



a program of  
Alliance for HOPE  
International

# STRANGULATION SENTENCING CONSIDERATIONS FOR OHIO JUDGES

Prepared by GAEL STRACK, ESQ., CEO and CASEY GWINN, ESQ., PRESIDENT, Training Institute on Strangulation Prevention  
institute@allianceforhope.com | strangulationtraininginstitute.com | allianceforhope.com

## NON-FATAL STRANGULATION ASSAULTS MUST BE TAKEN SERIOUSLY

The lack of physical evidence, experts, training, laws and protocols caused well-meaning professionals to unintentionally minimize one of the most lethal forms of domestic violence.

**FELONIOUS CONDUCT:** Today, 48 states, 2 U.S. Territories, the federal code and the military code have appropriately identified strangulation and suffocation as felonious conduct. In STATE V. WILLIAMS, the Court of Appeals of Ohio, Auglaize County, relied on the testimony of Dr. Scala-Barnett who testified that a chokehold could result in harm that carried a substantial risk of death and that being strangled to the point of unconsciousness involved a temporary substantial incapacity sufficient to satisfy the "serious physical harm" element of felonious assault.

## NATURE AND CIRCUMSTANCES OF STRANGULATION

**TERMINOLOGY:** The terms strangulation, choking, suffocation, and asphyxiation are often confused because they all lead to anoxia (brain being deprived of oxygen). "Strangulation" is external compression of the neck that can impede blood flow (oxygen) to or from the brain or direct air compression. "Choking" refers to an object in the upper airway that impedes oxygen intake and can occur accidentally or intentionally. "Suffocating means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim."<sup>1</sup> "Any pressure on the body that restricts the ability to breathe is positional asphyxia. It can include pressure on the chest, back, abdomen, back of the neck."<sup>2</sup>

**SIGNS AND SYMPTOMS:** 50% of strangulation victims may not have any visible injuries at the time of the assault.<sup>3</sup> The possible symptoms of strangulation include vision changes, hearing changes, sore throat, voice changes, difficulty breathing, difficulty swallowing, neck pain, petechiae, red

marks on the neck, fingernail marks on the neck, stroke, facial droop, headache, tongue swelling, nose bleed, vomit, miscarriage, dizziness, weakness, reports of loss of consciousness, urination and/or defecation. After strangulation, survivors of strangulation have reported memory problems, depression, insomnia, nightmares, anxiety and suicidal ideation.<sup>4</sup> Damage to the carotid arteries can lead to a dissection or a thrombosis (blood clot) leading to a stroke.<sup>5</sup>

**COERCIVE CONTROL (OHIO R.C. 2929.12):** Strangulation represents a violent form of controlling behavior. Studies show strangulation causes serious psychological harm to its victims<sup>6</sup> and increase the risk of homicide, up to seven-fold.<sup>7</sup> Courts shall consider both the psychological effects and the seriousness of the acts when sentencing stranglers.

**LETHALITY:** Strangulation is one of the most accurate predictors for the subsequent homicide of victims of domestic violence. One study showed that "the odds of becoming an attempted homicide increased by about seven-fold for women who had been strangled by their partner."<sup>8</sup>

## THE PURPOSE OF SENTENCING

OHIO R.C. 2929.11

OHIO R.C. 2929.11 sets forth the purposes and principles of felony sentencing and R.C. 2929.12 sets forth the sentencing factors. The overriding purposes of felony sentencing under R.C. 2929.11 are to protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish

those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

*With special gratitude to Judge Hyman (Ret.), Judge Chitwood, Jim Henderson, Sarah Mahoney, Ann Murray, Caroline Cirillo, Alexandria Ruden, Ruth Downing, and Yesenia Aceves for their contributions.*

**FACTORS TO CONSIDER IN SENTENCING FOR STRANGULATION ASSAULTS** OHIO R.C. 2929.12

Strangulation is an inherently dangerous act with foreseeable likelihood of great bodily harm and/or substantial risk of death, demonstrating a high degree of cruelty, viciousness, or callousness. For purposes of sentencing, the Court shall consider three key areas:

1) THE OFFENSE; 2) THE VICTIM; AND 3) THE OFFENDER.

**RESTITUTION TO THE VICTIM**

When a defendant is convicted of criminal activity or conduct which has resulted in pecuniary damages or loss to a victim, the court shall hold a hearing to determine the amount or type of restitution due.

Factors to Consider in THE OFFENSE	Factors to Consider with THE VICTIM	Factors to Consider with THE OFFENDER
Other types of assault involved, including sexual assault	Evidence of vulnerability	Demonstrated an intent to cause great bodily injury and/or death
Evidence of single or repeated loss of consciousness	Age	Evidence of single or repeated beatings or strangulation
Difficulty breathing or swallowing	Incapacity	Witness intimidation
Some victims may retain the ability to speak throughout the assault	Intoxicated/under the influence	History of violence
Strangulation methods used	Economic dependence	Presence, use, or threat to use weapons
Use of a ligature	Immigration status	Prevented victims from seeking medical attention
Evidence of petechiae, anoxic seizure, urination, or defecation	Unable to call the police or escape	Evidence of premeditation
Only stopped applying pressure because of an intervening factor	Pregnancy	Out on bail or own recognizance
Medical attention required, refused, or needed	On-going medical consequences from assault, such as PTSD or TBI	Use of alcohol and/or drugs
Location of attack	Injury to children: physical, sexual and/or psychological	Stalking
Children present	Lethality Assessment Program Factors	Property destruction
	Victim impact statement and/or wishes	Jealousy/name calling

**POTENTIAL FACTORS IN MITIGATION**

The Court shall consider whether the offender acknowledges guilt quickly in the process and accepts responsibility; feels remorse; began and possibly completed an intervention program before sentencing; began and possibly completed parenting without violence program; engaged in a substance abuse program; or is employed and pays restitution or support if previously ordered.

**CONCLUSION**

Given the lethality and seriousness of non-fatal strangulation, it is critical the court holds the most dangerous offenders accountable for the felonious crimes they commit. Stranglers pose a higher risk to their victim and the public in general. The following sentences have been upheld by Ohio courts:

**10-YEAR AGGREGATE PRISON SENTENCE** where the Defendant strangled his 64-year old mother until she lost consciousness to the point of incontinence, then chained her to a chair.<sup>9</sup>

**15-YEAR CONSECUTIVE SENTENCE** where the Defendant assaulted, kidnapped and choked his girlfriend to the point where she could not breathe. The victim required medical attention and sustained significant injuries.<sup>10</sup>

**17-YEAR CONSECUTIVE SENTENCE** where Defendant raped and strangled the victim with a cord to the point where she had petechiae on her face, urinated and defecated.<sup>11</sup>

**ENDNOTES**

- 1 Violence Against Women Reauthorization Act of 2013. 127 Stat. 124-125.
- 2 Smock, Tr., State v. Chauvin, 27-CR-20-12646, Hennepin County District Court.
- 3 Strack, et al, "A Review of 300 Attempted Strangulation Cases", JEM, 2001.
- 4 Taliaferro, et al, 2009.
- 5 Stapczynski, 2010.
- 6 State v. Rodriguez, 187 Wash.App. 922 (2015)
- 7 Glass, et al, 2008
- 8 Glass, 2008.
- 9 State v. Auto Revere, 2020 WL 837903, the Court of Appeals of Ohio, Cuyahoga County.
- 10 State v. Spivey, 2013 WL9347754, the Court of Appeals of Ohio.
- 11 State v. Tannreuther, 2014 WL 107851, the Court of Appeals of Ohio, Butler County.