Strangulation Assaults: *Prosecutions Are Up, Prevention Efforts Are Better, But Challenges Remain*

by Gael B. Strack, Casey Gwinn, and Gerald W. Fineman

Tremendous progress has been made in preventing and prosecuting strangulation over the past 15 years. These improvements began with the Diana Gonzalez Strangulation Prevention Act of 2011, which amended Penal Code section 273.5 to include strangulation and suffocation. Since then, new countywide and statewide protocols have been developed, multidisciplinary teams that include forensic nurses are being used, and wraparound services for victims at Family Justice Centers are available. In addition, new laws provide free strangulation exams in California, Colorado, Washington, Nevada, and Oregon.

More hospitals are adopting new imaging guidelines that identify carotid dissections, fractures, traumatic brain injuries, and strokes. Investigators are performing comprehensive investigations and testifying as experts in court. Forensic nurses are conducting state-of-the-art strangulation exams, identifying and documenting injuries, alerting physicians when imaging is necessary, advocating for a higher standard of care, and improving their discharge orders with safety planning.

Prosecutors are winning cases without external visible injuries and victim

Gael B. Strack is the chief executive officer and co-founder of Alliance for HOPE International.

Casey Gwinn is the president of Alliance for HOPE International.

Gerald (Jerry) W. Fineman was an assistant district attorney in Riverside County. All three authors serve on the Alliance for HOPE International's Board of Directors.

participation by using forfeiture by wrongdoing. Probation officers, court personnel, civil attorneys, and judges are improving their responses. Probation officers now understand the danger stranglers pose to their victims, police officers, and the public. Family court personnel are more careful in handling child custody and civil matters. Civil attorneys have improved their understanding of strangulation from the criminal side to the civil side. Judges are getting trained and developing bench cards in Minnesota, Virginia, Florida, Arizona, and Ohio (with a new bench card pending in California).

The challenge that remains is implementation. It is one thing to *pass* a strangulation law; it is another to *implement* it. To prevent homicides, everyone in law enforcement needs training to screen, identify, document, assess, investigate, prosecute, advocate, and respond to strangulation assault appropriately and immediately. There continues to be a strong need for multidisciplinary teams, approaches, and protocols in *every county.* Family justice centers, the ultimate form of multidisciplinary teams, are leading the way by specializing in handling strangulation cases. More research is necessary to understand the rage of stranglers and the impact on children who witness their mothers being strangled or are strangled themselves.

This article provides a detailed overview of the progress made and challenges that remain in strangulation prevention, starting with a review of the unpublished case of *People v. Perez*, which led to the Diana Gonzalez Strangulation Prevention Act of 2011.

People v. Perez and the Diana Gonzalez Strangulation Prevention Act

On October 12, 2010, Diana Gonzalez (Diana) was stabbed to death by her common-law husband, Armando Perez (Armando), on the campus of San Diego City College. Weeks before she was murdered, Diana had left Armando. She was tired of the abuse and determined to make a new life for herself and her baby. She dreamed of becoming a nurse. Armando had other plans. Like most stranglers, he became a stalker. Diana had just left her night class at San Diego City College and headed to her parked car. Armando was already waiting for her. Armando begged Diana to take him back. When she refused and tried to leave, he became enraged. He immediately strangled her to the point of unconsciousness

and urination. He then pushed her over to the passenger seat, kidnapped her, and drove her to a nearby hotel.

Over the next couple of days, Armando repeatedly threatened to kill Diana, their baby, and her family. He repeatedly sexually assaulted her. Diana believed she was going to die. She begged, pleaded, negotiated, and promised not to call the police. Diana eventually convinced Armando to let her go and drive her back home. When Armando dropped her off at her mother's house, Diana told her mother what had happened. The police were immediately called, and a sexual assault exam was conducted. During her exam, Diana still had evidence of florid petechiae and other injuries. Armando was subsequently arrested.

When interviewed, Armando claimed everything was consensual and Diana liked "rough sex." Diana obtained a protection order to keep Armando away from her. However, after being released from custody, Armando continued to stalk Diana and murdered her on campus on October 12, 2010, even though her mother and campus police were waiting for Diana at her parked car for extra protection. They were her safety plan. Armando immediately fled to Mexico and avoided being arrested until the district attorney's office negotiated with the Mexican government to extradite him to San Diego, where he was later convicted of murder and is now serving a life sentence without the possibility of parole.

