motor and speech disorders and paralysis. Psychological outcomes include PTSD, depression, suicidality and dissociation. Cognitive and behavioral outcomes include memory loss, increased aggression, compliance and lack of help-seeking. Pregnant victims who were strangled have also reported miscarriages. Experts in the physiology of strangulation can often provide evidence on all of this.

**The Inability to Breathe is Terrifying and Traumatic:** The experience of being strangled will most likely traumatize the victim. Studies show that victims who have been strangled often believe they were going to die, between 44% and 99% depending on the study.<sup>27</sup> When the human brain senses significant stress or danger, the ability of a person to voluntarily focus their attention may be reduced as the brain's defense circuitry takes control. For years, researchers have understood that trauma memories are often fragmentary and generally contain more emotional and sensory information.<sup>28</sup> Professionals need to understand the survivor may have no memory of some parts of the incident. This lack of memory may be evidence of the trauma endured, rather than a sign the subject is lying or uncooperative. These factors can dramatically impact how the victim tells their story. It is common in such situations for the victim's story to be jumbled or confused.<sup>29</sup> Victim advocates or experts in domestic violence dynamics with specialized training in strangulation can often provide testimony on these issues.

**Trauma-Informed Interview Techniques:** Professionals who interact with traumatized individuals should remember stress and trauma can change the way a person's brain operates and processes information.<sup>30</sup> The questions and way professionals interact with trauma victims must be informed by research on this subject to improve the quality of information obtained during interviews and to foster an understanding of why trauma survivors exhibit certain behaviors. Trauma changes brain function during a traumatic event, impacting future recall and potentially even the nature of the memories that are formed. In response to significant stress or a traumatic event, the automatic defense circuitry of the brain often affects the way a person can focus their attention,

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<sup>25</sup> *Id.*

<sup>26</sup> Bichard H, Byrne C, Saville C, Coetzer R, *The Neuropsychological Outcomes of Non-Fatal Strangulation in Domestic and Sexual Violence: A Systematic Review*, Neuropsychological Rehabilitation, Routledge (2020).

<sup>27</sup> Wilbur, et al, 2001; Thomas, et al, 2014; Parekh V, et al, *Non-Fatal Strangulation Versus General Assault in a Clinical Forensic Medicine Cohort: Characteristics of Patient, Perpetrator and Presentation*, Journal of Forensic and Legal Medicine (2024).

<sup>28</sup> Bessel A. van der Kolk, et al., *Exploring the Nature of Traumatic Memory: Combining Clinical Knowledge with Laboratory Methods*, Journal of Traumatic Stress pp. 10–32; co-published in 4 Journal of Aggression, Mal-treatment & Trauma 2: pp. 9–31 (2001); Bessel A. van der Kolk and Rita Fisler, *Dissociation and the Fragmentary Nature of Traumatic Memories: Overview and Exploratory Study*, 8 Journal of Traumatic Stress 4: pp. 505–536 (1995).

<sup>29</sup> See also Florida's Sexual Violence Bench book, July 2023, Victim Issues, pages 39-42.

<sup>30</sup> Wilson C, et al., *Understanding the Neurobiology of Trauma and Implications for Interviewing Victims*, End Violence Against Women International (2016).

whether they are able to engage in logical decision-making and planning, and how their memories are integrated into coherent narratives or “stories.” Each of these changes has implications for the way a victim or witness will experience and recall an event.<sup>31</sup> It is not uncommon for an individual exposed to significant stress or a traumatic experience to be challenged by questions that focus on the timeline of the assault or on details that seem germane to a police report or criminal justice proceedings, but were entirely irrelevant to the experience of a victim gripped by mind-shattering fear and engaged in a desperate struggle to stay alive.

**Presence of External Injuries:** As we discussed in Chapter 3, on the physiology of strangulation, experts can testify to the significance of injuries whether minor or major. Even when victims exhibit injuries from strangulation, the injuries will likely appear minor and limited to the point at which pressure was applied. The reference guide below provides a summary of the locations on the body where professionals may find signs of strangulation and/or suffocation and what they can testify to in court.

FACE	EYES & EYELIDS	NOSE	EAR	MOUTH
<input type="checkbox"/> Red or flushed <input type="checkbox"/> Pinpoint red spots <input type="checkbox"/> Scratch marks	<input type="checkbox"/> Petechiae to <b>R</b> and/or <b>L</b> eyeball (circle one) <input type="checkbox"/> Petechiae to <b>R</b> and/or <b>L</b> eyelid (circle one) <input type="checkbox"/> Bloody red eyeball(s)	<input type="checkbox"/> Bloody nose <input type="checkbox"/> Broken nose (ancillary finding) <input type="checkbox"/> Petechiae	<input type="checkbox"/> Petechiae (external and/or ear canal) <input type="checkbox"/> Bleeding from ear canal	<input type="checkbox"/> Bruising <input type="checkbox"/> Swollen tongue <input type="checkbox"/> Swollen lips <input type="checkbox"/> Cuts/abrasions (ancillary finding)

UNDER CHIN	CHEST	SHOULDERS	NECK	HEAD
<input type="checkbox"/> Redness <input type="checkbox"/> Scratch marks <input type="checkbox"/> Bruises <input type="checkbox"/> Abrasions	<input type="checkbox"/> Redness <input type="checkbox"/> Scratch marks <input type="checkbox"/> Bruise(s) <input type="checkbox"/> Abrasions	<input type="checkbox"/> Redness <input type="checkbox"/> Scratch marks <input type="checkbox"/> Bruise(s) <input type="checkbox"/> Abrasions	<input type="checkbox"/> Redness <input type="checkbox"/> Scratch marks <input type="checkbox"/> Fingernail impressions <input type="checkbox"/> Bruise(s) <input type="checkbox"/> Swelling <input type="checkbox"/> Ligature mark	<input type="checkbox"/> Petechiae (on scalp) <b>Ancillary findings:</b> <input type="checkbox"/> Hair pulled <input type="checkbox"/> Bump <input type="checkbox"/> Skull fracture <input type="checkbox"/> Concussion

**Internal Injuries/Symptoms:** In a 2016 study involving 1,064 victims of sexual assault and intimate partner violence, researchers found that 67% of strangulation victims reported at least one symptom of strangulation.<sup>32</sup> The reference guide below provides a summary of what symptoms to look for when seeking to identify any symptoms of internal injury on a victim who has reported being strangled or who is believed to have been strangled. Generally, if a forensic examination was completed, experts can testify to all of this.

<sup>31</sup> Wilson, *Understanding the Neurobiology*, *supra*.

<sup>32</sup> Zilkens R, et al., *Non-fatal Strangulation in Sexual Assault: A Study of Clinical and Assault Characteristics Highlighting the Role of Intimate Partner Violence*, 43 *Journal of Forensic and Legal Medicine*: pp. 1–7 (2016).

CHANGES IN				
BREATHING	VOICE	SWALLOWING	BEHAVIORAL	OTHER
<input type="checkbox"/> Difficulty breathing	<input type="checkbox"/> Raspy voice	<input type="checkbox"/> Trouble swallowing	<input type="checkbox"/> Agitation	<input type="checkbox"/> Dizzy
<input type="checkbox"/> Hyperventilation	<input type="checkbox"/> Hoarse voice	<input type="checkbox"/> Painful to swallow	<input type="checkbox"/> Amnesia	<input type="checkbox"/> Headaches
<input type="checkbox"/> Unable to breathe	<input type="checkbox"/> Coughing	<input type="checkbox"/> Neck pain	<input type="checkbox"/> PTSD	<input type="checkbox"/> Fainted
	<input type="checkbox"/> Unable to speak	<input type="checkbox"/> Nausea/vomiting	<input type="checkbox"/> Hallucinations	<input type="checkbox"/> Urination
		<input type="checkbox"/> Drooling	<input type="checkbox"/> Combativeness	<input type="checkbox"/> Defecation

**Note:** Victims may say they could not breathe but this may or may not mean their airway was blocked. Without adequate blood supply to the brain, victims may feel like they could not breathe even if their airway itself is still open and only partially obstructed.

**Suspect Statements:** Obtaining statements from everyone at the scene, including the suspect, will always help sort out the truth. Most suspects involved in domestic violence want the opportunity to tell their side of what happened and be heard. The more they talk, the more information any professional will get to help sort out the truth. Suspects should feel that you want to listen to what they have to say. Some suspects will deny everything and claim nothing happened at all—in which case eliminating self-defense. Other suspects will minimize what they did, make partial admissions, and/or claim self-defense. **Only a small number of suspects admit to everything they did.** Suspect interviews are always recommended and the fair course of action.<sup>33</sup>

**Witness Interviews:** 78% of intimate partner strangulations occur inside the home, which may lead many to believe that there are few, if any witnesses. Yet research shows that adult witnesses will be present in these situations up to 39% of the time of the time, and children may be present between 50–75% of the time.<sup>34</sup> In domestic violence cases, witnesses may include every person and/or child living or visiting the home who can provide some corroborating information. There could be witnesses who were present in the home but left. There could be witnesses who saw the victim before she was injured and after the assault.

Neighbors are often witnesses and are often the ones who call 911. Neighbors may have heard loud voices, people arguing, or the victim screaming for help. Neighbors may be aware of a history of arguments or violence. The neighbor may even be the person the victim ran to for help. Victims often call friends, family members, or co-workers before and/or after the incident occurred. Victims who do call 911 first may call family, friends, or co-workers while waiting for law enforcement to arrive, and these witnesses typically hear

<sup>33</sup> <https://www.allianceforhope.org/training-institute-on-strangulation-prevention/resources/cdaa-investigation-and-prosecution-of-strangulation-cases-manual>.

<sup>34</sup> Wilbur, Survey Results of Women Who Have Been Strangled, *supra*; Lisa B. E. Shields, et al., Living Victims of Strangulation A 10-Year Review of Cases in a Metropolitan Community, 31 *American Journal of Forensic Medicine and Pathology* 4: pp. 320–325 (2010).

the victim's demeanor and voice as they explain what happened. Children are often present during the assault and may even have called 911 or a relative for help. Children should always be interviewed. Letting children talk about what happened and acknowledging them can assist them in dealing with this traumatic event.

Talking with witnesses as soon as possible after the incident is imperative because their memory is fresh and there is less time for the witness to have talked with other parties, which may affect their statements. Friends and family of the parties often have the best information of prior violence in this relationship and are willing to share to protect the victim. Some will have electronic messages or notes from the victim. Some will have photos on their phones of prior injuries to the victim that the victim may have sent for safekeeping.

Other witnesses include emergency medical technicians (EMTs) and paramedics who were called to the scene shortly after the incident. The victim may have been transported to a local hospital. Statements made to medical professionals concerning the incident, how they are feeling, and what caused their injury for purposes of medical treatment are considered exceptions to hearsay and admissible under the medical diagnosis exception.<sup>35</sup>

In strangulation cases, most victims will **not have visible injuries at the time law enforcement responds**. Victims may or may not be aware, appreciate, or understand any symptoms they may be experiencing. Identifying witnesses after the incident occurred who may be able to corroborate visible injuries, voice changes, problems swallowing, or changes in behavior will provide corroborating evidence. While the victim is cooperative, ask who she saw or talked to about the incident after the incident occurred. Did the victim try to get a protection order? Did she stay with anyone? Did she see friends, family members, or coworkers when she had visible injuries? Did she talk to a victim-witness advocate at the district attorney's office to get the charges dropped or to the suspect's probation officer? Did she see subsequent medical attention? Did she talk to anyone from Child Welfare Services (CWS)? Did you talk to or see anyone else after the incident occurred?

**Medical Examination and Documentation:** Without question, strangled victims need medical attention and when examined by trained professionals, their medical examination, assessment, documentation, and treatment can provide persuasive forensic evidence to confirm that an assault took place. Assuming the victim is examined by a paramedic, a forensic nurse or a medical professional at an Emergency Room or by a primary care physician, the quality and the extent of the documentation will depend on the training of that individual, protocols in place in that jurisdiction and/or assessment tools that are available and/or being used by that practitioner. The Training Institute on Strangulation Prevention has developed a tool for first responders both in English and Spanish called the Strangulation Assessment Sheet. *See Appendix 13: Strangulation Assessment Sheet*. Medical examinations and related documentation provide impactful evidence in court.

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35 See Medical Statement, 90.803(4), Florida Domestic Violence Bench Book, May 2024, page 16.

**The Strangulation Assessment Sheet:** This sheet was designed by first responders for first responders and approved by the Medical Advisory Committee of the Training Institute on Strangulation Prevention, which is made up of the leading forensic medical experts in the United States. *See Appendix 13: Strangulation Assessment Sheet.* It provides a quick review of the signs and symptoms of strangulation, a checklist of what to do at the scene, recommendations for when to transport a strangled victim to the hospital, information about delayed consequences, discharge information for the victim/patient, and a notice to the medical provider about properly assessing a strangled patient, including a recommendation for medical providers to order a CTA of the neck to assess for internal injuries. There are also medical documentation forms for strangulation and/or suffocation that are available.

**Imaging Recommendations:** Imaging is also highly recommended for the strangled patient given the prevalence rate between 2% and up to 15%.<sup>36</sup> The imaging that is typically recommended is the computed tomography angiography (CTA), the magnetic resonance angiography (MRA) or magnetic resonance imaging (MRI). The CTA is the imaging of choice identified by the medical committee as part of their Imaging Recommendations. *See Appendix 14: Medical/Radiographic Recommendations.* The CTA tends to be more accurate in detecting damage to the arteries or veins, more readily available than an MRI and less expensive. However, recent studies show the benefit of MRIs. An MRI of the neck and/or head tends to find more relevant injuries of the assault than a CTA.<sup>37</sup> In a recent study conducted in Switzerland, researchers found approximately 7% of patients who reported being strangled had suffered potentially dangerous injuries such as fractures, carotid dissections and/or hypoxic brain injury, higher than most previous studies causing them to believe that the true prevalence of internal injuries from strangulation is unknown.<sup>38</sup>

Some strangulation protocols require paramedics to be summoned to a scene if: (1) the victim requests medical attention (whether the officer believes EMS should be summoned or not) or (2) if it appears that strangulation has occurred.<sup>39</sup> Reports from responding paramedics and emergency room records should be reviewed for statements by the victim describing internal and external injuries. The treating paramedics and emergency room personnel can also testify about the extent and treatment of the victim's injuries. Statements made by victims to medical professionals are generally considered an exception to the hearsay rule as a **medical diagnosis exception**.

In one case prosecuted by the San Diego City Attorney's Office, the police officer indicated

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<sup>36</sup> Patch M, Dugan S, Green W, Anderson J, *Emergency Evaluation of Nonfatal Strangulation Patients: A commentary on Controversy and Care Priorities*, JENOLINE, Vol. 48, Issue 3 (2022).

<sup>37</sup> Sharman L, Fitzgerald R, Douglas H, *Medical Evidence Assisting Non-Fatal Strangulation Prosecution: a Scoping Review*, BMJ (2023).

<sup>38</sup> Ruder T, Gonzenbach A, Heimer J, Arneberg L, Klukowska-Rotzler J, Blunier S, Exadaktylos A, Wolf-Dieter Z, Wagner F, *Imaging of Alert Patients after Non-self-inflicted Strangulation: MRI is Superior to CT*, European Radiology, 34:3813-3822 (2024).

<sup>39</sup> Law Enforcement Policy Center, *Domestic Violence: Model Policy* (2019).



in his report that the victim had “red abrasions to the neck.” He encouraged the victim to seek medical attention, which she did. In reviewing the medical records, the treating physician indicated the patient had “multiple linear contusions to both sides of her neck with overlying redness, mild edema, and tenderness.”<sup>40</sup> The medical description of the victim’s injuries provided dramatic medical corroboration which tremendously enhanced the case, allowing the prosecutor to obtain a quick guilty plea in court. None of the witnesses or the victim had to come to court to testify. Even if the victim is unable or unwilling to testify in court, the victim’s statements to a medical professional is generally deemed trustworthy and provided for medical purposes, as opposed to trial testimony and is not considered a violation of the confrontation clause.<sup>41</sup>

**Medical Diagnosis Exception:** Under s. 90.803(4), Fla. Stat., statements made for the purposes of medical diagnosis or treatment by a person seeking the diagnosis or treatment or made by an individual who has knowledge of the facts and is legally responsible for the person who is unable to communicate the facts, which statements describe the medical history, past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar, as reasonably pertinent to diagnosis or treatment.<sup>42</sup> Though Florida courts have not allowed identity of the perpetrator to be proven by the medical diagnosis exception to date, recent case law in other states has found that the identity of the perpetrator is admissible as pertinent of diagnosis and treatment and relevant to ensuring the safety of the victim.<sup>43</sup>

**Forensic Exams for the Strangled Victim/Patient:** Many jurisdictions now utilize forensic investigators and nurses who are specially trained to gather evidence using various techniques and photographic equipment either by policy or by law. The following states have now passed laws allowing for free forensic medical examinations for victims of strangulation: Colorado, Washington, California, Nevada, Oregon and/or Virginia.<sup>44</sup> Once these examinations are regularly performed in Florida, this evidence will begin appearing in more Florida trials.

Forensic nurses are proficient in follow-up examinations, taking photographs, and interpreting medical records. Many sexual assault nurses have expanded their scope of practice to include the forensic examination of strangulation victims. In 2016, the International Association of Forensic Nurses, in partnership with our Institute, developed the first Toolkit for Forensic Nurses for this examination.<sup>45</sup> Forensic nurses play a critical role in the clinical examination and comprehensive documentation of the strangled victim.<sup>46</sup>

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<sup>40</sup> Strack, et al., *supra*, note 1.

<sup>41</sup> *People v. Zumaran*, No. 23CA0903, 2025 WL 1419673 (Colorado 2025).

<sup>42</sup> *Id.*

<sup>43</sup> *White v. Illinois*, 502 U.S. 346 (1992). See Florida Bench Book, May 2024, Medical Statements, page 16-19.

<sup>44</sup> See Legislation Map at <https://www.strangulationtraininginstitute.com>.

<sup>45</sup> International Association of Forensic Nurses, Not-Fatal Strangulation Documentation Toolkit (2016).

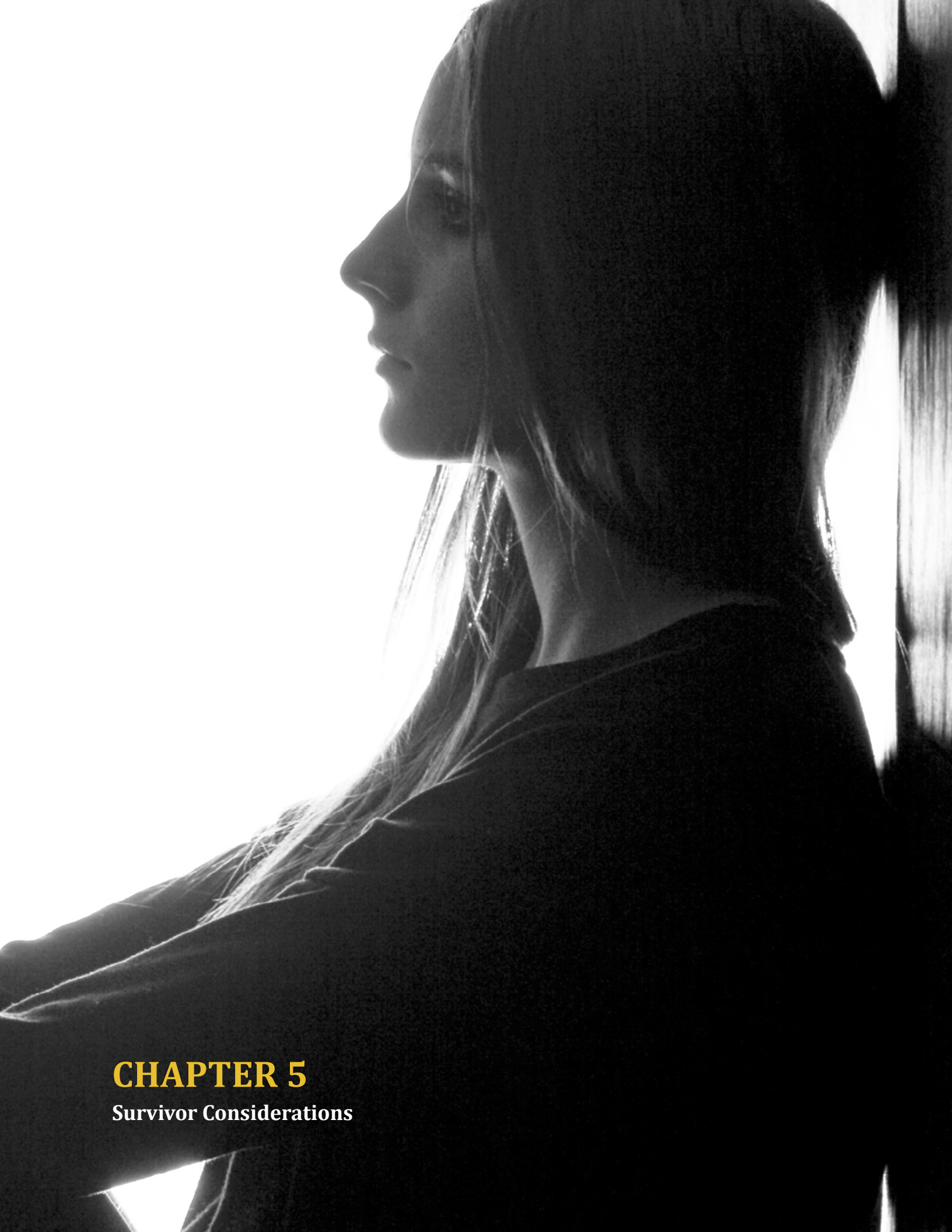
<sup>46</sup> Faugno D, et al., Strangulation Forensic Examination Best Practice for Health Care Providers, 35 Advanced Emergency Nursing Journal, 4: pp. 314–327 (2013).

They can assist police and prosecutors interpret medical records; understand offensive, defensive, accidental, and/or intentional injuries; document follow-up injuries; and/or testify in court as experts. Few victims are getting forensic examinations in Florida at the present time but with comprehensive training of professionals across the state, these types of witnesses will become more prevalent in the years to come. Forensic examinations provide powerful evidence corroborating a victim's statement or allowing prosecutors to go forward with prosecution even if the victim is too terrified to testify against her abuser.

## **CONCLUSION**

Florida judges and juries currently may not see much of the evidence being gathered in strangulation cases as in other parts of the country. This is a result of inadequate training for law enforcement officers, prosecutors, and medical professionals. The Training Institute on Strangulation Prevention is currently doing more training in Florida than it has historically. We anticipate judges and juries having access to much more evidence in their fact-finding process in the future. It is crucial that the evidence be gathered and that judges and juries then have the tools and information necessary to evaluate and understand the evidence.





## **CHAPTER 5**

**Survivor Considerations**

## CHAPTER 5

### Survivor Considerations

*“I write to provide the Commission my experience as a crime victim who experienced strangling and suffocation. After two years of marriage filled with verbal abuse, shoving and other physical abuse, one night my husband threw me down on the bed and began strangling me. Unlike any other way that he had attacked me in the past, this horror instantly sent me to a level of terror and trauma I had never known in my whole life. I knew I was seconds away from dying. This was fear unlike anything I had ever known. Everything was suddenly different in my whole consciousness. I was going to die. The unthinking rage in his eyes made that clear.”*

*Jennifer Bishop-Jenkins, Written Testimony to the U.S. Sentencing Commission, for VAWA 2013<sup>1</sup>*

## INTRODUCTION

Judges rarely see victims of strangulation assault at their best. They often see them when they are terrified, confused, recanting, and suffering the physical and psychological consequences of abuse. Inherent in the search for truth and access to justice is an understanding of victim dynamics and the complexities of engaging in the court system after experiencing near-fatal assaults.

**Lethality is High in the Context of Strangulation Assaults:** When a victim is strangled, she is at the edge of a homicide. Strangulation is one of the most accurate predictors for the subsequent homicide of victims of domestic violence. The most cited study is *Non-Fatal Strangulation is an Important Risk Factor for Homicide of Women* from 2008. In that article, researchers determined that “the odds of becoming an attempted homicide victim increased by about seven-fold for women who had been strangled by their partner.”<sup>2</sup>

**The Oklahoma Study:** Ten years later, researchers conducted another study involving the use of the Danger Assessment 11 (which includes 11 questions rather than 20 questions) in Oklahoma involving 1,008 cases. Oklahoma, like Florida, mandates law enforcement

<sup>1</sup> *Written Testimony of Jennifer Bishop-Jenkins describing her personal victimization related to strangulation, submitted February 13, 2014. For a full copy of her written testimony, please contact [institute@allianceforhope.com](mailto:institute@allianceforhope.com).*

<sup>2</sup> *Glass N, Laughon K, Campbell J, Block C, Hanson G, Sharps P, Taliaferro E, Non-fatal strangulation as an important risk factor for homicide of women, Journal of Emergency Medicine, 35(3), 329-335 (2008).*

officers to utilize a risk assessment tool when responding to domestic violence cases.<sup>3</sup> In this 2018 Study, most women reported some form of strangulation (79.66%). Researchers determined women who are strangled multiple times are at even higher risk of being killed and at higher risk of serious long-term health issues.<sup>4</sup> Strangulation is also repetitive. Very few victims are strangled only one time in an abusive relationship. In 2018, Spencer and Stith conducted a literature review of 17 peer-reviewed studies.<sup>5</sup> Their review determined that the strongest risk factors for intimate partner homicide were the perpetrator having direct access to a gun, previous non-fatal strangulation, previous rape of the victim, previous threat with a weapon, demonstration of controlling behaviors, and previous threats to harm the victim.

**Family and Friends May Know the Truth:** In one of the first and only studies with family members and close friends (co-victims), researchers not only interviewed co-victims, but they also examined affidavits from criminal case files and reviewed news releases. The data uncovered acute risk factors prior to the homicide, identified changes in perpetrators' behavior, observed perceived loss of control of the victim by the offender, and noted barriers that victims faced when attempting to gain safety. They found that "co-victims described stories of entrapment, stalking, strangulation and brutality." In those stories, researchers heard the many ways victims sought to break free from the relationship. Victims sought assistance from friends and family, health care professionals and the justice system." This article also included research that has repeatedly shown that any threat of leaving the abuser is dangerous because the abuser loses a sense of control over the victim.<sup>6</sup>

- Women that are separated after living with the perpetrator are over three times more likely to be victims of homicide than those that had not been separated.<sup>7</sup>
- Likelihood of homicide increased even more if the victim left the abuser for another partner.<sup>8</sup>
- For women who left their partners and were later killed, the homicide usually occurred within the first year following the separation, indicating that both separation and previous abuse are predictive risk factors for the next 12 months.<sup>9</sup>

<sup>3</sup> Gabby Petito Act of 2024, SB1224, and § 741.29, Fla. Stat. <https://www.tampapfp.com/domestic-violence-bill-signed-by-florida-gov-desantis-inspired-by-gabby-petito/>.

<sup>4</sup> Messing J, Patch M, Wilson J, Kelen G & Campbell J, *Differentiating Among Attempted, Completed and Multiple Nonfatal Strangulation in Women Experiencing Intimate Partner Violence*, Jacob's Institute of Women's Health, Elsevier Inc., (2018).

<sup>5</sup> Spencer C and Stith S, *Risk Factors for Male Perpetration and Female Victimization of Intimate Partner Homicides: A Meta-Analysis*, Trauma, Violence & Abuse, 1-14 (2018).

<sup>6</sup> Sheehan B, Murphy S, Moynihan M, Dudley-Fennessey E, Stapleton J, *Intimate Partner Homicides: New Insights for Understanding Lethality and Risks*, Violence Against Women (2014).

<sup>7</sup> Campbell J, *Helping Women Understand their Risk in Situations of Intimate Partner Violence*, Journal of Interpersonal Violence, 19, 1464-1477 (2004).

<sup>8</sup> Garcia L, Soria C & Hurwitz E, *Homicides and Intimate Partner Violence: A Literature Review*, Trauma, Violence & Abuse, 8, 370-383 (2007).

<sup>9</sup> Campbell J, Glass N, Sharps P, Laughon P & Bloom T, *Intimate Partner Homicide*, Trauma, Violence and Abuse, 8 246-269 (2007).



Strangulation has also been linked to officer-involved critical incidents, officers killed in the line of duty in intentional homicides, and mass murders.<sup>10</sup> See Chapter 8, The Rage of Stranglers.

**Civil Protection Orders Matter:** In one of the only studies on non-fatal strangulation cases in civil/family court, researchers analyzed the prevalence of non-fatal strangulation the year before and the year after a civil protection order was obtained.<sup>11</sup> Researchers found 57% of petitioners were strangled before the protection order and 12.4% after the protection order was obtained. While the order reduced the prevalence of strangulation assaults, it did not prevent stranglers from stalking and re-assaulting their victims.

**There is ample evidence today to confirm that stranglers become stalkers when their victims try to escape.**<sup>12</sup> Study results also suggested that those with nonfatal strangulation experiences may have an especially difficult time initiating and maintaining separation from abusive partners, most likely due the trauma, fear and neurological consequences. Researchers concluded that there are specific risk factors to consider in tailoring conditions of the protection order, safety supports, and resources for those with prior nonfatal strangulation experiences. Under Florida Law, victims should be given written information about their rights, available services, and referred to a domestic violence center. To address the unique and challenging issues faced by family court judges and magistrates, Virginia Superior Court Judge Lee Chitwood has created a checklist for judges to consider when ruling on motions to dismiss a protection order in Family Court. The checklist contains 10 topic areas and 50 questions. *See Appendix 2: Judicial Checklist to Dissolve Protection Orders.*

**The Traumatic Impact of Strangulation to Victims:** The inability to breathe is terrifying. Many strangulation victims have reported both intense pain and the overwhelming belief they were going to die ranging from 44% up to 99% of strangulation victims.<sup>13</sup>

In 2013, researchers interviewed 17 strangled victims—16 out of 17 believed they were going to die.<sup>14</sup> The only participant who didn't think she was going to die credited God. "I believe in God a lot, God had me. But I was just trying to get air, and he was cutting my air off."

Participants often thought about their children during the incident. Eleven women feared

<sup>10</sup> Gwinn C, *Men Who Strangle Women Also Kill Cops*, Domestic Violence Report, Civic Research Institute, Vol. 19, No. 6, 81-100 (2014); Gwinn, C & Hellman, C, *Hope Rising: How the Science of Hope Can Change Your Life* (2018); Gwinn C & Strack G, *Men Who Strangle Women Also Kill Cops*, Domestic Violence Report, Civic Research Institute, Vol. 30, No. 2, 17-40 (2025).

<sup>11</sup> Logan, *Examining Relationship and Abuse Tactics Associated with Nonfatal Strangulation Experiences before and After a Protection order*, *Violence Gend.*, 8(2), 95-103 (2021).

<sup>12</sup> *Id.*

<sup>13</sup> Wilbur L, Higley M, Hatfield J, Surprenant Z, Taliaferro E, Smith DJ Jr, Paolo A, *Survey Results of women who have been Strangled While in an Abusive Relationship*, *Journal of Emerg Medicine*, Oct;21(3):297-302 (70%) (2001); Sorenson SB, Joshi M, Sivitz E, *A Systematic Review of the Epidemiology of Nonfatal Strangulation, a Human Rights and Health Concern*, *Am J Public Health*, Nov;104(11):e54-61 (99%) (2014); Brady PQ, Fansher AK, Zedaker SB, *How Victims of Strangulation Survived: Enhancing the Admissibility of Victim Statements to the Police When Survivors are Reluctant to Cooperate*, *Violence Against Women*, Apr;28(5):1098-1123 (44%) (2022); Thomas K, Joshi M, Sorenson S, "Do You Know What It Feels Like to Drown?": *Strangulation as Coercive Control in Intimate Relationships*, *Psychology of Women Quarterly*, Vol. 38(1), 124-137 (2013).

<sup>14</sup> *Ibid*, Thomas, et. al.

they would never see their children again and worried about the impact their death would have on them. When children were present during the incident, participants were concerned about how to protect them. The four women who were pregnant during the incident feared for the health of their unborn babies. The strangulation incident elicited immediate and lasting fear, causing them to want to leave, feel trapped and feeling they couldn't leave, or altering their behavior to avoid violence, and becoming more submissive. In this study, participants believed their perpetrators strangled them for three main reasons: 1) To exert power and control, 2) to serve as a warning, and 3) to show they can get away with it (due to a lack of visible injuries). Researchers concluded that nonfatal strangulation is a way an abusive partner can “set the stage” by sending the message that “he can and perhaps will kill the victim”—a credible threat that is intended to induce compliance.<sup>15</sup>

**Neurological Outcomes:** In 2020, Bichard, et al, conducted a literature review of 30 empirical, peer reviewed studies which documented the outcomes of nonfatal strangulation in domestic and sexual assault. Almost all were female. Severe, life-threatening injuries were reported, including stroke, arterial dissection and symptoms of hypoxia and venous congestion.<sup>16</sup> They divided the neurological outcomes into three categories: Clinical, Psychological and Cognitive/Behavioral. Clinical outcomes included loss of consciousness, changes to vision and voice, motor difficulties and sensor loss. Psychological outcomes indicated profound trauma reactions, including acute and chronic fear, PTSD, dissociation, depression, anxiety and suicidality. Cognitive and behavioral changes included memory loss, executive difficulties, aggression toward attacker and lack of help-seeking.<sup>17</sup> Strangulation victims are also at risk for severe brain injury or death. They are twice as likely to re-admitted to the Emergency Room Departments within one year of the strangulation incidents, given many patients are “discharged home.”<sup>18</sup> Thereby causing some researchers to believe it is “professional dangerousness” to not detect, manage and support victims who will continue the cycle of abuse that is associated with economic, social, physical and psychological morbidity, and in many cases, death through the long-term effects of strangulation, along with increased homicide and suicide rates.<sup>19</sup>

### **The Link between Strangulation and Traumatic Brain Injury**

As discussed earlier, the brain needs a constant and uninterrupted flow of oxygen to survive. Acute and prolonged lack of oxygen to the respiratory and circular system and disruptions to cerebral blood flow can cause brain damage—unconsciousness within

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15 Ibid, Thomas, et. al.

16 Bichard H, Byrne C, Saville C, Coetzer R, *The Neuropsychological Outcomes of Non-Fatal Strangulation in Domestic and Sexual Violence: A Systematic Review*, Neuropsychological Rehabilitation, Routledge (2020).

17 See Florida's Sexual Violence Benchbook, July 2023, Victim Issues, pages 39-42.

18 Jacob B, Cullen N, Haag H, Chan V, Stock D, Colantonio A, *Assault by Strangulation, Sex Differences in Patient Profile and Subsequent Readmissions*, Canadian Journal of Public Health, 111:492-501 (2020).

19 Donaldson A, Hurren E, Harvey C, Baldwin A, Solomon B, *Front-line Health Professionals' Recognition and Responses to Nonfatal Strangulation Events: An Integrative Review*, J Adv Nurs, 70:1290-1302 (2023).

seconds and death within minutes. Only in the last 20 years has strangulation been linked to brain injury. In 2003, Valera and Berenbaum examined associations between IPV severity, cognitive functioning and psychopathology where they found that a majority (74%) of women sustained an IPV-related brain injury and 27% experienced strangulation induced anoxia or hypoxia.<sup>20</sup> In 2022, Valera and other researchers specifically sought to evaluate the link between strangulation victims and traumatic brain injury. They found that women who experienced a strangulation-related alteration in consciousness from IPV performed more poorly on a task of long-term memory and reported higher levels of depression and PTSD symptomology than women who had never experienced such strangulation. Brain injury within the context of domestic and sexual violence is being recognized as a likely outcome of repeated loss of consciousness associated with strangulation,<sup>21</sup> and is now referred to as “acquired brain injury.”<sup>22</sup> However, many professionals and even victims of domestic violence and/or strangulation are still unaware of the link between strangulation and brain injury. Many victims do not regularly seek nor are they encouraged to seek medical treatment after an assault.<sup>23</sup> As many as 50% of strangled victim may not even know they have been strangled to loss of consciousness, causing researchers to believe that loss of consciousness is an imperfect measure of anoxic brain injury following strangulation.<sup>24</sup> And many victims do not connect their long-term health issues as being connected to their strangulation assault.<sup>25</sup>

### **Strangulation as a Form of Torture**

In a Systematic Review of the *Epidemiology of Nonfatal Strangulation, A Human Rights and Health Concern*, researchers analogized strangulation as being the equivalent to water boarding given the terror most strangulation victims experience.<sup>26</sup> They defined water boarding as water being poured into the mouth and nasal passages of an immobilized captive to simulate drowning. Like strangulation, water boarding is widely considered to constitute torture. Both strangulation and water boarding: leave few marks immediately afterward, can result in the loss of consciousness, are used to assert the actor’s dominance and authority over the life of the other, create intense fear, and potentially result in

<sup>20</sup> Valera E, Berenbaum H, *Brain Injury in Battered Women*, *Journal of Consulting and Clinical Psychology*, 71 (4), 797-804 (2003).

<sup>21</sup> Monahan K, Bannon S, Dams-O'Connor, *Nonfatal Strangulation (NFS) and Intimate Partner Violence: A Brief Overview*, *Journal of Family Violence*, Springer Science (2020).

<sup>22</sup> Valera EM, Daugherty JC, Scott OC, Berenbaum H, *Strangulation as an Acquired Brain Injury in Intimate-Partner Violence and Its Relationship to Cognitive and Psychological Functioning: A Preliminary Study*, *J Head Trauma Rehabil*, Jan-Feb 01;37(1):15-23 (2022)

<sup>23</sup> Raskin S, DeJoie O, Edwards C, Uchida C, Moran J, White O, Mordasiewicz M, Anika D, Njoku B, *Traumatic Brain Injury Screening and Neuropsychological Functioning in Women Who Experience Intimate Partner Violence*, *The Clinical Neuropsychologist*, 6-13 (2023).

<sup>24</sup> Dugan S, Patch M, Hoang T, Anderson J, *Anoxic Brain Injury: A Subtle and Often Overlooked Finding in Nonfatal Intimate Partner Strangulation*, *Journal of Emergency Medicine*, 1-9 (2024).

<sup>25</sup> Patch, M, Anderson J, Alexander K, Somoano F, Kelen G, Holbrook D, Campbell J, *Didn't Put a Label on it: Examining Intimate Partner Strangulation within a Diagnostic Framework*, *J. Adv Nurs.*, Wiley (2022).

<sup>26</sup> Sorenson S, Joshi M & Sivitz E, *A Systematic Review of the Epidemiology of Nonfatal Strangulation, A Human Rights and Health Concern*, *American Journal of Public Health*, Vol. 104, No. 11 (2014).

death and both can be used repeatedly, often with impunity. Waterboarding has now been internationally outlawed as a form of torture, correctly considered inhumane and unacceptably dangerous. In waterboarding, only the airway is occluded. However, in strangulation, not only can air flow be interrupted, but mostly likely blood flow has been interrupted, thereby making strangulation potentially more lethal than waterboarding.<sup>27</sup>

### **Strangulation, Self-Defense and Identification of the Dominant Aggressor**

Like the trauma responses of fight, flight, fawn or appease, victims of strangulation who believe they are going to die may also have other responses. In a qualitative study with strangulation survivors, researchers found that the most common behavioral response was to focus on survival either by *placating their partners* to get them to stop, *becoming submissive or trying to break free*, but typically self-defense worsened the situation. Participants reported that they had little to no control over when or how the strangulation incident ended. In the majority of incidents, the men stopped and let go, but not until the woman had lost consciousness. In four incidents, someone intervened.<sup>28</sup>

In 2021, researchers reviewed 130 cases of nonfatal strangulation cases from Texas and explored what made the offender stop? Bystander intervention, either active or accidental, was the most common at 30.32%. Victim self-defense was the second common theme, including biting, scratching, kicking, punching and kneeing at 23%.<sup>29</sup> Verbal protests were less common. First, the victims would try to scream, yell and cry, trying to demand the offender let them go. Less typical was for victims to try to reason with the offender or appeal to their emotional side, such as one victim saying: "I'm sorry. I love you." The reality is when victims try to defend themselves, their offender may have more visible injuries than the strangled victim which may result in a mutual arrest or an arrest of the victim.

How officers and court personnel determine the primary, dominant aggressor or predominant aggressor is important. Across the United States, only 35 states have passed dominant aggressor laws. While Florida does have a primary aggressor statute, the statute provides very little guidance on how to identify the primary aggressor.

### **Section 741.29, Fla. Stat., states:**

*(4) Whenever a law enforcement officer determines upon probable cause that an act of domestic violence has been committed within the jurisdiction the officer may arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge shall not require consent of the victim or consideration of the relationship of the parties.*

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<sup>27</sup> Bichard H, Byrne C, Saville C & Coetzer R, *The Neuropsychological Outcomes of Non-Fatal Strangulation in Domestic and Sexual Violence: A Systematic Review*, *Neuropsychological Rehabilitation* (2020).

