



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Domestic Violence and Abuse

KRS § 403.735

403.735 Hearing on petition for order of protection; criteria to assess appropriate relief and sanctions; continuance of hearing and emergency protective order

Currentness

(1) Prior to or at a hearing on a petition for an order of protection:

(a) The court may obtain the respondent's Kentucky criminal and protective order history and utilize that information to assess what relief and which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure; and

(b) If the petitioner or respondent is a minor, the court shall inquire whether the parties attend school in the same school system to assist the court in imposing conditions in the order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.

(2) (a) If the adverse party is not present at the hearing ordered pursuant to KRS 403.730 and has not been served, a previously issued emergency protective order shall remain in place, and the court shall direct the issuance of a new summons for a hearing set not more than fourteen (14) days in the future. If service has not been made on the adverse party before that hearing or a subsequent hearing, the emergency protective order shall remain in place, and the court shall continue the hearing and issue a new summons with a new date and time for the hearing to occur, which shall be within fourteen (14) days of the originally scheduled date for the continued hearing. The court shall repeat the process of continuing the hearing and reissuing a new summons until the adverse party is served in advance of the scheduled hearing. If service has not been made on the respondent at least seventy-two (72) hours prior to the scheduled hearing, the court may continue the hearing no more than fourteen (14) days in the future. In issuing the summons, the court shall simultaneously transmit a copy of the summons or notice of its issuance and provisions to the petitioner.

(b) The provisions of this section permitting the continuance of an emergency protective order shall be limited to six (6) months from the issuance of the emergency protective order. If the respondent has not been served within that period, the order shall be rescinded without prejudice. Prior to the expiration of the emergency protective order, the court shall provide notice to the petitioner stating that, if the petitioner does not file a new petition, the order shall be rescinded without prejudice.

**Credits**

HISTORY: Repealed and reenacted by 2015 c 102, § 5, eff. 1-1-16; 2010 c 170, § 19, eff. 7-15-10; 1996 c 99, § 14, eff. 7-15-96; 1992 c 172, § 5, eff. 7-14-92; 1984 c 152, § 5

KRS § 403.735, KY ST § 403.735

Current through the 2024 Regular Session and the Nov. 5, 2024 election. Some sections may be more current, see credits for details.

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Baldwin's Kentucky Revised Statutes Annotated

Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs & Annos)

Domestic Violence and Abuse

KRS § 403.740

403.740 Domestic violence order; restrictions; temporary child support; expiration and reissuance

Currentness

(1) Following a hearing ordered under KRS 403.730, if a court finds by a preponderance of the evidence that domestic violence and abuse has occurred and may again occur, the court may issue a domestic violence order:

(a) Restraining the adverse party from:

1. Committing further acts of domestic violence and abuse;
2. Any unauthorized contact or communication with the petitioner or other person specified by the court;
3. Approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
4. Going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and
5. Disposing of or damaging any of the property of the parties;

(b) Authorizing, at the request of the petitioner:

1. Limited contact or communication between the parties that the court finds necessary; or
2. The parties to remain in a common area, which may necessitate them being closer than five hundred (500) feet under limited circumstances with specific parameters set forth by the court.

Nothing in this paragraph shall be interpreted to place any restriction or restraint on the petitioner;

(c) Directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse, except that the court shall not order the petitioner to take any affirmative action;

(d) Directing that either or both of the parties receive counseling services available in the community in domestic violence and abuse cases; and

(e) Additionally, if applicable:

1. Directing the adverse party to vacate a residence shared by the parties to the action;
2. Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.822, grant temporary custody, subject to KRS 403.315;
3. Utilizing the criteria set forth in KRS 403.211, 403.212, 403.2122, and 403.213, award temporary child support; and
4. Awarding possession of any shared domestic animal to the petitioner.

(2) In imposing a location restriction described in subsection (1)(a)4. of this section, the court shall:

- (a) Afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded;
- (b) Only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order;
- (c) Specifically describe in the order the locations or areas prohibited to the respondent; and
- (d) Consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.

(3) When temporary child support is granted under this section, the court shall enter an order detailing how the child support is to be paid and collected. Child support ordered under this section may be enforced utilizing the same procedures as any other child support order.

(4) A domestic violence order shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order.

#### **Credits**

HISTORY: 2024 c 219, § 7, eff. 7-15-24; 2022 c 122, § 7, eff. 7-14-22; 2022 c 143, § 1, eff. 7-14-22; 2022 c 158, § 2, eff. 7-14-22; 2018 c 198, § 6, eff. 7-14-18; Repealed and reenacted by 2015 c 102, § 6, eff. 1-1-16; 2010 c 170, § 2, eff. 7-15-10; 2004 c 133, § 44, eff. 7-13-04; 1996 c 99, § 16, eff. 7-15-96; 1992 c 172, § 6, eff. 7-14-92; 1984 c 152, § 6



KRS § 403.740, KY ST § 403.740

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Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs &amp; Annos)

Domestic Violence and Abuse

## KRS § 403.745

403.745 Duration of emergency protective order and domestic violence order;  
prohibited costs and conditions; mutual orders of protection; amendment; expungement

## Currentness

- (1) An emergency protective order and a domestic violence order shall become effective and binding on the respondent when the respondent is given notice of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation.
- (2) Costs, fees, or bond shall not be assessed against or required of a petitioner for any filing, hearing, service, or order authorized by or required to implement KRS 403.715 to 403.785.
- (3) A court shall not require mediation, conciliation, or counseling prior to or as a condition of issuing an order of protection.
- (4) Mutual orders of protection may be issued only if:
  - (a) Separate petitions have been filed by both parties; and
  - (b) The orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order.
- (5) Upon proper filing of a motion, either party may seek to amend an order of protection.
- (6) Testimony offered by an adverse party in a hearing ordered pursuant to KRS 403.730 shall not be admissible in any criminal proceeding involving the same parties, except for purposes of impeachment.
- (7) (a) The Court of Justice, county and Commonwealth's attorneys, law enforcement agencies, and victim services organizations may jointly operate a domestic violence intake center to assist persons who apply for relief under KRS 403.715 to 403.785.

- (b) In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the county attorney. A court may not withhold or delay relief if the petitioner elects to not contact the county attorney.
- (8) A person's right to apply for relief under this chapter shall not be affected by that person leaving his or her residence to avoid domestic violence and abuse.
- (9) A court shall order the omission or deletion of the petitioner's address and the address of any minor children from any orders or documents to be made available to the public or to any person who engaged in the acts complained of in the petition.
- (10) (a) If a petition under KRS 403.715 to 403.785 did not result in the issuance of a domestic violence order, the court in which the petition was heard may for good cause shown order the expungement of the records of the case if:
1. Six (6) months have elapsed since the case was dismissed; and
  2. During the six (6) months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person, including an order of protection as defined in KRS 456.010.
- (b) As used in this subsection, "expungement" has the same meaning as in KRS 431.079.

#### **Credits**

HISTORY: Repealed and reenacted by 2015 c 102, § 7, eff. 1-1-16; 1992 c 172, § 7, eff. 7-14-92; 1984 c 152, § 7

KRS § 403.745, KY ST § 403.745

Current through the 2024 Regular Session and the Nov. 5, 2024 election. Some sections may be more current, see credits for details.



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Title XXXV. Domestic Relations

Chapter 403. Dissolution of Marriage; Child Custody (Refs &amp; Annos)

Domestic Violence and Abuse

## KRS § 403.763

## 403.763 Violation of order of protection constitutes contempt of court and criminal offense

## Currentness

- (1) Violation of the terms or conditions of an order of protection after the person has been served or given notice of the order shall constitute contempt of court and a criminal offense under this section. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.
- (2) (a) Court proceedings for contempt of court for violation of an order of protection shall be held in the county where the order was issued or filed.  
  
(b) Court proceedings for a criminal violation of an order of protection shall follow the rules of venue applicable to criminal cases generally.
- (3) Nothing in this section shall preclude the Commonwealth from prosecuting and convicting the respondent of criminal offenses other than violation of an order of protection.
- (4) (a) A person is guilty of a violation of an order of protection when he or she intentionally violates the provisions of an order of protection after the person has been served or given notice of the order.  
  
(b) Violation of an order of protection is a Class A misdemeanor.

**Credits**

HISTORY: Repealed and reenacted by 2015 c 102, § 17, eff. 1-1-16; 1992 c 172, § 15, eff. 7-14-92

**LRC NOTES**

**Legislative Research Commission Note** (1-1-16): In 2015 Ky. Acts ch. 102, sec. 17, this statute was repealed and reenacted with language substantially different from that contained in the version current at that time. In Section 51 of that Act, KRS 403.763 (this statute) was also included in the list of statutes to be repealed. In codification, the Reviser of Statutes has determined that there was no intention to both repeal and repeal and reenact the same statute and that the inclusion of KRS 403.763 in the list

of statutes to be repealed was a manifest clerical or typographical error. As such, that repeal will not prevail over its repeal and reenactment in the same Act under the authority of KRS 7.136(1)(h).

KRS § 403.763, KY ST § 403.763

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Baldwin's Kentucky Revised Statutes Annotated

Title XL. Crimes and Punishments

Chapter 431. General Provisions Concerning Crimes and Punishments (Refs & Annos)

KRS § 431.005

431.005 Arrest by peace officers; by private persons

Currentness

(1) A peace officer may make an arrest:

(a) In obedience to a warrant; or

(b) Without a warrant when a felony is committed in his or her presence; or

(c) Without a warrant when he or she has probable cause to believe that the person being arrested has committed a felony; or

(d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his or her presence; or

(e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520, 189.580, 511.080, or 525.070 has been committed in his or her presence, except that a violation of KRS 189A.010 or KRS 281A.210 need not be committed in his or her presence in order to make an arrest without a warrant if the officer has probable cause to believe that the person being arrested has violated KRS 189A.010 or KRS 281A.210;

(f) Without a warrant when a violation of KRS 508.030 has occurred in a hospital without the officer's presence if the officer has probable cause to believe that the person being arrested has violated KRS 508.030. As used in this paragraph, "hospital" includes any property owned or used by a hospital as a parking lot or parking garage; or

(g) Without a warrant when a violation of KRS 235.240(2) has occurred causing an accident, occurring outside of the peace officer's presence, involving a motorboat or vessel on the waters of the Commonwealth, and resulting in a physical injury or property damage, and a commissioned peace officer has probable cause to determine who the operator of the motorboat or vessel was and that operator was intoxicated or under the influence of any substance that impairs one's ability to operate the motorboat or vessel at the time of the accident.

(2) (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member, member of an unmarried couple, or another person with whom the person was or is in a dating relationship.

(b) As used in this subsection, "dating relationship," "family member," and "member of an unmarried couple" have the same meanings as defined in KRS 403.720 and 456.010.

- (c) For the purpose of this subsection, the term “member of an unmarried couple” has the same meaning as set out in KRS 403.720.
- (3) A peace officer may arrest a person without a warrant when the peace officer has probable cause to believe that the person is a sexual offender who has failed to comply with the Kentucky Sex Offender Registry requirements based upon information received from the Law Information Network of Kentucky.
- (4) For purposes of subsections (2) and (3) of this section, a “peace officer” is an officer certified pursuant to KRS 15.380.
- (5) If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.
- (6) A private person may make an arrest when a felony has been committed in fact and he or she has probable cause to believe that the person being arrested has committed it.
- (7) If a law enforcement officer has probable cause to believe that a person has violated a restraining order issued under KRS 508.155, then the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

#### **Credits**

HISTORY: 2019 c 171, § 3, eff. 6-27-19; 2017 c 23, § 1, eff. 6-29-17; 2015 c 102, § 42, eff. 1-1-16; 2012 c 128, § 1, eff. 7-12-12; 2010 c 170, § 17, eff. 7-15-10; 2006 c 182, § 24, eff. 7-12-06; 2005 c 132, § 31, eff. 6-20-05; 2002 c 119, § 3, eff. 7-15-02; 1998 c 23, § 16, eff. 7-15-98; 1996 c 345, § 4, eff. 7-15-96; 1992 c 172, § 14, eff. 7-14-92; 1990 c 455, § 33, eff. 7-13-90; 1988 c 258, § 5, eff. 7-15-88; 1984 c 165, § 23, eff. 7-13-84; 1980 c 309, § 1, c 312, § 1; 1962 c 234, § 31

KRS § 431.005, KY ST § 431.005

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Title XL. Crimes and Punishments

Chapter 431. General Provisions Concerning Crimes and Punishments (Refs & Annos)

KRS § 431.015

431.015 Citation for misdemeanor; failure to appear

Currentness

- (1) (a) KRS 431.005 to the contrary notwithstanding, and except as provided in paragraphs (b), (c), and (d) of this subsection, a peace officer shall issue a citation instead of making an arrest for a misdemeanor committed in his or her presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.
- (b) A peace officer may make an arrest instead of issuing a citation for a misdemeanor committed in his or her presence if the misdemeanor is:
1. A violation of KRS Chapter 508, 510, or 527, or KRS 189A.010, 511.050, 511.085, 514.110, or 523.110;
  2. An offense in which the defendant poses a risk of danger to himself, herself, or another person; or
  3. An offense in which the defendant refuses to follow the peace officer's reasonable instructions.
- (c) A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785 or an order of protection as defined in KRS 456.010.
- (d) A peace officer may make an arrest or may issue a citation for a violation of KRS 508.030 which occurs in a hospital pursuant to KRS 431.005(1)(f).
- (2) A peace officer may issue a citation instead of making an arrest for a violation committed in his or her presence but may not make a physical arrest unless there are reasonable grounds to believe that the defendant, if a citation is issued, will not appear at the designated time or unless the offense charged is a violation of KRS 189.223, 189.290, 189.393, 189.520, 189.580, 235.240, 281.600, 511.080, or 525.070 committed in his or her presence or a violation of KRS 189A.010, not committed in his or her presence, for which an arrest without a warrant is permitted under KRS 431.005(1)(e).
- (3) A peace officer may issue a citation when he or she has probable cause to believe that the person being issued the citation has committed a misdemeanor outside of his or her presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.



- (4) If the defendant fails to appear in response to the citation, or if there are reasonable grounds to believe that he or she will not appear, a complaint may be made before a judge and a warrant shall issue.
- (5) When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word “ARRESTED” in lieu of the date of court appearance.

**Credits**

HISTORY: 2018 c 189, § 2, eff. 7-14-18; 2017 c 23, § 2, eff. 6-29-17; 2016 c 98, § 1, eff. 7-15-16; 2015 c 102, § 43, eff. 1-1-16; 2012 c 128, § 2, eff. 7-12-12; 2011 c 2, § 46, eff. 6-8-11; 2000 c 512, § 10, eff. 7-14-00; 1984 c 165, § 25, eff. 7-13-84; 1980 c 309, § 2, eff. 7-15-80; 1978 c 26, § 1, eff. 3-3-78; 1976 ex s, c 14, § 437, eff. 1-2-78; 1962 c 234, § 33

KRS § 431.015, KY ST § 431.015

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Title XL. Crimes and Punishments

Chapter 431. General Provisions Concerning Crimes and Punishments (Refs & Annos)

KRS § 431.064

431.064 Pretrial release of person arrested for assault, sexual offense, or violation of protective order; conditions; hearing; victim entitled to copy of conditions of release; entry of conditions into Law Information Network; penalty

Currentness

- (1) In making a decision concerning pretrial release of a person who is arrested for a violation of KRS Chapter 508 or 510, or charged with a crime involving a violation of an order of protection as defined in KRS 403.720 and 456.010, the court or agency having authority to make a decision concerning pretrial release shall review the facts of the arrest and detention of the person and determine whether the person:
  - (a) Is a threat to the alleged victim or other family or household member; and
  - (b) Is reasonably likely to appear in court.
- (2) Before releasing a person arrested for or charged with a crime specified in subsection (1) of this section, the court shall make findings, on the record if possible, concerning the determination made in accordance with subsection (1) of this section, and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence or abuse and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:
  - (a) An order enjoining the person from threatening to commit or committing acts of domestic violence or abuse against the alleged victim or other family or household member;
  - (b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly;
  - (c) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
  - (d) An order prohibiting the person from using or possessing a firearm or other weapon specified by the court;
  - (e) An order prohibiting the person from possession or consumption of alcohol or controlled substances;
  - (f) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court; or

- (g) Any combination of the orders set out in paragraphs (a) to (f) of this subsection.
- (3) If conditions of release are imposed, the court imposing the conditions on the arrested or charged person shall:
  - (a) Issue a written order for conditional release; and
  - (b) Immediately distribute a copy of the order to pretrial services.
- (4) The court shall provide a copy of the conditions to the arrested or charged person upon release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
- (5) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon request, the court shall hold a prompt hearing to review the conditions.
- (6) The victim, as defined in KRS 421.500, of the defendant's alleged crime, or an individual designated by the victim in writing, shall be entitled to a free certified copy of the defendant's conditions of release, or modified conditions of release, upon request to the clerk of the court which issued the order releasing the defendant. The victim or the victim's designee may personally obtain the document at the clerk's office or may have it delivered by mail.
- (7) The circuit clerk or the circuit clerk's designee, in cooperation with the court that issued the order releasing the defendant, shall cause the conditions of release to be entered into the computer system maintained by the clerk and the Administrative Office of the Courts within twenty-four (24) hours following its filing, excluding weekends and holidays. Any modification of the release conditions shall likewise be entered by the circuit clerk, or the circuit clerk's designee.
- (8) The information entered under this section shall be accessible to any agency designated by the Department of Kentucky State Police as a terminal agency for the Law Information Network of Kentucky.
- (9) All orders issued under this section which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts. If the conditions of pretrial release are contained in an order which is narrative in nature, the prescribed form shall be used in addition to the narrative order.
- (10) Any person who violates any condition of an order issued pursuant to this section is guilty of a Class A misdemeanor.

#### **Credits**

HISTORY: 2015 c 102, § 44, eff. 1-1-16; 2007 c 85, § 309, eff. 6-26-07; 2000 c 400, § 3, eff. 7-14-00; 1996 c 345, § 5, eff. 7-15-96

KRS § 431.064, KY ST § 431.064

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Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 500. General Provisions (Refs & Annos)

KRS § 500.080

500.080 Definitions for Kentucky Penal Code

Currentness

As used in the Kentucky Penal Code, unless the context otherwise requires:

- (1) “Actor” means any natural person and, where relevant, a corporation or an unincorporated association;
- (2) “Crime” means a misdemeanor or a felony;
- (3) “Dangerous instrument” means any instrument, including parts of the human body when a serious physical injury is a direct result of the use of that part of the human body, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury. “Dangerous instrument” may include a laser;
- (4) “Deadly weapon” means any of the following:
  - (a) A weapon of mass destruction;
  - (b) Any weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged;
  - (c) Any knife other than an ordinary pocket knife or hunting knife;
  - (d) Billy, nightstick, or club;
  - (e) Blackjack or slapjack;
  - (f) Nunchaku karate sticks;
  - (g) Shuriken or death star; or
  - (h) Artificial knuckles made from metal, plastic, or other similar hard material;

- (5) “Felony” means an offense for which a sentence to a term of imprisonment of at least one (1) year in the custody of the Department of Corrections may be imposed;
- (6) “Fentanyl derivative” has the same meaning as in KRS 218A.010;
- (7) “Government” means the United States, any state, county, municipality, or other political unit, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government;
- (8) “He” means any natural person and, where relevant, a corporation or an unincorporated association;
- (9) “Impacted by the disaster” means the location or in reasonable proximity to the location where a natural or man-made disaster has caused physical injury, serious physical injury, death, or substantial damage to property or infrastructure;
- (10) “Laser” means any device designed or used to amplify electromagnetic radiation by stimulated emission that emits a beam, other than a medical laser when used in medical treatment or surgery;
- (11) “Law” includes statutes, ordinances, and properly adopted regulatory provisions. Unless the context otherwise clearly requires, “law” also includes the common law;
- (12) “Minor” means any person who has not reached the age of majority as defined in KRS 2.015;
- (13) “Misdemeanor” means an offense, other than a traffic infraction, for which a sentence to a term of imprisonment of not more than twelve (12) months can be imposed;
- (14) “Natural or man-made disaster” means a tornado, storm, or other severe weather, earthquake, flood, or fire that poses a significant threat to human health and safety, property, or critical infrastructure;
- (15) “Offense” means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law, or ordinance of a political subdivision of this state or by any law, order, rule, or regulation of any governmental instrumentality authorized by law to adopt the same;
- (16) “Person” means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government, or a governmental authority;
- (17) “Physical injury” means substantial physical pain or any impairment of physical condition;
- (18) “Possession” means to have actual physical possession or otherwise to exercise actual dominion or control over a tangible object;

(19) "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, prolonged loss or impairment of the function of any bodily organ, or eye damage or visual impairment. For a child twelve (12) years of age or less at the time of the injury, or for any person if the relationship between the perpetrator and the victim meets the definition of a family member or member of an unmarried couple as defined in KRS 403.720, or a dating relationship as defined in KRS 456.010, a serious physical injury includes but is not limited to the following:

- (a) Bruising near the eyes, or on the head, neck, or lower back overlying the kidneys;
- (b) Any bruising severe enough to cause underlying muscle damage as determined by elevated creatine kinase levels in the blood;
- (c) Any bruising or soft tissue injury to the genitals that affects the ability to urinate or defecate;
- (d) Any testicular injury sufficient to put fertility at risk;
- (e) Any burn near the eyes or involving the mouth, airway, or esophagus;
- (f) Any burn deep enough to leave scarring or dysfunction of the body;
- (g) Any burn requiring hospitalization, debridement in the operating room, IV fluids, intubation, or admission to a hospital's intensive care unit;
- (h) Rib fracture;
- (i) Scapula or sternum fractures;
- (j) Any broken bone that requires surgery;
- (k) Head injuries that result in intracranial bleeding, skull fracture, or brain injury;
- (l) A concussion that results in the child becoming limp, unresponsive, or results in seizure activity;
- (m) Abdominal injuries that indicate internal organ damage regardless of whether surgery is required;
- (n) Any injury requiring surgery;
- (o) Any injury that requires a blood transfusion; and

- (p) Any injury requiring admission to a hospital's critical care unit;
- (20) “Unlawful” means contrary to law or, where the context so requires, not permitted by law. It does not mean wrongful or immoral;
- (21) “Violation” means an offense, other than a traffic infraction, for which a sentence to a fine only can be imposed; and
- (22) “Weapon of mass destruction” means:
  - (a) Any destructive device as defined in KRS 237.030, but not fireworks as defined in KRS 227.700;
  - (b) Any weapon that is designed or intended to cause death or serious physical injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;
  - (c) Any weapon involving a disease organism; or
  - (d) Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

**Credits**

HISTORY: 2024 c 174, § 44, eff. 7-15-24; 2023 c 153, § 4, eff. 6-29-23; 2022 c 151, § 1, eff. 7-14-22; 2017 c 171, § 4, eff. 6-29-17; 2001 c 113, § 7, eff. 6-21-01; 1992 c 211, § 130, eff. 7-14-92; 1990 c 282, § 1; 1986 c 331, § 56, eff. 7-15-86; 1978 c 78, § 1; 1974 c 406, § 8

KRS § **500.080**, KY ST § **500.080**

Current through the 2024 Regular Session and the Nov. 5, 2024 election. Some sections may be more current, see credits for details.



Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 508. Assault and Related Offenses (Refs & Annos)

KRS § 508.010

508.010 Assault in the first degree

Currentness

(1) A person is guilty of assault in the first degree when:

(a) He intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument;  
or

(b) Under circumstances manifesting extreme indifference to the value of human life he wantonly engages in conduct which creates a grave risk of death to another and thereby causes serious physical injury to another person.

(2) Assault in the first degree is a Class B felony.

**Credits**

HISTORY: 1974 c 406, § 65, eff. 1-1-75

KRS § 508.010, KY ST § 508.010

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Chapter 508. Assault and Related Offenses (Refs & Annos)

KRS § 508.020

508.020 Assault in the second degree

Currentness

(1) A person is guilty of assault in the second degree when:

- (a) He intentionally causes serious physical injury to another person; or
- (b) He intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or
- (c) He wantonly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument.

(2) Assault in the second degree is a Class C felony.

#### Credits

HISTORY: 1974 c 406, § 66, eff. 1-1-75

KRS § 508.020, KY ST § 508.020

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Chapter 508. Assault and Related Offenses (Refs & Annos)

KRS § 508.030

508.030 Assault in the fourth degree

Currentness

(1) A person is guilty of assault in the fourth degree when:

- (a) He intentionally or wantonly causes physical injury to another person; or
- (b) With recklessness he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

(2) Assault in the fourth degree is a Class A misdemeanor.

**Credits**

HISTORY: 1982 c 429, § 2, eff. 7-15-82; 1974 c 406, § 67

KRS § 508.030, KY ST § 508.030

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Chapter 508. Assault and Related Offenses (Refs & Annos)

KRS § 508.032

**508.032** Assault of family member or member of an unmarried couple; enhancement of penalty

Currentness

- (1) If a person commits a third or subsequent offense of assault in the fourth degree under KRS 508.030 within five (5) years, and the relationship between the perpetrator and the victim in each of the offenses meets the definition of family member or member of an unmarried couple, as defined in KRS 403.720, then the person may be convicted of a Class D felony. If the Commonwealth desires to utilize the provisions of this section, the Commonwealth shall indict the defendant and the case shall be tried in the Circuit Court as a felony case. The jury, or judge if the trial is without a jury, may decline to assess a felony penalty in a case under this section and may convict the defendant of a misdemeanor. The victim in the second or subsequent offense is not required to be the same person who was assaulted in the prior offenses in order for the provisions of this section to apply.
- (2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered by a court of competent jurisdiction.

**Credits**

HISTORY: 2000 c 401, § 39, eff. 7-14-00; 1996 c 345, § 2, eff. 7-15-96

KRS § 508.032, KY ST § 508.032

Current through the 2024 Regular Session and the Nov. 5, 2024 election. Some sections may be more current, see credits for details.

Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 508. Assault and Related Offenses (Refs & Annos)

KRS § 508.080

508.080 Terroristic threatening in the third degree

Currentness

(1) Except as provided in KRS 508.075 or 508.078, a person is guilty of terroristic threatening in the third degree when:

- (a) He threatens to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person; or
- (b) He intentionally makes false statements for the purpose of causing evacuation of a building, place of assembly, or facility of public transportation.

(2) Terroristic threatening in the third degree is a Class A misdemeanor.

**Credits**

HISTORY: 2001 c 113, § 3, eff. 6-21-01; 1974 c 406, § 72, eff. 1-1-75

KRS § 508.080, KY ST § 508.080

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Title L. Kentucky Penal Code  
Chapter 508. Assault and Related Offenses (Refs & Annos)

KRS § 508.140

508.140 Stalking in the first degree

Currentness

(1) A person is guilty of stalking in the first degree,

(a) When he intentionally:

1. Stalks another person; and
2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
  - a. Sexual contact as defined in KRS 510.010;
  - b. Serious physical injury; or
  - c. Death; and

- (b) 1. A protective order has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or
2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or
3. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims; or
4. The act or acts were committed while the defendant had a deadly weapon on or about his person.

(2) Stalking in the first degree is a Class D felony.

**Credits**

HISTORY: 2000 c 401, § 14, eff. 7-14-00; 1992 c 443, § 2, eff. 7-14-92

KRS § 508.140, KY ST § 508.140

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Title L. Kentucky Penal Code  
Chapter 508. Assault and Related Offenses (Refs & Annos)

KRS § 508.150

508.150 Stalking in the second degree

Currentness

(1) A person is guilty of stalking in the second degree when he intentionally:

(a) Stalks another person; and

(b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:

1. Sexual contact as defined in KRS 510.010;
2. Physical injury; or
3. Death.

(2) Stalking in the second degree is a Class A misdemeanor.

**Credits**

HISTORY: 1992 c 443, § 3, eff. 7-14-92

KRS § 508.150, KY ST § 508.150

Current through the 2024 Regular Session and the Nov. 5, 2024 election. Some sections may be more current, see credits for details.



Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 508. Assault and Related Offenses (Refs & Annos)

KRS § 508.170

**508.170** Strangulation in the first degree

Currentness

(1) A person is guilty of strangulation in the first degree when the person, without consent, intentionally impedes the normal breathing or circulation of the blood of another person by:

(a) Applying pressure on the throat or neck of the other person; or

(b) Blocking the nose or mouth of the other person.

(2) Strangulation in the first degree is a Class C felony.

**Credits**

HISTORY: 2019 c 183, § 1, eff. 6-27-19

KRS § 508.170, KY ST § 508.170

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Title L. Kentucky Penal Code  
Chapter 508. Assault and Related Offenses (Refs & Annos)

KRS § 508.175

**508.175** Strangulation in the second degree

Currentness

(1) A person is guilty of strangulation in the second degree when the person, without consent, wantonly impedes the normal breathing or circulation of the blood of another person by:

(a) Applying pressure on the throat or neck of the other person; or

(b) Blocking the nose or mouth of the other person.

(2) Strangulation in the second degree is a Class D felony.

**Credits**

HISTORY: 2019 c 183, § 2, eff. 6-27-19

KRS § 508.175, KY ST § 508.175

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Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 510. Sexual Offenses (Refs & Annos)

KRS § 510.040

510.040 Rape in the first degree

Currentness

(1) A person is guilty of rape in the first degree when:

(a) He engages in sexual intercourse with another person by forcible compulsion; or

(b) He engages in sexual intercourse with another person who is incapable of consent because he:

1. Is physically helpless; or
2. Is less than twelve (12) years old.

(2) Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

**Credits**

HISTORY: 1974 c 406, § 84, eff. 1-1-75

KRS § 510.040, KY ST § 510.040

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Title L. Kentucky Penal Code  
Chapter 510. Sexual Offenses (Refs & Annos)

KRS § 510.070

510.070 Sodomy in the first degree

Currentness

(1) A person is guilty of sodomy in the first degree when:

(a) He engages in deviate sexual intercourse with another person by forcible compulsion; or

(b) He engages in deviate sexual intercourse with another person who is incapable of consent because he:

1. Is physically helpless; or
2. Is less than twelve (12) years old.

(2) Sodomy in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

#### Credits

HISTORY: 1974 c 406, § 87, eff. 1-1-75


KRS § 510.070, KY ST § 510.070

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Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 510. Sexual Offenses (Refs & Annos)

KRS § **510.110**

**510.110** Sexual abuse in the first degree

Currentness

(1) A person is guilty of sexual abuse in the first degree when:

(a) He or she subjects another person to sexual contact by forcible compulsion; or

(b) He or she subjects another person to sexual contact who is incapable of consent because he or she:

1. Is physically helpless;
2. Is less than twelve (12) years old;
3. Is mentally incapacitated; or
4. Is an individual with an intellectual disability; or

(c) Being twenty-one (21) years old or more, he or she:

1. Subjects another person who is less than sixteen (16) years old to sexual contact;
2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or
3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or

- (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.
- (2) Sexual abuse in the first degree is a Class D felony, unless the victim is less than twelve (12) years old, in which case the offense shall be a Class C felony.

**Credits**

HISTORY: 2018 c 109, § 5, eff. 7-14-18; 2008 c 72, § 1, eff. 7-15-08; 2006 c 182, § 33, eff. 7-12-06; 2002 c 259, § 5, eff. 7-15-02; 1974 c 406, § 91, eff. 1-1-75

KRS § **510.110**, KY ST § **510.110**

Current through the 2024 Regular Session and the Nov. 5, 2024 election. Some sections may be more current, see credits for details.

Baldwin's Kentucky Revised Statutes Annotated  
Title L. Kentucky Penal Code  
Chapter 524. Interference with Judicial Administration (Refs & Annos)

KRS § **524.040**

**524.040** Intimidating a participant in the legal process

Currentness

- (1) A person is guilty of intimidating a participant in the legal process when, by use of harassing communications as described in KRS 525.080, physical force, or a threat directed to a person he or she believes to be a participant in the legal process, he or she:
  - (a) Influences, or attempts to influence, the testimony, vote, decision, or opinion of that person;
  - (b) Induces, or attempts to induce, that person to avoid legal process summoning him or her to testify;
  - (c) Induces, or attempts to induce, that person to absent himself or herself from an official proceeding to which he has been legally summoned;
  - (d) Induces, or attempts to induce, that person to withhold a record, document, or other object from an official proceeding;
  - (e) Induces, or attempts to induce, that person to alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding; or
  - (f) Hinders, delays, or prevents the communication to a law enforcement officer or judge of information relating to the possible commission of an offense or a violation of conditions of probation, parole or release pending judicial proceedings.
- (2) For purposes of this section:
  - (a) An official proceeding need not be pending or about to be instituted at the time of the offense; and
  - (b) The testimony, record, document, or other object need not be admissible in evidence or free of a claim of privilege.
- (3) Intimidating a participant in the legal process is a Class D felony.

(4) In order for a person to be convicted of a violation of this section, the act against a participant in the legal process or the immediate family of a participant in the legal process shall be related to the performance of a duty or role played by the participant in the legal process.

**Credits**

HISTORY: 2024 c 174, § 41, eff. 7-15-24; 2002 c 251, § 2, eff. 7-15-02; 1986 c 212, § 5, eff. 7-15-86; 1974 c 406, § 203

KRS § **524.040**, KY ST § **524.040**

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Title L. Kentucky Penal Code  
Chapter 524. Interference with Judicial Administration (Refs & Annos)

KRS § 524.050

524.050 Tampering with a witness

Currentness

- (1) A person is guilty of tampering with a witness when, knowing that a person is or may be called as a witness in an official proceeding, he:
- (a) Induces or attempts to induce the witness to absent himself or otherwise avoid appearing or testifying at the official proceeding with intent to influence the outcome thereby; or
  - (b) Knowingly makes any false statement or practices any fraud or deceit with intent to affect the testimony of the witness.
- (2) Tampering with a witness is a Class D felony.

**Credits**

HISTORY: 2002 c 251, § 4, eff. 7-15-02; 1974 c 406, § 204, eff. 1-1-75

KRS § 524.050, KY ST § 524.050

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VINE® is America's leading victim notification network, empowering victims and concerned citizens with timely and reliable information regarding offenders.

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## Overview of VINE

Since its humble beginnings in 1994, VINE has delivered more than 800 million notifications, providing timely information and peace of mind to victims and survivors all over the United States.

Over 20 million victims of crime and concerned citizens use VINE to stay safe and informed. Annually, VINE users:

- Complete 2.4M+ registrations
- Receive 21M+ notifications
- Conduct 35M+ offender searches

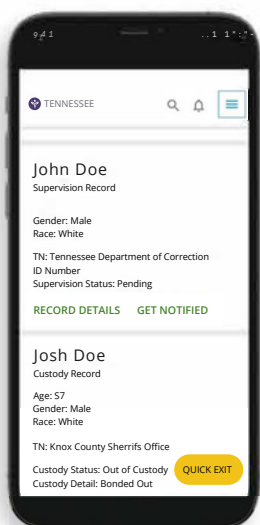
VINE is a free service that offers peace of mind to victims of crime by providing access to timely and reliable offender information. Victims and survivors may call a toll-free number, visit [www.vinelink.com](http://www.vinelink.com), or use the VINELink mobile app to anonymously check on an offender's custody status. VINE users can also register to receive automated notifications about changes in custody status via their choice of delivery method: in-app, phone, email, text, or TTY (hearing impaired) service. VINE is:

- Completely confidential
- Available in 47 states
- Accessible by mobile device, desktop computer, and phone
- Supported by trained victim service representatives available 24/7/365
- Able to distribute notifications by text, in-app, phone, email, and TTY
- Available via live operator support in 240+ languages

## Key Features for Victims and Survivors (available in select states)

VINE leverages technology improvements to expand access to services for victims of crime. Some benefits include:

- **I Need Guidance** - Find service providers using an intuitive, self-guided workflow.
- **Saved Service Providers** - Save preferred service providers to a VINE account.
- **Watch List** - Bookmark offenders to a personalized Watch List.
- **Interactive Voice Response** - Search for offenders using advanced voice and keypad technology.



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# **DOMESTIC AND INTERPERSONAL VIOLENCE PROSECUTION**

## **POLICY PROCEDURE MANUAL**

2024

**KENTUCKY OFFICE OF THE ATTORNEY GENERAL**

Office of Victims Advocacy

Office: (502) 696-5312

Victim Resource and Referral Line: (800) 372-2551

[AG.KY.gov/victims](https://ag.ky.gov/victims)



## ATTORNEY GENERAL RUSSELL COLEMAN

July 31, 2024

Dear Colleagues,

Thank you for your dedication on behalf of Kentuckians in handling domestic violence cases. *Your* efforts serve to make our communities safer and provide crucial support to those in need. These are complex and challenging cases, and your diligence is greatly appreciated as we work to keep our families safe.



This Manual aims to equip prosecutors, victims' advocates, and allied criminal justice professionals with the necessary resources and information to address domestic violence cases thoroughly and efficiently. It's the product of zealous collaboration by professionals across the Commonwealth. In these pages you will see the results of extensive experience in domestic violence cases that covers a wide range of topics including legal procedures, best practices, and victim support resources.

The high rates of domestic violence in Kentucky and across the nation should alarm every single one of us. According to the Justice & Public Safety Cabinet Domestic Violence Data Report, in Kentucky, more than 44% of women and 32.9% of men experience intimate partner physical violence or rape in their lifetimes. These statistics underscore the urgency and fuel our efforts to improve our Commonwealth's response. Together, we can make clear that domestic violence should not and will not be tolerated.

Your steadfast commitment to these cases is truly appreciated. Should you have any questions or require further assistance, please do not hesitate to reach out to the Attorney General's Office of Victims Advocacy at (502) 696-5312. We look forward to further collaboration in our collective pursuit of justice.

Gratefully,

A handwritten signature in blue ink that reads "Russ M. Coleman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized.

RUSSELL COLEMAN  
ATTORNEY GENERAL

## **ACKNOWLEDGEMENTS**

The Domestic and Interpersonal Violence Prosecution Policy and Procedure Manual is revised and updated, pursuant to KRS 15.717, through a multidisciplinary partnership among Kentucky criminal justice professionals. We are grateful to all contributors, both past and present, for their zealous collaboration and daily commitment to public safety, justice and protecting victims' rights. Their collective contribution will continue to make this Manual a valuable resource in the fight to end domestic violence.

The multidisciplinary team was led by the Office of Kentucky Attorney General Russell Coleman, including Criminal Chief Rewa Zakharia, Special Counsel Denise Durbin, Assistant Attorney General Barbara Whaley, Violent Crime Resource Prosecutor Thomas Lockridge, Domestic Violence Resource Prosecutor Kathy Phillips, Assistant Attorney General Amanda Morgan, Executive Director of the Office of Victims Advocacy Robyn Diez d'Aux, and Deputy Executive Director of the Office of Victims Advocacy Aimee Clymer-Hancock.

This effort would not have been possible without the immense contributions of partners and experts across Kentucky who face these issues every single day. Commonwealth's Attorney for the 12<sup>th</sup> Judicial Circuit Courtney Baxter and Boone County Attorney Jordan Dallas Turner provided invaluable assistance. Brittany Scordo, Director of Intimate Partner Violence and Parenting Programs for The Nest Center for Women, Children & Families of Lexington and Ann Perkins, Executive Director of Safe Harbor Domestic Violence Emergency Shelter and Advocacy Center of Northeast Kentucky gave victims' perspectives. Graves County Sheriff Jon Hayden represented law enforcement and their integral role.

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## POLICY STATEMENT

Domestic violence and interpersonal violence (dating violence, stalking and sexual assault) occur with alarming frequency in our nation and in our Commonwealth. According to the Centers for Disease Control, approximately 36% of women and about 34% of men have experienced intimate partner violence in their lifetimes.<sup>1</sup> The impact upon those who have experienced intimate partner violence is profound. According to the CDC, one impact is fear for safety:

For both female and male victims, the commonly reported impacts associated with having been a victim of intimate partner violence in one's lifetime were feeling fearful (61.9% of women and 18.2% of men), concerned for their safety (56.6% of women and 16.7% of men), and symptoms of post-traumatic stress disorder (51.8% of women and 16.7% of men).<sup>2</sup>

In Kentucky, according to the same CDC survey, nearly one in three women will be a victim of domestic violence, 47% of Kentucky women will experience sexual violence and nearly one in four will be a victim of stalking, the highest in the nation. Men, too, are victims of these crimes, with nearly one in three having been raped, stalked, or experienced physical violence by an intimate partner, and one in five being a victim of sexual violence.<sup>3</sup> In the state-by-state CDC study, there are 775,000 estimated victims of intimate partner violence per year.<sup>4</sup>

Domestic and interpersonal violence results in tremendous costs to victims, their families and society through loss of life, injury, medical bills, and lost wages. In addition to the tangible losses caused by interpersonal violence, the fact remains that no Kentuckian should live fearfully in their own home.

Prosecutors play a key role in protecting victims and upholding public safety in cases of domestic violence, dating violence, stalking and sexual assault. Prosecutorial intervention through the criminal justice system greatly influences the behavior of both domestic violence offenders and their victims. It sends a clear message to perpetrators that their

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<sup>1</sup> Smith, S.G., Zhang, X., Basile, K.C., Merrick, M.T., Wang, J., Kresnow, M., Chen, J. (2018). THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2015 Data Brief – Updated Release. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention

<sup>2</sup> Smith, S.G., Chen, J., Basile, K.C., Gilbert, L.K., Merrick, M.T., Patel, N., Walling, M., & Jain, A. (2017). THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS) 2010-2012 State Report. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

<sup>3</sup> <http://www.kasap.org/images/files/GetInfo/KYFactsheet.pdf>

<sup>4</sup> Smith, et. al. NISVS: 2010-2012 State Report, page 128, Table 5.7.

behavior is criminal, will not be tolerated in this Commonwealth, and will result in serious consequences. Because of the unique dynamics of, and, oftentimes, inherent difficulties with domestic violence cases, the successful prosecution of these cases requires specialized techniques. Prosecutors must approach cases of domestic violence with not only specific legal knowledge of criminal and civil sanctions, but also an understanding of the dynamics of domestic and interpersonal violence and their traumatic impact upon the victim.<sup>5</sup>

*“Domestic violence and abuse”* means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple; or “any conduct prohibited by KRS 525.125, 525.130, 525.135, or 525.137, or the infliction of fear of such imminent conduct taken against a domestic animal when used as a method of coercion, control, punishment, intimidation, or revenge directed against a family member or member of an unmarried couple who has a close bond of affection to the domestic animal.”<sup>6</sup>

*“Dating violence and abuse”* means physical injury, serious physical injury, stalking, sexual assault, strangulation, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault occurring between persons who are or have been in a dating relationship or any conduct prohibited by KRS 525.125, 525.130, 525.135, or 525.137, or the infliction of fear of such imminent conduct, taken against a domestic animal when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the perpetrator is or has been in a dating relationship, when that person has a close bond of affection to the domestic animal.”<sup>7</sup>

While an act of domestic violence can be a civil contempt, a criminal violation, a misdemeanor offense, or a felony offense depending upon the facts of the case, all cases of domestic violence should be treated as illegal conduct. A helpful tool when making charging decisions is to ask whether this “would be tolerated if a stranger exhibited the same conduct.” A person who commits an act of domestic violence in any one of Kentucky’s 120 counties has committed a crime against the “peace and dignity of the Commonwealth of Kentucky.” Perpetrators should receive the consistent, direct, and clear message that domestic violence is a crime and that they alone are responsible for their

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<sup>5</sup> See American Bar Association Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protective Order Cases [http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards\\_of\\_Practice\\_for\\_Lawyers\\_Representing\\_Victims\\_of\\_DV\\_SA\\_Stalking.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards_of_Practice_for_Lawyers_Representing_Victims_of_DV_SA_Stalking.authcheckdam.pdf)

<sup>6</sup> KRS 403.720

<sup>7</sup> KRS 456.010(2). All references to Kentucky Revised Statutes state the law in effect April 24, 2024.

behavior. While victims' safety is paramount, accountability is the second most important goal.

All perpetrators of domestic violence should receive appropriate sanctions as well as meaningful treatment for their abusive behavior.<sup>8</sup> All victims of domestic violence should receive appropriate, trauma informed, supportive services and referrals.

