

HB

219

SENATE COMMITTEE REPORT

DATE: 4/15/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 219(FIN)

HB 219 STRANGULATION CRIMES

"An Act relating to the definition of 'dangerous instrument' as applied within the criminal code."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____


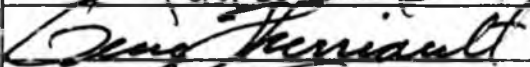

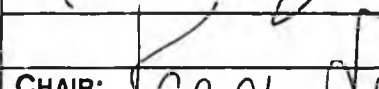
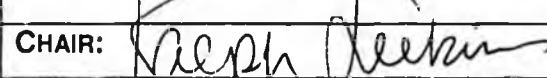
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	X			
	X			
			X	
	X			
CHAIR: 	✓			

Representative Mike Hawker

Alaska State Legislature



Session:

State Capitol
Juneau, AK 99801
907 465-4949 direct
800 478-4950 toll free
907 465-4979 fax

Interim:

716 W 4th Avenue
Anchorage, AK 99501
907 269-0244 office
907 269-0248 fax

Member:

House Finance Committee
Legislative Budget
& Audit Committee

House District 32:

Eagle River
Anchorage
Rainbow
Indian
Bird
Girdwood
Portage
Whittier
Sunrise
Hope

House Bill 219

Sponsor Statement

"An Act relating to crimes and dangerous instruments."

House Bill 219 specifically permits felony prosecution for an assault involving strangulation or suffocation. Strangulation is one of the top five risk factors for domestic violence homicide and is the cause of ten percent of homicide deaths in the United States. Yet, many cases have not been prosecuted as felonies due to physical evidence requirements that may not be relevant in strangulation assaults.

Strangulation can cause life-threatening injuries without obvious external marks that can be photographed and presented to a jury as evidence of "serious physical injury," which is required by current statute for felony assault. Forensic science proves that even in some fatal cases of strangulation there is no external evidence of injury. The cause of death was determined during autopsy, when the chance to photograph and collect untainted evidence had passed.

Without visible injuries, many cases are tried as misdemeanors even though the victim was minutes from death. Unconsciousness can occur within ten seconds, followed closely by irreversible brain damage and death within five minutes. Lack of oxygen can also cause internal injuries, including brain damage, which can lead to death hours, days or even weeks after the crime.

When strangulation occurs in a domestic relationship, it is indicative of a high level of violence within the relationship. In recent years, strangulation has been identified as one of the most lethal forms of domestic violence – a domestic violence victim who has been strangled is nine times more likely to be killed than one who has not.

This bill recognizes strangulation as a serious life threatening assault warranting felony prosecution. I urge your support.

Staff Contact: Juli Lucky 465-4949

Revised 3/17/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 219
 (H) Publish Date: 3/23/05

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title: Strangulation Crimes BRU: Alaska Court System
 Sponsor: Representative Hawker Component: Trial Courts
 Requester: _____ Component No.: 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 219.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 3/17/05 3:12 PM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 3/17/2005
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 219
 (H) Publish Date: 3/23/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to crimes and dangerous instruments." RDU CRIMINAL
 Component Criminal Justice Litigation
 Sponsor Representative Hawker
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: _____
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill amends Title 11 Criminal Law AS 11.81.900 (General Provisions - Definitions) by adding a new subsection under (b)(15) defining hands or other objects used in strangulation as "dangerous instruments".
 Passage of this legislation will have fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 3/22/05 2:45 PM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/22/2005
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 219
 (H) Publish Date: 3/23/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title "An Act relating to crimes and dangerous instruments." RDU Alaska State Troopers
 Component AST Detachments
 Sponsor Rep. Hawker
 Requester House Judiciary Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill amends AS 11.81.900(b)(15) which is the criminal definition for "dangerous instrument." It adds "hands or other objects when used to impede normal breathing or circulation of blood by applying pressure on the throat or neck or obstructing the nose or mouth" to the definition.

