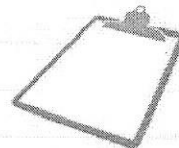


WATCH Report Part II:
The Impact of
Minnesota's Felony Strangulation Law
May, 2009

The mission of WATCH is to make the justice system more effective and responsive in handling cases of violence, particularly against women and children, and to create a more informed and involved public.

WATCH



Bringing a public eye to justice

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Introduction

In 2005, Minnesota became one of just six states with a specific statute making strangulation of a family or household member a felony-level crime. The law went into effect on August 1 at 12:00 a.m., and approximately 10 minutes later, a Stearns County man was arrested and charged under the statute. To date, there have been 3,638 strangulation assaults charged in Minnesota with 664 charged by the Hennepin County Attorney's Office.¹

It is estimated that 23% to 68% of women victims of domestic violence have experienced at least one strangulation assault during their lifetime.² Prior to the enactment of Minnesota's felony strangulation law, many of these assaults were charged as misdemeanors that were in turn frequently reduced to disorderly conduct charges as part of a plea bargain, or simply dismissed altogether. This approach to strangulation cases is not only short sighted, but puts victims at risk. Strangulation has been recognized as an indicator of escalating violence and potential lethality in domestic violence cases for at least 13 years, and the goal of enacting a law that singles out this brutal form of assault is to save lives. St. Paul Police Chief John Harrington has credited the felony strangulation law as an essential element in bringing about the reduction of domestic homicides in St. Paul in the last two years.³

In January 2007, WATCH published a report on the initial impact of Minnesota's felony strangulation statute that included a review of 59 strangulation cases charged in Hennepin County during the first six months of the law's implementation (August 1, 2005 to January 31, 2006).⁴ Since that time, WATCH has presented locally and nationally on Minnesota's strangulation statute and has assisted other states in pushing for similar legislation. To date, Nebraska, Missouri, Oklahoma, Idaho, North Carolina, Alaska, Oregon, Indiana, and Hawaii have enacted domestic strangulation laws. Such legislation, however, failed in Texas and California, and is pending in Tennessee, Ohio, Washington, and Illinois.

To further assess the ongoing impact of the law, WATCH conducted a comparable study of Hennepin County strangulation cases charged two years after the first review (August 1, 2007 to January 31, 2008).

¹Charges Filed on 609.2247 (Assault by Strangulation), State Court Administrator's Office, St. Paul, Minnesota, 2009.

²Berrios, D. C., & Gracy, D. (1991). Domestic violence: Risk factors and outcomes. *Western Journal of Medicine*, 155, 133-135. Wilbur, L., Highley, M., Hatfield, J., Surprenant, Z., Taliaferro, E., & Smith, D.J., et al. (2001). Survey results of women who have been strangled while in an abusive relationship. *Journal of Emergency Medicine*, 21, 297-302.

³Francis, Kelly. (2008). Minnesota's new domestic abuse strangulation statute. *Bench & Bar of Minnesota*, 65, 8.

⁴WATCH. The Impact of Minnesota's Felony Strangulation Statute. Minneapolis: WATCH, 2007.

Project Design

WATCH reviewed all of the cases charged in Hennepin County under the statute between August 1, 2007 and January 31, 2008. Our review included documentation of:

- Initial charges
- Case disposition
- Victim/defendant relationship
- Strangulation method used
- Contents of criminal complaint, including terms used to describe assault
- Length and conditions of sentences
- Consequences of probation violations
- City of incident
- Criminal justice system personnel involved

Additionally, WATCH monitors observed and took notes on approximately 60 hearings involving over 45 domestic strangulation cases.

Hennepin County case review

From August 1, 2007 to January 31, 2008, 96 domestic felony strangulation cases involving 95 defendants were charged in Hennepin County. The total number of misdemeanor, gross misdemeanor, and felony convictions for the 96 cases reviewed was 103 (out of a total of 181 total charges).⁵ Charging and conviction rates can be broken down as follows:

- Thirty-nine percent (37) resulted in convictions under the felony strangulation statute.
- Thirty-eight percent (36) resulted in convictions for other felonies, including domestic assault (15), terroristic threats (10), false imprisonment (2), drug possession (3), failure to register as a sex offender (1), attempted murder (1), burglary (1), harassment (1), violation of a no contact order (1), and fleeing a police officer (1).⁶
- Twenty-seven percent (27) resulted in convictions for lesser qualifying domestic violence-related crimes (6 gross misdemeanors and 21 misdemeanors).
- Four percent (3) were for non-qualifying charges (2 disorderly conducts and 1 damage to property).
- Eleven percent (11) were dismissed altogether, of which seven were charged solely under the felony strangulation statute.
- Two of the cases (4% of the total) are still open at the time of this report's publication. One defendant is awaiting trial on the strangulation charge. The other

⁵ Of the 96 cases, two defendants had jury trials and one defendant had a trial before a judge. All other convictions were obtained through plea agreements.

