



MEMORANDUM

Prepared for: Sen. Taylor

Date: January 26, 2018

By: Whitney Perez

Re: Strangulation offenses

LPRO: LEGISLATIVE POLICY AND RESEARCH OFFICE

You asked for information on offense levels for strangulation across the 50 states and the District of Columbia. Specifically, you asked for information on which jurisdictions treat strangulation as a felony and, of those that do, whether it is general or specific to domestic violence offenses. You also asked for detailed information on the offense level of strangulation in neighboring states.

SUMMARY

Sentencing and criminal statutes vary greatly across the country. These variations can make it difficult to provide a national perspective on a specific criminal offense. With this in mind, 30 states have specific strangulation statutes that have ranked the offense as a felony only. Within those 30 states, 15 are generally applicable statutes. The remaining 15 states have felony statutes specific to domestic violence. 19 states and the District of Columbia vary between having no specific strangulation statute to having offenses that vary between misdemeanors and felonies depending on the elements or victims of the crime. Two states have crimes, such as sexual abuse, that specifically include language about strangulation. Otherwise, the two states do not have a strangulation statute.

Oregon classifies strangulation as either an A misdemeanor or a C felony, depending on the circumstances. Oregon law does not provide a specific sentencing enhancement for domestic violence. Of the neighboring states, Idaho and California have felony level strangulation statutes that only apply to domestic violence crimes. Washington State has a strangulation statute that is always treated as a felony and applies to all victims. Nevada has two statutes that include strangulation, one generally applicable and one specific to domestic violence. Both statutes treat the offense as a felony.

NATIONAL OVERVIEW

Research Methodology:

The bulk of the research for this project was conducted using Lexis with a review of the criminal laws in all 50 states, plus the District of Columbia. Please note that some states have specific statutes dealing with strangulation, like Oregon, while other states have language involving strangulation contained within definitions or assault statutes. For instance, Vermont includes within the definition of “serious bodily injury” acts involving “strangulation by 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.”¹ Finally, the phrase “domestic violence” is used to refer broadly to a category of offenses that apply to specific family or relationship types, such as spouses or blood relatives. The 51 jurisdictions have varying and overlapping

¹ 13 V.S.A. § 1021(a)(2)(B)

definitions for what relationships fall within this category. This memorandum does not discuss these differences or similarities, nor does it involve an exploration of the sentencing laws in other states or a comparison of those sentencing laws to Oregon's laws.

The memorandum designates an offense as a felony if done so by that jurisdiction's statute or if a sentencing length is set in the statute that would correlate with a felony in Oregon. For example, New Jersey does not classify offenses as misdemeanor or felony.² But the crime of Aggravated Assault, which includes domestic violence strangulation, is a Third Degree Offense that carries a sentence of up to five years imprisonment, which correlates to a felony sentence under Oregon law.

Finally, this memorandum includes information on sentence enhancements that are crime or victim specific. Generally, it does not include other sentencing enhancement information, such as prior convictions of the defendant.

Findings:

No Specific Offense States

Six states, plus the District of Columbia, have no specific statute or language addressing strangulation.³ It is important to note that this does not mean that strangulation is not a punishable offense. This conduct is likely punishable under an assault or similar statute. For example, Arizona has an assault statute for "intentionally, knowingly or recklessly causing any physical injury to another person."⁴ Thus, if the physical act of strangulation causes "physical injury" it would be punishable as an assault.

Misdemeanor or Felony States Without Domestic Violence Enhancement

Four states,⁵ including Oregon, punish strangulation as a misdemeanor or felony depending on the factual circumstances, but with no specific enhancement or offense for crimes of domestic violence.

Felony States Without Domestic Violence Enhancement

Fifteen states have strangulation offenses that are classified as felonies.⁶ These states do not have specific statutes or sentence enhancements for crimes of domestic violence. These states do not have misdemeanor level offenses for strangulation. Two of these states, Massachusetts and Indiana, also have sentence enhancements for specific classes of victims, unrelated to domestic violence.⁷

² N.J. Stat. § 2C:43-1, N.J. Stat. § 2C:43-8, and N.J. Stat. § 2C:43-6.

³ Arizona, Kentucky, New Mexico, North Dakota, Ohio, South Carolina, and the District of Columbia

⁴ A.R.S. §13-1203(A)(1)

⁵ Arkansas, Connecticut, New York, and Oregon

⁶ Colorado, Delaware, Illinois, Indiana, Maine, Massachusetts, Michigan, Nebraska, New Hampshire, North Carolina, South Dakota, Tennessee, Utah, Washington, and Wisconsin

⁷ ALM GL ch. 265, § 15D(c) and Burns Ind. Code Ann. § 35-42-2-9(d)

Felony States Only Applicable to Domestic Violence

Fifteen states⁸ have strangulation offenses that are felonies and only apply to crimes of “domestic violence.” These states do not have generally applicable strangulation statutes at the misdemeanor or felony level.

Other States

The remaining ten states did not fall into any of the above categories.