This additional language adds clarity and will aid us when we have assault cases that involve strangulation and/or choking of victims.

Passage of this bill will have no fiscal impact on the Department of Public Safety.

Prepared by: Lieutenant Todd Sharp Phone 907-465-3223
 Division: Alaska State Troopers Date/Time 3/18/05 4:14 PM
 Approved by: Commissioner William Tandeske Date 3/18/2005
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: HB 219
 (H) Publish Date: 3/23/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An Act relating to crimes and RDU: Legal and Advocacy Services
dangerous instruments. Component: Public Defender Agency
 Sponsor: Rep. Hawker
 Requester: House Judiciary Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill broadens the definition of "dangerous instrument" in the criminal code to include hands or other objects when used for strangulation or suffocation. Using or threatening the use of a "dangerous instrument" in the commission of an offense generally raises the level of the offense to a felony, or aggravates the offense. Including hands within the definition of "dangerous instruments" will increase the level of offenses currently charged where hands are used or threatened to be used in such a manner. The number of these impacted offenses cannot be determined with any certainty. This bill, if enacted, will have a fiscal impact on the operations of the Agency, but it is not possible to predict with any certainty what that impact will be. Therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone: (907)334-4416
 Division: Public Defender Agency Date/Time: 3/21/05 8:42 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date: 3/21/2005
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSHB 219(FIN)
 (H) Publish Date: 4/12/2005

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title "An Act relating to crimes and dangerous instruments." RDU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Rep. Hawker
 Requester _____ Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends Criminal Law AS 11.81.900 by amending the definition for "dangerous instruments".

Prepared by: House Finance Committee Phone 465-4945
 Division _____ Date/Time 4/12/05 12:55 PM
 Approved by: Representative Meyer Date 4/12/2005
Representative Chenault

Tara Henry is a Forensic Nurse practicing in Alaska for the past 9 years. She performs medical-forensic examinations on victims of domestic violence, sexual assault and child abuse. She also testifies throughout the state of Alaska as an expert in forensic nursing, sexual assault and strangulation. This is her testimony regarding House Bill 219.

Strangulation is a very serious, sometimes fatal physical force that is commonly used as a method to control victims of domestic violence and sexual assault. When a person is being strangled, they can become unconscious within seconds and die within minutes if they are unable to get free of the strangulation hold. Even if they are able to get free of the strangulation hold, they are still at risk for dying hours to days later from the internal trauma that has occurred in the neck.

When pressure is applied to the neck in a strangulation incident, oxygen exchange is prevented from occurring in the brain either by blocking the blood vessels and/or the airway. When someone is using their hands, forearms, ligature or other objects to strangle another person, they are literally controlling whether the person lives or dies.

A person can become unconscious so quickly when they are without oxygen, that oftentimes there are no visible injuries on the external surface of the neck. In addition police may be responding to a strangulation assault soon after the incident occurred and the bleeding that takes place in the tissue of the neck is not visible on the skin surface until after the police have left the scene. There are many symptoms a person can have when they are strangled such as difficulty breathing, hoarse voice, dizziness and unconsciousness.

Although strangulation cases can currently be prosecuted as felonies, it is often difficult to do so without the visible physical injuries on the neck. Medical experts in strangulation are required to explain to the jury symptoms of strangulation and how a person could have easily been killed by being strangled, yet not have any visible marks. This difficulty often results in strangulation cases being prosecuted as misdemeanors instead of the very serious physical force that is.

Strangulation has been recognized as one of the top five lethality risk factors for a domestic violence homicide. Alaska leads the nation in domestic violence homicide rates. Prosecuting all strangulation cases as felonies will help prevent some of the domestic violence homicides in our state. I urge you to pass house bill 219 so strangulation cases can be more effectively prosecuted as the life threatening assaults that they truly are.

Thank you very much.