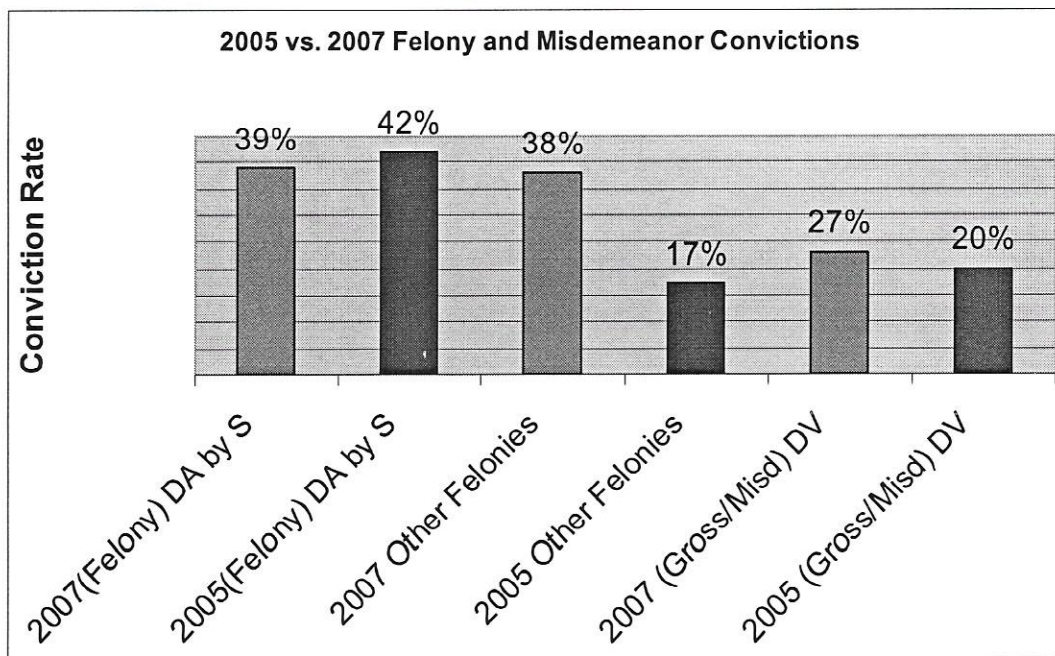
⁶ For cases reviewed in 2005, the other felony convictions were for the following crimes: terroristic threats, violation of an order for protection, burglary, and criminal sexual conduct.

was never apprehended. Both of these cases involve stand-alone felony strangulation charges.

The number of charges in the 2007 study represents a 61% increase over the same time period two years earlier, when only 59 cases (involving 59 defendants) were charged. The overall conviction rate for cases involving strangulation showed only a slight increase from 83 percent in 2005 to 86 percent in 2007. This conviction rate includes misdemeanor, gross misdemeanor, and felony convictions.

Forty-two of the 96 cases (44 percent) were charged solely under the felony strangulation statute compared to 24 of 59 cases (41 percent) in 2005, another slight increase. However, the conviction rate for these cases actually decreased—from 54 percent in 2005 to just 40 percent in 2007.

A significantly higher percentage of cases resulted in other felony convictions in 2007 (38 percent) compared to 2005 (17 percent), indicating that the strangulation charge is being used as leverage to obtain a conviction on another felony, usually one with the same or similar sentence. Leveraging the strangulation charge has been particularly helpful in obtaining convictions when the victim has not been available to testify or otherwise cooperate with the prosecution—key factors in obtaining a conviction under the statute. As an assistant Hennepin County attorney noted, “Anytime we are able to file a felony charge and convict on one, we are enhancing victim safety.”⁷



⁷ WATCH. The Impact of Minnesota’s Felony Strangulation Statute. Minneapolis: WATCH, 2007.

In addition to the increased percentage of felony convictions (other than for domestic assault by strangulation, which decreased), there was a seven percent increase in convictions that qualified as domestic violence-related crimes. This qualification is critical to offender accountability because it allows the criminal justice system to enhance any subsequent domestic violence-related crimes to a higher degree. For example, if the defendant commits a misdemeanor-level assault, the previous conviction on a qualified domestic violence-related crime allows the charge to be enhanced to a gross misdemeanor.

Sentencing

The presumptive sentence for a defendant with no prior criminal history who is convicted of felony domestic strangulation is a stayed⁸ sentence of one year and one day in prison. Sentences documented in the current study are listed below with comparative sentences from 2005 in parentheses. Nineteen defendants were given some stayed time in addition to being sentenced to serve time in prison and the workhouse, so the numbers below exceed the total number of defendants.

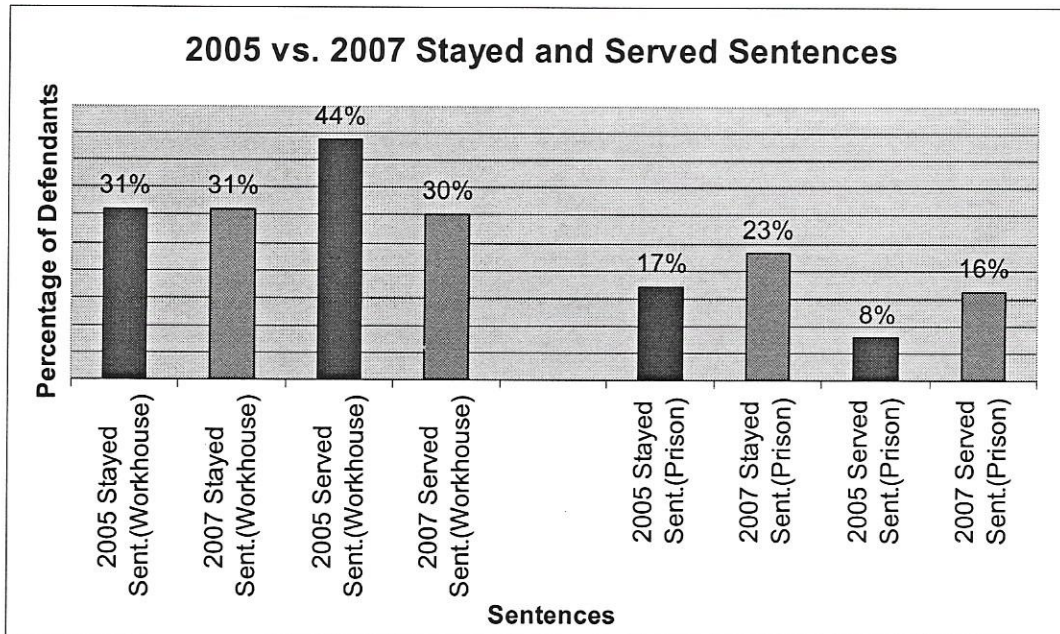
Stayed sentences (55 percent)

- Nineteen (23 percent) defendants received stayed prison sentences ranging from 12 to 66 months, with an average sentence of 22 months stayed for 3 to 5 years (compared with 17 percent of 2005 defendants who received stayed sentences with an average of 21 months).
- Twenty-six (32 percent) defendants received stayed workhouse sentences with an average sentence of 259 days. The percentage was exactly the same in 2005, with only a one-day difference in the average sentence.