Diana's murder prompted amendments to Penal Code section 273.5 to include strangulation and suffocation. Section 273.5 is recognized as one of the leading spousal-abuse statutes in the United States. First, it is a general intent crime, meaning it does not require specific intent and minimal injury. Second, it allows the filing of felony spousal-abuse charges even with minimal injury (defined as "traumatic condition") if the relationship between the victim and the offender falls within the categories covered by the statute: spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child. Traumatic condition is "a condition of the body, such as a wound, or external or internal injury, … whether of a minor or serious nature, caused by a physical force."[1] Finally, section 273.5 provides for an upper term of four years in state prison, excluding other statutory enhancements that may apply.

California courts have consistently upheld felony convictions under section 273.5 even when minimal internal or external injuries exist, which made amending section 273.5 the perfect approach

to enhancing consequences for non-fatal domestic violence strangulation assaults in California.[2] The Legislative Counsel explained the amendment to section 273.5 as follows: "This bill, the Diana Gonzalez Strangulation Prevention Act of 2011, would specify that 'traumatic condition' includes injury because of strangulation or suffocation and defines the terms 'strangulation' and 'suffocation' for those purposes."[3] Section 273.5(d) reads:

> As used in this section, "traumatic condition" means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, *injury as a result of strangulation or suffocation*, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck. [Emphasis added.]

The amendment added language clarifying that strangulation is serious criminal conduct in intimate relationships and, by the very nature of the offense, causes internal and often external injuries that result in a "traumatic condition." The section 273.5 amendment provides direction to judges and juries in domestic violence cases when an abuser has strangled his partner. (CALJIC 9.35).

People v. Reid (2024) 105 Cal.App.5th 446

In *People v. Reid*, the Fourth District Court of Appeal (DCA) provided clear guidance and honored the legislative intent behind the Diana Gonzalez Strangulation Prevention Act.[4] In *Reid,* the People filed a complaint charging Reid with assault using force likely to produce great bodily injury (Pen. Code § 245(a)) and willfully inflicting corporal injury upon a domestic partner resulting in a traumatic condition (Pen. Code § 273.5), specifically strangulation. At the preliminary hearing, the victim (Jane Doe) testified that Reid grabbed her by the throat with his hand and applied pressure for about 30 seconds. Jane said it was painful, she had difficulty swallowing, saw stars, and felt a little dizzy or faint (suggesting both the obstruction of blood flow and airflow). Jane testified she was afraid Reid was "going to kill me." *But she did not believe she lost consciousness.* Jane did not immediately call the police and admitted, "She always seems to protect him." But the next morning, after yet another verbal and physical confrontation with Reid, she called the police.

The responding officer also testified at the preliminary hearing. He testified that when he responded to the scene, he noted that Jane was upset and crying. When he asked Jane to describe how pressure was applied, she said,

> "She was very afraid at the time. She could not speak. She saw the black in Mr. Reid's eyes and the evil, and was extremely afraid. And when the pressure was applied to her throat, she saw spots, had difficulty swallowing, and was a little dizzy and faint, and she—for approximately 30 seconds she was—the pressure was applied."[5]

At the end of the preliminary hearing, the magistrate did not hold Reid on count two, willfully inflicting corporal injury upon a domestic partner resulting in a traumatic condition, stating: "I don't think that there is evidence of a traumatic injury."[6]

The People filed an information again alleging both counts. Reid filed a motion to dismiss count two, which the trial court granted. The People appealed the dismissal, which was reversed on appeal. The Court of Appeal found:

> The evidence provided a rational ground for assuming Reid inflicted *corporal injury* upon Jane through choking, which resulted in a *traumatic condition*. That is, the alleged impeding of Jane's ability to breathe normally, and/or the possible impeding of the circulation of Jane's blood to her brain, were the physical manifestations—traumatic conditions—resulting from Reid's infliction of corporal injury.
>
> ¶
>
> Thus, we reverse the order of dismissal.[7]

Reid is a helpful case for prosecuting strangulation cases for several reasons:

- Under the Relevant Principles of Laws, the court held that,

  > The purpose of section 273.5 is to protect persons … in a special relationship for which society demands, and the victim may reasonably expect, stability and safety, and in which the victim, for these reasons among others, may be especially vulnerable.[8]

- The Court of Appeal referred to the Diana Gonzalez Strangulation Prevention Act of 2011 and noted:

  > "According to the author, 'SB 430 seeks to rectify that strangulation and suffocation cases are often overlooked under existing statutes. Recent research has