**STATE OF ALASKA
OFFICE OF VICTIMS' RIGHTS**

Representative Hawker
State Capitol, Room 502
Juneau, AK 99801-1182

April 11, 2005

RE: HB 219- An Act Relating To Crimes And Dangerous Instruments

Dear Representative Hawker:

As the acting director of the Alaska Office of Victims' Rights, I write in support of HB 219, which you introduced on March 15, 2005.

As a former domestic violence prosecutor and current victims' advocate, this is a bill I feel quite strongly about, and one where I have experiential knowledge to offer. Strangulation is under charged and under prosecuted in terms of severity of criminal action, particularly in the domestic violence context because the injuries are generally not readily discernable. Lack of physical evidence has caused the criminal justice system to treat many choking cases as minor incidents, much like a slap on the face where only slight redness may appear. Strangulation is also one of the most deadly methods of controlling a victim. Only eleven pounds of pressure placed on both carotid arteries for ten seconds is necessary to cause unconsciousness.¹ Brain death will occur in four to five minutes if strangulation persists.²

In my experience with domestic violence cases, strangulation injuries are very difficult to see upon initial officer contact with a victim because very often the telltale signs such as difficulty swallowing and symptomatic voice changes only develop a day or two after the event. Due to the lack of "serious physical injury" often these cases are not charged as serious assaults. Many strangulation

¹ *Correlation of Circumstances with Pathological Findings in Asphyxial Deaths by Hanging: A Prospective Study of 61 Cases from Seattle, WA*, Journal of Forensic Sciences, JFSCA, 30:4, Oct. 1985, 1140-47.

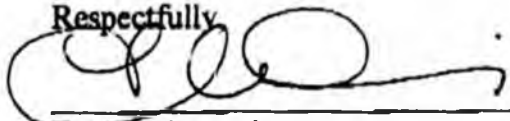
² *Id.*

victims report pain in the throat or hoarseness; others report nausea, loss of consciousness, hyperventilation, loss of bowel function, uncontrollable shaking or a loss of memory. Mental changes manifest as early restlessness and combativeness due to temporary brain anoxia and severe stress reaction³ - so very often the "hysterical" victim is dismissed by police as unable to give a coherent statement of what has happened. Where the police cannot show severe physical injury through description of the injuries that they observe on scene, they charge the conduct as a misdemeanor crime, rather than a very serious strangulation crime. That is a good example of why this bill is so important - it doesn't require the prosecutor to show physical injury through expert testimony, in order to charge felony conduct. This bill would allow prosecutors to charge felony conduct where there are indicia of strangulation present, such as where a victim loses consciousness for a period of time, loses bowel function, or exhibits other symptoms of having been strangled.

Strangulation is one of the most lethal forms of domestic violence. Unconsciousness and death occur within a very short period of time. Victims generally have few immediately discernable injuries and may manifest internal injuries such as lung damage or pulmonary edema that result in death several days or weeks later.⁴ When domestic violence perpetrators use strangulation to silence their victims, their conduct should be recognized for what it is - felonious assault. Strangulation is a form of power and control, which can have a devastating psychological effect on victims in addition to a potentially fatal outcome.

The Violence Policy Center Study, released in September of 2004, analyzed the Federal Bureau of Investigation's Uniform Crime Reporting Program Data and found that Alaska ranked number one in the United States for domestic violence deaths of women.⁵ That is not a statistic of which Alaska can be proud. I urge you to raise this crime to the level of severity that it deserves and give prosecution the tools to prosecute these crimes in recognition of their severity.

Respectfully,



Tamara de Lucia,
Acting Director
Alaska Office of Victims' Rights

³ *Strangulation Injuries In Children*. The Journal of Trauma: Injury, Infections and Critical Care. 40:1, Jan. 1996, 68-72.

⁴ *The Value of Various Lung Changes in Death by Strangulation*. Arch Kriminol. 196:1-2, July 1995, 38-45.

⁵ *When Men Murder Women: An Analysis of 2002 Homicide Data*, Violence Policy Center, September 2004, p.19.