## GOALS

The prosecutor should work to accomplish the following objectives at each stage of the criminal court process:

1. Stop the violence and prioritize safety.
2. Protect the victim through collaboration with victim services, law enforcement and other community partners.
3. Protect the children and other family members.
4. Upon the victim's request, ensure that the victim is informed of all stages and decisions in the court process.
5. Protect the general public.
6. Uphold the legislative intent and public sentiment that domestic violence be treated as a serious crime and communicate that intent to both the defendant and the victim.
7. Hold the offender accountable so that the violent behavior is not repeated.
8. Rehabilitate the offender so that the violent behavior is not repeated<sup>9</sup>.
9. Assist in the recovery of restitution for the crime victim.

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<sup>8</sup> Under no circumstances should victims be ordered to complete treatment *with* the perpetrator. The perpetrators' conduct is their responsibility to fix, not the victims'. Moreover, batterer's treatment is best practice, not general anger management. Look for programs in the region that offer a certified batterer's intervention program. Additionally, the victim should not be allowed to pay for the treatment.

<sup>9</sup> It is best practice to require appropriate treatment for batterers. Appropriate treatment does not include a traditional "anger management program." Instead, controlling abusers require specific batterers' intervention programs in order to adequately address the underlying problem surrounding their need to control others. Only after adequate treatment will future risk of similar behavior diminish.

## CHAPTER 1: *Prosecution Policy in Domestic and Dating Violence Cases*

### A. The Role Of The Prosecutor

#### 1. What Constitutes Domestic and Dating Violence

As a general rule, in criminal actions, Kentucky does not distinguish cases which involve domestic violence from any other criminal case, be it in charging or disposition<sup>10</sup>. However, statutory definitions can be found in KRS 403.720 and below that may assist prosecutors in identifying cases where the risk of further harm may occur. Prosecutors may wish to flag criminal case files that fall under these definitions with a D.V. stamp or colored sticker for the purpose of stricter monitoring by all prosecutors and victim advocates who may work on that case.<sup>11</sup> For the same reason, it is important to use the correct UOR code on charging documents, so the “domestic violence” specifier is known to those involved. This is equally important to enhance the penalty under KRS. 508.032.

#### Definitions

- “*Domestic animal*” means a dog, cat, or other animal that is domesticated and kept as a household pet, but does not include animals normally raised for agricultural or commercial purposes;<sup>12</sup>
- “*Domestic violence and abuse*” means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple; or any conduct prohibited by KRS 525.125, 525.130, 525.135, or 525.137, or the infliction of fear of such imminent conduct taken against a domestic animal when used as a method of coercion, control, punishment, intimidation, or revenge directed against a family member or member of an

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<sup>10</sup>One exception being KRS 508.032 which provides for an enhanced penalty if an individual is adjudged guilty on a third or subsequent offense of assault fourth degree domestic violence upon a victim who meets the definition of family member or member of an unmarried couple as defined in KRS 403.720.

<sup>11</sup> Because studies show that, 84% of spouse abuse victims are females, and 86% of victims of dating partner abuse are female, throughout this manual the victim will be referred to as “she” and the perpetrator as “he”. (U.S. Department of Justice, Bureau of Justice Statistics, Family Violence Statistics: Including Statistics on Strangers and Acquaintances, June 2005, NCJ 207846, available at [http:// www.bjs.gov/content/pub/pdf/fvs02.pdf](http://www.bjs.gov/content/pub/pdf/fvs02.pdf)).

<sup>12</sup> KRS 403.720(1).



unmarried couple who has a close bond of affection to the domestic animal;<sup>13</sup>

- “*Family member*” means a spouse, including a former spouse, a grandparent, a grandchild, a parent, an adult sibling, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;<sup>14</sup>
- “*Foreign protective order*” means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was issued on the basis of domestic violence and abuse;<sup>15</sup>
- “*Global positioning monitoring system*” means a system that electronically determines a person’s location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person’s latitude and longitude data to a monitoring entity;<sup>16</sup>
- “*Member of an unmarried couple*” means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;<sup>17</sup>
- “*Order of protection*” means an emergency protective order or a domestic violence order and includes a foreign protective order;<sup>18</sup>
- “*Sexual assault*” refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under KRS 530.020, or a criminal attempt, conspiracy, facilitation, or solicitation to commit rape, sodomy, sexual abuse, or incest;<sup>19</sup>

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<sup>13</sup> KRS 403.720(2).

<sup>14</sup> KRS 403.720(3).

<sup>15</sup> KRS 403.720(4).

<sup>16</sup> KRS 403.720(5).

<sup>17</sup> KRS 403.720(6). The statutes do not define “couple” or “living together”. See Ireland v. Davis, 957 S.W.2d 312, 313 (Ky. App. 1997) (Interpreting the word “couple”). Barnett v. Wiley, 103 S.W.3d 17 (Ky. 2003) (Interpreting “unmarried couple”). See also, Randall v. Stewart, 223 S.W.3d 121 (Ky. App. 2007); Rivers v. Howell, 276 S.W.3d 279 (Ky. App. 2008).

<sup>18</sup> KRS 420.720(7).

<sup>19</sup> KRS 403.720(8).

- “*Strangulation*” refers to conduct prohibited by KRS 508.170 and 508.175, or a criminal attempt, conspiracy, facilitation, or solicitation to commit strangulation;<sup>20</sup>
- “*Substantial violation*” means criminal conduct which involves actual or threatened harm to the person, family, or property, including domestic animal, of an individual protected by an order of protection;<sup>21</sup>
- “*Physical injury*” means substantial physical pain or any impairment of physical condition;<sup>22</sup>
- “*Serious physical injury*” means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, prolonged loss or impairment of the function of any bodily organ, or eye damage or visual impairment. For a child twelve (12) years of age or less at the time of the injury, or for any person if the relationship between the perpetrator and the victim meets the definition of family member or member of an unmarried couple as defined in KRS 403.720, or a dating relationship as defined in KRS 456.010, a serious physical injury includes but is not limited to the following:

- (a) Bruising near the eyes, or on the head, neck, or lower back overlying the kidneys;
- (b) Any bruising severe enough to cause underlying muscle damage as determined by elevated creatine kinase levels in the blood;
- (c) Any bruising or soft tissue injury to the genitals that affects the ability to urinate or defecate;
- (d) Any testicular injury sufficient to put fertility at risk;
- (e) Any burn near the eyes or involving the mouth, airway, or esophagus;
- (f) Any burn deep enough to leave scarring or dysfunction of the body;
- (g) Any burn requiring hospitalization, debridement in the operating room, IV fluids, intubation, or admission to a hospital's intensive care unit;
- (h) Rib fracture;
- (i) Scapula or sternum fractures;
- (j) Any broken bone that requires surgery;
- (k) Head injuries that result in intracranial bleeding, skull fracture, or brain injury;

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<sup>20</sup> KRS 403.720(9).

<sup>21</sup> KRS 403.720(10).

<sup>22</sup> KRS 500.080(16).

- (l) A concussion that results in the child becoming limp, unresponsive, or results in seizure activity;
- (m) Abdominal injuries that indicate internal organ damage regardless of whether surgery is required;
- (n) Any injury requiring surgery;
- (o) Any injury that requires a blood transfusion; and
- (p) Any injury requiring admission to a hospital's critical care unit;"<sup>23</sup>
- Stalking refers to "conduct prohibited under KRS 508.140 and 508.150."<sup>24</sup>

## **2. Policy for Filing Actions in Cases of Domestic and Dating Violence**

The prosecutor's office should not serve as an obstacle to the initiation of domestic violence cases. When considering a charge or indictment, the prosecutor needs to consider the dynamics of domestic violence. The victim's safety should be considered at each stage. Additionally, once a charge is made, risks to the victim and lethality of the perpetrator should again be assessed. The prosecutor's office, in cooperation with the court, should work with law enforcement to provide for 24-hour accessibility for warrants, protective orders and prompt relief when protective orders or conditions of release are violated.

Prosecutors should consider applicable charges without regard to the marital status or availability of the victim.<sup>25</sup> Moreover, a prosecutor should not decline to prosecute because a victim is reluctant to participate in the criminal justice process. Instead, the decision to prosecute a domestic violence case should be based on the same probable cause standard upon which all other criminal charges are based. However, prosecutors may find that domestic violence cases require further investigation to sustain the burden of proof beyond a reasonable doubt.

According to the National District Attorneys Association, "Prosecutorial discretion is an effective tool for addressing domestic violence cases and is favored over a blanket no drop policy, which prevents a victim from dropping the charges once they have been filed. Given the dynamics of domestic

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<sup>23</sup> KRS 500.080(18).

<sup>24</sup> KRS 456.010(9).

<sup>25</sup> The ability to prosecute a case, without the participation of the victim, is dependent upon the strength of the evidence without the victim's testimony.

violence and issues unique to domestic violence victims, a blanket policy may be too restrictive.”<sup>26</sup>

### **a. Dynamics of Domestic Violence**

Appropriate intervention within domestic violence requires a comprehensive understanding of the dynamic of power and control. Recognizing that victims may be abused or controlled by a partner requires an understanding of the range of violence and abuse to which they have been exposed, the strategies they may have used to protect themselves and their children, and the ways in which the violence may have impacted them psychologically, physically, economically and socially. It is essential that prosecutors understand the dynamics of domestic violence in order to properly consider and appropriately charge each case and avoid the risk that a case may “fall through the cracks” and result in deadly consequences.

- ***Forms of Domestic Violence***

Domestic violence can take many forms such as physical assault; sexual assault, including spousal rape; emotional or psychological violence; psychological battering and destruction of property or pets; and threats to personal safety of self and loved ones.

With each form of domestic violence, the abuse:

- Is done with the intent to harm the well-being of the victim, either mentally or physically
- Is done to show control and domination
- Usually is recurring and tends to escalate in frequency and severity unless changes are made to stop the violence
- Can take different forms, and the various forms usually occur together; rarely is one form of abuse used by itself

- ***Tactics of abuse - Power and Control or Coercive Control***

There are universal tactics used in dating and domestic abuse, all of which are centered on power and control by the perpetrator. These tactics include the use of emotional abuse; isolation; minimization, denial, and blaming; the children; male privilege; economic abuse; coercion and threats; and intimidation. These behaviors are

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<sup>26</sup> NATIONAL DOMESTIC VIOLENCE PROSECUTION BEST PRACTICES GUIDE, National District Attorneys Association, Women Prosecution Section, p 24 (July 17, 2017). Available at <https://ndaa.org/wp-content/uploads/NDAA-DV-White-Paper-FINAL-revised-July-17-2017-1.pdf>.

reinforced by the perpetrator through acts of violence intended to control the thoughts, feelings, and actions of the victim (see appendices A3-A7 for Power and Control Wheels).

## **b. Lethality and Risk Assessment**

The dynamics of domestic violence, its recurrence, and its lethal nature require that cases involving domestic violence be strictly monitored and promptly charged or indicted when probable cause exists.

Without effective early intervention, domestic violence can escalate in severity and lead to death. When domestic violence results in homicide, it is often a reflection of the community's failure to recognize the severity and potential lethality of the problem, and to address its critical role in early intervention.

"When battered women are killed by their abusers, it frequently occurs after they have been separated from them or taken other action to end the relationship. Since society continues to question why women remain in abusive relationships, it is essential to consider how dangerous and difficult it often is for battered women to leave abusive partners. Many women stay because of a reasonable fear that they will suffer severe injury or death if they attempt to end the relationship."<sup>27</sup>

- ***Lethality Checklist/Danger Assessment***

A critical component of intervention in these cases is the assessment of the perpetrator's lethality: during court proceedings, setting bail, subsequent motions for bond reduction, and when considering conditions of release or conditions of an EPO/DVO/IPO. While it may be difficult to foresee who might commit a homicide, there are some "red flag" factors that may assist judges and prosecutors in determining when a victim may be at greater risk of severe injury or death at the hands of a perpetrator. This information can be obtained from the victim, the perpetrator, family members, friends, law enforcement personnel responding to a call, social services workers or advocates of other agencies assisting the victim. Further, this information should be obtained as early in the process as possible. A procedure could be established to allow this information to be

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<sup>27</sup>Paymar, Michael, Building a Coordinated Community Response to Domestic Violence Assault: An Overview of the Problem.

collected when law enforcement responds to a domestic violence call, when an EPO is sought or when criminal complaints are initially filed. See *Pettingill v. Pettingill*, 480 S.W. 3d 920 (Ky. 2015) (In decision to grant a protective order a Judge may rely on his knowledge of lethality factors).

A risk/danger assessment tool can be utilized, prior to or after the charge, to gather important information. A danger/risk assessment tool can be found at <http://www.dangerassessment.org/>. If the complaining witness, whether the victim or a law enforcement officer, provides an affirmative answer to any of the risk and lethality questions, the prosecutor should proceed with caution. If several of these behaviors or issues are present, a serious domestic violence case exists which requires prompt charging (see Appendix A-15 for Domestic Violence Screen for First Responders).

When charges are not filed or an indictment is not returned, documentation of this decision should be retained by the prosecutor's office. When appropriate, the matter should be referred to an agency for follow-up and contact with the victim (e.g. law enforcement, Department for Community Based Services, domestic violence shelters). If previously identified evidentiary problems are resolved, the case should be returned promptly to the prosecutor to reassess whether it should be charged or presented to the grand jury.

## **B. Management of Domestic and Dating Violence Cases**

The complexity and dynamics of domestic violence cases require special attention and training to ensure successful prosecution.

### **1. Designation of Specific Prosecutor**

The prosecutor's office should designate a specific prosecutor or unit to prosecute domestic violence cases and use vertical prosecution, when possible. Options available to effectuate vertical prosecution include the Commonwealth's Attorney's Office assisting the County Attorney in the district court phase of a felony, or the County Attorney's Office assisting the Commonwealth's Attorney in the circuit court trial of a felony. Designated individuals in the prosecutor's office should also be responsible for reviewing all agency reports, for example, Department for Community

Based Services and law enforcement, involving incidents of domestic violence. They should develop an expertise in dealing with domestic violence in an effort to more accurately evaluate and effectively prosecute these cases. Specialized training for **all staff** in the prosecutor's office regarding the complexities of domestic violence crime will facilitate communication and increase the victim's trust in the prosecutor and participation in the prosecution.

## **2. Priority for Domestic Violence Cases**

Prosecutors should give priority to domestic violence cases, expediting them through the criminal justice system due to the inherent danger to the victim and the psychological dynamics of domestic violence, which, over time, can cause a deterioration of evidence. In most cases, the prosecutor should seek the earliest possible trial date and object to the defendant's motions for continuance. Offenders often utilize litigation abuse and should not be permitted to do so.

## **3. Pursue Additional Charges During Prosecution of Original Charges**

One of the main reasons victims are reluctant to initiate domestic violence proceedings is their fear of retaliation by the perpetrator against them or their family members. Therefore, the prosecutor must be willing to pursue additional charges against the perpetrator if he or his attorney attempts to harass, threaten, injure, or intimidate the victim or other witnesses during the pendency of the original charges.

Possible charges to consider may be under KRS Chapter 524 such as Intimidating a Participant in the Legal Process or Tampering with a Witness or under KRS 431.064 as a Violation of a Condition of Pretrial Release. When prosecuting additional charges, the prosecutor should consider higher bonds and the availability of consecutive sentences since these offenses are committed while the perpetrator is on bond for the original charges. Filing motions to revoke bond or asking the court to increase the amount are other options when the offender violates the court's bond conditions.

Additionally, given that there is most often a history of coercive control being exerted by the perpetrator against the victim, including violence of varying types, in most domestic violence cases that make it into court, the prosecutor should make a thorough inquiry into the dynamics of the relationship, including specifically any forms of violence, coercion, or

threats. In addition to prior convictions remember to consider unreported and uncharged conduct. Such criminal conduct could; (1) be the basis of additional charges, if within the statute of limitations; (2) be used under KRE 404(b), “other bad acts” (prior or subsequent to charged offense) to show intent, lack of mistake, motive, identity, etc., or (3) be the basis for a Stalking First Degree or Stalking Second Degree charge when the prior acts are used to satisfy the stalking element of “two or more acts” or to show the victim’s state of mind at the time of the stalking charge.<sup>28</sup>

The prosecutor should ensure victims are aware of their right to petition for an Emergency Protective Order (EPO), Domestic Violence Order (DVO), or Interpersonal Protective Order (IPO) and make the appropriate referral to professionals who can assist them in that process.

Criminal prosecution is not a substitute for civil proceedings to obtain a protective order. The fact that a victim of a crime has a protective order against the defendant does not preclude a criminal prosecution.

Protective orders not only provide an additional measure of protection but can possibly result in additional charges if violated.<sup>29</sup> In addition, Domestic Violence Orders and Interpersonal Protective Orders may be issued for up to three or 10 years, depending on whether the order is under KRS Chapters 403, 456, 508<sup>30</sup>, or 510<sup>31</sup>. As a result, the protection provided by these orders may be longer than the jail sentence, period of probation, or conditional discharge for a criminal conviction. In certain high-risk cases,

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<sup>28</sup>See, *Smith v. Commonwealth*, 904 S.W.2d 220 (Ky. 1995) [introduction of prior acts of physical abuse and evidence that victim had suffered unwitnessed physical abuse]; distinguished by *Bishop v. Commonwealth* 2009 WL 424989 (unpublished opinion); *McCarthy v. Commonwealth*, 867 S.W.2d 469 (Ky. 1994) (overruled on other grounds *Lawson v. Commonwealth*, 53 S.W.2d 534 (Ky. 2001) [introduction of both the history of EPOs and pending EPO]; *Matthews v. Commonwealth*, 709 S.W.2d 414 (Ky. 1986), cert. denied 107 S.Ct. 245, 479 U.S. 871, 93 L.Ed.2d 170 [relevant pattern of conduct]; *Todd v. Commonwealth*, 716 S.W.2d 242 (Ky. 1986) [“state of feeling” between the parties to establish motive]; *Driver v. Commonwealth*, 361 S. W. 3d 877 (Ky. 2012) [evidence of defendant's prior assaultive behavior toward victim was admissible to show the absence of accident or mistake].

<sup>29</sup> While a violation could amount to contempt or a criminal offense, both cannot be pursued. KRS 403.763(1) states:

Violation of the terms or conditions of an order of protection after the person has been served or given notice of the order shall constitute contempt of court and a criminal offense under this section. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.

<sup>30</sup> KRS 508.155 (stalking).

<sup>31</sup> KRS 510.037 (sexual assault IPO).



seeking court-ordered protection could increase the risk of fatality. A trained professional could assist the victim in assessing future risk.

#### **4. Kentucky Revised Statutes Applicable to Domestic Violence Cases**

- **KRS 237.110 relating to firearms.**

Prohibition to be licensed to carry concealed firearms or other deadly weapons if a person has been convicted of either Assault Fourth Degree or Terroristic Threatening Third Degree within the three years immediately preceding the date the application is submitted. Prohibition may be waived by the Commissioner of the Department of the Kentucky State Police upon “good cause shown” and a “determination that the applicant is not a danger and that a waiver would not violate federal law”

- **KRS 508.032 relating to the subsequent assault fourth degree.**

If a person commits a third or subsequent offense of Assault Fourth Degree (KRS 508.030) within a five-year period, and the relationship between the defendant and each victim meets the definition of family member or member of an unmarried couple as defined in KRS Chapter 403, the defendant may be convicted of a Class D felony. The victim of each offense need not be the same person. The five-year period on the prior offenses is measured by the date of the offense, not the date of conviction.

- **KRS 508.010 relating to assault in the first degree.**

First degree assault is a Class B felony. This statute criminalizes the intentional “serious physical injury” of a person by a “deadly weapon” or “dangerous instrument” or “under circumstances manifesting extreme indifference to the value of human life he wantonly engages in conduct which creates a grave risk of death to another and thereby causes serious physical injury to another person.”

- **KRS 508.020 relating to assault in the second degree.**

Second degree assault is a Class C felony. This statute criminalizes the intentional “serious physical injury” of another; or the intentional physical injury by means of a “deadly weapon” or “dangerous instrument”; or the wanton “serious physical injury” caused by a “deadly weapon” or “dangerous instrument.”

- **KRS 508.170 and 508.175 relating to strangulation.**

Both statutes criminalize an individual impeding the “normal breathing or circulation of the blood of another person” by either applying pressure to the throat or neck or by blocking the nose of the

victim. First-Degree Strangulation includes an “intentional” mental state and Second-Degree Strangulation contemplates a “wanton” mental state.

- **KRS 524.040 relating to intimidating a participant in the legal process.**

Intimidating is a Class D felony. This statute criminalizes harassing communications, use of physical force or threats aimed to influence or impact a person believed to be a participant in the legal process. In order for a person to be convicted, the act against a participant, or the immediate family of a participant, “shall be related to the performance of a duty or role played by the participant in the legal process.”

- **KRS 524.050 relating to tampering with a witness.**

Tampering is a Class D felony. This statute criminalizes inducing or attempting to induce a witness to avoid appearing or testifying with the intent to influence the outcome or knowingly making a false statement or engaging in any fraud or deceit with the intent to affect the witness’ testimony.

- **KRS 524.055 relating to retaliating against a participant in the legal process.**

Retaliating is a Class D felony. This statute criminalizes engaging or threatening to engage in conduct causing or intending to cause bodily injury or damage to property of a participant because that person participated in a legal proceeding.

- **KRS 525.070 relating to harassment.**

The penalty for harassment increases from a violation to a Class B misdemeanor if there is striking, shoving, kicking or other physical contact.

- **KRS 520.095 relating to fleeing or evading police.**

After July 15, 2024, the law makes it a Class C felony to flee or evade police in situations where the person is fleeing immediately after committing an act of domestic violence as defined in KRS 403.720. Additionally, the defendant shall not be released on probation, shock probation, conditional discharge, or parole until he has served at least fifty percent (50%) of the sentence imposed.

- **KRS 532.025(2) (a) (8) relating to aggravating factors in death penalty cases.**

In cases for which the death penalty may be authorized, the judge or jury determining the sentence shall consider as an aggravating circumstance whether the offender murdered the victim when an emergency protective order or a domestic violence order was in

effect, or when any other order designed to protect the victim from the offender, such as an order issued as a condition of a bond, conditional release, probation, parole, or pretrial diversion, was in effect.