> confirmed that strangulation is one of the most lethal forms of violence in domestic violence and sexual assault cases. Prior to the research and recent focus on strangulation training programs and specialized intervention processes, this lethal violence was often minimized. In many cases, the lack of physical evidence caused the criminal justice system to treat "choking" cases as minor incidents, much like a slap to the face where only redness might appear. Today, based on the involvement of the medical profession, specialized training for police and prosecutors, and ongoing research, strangulation has become a focus area for policy makers and professionals working to reduce intimate partner violence and sexual assault.'"[9]

- The Court of Appeal continued to quote the Legislature's intent:

> "Almost half of domestic violence homicide victims experienced at least one episode of attempted strangulation prior to a lethal or near-lethal violent incident. Victims of prior attempted strangulation are seven times more likely to become a homicide victim. In order to combat this criminal behavior, thirty states have passed special strangulation statutes. By providing clear legislation to guide judges and juries in addressing this extremely lethal form of violence which occurs particularly often in domestic violence cases, homicides will be reduced, lives saved, and surviving victims will enter a more informed and responsive criminal justice system."[10]

- It was also noted that,

> California case law interpreting section 273.5 makes clear that even a "minor injury [is] sufficient to satisfy the statutory definition" of a traumatic condition.
>
> The harm to the victim required to satisfy the "traumatic condition" element of section 273.5 is a lesser degree of harm than what is required under other criminal statutes. … But, the Legislature has clothed persons … in intimate relationships with greater protection by requiring *less harm* to be inflicted before the offense is committed.[11]

- Based on the evidence, the court found there was a rational ground for assuming that Reid inflicted *corporal injury* upon Jane within the plain meaning of those two italicized words noted:

> [I]f loss of consciousness is sufficient to establish felony battery under the "serious bodily injury" standard of

> section 243, subdivision (f)(4) and the Legislature has determined that *less harm* is sufficient to satisfy the "traumatic condition" standard of section 273.5, then it follows that Jane's alleged possible *loss of consciousness* (i.e., seeing spots and feeling dizzy or faint) was sufficient to support a probable cause finding that the preliminary hearing evidence satisfied the lower section 273.5 standard of harm.[12]

The Legislature and the Court of Appeal clearly understood the purpose of amending section 273.5 to include strangulation and suffocation, because victims of domestic violence minimize the abuse and are vulnerable and worthy of protection. *Reid* also honors Diana Gonzalez's memory and validates the Diana Gonzalez Strangulation Prevention Act.

Reid has two other key points worth mentioning. First, the responding deputy was trained in trauma-informed interviewing and how to conduct a strangulation interview. Second, it is common for victims of strangulation not to remember if they were strangled to the point of unconsciousness.

In a 2024 study, researchers recognized that some victims of strangulation may be able to recall loss of consciousness, while others may not.[13] The leading author was Dr. Sean Dugan, former medical director of the California Clinical Forensic Medical Training Center. The Dugan study included 191 unique patients. Researchers found that 51 percent of their patients reported loss of consciousness, while the other 49 percent of patients did not. However, based on their clinical assessment and reported symptoms of anoxia, they concluded it was likely that those patients who did not report loss of consciousness (LOC) may have lost consciousness. They recommended that emergency medicine providers screen patients reporting strangulation for amnesia in addition to LOC, which would enhance the detection of an anoxic brain injury, increase considerations for imaging, and improve the treatment of acute and chronic symptoms by referring patients to specialists, such as neurologists, physiatrists, and occupational therapists.

Prosecutors should continue to charge section 273.5 for strangulation and suffocation assault. But they also should consider charging assault with the intent to cause great bodily injury, torture, unlawful restraint, kidnapping, restraining order violations, criminal threats, assault with a deadly weapon, sexual assault,

witness intimidation, animal abuse, child endangerment, including, where appropriate, charging strangulation as attempted murder.

Strangulation as Attempted Murder

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 to determine whether case characteristics and themes across survivors' on-scene statements could help prosecutors combat common legal defenses raised when victims are unavailable. Researchers found that only 6 percent 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.[14]

In 2023, the Tennessee Legislature added a new subdivision to its penal code, allowing prosecutors to charge attempted first-degree murder when the victim loses consciousness due to strangulation under Tennessee Penal Code section 39-13-202, or attempted second-degree murder, under section 39-13-210. As most prosecutors know, the difference between strangulation as an aggravated assault and strangulation as attempted murder is that 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 or by using a ligature, and loses consciousness, prosecutors should consider charging attempted murder. There is no reason to continue applying pressure to a limp and unconscious individual unless you intend to kill them. Continuing to apply pressure after loss of consciousness significantly increases the chances of brain damage or death. Evidence of seizure, petechiae, urination, and defecation are clear signs of a near-fatal strangulation case.

