

## Survival or Suffocation: Can Minnesota's New Strangulation Law Overcome Implicit Biases in the Justice System?

By Archana Nath\*

### Introduction

[In the summer of 2004,] Alyson, . . . a 21-year-old college student in St. Cloud, [Minnesota,] was brutally attacked by her boyfriend. During the assault, the boyfriend knocked her unconscious and later strangled her with his hands and a telephone cord. The police officer responding to a neighbor's 911 call reported hearing the man shout, "Do you want death? Do you want death? 'Cause I'll give it to you!" and witnessed [the boyfriend] strangling [Alyson]. Despite the fact that Alyson's injuries were severe enough to hospitalize her, the boyfriend was only charged with misdemeanor domestic assault and felony terroristic threats. Later, the assault charges were dropped, even though police witnessed the strangulation . . . .<sup>1</sup>

Heidi tried to hide her bruises from her family and didn't often come to family gatherings. On June 12th, [1996,] when Heidi was five months pregnant, she delivered a premature baby boy . . . . He died an hour and a half after birth. Family members noticed bruising on Heidi's back and a fresh black eye, and suspected the premature delivery . . . was due to battering on the part of Heidi's boyfriend . . . . On June 28th police received a call from witnesses that a woman was being hit by a man in a car . . . . As the witnesses drove back to the scene they

---

\* J.D. Candidate 2007, University of Minnesota Law School; B.A. Colgate University. I would like to thank Brad for his unwavering patience and support throughout my academic career, as well as my family for always inspiring and encouraging me to pursue my passions. I would also like to thank Professor Beverly Balos and Professor Mary Louise Fellows for their immeasurable knowledge and guidance, and for their profound dedication to ending violence against women. Finally, I would like to thank all of the editors and staff of this journal for making this publication possible.

1. Minnesota Coalition for Battered Women, *Potentially Lethal Assaults Should Have Serious Consequences*, WATCH POST (WATCH, Minneapolis, Minn.) Spring 2005, at 1, available at <http://www.watchmn.org/pdfs/newsletter505.pdf> [hereinafter WATCH POST].

saw . . . [Heidi's boyfriend] outside of the car on the passenger side, strangling Heidi. When police arrived, Heidi was lying outside of the car, facedown on the ground. She was pronounced dead . . . after police made a prolonged attempt to resuscitate her.<sup>2</sup>

[A] 17-year-old girl made . . . a 911 emergency call to the San Diego Police Department. She reported being choked by her 21-year-old former boyfriend . . . . When the police arrived, . . . [the victim's] injuries were fading. Redness to the neck was all the officers could see . . . . No arrest was made due to the lack of independent corroboration . . . . The case was subsequently closed. A week later, [the victim's] former boyfriend stabbed her to death . . . .<sup>3</sup>

Recent legal and medical studies have brought strangulation<sup>4</sup> to the forefront of domestic violence<sup>5</sup> issues. Studies have found that strangulation is a common cause of domestic violence homicides.<sup>6</sup> Additionally, nonfatal strangulation is a predictive risk factor for future severe domestic abuse and homicide incidents.<sup>7</sup> Given the prevalence of domestic violence,<sup>8</sup> these new findings increase the urgency of addressing strangulation.

In August of 2005, joining a handful of other states,<sup>9</sup> the

---

2. MINN. COAL. FOR BATTERED WOMEN, SPECIAL FEMICIDE REPORT: STRANGULATION AND WOMEN AND CHILDREN MURDERED IN MINNESOTA, 1989-2005 10 (2005) [hereinafter FEMICIDE REPORT].

3. GAEL B. STRACK & GEORGE MCCLANE, HOW TO IMPROVE YOUR INVESTIGATION AND PROSECUTION OF STRANGULATION CASES 1 (David C. James ed., 1999), available at [www.ncdsv.org/images/strangulation\\_article.pdf](http://www.ncdsv.org/images/strangulation_article.pdf).

4. The term strangulation has been used by medical and legal scholars for both fatal and nonfatal strangulation. Both forms are relevant for the purposes of this article, though the focus will be on nonfatal strangulation.

5. For the purposes of this article, "domestic violence" refers to violence against a current or former spouse, girlfriend or boyfriend, or intimate partner.

6. *E.g.*, FEMICIDE REPORT, *supra* note 2, at 3 (noting that at least forty-one women were strangled to death in domestic violence cases in Minnesota between 1989-2005).

7. See CAROLYN REBECCA BLOCK ET AL., THE CHICAGO WOMEN'S HEALTH RISK STUDY: RISK OF SERIOUS INJURY OR DEATH IN INTIMATE VIOLENCE, A COLLABORATIVE RESEARCH PROJECT 152, 237, 251, 277 (2000) (finding that an incident of strangulation is a "risk factor for being killed").

8. Donald J. Smith et al., *Frequency and Relationship of Reported Symptomology in Victims of Intimate Partner Violence: The Effect of Multiple Strangulation Attacks*, 21 J. EMERGENCY MED. 323, 323 (2001) ("[I]ntimate partner violence (IPV) is the most common cause of nonfatal injury to women in the US.").

9. See IDAHO CODE ANN. § 18-923 (2006) (making nonfatal strangulation of a household member a felony punishable by up to fifteen years in prison); MO. REV. STAT. § 565.073 (2006) (providing strangulation as a qualifier for second-degree

Minnesota Legislature recognized strangulation as a serious and prevalent form of violence; a new statute made strangulation by a family member a potential felony.<sup>10</sup> This Article examines the progress of the government and legal system in responding to domestic violence, progress that has allowed us to reach a point where an abuser can be punished more severely even though neither a weapon nor substantial visible injuries are associated with the crime. Additionally, this Article considers the contrast between progressive legislative enactments and problematic implementation by the legal system in the domestic violence arena. This dichotomy between the law and the legal system has had a substantial impact on the implementation of domestic violence laws since those laws were created.<sup>11</sup>

Part I of this Article will explore the emergence of domestic violence as a social issue in America and the government's progress in responding to battered women and their abusers. Further, Part I will discuss the seriousness of strangulation and why it is especially dangerous for battered women. Part I will conclude with a discussion of Minnesota's new Domestic Assault by Strangulation Statute ("Strangulation Statute") and how it addresses strangulation as a serious crime. Part II of this Article will discuss the negative and unintended consequences that have resulted when the justice system has implemented other specific domestic violence laws. In light of these implementation problems, the Article will consider whether similar problems will arise for the Strangulation Statute or whether it has a chance of being implemented as intended. Finally, Part III of this Article will present recommendations, based on research and successful legal programs, proposing steps that should be taken by judges,

---

domestic assault, punishable as a class C felony); N.C. GEN. STAT. § 14-32.4 (2005) (including strangulation under the provision for assault inflicting serious bodily injury); OR. REV. STAT. § 163.187 (2006) (making a strangulation offense punishable as a class A misdemeanor).

10. Domestic Assault by Strangulation, MINN. STAT. § 609.2247 (2005) ("Unless a greater penalty is provided elsewhere, whoever assaults a family or household member by strangulation is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.").

11. See Debora Epstein, *Effective Intervention of Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 4 (1999) ("A law is only as good as the system that delivers on its promises, and the failure of the courts and related institutions to keep up with legislative progress has had a serious detrimental impact on efforts to combat domestic violence.").

prosecutors, police, and the criminal justice system as a whole to increase the chances of a successful execution of the new Strangulation Statute.

### I. Domestic Violence Laws: From Condoning Wife Abuse to the Strangulation Statute

Domestic violence is deeply embedded in American society. It is the most common form of nonfatal violence against women in the United States,<sup>12</sup> and "women's greatest risk of assault is from their intimates."<sup>13</sup> Some reports state that approximately one to three million incidents of domestic violence occur each year,<sup>14</sup> but studies show that this is a gross underestimation<sup>15</sup>—the number is thought to be closer to four million.<sup>16</sup> Though domestic assault is a form of violence that spans all social and economic groups,<sup>17</sup> it does not affect men and women equally. Men are the primary perpetrators and women the primary victims of assaults by intimate partners.<sup>18</sup> This trend has existed since the beginnings of

12. See Erin L. Han, *Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B.C. THIRD WORLD L.J. 159, 160 (2003) ("More women seek medical attention for harm suffered at the hands of an intimate partner than for injuries caused by auto accidents, rapes, and muggings combined."); Michael T. Morley et al., *Developments in Law and Policy: Emerging Issues in Family Law*, 21 YALE L. & POL'Y REV. 169, 208 (2003) ("[T]he single largest cause of injury to women in the United States remains battering by husbands, ex-husbands, and lovers . . ."); Smith, *supra* note 8, at 323.

13. Angela Browne, *Violence Against Women by Male Partners: Prevalence, Outcomes, and Policy Implications*, 48 AM. PSYCHOL. 1077, 1077 (1993).

14. See, e.g., MURRAY A. STRAUS ET AL., BEHIND CLOSED DOORS, VIOLENCE IN THE AMERICAN FAMILY 40-41 (1980) (noting that almost 1.8 million American wives are beaten by their husbands every year); U.S. DEPT OF JUST., FAMILY VIOLENCE STATISTICS 9 (2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>.

15. See Browne, *supra* note 13, at 1077-78; Angela M. Moore Parmley, *Violence Against Women Research Post VAWA, Where Have We Been, Where Are We Going?*, 10 VIOLENCE AGAINST WOMEN 1417, 1420 (2004) (stating research shows that a large percentage of violence against women is never reported to the police and that the FBI reports severely underestimate the magnitude of domestic violence).

16. See Browne, *supra* note 13, at 1077-78; *Developments in the Law: Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498, 1501 (1993) [hereinafter *Developments in the Law*]; Edward S. Snyder & Laura W. Morgan, *Domestic Violence Ten Years Later*, 19 J. AM. ACAD. MATRIM. LAW 33, 35 (2004).

17. See STRAUS ET AL., *supra* note 14, at 151-52.

18. See JULIE BLACKMAN, INTIMATE VIOLENCE 102 (1989) (stating that spousal violence victims are female 96% of the time); R. EMERSON DOBASH & RUSSELL DOBASH, VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY 14-15 (1979) ("[T]he use of force between adults in the home is systematically and disproportionately directed at women.") [hereinafter DOBASH & DOBASH, VIOLENCE AGAINST WIVES]; Gael B. Strack et al., *A Review of 300 Attempted Strangulation Cases: Part I: Criminal Legal Issues*, 21 J. EMERGENCY MED. 303, 305 (2001)

American society.<sup>19</sup>

*A. Domestic Violence and the Law: Legal and Social Development*

Despite the prevalence of domestic violence, it was once an issue ignored by the American legal system. This section will explore the beginning stages of domestic violence in the United States and track the progress and setbacks in the legal system throughout its history. The section will conclude with a discussion about current laws addressing domestic violence. These legal developments are what eventually brought the Minnesota legislature to recognize that felonizing strangulation is a necessary and important step in combating domestic violence.

1. The History and Progress of Domestic Violence Laws

At the beginning of American history, the western world socially and legally accepted wife abuse as part of the culture.<sup>20</sup> In fact, not only was domestic violence tolerated, it was "considered a necessary aspect of a husband's marital obligation to control and chastise his wife through the use of physical force."<sup>21</sup> Women, holding a subordinate status in society,<sup>22</sup> were seen as the property of their husbands, and as such needed to be kept in line.<sup>23</sup>

---

(finding that 99% of domestic strangulation victims were women).

19. See BLACKMAN, *supra* note 18, at 1-3 (discussing the history of domestic violence against women in American society); DOBASH & DOBASH, *VIOLENCE AGAINST WIVES*, *supra* note 18, at 3-5; Epstein, *supra* note 11, at 9-12.

20. See DOBASH & DOBASH, *VIOLENCE AGAINST WIVES*, *supra* note 18, at 6 ("The subordination of women was explicitly established in the institutional practices of both the church and the state and supported by some of the most prominent political, legal, religious, philosophical, and literary figures . . .").

21. R. Emerson Dobash & Russel P. Dobash, *Wives: The 'Appropriate' Victims of Violence*, 2 *VICTIMOLOGY* 426, 426 (1978) [hereinafter Dobash & Dobash, *Appropriate Victims*]; see also MURRAY A. STRAUS & RICHARD J. GELLES, *PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8,145 FAMILIES* 113 (Christine Smith ed., 1992) (noting Blackstone's codification of the common law asserting that a husband had the right to "physically chastise" an errant wife).

22. STRAUS & GELLES, *supra* note 21, at 113 ("The subordinate status of women in American society, and in most of the world's societies, is well documented.").

