



## **National Strangulation Training Institute**

### **National Family Justice Center Alliance Strangulation Training Institute**

#### **Background Information for a California Strangulation Statute**

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#### Background

In recent years, research has confirmed that strangulation violence is one of the most lethal forms of violence in domestic violence and sexual assault cases. While the primary focus of this paper is on domestic violence, most of the research is relevant as well to sexual assault cases, particularly spousal sexual assault. 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. Twenty-nine states have now passed strangulation laws which provide clear legislative definitions of the violent, life threatening assault now properly referred to as strangulation. California is one of only a handful of large states in the country that has not yet passed a statute. Yet domestic violence is a serious social, criminal, and civil justice issue in California.

According to the California Women’s Health Survey (CWSH), approximately 40% of California women experience physical intimate partner violence in their lifetimes. There is no similar research for male victims though strangulation research has found that 99% of strangulation victims are women. The CWSH found younger women, 18-24 years of age, were significantly more likely (11%) to be victims of physical intimate partner violence in the past year than women in other age groups. The CWSH1 also revealed statistically significant higher rates of intimate partner violence among women who had been pregnant in the last five years (12%). Of those experiencing physical intimate partner violence, 75% of victims had children under the age of 18 years at home. The violence, including strangulation, is not confined to adults. According to the California Student Survey (CSS), at least one incident of physical dating violence was reported by 5.2% of 9th graders and 8.2% of 11th graders. Among students who had a boy/girlfriend, the rates of dating violence were 8.8% in 9th grade and 12.8% in 11th grade.

In many of the cases in California, strangulation is a primary cause of death though it is not reported or documented due to the lack of focus on the subject but general research confirms this reality. According to the California Department of Justice, Criminal Justice Statistics Center, there were 113 domestic violence fatalities in 2008 (the most recent year for which data is available). These accounted for 5% of all homicides in the State. Of the 113 domestic violence



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homicides in 2008, 99 of the victims were females (88%), and 14 were males (12%). The 1993 National Mortality Followback Survey of adults shows that the percent of women dying from strangulation was approximately 12%. While there is little research specifically examining strangulation in the context of intimate partner violence or homicide, some experts have suggested that those numbers could be as high as 20% of all domestic violence homicides. Applying numbers from the strangulation field, 20% of all domestic violence homicides could involve strangulation which would account for 20-25 homicides per year in California.

Law enforcement agencies in California are already investing enormous resources in addressing domestic violence cases but there is no consistent set of standards for the handling of strangulation cases. In most jurisdictions, the large majority of such cases are still being handled as misdemeanors and when handled as felonies there is little legal guidance for judges or juries on the nature of the crime when strangulation is involved. According to the California Department of Justice, Criminal Justice Statistics Center, there were 174,649 domestic violence-related calls for assistance in 2007 (the most recent year for which data is available).

### Key Reasons to Pass a California Strangulation Statute

The Family Justice Center Alliance ([www.familyjusticecenter.org](http://www.familyjusticecenter.org)) has become a national leader in the effort to educate professionals and policy makers on strangulation. The Strangulation Training Institute (<http://www.familyjusticecenter.com/Strangulation-Training/strangulation-training.html>) is a specialized team of police officers, prosecutors, advocates, and survivors of domestic violence and sexual assault that provide training across the United States and around the world on the investigation, prosecution, and advocacy issues related to strangulation.

The following reasons have been prepared to assist elected officials, policy makers, and caring community members in supporting the passage of a strangulation statute in California.

- Every state prosecutor's association in the country that has studied the issue has concurred in the need for a statute and has supported such legislation. The National District Attorney's Association (NDAA) has also studied the issue and recommended specific legislation.
- Twenty nine states have now passed statutes in the last ten years but California has failed to make this offense a priority focus area even though much of the research on strangulation has emanated out of California and specifically out of San Diego. (NDAA Article). After NDAA's recent research publication, Illinois, New York and Mississippi passed strangulation felony laws in 2010 with other states in process.
- The NDAA and the Battered Women's Justice Project have strongly endorsed the creation of such statutes. The National Family Justice Center Alliance has provided technical assistance to most, if not, all of the states that have passed strangulation statutes.