<sup>28</sup> Thomas K, et al, "Do You Know What It Feels Like to Drown?": Strangulation as Coercive Control in Intimate Relationships, *Psychology of Women Quarterly*, Vol. 36(1), 124-137 (2014).

<sup>29</sup> Brady P, Fansher A, Zedaker S, *How Victims of Strangulation Survived: Enhancing the Admissibility of Victim Statements to the Police When Survivors are Reluctant to Cooperate*, *Violence Against Women*, 1-26 (2021).

*(5)(a) When complaints are received from two or more parties, the officers shall evaluate each complaint separately to determine whether there is probable cause for arrest.*

*(b) If a law enforcement officer has probable cause to believe that two or more persons have committed a misdemeanor or felony, or if two or more persons make complaints to the officer, the officer must try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor and not the preferred response with respect to a person who acts in a reasonable manner to protect or defend oneself or another family or household member from domestic violence.*

How often victims defend themselves in a strangulation assault varies from study to study but it could be as high as 65%.<sup>30</sup> Given the likelihood that victims of domestic violence and/or strangulation will need to defend themselves and law enforcement may or may not be able to identify the primary or predominant aggressor at the scene, judges and court personnel will likely need to address who is the predominant aggressor in one setting or another. For example, in California, judges are required to make the same dominant aggressor analysis that law enforcement officers are required to do when issuing protection orders. Under California Family Code 6305, judges are discouraged from issuing mutual protection orders without making detailed findings that show one party acted as the primary aggressor and neither party acted primarily in self-defense.<sup>31</sup>

In addition to the right of self-defense, is the defense of property, defense of others, ejectment of trespasser are other legal defenses. Other factors and/or evidence to consider include demeanor of the parties, evidence of rage, evidence of fear, property destruction, prior argument at the time of the incident, prior history of domestic violence, prior protection orders, power and control, witnesses, corroborating evidence, offense and/or defensive injuries, height/weight of the parties, 911 calls, body worn camera recordings, medical treatment and/or records, photos, follow-up photos, impact to the parties and/or which story makes the most sense. *See Appendix 5: Power and Control Wheel.*

**The Science of Recantation:** It is common knowledge that victims of domestic violence often recant their initial complaints to the police for many reasons, easily 80% of the time or higher.<sup>32</sup> As recognized by the United States Supreme Court in *Davis v. Washington*, 126 S. Ct. 2266 (2006), “this particular crime is notoriously susceptible to intimidation or coercion of the victim to ensure she does not testify at trial.” Judges must pay particular attention to why a victim might be recanting on the witness stand while under oath.

In 2011, researchers analyzed jail calls between intimate partner couples with severe offenses, such as strangulation, to determine how and why victim arrived at their decision

<sup>30</sup> Strack G, Gwinn G, Bianco J, Fineman J, Rincon D, *Important Takeaways from the Murder of Gabby Petito, Domestic Violence Report*, Vol. 27, No. 5 (2022).

<sup>31</sup> See *Melissa G. v. Raymond M.*, 27 Cal.App. 56th, 360 (2018).

<sup>32</sup> Bonomi A, Gangamma R, Locke C, Katafiasz, Martin D, “Meet Me at the Hill Where We Used to Park”: Interpersonal Processes Associated with Victim Recantation, *Social Science & Medicine*, 73:1054-1061 (2011).



to recant and/or refuse prosecution efforts. What they discovered was the science of recantation demonstrated in their “Recantation Wheel.”<sup>33</sup> They identified five phases to recantation: the victim’s recantation intention was influenced by the perpetrator’s minimization of the abuse and appeals to her sympathy through descriptions of his suffering from mental and physical problems, intolerable jail conditions and life without her. The intention was further solidified by the couple “invoking images of life without each other and bonding over love, dreams and memories.” Once the victim arrived at her decision to recant, the couple constructed the recantation plan by redefining the abuse event to protect the perpetrator, blaming the State for the couple’s separation and exchanging specific instructions on what should be said or done. Direct threats were rarely used to influence victims. Researchers urged practitioners to double their efforts to hold perpetrators accountable for their actions and to link victims to advocates who can help them.<sup>34</sup> **Given the prevalence of recantation and the high risk of lethality for strangulation victims, every jurisdiction in America needs to consider evidence-based prosecution as a strategy to improve victim safety and offender accountability.** 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, § 960.001(1)(a), Fla. Stat.

**Evidence Based Prosecution:** Historically and in many jurisdictions today, prosecutors refuse to file charges if the victim is “uncooperative” or they dismiss charges if the victim becomes uncooperative.<sup>35</sup> Since the late 1900s, prosecutors from coast to coast have recognized the need to prosecute domestic violence cases with or without the victim’s participation as a homicide prevention strategy such as San Diego, California; Los Angeles, California; Duluth, Minnesota; Nashville, Tennessee; Quincy, Massachusetts and Seattle, Washington. Many of these forward-thinking prosecutors believed victims of domestic violence were safer not testifying for the prosecution. Prosecutors simply learned how to win cases without the victim’s testimony, like homicide prosecutions, by using exceptions to the hearsay rule, identifying corroborating witnesses, and gathering other compelling evidence. In 2001, the ABA Commission conducted a study on San Diego’s evidence-based prosecution approach and found it to be successful in reducing reliance on victim testimony to hold offenders accountable.<sup>36</sup>

In Florida, prosecutors must adopt pro-prosecution policies. Section 741.2901, Fla. Stat., provides the following: Domestic violence cases; prosecutors; legislative intent; investigation; duty of circuits; first appearance.

(1) Each state attorney shall develop special units or assign prosecutors to specialize in the

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Gwinn C, O’Dell A, *Stopping the Violence: The Role of the Police Officer and the Prosecutor*, Western State University Law Review (1993).

<sup>36</sup> Smith, B., *American Bar Association Study of No-Drop Policies (unpublished) (2001)*. Available upon request.

prosecution of domestic violence cases, but such specialization need not be an exclusive area of duty assignment. These prosecutors, specializing in domestic violence cases, and their support staff shall receive training in domestic violence issues.

(2) It is the intent of the Legislature that domestic violence be treated as a criminal act rather than a private matter. For that reason, criminal prosecution shall be the favored method of enforcing compliance with injunctions for protection against domestic violence as both length and severity of sentence for those found to have committed the crime of domestic violence can be greater, thus providing greater protection to victims and better accountability of perpetrators. This provision shall not preclude such enforcement by the court through the use of indirect criminal contempt. The state attorney in each circuit shall adopt a pro-prosecution policy for acts of domestic violence, as defined in s. 741.28, and an intake policy and procedures coordinated with the clerk of court for violations of injunctions for protection against domestic violence. The filing, non-filing, or diversion of criminal charges, and the prosecution of violations of injunctions for protection against domestic violence by the state attorney, shall be determined by these specialized prosecutors over the objection of the victim, if necessary.

(3) Prior to a defendant's first appearance in any charge of domestic violence as defined in s. 741.28, the State Attorney's Office shall perform a thorough investigation of the defendant's history, including, but not limited to: prior arrests for domestic violence, prior arrests for non-domestic charges, prior injunctions for protection against domestic and repeat violence filed listing the defendant as respondent and noting history of other victims, and prior walk-in domestic complaints filed against the defendant. This information shall be presented at first appearance, when setting bond, and when passing sentence, for consideration by the court. When a defendant is arrested for an act of domestic violence, the defendant shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903. In determining bail, the court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released.

Given that strangulation victims are at high risk and more likely to recant, a pro-prosecution policy should include the use of forfeiture by wrongdoing thereby allowing prosecutors to prosecute the domestic violence case with or without the victim's participation. Evidence-based prosecution has been identified by the National District Attorneys' Association, Women Prosecutors Section as a best practice and endorsed by the California Attorney General's Office in 2005.<sup>37</sup> Numerous law review articles have been written on the subject.<sup>38</sup>

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<sup>37</sup> National Domestic Violence Prosecution Best Practice Guide, National District Attorneys Association, Women Prosecutors Section, July 17, 2017, Revised January 25, 2021. Contact [Tracy.Prior@sdcda.org](mailto:Tracy.Prior@sdcda.org).

<sup>38</sup> Volochinsky B, *Obtaining Justice for Victims of Strangulation in Domestic Violence: Evidence Based Prosecution and Strangulation Specific training*, Student Pulse, 4(10) (2012).

Many domestic violence prosecutors are now making good use of the doctrine of forfeiture by wrongdoing—“one shall not be permitted to take advantage of his own wrong,” *Crawford v. Washington*, 541 U.S. 36 (2004). “Wrongdoing” at common law has included more than the criminal acts. Justice Scalia, in *Giles*, observed that “acts of domestic violence are intended to dissuade a victim from resorting to outside help and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions.” See *Giles v. California*, 554 U.S. 353 (2008). States have also held that wrongdoing includes not only murder, assault, threats and other forms of intimidation but also declarations of love, promises to marry or to change behavior, especially when they are intended to cause the victim not to testify. *Commonwealth v. Szerlong*, 933 N.E.2d 633 (Mass. 2010).

While Florida recognizes the doctrine of forfeiture by wrongdoing by statute and case law,<sup>39</sup> the authors of this guide were unable to identify any case involving non-fatal strangulation and/or aggravated assault involving intimate partners. Most forfeiture by wrong-doing cases in Florida involved murder cases.

However, in *Cody v. Commonwealth*, 812 S.E.2d 466 (Va. App. 2018), the Court of Appeals of Virginia, in a case of first impression, found forfeiture by wrongdoing can apply when a witness refuses to testify by invoking the Fifth Amendment. In *Cody*, the victim was strangled by the defendant until she lost consciousness. The defendant was arrested, and a protection order was issued preventing the defendant from contacting the victim. Nevertheless, the defendant contacted the victim from jail by making five jail calls. *Cody* repeatedly begged her to forgive him and give him another chance, to let him come home, to be a family again, to visit him in jail, to drop the protective order and charges and to not help the prosecution or appear in court. By the 5<sup>th</sup> call, the victim recanted, had the protection order dismissed and took the 5<sup>th</sup> at trial thereby making herself unavailable. In a bench trial, the trial court found the Commonwealth proved by a “preponderance of evidence” that the victim was unavailable as a witness and that the defendant *Cody* intended to, and did, by his wrongdoing procure her unavailability.

**Credibility Considerations:** As a general rule, the law allows the judge and/or the jury to consider the credibility of witnesses to prove or disprove the truthfulness of their testimony. In *Banks v. State*, 648 So.2d 766 (Fla. 1st DCA 1994), the court held that all witnesses who testify place their credibility at issue and the evidence code specifically provides that a party may attack credibility of a witness by showing defect of capacity, ability or opportunity in witness to observe, remember or recount matters about which witness had testified to in court. In determining credibility, Florida Code Section 90.608 provides that any party, including the party calling the witness, may attack the credibility of a witness by:

- Introducing statements of the witness which are inconsistent with the witness’  
present testimony

<sup>39</sup> Section 90.804, Fla. Stat., *Joseph v. State*, 250 So.3d 113 (Fla. 4th DCA 2018), *Adams v. State*, 277 So.3d 249 (Fla. 4th DCA 2019).

- Showing that the witness is biased
- Attacking the character of the witness in accordance with the provisions of § 90.609 or § 90.610, Fla. Stat.
- Showing a defect of capacity, **ability or opportunity of the witness to observe, remember or recount** the matters about which the witness testified
- Proof by other witnesses that material facts are not as testified to by the witness being impeached

A victim of strangulation may have trouble remembering details of the event due to a lack of oxygen to the brain or her testimony may appear to be jumbled due to the trauma of the assault. To be discussed in Chapter 7, *The Use of Experts in Strangulation Cases*, the common juror may not understand the consequences of strangulation and/or the impact of trauma. As such, calling an expert to explain both would be appropriate.<sup>40</sup>

**Strangulation is the Ultimate Robber of Hope:** In our published research, victims of strangulation assault have the lowest Hope Scores and highest rates of suicidal ideation of all victims of domestic and sexual violence.<sup>41</sup> This seems counterintuitive. Victims have survived terrifying and often near-fatal violence and then they become suicidal and see no pathway forward in life. There are two components to hope—agency (the motivation to pursue personal goals in life) and pathways thinking (the ability to identify the steps to achieve personal goals in life). When a victim experiences pressure to the neck, by any means, usually at the hands of a trusted partner, she is robbed of all ability to set goals for her life or think about pathways to achieve those goals. In the moments of the assault, she realizes her partner will decide if she lives or dies. She controls nothing about her life. This is the ultimate robbery of hope in the life of a crime victim. Once the assault ends, the message remains: He has complete control over her very breath, and she controls nothing in her life. This may cause an otherwise credible survivor to seem completely unbelievable in court without a strong understanding of victim dynamics in such cases.

## CONCLUSION

Victims of strangulation assault will behave in seemingly incongruous ways in court. They may seem terrified at the bail hearing but then support their abuser's statements about the assault at the time of trial. Victims may first tell responding officers one story at the scene but then present a completely different story in criminal, family, or juvenile court. Even under oath in a courtroom, they may seem to completely deny the apparent import of the facts of the case. They may claim to have no memory of the incident even in the face of efforts to refresh their memories. Judges must be able to evaluate credibility and can and should rely on evidence presented about victim dynamics and the physiological and psychological impacts of strangulation assaults during the fact-finding process.

<sup>40</sup> See also *Florida Sexual Violence Benchbook*, July 2023, *Implications for Court*, pages 42-43.

<sup>41</sup> Gwinn, C., Strack, G., Williams, S., Spain, B., *Report on the National Polyvictimization Initiative for the U.S. Dept. of Justice* (2021). <https://www.allianceforhope.org/family-justice-center-alliance/resources/polyvictimization-final-report>.



## **CHAPTER 6**

**Court Considerations at Bail Hearings, Sentencing, and Probation**



## CHAPTER 6

### Court Considerations at Bail Hearings, Sentencing, and Probation

*Strangulation of a conscious victim is prima facie evidence  
that a murder is “heinous, atrocious and cruel.”*

*Johnson v. State, 969 So.2d 938 (Fla. 2007)*

#### INTRODUCTION

This chapter will address court considerations in handling strangulation cases in criminal court. It will cover arraignment, the bail hearing, sentencing and probation. While this chapter can inform judges in civil, juvenile, and family court cases, it is focused on criminal cases. Judges in Florida generally have a great deal of discretion in sentencing and probationary conditions. But it is important to decide whether someone is truly a danger to the public and/or to their intimate partners—during bail setting, bail modification hearings, or sentencing. Former Cuyahoga County Judge Ron Adrine, now an Alliance for HOPE International Board member, says it this way:

*“In bail decisions and sentencing, judges must be able to differentiate  
between citizens they are mad at and citizens who pose a grave danger  
to the public including their intimate partners.”*

*Former Presiding Judge Ron Adrine, Cuyahoga County, Ohio (Ret.)*

**Bail Hearings:** The most dangerous time for a victim or witness is between arrest and trial.<sup>1</sup> When a victim survives strangulation, she has suffered a near-death experience and may, in fact, have just survived an attempted murder. The research is clear: Women who are strangled, threatened with murder, and believe their attacker can murder them, are at the highest risk of being killed. They represent approximately 45% of domestic violence victims.<sup>2</sup>

Under § 907.041(3)(a), Fla. Stat., a court can hold a defendant in a pre-trial detention for “dangerous crimes” including an act of domestic violence under § 907.041(5)(a)18., Fla. Stat., Fla. Stat., or an act of stalking or aggravated stalking under § 907.041(5)(a)17., Fla. Stat. The State Attorney has the burden of showing the need for pretrial detention under section 907.041(5)(h). Fla. Stat.<sup>3</sup>

<sup>1</sup> Kerry Healey, “Victim and Witness Intimidation,” Research in Action, National Institute of Justice (1995).

<sup>2</sup> <https://www.news5cleveland.com/news/local-news/cleveland-metro/case-western-report-domestic-violence-victims-at-high-risk-of-being-killed-by-abusers?page=2>.

<sup>3</sup> See Florida Domestic Violence Benchbook, May 2024, Bail, pages 21-23 and Florida Sexual Violence Benchbook, July 2023, Dangerous Crime, pages 82-85.

Prior to a first appearance, the State Attorney's Office shall perform a thorough background investigation on the respondent and present the information to the judge at first appearance, so he/she will have all pertinent information when determining bail, § 741.2901(3), Fla. Stat. *See Appendix 1: Florida Bench Card.*

In the United States, the bail reform discussion and debate has spread rapidly in recent years and rightfully so. It involves a complex set of issues. While no one wants to see an innocent person incarcerated let alone remain in jail due to the color of their skin or the size of their bank account, it is also true that no one wants to see innocent victims, police officers and/or the public put at risk immediately after a dangerous person has been released. It is a difficult balance but when all factors and rights are considered, the scales of justice must tip toward victim safety.<sup>4</sup>

Since 2018, the Institute has been monitoring individuals across the country who have committed murder AFTER being arrested for strangulation and AFTER being released, whether by bail, personal bond, or own recognizance bond. Our findings are alarming and overwhelming with a conservative finding of at least two murders per month involving a suspect while out on bail/bond/warrant for prior domestic violence involving strangulation who subsequently murders his victim or another. Our findings can be best summarized by a news story from the Texan in August 2020 where the Harris County Domestic Violence Council conducted a similar study of murders involving suspect out on bail and/or personal recognizance bonds. Just within one county, they found more than 50 murders over the previous two years, including five domestic violence murders involving women who had previously reported domestic violence.<sup>5</sup>

**Determining “Dangerousness” Matters:** Bail and jail reform without accountability for dangerous domestic and sexual assault offenders cannot be a license to abuse and kill women. Strangulation needs to be considered at time of bail. Under s. 903.046(1), Fla. Stat., the purpose of bail is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. Under § 907.041(3)(a), Fla. Stat., the purpose of bail is also to ensure the integrity of the judicial process. When determining the initial bail or bail modification, Florida judges shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released under § 741.2902(1), Fla. Stat. Based on the research presented earlier in this manual, it is common knowledge that stranglers pose a greater danger to their victims, police officers, and the public.

Most state bail statutes do allow courts the discretion to consider “other factors” in determining bail. It is under “other factors” that most courts have the discretion to

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<sup>4</sup> For a full discussion on Domestic Violence Bail Reform, see Gwinn C, Strack G, “DV and Bail Reform”, *Domestic Violence Report*, Vol. 26, No. 3, pp. 33-43 (2021). Available upon request at [institute@allianceforhope.com](mailto:institute@allianceforhope.com).

<sup>5</sup> [https://thetexan.news/issues/criminal-justice/more-than-50-murder-cases-in-harris-county-involve-suspects-out-on-felony-bond-says/article\\_1e739f4e-d360-518e-83b5-c1a3c556d837.html](https://thetexan.news/issues/criminal-justice/more-than-50-murder-cases-in-harris-county-involve-suspects-out-on-felony-bond-says/article_1e739f4e-d360-518e-83b5-c1a3c556d837.html).

consider the use of risk assessment tools. In 2018, Pennsylvania passed legislation allowing judges to use risk assessment tools to determine whether the victim is at high risk for further violence or homicide (Tierne's Law of 2018).<sup>6</sup> In 2020, Orchard Park, New York passed "Justice for Rachael Act" allowing judges to consider "dangerousness" at the time of bail to prevent other domestic violence victims from being murdered while their offender was out on bail.<sup>7</sup> Since then, other states have passed similar laws related to dangerousness and dangerousness hearings such as Alabama,<sup>8</sup> Texas<sup>9</sup> and Delaware.<sup>10</sup> These laws were motivated by cases of domestic violence victims being murdered after their abusers (with a history of strangulation) were released from custody.

**Which Risk Assessment tools are available?** In 2025, Florida passed the Gabby Petito Act and now requires the use of risk assessment tools by all law enforcement officers in domestic violence cases. Once fully implemented by law enforcement officers and advocates, Florida judges will begin seeing these assessments in domestic violence cases. Use of risk assessment tools can provide significant insight when supporting a victim. In Julie Saffen's article, *Using Judicial Knowledge of Lethality Factors*, Saffen identified risk assessment tools for the bench as a best practice where domestic violence has occurred.<sup>11</sup> Bench tools assist judges to identify risks and tailor orders that may be entered in a case. In *Pettingill v. Pettingill*, 408 S.W.3d 920, (Ky. 2015), the Kentucky Supreme court upheld the trial court's decision to grant a protection order based in part on Judge Jerry Bowles' knowledge of lethality factors, not used as evidence, but used to help him make an informed decision. When using risk assessment tools, courts should specifically address issues of DV pertaining to strangulation. The benefits of using risk assessments include:

- Assisting victims and domestic violence workers to develop more realistic safety plans;
- Helping the criminal justice system identify which offenders need higher bail;
- Inform conditions of release;
- Craft enhanced supervision strategies;
- Educate criminal justice practitioners and service providers about domestic violence and provide a shared language about risk factors; and,
- Assist perpetrator treatment programs to select the amount and types of treatment.

The danger of using risk assessment or lethality assessment tools is that they can also give court, probation and victims a false sense of security since the prediction of dangerousness

<sup>6</sup> <https://www.senatorbartolotta.com/2018/04/16/governor-signs-tiernes-law-protect-domestic-violence-victims/>.

<sup>7</sup> <https://spectrumlocalnews.com/nys/buffalo/news/2020/02/06/orchard-park-passes-bill-to-help-in-domestic-violence-cases---justice-for-rachael->.

<sup>8</sup> <https://alabamareflector.com/2025/04/30/alabama-house-passes-aniahs-law-expansion/>.

<sup>9</sup> [https://www.thecentersquare.com/texas/article\\_cfd55ad-5cd3-4999-8ac7-6b15a52cff6c.html](https://www.thecentersquare.com/texas/article_cfd55ad-5cd3-4999-8ac7-6b15a52cff6c.html).

<sup>10</sup> Del. Code tit. 11, §§ 2104, 2107 (2024). <https://law.justia.com/codes/delaware/title-11/chapter-21/section-2107/>.

<sup>11</sup> Saffen, J, *Judicial Knowledge of Lethality Factors*, Domestic Violence Report (2016). See <https://www.civicresearchinstitute.com/online/PDF/DVR-2105-04.pdf>.

of an offender is not an exact science. The most widely known and validated tools related to IPV are listed below:

- **DA** – The Danger Assessment tool was developed by Dr. Jackie Campbell in the United States to predict lethality. It is available online at [dangerassessment.org](http://dangerassessment.org). There are various related tools: The DA 20 (Advocate Tool which includes 20 questions), the DA 11 (Law Enforcement tool which includes 11 questions), and the DA 5 (Medical tool which includes 5 questions). All these tools are used by professionals with survivors to assess the level of dangerousness and risk of lethal violence for victim education, awareness, safety planning and service provision. There are four categories of danger: variable danger, increased danger, severe danger and extreme danger. There are also tools for vulnerable populations such as women in same-sex relationships and immigrant women. The DA includes strangulation as a risk factor and was most recently updated to weigh strangulation more heavily.
- **DV-MOSAIC** – DV-MOSAIC is computer-assisted method that includes 46 multiple response items about risk and protective factors. It helps victims and professionals assess immediate, short-term threat of severe or lethal domestic violence situations for victim awareness, safety planning, further investigation and criminal justice responses. DV-MOSAIC also includes strangulation as a risk factor.
- **DVSI** – The Domestic Violence Screening Instrument was developed in the United States by the Colorado Domestic Violence Risk Reduction Project to assist criminal justice decision makers in determining the best pre-trial option for domestic violence offenders after arrest. It was developed to assess risk of recidivism/re-assault for supervision, probation/parole, and other offender-related decisions. It has twelve risk factors. It is completed by a probation or other court officer based on the offender's criminal record and interview. It does not include strangulation as a risk factor.
- **SARA** – The Spousal Assault Risk Assessment tool, developed in Canada, is a 20-item instrument designed to screen for empirically established risk factors related to spousal or family-related assault. To complete the assessment, it may be necessary to conduct interviews with both the survivor, and the offender and requires access to criminal and clinical files. However, other variations of the tool have been developed: B-SAFER—the brief spousal assault form for the evaluation of risk and SARA:SV—an abbreviated version (10 items) of the SARA that can be used by law enforcement. It does not include strangulation as a risk factor.
- **ODARA** – The Ontario Domestic Assault Risk Assessment, also developed in Canada, is a spousal assault risk scale designed from items that could be reliably assessed by police and examined for incremental validity in predicting subsequent police contact. It is designed to predict the likelihood of recidivism. It does not include strangulation as a risk factor.

- **K-SID** – The Kingston Screening Instrument for Domestic Violence Offenders was developed from the extensive research of Richard Gelles as a screening instrument. It consists of ten risk markers and primarily used throughout Connecticut as a basis for criminal justice decisions including probation, incarceration and conditions of protection orders. It was validated by Eleanor Lyons in 1998. It does not include strangulation as a risk factor.
- **DASH** – The Domestic Abuse, Stalking, and Honour-based violence risk identification, assessment and management model developed in the United Kingdom as a risk assessment tool is used to determine recidivism. It has been described as the next generation of risk assessment tools. The DASH is a multi-agency assessment tool, designed for use by front line officers and partner agencies. It has been used in the UK since 2009. It does include strangulation as a risk factor.
- **APRAIS** – The Arizona Intimate Partner Risk Assessment Instrument System was developed in 2017 and provides risk information gathered by police from victims of intimate partner violence to the court at the initial appearance of the accused. APRAIS was designed to connect the victim with support services while officers are at the scene and is currently being used by the Arizona Supreme Court. For more information on APRAIS, see [socialwork.asu.edu/family-violence-center/aprais](https://socialwork.asu.edu/family-violence-center/aprais).

In 2012, researchers compared ODARA, SARA, DA, DVSI and K-SID. They found that ODARA had the highest average weighted score, followed by SARA, DA, DVSI and K-SID.<sup>12</sup> In 2018, researchers compared the perceptions of police of important risk factors in domestic abuse cases. They received responses from 720 British and American police officers to questions regarding how important and how essential various risk factors are for evaluating the level of risk or harm a victim of domestic violence may face in the future. **They found these officers were largely in agreement about four factors: using or threatening use a weapon, strangulation, physical assault resulting in injury, and escalation of violence.** The study also revealed that context and the victim's perception about risk are important in domestic abuse risk assessment.<sup>13</sup>

**Firearm Considerations:** Federal firearms provisions provide that it is unlawful for any person convicted of certain misdemeanor crimes involving domestic violence to ship, transport, possess, sell or otherwise dispose of, or receive firearms or ammunition (18 USC 922(g)(9)). Misdemeanors are excluded if they are punishable by a term of two years or less. Federal law also prohibits any person subject to a qualifying order of protection from possessing firearms and ammunition. (18 USC 922(g)(8)). In the U.S., most homicide victims of intimate partner violence are killed by firearms and at least 50% of those

<sup>12</sup> Messing, J, Thaller J, *The Average Predictive Validity of Intimate Partner Violence Risk Assessment Instruments*, *Journal of Interpersonal Violence* (2012).

<sup>13</sup> Robinson A, Pinchevsky G, Guthrie J, *A Small Constellation: Risk Factors Informing Police Perceptions of Domestic Abuse*, *Policing and Society*, 28:2, 189-204, (2018); <https://www.tandfonline.com/doi/full/10.1080/10439463.2016.1151881#d1e154>.



homicide victims were previously strangled immediately before they were killed.<sup>14</sup> Extra precaution should be taken surrounding firearms, ensuring that offenders do not have access to them. It is well known that the presence of a firearm in IPV situations increases the risk of homicide of women.<sup>15</sup> In a recent study, a combination of strangulation and access to a firearm increased the likelihood of being murdered by 1100%.<sup>16</sup> **Taking firearms away from domestic violence offenders is key.** For instance, in Ann Arbor, MI, offenders cannot leave jail until their firearms are surrendered. In 2006, the San Mateo County Domestic Violence Council partnered with local law enforcement agencies to develop a protocol to take away firearms from domestic violence offenders and in 2007 the Sheriff's Department launched a Domestic Violence Compliance Unit.<sup>17</sup> The purpose of the protocol was to track, investigate and enforce Domestic Violence Protective Court Orders and when appropriate, seize and store firearms surrendered or confiscated from persons subject to court ordered firearms prohibition. Research has suggested that these efforts are effective.<sup>18</sup> More recently, many jurisdictions have started gun buyback or disposal programs to promote public safety and address gun violence.<sup>19</sup> Approximately 17 states have enhanced their firearm relinquishment laws either requiring offenders to turn in their guns (safe surrender) or allowing law enforcement to confiscate and destroy guns possessed, used or sold in violation of the law.<sup>20</sup> However, there is significant work that still needs to be done surrounding the surrender of firearms even with the recent United States Supreme Court Decision in *U.S. v. Rahimi*, 602 U.S. 680 (2024) which acknowledged that domestic violence abusers should not have guns.<sup>21</sup>

In a recent news story by Florida Investigative Reporter Chris Anderson from the Sarasota Herald Tribune, Anderson spent months tracking the disposition of felony strangulation charges which uncovered numerous Florida killers with a history of strangulation charges against them before they killed someone.<sup>22</sup> Unfortunately, 84% of those prior strangulation charges were either declined or reduced to misdemeanors. Failing to prosecute, reducing strangulation charges to misdemeanors, or allowing stranglers to divert not only sends the wrong message to offenders, victims and the public but it also

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14 Glass N, Laughon K, Campbell J, Block CR, Hanson G, Sharps PW, Taliaferro E. Non-fatal strangulation is an important risk factor for homicide of women, *Journal of Emergency Medicine*, Oct;35(3):329-35 (2008).

15 Campbell J, et al, Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study, *American Journal of Public Health* (2003); <https://ajph.aphapublications.org/doi/10.2105/AJPH.93.7.1089>.

16 Spencer C, Stith S, Risk Factors for Male Perpetration and Female Victimization of Intimate Partner Homicide: A Meta-Analysis, *Trauma, Violence & Abuse*, 1-14 (2018).

17 <https://www.bwjp.org/assets/documents/pdfs/dv-firearms-protocol.pdf>.

18 <https://www.preventdvgunviolence.org/assets/documents/relevant-research/part-ii-the-impact-of-state-level-domestic-violence-restraining-order-firearm-restriction-statutes.pdf>.

19 <https://californiagunservices.com/gun-buyback-program/>; See <https://www.sdsheriff.gov/community/firearms-disposal>.

20 <https://www.everytown.org/solutions/firearm-relinquishment/>.

21 <https://stateline.org/2024/06/21/us-supreme-court-upholds-law-that-prevents-domestic-abusers-from-owning-guns/>.

22 <https://www.heraldtribune.com/story/news/local/sarasota/2025/06/22/sarasota-manatee-state-attorney-gives-batterers-second-chance-to-kill-strangulation/84230121007/>.

puts them at risk for future harm and/or even murder. So, what should court personnel consider when sentencing stranglers?

**Strangulation Sentencing Statutes: There are only five known states that have addressed stranglers in their statutes with respect to sentencing:**

- Massachusetts (2014) requires batterer's intervention program to be completed
- Minnesota (2021)—requires notification of conviction to family court; and has a presumption against child custody
- Guam (2016) says a person convicted of strangulation shall not be eligible for work release or educational programs outside the confines of prison
- Montana (2017) requires a defendant to complete a counseling assessment and requires courts to revisit any parenting plan
- Idaho (2018) requires convicted strangulation defendants to undergo an evaluation, counseling and other treatment as provided by section 18-918(7).

**Recommendations for Supervision:** In the United States there is very little guidance on how to best handle high-risk strangulation offenders. However, in 2015 the City of Duluth and six criminal justice agencies adopted a new domestic violence policy called “The Duluth Blueprint for Safety.”<sup>23</sup> In Chapter 7, Pretrial and Probation Chapter, the authors noted that re-offending is common in domestic violence cases soon after the arrest. They recommended that defendants who are thought to pose a high level of risk to the victim or others should receive more intensive monitoring through frequent and/or in person reporting. They encouraged supervised release agents to remain alert to a defendant's violation of non-contact orders and intimidation of the victim and respond promptly to any violations by revoking their release and bringing them in front of the judge.

The **Watch Report of 2007** made ten important and helpful recommendations after carefully studying the impact of strangulation laws.<sup>24</sup> Their recommendations include:

1. Increase probationary supervision of felony level offenders. This could be implemented through a specialized unit to supervise felony level domestic violence offenders or through increasing domestic violence training for probation officers that supervise felony level probationers.
2. Encourage judiciary to increase and standardize probation revocations when defendants violate their probation. Further, encourage the bench to verbalize the seriousness of violations of no-contact orders and orders for protection in domestic strangulation and to address them appropriately.
3. Discourage the judiciary from staying imposition of sentences in domestic

<sup>23</sup> <https://www.theduluthmodel.org/duluth-blueprint-safety/>.

<sup>24</sup> Wolfgang H, *The Watch Report, The Impact of Minnesota's Felony Strangulation Law, 2007.* <https://www.theadvocatesforhumanrights.org/Publications/A/Index?id=364>.

strangulation cases.

4. Provide written materials (with on-the-scene-checklist) for law enforcement officers called to domestic assault strangulation scenes to ensure that all necessary questions are asked of victims and witnesses, injuries are documented photographed and appropriate medical treatment is provided.
5. Encourage batterers intervention programs to develop specific types of intervention that target abusers who use strangulation.
6. Convene a domestic strangulation working group to look at the coordination and implementation of the new law.
7. Conduct yearly reviews of strangulation related misdemeanor cases to ensure that investigation, charging and referral policies are followed.
8. Encourage service providers, law enforcement and court personnel to host domestic strangulation review teams or working group in every jurisdiction in the state to review the law and gaps in local implementation.
9. Provide training on strangulation for all domestic violence service providers, medical professionals and criminal justice system personnel including specifics on statutory language and requirements.
10. Encourage community education about the high incidence of strangulation in domestic abuse cases; correct terminology when discussing strangulation, the impact of strangulation on victims and their children; the continuum of violence and the role strangulation plays as violence escalates; and the potential lethality of strangulation.

The **Watch Report of 2009** added the following recommendations:

- Create a specialized team of prosecutors who would strive to obtain convictions on domestic violence strangulation charges.
- Eliminate the use of stays of imposition of sentences in domestic violence cases.
- Sentence defendants to the maximum sentence allowed under the statute to avoid minimizing the seriousness of a strangulation assault.
- Ensure that supervised probation is ordered for all defendants convicted of crimes involving strangulation regardless of the final conviction Probation conditions for these defendants should include domestic abuse programming as required by statute, based on risk assessment and pre-sentencing investigations. **Anger management should not be recommended by corrections or ordered by a judge in place of participation in a domestic violence program.**<sup>25</sup> There is no published research supporting anger management for strangulation assault offenders.

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<sup>25</sup> Anderson M, *The Watch Report Part II, The Impact of Minnesota's Felony Strangulation Law, May 2009*; <https://training.theadvocatesforhumanrights.org/Publications/A/Index?id=362>.

To enhance victims' safety, strangulation offenders should be supervised as high-risk, including frequent contacts in the home and field for surveillance as opposed to office visits. Many probation officers have reduced office visits to just probation group reporting to free more time for home and field visits. Investigation of records should also be in place for:

- New abusive incidents;
- Contact with victims (if willing), along with health-check for any delayed or long-term consequences from strangulation and/or costs associated with health care;
- Substance abuse monitoring;
- Checks of attendance and participation in intervention programs;
- Electronic monitoring or curfew checks;
- Monitoring of offenders' financial obligations, such as child support, alimony, and restitution.

**Sentencing Recommendations:** Strangulation is heinous, atrocious and cruel. The Florida Supreme Court in *Johnson v. State*, 969 So.2d 938 (Fla. 2007) has ruled that strangulation of a conscious victim transforms a murder into a death penalty offense because it is per se "heinous, atrocious and cruel." The court held that strangulation of a conscious victim involves foreknowledge and the extreme anxiety of impending death. There was evidence that the victim experienced extreme terror, agony and pain before her death and that she knew she was about to be killed because she asked to see her children. Whether the victim lives or dies, it does not change the reality of the Supreme Court's finding.

In 2014, after the federal strangulation and suffocation law was passed under Title 18 U.S.C § 113, is the United States Sentencing Commission received extensive information about strangulation and suffocation in response to the proposed amendments to the federal sentencing guidelines and issues for comment published in the Federal Register on January 17, 2014. Those comments were consistent and similar with this resource. They determined the appropriate enhancement for suffocation/strangulation should be the same as the enhancement for serious bodily injury.<sup>26</sup> The maximum sentence for a violation of a first offense for strangulation under 18 U.S.C. 113(3) is ten years.

Since the authors of this resource were unable to identify any case law specifically addressing sentencing considerations for stranglers in the U.S., we looked to other countries. In Canada, the offense of non-fatal strangulation took effect in 2022.<sup>27</sup> In England, *R. v. Cook*, EWCA Crime 452 (2023), the Court in Cook determined that the starting point was 18 months and identified the following aggravating factors for the

<sup>26</sup> Letter from Director Jonathan J. Wroblewski, Office of Policy and Legislation, U.S. Department of Justice, Criminal Division, dated March 6, 2014. For a copy of this letter, please email [institute@allianceforhope.com](mailto:institute@allianceforhope.com).

<sup>27</sup> Thomas M, Ball J, *Intentional Strangulation: The Proper Approach to Sentencing in the Absence of a Sentencing Guideline*, *Journal of Criminal Law*, Vol. 87(4): 281-289 (2023).

offense of strangulation:

- History of previous violence. The significance of the history will be greater when the previous violence has involved strangulation.
- Presence of a child or children.
- Attack carried out in the victim's home.
- Sustained or repeated strangulation.
- Use of a ligature or equivalent.
- Abuse of power.
- Offender under influence of drink or drugs.
- Vulnerable victim.
- Steps were taken to prevent the victim from reporting an incident.
- Steps were taken to prevent the victim from obtaining assistance.

The Court identified the following mitigating factors for the offense:

- Good character
- Age and immaturity
- Remorse
- Mental Disorder
- Genuine recognition of the need for change and evidence of the offender having sought appropriate help and assistance; and
- Very short-lived strangulation from which the offender voluntarily desisted.

Longer sentences allow for more intensive probation and the opportunity for the defendant to receive batterer's intervention. Withholding adjudication, however, allows convictions to be vacated and stranglers' cases removed from the record after successfully completing a probationary period for two years or less and possibly making future domestic assaults unable to be enhanced to greater charges.<sup>28</sup>

Yet, sentencing for perpetrators of non-fatal strangulation has been inconsistent, ranging from no terms of probation all the way up to 46 years depending on the circumstances, the charge and the jurisdiction. Most tend to receive little accountability (Watch, 2007).

### **What Factors Should Courts and Probation Officers Consider?**

*Strangulation is an inherently dangerous act with foreseeable likelihood of great bodily harm and/or substantial risk of death, demonstrating a high degree of cruelty, viciousness, or callousness.*

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<sup>28</sup> Ibid, at note 23.



The general objectives of sentencing of any defendant convicted of any crime include:

- (1) Protecting society;
- (2) Punishing the defendant;
- (3) Encouraging the defendant to lead a law-abiding life in the future and deterring him or her from future offenses;
- (4) Deterring others from criminal conduct by demonstrating its consequences;
- (5) Preventing the defendant from committing new crimes by isolating him or her for the period of incarceration;
- (6) Securing restitution for the victims of crime; and
- (7) Achieving uniformity in sentencing.

For purposes of sentencing a defendant, the court should generally consider three key areas: 1) The offense; 2) The victim; and 3) The offender. With respect to strangulation assault, here are additional aggravating factors to consider:

- Prior criminal history involving other crimes and other victims
- Strangulation was committed while out on bail, on probation or subject to a restraining order
- Defendant did not stop strangling the victim on his own
- Victim pregnant at time of offense
- Gratuitous degradation of victim
- Evidence of multiple strangulations during the same incident (torture)

Here are additional factors in mitigation:

- Acknowledges guilt quickly in the process and accepts responsibility
- Began and possibly completed an intervention program before sentencing
- Began and possibly completed parenting program without violence program
- Engaged in a substance abuse program
- Employed and paying restitution or support if previously ordered

**Victim Restitution Should Be a Priority:** Every state, federal and military jurisdiction has determined that it is essential to **fully compensate** all victims of such conduct or activity for any pecuniary loss, damage or injury. The law provides for all economic losses which generally includes all medical expenses, mental health treatment fees, lost wages, dental care, emergency relocation, enhanced security, and others. In many strangulation cases, the victim has incurred medical bills, counseling bills, loss of work and destruction of property. *See Appendix 1: Florida Bench Card.*

Section 741.30(6)(a), Fla. Stat., provides that the court may award any other relief the court deems necessary for the protection of a victim of domestic violence.

- Section 960.292, Fla. Stat., provides that upon conviction, the convicted offender shall incur civil liability for damages and losses to crime victims. The statute allows for a victim to request a lien on the perpetrator's property as a remedy to the perpetrator's failure to provide restitution.

