

Executive Summary

The Impact of Minnesota's Felony Strangulation Law

A WATCH Report

"Strangulation is often one of the last abusive acts committed by a violent domestic partner before murder."
Hennepin County Fatality Review Team 2004 Report

The Minnesota legislature passed a bill during the 2005 session making strangulation during a domestic assault a felony. Minnesota Statute § 609.2247 went into effect on August 1, 2005. Prior to the law's passage, most domestic strangulation cases were charged as misdemeanors even though strangulation is one of the most dangerous forms of domestic violence and, according to the Hennepin County Fatality Review Team and other experts,¹ is frequently a precursor to domestic homicide.

The new law, which applies to strangulation perpetrated by a family or household member,² defines strangulation as "intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person." If convicted, a defendant may be sentenced to imprisonment of up to three years, be fined up to \$5,000, or both.

To assess the law's initial impact, WATCH interviewed 18 Hennepin County criminal justice system personnel including victim advocates, law enforcement officers, judges, city prosecutors, county prosecutors, and probation officers,³ and reviewed 59 Hennepin County cases with felony domestic strangulation charges and 17 misdemeanor cases involving the defendant placing his hands around the victim's neck.⁴ WATCH also gathered statewide charging information from the State Court Administrator's Office and distributed a survey to Minnesota Coalition for Battered Women member programs, eliciting responses from 16 domestic violence service providers serving primarily 15 counties and the Leech Lake Reservation. In addition, WATCH has made monitoring strangulation cases a priority since the new law went into effect.

The WATCH report focuses on the impact of the statute on victim safety and offender accountability.

¹ Strack, Gael B., McClane, George E., and Hawley, Dean (2001). A review of 300 attempted strangulation cases Part 1: Criminal Legal Issues. *Violence Recognition, Management, and Prevention* 21 (3) pg. 303-309.

² The statute defines "family or household member" as a spouse or former spouse; parents and children; persons related by blood; persons who are presently residing together or who have resided together in the past; persons who have a child in common regardless of whether they have been married or have lived together at any time; a man and a woman if the woman is pregnant and the man is alleged to be the father, regardless of whether or not they have been married or lived together at any time; and persons involved in a significant romantic or sexual relationship.

³ The Public Defender's Office declined to participate in interviews.

⁴ These cases were charged between August 1, 2005, and January 31, 2006.

WATCH reviewed 59 Hennepin County cases charged under the new felony domestic strangulation statute between August 1, 2005, and January 31, 2006, to identify charging, conviction, and sentencing patterns. Twenty-four of the 59 cases were charged solely under the felony strangulation statute. All the other cases had multiple charges, most commonly terroristic threats, interference with a 911 call or assault.

Case review results

Of the 59 Hennepin County cases WATCH examined:

- Convictions were obtained in 83 percent of cases (misdemeanor and felony).⁵
- Forty-two percent ended in convictions under the felony strangulation statute.⁶
- Seventeen percent ended in convictions under other felonies such as terroristic threats or violation of an order for protection.
- Twenty percent of cases ended in convictions to lesser qualifying domestic violence related crimes such as fifth degree domestic assault.
- Almost seven percent of cases ended in conviction on non-qualifying charges such as damage to property or disorderly conduct.⁷
- Fourteen percent of cases were dismissed.
- One case is still open at the time of this report's publication.⁸

Sentencing

The presumptive sentence for felony domestic strangulation (with no criminal history) is one year and one day stayed. The sentences for the 59 defendants are listed below. There is no distinction between those convicted of felonies, gross misdemeanors and misdemeanors.

Stayed Sentences (47 percent)⁹

- Eight defendants received stayed (for three years) prison sentences ranging from 12 to 48 months. The average sentence was 21 months.
- Fifteen defendants received stayed time at the Adult Correctional Facility. Their sentences ranged from 70 to 450 days and were stayed from one to three years.

Served Sentences (51 percent)

- Four defendants served time in prison with sentences ranging from 20 to 94 months including credit for time served.¹⁰
- Twenty-one defendants served time at the Adult Correctional Facility. Sentences (including credit for time served) for this group ranged from four to 113 days with an

⁵ Three defendants (six percent) of defendants were convicted of more than one charge

⁶ One defendant was convicted of felony domestic strangulation and another felony – only the felony domestic strangulation conviction is included in these calculations.