- **KRS 431.064 relating to pretrial release.**

The court or agency having authority to make a decision concerning pretrial release of a person arrested for a violation of KRS Chapters 508 or 510, or charged with a crime involving a violation of an order of protection as defined in KRS 403.720 or 456.010 is required to review the facts of the arrest and detention of the person and determine whether the person is a threat to the alleged victim or other family or household member and whether he or she is reasonably likely to appear in court. The statute also provides a list of conditions that may be imposed, provides that the victim is entitled to a free certified copy of the conditions of release, and makes a violation of an order issued pursuant to this statute a Class A misdemeanor. Pretrial release conditions must be entered into the computer system maintained by the Administrative Office of the Courts within 24 hours of the filing of the order of release, excluding weekends and holidays, and the information must be accessible to any agency designated a terminal agency for the Law Information Network of Kentucky.

- **KRS 403.7521 relating to foreign (out of state) protective orders.**

This law establishes a process for the full faith and credit of foreign domestic violence protective orders.

- **KRS 403.751 relating to entry of orders.**

All forms, affidavits, and orders of protection issued or filed pursuant to KRS 403.715 to 403.785 which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts after consultation with the Justice and Public Safety Cabinet.

- **KRS 403.735 relating to renewal of emergency protective orders when the respondent has not been served.**

This law provides that when a respondent has not been served with notice of an EPO, the EPO shall remain in place and a new summons with a new date and time for a hearing shall be set within 14 days of the original hearing date. This process may continue for up to 6 months. After that time the order is rescinded without prejudice, but the petitioner may file a new petition before the first order is rescinded.

- **Family Court Rules of Procedure and Practice (FCRPP) 10-12. KRS 403.725; KRS 456.030** relating to domestic violence case procedures in family court and criminal court.
- **KRS 403.730- relating to the use of mediation.**  
 Parties may not be ordered or referred to mediation unless requested by the petitioner, and the court finds that:
  - (a) The petitioner's request is voluntary and not the result of coercion; and
  - (b) Mediation is a realistic and viable alternative or adjunct to the issuance of an order sought by the petitioner.
- **KRS 196.280 relating to confinement release notification.**  
 This law established the nation's first statewide computerized victim notification system referred to as Victim Information and Notification Every day, "V.I.N.E". The Department of Corrections has created this system, and jails and detention facilities are required to provide information to the Department prior to the release of an incarcerated person. In turn, the Department of Corrections is to provide to members of the public who request notification, notification of the release of an incarcerated person from a penitentiary, facility for youthful offender, county jail or regional jail.
- **KRS 237.095 relating to persons barred by federal law from purchase of firearms; duty to notify courts and law enforcement agencies of purchase or attempt to purchase; protocol for providing notice; duty to notify petitioner; immunity from liability.**
  - (1) Upon receiving notice that a person barred from purchasing a firearm under 18 U.S.C. sec. 922(g)(8) has purchased or attempted to purchase a firearm, any agency with the responsibility of entering domestic violence records into the Law Information Network of Kentucky shall notify:
    - (a) The court in the jurisdiction where the domestic violence order was issued under KRS 403.750; and
    - (b) The law enforcement agencies, as designated by the Department of Kentucky State Police, that have jurisdiction in the county where the domestic violence order was issued and in the county of the victim's residence if different from the county where the domestic violence order was issued.
  - (2) The Department of Kentucky State Police shall develop a protocol for providing notice to the required court and law enforcement agencies under subsection (1) of this section. Within the protocol, the

Department of Kentucky State Police shall designate which local law enforcement agencies are to receive notice in each county. A minimum of one (1) law enforcement agency shall be designated in each county.

(3) When a designated law enforcement agency for the county where the domestic violence order was issued or where the victim resides receives notice under subsection (1) (b) of this section, that agency shall make reasonable efforts to ensure that the petitioner who obtained the domestic violence order is notified that the respondent has purchased or attempted to purchase a firearm.

(4) Any person carrying out responsibilities under this section shall be immune from civil liability for good faith conduct in carrying out those responsibilities.

(5) This section shall apply only to domestic violence orders issued, or reissued, on or after July 14, 2000, through July 15, 2002.

- **KRS 237.100 relating to notification of purchase of firearm or attempt to purchase firearm; immunity.**

(1) Upon receipt of notice that a person barred from purchasing a firearm under 18 U.S.C. sec. 922(g) (8) has purchased or attempted to purchase a firearm, the Justice and Public Safety Cabinet shall make a reasonable effort to provide notice to the petitioner who obtained the domestic violence order issued under KRS 403.740 that the respondent to the order has attempted to purchase a firearm. The Justice and Public Safety Cabinet may contract with a private entity in order to provide notification.

(2) The notification shall be limited to a petitioner who has:

(a) Received a domestic violence protective order issued or reissued under KRS 403.740 on or after July 15, 2002;

(b) Received a domestic violence protective order that involves a respondent who is prohibited by 18 U.S.C. sec. 922(g) (8) from possessing a firearm; and

(c) Provided the Justice and Public Safety Cabinet or the entity with a request for notification.

(3) Any person carrying out responsibilities under this section shall be immune from civil liability for good faith conduct in carrying out those responsibilities. Nothing in this subsection shall limit liability for negligence.

- **KRS 421.575 relating to victim advocates.**

This law permits a victim advocate, upon request of the victim, to accompany the victim in all court proceedings to provide moral and

emotional support. The victim advocate is permitted to confer orally and in writing with the victim in a reasonable manner but is specifically prohibited from providing legal advice.

- **KRS 421.350 relating to child testimony in sexual assault prosecutions.**

This law permits the testimony of a child who is 12 years of age or younger (at the time of the crime) who witnesses, as well as one who is a victim of, one of the listed offenses; (1) to testify outside of the courtroom and viewed by the court and jury by closed circuit television, or (2) to have his or her testimony videotaped before trial to be shown to the court and jury during the trial. Before either of the procedures may be used the court must find that there is a compelling need for the use of these procedures.

- **KRS 508.140 and 508.150 relating to stalking.**

These laws define the crime of stalking. Under KRS 508.130, “protective order” for purposes of KRS 508.140 and 508.150 means:

(a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;

(b) A foreign protective order, as defined in KRS 403.720 and 456.010;

(c) An order issued under KRS 431.064;

(d) A restraining order issued in accordance with KRS 508.155;

(e) An order of protection as defined in KRS 403.720 and 456.010; and

(f) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

- **KRS 403.761 relating to failure to wear a global positioning monitoring system monitoring device.**

This law makes it a Class D felony to fail to wear, remove, or tamper with or destroy a GPS monitoring system monitoring device which the individual has been ordered to wear as a condition of a DVO unless the individual has written permission from a court.

**KRS 510.037 relating to interpersonal protective order following sexual assault conviction.** This provision allows for a ten-year IPO for the victim after the defendant is convicted of certain enumerated crimes under Chapter 510.

- **KRS 508.155 relating to interpersonal protective order following stalking conviction.**

This provision allows for a ten-year IPO for the victim after the defendant is convicted of stalking under KRS 508.140 or 508.150.

- **KRS Chapter 511.085 relating to domestic violence shelter trespass.**

A person is guilty of domestic violence shelter trespass when:

(a) The person enters the buildings or premises of a domestic violence shelter that the person knows or should know is a domestic violence shelter or which is clearly marked on the building or premises as being a domestic violence shelter; and

(b) At the time of the entering, the person is the subject of an order of protection as defined in KRS 403.720 and 456.010.

Domestic violence shelter trespass is a Class A misdemeanor.

- **KRS 431.005(2) relating to a peace officer's authority to arrest without a warrant.**

A peace officer may arrest an offender without a warrant so long as the officer has probable cause to believe the offender committed an act of domestic violence.

- KRS 503.050(3) relating to admissible evidence presented by the defendant to establish the existence of a prior act of domestic violence, as defined in [KRS 403.720](#), by the person against whom the defendant is charged with employing physical force.

## **5. Double Jeopardy and Domestic Violence Cases**

### ***Historical Perspective***

In 1990, in the case of *Grady v. Corbin*, 495 U.S. 508, 110 S.Ct. 2084, 109 L.Ed.2d 548 (1990), the United States Supreme Court expanded the long-standing “same elements” analysis of claims of double jeopardy that was set out in the case of *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed.306 (1932). In *Grady*, the Court held that double jeopardy occurs when the “same conduct” constituting one offense is used to prove an essential element of the other.

Only a few months after the decision in *Grady*, the Kentucky Supreme Court rendered opinions in *Walden v. Commonwealth*, 805 S.W.2d 102 (Ky. 1991) and *Ingram v. Commonwealth*, 801 S.W.2d 321 (Ky. 1990) expanding the *Blockburger* test for purposes of double jeopardy analysis under Section 13 of the Kentucky Constitution. *Walden* and *Ingram* adopted “same conduct”

and “single impulse” tests for double jeopardy analysis under the Kentucky Constitution.

After the decisions in *Grady*, *Walden* and *Ingram*, it was unclear in Kentucky whether a person who violates an order of protection (e.g. EPO, DVO, restraining order) and is held in criminal contempt for that conduct could also be tried for violations of Kentucky’s criminal laws which occurred during the same course of conduct upon which the finding of criminal contempt was based. Victims of domestic violence often need the protection offered by the criminal contempt proceeding which can result in a more immediate incarceration of the defendant and a “cooling off” period. However, until this issue was recently addressed by the Kentucky Supreme Court, victims were often forced to forego the option of criminal contempt due to the fact that prosecution of the criminal charges might be barred. Prosecutors, too, were put in a difficult situation since a decision by a victim to have a perpetrator held in contempt in a civil proceeding, to which the Commonwealth was not a party, had the potential to bar prosecution of the perpetrator on serious criminal charges.

However, with the rendition of opinions in the cases of *Commonwealth v. Burge*, *Herriford v. Commonwealth*, and *Commonwealth v. Effinger* 947 S.W.2d 805 (Ky. 1996) the law on this issue has been clarified. The Kentucky Supreme Court held that the subsequent prosecution of felony charges was not barred by criminal contempt proceedings. In reaching its conclusion, the Court held that criminal contempt is a crime for double jeopardy purposes, thereby requiring application of double jeopardy analysis to the facts of the cases before the Court. The Court returned to the traditional test set out in *Blockburger* as the **sole** test for double jeopardy analysis as the United States Supreme Court had done in *United States v. Dixon*, 509 U.S. 688, 113 S.Ct. 2894, 125 L.Ed.2d 556 (1993).

Applying the *Blockburger* test, the Court reasoned that in order to prove contempt there must be proof that the defendant had knowledge that a valid court order prohibiting the conduct was in effect.<sup>32</sup> Under this analysis, a finding of contempt for violation of a protection order will seldom, if ever, bar a subsequent prosecution on criminal charges arising out of the same course of conduct.

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<sup>32</sup>The United States Supreme Court decision in *Dixon*, *supra*, left this issue unclear.



In reaching its holding, the Kentucky Supreme court specifically overruled *Walden* and *Ingram* and a number of other cases that were predicated on the “same conduct” or “single impulse” tests. The Court stated “we now depart from the ‘same conduct’ and ‘single impulse’ tests” and “declare that double jeopardy issues arising out of multiple prosecutions henceforth will be analyzed in accordance with the principles set forth in *Blockburger v. United States*, *supra*, and KRS 505.020. Thus, we return to the *Blockburger* analysis.” *Burge*, at 811. See also, *Commonwealth v. McCombs*, 304 S.W. 3d 676 (Ky. 2009), *Commonwealth v. Bailey*, 970 S.W.2d 818 (Ky. App. 1998), and *Dixon v. Commonwealth*, 263 S.W.3d 583 (Ky. 2008).

#### **6. Violation of Protective Order or Interpersonal Violence Order**

KRS 403.763 and its counterpart KRS 456.180 specifically state that the violation of the terms or conditions of an order of protection (after service and notice to the Respondent) shall constitute a contempt of Court AND a criminal offense under these sections. However, both sections also state that once a criminal or contempt proceeding has been initiated the other shall not be undertaken. In other words, although a violation of a protective order qualifies as both contempt and a criminal offense, a prosecutor cannot proceed with a violation of protective order charge in criminal court if the respondent has already been held in contempt. Additionally, these statutes specifically state that nothing contained within them shall preclude the Commonwealth from prosecuting the Respondent for criminal offenses other than the violation of an order of protection.

#### **C. Disposition of Domestic and Dating Violence Cases**

The appropriate disposition of a domestic violence case plays a critical role in alleviating the conditions which would otherwise allow the violence to continue and escalate. The adjudication of criminal charges defuses the perpetrator’s minimization, denial, and externalization by holding him responsible for the abusive behavior, with the goal of changing that behavior to prevent future violence. A disposition which includes clear consequences sends a powerful message to both the victim and the perpetrator that violence will not be tolerated and will be treated as a serious crime.

When the prosecutor makes a clear statement that the acts of violence were committed against the “peace and dignity of the Commonwealth,” it becomes apparent that it is the Commonwealth, not the victim, that decides whether or

not to pursue criminal charges.<sup>33</sup> At this point, the perpetrator's control over the victim is severely weakened. As a result, the perpetrator is forced to realize that coercing the victim to request a dismissal or deny the incident no longer provides him or her an effective means of avoiding criminal sanctions for his or her conduct. Further, the imposition of negative consequences on the perpetrator will counteract the belief that violence is an effective and acceptable means of maintaining such power and control. The prosecutor should **always** absorb the responsibility for the charges, relieving the perceived blame the perpetrator attributes to the victim.

## 1. Evidence-Based Prosecution

An evidence-based prosecution policy should be adopted by all prosecutors' offices within the Commonwealth. This policy recognizes the dynamics of the crime of domestic violence by not allowing the victim's level of prosecutorial participation to dictate whether a perpetrator is punished for criminal conduct.

When a victim appears for a case conferencing in a domestic violence case, she may be experiencing continued coercive control by the perpetrator, who may no longer be attempting to control the relationship by violence but is doing so in implicit, nonphysical ways. This often includes apologies, gifts, promises to attend counseling, and discovery of religion. If these attempts at reconciliation are unsuccessful, the perpetrator will often resort to threats, crying, begging, and even threatening to take away the children or suspend child support.

Recognizing the ploys of manipulation, the prosecutor should not be discouraged if the victim attempts to minimize the perpetrator's accountability for the criminal offense. By allowing the victim to make these prosecutorial decisions, the Commonwealth rewards perpetrators who are successful in the manipulation of their victim. The effect of disposing of a case according to the victim's wishes reinforces the perpetrator's conduct, giving the perpetrator ultimate control over the disposition of the case.

Instead of focusing on the desires of the victim in deciding whether to prosecute domestic violence cases, the prosecutor should focus on the conduct of the perpetrator and make a legal determination regarding the criminality of the perpetrator's conduct. This procedure will alleviate the

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<sup>33</sup> Kentucky indictments contain the language "against the peace and dignity" of the Commonwealth. See *Ingram v. Commonwealth*, 427 S.W.2d 815 (1968).

pressures applied to victims once the perpetrator realizes that the victim does not control the prosecutor's decision-making process. Building a case without the victim, if possible, is preferable, rather than dismissing a case.

Due to the dynamics of domestic violence, victims may become reluctant or refuse to testify. Often victims recant their prior statements to law enforcement officers, victim service providers or prosecutors. As a result, it may be necessary for the prosecutor to use additional evidence in a domestic violence trial.

A domestic violence case should not be dismissed solely because the victim has made a request that the charges be dismissed. Likewise, a domestic violence case should not be dismissed due to a heavy caseload, or availability of a civil remedy or settlement. Absent a clear determination by an experienced prosecutor that insufficient evidence exists to go forward, the prosecutor should be committed to prosecuting the domestic violence case to its appropriate conclusion. As always, safety of the victim and community should be incorporated into all decisions.

## **2. Pretrial Release and Conditions of Release**

The prosecutor shall consider the safety of the victim and the dynamics of domestic violence when recommending a bond in domestic violence cases. Often the pretrial detainment of the defendant allows the victim to explore available resources and options which the victim could not otherwise explore while under the defendant's influence and pressure. Pre-trial officers are instructed to advise the court if the case involves allegations of domestic violence.

Pretrial release of the defendant should include *specific* non-financial conditions *in writing* and signed by the defendant pursuant to RCr 4.14. These conditions may include an order prohibiting the defendant from contacting the victim and victim's family. This order should define "no contact" in detail to prevent the defendant's presence within a specific proximity of the victim's person, family, and residence. The order should also prevent contact by telephone, mail, messenger, e-mail and through third persons acting on behalf of the defendant.

- ***Mutual No-Contact Order. (KRS 403.745(4) and KRS 456.070(4)***  
Mutual "no-contact" orders should not be requested and should be opposed. These orders are inappropriate for multiple reasons: First, the criminal court lacks jurisdiction over the victim because the victim

is not a party to the criminal action. Second, mutual orders create enforcement problems. For instance, the defendant may harass the victim, but tell law enforcement the victim initiated the contact. In this scenario, prosecutors should remember that it is the defendant who is subject to the conditions of bond.

- ***Victims' Rights to Written Conditions of Release. (KRS 431.064)***

KRS 431.064, relating to pretrial release of a person charged with a criminal offense under KRS Chapter 508 (assaults), KRS Chapter 510 (sex offenses) or the criminal offense of violating an Order of Protection under 403.720 (DVO) and 456.010 (IPO), sets out specific conditions of release which may be imposed, provides for a written order of conditions, and mandates a **free certified copy** of the conditions, upon request, be provided to the victim. The court and the prosecutor should ensure that the victim is informed of the victim's right to a certified copy of release conditions and should encourage the victim to request a copy. Such simple advice could later save the victim's life. Should an act violating a condition occur during the hours when the office of the clerk holding the bond papers is closed or the responding law enforcement officer is unable to verify the conditions through pretrial services or LINK, the victim's certified copy of the conditions of release will be sufficient to support an arrest. Additionally, violation of any condition of an order issued under KRS 431.064 is a Class A misdemeanor.

- ***Arrest for Violation of Condition of Release. (KRS 431.005)***

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

- ***Victim's Right to Verbal Notice of Release: Victim Information and Notification Everyday (V.I.N.E.). (KRS 196.280)***

The victim should be advised of his or her right to register with the V.I.N.E. system to be notified upon the release of the defendant from incarceration.

### **3. Case Conferencing Among Agencies**

The prosecutor should organize case conferencing to encourage review and exchange of information in domestic violence cases. Case

conferencing benefits from the collaboration of different perspectives: those of law enforcement, prosecution and community-based victim advocates, social workers, mental health treatment providers and your local domestic violence shelter. A multidisciplinary approach to conferencing child sexual abuse cases is proving successful throughout the Commonwealth. While an organized meeting may prove challenging, it is vital for victim safety and offender accountability that each multi-disciplinary team member share information.

After consultation with the victim and the multi-disciplinary team, the prosecutor will determine if the case will proceed to trial, be plea bargained or otherwise resolved. Consider all relevant factors when determining the appropriate case resolution including the impact testifying may have on the victim, the likely outcome at trial, and the enhancement of penalty available under KRS 508.032 for a third or subsequent offense of assault fourth degree domestic violence (KRS 508.030) within five years. The prosecutor is mandated under 421.500(6) to communicate these decisions and any position regarding probation of the offender to the victim.

Continued trauma-informed and victim-centered communication with the victim through the assistance of a victim advocate increases rapport with and participation by the victim.

Case conferencing can be particularly effective in complex or “revolving door” types of domestic violence cases where there is a history within the system by developing a deeper understanding of the dynamics of the abuse and coercive control specific to each particular case.

#### **4. Conflict of Interest**

The prosecutor should evaluate each domestic violence case, as any other case would be evaluated, for any potential conflict of interest or the appearance of a conflict of interest. If the prosecutor has personal ties or has represented the perpetrator in any civil action or other legal action through the private practice of law, that prosecutor should not be involved in screening or prosecution of that case. The Kentucky Bar Association has recommended that the prosecutor also turn over the private action to another attorney when these circumstances exist.<sup>34</sup> KBA Ethics Opinion E-415 specifically states that a part-time prosecutor may not represent a respondent in a matter involving a civil domestic violence order.

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<sup>34</sup>Attorney General’s Task Force on Domestic Violence Crime, October, 1991.

Additionally, the prosecutor should not attempt to influence or affect the outcome of the domestic violence case in the event a prosecutor in that office subsequently handles the criminal case.

## 5. Mediation In Domestic and Dating Violence Cases

The prosecutor should not agree to mediate domestic violence cases prior to charging, because the perpetrator's appearance in the judicial process is an important step toward recognition and reform of his criminal behavior. Further, mediation of domestic violence cases may foster archaic attitudes that regard violence as family matters not worthy of the judicial system. The generic definition of "mediation" is an attempt to resolve a legal dispute through a third party neutral and come to a mutual agreement.<sup>35</sup> This makes mediation inappropriate for cases involving interpersonal violence because mediation presupposes equal power between the parties. In dating and domestic violence relationships, the abuser enjoys a power imbalance.

KRS 403.730 and KRS 456.040 provide that if the court finds that there is domestic violence and abuse, the court is not allowed to order mediation unless the victim requests it, and the court finds that the request is voluntary and uncoerced, and that mediation is a viable alternative to or adjunct to the issuance of a protective order.

KRS 403.745 and KRS 456.070(3) provide that a court which enters an order of protection may direct either or both parties to receive counseling but **shall not order** or refer the parties to participate in **mediation, or conciliation, or counseling** prior to or as a condition of issuing a protective Order and for resolution of the issues alleged in the petition filed pursuant to KRS 403.750 to 403.785 or 456.010 through 456.180.

## 6. Alternative Sentencing Policy

In certain cases, probation or formal court-approved diversion may be appropriate. Alternative sentencing should never be considered merely because of the relationship of the perpetrator to the victim. Before agreeing to alternative sentencing, the prosecutor should fully consider the dynamics of domestic violence and the need to hold the batterer criminally accountable.

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<sup>35</sup> See Legal Dictionary.com, <https://dictionary.law.com/Default.aspx?selected=1233#:~:text=the%20attempt%20to%20settle%20a,agree%20on%20a%20fair%20result.&text=However%2C%20mediation%20does%20not%20always%20result%20in%20a%20s%20ettlement.> (last visited June 30, 2020).

When the injuries are severe, the perpetrator has a prior conviction for a violent offense, children were present during the violence, the victim was pregnant or the victim appears to remain in danger, alternative sentencing is not appropriate. Restitution and assessment for court-ordered counseling for the perpetrator by an approved provider should **always** be a condition of an alternative sentence.