Progress Since the Diana Gonzalez Strangulation Prevention Act

Since 2011, several important steps have been taken to better understand strangulation, hold offenders accountable, and increase victim safety. In 2013, CDAA published *Investigation and Prosecution of Strangulation Cases*; a revised edition was released in 2020. This manual spurred Alaska (2014) and Kentucky (2024) to publish manuals.

By 2013, a tremendous amount of work had already begun in San Diego to understand the lethality of strangulation assaults and improve the investigation, prosecution, and advocacy surrounding these assaults. It all started because of two domestic violence homicides in 1995: Casondra Stewart (17 years old) and Tamara Smith (16 years old). Their deaths made San Diego realize how the criminal justice system was failing high-risk victims of non-fatal strangulation. There was a huge gap in knowledge among medical, legal, and advocacy professionals when it came to non-fatal strangulation cases. The San Diego City Attorney's Office studied 300 existing "choking" cases being prosecuted within the office to find answers. The study's findings were published in a special edition of the *Journal of Emergency Medicine* in 2001.[15] Below is a summary of the study's key findings:

- Many more victims were being strangled than we realized.
- Strangulation victims were at a high risk of being killed.
- Victims were suffering serious health consequences but rarely seeking medical attention.
- Strangulation was a weapon of choice by repeat offenders and evidence of escalation.
- Strangulation was a gendered crime (mostly men strangling women).
- Everyone was minimizing strangulation.
- Victims reported being "choked," professionals called it "attempted strangulation," and rarely did medical professionals treat "choking" cases as an emergency medical condition requiring a full examination or imaging.
- Serious, life-threatening cases were being minimized due to a lack of visible injury, a lack of victim "cooperation," or a lack of corroborating evidence.

Countywide Strangulation Protocols

The first communities to develop countywide, multidisciplinary strangulation protocols were Maricopa, Arizona, in 2014, and Brevard County, Florida, in 2015. Arizona documented an increase in prosecutions and a reduction in domestic violence-related homicides. Brevard County saw improvement in filing and accountability.

Today, California leads the country in countywide strangulation protocols, including San Diego, Napa, Riverside, Sacramento, Santa Clara, Contra Costa, Solano, Stanislaus, and Ventura.[16]

San Diego, in particular, continues to see increased felony prosecutions and a dramatic drop in domestic violence homicides—proving that prioritizing and aggressively prosecuting strangulation cases prevents homicides. Protocols allow for and include trained professionals, specialized forms, thorough investigations, forensic medical examinations, forensic documentation, the use of experts, and evidence-based prosecutions. The success of countywide, multidisciplinary protocols has inspired statewide protocols in Delaware, Indiana, and New Jersey.

The Domestic Violence Report of 2014

In 2014, the Civic Research Institute devoted an entire issue to strangulation assaults.[17] At that time, Kelly Weisberg, the editor of the *Domestic Violence Report*, noted that strangulation was a topic of great interest because of the risk of death, profound health consequences for survivors, and the challenges for law enforcement in building strangulation cases for prosecution without visible injuries. This was such an important issue in the field that the Civic Research Institute made this special issue available for free—for the first time in their 20-year history. The 2014 special issue included six important articles: (1) Strangulation and Domestic Violence: The Edge of a Homicide; (2) New Laws Related to Strangulation; (3) How to Investigate and Prosecute Strangulation Cases; (4) Men Who Strangle Women Also Kill Cops, (5) A Summary of Recent Strangulation Case Law; and (6) Why Didn't Someone Tell Me? Health Consequences of Strangulation Assault for Survivors.

Duty to Warn and Duty to Track

In 2017, California passed SB 40. Thanks to the efforts of Senator Richard Roth and Riverside County Assistant District Attorney Gerald Fineman, 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). Section 13730 requires law enforcement agencies to modify their reporting forms to document when strangulation or suffocation has occurred during a domestic violence incident. (Duty to Track).

Forensic Medical Exams and Forms

One of the best resources for professionals is Chapter 5 of CDAA's manual, *Investigation and Prosecution of Strangulation Cases*.[18] The chapter, "Medical and Forensic Evaluation in Non-Fatal Strangulation Cases," was authored by Dr. William Green of the California Clinical Forensic Medical Training Center, which has been instrumental in developing materials, specialized forms, curriculum, and providing training to medical professionals on the identification, documentation, and forensic medical exam of the strangled victim in domestic violence and sexual assault cases.

Along with the California Chapter of the International Association of Forensic Nursing, CDAA, and others, this group of stakeholders laid the foundation for California's new law on medical forensic exams for the strangled domestic violence victim.