Forensic Nurses Association of Alaska

PO Box 771833
Eagle River, Alaska 99577

February 4, 2005

To Whom It May Concern:

The Forensic Nurses Association of Alaska supports the proposed statutory changes to include strangulation as a felony assault. Strangulation is a very serious, sometimes fatal physical assault that is commonly seen in domestic violence and sexual assault cases. When a person is being strangled, they are at a substantial risk for death. The victim becomes unconscious within seconds and death can occur within minutes.

It is well documented in the latest research that strangulation is one of the top five risk factors for a domestic violence homicide. Women who are strangled by an intimate partner are at a 5.9 times higher risk for being murdered by their partner than other women.

The State of Alaska leads the nation in the number of domestic violence homicides per capita. The proposed statutory changes that will include strangulation as a felony assault is a proactive approach to preventing domestic violence homicides, and is desperately needed in our state. In addition, the proposed changes will finally address this life threatening assault at the level of seriousness that it is.

The Forensic Nurses Association of Alaska fully supports and encourages this statutory change.

Sincerely,

A handwritten signature in cursive script that reads "Carol Odinzoff RN".

Carol Odinzoff, RN
President
Forensic Nurses Association of Alaska



Municipality of Anchorage

4501 Bragaw Street • Anchorage, Alaska 99507-1599 • Telephone (907) 786-8500 • <http://www.muni.org>



Mayor Mark Begich

Anchorage Police Department

March 17, 2005

Representative Mike Hawker
State Capitol, Room 434
Juneau, AK 99801-1182

Dear Representative Hawker,

I understand that a bill regarding strangulation has been introduced to the House of Representatives. Several of our Department members have been conferring with Tara Henry about what is being proposed. I would like to provide support for the passing of this bill.

The State of Alaska faces multiple challenges in combating the elevated rate of crimes involving sexual assault and domestic violence. All too often, we learn that some form of strangulation occurred during the commission of these crimes. Individuals who perpetrate this type of violence against another person are using it as the ultimate form of control. Through the use of one's hands or another object to impede normal breathing or circulation, they are sending a message to the victim that they control their life.

In recent years, we are becoming more aware of the prevalence of strangulation as well as the extreme danger associated. The Anchorage Police Department has proactively responded to this information by educating all of our officers about how to recognize and respond to these incidents. An imperative part of this response package involves the prosecution of those who perpetrate these crimes. The proposed change in statute regarding the definition of dangerous instrument would add greatly to the ease of both charging and prosecuting these suspects.

I appreciate your willingness to carry this through. If you require any assistance from the Anchorage Police Department, please don't hesitate to call me personally.

Sincerely,

Walt Monegan
Chief of Police

WM/ga

Community, Security, Prosperity

*Representing Alaska's Finest
Alaska State Troopers, State Fire Marshals, Court Service Officers, Airport Police and Fire
Officers, Juneau Police, Unalaska Police, Sitka Police, Fairbanks Police, Ketchikan Police,
and the Soldotna Police*



Political Action Committee

March 16, 2005

Representative Mike Hawker
State Capitol, Room 502
Juneau, AK 99801-1182

Re: HB 219

Dear Representative Hawker,

On behalf of the members of PSEA, I would like to thank for introducing HB 219. We believe HB 219 brings about a much-needed amendment to better define the criteria of what is a "dangerous instrument".

As a representative of Alaska's law enforcement officers, it is imperative that we have the necessary tools to ensure that Alaska's citizens are adequately protected. HB 219 will better assist law enforcement with the prosecution for those individuals who have committed such a horrendous assault.

PSEA hopes that the legislature will act swiftly on this matter and pass HB 219.