23. See DOBASH & DOBASH, *VIOLENCE AGAINST WIVES*, *supra* note 18, at 32 ("In reality, women rarely had an identity apart from that given them as wives, mothers, and daughters, and departure from that identity was discouraged and punished."); DEL MARTIN, *BATTERED WIVES* 27 (1976) ("The word family is derived from the Roman word *familia*, signifying the totality of slaves belonging to an individual."); Dobash & Dobash, *Appropriate Victims*, *supra* note 21, at 429

Though not formally recognized as a legal right until 1824,<sup>24</sup> as evidenced by Blackstone's commentary about a husband's right to "chastise" his wife,<sup>25</sup> the common law strongly supported domestic violence. On the rare occasion that the state did intervene, it was never due to an act of violence, but an act of *too much* violence.<sup>26</sup> It was the court's job to determine when the husband had gone too far. As stated by the North Carolina Supreme Court in 1864: as the head of the household, a husband is allowed to use force against his wife, "and unless some permanent injury be inflicted, or there be an excess of violence, or such a degree of cruelty as shows that it is inflicted to gratify his own bad passions, the law will not invade the domestic forum, or go behind the curtain."<sup>27</sup> Therefore, it was not the court's job to stop violence, but to limit it to only "proper" uses. The well known "rule of thumb" had a different meaning in those times, giving a husband the right to beat his wife as long as he used a switch no bigger than his finger.<sup>28</sup>

By the turn of the 20th century, wife abuse became illegal in most states but was still not seen as a "real crime."<sup>29</sup> Domestic violence was considered a private family matter, and the courts would still not intervene unless serious violence occurred.<sup>30</sup> Even when remedies were provided, the goal of the justice system was to

---

(quoting Blackstone in saying that "the law thought it reasonable to entrust [the husband] with his power of restraining her by domestic chastisement"); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1661 (2004).

24. DOBASH & DOBASH, VIOLENCE AGAINST WIVES, *supra* note 18, at 4, 62 (in Mississippi); Dobash & Dobash, *Appropriate Victims*, *supra* note 21, at 430.

25. DOBASH & DOBASH, VIOLENCE AGAINST WIVES, *supra* note 18, at 60-61.

26. *See, e.g.*, State v. Black, 60 N.C. (Win.) 262, 262 (1864).

27. *Id.*

28. *See* State v. Rhodes, 61 N.C. (Phil.) 453, 454 (1868) (noting the lower court's holding that a "defendant had a right to whip his wife with a switch no larger than his thumb"); BLACKMAN, *supra* note 18, at 2; STRAUS ET AL., *supra* note 14, at 10; Elena Salzman, *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention*, 74 B.U. L. REV. 329, 336 (1994).

29. BLACKMAN, *supra* note 18, at 2. Alabama and Massachusetts were the first states to officially outlaw wife abuse. DOBASH & DOBASH, VIOLENCE AGAINST WIVES, *supra* note 18, at 63.

30. *See* Rhodes, 61 N.C. (Phil.) at 459 ("We will not inflict upon society the greater evil of raising the curtains on domestic privacy, to punish the lesser evil of trifling violence."); BLACKMAN, *supra* note 18, at 2; DOBASH & DOBASH, VIOLENCE AGAINST WIVES, *supra* note 18, at 7 ("Belief in the sanctity of the family was closely associated with belief in personal privacy and with the rejection of outside intervention in family affairs."); Sack, *supra* note 23, at 1662.

maintain the family structure, which provided few real remedies for the victims.<sup>31</sup> Once formally prohibited by law, domestic violence quickly faded from the American public's view.<sup>32</sup>

After decades of suffering behind closed doors, the plight of abused women began to reemerge in American society.<sup>33</sup> In the 1960s and 70s, the battered women's movement helped bring domestic violence into the public eye.<sup>34</sup> This is partly due to the fact that in the fifty years prior, other social problems began to emerge and were given attention by the American people.<sup>35</sup> The Great Depression brought the government into social welfare activities.<sup>36</sup> After World War II, civil rights issues came to the forefront of the Nation's concerns.<sup>37</sup> What was once seen as private became recognized as a community concern by both the public and the government.<sup>38</sup> These developments made people more willing to recognize the social problem of domestic violence that was being uncovered by the battered women's movement.<sup>39</sup>

Despite recognition of the problem, attitudes about domestic

31. See ELIZABETH PLECK, *DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT* 136-42 (1987) (noting judges felt their role was that of a "great social agency," preferring reconciliation and being hesitant to allow divorces, impose fines, or even issue arrest warrants).

32. DOBASH & DOBASH, *VIOLENCE AGAINST WIVES*, *supra* note 18, at 5 ("The issue [of domestic violence] disappeared from public view . . . and became the concern only of those individuals directly involved.").

33. BLACKMAN, *supra* note 18, at 1; DOBASH & DOBASH, *VIOLENCE AGAINST WIVES*, *supra* note 18, at 8.

34. See CAROLYN HOYLE, *NEGOTIATING DOMESTIC VIOLENCE: POLICE, CRIMINAL JUSTICE AND VICTIMS* 3 (1998); Diane Crocker, *Regulating Intimacy: Judicial Discourse in Cases of Wife Assault (1970-2000)*, 11 *VIOLENCE AGAINST WOMEN* 197, 197 (2005); *Developments in the Law*, *supra* note 16, at 16; Marion Wanless, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But is it Enough?*, 1996 U. ILL. L. REV 533 (1996); see also BLACKMAN, *supra* note 18, at 10 (noting that following increased activism, the media brought publicity to domestic violence).

35. See BLACKMAN, *supra* note 18, at 7; see generally SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE, THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT* 29-32 (1982) (exploring in greater detail the societal occurrences leading to the publicity given to domestic violence in the 1960s and 1970s).

36. See BLACKMAN, *supra* note 18, at 3 ("As a consequence of the Great Depression, the federal government . . . engaged in social welfare activities for the first time, and previously welfare inviolable boundaries between the individual and the government.").

37. See SCHECHTER, *supra* note 35, at 29-30 ("[T]he civil rights, anti-war, and black liberation movements challenged the nation.").

38. See BLACKMAN, *supra* note 18, at 3-7; SCHECHTER, *supra* note 35, at 31.

39. See BLACKMAN, *supra* note 18, at 7.

violence remained riddled with stereotypes that prevented proper responses from the community and the legal system.<sup>40</sup> "In broad terms, the classic myths [were] that domestic violence is a family matter in which state officials should not interfere, that victims provoke incidents of domestic violence, and that victims can easily leave abusive relationships."<sup>41</sup> Many people, including women, still believed that it was acceptable, and even justified, for a husband to beat his wife.<sup>42</sup>

Even with the lag in attitudinal changes, the recognition of domestic violence issues was enough to cause some legal action. Over time, "[e]ven without measurable changes in general, societal attitudes, problems which receive sufficient exposure, about which the public becomes aware, come to be seen by legislators as ones which justifiably deserve governmental attention . . ."<sup>43</sup> In the mid to late 1970s, states began passing laws addressing domestic violence.<sup>44</sup> Though legislators were beginning to address the issue, their misconceptions about wife battering and their interests in preserving the family structure were expressed in their laws.<sup>45</sup> These same misconceptions flooded the criminal justice system, while minimizing the effects of any reforms brought about by the battered women's movement. The government was reluctant at all levels to respond in any way to domestic violence problems.<sup>46</sup>

Though in most states women could file criminal charges against their husbands for abuse<sup>47</sup> or request orders for protection against their abusers,<sup>48</sup> the processes were made so difficult that

---

40. See *Developments in the Law*, *supra* note 16, at 1502 (detailing the stereotypes that restricted legal action).

41. *Id.* at 1502-03; see HOYLE, *supra* note 34, at 7; Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267, 268-69 (1985).

42. See BLACKMAN, *supra* note 18, at 11; Elizabeth Topliffe, *Why Civil Protection Orders are Effective Remedies for Domestic Violence but Mutual Protective Orders are Not*, 67 IND. L.J. 1039, 1039 (1992).

43. BLACKMAN, *supra* note 18, at 12.

44. For example, states started passing laws allowing women to prosecute their husbands for marital rape. See *id.*; PLECK, *supra* note 31, at 192. Also, new state laws that "provided funding for shelters, improved reporting procedures, repealed intraspousal immunity from torts, and established more effective criminal court procedures" were passed. BLACKMAN, *supra* note 18, at 12-13.

45. See Wanless, *supra* note 34, at 537.

46. *Development in the Law*, *supra* note 16, at 1502-03.

47. MARTIN, *supra* note 23, at 32.

48. Sack, *supra* note 23, at 1667.



the laws may well have not existed.<sup>49</sup> Police considered domestic violence calls low priority incidents, and they often took up to several hours to respond or never showed up at all.<sup>50</sup> If police came to the home, they failed to arrest abusers.<sup>51</sup> Many states had non-arrest policies explicitly deterring the arrest of batterers and encouraging officers to convince victims not to pursue charges.<sup>52</sup> Additionally, "most states prohibited warrantless arrests for misdemeanor [domestic assault] offenses unless the crimes were committed in the presence of a police officer."<sup>53</sup>

If a woman wanted to file criminal charges against her husband, she was required to go to the District Attorney's Office.<sup>54</sup> Prosecutors, unconvinced that the case was serious enough or uninterested in taking on a "private" matter, often transferred cases to civil court<sup>55</sup> where orders for protection were the woman's only remedy.<sup>56</sup> To obtain even this civil remedy, a woman had to retain a lawyer and pay a substantial filing fee.<sup>57</sup> Even when a woman succeeded in getting her case to criminal court, the charge often was less serious than if it had been against a stranger.<sup>58</sup>

---

49. See generally DOBASH & DOBASH, *VIOLENCE AGAINST WIVES*, *supra* note 18, at 209-22 (describing procedures, policies, and attitudes which made it difficult for victims to obtain legal protection).

50. See *id.* at 211-12.

51. Wanless, *supra* note 34, at 536-37.

52. Pamela Blass Bracher, *Mandatory Arrest for Domestic Violence: The City of Cincinnati's Simple Solution to a Complex Problem*, 65 U. CIN. L. REV. 155, 161 (1996); see Epstein, *supra* note 11, at 14 (stating that police were trained to mediate rather than arrest abusers); Sack, *supra* note 23, at 1662 ("Officers were explicitly instructed not to make an arrest . . ."); Wanless, *supra* note 34, at 536-37 ("Police viewed arrest as a last resort."); e.g. DOBASH & DOBASH, *VIOLENCE AGAINST WIVES*, *supra* note 18, at 209-10 (citing Michigan police policies that emphasize the sanctity of the home and reveal a preference towards promoting peace and avoiding arrest); MARTIN, *supra* note 23, at 93-94 (citing California and Michigan police procedures explicitly advising officers to avoid arrests, appeal to the victims "vanity," and deter the victim from obtaining a warrant by explaining the difficult process including time and money).

53. Wanless, *supra* note 34, at 537.

54. MARTIN, *supra* note 23, at 109.

55. See, e.g., DOBASH & DOBASH, *VIOLENCE AGAINST WIVES*, *supra* note 18, at 218-19 (stating that in 1966 only 200 (2.7%) of the over 7,500 women who sought to file criminal complaints in Washington, D.C. against their husbands were successful); MARTIN, *supra* note 23, at 111.

56. See MARTIN, *supra* note 23, at 101 ("In Family Court, the most a woman can hope for is that an injunction or an 'order for protection' will be issued against her husband.").

57. *Id.* at 105 ("A restraining order [could] be acquired only after the victim . . . retained an attorney and paid costs for filing."). There was even an additional fee beyond the filing fee to get the husband to appear in court. *Id.*

58. HOYLE, *supra* note 34, at 3-4.

Further, judges frequently did not take the abuse seriously and focused on reconciling the family, while ignoring the safety of the victim and the continuing danger posed by the abuser.<sup>59</sup> Judges, like prosecutors and police officers, believed the same anti-victim stereotypes and often would assume that the victim provoked the abuse.<sup>60</sup> A judge who did sentence an abuser usually used minimal sanctions such as fines or probation, leaving wives no real protection from their husbands' abuse.<sup>61</sup>

As the justice system remained apathetic about domestic violence issues, women's movements continued their work to expand the country's awareness.<sup>62</sup> Numerous studies emerged about the prevalence and severity of domestic violence and the failure of the legal system to properly protect abused women.<sup>63</sup> Additionally, programs and shelters began appearing around the country.<sup>64</sup> Many of these were volunteer and community based organizations with no government participation.<sup>65</sup> Activists largely were hesitant to seek state assistance because the state, by tolerating and accepting domestic violence, was an enforcer of the system that oppressed women.<sup>66</sup> Despite these concerns, advocates realized that in order to change social attitudes and the system at large, they must first change the state's role in

---

59. See DOBASH & DOBASH, *VIOLENCE AGAINST WIVES*, *supra* note 18, at 217-28 ("The judicial response to violence against wives generally reflects the same pattern of indifference, official inaction, and occasional unofficial reaction exhibited by police departments."); MARTIN, *supra* note 23, at 114-18 ("Another common problem at this stage is the desire, this time on the part of the judge, to see the couple reconciled.").