**The Restitution Hearing:** When a defendant is convicted of criminal conduct which has resulted in pecuniary damages or loss to a victim, the court shall hold a hearing to determine the amount or type of restitution due the victim or victims of such defendant's criminal acts. The purpose of a restitution hearing is to arrive at a precise amount of restitution due a victim because of a defendant's acts, so that the victim may be fully compensated. Evidence is generally presented concerning the exact nature and amount of the victim's damage or loss. Strangulation victims often sustain long-term health consequences which may not be known and/or difficult to ascertain at the time of sentencing. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order should include a provision that the amount will be determined at the direction of the court.

The information should then be provided to the probation officer preparing the pre-sentencing report or to the prosecutor handling the sentencing. If the total amount owed is not known at the time of the sentencing, prosecutors should seek an order for the amount known, and a second order in an amount to be determined by further order of the court. The court is permitted to retain jurisdiction over a defendant for purposes of imposing or modifying restitution until the losses can be determined. There is generally no limitation on when the court must set the restitution hearing. As such, prosecutors and/or probation officers may want to request a separate restitution hearing with sufficient time to gather all the necessary information and/or bills concerning medical and/or counseling expenses not covered by insurance and/or the State Victim Compensation Board.

**Victim Impact Statements:** Under § 921.143(1), Fla. Stat., the victim has the right to a meaningful opportunity to address the court prior to sentencing. Victims also may be heard at a probation revocation sentencing hearing. *Camel v. State*, 386 So.3d 1064 (Fla. 1st DCA 2024). In the Florida Sexual Assault Bench Book, Victim Input, page 95, it is recommended: "Where appropriate, consider allowing a victim to prepare and provide a victim impact statement to the court in support of or in lieu of the victim being physically present to address the court."

Under § 921.141(8), Fla. Stat., in **cases involving a sentence of death or life imprisonment**, once the prosecution has provided evidence of the existence of one or more aggravating factors as described in subsection (6), the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence shall be designed

to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.

- In *Wilson v. State*, 410 So.3d 548 (Fla. 2025), the court held the statute does not say that every word, sentence, or paragraph of a victim impact statement must cover both the victim's uniqueness and the resultant loss to the community. In *Wilson*, the witness' statement, even the portions discussing the earlier tragedies, did both demonstrate the victims' uniqueness as individuals and the loss to the community's members because of their deaths. Moreover, the testimony was not unnecessarily emotional or inflammatory, did not mention *Wilson* or the facts of the murders, did not ask for specific sentences or punishments, and did not mention revenge or retribution. Thus, it cannot be said that the trial court abused its discretion in allowing the jury to hear the portions of Benson's statement referencing the earlier tragedies within the victims' family.
- In *Sexton v. State*, 775 So.2d 923 (Fla. 2000), victim impact statements were provided to the trial court in advance to ensure the statements were within the parameters of the law. Once reviewed, the witnesses were permitted to read their statements.

It is unclear what the limitations may be for non-fatal strangulation cases given the limited case law. However, many strangulation victims report long-term health consequences from the assault, and may be suffering from post-traumatic stress disorder, anoxic brain injury, traumatic brain injury, concussive syndrome or other related health issues that will likely change their lives forever. In *People v. Arnold*, No. 351190, 2021 WL 297456, (Mich. Ct. App. Jan. 28, 2021), the Appellate Court recognized that judges are permitted to consider the psychological injury to the victim as part of sentencing. In *Arnold*, the victim testified at sentencing that she now has a higher risk of several serious health problems as a result of being strangled, that she underwent ten months of trauma therapy but continued to have nightmares and flashbacks. She also testified that she was afraid of being killed or stalked and did not like to walk to her car by herself. It would be reasonable and appropriate for a judge to seek to determine how the crime of strangulation, suffocation and any other related crimes have impacted the victim and/or changed her life. Some questions you might want to discuss with the victim are:

- How has your life changed since the crime occurred?
- How has the crime affected you emotionally or psychologically?
- How has the crime affected you financially?
- Is this crime a culmination of other crimes or violence committed by the same person?
- What fears or hopes do you have?

In *People v. Sotomayor-Quan*, 2021 Ill. App. 181617, the defendant was found guilty of

attempted first degree murder where he had twice strangled the victim to the point of loss of consciousness. He repeatedly threatened to kill her, and the victim thought she was going die. The victim was able to escape, call the police and seek medical attention. The defendant was sentenced to 8 years. At the sentencing hearing, the victim testified that the assault caused her to be depressed, have flashbacks, nightmares, night terrors and disassociation. At the time of the sentencing, she feared EVER having a relationship with anyone ever again. The Institute recommends that victim impact statements be created by survivors, working with advocates, long before the sentencing hearing. This allows prosecutors to have the benefit of such statements during the decision-making process on disposition of the case.

## **CONCLUSION**

Judges should carefully and thoughtfully evaluate cases based on the dangerousness of the offender and the risk to the victim and the public of release. Strangulation presents a unique set of risks and considerations compared to many other domestic violence offenses. While additional time may be necessary to adequately evaluate strangulation offenses, the impact on the victim, and the choices of the defendant, the court should take the time to “get it right” based on what is at stake in these high-risk cases.







## CHAPTER 7

### The Use of Experts in Strangulation Cases

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*“A trial court has broad discretion in determining the range of subjects on which an expert witness may be allowed to testify, and, unless there is a clear showing of error, its decision will not be disturbed on appeal.”*

*JOHNSON V. STATE, 393 SO.2D 1069 (FLA. 1980)*

#### INTRODUCTION

This chapter will focus on the use of experts in non-fatal strangulation and suffocation cases. Strangulation cases involve complex medical, forensic and behavioral evidence, which can easily be misunderstood or overlooked without specialized knowledge, expertise and/or training. The pre-trial, trial, and post-trial rulings of judges play an important role in ensuring a thorough review and informed decision-making.

**Use of Experts is Essential in Strangulation Cases:** There are many cases that can be successfully litigated or prosecuted without expert testimony, but not strangulation cases. Section 90.702, Fla. Stat., testimony by experts, provides:

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.

In Florida, experts have been used in homicide cases involving strangulation for decades.

- In *Huggins v. State*, 889 So.2d 743 (Fla. 2004), the medical examiner was permitted to testify to the physiological effects and psychological pain of strangulation, which was the cause of the victim’s death. While the expert was permitted to testify to the “fear” and “fright” she may have experienced, he was not permitted to use the words “terror” or “horror.”
- In *McWatters v. State*, 36 So.3d 613 (Fla. 2010), the expert was permitted to testify during the guilt phase that a strangulation victim will remain conscious for at least

twenty to thirty seconds and that a victim who struggles would lose consciousness after a longer period of time.

- In *Endress v. State*, 462 So. 2d 872 (Fla. 2d DCA 1985), an associate medical examiner was permitted to testify as medical expert to establish the cause of death of the victim. His opinion was that death was by strangulation, caused by multiple injuries on the victim's neck. Experts have also been used to testify in domestic violence cases to explain why victims may recant, minimize the abuse, return to their abuser, not seek medical attention, protection orders, recant and/or refuse to testify.<sup>1</sup>

However, there are no published Florida cases concerning the use of experts in non-fatal strangulation cases. In other jurisdictions, expert witnesses (advocates, law enforcement, paramedics, medical professionals) have been regularly utilized to explain the mechanics, the danger, the physiology, and the myths of strangulation and suffocation assaults including visible injury will always exist, minor injury means the assault was minor, or the victim's reaction to the assault means it was not a near-fatal experience.

Other jurisdictions have also found that strangulation, fatal or non-fatal, is considered "beyond matters commonly known by jurors" and relevant to understanding strangulation assaults.

- In *Commonwealth v. Lopez*, 854 A.2d 465 (Pa. 2004), an expert witness was permitted to testify about victim's state of mind before death by strangulation. Court held the average lay person is generally unacquainted with the physical process accompanying ligature strangulation. Dr. Isadore Mihalakis testified the victim experienced terror as she died of ligature strangulation. "What is required is the ligature be tightened, the blood supply compromised or closed off, the windpipe narrowed, the air supply and oxygenation of the blood being reduced, the brain being deprived of oxygen. There is a period of a struggle until the person passes out. The period of struggle is, depending on whether and how quickly the ligature is tightened, it may be quick, as low as 10, 15 seconds, or it may last longer, even minutes depending on how, during this period of time, the person is conscious, alive, appreciates what is happening. It's a very terrifying period and then the person passes out."
- In *State v. Bailey*, 157 Wn. App. 1026, (Wash. App. 2010), the defendant claimed expert testimony on strangulation was not necessary because the average juror would likely understand strangulation could lead to death. The Appellate Court disagreed and upheld the expert testimony of a forensic pathologist to explain what would cause loss of consciousness during strangulation, the different ways a person can be strangled, the physical processes in the body that are affected by strangulation and what could occur because of strangulation. Dr. Selove also testified that it was possible to strangle

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<sup>1</sup> See *Domestic Violence Bench Book*, May 2024, Section F - Battered Spouse Syndrome at p. 211; and *Expert Witness Testimony: Examined Using Daubert Standard*, p. 212-214.

a person without leaving any visible marks on a person's neck as was the case with the victim in the case. He further testified that if a person is released from a strangulation hold for even a few seconds, the strangulation would have to begin all over again before a lack of oxygen would influence the brain. Court held this testimony was not cumulative and most likely beyond the knowledge of a common juror.

- In *State v. Simmons*, 2011-Ohio-6074 (8<sup>th</sup> Dist. 2011), the sole issue on appeal was the testimony of a forensic nurse in a non-fatal strangulation case. The defendant argued that the forensic nurse was not qualified to testify about petechiae because it was only based on her observations and not scientific data. The Appellate Court disagreed. To establish the reliability of expert testimony, courts may focus on how the experts arrived at their opinion. That opinion is based not only upon educational qualifications, but also reliable procedures and information utilized within the medical field. Here the expert was a trained medical professional whose qualifications were in the areas of assault and domestic violence injuries. The expert testimony of the forensic nurse concerning the relationship between petechiae and asphyxiation helped the trier of fact to understand the severity and trauma during the “choking” episode inflicted upon the victim.
- In *People v. Jackson*, 221 Cal. App.4<sup>th</sup> 1222 (2013), the court held the significance of manual strangulation is not a matter of common knowledge and is the proper subject of expert testimony. An investigator was permitted to testify about crime scene analysis in a strangulation homicide to understand the evidence.
- In *Holmes v. Commonwealth*, No. 0097-23-3, 2024 WL 1160603 (Va. Ct. App. 2024), the court held the time and pressure to render a person unconscious from strangulation are matters unlikely to be commonly known. The information the expert, a forensic nurse, provided was useful to the jury in understanding the victim's testimony about having passed out from been “choked.” The expert's testimony about the lack of visual injuries in about half of the cases was also a matter beyond common knowledge and relevant to understanding the assault.

**Scope and Relevance of Expert's Testimony:** Expert witnesses can be used for various reasons, including educating the judge and jurors about medical, technical, or scientific principles. Experts may also be able to express an opinion after evaluating the significance of the facts of the case under § 90.704, Fla. Stat. Experts can be utilized at different stages of the proceedings and in various courtrooms.

There are reasons to allow testimony of an expert if offered in a strangulation case. Experts can explain:

1. The medical difference between “choking” and “strangulation” as well as the difference between manual and ligature strangulation.
2. That lack of visible evidence is common and should not be used to minimize



- either the forensic significance or the medical risk to life.
3. Why injuries may not be immediately visible but could appear days later.
  4. Why petechiae may or may not be present and how such injuries occur.
  5. It takes very little pressure to cause internal and life-threatening injury.
  6. It takes very little time to render a person unconsciousness, cause brain injury or even death.
  7. The failure to seek medical attention does not mean the strangulation assault wasn't serious. Given the current state of research and the law, strangulation is an emergency medical condition requiring adequate assessment, diagnosis and treatment. The challenge is:
    - (a) the victim may not realize it is necessary, or it will cost too much;
    - (b) first responders don't appreciate the degree of medical risk and therefore do not encourage evaluation; and/or
    - (c) emergency medicine physicians are not current regarding new information about the medical risk and appropriate testing, observation, and consultation.
  8. Why most victims are likely to have symptoms rather than visible external injury, why symptoms are as important as signs, how they may be indicative of an internal injury, and why imaging is important to rule out life-threatening injuries.
  9. Things can happen very quickly. (a) strangulation can cause unconsciousness within seconds, and (b) death can happen within minutes.
  10. Why a victim may not remember details, may have gaps in memory, and have a difficult time describing the incident in chronological order.<sup>2</sup>
  11. Why victims may not understand the immediate and long-term health consequences of strangulation and fail to seek medical attention, fail to even mention it to professionals or connect subsequent medical issues back to the strangulation assault.
  12. The inability to breathe is terrifying. Most victims believe they were going to die and live in constant fear and terror which may explain why they may recant or minimize the assault.
  13. Strangulation is one of the best predictors of the subsequent homicide of victims of domestic violence. They are at high risk of being intimidated, assaulted again and killed. When victims try to leave, stranglers often become stalkers.
- In *Turner v. State*, 292 So. 3d 1006 (Miss. Ct. App. 2020), the court found a forensic

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<sup>2</sup> *Flores v. State*, No. 02-24-00143-CR, 2025 WL 1717284 (Tex. App.—Fort Worth 2025), where expert was permitted to testify as an expert in strangulation. At trial, expert testified to signs and symptoms including a "lack of oxygen can cause a person to have erratic behavior and memory loss which can be mistaken for a mental health episode."



nurse was qualified to testify as an expert in strangulation, but ruled she exceeded the scope of her qualifications when she testified that the injury to the victim's eye was because she had "a hypodensity area in her brain and vertebrae defect." Appellate Court held the expert was qualified because she had 21 years of experience, a degree in nursing, was a certified Sexual Assault Nurse Examiner (SANE), had extensive training, had taught classes on forensic nursing and previously qualified as an expert in domestic violence and sexual assault cases. However, portions of her testimony were speculative and unreliable. Court relied on Daubert and held there was no evidence to support subconjunctival hemorrhage in the case. Medical records all said "assault" with no mention of strangulation. There was also no conclusive evidence attributing hypodensity area to strangulation. Without a valid scientific connection to the hypodensity areas in victim's brain, that testimony was inadmissible, and the trial court abused its discretion in allowing the nurse to testify regarding those injuries which substantially prejudiced defendant's trial. Case was reversed and remanded for a new trial.

#### **Duty to Disclose Expert Witnesses:**

- As a general rule, the prosecution has a duty to disclose any expert witness whom the prosecuting attorney will call at the hearing or trial, the subject of their testimony and any reports that have been submitted to the prosecuting attorney. The purpose of the rule is to prevent a defendant from being prejudiced by surprise, misconduct or arbitrary action by the government. When there is a failure to disclose, the court may grant a continuance, dismiss the action or enter another appropriate order. See Domestic Violence Benchbook, Section G. Statements by Witnesses. Florida Rule of Criminal Procedure 3.220(b)(1)(B).
- In *State v. Abbott*, No. 83558-1-I, 2023 WL 2856229 (Wash. App. 2023), the Appellate Court found the prosecutor violated discovery rules by failing to disclose the expert testimony of a detective and a firefighter in a strangulation case. However, the Appellate Court also found that the improper expert testimony did not materially affect the outcome of the trial given the overwhelming evidence in support of strangulation.

**Continuances to Obtain An Expert:** Courts often have a decision to make when the defense requests a continuance to obtain an expert in the middle of the trial. Courts have ruled both ways on such requests. There are no published appellate cases on this issue in Florida.

- In *State v. Schramm*, 933 N.W.2d 600 (Neb. App. 2019), Defendant was entitled to a continuance to obtain medical expert to rebut the testimony of a forensic nurse. Defendant was convicted of strangulation and sentenced to two years. He appealed and claimed the trial court abused its discretion in denying his motion to continue to obtain a medical expert to rebut the testimony of the state's expert on strangulation and in particular petechiae. The Appellate Court agreed. **Reversed and remanded.**

- In *People v. Herrera*, H044475, 2020 WL 1317021 (Cal. App. 2020), the Appellate Court held the trial judge acted within its discretion in denying the defendant's request for a continuance to rebut the prosecution's expert regarding strangulation, even where the expert was given wide latitude in her testimony. In *Herrera*, the defendant strangled the victim for 5 to 10 seconds, applied pressure to both sides of her neck in a chokehold, with a strong grip. The victim had difficulty breathing and speaking. She made a gargling noise. Her neck was sore and difficult to turn for 2 days but had no visible external injury. The prosecutor called a forensic nurse (Rodriguez) to testify about strangulation as an expert. Rodriguez opined that "it would take about 11 pounds of pressure to actually occlude our carotid vein [sic]." Rodriguez also testified: "When the carotid arteries (which supply blood to the head) are compressed, the jugular veins usually are compressed as well. The compression stops blood flow to and from the head, including the brain. This circumstance causes a risk of blood clots, and the lack of oxygen can cause ischemia or stroke-like symptoms. As with the jugular veins, occlusion of the carotid arteries with 11 pounds of pressure for 10 seconds can cause a loss of consciousness." Rodriguez explained that "about 33 pounds of pressure [is needed] to completely collapse the trachea." A collapsed trachea "can't really rebound at all. [The injured person] would need urgent medical attention and an airway." "Someplace in between those 11 pounds and 33 pounds...will still do damage to the other structures within the neck causing...swelling of the soft tissues around it and even potential fractures...around the thyroid cartilage...So, it can cause additional pain, swelling, difficulty breathing, that kind of case can happen internally." Rodriguez further stated the carotid arteries, and jugular veins can be compressed by one-handed manual strangulation, depending on the size of the hand and neck. An average male can squeeze his hand closed with "about anywhere from 103 to 108 pounds of pressure." She also explained that "bruises will not fully come to light until about 24 to 48 hours after an event has occurred." "50% of strangulation patients really show no injury at all. 35% will only actually show a very minor amount of injury. And the last 15% are that typical person that everybody would think of on TV that has multiple injuries and looks pretty bad off." Rodriguez also testified that strangulation patients who do not have visible injuries may nevertheless have a weakened voice, painful swallowing, compromised range of neck motion, and internal swelling.

The defendant's main defense was "no injury means no strangulation" but the defense could not find an expert to support his point. The trial Court made a detailed record related to defense's request for a continuance to obtain an expert witness. First, the trial court acknowledged that "the defense and the defendant should be afforded an opportunity to present a defense to the extent that they wish to do so," but explained it had discretion to exclude evidence. The court said it "[found] it somewhat speculative" whether the defense expert "would provide any additional relevant evidence...in light of what was covered" by Rodriguez regarding the percentage of strangulation cases that present with no visible injuries. The trial court also noted that defense counsel was on notice before the recess that any defense witnesses had to be available on April 19, and "if one expert was not available...then obviously there should be attempts to contact

other experts in the field.” Regarding “the burden” of a continuance on witnesses and jurors and “whether justice will be accomplished or defeated by granting the motion,” the court noted that the trial had gone well beyond the time estimate that had been promised to the jurors, and certain jurors indicated they would not be available after the week of April 18. Accordingly, the trial court denied the motion for a continuance.

### **Who Has Testified as Experts in Strangulation/Suffocation Cases?**

#### **Advocates/Therapists:**

- In *Williams v. State*, 131 Nev. 1364 (Nev. App. 2015), the Appellate Court upheld the testimony of two experts in a case where the victim initially reported that her boyfriend had put her in a headlock, pressed against the front of her neck, unable to breathe and blacked out for a few seconds but recanted at the preliminary hearing. The prosecutor called two experts, Elynne Green (an advocate) who testified about battered woman syndrome, the cycle of violence, why victims recant, why victims may not want to end the relationship and why they blame themselves. The defendant argued that Green’s testimony was irrelevant because she never met the victim. The prosecutor also called Dr. Lisa Garvin (forensic pathologist) who testified that the victim’s signs and symptoms were consistent with strangulation. The defendant argued calling a pathologist was prejudicial because it implied the victim could have died and been in the morgue. The Appellate Court disagreed.
- In *Kingsbury v. State*, 625 S.W.3d 686, 691 (Tex. App.—Fort Worth 2021), the CEO of a shelter program was permitted to testify as an expert about domestic violence dynamics and the Danger Assessment tool in a strangulation case where the victim was pregnant. During the pre-trial hearing, the expert testified as to her qualifications, her education and training which included attending the Advanced Course on Strangulation, the annual Family Justice Center Conference, offender programs and the Duluth training. She explained how her organization uses the Duluth Power & Control Wheel as well as the DA tool to educate victims and explain their danger. Any score over 18, her staff would encourage the victim to seek help immediately as they were in extreme danger of being killed. Defense attorney sought to exclude any testimony about the DA tool as too prejudicial during the trial. Trial court permitted her testimony during trial which was upheld on appeal. Appellate Court held both the power and control wheel, and the Danger Assessment tool have been recognized in case law as helpful to the jury in explaining a domestic violence relationship and the expert tied those tools into her own observations and opinions about intimate partner violence. It was admissible to explain the victim’s tolerance of her abusive relationship with the defendant, why she minimized the history of domestic violence and why she stayed. Further, the common juror is not familiar with domestic violence dynamics, recantation, delay in reporting, continuing to live with your abuser, the cycle of violence, power and control wheel, lying to the police, why a victim would testify on the defendant’s behalf and change her story. *See Appendix 5: Power and Control Wheel.*

#### **Law Enforcement Officers/Detectives:**

- In *State v. Supino*, No. A08-64, 2009 WL 1515255 (Minn.App.2009), where the detective's testimony that strangulation does not necessarily result in external, physical injury was relevant and proper. The victim reported the defendant went from calm to enraged. He had grabbed her by the throat twice, choked her while they were driving, could barely breathe and she jumped out of the car when it was traveling slowly. The detective responded to the 911 call. He found the victim on the side of road. She had minor injuries on her foot and no visible injuries on her neck. He testified that he had investigated dozens of cases involving strangulation or choking and that "more often than not he observed no strangulation marks on the alleged victim." The defense objected. The Trial Court held that based on the officer's experience in investigating strangulation cases his testimony was relevant and helpful to the jury. The Appellate Court agreed.
- In *Carter v. State*, 235 P.3d 221 (Alaska App. 2010), the officer's testimony was admissible regarding strangulation signs and symptoms. The victim initially reported that the defendant had grabbed the back of her head, hit her and choked her which was witnessed by her two daughters. At trial, the victim and her daughters recanted. The prosecutor impeached the witnesses with their prior statements. The sole issue on appeal was the officer's expert testimony. The Appellate Court held that the officer was qualified to give expert testimony as to petechiae and delayed bruising in strangulation victims. This case also included a good discussion about lay testimony versus expert testimony.
- In *State v. Battle*, 415 S.W.3d 783 (Mo. App. E.D. 2013), the detective was qualified to testify about bruising in the context of strangulation even though he was not a medical expert.
- In *Maxwell v. State*, 348 Ga. App. 870 (Ga. App. 2019), a prosecutor used a patrol officer's training on the use of chokeholds as foundation for expert testimony. He was trained to use the chokehold as a defensive tactic. He previously served in the military as a firefighter and as an emergency medical responder for the fire department. As part of his testimony, he described the rear chokehold which can render someone unconscious by restricting the blood flow in the person's neck, prevents blood flow/oxygen to go to the brain. Using the prosecutor in a demonstration, the officer showed the jury the type of chokehold the officer saw defendant applying when he entered the apartment. Without objection, he testified that the chokehold applied by the defendant was dangerous and if done improperly, could result in unconsciousness and even death.
- In *State v. Wagner*, 319 Or. App. 399 (Or. App. 2022), the detective was qualified to testify regarding domestic violence dynamics and strangulation. She was both the lead investigator and the case expert. Her qualifications included 22 years in law enforcement, with 8 years as a detective handling approximately 400 domestic violence cases. She also served as a deputy examiner, conducting 250 autopsies, 25 to 30 of which involved strangulation or asphyxiation. Her training encompassed the police academy, corrections academy, specialized instruction in assault, rape, and investigations, as well as an advanced course on strangulation prevention.

She had also received training on the cycle of violence and victim behavior. With respect to strangulation, the detective testified that strangulation is well understood by law enforcement and deputy medical examiners. She testified that strangulation blocks oxygen from getting to the brain and can cause loss of consciousness. Some of the signs of strangulation are physical and include petechiae and bruising. Other signs are not visible and include dizziness, nausea and urination. She personally observed deceased victims who have urinated and defecated after being strangled and it occurs because the brain is deprived of oxygen causing the muscles control of those bodily functions to relax. She also testified she investigated non-fatal strangulation where the victim urinated or defecated and when that happens, the victim is as close to death as the victim can get without dying. Not every victim shows the same signs, and it is possible for some victims not to have any visible signs of strangulation because the neck is primarily soft tissue. Strangulation frequently occurs without bruising and urination happens in strangulation cases. With respect to domestic violence dynamics, the detective testified about the cycle of violence and the most dangerous time in a violent relationship is when the victim tries to leave. She testified many victims demonstrate “counterintuitive behaviors” including minimizing the abuse, delay in reporting and remaining with and/or returning to their abuser.

#### **Paramedics:**

- In *Marpoe v. State*, NO. 03-17-00748-CR, 2019 WL 5076506 (Tex. App.—Austin 2019), a paramedic/EMT testified as an expert. There was no objection to the testimony. The paramedic described the injuries that she observed on the victim which included redness, swelling on both sides of her face and petechiae on both sides of her neck above her collarbone. She explained the petechiae is small round dots in an area where pressure has been applied that indicates that capillaries beneath the skin have burst. She testified that petechiae is very common in strangulation and that petechiae on victim’s neck was bilateral (on both sides) in a place where victim reported he choked her.
- In *Edgar v. State*, No. 11-20-00025-CR, 2022 WL 401434 (Tex. App.—Eastland 2022), a paramedic testified as an expert with no objection from the defense. The defendant was convicted of felony assault—family violence—strangulation. The defendant appealed on sufficiency (no visible injury, felt fine and no transport to hospital) and ineffective trial counsel. **At trial, the paramedic testified that in non-fatal strangulation cases, one may not always see shortness of breath, petechiae or bruising on the victim.** The Appellate Court affirmed. The victim testified she couldn’t breathe. Officers saw and documented visible injury. Per the Penal code, any physical pain however minor will suffice to establish bodily injury. Obstructing or impeding a person’s breathing is a form of bodily injury for purposes of assault and family violence. The testimony of a single eyewitness can be enough to support a conviction. The jury found the victim credible.

#### **Medical Experts (Nurses):**

- In *State v. Simmons*, 2011-Ohio-6074 (8th Dist. 2011), the defendant argued the testimony of the forensic nurse exceeded her qualifications in the areas of assault and



domestic violence injuries because it was only based on her observations and not scientific data. Trial and Appellate Court disagreed. To establish the reliability of expert testimony, courts can focus on how the expert arrived at their opinion. That opinion is based not only upon educational qualifications but also on reliable procedures and information utilized within the medical field. The forensic nurse's testimony concerning the relationship between petechiae and asphyxiation helped the trier of fact to understand the severity and the duration of the choking episode inflicted on the victim.

- In *State v. Cox*, 842 N.W.2d 822 (Neb. App. 2014), a nurse's expert testimony on domestic violence and strangulation, though non-percipient, was properly admitted. Non-percipient experts have not been involved in the case prior to their testimony. The defendant was convicted of strangulation and domestic assault after attacking his girlfriend. At trial, and over the defendant's objection, the State introduced the expert testimony of a licensed registered nurse, Sue Michalski, with specialized training in domestic violence and strangulation. The expert, who had neither met with nor interviewed the defendant or the victim, testified specifically about the signs and symptoms of strangulation, including how the lack of visible injury is common and the potential lethality of strangulation. She also testified about the characteristics of offenders. This was not objected to at trial but contested on appeal. The expert testified she does not make a medical diagnosis as part of her scope of practice; **anytime there is any type of neck compression, it becomes a potentially a lethal situation.** Often strangled victims do not have outward signs. **Victims often do not report strangulation because they don't think it is significant and/or they do not remember.** On appeal, the defendant argued that the trial court erred in allowing expert testimony because the expert's definition of strangulation differed slightly from that of the statutory definition. The Appellate Court affirmed the convictions, finding that the expert's definition was "almost identical" to the statutory definition and thus did not risk unfair prejudice to the defendant. **No need for Daubert hearing given medical testimony.** Testimony related to personal knowledge or observations generally not subject to Daubert. Testimony related to DV dynamics not subject to Daubert analysis but simply helpful to the jury. It was also appropriate for expert to testify about domestic violence dynamics since she had interviewed thousands of domestic violence victims.
- In *State v. Perry*, 159 A.3d 840 (Me. 2017), where forensic nurse, Polly Campbell, was permitted to testify as a "blind witness" regarding the causes, effects and symptoms of strangulation. Expert did not examine the victim, did not review any facts or records in the case nor give an opinion as to whether the victim had been strangled. Defendant argued the expert testimony was not relevant given the statute defined strangulation and it was not helpful because strangulation is common knowledge. Trial court disagreed. Victim had been strangled to the point of loss of consciousness, urination and defecation. Expert testified to the definition of strangulation, the terms lay people often use like "choking," described the signs and symptoms and explained how those symptoms show an interruption in the flow of oxygen to the brain. See also *State v. Treadway*, 240 A.3d 66 (2020, Maine) where testimony of expert was relevant and

helpful in the prosecution of strangulation case.

- In *State v. Baker*, No. 56386-0-II, 2023 WL 2160478 (Wash. App. 2023), the trial court properly admitted the expert testimony of a nurse to explain the general causes and effects, signs and symptoms of strangulation, terminology and explain the significance of the evidence that was collected. Furthermore, her testimony was not cumulative, confusing nor prejudicial simply because the treating emergency room physician also testified in the case. The court also said that testimony about the lack of oxygen to the brain, neck anatomy and pressure necessary to block veins and arteries did not involve novel scientific knowledge requiring a **Daubert** hearing.

### **Physicians and Pathologists are Presumed Qualified:**

- In *Brown v. State*, No. A-9607, 2008 WL 4531666 (Alaska App. 2008), Pathologist Dr. Hawley testified as an Expert in NFS—Loss of Consciousness amounts to Serious Physical Injury. Defendant convicted of Assault in the first degree, causing serious physical injury to his wife. In violation of a protection order, the defendant entered the victim's apartment and immediately began to hit her in the face with his fist and choke her. The victim described the defendant was extremely angry and in a rage. The victim tried to escape. The defendant chased, restrained and strangled the victim again. The defendant threatened victim: "You can scream all you want but you'll be dead before they get here." The victim believed she lost consciousness. She described that he strangled her with his hands around her throat, put his thumbs in her mouth, pressing back and down. She could not breathe. Dr. Hawley testified as an expert. In his opinion, the victim experienced a very violent assault—she was strangled multiple times, lost consciousness, could not breathe and likely only survived because her sons arrived. Her injuries were representative of a nearly lethal force. She sustained serious and life-threatening bodily injury by manual strangulation to the point of unconsciousness resulting in serious, nearly lethal internal injury to the vessels of the neck and asphyxiation to her brain. He had a very hard time understanding why this victim survived because her injuries were typical injuries he would see in a homicide. Affirmed. The Appellate Court relied on unpublished opinions from other states.
- In *State v. Delgado*, 303 P.3d 76 (Az. App. 2013), an emergency room doctor without formal strangulation training was qualified to opine about strangulation injuries. The defendant appealed from his convictions for aggravated assault and simple assault for strangling his girlfriend because the trial court erred in allowing the testimony of a "strangulation expert," among other issues raised on appeal. Specifically, the defendant argued that Dr. Salik, although a physician, had no specialized training on strangulation, suggesting his experience was insufficient to qualify him as an expert. He further argued his testimony was not helpful because you don't have to be a doctor to listen to a person's allegation that she was strangled which may or may not be true; it would evade the province of the jury because his testimony will essentially result in being an expert on the victim's credibility and does not require a Daubert standard. The trial court found, and the Appellate Court confirmed that Dr. Salik, as a medical doctor with extensive experience working in emergency medicine had sufficient expertise "on the

physical process a body undergoes during strangulation,” and therefore was qualified as an expert. The standard is “liberal minimum qualifications. Level of expertise goes to credibility and weight not admissibility. Medicine, not entire science, subject to Daubert. It is a learned expertise. **Physicians can rely on patient history.** Although a layperson may have the capacity to listen to patient histories, an ordinary juror does not have the same ability to assess injuries and histories as a physician trained in respiratory physiology who has experience treating patients reporting incidents of strangulation. The physician did not testify that the victim was strangled but that injuries were **consistent with strangulation.**

- In *State v. Schulz*, No. 39000, 2013 WL 5984478 (Idaho Ct. App. 2013), an emergency room doctor was presumed qualified to testify as a blind expert. The defendant was convicted of felony child abuse. Defendant strangled his teenage daughter causing a bruise to side of her neck. The victim reported to police, examining physician and at the preliminary hearing that her father was angry and choked her with his right hand. At trial, the victim recanted and claimed the bruising to her neck were hickeys. Prosecutors called an emergency room physician with 20 years of experience to review the photos and medical records. In his expert opinion, the bruising to the victim’s neck were consistent with strangulation and could cause great bodily harm and/or death. **Defendant claimed the ER Physician, while qualified as an ER doctor was not qualified to testify about strangulation injuries since he only saw two strangulation victims per year and he didn’t examine his daughter. Appellate Court disagreed.** Emergency room doctors are sufficiently qualified to testify about anatomy and injuries associated with strangulation. It was permissible to base his opinion on review of photos and medical records of another physician. No need for a *Daubert* hearing and no need to show specific training in strangulation.
- In *Morones v. State*, 466 P.3d 300 (2020, Wyoming), an emergency room doctor who treated victim in the emergency room also testified as an expert in strangulation. His expert opinion that the victim was strangled was used to support defendant’s conviction for strangulation. The doctor explained how pressure in the vascular system can cause petechiae, how medical professionals are trained to look for petechiae and how the presence of petechiae corroborates the victim’s report of strangulation. He also testified he ordered a CT scan to ensure there was no internal damage to the structures in her neck and throat. Based on his training and experience, he opined the victim was strangled. Appellate Court also found the trial court did not commit prejudicial error in allowing the sexual assault nurse examiner’s testimony concerning victim’s injuries as an exception to the hearsay rule for purposes of medical diagnosis or treatment.

**Areas Subject to Cross Examination:** There are four areas that are typically considered and subject to the cross-examination of an expert witness: qualifications, basis of opinion, substance of opinion and bias, and motive or prejudice. To date and across the United States, advocates, law enforcement, paramedics and medical professionals have qualified as experts based on their knowledge, skill, experience, training or education.

### **1. Qualifications of Expert: Specialized training in Strangulation Helps**

- In *People v. Oliver*, No. 339826, 2018 WL 2324104 (Mich. Ct. App. 2018), the defendant argued state's expert, a forensic nurse, did not have sufficient training in strangulation. Appellate Court disagreed. Expert worked as a SANE. She testified she was specially trained to take care of sexual assault victims. She held a SANE certificate which required her to be a fully licensed nurse and to complete an additional 40 hours of adult training, an additional 40 hours of pediatric training and a six-month orientation period with an experienced nurse examiner. She had conducted approximately 238 examinations during that time. She also testified she had received specialized training regarding strangulation.
- In *State v. Hampton*, A17-1449, 2018 WL 4055659 (Minn. App. 2018), a detective qualified as an expert based on his experience and training. The detective testified that he had responded to about 50 calls involving domestic assaults by strangulation and that the injuries did not appear well in photos in those cases. He also testified that he attended our Advanced Course on Strangulation Prevention in San Diego. The court found his experience and training qualified him as an expert which required advanced disclosure to the defense.

## **2. Basis of Opinion**

The defense may question prosecution experts about reports, studies, or evidence they have not reviewed. They may ask questions that insinuate that the experts' opinion is only as good as the assumptions and facts they are accepting. Defense counsel may also ask questions that ask experts to admit they are relying only on the victim's version of events versus the defendant's version of the events. This supports the importance of the history—including ALL versions of what the victim said happened and what they experienced—from police officer(s), paramedics, nursing personnel, the family, and the emergency room doctor.

## **3. Substance of Opinion**

This is the area where defense counsel may attempt to gain concessions from the expert. Defense counsel may attempt to get experts to concede facts that are consistent with the defense theory. The best approach to expert opinions is to allow experts to testify to what is consistent or inconsistent between the facts and their expertise on strangulation.

## **4. Bias, Motive and/or Prejudice**

Questions concerning bias, motive and/or prejudice may include a connection to the parties of the case, how the expert is being compensated for his or her testimony, whether the expert has ever testified for the defense, and what percentage of the expert's income, if any, is derived from courtroom testimony.

- In *State v. Speer*, No. 39552-9-III, 2025 WL 1258213 (Wash. App. 2025), the defendant argued it was prosecutorial misconduct for the prosecutor to call his wife, Detective Nichols, as an expert in strangulation because it created a conflict of interest, an appearance of impropriety and impaired his right to cross-examine the detective. Since no authority was cited for this argument, the court declined to address the issue. The trial court provided a jury instruction that it may consider any biases of witnesses in

assessing their credibility. The conviction was affirmed.

**Demonstrative Exhibits:** A diagram of the internal workings of the neck may be a valuable tool in court to use while the expert is explaining the anatomy of the neck area. *See Appendix 11: Vital Structures of the Neck.* This exhibit is often used in our trainings around the country and juries have found it helpful to understand the basic anatomy of the neck.

A photograph of the victim where signs of strangulation appear may also be helpful as the expert testifies. The expert can point out these signs and/or injuries and indicate they are consistent with strangulation. If ANY medical record exists from a post-strangulation exam conducted immediately to several days after the event, it should be scrutinized by the expert for any symptoms or findings consistent with strangulation. The defense in criminal cases often wants to note all the signs or symptoms that do not exist in particular cases and is a valid defense strategy.

Audio recordings, including the 911 dispatch tapes, may be helpful as the expert explains that voice change, hoarseness, and shortness of breath are consistent with injury during an assault involving strangulation. If there are recordings of the victim's voice over a period of time, they may demonstrate changes and resolution of injuries after the assault.

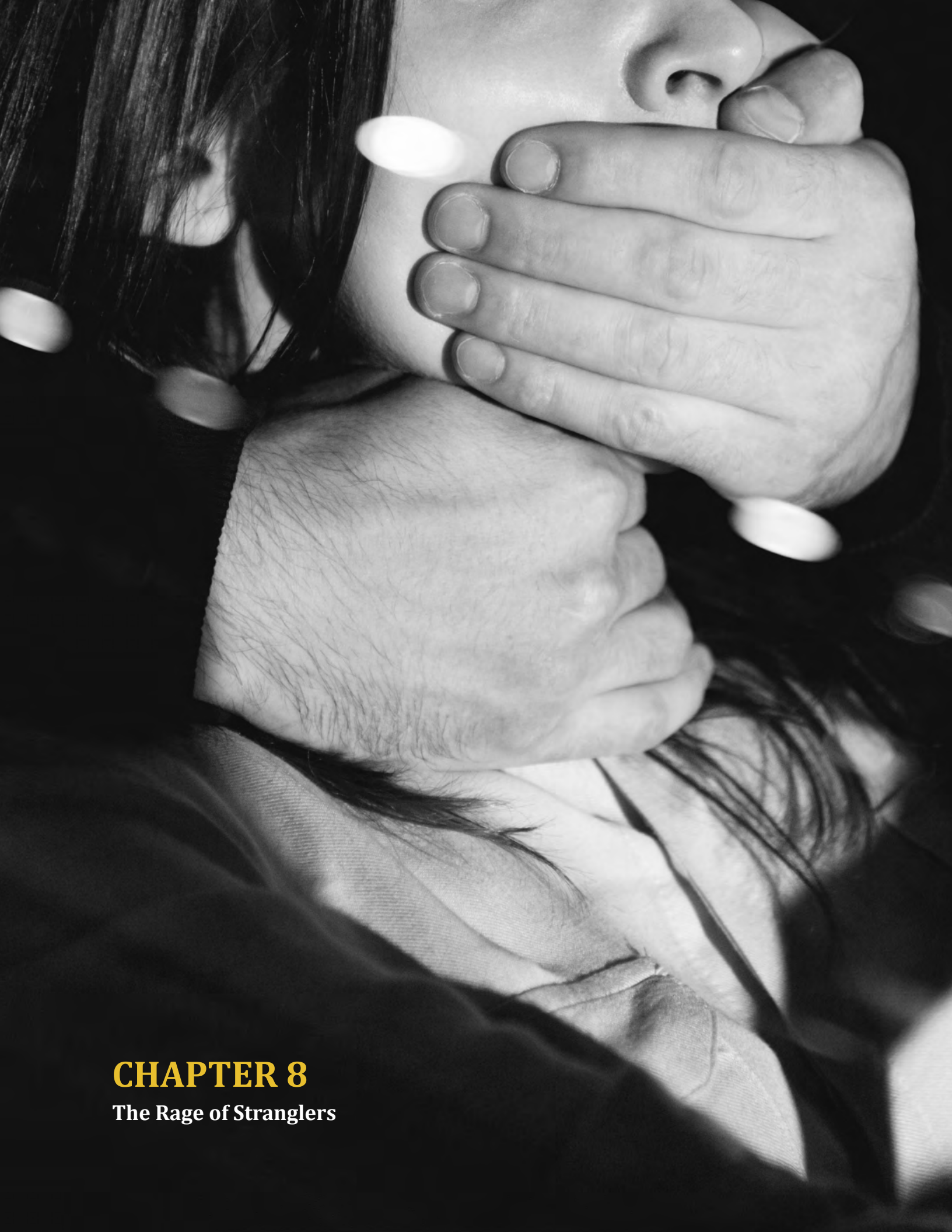
A wig head may be used in court to demonstrate how the strangulation occurred and what amount of force was used.