- Iowa has a specific statute governing strangulation when it is domestic violence. This statute makes the offense a gross misdemeanor but it becomes a class D felony if the strangulation causes “bodily injury.”⁹
- In Georgia, strangulation or attempted strangulation involving the use of “any object, device, or instrument” is an offense subject to one to 20 years’ incarceration.¹⁰ It becomes elevated to a sentence of at least three years’ incarceration when the offense involves domestic violence or other specifically enumerated categories.¹¹
- Likewise, Virginia and Nevada have a felony level offense for strangulation that is generally applicable, a felony level offense specific to domestic violence crimes, and other sentence enhancements that are victim or crime specific.¹²
- In Pennsylvania and Vermont, strangulation can be punished as a misdemeanor or a felony. These laws contain felony level enhancements for crimes of domestic violence or for other factors, such as if the offense is in conjunction with stalking.¹³
- Mississippi has a felony level offense that is specific to domestic violence and a felony level offense that is specific to child abuse.¹⁴
- Likewise, West Virginia has a generally applicable felony level offense and a felony level offense that is specific to a robbery involving strangulation.¹⁵
- Alaska only has specific statutory language around strangulation when it involves person crimes against children under the age of 12.¹⁶
- Finally, Maryland includes acts of strangulation when it involves sexual contact within the crimes of Rape in the First Degree and Sexual Offense in the Third Degree.¹⁷

The findings of this section are summarized in Chart 1, below.

⁸Alabama, California, Florida, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Missouri, Montana, New Jersey, Oklahoma, Rhode Island, Texas, and Wyoming

⁹ Iowa Code § 708.2A(2)(d) and (5)

¹⁰ O.C.G.A. § 16-5-21(a)(3)

¹¹ O.C.G.A. § 16-5-21(c)-(k)

¹² Va. Code Ann. § 18.2-51.6, Va. Code Ann. § 18.2-57.2(B), Va. Code Ann. § 18.2-58.1(B), Nev. Rev. Stat. Ann. § 200.481, Nev. Rev. Stat. Ann. § 200.485

¹³ 18 Pa.C.S. § 2718, 13 V.S.A. §1023, 13 V.S.A. §1024, 13 V.S.A. § 1042, and 13 V.S.A. § 1043

¹⁴ Miss. Code Ann. § 97-3-7(4)(a)(iii) and Miss. Code Ann. § 97-5-39(2)(a)(iii)

¹⁵ W. Va. Code § 61-2-9d(b) and W. Va. Code § 61-2-12(a)

¹⁶ Alaska Stat. § 11.41.255(2)(c)

¹⁷ Md. CRIMINAL LAW Code Ann. § 3-303(a)(2)(iii) and Md. CRIMINAL LAW Code Ann. § 3-307(a)(1)(ii)(3)

Chart 1—Treatment of Strangulation in 51 Jurisdictions

| | Felony – General | Felony – DV only | Misdemeanor | No specific statute/language |
|----------------|------------------|------------------|-------------|------------------------------|
| Alabama | | ✓ | | |
| Alaska | | | | |
| Arizona | | | | ✓ |
| Arkansas | ✓ | | ✓ | |
| California | | ✓ | | |
| Colorado | ✓ | | | |
| Connecticut | ✓ | | ✓ | |
| Delaware | ✓ | | | |
| Florida | | ✓ | | |
| Georgia | ✓ | ✓ | | |
| Hawaii | | ✓ | | |
| Idaho | | ✓ | | |
| Illinois | ✓ | | | |
| Indiana | ✓ | | | |
| Iowa | | ✓ | ✓ | |
| Kansas | | ✓ | | |
| Kentucky | | | | ✓ |
| Louisiana | | ✓ | | |
| Maine | ✓ | | | |
| Maryland | | | | |
| Massachusetts | ✓ | | | |
| Michigan | ✓ | | | |
| Minnesota | | ✓ | | |
| Mississippi | | ✓ | | |
| Missouri | | ✓ | | |
| Montana | | ✓ | | |
| Nebraska | ✓ | | | |
| Nevada | ✓ | ✓ | | |
| New Hampshire | ✓ | | | |
| New Jersey | | ✓ | | |
| New Mexico | | | | ✓ |
| New York | ✓ | | ✓ | |
| North Carolina | ✓ | | | |
| North Dakota | | | | ✓ |
| Ohio | | | | ✓ |
| Oklahoma | | ✓ | | |
| Oregon | ✓ | | ✓ | |
| Pennsylvania | ✓ | ✓ | ✓ | |
| Rhode Island | | ✓ | | |

| | | | | |
|-------------------|---|---|---|---|
| South Carolina | | | | ✓ |
| South Dakota | ✓ | | | |
| Tennessee | ✓ | | | |
| Texas | | ✓ | | |
| Utah | ✓ | | | |
| Vermont | ✓ | ✓ | ✓ | |
| Virginia | ✓ | ✓ | | |
| Washington | ✓ | | | |
| Washington, DC | | | | ✓ |
| West Virginia | ✓ | | | |
| Wisconsin | ✓ | | | |
| Wyoming | | ✓ | | |

Source: Legislative Policy and Research Office

Data: Lexis

STATUTES IN OREGON AND NEIGHBORING STATES

Oregon

The specific offense of strangulation was enacted in Oregon in 2003.¹⁸ Strangulation is when a person “knowingly impedes the normal breathing or circulation of the blood of another person by” either applying pressure to the throat or the neck or by blocking the nose or mouth of another person.¹⁹ This offense is a class A misdemeanor, unless specific elevating factors apply.