Served sentences (70 percent)

- Thirteen (16 percent) defendants were sentenced to serve time in prison, with sentences ranging from 15 to 108 months, with an average sentence to be served of 31 months (compared to 8 percent of 2005 defendants who received an average of 43 months).
- Forty-four (54 percent) defendants were sentenced to serve time in the workhouse, with an average sentence of 97 days (compared to 18 percent of 2005 defendants who received an average sentence of 164 days).

⁸ A stayed sentence means the defendant would be placed on probation and only serve the sentence or a portion of the sentence if he violates the terms of probation.



A greater number of defendants in the 2007 case review received sentences to serve in both prison and the workhouse than defendants in 2005. Though defendants typically received less time than permitted under the felony strangulation statute of one year and a day, the cases reviewed for this report indicate that defendants are on average receiving greater penalties than when the law first went into effect.

Given the potential lethality of a strangulation assault, WATCH continues to advocate for prosecutors to argue for and judges to sentence defendants to the maximum penalty allowed under the statute. As many criminal justice system personnel pointed out in interviews from the 2005 study, offender accountability is increased with longer supervised probation periods, which allows for more intensive treatment such as batterer’s intervention, and greater penalties that are associated with a felony conviction. One advocate noted that, *“these cases have a better chance of getting pre-sentence investigations and supervised probation.”*

Stays of imposition of sentences⁹ (21 percent)

- Seventeen defendants, 10 of who were convicted of felony domestic strangulation, received stays of imposition of their sentences, which ranged from 19 to 180 days. All received stays of imposition for three years except one, who received a stay of one year on a terroristic threats conviction.

⁹ Instead of imposing the sentence, the defendant is placed on probation with conditions to follow, and the charge is reduced to a misdemeanor upon successful completion of probation. The length of the stay indicates the amount of time the defendant will be on probation.

- Fifteen of these 17 defendants were ordered to serve time at the workhouse. Eleven of the 15 were released at sentencing because the time ordered equaled the amount of time they had already served.

A strong concern highlighted in the 2005 report was the high number of cases resulting in stays of imposition of the sentence, several for just two years. WATCH recommended at that time that stays of imposition be used sparingly, if at all, for strangulation cases, and never with a probationary period of less than two years.

The research showed a significant decrease in the number of defendants receiving stays of imposition, dropping from 36 percent in 2005 to 21 percent in 2007. Additionally, all but one of the 2007 stays of imposition had a probationary period of three years. Both these factors appear to demonstrate a greater attempt on the part of criminal justice system personnel to hold these offenders accountable than when the law initially went into effect.

Statements at sentencing

WATCH monitors attended the sentencing hearing in approximately one quarter of the 2007 felony strangulation cases reviewed for this report. At a sentencing hearing, victims are given the opportunity to address the court about the crime's impact on their life, which can be an empowering act for them. WATCH monitors took notes on any victim impact statements that were provided. While some women were overheard making statements about their role in the assault or were attending the hearing in support of the defendant, other victims spoke of their fear and devastation after the crime. One woman revealed that she still *"doesn't feel safe, has bad dreams,"* that the *"incident has made her suicidal, and she strongly desires justice."* Another victim told the judge about *"how the husband I loved tried to murder me. My spirit was broken with the abuse...I kept all the violence a secret...my children are deeply affected."*

Defendants also have a right to make a statement at their sentencing hearing, and WATCH monitors noted these as well. At one hearing, the *"defendant apologized to victim (not present). He said he had no intention of hurting her. He just wanted to stop her from getting a tattoo when she was pregnant. He just wants to take care of his son and newborn daughter."* Another said that he wanted to *"take responsibility for my actions. I'm sorry for my role that day...I will make the best of a bad situation."* These types of statements from defendants are not uncommon. While they may apologize, they often make excuses for their violence, such as wanting *"to stop her from getting a tattoo,"* or they minimize their agency (*"I'm sorry for my role that day"* rather than, *"I'm sorry for what I did"*).

Probationary conditions

The vast majority of defendants in the 2007 review (77 percent or 58 defendants) were placed on supervised probation. Fifty-six of them were given conditions that required at least occasional contact with a probation officer, such as being ordered to provide a DNA sample, undergo a chemical dependency evaluation, or submit to random drug testing.

Two of the defendants, however, were not ordered to undergo any monitoring that would require contact with probation. Though this is a small percentage, it is important that conditions requiring actual contact with a probation officer be included, otherwise the supervision is on paper only, making it essentially impossible to gauge the defendant's progress. Similarly, three defendants were placed on probation to the court, where, again, the defendant is not required to check in regularly with a probation officer. In these cases, no one is clearly responsible for supervising the defendant nor is anyone clearly responsible for issuing an arrest and detention order if the defendant violates the terms of probation. This particular type of probation is the least appropriate for violent offenders.

No contact orders

Sixty-six percent of the defendants in the 2007 study were ordered to have no contact with the victim as part of their probation, a low percentage given the level of violence described in the criminal complaints. Several of the defendants had *no contact* orders already in place at the time of sentencing and requested that these orders be lifted. Lifting a *no contact* order, however, even at the request of a victim, places her in danger. One monitor noted that the judge denied the request for lifting the *no contact* order: "*The defendant said he was sorry for his crime and that it wouldn't happen again. He asked the judge to allow him to help his family and promised that he would turn himself in.*" The judge denied the request saying that he didn't want to "*take a chance that something worse could happen.*"

When a *no contact* order is lifted, WATCH recommends that advocates, prosecutors, and judges advise victims of the dangers of maintaining contact with the offender and ensure that she is not being coerced into making the request. Further, victims should not be shamed for making such requests, and should be assured that if the order is lifted, any subsequent calls to police will be taken seriously by members of the justice system.

Monitors noted that judges, attorneys, and advocates did take steps to minimize the danger to victims when a *no contact* order was lifted. One monitor observed that the "*victim wants to drop no contact order...and was present in court with child...defendant agreed that he would get double the guidelines [sentence] if he violates his probation*" as a condition for lifting the order.