## **CONCLUSION**

Expert witnesses can be incredibly helpful to judges and juries in providing context to strangulation assaults and insights into the physiology of strangulation and suffocation assaults. Most courts across the country have allowed expert testimony from the

prosecution and the defense and allowed juries to decide the weight such testimony should be given. Our Training Institute on Strangulation Prevention is training more than 50,000 professionals each year on the handling of strangulation assaults, including in Florida, ensuring that judges will continue to see more and more professionals with expertise that can be beneficial to a trier of fact. This includes police officers, detectives, nurses, doctors, shelter directors, advocates, and others.





## CHAPTER 8

The Rage of Stranglers

## CHAPTER 8

### The Rage of Stranglers

*“I don’t think I ever could have done that if I still cared;  
if she still registered as a woman or even a person to me.  
I mean how could you choke someone who is just inches away from you  
and looking right at you? No way you could still see them as a living being.  
In fact, if that guy hadn’t pulled me off of her,  
I’m sure she wouldn’t be [alive].”<sup>1</sup>*

**INTRODUCTION: Strangulation is deadly force and stranglers are dangerous.** Men who strangle women are the most dangerous men on the planet and many professionals continue to miss this truth. The research is clear: If a man strangles a woman one time in an abusive relationship, she is 750% more likely to later be killed by him than a woman who is simply punched or slapped by her partner.<sup>2</sup> The majority of mass shooters, cop killers, domestic terrorists, and domestic violence killers in this country have two things in common: A history of childhood trauma and a prior history of strangulation assault against women before they kill women or others.<sup>3</sup> While not all stranglers carry these titles, virtually everyone who carries these titles are stranglers. When the stranglers of America apply pressure to a woman’s neck, they are raising their hand and saying they are killers. Why? What is the connection between strangulation and the mass shooters and cop killers of America? The reasons are complex but the rage of stranglers, soaked in misogyny, appears to produce what we now refer to as a “loaded God-complex.”

**It is about Power and Control:** Stranglers want their victims to know that they have complete control over whether their victims live or die. Stranglers literally hold victims’ lives in their hands. It makes sense that such rage-filled entitlement increases the likelihood that a strangler will kill a woman, a police officer, a judge, or attack others when his power is questioned or challenged. In failing to understand these complex connections, police officers, women, mass shooting victims, and many in the public are dying because of our failed interventions with stranglers.

As we have learned throughout this resource, strangulation is also a form of power and

<sup>1</sup> <http://www.endingtheviolence.us/the-strangulation-chronicles1.html>.

<sup>2</sup> Glass N, Laughon K, Campbell J, Block CR, Hanson G, Sharps PW, Taliaferro E. Non-fatal strangulation is an important risk factor for homicide of women. *Journal of Emergency Medicine*, 2008 Oct;35(3):329-35.

<sup>3</sup> Gwinn C, Hellman C, Hope Rising: How the Science of Hope Can Change Your Life (2018).

control that can have devastating psychological effects on victims in addition to the potentially fatal outcome (*People v. Figueroa*, 40 Misc.3d 1010 (2013, NY)).<sup>4</sup> The inability to breathe is one of the most terrifying events a person can endure. Survivors of non-fatal strangulation have known for years what many professionals are only recently learning: many domestic violence perpetrators use strangulation and suffocation to silence their victims, gain control, torture, and kill them.<sup>5</sup>

**High Risk Offenders:** Strangulation offenders are, by definition, high risk offenders. Their victims are at high risk for additional violence and homicide. What makes men who strangle high-risk is the intention behind their violence. Many perpetrators strangle their victims to show them that they can kill them—any time they wish. Others strangle victims to deliberately cause loss of consciousness, great bodily injury, torture and/or death.<sup>6</sup> Once a victim understands that truth, they live with that fear day in and day out. Every subsequent act of strangulation only increases the fear, the terror and the chances of the victims being killed, much like the deadly practice of Russian roulette. Eventually, there will be a deadly outcome and a prosecution for murder or attempted murder. Strangulation is one of the most accurate predictors for the subsequent homicide of victims of domestic violence. One study showed that “the odds of becoming an attempted homicide victim increased by about seven-fold for women who had been strangled by their partner.”<sup>7</sup> Victims may have no visible injuries, yet—because of underlying brain damage or other impacts due to the lack of oxygen during the strangulation assault—they may sustain serious internal injuries and may even die days or weeks after the attack. Strangulation has also been linked to officers shot or killed in the line of duty and mass murders, which will be discussed in further detail below.<sup>8</sup>

For too many years, we treated the man who slapped a woman, the same as the man who strangled the woman due the lack of visible injury. We didn’t understand that strangulation was a weapon of choice meant to communicate their power to end a life. Non-fatal strangulation is closely correlated with entitlement, male privilege, and coercive control.<sup>9</sup>

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<sup>4</sup> See *People v. Figueroa*, 968 N.Y.S.2d 866 (N.Y. City Ct. 2013). The court in *Figueroa* looked to the legislative intent and concluded: “The rationale for the legislation, as explained in the Legislative Memorandum, was that: ‘The intentional obstruction of a person’s breathing or circulation is among the most potentially lethal forms of [domestic] abuse...These acts send a message to the victim that the batterer holds the power to take the victim’s life, with little effort, in a short period of time, and in a manner that may leave little evidence of an altercation...The suffering endured by these victims often includes torment caused by the blocking of blood flow and/or near asphyxiation; it is not necessarily limited to “pain” alone.’”

<sup>5</sup> Sorenson SB, Joshi M, Sivitz E. A systematic review of the epidemiology of nonfatal strangulation, a human rights and health concern. *American Journal of Public Health* (2014) Nov;104(11).

<sup>6</sup> Strack G, Gwinn C, On the Edge of Homicide: Strangulation as a Prelude, 26 *Fall Criminal Justice* 32 (2011); Sorenson S, Joshi M, Sivitz E, A Systematic Review of the Epidemiology of Nonfatal Strangulation, A Human Rights and Health Concern, *American Journal of Public Health*, 104(11), e54-361 (2014).

<sup>7</sup> Glass N, Laughon K, Campbell J, Block CR, Hanson G, Sharps PW, Taliaferro E. Non-fatal strangulation is an important risk factor for homicide of women. *Journal of Emergency Medicine*. (2008) Oct;35(3):329-35.

<sup>8</sup> Gwinn C, Strack G, “Strangulation and Domestic Violence: The Edge of a Homicide,” *Domestic Violence Report*, Vol. 19, No. 6, pages 81-100, August/Sept. 2014, p. 81.

<sup>9</sup> Pritchard, A. J., Reckdenwald, A., & Nordham, C. (2016). *Nonfatal Strangulation as Part of Domestic Violence: A Review of Research*. *Trauma, Violence, & Abuse*, 18(4), 407-424 (Original work published 2017).

**What We Know About Stranglers?:** Most of the research concerning stranglers involves the future likelihood of re-assaulting and/or murdering his victim.<sup>10</sup> In the United States, very little research has been done to understand the strangler and the etiology of his abuse.

Anecdotally, Jim Henderson, a former probation officer in Ann Arbor, Michigan, and now a batterers' intervention program (BIP) coordinator, has been conducting his own research involving his BIP clients. In a small sample, he has discovered that most stranglers have a high ACE score. More significantly, the common factors with the men in his group who strangled included prior child sexual assault (90%) and 80% of them said when they disclosed the sexual assault as a child to their mothers, she did not believe them.<sup>11</sup>

Most recently, Queensland Sentencing Advisory Council in Australia published its first Sentencing Spotlight on choking, suffocation or strangulation in a domestic setting.<sup>12</sup> Researchers found that more than 98% of strangulation cases finalized in Queensland courts involved male offenders. In the first two years of the strangulation offence operating in Queensland, 287 people were sentenced, receiving an average sentence of 1.9 years imprisonment. The offence carries a maximum penalty of seven years in jail. A QSAC Sentencing Spotlight analysis of court's data from 1 July 2016–30 June 2018 found that offenders were typically: Male, Aged 20-29 years, non-indigenous, and sentenced on a plea of guilty. More than 76% of offenders were jailed; the longest sentence imposed was four years. The oldest offender was 60, the youngest 15. Of the 287 people sentenced, five (1.7%) were women. 99% of offenders with strangulation as their most serious offence (MSO) pleaded guilty. QSAC Chair, John Robertson, said the Sentencing Spotlight provided a clearer picture of the prevalence of the offence. "This is a particularly abhorrent crime. When a person can look into their partner's eyes and hurt them in this way, all the evidence shows a line has been crossed. Violence of this kind is a known predictor of escalating violence and increased risk to the offender's domestic partner, and clearly police and prosecutors are taking this very seriously, pursuing this new offence through the courts," Mr. Robertson said.

Given limited available research concerning stranglers, stranglers should be treated as high-risk offenders. Batterer Intervention Programs (BIP) are a common intervention employed in dealing with Domestic Violence offenders. BIPs should be more structured to deal with the underlying issues of strangulation, such as the threat of killing one's partner. In addition, the BIP should be based on risk- and need-assessments; this may include the number of times the offender has been arrested or charged with other violations. With this information, treatment options should mandate how frequently an offender attends

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<sup>10</sup> Glass N, Laughon K, Campbell J, Block C, Hanson G, Sharps P, Taliaferro E, *Non-Fatal Strangulation as an Important Risk Factor for Homicide of Women*, *Journal of Emergency Medicine*, 35(3), 329-335 (2008).

<sup>11</sup> Keynote address by James Henderson at the 25<sup>th</sup> Annual International Family Justice Center Conference, San Diego, CA, April 30, 2025.

<sup>12</sup> [https://www.sentencingcouncil.qld.gov.au/\\_data/assets/pdf\\_file/0004/614749/sentencing-spotlight-on-choking-suffocating-or-strangulation-in-a-domestic-setting.pdf](https://www.sentencingcouncil.qld.gov.au/_data/assets/pdf_file/0004/614749/sentencing-spotlight-on-choking-suffocating-or-strangulation-in-a-domestic-setting.pdf).



their BIP; for instance, in Colorado, it is mandated that the top 10% of the most violent offenders should not go more than two to three days without an intervention (Davis, C., 2015). Ultimately, high-risk offenders need tougher interventions, which requires differential diagnoses.

One technique that is showing promise is the use of rewards and sanctions to encourage and motivate offenders to engage in behavioral change, complete programs, and comply with orders. Criminal justice partners need to review procedures that enable the court to monitor and support an offender's progress or lack thereof. For example, when and how often do programs report to the court and how quickly, if at all, does the court respond to that information? In Ann Arbor, MI, the BIP started sending over attendance records within 24 hours to a probation officer. Probation could then call an offender, inquire about absences, and file a violation to the court. Because they used sure, swift, and certain sanctions, offenders knew exceeded absences resulted in one day serving in the jail-work program per class missed, resulting in classes being immediately made up and attendance improved.

**Link to Cop Killings, Mass Shootings and other Crimes:** Current research further suggests a strong link to criminal re-offending, heightened risk of substance abuse, mental illness, police shootings, homicides and mass shootings. In addition, men who strangle are also connected to other crime such as child abuse, domestic violence (DV), sexual assault, and elder abuse. 35% of men who strangle also sexually assault and abuse their partner, and 9% of strangulation victims are pregnant (Shields et al., 2010). People acting out deep-rooted entitlement expose their victims to a range of social, health, and legal risk factors. Children often are in the home at the time of this near-fatal and life-threatening assault and may even intervene to save their mother.

A recent national study, "Making it Safer, an analysis of U.S. law enforcement fatalities between 2010-2016," funded by the U.S. Department of Justice, found that 29% of officers killed in the line of duty are killed in "domestic dispute" and "domestic-related incidents," an increase from previous years.

In a 2011 study conducted at the request of Nampa Police Chief Craig Kingsbury, Boise State analyzed last ten incidents where an officer shot a suspect or a suspect shot an officer.

**The results got our attention: 80% of the criminal suspects had a prior domestic violence history and 30% had a prior history of strangulation assaults.** This finding was based only on a public records check. This was without social or relationship history of the perpetrators and without interviewing all their prior partners. This finding suggested that those individuals, who were all men, were not only willing to strangle their intimate partners but also willing (and practicing) to attack, pull a gun and/or shoot an officer.<sup>13</sup>

Soon after the Nampa Study, the Institute recruited the Supervising Deputy District

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13 Gwinn C, Hellman C, *Hope Rising: How the Science of HOPE Can Change Your Life* (2018).

Attorney Jerry Fineman from Riverside District Attorney's Office to assist with another study. Jerry Fineman identified eight law enforcement officers who died in the line of duty from intentional homicide between 1993 and 2013. His review of the killers' histories was also limited to public records. **He too found that 80% of them had a public records history of domestic violence but 50% of them had a history of strangulation assault and domestic violence.** Fineman found a surprising link between strangulation and intentional killing of police officers.

The Institute recently completed an internet analysis of officers killed in the line of duty in the United States in 2017 and 2018 based on the Officer Down website and found similar results: 33 out of 44 (75%) cop killers had a history of violence against women which also include strangulation.<sup>14</sup> These small studies lead us to conclude that the majority of law enforcement officers killed in America are likely killed by rage-filled men with a history of domestic violence by men with also a history of strangulation. The Institute continues to advocate for a comprehensive study of the relationship history of these cop killers to be conducted.

Most recently, multiple media stories have made the link between domestic violence, and mass shootings and some included a history of strangulation. Everytown for Gun Safety analyzed FBI data on mass shootings from 2009 to 2015 and found that 57% of the cases included a spouse, former spouse or other family members among the victims and that 16% of the attackers had previously been charged with domestic violence.

- Robert Lewis Dear, in Nov 2015 was identified to be responsible for the Planned Parenthood Clinic Shooting in Colorado where he **killed 3 people and wounded 9 others**. Dear had been accused by at least two of his three ex-wives of physical abuse.
- Omar Mateen, in June 2016, was identified to be responsible for the Orlando Pulse nightclub shooting, **killing 49 and injuring another 58**. Family members reported that Mateen had previously beat his ex-wife, who left him after just four months of marriage, which included a history of strangulation.
- Esteban Santiago, in January 2017, the Huffington Post reported in *Domestic Violence Allegations Were A Missed Red Flag Before Florida Mass Shooting* that Esteban Santiago **killed five people and injured six others**. Esteban had previously been arrested twice for felony strangulation. But the cases were not taken seriously as both charges were prosecuted as misdemeanors, and he received deferred prosecution.
- James Hodgkinson, in June 2017, the New Yorker reported in *The Link Between Domestic Violence and Mass Shootings* the connection between James Hodgkinson who **shot Congressman Steve Scalise and four others** to his history of domestic violence, child abuse and aiming a firearm at his foster daughter's boyfriend and then fired one round.

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<sup>14</sup> <https://www.policiechiefmagazine.org/a-dangerous-link/>.



- Stephen Paddock, in October 2017 **killed 58 people** in Las Vegas. Ten months later the investigation was closed with police failing to identify a motive. Later it was revealed, there was evidence of child porn and reports of strangulation with sex workers.
- Devin Patrick Kelley, in November 2017 was identified to be responsible for the First Baptist Church shooting, **killing 26 people** in Sutherland Springs, Texas. Kelley had previously been court-martialed for assaulting his wife and children, which included strangulation.
- Nikolas Cruz, in February 2018, was identified as the 19-year-old who shot and **killed 17** in Parkland, Florida. Cruz was reported to have an abusive history toward a girlfriend and threatened to kill her new boyfriend after they broke up.
- Ian David Long, in November 2018, shot and **killed 12**, injured 23 in Thousand Oaks, California. Long was a veteran and suspected to have had PTSD. It was also reported that he had a long history of domestic disturbances.
- Dakota Theriot, in January 2019, shot and **killed 5** people including his parents, girlfriend, her father and her brother in Livingston, Louisiana. There was a reported history of domestic violence between Theriot and his girlfriend.
- Connor Betts, in August 2019, shot and **killed 9** people including his younger sister in Dayton, Ohio. Betts (24) was reported to have been involved in two prior strangulation cases. Former students reported that Betts was suspended from high school for compiling a “hit list” and a “rape list.”
- Gabriel Wortman (51), in April 2020, shot and killed 22 people in a 12-hour rampage. He was ultimately killed in a confrontation by police. His first victim was his girlfriend who he beat but survived the attack by hiding in the woods. Later reports came out about his history of abuse and hatred for women.

**Courts Are Beginning to Recognize the Danger of Stranglers:** While Florida courts have not yet focused on the seriousness of non-fatal strangulation or the danger of stranglers, courts in other states and other countries have opined on the men who strangle women. In Connecticut, in *State v. Lewis*, 33 Conn. 543 (2019), the court reviewed a defendant’s challenge to pat-down search after he had fled the scene of a strangulation assault where he strangled his girlfriend. The court, citing our research on stranglers ruled that once officers knew he had applied pressure to his girlfriend’s neck they had a right to pat him down for their own safety given the greater likelihood that he would assault police officers. They found a firearm on his person that resulted in additional charges. In *U.S. v. Lamott*, 831 F. 3d. 1153 (2016), a federal court, citing to our published research, noted the seriousness of strangulation and the risk to victims, stating: “The recent increased focus on the dangers of nonfatal strangulation confirms what “[s]urvivors of non-fatal strangulation have known for years:” “Many domestic violence offenders and rapists do not strangle their partners to

kill them; they strangle them to let them know they can kill them—any time they wish.”<sup>15</sup>

**Accountability Matters:** Judicial officers should not continue to hear the words “He choked me” and treat this assault as if it were a slap in the face or a punch to the arm.

**Today, it is understood unequivocally that strangulation is the calling card of a killer; it is one of the most lethal forms of domestic violence and more prevalent than we once realized.** Strangulation can have immediate, delayed and long-term consequences, including death.<sup>16</sup> It is most often perpetrated by men against their intimate partners.<sup>17</sup>

Probation officers often have the most contact with domestic violence offenders and play an important role in assessing the context of the offender’s violent behavior and recommending appropriate sanctions to the court. Their recommendations can advance or impede safety outcomes for victims and accountability for offenders.

## CONCLUSION

Florida courts have not yet focused on the unique dangers posed by stranglers, but judges should be scrutinizing closely the prior history of violence by men who strangle women whether that history is documented or provided to the court by the victim or others familiar with the defendant’s prior conduct. It is imperative that judges probe deeply into the potential risk of a strangler to the current victim, future partners, or the public. There is more than enough research to now suggest that stranglers are high risk offenders with the potential for lethal violence.

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<sup>15</sup> *State v. Lewis*, 33 Conn. 543 (2019), Citing *Casey Gwinn, Strangulation and the Law*, in *The Investigation and Prosecution of Strangulation Cases* 5, 5 (2013).” *U.S. v. Lamott*, 831 F.3d. 1153 (9th Cir. 2016).

<sup>16</sup> Patch M, Anderson JC, Campbell J, *Injuries of Women Surviving Intimate Partner Strangulation and Subsequent Emergency Health Care Seeking: An Integrative Evidence Review*. *Journal of Emergency Nursing*, Jul;44(4):384-393 (2018).

<sup>17</sup> Strack, G, McClane G, Hawley D, *A Review of 300 Attempted Strangulation Cases Part 1: Criminal Legal Issues*, *Journal of Emergency Medicine*, Vol, 21, No. 3, 303-309 (2001).



## CHAPTER 9

Emerging Issues — Children, Sex, and Suspicious Death Cases

## CHAPTER 9

### Emerging Issues – Children, Sex, and Suspicious Death Cases

*“Around here, however, we don’t look backwards for very long.  
We keep moving forward, opening up new doors and doing new things,  
because we’re curious...and curiosity keeps leading us down new paths.”*

WALT DISNEY

#### INTRODUCTION

This chapter will address the three emerging issues in the field of strangulation and suffocation assaults. The issues include the links between strangulation and (1) children, (2) sex, and (3) suspicious death cases. This chapter will highlight information that every professional needs to know that is working with victims of intimate partner violence, sexual assault, elder abuse, child abuse or animal abuse about the link between strangulation, children, sex, and homicides. First, we address below the subject of child victims of strangulation/choking as well as child witnesses to these incidents.

#### Emerging Issue #1 – Little Necks, Big Consequences

**Pediatric Strangulation is Being Missed:** Children are often victims of strangulation as well as witnesses to strangulation and suffocation assaults of other family members. While a tremendous amount of research has been conducted on the impact of children witnessing domestic violence and the impact of Adverse Childhood Experiences (ACES), we know very little about the prevalence of children being strangled and the impact on children of witnessing strangulation and suffocation assaults.

The issue of children as victims of strangulation first came to the attention of law enforcement in San Diego in 2018. Detective Joe Bianco was our law enforcement expert in adult strangulation cases at the San Diego Family Justice Center. He knew little about strangulation before he came to the Domestic Violence Unit but then he attended our four-day Advanced Strangulation Prevention Course. He then applied everything he had learned to the adult cases he encountered. In fact, he was so dedicated and committed to processing adult strangulation cases that most of his cases resulted in guilty pleas. After the Advanced Course, he gathered more evidence than he had before; he honed his trauma-informed interviewing skills to obtain much more information from victims and more admissions from suspects; and he wrote more detailed and in-depth reports. When cases were set for trial, Detective Bianco was regularly called as a subject matter expert not only to discuss domestic violence dynamics and victim recantation but also to explain



the signs and symptoms of strangulation and suffocation.<sup>1</sup>

When Joe was re-assigned from the Domestic Violence Unit to the Child Abuse Unit, he was decidedly unenthusiastic. As luck would have it, Joe's first case involved a child who was strangled. Joe quickly realized that, while the patrol officer had done an excellent job of investigating the strangulation case involving the victim-mother, the officer had failed to properly investigate the strangulation case involving the child victim-witness. Joe could easily see—on the patrol officer's body camera—that the 10-year-old boy was visibly upset and distraught as he demonstrated to the officer how he himself had been “choked” by his stepdad. However, the patrol officer was so focused on the mother and in following proper protocol for investigation of her incident, he simply failed to conduct a minimal fact interview or offer medical treatment to the child who had been strangled during the same assault.

Detective Bianco's case became a turning point for the San Diego Police Department and The Training Institute on Strangulation Prevention. The San Diego County Strangulation Protocol did not include child victims. We had missed it. Detective Bianco immediately requested that both cases (mother and child) be assigned to him. He applied everything he had learned about adult strangulation cases to his child victim. But he met a roadblock when he discovered that our forensic nurses were not allowed to conduct forensic strangulation exams on children. Child abuse cases had to go through the Child Abuse Protocol and examinations had to be done at the Chadwick Center for Children and Families, our local Child Advocacy Center.

Detective Bianco soon realized that child welfare workers were not trained in strangulation nor were the forensic interviewers at the Child Advocacy Center. Armed with these realizations and the realization that we unwittingly had failed to include child victims in our 2017 San Diego County Strangulation Protocol; we decided to improve our efforts. Detective Joe Bianco (Ret.) is now helping us improve our efforts by working for the Institute as a trainer and subject matter expert in both adult and child cases.

**Our Seminal Strangulation Study Omitted Children:** How did we miss the importance of children as victims of strangulation? Our initial focus was on adult victims of strangulation. When we published our initial research in 2001 in the *Journal of Emergency Medicine (JEM)* in a special issue on non-fatal strangulation assaults, our six articles highlighted adult strangulation cases. Specifically, we covered the following topics:

- Walking and Talking Victims of Strangulation: Is there a New Epidemic?;<sup>2</sup>
- Survey Results of Women Who Have Been Strangled While in an Abusive Relationships;<sup>3</sup>

<sup>1</sup> Presentation by Casey Gwinn, Gael Strack and Joe Bianco at the North Carolina Family Justice Center and Collaborative Communities Conference, One-Day Preconference, November 2024.

<sup>2</sup> Taliaferro E, Mills, T, et al, Walking and talking victims of strangulation. is there a new epidemic? a commentary, *J of Emergency Medicine*, Volume 21, Issue 3, 2001, Pages 293-295.

<sup>3</sup> Wilbur L, Higley M, Hatfield J, et al., Survey results of women who have been strangled while in an abusive relationship. *J Emerg Med*. 2001 pp. 297-302.



- Frequency and Relationship of Reported Symptomology in Victims of Intimate Partner Violence: The Effect of Multiple Strangulation Attacks;<sup>4</sup>
- Review of 300 Cases, Part I: The Criminal Legal Issues;<sup>5</sup>
- Review of 300 Cases, Part II: Clinical Evaluation;<sup>6</sup> and
- Review of 300 Cases, Part II: Injuries in Fatal Strangulation Cases.<sup>7</sup>

The impetus for our research on adult strangulation was the deaths of two San Diego teenagers (Cassandra Stewart, age 17, and Tamara Smith, age 16). In both cases, evidence of the victims' prior strangulation had been missed by law enforcement. After discovering this evidence, our goal was to shine a bright light on this overlooked and under-researched issue. To this day, our entire team regrets our omission of child victims of strangulation from our seminal study. We naively thought that sufficient research existed about the role of child victims and witnesses generally because of the burgeoning research on the impact of children witnessing of domestic violence and/or being victims of child abuse.

Today, we still do not know enough about the impact of children being strangled. But at least, we are beginning to learn more about this phenomenon. We found that in 1995, in our San Diego Study, children had witnessed their mothers being strangled at least 41% of the time but we did not analyze children being strangled.<sup>8</sup> Other researchers have confirmed our early findings about the prevalence of child witnesses. A study from the UK found children were in the home 33% of the time.<sup>9</sup> Studies from Australia found between 28% and 50%.<sup>10</sup>

In 2022, Australian researchers documented children witnessing the strangulation of an adult in 43% of the cases. These researchers noted additionally the co-occurrence of children being strangled was 9%.<sup>11</sup> We already know if Mom is being abused, chances are the children are being abused. If Mom is at high risk, chances are that the children are at high risk too.

This issue has also been missed by legal policy makers. Very few state laws address the

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4 Smith D, et al, *Ibid.*, 2001.

5 Strack G, et al, *Ibid.*, 2001.

6 McClane, et al, *Ibid.*, 2001.

7 Hawley, et al, *Ibid.*, 2001.

8 Strack, et al, *Ibid.* (2001).

9 White C, Martin G, Schofield A, Majeed-Ariss R, *I Thought He was Going to Kill Me: Analysis of 204 Case Files of Adults Reporting Non-Fatal Strangulation as Part of a Sexual Assault Over a 3-year Period*, *Journal of Forensic and Legal Medicine* 79 (2021).

10 Parekh V, Brkic A, McMinn J, Williams D, Van Diemen J, *Non-Fatal Strangulation versus General Assault in a Clinical Forensic Medicine Cohort: Characteristics of Patient, Perpetrator and Presentations*, *Journal of Forensic Medicine* 102 (2024) and Douglas H, Fitzgerald R, *The Australian Legal Response to Non-Fatal Strangulation: Policy Recommendations*, Emerald Open Research (2022), <https://www.researchgate.net/publication/363694614-The-Australian-Legal-Response-to-Non-Fatal-Strangulation-Policy-Recommendations>.

11 Fitzgerald, R, et al, *The Prosecution of Non-Fatal strangulation Cases: An Examination of Finalised Prosecution Cases in Queensland, 2017-2020*, the University of Melbourne and the University of Queensland (2022), [https://law.unimelb.edu.au/data/assets/pdf\\_file/0005/4096535/Fitzgerald-et-al-ODPP-report.pdf](https://law.unimelb.edu.au/data/assets/pdf_file/0005/4096535/Fitzgerald-et-al-ODPP-report.pdf).

important issue of children being strangled. While child endangerment laws exist in every state in the nation authorizing intervention in child abuse cases, only two states (Oregon and Oklahoma) specifically make it a felony to commit strangulation in the presence of a child.<sup>12</sup>

**Child Victims are Overlooked and Under Researched:** We were not the only ones to miss children being strangled. Researchers, for the most part, have missed the topic of child victims of strangulation. Although more than a thousand articles currently exist about adult strangulation, only approximately ten articles address strangulation in children.<sup>13</sup>

Dr. Cathy Baldwin Johnson and Tracy Wiese, DNP, ANP, were the first to write about children being strangled. These two experts in pediatrics focused on the available data in Alaska when working on their Alaskan version of our manual on *The Investigation and Prosecution of Strangulation Cases*.<sup>14</sup> They addressed the following issues related to children:

- Challenges in Evaluating Strangulation Cases
- Pediatric Anatomy of the Head and Neck
- Clinical Presentation of Pediatric Patients
- Differential Diagnosis in Pediatric Patients: Choking Game, Accidental, Suicide and Medical (Intentional), and
- Recommendations for First Responders and Health Care Personnel.

In addition, limited case law exists on the topic of child victims. The few published and unpublished cases reveal the focus of courts with respect to strangulation of children:

- Adolescents cannot consent to the choking game.<sup>15</sup>
- Strangling mom while she is holding her baby puts the child at substantial risk of future harm.<sup>16</sup>
- One act of strangulation is enough to put a child at substantial risk of future harm.<sup>17</sup>
- Chokeholds are an excessive form of discipline.<sup>18</sup>

There is a critical need to improve our understanding of the link between adult strangulation and the strangulation of children. Those who work in the field need to promote training on the topic, conduct better screening identify child victims of strangulation and conduct thorough investigations to charge child endangerment and/or strangulation on a child. Resources for the handling of child strangulation

<sup>12</sup> Oklahoma Statute Section 21-644(g) and Oregon Revised Statute Section 163.180.

<sup>13</sup> Pediatric Bibliography, <https://www.allianceforhope.org/training-institute-on-strangulation-prevention/resources/pediatric-strangulation-bibliography>.

<sup>14</sup> See <https://www.allianceforhope.org/training-institute-on-strangulation-prevention/resources/responding-to-strangulation-in-alaska-guidelines-for-law-enforcement-health-care-providers-advocates-and-prosecutors>.

<sup>15</sup> *People v. Ford*, 43 N.E.3d 193 (Ill. App. 2015).

<sup>16</sup> *In re M.M.*, 192 Cal.Rptr.3d 849 (Cal. App. 2015).

<sup>17</sup> *In re A.P.*, No. 2011-147, 2011 WL 5996034 (Vt. 2011).

<sup>18</sup> *In re D.W.*, E081703, 2023 WL 9011955 (Cal. App. 2023).

assaults are available on our Institute website.<sup>19</sup> *See Appendix 7: Pediatric Signs and Symptoms of Strangulation and Appendix 9: Pediatric Strangulation - Important Information for Guardians.*

## **Emerging Issue #2 –Truth About and Consequences of Strangulation During Sex**

The second emerging issue in our work focuses on the use of strangulation (usually called “choking,” “sexual choking,” “breath play” or “erotic asphyxia”) during sex.

Don’t let the name “erotic” be misleading. All of it is strangulation.<sup>20</sup>

Strangulation is external pressure to the neck that blocks blood flow, airflow, or both. Strangulation usually involves placing a hand or hands around another person’s neck but can sometimes be caused by an arm, a leg, or even a ligature of some kind. This type of pressure around the neck cuts off the flow of blood, resulting in blood congestion in the brain. The effect is lightheadedness due to the drop in oxygen levels and increase in carbon dioxide. For some people, this sensation causes them to experience increased erotic pleasure, but it is all dangerous to life and health.

It takes as little as four pounds per square inch (psi) to block blood flow from the brain back to the heart through the jugular veins, and it takes as little as 11 psi to block oxygenated blood from getting to the brain in the carotid arteries. The brain has no reserve tank of oxygen, so the pressure to the neck can alter a person’s state of consciousness within seconds, cause unconsciousness in as little as 6-9 seconds, cause internal injuries almost immediately, and cause death within 1-2 minutes. *See Chapter 5, Medical Chapter.*

Preliminary data reveals that the prevalence of strangulation today during sex or intimacy in relationships is staggering. Findings from a national probability survey among U.S. adults ages 18 to 60 found that 21% of women reported having been choked during sex, and 20% of men reported that they have choked a partner during sex.<sup>21</sup> In this study, younger adults (those ages 18 to 29) reported engaging in choking at higher rates than older adults, revealing a population shift in sexual behavior. A different study of female college students found that 58% of them had been choked during sex<sup>22</sup>—further suggesting that this phenomenon is increasingly common among those of younger ages.

Despite these prevalence statistics, there has been little public awareness or education on the dangers and consequences of applying pressure to a person’s neck in intimate or sexual situations. While some defense attorneys try to distinguish between consensual and non-consensual strangulation in cases being prosecuted, we see no difference. Strangulation is pressure to the neck causing blockage of air flow and/or blood flow and alleging consent to

<sup>19</sup> See generally [strangulationtraininginstitute.com](http://strangulationtraininginstitute.com).

<sup>20</sup> Herbenick D, Patterson C, Wright P, Kawata K, Fu T, *Sexual Choking/Strangulation During Sex: A Review of the Literature, Current Sexual Health Reports*, Springer (2023), <https://link.springer.com/article/10.1007/s11930-023-00373-y>.

<sup>21</sup> Herbenick D, Patterson C, Wright P, Kawata K, Fu T, *Sexual Choking/Strangulation During Sex: A Review of the Literature, Current Sexual Health Reports*, Springer (2023).

<sup>22</sup> Herbenick, et al, *Diverse Sexual Behaviors and Pornography Use: Findings from a Nationally Representative Probability Survey of Americans Aged 18 to 60 Years*, *J Sex Med.*, 17(4):623-633 (2020).

do the act does not change the nature of the act. An act that might start out as “consensual” can quickly become non-consensual if the perpetrator continues pressure for even a second after the victim fears for her life and health. One quote from a sexual strangler on a website called, “The Strangulation Chronicles” says it all:

*“I convinced my girlfriend to let me choke her during sex. I told her it would be fun and better sex for both of us. And then I didn’t let go even when she asked me to. The look on her face when I was doing it was such a rush. It turned me on like never before...and who is she going to tell?”<sup>23</sup>*

Twenty years ago, as the authors of this guide began prosecuting strangulation crimes in San Diego, we occasionally saw defendants raise the so-called “rough sex,” or “consent” defense. Defendants would argue that their partner wanted him to be rough and apply pressure to her neck to enhance sexual pleasure. The defense lacked credibility because defendants never raised the defense at the scene of the crime. They only brought it up later in court after consulting with their attorney. The authors did not give this defense much attention at the time because public policy in America has been clear for decades that a person cannot consent to something that can harm them, cause serious bodily injury or pose a substantial risk of death.<sup>24</sup> More commonly, we saw the defense of “self-strangulation” for sexual pleasure, usually referred to as “auto-erotic” asphyxia. Auto-erotic asphyxia was, as Dr. Dean Hawley said, “a guy thing” done primarily by men and generally done when men are alone and in private. It was rare for women to be involved in auto-erotic asphyxia or even erotic asphyxia.<sup>25</sup>

But since the authors first identified this issue more than 20 years ago, the culture has changed. Strangulation/choking during sexual activity has become much more common. Powerful social forces have contributed to this result, specifically:

- Pornography is taking over the culture with the majority of men now viewing porn weekly
- Porn is romanticizing strangulation during sex as safe, enjoyable, and even expected from a sexual partner<sup>26</sup>
- In the most recent research, the majority of all college age women are now experiencing strangulation during intimacy or sex at the hands of men
- And large percentages of young people now consider some level of violence in teen relationships as normative behavior due to the impacts of pornography.

<sup>23</sup> The Strangulation Chronicles, What Abusers Say about Their Use of Intimate Partner Strangulation, <http://www.endingtheviolence.us/the-strangulation-chronicles1.html>.

<sup>24</sup> John Doe v. George Mason University, 149 F. Supp 3d 602 (2016, Virginia) and National Coalition for Sexual Freedom, Legal Issues, Consent Legal Cases, <https://www.kpact.xyz/2023/05/22/rough-sex-defense-consent-and-law/>.

<sup>25</sup> Sendler D, Lethal Asphyxiation Due to Sadomasochistic Sex Training—How Some Sex Partners Avoid Criminal Responsibility Even Though Their Actions Lead to Someone’s Death, *Journal of Forensic and Legal Medicine* 56, 59-65 (2018).

<sup>26</sup> Herbenick, et al, *Ibid.* (2023).

**Pornography and Pop Culture are Impacting Social Norms:** The alarming trend toward normalizing strangulation in intimate relationships is happening in the United States and around the world based on the research of Dr. Debby Herbenick and others. Today, there are millions of porn videos with strangulation violence available to access by any child, teen, or adult by smartphone, desktop, or laptop. Recently, the Alliance team analyzed porn websites by a Google search of “Strangulation,” “Sex,” “XXX,” and “Porn.” The search yielded millions of available webpages.<sup>27</sup> Porn actors and actresses are now producing millions of live sex and strangulation videos daily from many countries around the world. Strangulation is being normalized by children and teens in intimate relationships, marital partners, and in other intimate relationships. Recently, Cosmo Magazine even recommended “choking” as a sexy way to relieve the boredom of quarantine because of COVID-19.<sup>28</sup>

This trend toward viewing strangulation as normal, fun, and harmless sexual behavior is not new. It has been going on for years. *Fifty Shades of Grey* (the 2011 erotic romance novel by British author E.L. James) and other mainstream books, articles, and films about pain and pleasure highlight and glorify “breath play” and “rough sex.” Initially, the conduct was often thought to be confined to what is called the “BDSM” (Bondage and Discipline, Dominance and Submission, Sadism, and Masochism) community. But more than a decade ago, the pornography industry in this country began investing in the concept of “choking” by providing more content promoting compression of the neck to enhance sexual pleasure. While there is no physiological evidence of strangulation producing better sexual experiences, the belief that it does has become dominant in the culture.

**Myths Must be Debunked:** Underlying this surge in porn videos showing mild to extremely violent pressure as enhancing sexual pleasure are several myths:

1. Strangulation is harmless and causes no damage to the victim;
2. Consent is legally valid, and women can consent to being strangled in any setting; and
3. Strangulation is enjoyed by all parties in consensual sex acts and increases pleasure and sexual satisfaction without any psychological, emotional, or physiological impacts.

The author’s research solidly debunks these myths.

***Myth #1: Strangulation is harmless and causes no physical damage***

As discussed in Chapter 5, strangulation dramatically reduces oxygenated blood either getting to the brain or toxic, deoxygenated blood leaving the brain as soon as the pressure to the neck starts. If the pressure increases to the point that no oxygenated blood is getting to brain cells, this is called “anoxia.” Once anoxia occurs in a strangulation assault, the

<sup>27</sup> Gwinn C, Strangulation, Sex, Porn & Misogyny, <https://fightthenewdrug.org/the-concerning-trend-of-porn-romanticizing-strangulation/>.

<sup>28</sup> Emmon, L, Cosmo Offers Choking as a Sexy way to relieve Boredom of Quarantine (2020), <https://thepostmillennial.com/cosmo-offers-choking-as-a-sexy-way-to-relieve-boredom-of-quarantine>.



victim loses 32,000 neurons and 230 million synapses per second.<sup>29</sup> The death of synapses and neurons results in permanent brain damage. Those neurons and synapses will never come back to life and never heal. But brain damage is not the only physical damage that can occur. More than 1,000 peer-reviewed, academic research articles on strangulation assaults document internal injuries such as damage to tracheal rings, injuries to the vocal cords, major trauma to the thyroid, cricoid and thyroid cartilage, bruising and tearing to muscles in the neck, and carotid and vertebral artery dissections.<sup>30</sup>

The reply to Myth #1 is that strangulation is not harmless and can have lethal consequences.

***Myth #2: Consent is valid, and women can consent to being strangled in any setting***

A foundational rule of law is that you cannot consent to something that can kill you or cause great bodily injury. Or, put another way, the victim's consent is not a defense for aggravated assault or murder. Strangulation can and does kill. No matter what type of agreement sexual partners might reach about the presence of strangulation during sexual activity, if the person being strangled suffers major injuries or dies, the partner putting the pressure on the victim's neck will face criminal charges in every state in the country.