60. Bracher, *supra* note 52, at 162.

61. DOBASH & DOBASH, *supra* note 18, at 220.

62. Kathleen J. Ferraro, *The Legal Response to Woman Battering in the United States*, in *WOMEN, POLICING AND MALE VIOLENCE: INTERNATIONAL PERSPECTIVES* 155 (Jalna Hanmer et al. eds., 1989).

63. HOYLE, *supra* note 34, at 3; see e.g., Aysan Sev'er et al., *Guest Editor's Introduction, Lethal and Nonlethal Violence Against Women by Intimate Partners: Trends and Prospects in the United States, the United Kingdom, and Canada*, 10 *VIOLENCE AGAINST WOMEN* 563 (2004) (providing empirical data regarding the prevalence and severity of domestic violence).

64. BLACKMAN, *supra* note 18, at 14-15; STRAUS, *supra* note 14, at 11; SCHECHTER, *supra* note 35, at 11-12 (recalling "the emergence of battered women's shelters across the country in the 1970s and 1980s"). The first hotline for battered women was created in St. Paul, Minnesota, and the first shelters were established in Pasadena, California in 1971. See Michael Steinman, *The Public Policy Process and Woman Battering: Problems and Potentials*, in *WOMEN BATTERING: POLICY RESPONSES* 1, 6 (Michael Steinman ed., 1991).

65. BLACKMAN, *supra* note 18, at 10.

66. Sack, *supra* note 23, at 1666.

condoning domestic abuse and partner with state institutions to make domestic violence a public issue.<sup>67</sup> Toward this goal, in the 1980s, the battered women's movement strongly campaigned to improve the legal system's response to domestic violence.<sup>68</sup>

Notwithstanding the continued resistance from the justice system and the courts, legislators began to realize the need to provide abused women with more adequate safeguards. As a result, jurisdictions throughout the country began enacting specific laws to address domestic violence.<sup>69</sup> These new laws and policies were greatly influenced by the domestic violence research that emerged over the previous decade, which focused on police as the gatekeepers of domestic violence cases.<sup>70</sup> Numerous studies revealed and criticized the failure of the police to take domestic violence calls seriously and officers' unwillingness to arrest abusers.<sup>71</sup> Additionally, the 1984 Minneapolis Domestic Violence Experiment found that *arresting* abusers, as opposed to utilizing other police responses, was the most effective deterrent for future abuse.<sup>72</sup> This study "had a pivotal impact transforming battering into a public problem because it gave public officials a way to treat it."<sup>73</sup> As a result of this research as well as the recommendations from the newly appointed Task Force on Family Violence, states adopted laws that enhanced the power of police officers to arrest batterers.<sup>74</sup> Some states created mandatory arrest policies that required the officer to make an arrest for misdemeanor assaults

---

67. *Id.* at 1666, 1675-76.

68. See Deborah Epstein et al., *Transforming Aggressive Prosecution Policies: Prioritizing Victims' Long-Term Safety in the Prosecution of Domestic Violence Cases*, 11 AM. U. J. GENDER SOC. POL'Y & L. 465, 465 (2003) (suggesting the movement in the 1980s and 1990s attempted to improve criminal justice responses); Ferraro, *supra* note 62, at 156-57 ("[T]he grass-roots battered women's movement worked to change existing legislation and create laws specifically designed to provide government and legal support to battered women.").

69. Sack, *supra* note 23, at 1668.

70. See *id.* ("As a result of . . . direct pressure from battered women's advocates, some jurisdictions were beginning to enact legislation requiring some changes in arrest policies for domestic violence offenses.").

71. See HOYLE, *supra* note 34, at 9-10 (citing various empirical studies conducted in the 1980s that analyzed police records and procedures and victims' responses to police assistance).

72. Lawrence W. Sherman & Richard A. Berk, *The Minneapolis Domestic Violence Experiment*, in POLICE FOUNDATIONS REPORTS 1, 1 (1984).

73. Steinman, *supra* note 64, at 7.

74. The Task Force, appointed by the United States Attorney General, recommended that domestic violence be treated as a criminal activity and that police officers should use arrest as the preferred response to domestic violence cases. Ferraro, *supra* note 62, at 160.

when the offender was present at the scene and probable cause existed.<sup>75</sup> Most states adopted preferred-arrest policies, where police still had considerable discretion in making an arrest based on probable cause.<sup>76</sup> Domestic violence advocates then switched their focus from police responses to criticizing practices in other areas of the legal system.<sup>77</sup> As a result, legislatures enacted new statutes to address problems with prosecutors and the previous laws themselves, a trend that has continued through today.<sup>78</sup>

## 2. Contemporary Domestic Violence Laws

Although assaults committed by intimate partners continue to carry fewer legal sanctions than those committed by strangers,<sup>79</sup> both federal and state legislatures have made noticeable efforts to more effectively combat domestic violence. Orders for protection ("OFP") are now much more accessible to domestic assault victims, including those who are indigent.<sup>80</sup> These orders usually consist of an injunction that "directs the offender to cease battering, threatening, or harming both the woman and, where appropriate, other family members such as children."<sup>81</sup> Women have access to both temporary and permanent restraining orders.<sup>82</sup> In all states, women can now obtain emergency orders on an *ex parte* basis if the situation presents "imminent and present danger" or if they can show a justified fear

---

75. See J. David Hirshel & Ira Hutchinson, *Police-preferred Arrest Policies*, in *WOMEN BATTERING: POLICY RESPONSES* 49, 50 (Michael Steinman ed., 1991) (citing six state laws requiring arrest upon probable cause when the perpetrator is present at the scene).

76. Sack, *supra* note 23, at 1670; see also Ferraro, *supra* note 62, at 158 (citing new state legislation from the early 1980s providing the police with increased power to arrest batterers on the basis of probable cause); Hirshel & Hutchinson, *supra* note 75, at 50-51 ("[P]referred arrest policies are far more common than mandatory policies.").

77. E.g., Minnesota Supreme Court Task Force on Gender Fairness in the Courts, *Final Report*, 15 WM. MITCHELL L. REV. 826, 872 (1989) [hereinafter Minnesota Task Force Report] (discussing the shortcomings of actors in the legal system in domestic violence cases); see also Ferraro, *supra* note 62, at 159 (discussing the push for legislation to fund domestic violence services).

78. E.g., Ferraro, *supra* note 62, at 158 ("[States] created new measures for obtaining orders of protection for battered women.").

79. Leonore M.J. Simon, *A Therapeutic Jurisprudence Approach in the Legal Processing of Domestic Violence Cases*, 1 PSYCHOL. PUB. POL'Y & L. 43, 44 (1995).

80. See generally *infra* notes 83-86 and accompanying text.

81. Simon, *supra* note 79, at 76.

82. Sack, *supra* note 23, at 1667.

of future assaults.<sup>83</sup> This temporary order stays in place until a hearing is held to determine whether a permanent order will be issued.<sup>84</sup> Many states no longer require that a woman be represented by a lawyer at hearings for protection orders.<sup>85</sup> This provides greater access to such orders for indigent women. Further, the filing fee for the order often can be waived for indigent clients, removing another barrier to a woman's safety.<sup>86</sup> Finally, all fifty states have made a violation of a protection order a statutory crime.<sup>87</sup>

No-drop policies also have been adopted by prosecutors' offices in many jurisdictions, where a prosecutor's decision to charge a domestic abuser and continue with the case is not contingent upon the victim's participation.<sup>88</sup> Under this policy, once a victim has filed a criminal complaint, the victim cannot withdraw it.<sup>89</sup> Further, though jurisdictions vary greatly in the structure of their no-drop policies, many limit the prosecutor's ability to drop a case unless there is a "clear lack of evidence."<sup>90</sup> States also continue to implement preferred and mandatory arrest policies, even if the officer was not present during the assault.<sup>91</sup> In addition to these general changes throughout the country, jurisdictions have enacted special laws that specifically address domestic violence.<sup>92</sup>

In addition to more aggressive laws by the states, the federal government enacted the Violence Against Women Act of 1994

---

83. Epstein, *supra* note 11, at 11; Topliffe, *supra* note 42, at 1043.

84. Topliffe, *supra* note 42, at 1043.

85. *Id.*

86. See, e.g., MINN. STAT. § 518b.01, subd. 3(a) (1988) (waiving filing fee for petitioner and in some instances requiring respondent to bear the financial burden upon a court order).

87. Sack, *supra* note 23, at 1667 (citing Deborah Epstein, *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1852 (2002)). Despite these laws, police are not constitutionally required to enforce orders for protection. See *Castle Rock v. Gonzalez*, 545 U.S. 748 (2005).

88. Sack, *supra* note 23, at 1657.

89. Cathleen A. Booth, *No-Drop Policies: Effective Legislation or Protectionist Attitude?*, U. TOL. L. REV. 621, 634 (1999); Angela Corsilles, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?*, 63 FORDHAM L. REV. 853, 858-59 (1994).

90. Kalyani Robbins, *No-Drop Prosecution of Domestic Violence: Just Good Policy, or Equal Protection Mandate?*, 52 STAN. L. REV. 205, 216 (1999).

91. Sack, *supra* note 23, at 1668-69.

92. E.g., MO. ANN. STAT. §§ 565.072-.074 (Supp. 2006) (providing distinct penalties for domestic assaults).

("VAWA"),<sup>93</sup> which was reauthorized in 1998 and again just recently in September of 2005.<sup>94</sup> This Act provides funding for law enforcement and prosecution of domestic assaults, as well as domestic violence advocacy groups.<sup>95</sup> In addition to domestic violence related funding, the Act provides federal penalties for abusers who commit a violent crime against an intimate partner as a result of crossing state lines with the "intent to kill, injure, harass, or intimidate a spouse or intimate partner . . ."<sup>96</sup> The Act also has provisions that penalize stalking across state lines,<sup>97</sup> causing an intimate partner to cross state lines by "force, coercion, duress, or fraud,"<sup>98</sup> crossing state lines to violate an OFP,<sup>99</sup> and cyberstalking.<sup>100</sup>

Congress, along with several states, has also enacted laws that prohibit firearm possession by abusers.<sup>101</sup> Statistics show that the presence of a firearm in a home where there is a history of domestic violence increases the risk of death or firearm injury dramatically.<sup>102</sup> Under federal law it is illegal for perpetrators of domestic assault who are subject to a restraining order and have been found to pose a "credible threat to the physical safety of the victim" to possess a firearm.<sup>103</sup> A perpetrator convicted of a domestic violence misdemeanor offense also is prohibited from possessing a firearm.<sup>104</sup>

### *B. The Need for a Domestic Violence Strangulation Statute*

A century's worth of struggle and progress has finally

93. Violence Against Women Act of 1994, Pub. L. No. 103-322, Title IV, § 40001, 108 Stat. 1902.

94. Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1491; Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006).

95. Snyder, *supra* note 16, at 35; Sack, *supra* note 23, at 1675.

96. Violence Against Women Act, 18 U.S.C. § 2261(a)(1) (2000 & Supp. 2006).

97. *Id.*

98. § 2261(a)(2).

99. § 2262(a)(1).

100. § 2261A(2).

101. Snyder, *supra* note 16, at 35-42; *see e.g.*, MINN. STAT. § 609.2242, subd. 3(d) (prohibiting convicted domestic abusers from possessing a firearm for at least three years after the date of conviction).

102. BLOCK ET AL., *supra* note 7, at 243; Lisa D. May, *The Backfiring of Domestic Violence Firearms Bans*, 14 COLUM. J. GENDER & L. 1, 4 (2005) (citing 139 CONG. REC. S16288-03 (1993)).

103. 18 U.S.C. § 922(g)(8).

104. § 922(g)(9).

brought domestic violence to a place where it is given significant attention by the federal and state legislatures. This progress, both in the social and legal realms, prompted the Minnesota legislature to enact the Strangulation Statute. This section will discuss the seriousness of strangulation, both as a general problem and as it specifically pertains to domestic violence. Further, this section will discuss how Minnesota laws previously addressed strangulation and how the new law changes the way domestic violence strangulation is handled by the legal system.