The danger of lifting a *no contact* order, especially without a thorough vetting of the defendant's history of violence, is illustrated in one of the 96 cases reviewed. A monitor at the sentencing hearing for the defendant wrote, "*victim wants no contact order lifted...judge allowed it at request of prosecution and as long as wife continues domestic abuse program.*" The monitor noted that the judge stated he felt it was safe to lift the *no contact* order because both the defendant and victim were in counseling and it appeared they were reconciling. The judge also gave the defendant a downward departure from the sentencing guidelines because the offense was, according to the monitoring notes, the "*first occurrence, wife agrees, and defendant expresses remorse and is in counseling.*"

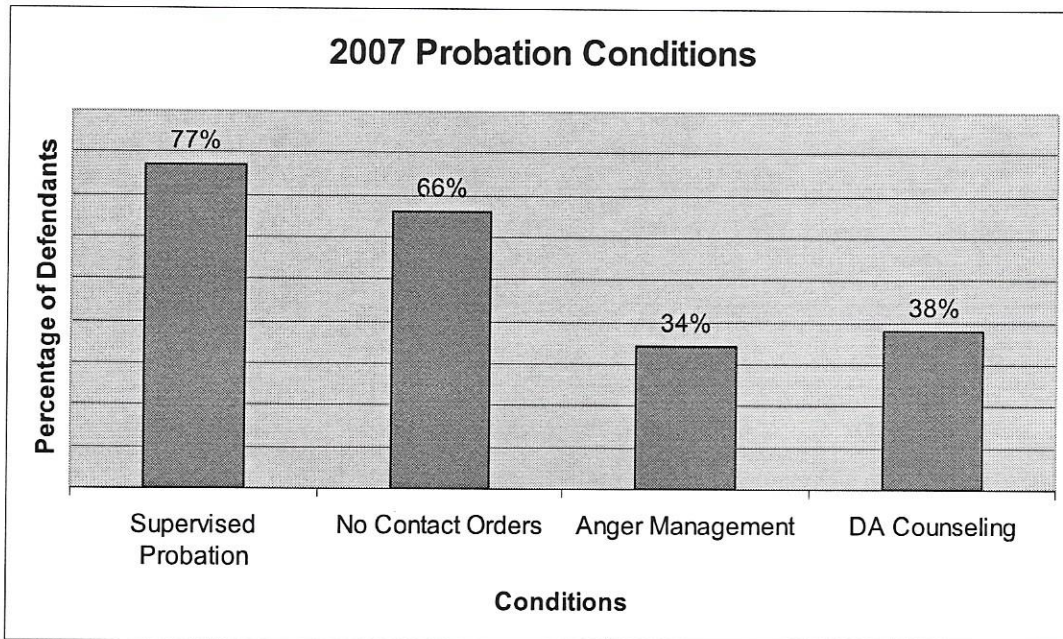
The criminal complaint documenting the felony strangulation assault, however, told a different story: “*Defendant waived Miranda rights and admitted that he had choked victim and covered her mouth with his hand several times*” previously. The complaint also states that the defendant told police he was not a violent person, just gets “*frustrated.*” Within seven months of his sentencing, he had a new gross misdemeanor domestic assault charge.

Domestic abuse counseling

In domestic abuse cases, defendants who are given probationary sentences are required under statute to successfully attend and complete a domestic abuse counseling program.¹⁰ Thirty-eight percent (29) of the probationary sentences did include this condition, meeting the statutory requirement. In a few of the cases resulting in a drug, disorderly conduct, or fleeing a police officer conviction, the defendant was not ordered to attend domestic abuse counseling. Even though these sentences still complied with the statute, they do not address the underlying reason for why the case was charged in the first place: the defendant’s domestic violence. Since the defendant was being given a break by removing the domestic violence charge, it would seem prudent and reasonable to make a condition of the plea agreement be successful completion of domestic abuse counseling.

In 34 percent (26) of the cases reviewed, the defendant was ordered to attend anger management classes. While some of these defendants were ordered to complete anger management in addition to domestic abuse counseling, 15 defendants were ordered to anger management alone. This does not comply with the statute for good reason—anger management does not adequately address domestic violence, instead grouping together individuals with unrelated issues (such as losing their temper while driving), often for a one-time only class. Anger management alone for domestic abusers should cease to be an option.

¹⁰ Domestic Abuse Act 518B.02, Sub. 2: If the court stays imposition or execution of a sentence for a domestic abuse offense and places the offender on probation, the court shall order that, as a condition of the stayed sentence, the offender participate in and successfully complete a domestic abuse counseling program or educational program.



Recidivism

WATCH gathered public records for the 59 defendants from the 2005 study to see how many had been re-arrested. Twenty-five defendants (42 percent) had other criminal charges in the two years since their felony strangulation charge, and 12 of these had been arrested more than once, resulting in 41 new criminal cases. Fourteen defendants had new domestic violence cases, composing 30 of the 41 cases. The new domestic violence-related charges included four felony strangulation charges (of which two were dismissed), eight charges of order for protection or *no contact* order violations, burglary, criminal sexual conduct, second degree assault, felony domestic assault, and felony harassment and stalking. Twenty-four of the domestic-related cases resulted in convictions, with 10 of the defendants sentenced to serve time at the workhouse or in prison for their crimes.

At the time of this report, 29 (31 percent) of the 95 defendants with 2007 cases had new criminal charges,¹¹ 9 for domestic violence-related offenses resulting in 11 new cases.

It is important to note that of the 9 defendants who committed new domestic violence-related offenses since their 2007 case, eight (89 percent) had had the felony strangulation charge dismissed and two had pleaded to the strangulation charge but received stays of imposition at sentencing.

- Two defendants had the felony strangulation case completely dismissed.

¹¹ Ten of the defendants had traffic-related offenses, five had drug-related charges, and three were charged with fraud, loitering with intent, or assaulting a police officer.