KRS 533.260 & 533.262 requires that felony pretrial diversion programs must be authorized by the Supreme Court. The statutes set out the elements each program must contain, the duties of the Commonwealth's Attorney when considering an application for pretrial diversion, requirements for payment of restitution, consequences of failure to complete the provision of a diversion agreement and the effects of successful completion of the diversion agreement. See KRS 533.015 - 533.262

#### **D. Mandatory Domestic Violence Training for Criminal Justice Professionals**

The law requires key professionals, including domestic violence center staff, social workers, judges, prosecutors, victim advocates, medical professionals, and court clerks to receive training on domestic violence. The Justice Cabinet, the Attorney General's Office, the Administrative Office of the Courts, and the Cabinet for Families and Children are required by the law to develop appropriate training curricula for the professions under their auspices.

##### **1. Prosecutors**

**KRS 15.718.** Before handling domestic violence cases, prosecutors should receive specialized training in working with domestic violence victims and prosecuting these cases. KRS 15.718 requires the Office of the Attorney General to provide initial training courses and, at least once every two (2) years, continuing education courses for Commonwealth's attorneys and county attorneys and their staffs concerning:

- (a) The dynamics of domestic violence, child physical and sexual abuse, rape, effects of crime on adult and child victims, legal remedies for protection, lethality and risk issues, profiles of offenders, model protocols for addressing domestic violence, child abuse, rape, available community resources and victims' services, and reporting requirements; and
- (b) The appropriate response to victims of human trafficking, including but not limited to screening for victims of human trafficking, federal and state legislation on human trafficking, appropriate services and referrals for victims of human trafficking, working with interpreters, and agency protocol for handling child trafficking cases.

Per the statute:

- The training shall be developed in consultation with prosecutors, victim's services, victim advocacy, and mental health professionals with an expertise in domestic violence, child abuse, human trafficking, and rape.
- Each Commonwealth's Attorney, assistant Commonwealth's Attorney, county attorney, and assistant county attorney shall successfully complete the training.

## **2. Victim Advocates**

**KRS 421.570** sets forth training requirements for all victim advocates. For the purposes of the statute and KRS 421.575, "victim advocate" means an individual at least eighteen (18) years of age and of good moral character, who is employed by, or serves as a volunteer for, a public or private agency, organization, or official to counsel and assist crime victims as defined in KRS 421.500 (The Crime Victims Bill of Rights), and includes a victim advocate employed by a Commonwealth's Attorney pursuant to KRS 15.760 and a victim advocate employed by a County Attorney pursuant to KRS 69.350.<sup>36</sup>

KRS 421.570(2) provides that each victim advocate shall complete training which shall include information concerning the difference between advocacy and the practice of law, and the appropriate intervention with crime victims, including victims of domestic violence, child physical and sexual abuse, human trafficking and rape. Victim advocates employed by a Commonwealth's or County Attorney must also receive training related to the appropriate intervention with victims of elder abuse, neglect or exploitation or other crimes against the elderly. Commonwealth's Attorneys and County Attorneys must ensure that victim advocates employed by them complete training related to appropriate intervention with crime victims, specifically including victims of domestic violence. See KRS 15.760, 69.350.

## **3. Law Enforcement**

**KRS 15.334(3)** requires the Justice and Public Safety Cabinet to provide training on domestic violence and abuse. All certified peace officers must complete the training at least once every two years.

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<sup>36</sup> KRS 421.570(1).



KRS 15.334(2) requires the Kentucky Law Enforcement Council to establish, by January 1, 2017, a forty (40) hour sexual assault investigation training course. By January 1, 2019, agencies shall have one (1) or more officers trained in this curriculum, as follows:

- Agencies with five (5) or fewer officers shall have at least one (1) officer trained in sexual assault investigation;
- Agencies with more than five (5) officers but fewer than thirty (30) officers shall have at least two (2) officers trained in sexual assault investigation; and
- Agencies with thirty (30) or more officers shall have at least four (4) officers trained in sexual assault investigation.

## **E. Innovative Ideas in Response to Domestic Violence**

Interagency/multidisciplinary approaches to prevention, investigation, and prosecution of domestic violence have proved to be effective in many communities. These approaches include participation on domestic violence coordinating councils, multidisciplinary case review teams, domestic violence fatality review teams, domestic violence high risk response teams, sexual assault response teams and sexual assault interagency councils. In the appendix of this manual are tools to assist you in implementing a Lethality Assessment Program as well as resources to enhance your response to underserved populations including non-English speaking victims or victims with a disability.

## **CHAPTER 2: *The Domestic Violence and Abuse Act***

### **A. Statutory Provisions**

KRS 403.715 through 403.785 sets forth the law as it relates to civil aspects of domestic violence. *(The following statutes became effective January 1, 2016. For Orders in effect prior to January 1, 2016, please refer to the older statutory provisions.)*

#### **1. Legislative Intent of the Act (KRS 403.715)**

KRS 403.715 to 403.785 shall be interpreted to:

- Allow victims to obtain effective, short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible;

- Expand the ability of law enforcement officers to effectively respond to further wrongful conduct so as to prevent future incidents and to provide assistance to the victims;
- Provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probable cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;
- Provide for the collection of data concerning incidents of domestic violence and abuse in order to develop a comprehensive analysis of the numbers and causes of such incidents; and
- Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620.

## **2. Definitions for the Act (KRS 403.720)**

- *“Domestic violence and abuse”* means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;
- *“Family member”* means a spouse, including a former spouse, a grandparent, a grandchild, a parent, an adult sibling, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;
- *“Foreign protective order”* means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was issued on the basis of domestic violence and abuse;
- *“Global positioning monitoring system”* means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;
- *“Member of an unmarried couple”* means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;

- “*Order of protection*” means an emergency protective order or a domestic violence order and includes a foreign protective order;
- “*Sexual assault*” refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under [KRS 530.020](#), or a criminal attempt, conspiracy, facilitation, or solicitation to commit rape, sodomy, sexual abuse, or incest;
- “*Strangulation*” refers to conduct prohibited by KRS 508.170 and 508.175, or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of strangulation; and
- “*Substantial violation*” means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

### 3. Additional Definitions

- “*Physical Injury*” means “substantial physical pain or any impairment of physical condition. KRS 500.080(13);
- “*Emergency Protective Order*” (“EPO”) means an ex parte court order (an order issued at the request of one party without a hearing) issued under the provisions of KRS 403.730 against a family member or a member of an unmarried couple who have been determined to present an immediate and present danger. KRS 403.730;
- “*Domestic Violence Order*” (“DVO”) means a court order issued under the provisions of KRS 403.740 following a hearing against a family member or a member of an unmarried couple where the court has found violence has occurred and is likely to occur again. In Kentucky, a “DVO” is valid for up to three years and may be reissued upon expiration for subsequent periods of up to three years each (the date of expiration should appear on the order);
- “*Mutual Protection Order*” is an order of protection against both the Petitioner and Respondent and may only be issued if both parties have filed separate petitions and the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. KRS 403.745(4). KRS 456.070(4). See *Manning v. Willett*, 221 S.W.3d 394 (Ky. App. 2007).

NOTE: Mutual Protection Orders are discouraged by interpersonal violence professionals in most cases. Mutuality perpetuates the mistaken belief that *both* parties are to blame in abusive relationships,

when in reality, the controlling, abusive partner is the person who needs to cease the abusive behavior.

#### **4. Identifying Victims of Domestic and Dating Violence and Abuse and Making Referrals for Voluntary Services under KRS Chapter 209**

**Note:** The KRS 209A requirement for reporting Spouse Abuse was **repealed** by 17 HB 309. Reporting may be required under KRS Chapter 209 in some cases.

##### **Purpose**

- To identify victims of domestic violence and abuse and dating violence and abuse, to link those victims to services and to provide protective or therapeutic services for those who choose to accept them.
- A victim of domestic or dating violence or abuse who has a mental or physical disability or who cannot carry out the activities of daily living or protect himself or herself without the assistance of others may be served under the provisions of KRS Chapter 209.

##### **Definitions (KRS 209A.020)**

- “*Cabinet*” means the Cabinet for Health and Family Services;
- “*Dating violence and abuse*” has the same meaning as in KRS 456.010;
- “*Domestic violence and abuse*” has the same meaning as in KRS 403.720;
- “*Law enforcement officer*” means a member of a lawfully organized police unit or police force of county, city, or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as a sheriff, sworn deputy sheriff, campus police officer, law enforcement support personnel, public airport authority security officer, other public and federal peace officer responsible for law enforcement, special local peace officer appointed pursuant to KRS 61.360, school resource officer, public school district security officer, and any other enforcement officer as defined by law;
- “*Professional*” means a physician, osteopathic physician, coroner, medical examiner, medical resident, medical intern, chiropractor, nurse, dentist, optometrist, emergency medical technician, paramedic, licensed mental health professional, therapist, cabinet employee, child-care personnel, teacher, school personnel, ordained minister or the

denominational equivalent, victim advocate or any organization or agency employing any of these professionals;

- “*Victim*” means an individual who is or has been abused by a spouse or former spouse or an intimate partner who meets the definition of a member of an unmarried couple as defined in KRS 403.720, or a member of a dating relationship as defined in KRS 456.010;
- “*Victim advocate*” has the same meaning as in KRS 421.570.

#### **Reporting – at the request of the victim**

- Upon the request of a victim, a professional shall report an act of domestic violence and abuse or dating violence and abuse to a law enforcement officer.
- A professional who makes a report under Chapter 209A shall discuss the report with the victim prior to contacting a law enforcement officer.

#### **Reporting – suspected domestic or dating violence or abuse related death**

- A professional **shall report** to a law enforcement officer his or her belief that the death of a victim with whom he or she has had a professional interaction is related to domestic violence and abuse or dating violence and abuse.
- Nothing in KRS Chapter 209A shall relieve a professional of the duty pursuant to KRS 620.030 to report any known or suspected abuse, neglect, or dependency of a child.
- Nothing in KRS Chapter 209A shall relieve a professional of the duty pursuant to KRS 209.030 to report to the cabinet any known or suspected abuse, neglect, or exploitation of a person eighteen (18) years of age or older who because of mental or physical dysfunction is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation or a hazardous or abusive situation without assistance from others.

#### **Law Enforcement Response to Report**

- If a law enforcement officer receives a report of domestic violence and abuse or dating violence and abuse, the officer shall use all reasonable means to provide assistance as required under KRS 403.785 and 456.090.
- A law enforcement officer who responds to a report of domestic violence and abuse or dating violence and abuse shall use the JC-3 form, or its

equivalent replacement, as provided by the Justice and Public Safety Cabinet to document any information or injuries related to the domestic violence and abuse or dating violence and abuse.

- A completed JC-3 form, or its equivalent replacement, shall be kept in the records of the law enforcement officer's agency of employment.
- If the JC-3 form, or its equivalent replacement, includes information that only relates to a victim as defined in Section 4 of this Act, (Section 4 defines victim as individuals meeting the definition of a member of an unmarried couple as defined in KRS 403.720 or a member of a dating relationship as defined in KRS 456.010), the form shall not be forwarded to the cabinet.
- If the JC-3 form, or its equivalent replacement includes information on known or suspected child abuse or neglect or the abuse or neglect of an elderly or disabled adult, the form shall be forwarded to the cabinet.

### **Duty of Professionals to Provide Educational Materials**

If a professional has reasonable cause to believe that a victim with whom he or she has had a professional interaction has experienced domestic violence and abuse or dating violence and abuse, the professional shall provide the victim with educational materials related to domestic violence and abuse or dating violence and abuse, including:

- information about how he or she may access regional domestic violence programs or rape crisis centers; and
- Information about how to access protective orders.

The cabinet designated primary service provider for domestic violence shelter, crisis, and advocacy services in the district in which the provider is located shall make the educational materials available on its website or in print form for professionals to provide to potential victims of domestic violence and abuse or dating violence and abuse. To access educational materials from ZeroV visit: [https://www.zerov.org/krs\\_209a](https://www.zerov.org/krs_209a).

**NOTE:** Professionals, including prosecutors and law enforcement, should never direct a victim to obtain a protection order without understanding all material facts of the case and determination of future lethality. Preferably, the victim should be referred to a victim service provider or experienced and DV-trained attorney to assess safety and determine on a case-by-case basis if a protection order is appropriate.

**Privilege**

Neither the psychotherapist–patient privilege nor the husband-wife privilege shall be a ground for excluding evidence regarding the domestic violence and abuse or dating violence and abuse of an adult or the cause thereof in any judicial proceeding resulting from a report pursuant to KRS Chapter 209A.

**Immunity from Liability**

Any person acting upon reasonable cause in complying with the provisions of KRS Chapter 209A shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed and shall have the same immunity with respect to participation in any judicial proceeding resulting there from.

**Penalty for Failure to Report**

A professional knowingly or wantonly violating the provisions of KRS Chapter 209A shall be guilty of a Class B misdemeanor and penalized in accordance with KRS 532.090. Each violation shall constitute a separate offense.

**B. Filing a Domestic Violence Petition**

Domestic violence proceedings allow all victims of domestic violence to obtain short-term protection against further violence through court protective orders and expanded law enforcement authority to intervene and assist victims. No filing fee or court cost shall be assessed upon the victim for either the filing of domestic violence petition or the service of the petition upon the perpetrator. KRS 403.730 and 403.745(2).

The petition is a request for a hearing on the issue of the alleged abuse. A victim/petitioner who feels in immediate danger may, in the petition, ask the judge to issue an emergency protective order to control the perpetrator/respondent until the hearing is held.

Note: An EPO is the emergency, *ex parte* order that can be granted if the statutory elements exist. The court may also deny the issuance of an EPO, but still set the case for a DVO hearing. This simply means the reviewing judge did not identify a threat of immediate harm but believed that a claim for domestic violence was stated in the complaint (*i.e.* petition).

A legal proceeding started by this petition is a *civil proceeding, not a criminal one*.

A protective order is not a substitute for a criminal prosecution or a divorce proceeding. Criminal prosecution should not be declined solely because the victim has obtained an order of protection. There are many benefits and protections afforded to a victim from a protective order that are not available in a criminal prosecution alone<sup>37</sup>.

## 1. Who Can File a Domestic Violence Petition?

A petition for an Order of Protection may be filed by

- A victim<sup>38</sup> of domestic violence and abuse; or
- An adult on behalf of a victim who is a minor otherwise qualifying for relief under KRS 403.725.

For purposes of a domestic violence petition, “victim” means:

- A “*family member*” means a spouse, including a former spouse, a grandparent, a grandchild, a parent, an adult sibling, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;<sup>39</sup>
- A “*member of an unmarried couple*” means each member of an unmarried couple which allegedly has a child in common, any children of the couple, or a member of an unmarried couple who are living together or have formerly lived together.<sup>40</sup>

All the above listed persons may file and receive protection through issuance of an EPO or DVO in District Court, notwithstanding the existence of or intent to file a divorce or custody action in the Circuit Court by either party. However, when an EPO is sought in District or Circuit Court, the

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<sup>37</sup> These benefits include: protective orders are available 24 hours a day, seven (7) days a week; protective orders are entered into the LINK protective order file and are available to law enforcement officers 24 hours a day; intentionally violating the provisions of a protective order with which the respondent has been served or has been given notice is a Class A misdemeanor; arrest is mandatory when the officer has probable cause to believe that a protective order has been violated and the respondent has been served with or given notice of the order; other states must enforce Kentucky protective orders which meet the requirements of 18 U.S.C. sec. 2265; and state and federal laws place restrictions on the ability of persons, against whom a qualifying protective order has been issued, to ship, transport, or possess weapons and to have a license to carry a concealed deadly weapon.

<sup>38</sup> It is worth noting that “victim” does not specify the “victim” must be an adult. Presumably, the “victim” may be a juvenile.

<sup>39</sup> KRS 403.720(3).

<sup>40</sup> KRS 403.720(6).



person making the petition shall make any pending custody or divorce actions, involving both the petition and the respondent, known to the Court. (KRS 403.750 (2) (a)).

**Note:** A person's right to apply for relief shall not be affected by that person leaving his or her residence to avoid domestic violence and abuse. KRS 403.745(8).

## **2. What Behavior Constitutes Domestic Violence and Abuse?**

*"Domestic violence and abuse"* means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple. KRS 403.720.

## **3. What is the Difference Between an EPO and a DVO?**

**EPO (Emergency Protective Order).** Pursuant to KRS 403.730, an EPO is an ex parte court order issued against a family member or a member of an unmarried couple when a judge determines that the allegations contained in the petition indicates the presence of an immediate and present danger of domestic violence and abuse. Typically, no court hearing occurs with an EPO. A judge can opt to not issue an EPO, but still set the matter for a DVO hearing at a later point in time.

**DVO (Domestic Violence Order).** Pursuant to KRS 403.740, a DVO is a court order issued following a hearing against a family member or a member of an unmarried couple where a judge has found by a preponderance of the evidence that acts of domestic violence and abuse have occurred and may occur again. In other words, after a full due process hearing, this is the resulting order after hearing the evidence.

**Note:** In Kentucky, a domestic violence order shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order. See *Buddenberg v. Buddenburg*, 304 S.W. 3d 717 (Ky.App., 2010). The date of expiration should appear on the Order. (KRS 403.740 (3)).

**Note:** KRS 403.735 (1) provides that, prior to or at a hearing on a petition for an order of protection, the court may obtain the respondent's Kentucky criminal and protective order history and utilize that information to assess

what relief and which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure. Also, if the petitioner or respondent is a minor, the court shall inquire whether the parties attend school in the same school system to assist the court in imposing conditions in the order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.

**Note:** If an EPO is not issued, the court shall note on the petition, for the record, any action taken or denied and the reason for it. KRS 403.730(2)(b).

#### **4. Where, When and How is an Order of Protection to be Filed?**

##### **Where is the petition filed?**

**KRS 403.725(2).** The petition may be filed in the victim's county of residence or a county where the victim has fled to escape domestic violence and abuse.

**KRS 403.725(6) (a).** Jurisdiction over petitions filed under this chapter shall be concurrent between the District Court and Circuit Court, and a petition may be filed by a petitioner in either court, except that a petition shall be filed in a family court if one has been established in the county where petition is filed.

**KRS 403.725(8).** If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules.

**Note:** All petitions requested, completed, and signed by persons seeking protection under this chapter shall be accepted and filed with the Court. KRS 403.725(5).

##### **When may a petition be filed?**

All Kentucky courts are required to provide twenty-four (24) hour access to emergency protective orders.

- **KRS 403.725(6) (b).** The Court of Justice shall provide a protocol for twenty-four (24) hour access to orders of protection in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
- **KRS 403.725(6) (c).** The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.

#### **How is a petition filed?**

The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual specifically authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers, and County or Commonwealth's attorneys.

All petitions requested, completed and signed by persons seeking protection under the Act shall be accepted and filed with the court. KRS 403.725 (5).

Additionally, upon proper filing of a motion, either party may seek to amend an order of protection. KRS 403.745 (5).

**Note:** No costs, fees, or bond shall be assessed against or required of a petitioner for any filing, hearing, service, or order authorized by or required to implement KRS 403.715 to 403.785. KRS 03.745 (2)

**Note:** A court may issue mutual protective orders only if: 1) both parties have filed separate petitions and 2) the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. (If there is probable cause to believe a violation of the order has occurred.) KRS 403.745(4). KRS 456.070(4). See *Manning v. Willett*, 221 S.W.3d 394 (Ky. App. 2007).

**5. When does the protective order become effective and for how long?**

- An emergency protective order and a domestic violence order shall become **effective and binding on the respondent when the respondent is given notice** of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation. KRS 403.745(1).
- An EPO can be effective for up to six (6) months. Once a petition is filed, the court must review the petition immediately. If the court determines domestic violence and abuse exists and there is a presence of an immediate and present danger of domestic violence and abuse, the court shall enter an emergency protective order, and hold an evidentiary hearing within fourteen (14) days from the day the protective order is granted. If the respondent is not present at the hearing, the court shall issue a summons for a new hearing within fourteen (14) days. The court may continue to issue a new summons with a new hearing date every fourteen (14) days for up to six (6) months if the summons is not served upon the perpetrator/respondent. At the end of six (6) months without service the order will be rescinded without prejudice, however the petitioner may, before the expiration of the order, file a petition for a new order. A new six (6) month process will begin at this time. KRS 403.730 and 403.735(2) (b). See *Daugherty v. Telek*, 366 S. W. 3d 463 (Ky. 2012).
- A DVO shall be effective for a period of time as fixed by the court not to exceed three (3) years and may be reissued upon expiration for subsequent periods of up to three (3) years each. See *Wooldridge v. Zimmerer*, 311 S.W.3d 254 (Ky. App. 2010); *Kessler v. Switzer*, 289 S.W.3d 228 (Ky. App. 2009). KRS 403.740(4).

**Note:** The fact that an Order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order. KRS 403.740(4)

**6. What behavior may be prohibited / What relief may be ordered?**

- *EPO--KRS 403.730*: If, upon review of the petition as provided for in KRS 403.730(2) (a), the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order which authorizes the use of relief options set out in KRS 403.740, other than awarding temporary support or counseling.

The EPO may not order or refer the parties to mediation unless requested by the petitioner, and the court finds that the petitioner's request is voluntary and not the result of coercion and mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the petitioner. KRS 403.730.

- *DVO--KRS 403.740*: Following the hearing provided for under KRS 403.730, if the court finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur, the court may:
  - (a) Restrain the adverse party from:
    - Committing further acts of domestic violence and abuse;
    - Any unauthorized contact or communication with the petitioner or other person specified by the court;
    - Approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
    - Going to or within a specified distance of a specifically described residence, school, or place of employment area where such a place is located; and
    - Disposing of or damaging any property of the parties;
  - (b) Direct or prohibit any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse cases, except that the court shall not order the petitioner to take any affirmative action;
  - (c) Direct that either or both of the parties receive counseling services available in the community in domestic violence and abuse cases; and
  - (d) Additionally, if applicable:
    - Direct the adverse party to vacate a residence shared by the parties to the action;

- Utilize the criteria set forth in KRS 403.270, 403.320, and 403.822, to grant temporary custody; and
- Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, to award temporary child support. KRS 403.740.

**Note:** Location Restrictions (KRS 403.740(2))

When imposing a location restriction described in KRS 403.740(1) (a) (4) the court shall:

- Afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded;
- Only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order;
- Specifically describe in the order the locations or areas prohibited to the respondent; and
- Consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm or attempt to harass or harm the petitioner.

