



Domestic Abuse Bill – the need for an offence of non-fatal strangulation

About Centre for Women's Justice

Centre for Women's Justice (CWJ) is a legal charity working to hold the state to account on the response to violence against women and girls. We are a lawyer-led organisation whose work focuses on challenging failings and discrimination against women in the criminal justice system.

Summary

CWJ is calling for a free-standing offence of non-fatal strangulation or suffocation. We believe that this form of offending is currently significantly under-charged across the UK. Our view is strongly supported by the Domestic Abuse Commissioner, the Victim's Commissioner and numerous domestic abuse charities.

The proposed amendment to the Domestic Abuse Bill:¹

“Offence of non-fatal strangulation or suffocation

A person (A) commits an offence if that person unlawfully strangles or suffocates another person (B).

A strangles or suffocates B if A impedes B's breathing, blood circulation, or both, by doing any of the following (manually or using any aid): (i) blocking B's nose, mouth, or both; or (ii) applying pressure on, or to, B's throat, neck, chest or more than one of these.

A person guilty of an offence under this section is liable –

(a) on summary conviction-

(i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020), or

(ii) to a fine, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or both.”

A second version of the amendment limits the offence to domestic abuse cases only, where A and B are personally connected as defined in section 2 of this Act.

What is non-fatal strangulation?

It is widely recognised that non-fatal strangulation and suffocation (e.g. with a pillow) are a common feature of domestic abuse and a well-known risk indicator.²

Strangulation / suffocation is the second most common method of killing in female homicides - 29% of adult women³ - as compared to only 3% of male homicides.⁴ In addition, research highlights how non-fatal strangulation is frequently used as a tool to exert power and control, and to instil fear, rather than being a failed homicide attempt.⁵ It sends the message that 'if you do not comply this is how easily I could kill you'. Non-fatal strangulation is a gendered crime.

What are the physical effects?

Reports describe strangulation as extremely painful and the inability to breathe as very frightening. Loss of consciousness can occur in 10 to 15 seconds and lack of oxygen to the brain can result in mild brain damage. Although there is little or no visible injury, numerous longer-term effects are reported: fractured trachea/larynx, internal bleeding, dizziness, nausea, tinnitus, increased risk of miscarriage, and neurological injuries such as facial and eyelid droop, loss of memory and even stroke several months later as a result of blood clots. Medical research points to strangulation as the second most common cause of strokes in women under 40.⁶

How common is it?

Reports on prevalence of strangulation within intimate partner violence describe a "hidden epidemic"⁷. A range of studies indicates that whilst lifetime incidence of strangulation is between 3% and 9.7% in the adult population, this rises to 50-68% for victims of recurrent abuse. Two studies of intimate partner violence and sexual assaults where medical examinations took place found that strangulation was involved in 20% and 23% of cases respectively.⁸ In the UK an estimated 20,000 women per year who have been assessed as high risk have experienced strangulation or attempted strangulation.⁹

Why is a new offence needed?

Under-charging demonstrates a failure by both police and prosecutors to appreciate the severity of non-fatal strangulation. A separate offence would also emphasise the importance of non-fatal strangulation when risk assessments are carried out.

The current legal position

There is currently no distinct offence of non-fatal strangulation or suffocation¹⁰ and it can be difficult to prove intent for an offence of attempted murder. In the majority of cases prosecutions can be brought for an assault offence. The lack of observable injuries means that offenders' conduct is often minimised, and they are charged with common assault rather than with actual bodily harm (ABH).

CPS guidance for prosecutors on offences against the person¹¹ states that when deciding whether to charge with common assault or ABH:

*Whilst the level of charge will usually be indicated by the injuries sustained, ABH may be appropriate.....[where] the circumstances in which the assault took place are more serious e.g. repeated threats or assaults on the same complainant or significant violence (e.g. by **strangulation or repeated or prolonged ducking in a bath**, particularly where it results in momentary unconsciousness.) (emphasis added)*

The guidance indicates that non-fatal strangulation and suffocation offences should result in a charge of ABH rather than common assault. However, in our experience this is not what happens in a great many cases.

Realities on the ground

CWJ regularly hears reports from domestic abuse workers that most, if not all, cases of strangulation they deal with are charged as common assault. We hear this consistently from support workers across England and Wales. We therefore believe that this is a systemic issue rather than local isolated failings. Police officers are simply not applying the CPS guidance.

Charging decisions

Common assault is a 'summary' offence which can only go to the Magistrates Court, whereas ABH is a more serious 'either way' offence which can go to the Magistrates or the Crown Court. Frontline support workers report that police officers tend to focus primarily on physical injuries when they assess domestic abuse situations. Strangulation and suffocation leave minimal visible injury, either nothing at all or just a red mark. They are therefore easily dismissed by police officers as relatively minor.