Sincerely,

Maurice I. Hughes Jr.
PSEA Vice President



Anchorage
Police
Department
Employees
Association

Phone (907) 561-7300
P.O. Box 230330
Anchorage, Alaska 99523
500 West International Airport Road
Anchorage, Alaska
www.apdea.org

March 17, 2005

Re: HB 219

Dear Legislative Body:

The Anchorage Police Department Employees Association represents rank-and-file police employees in the Anchorage Police Department. I am writing to express the APDEA's full support for HB 219. There is presently an ambiguity in the law that has led to uncertainty by prosecutors as to how to charge the crime of strangulation. Unfortunately, this ambiguity has led to some of those who have committed this potentially life-threatening crime to receive lesser sentences than would otherwise be appropriate. HB 219 brings much needed clarity to this area.

I look forward to answering any questions you may have about HB 219.

Sincerely,


Michael Coulurier
APDEA Vice President

Juli Lucky

From: Natasha Norris [Natasha_Norris@law.state.ak.us]
Sent: Monday, March 21, 2005 11:17 AM
To: Juli Lucky
Subject: Strangulation bill

Ms. Lucky:

I am writing this email in support of House Bill No. 219. I have been a prosecutor for almost four years in the State of Alaska. I worked in Sitka, Alaska as the only State prosecutor, for two and half years.

While at the Sitka post, I dealt with several strangulation cases.

There are a couple of things regarding strangulation that are striking.

First, strangulation occurs in many domestic violence situations.

Often, when speaking to a victim of domestic violence, they disclose that although strangulation may not have occurred the incident leading to arrest, they have at one point or another, suffered strangulation at the hands of their boyfriend or husband. Second, because of the lethality of strangulation, ANYTIME a defendant uses their hands to block normal breathing causes a substantial risk of death or serious physical injury. The law now requires that before hands can be a "dangerous instrument", an expert needs to testify that the hands were used in a way that caused a substantial risk of death or serious physical injury. Given what we know about domestic violence and the lethality of strangulation, the definition of dangerous instrument should include the use of hands or other objects to strangle without the need for experts to testify to the lethality of strangulation. For the sake of victims, I hope House Bill No. 219 passes.

Sincerely,
Natasha Norris

From: lisa rea [lisadrew@alaska.com]
Sent: Tuesday, March 22, 2005 7:54 AM
To: Juli Lucky
Subject: Strangulation bill

Representative Hawker

As a resident of Anchorage, a Public Health Nurse and a Sexual Assault Nurse Examiner I want to thank you for your support of house bill 219, strengthening the statutes to increase strangulation from a misdemeanor to a felony. This bill is an opportunity to recognize the seriousness of strangulation. If you have any questions about why I support this I can be reached at 349-9941.

Thank you
Lisa Rea, RN

Columbus Dispatch (Ohio)

August 14, 2004 Saturday

Strangulation Cases; Seminar Explores Details Overlooked in Investigations

By Alayna DeMartini, *Columbus Dispatch*

The man called 911 with an odd complaint.

"She won't die," he told the dispatcher. "I've tried to kill her four different ways. She won't die."

But when medics arrived at the couple's home they found that the man had succeeded in strangling his wife.

The call to a 911 operator in Las Vegas was played yesterday for central Ohio police officers, prosecutors and emergency personnel during a training session on recognizing and prosecuting strangulation and attempted strangulation cases.

Too often the assailant walks away with little or no punishment because there aren't always marks left on the victim, said Gael B. Strack, a San Diego city attorney who led yesterday's seminar at the Franklin County Courthouse.

The victim may have serious injuries that aren't always apparent, such as internal fractures in the throat, Strack said.

"We understand when someone's stabbed, when their lip is cut, because we can see the signs," Strack said. "With strangulation, most victims will have internal injuries. It's easy to overlook, minimize or trivialize."

A study by the San Diego city attorney's office of police reports showed that if there was no visible sign of attempted strangulation, the assailant wasn't charged with a serious crime.

"We didn't understand what we had in front of us," Strack said.

The study, conducted in the late 1990s, showed that police often neglected to clearly document what symptoms victims were experiencing, Strack said. Cases that were prosecuted were charged as misdemeanors when many could have been felonies, Strack said.