- Two pled guilty on the new domestic assault charge in exchange for dismissal of the strangulation charge. One had the felony strangulation charge dismissed in exchange for pleading to a lesser charge (even though he had been charged with a violation of a *no contact* order in Ramsey County the day before) and was charged with the new assault within one year.
- Two received stays of imposition for the strangulation conviction and both of them committed a new domestic offense—one of them two months and the other six months after being sentenced.
- One defendant pled guilty on a new terroristic threats charge in exchange for dismissal of the pending felony strangulation case.
- One defendant who had been convicted on the felony strangulation charge had his probation revoked for the new offense and was sentenced to serve his full prison sentence.

The points above illustrate that 89 percent of defendants who committed new domestic violence-related offenses had received lenient sentences for the original felony strangulation conviction, such as a stay of imposition, or had their felony strangulation charge dismissed, in effect sending the message to the abuser that the justice system will not hold him accountable for his violence.

Probation violations

In the 2007 cases reviewed, 22 defendants were found to have violated the terms of their probation by the time of this report. The public records do not clearly identify the type of violation, but WATCH could confirm four violations that were domestic violence-related, such as a violation of a *no contact* order or a new assault.

Consequences for the four domestic violence-related violations were as follows:

- One defendant was gone on arrival after committing a new assault and was not charged with a new offense; his violation was subsequently dismissed.
- One defendant obtained an additional felony strangulation charge when he strangled his ex-girlfriend a second time for reporting the previous strangulation assault, which had resulted in a conviction and stay of imposition for three years. His probation was revoked for the second assault, and he served 180 days in the workhouse, but his stay of imposition was not revoked—meaning that the felony strangulation assault could eventually become a misdemeanor offense on his record.
- One defendant violated the no contact order and threatened to kill the victim and her family. His probation was revoked, and he was sentenced to serve 15 months.
- One defendant committed another assault against the same victim. He was charged for the new assault and served five days for the probation violation.

WATCH monitored the revocation hearing for the defendant who violated the *no contact* order. Prior to the hearing, the WATCH monitor observed the victim’s father talking to a probation officer about how the system “*needs to change and protect his daughter. He*

does not know how the defendant got her number to call. He isn't able to always be there to protect her.... Victim said that the defendant told her, 'I'm here til the end. I'm here til you die.'" The father then stated, *"No matter where they put him, he will find her."*

This case speaks to how critical probation officers are in holding defendants accountable for all violations, but particularly violations that increase a victim's fear and put her in danger. Continued threats and victim contact should not be tolerated in light of such defendants' propensity to lethal violence. In such cases, all system players should respond quickly and seriously to violations involving victims or their family members.

Minimizing the violence

It is not uncommon for battered women to minimize the violence they experience and for abusive men to deny or minimize the violence they have perpetrated. A review of strangulation cases in San Diego illustrates this minimization. Comments from victims include, *"He didn't really choke me, he just had me in a headlock and I couldn't breathe."* Defendants make similar comments such as, *"Why are you arresting me? All I did was choke her."*¹²

Minnesota's felony strangulation law provides the criminal justice system the opportunity to give a wake-up call to both defendants and victims about the seriousness of a strangulation assault. One victim advocate told WATCH that she attempts to *"educate victims on the fatality of strangulation and how quickly they can die."* The loss of consciousness can occur within approximately 10 seconds and death within 4 to 5 minutes.¹³

As the earlier WATCH report demonstrated, Minnesota's felony strangulation law has increased victim safety and offender accountability. However, as our 2007 review shows, it is common for the strangulation charge to be dismissed in exchange for a conviction on another charge and when a felony strangulation conviction is obtained, the sentence given is often shorter than allowed under the statute.

Both factors can lead to a minimization of the escalating violence. As one probation officer observed in our earlier review, *"...defendants are frequently given a break. I think people are walking out of here with 60 or 90 days and with lots of denial."*

In one of the 2007 cases reviewed, the monitor made this observation: *"The judge told defendant not to let things get out of hand again and that resources are available for help."* The judge continued to explain that the charges were amended from strangulation to misdemeanor 5th degree domestic assault because *"...while defendant placed his hands on her neck, 'it's apparent that he never impeded her breathing.'"*

¹² Strack, G.B., McClane, G.E., Hawley, D. (2001). A review of 300 attempted strangulation cases: Criminal legal issues. *Journal of Emergency Medicine*, 21, 303-309.

¹³ Ibid.

But it was not apparent in the criminal complaint that he “never impeded her breathing.” The investigator of the Minneapolis Police Department wrote, “*The defendant put his hands to her throat and squeezed. He also hit her and threw her to the floor...again put his hands on her throat exerting pressure. The victim bit the defendant’s finger in an effort to get him to stop strangling her and he let go of her neck.*”

Though the criminal complaint does not specifically state whether her breathing was impeded, it does state that he “exerted pressure” on her throat. Reducing such an assault to a misdemeanor charge may be a good strategy to obtain a conviction, but it still sends a message that the assault was not that serious.

Elements of criminal complaints

WATCH analyzed the 96 criminal complaints to try to determine whether the language used and the description of the assault and its aftermath as well as its documentation in the criminal complaint had an impact on case outcome. Complaints were reviewed using three criteria: 1) use of the word “strangle;” 2) description of strangulation-related injuries; and 3) documentation of whether breathing was impaired. Sixteen (17 percent) of the 96 complaints contained all three elements. Two such examples are: “*the defendant grabbed the victim around her throat and strangled her... squeezed to the point that she could not talk or scream....started to throw-up from being strangled.*” “*The defendant got on the bed that she was on, placed both of his hands around her neck and began strangling her...officers could see that the right side of her face was red and that her right eye was discolored and swollen.... Photographs of the injuries to the victim's face were taken.*”

In addition, two complaints included all three elements and also stated that medical attention was provided. “*The defendant got on top of her [the victim], then placed both hands around her neck and strangled her...applied pressure to her throat, making it difficult to breathe...she felt light-headed and believes she would have passed out but third party stopped the defendant. Victim complained that she felt like her neck was swelling up and officers called for paramedics...day after assault, throat was still sore and her voice was raspy.*”