Domestic Violence Report of 2024 and Training

The Civic Research Institute recently partnered with the Training Institute on Strangulation Prevention (the Institute) to publish a 2024–25 special strangulation edition of the *DV Report*.[19] This edition included new research, case law, and links to new resources available through the Training Institute on Strangulation Prevention's website. The special issue also included three new emerging issues: the Truth and Consequences of Strangulation/Choking During Sex, Little Necks, Big Consequences—The Link Between Mothers and the Children Being Strangled, and Hidden Homicides, which focused on cases where men strangle their victims to death and stage it to look like a suicide.

CDAA and the Institute worked closely to provide strangulation training to multidisciplinary professionals before and after the law was passed. The Commission on Peace Officer Standards and Training (POST) has incorporated strangulation training into its curriculum, police academies, advanced officer training, investigator courses, and more. As of 2025, 47 advanced courses on strangulation prevention and many others have been held.

Strangulation Laws Are Evolving All Over the Country

The first standalone strangulation 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, Washington, D.C., and three

U.S. Territories (Virgin Islands, Guam, and Puerto Rico) have added strangulation or suffocation to their criminal codes. Strangulation and suffocation are also included in 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 passed separate, standalone strangulation and suffocation statutes, and a few states 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 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. Florida law does not say "without consent," it says "against the will."

Federal law has one of the most comprehensive definitions of strangulation and suffocation. Under the United States Code, title 18, section 113(b)(4)–(5), 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.[20]

A violation of this code section is a felony punishable by up to 10 years. The effort to understand the significance of strangulation and suffocation in the United States did not go unnoticed by other countries. Australia (2016),[21] New Zealand (2018),[22] Canada (2019),[23] the United Kingdom (2021),[24] and Ireland (2023)[25] have all passed similar standalone strangulation laws.

California Case Law

Fortunately, trained prosecutors across California report successful felony prosecutions with minimal external visible injury, with or without victim participation. A few sample cases (published and unpublished) illustrate this success, before and after the Diana Gonzalez Strangulation Prevention Act took effect. Across California

and the country, the emerging issues in strangulation cases are bail, sufficiency of evidence, recantation, use of spontaneous statements, use of medical diagnosis exception to include identity, use of expert testimony, forfeiture by wrongdoing, and, most recently, overcoming the consent or rough sex defense.

Below is a brief overview of expert testimony, the consent defense, and forfeiture by wrongdoing in strangulation cases.

Expert Testimony in Strangulation Cases

Under Evidence Code section 1107, expert testimony in domestic violence cases has long been admissible to explain victim behavior, power and control dynamics, define abuse, describe the various types of abuse and techniques used by perpetrators to control their victims, and illustrate how terminology has evolved.[26] Similarly, strangulation is a type of crime that is not common knowledge for jurors or judges.[27] Expert testimony is necessary to explain how strangulation differs from other assaults. It is the most lethal form of domestic violence. Victims of strangulation are often more likely to recant due to their fear, escalation of violence, and the high risk of being killed. They are typically terrified victims who have experienced near-death situations and believed they were going to die. Strangulation also involves anatomy, vital and vulnerable neck structures, and physiology. Myths associated with strangulation need to be explained, terminology defined, including how quickly events can escalate, the lack of visible injury, the lack of memory or jumbled memory, failure to seek medical attention, and more.

At present, the only published case on point involving strangulation is *People v. Sexton*,[28] where expert testimony helped the jurors understand why the victim did not immediately report her abuse to the police, which included threats to kill, being threatened with a gun, being repeatedly assaulted, strangled, and sexually assaulted. The district attorney's office refused to drop the case, even though the victim recanted and wanted the charges dropped. Instead, they used an expert to explain why victims recant and made sense of the facts under the circumstances. Over the years, many prosecutors have called expert witnesses to help jurors understand the many aspects of strangulation. While most of these cases have been identified in unpublished opinions, they are nevertheless helpful and on point. They include:

- *People v. Elshere* (2025). Napa Police Detective Bill Hernandez testified as a strangulation expert and explained how little pressure it takes to occlude air flow or blood flow, how little pressure it takes to cause significant internal injuries, the signs and symptoms of strangulation, as well as the lack of visible external injuries. District Attorney Investigator Melissa Kelly was qualified as an expert in domestic violence and testified about domestic violence dynamics.
- *People v. Singh* (2025). Davis Police Officer Josh Helton testified as an expert in a strangulation case. He testified about how little pressure it takes to occlude blood flow or air flow, the timeline of a strangulation assault, the lack of visible injury, and how strangulation is inherently dangerous.
- *People v. Frazier* (2023) WL 2705885. Napa Police Detective Bill Hernandez qualified as a strangulation expert where the victim discussed two incidents of strangulation, including feeling like she needed to urinate but did not, and the other, where she defecated because of being strangled. Hernandez explained the timeline from loss of consciousness, urination, defecation, and death, as well as the need for continuous pressure.
- *People v. Vanderwood* (2019). Dr. Bill Smock testified as an expert in a strangulation/torture case. He explained the gurgling sound that was captured in a recording was likely because the victim's esophagus was blocked from strangulation. The compression prevented the victim from swallowing and caused saliva to pool in the back of her throat, making her feel like she was drowning.
- *People v. Taylor* (2018). Forensic nurse Malinda Wheeler testified as an expert in a strangulation case that strangulation victims sometimes have physical symptoms such as pain, ligature marks, trouble breathing or swallowing, a raspy voice, eye hemorrhages, and memory loss. In approximately 50 percent of cases, however, the victim has no outward signs of injury. It is also common for strangulation victims to refuse medical treatment.
- *People v. Bottenfield* (2017). Forensic nurse Jayne Cohill testified as an expert and explained both strangulation and trauma. Sacramento Sheriff's Sergeant Dennis Prizmitch testified as an expert in domestic violence dynamics.
- *People v. Birse* (2014). District Attorney Investigator Mike Wallace (Shasta County) testified as an expert in domestic violence dynamics and the mechanics of strangulation.
- *People v. Brown* (2013). Dr. Steven Campman, a pathologist, testified as an expert in non-fatal strangulation cases. He explained that impeding the flow of blood from the brain or air to the lungs during an act of strangulation can cause a person to become dizzy,

lose consciousness, and die. Dizziness can occur in as little as 10-15 seconds, and continued pressure on the neck for minutes can cause death. Strangulation can also cause brain damage.

- *People v. Mercado* (2013). Gloria Davis, a project manager of the Sexual Assault Response Team (SART) at the Riverside County Regional Medical Center, testified that urination is consistent with strangulation.
- *People v. Romero* (2011). Dr. Marie Russell, an emergency room physician and former police officer, testified as an expert.

Recantation and the Consent Defense

We continue to see domestic violence and strangulation victims recant and, after the initial police report, later claim they consented to the act of strangulation. Two things are critical to remember. First, there is a science to recantation. Prosecutors should expect it and be ready to explain it to a judge or a jury. In her seminal article, *"Meet Me at the Hill Where We Used to Park": Interpersonal Processes Associated with Victim Recantation*, Amy Bonomi, et al., provide all the tools to explain recantation.[29] Second, there is a rise in the use of the "consent" defense. Instead of saying "It didn't happen. I lied," "The officer got it wrong," or "It was all my fault, I hit him first," victims are now claiming the strangulation was consensual.

The 911 call can generally and quickly eliminate this defense. If strangulation was consensual, why call 911? The 911 call is the best defense to the consent defense. The 911 call is generally considered a spontaneous and trustworthy statement. You can hear the terror in the voices of victims as they explain what just happened to them, why they need emergency assistance, and often explain that they thought they were going to die. This defense usually comes up after the arraignment. However, given the prevalence of sexual choking, investigators need to eliminate this defense at the scene, and prosecutors need to be ready to address it in court. Remember, defense attorneys go to training, have their manuals, and write articles, too. The following are several cases that address keeping irrelevant evidence out of the courtroom.

- *People v. Lay* (1944) 66 Cal.App.2d 889. No consent was given where the victim was strangled during a sexual assault.
- *People v. Samuels* (1967) 250 Cal.App.2d 501. Alleged consent of the beaten victim was not a defense to aggravated assault against the defendant, who was depicted by motion film in a sadomasochism context as administering the beating.

- *People v. Alfaro* (1976) 61 Cal.App.3d 414. The trial court did not err in failing to instruct that the victim's consent was a defense to a charge of force likely to produce great bodily injury.

Forfeiture by Wrongdoing

When the decision in *Crawford v. Washington*[30] was issued in 2004, many prosecutors across the United States thought we would never be able to prosecute domestic violence again unless the victim testified. Some automatically dismissed cases on the day of trial when the victim did not appear in court, but that was a mistake. As it turns out, *Crawford* was a gift because it reminded prosecutors of the basic principle of forfeiture by wrongdoing: "One shall not be permitted to take advantage of his wrongdoing." It just took a little time for this to become clear with decisions like *Giles v. California*.[31]

Today, it is much easier to prosecute strangulation cases without victim participation by using the forfeiture by wrongdoing doctrine, which says once you prove the defendant's conduct caused the victim to recant, take the Fifth, or become unavailable, the defendant not only forfeits their right to cross-examine the victim but testimonial evidence otherwise not admissible under one of the exceptions to the hearsay rule will be admissible.