### 1. Strangulation, a Life-Threatening Form of Violence

Strangulation is “produced by a constant application of pressure to the neck”<sup>105</sup> that “may result in the restriction of blood flow and oxygenation to the brain.”<sup>106</sup> The most common form of strangulation is manual strangulation, where pressure is applied to the neck with one or two hands.<sup>107</sup> Strangulation is highly life-threatening. Although the amount of pressure on the neck required to induce death or unconsciousness varies greatly from one person to the next,<sup>108</sup> only a minimal amount of pressure is needed to cause potentially serious injury.<sup>109</sup> Generally, it only takes eleven pounds of pressure applied for ten seconds to cause unconsciousness.<sup>110</sup> After another minute, most victims will not survive.<sup>111</sup>

Injuries in strangulation cases are often severe, even when latent or delayed.<sup>112</sup> They range from symptoms such as scratches

---

105. Lee Wilbur et al., *Survey Results of Women Who Have Been Strangled While in an Abusive Relationship*, 21 J. EMERGENCY MED. 297, 298 (2001).

106. Smith et al., *supra* note 8, at 323.

107. Wilbur et al., *supra* note 105, at 300.

108. Dean A. Hawley et al., *A Review of 300 Attempted Strangulation Cases Part III: Injuries in Fatal Cases*, 21 J. EMERGENCY MED. 317, 320 (2001); George E. McClane et al., *A Review of 300 Attempted Strangulation Cases Part II: Clinical Evaluation of the Surviving Victim*, 21 J. EMERGENCY MED. 311 (2001).

109. McClane et al., *supra* note 108, at 313.

110. STRACK ET AL., *supra* note 3, at 3; New York State Office for the Prevention of Domestic Violence, *OPDV Bulletin: Strangulation in Domestic Violence and Sexual Assault*, [http://www.opdv.state.ny.us/public\\_awareness/bulletins/fall2003/strangulation.html](http://www.opdv.state.ny.us/public_awareness/bulletins/fall2003/strangulation.html) (last visited Oct. 15, 2005).

111. New York State Office for the Prevention of Domestic Violence, *OPDV Bulletin: Strangulation in Domestic Violence and Sexual Assault*, [http://www.opdv.state.ny.us/public\\_awareness/bulletins/fall2003/strangulation.htm](http://www.opdv.state.ny.us/public_awareness/bulletins/fall2003/strangulation.htm) (last visited Oct. 15, 2005).

112. See STRACK ET AL., *supra* note 3, at 4-6; Hawley et al., *supra* note 108, at 317-20.

and voice changes to paralysis and death.<sup>113</sup> However, even when strangulation is fatal, there may be no external evidence of injury.<sup>114</sup> Even injuries that are visible do not fully reveal the extent of underlying physical damage. Bruises may not appear up to *days* after fatal strangulation.<sup>115</sup> Swelling of the neck is an indication of more serious injuries such as internal bleeding and a fracture of the larynx.<sup>116</sup> What may seem initially to be mild breathing problems actually may kill a victim up to thirty-six hours later from the underlying injuries.<sup>117</sup> Some pregnant victims have had miscarriages hours or even days after the strangulation occurred.<sup>118</sup> Additionally, long-term mental problems such as amnesia, depression, and psychosis can develop due to the loss of oxygen to the brain during strangulation.<sup>119</sup>

The injuries resulting from strangulation, many either permanent or fatal, make strangulation life-threatening form of violence. The importance of addressing strangulation becomes even clearer in the context of domestic violence.

## 2. Strangulation and Domestic Violence

Though there are few studies concerning strangulation, a new recognition of the problem, especially in the domestic violence realm, has brought forth some crucial findings. Like other forms of domestic violence, strangulation is committed predominantly by male abusers against female victims.<sup>120</sup> Recent studies have found that 30-68% of women in abusive relationships have been strangled by their partners at some point in the relationship.<sup>121</sup>

---

113. STRACK ET AL., *supra* note 3, at 4-6; Wilbur et al., *supra* note 105, at 301.

114. See Hawley et al., *supra* note 108, at 318.

115. STRACK ET AL., *supra* note 3, at 5 (reporting that bruises may take hours, days, or even weeks to appear).

116. *Id.*

117. *Id.* at 4.

118. *Id.*; Wilbur et al., *supra* note 105, at 298 ("[C]ase studies . . . indicate that non-lethal strangulation can have detrimental medical complications up to two weeks after the strangulation incident.").

119. STRACK ET AL., *supra* note 3, at 5; Wilbur et al., *supra* note 105, at 301.

120. Strack et al., *supra* note 18, at 305 (finding that out of 300 domestic strangulation cases, 99% of the victims were women).

121. See e.g., BLOCK ET AL., *supra* note 7, at 161 (stating that 56% of participants had been strangled); Holly Johnson, *Risk Factors Associated with Non-Lethal Violence Against Women by Marital Partners*, in NAT'L INST. OF JUST., TRENDS, RISKS, AND INTERVENTIONS IN LETHAL VIOLENCE, at 158-59 (Carolyn Block & Richard Block eds., 1995) (reporting that in a study of more than 12,000 Canadian women, 30% had been strangled by a previous marital partner); Jacquelyn Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a*



Additionally, 87% of the incidents of nonfatal strangulation were accompanied by death threats.<sup>122</sup>

Even more troubling than the prevalence of strangulation in domestic violence cases is the fact that strangulation is a strong predictive risk factor for lethal domestic assaults.<sup>123</sup> According to one study, at least 56.4% of abused women eventually killed were previously strangled by their abusers.<sup>124</sup> The Chicago Women's Health Risk Study ("CWHRS") found similar results, concluding that prior strangulation is a strong predictive factor for future homicides.<sup>125</sup> Not only is strangulation predictive of an eventual homicide, but it tends to occur later in the abusive relationship, often years after the abuse has started, when the violence level is escalating in both frequency and severity.<sup>126</sup> Strangulation is often one of the last acts of violence committed before murder.<sup>127</sup> Like death threats and the use of a gun against a partner,<sup>128</sup> strangulation is an indicator that the violence is becoming closer and closer to being fatal by the day.<sup>129</sup>

Based on these studies, a victim of nonfatal strangulation at the hands of her intimate partner is at great risk of future severe violence and possibly death. Additionally, since the line between fatal and nonfatal strangulation is only a matter of a few seconds or a few pounds of pressure, any instance of nonfatal strangulation can easily transform into a homicide.<sup>130</sup> In fact, 70% of women who were strangled by their partners reported that they believed

---

*Multistate Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1094 (2003) (finding that 56.4% of domestic violence victims had been strangled by their partners); Wilbur et al., *supra* note 105, at 299 (finding that 68% of surveyed victims of intimate partner abuse had been strangled previously).

122. Wilbur et al., *supra* note 105, at 299.

123. BLOCK ET AL., *supra* note 7, at 285-86.

124. Campbell et al., *supra* note 121, at 1094 (noting that information was missing for 32% of the participants for this question, so the percentage could be even higher); *see also* BLOCK ET AL., *supra* note 7, at 249-51.

125. BLOCK ET AL., *supra* note 7, at 286.

126. Wilbur et al., *supra* note 105, at 299 (finding that the average length of the relationship was 5.2 years and the average length of abuse was 3.1 years before strangulation first occurred).

127. *Domestic Assault by Strangulation: Hearing on S.F. 934 Before the Crime Prevention & Public Safety Comm.* (2005) [hereinafter Gaertner, *Strangulation Hearing*] (statement of Susan Gaertner, Ramsey County Attorney).

128. BLOCK ET AL., *supra* note 7, at 285-88.

129. *Id.*

130. *See* Wilbur et al., *supra* note 105, at 300 (reporting that in almost half the incidents, nonfatal strangulation lasted from one to five minutes).

they were going to die at the time.<sup>131</sup> Further, the CWHRS found that 17.5% of domestic violence homicides where male offenders killed female victims were caused by strangulation, and that previous strangulation within the past year was highly predictive of this outcome.<sup>132</sup>

Just as the use of a gun makes a domestic violence offense more severe, so too does the use of strangulation during an assault. Moreover, in both cases the line between life and death is a matter of seconds: pulling a trigger or constricting someone's neck one moment too long. That strangulation in domestic violence cases is so prevalent, severe, and often predictive of future life-threatening abuse made it the right candidate for special attention by the legislature.

### 3. The Inability of Domestic Violence Laws to Address Strangulation as a Serious Form of Violence

The seriousness of strangulation in domestic violence cases makes the need to address this form of violence clear. Before the passage of Minnesota's new Strangulation Statute, the crime of strangulation was usually charged, if at all, as a Fifth-Degree Misdemeanor Assault.<sup>133</sup> These charges often resulted in a mere "slap on the wrist" for an abuser, despite the seriousness of his crime.<sup>134</sup>

One of the reasons for this inadequate charge was that Minnesota laws were not equipped to deal with such a crime. Under Minnesota statutes, felony assaults require the use of a weapon or some sort of serious physical disfigurement or impairment to the victim,<sup>135</sup> which usually are not associated with strangulation incidents, even when fatal. For example, Second-Degree Assault requires the use of a deadly weapon,<sup>136</sup> but with strangulation, the abuser's hands are most often the only weapon used or needed.<sup>137</sup> Even Third-Degree Assault, which requires

---

131. *Id.* at 299.

132. BLOCK ET AL., *supra* note 7 at 241, 251, 267; *see also* Complaint at 2-4, State v. Miller, No. 2031693 (Minn. Dist. Ct., Nov. 18, 2004) (charging defendant with Murder in the Second Degree for allegedly strangling his girlfriend to death).

133. *See* Gaertner, *Strangulation Hearing*, *supra* note 127.

134. *Id.*

135. MINN. STAT. §§ 609.222 (1989), 609.223 (1994).

136. § 609.222.

137. Wilbur et al., *supra* note 105, at 300.

“substantial bodily harm,”<sup>138</sup> could not incorporate strangulation. Substantial bodily harm requires “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.”<sup>139</sup> Although prosecutors sometimes could meet this standard if the victim was strangled into unconsciousness, juries often disagreed that this actually constituted *substantial* bodily harm.<sup>140</sup> In fact, strangulation is inversely correlated with conviction, in contrast with abuse such as punching and kicking, where physical signs of abuse are obvious.<sup>141</sup>

The inability of Minnesota statutes to address the problem of strangulation left many women without protection of the law. Despite a victim’s near death experience, the abuser could quickly be released back to the household with nothing more than probation, if that. In addition to problems with the laws, strangulation was not known as a serious form of violence. Judges, prosecutors, police officers, and even doctors were – and continue to be – unaware of its seriousness and prevalence.<sup>142</sup> This meant that neither officers nor doctors were asking victims about strangulation, nor were they looking for or recording symptoms.<sup>143</sup> Prosecutors, not realizing the seriousness of the crime, did not attempt to charge it as anything more than a misdemeanor.<sup>144</sup> Even those prosecutors who wanted to charge

---

138. § 609.223.

139. MINN. STAT. § 609.02 subd. 7(a) (2005).

140. See Gaertner, *Strangulation Hearing*, *supra* note 127 (basing statements on an examination of jury behavior in Minnesota conducted by the Ramsey County Prosecutor’s Office). Sometimes when strangulation is accompanied by death threats, prosecutors are able to charge the abuser with terroristic threats under chapter 609, section 713 of the Minnesota Statutes. See e.g., Complaint at 2, State v. Schnell, No. 2032885 (Minn. Dist. Ct., Jan. 3, 2005).

141. Lois A. Ventura & Gabrielle Davis, *Domestic Violence, Court Case Conviction and Recidivism*, 11 VIOLENCE AGAINST WOMEN 255, 268, 272 (2005).

142. WATCH POST, *supra* note 1, at 6; Ellen Taliaferro et al., *Walking and Talking Victims of Strangulation. Is There a New Epidemic? A Commentary*, 2 J. EMERGENCY MED. 293, 294 (2001).

143. See Gaertner, *Strangulation Hearing*, *supra* note 127 (stating that officers recognized strangulation in only 15% of domestic violence cases in 2004, but after training on strangulation, recognition of strangulation in domestic violence cases jumped to 30%); Wilbur et al., *supra* note 105, at 302.