In the last case, the defendant incurred a new felony charge of terroristic threats against the same victim while the felony strangulation charge was pending. In exchange for a guilty plea on the terroristic threats charge, the felony strangulation charge was dismissed. This provides an example of how a strangulation case can be used as leverage to obtain a guilty plea on another felony charge, but a closer look at the case and the defendant’s response to it suggests that pursuing the strangulation charge might have resulted in greater offender accountability. In this case, the language in the complaint accurately reflected what had transpired, clearly meeting the statutory standard, and a third party also witnessed the assault. The defendant, too, did not seem to merit any compromises as illustrated by a WATCH monitor’s observations at the sentencing, “*Before seeing judge, defendant was chatting with attorney. They were very nonchalant, talking about how the charges were bogus. Defendant said he was accused of choking*

her for 30 seconds, then laughed and said, 'Look at my hands. If I choked her for 30 seconds, I would have crushed her.'"

For strangulation to be charged as a felony, a complaint must include language that shows the defendant impeded the normal breathing of the victim. Seven defendants in the 2007 study were initially charged with domestic assault by strangulation, but the charge was later amended to a lesser gross misdemeanor or misdemeanor charge. Two of the criminal complaints did not indicate that the victim's breathing had been impeded, and none of the seven complaints used the term "strangle" or even "choke" to describe the assault.

A total of nine (9 percent) criminal complaints reviewed did not specifically indicate whether the victim had trouble breathing during the assault. Of those, five of the felony strangulation charges were dismissed, three resulted in felony strangulation convictions, and one case is pending.

Comparing 2005 and 2007 criminal complaints

The majority of criminal complaints in the felony cases from both 2005 and 2007 clearly demonstrate the statutory requirement to "impede normal breathing or circulation of the blood." From 2005 to 2007, the percentage of cases meeting this requirement went up, from 83 percent in 2005 to 90 percent in 2007.

Curiously, use of the term "choke" to describe the assault increased from 2005 while use of the stronger and more accurate term "strangle" decreased. In the 2007 complaints, 39 percent contained the term "choke," while in the 2005 complaints, "choke" was only used 29 percent of the time. Conversely, the term "strangle" was used in 23 percent of the 2007 complaints compared to 51 percent of the complaints from 2005, when the law was first implemented.

Neither "choke" nor "strangle" was used in 32 percent of the 2007 complaints and 20 percent of the 2005 complaints. Instead, terms such as "squeeze" (10 percent in 2007), "grabbed" (12 percent in 2007), and "pressure" (3 percent in 2007) were used. It is possible that the law enforcement training conducted prior to the implementation of the felony statute, which stressed using the term "strangle" as opposed to "choke" to convey the violence of the assault, impacted the use of language in the complaints, resulting in greater numbers of the 2005 complaints containing the term "strangle." The 2007 study should serve as a reminder to first responders and investigators of the importance of using accurate terminology in reports.

Documentation of strangulation signs or symptoms at the scene

Sixty-eight percent of the 2005 criminal complaints reported that the victim sustained physical injuries directly attributed to strangulation compared to 61 percent in 2007. Documenting injuries should be standard for any domestic assault, including strangulation, and this is an area where law enforcement should receive additional

training, especially since injuries resulting from strangulation may not be obvious. Of the 37 convictions for felony strangulation, 23 (62 percent) of the criminal complaints documented the victims' injuries, including "*redness, large scratch marks, swelling, or bruising on her neck.*" Several complaints also indicated that the victim suffered from a "*raspy voice, watery eyes, and/or had vomited or urinated during the assault.*" One law enforcement officer wrote that the victim had "*petechial hemorrhages in his eyes, face, and throat...aware such injuries often result from strangulation.*" Another indicated that the victim's "*neck was red and her ear had bled.*"

In domestic violence cases, victims commonly minimize the level of violence they experience, particularly if the case takes several months to prosecute and the victim has reconciled with the defendant. Over time, victims may become reluctant to cooperate with the prosecution, which makes obtaining convictions for charges that rely on their testimony (like felony strangulation) more difficult. For this reason, many prosecutors seek convictions on other charges that can more easily be independently substantiated, such as domestic assault or terroristic threats.

To successfully prosecute felony strangulation cases regardless of the victim's involvement, it is extremely important for law enforcement to document injuries by taking photographs and engaging paramedics. Recording victim statements and physical signs that a victim was unable to breathe—an element that typically has turned on victim testimony—is also critical. Collecting this information at the scene could lead to less reliance on victim testimony in court.

Conclusion

The review of the 2005 and 2007 felony strangulation cases indicates that the law continues to have a positive impact on victim safety and offender accountability. Violent domestic abusers are being charged with a crime that accurately conveys the core element of the assault and reflects its seriousness rather than avoiding prosecution or being initially charged with a lesser crime.

Further, the statute has resulted in a greater number of felony and misdemeanor convictions and increased defendant supervision, as it provides leverage for convictions on other crimes that may be easier to prove. The reviews of criminal complaints suggest that using the appropriate language to clearly document the assault, including a victim's impaired breathing and strangulation-related and other injuries, is necessary to holding defendants accountable. The reviews also indicate there is room for improvement in this area.

Additionally, the high percentage of defendants who re-offended after the felony strangulation charge was dismissed should serve as a reminder that these cases must be taken seriously and responded to appropriately. Overall, the felony strangulation cases being handled in Hennepin County indicate that when possible prosecutors convict on other felony charges in exchange for dismissal of the strangulation charge. While this

may be a good strategy for obtaining a guilty plea, it can lead to continued minimization of the violence on the part of defendants, victims, and justice system members.