The United States Supreme Court has already found that domestic violence cases are notoriously susceptible to witness intimidation. Wrongdoing not only includes murder, assault, threat, and other forms of intimidation, but it also includes declarations of love, promises to marry, or a change in behavior if it is intended to cause the victim not to testify.[32] At the heart of any domestic violence case is witness intimidation, and it will be easy to find. Here are some cases worth reading for any prosecutor willing to lay the foundation for forfeiture by wrongdoing.

- *People v. Merchant* (2019) 40 Cal.App.5th 1179. It was proper for the trial court to admit the victim's testimonial statements to law enforcement on the day of the incident. By a preponderance of evidence, sufficient evidence supports the finding that the defendant engaged in wrongdoing designed to prevent the witness from testifying, forfeiting his right to confrontation. The defendant made 167 jail calls. While he made a direct threat to harm her, his calls were obsessive, repeated, and calculated. He would tell the victim to lie low, stay at home, and not venture out or invite company. He told her charges would be dismissed if she evaded being subpoenaed. At the same time, his life would

be over if she came forward. Gratitude and expressions of love followed each time she promised not to appear.

- *People v. Reneaux* (2020) 50 Cal.App.5th 852. The trial court found the defendant's actions (encouraging her to call authorities and tell them she lied, discouraging her from attending proceedings, and promising to marry her) were sufficient to show he caused the victim to be unavailable under forfeiture by wrongdoing. The appellate court cited *Giles*, highlighting that the goal of forfeiture by wrongdoing is to remove the otherwise powerful incentive for defendants to intimidate, bribe, or kill a witness. Forfeiture is grounded in the ability of the courts to protect the integrity of their proceedings. The appellate court highlighted that domestic violence offenses and abusive relationships typically include an element of inherent psychological coercion, and "[t]his particular type of crime is notoriously susceptible to intimidation or coercion of the victim to ensure that [the witness] does not testify at trial."[33]
- *Cody v. Commonwealth* (2018) 68 Va.App. 638. The victim took the Fifth after five jail calls from the defendant, encouraging her to drop the protective order and charges. The trial court found the Commonwealth proved by a "preponderance of evidence" that the victim was unavailable as a witness and the defendant intended to and did, by his wrongdoing, procure her unavailability. Testimonial evidence and evidence admissible by exceptions to the hearsay rule were admissible.

Conclusion

Our mission as prosecutors is to increase victim safety and offender accountability and reduce homicides. We can never achieve our mission until we are all well-versed in handling strangulation assault cases to prevent homicides. And if we cannot stop them, we must do everything we can to accurately determine the cause and manner of death in cases where women die after a prior history of domestic violence. In the words of Lois McMaster Bujold, "*The dead cannot cry out for justice. It is a duty of the living to do so for them.*" ■

ENDNOTES

1. Pen. Code § 273.5(c).
2. *People v. Silva* (1994) 27 Cal.App.4th 1160, 1166 [cert. for part. pub.]; *People v. Wilkins* (1993) 14 Cal.App.4th 761, 771.
3. See SB 430, 2011–2012 Reg. Sess. (Ca. 2011).
4. *People v. Reid* (2024) 105 Cal.App.5th 446.
5. *Id*. at 452.
6. *Id*.