**Note:** When temporary child support is granted, the court shall enter an order detailing how the child support is to be paid and collected. The child support ordered may be enforced utilizing the same procedures as any other child support order. KRS 403.740(3).

**Note:** A court shall not require mediation, conciliation, or counseling prior to or as a condition of issuing an order of protection. KRS 403.745(3).

**7. Consequences of Violating an EPO, DVO, or a Foreign Protective Order. (KRS 403.763)**

If a respondent violates the terms of an EPO, DVO or foreign protective order, either one of two proceedings may be brought against him: a criminal charge (“violation of a protective order”) or a proceeding for contempt of court. KRS 403.763.

**State Criminal Charge**

Violation of a protective order. A person commits this crime, which is a Class A misdemeanor, when he or she intentionally violates the provisions of an Order of Protection with which he or she has been served or has been given

notice. KRS 403.763. See *Stinson v. Stinson*, 381 S.W.3d 333 (Ky. App. 2012). A Class A misdemeanor carries a penalty of up to 12 months in jail and a \$500 fine.

Court proceedings for a criminal violation of an order of protection shall follow the rules of venue applicable to criminal cases generally. KRS 403.763(2) (b).

### **Contempt of Court Proceeding**

Violating the provisions of an EPO, DVO or foreign protective order shows contempt for an order of the court, and a proceeding for contempt of court may be brought.

Court proceedings for contempt of court for violation of an order of protection shall be held in the county where the order was issued or filed. KRS 403.763(2) (a).

### **Federal Criminal Charge**

The Violence Against Women Act created federal offenses in cases where an abuser crosses state lines to violate a protection order or injure, harass, or intimidate a spouse or intimate partner. These federal remedies are important tools in cases when movement across state lines makes state prosecution difficult and where state law penalties may not be tough enough. They also offer important benefits to victims, including strengthened restitution provisions and an opportunity to address the court concerning the danger posed by a defendant prior to any pre-trial release.

Additionally, it is a federal crime to possess a firearm if an individual has a protection order against him. 18 U.S.C. § 922(g) (8).

## **C. Processing of Domestic Violence Civil Complaints**

### **1. Duties of the Judge**

#### **Reviewing the Petition (KRS 403.730)**

The judge reviews the petition immediately upon its filing, and, if the petition does describe a domestic violence and abuse situation, the judge proceeds as follows.

### Acting on the Petition

- Petitioner not in imminent danger (KRS 403.730(1)(a))  
The court reviews the petition seeking an order of protection immediately upon its filing.

If the review indicates that *domestic violence and abuse exists*, the court shall summon the parties to an evidentiary hearing not more than fourteen (14) days in the future.

If the review indicates that such a *basis does not exist*, the court may consider an amended petition or dismiss the petition without prejudice.

- Petitioner in danger (KRS 403.730(2)(a))  
If the Judge decides the Petition shows an immediate and present danger of domestic violence and abuse, the court shall, upon proper motion, issue ex parte an emergency protective order. The order may contain some, all, or a combination of the protections that are set forth in KRS 403.740. (Other than awarding temporary support and counseling). This Order expires upon the conclusion of the evidentiary hearing, unless extended or withdrawn by subsequent order of the court.

A copy of the EPO, as well as a copy of the order fixing the date of the hearing, and a copy of the petition are served on the respondent (KRS 403.730(1) (b)).

- A court may *issue mutual protective orders only* if separate petitions have been filed by both parties and the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. KRS 403.745(4).

### Obtaining Information and Review of Documents (KRS 403.735)

Prior to a hearing on the Order of Protection the Court may obtain the Respondent's Kentucky criminal history and protective order history. The court shall review and assess which sanctions may protect against danger to the petitioner or a family member or member of an unmarried couple for whom protection is being sought. The court shall provide a copy of the information to petitioner and respondent or to their counsel. KRS 403.741 (3).



**Referral to County Attorney (KRS 403.745(7) (b))**

In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the county attorney. A court may not withhold or delay relief if the petitioner elects to not contact the county attorney.

**Conducting the Hearing (KRS 403.740)**

At the hearing, the judge hears evidence from both the petitioner and the respondent. If a preponderance of the evidence shows that domestic violence and abuse (1) has occurred, and (2) may again occur, the judge acts to correct the situation by issuing a domestic violence order (DVO).

**Issuance of a Domestic Violence Order**

The DVO may contain some or all of the following restrictions upon the respondent:

1. Committing further acts of domestic violence and abuse.
2. Limiting the contact and scope of contact between the parties.
3. Setting a distance limit to which the Respondent may come around in the proximity of the Petitioner (not to exceed 500 feet).
4. Going to or within a specified distance of a specifically described residence, school, place of employment, or other area.

The judge may also invoke other alternatives. These included any or all of the following:

- Directing or prohibiting any actions to which the Court believes will be of assistance in eliminating future acts of domestic violence or abuse. The court cannot, however, require the petitioner (victim) to any affirmative duty.
- Directing one or both of the parties to counseling.
- Additional remedies (if applicable) including:
  - Directing the respondent to vacate the residence.
  - Granting temporary child custody and child support.

DVOs are in effect for up to three years and may be reissued. Either party may seek to amend a DVO.

**Note:** KRS 403.745 (6) specifically provides that any testimony shall not be admissible in any criminal proceeding involving the same parties, except for purposes of impeachment.

**Note:** It is against best practice to order the petitioner and respondent to couples counseling.

### **Expungement of a Petition (KRS 403.745(10))**

The court in which the petition was heard may for good cause shown order the expungement of the records of the case if:

1. Six (6) months have elapsed since the case was dismissed; and
2. During the six (6) months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person, including an order of protection as defined in KRS 456.010.

### **Amendment of Domestic Violence Order to Require Participation in Global Positioning Monitoring System (KRS 403.761)**

- Gathering Records  
A Court must review an updated history of the Respondent's Kentucky criminal and protective history before it can amend an order of protection to require respondent's participation in a GPS monitoring system. KRS 403.761 (1) (b).
- Amending the Order
  1. Upon proper filing of a motion, either party may seek to amend an Order of protection. KRS 403.745(5).
  2. Upon a petitioner's request and after an evidentiary hearing, a court may amend a domestic violence order to require a respondent to participate in a global positioning monitoring system if:
    - The respondent has committed a substantial violation of a previously entered domestic violence order;
    - The court has reviewed an updated history of the respondent's Kentucky criminal and protective order history; and
    - The court makes a factual determination that the use of a global positioning monitoring system would increase the petitioner's safety. KRS 403.761 (1).

*“Substantial violation”* means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection. KRS 403.720(7).

3. If the Judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is

unavailable or unable to act within a reasonable time, the proceedings may be conducted by any Judge of the county in accordance with Court rules. KRS 403.725 (8).

- GPS Monitoring System Order (KRS 403.761(2))

An order requiring participation in a global positioning monitoring system shall:

- Require the respondent to pay the cost of participation up to the respondent's ability to pay, with the system operator bearing any uncovered costs for indigent respondents;
- State with specificity the locations or areas where the respondent is prohibited from being located or persons with whom the respondent shall have no contact;
- Include the date that the order expires, which shall be no longer than the expiration date of the domestic violence order, although participation may be extended if the underlying order is extended;
- Require the entity that operates the monitoring system to immediately notify the petitioner, the local law enforcement agency named in the order, and the court if a respondent violates the order; and
- Include any other information as the court deems appropriate.

- Payment for Monitoring Program

The Supreme Court may establish by rule a sliding scale of payment responsibility for indigent defendants for use in establishing required payments under KRS 403.761(2). KRS 403.761(4) (a). KRS Violations and Penalties. A respondent who fails to wear, removes, tampers with, or destroys a global positioning monitoring system device in contravention of an order entered under this section shall be guilty of a Class D felony. KRS 403.761(6).

- Termination of the Monitoring Program

An Order requiring participation shall include the date that the order expires, which shall be no longer than the underlying protective order, although the participation may be extended if the underlying order is extended. KRS 403.761(2) (c).

## **2. Duties of the Court Clerk**

### **Deleting Petitioner's Address from Documents to be Served on the Respondent (KRS 403.745(9))**

The court clerk upon order of the Court, shall delete the address of the petitioner and of any minor children from any documents or orders, to be made available to the public or to any person who engaged in the acts complained of in the petition. This protects them from a dangerous respondent who doesn't know their current address.

### **Providing and Verifying (KRS 403.725(4))**

Petitions shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the **circuit clerk** or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers and Commonwealth's or county attorneys.

### **Forwarding Documents to Law Enforcement (KRS 403.751(2))**

The circuit clerk sends a copy of each summons, EPO, DVO or foreign (out-of-state) protective order, within 24 hours of its being filed, to the appropriate law enforcement agency designated to enter domestic violence records into the Law Information Network of Kentucky (LINK) and the agency assigned service. Generally speaking, the "entering agency" is a local law enforcement agency with a LINK terminal; if there is no such agency in the county, the State Police is the entering agency.

## **3. Duties of the County Attorney**

### **Providing and Verifying (KRS 403.725(4))**

The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers and Commonwealth's or County Attorneys.

## **D. Duties of Law Enforcement Officers**

### **1. Providing and Verifying (KRS 403.725 (4))**

The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide

and verify petitions in emergency situations, such as law enforcement officers and Commonwealth's or County Attorneys.

## **2. Preventing Further Abuse at the Scene (KRS 403.785(2))**

Whether or not an arrest has been made, if the officer has reason to suspect that a family member, member of an unmarried couple, or household member has been the victim of domestic violence, the officer shall use all reasonable means necessary to prevent further domestic violence, including but not limited to:

- Remaining at the scene as long as the officer reasonably suspects there is danger to the physical safety of the individuals present without the presence of a law enforcement officer;
- Assisting the victim to obtain medical treatment, including offering to transport, or arranging for the transportation of the victim to the nearest medical treatment facility capable of providing the necessary treatment; and
- Advising the victim immediately of rights and services available including those provided in KRS 421.500 and Chapter 403.

**Note:** These “rights and services” include information about criminal complaint procedures, availability and enforcement of civil protective orders, availability of emergency shelter services, protective services of DCBS, and other community resources. Many of these rights and services are printed on “Victim Rights Information” tear-off portion of the JC-3 form.

**Note:** Tearing off the victim rights information portion of the JC-3 form and giving it to a victim may not fully satisfy this duty. The responding officer should also ensure that the victim can read and understand the printed form.

**Note:** Death of an adult or child does not relieve the officer of the responsibility to report the circumstances surrounding the death related to abuse or neglect.

## **3. Safe Environment**

In order to protect the victim and provide access to a safe environment the officer should:

- Provide a copy of a safety plan, if available;
- Inform the person of local procedures for victim notification. KRS 421.500(3).

#### **4. Crime Victims Bill of Rights (KRS 421.500(3))**

As soon as possible, law enforcement personnel, pursuant to KRS 421.500(3), shall ensure that victims receive information on available emergency, social, and medical services upon initial contact with the victim and are given information on the following:

- Availability of crime victim compensation where applicable;
- Community-based treatment programs;
- The criminal justice process as it involves the participation of the victim or witness;
- The arrest of the accused; and
- How to find out if a person has been released from jail or a juvenile detention facility.

#### **5. Reporting Actual or Suspected Domestic Violence and Abuse**

A law enforcement officer who has reason to suspect that a person has been the victim of domestic violence and abuse must complete a JC-3 form, or its equivalent replacement, and provide the information to the Criminal Justice Statistical Analysis Center pursuant to KRS 209A.110. KRS 403.785(2)(d).

#### **6. Giving Notice of Orders to Respondents (KRS 403.745(1))**

A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation.

#### **7. Arresting Respondents Who Violate Orders (KRS 431.015(c))**

A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785 or an order of protection as defined in KRS Chapter 456.010.

The officer should not arrest unless the officer first knows:

- The restrictions imposed on the respondent by the order (the judge does not always check all blocks on standard form, and the officer may arrest only for violation of an indicated restriction);

- If the order is still in effect (the order is in effect only until the expiration date stated on the face of the order); and
- The respondent is not bound by the order unless there has been service made or notice given). While “notice” can be given verbally by a law enforcement officer, it is best practice to conduct physical service of process.

Other charges, in addition to “Violation of a protective order,” may also be in order.

In the case of a foreign protective order, if the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law. KRS 403.7521(4).

#### **8. Good Faith Immunity from Liability**

Officers who reasonably perform their duties in good faith have immunity from civil and criminal liability under the following situations:

- Enforcing Emergency Protective Orders or Domestic Violence Orders. KRS 403.785(4).
- Enforcing foreign protective orders. KRS 403.7521(3).
- Making a report or investigation for adult abuse or neglect. KRS 209.050; KRS 403.715(5).
- Making a report or investigation for child dependency, abuse or neglect. KRS 620.050(1); KRS 403.715(5).

#### **E. Duties of Law Enforcement Agencies**

1. Reporting Domestic Violence To CHFS (KRS 403.785(5))

**REPEALED** 17 HB 309

2. **Entering Records into LINK (KRS 403.751(3))**

Designated agencies are responsible for entering domestic violence records (EPOs, DVOs and foreign protective orders) into LINK (Law Information Network of Kentucky). These records are sent to the agencies by the circuit clerk’s office; they are to be entered immediately upon receipt.

3. Forwarding JC-3 forms to the Cabinet (KRS 209A.120)

If a JC-3 form, or its equivalent replacement includes information on known suspected child abuse or neglect or the abuse or neglect of an elderly or disabled adult, the form shall be forwarded to the cabinet.

#### **F. Duties of the Administrative Office of the Courts**

The Administrative Office of the Courts shall prepare a publicly available information pamphlet containing information on the method of applying for, hearing, amending, and terminating an order requiring participation in a global position monitoring system. KRS 403.761(3).

#### **G. Making Foreign (Out-of-State) Protective Orders Effective in Kentucky (KRS 403.751 – 7539)**

Federal law (18 U.S.C. sec. 2265) requires all states to recognize (give “full faith and credit” to) foreign (out-of-state) protective orders, and Kentucky law implements this requirement. A foreign protective order can be enforced in Kentucky by either presenting it to a peace officer or filing it at a circuit clerk’s office.

The Violence Against Women Act provides that a civil protection order issued by the court of one state or tribe shall be accorded full faith and credit by the court of another state or Indian Tribe, and shall be enforced as if it were the order of the court of the second state or tribe. To be given full faith and credit in another state, the issuing court must have had both personal and subject matter jurisdiction and the respondent must have received reasonable notice and an opportunity to be heard for the provision to be in effect. If the issuing state fails to comply with due process requirements in issuing the protection order, the order is not entitled to full faith and credit. Mutual protection orders are not entitled to full faith and credit unless a cross or counter petition, complaint or other written pleading has been filed and the order was issued upon a showing of mutual abuse.

Prior to the enactment of the Violence Against Women Act, a victim with a protection order often could not use that order as the basis for protection if the victim went to work, traveled or moved to most other states. Under the Violence Against Women Act, the second state must afford full faith and credit to an order issued by another jurisdiction, even if the victim otherwise would be ineligible for protection in the new state. A victim does not have to wait for abuse to occur in the new state nor does a victim need to be concerned if he or she cannot meet its jurisdictional requirements. Furthermore, a victim does



not have to register a protection order in the new state (unless mandated by statute in the enforcing state) -- the protection order of the issuing state should provide continuous protection to the victim so long as the protection order is presented to a peace officer or filed at a circuit clerk's office.

All foreign protective orders shall have the rebuttable presumption of validity. KRS 403.7521. The validity shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.

**1. Peace Officer Treatment of a Foreign Protective Order (KRS 403.7521)**

All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.

The fact that a foreign protective order has not been entered into LINK shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.

If the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take action as required by Kentucky law.

**2. Filing and Enforcement of a Foreign Protective Order (KRS 403.7527)**

A copy of a foreign protective order may be filed in the office of the clerk of any court of competent jurisdiction of this state. A foreign protective order so filed shall have the same effect and shall be enforced in the same manner as an order of protection issued by a court of this state.

**H. Effect of Domestic Violence on the Right to Carry a Concealed Weapon**

The Department of Kentucky State Police may *not* issue or renew a license to carry concealed firearms or other deadly weapons if an applicant is prohibited from the purchase, receipt or possession of firearms, ammunition or both pursuant to 18 U.S.C.922(g), 18 U.S.C. 922(n) or applicable state law. Additionally, a license may *not* be issued or renewed if the applicant has been convicted of a violation of KRS 508.030 or 508.080 within three (3) years

immediately preceding the date on which the application is submitted. However, the commissioner of the Department of Kentucky State Police *may* waive this requirement upon good cause shown and a determination that the applicant is not a danger and that a waiver would not violate federal law. See KRS 237.110.

## **CHAPTER 3: *Interpersonal Protective Orders***

### **A. Statutory Provisions**

**KRS 456.020** sets forth the law as related to interpersonal violence and abuse.

#### **1. Legislative Intent of the Act**

KRS 456.010 to KRS 456.180 shall be interpreted by the courts of the Commonwealth to effectuate the following express legislative purposes:

- Allow victims to obtain effective short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible;
- To expand the ability of law enforcement officers to effectively respond to further wrongful conduct so as to prevent future incidents and to provide assistance to the victims;
- To provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probable cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;
- To provide for the collection of data concerning incidents of dating violence and abuse, sexual assault, strangulation, and stalking in order to develop a comprehensive analysis of the numbers and causes of such incidents; and
- Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620.

#### **2. Definitions for the Act (KRS 456.010)**

- “*Dating relationship*” means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. Factors that may be considered (in addition to any other relevant factors) in determining whether the relationship is or was of a romantic or intimate nature include:
  - Declarations of romantic interest
  - The relationship was characterized by the expectation of affection

- Attendance at social outings together as a couple
- The frequency and type of interaction between the persons
- Length and recency of the relationship
- Indicia that would lead a reasonable person to understand that a dating relationship existed;
- *“Dating violence and abuse”* means physical injury, serious physical injury, stalking, sexual assault, strangulation, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation or assault occurring between persons who are or have been in a dating relationship;
- *“Foreign protective order”* means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 which was **not** issued on the basis of domestic violence and abuse;
- *“Global positioning monitoring system”* means a system that electronically determines a person’s location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person’s latitude and longitude data to a monitoring entity;
- *“Order of protection”* means any interpersonal order including those issued on a temporary basis and includes foreign protective order;
- *“Sexual assault”* refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or a criminal attempt, conspiracy, facilitation or solicitation to commit any degree of rape, sodomy, or sexual abuse, or incest under KRS 530.020;
- *“Stalking”* refers to conduct prohibited as stalking under KRS 508.140 or 508.150, or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of stalking;
- *“Strangulation”* refers to conduct prohibited by KRS 508.170 and 508.175, or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of strangulation;
- *“Substantial violation”* means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

## **B. Filing for an Interpersonal Protective Order**

### **1. Who may petition for an interpersonal protective order?**

**KRS 456.030(1).** A petition for an interpersonal protective order may be filed by:

- A victim of dating violence and abuse;

- A victim of stalking;
- A victim of sexual assault;
- An adult on behalf of a victim who is a minor who otherwise qualifies for relief under this subsection.

If the petitioner or respondent to an interpersonal protective order initiates an action under KRS Chapter 403, the party initiating the action shall make known to the court the existence and status of any interpersonal protective orders, which shall remain effective and enforceable until superseded by order of the court in which the KRS Chapter 403 case is filed. KRS 456.080.

**Note:** All petitions requested, completed, and signed by persons seeking protection under KRS Chapter 456 shall be accepted and filed with the court. KRS 456.030(5).

**Note:** A person's right to apply for relief under KRS Chapter 456 shall not be affected by that person leaving his or her residence to avoid dating violence and abuse, sexual assault, or stalking. KRS 456.070(8).

## **2. Where, when and how is a petition for an interpersonal protective order filed?**

*Where is the petition filed?*

- The petition may be filed in the victim's county of residence or a county where the victim has fled to escape dating violence and abuse, stalking, or sexual assault. KRS 456.030(2).
- Jurisdiction over petitions filed under Chapter 456 shall be concurrent between the District Court and Circuit Court. KRS 456.030(6) (a).

*When may a petition be filed?*

- All Kentucky courts are required to provide twenty-four (24) hour access to interpersonal protective orders in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection. KRS 456.030(6) (b).
- The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in 456.030(6) (a). KRS 456.030(6) (c).

*How is the petition filed?*

- The petition shall be verified and contain:
  - The name, age, address, occupation, residence, and school or postsecondary institution of the petitioner
  - The name, age, address, occupation, residence, and school or postsecondary institution of the person or persons who have engaged in the alleged act or acts complained of in the petition
  - The facts and circumstances which constitute the basis for the petition
  - The names, ages, and addresses of the petitioner's minor children, if applicable. KRS 456.030(3).
- The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers and Commonwealth's or county attorneys. KRS 456.030(4).
- If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules. KRS 456.030(8).

**Note:** No costs, fees, or bond shall be assessed against or required of a petitioner for any filing, hearing, service, or order authorized by or required to implement KRS Chapter 456. KRS 456.070(2).

*When does the protective order become effective and for how long will the order be in effect?*

(1) A temporary or ordinary interpersonal protective order shall *become effective and binding on the respondent when the respondent is given notice* of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation. KRS 456.070(1).

(2) Prior to or at a hearing on the petition, if review of a petition for an interpersonal order indicates the presence of an immediate and present danger of dating violence and abuse, sexual assault, or stalking, the court shall, upon proper motion, issue ex parte a temporary interpersonal order

*which shall be effective for up to fourteen (14) days from the day of issuance* and may be reissued if the respondent is not present at the hearing and has not served. If the respondent is not served with the summons within 72 hours of the hearing the court shall direct the issuance of a new summons for a hearing not more than fourteen (14) days in the future. The court may continue to issue a new summons with a new hearing date every fourteen days for up to six (6) months if not served upon the perpetrator/respondent. At the end of six (6) months without service the order will be rescinded without prejudice. The petitioner may, before the expiration of the order, file a petition for a new order. A new six (6) month process will begin at this time. KRS 456.040-050.

(3) Following a hearing, ordered under KRS 456.040, if a court finds by a preponderance of the evidence that dating violence and abuse, sexual assault, or stalking has occurred and may again occur, the court may issue an interpersonal protective order which shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. KRS 456.060(1) & (3).