CWJ frequently hears of cases where prosecutions are not brought at all, not even for common assault, because the six-month deadline for charging this summary offence has passed. When strangulation is treated as a common assault, rather than ABH, cases are closed by the police due to this deadline, without a referral to CPS. Had they been treated as ABH there would be no time limit for charging. A new offence must be an 'either way' offence to reflect the severity of the conduct involved and remove time restrictions.

Police training

The vast majority of domestic abuse cases are dealt with by generalist officers, who do not have specialist knowledge on domestic abuse. Whilst most police forces do provide some training on this, support workers working with victims report that officers are frequently unfamiliar with their own force guidance on domestic abuse. A new and specific offence will send a crystal clear message to police officers about this particular crime, in the way that yet another issue within training can never do.

Risk assessment

A separate offence of non-fatal strangulation will also help the police to identify this critical risk factor in their overall response to domestic abuse. This could save lives. Research has found that a history of strangulation presents an eight-fold increase in the risk of death.¹² Lack of understanding by police officers is illustrated by the Coroner's report in 2019 following the inquest into the death of Anne-Marie Nield:

Anne-Marie Nield died during a sustained assault by her partner, who had previously subjected her to non-fatal strangulation. Officers who dealt with the previous incidents failed to appreciate the significance of strangulation as a risk factor, and graded the risk as standard rather than high. There was no support offered to her and no referral to the multi-agency panel. The Coroner expressed concern that at the time of the inquest two and a half years later there was still no reference to non-fatal strangulation in the police force's domestic abuse policy and a lack of understanding of the issue amongst the officers involved.

The international picture

Under-charging of strangulation has been identified as a problem in the US, Australia and New Zealand.¹³ No doubt this is due to the inherent difficulties arising from the combination of serious violence and risk, with lack of visible injuries. In the US 37 states have introduced non-fatal strangulation offences¹⁴ and in Australia the state of Queensland introduced the offence in 2016, with other states due to follow.¹⁵ A new offence came into force in New Zealand in December 2018.¹⁶

The New Zealand Commission considered that as a starting point, it was preferable for offences to be generic (for example homicide, or assault) “to avoid a slide into a chaotic plethora of specific offences”. However, they concluded that strangulation met the criteria for exceptions to this approach. The Commission stated that a new offence would be a more effective criminal sanction than the existing options, and would increase awareness of the significant dangers of strangulation and generally improve the safety of victims of domestic abuse.¹⁷

Conclusion

A freestanding offence of strangulation or suffocation which is an ‘either way’ offence will require police to treat such cases with the gravity they deserve, and to refer all such cases to the CPS. It will also draw the attention of prosecutors to the seriousness of this form of offending, and trigger training around the particular links between strangulation / suffocation, domestic abuse and homicide.

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¹ The definition of strangulation / suffocation is taken from the New Zealand law introduced in December 2018

² The standard risk assessment tool for domestic abuse is the “DASH” checklist which includes a question about attempts to strangle, choke, suffocate, or drown the victim /survivor. The questions in the DASH checklist have been identified through extensive research on factors associated with serious domestic violence and homicide <https://safelives.org.uk/sites/default/files/resources/Dash%20risk%20checklist%20quick%20start%20guidance%20FINAL.pdf>

³ The Femicide Census for 2018 page 28 <https://femicidescensus.org/wp-content/uploads/2020/02/Femicide-Census-Report-on-2018-Femicides-.pdf>.

⁴ The 3% figure includes child victims and includes men and boys killed by other men. Office for National Statistics Homicides in England and Wales year ending March 2019 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2019>

⁵ See for example research by Thomas, Joshi and Sorenson (2014) https://repository.upenn.edu/cgi/viewcontent.cgi?article=1190&context=spp_papers

⁶ See the survey of medical literature by Bichard, Byrne, Saville and Coetzer (2020) <https://psyarxiv.com/c6zbv/>

⁷ Ibid

⁸ Ibid

⁹ Based on figures collected by the charity Safelives

¹⁰ Section 21 Offences Against the Person Act 1861 has an offence of attempting to choke, suffocate or strangle in order to commit an indictable offence, but this only applies done in order to commit some other serious offence <https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard>

¹² Glass et al., (2008) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2573025/>

¹³ <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R138.pdf>

¹⁴ Gwinn, Strack and Mack (2014) ‘Law Reform Targets the Crimes of Strangulation’ <https://www.policyforum.net/red-flag-homicide/>

¹⁶ New Zealand Law Commission <https://www.lawcom.govt.nz/news/new-strangulation-offence>

¹⁷ New Zealand Law Commission report paragraphs 1.16 to 1.18 see note 13 above