7. *Id*. at 451.
8. *Id*. at 455, citing *People v. Vega* (1995) 33 Cal.App.4th 706, 710.
9. *Reid*, *supra*, at 456, citing Assem. Com. on Public Safety, Analysis of Sen. Bill No. 430, *supra*, as amended June 15, 2011.
10. *Reid*, *supra*, at 456–457, citing Sen. Com. on Public Safety, Analysis of Sen. Bill No. 430 (2011–2012 Reg. Sess.) as introduced Feb. 16, 2011.
11. *Reid*, *supra*, at 457–458, citing *People v. Abrego* (1993) 21 Cal.App.4th 133, 138 and *People v. Gutierrez* (1985) 171 Cal.App.3d 944, 952 [emphasis in original].
12. *Reid*, *supra*, at 459.
13. Sean Dugan MD, FAAP, et al., *Anoxic Brain Injury: A Subtle and Often Overlooked Finding in Non-Fatal Intimate Partner Strangulation* (Dec. 2024) 67 The Journal of Emergency Medicine 6: pp. e599-e607.
14. Patrick Q. Brady, et al., *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).
15. Lee Wilbur, et al., *Survey Results of Women Who Have Been Strangled While in an Abusive Relationship* (2001) The Journal of Emergency Medicine, 21:3, pp. 297–302.
16. If your county has a county-wide strangulation protocol, please email *gael@allianceforhope.com*.
17. Casey Gwinn, et al., *Domestic Violence Report* (August/September 2014) 19:6. <*http://bit.ly/4qNlvVw*> (accessed Oct. 29, 2025).
18. <*https://www.cdaa.org/wp-content/uploads/Strangulation_2020-Online-Version.pdf*> (accessed Oct. 29, 2025).
19. Gael Strack and Casey Gwinn, Domestic Violence Report (December/January 2025) 30:2, pp. 17–40 <*http://bit.ly/3Lag6aJ*> (accessed Oct. 29, 2025).
20. 18 U.S.C. § 113(b)(4)–(5).
21. Heather Douglas, *A Red Flag for a Homicide. Should Non-Fatal Strangulation Be Made a Stand-Alone Offence?* (Oct. 2018) Asia & The Pacific Policy Society <*https://www.policyforum.net/red-flag-homicide/*> (accessed Aug. 18, 2025).
22. The Law Commission, *Strangulation: The Case for a New Offence* (Mar. 2016) Report 138 <*https://tinyurl.com/3jpwhtpb*> (accessed Aug. 18, 2025).
23. Mary Fowels, "The Hidden, Deadly Epidemic in Partner Violence" (Feb. 8, 2022) *The Tyee* <*https://tinyurl.com/43vu6eya*> (accessed Aug. 18, 2025).
24. Gov.UK, *Strangulation and Suffocation* (2024) <*https://tinyurl.com/2h3pku6z*> (accessed Aug. 18, 2025).
25. Eve Rosato, "Non-Fatal Strangulation Law Comes Into Effect in Northern Ireland" (Jun. 26, 2023) *BBC* <*https://tinyurl.com/27xecv8e*> (accessed Oct. 25, 2025).
26. *People v. Brown* (2004) 33 Cal.4th 892.
27. *People v. Jackson* (2013) 221 Cal.App.4th 1222.
28. *People v. Sexton* (2019) 250 Cal.Rptr.3d 496.
29. Amy Bonomi, et al., *"Meet Me at the Hill Where We Used to Park": Interpersonal Processes Associated with Victim Recantation* (2011) 73 Social Science & Medicine 7: pp. 1054–1061.
30. *Crawford v. Washington* (2004) 541 U.S. 36.
31. *Giles v. California* (2008) 554 U.S. 353.
32. *Commonwealth v. Szerlong* (2010) 457 Mass. 858.
33. *People v. Reneaux* (2020) 50 Cal. App.5th 852, 868, citing *Davis v. Washington* (2006) 547 U.S. 813, 832–833.

CA SUMMIT on Domestic Violence & Strangulation

March 30–April 1, 2026 • Hyatt Regency Monterey
1 Old Golf Course Rd • Monterey, CA

ABOUT THE SUMMIT

Formerly known as the Sacramento Valley Domestic Violence & Strangulation Summit, this is a three-day multidisciplinary training (the first day is optional) that offers general session and specialized breakouts for prosecutors, law enforcement officers, physicians, nurses, victim advocates, social workers/therapists, fire fighters, paramedics/EMTs, and 911 dispatchers. CDAA has partnered with the Training Institute on Strangulation Prevention, the Sacramento Regional Family Justice Center, the Sacramento County District Attorney's Office, Yolo County District Attorney's Office, and WEAVE to offer this valuable training opportunity.

PRE-CONFERENCE
Forensic Evaluation of Gunshot Wounds • Advocacy Track

REGULAR CONFERENCE
Officer-Involved Domestic Violence • Evaluating Strangulation Injuries • Case Studies • When the Batterer Is the Badge • Medical Breakouts

Pre- and Regular Conference = $375
Pre-Conference = $125
Regular Conference = $250

Depending on the class(es) you choose, this seminar is certified for 17.5 hours of general MCLE credit for prosecutors or 17.5 hours of BRN credit for nurses. Actual credit will depend upon the final agenda.

LEARN MORE
Scan the QR code to register for this summit.

Training Institute on Strangulation Prevention
District Attorney Sacramento County
WEAVE
CDAA California District Attorneys Association
Sacramento Regional Family Justice Center