144. See Gaertner, *Strangulation Hearing*, *supra* note 127; Alayna DeMartini, *Strangulation Cases; Seminar Explores Details Overlooked in Investigations*, COLUMBUS DISPATCH, Aug. 14, 2004, available at <http://www.ncdsv.org/images/StrangulationCasesSeminarExplores.pdf> (stating that it is easy to “minimize” or “trivialize” strangulation because of the lack of visible injuries).

strangulation as a more serious crime could not, either because the laws would not allow it,<sup>145</sup> or there was not enough evidence to charge the crime since the injuries were not visible,<sup>146</sup> or officers and doctors did not know to record information about strangulation.<sup>147</sup>

Once research began to show that strangulation was in fact a serious and prevalent form of domestic violence, the Minnesota Legislature was presented with the request for stronger punishments. After a long journey through the House and Senate, filled with testimony from organizations such as the Minnesota Coalition for Battered Women<sup>148</sup> and the Ramsey County Attorney's Office,<sup>149</sup> a new strangulation law finally was passed, effective August 1, 2005.<sup>150</sup>

#### 4. How Minnesota's Strangulation Statute More Effectively Addresses Strangulation as a Serious Crime

Under Minnesota's new Strangulation Statute,<sup>151</sup> an abuser now can be charged with a felony, punishable by up to three years in prison, for strangling his partner.<sup>152</sup> Strangulation is defined in the statute 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."<sup>153</sup>

There is no physical harm requirement under the statute, removing the burden of proving substantial visible injuries, which often do not exist.<sup>154</sup> The only requirement, besides proving the strangulation actually occurred, is that the perpetrator must have *intended* to impede "normal breathing or circulation of the blood."<sup>155</sup> Though the perpetrator does not have to intend to *kill*

145. See Gaertner, *Strangulation Hearing*, *supra* note 127.

146. See Hawley, *supra* note 108, at 319.

147. See STRACK ET AL., *supra* note 3, at 2-3; Taliaferro et al., *supra* note 142, at 394; WATCH POST, *supra* note 1, at 6.

148. *Informational Hearing on the Lethality of Strangulation in Domestic Violence: Hearing on S.F. 934 Before the Public Safety Budget Comm. of the Minn. H.R.* (2005) (statement of Lonna Stevens, Public Policy and Legislative Coordinator for the Minnesota Coalition for Battered Women).

149. Gaertner, *Strangulation Hearing*, *supra* note 127.

150. See MINN. STAT. § 609.2247 (2005).

151. *Id.*

152. § 609.2247, subd. 2.

153. § 609.2247, subd. 1(c).

154. See *supra* notes 114-15115 and accompanying text.

155. § 609.2247, subd. 1(c).

the victim, it is not clear what will be required for "intent." This is a question that will only be answered in time, through the statute's utilization in the legal system.

The statute provides much greater sanctions for strangulation of domestic partners than what previously had been available under the law. In addition to the possible felony conviction and lengthier prison sentence, the statute also provides for further punishment. The Strangulation Statute has been added to Minnesota's list of Qualified Domestic Violence-Related Offenses.<sup>156</sup> Therefore, a person convicted of strangulation loses his right to possess a firearm for three years from the date of conviction and can only regain that right if he is not convicted of any other domestic violence related offenses during that time.<sup>157</sup>

In addition to the stronger punishments provided by the statute, the method used by the legislature to felonize strangulation has its own benefits. That strangulation is addressed by its own distinct law, and not by an added provision hidden within an already existing assault statute, highlights its importance for the players in the legal system. Since police officers, prosecutors, and juries likely know little about strangulation, the fact that an entire statute was created to address it makes it more difficult to ignore. This increases the likelihood that actors in the legal system will at least inquire into the issue of strangulation, and perhaps even be convinced that training should be conducted in their offices, police stations, and courtrooms.

## **II. Problems with the Implementation of Domestic Violence Laws and Possible Effects on the Strangulation Statute**

Legal developments in the past decade have improved the government's response to violence against women. Nevertheless, the legal system continues to be "systematically biased in ways that implicitly condone violence against women," which manifests itself in the decisions and actions of police, prosecutors, and judges and in the development of case law.<sup>158</sup> Implementation problems revealed in studies during the 1970s until today continue to prevent domestic violence victims from getting adequate

---

156. MINN. STAT. § 609.02, subd. 16 (2005).

157. MINN. STAT. § 609.2242, subd. 3(d) (2005).

158. Crocker, *supra* note 34, at 198.

protection from the government.<sup>159</sup> Even in Minnesota, which has been a pioneer in the fight against domestic violence,<sup>160</sup> implementation problems that have continued since the beginning of domestic violence laws leave countless abused women without legal remedies.<sup>161</sup>

When analyzing the new Strangulation Statute, it is imperative to consider the context surrounding the law. Although the purpose of the statute seems simple—to recognize the seriousness of strangulation by more harshly punishing abusers who strangle<sup>162</sup>—even the simplest domestic violence laws have become riddled with complications and unintended consequences when applied. Alternatively, many domestic violence laws have not been applied at all.<sup>163</sup> The remainder of this Article largely will analyze, based on implementation problems that have surfaced for domestic violence laws in the past, what problems may arise in implementing the Strangulation Statute.

#### *A. Negative and Unintended Consequences of Specific Domestic Violence Laws*

Problems with the effectuation of domestic violence laws have taken many forms, including backlashes from the system, unintended and unexpected consequences, and most often, a simple failure to implement. This section explores the various unintended consequences that have resulted from the passage of other domestic violence laws and what these consequences may mean for the new Strangulation Statute.

##### *1. The Federal Firearm Ban*

Congress passed laws to impose harsher sanctions on domestic violence offenders by banning convicted abusers and abusers with OFPs filed against them from possessing firearms.<sup>164</sup> This was done to combat the risk of death and injury that

---

159. See generally Dobash & Dobash, *Appropriate Victims*, *supra* note 21, at 426 (stating that though wife abuse “is now proscribed by law . . . cultural and normative prescriptions still support such practice and it is only mildly condemned, if at all, by law enforcement and judicial institutions”).

160. See generally Minnesota Task Force Report, *supra* note 77, at 872 (“Minnesota . . . has a progressive statutory scheme to handle domestic violence cases.”).

161. SCHECHTER, *supra* note 35, at 161.

162. MINN. STAT. § 609.2247 (2005).

163. See Corsilles, *supra* note 89, at 853-55; Sack, *supra* note 23, at 1661.

164. See *supra* notes 101-04 and accompanying text.

increases drastically when a firearm is present in a home with a history of domestic violence.<sup>165</sup> Despite the intent of the legislature, many judges have taken it upon themselves to ignore or find ways around this law.<sup>166</sup> For example, in Minnesota, a defendant was convicted of battering his wife, and therefore, under federal law he was prohibited from possessing a firearm.<sup>167</sup> Nevertheless, the judge expunged the defendant's record—not because the defendant was innocent, but because the defendant was a police officer and faced losing his job due to the firearm ban.<sup>168</sup> The judge, worried only about a police officer not having access to his gun, clearly ignored the danger of giving a wife abuser the license to use a weapon freely and in a role of great power. This case mirrors many others where judges protect the job of a batterer while leaving the victim without any legal remedy.<sup>169</sup> Further, not only do some judges ignore the firearm ban to protect batterers from unemployment, but also “to protect them from simply missing hunting season.”<sup>170</sup>

Judges are flatly ignoring federal law despite Congress' intent in passing the law and the overwhelming research evidencing the severe danger of allowing an abuser to possess a firearm.<sup>171</sup> The actions of these judges reflect the same biased attitude that has been problematic since domestic abuse was condoned by law. Whether without recognizing the well-documented danger of allowing abusers to possess firearms or *despite* recognizing such a danger, some judges are placing a greater value on the livelihood or even recreational enjoyment of

---

165. See e.g., BLOCK ET AL., *supra* note 7, at 243 (citing a study in which a firearm was the murder weapon in 68% of cases in which a domestic violence victim was killed by the offender where there was a gun in the house); May, *supra* note 102, at 4 (noting the congressional record shows the legislature's intention to remove guns from a household to lessen the risk of death in domestic violence situations).

166. See e.g., Melanie L. Mecka, *Seizing the Ammunition from Domestic Violence: Prohibiting the Ownership of Firearms by Abusers*, 29 RUTGERS L.J. 607, 636 (1998) (citing a California case in which the charge under the federal domestic violence law was dismissed as part of a plea bargain to avoid the firearm ban).

167. See May, *supra* note 102, at 1-2.

168. *Id.*

169. See generally *id.* at 9-10 (noting some judges view these gun control restrictions as “potential career ending penalties,” and thus deny protective orders for victims and dismiss offenses); Mecka, *supra* note 166, at 636.

170. *Id.* at 22.

171. See, e.g., *id.* at 4 (“[D]omestic assaults involving firearms are twelve times more likely to result in death than all non-firearm domestic assaults.”); Mecka, *supra* note 166, at 607-08.

the abuser than on the safety of the victim and her family.<sup>172</sup> This completely ignores the purpose of the law and reiterates the stereotypical perception that domestic violence is not a serious crime meriting strong punishments.

The underlying attitude reflected by judges who ignore the federal firearm ban can cause similar negative consequences under the Strangulation Statute. Just as abusers stand to lose more under the federal firearm ban, so too do abusers under the new Strangulation Statute. Under this law, an abuser faces a possible felony sentence.<sup>173</sup> A felony sentence can be a barrier to such things as employment, just as the firearm ban is for abusers that are employed as police officers and military personnel.<sup>174</sup> Additionally, a felony sentence of any kind is a bar to the possession of firearms.<sup>175</sup> Further, just the mere fact that a felony sentence means more jail time for the abuser may be enough to create problems with judicial enforcement, since judges are often hesitant to punish domestic abusers harshly.<sup>176</sup>

Under the firearm ban, some judges are either not recognizing or ignoring the seriousness of battering when allowing abusers to continue to possess firearms. This attitude then would also make some judges reluctant to impose a felony sentence on an abuser, since the actions of these judges indicate that they do not see domestic violence as a serious crime. Just as beating your wife is not seen by some judges as severe enough to merit losing a hunting rifle, strangulation may not be seen as serious enough to merit a felony sentence that, although deserved, will prohibit firearm possession, and may make it difficult for an abuser to later find employment or obtain other benefits under the law.

---

172. May *supra* note 102, at 9-10, 22.

173. MINN. STAT. § 609.2247 (2005) ("Unless a greater penalty is provided elsewhere, whoever assaults a family or household member by strangulation is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.").

174. May, *supra* note 102, at 8-10.

175. 18 U.S.C. § 922(g)(1) (2000) ("It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.").

176. See *infra* notes 221-30223 and accompanying text.



## 2. Mandatory Arrest Statutes

After arresting abusers was found to be an effective deterrent to domestic violence, many states passed mandatory arrest statutes;<sup>177</sup> however, no one predicted the backlash that occurred in police departments across the country. Legislatures enacted the statutes to combat the unwillingness of officers to arrest domestic violence batterers.<sup>178</sup> Despite this intent, police officers began making dual arrests, and the number of women arrested for battery dramatically increased. This trend continues in some jurisdictions today.<sup>179</sup> Victims are arrested along with abusers, and sometimes only the victim is arrested.<sup>180</sup> Once again the intent of the legislature is completely negated, and this problem occurs for various reasons. Some officers do not bother determining who the initial aggressor is. Some arrest a victim who acted in self-defense, since she seems to be the aggressor to the untrained eye.<sup>181</sup> Some police officers make dual arrests out of pure resentment over the mandatory arrest statutes because the statutes remove police discretion.<sup>182</sup>

Whether caused by ignoring or not understanding the seriousness of domestic violence, the officers who fail to follow mandatory arrest policies may also fail to properly implement the Strangulation Statute. Though there is no clear backlash that might similarly arise from it, the attitudes and perceptions displayed by police officers under mandatory arrest statutes may affect the implementation of the Strangulation Statute.

Those officers who do not think domestic violence is a serious enough crime to identify the real batterer may also not take the time to investigate after a strangulation incident. Since visible injuries often do not exist,<sup>183</sup> and victims may not know to

---

177. See *supra* notes 70-76 and accompanying text.

178. See *supra* notes 50-53 and accompanying text.

179. See Jessica Dayton, *The Silencing of a Woman's Choice: Mandatory Arrest and No-Drop Prosecution Policies in Domestic Violence Cases*, 9 CARDOZA WOMEN'S L.J. 281, 287 (2003) (citing a study showing that three times as many women were arrested for domestic abuse after a mandatory arrest statute was passed in Los Angeles); Parmley, *supra* note 15, at 1424-25 (noting police may mistake the victim for the perpetrator if the perpetrator's defensive wounds are mistaken for offensive injuries); Sack, *supra* note 23, at 1680 ("Arrests of abused women have increased because officers have been either unable or unwilling to determine the initiator of the violence.").

180. See Sack, *supra* note 23, at 1680; Wanless, *supra* note 34, at 565.

181. *Developments in the Law*, *supra* note 16, at 1538.

182. Wanless, *supra* note 34, at 565.

183. See *supra* notes 112-19 and accompanying text.

specifically tell officers about the strangulation, the tendency of some officers to leave a domestic violence scene without proper investigation may leave a serious crime unreported.<sup>184</sup> No one will ever know that minutes before the police arrived, a woman was fighting for her life.

