

Two Minnesota Prosecutors Explain the Need for Increased Criminal Penalties for Strangulation in Domestic Violence Cases

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A batterer who is strangling a victim literally has her life in his hands and they both know it. It has been described by victims as one of the most terrifying experiences they've ever had. Strangulation has been repeatedly demonstrated to be extremely high on the lethality assessment scale, meaning women who are assaulted by strangulation are at a far greater risk of eventually being murdered. As a result, strangulation is more serious than a misdemeanor assault by other means. Yet as of October 2004, only three states, Missouri, Oregon and North Carolina, have specific felony strangulation laws.

Some would argue that Minnesota's current assault statutes are sufficient to address strangulation, since proving substantial or great bodily harm would elevate these assaults to felonies with more serious penalties. The problem is that there are hardly ever any visible signs of substantial or great bodily harm, and in fact there are often NO visible signs of injuries at all. External strangulation injuries to the neck region are insufficient to support felony charges based on the way current statutes are written. Doctors' examinations to look for internal injuries, if they're done at all, don't necessarily discover medical evidence to support felony charges under Minnesota's current law. While under the current assault statutes the presence of medical evidence (e.g., bruised larynx or vocal chords) is essential to successful prosecution of these cases as a felony, the absence of medical evidence does not diminish the extreme terror or the seriousness of the assault when the victim is being strangled and believes she may die.

Currently, there is no statutory consideration for the location of the injuries when determining the seriousness of the charges. A bruise to the arm is considered just as serious as a strangulation bruise to the neck. Recognizing the relevance of the location of injuries in assessing the severity of an assault, the Minnesota Legislature changed the law with respect to child abuse cases. They created a new felony when a child under the age of four has bruises to the head, eyes, or neck or had multiple bruises to the body because of the heightened danger to the child from injury in these areas. This same kind of distinction should be made in cases of strangulation.

It is time to recognize the increased danger to the victim and the increased seriousness of the offense of assault by strangulation and to enact felony strangulation legislation.

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Molly was shaking uncontrollably when police arrived at her St. Paul apartment. Nasty red scratches and finger marks were visible on her neck and throat.

Fighting back tears, the 25-year-old woman told police her boyfriend had become enraged, grabbed her around the neck and strangled her — to the point where she blacked out. When she regained consciousness, he was dumping garbage on her and threatening her.

She managed to run out of the apartment and scream for help. Luckily, a neighbor intervened and called police. Molly was lucky to survive. A person being strangled can lose consciousness in seconds and die in just minutes. Chances are, Molly came perilously close to crossing that thin line between life and death.

It was a very serious attack, but prosecutors were limited to charging the assailant with assault in the fifth degree, a misdemeanor. He served just 90 days in the workhouse. Unfortunately, that was the best prosecutors could do under our current laws. In Minnesota, strangulation usually can't be charged as a felony unless the victim dies.

The Minnesota Legislature is considering a bill to create a new felony-level crime of domestic assault by strangulation. We desperately need this new law for one primary reason: homicide prevention.

The sad fact is, Molly's case isn't unusual. Police and prosecutors see countless cases of domestic assault involving strangulation. We know from the research and our own experience that domestic abusers who strangle their victims often eventually kill them. That's why strangulation is a huge red flag for future homicides.

In domestic assault situations, strangulation is one of the scariest and most effective ways an abuser can exercise power and control over a victim. A person who has his hands around a victim's neck is looking straight into her eyes and watching her come within a hair of dying or — in far too many cases — watching her actually die.

"Look at the power and control I exercise over you," the assailant is saying to his victim.

"I decide whether you live or die."

It's a horrifying experience for the victim — extremely painful, terrifying, dehumanizing — and often lethal. In Minnesota, at least 50 women and children were strangled to death by a partner or household member between 1989 and

2004, according to the Minnesota Coalition for Battered Women, a leading proponent of the legislation.

A felony strangulation law will help us to save lives by intervening in some of the most abusive, violent relationships and seeking tough consequences for the offenders. This change also will encourage the criminal justice system to pay more attention to strangulation in domestic assault cases.

Historically, the fact that a domestic abuser strangled his victim might not even be mentioned in a police report or included in a charging document. Evidence of strangulation just hasn't been necessary to prove a misdemeanor case where other assaultive behavior is involved.

As a result, we haven't even asked victims the right questions. And so, we've missed warning signs for future homicides.

The proposed law would send a message to everyone in the criminal justice system: "Wait a minute. This isn't just a misdemeanor. It's a case that deserves further investigation. We need to ask more questions."

In St. Paul, we already are seeing this happen. Last fall, in anticipation of this legislation, my office and the St. Paul Police Department began training police to watch for signs of strangulation in domestic assaults. Armed with this heightened awareness, police are submitting reports that fully document evidence of strangulation. In the long run, this will help to save lives.

As it stands now, our laws allow a domestic abuser to come within seconds of strangling someone to death and get by with a slap on the wrist. Essentially, we're saying, "Lucky you. She lived. You're going to get by real easy — even though everything we know suggests you may kill her next time."

We need to recognize the seriousness of strangulation in domestic situations. The proposed legislation deserves strong support.