For decades, U.S. case law has affirmed that consent is not a defense to choking (strangulation):

- One cannot consent to an act which is likely to produce grievous bodily harm or death. *U.S. v. Outhier*, 45 M.J. 326 (C.A.A.F. 1996).
- A person commits an aggravated battery when he strangles another person. *People v. Kline*, 45 M.J. 326 (C.A.A.F. 1996).
- In *People v. Ford*, 43 N.E.3d 193 (Ill. App. 2015), a teenager could not consent to the "choking game" due to the inherent risk of serious bodily injury and/or risk of death.
- Even in a consensual BDSM context, due to the risk of serious physical injury, courts continue to rule consent is not a defense to strangulation, *John Doe v George Mason University*, 149 F. Supp 3d 602 (E.D. Va. 2016).
- While BDSM is legal, strangulation is not, *State v. Dudas*, 391 Wis.2d 494 (2020).
- For policy reasons, courts have found that states have a right to make strangulation illegal and there is no constitutional right to consensual asphyxiation. *State v. Christel*, 2022 WI App 7 (Wi. App. 2021).

Most recently, in *State v. Stone*, 324 Or. App. 688 (Or. App. 2023), Stone was charged and convicted of felony strangulation of an intimate partner and unlawful use of a weapon. The main issue was consent and the intent of the legislature in passing their strangulation

<sup>29</sup> Saver, J, *Time is Brain – Quantified*, *Stroke* (2005).

<sup>30</sup> Strangulation Bibliography, <https://www.allianceforhope.org/training-institute-on-strangulation-prevention/resources/strangulation-bibliography>.

law. At trial, the Stone admitted to strangling the victim with a cord until she lost consciousness, dragging her to the bedroom and handcuffing to the closet rod. The victim testified it was not consensual. Stone testified the victim consented to the sexual choking and they were into BDSM. He further testified that he was careful to watch if she tapped out or struggled and was convinced that the victim did not lose consciousness. He believed she was enjoying it. He also testified that his intent was to deprive the victim of air only to the point that it was pleasurable and not to the point of unconsciousness or injury. On cross-examination Stone admitted he knew strangulation is dangerous and could cause death. After being convicted of strangulation, Stone appealed and claimed the trial court erred by telling the jury, in response to a jury question, that “there is no consent or non-consent portion or element to the crime of strangulation.” On appeal he further argued the legislature must have intended to allow consent to be a defense to strangulation. However, the Court of Appeal was unpersuaded that the legislature intended consent to be a defense to strangulation and agreed with the trial judge that consent is not an element of the crime of strangulation and therefore not relevant at trial.

In the U.S., strangulation is not considered sexual activity even within sexual assault statutes nor does the National Coalition for Sexual Freedom condone including strangulation in their Explicit Prior Permission contracts.<sup>31</sup> Today, the BDSM community acknowledges on their websites the risk sexual partners take when they engage in activities that may injure or kill a sexual partner. Furthermore, the use of compression such as the vascular neck restraint is viewed as deadly force by statute and case law.

Only five states have included the element of “a lack of consent” in their strangulation statute:<sup>32</sup>

- Florida – against the will of another (2007)
- Virginia – without consent (2012)
- Pennsylvania – affirmative defense if victim consented (2016)
- West Virginia – without consent (2016)
- Kentucky – without consent (2019)

Strangulation during sex is like playing Russian Roulette (the potentially lethal game of chance in which a player places a single round in a revolver, spins the cylinder, places the muzzle against the head or body, and pulls the trigger). Partners cannot legally consent to play Russian Roulette. If the loser of the game dies, the “winner” will be prosecuted for reckless or negligent homicide or manslaughter. Furthermore, the “rough sex” defense is being banned not only from US courts but also in the UK, Canada and Ireland where there is

<sup>31</sup> National Coalition for Sexual Freedom, *Is Erotic Choking Legal?, Explicit Prior Permission*, <https://ncsfreedom.org/2023/04/22/is-erotic-choking-legal/>; <https://ncsfreedom.org/2024/12/27/you-cant-consent-to-serious-injury-in-a-sexual-or-erotic-context/>.

<sup>32</sup> Strack G, Gwinn C, *The Domestic Violence Report*, Vol. 30, No. 2, 17-40 (2025).

harm, risk of death or death.<sup>33</sup>

The reply to Myth #2 is that people cannot consent to something that can cause serious bodily injury and/or kill them.

***Myth #3: Strangulation is enjoyed by all parties in consensual sex acts, and it increases pleasure and sexual satisfaction without any psychological, emotional, or physiological impacts***

Research reveals that strangulation is primarily an activity enjoyed by men who are the predominant stranglers in violent assaults and in so-called “consensual breath play” or “consensual choking.” In fact, many women are being choked during sex without their ever having given their consent.<sup>34</sup> Further, if women do consent, their consent is not based on their belief that they will derive their own sexual pleasure from the act, but rather because they think it is sexually arousing to their partner.

Men perpetuating the myth that strangulation is pleasurable and harmless are fueling their sexual desires with pornography. They have absorbed so many pornographic images of strangulation prior to doing it with a partner that they often need to engage in such acts to be sexually gratified.<sup>35</sup>

Perhaps even more troubling is that men are willing to risk brain injury and even death of their partner for the men’s own sexual gratification. Many women who have experienced strangulation during sex find it terrifying and deeply uncomfortable as they struggle with the inability to breathe. There is little doubt in our work that there are long-term psychological, emotional, and physiological impacts from the chronic power and control dynamic of men strangling their partners during sex. The most recent study by Dr. Debby Herbenick on physiological impacts of strangulation during sex found that structure of women’s brains are being impacted by strangulation during sex.<sup>36</sup>

The reply to Myth #3 is that strangulation risks the health and lives of women for the sexual gratification of men.

***Emerging Issue #3 – Suspicious Death Cases***

The third emerging issue we must highlight involves the murders of women after long histories of domestic violence in which the death is then staged to look like a suicide, accidental death, or drug overdose.

**The Libby Caswell and Stacy Feldman Paint the Picture:** We believe that the deaths of many women, after an identifiable history of domestic violence, are being ruled as suicides,

<sup>33</sup> Strack G, Gwinn C, *The Domestic Violence Report*, Vol. 30, No. 2, 17-40 (2025).

<sup>34</sup> Pugachevsky J, *Choking Without Consent is a GenZ hookup trend. Even if it Doesn’t Bother You, it can be Extremely Dangerous* (2022); <https://www.businessinsider.com/choking-gen-z-sex-hookups-consent-assault-2022-10>.

<sup>35</sup> Emmon, L, *Cosmo Offers Choking as a Sexy way to relieve Boredom of Quarantine* (2020), <https://thepostmillennial.com/cosmo-offers-choking-as-a-sexy-way-to-relieve-boredom-of-quarantine>.

<sup>36</sup> Hou, J, et al, *Structural Brain Morphology in Young Adult Women Who Have Been Choked/Strangled During Sex: A Whole-Brain Surface Morphometry Study*, *Brain and Behavior*, (2023), <https://pubmed.ncbi.nlm.nih.gov/37459254/>.

accidents, and overdoses when they are, in fact, murders. The cases of Libby Caswell and Stacy Feldman illustrate this emerging issue.

On December 11, 2017, Libby Caswell died at the Sports Stadium Inn in Independence, Missouri. Within hours of arriving at the scene, Independence Police ruled her death a suicide after finding Libby in the bathroom between the toilet and the bathtub fully clothed with her boyfriend's belt around her neck. Her boyfriend, Devon, who had fled the scene, later told police that he shot himself up with methamphetamines and then fell asleep while Libby went to take a shower. He said he woke up eight hours later to find Libby hanging from the door of the bathroom with his belt around her neck. He said he panicked and fled, turning off the bathroom light, closing the bathroom door, and fleeing to his father's house. Within hours, with no significant investigation, the Independence Police Department determined Libby's death to be a suicide.

One year after Libby's death, her mother, Cindy Caswell, reached out to our Training Institute on Strangulation Prevention team and asked for help. Cindy Caswell said that Libby was not suicidal and there was a long history of domestic violence, stalking, and strangulation involving Devon. At the time of her death, Libby was trying to get away from Devon.<sup>37</sup>

With no money and no ability to demand the case be re-opened, Cindy Caswell depended on the pro bono and donated assistance of our team at the Institute to help obtain and evaluate all the records of the case. The Alliance utilized Freedom of Information Act requests for the autopsy photos, crime scene photos, suspect and witness interview reports, and other evidence. We analyzed all available evidence, reconstructed the purported manner of death, and then shared our findings with more than 1,000 experts at various training courses that we host in Florida and across the country. Unanimously, they concluded that Libby Caswell was murdered by strangulation. For the last six years, and after hundreds of hours of donated time, the Alliance has continued advocating for Libby's case to be re-opened (to date, unsuccessfully).<sup>38</sup>

Sadly, Libby's case is not unique. Stacy Feldman died in 2015 in Denver, Colorado. The initial investigation and the Medical Examiner's report pointed toward a "fall in the bathtub" as the cause of her death. The Medical Examiner could not identify a manner of death and ruled it "Undetermined." But two years after her death, Denver homicide detective Randy Dennison reached out to our team at the Institute for help evaluating Stacy's death and we were able to successfully advocate for the case to be re-opened. We concluded that Stacy had likely been strangled and/or suffocated and then her husband, Robert Feldman,

<sup>37</sup> Plake S, *What Happened in Room 319? Family Questions Cause of Death of Young Mother* (2021);

<https://www.kshb.com/news/crime/what-happened-in-room-319-family-questions-cause-of-death-of-young-mother>.

<sup>38</sup> Plake S, *What Happened in Room 319? Calls Persist for New Investigation on Anniversary of Libby Caswell's Death* (2024); <https://www.kshb.com/news/local-news/investigations/what-happened-in-room-319-calls-persist-for-new-investigation-on-anniversary-of-libby-caswell-death>; JCPAO Press Release: Jackson County Prosecutor's Statement on 2017 Death of Libby Casewell; <https://www.jacksoncountyprecutor.com/CivicAlerts.aspx?AID=1482>.

had staged the scene to look like a fall in the bathtub. We were fortunate to work with a committed homicide detective and Denver prosecutor, Maggie Conboy, who were suspicious that Stacy's death was a murder but who lacked the training and expertise to properly analyze the evidence.<sup>39</sup>

Our collaboration led to the conviction of Robert Feldman for the murder of Stacy Feldman (after the case had been ruled as "undetermined" cause of death). In 2023, Stacy's murder was profiled on NBC's Dateline in a two-hour special called "The Sisterhood."<sup>40</sup> Since the national exposure of the case on Dateline, the Alliance has been approached by a host of families asking for help in cases where a loved one died, and when authorities concluded that the death was an accident or a suicide in the face of overwhelming evidence of a staged crime scene with a long history of intimate partner violence.

Libby Caswell and Stacy Feldman represent only two of what now appears to be hundreds of what we are calling "hidden homicides" across the country every year—cases where there is a history of domestic violence and then the victim is killed by strangulation or suffocation, but the killer stages the scene to look like a suicide, accident, or overdose.

**The Prevalence of Hidden Homicides Appears Troubling:** The prevalence of what we are calling "hidden homicides" may be substantial. In a groundbreaking study by Dr. Jane Monckton Smith (a forensic criminologist at the University of Gloucestershire who specializes in homicide, suicide, coercive control and stalking) in the United Kingdom (UK) in 2022, Dr. Smith estimated there are 100-130 hidden homicides per year in the UK (with a population of 38 million).<sup>41</sup> If Dr. Smith's UK estimate is accurate, we may have 800-1,200 hidden homicide cases each year in the United States with a population of 336 million people. After we first began talking about "hidden homicides" in 2017 in our strangulation trainings, we have NEVER conducted a training in a community where we have not had at least one participant describe a suspicious death case of a woman with an identifiable prior history of domestic violence.

These cases occur when a perpetrator of domestic violence kills his partner, often by strangulation or suffocation, and then "stages" the scene to look like a suicide, accident, or overdose, thereby avoiding accountability for murder. Crime scene staging research has found that most offenders who stage crime scenes are male, most victims are female, and the most common victim-offender relationship involving staging is intimate partner relationships.<sup>42</sup>

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<sup>39</sup> Sederstrom J, *Denver Man Kills Wife Same Day She Learns of His Tinder Affair, Claim He Found Her Dead in Shower* (2025); <https://www.oxygen.com/dateline-secrets-uncovered/crime-news/bob-feldman-killed-wife-stacy-feldman-after-his-affair>.

<sup>40</sup> Dateline NBC: *The Sisterhood* aired 9-30-22; <https://www.imdb.com/title/tt17507504/>.

<sup>41</sup> <https://www.theguardian.com/society/2024/mar/04/hidden-homicides-campaign-calls-for-review-of-cases-where-women-fell-from-height>

<sup>42</sup> Miller M, Merola M, Opanashuk L, Robins C Chancellor A, Craun S, "911 What's Your Emergency?:" *Deception in 911 Homicide and Suicide Staged as Homicide Calls*, *Homicide Studies*, 1-17, Sage Publication (2020).



National attention on this issue is sorely needed. While the staging of crime scenes long has been conducted by perpetrators, the recent rise in domestic violence homicides and the rise in staged crime scenes call for greater attention to this issue.<sup>43</sup> The number of cases of hidden homicides is not insignificant—we believe that hundreds of murders are being misidentified as suicides and/or accidents.

**Misidentification of Manner of Death is Common and Evaluating our Red Flags is Crucial:** How does misidentification happen? Seasoned investigators, medical examiners, and prosecutors can be misdirected by killers to erroneously find that highly suspicious cases were suicides, accidents, or undetermined cause of death cases. In fact, Vernon Geberth, one of the leading homicide investigators in the last fifty years in the United States has written about the major mistakes investigators make during a suicide investigation, including assuming a death is a suicide before an investigation.<sup>44</sup>

Victims can be strangled to death with no external visible injury on the body and then another explanation can be offered by the killer—fooling investigators and sometimes resulting in a decision to not do an internal examination of the body by autopsy at all. The failure of law enforcement professionals to thoroughly investigate death cases, particularly in marginalized communities, with victims lacking privilege or status, and often with victims of color, has been recently documented in the work around missing or murdered indigenous persons by the U.S. Department of Justice.<sup>45</sup>

What can be done to reduce misidentification of these cases? Based on our work, the Institute has identified ten evidence-based red flag factors<sup>46</sup> that point to a homicide rather than suicide or accident in intimate partner violence death cases:

- 1. *Victim dies prematurely;***
- 2. *It appears to be a suicide or accident scene;***
- 3. *One partner wanted to end the relationship;***
- 4. *There is a prior history of domestic violence in the relationship;***
- 5. *Victim found dead in home or place of residence;***
- 6. *Victim found by current or previous partner;***
- 7. *The prior history of domestic violence includes strangulation/suffocation;***
- 8. *Partner is the last to see the victim alive;***

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<sup>43</sup> When Men Murder Women: A Review of 25 Years of Female Homicide Victimization in the United States, Violence Policy Center (2023); <https://www.vpc.org/studies/wmmw2023.pdf>.

<sup>44</sup> Geberth V, Seven Mistakes in Suicide Investigations, Law & Order, Wilmette, Vol. 61, Issue 1, 54-47 (2013).

<sup>45</sup> Missing and Murdered Indigenous Women & Girls, A Snapshot of data from 71 Urban Cities in the United States, <https://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>.

<sup>46</sup> Ten Factors of a Suspicious Death in Intimate Partner Violence (2024); <https://www.allianceforhope.org/training-institute-on-strangulation-prevention/resources/ten-factors-of-a-suspicious-death-in-intimate-partner-violence-relationships>.

**9. Partner has control of the crime scene before the police arrive; and**  
**10. The crime scene altered in some way.**

We have also identified a lack of training on the part of investigators as a key challenge. Most death investigators do not have specialized training in domestic violence and do not work in a multi-disciplinary team (MDT).<sup>47</sup> The lack of training on domestic violence causes them to miss the history of domestic violence altogether or minimize its significance. Most forensic medical examiners have not been trained in the dynamics of domestic violence and often rely on the investigation by law enforcement to help determine the manner of death. Untrained investigators may be quick to call a case a suicide, based on initial appearances, and therefore never even investigate the history of the relationship by talking to family members, conducting a post-lethality risk assessment, or looking for prior suicidal ideation in the potential victim before her death. When the victim and the potential killer have a close relationship, staging is even more likely. If a killer takes the life of a total stranger, there is no need for staging because there is no suspect or person of interest. If a husband or boyfriend, kills his partner, everyone will suspect him—making staging much more likely. FBI expert Mark Safarik, in the California case of *People v. Jackson*, 221 Cal. App.4<sup>th</sup> 1222 (Cal. App. 2014), testified that “extensive staging is suggestive of someone who knows the victim.”

**Our Work on Hidden Homicides is Creating State Law:** Alliance for HOPE International is committed to raising awareness nationwide about hidden homicides. We have helped family members of murder victims to create a national advocacy group called Voices for Victims of Hidden Homicides.<sup>48</sup> The Alliance also recently created a formal program called “The Justice Project” to evaluate suspicious death cases brought to our attention by local law enforcement agencies or families where there is a history of domestic violence and then a death that appears at first glance to be a suicide or accidental death. We have also created a course called: “Hidden Homicides: The Challenges of Staged Crime Scenes” geared toward local, state, and federal investigators; medical professionals; advocates; and other forensic experts handling death cases across the country.

Finally, we authored state legislation to raise awareness. We proposed the first “Suspicious Death” bill in the country in January 2024. California Senate Bill (SB) 989 (presented by Senator Angelique Ashby) moved forward through the state legislature with unanimous, bi-partisan support, was approved by the Governor in September 2024, and signed into law in January 2025.<sup>49</sup> The goals of SB 989 are to raise awareness about suspicious death

<sup>47</sup> Adams P, *Staged Crime Scenes: Has Society Created a Problem for Law Enforcement? An Administrative Research paper submitted in partial fulfillment required for graduation from the Leadership Command College (2005)*. See <https://core.ac.uk/download/478604815.pdf>.

<sup>48</sup> *Voices for Victims of Hidden Homicides (VVHH)* was established in 2024 by the family members of lost loved ones who were clients of the Justice Project, a program of Alliance for HOPE International. See <https://www.allianceforhope.org/justice-project#:~:text=joanna's%20Law%20also%20includes%20The,an%20advocacy%20and%20support%20group>.

<sup>49</sup> SB989, Domestic Violence: Death (2023-2024). See [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?\\_bill\\_id=202320240SB989](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?_bill_id=202320240SB989).

cases and to challenge law enforcement to conduct comprehensive investigations where there is a prior history of domestic violence—before rushing to a premature conclusion about the cause and manner of death. The bill will codify our ten red flag factors into California law, identify the family member(s) of lost loved ones as having a right to records in closed cases, and as deserving of crime victim services during the pendency of the investigations of the deaths of their loved ones. We intend to see SB 989 become a model statute which other states will replicate across the country.

## **CONCLUSION**

Judges rarely get the opportunity to preview emerging issues before they become dominant in law and culture. But our research on pediatric strangulation, sexual choking, and suspicious death cases clearly shows these emerging issues will be finding their way into civil and criminal cases in the years ahead. These emerging issues also shed light on issues which judges will be evaluating —cases involving the strangulation of children, the consent defense in strangulation cases, and the sufficiency of evidence in re-opened cases after poor or inadequate investigations in the initial review of death cases.



## CHAPTER 10

Parenting and Family Law

## CHAPTER 10

### Parenting and Family Law

The Honorable Mary Evans, Unified Family Court Judge, Florida - Twentieth Judicial Circuit

*“He strangled me with our young children present. He said I was going to die.*

*We had been arguing prior to the incident. He said, “you better dig two graves with how fat you are.” He was cursing and screaming and name calling. He told my two older children (who are not his kids) to shut the f--- up multiple times. My 6-year-old was screaming at him to stop and hit his dad.*

*The Respondent said “touch me again and see what happens.”*

*SURVIVOR OF STRANGULATION*

The above is a direct quote from a Petition for Injunction for Protection Against Domestic Violence filed in Florida. Sadly, this type of allegation is not uncommon. Also not uncommon, is the petitioner dismissing her petition before or at the hearing on the matter, or moving to dismiss a Final Judgment of Injunction for Protection Against Domestic Violence<sup>1</sup> not long after it is entered; the latter is what happened in the case from which the above scenario was taken.

Florida family law judges often handle cases where domestic violence has occurred, or has been alleged, between the parents, although, frequently, there isn’t an injunction in place. Family law judges are bombarded with requests for hearings in cases involving complex family dynamics that can be impossible to repair in a courtroom, if at all. Judges presiding over family cases rarely are required to resolve anything for parties who are being reasonable and cooperative. On the contrary, the litigants who require judicial assistance often can’t even agree on whether the sun is shining or if it’s daytime. Parties will fight over everything, and the fighting intensifies when children’s issues must be broached. Add in allegations of domestic violence, and an already-difficult situation worsens, especially if the allegations are exaggerated, or worse, fabricated. The intent of this chapter is to address parenting issues where the worst of all domestic violence allegations is present—strangulation.

Before proceeding, distinctions should be made—again—between “choking” and “strangulation.”<sup>2</sup> Judges presiding over a family court docket or handled injunctions for protection cases have probably heard an allegation that one person choked another.

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<sup>1</sup> Moving forward, A Final Judgment of Injunction for Protection Against Domestic Violence will be referred to, simply, as an injunction for ease of reading.

<sup>2</sup> This is addressed elsewhere in this book in more detail.



Choking, however, is an incorrect term as it relates to domestic violence. Choking is what happens when you take a large bite of food and don't swallow it correctly, thereby causing your airway to become blocked. Strangulation refers to an event where external compression of the neck impedes blood flow through veins/arteries and/or airflow through the trachea.<sup>3</sup> Many litigants use the term strangulation interchangeably with choking, but it is important to continue stressing the distinction; one is self-imposed—she<sup>4</sup> took too big a bite of some food—while the other is an act committed against her. Choking is an accident. Strangulation is an act of violence; a tool used as a display of power and control and a means to convey a message that says, “I can end you.”

Depending on the severity and frequency of abuse—particularly when strangulation has been involved—the danger often persists even after a woman manages to escape. This ongoing risk makes co-parenting with an abuser especially challenging. Nevertheless, these are the circumstances in which many family law judges must operate while fulfilling the requirements of Chapter 61, Fla. Stat., which mandates the entry of a parenting plan. When parents cannot agree on their own plan, the case proceeds to trial, where a family judge hears the evidence and determines what arrangement serves the children's best interests. Judges rarely meet directly with the children, so their decisions rely heavily on the evidence presented in court, which is often incomplete. Parents frequently argue for outcomes they believe are fair to them, but fairness to the parents is not a consideration under the law. Instead, Chapter 61, Fla. Stat., governs dissolution proceedings and establishes the statutory factors judges must use when creating parenting plans. The definition of parenting plan, is found in § 61.046(14), Fla. Stat.:

“Parenting plan” means a document created to govern the relationship between the parents relating to decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child. The issues concerning the minor child may include, but are not limited to, the child's education, health care, and physical, social, and emotional well-being. In creating the plan, all circumstances between the parents, including their historic relationship, domestic violence, and other factors must be taken into consideration.<sup>5</sup>

“All circumstances between the parents...must be taken into consideration”—that's quite a charge for a judge. In the case of a dissolution proceeding, the judge may never learn what caused the parties' break up because Florida is a no-fault state. By far, the most commonly pled ground for dissolution is that the marriage is irretrievably broken; why or how it reached that state is often not delved into on direct or cross examination. In other words, “all circumstances between the parties, including their historic relationship” may not be

<sup>3</sup> Strangulation Benchcard. <https://www.flcourts.gov/Resources-Services/Office-of-Family-Courts/Family-Court-in-Florida/Domestic-Violence/DV-Training/Benchbooks-Court-Guides>.

<sup>4</sup> Note: Due to the fact that the majority of victims of strangulation are female, feminine pronouns are utilized throughout this guide. However, this does not mean that males are not sometimes victimized.

<sup>5</sup> Emphasis added.

addressed in testimony. Self-represented parties usually don't know anything about the timesharing factors, so they do not come prepared to give the court the evidence it needs. Attorneys don't always question their clients according to these factors either. Judicial philosophies differ as to whether or not a judge should ask questions during a proceeding; some may feel the need to take matters into their own hands if they are not being given enough information, while others take a more conservative approach. If no evidence is presented pursuant to the factors, the court's findings reflect as much. Neither approach is wrong. Interestingly, while the statute's definitions require the court to consider "all factors between the parties," the actual timesharing factors and the provisions on parental responsibility make no mention of the parties' dynamics.

So, what is in that chapter? Section 61.13(2)(c)2, Fla. Stat., provides:

The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child.

Shared Parental Responsibility is defined by § 61.046(17), Fla. Stat., as:

...a court-ordered relationship in which both parents retain full parental rights and responsibilities with respect to their child and in which both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly.

Florida public policy prefers parents sharing responsibility for their minor children. *Musgrave v. Musgrave*, 290 So.3d 536 (Fla. 2d DCA 2019). However, Shared Parental Responsibility does not require the parents to agree on timesharing with the children. In cases where domestic violence has been part of the relationship, true joint parental rights and responsibilities are impossible because the parents cannot safely confer or make decisions together on behalf of their children. In such a case, the parties most likely are not on equal footing, especially when one parent has been strangled by the other. Research, experience, and common sense indicate that a party who exercised power and control over the other during the relationship is unlikely to relinquish that dynamic simply because the court has entered a final order.

Issues of power and control—particularly with respect to children or finances—frequently arise in family court. Such concerns can be addressed through specific orders that place the parents on equal footing and minimize opportunities for manipulation or ambiguity. In those cases, the one party who was exerting power and control over the children, for example, can be admonished that failure to follow the court's order may result in a change in circumstances that could result in her/his timesharing being decreased. Conversely, in cases where one party has endured physical, emotional, or psychological abuse, an order admonishing the abuser to "play nice" is meaningless. No piece of paper can erase the trauma of being strangled or instantly restore trust and safety. Even if the victim feels a

measure of relief when the final judgment of dissolution is entered, she does not walk out of the courthouse to find puppy dogs and rainbows waiting for her.

The court is not powerless, however. Section 61.13(2)(c)2, Fla. Stat., goes on to state a court may choose *not* to award shared parental responsibility if evidence is received that shows shared parental responsibility would be detrimental to a child. The statute gives some guidance as to what that means:

In determining detriment to the child, the court shall consider:

- a. Evidence of domestic violence, as defined in s. 741.28;
- b. Whether either parent has or has had reasonable cause to believe that he or she or his or her minor child or children are or have been in imminent danger of becoming victims of an act of domestic violence as defined in s. 741.28 or sexual violence as defined in s. 784.046(1)(c) by the other parent against the parent or against the child or children whom the parents share in common regardless of whether a cause of action has been brought or is currently pending in the court;
- c. Whether either parent has or has had reasonable cause to believe that his or her minor child or children are or have been in imminent danger of becoming victims of an act of abuse, abandonment, or neglect, as those terms are defined in s. 39.01, by the other parent against the child or children whom the parents share in common regardless of whether a cause of action has been brought or is currently pending in the court; and
- d. Any other relevant factors.

§ 61.13(2)(c)2.a-d, Fla. Stat.

Section 741.28, Fla. Stat., defines domestic violence as: “any assault, aggravated assault, battery, aggravated battery...or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.”<sup>6</sup> Certainly, strangulation of one parent by the other meets any definition of battery, although it may, under the right circumstances, meet the definition of aggravated battery as well. Alas, the provisions regarding shared parental responsibility continue. According to § 61.13(2)(c)3, Fla. Stat., even where a party has been convicted of a misdemeanor, or higher, involving domestic violence (using the same definition as in § 741.28, Fla. Stat.) the presumption that shared parental responsibility is detrimental to the children is rebuttable.

Scenario #1:

*Called police to come to home because he needed to know how I was because I wouldn't contact him. He followed me and my children to a store, he was beating on the doors and trying to break the windows with a metal pipe. He was grabbing me and forcing me against a car and holding me hostage. The kids were in vehicle and he threatened to set*

<sup>6</sup> Injuries as a result of strangulation will be discussed in a different chapter.

*the car on fire with us in it. Called police, he tried running us into ditches and poles. He was gone. Later in the night I woke up to him choking me on top of me with his knee in my surgery scar. My daughter was in the bed, too. [sic]*

The wife in this case filed against the husband after he had been arrested for domestic violence battery, but continued to contact her from the jail, with total disregard for the No Contact Order that had been entered in the criminal case. The wife then sought and received a civil injunction, but that didn't deter the husband either; he was arrested for violating the injunction which landed him in jail without bond for having violated his conditions of pre-trial release. Next, the wife filed a petition for dissolution of marriage and requested sole parental responsibility. At trial, the wife bore the burden of proving that shared parental responsibility was detrimental to the parties' children; she attempted to do so by testifying to the facts alleged above and to the fact that he was arrested for it. Seems like a slam dunk, right? Not so fast. The husband is now burdened with rebutting the evidence that proves detriment to the children, which he attempted to do by presenting love letters the wife wrote him after he had been re-arrested for violating the no contact order and the domestic violence injunction. The husband pled for shared parental responsibility in his counterpetition which means the court has two options: 1) find the wife credible and further find that shared parental responsibility would be detrimental to the children because of the domestic violence committed by the husband, or, 2) find the wife credible but also find the husband rebutted the wife's evidence with more recent evidence of his own. This case is real, it is difficult, and it is a perfect example of how judges are called upon to make tough decisions. The wife was strangled – that testimony went un rebutted - and, several months later, she wrote love letters to the man who almost killed her. Interestingly, but, perhaps not surprisingly, the wife in the above scenario had also filed an earlier petition for injunction for protection in which she alleged the following:

*Respondent abused petitioner. I am writing this with 2 black eyes, a fractured ankle and numerous marks and bruises on my body. Respondent tackled me grabbing me and "detaining" me when I try to leave the situation. Was squeezing and throwing against vehicle. Grabbed me from behind so hard I couldn't breathe. Respondent squeezing me slams me into car handle on inside ceiling and hard surfaces. Respondent was trying to choke me with hands and lanyard on keys. Respondent swing keys hitting me everywhere. Respondent put me face into the hard surface inside passenger seat he sat on my back side. Respondent grabbed a fistful of my hair and hit my face into the surface multiple times. Respondent twisted me around threatening to kill me and the kids calling me names punches me with closed fists. Respondent tried to smash my phone...preventing me from calling 911. Respondent kept saying "I'll kill you b----, you're going to f---ing die if you report me. [sic]*

The wife filed this petition which resulted in the court issuing a temporary injunction. Fifteen days later she failed to appear at the hearing. Is this abandoned petition evidence of the wife not really being afraid of the husband? Or is it possible the wife is suffering from after-effects of being strangled, such as loss of memory, inability to concentrate, behavior changes, brain damage, and/or difficulty speaking? Perhaps the answer is something simpler, like, the husband pressured the wife into dropping the whole thing. Whatever the answer, the family judge assigned to this case must decide whether to award sole or shared parental responsibility after hearing all of that evidence.

Scenario #2 - the husband was convicted for battering the wife.

§ 61.13(2)(c)3, Fla. Stat., provides:

If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.<sup>7</sup>

Domestic violence itself, even without a criminal conviction, is evidence of detriment to the children and the court must consider it as such. Where a husband is *convicted* of domestic violence battery (for example), not only is the court required to begin with the presumption of detriment to the children, the court *must advise* the husband of the presumption and that the presumption is rebuttable.<sup>8</sup> The Fifth District Court of Appeals tackled this issue in *Matura v. Griffith*, 135 So.3d 377 (Fla. 5<sup>th</sup> DCA 2014), in which it commented on the trial court's failure to advise the father of the rebuttable presumption and of its (the trial court's) inability to award shared parental responsibility, including timesharing, if the presumption went un rebutted. The Fifth DCA said: "Because the trial court failed to consider this provision, its analysis appears to have been incorrectly skewed toward granting time-sharing instead of determining whether the father had overcome the presumption of detriment." [sic] *Matura*, supra, at 378, footnote 1. The First District Court of Appeals also commented on misdirected attention, this time by the appellant, in *Burke v. Watterson*, 713 So.2d 1094 (Fla. 1<sup>st</sup> DCA 1998). In *Burke*, the father had been convicted of homicide manslaughter of the mother. The trial court awarded custody of the parties' children to the maternal grandparents which resulted in the father appealing the order.

<sup>7</sup> *Emphasis added.*

<sup>8</sup> *This applies to whichever parent has been convicted, not just husbands.*



The First DCA said:

Burke fails to argue the other reason primarily advanced in the trial court's order for placing the children in their grandparents' care, which was that by virtue of the fact that appellant had been convicted of the homicide manslaughter of the children's natural mother, the rebuttable presumption of detriment to the children arose by operation of [the version of the same statute in effect in 1995]. The court found that "the loss of motherly love caused by Keith Burke is a continuing detriment to these children," and that Burke failed to rebut the presumption.

Note, however, the result arrived at in *Monacelli v. Gonzalez*, 883 So.2d 361 (Fla. 4<sup>th</sup> DCA 2004) in which the court found the husband had committed acts of domestic violence against the wife but awarded him primary residential parent. The Fourth DCA opined:

Because it provides that the presumption of detriment to the children may be rebutted, section 61.13(2)(b)2., contradicts the wife's claim that the husband's felony conviction is an automatic, absolute bar to an award of primary residential custody. The trial court's order supports the conclusion that the husband overcame the presumption of unfitness.

Thus, the presumption is rebuttable to the extent that the convicted parent may be awarded more timesharing than the other parent. If the presumption is not rebutted, the court's ability to award timesharing is limited. *Doyle v. Owens*, 881 So.2d 717 (Fla. 1st DCA 2004). Section 61.13(2)(c)3.a, Fla. Stat., precludes the trial court from awarding shared parental responsibility and timesharing to a parent who "has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in § 741.28 and chapter 775."<sup>9</sup> Battery by strangulation is a felony of the third degree pursuant to § 784.031(2), Fla. Stat. A court may choose to award sole parental responsibility to the victim (non-convicted) parent and permit timesharing with the convicted parent by making "such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm." If timesharing is awarded to the convicted parent after a presumption has not been rebutted, the court must make safety-focused arrangements for timesharing. Case law does not delineate what types of arrangements "best protect the child or abuse spouse from further harm" but some suggestions are:

- 1) order timesharing to occur at a third-party, professional visitation center (assuming the party can afford it),
- 2) limit the amount and duration of the contact,
- 3) limit contact to occur in public places,
- 4) order the convicted parent to have no contact with the victim parent,
- 5) prohibit electronic communication between the children and the convicted parent,

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<sup>9</sup> There are other disqualifying activities, but this book does not delve into those.

including via online video games!

6) revoke a parent's ability to access the child's school and medical records pursuant to Fla. Stat. § 61.13(2)(c)7, Fla. Stat.

The court is within its power to award sole parental responsibility without timesharing if appropriate.

If you are called on to decide parental responsibility and the facts of the case fall within § 61.13(2)(c), Fla. Stat., first, recognize you have great leeway in an initial proceeding. *Rosen v. Rosen*, 696 So.2d 697 (Fla. 1997). See also *Wade v. Hirschman*, 903 So.2d 928 (Fla. 2005). As long as your order or final judgment includes findings sufficient to support what you awarded (or didn't award), district courts of appeal likely will not disturb your ruling. Trial courts are the finders of fact and the determiners of credibility. "Great deference is afforded the finder of fact because it has the first-hand opportunity to see and hear the witnesses testify." *Ferry v. Abrams*, 679 So.2d 80 (Fla. 5<sup>th</sup> DCA 1996). See also *Martin v. Martin*, 43 So.3d 195 (Fla. 4<sup>th</sup> DCA 2010).

Second, if the court finds the wife (for example) credible that domestic violence occurred during the relationship, that can be said in the order, along with a finding of detriment pursuant to § 61.13(2)(c), Fla. Stat. The court can make the finding on the record orally, or it can be included as a written finding in the order or final judgment. *Grimaldi v. Grimaldi*, 721 So.2d 820 (Fla. 4<sup>th</sup> DCA 1998), *Coyne v. Coyne*, 895 So.2d 469 (Fla. 2<sup>d</sup> DCA 2005), *Griffin v. Griffin*, 665 So.2d 352 (Fla. 1<sup>st</sup> DCA 1995). (See also *Tucker v. Tucker*, 375 So.3d 323 (Fla. 5<sup>th</sup> DCA 2023) where the trial court's order was upheld although it did not mention the husband's domestic violence upon the wife. The Fifth DCA found there was evidence on the record supporting the trial court's ruling and that was enough in that case.) If there is no court reporter at the hearing and if the jurisdiction does not provide audio recording of family proceedings, the court should include findings of detriment in the written order. To be clear, the detriment is a finding as to the children's best interests. Matters of parental responsibility and timesharing are always "subject to the overriding concern of the children's best interests. *Puglisi v. Puglisi*, 135 So.3d 1146 (Fla. 5<sup>th</sup> DCA 2014). Whatever the ruling on parental responsibility, when domestic violence is a factor, the judge should be sure to talk about it. *Velazquez v. Millan*, 963 So.2d 852 (Fla. 3<sup>d</sup> DCA 2007). The court cannot say it considered the factors under §61.13, Fla. Stat., then fail to discuss parental responsibility and domestic violence. If the judge finds that the wife has met her burden of proving domestic violence occurred during the marriage, but the husband subsequently meets his burden of rebutting the presumption, be sure to explicitly state that finding. This is no time for brevity. Case law is replete with examples of trial judges being reversed for failing to include findings to support that which they ordered. *Wallace v. Wallace*, No. 4D2024-0441, 2025 WL 2055228 (Fla. 4<sup>th</sup> DCA 2025). *Smith v. Daniel*, 246 So.3d 1279 (Fla. 1<sup>st</sup> DCA 2018).

In some cases, the court may not be able to award anything but shared parental responsibility, depending on how the case is plead and/or depending on what the parties request at the final hearing. Recall the scenario earlier in this chapter where the wife was awarded a final injunction for protection against domestic violence which she moved the court to dissolve shortly after it was entered. She was strangled, among other despicable things that weren't shared herein, but she wanted the injunction dissolved so the parties could work on their relationship. If those parties were the parents in family court, a judge could find domestic violence had occurred by taking judicial notice of the final injunction or by listening to the mother's testimony and orally pronouncing that the husband was the perpetrator of domestic violence against the wife, and that shared parental responsibility, therefore, would be detrimental to the children's best interests. An order awarding sole parental responsibility to the wife with those findings clearly delineated would most likely survive appeal, assuming sole parental responsibility had been pled by the wife. But, what if both parties appeared at trial in the family action and only requested shared parental responsibility? If shared parental responsibility is the only form of parental responsibility they pled, surely and most-effectively they tied the judge's hands. *Alfonso v. Hierrezuelo*, No. 3D24-899, 2025 WL 2405995 (Fla. 3d DCA 2025).

This is one of those times where following the law can be a challenge: case law is rife with examples of trial courts being reversed because a particular award was not requested in the pleadings. However, any of us with even the slightest shred of education on the power and control dynamic of domestic violence knows that an award of shared parental responsibility in such a case as this would probably turn into a disaster. Why? Because when the honeymoon period wears off, he who previously held the power in the relationship most likely will reclaim that power and resume being violent toward the weaker party; in other words, we know history is prone to repeating itself.

If a parent has been convicted of a crime that meets criteria pursuant to § 741.28 or § 775, Fla. Stat., case law is unclear as to whether sole parental responsibility must have been plead before the court can order it. There is plenty of case law involving domestic violence and sole parental responsibility, but § 61.13(2)(c)3, Fla. Stat., clearly relates to parents who have been convicted of a crime of domestic violence. In reading the statute and strictly construing its words, it would appear the court is required to find shared parental responsibility would be detrimental to the children's best interests after finding one of the parties was convicted of a qualifying crime. The court would still have to follow the procedure of advising the convicted parent about the rebuttable presumption and thereafter of giving that parent the opportunity to rebut it. Where strangulation has occurred, a family law court could cite § 784.031, Fla. Stat., that battery by strangulation, at the very least, creates a risk of great bodily harm. In a criminal case, "[a]ll that needs to be proven, under the plain language of the statute, is that appellant's actions 'create a risk of... great bodily harm.'" *Dennis v. State*, 338 So.3d 279 (Fla. 4th DCA 2022). In a parental

responsibility setting, finding that strangulation occurred and the parent who committed the act did so without regard for the great bodily harm it created could be support for an award of sole parental responsibility, following either avenue discussed.