Recommendations

Recommendation #1

- **Create a specialized team of prosecutors who would strive to obtain convictions on domestic assault strangulation charges.**

Recommendation #2

- **Eliminate the use of stay of imposition of sentences in domestic strangulation cases.**

Recommendation #3

- **Sentence defendants to the maximum sentence allowed under the statute to avoid minimizing the seriousness of a strangulation assault.**

Recommendation #4

- **Ensure that supervised probation is ordered for all defendants convicted of crimes involving strangulation regardless of the level of the final conviction. Probationary conditions for these defendants should include domestic abuse programming as required by statute, based on risk assessments and pre-sentencing investigations. Anger management should not be recommended by corrections or ordered by a judge in place of participation in a domestic abuse program.**

Recommendation #5

- **Provide periodic training for criminal justice system personnel throughout Minnesota on investigating and prosecuting strangulation cases under the statute.**

Recommendation #6

- **Provide a checklist for law enforcement officers who respond to domestic assault strangulation scenes to ensure that all necessary questions are asked of victims and witnesses, injuries are documented and photographed, and appropriate medical treatment is provided.**

Recommendation #7

- **Encourage the judiciary to standardize probation revocations when defendants who have committed strangulation violate the terms of their probation. Further, encourage the judiciary to emphasize to defendants at sentencing the seriousness with which any violation of a *no contact* order or order for protection will be met.**

Appendix 1: Felony Strangulation Charges Across Minnesota

Charges Filed on Year					
609.2247 (Assault by Strangulation)					
County	2005	2006	2007	2008	Grand Total
Aitkin		2	4	5	11
Anoka	19	50	57	51	177
Becker		13	3	6	22
Beltrami		8	11	6	25
Benton	10	18	17	6	51
Big Stone		1	1		2
Blue Earth	14	34	20	25	93
Brown	2	8	3	2	15
Carlton	3	10	12	3	28
Carver	6	5	14	10	35
Cass	1	6	7	10	24
Chippewa		5	2	3	10
Chisago	1	13	10	4	28
Clay	8	20	17	21	66
Clearwater	2	2	2	2	8
Cook				1	1
Cottonwood		2	5	4	11
Crow Wing	3	19	14	10	46
Dakota	26	76	68	68	238
Dodge	1	3	5	4	13
Douglas	5	11	12	9	37
Faribault	1	1	3	2	7
Fillmore		1	2	2	5
Freeborn	2	2	6	12	22
Goodhue		11	16	16	43
Grant		2	2	2	6
Hennepin	69	204	209	182	664
Houston	1	4	5	3	13
Hubbard			2	1	3
Isanti		6	9	7	22
Itasca	5	17	13	19	54
Jackson			2		2
Kanabec	1	7	4	4	16
Kandiyohi	3	14	12	9	38
Koochiching	2	3	3	4	12
Lake			1	1	2
Lake of the Woods		1			1
LeSueur	1	4	1	5	11

Lyon	1	3	8	4	16
Mahnomen		4	8	12	24
Martin		2	5	4	11
McLeod		6	10	12	28
Meeker	3	5	2	2	12
Mille Lacs		7	8	1	16
Morrison	6	4	10	7	27
Mower	1	17	25	15	58
Nicollet	1	7	3	11	22
Nobles	3	11	8	4	26
Norman			2	3	5
Olmsted	13	38	38	54	143
Otter Tail	1	10	9	4	24
Pennington		1	4	7	12
Pine	1	5	1	4	11
Pipestone		1		1	2
Polk		11	7	5	23
Pope		6	1		7
Ramsey	31	113	102	106	352
Red Lake	1	1	4	1	7
Redwood	1		3	5	9
Renville		1	6	2	9
Rice	5	10	7	14	36
Rock			2	2	4
Roseau				1	1
Scott	22	30	19	25	96
Sherburne	2	7	10	13	32
Sibley	1	3	3	3	10
St. Louis	19	73	77	81	250
Stearns	10	45	38	46	139
Steele	6	7	10	11	34
Stevens	1	1	4	3	9
Swift	1	7	5	1	14
Todd		5	7	4	16
Wabasha	1	3	7	8	19
Wadena		5	7	9	21
Waseca	1	8	9	9	27
Washington	10	26	18	31	85
Watsonwan		4	3	4	11
Winona	7	12	13	15	47
Wright	5	20	20	31	76
Yellow Medicine	1	3		1	5
Grand Total	341	1105	1097	1095	3638

**Appendix 2: Felony Strangulation Charge and Conviction Breakdown
2007 Case Review**

Complete List of Initial Charges in Felony Cases	Complete List of Final Charges (Convictions) in Felony Cases
<p><u>Felony</u> 96 domestic strangulation 21 terroristic threats 12 domestic assault 6 false imprisonment 5 first degree criminal sexual conduct 4 first degree burglary 1 first degree attempted murder 1 second degree attempted murder 1 first degree assault 1 fail to register as a predatory offender 1 fleeing police 1 fifth degree drug possession 1 kidnapping 1 violation of a no contact order</p> <p><u>Gross Misdemeanor</u> 10 interference with a 911 call 2 harassment 1 domestic assault 1 third degree domestic assault 1 fourth degree assault 1 malicious punishment of a child</p> <p><u>Misdemeanor</u> 9 domestic assault 2 fleeing police 1 fifth degree assault 1 fifth degree domestic assault</p>	<p><u>Felony</u> 37 domestic strangulation 15 domestic assault 10 terroristic threats 2 false imprisonment 3 drug possession 1 failure to register as a predatory offender 1 first degree burglary 1 harassment 1 violation of a no contact order 1 fleeing police</p> <p><u>Gross Misdemeanor</u> 3 interference with a 911 call 2 domestic assault 1 harassment</p> <p><u>Misdemeanor</u> 9 fifth degree assault 6 domestic assault 2 disorderly conduct 2 damage to property</p>

Appendix 3: Conviction Breakdown by City

Below is the list of the cities with the total number of felony strangulation charges reported and investigated with the resulting conviction (highest level).