This offense becomes a class C felony in the following circumstances:

- the crime is committed in the presence of or witnessed by the person’s or victim’s minor child or stepchild or a minor child residing in the home of either;
- the victim is under age 10;
- the person used or threatened to use a dangerous or deadly weapon;
- the person has a previous conviction for this offense or other related offenses against the same victim;
- the person has at least three prior convictions for this offense or similar offenses; or
- the person knows that the victim is pregnant.

All but the second and third factors are mirrored in Assault in the Fourth Degree’s elevation from an A misdemeanor to a C felony.²⁰ Strangulation as a class C felony is a level six on the guidelines.

It is important to note that the physical act of strangulation can be encompassed within Oregon’s other assault or person crime statutes. For example, if a person commits strangulation using a “deadly or dangerous weapon,” and the strangulation results in physical injury, it could be a Measure 11 class B felony of Assault

¹⁸ 2003 c. 577 § 2

¹⁹ ORS 163.187

²⁰ ORS 163.160

in the Second Degree, with a 70-month mandatory minimum prison sentence.²¹ This is similar to Georgia's statute, referenced above, that penalizes strangulation as a felony when it involves the use of "any object, device, or instrument." However, Georgia's statute does not require physical injury or a completed act.

Washington

Washington includes assaulting "another by strangulation or suffocation" within the offense of Assault in the Second Degree.²² Strangulation was added in 2007 and suffocation was added in 2011.²³ This offense is a class B felony. Assault in the second degree with a finding of sexual motivation is a Class A felony.

Idaho

In Idaho, attempted strangulation is a felony punishable by up to 15 years' incarceration.²⁴ This offense only applies to victims who are a household member or have had a "dating relationship" with the defendant. Attempted strangulation is when a person "willfully and unlawfully chokes or attempts to strangle" one of the victims mentioned above. This offense was created in 2005.²⁵

California

California has a domestic violence statute that includes strangulation.²⁶ This offense applies to any person "who willfully inflicts corporal injury resulting in a traumatic condition" upon a victim falling within a specific relationship type. "Traumatic condition" is defined to include "injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force." Notably, Oregon does not require any injury in its strangulation statute. The California statute also defines "strangulation" and "suffocation" as including acts "impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck." This offense is punishable in "state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars, or by both that fine and imprisonment."

Nevada

Nevada has a rather complex statutory scheme around strangulation. Strangulation is defined as "intentionally impeding the 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 in a manner that creates a risk of death or substantial bodily harm."²⁷ Thus, the definition requires a higher mental state than Oregon and includes an additional element of creating "a risk of death or substantial bodily harm." This offense is a category C felony if it did not involve a deadly weapon. If the strangulation involved a deadly weapon, it is a category B felony. Likewise, if the victim of strangulation is an officer, health care provider, school employee, taxicab

²¹ ORS 163.175(1)(b)

²² Rev. Code Wash. (ARCW) § 9A.36.021(1)(g)

²³ 2007 c. 79 § 2 and 2011 c. 166 § 1

²⁴ Idaho Code § 18-923.

²⁵ 2005, ch. 303, § 1

²⁶ Cal. Pen. Code § 273.5

²⁷ Nev. Rev. Stat. Ann. § 200.481(i)

driver, transit operator, or sports official, the offense is a category B felony. If a probationer, prisoner, or parolee commit the crime with the use of a deadly weapon, it is a category B felony. In addition, a separate statute governs battery with the intent to commit a sexual assault. This offense is a category A felony subject to a life sentence when committed by strangulation.²⁸ Finally, Nevada has a statute governing battery, which constitutes domestic violence. This offense is a category C felony when committed by strangulation.²⁹ Nevada also has a specific statute governing sentencing for these strangulation offenses when it involves a violation of a protection order.³⁰

CONCLUSION

The vast majority of states have addressed strangulation offenses within statute. In addition, most states classify strangulation as a felony, at least in certain circumstances. These circumstances can depend on the elements of the offense, such as use of a weapon, or class of victims, such as domestic violence victims. Twenty-two states currently have a felony level offense for strangulation that is an act of domestic violence. However, the elements of these offenses do not always correlate to strangulation in Oregon.

²⁸ Nev. Rev. Stat. Ann. § 200.400(4)(a)

²⁹ Nev. Rev. Stat. Ann. § 200.485(2)

³⁰ Nev. Rev. Stat. Ann. § 193.166(4)