*What behavior may be prohibited / What relief may be ordered?*

If, upon review of the petition as provided for in KRS 456.050, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of dating violence and abuse, sexual assault, or stalking, the court shall issue, upon proper motion, ex parte, a temporary interpersonal protective order which authorizes the use of relief options set out in KRS 456.060. Following the hearing provided for under KRS 456.040, the court, if it finds from a preponderance of the evidence that an act or acts of dating violence and abuse, sexual assault, or stalking, have occurred and may again occur, may:

(a) Restrain the adverse party from:

- (1) Committing further acts of dating violence and abuse, stalking, or sexual assault;
- (2) Any unauthorized contact or communication with the petitioner or other person specified by the court;
- (3) Approaching the petitioner or person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
- (4) Going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and

- (5) Disposing of or damaging any of the property of the parties;
- (b) Directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of dating violence and abuse, stalking, or sexual assault, except that the court shall not order the petitioner to take any affirmative action; and
- (c) Directing that either or both of the parties receive counseling services available in the community in dating violence and abuse cases.

### **3. Consequences of Violating an Interpersonal Protection Order (KRS 456.180)**

If a respondent violates the terms of an interpersonal protection order either one of two proceedings may be brought against him: a criminal charge (“violation of a protective order”) or a proceeding for contempt of court.

Court proceedings for contempt of court for violation of an order of protection shall be held in the county where the order was issued or filed.

Court proceedings for a criminal violation of an order of protection shall follow the rules of venue applicable to criminal cases generally.

**Note:** Nothing in this section shall preclude the Commonwealth from prosecuting and convicting the respondent of criminal offenses other than violation of an order of protection.

A person is guilty of a violation of an order of protection when he or she intentionally violates the provisions of an interpersonal protective order after the person has been served or given notice of the order. Violation of an order of protection is a Class A misdemeanor.

## **C. Processing of Interpersonal Protective Orders**

### **1. Interpersonal Protective Order Intake Centers**

The Court of Justice, County and Commonwealth’s Attorneys, law enforcement agencies, and victim services organizations may jointly operate an interpersonal protective order intake center to assist persons who apply for relief under KRS 456. KRS 456.070(7) (a).

### **2. Duties of the Judge**

The judge reviews the petition and, if the petition does describe a situation of dating violence and abuse, stalking, or sexual assault, the judge proceeds as follows.

**Reviewing the Petition (KRS 456.040 (1) (a))**

Any judge to whom a petition is referred under KRS 456.030(6) shall have full authority to review and hear a petition and subsequently grant and enforce an interpersonal protective order. KRS 456.030(7).

**Acting on the Petition**

- Petitioner not in danger (KRS 456.040(1))

If the judge decides the petition does not show the petitioner to be in immediate danger, the judge fixes a date, time and place for a hearing, to be held within fourteen (14) days of the issuing of a summons for the respondent.

The judge issues a summons. The summons, a copy of the order fixing the date of the hearing, and a copy of the petition are served on the respondent personally. A summons may be reissued if service has not been made on the respondent by the fixed court date and time.

- Petitioner in danger (KRS 456.040(2))

If the judge decides the petition does show an immediate danger not only are a date, time and place for a hearing set, but the judge also issues ex parte a temporary interpersonal protective order that authorizes relief appropriate to the situation, expires upon the conclusion of the evidentiary hearing unless extended or withdrawn by subsequent order, and does not order or refer the parties to mediation unless requested by the petitioner and the court finds that the request is voluntary and that mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the petitioner.

If an order is not issued under KRS 456.040(2), the court shall note on the petition, for the record, any action taken or denied and the reason for it. KRS 456.040(2) (b).

The Court of Justice shall provide a protocol for twenty-four (24) hour access to interpersonal protective orders in each county, and any protocol, whether statewide or local, is subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection. KRS 456.030(6) (b).



The law provides the judge with seven alternatives to use in a temporary interpersonal order to deal with the emergency. Any one, or any combination of which, may be used. KRS 456.060(1).

1. Restraining the adverse party from committing further acts of dating violence and abuse, stalking, or sexual assault;
2. Restrain the adverse party from making any unauthorized contact or communication with the petitioner or other person specified by the court;
3. Restrain the adverse party from approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
4. Restrain the adverse party from going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located;
5. Restrain the adverse party from disposing of or damaging any of the property of the parties;
6. Enter other orders the court believes will be of assistance in eliminating future actions of dating violence and abuse, stalking or sexual assault, except that the court shall not order the petitioner to take any affirmative action; or
7. Direct that either or both of the parties receive counseling services available in the community in dating violence and abuse cases.

A court ***shall not*** require mediation, conciliation, or counseling prior to or as a condition of issuing an interpersonal protective order. KRS 456.070(3).

A temporary interpersonal order is valid for up to 14 days (the date of the expiration should appear on the order). It should set the date within the 14-day period for a full hearing in open court. If the respondent is not served with the summons within 72 hours of the hearing the court shall direct the issuance of a new summons for a hearing not more than fourteen (14) days in the future. The court may continue to issue a new summons with a new hearing date every fourteen (14) days for up to six (6) months if not served upon the perpetrator/respondent. At the end of the six (6) months without service the order will be rescinded without prejudice. The petitioner may, before the expiration of the order, file a

petition for a new order. A new six (6) month process will begin at this time. KRS 456.050(2).

Service of the summons and hearing order are served personally on the respondent. (KRS 456.040(1) (b)).

A court may issue mutual protective orders **only** if separate petitions have been filed by both parties and the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. KRS 456.070(4).

**Note:** In imposing a location restriction described in KRS 456.060(1)(a)(4), the court shall afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded; only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order; specifically describe in the order the locations or areas prohibited to the respondent; and consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.  
KRS 456.060(2) (a-d).

#### **Obtaining Information and Review of Documents (KRS 456.050(1))**

Prior to a hearing on a petition for an interpersonal protective order, the court may obtain the respondent's Kentucky criminal and protective order history.

The court shall review the documents and consider respondent's criminal history, consider the record of any past orders of protection relating to respondent and the record of compliance or non-compliance, and utilize the information at any hearing to assess which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure.

The court shall provide a copy of the information to the petitioner and respondent or to their counsel.

If the respondent is a minor, the court may also inquire whether the parties attend school in the same school system to assist the court in imposing

conditions in the order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.

**Referral to County Attorney (KRS 456.070(7) (b))**

In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the county attorney. A court may not withhold or delay relief, however, if the petitioner elects to not contact the county attorney.

**Conducting the Hearing (KRS 456.060)**

At the hearing, the judge hears evidence from both the petitioner and the respondent. If a preponderance of the evidence shows that dating violence and abuse, sexual assault, or stalking has occurred and may again occur, the court may issue an interpersonal protective order.

The judge may also include other alternatives available in a temporary interpersonal protective order.

Interpersonal protective orders are in effect for up to three years and may be reissued. Either party may seek to amend the order.

**Note:** KRS 456.070(6) specifically provides that any testimony shall not be admissible in any criminal proceeding involving the same parties except for purposes of impeachment.

**If No Order is Issued (KRS 456.070(10) (a))**

The court in which the petition was heard may for good cause shown order the expungement of the records of the case if:

1. Six (6) months have elapsed since the case was dismissed; and
2. During the six (6) months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person, including an order of protection as defined in KRS 456.010.

**Note:** Denial of Protective Order. If an order is not issued, the court shall note on the petition, for the record, any action taken or denied and the reason for it. KRS 456.040(2) (b).

**Note:** As used in KRS 456.070(10), “expungement” has the same meaning as in KRS 431.079.

**Amendment of Interpersonal Protective Order to Require Participation in Global Positioning Monitoring System. (KRS 456.100)**

- **Gathering Records**

A court must review an updated history of the respondent's Kentucky criminal and protective order history before it can amend an order of protection to require respondent's participation in a GPS monitoring system. KRS 456.100(1) (b).

- **Amending the Order**

1. Upon proper filing of a motion, either party may seek to amend an interpersonal protective order. KRS 456.070(5).
2. Upon a petitioner's request and after an evidentiary hearing, a court may amend a protective order to require the respondent to participate in a GPS monitoring system if:
  - The respondent has committed a substantial violation of a previously entered domestic violence order;
  - The court has reviewed an updated history of the respondent's Kentucky criminal and protective order history; and
  - The court makes a factual determination that the use of a GPS monitoring system would increase the petitioner's safety.

*"Substantial violation"* means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protections. KRS 456.010(8).

3. If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules. KRS 456.030(8).

- **GPS Monitoring System Order (KRS 456.100(2))**

An order requiring participation in a GPS monitoring system shall:

- require the respondent to pay the cost of participation up to the respondent's ability to pay, with the system operator bearing any uncovered costs for indigent respondents;
- state with specificity the locations or areas where the respondent is prohibited from being located or persons with whom the respondent shall have no contact;

- include the date the order expires, which shall be no longer than the expiration date of the underlying interpersonal protection order, although participation may be extended if the underlying protection order is extended;
  - require the entity that operates the monitoring system to immediately notify the petitioner, the local law enforcement agency named in the order, and the court if a respondent violates the order; and
  - Include any other information as the court deems appropriate.
- **Payment for Monitoring Program**  
The Supreme Court may establish by rule a sliding scale of payment responsibility for indigent defendants for use in establishing required payments under KRS 456.100(4).

A person, county, or other organization may voluntarily agree to pay all or a portion of a respondent's monitoring costs.

- **Violations and Penalties**  
A respondent who fails to wear, removes, tampers with, or destroys a GPS monitoring system device in contravention of an order entered under this section shall be guilty of a Class D felony. KRS 456.100(6).
- **Termination of the Monitoring Program**  
An order requiring participation shall include the date that the order expires, which shall be no longer than the underlying protective order, although participation may be extended if the underlying order is extended. KRS 456.100(2).

An order requiring participation may be shortened or vacated by the court whether upon the request of the petitioner or the request of the respondent after an evidentiary hearing if the respondent has not violated the order and three (3) months have elapsed since the entry of the order and no previous request has been made by the respondent in the previous six (6) months. KRS 456.100(5).

#### **Written Protocols Required by Each Court (KRS 456.030(6) (a-c))**

- All courts shall provide 24-hour access to interpersonal protective orders.
- The Court of Justice shall provide a protocol for twenty-four (24) hour accessibility to be reviewed and approved by the Kentucky Supreme Court.

- There shall be concurrent jurisdiction between District and Circuit Court and a petition may be filed by a petitioner in either court, except that a petition shall be filed in a family court if one has been established in the county where the petition is filed.
- The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in KRS 456.030(6) (a).

### **3. Duties of the Court Clerk**

#### **Deleting Petitioner's Address from Documents to be Served on the Respondent**

**Note:** A court shall order the omission or deletion of the petitioner's address and the address of any minor children from any orders or documents to be made available to the public or to any person who engaged in the acts complained of in the petition. KRS 456.070(9).

#### **Forward Documents to Law Enforcement (KRS 456.110(2))**

The circuit clerk, in cooperation with the court, shall cause a copy of each summons or order issued pursuant to KRS chapter 456, or foreign protective order, fully completed and authenticated pursuant to KRS Chapter 456, to be forwarded, by the most expedient means reasonably available and within twenty-four (24) hours following its filing with the clerk, to the appropriate agency designated for entry of interpersonal protective order records into LINK and to the agency assigned service. Any order or court record superseding, modifying, or otherwise affecting the status of an earlier summons or order shall likewise be forwarded by the circuit clerk to the appropriate LINK entering agency and to the agency assigned service, if service is required. The clerk and the court shall comply with all provisions and guidelines of LINK for entry of the records. KRS 456.110(2).

#### **Provide Forms for Petitioner (KRS 456.030(4))**

The circuit court clerk (or another individual authorized by the court) shall provide the petitioner with the forms on which to file the petition.

#### **4. Duties of the County Attorney**

##### **Providing and Verifying (KRS 456.030(4))**

If authorized by the court to do this, the Commonwealth's or County Attorney, in emergencies, is to provide and verify petitions for interpersonal protection orders. Such petitions are then filed in court.

The Court of Justice, County and Commonwealth's Attorneys, law enforcement agencies, and victim services organizations may jointly operate an interpersonal protective order intake center to assist persons who apply for relief under KRS Chapter 456. KRS 456.070(7) (a).

In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the County Attorney. A court may not withhold or delay relief if the petitioner elects to not contact the county attorney. KRS 456.070(7) (b).

#### **D. Duties of Law Enforcement Officers**

##### **1. Providing and Verifying (KRS 456.030(4))**

If authorized by the court to do this, an officer, in emergencies, is to provide domestic violence and abuse petitions to victims and to verify (administer an oath on) the petitions. Such petitions are then filed by the officer with the court.

##### **2. Preventing Further Abuse at the Scene (KRS 456.090(2))**

When a law enforcement officer has reason to suspect that a person has been the victim of dating violence and abuse, sexual assault, or stalking, the officer shall use all reasonable means to aid the victim, including but not limited to:

- Remaining at the scene as long as the officer reasonably suspects there is danger to the physical safety of individuals there without the presence of a law enforcement officer;
- Assisting the victim to obtain medical treatment, including offering to transport, or arranging for the transportation of the victim to the nearest medical treatment facility capable of providing the necessary treatment; and
- Advising the victim immediately of the rights and services available including the provisions of this chapter.

##### **3. Assisting in Compliance with Protective Order provisions (KRS 456.090)**

- A court shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with.

- Orders of protection shall be enforced in any county of the Commonwealth.
- Officers acting in good faith in enforcing these orders are immune from criminal and civil liability.

#### **4. Giving Notice of Order to Respondents (KRS 456.070(1))**

A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation.

#### **5. Arresting Respondents who Violate Orders**

The officer should not arrest unless the officer first knows:

- The restrictions imposed on the respondent by the order (the judge does not always check all blocks on standard form, and the officer may arrest only for violation of an indicated restriction);
- If the order is still in effect (the order is in effect only until the expiration date stated on the face of the order); and
- If the respondent has been served with, or given notice of, the order (the respondent is not bound by the order unless there has been service made or notice given).

Other charges, in addition to "Violation of a protective order," may also be in order.

In the case of a foreign protective order, if the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law. KRS 403.7521(4).

#### **6. Special Warrantless Arrest Power– Violation of a Domestic Violence, Protective Order, Interpersonal Protective Order or a Foreign Protective Order (KRS 431.015 and 403.7521)**

A peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member, member of unmarried couple, or another person with whom the person was or is in a dating relationship. KRS 431.005(2).



- A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785 or an order of protection as defined in KRS 456.010. (KRS 431.015).
- All peace officers shall treat a foreign protective order as a legal document valid in Kentucky and shall make arrests for a violation thereof in the same manner as for a violation of an order of protection issued in Kentucky. (KRS 403.7521)

### **7. Good Faith Immunity from Liability**

Officers who reasonably perform their duties under KRS Chapter 456 in good faith have immunity from civil and criminal liability. (KRS 456.090(4))

## **E. Duties of Law Enforcement Agencies**

### **1. Entering Records into LINK**

Each agency designated for entry of summonses and orders issued pursuant to this chapter, or foreign protective orders authenticated pursuant to this chapter, into the Law Information Network of Kentucky shall, enter the records immediately upon receipt of copies forwarded to the agency under KRS 456.110(2). KRS 456.110(3).

## **F. Duties of the Administrative Office of the Courts**

1. The Administrative Office of the Courts shall prepare a publicly available information pamphlet containing information on the method of applying for, hearing, amending, and terminating an order requiring participation in a global position monitoring system. KRS 456.100(3).
2. The AOC shall prescribe the forms on which petitions for interpersonal protective orders are filed. KRS 456.030(4).
3. After consultation with the Justice and Public Safety Cabinet, the AOC shall prescribe forms on which all forms, affidavits, and orders of protection issued or filed pursuant to KRS Chapter 456. KRS 456.110(1).

## **G. Making Foreign (Out-of-State) Protective Orders Effective in Kentucky (KRS 456.120 – 170)**

### **1. Presumption of Validity (KRS 456.120(1))**

All foreign protective orders shall have the rebuttable presumption of validity. The validity of a foreign protective order shall only be determined by a court of

competent jurisdiction. Until a foreign protective order is declared to be invalid by a court of competent jurisdiction, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.

**2. Peace Officer Treatment of a Foreign Protective Order (KRS 456.120(2))**

All peace officers shall treat a foreign protective order as a legal document valid in Kentucky and shall make arrests for violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.

The fact that a foreign protective order has not been entered into the Law information Network of Kentucky shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability. KRS 456.120(3).

If the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law. KRS 456.120 (4)

**3. Legal Proceedings for Violation of a Foreign Protective Order (KRS 456.120(5))**

Civil proceedings and criminal proceedings for violation of a foreign protective order for the same violation of the protective order shall be mutually exclusive. Once either proceeding has been initiated, the other shall not be undertaken, regardless of the outcome of the original proceeding.

**4. Filing a Foreign Protective Order (KRS 456.140)**

A copy of a foreign protective order may be filed in the office of the clerk of any court of competent jurisdiction of this state. A foreign protective order so filed shall have the same effect and shall be enforced in the same manner as an interpersonal protective order issued by a court of this state.

At the time of filing, the person filing the order shall file with the clerk of the court an affidavit on a form prescribed by the Administrative Office of the Courts.

- a. The affidavit shall set forth the name, city, county, and state or other jurisdiction of the issuing court.

- b. The person shall certify in the affidavit the validity and status of the foreign protective order, and attest to the person's belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction.
- c. All foreign protective orders presented with a completed and signed affidavit shall be accepted and filed.
- d. The affidavit signed by the applicant shall have space where the reviewing judge shall place information necessary to allow the order's entry into LINK in the same manner as a Kentucky order.

**5. Duties of Court Clerk (KRS 456.140(3))**

- a. If the person seeking to file the order presents a copy of the foreign protective order which is current by the terms of the order and has been certified by the clerk, the court clerk shall present it to the District Judge or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into LINK. The order shall not be subject to further verification and shall be accepted as authentic, current, and subject to full faith and credit.
  - i. If the order presented is current, but not certified in the manner specified above, the circuit clerk shall present the order and the affidavit to the District or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into LINK.
    - A. The order shall be subject to full faith and credit in the same manner as a Kentucky interpersonal protective order, but shall be subject to verification by the circuit clerk.
    - B. The order shall be valid for a period of fourteen (14) days and may be renewed once for a period of fourteen (14) days if the circuit clerk has not received a certified copy of the order from the issuing jurisdiction.
    - C. The clerk shall treat the foreign protective order in the same manner as an interpersonal protective order of this state, except that no service on the adverse party shall be required pursuant to 18 U.S.C. sec. 2265.
- b. Upon the filing of an uncertified protective order, the circuit clerk shall, within two (2) business days, contact the issuing court to request a certified copy of the order. If the certified copy of the order is received by the circuit clerk within the initial fourteen (14) day period, the clerk shall cause the information that certification has been received to be

entered into LINK and shall notify the applicant for the order of the fact of its certification. A facsimile copy of a certified foreign protective order shall be grounds for the issuance of an interpersonal protective order.

- c. If the clerk has not received a certified copy of the foreign protective order within ten (10) days, the clerk shall notify the court and the applicant that the order has not been received.
  - i. The notice to the applicant, on a form prepared by AOC, shall state that the foreign protective order will be extended another fourteen (14) days, but will be dismissed at the expiration of that time.
  - ii. If the clerk informs the judge in writing that the certified foreign protective order has been requested but has not yet been received, the judge shall extend the foreign protective order for a period of fourteen (14) days.
  - iii. If certification of the foreign protective order has not been received within twenty-eight (28) days, the foreign protective order shall expire and shall be not reissued.
  - iv. If the applicant meets the qualifications for the issuance of a Kentucky interpersonal protective order, the court may, upon proper application and showing of evidence, issue a Kentucky order in accordance with KRS Chapter 456.
- d. When the court declares an order to be authenticated, pursuant to KRS 456.150(1), the clerk shall notify the person who filed the foreign protective order of the decision of the court and provide the person a certified copy of the affidavit declaring the authentication of the order. KRS 456.150(3).

**Note:** The right of a person filing a foreign protective order to bring an action to enforce the order instead of proceeding under KRS Chapter 456 remains unimpaired. KRS 456.140(4).

#### **6. Duty of the Court (KRS 456.150)**

- (1) Upon ex parte review of the foreign protective order and the affidavit filed pursuant to KRS 456.140, and after determining the order is entitled to full faith and credit in this Commonwealth pursuant to 18 U.S.C. sec. 2265, the court shall declare the order to be authenticated and record the finding on the affidavit.
- (2) If the court declares the order to be authenticated, the court shall:

- Direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with, if applicable; and
- Order its enforcement in any county of the Commonwealth in the same manner as an interpersonal protective order of this state issued pursuant to KRS 456.060.

## **7. Clearing a Foreign Protective Order (KRS 456.160)**

- (1) A foreign protective order which has been entered into LINK shall be immediately cleared as an active record from the computer system when:
  - a. The order expires according to the terms contained therein;
  - b. A Kentucky court notifies LINK that a foreign protective order has been dismissed, either by a court order or entry of notification by a circuit clerk; or
  - c. A circuit clerk notifies LINK that a foreign protective order tendered to the clerk has not been authenticated in the time period specified in KRS 456.140.
- (2) For validation purposes, LINK shall provide the circuit clerk with a printout of foreign protective orders. The clerk shall validate each order annually by contacting the original issuing court of jurisdiction. If the clerk has not received information from the foreign jurisdiction within thirty-one (31) days, the clerk shall cause those orders to be cleared from LINK.

## **8. Obligations of Person Filing a Foreign Protective Order (KRS 456.170)**

A person who has filed a foreign protective order in a court in Kentucky is under a continuing obligation to inform the court of any expiration, vacation, modification, or other change in the order which the person filing the order has received from the issuing foreign court. KRS 456.170 (1).

A person who has filed a foreign protective order in a court in Kentucky shall, within two (2) working days of the occurrence of any event specified above, notify the clerk of the court in which the foreign protective order was filed of the fact of the changed order and present the clerk with a copy of the order for authentication as provided in this chapter. The clerk shall immediately notify the LINK entering agency of the modification. KRS 456.170(2).

**Note:** No court in Kentucky and no peace officer in Kentucky shall be expected to enforce a provision of a foreign protective order which has been the subject

of any action specified in KRS 456.160(1), unless proper notice has been given. KRS 456.170 (3). Meaning, no order has to be enforced unless it has been updated by LINK pursuant to sections (1) and (2).