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- The largest strangulation study conducted to date is from San Diego, California where 300 cases were studied. (Taliaferro, 2009) The San Diego City Attorney's office found that most cases lacked physical evidence of strangulation – only 15% had a photograph of sufficient quality to be used in court as physical evidence of strangulation and no symptoms were documented or reported in 67% of the cases. (Strack, 2001)
- Strangulation is more common than professionals have realized. Recent studies have now shown that 34% of abused pregnant women report being “choked” (Bullock, 2006); 47% of female domestic violence victims reported being “choked” (Block, 2000) and most experts believe the rate is higher given the lack of minimization by victims and the lack of education.
- Victims of multiple 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”. (Smith, 2001)
- **Almost half of all domestic violence homicide victims had experienced at least one episode of attempted strangulation prior to a lethal or near lethal violent incident (Glass, Sage, 2008). Victims of prior attempted strangulation are 7x more likely of becoming a homicide victim. (Glass, et al, 2008).**
- Strangulation is more serious than professionals have realized. Loss of consciousness can occur within 5 to 10 seconds and death within 4 to 5 minutes. (Watch, 2009; Hawley, McClane, 2001). The seriousness of the internal injuries may take a few hours to be appreciated and delayed death can occur days later. (Hawley, McClane, 2001).
- Because most strangulation victims do not have visible injuries, strangulation cases are minimized or trivialized by law enforcement, medical and mental health professionals.
- **Oftentimes even in fatal cases, there is no external evident injury whatsoever.** (Hawley, Forensic Medical Findings in Fatal and Non-Fatal Intimate Partner Strangulation Assaults).
- Strangulation is lethal force and is one of the best predictors of a future homicide in domestic violence cases. (Glass, et al, 2008).
- All strangulation cases must be meticulously assessed and documented. Even in fatal strangulation cases, it has been reported that documentation is missed. According to Dr. Dean Hawley, a common scenario for homicidal strangulation is that the individual is found dead, often reported by the assailant, with a vague history of substance abuse or depression. There being no externally-evident injury, the body is taken for autopsy with a suspicion of drug overdose and the injury of strangulation is not found until the neck dissection is carried out at autopsy, ordinarily at the end of the case. Therefore, photographs and trace evidence collections are not made.



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- When strangulation is minimized by professionals, it also sends the wrong message to victims. They are generally in denial or minimizing their situation, yet they may not realize their level of danger, be referred to advocates or counselors nor be provided with adequate safety planning information.
- Strangulation does not fit neatly into any other crime. You can strangle someone nearly to death with no visible injury. What is it? A misdemeanor assault with a likely sentence of a \$400 fine and public work service. It is not a PC273.5. We have documented many murders with no visible injuries.
  - It might be a felony assault but expert testimony is necessary and even then there are no elements that relate to the actual nature of the crime.
  - It is most likely an attempted murder but police officers and prosecutors will be reluctant to file those charges because of the lack of documentation and their lack of education, training and practice.
- The IACP National Law Policy Center has incorporated strangulation training into their policy and model police protocols on domestic violence. (IACP, 2006).
- In 2008, the Abuse Assessment Screen has been revised to address nonlethal strangulation due to the body of research. (JOGNN, 2008)
- In 2009, a review and analysis of laws related to strangulation in 50 states was conducted by Kathryn Laughon, University of Virginia; Nancy Glass, Johns Hopkins University School of Nursing, and Claude Worrell, Deputy Commonwealth's Attorney from the City of Charlottesville, which concluded that all states should pass felony strangulation laws. Based on their research, they found non-lethal strangulation of intimate partners has substantial direct health effects and is associated with an increased risk of later lethal violence by a partner or ex-intimate partner but can be difficult to prosecute under existing (non-strangulation) felony laws. They recommended that all states develop policies to improve prosecution of strangulation (implementation), include strangulation in their criminal codes (bail, enhancements) and use language that includes all potential victims (child abuse, sexual assault and elder abuse).
- When laws are passed, it sends a strong message to the professionals handling such incidents that strangulation cases should be treated as serious cases and either generally requires them or gives them an incentive to receive training, develop policies and improve their practice of handling lethal domestic violence cases.
- Today, training materials on strangulation are readily available.
- 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.
- Effective intervention in non-homicide strangulation cases, will increase victim safety, hold offenders for the crimes they commit and prevent future homicides.



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### What Will Opponents Say?

Opponents of a California Strangulation statute may argue that such legislation is not necessary because existing laws address this type of violence. They may argue that more offenders may be incarcerated in state prison. They will argue that the cost of specialized investigations and increased incarceration will burden an already impacted state budget.

### Responses to Opponents of a California Strangulation Statute

- Early intervention, prior to a homicide will save money and lives.
- In California, one domestic violence murder costs a minimum of \$2.5 million in local and state expenses. (San Diego County, HHS Study, 1994)
- More strangulation cases will be prosecuted as high-level misdemeanor or felony level and not result in long-term incarceration unless it is a homicide.
- Any felony strangulation statute should not be a substitute for strong, misdemeanor intervention in domestic violence cases. In one study, victims had been physically abused on average for 3 years before ever being strangled (Wilbur, 2001). In the San Diego Study, 89% of the victims had a long history of prior and documented domestic violence.
- How long does the state have to wait to adequately intervene in a serious, life threatening domestic violence case?
- The impact of children witnessing strangulation violence cannot be underestimated. Children witness approximately 50% of all strangulation incidents – causing deep, long-term emotional trauma and dramatically increasing the likelihood that male children will repeat the violence as teenagers and adults. (Bancroft, 2009)
- Strangulation violence is a felony under virtually any assault statute in the United States. A specialized strangulation statute will not create a new crime, it will simply provide clear elements of an offense for existing lethal force being used consistently by violent and abusive intimate partners in California.

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