Further, even if the strangulation incident is discovered by the officer, he or she may not think it is serious enough to merit investigation or may simply not take the time to investigate properly. When visible injuries are so slight, collecting evidence becomes more crucial, but also more difficult. The process would take time—interviewing the victim and witnesses, taking down thorough notes about what happened, taking photographs of injuries, recording any information that indicates intent. Not only does this require that the officer think the crime is worth the effort, but it also requires that the officer recognizes and knows how to adequately respond to a strangulation incident. An officer who does not recognize that minor scratches and bruises can be indicators of more serious strangulation injuries will not know that more evidence needs to be collected, that an arrest may be warranted, or that he or she should tell the victim to seek further medical attention.

The officers who rebel against the mandatory arrest statutes because the statutes remove police discretion are even less likely to be educated about the new Strangulation Statute. Their disregard for the intent of the legislature indicates an unwillingness to recognize that lawmakers may know something about strangulation that officers do not. Even if they are educated about strangulation, these officers may choose to ignore the legislature's intent.<sup>185</sup> However, the new Strangulation Statute is a discretionary tool for police rather than a mandate.<sup>186</sup> Since it does not take away police discretion but instead gives officers another device on which to base an arrest, it is possible that the officers who rebelled against the mandatory arrest statutes will not similarly rebel against the Strangulation Statute. Nevertheless, these officers must still be educated about strangulation and believe that domestic violence is a serious crime before they will properly address and investigate a strangulation

---

184. See *Developments in the Law*, *supra* note 16, at 1535-36 (noting how many police officers responding to domestic violence calls "seek merely to placate the parties").

185. See Wanless, *supra* note 34, at 565.

186. See MINN. STAT. § 609.2247 (2005).

incident.

### 3. No-Drop Prosecution Policies

No-drop policies increased the number of domestic violence cases that prosecutors pursued in criminal court and “resulted in substantial improvements for domestic violence victims.”<sup>187</sup> Nonetheless, one of the negative consequences that surfaced from these policies is that prosecutors sometimes force victim involvement in the case.<sup>188</sup> Subpoenas may be issued for the victim to testify, and the victim may be held in contempt and possibly even face jail time for failure to comply.<sup>189</sup> This again misses the purpose of the law. No-drop policies are meant to better protect the victim by making sure the prosecutor pursues domestic violence cases,<sup>190</sup> but by forcing victims to testify or arresting them for refusing to testify, victims face even more hardships. Although victim testimony is preferable because it strengthens a case, coercing a victim to testify often puts the victim in further danger of abuse.<sup>191</sup> A victim’s fear of testifying is well-founded since “[m]any batterers have kidnapped their victims and seriously injured or even killed them to prevent them from testifying in court.”<sup>192</sup> Moreover, arresting a victim for refusing to testify may create problems for the victim such as losing custody of her children, and it may deter her from seeking help from the police again despite the continuing danger posed by the abuser.<sup>193</sup>

---

187. Epstein et al., *supra* note 68, at 466.

188. Sack, *supra* note 23, at 1681.

189. Dayton, *supra* note 179, at 291; *see also* Sack, *supra* note 23, at 1681-82 (discussing a New York case where a victim refused to comply with the subpoena to testify out of fear for her life, because the criminal justice system had failed to protect her from her abuser before. The judge sent the victim to jail for a week for refusing to testify.).

190. Booth, *supra* note 89, at 634 (“No-drop policies are instituted to combat the high percentages of domestic violence prosecutions that are withdrawn or abandoned by prosecutors.”).

191. *See* Epstein et al., *supra* note 68, at 476 (“A substantial number of women express fear that their batterer will retaliate with more violence if they continue with prosecution . . . . These concerns are not unfounded. Battered women are most likely to be killed while taking steps to end the relationship with the abuser or while seeking help from the legal system and at least 30% of all battered women who pursue legal action are reassaulted during the process of prosecution.”).

192. Epstein et al., *supra* note 68, at 476 (“Even perpetrator incarceration may be insufficient to remove this risk [of injury to the victim], because in some instances, an abuser’s friends or family may seek revenge for his arrest or attempt to prevent a victim from testifying.”).

193. *See* Parmley, *supra* note 15, at 1425 (recognizing negative consequences resulting from an unjust arrest including loss of job, loss of custody of children, and

Finally, arresting the victim reiterates the idea that she is to blame for the abuse and that the batterer is free from liability.<sup>194</sup>

The consequences of these no-drop policies may have a direct effect on the implementation of the Strangulation Statute. Though there is no state law requiring no-drop policies in Minnesota, all city and county attorneys must have a written plan "to expedite and improve the efficiency and just disposition of domestic abuse cases,"<sup>195</sup> and some prosecutors have implemented no-drop policies as part of this plan.<sup>196</sup> Moreover, even without no-drop policies, prosecutors are free to subpoena victims to testify.<sup>197</sup>

The practice of subpoenaing witnesses may be used excessively in strangulation cases because of the nature of strangulation and the requirements of the statute. Since this is a felony crime, there is a greater chance that strangulation cases will go to trial.<sup>198</sup> This means that jury members, likely unfamiliar with strangulation, will have to be convinced that the strangulation occurred. If no injuries are apparent, then the victim's testimony will become important for the prosecutor to win the case.

Furthermore, the statute requires that the abuser intended to impede "normal breathing or circulation of the blood."<sup>199</sup> This may come down to a he-said/she-said match, and without the victim's testimony it might be difficult to contest the abuser's claim that he lacked the requisite intent. Therefore, the use of subpoenas forcing victims to testify is a specific concern under the Strangulation Statute. This can be especially dangerous for strangulation victims because strangulation usually occurs later in the relationship when the abuse is becoming more frequent and severe,<sup>200</sup> and as a result retaliation by the abuser is a greater possibility. Despite this substantial danger, if a victim fails to

---

financial hardship).

194. See Wanless, *supra* note 34, at 565 (noting how dual arrest re-victimizes the victim because she is treated the same as her abuser).

195. MINN. STAT. § 611A.0311, subd. 2 (2003).

196. See *e.g.*, Corsilles, *supra* note 89, at 862 (discussing Duluth, Minnesota's "hard" no-drop policy where victims are regularly subpoenaed because prosecutors seek to pursue the case, despite the victim's reluctance to do so).

197. § 611A.0311, subd. 2.

198. *Cf.*, Mecka, *supra* note 166, at 640 (stating that the federal firearms ban caused fewer guilty pleas and more requests for trials in an attempt to avoid a conviction).

199. MINN. STAT. § 609.2247, subd. 1(c) (2005).

200. See *supra* notes 123-29 and accompanying text.

comply with a subpoena, she may face criminal sanctions and even jail time, possibly leaving her children without any protection.

#### 4. Orders for Protection

When legislators began making OFPs more accessible to victims of domestic violence, the number of mutual orders issued by judges increased. These orders continue to be prevalent.<sup>201</sup> Sometimes when a mutual OFP is issued it is because the perpetrator sought a corresponding order against the victim, but sometimes judges simply grant mutual orders on their own initiative, even when there is no evidence of mutual abuse.<sup>202</sup> Though the Minnesota courts made clear early on that mutual orders are improper,<sup>203</sup> some judges continue to impose them.<sup>204</sup>

Mutual OFPs hold both parties liable for the terms of the order and can include criminal sanctions when violated. If a victim violates the order, she faces arrest and the violation can be used against her in divorce proceedings, civil proceedings concerning the domestic violence, and in criminal proceedings against the abuser.<sup>205</sup> Even when judges do not give out mutual orders, some prosecutors have charged victims with aiding and abetting the violation of their abusers' orders.<sup>206</sup>

Once again, this unintended consequence evidences a lack of understanding about domestic violence that has negated the intent of the legislature. Changing OFP laws was meant to make it easier for the victim to obtain this protection;<sup>207</sup> however, issuing mutual orders reinforces the idea that the victim is to blame and actually increases the hardships on the victim.<sup>208</sup> Similarly, the fact that prosecutors hold victims criminally liable when abusers violate non-mutual orders also misses the point of

---

201. Minnesota Task Force Report, *supra* note 77, at 878.

202. *Id.* at 878-79.

203. *See e.g.*, Fitzgerald v. Fitzgerald, 406 N.W.2d 52, 54 (Minn. Ct. App. 1987) (vacating an order to amend an order for protection to make it a mutual order when there was no evidence to support the mutuality of the order).

204. Minnesota Task Force Report, *supra* note 77, at 878.

205. *Id.*; Topliffe, *supra* note 42, at 1062.

206. Sack, *supra* note 23, at 1685 (noting some prosecutors charge victims as an incentive to end all contact between the victim and abuser). *But see* State v. Lucas, 795 N.E.2d 642 (Ohio 2003) (holding that an individual who is the protected subject of a restraining order cannot be prosecuted for aiding and abetting the restrainee in violating the order).

207. Sack, *supra* note 23, at 1667.

208. *See supra* notes 201-02.

the legislation—taking such an action fails to recognize the complex social and psychological dynamics of domestic violence. There are many reasons why a victim may violate an order or “aid” in the perpetrator’s violation. Victims often are coerced or threatened by abusers, or sometimes there are children involved and abusers still have parental rights.<sup>209</sup> Whatever the reason, punishing the victim does nothing to protect her or to prevent the abuser from continuing to commit acts of domestic violence, which was the sole purpose of the changes in OFP laws.

Issuing mutual orders evidences the fact that some judges lack understanding and education about domestic violence. This again may have effects on the implementation of the Strangulation Statute. If judges do not understand the nature of strangulation, they may not realize that it is a serious crime. As a result, they may not sufficiently sentence an abuser, or find that the requisite violence existed for a charge. Further, combining this lack of education with some judges’ tendencies to issue *mutual* OFPs, judges may not realize the importance of issuing a non-mutual OFP against an abuser who strangled his victim.<sup>210</sup> Since strangulation is such a severe and potentially fatal form of violence, a proper OFP is crucial to the victim’s safety.

Prosecutors filing criminal charges against victims for aiding and abetting violations of OFPs, whether mutual or not, also display a lack of understanding about domestic violence. This too could have negative consequences for the application of the Strangulation Statute. In a strangulation case, since the violence in the relationship is becoming more and more severe, the victim is likely not in a position where she has any control over her abuser.<sup>211</sup> The abuser may be coercive and threatening, and the victim may be particularly fearful for her safety due to the devastating incident of strangulation she recently experienced. Thus, the victim may be in no position to make decisions about whether she contacts or interacts with her abuser but may still be held criminally liable for her abuser’s OFP violation.<sup>212</sup>

---

209. Topliffe, *supra* note 42, at 1060-64; *see also* Epstein et al., *supra* note 68, at 475-81.

210. Minnesota Task Force Report, *supra* note 77, at 878.

211. BLOCK ET AL., *supra* note 7, at 251.

212. *See generally* Sack, *supra* note 23, at 1685 (describing how prosecutors might charge victims for aiding their abusers in violating OFPs); Topliffe, *supra* note 42, at 1062 (citing the use of such contact as damaging evidence against the victim in future proceedings).

*B. General Lack of Implementation of Domestic Violence Laws and Possible Effects on the Strangulation Statute*

In spite of the prevalence of unintended consequences stemming from domestic violence laws, a widespread lack of implementation at all levels of the legal system remains the largest problem that these laws face. "Police, prosecutors, and judges in many jurisdictions are not resisting changes in domestic violence response due to a 'backlash' resulting from negative experiences with the new policies; rather, they have never fully instituted these policies at all."<sup>213</sup> This section discusses how the continued failure to enforce domestic violence laws may have specific consequences for the Strangulation Statute.