⁷ One defendant was convicted of two counts of misdemeanor disorderly conduct.

⁸ The defendant has entered a guilty plea in this case and has failed to appear for sentencing. Initial and final charges in these cases are included in all calculations.

⁹ Some defendants in this group were also sentenced to serve time in the Adult Correctional Facility, therefore they are counted under served sentences as well.

¹⁰ These tended to be individuals with extensive criminal histories or who were convicted of higher level felonies such as sexual assault.

average of 40 days. Fourteen of these defendants received a combination of workhouse time and a stayed sentence.

Stays of Imposition of Sentences¹¹ (36 percent)

- Eighteen defendants, 13 of which were convicted of felony domestic strangulation, received stays of imposition of their sentences.
- Four defendants convicted of felony domestic strangulation received stays of imposition for two years or less.
- Ten of these 18 defendants were sentenced to serve time at the Adult Correctional Facility. Three of the ten were released at sentencing because their sentences equaled the amount of time they had already served.
- Five of these 18 defendants were not sentenced to serve time at the Adult Correctional Facility.

WATCH advocates for prosecutors to argue for and judges to sentence defendants to the maximum penalty allowed under the statute. As many criminal justice personnel have pointed out in their interviews with WATCH, longer sentences allow for more intensive probation and the opportunity for batterer's intervention.

WATCH is concerned that stays of imposition for two years or less are being offered. Stays of imposition allow defendants' guilty pleas to be vacated and their cases removed from the record after successfully completing a probationary period of two years or less and possibly making future domestic assaults unable to be enhanced to greater charges. Four of the 18 cases in which defendants were sentenced to stays of imposition received stays of two years or less.

Recidivism

Eleven of the 59 defendants, four of whom were convicted of felony domestic strangulation, committed probation violations during the year WATCH reviewed the cases. Five of the 11 defendants committed new misdemeanor domestic violence crimes. Violations were rarely met with more than a warning. Five defendants (45 percent) had their probation continued, with three serving a brief stint at the Adult Correctional Facility as a penalty. Probation was revoked in three cases (27 percent), but only after more than one probation violation. Only one of these cases (for which probation was revoked) involved a defendant convicted of felony strangulation.

WATCH is concerned about the lack of consequences for offenders who commit probation violations, including new crimes, while on probation. Three of the 11 defendants re-offended or violated probation as many as three times, with two serving additional time at the Adult Correctional Facility after their third violation.

¹¹ Stays of imposition require that the defendant enter a guilty plea to a specific charge. The defendant is then placed on probation for the length of the stay (three to five years). If the defendant successfully completes his probation, his guilty plea can be vacated and removed from his criminal record or lowered to a misdemeanor.

Conclusion

The majority of those interviewed and surveyed view the felony domestic strangulation statute as a positive step in enhancing victim safety, holding domestic abusers accountable, and trying to prevent domestic homicides. The number of charges under the statute in Hennepin County and throughout the state indicate that the law is being used with regularity in combination with other charges and on its own. This reinforces the position that strangulation is frequent in domestic violence and a serious assault with grave and sometimes fatal injuries to the victim.

The law has clearly increased the awareness of many victims, service providers, and criminal justice personnel about the potential lethality of strangulation. Some law enforcement agencies are dedicating more time and resources to investigating these crimes, more prosecutors are aggressively bringing these cases forward, and advocates are continuing to support and educate victims. WATCH's data show that the law has resulted in an increased number of convictions on strangulation assaults on both felony and misdemeanor charges.

According to the individuals interviewed for this report and based on WATCH's monitoring, the law's implementation is not without its shortcomings. Specifically, WATCH's case review points out inconsistencies in charging patterns, lenient sentences given to potentially lethal offenders, failures to adequately address probation violations and the need to intensify probation supervision.

As one of six states that have felony strangulation statutes, Minnesota has the opportunity to provide leadership nationally on how to implement such a law. The full report, including WATCH's recommendations, can be found at www.watchmn.org.