Franklin County prosecutors estimate that 30 percent to 40 percent of the annual 6,000 domestic-violence cases in the county involve choking or strangulation, said Leslie Ashworth, director of the Columbus city attorney's domestic-violence unit.

Typically, victims of attempted strangulation will have red marks on the neck and a raspy voice, Ashworth said.

However, victims sometimes refuse to be treated at a hospital because they can't afford it, Ashworth said.

"Then you lose the evidence," Ashworth said.

Even when victims go to hospitals, they often minimize their injuries and do not blame them on others.

"The important thing is for everyone to realize that it's a potentially life-threatening matter and not say 'Oh, they were just choked,'" Ashworth said.

In Ohio, someone who tries to strangle a mate could be charged with domestic violence, which is a misdemeanor, or a felony such as felonious assault.

Some states have recently stepped up their domestic-violence laws and the penalties for strangulation attempts.

On Thursday, North Carolina Gov. Mike Easley signed legislation, "assault inflicting serious physical injury by (attempted) strangulation," a felony punishable by up to two years in prison.

An Oklahoma law that goes into effect in November makes it a felony to commit attempted strangulation on a domestic partner.

ademartini@dispatch.com

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**Women's
Justice Center**



**Centro de Justicia
Para Mujeres**

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Domestic Violence Homicide Risk Assessment (data from USDOJ Scale)

**** Weapons ** Threats ** Strangling **
** Constant Jealousy ** Forced Sex ****

Note: The top five risk factors for domestic violence homicide usually don't bleed! In fact, these high risk factors often don't leave any visible marks at all.

The only sure way to determine the presence of these high risk factors is through careful, comprehensive victim interviews.

Ask & Document

The Top Five Risk Factors

The numbers in parenthesis indicate the factor by which a domestic violence victim's risk of homicide is increased relative to other domestic violence victims.

- 1. Has the abuser ever used, or threatened to use, a gun, knife, or other weapon against victim? (20.2x)**
- 2. Ever threatened to kill or injure victim? (14.9x) Document complete and accurate quotes of the threats**
- 3. Ever tried to strangle (choke) the victim? (9.9x)**
- 4. Is abuser violently or constantly jealous? (9.2x)**
- 5. Has abuser ever forced victim to have sex? (7.6x)**

More Notes: *The US Dept. of Justice has now compiled a number of smaller studies into a lethality assessment list of 17 risk factors for domestic violence homicide. (The full lethality risk scale can be found at ww.ncjrs.org/pdffiles1/jr000250e.pdf Scroll to bottom of document.)*

The numbers in parenthesis indicate the factor by which a domestic violence victim's risk of homicide is increased relative to other domestic violence victims. For example, if the abuser has used or threatened to use weapons, the victim's risk of domestic violence homicide is 20.2 times that of the average domestic violence victim.

- **Always Keep in Mind: All Domestic Violence Victims Are at Heightened Risk of Homicide.**
- *Don't dismiss threats to kill and maim as "just words". All victims should be asked about threats, and all threats should be quoted accurately and in detail. Also, threats to kill or maim are a crime in California, PC 422.*
- *Even victim advocates often fail to ask about sexual violence in the relationship. **Sexual violence is serious trauma, and, is a high risk factor for domestic violence homicide. Don't be shy. Always ask!***
- *The USDOJ lethality scale deals only with factors inside the relationship. Other studies have found that factors outside the relationship - such as the quality of prior law enforcement or court response - correlate with future lethality. But again, the key to uncovering these risk factors is the same; a careful, comprehensive victim interview.*

How You Can Help

Please pass this page on to health workers, teachers, clergy, counselors, friends, police, and neighbors... Or post it at your work, school, church or home.

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OPDV Bulletin:
Strangulation in Domestic Violence and Sexual Assault

"He choked me~ but there are no marks."