*1. A Continued Lack of Implementation of Domestic Violence Laws*

During the past fifteen years, the nation has witnessed a veritable explosion in the number of laws enacted to combat the problem of woman battering. In the field of criminal law, in particular, warrantless misdemeanor arrest statutes, antistalking legislation, and specialized domestic abuse laws have provided criminal justice personnel with the tools to aggressively pursue batterers. Despite this development, however, and despite the ever growing body of evidence establishing woman battering as a problem of systemic proportions, statistics indicate that few cases are formally adjudicated. In many cases, police still fail to arrest offenders, prosecutors still decline to file charges, and, if they do file charges, they often undercharge, and subsequently recommend dismissal. In essence, although legislative enactments have removed many structural impediments to prosecuting batterers, operational practices remain unchanged.<sup>214</sup>

In domestic violence cases, police still fail to intervene and some still intentionally delay responses in hopes that the conflict will be resolved once they arrive.<sup>215</sup> Additionally, despite the existence of mandatory arrest policies, several jurisdictions still do not implement them and domestic violence arrests are rarely

---

213. Sack, *supra* note 23, at 1698.

214. Corsilles, *supra* note 89, at 853-55 (citations omitted).

215. Simon, *supra* note 79, at 64.

made,<sup>216</sup> leaving victims and their families to fend for themselves in a dangerous environment. Even when orders for protection are violated, which is a criminal offense, police sometimes fail to make an arrest despite apparent abuse.<sup>217</sup>

Even with no-drop policies in effect, many prosecutors still are reluctant to go forward with domestic violence cases. Still believing that domestic violence is not a "real" crime and that the victim is to blame,<sup>218</sup> prosecutors continue to drop domestic violence cases at staggering levels.<sup>219</sup> Even if prosecutors do proceed with a domestic violence case, the abuser frequently is undercharged.<sup>220</sup>

"Most judges come to the bench with little understanding of the social and psychological dynamics of domestic violence and, instead, bring with them a lifetime of exposure to the myths that have long shaped the public's attitude toward the problem."<sup>221</sup> These stereotypical attitudes coupled with a lack of understanding

216. See Epstein, *supra* note 11, at 4 ("It has long been common practice for police to refuse to arrest . . ."). See generally Sack, *supra* note 23, at 1690-97 (analyzing the benefits and burdens of mandatory arrest policies).

217. See e.g., Minnesota Task Force Report, *supra* note 77, at 880-81 (finding that in Minnesota "22% of the persons who were under the protection of court-issued [orders for protection] were later the victims of violence in documented police reports. Only 22% of those subsequent perpetrators were arrested by police"); see also *Castle Rock v. Gonzalez*, 545 U.S. 748 (2005) (holding there is no 14th amendment right to enforcement of a restraining order).

218. See Corsilles, *supra* note 89, at 867; Robbins, *supra* note 90, at 211.

219. See Minnesota Task Force Report, *supra* note 77, at 880-81 (reporting that only "one percent of the cases of subsequent reported violence resulted in prosecution").

220. See Robbins, *supra* note 90, at 211 ("[P]erhaps most commonly, many prosecutors undercharge cases of domestic abuse by filing as misdemeanors crimes which actually constitute felonies.").

221. Epstein, *supra* note 11, at 39. These biases take the form of thinking the woman is not credible because she is overly emotional, blaming the victim for provoking the abuse or failing to leave, not helping a victim who has refused to cooperate with prosecutors in the past, identifying with the abuser, and treating domestic violence as a mere relationship issue that does not merit legal intervention. May, *supra* note 102, at 25-27.

The most persistent of these myths is the belief that battered women could leave their relationships if they simply chose to do so. But this belief ignores the real-life obstacles facing women who wish to end their relationships. These may include fear of retaliation; lack of economic resources; concern for children; emotional attachment to the perpetrator; perceptions of the availability of social support; and religious and culturally-based values and norms. In addition, this belief ignores the fact that many women make numerous unsuccessful attempts to leave before they actually are able to do so, and [they] are punished [for the attempts] with a more severe beating or even homicide.

Epstein, *supra* note 11, at 39.



about domestic violence cause numerous judges to continue disregarding domestic violence laws<sup>222</sup> and to take on an anti-victim perspective.<sup>223</sup> Judges repeatedly do not issue OFPs even when there is evidence of severe violence.<sup>224</sup> When such evidence is given, judges often fail to sanction abusers for violating orders, even after repeated violations.<sup>225</sup> Additionally, judges may refuse to find that the requisite violence existed to sentence an abuser, and many give light sentences despite a serious conviction.<sup>226</sup>

Overall, research suggests that the traditional biases and lack of understanding about domestic violence continue to pervade the legal system.<sup>227</sup> Stereotypes remain just as they did a century ago, including blaming the victim for the abuse and not considering domestic assault a real crime.<sup>228</sup> These stereotypes lead to a failure to adequately respond to domestic violence that "cuts across all levels of the legal system."<sup>229</sup> This failure of the justice system may have specific implications for the implementation of the Strangulation Statute, especially because of the statutory requirements necessary to prove a strangulation offense.<sup>230</sup>

## 2. The Effects of a Failure to Implement Domestic Violence Laws on Proving the Statutory Elements of the Strangulation Statute

Substantial problems may arise from the evidence required to meet the elements of the Strangulation Statute and to convince a judge or jury that the abuser is guilty. Although injury is not needed to meet the statutory requirement,<sup>231</sup> there needs to be some evidence to convince a judge or jury that the strangulation occurred. Thus, the fact that strangulation often leaves little or no

---

222. May, *supra* note 102, at 25-27.

223. Epstein, *supra* note 11, at 40-43.

224. A woman in Minnesota had been in an abusive relationship for twenty-five years and was denied an order for protection. The judge "suggested that she provoke a more serious incident to make sure her case was strong enough to support the [order]." The woman said to the judge, "I guess I need a knife in my back . . . to get an [order for protection]." The judge responded, "That's just about it." Minnesota Task Force Report, *supra* note 77, at 874-75.

225. See Salzman, *supra* note 28, at 337-38.

226. May, *supra* note 102, at 23-24.

227. Minnesota Task Force Report, *supra* note 77, at 875.

228. *Id.*; see SCHECHTER, *supra* note 35, at 161.

229. Robbins, *supra* note 90, at 209; see also Epstein, *supra* note 11, at 4.

230. See MINN. STAT. § 609.2247 (2005).

231. See *id.*

visible injury, even when there is serious underlying harm,<sup>232</sup> will cause problems at all levels of the criminal justice system. This is especially true since even visible strangulation injuries often are too minor to capture in photographs from the instant cameras used by many police precincts.<sup>233</sup> Proving strangulation is already difficult even if all parties involved are implementing the statute properly.

The most challenging requirement of the Strangulation Statute is proving intent. Under Minnesota law, the word "intentionally" means that "the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result."<sup>234</sup> Hence, an abuser is not guilty of strangulation under the statute, even if he physically put his hands around the neck of the victim and applied pressure to a point near death, unless he *purposely* meant to impede the "normal breathing or circulation of the blood."<sup>235</sup> This requirement will be particularly problematic if actors in the legal system are already failing to implement domestic violence laws.

Police officers are the first line of protection for abused women. They are first on the scene and have access to evidence that can only be obtained by them. If evidence is not collected at the scene, this will either prevent the case from making it into the system or will hinder the success of the case at every step of the criminal process.<sup>236</sup> Since visible injuries may be scarce and may fade quickly,<sup>237</sup> it is imperative that police officers recognize strangulation injuries, document them, and then advise victims to seek medical help. These steps are necessary to ensure that adequate evidence is collected for the case and that the victim is treated properly for any latent or underlying injuries due to the strangulation.

If police officers are not responding to domestic violence calls then the strangulation may never be discovered. Moreover, officers who go to the scene but believe that domestic violence is not a real problem likely will not take the time to investigate the

---

232. See Hawley et al., *supra* note 108, at 318; see also STRACK ET AL., *supra* note 3, at 5.

233. See *infra* notes 269-73273 and accompanying text.

234. MINN. STAT. § 609.02, subd. 9 (2005).

235. § 609.2247.

236. See STRACK ET AL., *supra* note 3; Sack *supra* note 23, at 1722-23.

237. See STRACK ET AL., *supra* note 3, at 5; Hawley et al., *supra* note 108, at 318.

assault<sup>238</sup> and may not discover that strangulation took place. Even those officers who do take domestic abuse seriously likely will lack the knowledge to recognize the symptoms of strangulation or to ask about it, especially since the symptoms often are slight.<sup>239</sup>

In all of these instances, whether due to lack of care or lack of knowledge, a police report may not even contain notes indicating that a strangulation occurred. If never reported, strangulation can never be charged. Even in cases where the police find out about strangulation while at the scene, they may not know what to look for, what to ask about, or what to record in the report since strangulation injuries may be subtle.<sup>240</sup>

In addition to the evidence concerning injuries themselves, the intent requirement poses another concern for proper implementation of the Strangulation Statute. Whether or not a victim testifies at trial, it is crucial that the police record any information that may indicate intent. This may come in the form of the victim's report of what the abuser said while strangling her, which may be relevant since many abusers make death threats while strangling their victims.<sup>241</sup> Making a record of such statements could be a determinative factor in proving the required intent under the statute.<sup>242</sup> Still, if officers do not take the time to find out about the strangulation, fail to recognize that it occurred, or simply do not see it as a serious crime and do not investigate further, proof of intent may be lost.

Even if police officers fully did their jobs and provided prosecutors with a complete report about a strangulation incident, prosecutors still may not proceed as they should because of their own biases and lack of education about domestic violence. Prosecutors, even where no-drop policies are in place, have a great deal of discretion over who and what to charge for an offense.<sup>243</sup> Since many prosecutors choose to drop the majority of domestic violence cases placed before them, or undercharge in the cases

---

238. See Epstein, *supra* note 11, at 14.

239. See STRACK ET AL., *supra* note 3, at 2.

240. *Id.*

241. See Strack et al., *supra* note 18, at 306-07.

242. Under *Crawford v. Washington*, statements of the victim to the police may be inadmissible if considered testimonial hearsay. 541 U.S. 36 (2004).

243. Minnesota Task Force Report, *supra* note 77, at 872-73; Simon, *supra* note 79, at 67.

they do take on,<sup>244</sup> this egregious crime can go uncharged.

If police officers have done a thorough investigation of the strangulation incident and the prosecutor has charged the offense as felony strangulation, judges still may create an obstacle preventing proper implementation. Since judges have a great deal of power and discretion,<sup>245</sup> their biases or lack of understanding about domestic violence could threaten successful prosecution. Judges have the power to determine whether a defendant should be released before trial and when a protective order should be issued.<sup>246</sup> If a judge has anti-victim biases, then even though a strangulation victim faces severe danger, her abuser may be released without a protective order in place.<sup>247</sup> Judges also have the power to refuse to admit information obtained during investigations, such as a victim's statements about the strangulation incident, which may be crucial in proving intent.<sup>248</sup>

Furthermore, under the Strangulation Statute a judge can sentence an abuser to prison for "*not more than three years or to payment of a fine of not more than \$5,000, or both.*"<sup>249</sup> Therefore, judges have a great deal of discretion in whether an offender should even spend time in prison at all. Since judges often fail to impose a sentence that matches the seriousness of the domestic abuse crime,<sup>250</sup> it is possible that even when the rest of the legal system properly effectuates the Strangulation Statute, judges can impede the purpose of its enactment, which is sending a

---

244. Minnesota Task Force Report, *supra* note 77, at 883.

245. May, *supra* note 102, at 23.

Judges have the power to impede the implementation of progressive state domestic violence laws by both direct and indirect measures. Judges acting as factfinders – as they so often do in domestic violence cases – may refuse to find that the requisite violence existed to sentence a perpetrator or issue a civil order of protection. Judges may disallow certain probative evidence, or they may wholly ignore admitted evidence. Some judges even intentionally misapply the local statutes. Even in jury trials, judges control the admission of evidence, jury instructions, and sentencing.

*Id.*

246. NAT'L RESEARCH COUNCIL, UNDERSTANDING VIOLENCE AGAINST WOMEN 121 (Nancy A. Crowell & Ann W. Burgess eds., 1996) ("Judges' decisions can directly affect battering cases: judges can determine pretrial release conditions, such as whether or not the defendant should be released, how long he should be held prior to release, the nature and amount of bond, and whether a protective order should be issued," and they also exercise "considerable discretion in sentencing.").

247. *Id.*

248. *See id.*

249. MINN. STAT. § 609.2247, subd. 2 (2005) (emphasis added).

250. *See* NAT'L RESEARCH COUNCIL, *supra* note 246, at 121.

dangerous offender to prison and preventing future, possibly fatal, violence.<sup>251</sup>

### III. Recommendations for the Successful Implementation of Minnesota's Strangulation Statute

Though the new Strangulation Statute may face challenges in implementation, as so many other domestic violence laws have,<sup>252</sup> there are steps that can be taken to minimize such problems. The most important step to ensure successful implementation is education at all levels of the legal system about strangulation and the new law.<sup>253</sup> This would not only clear up any confusion about the purpose of the law but would increase compassion for the victim as well.<sup>254</sup> Education will help police and prosecutors understand how to deal with strangulation incidents, increasing the probability of conviction and the likelihood that victims will receive proper medical attention.<sup>255</sup> Even research and the medical communities did not realize the gravity of strangulation in the domestic violence context until recently, and research about its specific effects is still in the early stages.<sup>256</sup> Without education, there is a good chance that actors in the legal system may not understand how serious strangulation is for a victim of domestic abuse.