Once parental responsibility has been decided, the next statutory concern is timesharing. Section 61.13(3), Fla. Stat., provides twenty factors family law judges must consider when they are deciding how much, if any, timesharing is in the children's best interests. Two factors specifically address the issue regarding domestic violence. Section 61.13(3)(m), Fla. Stat., states:

Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect or evidence that a parent has or has had reasonable cause to believe that he or she or his or her minor child or children are in imminent danger of becoming victims of an act of domestic violence, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

Section 61.13(3)(n), Fla. Stat., states:

Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

The existence of factors that judges must consider does not make the task any easier. Judges should, however, remain mindful that parties who testify regarding domestic violence may not always do so accurately. Many, many victims testify they were choked, perhaps because they do not know to use the proper term—strangulation—or perhaps because they think strangulation is something more serious than what they experienced. Strangulation may not cause a loss of consciousness and there may be no external signs showing it occurred. In such a case, where there are no outward bruises or redness (which means there wasn't anything to photograph) a family judge is faced with deciding if the petitioner is credible based on her testimony and recollection of the event. To add insult to (possible) actual injury, strangulation victims often cannot recall the event accurately because of the loss of airflow and/or blood flow to the brain. Victims who lose consciousness might wake up not even realizing they were strangled; they might regain consciousness and find they had soiled themselves but can't understand how it happened. Days or weeks may go by before a strangulation victim is able to piece together what happened and she may be too embarrassed to testify to it in family court. The factors as to domestic violence are not the only ones where strangulation might be mentioned, however.

Section 61.13(3)(b), Fla. Stat., requires the court to consider the "anticipated division of parental responsibilities after the litigation, including the extent to which parental

responsibilities will be delegated to third parties.” Many factors go into the division of parental responsibilities: if the children are in school or daycare, each party’s work schedule, children’s extracurricular activities, children’s medical needs, etc. A court may want to mention that the strangulation of one parent by the other negatively affected how the parties will divide these responsibilities after the litigation ends. Perhaps the mother will testify she does not object to the father having timesharing but she does not want to exchange the children with him directly—this could require the assistance of a third-party. A wife who has been strangled by the husband might testify she does not want him to have access to the children’s medical and educational records which a court can revoke pursuant to § 61.13(2)(c)7, Fla. Stat. Section 61.13(3)(c), Fla. Stat., requires the court to consider “the demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.” If the children witnessed their mother being strangled (as is often the case) the court could find the father acted upon his own needs in expressing his anger (or power and control) through strangling the mother and in doing so without regard for the location of the children. Section 61.13(3)(d), Fla. Stat., requires the court to consider “the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.”

If the children have been living in a household marked by domestic violence, the court could talk about strangulation in the home being the exact opposite of a stable, satisfactory environment. Section 61.13(3)(f), Fla. Stat., requires the court to consider the moral fitness of the parents. This factor is always a tricky one in dissolution proceedings because Florida is a no fault state. This factor is tricky in a paternity case because the children were born out of wedlock so, morally speaking, neither parent can point the finger at the other. As a result, courts don’t often rely on this factor for anything substantive. Perhaps, however, this factor is an opportunity for the court to find that a husband having strangled the wife shows a lack of moral fitness on his part. Section 61.13(t), Fla. Stat., is a catch-all factor that allows the court to consider “any other factor that is relevant” to a parenting plan and timesharing schedule. If you feel you didn’t make enough findings under section § 61.13(m) or § 61.13(n) you have § 61.13(t) to fall back on.

The last statutory consideration, following the statutes in order, is a petition for injunction for protection. In order to have standing to file a Petition for Injunction for Protection Against Domestic Violence, the parties must be related somehow. § 741.28(3), Fla. Stat., provides: “Family or household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.” Once a petitioner alleges



her relationship to the respondent under one of the above criteria, she then must plead (and later prove) that one act of domestic violence occurred or that she has reasonable cause to believe she is in imminent danger of becoming the victim of any act of domestic violence. Section 741.28(2), Fla. Stat., defines domestic violence as: “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.” District Courts of Appeal differ on the definition of “imminent danger” and, as opined in *Dickson v. Curtis*, 338 so.3d 1001 (Fla. 3d DCA 2022), there is no bright line rule as to what is too remote in time. There are five types of injunction for protection, four of which might involve allegations of strangulation: domestic violence, repeat violence, dating violence, and sexual violence.

A petitioner seeking an injunction for protection against repeat violence must allege two acts of violence and one of those acts must have occurred within the past six months. A petitioner seeking an injunction for protection against dating violence must allege the parties were in an intimate relationship (casually dating isn’t enough) and she must allege one act of violence along with a reasonable fear of becoming the victim of another act of violence in the future. A petitioner seeking an injunction for protection against sexual violence must allege an act of violence as defined by § 784.046(1)(c), Fla. Stat.:

1. Sexual battery, as defined in chapter 794;
2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age;
3. Luring or enticing a child, as described in chapter 787;
4. Sexual performance by a child, as described in chapter 827; or
5. Any other forcible felony wherein a sexual act is committed or attempted.

Strangulation may be a facet of a sexual battery, but one of the five acts defined above must be present in the allegations for a petition for injunction for protection against sexual battery to go forward.

If a temporary injunction is entered, a hearing must be held within fifteen days, pursuant to § 741.30(5)(c), Fla. Stat. If the petition alleges an act of violence that is not recent, the court can set a hearing that must occur at the earliest possible time, which is not capped at fifteen days. Section 741.30, Fla. Stat., is misleading in that it appears to require a hearing to be set every time a petition is filed; this is incorrect. Section 741.30(5)(b), Fla. Stat., provides: “A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial.” The statute goes on to say: “When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time.”

If strangulation is alleged, even if it wasn't recent, a best practice is to set a hearing to assess the likelihood of imminent danger to the petitioner.

Once all of the initial procedural hurdles have been satisfied, the court possesses broad discretion at the hearing on the petition. Once again, the court is the finder of fact and the determiner of credibility. If the court finds the petitioner credible, a final judgment of injunction for protection may be entered. In the case of a domestic violence injunction where children are involved, if the parties are the parents of the children (which isn't always the case), the court can permit timesharing if it finds that to be in the children's best interests. If the children witnessed the domestic violence that occurred, or if the allegations are particularly serious, such as in a strangulation case, the court can include the children on the injunction and deny timesharing to the respondent altogether. However, the entry of a final judgment of injunction for protection against domestic violence may turn out to be temporary as it pertains to a later timesharing schedule being entered because the Final Judgment of Injunction for Protection Against Domestic Violence provides for proceedings in family or dependency court to override its provisions.

#### **SECTION V. DIRECTIONS TO LAW ENFORCEMENT OFFICER IN ENFORCING THIS JUNCTION**

(Unless ordered otherwise by the judge, all provisions in this junction are considered mandatory provisions and should be interpreted as part of this junction.)

**1. This injunction is valid in all counties in the state of Florida.** Violation of this injunction should be reported to the appropriate law enforcement agency. Law enforcement officers of the jurisdiction in which a violation of this injunction occurs shall enforce the provisions of this injunction and are authorized to arrest without warrant pursuant to section 901.15, Florida Statutes, for any violation of its provisions, except those regarding child support and/or alimony, which constitutes a criminal act under section 741.31, Florida Statutes. ***When inconsistent with this order, any subsequent court order issued under Chapter 61 or Chapter 39, Florida Statutes, shall take precedence over this order on all matters relating to property division, alimony, parental responsibility, parenting plan, time-sharing, child custody, or child support.***<sup>10</sup>

The court should not be deterred from entering a final judgment because of this provision, however, because all final judgments are modifiable, or may be dissolved, upon proper motion and a hearing on the matter. Even if the parties are headed to family court immediately, the final judgment may give them a much-needed cooling off period. Alternatively, the court can enter a final judgment but allow for telephonic or electronic contact between the parties and/or between the children and the respondent if it finds that is in the children's best interests.

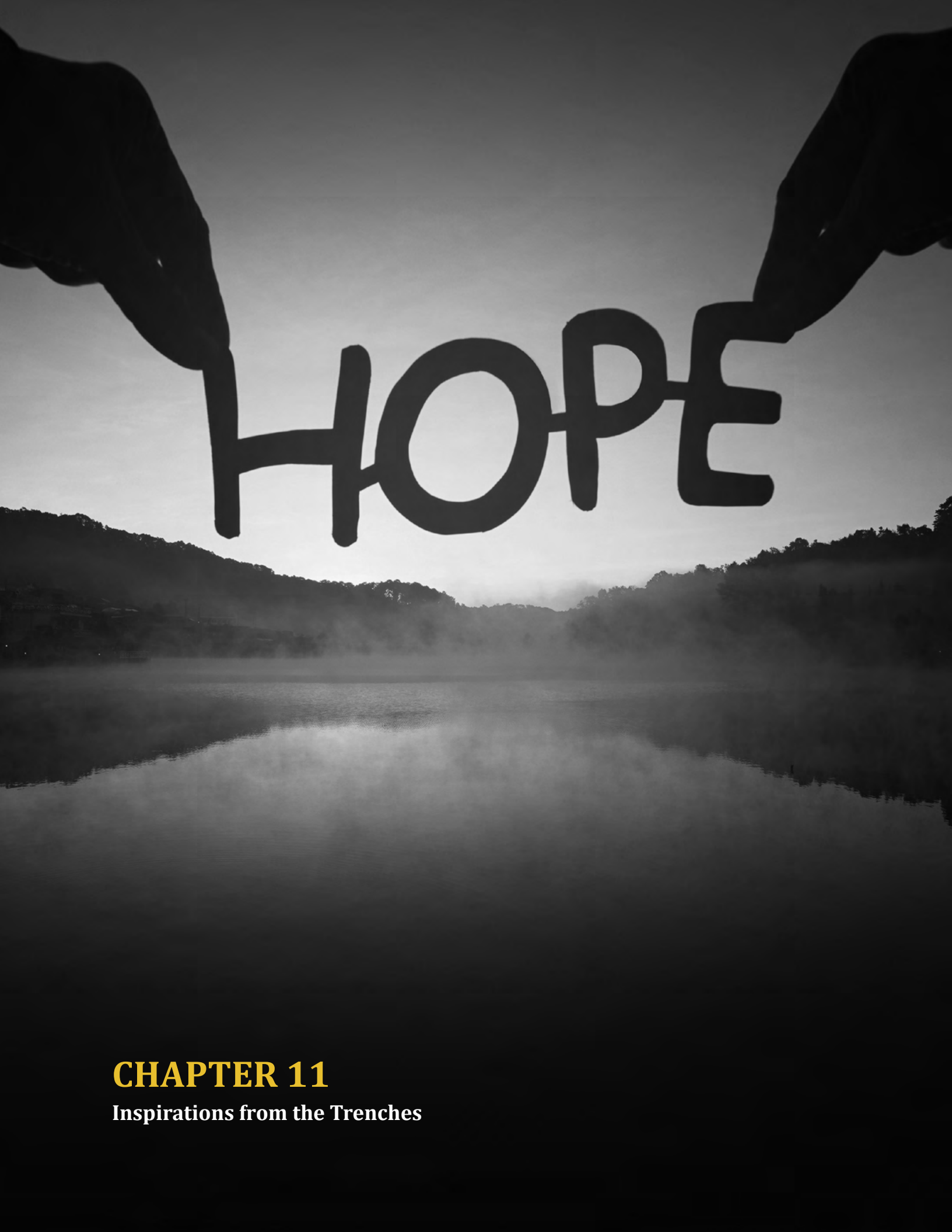
This chapter has been an overview of things to consider by family law judges when

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<sup>10</sup> Section V, Florida Supreme Court Approved Family Law Form 12.980(d)(1), Final Judgment of Injunction for Protection Against Domestic Violence with Minor Children (After Notice)(06/21).

domestic violence by strangulation is a factor in a family's history. Judges with even the most basic training in domestic violence are aware that strangulation is a lethality factor; a bright red flag, flying high and warning "danger!" The intent of this chapter was to evoke thoughtfulness about how strangulation can affect parenting. Married parents take vows to love, honor, and cherish one another, but when domestic violence emerges, there may be no greater betrayal than strangulation. In a paternity case, where no vows were exchanged, the introduction of domestic violence similarly transforms a once-healthy relationship into one marked by profound disloyalty. Even in relationships that were toxic from the outset, strangulation represents the ultimate act of corruption. Amidst that chaos, family law judges face the difficult and unenviable task of sorting through the wreckage and salvaging what they can of a broken family. When strangulation has occurred, keeping the family broken but keeping the children safe may be the best a family law judge can do.





## **CHAPTER 11**

Inspirations from the Trenches



## **CHAPTER 11**

### **Inspirations from the Trenches**

*“The great thing in the world is not so much where we stand,  
as in what direction we are moving...”*

OLIVER WENDELL HOLMES SR.

#### **INTRODUCTION**

This chapter highlights a few promising and evidence-based practices in Florida and across the United States in the handling of non-fatal strangulation cases. It is impossible to profile every innovative initiative around strangulation case intervention. But a few examples from the trenches of our work around the country can inspire new initiatives in Florida. In every example we share in this chapter, courts have played an important partnership or leadership role.

There are few crimes undergoing as much research and analysis as strangulation and suffocation assault. The level of understanding of the seriousness of strangulation is growing exponentially; innovative ways to document and investigate these crimes are rapidly evolving. We are seeing more training for all professionals than we have ever seen in addressing these crimes. We are seeing investigative advances including specialized reporting forms, a growing body of medical research, bench cards for judges, county-wide strangulation protocols, specialized courts focusing on high-risk cases like strangulation assaults, evidence-based practices in examining and documenting signs and symptoms in victims, risk assessment and safety planning policies, and wraparound intervention approaches such as Family Justice Centers expanding quickly. Identifying and applying best practices leads to more effective interventions, greater safety for victims, reduced harm to families and communities, and a more just and accountable court systems.

#### **Florida Courts and Communities Are Leading the Way**

Florida courts have been at the forefront of this evolution with a focus on:

1. Specialized Domestic Violence Courts
2. Florida’s Trauma-Informed Courts
3. Florida courts were the first to provide online training for Judges on non-fatal strangulation.

4. **Florida Judges Bench Card:** Florida was one of the first states to publish a bench card for judges on non-fatal strangulation. The Florida Bench Card is also one of the most comprehensive bench cards with 18 important factors judges should consider when handling a strangulation case from bail to victim restitution. Minnesota included “7 Things Judges need to know about Strangulation” and Virginia included “Family Court Judicial Checklist - Non-Fatal Strangulation Cases.” *See Appendix 1: Florida Bench Card.*

Brevard County’s Strangulation Protocol Points the Way Forward: Brevard County’s Strangulation Prevention Project was launched by the Brevard County Sheriff’s Office in 2014 to develop a plan to evaluate inadequacies in the agency’s response to nonfatal strangulation occurring in domestic violence situations. The project included local stakeholders from the Sheriff’s Office, State Attorney’s Office, Health Department, Sexual Assault Victim Services and Domestic Violence Shelters along with researchers from the University of Central Florida and the Training Institute on Strangulation Prevention. After almost 10 years of earnest effort, researchers found their efforts were effective and highlighted the importance of comprehensive law enforcement training and detailed medical evidence in facilitating evidence-based prosecution.<sup>1</sup>

**The University of Central Florida is a Powerful Research Resource:** The University of Central Florida has produced eight articles on non-fatal strangulation demonstrating an expertise around non-fatal strangulation and is a resource to local professionals across the state. The eight articles include:

- A literature review on non-fatal strangulation.<sup>2</sup>
- An examination of domestic violence records and the role of 911 dispatchers.<sup>3</sup>
- A review of data from a local pilot project with Brevard County Sheriff’s Office to determine the occurrence of known and/or suspected strangulation assaults.<sup>4</sup>
- An evaluation of a coordinated effort to improve a local law enforcement’s response to nonfatal strangulation, “Brevard County’s Strangulation Prevention Project.”<sup>5</sup>
- A three-year examination of prosecutor filings, charging decisions, and adjudication decisions of non-fatal strangulation cases submitted for prosecution.<sup>6</sup>

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<sup>1</sup> Reckdenwald A, Szalewski A, Mandes C, Peebles C, *Factors Associated with Legal Decisions on Nonfatal Strangulation Cases with Forensic Evidence*, *Criminal Justice Policy Review*, Vol. 35(5-6) 273-294 (2024).

<sup>2</sup> Pritchard A, Reckdenwald A, Nordham C, *Nonfatal Strangulation as Part of Domestic Violence: A Review of Research, Trauma, Violence & Abuse*, Vol. 18(4) 47-423 (2017).

<sup>3</sup> Reckdenwald A, Nordham C, Pritchard A, Francis B, *Identification of Nonfatal Strangulation by 911 Dispatchers: Suggestions for Advances Toward Evidence-Based Prosecution, Violence and Victims*, Vol. 32 (2017).

<sup>4</sup> Pritchard A, Reckdenwald A, Nordham C, Holton J, *Feminist Criminology*, Vol. 13(2) 160-181 (2018).

<sup>5</sup> Reckdenwald A, Fernandez K, Mandes C, *Improving Law Enforcement’s Response to Non-fatal Strangulation, Policing: An International Journal*, Vol. 42(6) 1007-1021 (2019).

<sup>6</sup> Reckdenwald A, King D, Pritchard A, *Violence and Victims*, Vol. 35(2) (2020).

- An evaluation of the Brevard County's Strangulation Prevention Project with a focus on the impact of training and specialized forensic medical examinations on facilitating evidence-based prosecution of nonfatal strangulation cases.<sup>7</sup>
- An examination of forensic documentation of non-fatal strangulation cases.<sup>8</sup>
- An examination of the influence of offender, victim and case characteristics along with available forensic evidence on legal outcomes on non-fatal strangulation cases.<sup>9</sup>

**The San Diego County's Strangulation Protocol is The Gold Standard:** The City of San Diego has been doing groundbreaking work around strangulation and suffocation cases since the mid-1990's. The County Strangulation Protocol was launched by the San Diego District Attorney's Office in 2017. It was an effort to institutionalize the practices already in place in the City of San Diego throughout the entire county. The protocol included a multi-disciplinary team of stake holders from 911 dispatchers, paramedics, patrol, detectives, prosecutors and medical professions. The protocol included the use of specialized forms and training and the use of forensic medical exams for the strangled victim/patient. The results included increased felony prosecutions by 65% and a dramatic reduction of domestic violence homicides county-wide.<sup>10</sup> The San Diego Strangulation Protocol was inspired by the work of Maricopa County, Arizona which launched their strangulation protocol in 2014. Collectively, Arizona, Florida, and California have inspired other communities to also create various models of county-wide protocols, such as Napa, California; Sacramento, California; Salt Lake City, Utah and Missoula, Montana just to name a few.

Judges can play a role in calling for comprehensive protocols across the state of Florida that include the items addressed in Brevard County and the issues included in the San Diego County Protocol. There is clearly an opportunity to also include the role of the courts in evaluating and handling strangulation and suffocation cases in the civil and criminal context. Judges should also be calling for a statewide focus on developing multi-disciplinary teams to address strangulation assaults.

**The New Jersey Attorney General's Statewide Initiative is replicable in Florida:** This Initiative was established in 2023 by the Attorney General's Office, Directive 2023-03. The Directive established multi-disciplinary "BREATHE" teams through the state of New Jersey. Breathe Teams includes law enforcement, forensic nurses and victim advocates to respond to strangulation assaults that have occurred within the past five days or where

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7      Reckdenwald A, Mandes C, Fernandez K, *The Effectiveness of a Coordinated Response Toward Nonfatal Strangulation in Facilitating Evidence-Based Prosecution*, Criminal Justice Policy Review, Vol. 32(8) 816-840 (2020).

8      Reckdenwald A, Powell K, Martins T, *Forensic Documentation of Non-Fatal Strangulation*, J Forensic Sci. (2022).

9      Reckdenwald A, et. al, *supra*, note 1.

10     <https://www.sandiegouniontribune.com/2016/09/15/focusing-on-strangulation-a-deadly-form-of-domestic-violence/?clearUserState=true>; See <https://www.strangulationtraininginstitute.com/wp-content/uploads/2015/07/2017-Countywide-Strangulation-Protocol-all-documentsSM.pdf>; <https://www.allianceforhope.org/training-institute-on-strangulation-prevention/resources/how-to-implement-a-strangulation-protocol-in-less-than-six-months>; <https://www.sandiegouniontribune.com/2018/10/03/domestic-violence-homicides-fall-measures-addressing-strangulation-given-partial-credit/>.

the victim exhibits visible signs of injury. In fiscal year 2024, Governor Murphy's budget included \$4.2 million for the BREATHE Project.<sup>11</sup> The BREATHE Project is preparing more comprehensive presentations of the evidence for judges and juries than exists in most jurisdictions in the country.

**The High Risk Court Model in Ohio (Stranglers/firearms) is Replicable in Florida:**

Under the leadership of Administrative and Presiding Judges John Russo and Brendan Sheehan, in collaboration with Judge Sherrie Miday, the Cuyahoga County Common Pleas Court identified a unique opportunity to improve the criminal justice system's response to felony-level cases of intimate-partner violence in Cuyahoga County. Planning for this new specialty docket began in 2019 with the Cuyahoga County Prosecutor's office, Office of the Public Defender, Adult Probation Department, Bond Commissioner, Witness Victim Service Center, the Cuyahoga Family Justice Center, the Sheriff's Department, Cleveland Municipal Court, the Journey Center for Safety and Healing, Legal Aid Society of Greater Cleveland and the Cuyahoga Criminal Defense Lawyers Association.

Within a year, the docket began accepting cases. Eligibility criteria include intimate partner domestic violence cases that have an allegation of the use of a firearm and/or strangulation. Evidence-based practices in supervision are utilized to reduce risk of recidivism, and the team continuously monitors and strategizes to reduce risk of violence on an ongoing basis. Resources are made available to target the individual behavioral needs of defendants and provide interventions to prevent future violence. The victim advocates reach out to victims early in the case process and maintain communication throughout the duration of the case. Victims receive information throughout the case, and resources are made available to them to support their safety.<sup>12</sup>

This Docket was funded by a three-year, \$1 million grant from the Bureau of Justice Assistance, Innovations in Supervision program, and awarded to the Cuyahoga County Common Pleas Court for the creation of the High-Risk Domestic Violence Court docket to handle 50 cases per year, or 150 cases over the life of the grant. Case Western Reserve University is currently assessing the effectiveness of the High-Risk Domestic Violence Court. It is anticipated that the report will show encouraging long-term outcomes with lower recidivism and reduced likelihood of a future homicide.

**High Risk Teams Approaches Can Be Developed in Florida:** With Family Justice Centers now developing across Florida, there is a tremendous opportunity for the courts to participate in a high-risk team framework in cases such as strangulation, suffocation, and stalking (often where offenders also have access to firearms) that are predictors of future homicides. In 2021, the Guilford County (North Carolina) Family Justice Center launched its multi-disciplinary

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<sup>11</sup> [https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2023-03\\_Directive-Establishing-BREATHE-Team.pdf](https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2023-03_Directive-Establishing-BREATHE-Team.pdf)

<sup>12</sup> <https://cp.cuyahogacounty.gov/court-resources/specialty-courtsprograms/high-risk-domestic-violence-court/>

High-Risk Team after realizing approximately 23% of their clients were at high risk of lethality using the validated Danger Assessment 5. The High-Risk Team includes partners from the Guilford County Family Justice Center and the Greensboro Police Department, Family Victims Unit. Cases are referred to the High Risk Team based on 13 high risk factors with Strangulation being No. 1, followed by:

- serious injury,
- recent assault (72 hours),
- medical treatment,
- pending charges against the defendant,
- warrants involved, weapons involved,
- violations of protection orders,
- history of domestic violence,
- children injured,
- children present,
- severity of defendant's threats,
  - including threats to kill self or the victim,
  - and/or significant mental health issues.

Once a case is referred to the High-Risk Team, an 8-step review process is conducted to evaluate the case and develop a strategy. Members of the High-Risk Team attend bail and court hearings to ensure the court has the most accurate and current information and the victim feels safer and supported. Results have included higher bonds, pre-trial monitoring and increased accountability for the defendant. The high-risk victim receives priority access to resources, shelter access, support at all hearings and civil legal services.

The Guilford County Family Justice Center has dramatically reduced homicides with a combination of High-Risk Team framework and the Family Justice Center, providing wraparound services to victims and their children. The national research confirms that Family Justice Centers are an evidence-based practice that increases safety, hope, and healing for trauma survivors.<sup>13</sup>

**Gun Confiscation Programs in Florida Can Save Lives:** In 2018, the Office on Family Safety (OFS) and the Nashville Family Safety Center in Nashville, Tennessee developed a domestic violence firearms dispossession protocol to increase firearms identification and investigation and encourage consistent court dispossession procedures. Today, the protocol includes bench cards for judges, a firearms pocket card for police, a firearms identification form for domestic violence victims and survivors seeking to dispossess their abuser of their weapons. Additionally, OFS flags every criminal domestic violence case and civil Order of Protection (OP) for potential firearms possession by the offender. In 2024, OFS reviewed 13,818 individuals for evidence of firearms, and 44% of all cases had positive indications of potential firearms possession.

OFS also notifies the court, police, and prosecutors when domestic violence defendants and/or OP respondents appear to be non-compliant with the court-ordered dispossession.

<sup>13</sup> Family Justice Center Framework Impact Report: Published Findings and Outcomes (2025). See <https://www.allianceforhope.org/resources/family-justice-center-framework-impact-report-updated>.



This led to one of Nashville's courts establishing regular compliance hearings and another court agreeing to conduct these hearings as necessary. Most recently, Nashville-Davidson County's Metro Council also unanimously passed a resolution urging the Metro Nashville Police Department and/or the District Attorney's Office to hire a firearms dispossession investigator position. Early research outcomes shows homicides are much less likely if guns are taken away from high-risk offenders.

**In Oklahoma City, Oklahoma,** Operation 922 is a strategy to reduce gun violence by targeting domestic violence cases. It was launched in 2018 in partnership with the U.S. Attorney's Office, Western District, ATF, the Palomar Family Justice Center, the U.S. Marshal's, and the Oklahoma City Police Department. Operation 922 is based on the Federal Code, 18 U.S.C. Section 922.<sup>14</sup> Specifically, it focuses on individuals who are repeat domestic abusers and/or particularly violent who are found to violate federal firearms laws. This strategy fills a void in state law and holds the abuser accountable without forcing the abuse victim to testify regarding the abuse. Operation 922 uses the power of federal prosecution to quickly remove abusers from the home and protect victims and their children. Since its inception, 310 defendants have been charged and 284 have pled guilty or been convicted. 33% were known gang members. 442 firearms and 11,173 rounds of ammunition have been seized. As stated by U.S. Attorney Robert Troester, "You cannot have safe neighborhoods without first having safe homes."<sup>15</sup>

**In San Diego, California,** the San Diego City Attorney's Office launched "The Gun Violence Response Unit" (Unit) to reduce the threat of firearm-related domestic violence in 2018.<sup>16</sup> To date, this Unit has intervened in over 3,500 dangerous situations, with more than one-third directly related to domestic or family violence. These proactive measures have addressed a critical public safety challenge: the presence of a firearm in domestic violence situations, which increases the risk of homicide by 500% to 1100%. By disarming individuals who pose a threat, especially during high-risk periods, such as the 90 days following separation, the Unit mitigates the elevated risk of homicide victims face during this time. Through innovative strategies and relentless dedication, the Unit built trust and streamlined processes with the San Diego Police Department and other local law enforcement agencies to ensure effective and timely intervention when guns pose a threat. By utilizing creative outreach and education initiatives, the team raised awareness of Gun Violence Response Orders and trained hundreds of law enforcement agencies across the nation, establishing San Diego's program as a national model. The San Diego Superior Court and the San Diego Family Justice Center have been important partners in this initiative.

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<sup>14</sup> See <https://www.justice.gov/archives/opa/pr/presidential-commission-law-enforcement-and-administration-justice-releases-final-report>.

<sup>15</sup> See <https://www.justice.gov/usao-wdok/pr/western-district-oklahomas-operation-922-domestic-violence-initiative-remains-powerful>.

<sup>16</sup> See <https://www.justice.gov/usao-wdok/pr/western-district-oklahomas-operation-922-domestic-violence-initiative-remains-powerful>.

**The Family Justice Center Framework and Similar Types of Collaboration Save Lives:**

Judges cannot solve complex social and public health issues alone. Problem solving courts across the country have already demonstrated the power of judicial partnerships.<sup>17</sup> But there is overwhelming published research now on the Family Justice Center framework, which brings together public and non-profit agencies under one roof to create a community of safety, support, hope, and healing for survivors of domestic violence, sexual assault, child abuse, elder abuse, and human trafficking.<sup>18</sup> Florida communities are just beginning to create Family Justice Centers with the newest Center in Pinellas County and now Centers in planning in counties as diverse as Marion and Orange.

Judges and court administrative leaders play a role in Family Justice Centers across the country including coordinating electronic filing, remote appearances for victims from Family Justice Centers, and having advocates in their courtrooms to support survivors. Survivors always say court is the scariest place they ever go for help and the Family Justice Center framework can reduce that fear and terror. Family Justice Centers provide court accompaniment, advocates to be with victims in the courtroom, support dogs in child abuse and domestic violence cases, and a place where victims can respond to a subpoena and wait until they must go to court to testify.

The most innovative court collaboration in the country is in Nashville, Tennessee where the Davidson County courts have partnered with the Nashville Family Safety Center to host the Jeanne Crow Advocacy Center in the courthouse. It is the ultimate trauma-informed court process where the Advocacy Center is in the courthouse.<sup>19</sup> When domestic violence/strangulation survivors come to court they don't have to wait in the hallway with their abuser or in the courtroom where even a look from the abuser can terrify them. When they seek a protection order, they don't go to the clerk's office. They go to the Advocacy Center. If they need support from other survivors going through the court process, they go to the Advocacy Center. If they need a protection order served, they go to the Advocacy Center. When coming to court to testify, they check into the beautiful area with free childcare, snacks, and advocates and wait there until they are escorted to a courtroom when their case is ready to be heard. The Jeanne Crow Advocacy Center serves victims in criminal and family court with a trauma-informed, supportive, safe place for victims to access justice. We advocate for similar approaches in courthouses across America.

The Family Justice Center framework often co-locates process servers from a local Sheriff's Department or law enforcement agency. By co-locating those serving protection orders, much better intelligence is available to all partner agencies and the victims. The Family Justice Center often has remote courtrooms onsite so survivors can have their children in childcare at the Center while they are down the hall appearing on video before the judge.

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<sup>17</sup> See <https://judicature.duke.edu/articles/problem-solving-courts-innovative-solutions/>.

<sup>18</sup> *Ibid*, at Footnote 13.

<sup>19</sup> See <https://ofs.nashville.gov/jean-crowe-advocacy-center/>.

This allows limited representation lawyers within Centers to handle more cases than having to go to court separately with each domestic violence/strangulation assault victim.

The published outcomes on Family Justice Centers should compel every judge in America to advocate for the creation of a dynamic Center, including judges across the state of Florida. Family Justice Centers reduce homicides.<sup>20</sup> Family Justice Centers increase access to justice.<sup>21</sup> Family Justice Centers increase hope and resiliency in adult and child survivors of trauma, violence, and abuse.<sup>22</sup>

## CONCLUSION

Supreme Court Justice Louis Brandeis said, “Most of the things worth doing in the world had been declared impossible before they were done.”<sup>23</sup> This Strangulation Guide is intended to inspire courage, vision, and change. Florida has led in some ways in the work to address strangulation and suffocation and has fallen woefully behind in other ways. Judges and courtrooms are the place where the law keeps its promise—Equal protection under the law. Men who strangle women are the most dangerous men on the planet. Women being strangled by men are the most likely victims of domestic violence to be murdered by their abusive partners. Change, at times, seems impossible. But then it happens after gentle, relentless pressure. It happens after a judge imagines something is possible that has never been done. The judges and court personnel in Florida have an opportunity to save lives and make a difference in the lives of adults and children impacted by trauma for generations to come. May this manual be the inspiration for those changes.

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<sup>20</sup> *Ibid*, at Footnote 13.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> <https://www.goodreads.com/quotes/257692-most-of-the-things-worth-doing-in-the-world-had>.





1. **FLORIDA BENCH CARD**      What Florida Judges Need to Know About Strangulation
2. **FAMILY COURT JUDICIAL CHECKLIST - VIRGINIA**      For motions to dissolve protective orders
3. **STRANGULATION INFOGRAPHIC**      Facts to know about strangulation in intimate partner violence
4. **FIVE MYTHS ABOUT STRANGULATION**      Misconceptions about strangulation, the truth, and solutions
5. **POWER AND CONTROL WHEEL**      A useful tool for examining domestic violence and power dynamics
6. **SIGNS AND SYMPTOMS OF STRANGULATION**      Visual aids to identify signs and symptoms in adults, in two skin tones
7. **PEDIATRIC SIGNS AND SYMPTOMS OF STRANGULATION**      Visual aid to identify signs and symptoms in children
8. **VITAL FACTS FOR VICTIMS OF STRANGULATION**      Survivor brochure about the dangers of strangulation
9. **PEDIATRIC STRANGULATION - IMPORTANT INFORMATION FOR GUARDIANS**      Informational trifold brochure
10. **DANGER ASSESSMENT 11 (DA-LE)**      Danger assessment for law enforcement
11. **VITAL NECK STRUCTURES**      Visual aid showing arteries, veins, and cartilage which might be affected by strangulation
12. **TIMELINE OF PHYSIOLOGICAL CONSEQUENCES OF STRANGULATION**      Occlusion of arterial blood flow: seconds to minutes
13. **STRANGULATION ASSESSMENT SHEET**      Quick-reference tool for first responders
14. **MEDICAL/RADIOGRAPHIC RECOMMENDATIONS**      for the evaluation of adult survivor of strangulation
15. **HELPS**      Informational flyer for trainings and resources
16. **STRANGULATION FACT SHEET**      Why Non-Fatal Strangulation cases should be treated as felonies





# WHAT FLORIDA JUDGES SHOULD KNOW ABOUT NON-FATAL STRANGULATION

## WHAT IS STRANGULATION?

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

## LETHALITY

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

## 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.*

## BRAIN AND NEUROLOGICAL IMPACT

Strangulation is a form of asphyxia that usually deprives the victim's brain of oxygen. 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. *As a result, victims are often unable to describe a near-death experience calmly and chronologically.*

## 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.* Research has shown that most victims of adult non-fatal strangulation are women.

## SERIOUS INJURIES OCCUR QUICKLY

A victim of strangulation can become unconscious in 5-10 seconds and can die within minutes. 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.

## HIDDEN DANGERS

Strangulation may 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.*

## 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.*

## RECANTATION

Victims of domestic violence often recant. This may be due to witness intimidation, which research has shown occurs in many domestic violence cases. *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.

## REFERRAL TO SUPPORT SERVICES

Under the guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems, victims shall be given written information about their rights and available support services, among other things.

§ 960.001(1)(a), Fla. Stat.

## 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, from 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 the assault or after?
- Did you have trouble breathing or swallowing?
- Did you have a sore throat afterward?
- 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?
- Did you experience any vision changes?
- Did you see stars? (She may not know.)
- Did you regain consciousness and realize you soiled yourself?

## 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*.

## 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.” § 784.041, Fla. Stat.

## 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” (citing Barnhill v. State, 834 So.2d at 850), and is an aggravator supporting the imposition of the death penalty as punishment.*

*Lopez-Macaya v. State*, 278 So. 3d 248 (Fla. 3rd DCA 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 that the perpetrator’s actions created a risk of great bodily harm.*

## BAIL

“Pretrial detention and release. -  
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.*” § 907.041(1), Fla. Stat.

“RELEASE ON NONMONETARY  
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 (5) [(stalking and domestic violence are two of twenty-six enumerated crimes)]. A person charged with a dangerous crime . . . 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.” § 907.041(3)(a), Fla. Stat.

## PRETRIAL DETENTION

A court can hold a defendant in pre-trial detention for “dangerous crimes” listed under § 907.041(5), Fla. Stat., including an act of domestic violence under § 907.041(5)(a)18, Fla. Stat., or an act of stalking or aggravated stalking under § 907.041(5)(a)17, Fla. Stat. The state attorney has the burden of showing the need for pretrial detention.  
§ 907.041(5)(h), Fla. Stat.

## 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. § 90.702, Fla. Stat.

## 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.

§ 741.30(6)(a)9, Fla. Stat. 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.

## OTHER IMPORTANT CONSIDERATIONS

Below are important points delivered by *The Training Institute on Strangulation Prevention* at the Strangulation Conference held on April 5th, 2024, in San Diego, CA.

- Brain cells that die due to a lack of oxygen are gone forever.
- Law enforcement officers responding to domestic disturbances are in greater danger of being murdered on scene when strangulation is involved in the incident.
- The trauma of asphyxiation may alter the victim's ability to recall what happened immediately after the event.
- Strangulation victims should seek medical attention immediately, because a CTA scan may be necessary to identify arterial damage.

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- Note:* This document is gender-neutral, but strangulation is an extremely gendered crime. See Pritchard, et al., (2015), Nonfatal Strangulation as Part of Domestic Violence: A Review of Research (99% of stranglers were men in the San Diego Study), *Trauma Violence Abuse*, 18(4), 407-424, <https://pubmed.ncbi.nlm.nih.gov/26721886/>.



This bench card is a product of the Pulaski County Domestic Violence Committee and was created by Judge Lee Chitwood with the assistance of Jaime Clemmer, Domestic Violence Coordinator of the Pulaski County Juvenile and Domestic Relations District Court, Madelyn Herman, Senior Domestic Violence Program Analyst, Department of Judicial Planning, Supreme Court of Virginia and Gael Strack and Yesenia Aceves from the Training Institute on Strangulation Prevention. (5/7/20). This project is supported all or in part by Grant No. 2016-TA-AX-K067 and STOP Grant No. 20-Q4161VA19 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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# JUDICIAL CHECKLIST FOR MOTIONS TO DISSOLVE PROTECTIVE ORDERS

## PULASKI COUNTY JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT BENCH CARD #2

Ms./Mr. \_\_, you have filed a motion to drop your protective order. Is that correct? I am going to ask you a series of questions to ensure that you will be safe if I grant your request.

### BACKGROUND

- 1 I have your affidavit from your original petition (and affidavit from the criminal charge).
  - a. Was that information correct?
  - b. During the arrest for assault & battery, did the officer ask you a set of Lethality Assessment Protocol (LAP) questions? What was the result?
  - c. Did you call or meet with an advocate?
  - d. The bail checklist shows the following convictions: \_\_\_\_\_. Were you aware of those?
- 2 Why do you want to "drop" the Protective Order (PO)? Have you "dropped" one before?
- 3 Has he complied with the PO in full? If not, what happened? Did you pursue charges? Why not?
- 4 Have you been pressured in any way to "drop" the PO? By his family? **Your** family? By the children (if shared in common)?
- 5 Without giving me any details, do you know what you will do if this happens again? (Do you have a safety plan?)

### GENERAL QUESTIONS

- 6 Do you know how to obtain an emergency protective order? Do you know how to obtain a final protective order?
- 7 Have you spoken to Victim Witness or to the Women's Resource Center (WRC)?
  - a. Do you want an opportunity to do so?
  - b. Do you need more time to talk with them?
  - c. Did you watch the PO video? Would you like to?

#### \*COURT MUST GIVE ADVOCATE NOTICE TO APPEAR\*

- 8 Do you realize that you can "drop" part of the PO while keeping some of it in place? That means that you have the option for the PO to stay in place, while allowing peaceful contact or contact by text message only. Have you considered that option?
- 9 Are there other PO's in place in other jurisdictions?
- 10 Do you have other cases pending, such as custody, visitation, support, divorce, landlord/tenant, or property division?

### CRIMINAL MATTERS

- 11 If there was a criminal charge, is it over? Is there a bond or no contact order? Has he complied? If he was held in jail, did he contact you from jail? What did he say?
- 12 Was he required to complete a batterer's intervention program (BIP) or any other program?

### CHILDREN

- 13 Were there children involved? Were there children "present"? Is he the father of all these children? Do you have a plan to keep them safe if this happens again? Did he threaten to harm or take away the children?
- 14 Is the Department of Social Services (DSS) involved? Is there a Child Protective Order (CPO) or Safety plan? Were the children placed outside the home?
- 15 Do the children support your motion to "drop" the PO?
- 16 You should know that girls who witness Domestic Violence (DV) are more likely to become victims and boys who witness DV are six times more likely to become abusers. **DV IS A LEARNED BEHAVIOR.** He abuses the kids when he abuses you.