In 1999, the Clinton County District Attorney's Office and the New York Prosecutors Training Institute (NYPTI) hosted the nation's leading experts in the prosecution and investigation of strangulation cases. Assistant District Attorney Gael Strack and George McClane, MD, both from San Diego, California, presented their findings at the three-day conference, "Detection and Prosecution of Strangulation in Domestic Violence and Sexual Assault Cases," funded by the US Department of Justice Violence Against Women Grants Office and the New York State Division of Criminal Justice Services. The following is adapted from a condensed portion of their presentation.

"He choked me - but there are no marks." Strangulation has only recently been identified as one of the most lethal forms of domestic violence. When perpetrators use strangulation to silence their victims, this is a form of power and control that has a devastating psychological effect on victims and a potentially fatal outcome. Historically, "choking" was rarely prosecuted as a serious offense because victims minimize the level of violence and police and medical personnel fail to recognize it.

Strangulation is defined as a form of asphyxia and is characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck. It is often incorrectly referred to as choking which involves blocking, or obstructing the windpipe. Ten percent of violent deaths in the US each year are due to strangulation, with six female victims to every male.

Strangulation by ligature is done with a cord like object that could include anything from a telephone cord to articles of clothing. Manual strangulation is done with the hands, forearms (as in the classic chokehold), or standing or kneeling on the victim's throat.

Clinically, a victim who is being strangled first experiences severe pain, followed by unconsciousness, and then brain death. The victim will lose consciousness by any one or more of the following: blocking of the carotid arteries (depriving the brain of oxygen), blocking of the jugular veins (preventing deoxygenated blood from exiting the brain), and/or closing off the airway, causing the victim to be unable to breathe. Only eleven pounds of pressure placed upon both carotid arteries for ten seconds is necessary to cause unconsciousness. If pressure is released immediately, consciousness will be regained within ten seconds. After 50 seconds of continuous oxygen deprivation the victim rarely recovers. To completely close off the trachea, three times as much pressure (33 lbs.) is required. For comparison purposes, it only takes 8 lbs. of pressure to pull a trigger on a gun.

Fifty percent of victims report symptomatic voice changes which may be as mild as simple hoarseness or a complete loss of voice. Many victims also report that it is difficult or painful to swallow. This is due to injury of the larynx cartilage and/or hyoid bone, a small horseshoe shaped bone in the neck. Difficulty getting a breath may be due to the hyperventilation that normally accompanies a terrifying event, but more importantly may be secondary to underlying neck injury. It is critical to know that breathing changes may initially appear to be mild, yet underlying injuries may kill the victim hours or days later due to decompensation of the injured structures. Involuntary urination and defecation often occurs. Officers

should inquire about such because victims may be embarrassed and reluctant to disclose these facts unless asked.

Visible injuries to the neck may include scratches, abrasions, and scrapes. Redness on the neck may be fleeting, but may demonstrate a detectable pattern. These marks may or may not darken to become a bruise. Bruises may not appear for hours or even days. Chin abrasions are also common, as are tiny red spots called petechiae. These are caused by ruptured capillaries and may be found around the eyes, under the eyelids, anywhere on the face, and on the neck above the area of constriction. Blood red eyes are due to capillary rupture in the white portion of the eyes. This phenomenon suggests a particularly vigorous struggle between the victim and assailant.

In 70 to 80 percent of all domestic violence cases, the victim will recant. Therefore law enforcement should anticipate this and plan on prosecution based on the evidence, just like in a murder case. Efforts should be made to investigate the cases like an attempted homicide case. It is important to ask as many questions as possible at the earliest time possible. For specific questions and checklists to assist in detecting and investigating strangulation cases, go to

<http://www.correctionhistory.org/northcountry/html/knowlaw/strangulationinvestigation3.htm>.

Condensed by NYPTI, (518) 432-1100, the Continuing Legal Education and Mutual Assistance Division of the New York State District Attorneys Association. The points of view or opinions stated in this article are those of the particular author and do not represent the official position of the NYS Division of Criminal Justice Services. Information dealing with a specific legal matter should be researched in original and current sources of authority.