For the Strangulation Statute to be effectively implemented, there must be training at all levels of the legal system and in the medical community. Police must be educated on the research behind the statute so that they understand the severe danger of strangulation. If convinced of its seriousness, officers might not ignore or downplay an instance of strangulation. Officers also should be trained on how to respond to and investigate a strangulation incident. As discussed above,<sup>257</sup> without proper investigation, officers may not even discover that strangulation occurred, and if they do, they may not investigate enough to make

---

251. May, *supra* note 102, at 23.

252. See Sack, *supra* note 23, at 1722.

253. May, *supra* note 102, at 33-34 (stating that judicial education is needed on the psychology and pathology of domestic violence); Sack, *supra* note 23, at 1722 ("[Implementation problems] can be addressed through ongoing training and education of police officers, prosecutors, and judges . . .").

254. May, *supra* note 102, at 33-34.

255. See Sack, *supra* note 23, at 1722-23.

256. See Taliaferro et al., *supra* note 142, at 294.

257. See *supra* notes 236-42422 and accompanying text.

a report that is sufficient to press charges against the abuser. Police need to know what symptoms to look out for, such as voice hoarseness and neck injuries. They need to know how to investigate the strangulation, which includes asking the victim if the abuser said anything or did anything during the incident that may indicate intent. Police likewise need to know enough about strangulation to convince the victim to seek further medical attention for her own safety and to strengthen a criminal case.

Ramsey County, Minnesota, serves as an example of how education can help officers successfully apply the Strangulation Statute. Prior to the enactment of the statute, the Ramsey County Attorney's Office trained its police officers on strangulation.<sup>258</sup> Before the training was conducted, only 15% of domestic violence cases reported a strangulation incident.<sup>259</sup> After the training was completed, officers reported strangulation as part of their domestic violence cases 30% of the time.<sup>260</sup> From a few hours of education, the recognition of strangulation by police officers increased twofold. Other counties in Minnesota must follow the lead of Ramsey County and institute training programs for their police officers.

Education also must extend to prosecutors, who, like police officers, often have biased attitudes towards victims or lack the knowledge to understand the complicated nature of domestic violence.<sup>261</sup> First, prosecutors must know that they now have this law at their disposal. The fact that the new strangulation law was passed as a separate statute, as opposed to an additional provision added to an already existing assault statute, likely will be enough to inform prosecutors about it. Second, prosecutors need to utilize the statute. This requires both recognizing its importance and knowing what is necessary to build a strong case against the abuser. Prosecutors must read the research that convinced the legislature to enact the statute. The studies about strangulation and domestic violence show that strangulation is undeniably a serious crime that merits serious charges.<sup>262</sup>

When the Ramsey County Attorney was exposed to studies about strangulation, she became a zealous advocate for the new strangulation law. Her testimony to the legislature was a

---

258. Gaertner, *Strangulation Hearing*, *supra* note 127.

259. *Id.*

260. *Id.*

261. See Minnesota Task Force Report, *supra* note 77, at 875-76.

262. See generally STRACK ET AL., *supra* note 3; Hawley et al., *supra* note 108.

persuading factor in the passage of the statute.<sup>263</sup> This also led the County Attorney to train police officers about strangulation and to work hard to utilize the statute in her office once it was passed.<sup>264</sup> This evidences the fact that simply learning more about the dangerousness and prevalence of strangulation can have a profound effect on how the new law is implemented.

Prosecutors also need to be educated on the evidentiary requirements under the statute and how to best meet them. Not only thorough police reports, but also follow-up interviews with the victim, and medical records of latent injuries are all necessary for successful prosecution. Further, education about the dangerousness of strangulation is also needed to help prosecutors understand why a victim may not wish to testify at trial. Prosecutors must understand and be prepared for the fact that in some strangulation cases the trial may have to proceed without the victim's testimony.

Though judges also harbor biases towards domestic violence victims, there has been no parallel education for them as there has been for prosecutors and police officers.<sup>265</sup> But as previously discussed, many judges do not recognize domestic violence as a serious crime and are hesitant to punish abusers. Again, it is education that can best help judges to understand both the seriousness and complexities of domestic violence.<sup>266</sup> For strangulation in particular, if judges do not recognize the gravity of this offense, they may not be willing to grant OFPs or impose a harsher, though well-deserved, sentence on an abuser.

In addition to training members of the legal system, jury members, as members of the public, often hold biases towards domestic violence and probably know little about it. Many people still think that domestic abuse is justified in various situations.<sup>267</sup> In contrast with offenses that leave more prominent physical injuries, strangulation leads to fewer jury convictions.<sup>268</sup> This increases the importance of including medical experts at trial who

---

263. See Gaertner, *Strangulation Hearing*, *supra* note 127.

264. *Id.*

265. See May, *supra* note 102, at 32-34.

266. *Id.*

267. See Karen M. Gentemann, *Wife Beating: Attitudes of a Non-Clinical Population*, 9 VICTIMOLOGY 109, 111-13 (1984) (finding that one in five people found wife abuse justified when the wife did things like flirt with another man or nag their husbands).

268. Ventura & Davis, *supra* note 141, at 272.

can testify to the seriousness of strangulation, despite the lack of physical injury.

Education is crucial at *all* levels of the legal system because if one part of the system fails, they all do. If a police officer fails to investigate a strangulation incident, even the best prosecutor will not be able to bring a sufficient case. Even if an officer thoroughly investigates a strangulation incident, this means nothing unless the prosecutor is willing to take on the case. Finally, if the prosecutor and police officers both do their jobs, it still will be in vain unless a jury is willing to convict and a judge is willing to punish an offender properly. Not only must Minnesota educate police officers and prosecutors about strangulation, but it must educate *everyone* in the justice system in order for the Strangulation Statute to be implemented effectively.

Furthermore, there are specific requirements in the Strangulation Statute that may be difficult to meet even when carried out correctly. Research must be done to determine the best ways to deal with these barriers. For example, the problematic lack of visible injuries on a victim can make proving strangulation difficult, especially when coupled with the fact that instant photographs often do not capture the injuries on film.<sup>269</sup> A study conducted on photographing injuries from strangulation found that victims had visible injuries in only half of the cases.<sup>270</sup> Out of the cases with visible injuries, police photographed the injuries over 75% of the time, while in the other 25% of cases the visible injuries were "too minor to photograph."<sup>271</sup> Despite the number of photographs taken by police, 60% of those photographs showed *no* visible injury.<sup>272</sup> In total, when it came to trial, only 15% of all the cases involving strangulation had usable photographs to present into evidence.<sup>273</sup>

Resolving this problem could involve something as simple as officers using digital cameras instead of instant cameras to photograph injuries. One study found that the use of digital photos versus instant photos quadrupled the chance of conviction in domestic violence cases, even when the victim did not testify at trial.<sup>274</sup> Digital photographs yielded a much higher number of

---

269. Strack et al., *supra* note 18, at 305-06.

270. *Id.* at 306.

271. *Id.* at 305.

272. *Id.* at 306.

273. *Id.*

274. Crystal A. Garcia, *Digital Photographic Evidence and the Adjudication of*



useable pictures, revealing many more of the victim's injuries.<sup>275</sup> According to the study, when digital photos were used domestic abusers were "six times more likely to plead guilty . . . four and one-half times more likely to be convicted [by a jury]," and five times more likely to be sentenced to time in custody.<sup>276</sup>

This small adjustment could have dramatic effects on domestic violence cases. Since proving injuries from strangulation poses a particularly difficult problem, digital cameras could have a profound impact on strangulation cases. The fact that digital photos increased convictions even when victims did not testify provides an additional advantage: a victim in danger can forego testifying and the case can still be successful. Though not all problems will be this simple to solve, and fixing them might sometimes be expensive, the example serves to show that small changes can make a large difference for domestic violence cases.

The final step in proper implementation is evaluating the statute after it has been in effect for a sufficient amount of time. Throughout the development of domestic violence laws there has been little discussion about what works best in addressing domestic abuse.<sup>277</sup> It sometimes happens that what works in theory does not work in practice—a law is not working as intended—but without evaluation there can be no remedy. The legal system must take the time to evaluate how successful the Strangulation Statute has been and what might be needed to better implement the legislature's intent. Whether it requires more education of the actors in the legal system or something as simple as using digital cameras, problems cannot be remedied unless there is recognition that those problems exist and investigation into *why* they exist.

## Conclusion

Powerful social forces permit and even encourage abuse. These forces continue to influence legal institutions and personnel, and undermine the legal system's desire and ability to combat the problem. Even if these forces were purged from the legal system, they would probably continue to operate in society at large. As long as social forces and attitudes condone

---

*Domestic Violence Cases*, 31 J. CRIM. JUST. 579, 584 (2003).

275. *See id.* at 585-86.

276. *Id.* at 584.

277. Aysan Sev'er et al., *Guest Editor's Introduction: Lethal and Nonlethal Violence Against Women by Intimate Partners: Trends and Prospects in the United States, the United Kingdom, and Canada*, 10 VIOLENCE AGAINST WOMEN 563, 570 (2004).

battering, the legal system alone can never provide a complete solution to battering. Nevertheless, the law, especially the criminal law, can play a critical role in reducing domestic violence.<sup>278</sup>

Despite possible implementation problems, there is no doubt that Minnesota's new Strangulation Statute is a positive step in combating domestic violence and the negative stereotypes and biases that surround it.<sup>279</sup> Just a few months before the new law was passed, a defendant admitted to police that he strangled his victim, stopping only when their two-year-old son intervened.<sup>280</sup> In this case, visible injuries were severe and very graphic. Despite the severity of the injuries, under Minnesota law the defendant was charged with only Misdemeanor Domestic Assault.<sup>281</sup>

Within the first three weeks after the statute was passed in Minnesota, the county attorneys in the metro area charged at least ten men with strangulation felonies.<sup>282</sup> In one case, the defendant dragged the victim into the kitchen by the neck.<sup>283</sup> The victim was lightheaded and drooling uncontrollably.<sup>284</sup> The victim got loose and ran from the house, but the defendant grabbed her by the neck again, this time lifting her off her feet.<sup>285</sup> The victim felt like she was losing consciousness and thought she was going to die.<sup>286</sup> Until the police arrived, the defendant continued to beat and strangle the victim while saying, "Bitch, just die," "Bitch, why won't you just die?"<sup>287</sup> Having been trained about strangulation,<sup>288</sup>

278. Waits, *supra* note 41, at 270.

279. Cf. Joseph R. Biden, *Violence Against Women, The Congressional Response*, 48 AMER. PSYCHOL. 1059, 1060 (1993) ("Although legislation cannot hope to change these attitudes directly, the legislative process can help to alert the public.").

280. Complaint ¶ 2, State v. Nins, No. 04233477 (Minn. Dist. Ct. Dec. 9, 2004) [hereinafter Nins Complaint]. In this case, the defendant admitted grabbing the victim by the neck. The victim testified that she was strangled for one to two minutes. *Id.*

281. MINN. STAT. § 609.2242, subd. 1 (2005); Nins Complaint ¶ 2.

282. Paul Gustafson, *Law Gets Tough on Choking Assault, Attempts to Suffocate or Strangle Now a Felony*, STAR TRIBUNE, Aug. 23, 2005, at B1.

283. Complaint ¶ 2, State v. Johnson, No. 05204734 (Minn. Dist. Ct. Sept. 26, 2005) [hereinafter Johnson Complaint].

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.*

288. The officer was a member of the Ramsey County Police force, who were trained on strangulation prior to the passage of the statute. See Gaertner, *Strangulation Hearing*, *supra* note 127.

the officer at the scene noticed the victim's voice was hoarse, she had bruises on her throat, and scratches along her left cheek and jaw.<sup>289</sup> Not only did the officer investigate the strangulation incident and take photographs, but the defendant was charged under the new Strangulation Statute and faces a possible felony sentence.<sup>290</sup>

If the other counties in Minnesota follow the lead of the metro area, by educating both officers and prosecutors and making this new statute a priority, the statute may be carried out as intended. Nevertheless, even in areas like Ramsey County, it is still too early to know how judges and jury members will react to this new statute. Therefore, a close eye should be kept on the implementation of the statute to be sure that it does not fall victim to the fate of so many other domestic violence laws. The best way to ensure proper implementation of the statute will hinge on education: education about how to best utilize the statute and education to convince police officers, prosecutors, judges, and jury members that strangulation is a serious crime that merits their attention. If this is done, then the Domestic Assault by Strangulation Statute has the chance to be implemented as intended by the legislature, possibly becoming an effective tool in combating domestic violence.

---

289. Johnson Complaint ¶ 2.

290. *Id.*; see also Complaint ¶¶ 2-5, State v. Bean, No. 05177059 (Minn. Dist. Ct. Aug. 23, 2005) (charging defendant with Domestic Assault by Strangulation after he grabbed victim's throat, pushed her on the bed, and strangled her with both hands).