### STRANGULATION

- 17 Has he ever strangled, suffocated, smothered, or choked you? Has he ever put his hands or forearm around or against your neck in an angry way? Has he ever shaken you by the neck? Picked you up by the neck? Has he ever applied pressure to your neck? Are you comfortable discussing?
  - a. Describe what happened. Done from front or back? One hand or two? Ligature? How long last? Happen more than once? On a scale from 1-10, tell me how much pressure he applied?
  - b. Describe how you felt. Did you have trouble breathing? Sore throat? Voice change? Petechia? See stars? Trouble swallowing? Lose consciousness - how do you know? Headache? Dizziness? Vision problems?
  - c. On a scale of 1-10, tell me how much it hurt.
  - d. What did he say? Describe how he looked.
  - e. What did you think was going to happen? What did you say?
  - f. Where did this happen? How did it stop? Did you change clothes afterwards?
  - g. Did law enforcement come? Charges? Why not? Did you see paramedic? Go to the ER? If so, did you have a CTA?
  - h. Did you know that strangulation kills brain cells that never recover, and that strangulation can lead to brain damage, stroke, and death? You could have a dissection of your carotid artery.
  - i. You have reported multiple strangulations. Have you sought any services or treatment as a result? TBI assessment?
  - j. I want you to know that one incident of strangulation makes you 750% more likely to become a homicide victim, and that the weapon will probably be a firearm. Repeated strangulations increase that risk. Did you know that most women killed by their partners had been strangled by that partner?
  - k. Did you know that many defendants who kill police have a history of strangulation?
  - l. I consider strangulation a form of torture, like waterboarding. It really is attempted murder. It is the "last warning shot." The behavior will likely escalate; it will not decrease.

## **TBI/HEAD INJURY**

**18** Did he ever hit you in the head? With what? Did he slam your head into anything? Did he push you so that you hit your head?

**19** Did you go to the ER? Did the ER diagnose or suspect a concussion? What symptoms did you have?

## **WEAPONS/FIREARMS**

**20** Were weapons of any kind ever used or displayed? Has he threatened to use a weapon? Did you believe him?

**21** Did he have a concealed weapons permit? Did he turn in?

**22** Are there guns in the house? Does he own, possess, or have access to guns? (Did he sell or transfer his firearms after the PO was entered?) The presence of a gun makes it five times more likely a victim will be killed.

## **STALKING/CONTROLLING BEHAVIOR/COERCIVE CONTROL**

**23** Is he controlling? Do you feel like a prisoner in your own home? Has he taken your phone, car, or keys? Has he disabled your car? Has he spread rumors on social media? Posted "bad" pictures of you? Did he ever stalk you? Did he ever stalk you on social media? Do you know that 76% of victims killed by intimate partners were stalked by that partner?

**24** Does he check your phone or computer? Does he control your Internet use? Does he interrogate you? Does he make you explain where you have been? Has he ever come by your workplace unannounced?

**25** Does he follow you or spy on you? Does he leave threatening notes, texts, or phone messages?

**26** Has he destroyed your property? Has he burned or threatened to burn your property?

**27** Has he threatened your friends or family? Does he try to stop you from seeing family or friends?

**28** Is he very jealous? For example, has he ever said "if I can't have you, no one will?" Does he regularly accuse you of affairs or flirting?

**29** Does he call you names? If you are comfortable saying, tell me which ones. Does he "put you down"?

**30** Does he force you to work or prohibit you from working? Does he control the household money? Does he make you account for your spending?

**31** Does he try to control how you dress? Does he tell you how you should wear your makeup or your hair?

**32** Do you feel ashamed of things he does?

**33** Do you try not to "rock the boat"?

**34** What was the worst thing he has ever done to make you the most scared?

## **ADDITIONAL LETHALITY QUESTIONS**

**35** Was he ever violent during a pregnancy? Please describe.

**36** Has he threatened to kill you? Did he tell you how/give you details or a plan? Did he ever begin that plan?

Did he ever fantasize about killing you? Have you ever thought he might kill you? Can he scare you without saying anything?

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**37** Has he ever threatened to kill or harm himself?

Has he attempted suicide?

**38** Has he been violent outside of your relationship?

**39** Have you ever had to seek medical attention as a result of his actions?

**40** Did he ever abuse, torture, or kill any family pets? Did he ever threaten to do so? Were children present? Did you know that a child exposed to DV is approximately three times more likely to commit animal cruelty? Did you know that abuse of a companion animal is one of the four most significant risk factors for someone becoming a domestic abuser?

**41** Have you sought outside help from Law Enforcement Officers (LEO), WRC, DSS, or Victim Witness services? Have you ever called 911? Why?

**42** Have you ever protected him from arrest or prosecution by not calling Law Enforcement Officers (LEO), lying for him, failing to appear at court, "forgetting" what happened, or asking the Court to "drop" charges against him? Do you hide his actions from others? Did he ever avoid arrest or prosecution? Did he ask you to not appear, change your testimony, or tell CA to "drop" charges? Has he called you from jail? How many times?

**43** Did he apologize after these incidents and promise to never do it again? (Gave you gifts, flowers?) Did he keep that promise? Are you familiar with term "honeymoon period?" Did you blame yourself?

**44** How many times have you separated? How long did you date before moving in together? What is the age difference between the two of you?

**45** Is he employed? Recently unemployed? Does he pay child support? Is there child support order in place? Have you been supporting him?

**46** Does he abuse alcohol or drugs? What drugs and how often? Legal or illegal? Have you noticed any changes in use recently? Have you noticed recent changes in his behavior? Has he had mental health problems? (Neither substance abuse nor mental illness cause, or excuse DV.)

## **FINAL QUESTIONS**

**47** Has he done anything scary or frightening to you since the PO was entered?

**48** At the last hearing I denied your request for contact. Do you think I made the right decision?

**49** Do you have a Hope Card?

**50 DO YOU NOW FEEL SAFE? DO YOU HAVE ANY QUESTIONS FOR ME?**

This bench card is a product of the Pulaski County Domestic Violence Committee and was created by Judge Lee Chitwood

The Institute on Strangulation Prevention is a program of Alliance for HOPE International

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# STRANGULATION IN INTIMATE PARTNER VIOLENCE

v6.9.2025

Click on stats and bibliography to be linked to the original source.

## STRANGULATION

is the obstruction of blood vessels and/or airflow in the neck resulting in asphyxia.

**1 in 4** women will experience intimate partner violence (IPV) in their lifetime <sup>1</sup>

Of women at high risk, **68-80%** will experience **NEAR-FATAL STRANGULATION BY THEIR PARTNER** <sup>2</sup>

Strangulation survivors have the **LOWEST HOPE SCORES** of all victims of domestic violence, with a **31% INCREASE IN SUICIDAL IDEATION** <sup>3</sup>

Strangulation is among the most lethal forms of Domestic Violence.

Loss of consciousness can occur within

**5-10 seconds.** Death within minutes <sup>4</sup>

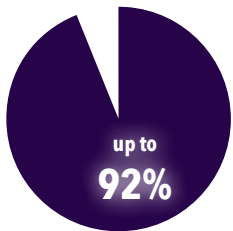


Up to **60%** of college students have taken part in sexual choking.

*\*However, there is no safe way to strangle your partner, victims cannot legally consent to being strangled and the National Coalition for Sexual Freedom does not even include "choking" in their EPP (Explicit Prior Permission) form<sup>5</sup>*



Up to **14%** of strangled victims may have an internal, life-threatening damage to their arteries and veins, putting them at a risk for a stroke<sup>6</sup>



of women who have experienced IPV, including strangulation, are estimated to have suffered some type of a TBI <sup>7</sup>



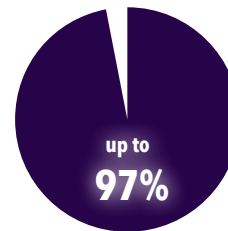
are strangled along with sexual assault/abuse <sup>8</sup>  
**9%** are also pregnant <sup>7</sup>



of children witnessed their mothers being strangled  
and **9%** were also strangled <sup>9</sup>



of strangled women believed they were going to die <sup>10</sup>



are strangled manually (with hands) <sup>11</sup>



report losing consciousness <sup>12</sup>

And odds for homicide increase **750%**  
for victims who have been previously strangled,  
compared to victims who have never been strangled <sup>13</sup>

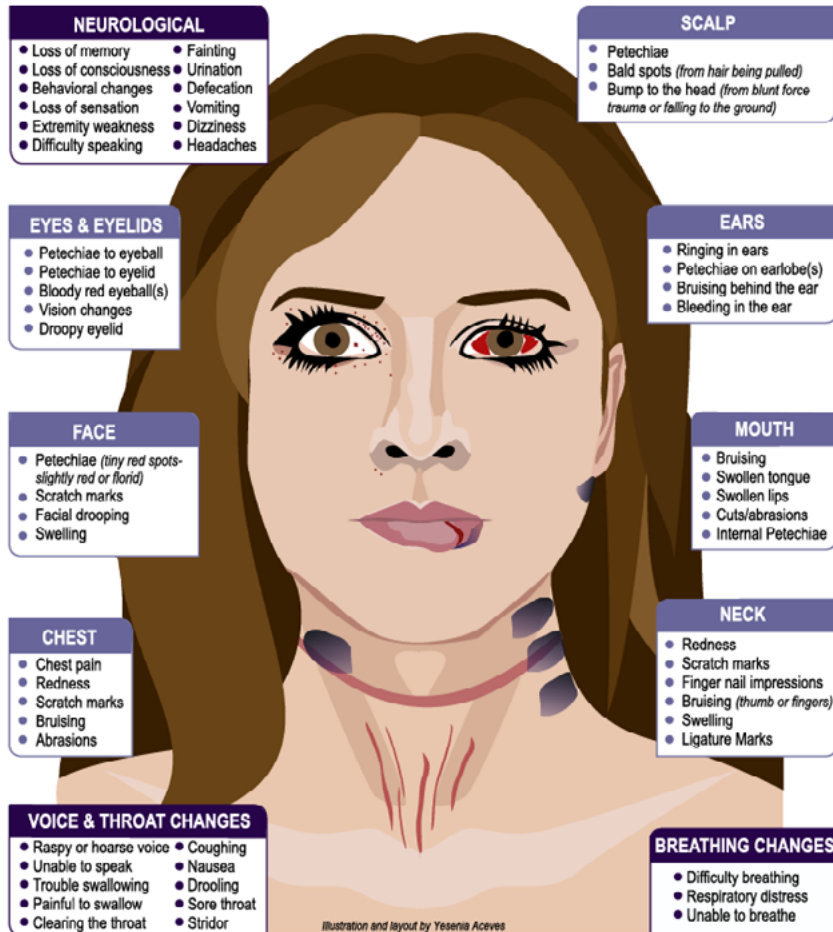
Today, **Washington DC, 50 States, 22 Tribes** and **3 US Territories** have passed felony strangulation laws <sup>15</sup>

The majority of all **POLICE OFFICERS KILLED IN THE LINE OF DUTY** are killed by men who have strangled women <sup>14</sup>

**Strangulation** and **suffocation** are included in **Federal (2013)** and **Military (2019) Codes** <sup>15</sup>

# STRANGULATION

## SIGNS AND SYMPTOMS <sup>2</sup>



## CONSEQUENCES <sup>15</sup>

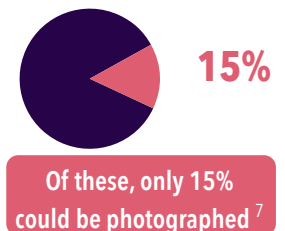
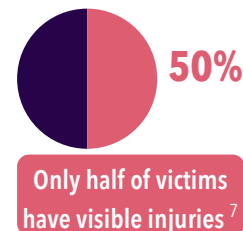
### PSYCHOLOGICAL NEUROLOGICAL INJURY and TBI

PTSD, depression, suicidal ideation, memory problems, nightmares, anxiety, severe stress reaction, amnesia, and psychosis.

### DELAYED FATALITY

Death can occur days or weeks after the attack due to carotid artery dissection and respiratory complications such as pneumonia, acute respiratory distress syndrome, stroke due to the risk of blood clots traveling to the brain (embolization).

**HOWEVER...** Oftentimes, even in fatal cases, there are **NO EXTERNAL SIGNS** of injury <sup>17</sup>



<sup>1</sup> Breiding, et al (2011). Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization—National Intimate Partner and Sexual Violence Survey, United States. MMWR 2014; 63(SS-8):1-18.

<sup>2</sup> Taliaferro, et al (2009). Strangulation in Intimate Partner Violence. Intimate Partner Violence: A Health-Based Perspective. Oxford University Press, Inc., 217-235; Messing, et al (2018). Differentiating Among Attempted Completed and Multiple Non-Fatal Strangulation in Women Experiencing Intimate Partner Violence. Women's Health Issues, 28(3), 104-111; Wilbur, et al (2001). Survey results of women who have been strangulated while in an abusive relationship. 21J. Emergency Medicine 297.

<sup>3</sup> Gwinn, et al (2018). Hope Rising: How the Science of Hope Can Change Your Life, 113; Wilbur, et al (2001). Survey results of women who have been strangulated while in an abusive relationship. 21J. Emergency Medicine 297.

<sup>4</sup> Patch, et al (2022). Emergency Evaluation of Nonfatal Strangulation Patients: A Commentary on Controversy and Care Priorities. Journal of Emergency Nursing, 48(3), 243-247.

<sup>5</sup> Gwinn, Strack, (2023). 10 Years Later—What Did We Learn About Strangulation Assaults?, Domestic Violence Report, 30(2), 35.

<sup>6</sup> Herbenick, et al (2023). Sexual Choking/Strangulation During Sex: A Review of the Literature, Curr Sex Health Rep 15, 253-260.

<sup>7</sup> Campbell, et al, (2018) The Effects of IPV and Probable Traumatic Brain Injury on Central Nervous System, Journal of Women's Health, 27 (6); Zieman, et al (2017). Traumatic Brain Injury in Domestic Violence Victims: A Retrospective Study at the Barrow Neurological Institute. Journal of Neurotrauma, 876-880.

<sup>8</sup> Zilkens, et al (2016). Non-Fatal Strangulation in Sexual Assault, Journal of Forensic and Legal Medicine, 43, 1-7.

<sup>9</sup> Fitzgerald, et al (2022). The Prosecution of Non-Fatal Strangulation cases: An Examination of Finalised Prosecution cases in Queensland, 2017–2020; The University of Melbourne and The University of Queensland.

<sup>10</sup> Thomas, et al (2014). Do You Know What It Feels Like to Drown. Psychology of Women Quarterly, 38, 124-137.

<sup>11</sup> Strack, et al (2001). A review of 300 attempted strangulation cases: Part I: Criminal Legal Issues. Journal of Emergency Medicine, 21(3), 303-309; Brady, et al (2021). How Victims of Strangulation Survived. Violence Against Women, 1(26).

<sup>12</sup> Shields, et al (2010). Living victims of strangulation: A 10-year review of cases in a metropolitan community. American Journal of Forensic Medical Pathology, 31, 320-325.

<sup>13</sup> Glass, et al (2008). Non-fatal strangulation is an important risk factor for homicide of women. The Journal of Emergency Medicine, 35(3), 329-335.

<sup>14</sup> Gwinn, et al (2018). Hope Rising: How the Science of Hope Can Change Your Life, 90.

<sup>15</sup> Training Institute on Strangulation Prevention (2025). <https://www.allianceforhope.org/training-institute-on-strangulation-prevention/strangulation-legislation>

<sup>16</sup> Bergin, et al (2022). Describing Non-Fatal Intimate Partner Strangulation Presentation and Evaluation in a Community-Based Hospital. Journal of Head Trauma Rehabilitation, 37(1), 5-14.

<sup>17</sup> DiPaolo, et al (2009). Unexpected Delayed Death After Manual Strangulation, Monaldi Arch Chest Dis, 71(3), 132-134; Luke (1966). Strangulation as a Method of Homicide, Arch Path, Vol. 83.



# FIVE MYTHS ABOUT STRANGULATION

Prepared by Gerald Fineman, Assistant District Attorney, Riverside County, and Dr. William Green, Medical Director, California Clinical Forensic Medical Training Center/ CDAA

<b>1</b> <b>MYTH</b> <b>STRANGULATION AND CHOKING ARE THE SAME THING</b> <b>FACT</b> <b>STRANGULATION</b> is the <u>external</u> application of physical force that impedes either air or blood to or from the brain. <b>CHOKING</b> is an <u>internal</u> obstruction of the airway by a foreign object. <b>SOLUTION</b> Use a diagram. Compare to the flow of electrical current. Compare to the flow of air/water through a closed system (fish tank).	<b>2</b> <b>MYTH</b> <b>STRANGULATION ALWAYS LEAVES VISIBLE INJURIES</b> <b>FACT</b> Studies show that over half the victims of strangulation lack visible external injury. A victim without visible external injury can still die from strangulation. <b>SOLUTION</b> Demonstrate cutting off blood flow to your fingertips by squeezing your wrist with your other hand. Upon release of the grip, you will likely have no identifiable marks. If you do, they will be very short in duration.	<b>3</b> <b>MYTH</b> <b>IF THE VICTIM CAN SPEAK, SCREAM, OR BREATHE, THEY ARE NOT BEING STRANGLED</b> <b>FACT</b> Since strangulation involves obstruction of blood flow, a person can have complete obstruction and continue breathing until the moment they die from lack of oxygenated blood flow to the brain. <b>SOLUTION</b> Again, grab your wrist and squeeze. You can still breathe, yet blood flow is obstructed to the fingertips. If this was the victim's neck, they could still have an open trachea (windpipe) but have lack of blood flow to the brain.	<b>4</b> <b>MYTH</b> <b>STRANGULATION CANNOT BE HARMFUL BECAUSE MANY PEOPLE PRACTICE IT (MARTIAL ARTS, MILITARY, LAW ENFORCEMENT)</b> <b>FACT</b> Martial arts are a form of combat. The military and law enforcement use strangulation as a lethal form of force. <b>RISK</b> There are numerous incidents of death resulting from strangulation. This can even occur during otherwise supervised events, such as sporting events, law enforcement training, etc.	<b>5</b> <b>MYTH</b> <b>STRANGULATION VICTIMS SHOULD BE ABLE TO DETAIL THEIR ATTACK</b> <b>FACT</b> <u>Trauma</u> impacts the brain's ability to store memory. In addition, the hippocampus (part of the brain where memory is stored) is the most sensitive to <u>oxygen deprivation</u> . When a victim is strangled, both factors can impact the ability to recall. <b>SOLUTION</b> Give the example of how limiting the flow of electricity to a digital recording device will prevent it from recording.
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# STRANGULATION

SOURCE: *Strangulation in Intimate Partner Violence, Chapter 16*

## SIGNS & SYMPTOMS

Visible injuries.

Injuries not visible to the naked eye; may be observable only to the victim.

### NEUROLOGICAL

- Loss of memory
- Loss of consciousness
- Behavioral changes
- Loss of sensation
- Extremity weakness
- Difficulty speaking
- Fainting
- Urination
- Defecation
- Vomiting
- Dizziness
- Headaches

### SCALP

- Petechiae
- Bald spots (*from hair being pulled*)
- Bump to the head (*from blunt force trauma or falling to the ground*)

### EYES & EYELIDS

- Petechiae to eyeball
- Petechiae to eyelid
- Bloody red eyeball(s)
- Vision changes
- Droopy eyelid

### EARS

- Ringing in ears
- Petechiae on earlobe(s)
- Bruising behind the ear
- Bleeding in the ear

### FACE

- Petechiae (*tiny red spots-slightly red or florid*)
- Scratch marks
- Facial drooping
- Swelling

### MOUTH

- Bruising
- Swollen tongue
- Swollen lips
- Cuts/abrasions
- Internal Petechiae

### CHEST

- Chest pain
- Redness
- Scratch marks
- Bruising
- Abrasions

### NECK

- Redness
- Scratch marks
- Finger nail impressions
- Bruising (*thumb or fingers*)
- Swelling
- Ligature Marks

### VOICE & THROAT CHANGES

- Raspy or hoarse voice
- Unable to speak
- Trouble swallowing
- Painful to swallow
- Clearing the throat
- Coughing
- Nausea
- Drooling
- Sore throat
- Stridor

### BREATHING CHANGES

- Difficulty breathing
- Respiratory distress
- Unable to breathe

Illustration and layout by Yesenia Aceves



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# SIGNS AND SYMPTOMS OF STRANGULATION

vi.14.19

Based on: Strangulation in Intimate Partner Violence, Chapter 16; Intimate Partner Violence. Oxford University Press, Inc. 2009.

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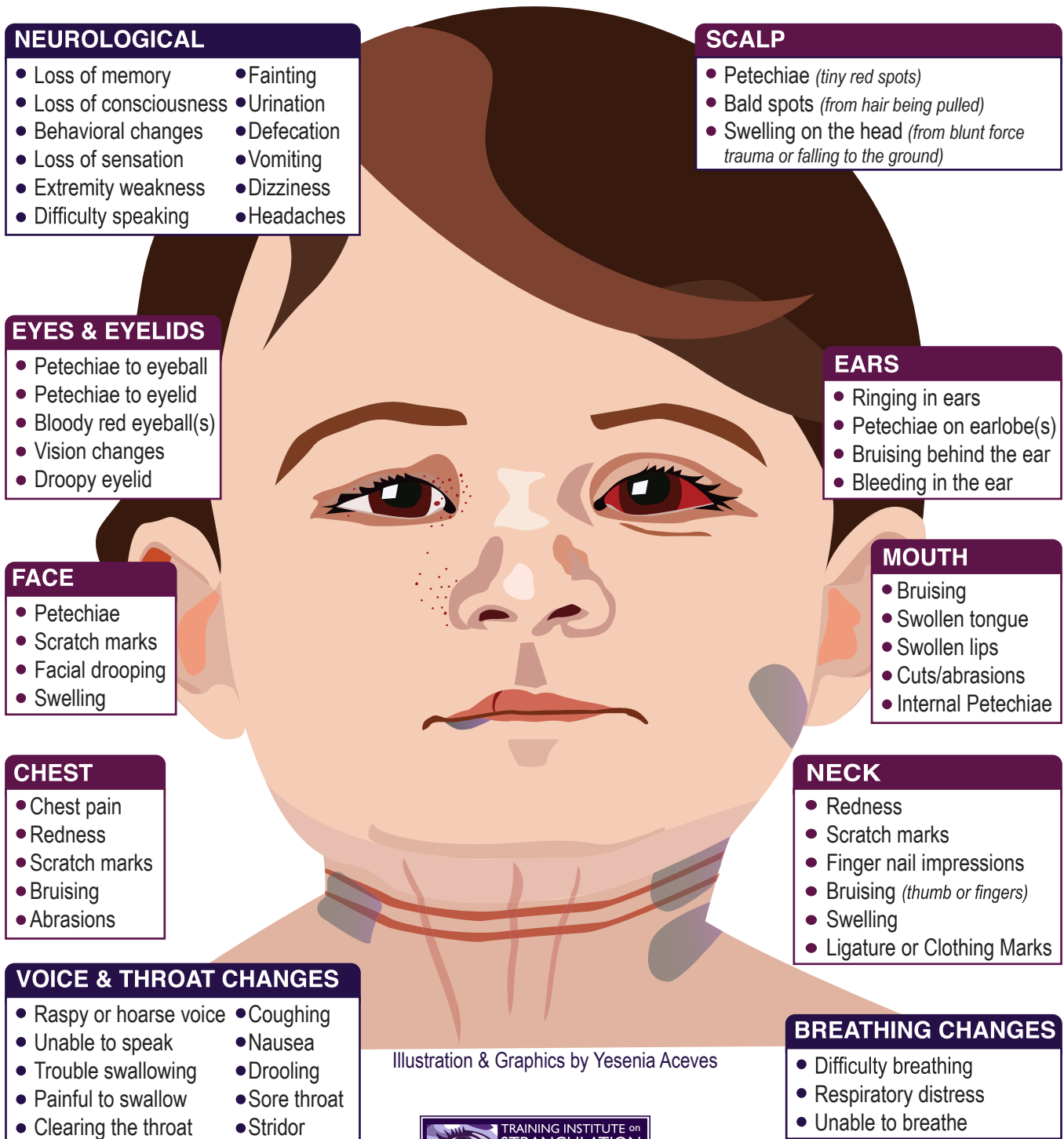
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- Behavioral changes
- Loss of sensation
- Extremity weakness
- Difficulty speaking
- Fainting
- Urination
- Defecation
- Vomiting
- Dizziness
- Headaches

### SCALP

- Petechiae (*tiny red spots*)
- Bald spots (*from hair being pulled*)
- Swelling on the head (*from blunt force trauma or falling to the ground*)

### EYES & EYELIDS

- Petechiae to eyeball
- Petechiae to eyelid
- Bloody red eyeball(s)
- Vision changes
- Droopy eyelid

### EARS

- Ringing in ears
- Petechiae on earlobe(s)
- Bruising behind the ear
- Bleeding in the ear

### FACE

- Petechiae
- Scratch marks
- Facial drooping
- Swelling

### MOUTH

- Bruising
- Swollen tongue
- Swollen lips
- Cuts/abrasions
- Internal Petechiae

### CHEST

- Chest pain
- Redness
- Scratch marks
- Bruising
- Abrasions

### NECK

- Redness
- Scratch marks
- Finger nail impressions
- Bruising (*thumb or fingers*)
- Swelling
- Ligature or Clothing Marks

### VOICE & THROAT CHANGES

- Raspy or hoarse voice
- Unable to speak
- Trouble swallowing
- Painful to swallow
- Clearing the throat
- Coughing
- Nausea
- Drooling
- Sore throat
- Stridor

### BREATHING CHANGES

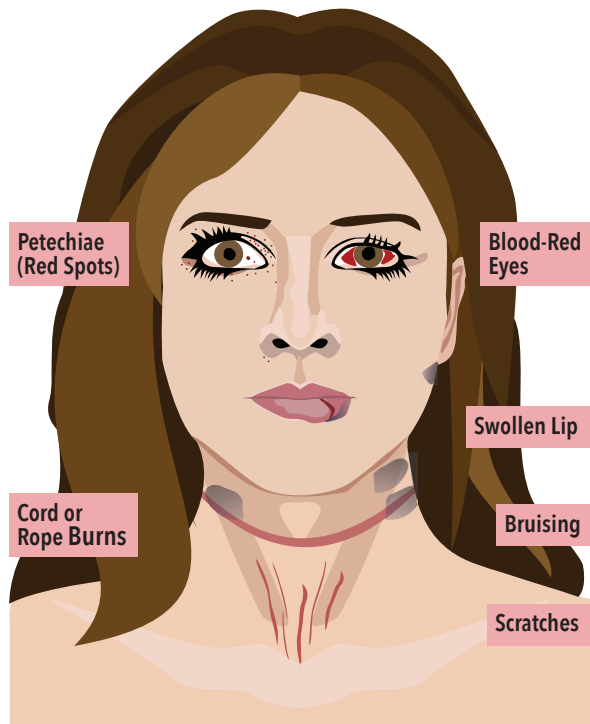
- Difficulty breathing
- Respiratory distress
- Unable to breathe

Illustration & Graphics by Yesenia Aceves



[strangulationtrainingInstitute.com](http://strangulationtrainingInstitute.com)

## VISIBLE SIGNS (may not be present)



**ADDITIONAL RESOURCES** are available for download on our resource library at: [allianceforhope.com/training/online-resource-library/](http://allianceforhope.com/training/online-resource-library/) including a larger and more detailed version of the **SIGNS AND SYMPTOMS** graphic shown above. It is available in Adult English, Spanish, and Arabic versions. Pediatric versions in English and Spanish are also available.

This project is supported all or in part by Grant No. 2016-TA-AX-K067 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

**STRANGULATION** has only recently been identified as one of the most lethal forms of domestic violence: unconsciousness may occur within seconds and death within minutes. When domestic violence perpetrators choke (strangle) their victims, not only is this a felonious assault, but it may be an attempted homicide. Strangulation is an ultimate form of power and control, where the batterer can demonstrate control over the victim's next breath; having devastating psychological effects or a potentially fatal outcome.

Sober and conscious victims of strangulation will first feel terror and severe pain. If strangulation persists, unconsciousness will follow. Before lapsing into unconsciousness, a strangulation victim will usually resist violently, often producing injuries of their own neck in an effort to claw off the assailant, and frequently also producing injury on the face or hands to their assailant. These defensive injuries may not be present if the victim is physically or chemically restrained before the assault.

**DOCUMENTATION** by photographs sequentially for a period of days after the assault is very helpful in establishing a journal of physical evidence.

Victims should also seek medical attention if they experience difficulty breathing, speaking, swallowing or experience nausea, vomiting, lightheadedness, headache, involuntary urination and/or defecation, especially pregnant victims. A medical evaluation may be crucial in detecting internal injuries and saving a life.

**LOSING CONSCIOUSNESS** is a common symptom in strangulation victims; it is caused by any one or all of the following methods: blocking of the carotid arteries in the neck (depriving the brain of oxygen), blocking of the jugular veins (preventing deoxygenated blood from exiting the brain), and closing off the airway, making breathing impossible.



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[strangulationtraininginstitute.com](http://strangulationtraininginstitute.com)

*Illustrations and Graphic Design by Yesenia Aceves*

Agency's Contact Information  
Anything they want to appear here is fine,  
we recommend general phone number and physical  
address whenever possible.

Vital FACTS for Victims of  
**STRANGULATION**

## Monitor Your **SYMPTOMS**

DATE/TIME	DESCRIBE SYMPTOMS

## Monitor Your **SIGNS**

DATE/TIME	DESCRIBE SIGNS

DATE/TIME	DESCRIBE ANY OTHER SENSATIONS

## **SYMPTOMS** of Strangulation

**VOICE CHANGES** Raspy and/or hoarse voice, coughing, unable to speak, complete loss of voice.

**SWALLOWING CHANGES** Trouble swallowing, painful swallowing, neck pain, nausea/vomiting, drooling.

**BREATHING CHANGES** Difficulty breathing, hyperventilation, unable to breathe.

**BEHAVIORAL CHANGES** Restlessness or combativeness, problems concentrating, amnesia, agitation, Post-traumatic Stress Syndrome, hallucinations.

**VISION CHANGES** Complete loss or black & white vision, seeing 'stars', blurry, darkness, fuzzy around the eyes.

**HEARING CHANGES** Complete loss of hearing, gurgling, ringing, buzzing, popping, pressure, tunnel-like hearing.

**OTHER CHANGES** Memory loss, unconsciousness, dizziness, headaches, involuntary urination or defecation, loss of strength, going limp.

## **SIGNS** of Strangulation

**HEAD** Pinpoint red spots (petechiae) on scalp, hair pulled, bump(s), skull fracture, concussion.

**FACE** Red or flushed, petechiae, scratch marks.

**EYES AND EYELIDS** Petechiae to the left or right eyeball, bloodshot eyes.

**EAR** Petechiae (external and/or ear canal), bleeding from ear canal.

**NOSE** Bloody nose, broken nose, petechiae.

**MOUTH** Bruising, swollen tongue, swollen lips, cuts/abrasions.

**UNDER THE CHIN** Redness, scratch marks, bruise(s), abrasions.

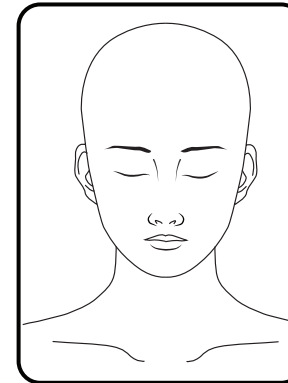
**NECK** Redness, scratch marks, fingernail impressions, bruise(s), abrasions, swelling, ligature marks.

**CHEST AND SHOULDERS** Redness, scratch marks, bruise(s), abrasions.

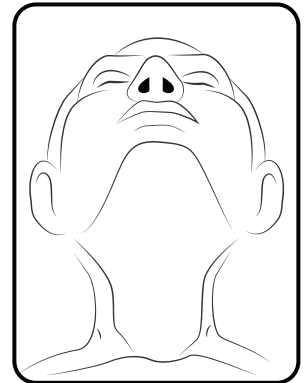
## Mark Visible Injuries

Use a pen or marker to indicate any visible signs of strangulation in the diagrams below:

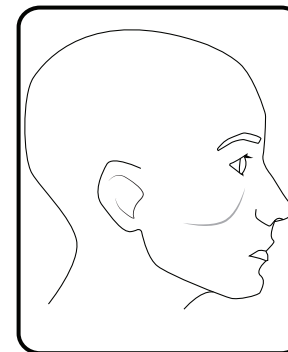
**FRONT**



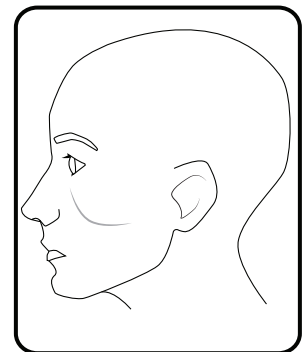
**UNDER CHIN**



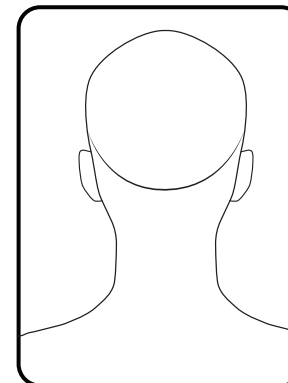
**RIGHT SIDE**



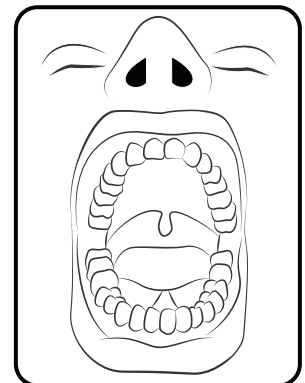
**LEFT SIDE**



**BACK**

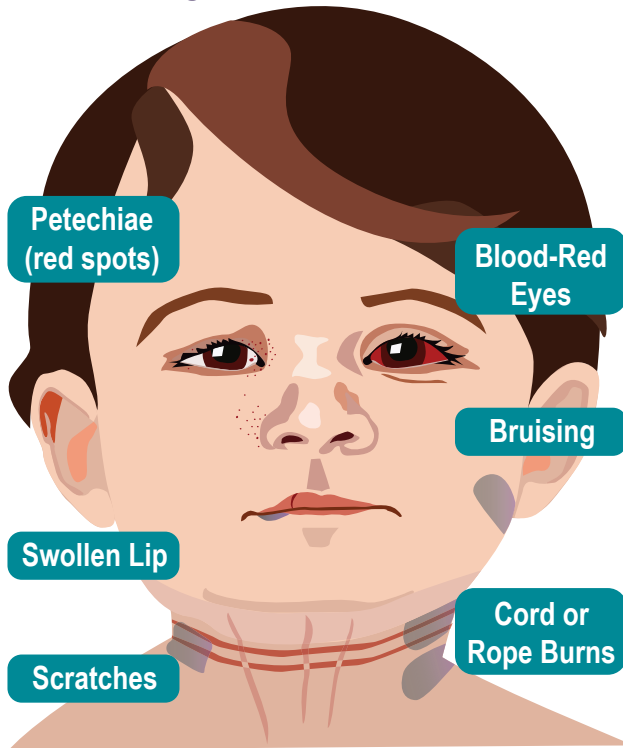


**INSIDE MOUTH**





## Visible Signs (may not be present)



## Additional Signs and Symptoms

A larger version of the graphic above which contains detailed signs and symptoms is available for download at [strangulationtraininginstitute.com/resources/library/pediatric/](https://strangulationtraininginstitute.com/resources/library/pediatric/)

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## STRANGULATION

Strangulation is often under-recognized in children but no less serious than in adults. Unconsciousness may happen within seconds and death within minutes. Children may be strangled when caregivers lose control, as part of physical and/or sexual assault, or as a way of demonstrating ultimate power and control over the child. Regardless, strangulation of a child can have long-lasting physical and mental health effects and can result in death even months later.

Child victims of strangulation may feel terror and extreme pain. If strangulation continues, unconsciousness will follow. Before sliding into unconsciousness, a child victim may resist violently, producing injuries to their own neck or to the face or hands of their attacker. These defensive injuries may not be present in young or developmentally disabled children, or if the victim is physically or chemically restrained.

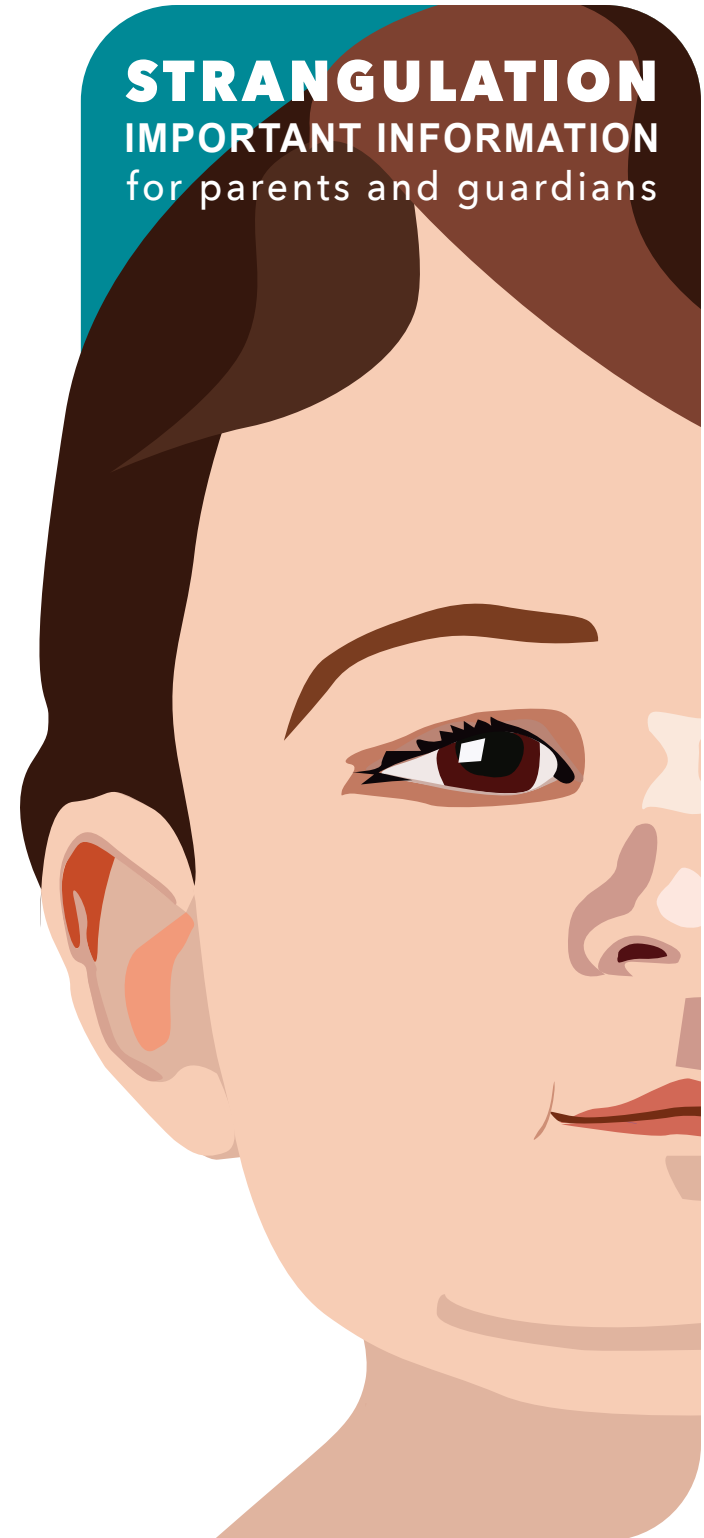
### Observing Changes

Documentation by photographs organized in order, for a period of days after the attack is very helpful in beginning and building a journal of proof. Victims should be given medical attention if they experience difficulty breathing, speaking, swallowing or experience nausea, vomiting, lightheadedness, headache or holding head, accidental urination and/or bowel movement in children not diapered. A medical evaluation may be extremely important in detecting internal injuries and saving a life.

### Loss of Consciousness

Victims may lose awareness or faint by any one or all of the following methods: blocking of the blood vessels from the heart in the neck (taking away oxygen from the brain), blocking of the large veins in the neck (preventing deoxygenated blood from exiting the brain), and closing off the tube from the mouth to the lungs, making breathing impossible.

## STRANGULATION IMPORTANT INFORMATION for parents and guardians



## Monitor the Signs

Write down signs on the child, include time/date


## Monitor the Symptoms

Write down symptoms in the child, include time/date


Additional notes:


## Signs of Strangulation

**HEAD**—loss of hair, bruises, skull fracture, concussion, red spots (petechiae).

**FACE**—reddened marks, petechiae, scratches.

**EYES AND EYELIDS**—petechiae on one or both eyeballs, red and/or bloody eyes.

**EAR**—petechiae (external and/or ear canal), bleeding from ear canal.

**NOSE**—bloody nose, broken nose, petechiae.

**MOUTH**—bruising, swollen tongue, swollen lips, cuts/abrasions (scrapes).

**UNDER THE CHIN**—redness, scratches, bruises, abrasions.

**NECK**—redness, scratch marks, fingernail marks, bruise(s), abrasions, swelling, ligature (tie) or clothing marks.

**CHEST AND SHOULDERS**—redness, scratch marks, bruise(s), abrasions.

## Symptoms of Strangulation

**VOICE CHANGES**—raspy and/or hoarse voice, cough, inability to speak, complete loss of voice.

**SWALLOWING CHANGES**—difficulty swallowing, pain when swallowing, neck pain, nausea/vomiting, drooling.

**RESPIRATORY CHANGES**—difficulty breathing, hyperventilation, unable to breathe.

**BEHAVIOR CHANGES**—restlessness or combativeness, concentration problems, amnesia (memory loss), agitation, hallucinations, post-traumatic stress syndrome.