City	Total # of felony strangulation charges	Felony conviction	Gross Misdemeanor conviction	Misdemeanor conviction	Case Dismissed
Minneapolis	41	32		4	5
Brooklyn Park	11	9			1
Bloomington	8	5		2	1
Richfield	7	6	1		
Brooklyn Center	6	2		1	3
St. Louis Park	5	2	1	2	
Hopkins	2	2			
Mound	2	1			1
New Hope	2	1		1	
Plymouth	2			2	
Champlin	1	1			
Crystal	1	1			
Corcoran	1	1			
Hassan	1	1			
Golden Valley	1				1
Maple Grove	1	1			
Minnetonka	1	1			
Minnetrista	1	1			
Unknown **	2	1			

* One defendant never apprehended. **One defendant's case is pending.

Appendix 4: Felony Strangulation Case Sentence Breakdown

The following sentencing summary includes only the 31 defendants who were convicted of only the felony domestic strangulation charge. This review does not take into account prior convictions or information gathered about the defendant as a part of the pre-sentencing investigation. Eleven judges sentenced defendants on sole convictions of felony domestic strangulation during the review period.

Judge Albrecht presided over two cases:

1. One defendant received an 18-month prison sentence stayed for 3 years and a workhouse sentence of 60 days with credit for 17 days. Supervised probation for 3 years.
2. One defendant was sentenced to a three-year stay of imposition and a workhouse sentence of 16 days with credit for 16 days. Supervised probation for three years.

Judge Cahill presided over one case:

1. The defendant received a 365-day workhouse sentence stayed for 361 days with 4 days to serve. Supervised probation for two years.

Judge Mabley presided over two cases:

1. One defendant was sentenced to service for 30 days over a 6 month period. Supervised for 3 years.
2. One defendant received a 21-month prison sentence stayed for 5 years and a workhouse sentence of 365 days with credit for 32 days. Supervised probation for 5 years.

Judge Nord presided over three cases:

1. One defendant received a three-year stay of imposition and a workhouse sentence of 120 days with credit for 89 days. Supervised probation for 3 years. This sentence was amended when the defendant violated terms of his probation for which he received a prison sentence of 1 year and 1 day with credit for 112 days.
2. One defendant received a three-year stay of imposition and a workhouse sentence of 64 days with credit for 64 days. Supervised probation for 3 years.

3. One defendant received a three-year stay of imposition and a workhouse sentence of 60 days with credit for 24 days. Supervised probation for three years.

Judge Oleisky presided over five cases:

1. One defendant received a three-year stay of imposition and a workhouse sentence of 120 days with credit for 48 days. Supervised probation for 3 years. This sentence was amended when the defendant violated terms of his probation for which he was ordered to serve 30 days at the workhouse, had his probationary period extended and was ordered to provide proof of completing domestic abuse program.
2. One defendant received a three-year stay of imposition and a workhouse sentence of 31 days with credit for 31 days. Supervised probation for 3 years.
3. One defendant received a workhouse sentence of 90 days with credit for 53 days. Supervised probation for 3 years.
4. One defendant received a workhouse sentence of 365 stayed for 331 days and credit for 34 days. Supervised probation for 2 years. This sentence was amended when the defendant violated the terms of his probation for which he was ordered to serve 180 days in the workhouse with credit for 13 days.
5. One defendant received a 21-month prison sentence stayed for three years and a workhouse sentence of 180 days with credit for 71 days. Supervised probation for 3 years.

Judge Pihlaja presided over four cases:

1. One defendant received a 30-month prison sentence stayed for 3 years and a workhouse sentence of 180 days with credit for 7 days. Supervised probation for 3 years.
2. One defendant received a 15-month prison sentence stayed for 3 years and a workhouse sentence of 150 days with credit for 64 days. Supervised probation for 3 years. This sentence was amended when the defendant committed another domestic assault. He was sentenced to serve the 15-month prison sentence with credit for 128 days.
3. One defendant received a 66-month prison sentence stayed for 3 years and a workhouse sentence of 81 days with credit for 81 days. Supervised probation for 3 years.

4. One defendant received a 24-month prison sentence stayed for 3 years and a workhouse sentence of 44 days with credit for 44 days. Supervised probation for 3 years.

Judge Quaintance presided over five cases:

1. One defendant received a three-year stay of imposition and workhouse sentence of 48 days with credit for 48 days. Supervised probation for 3 years.
2. One defendant received a workhouse sentence of 364 days stayed for 309 days and credit for 55 days. Supervised probation for 2 years.
3. One defendant received a 15-month prison sentence stayed for 3 years and a workhouse sentence of 60 days with credit for 5 days. Supervised probation for 3 years.
4. One defendant received a three-year stay of imposition and a workhouse sentence of 5 days with credit for 5 days. Supervised probation for 3 years.
5. One defendant received a 21-month prison sentence stayed for 3 years and a workhouse sentence of 186 days with credit for 186 days. Supervised probation for 3 years.

Judge Sagstuen presided over one case:

1. The defendant received a workhouse sentence of 364 days stayed for 334 days (for a period of two years) with credit for 5 days. Supervised probation for 2 years.

Judge Scherer presided over two cases:

1. One defendant received a workhouse sentence of 50 days with credit for 8 days. Supervised probation for 3 years.
2. One defendant was sentenced to 177 days in the workhouse with credit for 177 days. Supervised probation for 3 years. This sentence was amended when the defendant violated the terms of his probation for which he was ordered to serve 18 months in prison with credit for 238 days.

Judge Sommerville presided over two cases:

1. One defendant received a 15-month prison sentence with credit for 73 days.
2. One defendant was sentenced to a three-year stay of imposition and a workhouse sentence of 55 days with credit for 55 days. Supervised probation for 3 years. This sentence was amended when the defendant

violated the terms of his probation for which he was ordered to serve 90 days in the workhouse with credit for 5 days.

Judge Wernick presided over four cases:

1. One defendant received a workhouse sentence of 50 days with credit for 50 days. Supervised probation for 3 years.
2. One defendant received a 16-month prison sentence with credit for 149 days.
3. One defendant was sentenced to a three-year stay of imposition and 51 days in the workhouse with credit for 51 days. Supervised probation for 3 years.
4. One defendant was sentenced to 365 days in the workhouse stayed for 361 days (for a period of 2 years) with credit for 4 days and sentenced to service for 20 days over a period of 180 days. Supervised probation for 2 years.