



Non-Fatal Strangulation

A Meaningful Change or An Unnecessary Addition?

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The 7th of June 2022 will see the introduction of a new criminal offence punishable by up to 5 years' imprisonment with the commencement of section 70 of the Domestic Abuse Act 2021 which inserts section 75A into the Serious Crime Act 2015.

The new standalone offence of strangulation will have been committed if "A" intentionally strangles "B" or does any other act the affect's "B's" ability to breathe and constitutes a battery. The defence of consent will apply to this offence, but not if serious harm is caused/was intended as a result of the strangulation or if "A" was reckless as to whether such harm would be caused. This, together with section 71 of the 2021 Act codifies the principle in *R v Brown*.

The new offence came as the result of lobbying from groups including, We Can't Consent to This, and the Centre for Women's Justice and received widespread support from numerous domestic abuse charities across the jurisdiction. Strangulation has been a commonly identified feature within intimate partner violence for many years, and indeed up until the 7th of June it is something that has been covered by a range of offences all of which would see such conduct placed in the highest category of culpability in their respective sentencing guidelines. However, in a medicolegal context the dangerousness of non-fatal strangulation ("NFS") has only been commented on within the last 15 years¹.

Views of the Government have previously been that the range of offences that could apply to NFS reflected the levels of seriousness that may be involved and meant that there was not an inconsistent treatment of different offenders who may be equally culpable². This particular issue will not be cause for concern because although this offence has come about as a result of campaigns by domestic abuse organisations, the statute is not applicable solely in a domestic context. It might also be suggested that the addition of a new standalone offence to cover something which is already encompassed within existing statute is simply unnecessary. This may on the face of it seem like an arguable point, particularly when one considers the criticisms that have been levelled at the current government for the introduction of offences that are already catered for elsewhere some might say for the sake of appearing "tough on crime"³. However, when one considers the issues that can be involved in the prosecution of NFS cases it can be said that the current law does not reflect for those who have been the victims of this kind of abuse.

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4202982/>

² <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/strangulation-and-suffocation>

³ <https://twitter.com/BarristerSecret/status/1433700513632112641>



In 2021 the St Mary's Sexual Assault Referral Centre (SARC) at St Mary's Hospital in Manchester conducted the largest ever report on NFS in the UK⁴. They found that 9.28% of adults who attended the centre over a three-year period for a forensic medical examination had been identified as complainants of NFS⁵. Within this number, 96.6% of these complainants were female with 98% of the alleged perpetrators being male, the majority of whom were in a relationship with the complainant and in 40% of these cases the complainant was said to have been strangled in their own homes and in 33% of cases children lived in that home⁶. 27% of these complainants alleged that they had been strangled by the same perpetrator previously⁷.

When reflecting on their experience over a third of these complainants 'thought they were going to die'⁸. This is all the more concerning when it is acknowledged that previous incidents of NFS are associated with a seven-fold increase in future murder by an intimate partner⁹, and that strangulation/asphyxiation is the second most common way in which women are killed by men¹⁰.

Allegations of strangulation are often charged as assaults occasioning actual bodily harm which of course carries certain evidential requirements. This can be problematic for prosecutors of such cases because one is often presented with photographs which can show very limited injuries/markings which appears somewhat contrary to the assumption that many would have that surely someone who has been strangled to the point of unconsciousness would have some sort of marks as a result. It is worth noting that consciousness can be lost with as little as 4 seconds of arterial pressure¹¹, and it takes only 11psi to occlude a carotid artery (compared to a male handshake which has 80-100psi)¹².

Obviously, strangulation can decrease the oxygen supply to the brain and the Faculty of Forensic and Legal Medicine has reported that victims can have limited awareness of the events due to this¹³. They may suffer symptoms following the strangulation such as a hoarse voice, difficulties in breathing, hearing and sight changes all of which would be logical to a lay person.

However, what can be difficult to comprehend is that often there may be no physical injuries present. A study of over 300 cases found that 50% of survivors of strangulation had no visible markings to their neck and only 25% had minor injuries¹⁴. The same study concluded that because most victims of strangulation had no visible injuries or their injuries were too minor to photograph, opportunities for higher level criminal prosecution were missed¹⁵.

⁴ <https://pubmed.ncbi.nlm.nih.gov/33618205/>

⁵ Ibid.4

⁶ Ibid.4

⁷ Ibid.4

⁸ Ibid.4

⁹ <https://pubmed.ncbi.nlm.nih.gov/17961956/>

¹⁰ https://www.femicidecensus.org/wp-content/uploads/2022/02/010998-2020-Femicide-Report_V2.pdf

¹¹ <https://pubmed.ncbi.nlm.nih.gov/33432860/>

¹² Ibid.4

¹³ <https://fflm.ac.uk/wp-content/uploads/2020/03/Non-fatal-strangulation-in-physical-and-sexual-assault-Dr-C-White-Dr-M-Stark-Dr-B-Butler-March-2020.pdf>

¹⁴ <https://pubmed.ncbi.nlm.nih.gov/11604294/>

¹⁵ Ibid.14



The introduction of this new offence will mean that cases which might not have led to a conviction for assault occasioning actual bodily harm because of a lack of visible injuries can be treated as seriously as they should be and can be sentenced appropriately once the legal burden has been satisfied even if there has not been any physical evidence. Alternatively, where there is physical evidence to support a charge of actual/grievous bodily harm this will remain open as an avenue to be pursued by the Crown Prosecution Service.

The effects of domestic abuse and issues that surround it are something that those who work in the criminal justice system are used to seeing on a daily basis, and it is hoped that this new offence which reflects and acknowledges the realities of physical abuse will help those who have been the victims of violence at the hands of people they deserve to feel safest will get justice.

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¹⁶ <https://www.researchgate.net/profile/Daisy-Manning>