**VISUAL CHANGES**—complete loss, or black and white vision, seeing 'stars', blurry, dark, fuzzy around the eyes.

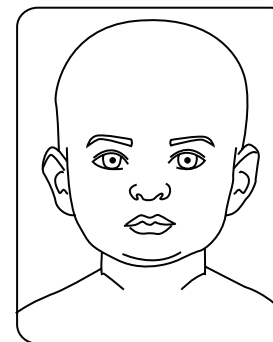
**HEARING CHANGES**—complete hearing loss, ringing, gurgling, buzzing, popping, pressure, tunnel-like hearing.

**OTHER CHANGES**—memory loss, loss of consciousness, dizziness, headaches, involuntary urination or bowel movement in potty-trained child, loss of strength, going limp.

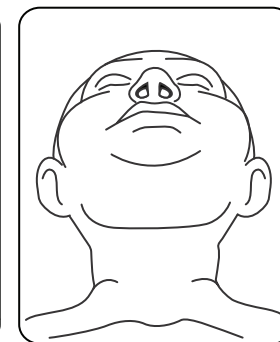

## Diagrams to Mark VISIBLE LESIONS

Use a pencil or pen to mark any visible signs

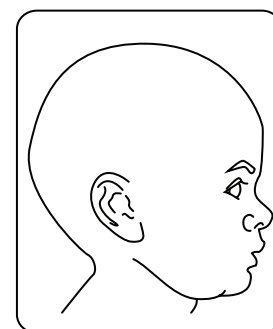
Front



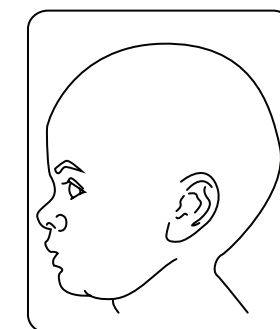
Under Chin



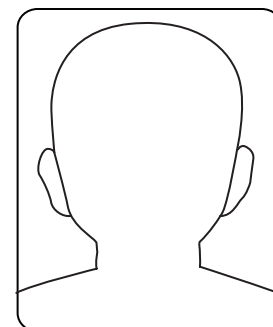
Right Side



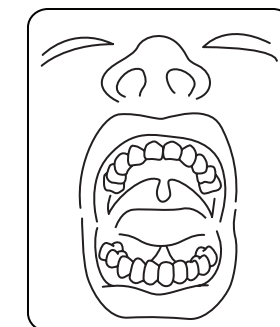
Left Side



Back



Inside Mouth



# DANGER ASSESSMENT - LAW ENFORCEMENT (DA-LE)

SUBMIT THIS WITH YOUR REPORT

☐ DISTRICT 1

☐ DISTRICT 2

☐ DISTRICT 3

☐ DISTRICT 4

☐ DISTRICT 5

Officer:	Date:	Incident #:
Victim:	Suspect:	
<b>For each question, provide as much information as space allows. Include additional information in your report.</b>		
<input type="checkbox"/> <b>CHECK HERE IF VICTIM DECLINED RISK SCREEN</b>		
<b>RISK FACTORS</b>		
1. Has the physical violence increased in severity or frequency over the past year? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Answered		
2. Have you left him/her after living together in the past year? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Answered		
3. Does he/she control most or all of your daily activities? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Answered		
4. Has he/she tried to kill you? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Answered		
5. Has he/she ever threatened to kill you? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Answered		
6. Has he/she used a weapon against you or threatened you with a lethal weapon? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Answered		
7. Has he/she ever tried to choke (strangle) you? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Answered		
8. Has he/she choked (strangled) you multiple times? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Answered		
9. Do you believe he/she is capable of killing you? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Answered		
10. Does he/she own a gun? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Answered		
11. Has he/she ever threatened or tried to commit suicide? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Answered		

Total "Yes" Answers \_\_\_\_\_

☐ Further Review

<b>Justification for Further Review:</b>
------------------------------------------

The DA-LE is based on the Danger Assessment and research of Dr. Jacquelyn C. Campbell, PhD, RN, FAAN of Johns Hopkins University School of Nursing and Dr. Jill Theresa Messing, MSW, PhD, Arizona State University School of Social Work and developed with the Jeanne Geiger Crisis Center. The contents of this DA-LE may not be reproduced, changed, or duplicated in any manner without express written permission of Jeanne Geiger Crisis Center, Inc.  
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PIO	SIO	Unit	Supervisor Name/Badge
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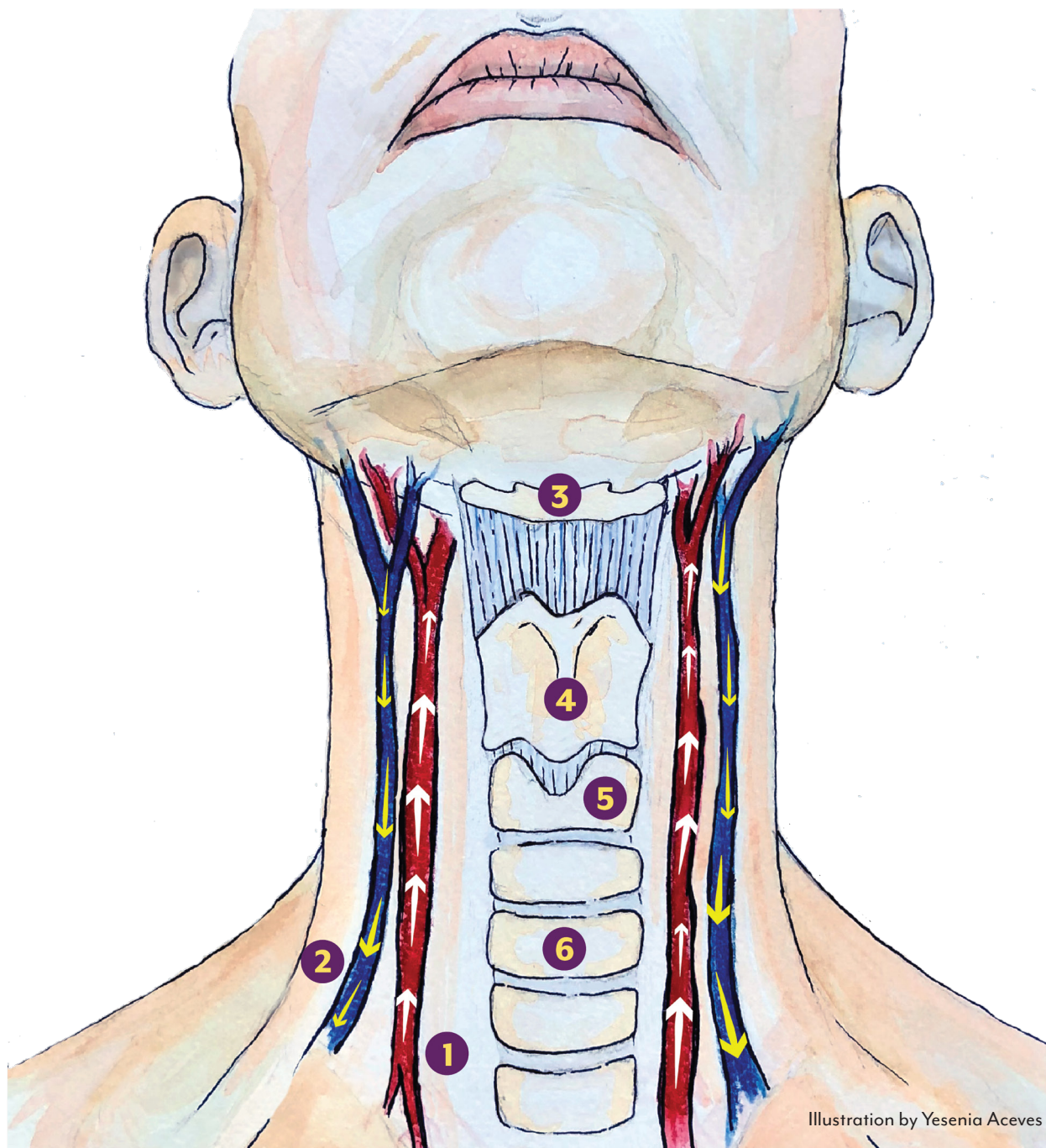


Illustration by Yesenia Aceves

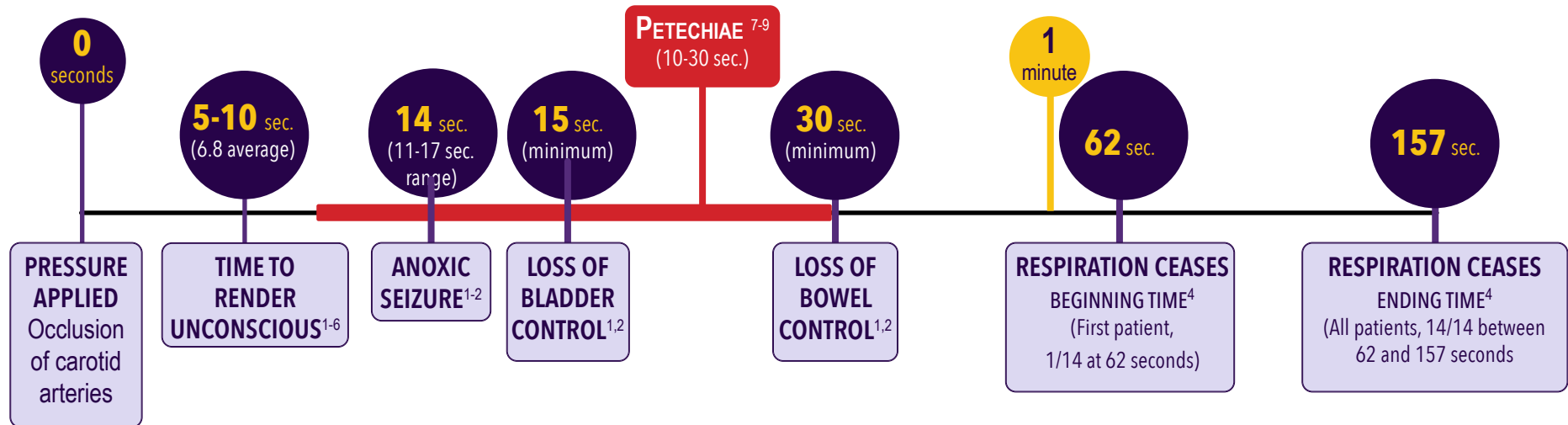
- |                         |                            |                            |
|-------------------------|----------------------------|----------------------------|
| <b>1</b> Carotid Artery | <b>3</b> Hyoid Bone        | <b>5</b> Cricoid Cartilage |
| <b>2</b> Jugular Vein   | <b>4</b> Thyroid Cartilage | <b>6</b> Tracheal Rings    |

This project is supported all or in part by Grant No. 2016-TA-AX-K067 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

# PHYSIOLOGICAL CONSEQUENCES OF STRANGULATION

## Occlusion of Arterial Blood Flow: Seconds to Minutes Timeline

CREATED BY: Ruth Carter; Bill Smock, MD; Gael Strack, JD; Sean Dugan, MD; Marisol Martinez, MA ; Yesenia Aceves; and Ashley Peck



### REFERENCES AND RESOURCES

- <sup>1</sup> Kabat H, Anderson JP. Acute arrest of cerebral circulation in man: Lieutenant Ralph Rossen (MC), U.S.N.R.. Journal of Nervous and Mental Disease. 1943; 50(5):510-528. doi: 10.1001/archneurpsyc.1943.02290230022002
- <sup>2</sup> Smith BA, Clayton EW, Robertson D. Experimental arrest of cerebral blood flow in human subjects: the red wing studies revisited. Perspect Biol Med. 2011;54(2):121-131. doi:10.1353/pbm.2011.0018
- <sup>3</sup> Reay DT, Holloway GA Jr. Changes in carotid blood flow produced by neck compression. Am J Forensic Med Pathol. 1982;3(3):199-202. doi:10.1097/00000433-198209000-00002
- <sup>4</sup> Sauvageau A, Laharpe R, King D, et al. Agonal sequences in 14 filmed hangings with comments on the role of the type of suspension, ischemic habituation, and ethanol intoxication on the timing of agonal responses. Am J Forensic Med Pathol. 2011;32(2):104-107. doi:10.1097/PAF.0b013e3181efba3a
- <sup>5</sup> Mitchell JR, Roach DE, Tyberg JV, Belenkie I, Sheldon RS. Mechanism of loss of consciousness during vascular neck restraint. J Appl Physiol (1985). 2012;112(3):396-402. doi:10.1152/japplphysiol.00592.2011
- <sup>6</sup> Stellpflug SJ, Menton WH, Dummer MF, et al. Time to unconsciousness from sportive chokes in fully resisting highly trained combatants. International Journal of Performance Analysis in Sport. 2020; 20(4):720-728. doi: 10.1080/24748668.2020.1780873
- <sup>7</sup> Copley AL & Kozam G. Capillary Fragility and the Ecchymosis Test in Man. Journal of Applied Physiology. 1951;4(4):311-327. doi: 10.1152/jappl.1951.4.4.311
- <sup>8</sup> Anscombe AM, Knight BH. Case report. Delayed death after pressure on the neck: possible causal mechanisms and implications for mode of death in manual strangulation discussed. Forensic Sci Int. 1996;78(3):193-197. doi:10.1016/0379-0738(95)01886-7
- <sup>9</sup> Stapczynski JS. Strangulation injuries: Emergency Medicine Reports; 2010. 31(17):193:203. <https://www.reliasmedia.com/articles/19950-strangulation-injuries>



[strangulationtraininginstitute.com](http://strangulationtraininginstitute.com)

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# STRANGULATION ASSESSMENT SHEET

SIGNS	SYMPTOMS	CHECKLIST	TRANSPORT
<ul style="list-style-type: none"> <li>Red eyes or spots (Petechiae)</li> <li>Neck swelling</li> <li>Nausea or vomiting</li> <li>Unsteady</li> <li>Loss or lapse of memory</li> <li>Urinated</li> <li>Defecated</li> <li>Possible loss of consciousness</li> <li>Ptosis – droopy eyelid</li> <li>Droopy face</li> <li>Seizure</li> <li>Tongue injury</li> <li>Lip injury</li> <li>Mental status changes</li> <li>Voice changes</li> </ul>	<ul style="list-style-type: none"> <li>Neck pain</li> <li>Jaw pain</li> <li>Scalp pain (from hair pulling)</li> <li>Sore throat</li> <li>Difficulty breathing</li> <li>Difficulty swallowing</li> <li>Vision changes (spots, tunnel vision, flashing lights)</li> <li>Hearing changes</li> <li>Light headedness</li> <li>Headache</li> <li>Weakness or numbness to arms or legs</li> <li>Voice changes</li> </ul>	<p><b>S</b> <b>SCENE AND SAFETY</b> Take in the scene. Make sure you and the victim are safe.</p> <p><b>T</b> <b>TRAUMA</b> The victim is traumatized. Be kind. Ask: what do you remember? See? Feel? Hear? Think?</p> <p><b>R</b> <b>REASSURE AND RESOURCES</b> Reassure the victim that help is available and provide resources.</p> <p><b>A</b> <b>ASSESS</b> Assess the victim for signs and symptoms of strangulation and TBI.</p> <p><b>N</b> <b>NOTES</b> Document your observations. Put victim statements in quotes.</p> <p><b>G</b> <b>GIVE</b> Give the victim an advisal about delayed consequences.</p> <p><b>L</b> <b>LOSS OF CONSCIOUSNESS</b> Victims may not remember. Lapse of memory? Change in location? Urination? Defecation?</p> <p><b>E</b> <b>ENCOURAGE</b> Encourage medical attention or transport if life-threatening injuries exist.</p>	<p>If the victim is <b>Pregnant</b> or has life-threatening injuries which include:</p> <ul style="list-style-type: none"> <li>Difficulty breathing</li> <li>Difficulty swallowing</li> <li>Petechial hemorrhage</li> <li>Vision changes</li> <li>Loss of consciousness</li> <li>Urinated</li> <li>Defecated</li> </ul>

## DELAYED CONSEQUENCES

Victims may look fine and say they are fine, but just underneath the skin there would be internal injury and/or delayed complications. Internal injury may take a few hours to be appreciated. The victim may develop delayed swelling, hematomas, vocal cord immobility, displaced laryngeal fractures, fractured hyoid bone, airway obstruction, stroke or even delayed death from a carotid dissection, bloodclot, respiratory complications, or anoxic brain damage.

Taliaferro, E., Hawley, D., McClane, G.E. & Strack, G. (2009). Strangulation in Intimate Partner Violence. *Intimate Partner Violence: A Health-Based Perspective*. Oxford University Press, Inc.

## ADVISAL TO PATIENT

- After a strangulation assault, you can experience internal injuries with a delayed onset of symptoms, usually within 72 hours. These internal injuries can be serious or fatal.
- Stay with someone you trust for the first 24 hours and have them monitor your signs and symptoms.
- Seek medical attention or call 911 if you have any of the following symptoms: difficulty breathing, trouble swallowing, swelling to your neck, pain to your throat, hoarseness or voice changes, blurred vision, continuous or severe headaches, seizures, vomiting or persistent cough.
- The cost of your medical care may be covered by your state's victim compensation fund. An advocate can give you more information about this resource.
- The National Domestic Violence Hotline number is **1-888-799-SAFE**.

## NOTICE TO MEDICAL PROVIDER

- In patients with a history of a loss of consciousness, loss of bladder or bowel control, vision changes or petechial hemorrhage, medical providers should evaluate the carotid and vertebral arteries, bony/cartilaginous and soft tissue neck structures and the brain for injuries. A list of medical references is available at [strangulationtraininginstitute.com](http://strangulationtraininginstitute.com)
- Life-threatening injuries include evidence of petechial hemorrhage, loss of consciousness, urination, defecation and/or visual changes.
- If your patient exhibits any of the above symptoms, medical/radiographic evaluation is strongly recommended. Radiographic testing should include: a CT angiography of carotid/vertebral arteries (most sensitive and preferred study for vessel evaluation) or CT neck with contrast, or MRA/MRI of neck and brain.
- ED/Hospital observation should be based on severity of symptoms and reliable home monitoring.
- Consult Neurology, Neurosurgery and/or Trauma Surgery for admission.
- Consider an ENT consult for laryngeal trauma with dysphonia, odynophagia, dyspnea.
- Discharge home with detailed instructions to return to ED if neurological signs/symptoms, dyspnea, dysphonia or odynophagia develops or worsens.



This project is supported all or in part by Grant No. 2014-TA-AX-K008 awarded by the Office on Violence Against Women, U.S. Dept. of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.



# RECOMMENDATIONS FOR THE MEDICAL/RADIOGRAPHIC EVALUATION OF ACUTE ADULT NON/NEAR FATAL STRANGULATION

Prepared by Bill Smock, MD; Bill Green, MD; and Sally Sturgeon, DNP, SANE-A

Endorsed by the National Medical Advisory Committee:

Cathy Baldwin, MD; Ralph Riviello, MD; Sean Dugan, MD; Steve Stapczynski, MD; Ellen Tailiaferro, MD; Michael Weaver, MD



## GOALS:

1. Evaluate for acute medical conditions requiring immediate management/stabilization
2. Evaluate carotid and vertebral arteries for injuries (dissection/thrombosis)
3. Evaluate airway structures and other bony/cartilaginous/soft tissue neck structures

## STRANGULATION PATIENT PRESENTS TO THE EMERGENCY DEPARTMENT

### HISTORY (ANY of the following; current OR assault related and now resolved)

1. Loss of consciousness
2. Visual changes: "spots," "flashing lights," "tunnel vision"
3. History of altered mental status: "dizzy," "confused," "lightheaded," "loss of memory," "any loss of awareness"
4. Breathing changes: "I couldn't breathe," "difficulty breathing"
5. Incontinence (bladder or bowel)
6. Neurologic symptoms: seizure-like activity, stroke-like symptoms, headache, tinnitus, decreased hearing, focal numbness, amnesia
7. Ligature mark or neck contusion
8. Neck tenderness or pain/sore throat/pain with swallowing
9. Change in voice: unable to speak, hoarse or raspy voice

### PHYSICAL EXAM (ANY Abnormality)

1. Functional assessment of breathing, swallowing, and voice
2. Thorough examination of neck, eyes, TMs, oral mucosa, nose, airway, upper torso for: tenderness, swelling, bruising, abrasions, crepitance, bruit
3. Venous congestion/petechial hemorrhages/scleral hemorrhages
4. Ligature mark = **HIGH RISK**
5. Tenderness of airway structures/carotid arteries = **HIGH RISK**
6. Mental status/complete neurologic exam

CONSIDER ADMINISTRATION OF ONE 325MG ASPIRIN IF THERE IS ANY DELAY IN OBTAINING A RADIOGRAPHIC STUDY

### RECOMMENDED RADIOGRAPHIC STUDIES TO RULE OUT LIFE-THREATENING INJURIES\* (including delayed presentations of up to 1 year)

1. CT Angio of carotid/vertebral arteries (GOLD STANDARD for evaluation of vessels and bony/cartilaginous structures, less sensitive for soft tissue trauma) or
2. MRA of carotid/vertebral arteries
3. Carotid Doppler Ultrasound (NOT RECOMMENDED - Unable to adequately evaluate vertebral arteries or proximal internal carotid arteries)
4. Plain Radiographs (NOT RECOMMENDED - Unable to evaluate vascular and soft-tissue structures)
5. Consider fiberoptic direct laryngoscopy to evaluate possible laryngeal injury or airway compromise

### POSITIVE RESULTS

1. Consult Neurology/Neurosurgery/Trauma Surgery for admission
2. Consider ENT consult for laryngeal trauma or dysphonia
3. Perform a lethality assessment per institutional policy

### NEGATIVE RESULTS

**Discharge home with detailed instructions, including a lethality assessment, and to return to ED if:** neurological signs/symptoms, dyspnea, dysphonia orodynophagia develops or worsens

IF THE CTA IS NEGATIVE, CONSIDER OBSERVATION OF NEAR-FATAL STRANGULATION PATIENT IF THE AIRWAY IS OF CONCERN. OBSERVATION HAS **NO** ROLE IN RULING OUT A VASCULAR INJURY.

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# HELPS BRAIN INJURY SCREENING TOOL

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Consumer Information: \_\_\_\_\_

\_\_\_\_\_

Agency/Screeners' Information: \_\_\_\_\_

\_\_\_\_\_

**H** Have you ever **Hit** your **Head** or been **Hit** on the **Head**? ☐ Yes ☐ No

Note: Prompt client to think about all incidents that may have occurred at any age, even those that did not seem serious: vehicle accidents, falls, assault, abuse, sports, etc. Screen for domestic violence and child abuse, and also for service related injuries. A TBI can also occur from violent shaking of the head, such as being shaken as a baby or child.

**E** Were you ever seen in the **Emergency** room, hospital, or by a doctor because of an injury to your head? ☐ Yes ☐ No

Note: Many people are seen for treatment. However, there are those who cannot afford treatment, or who do not think they require medical attention.

**L** Did you ever **Lose** consciousness or experience a period of being dazed and confused because of an injury to your head? ☐ Yes ☐ No

Note: People with TBI may not lose consciousness but experience an "alteration of consciousness." This may include feeling dazed, confused, or disoriented at the time of the injury, or being unable to remember the events surrounding the injury.

**P** Do you experience any of these **Problems** in your daily life since you hit your head? ☐ Yes ☐ No

Note: Ask your client if s/he experiences any of the following problems, and ask when the problem presented. You are looking for a combination of two or more problems that were not present prior to the injury.

- |                                                   |                                                                                |
|---------------------------------------------------|--------------------------------------------------------------------------------|
| <input type="checkbox"/> headaches                | <input type="checkbox"/> difficulty reading, writing, calculating              |
| <input type="checkbox"/> dizziness                | <input type="checkbox"/> poor problem solving                                  |
| <input type="checkbox"/> anxiety                  | <input type="checkbox"/> difficulty performing your job/school work            |
| <input type="checkbox"/> depression               | <input type="checkbox"/> change in relationships with others                   |
| <input type="checkbox"/> difficulty concentrating | <input type="checkbox"/> poor judgment (being fired from job, arrests, fights) |
| <input type="checkbox"/> difficulty remembering   |                                                                                |

**S** Any significant **Sicknesses**? ☐ Yes ☐ No

Note: Traumatic brain injury implies a physical blow to the head, but acquired brain injury may also be caused by medical conditions, such as: brain tumor, meningitis, West Nile virus, stroke, seizures. Also screen for instances of oxygen deprivation such as following a heart attack, carbon monoxide poisoning, near drowning, or near suffocation.

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## Scoring the HELPS Screening Tool

A HELPS screening is considered positive for a *possible* TBI when the following 3 items are identified:

- 1.) An event that could have caused a brain injury (yes to H, E **or** S), **and**
- 2.) A period of loss of consciousness or altered consciousness after the injury or another indication that the injury was severe (yes to L or E), **and**
- 3.) The presence of two or more chronic problems listed under P that were not present before the injury.

### Note:

- A positive screening is **not sufficient to diagnose TBI** as the reason for current symptoms and difficulties - other possible causes may need to be ruled out
- **Some individuals could present exceptions** to the screening results, such as people who do have TBI-related problems but answered "no" to some questions
- Consider positive responses within the context of the person's self-report and documentation of altered behavioral and/or cognitive functioning

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The original HELPS TBI screening tool was developed by M. Picard, D. Scarisbrick, R. Paluck, 9/91, International Center for the Disabled, TBI-NET, U.S. Department of Education, Rehabilitation Services Administration, Grant #H128A00022. The Helps Tool was updated by project personnel to reflect recent recommendations by the CDC on the diagnosis of TBI. See [http://www.cdc.gov/ncipc/pub-res/tbi\\_toolkit/physicians/mtbi/diagnosis.htm](http://www.cdc.gov/ncipc/pub-res/tbi_toolkit/physicians/mtbi/diagnosis.htm).

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# STRANGULATION FACT SHEET

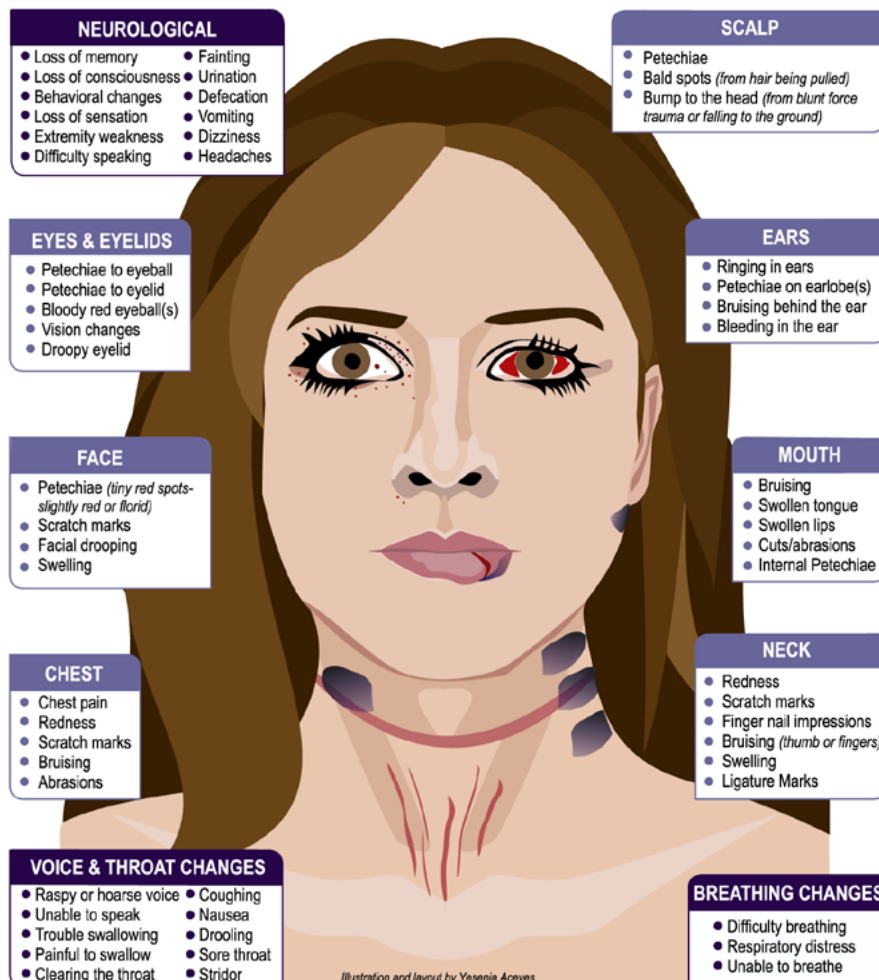
## WHY NON-FATAL STRANGULATION CASES SHOULD BE TREATED AS FELONIES

by Gael Strack, Esq. and Casey Gwinn, Esq.

There are clear reasons why strangulation assaults in domestic violence cases should have a separate felony statute, and, if there is a misdemeanor element to the statute, it should be only used after it is determined that a felony cannot be filed. These reasons have been articulated during legislative hearings across the country as statutes have been passed over the last 16 years as well as numerous published and unpublished cases. Prosecutors and law enforcement professionals should be familiar with these arguments.

They can help in advocating for legal changes, felony prosecution, used in bail hearings, plea negotiations with defense attorneys, during trial, at sentencing hearings, with probation and parole officers and helping victims understand the seriousness and lethality of strangulation assaults. These key points are separated in bullet points to make it easy for professionals to “cut and paste” into bail arguments, trial briefs and sentencing reports.

### SIGNS AND SYMPTOMS<sup>1</sup>



Source: Strangulation in Intimate Partner Violence, Chapter 16, Intimate Partner Violence. Oxford University Press, Inc. 2009.

### CONSEQUENCES<sup>2</sup>

#### PSYCHOLOGICAL INJURY

PTSD, depression, suicidal ideation, memory problems, nightmares, anxiety, severe stress reaction, amnesia, and psychosis.

#### DELAYED FATALITY

Death can occur days or weeks after the attack due to carotid artery dissection and respiratory complications such as pneumonia, ARDS, and the risk of blood clots traveling to the brain (embolization).

As of 2025, **Washington DC, 50 States, 22 Tribes and 3 US Territories** have passed felony strangulation laws.<sup>3</sup>

Strangulation and suffocation are included in **Federal (2013)** and **Military (2019) Codes**.

OF WOMEN  
AT HIGH RISK...

**68-80%**

WILL EXPERIENCE  
NEAR-FATAL STRANGULATION  
BY THEIR PARTNER. <sup>1</sup>

### **STRANGULATION IS MORE COMMON THAN PROFESSIONALS HAVE REALIZED.**

Studies have shown that the prevalence of strangulation victims varies from **68%** in a study conducted in 2001 among abused women seeking medical services and/or shelter services; **72%** of abused women seeking services<sup>4</sup> at a Family Justice Center in Milwaukee<sup>5</sup>; and **80%** among abused women who called Oklahoma police departments for help.<sup>6</sup>

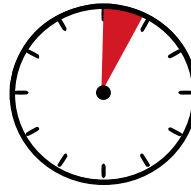
### **VICTIMS OF MULTIPLE NON-FATAL STRANGULATION**

"who had experienced more than one strangulation attack, on separate occasions, by the same abuser, reported neck and throat injuries, neurologic disorders and psychological disorders with increased frequency."<sup>7</sup>

Researchers now believe that victims who are strangled multiple times also are at the **HIGHEST RISK OF BEING KILLED** and suffering long-term consequences.<sup>8</sup>

In one study based on a Chicago study, **ALMOST HALF OF ALL DOMESTIC VIOLENCE HOMICIDE VICTIMS HAVE EXPERIENCED AT LEAST ONE EPISODE OF STRANGULATION PRIOR TO A LETHAL OR NEAR-LETHAL VIOLENT INCIDENT.** Victims of one episode of strangulation are **700%** more likely to be a victim of attempted homicide by the same partner, and are **800%** more likely of becoming a homicide victim at the hands of the same partner.<sup>9</sup>

Even given the lethal and predictive nature of these assaults, the two largest non-fatal strangulation case studies ever conducted to date in the United States, found that **MOST CASES LACKED PHYSICAL EVIDENCE OR VISIBLE INJURY OF STRANGULATION.** In the 2001 San Diego Study involving **300** police reports, only **50%** of the victims had visible injuries to the neck with only **15%** of those injuries being sufficient enough to photograph.<sup>10</sup> In the 2016 Brevard County Study involving **591** police reports, **50%** of the cases involving explicit strangulation had visible neck injuries.<sup>11</sup>



**LOSS OF CONSCIOUSNESS  
CAN OCCUR WITHIN 5-10 SECONDS.  
DEATH WITHIN MINUTES. <sup>11</sup>**

### **STRANGULATION IS MORE SERIOUS THAN PROFESSIONALS HAVE REALIZED.**

Loss of consciousness can occur within **5-10 SECONDS**, death within **2-5 MINUTES** depending on the circumstances, and brain damage somewhere in between.<sup>12</sup>

The seriousness of the internal injuries, even with no external injuries, may take a few hours to be appreciated and **DELAYED DEATH CAN OCCUR DAYS LATER.**<sup>13</sup>

Because most strangulation victims do not have visible external injuries, **STRANGULATION CASES ARE OFTEN MINIMIZED OR TRIVIALIZED** by law enforcement, medical, advocacy, and mental health professionals.<sup>14</sup>

Even in fatal strangulation cases, **THERE IS OFTEN NO EXTERNAL EVIDENT INJURY** (confirming the findings regarding the seriousness of non-fatal, no-visible-injury strangulation assaults).<sup>15</sup>

There is consensus among national and international legal and medical experts, research, statutes and case law that **MANUAL AND/OR LIGATURE STRANGULATION IS LETHAL FORCE AND CAN CAUSE SERIOUS BODILY INJURY AND/OR POSES SUBSTANTIAL RISK OF DEATH.**<sup>16</sup>

Leading forensic pathologists have determined that even homicides in strangulation assaults have not been identified at the scene of the crime, leading to poor crime-scene investigation (no photos, interviews, or trace evidence) due to **MISIDENTIFICATION OF THE CASE** as a drug overdose.<sup>17</sup>

When non-fatal strangulation is minimized by professionals, it sends the wrong message to victims and perpetrators, resulting in **INADEQUATE INVESTIGATIONS, CASES BEING REDUCED TO MISDEMEANORS OR DISMISSED, INADEQUATE MEDICAL ATTENTION AND/OR DIAGNOSIS, RISK ASSESSMENT AND SAFETY PLANNING.**<sup>18</sup>



**STRANGULATION IS A UNIQUE CRIME.** It is now being considered the equivalent to water boarding and torture.<sup>19</sup> It has more in common with sexual assault crimes than basic assault or battery crimes – may not have injuries, personal in nature, requires special investigation and documentation.

**THE INABILITY TO GET OXYGEN IS ONE OF THE MOST TERRIFYING EVENTS A PERSON CAN ENDURE.** The body has an automatic reaction to being deprived of oxygen and blood to the brain. It knows it is about to die if it does not change the situation immediately, which leads to escalation of the violence by the victim.<sup>20</sup>

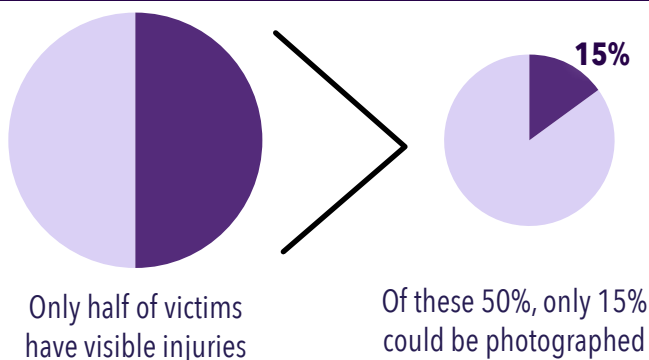
**DOMESTIC VIOLENCE STRANGULATION IS USUALLY ABOUT ASSERTING CONTROL OVER THE VICTIM,** i.e., showing that the offender has the power of life and death over the victim<sup>21</sup>; it's not about doing serious bodily injury (as is required by many statutes).

Strangulation is far more cruel, inhumane, and dangerous than merely punching a person (battery). **STRANGULATION IS A CRUEL ACT, WITH FAR-REACHING CONSEQUENCES.** The particular cruelty of the offense and its potential effects upon a victim both physically and psychologically, merit its categorization and a ranked felony offense.<sup>22</sup>

#### **JURORS EXPECT TO SEE VISIBLE INJURIES.**

But the fact that strangulation often leaves no marks, combined with its terror value, makes it a favorite tactic and a weapon of choice for experienced batterers.<sup>23</sup>

Oftentimes, even in fatal cases, there are **NO EXTERNAL SIGNS** of injury.<sup>24</sup>



Due to the research on the lethal and predictive nature of strangulation assaults, national organizations have passed position papers and resolutions to raise awareness about the seriousness and lethality of strangulation assaults, such as **INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE RESOLUTION OF 2014<sup>25</sup>; THE INTERNATIONAL OF FORENSIC NURSES ASSOCIATION STRANGULATION POSITION PAPER OF 2016<sup>26</sup>, EMERGENCY NURSES ASSOCIATION TOPIC BRIEF ON STRANGULATION OF 2016<sup>27</sup>** and now pending is the American College of Emergency Physicians proclamation on non-fatal strangulation.

In 2008, the **ABUSE ASSESSMENT SCREEN** was revised to address non-lethal strangulation due to the body of research on seriousness of the assault.<sup>28</sup>

**RESEARCH CONFIRMS THAT THE ACT OF PLACING HANDS OR A LIGATURE AROUND A VICTIM'S NECK INTRODUCES A DIFFERENT LEVEL OF LETHALITY, RAGE, AND BRAIN INJURIES** than simple assaults such as pushing, punching, kicking, or slapping.<sup>29</sup>

Juries and judges have difficulty understanding the serious nature of the crime without clear guidance from expert witnesses, professionals with specialized training, and clear guidance in the law. **MANUAL STRANGULATION IS NOT A MATTER OF COMMON KNOWLEDGE AND IS PROPER SUBJECT OF EXPERT TESTIMONY.**<sup>30</sup>

**ODDS FOR homicide INCREASE 750% FOR VICTIMS WHO HAVE BEEN PREVIOUSLY STRANGLED, COMPARED TO VICTIMS WHO HAVE NEVER BEEN STRANGLED.**<sup>31</sup>

**EFFECTIVE INTERVENTION IN NON-HOMICIDE STRANGULATION CASES WILL INCREASE VICTIM SAFETY, HOLD OFFENDERS ACCOUNTABLE FOR THE CRIMES THEY COMMIT, AND PREVENT FUTURE HOMICIDES.**

Communities that have adopted strangulation protocols and/or initiatives like Maricopa, Arizona; Tulsa, Oklahoma and San Diego, California have seen drops in domestic violence homicide.<sup>32</sup>



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- <sup>22</sup> Johnson v. State (2007, Florida) 969 So.2d 938, 956-57. <https://caselaw.findlaw.com/court/fl-district-court-of-appeal/1118724.html>; State v. Rodriguez (2015, Washington) 187 Wash.App. 922. <https://case-law.vlex.com/vid/state-v-rodriguez-no-888249718>
- <sup>23</sup> Brett Johnson, Sweetwater County Attorney, from testimony at a House and Senate Judiciary Committee of the Wyoming Legislature regarding SF 132: Strangulation of a Household Member (2011). <https://wyoleg.gov/2011/Engross/SF0132.pdf>
- <sup>24</sup> Strack et al., supra, note 10.
- <sup>25</sup> <https://www.theiacp.org/resources/resolution/increasing-the-awareness-of-the-lethality-of-intimate-partner-strangulation>
- <sup>26</sup> <https://www.forensicnurses.org/page/PositionPapers>
- <sup>27</sup> <https://www.allianceforhope.org/training-institute-on-strangulation-prevention/resources/ena-topic-brief-an-overview-of-strangulation-injuries-and-nursing-implications>
- <sup>28</sup> Laughon et al., supra, note 18.
- <sup>29</sup> Taliaferro et al., supra, note 1; Glass et al., supra, note 5, at 333-334; Hawley, supra, note 8, at 7-8; Wilbur et al., supra, note 4.
- <sup>30</sup> People v. Jackson (2013) 221 Cal.App.4th 1222. <https://case-law.vlex.com/vid/people-v-jackson-b241930-892655744>
- <sup>31</sup> Glass et al., supra, note 9.
- <sup>32</sup> Supra, note 6; <https://www.azcentral.com/story/news/local/phoenix/2015/03/02/county-attorney-strangulation-protocol/24001897/>; <https://www.sandiegouniontribune.com/news/public-safety/sd-me-domestic-violence-20181004-story.html>.

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