Note to Officers and Prosecutors: Treat Your Strangulation Cases Seriously

Start by using the word "strangle" as opposed to the word "choke." Strangle means to obstruct seriously or fatally the normal breathing of a person. Choke means having the windpipe blocked entirely or partly by some foreign object like food.

"How to Improve Your Investigation and Prosecution of Strangulation Cases" by Gael B. Strack, San Diego Assistant City Attorney and Dr. George McClane, Emergency Physician, October 1998, updated May 1999 is an excellent article. It can be obtained by request from Gael B. Strack at: Gael B. Strack at

Know the Law: Resource Materials on Strangulation

Strangulation Conference

On September 28-30, 1999, the Clinton County District Attorney's Office and the New York Prosecutor's Training Institute sponsored a conference on **Detection and Prosecution of Strangulation in Domestic Violence and Sexual Assault Cases**. Funding was provided by the United States Department of Justice Violence Against Women Grants Office and the New York State Division of Criminal Justice Services.

The leading experts on this subject, Assistant City Attorney Gael Strack of the San Diego City Attorney's Office and George E. McClane, M.D., Emergency Physician at Sharp Health Care in San Diego, came to Plattsburgh and conducted three days of training for more than 350 physicians, nurses, emergency responders, law enforcement, prosecutors, case workers and others.

"Strangulation" refers to the behavior of one person placing one or two hands around the neck of another person and squeezing or applying other pressure. This can kill.

We presented training on detecting and prosecuting strangulation because, in reviewing the Domestic Incident Reports (DIRs) filed by the police and interviewing victims, we repeatedly came across descriptions of the incident that included the complainant being choked - hands put on her throat, sometimes until she passed out! There might have been other physical violence, as well, sometimes not.

In examining this more closely, we found that in about 10% of the DIRs, choking was part of the specific incident. Reports made to the STOP Domestic Violence program by women, about 40% described "choking" as part of the abusive conduct at one or more points in their relationship.

Despite this frequency, rarely was there an arrest for the choking behavior. Seldom were there any marks or visible injuries seen by the police, and the victims themselves often described the choking aspect as minor in relation to the other violence used against them.

In New York, a person cannot be charged with criminal assault unless "physical injury" is actually caused. That is defined in the Penal Law as "impairment of physical condition or substantial pain." The choking cases did not really seem to meet this standard; it was understandable that the police did not make an arrest.

But, we wondered whether there were internal injuries caused by being choked - strangled - that did not leave outward visible signs. Or maybe the signs were there, but we did not know what to look for.

In our search for more information, we found some people around the state asking the same things, but no real answers. Eventually, through an internet search, we made progress. When the key word was "choking," it brought articles about medical conditions or choking on food. "Strangulation" first led to some guy's personal web page that suggested the sexual benefits of that conduct!

In refining the search to "manual strangulation," we came up with articles by pathologists, describing the evidence of strangulation found during autopsies. Hoping for someone who could identify such signs in living people who had been strangled, we pressed on and learned of Gael Strack and Dr. George McClane in San Diego.

We learned that they struggled with the same kinds of problems a couple of years earlier in San Diego, in cases that started with what looked like minor abuse, including choking, and led to homicide. As a consequence, they taught themselves and other law enforcement and medical personnel what to look for to detect whether injury was caused.

As a prosecutor, I know that I can only be effective if there is a good investigation. I depend upon the police, the EMTs, the nurses and doctors for the evidence I use in court.

We now realize that we may be overlooking serious crimes, because we did not know what to look for. The frequency with which manual strangulation is used in domestic violence incidents is surprising: in San Diego, in Plattsburgh, and very likely, everywhere else.

Because we all see it but have not known how to deal with it, we brought the experts from San Diego to train us. We want to learn how to better do our jobs; how to better protect our community.

The three days of training were outstanding - all we hoped for and more. The presentations of Gael Strack and Dr. George McClane are summarized in the New York Prosecutors Training Institute Newsletter which follows.