**Note:** Intentional failure of a person who has filed a foreign protective order to make the notifications required by KRS 456.160 in the manner required shall constitute contempt of court and may be grounds for an appropriate civil action brought by any person damaged by the intentional act of omission by the person failing to act. KRS 456.170(4).

**9. Assisting a Court of Another State in Determining Whether an Order is Entitled to Full Faith and Credit Pursuant to 18 U.S.C. Sec. 2265. (KRS 456.130)**

- (a) All interpersonal protective orders shall include a statement certifying that the issuing court had jurisdiction over the parties and the matter, and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's right to due process; and
- (b) All temporary interpersonal protective orders shall include a statement certifying that notice and opportunity to be heard was provided within the time required by state law, and in any event within a reasonable time after the order was issued, sufficient to protect the respondent's due process rights.

**CHAPTER 4: *Preliminary/Pretrial Issues***

**A. Laws of Arrest**

**1. General Arrest Powers**

An officer has all the arrest authority given to him by KRS 431.005(1) with a warrant and without a warrant, for felonies, misdemeanors, and violations.

An officer can use an arrest as a means of stabilizing a domestic situation and should have in mind offenses most likely to be involved in such a situation: burglary, criminal trespass, assault, stalking, menacing, terroristic threatening, criminal mischief, etc.

Sometimes an arrest becomes possible because of:

- a domestic violence protective order (emergency protective order or order following a hearing) has been served on, or notice of the order has been given;
- criminal trespass (order requires respondent to vacate residence shared by the parties);
- theft or criminal mischief (order restrains respondent from disposing of or damaging any property of the parties); and/or
- custodial interference (order awards temporary child custody to other party), etc.

**2. Special Warrantless Arrest Power – Misdemeanor (Fourth Degree) Assault in a Domestic Situation (KRS 431.005(2))**

- Any peace officer may arrest a person without a warrant when the peace officer has probable cause to believe the person has intentionally or wantonly caused physical injury to a family member, member of an unmarried couple, or another person with whom the person was or is in a dating relationship.
- Under KRS 431.005(2), “dating relationship,” “family member,” and “member of an unmarried couple” have the same meanings as defined in KRS 403.720 and 456.010.
- Under KRS 431.005(2), the term “member of an unmarried couple” has the same meaning as set out in KRS 403.720.
- Under KRS 431.005(2), a “peace officer” is an officer certified pursuant to KRS 15.380. Only officers certified pursuant to KRS 15.380 have the authority to make the arrest authorized by KRS 431.005(2). KRS 431.005(4)

**3. Special Warrantless Arrest Power – Violation of Pretrial Release Order (KRS 431.005(5))**

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

**4. Special Warrantless Arrest Power – Violation of a Stalking Restraining Order (KRS 431.005(7))**

A law enforcement officer that has probable cause to believe that a person has violated a restraining order issued under KRS 508.155 shall, without a

warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

**5. Special Warrantless Arrest Power – Violation of a Domestic Violence Protective Order, Interpersonal Protective Order or a Foreign Protective Order (KRS 431.015 and 403.7521)**

- A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785 or an order of protection as defined in KRS 456.010.
- All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for a violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.

**B. Prosecution Case Preparation**

**1. Establishment of Prosecution Policy**

Each prosecutor office should develop a domestic violence policy. The preference of this Manual is a pro-prosecution model where prosecution is favored, preferably without requiring the participation of the victim. The purpose of the policy is to provide prosecutors and support personnel with clear definitions, direction and guidelines for providing and promoting a consistent, effective response to domestic violence crimes. The policy will serve as a guide and structure rather than establish a rigid formula.

**2. Pre-charging Considerations**

A domestic violence case should not be dismissed solely because the victim requests that charges be dismissed or fails to cooperate with the prosecutor.

The following *Domestic Violence Checklist* may be of assistance during the initial case assessment and charging decision for law enforcement and prosecutors, as well as later in the case progression:



## Domestic Violence Checklist<sup>41</sup>

<b>I. VICTIM</b> <input type="checkbox"/> Described the victim's location upon arrival. <input type="checkbox"/> Administered first aid to the victim. <input type="checkbox"/> Recorded any spontaneous statement made by the victim <input type="checkbox"/> Described the victim's physical condition. <input type="checkbox"/> Documented the victim's injuries in detail, including photos <input type="checkbox"/> Made note of the victim's relationship to the suspect. <input type="checkbox"/> Recorded history of abuse. <input type="checkbox"/> Noted any temporary restraining/court orders. <input type="checkbox"/> Gave victim required written information on social agencies, legal steps, etc . <input type="checkbox"/> Recorded any temporary address/telephone of victim	<b>II. SUSPECT</b> <input type="checkbox"/> Described the suspect's location upon arrival. <input type="checkbox"/> Administered first aid to the suspect. <input type="checkbox"/> Recorded any spontaneous statements made by the suspect. <input type="checkbox"/> Described the suspect's emotional condition. <input type="checkbox"/> Described the suspect's physical condition. <input type="checkbox"/> Documented the suspect's injuries in detail. <input type="checkbox"/> Documented evidence of substance/chemical abuse by suspect. <input type="checkbox"/> Interviewed the suspect.
<b>III. WITNESS</b> <input type="checkbox"/> Interviewed the reporting party. <input type="checkbox"/> Identified all witnesses and interviewed separately. <input type="checkbox"/> Listed names and ages of children present. <input type="checkbox"/> Interviewed the children, and recorded statements in report. <input type="checkbox"/> Recorded names and addresses of emergency personnel. <input type="checkbox"/> Identified treating physician. <input type="checkbox"/> Recorded the "911" # _____ and incident # _____	<b>IV. EVIDENCE</b> <input type="checkbox"/> Photographed the crime scene. <input type="checkbox"/> Took "full body" photograph of the suspect. <input type="checkbox"/> Photographed the suspect's injuries. <input type="checkbox"/> Impounded all weapons used. <input type="checkbox"/> Impounded weapons for safekeeping. <input type="checkbox"/> Attached related reports, photographs, and impound tags to investigator's copy. <div style="font-size: small;">* If not applicable mark "NA".</div>

### 3. Potential State Charges

#### a. Assault and related offenses

- 508.010 Assault in the first degree
- 508.020 Assault in the second degree
- 508.025 Assault in the third degree
- 508.030 Assault in the fourth degree
- 508.032 Assault of a family member or member of an unmarried couple (enhancement of penalty to Class D felony)
- 508.040 Assault under extreme emotional disturbance
- 508.050 Menacing
- 508.060 Wanton endangerment in the first degree
- 508.070 Wanton Endangerment in the second degree
- 508.080 Terroristic Threatening (Third Degree)
- 508.100 Criminal abuse in the first degree
- 508.110 Criminal abuse in the second degree
- 508.120 Criminal abuse in the third degree
- 508.140 Stalking in the first degree
- 508.150 Stalking in the second degree

<sup>41</sup>Adapted from the San Diego, CA Police Department, Domestic Violence Unit.

- 508.155 Restraining Order upon violation of KRS 508.140 or 508.150
- 508.155 Restraining Order or interpersonal protective Order to be issued upon violation of 508.140 or 508.150.
- 508.170 Strangulation in the first degree
- 508.175 Strangulation in the second degree

**b. Kidnapping and related offenses**

- 509.020 Unlawful imprisonment in the first degree
- 509.030 Unlawful imprisonment in the second degree
- 509.040 Kidnapping
- 509.070 Custodial interference

**c. Homicide**

- 507.020 Murder
- 507.030 Manslaughter in the first degree
- 507.040 Manslaughter in the second degree
- 507.050 Reckless homicide

**d. Sexual Offenses**

- 510.040 Rape in the first degree
- 510.050 Rape in the second degree
- 510.060 Rape in the third degree<sup>\*42</sup>
- 510.070 Sodomy in the first degree
- 510.080 Sodomy in the second degree
- 510.090 Sodomy in the third degree\*
- 510.110 Sexual abuse in the first degree
- 510.120 Sexual abuse in the second degree

**e. Burglary and related offenses**

- 511.020 Burglary in the first degree
- 511.030 Burglary in the second degree
- 511.040 Burglary in the third degree
- 511.060 Criminal trespass in the first degree
- 511.070 Criminal trespass in the second degree
- 511.080 Criminal trespass in the third degree
- 511.085 Domestic violence shelter trespass

**f. Criminal damage to property**

- 512.020 Criminal mischief in the first degree
- 512.030 Criminal mischief in the second degree
- 512.040 Criminal mischief in the third degree

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<sup>42</sup> \* Denotes a new statute or an amendment to an existing statute by the 2018 General Assembly.

**g. Robbery**

- 515.020 Robbery in the first degree
- 515.030 Robbery in the second degree

**h. Disorderly conduct and related offenses**

- 525.060 Disorderly conduct
- 525.070 Harassment
- 525.080 Harassing Communications

**i. Violation of a protective order**

- 403.763 Criminal penalty for violation of a protective order
- 403.7539 Criminal penalty for violation of a foreign protective order
- 403.761(11) (b) Criminal penalty for failing to wear, removing or tampering with or destroying a GPS device.
- 456.180 Violation of an Order of Protection (includes interpersonal protective order and foreign protective orders)

**j. Other potential charges**

- 529.100 Human Trafficking
- 529.110 Promoting Human Trafficking
- 531.090 Voyeurism
- 531.100 Video Voyeurism
- 531.120 Distribution of Sexually Explicit Images Without Consent
- 520.095 Fleeing or evading police in the first degree
- 508.152 Unlawful use of a tracking device
- 209.030 Duty to report suspected adult abuse; neglect or exploitation; 209.990 Penalties
- 209A.030 Penalty for violating provisions of KRS Chapter 209A— Spousal Abuse or Neglect
- 620.030 Duty to report dependency, neglect or abuse of a child; 620.990 Penalty
- 431.064(10) Penalty for violation of a condition of release
- 530.060 Endangering the welfare of a minor
- 524.055 Retaliating against a participant in the legal process
- 524.040 Intimidating a Participant in the Legal Process
- 532.025(2)(a)(8) Aggravating circumstance in death penalty case

**Note:** KRS 421.350 which permits videotaped or closed-circuit testimony by victims and witnesses who are 12 years of age and younger, in limited

circumstances, may be used in prosecutions for endangering the welfare of a minor and other crimes.<sup>43</sup>

#### **4. Potential Federal Charges**

- a. 18 U.S.C. § 2261 Interstate Domestic Violence
- b. 18 U.S.C. § 2262 Interstate Violation of Protection Order
- c. 18 U.S.C. § 2261A (1) Interstate Stalking
- d. 18.U.S.C. § 2261A (2) Cyber Stalking
- e. 18 U.S.C. § 922(g) Prohibition Against Disposal of Firearms to, or Receipt of Firearms by, Persons Who Have Committed Domestic Abuse or Who Have Been Convicted of a Misdemeanor Domestic Violence Crime

#### **5. Role of the Victim Advocate**

Effective prosecutors are increasingly turning to victim advocates in order to assist and support victims as they navigate the criminal justice system.

Two of the most common kinds of advocacy programs are internal (“system-based”) programs and external (to the prosecutor) community advocacy programs (“community-based”). Each may serve a different purpose and may have different strengths and limitations. Scarce resources for advocacy mean it is necessary to take a broad view and close look at ways to divide resources and victim advocacy functions between prosecution-based victim advocacy programs and external community-based domestic violence programs.

#### **Types of Programs**

##### *a. Internal to the Legal System*

Roles include:

- Assisting prosecutors in handling and proving cases.
- Assisting law enforcement in interacting with crime victims, especially in gathering evidence that a crime was committed.
- Compliance with Kentucky’s Constitutional Victim Rights and crime victim bill of rights.

Location or Site of Program:

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<sup>43</sup> KRS 421.350 applies to offenses under “KRS 510.040 to 510.155, 529.030 to 529.050, 529.070, 529.100, 529.110, 530.020, 530.060, 530.064(l)(a), 531.310, 531.320, 531.370, or any specified in KRS 439.3401 and all dependency proceedings pursuant to ICRS Chapter 620, when the act is alleged to have been committed against a child twelve (12) years of age or younger, and applies to the statements or testimony of that child or another child who is twelve (12) years of age or younger who witnesses one of the offenses included in this subsection.”

- Prosecutors' offices (to improve system response to victims and assist in case development).
- Law enforcement agencies (to improve ability of law enforcement to stop crime).
- Courthouse (to assist with Civil Protection Order applications).

*b. External to the Legal System*

Roles include:

- Working with individual victims-survivors to provide information, resources, assistance in meeting their needs; and
- Working to advocate on behalf of the interests of victim-survivors in general with systems such as legal, welfare, and housing.

Location or Site of Program:

- Shelters (provide many varieties of advocacy and other services).
- Community advocacy programs (often attempt to assist victims with any need).
- Intervention projects (monitoring, tracking, and coordinating of cases).

**The Primary Issues in prosecution-based versus community-based advocacy:**

*a. Confidentiality*

- Confidentiality of the advocate and victim-survivor relationship is a central feature for many reasons: safety concerns, need for time to plan escape before the abuser knows the intention to do so, etc.
- Kentucky Rule of Evidence 506(a) (1) (G) includes victim advocates in the counselor-client privilege, except those advocates who work in prosecutors' offices. This means that if a prosecutor needs testimony from an advocate in a non-prosecutor based program, that advocate will need to get a release from the victim/witness.
- Defense counsel have attempted on many occasions to subpoena advocates and records. The prosecutor can and should file motions to quash such attempts to protect local advocacy programs as a resource for victims.

- Prosecutor and Law Enforcement Based Advocates should communicate to the victim clearly upon initiation of services that their communication is not confidential and they are required to disclose information to the prosecutor who may disclose certain information to the defense.

**Note:** In some jurisdictions prosecutors have successfully prevented disclosure of a victim's privileged mental health records where the victim and/or the psychotherapist have asserted the KRE 507 privilege. In these cases, the trial courts have relied on the decision of the United States Supreme Court in *Jaffee v. Redmond*, 116 S.Ct. 1923, 518 U.S. 1 (1996) which was decided subsequent to *Eldred v. Commonwealth*, 906 S.W.2d 694 (Ky. 1994) where the court held that mental health records were discoverable by the defense. See also, *Commonwealth v. Barroso* 122 S.W. 3d 554 (Ky. 2003), which abrogated *Eldred vs. Commonwealth* to the extent that the Court ruled that in camera review of a witness's psychotherapy records is authorized only upon receipt of evidence sufficient to establish a reasonable belief that the records contain exculpatory evidence; see also *Peak v. Commonwealth*, 197 S.W.3d 536 (Ky. 2006).

*b. Comprehensiveness of services provided*

- The internal, prosecutor-based advocate shall perform those duties necessary to insure compliance with the crime victim's bill of rights contained in KRS 421.500 to 421.530. KRS 69.350, KRS 15.757.
- In all court proceedings, a victim advocate, upon request of the victim, shall be allowed to accompany the victim during the proceeding to provide moral and emotional support. KRS 421.760. When read in conjunction with KRS 610.060, this also provides the right to accompany victims to juvenile proceedings.
- Because victims of domestic violence often present with comprehensive needs, prosecution-based advocates should collaborate with community-based advocates who are in the best position to directly support victims' immediate safety, housing, medical, child custody and other family court needs.

## **Marsy's Law**

In the 2020 General Election, Kentuckians voted to add an amendment to the Constitution of Kentucky called Marsy's Law. This decision made [Senate Bill 15](#) and [Senate Bill](#)

[80](#) law. Senate Bill 15's amendments are reflected in [Section 26A](#) of the Constitution of Kentucky and Senate Bill 80 works in conjunction with [KRS 421.500 - 421.575](#).

Section 26A of the Constitution of Kentucky ensures crime victims' rights are "respected and protected by law in a manner no less vigorous than the protections afforded to the accused." Marsy's Law does not give crime victims the same rights as the accused. However, the rights given to crime victims have equal protection under the law.

Under Marsy's Law, crime victims have the constitutional right to:

- Timely notice of all proceedings.
- Be heard in any proceeding involving release, plea, sentencing, or consideration of pardon, commutation, granting of reprieve, or other matter involving the right of a victim.
- Be present at all proceedings, other than Grand Jury proceedings.
- Proceedings free from unreasonable delay.
- Consult with the attorney for the Commonwealth or designee.
- Reasonable protection from the accused.
- Timely notice of release or escape of the accused.
- Have their safety and their family's safety considered in setting bail, the defendant's release and conditions of release.
- Full restitution to be paid by the convicted defendant.
- Fairness and consideration of the victims' safety, dignity, and privacy.
- Be informed of these rights and standing to assert these right

Prosecutors Must Promote Victim Participation by:

- Making reasonable efforts to ensure victims and witnesses who are required to attend criminal justice proceedings are notified of any scheduling changes;
- Returning the victims' property which was held for evidentiary purposes (unless there is a compelling reason to retain);
- If requested by the victim or witness, assist in explaining absences from work due to participation in the prosecution.

Prosecutors Must Notify Victims Regarding:

- Their right, upon conviction, to submit a written victim impact statement;
- The defendant's release on bond or any special conditions of release.
- The defendant's charges;
- Any changes in custody of the defendant;
- The trial date, the trial verdict, the sentencing date, and any Parole Board hearing date;
- The right of the defendant to appeal the conviction and any scheduled hearings for shock probation or bail pending appeal and the results of those hearings.

Prosecutors Must Inform Victims regarding:

- The assistance of a victim advocate;
- Protective, emergency, social and medical services;
- Community-based treatment programs;
- Where applicable, restitution and crime victim compensation;
- Registration/notification when a person has been released from prison, jail, juvenile detention facility, psychiatric facility, or under limited circumstances, a forensic psychiatric facility;
- Protection from intimidation, harassment or retaliation;
- The Victim, Witness, and Family Protection Program.

Prosecutors Must Consult with Victims regarding:

- Case dismissal;
- Release of the defendant, pending judicial proceedings;
- Conditions of the defendant's release;
- Negotiated plea;
- Defendant's entry into a Pre-trial Diversion Program.



## APPENDIX

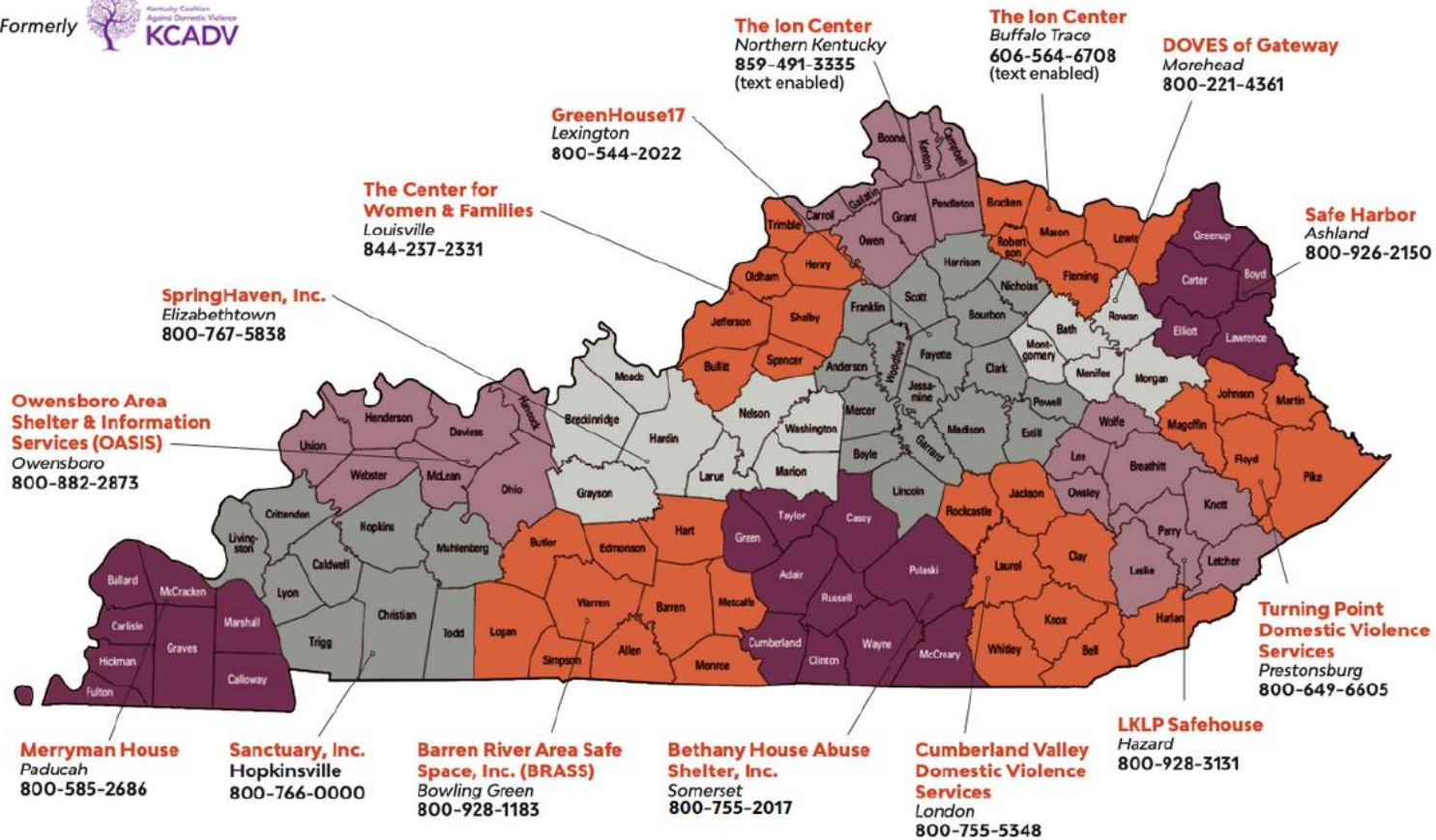
1.	Domestic Violence and Sexual Assault Program Map . . . . .	A-2
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3.	Resource List . . . . .	A-4
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Kentucky united against violence.

**ZEROV.org** | PHONE 502-209-5382  
111 Darby Shire Circle | Frankfort, KY 40601  
Domestic Violence Hotline **800-799-SAFE (7233)**

### Kentucky's Domestic Violence Shelter Programs



# POWER AND CONTROL WHEEL

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



Developed by:  
Domestic Abuse Intervention Project  
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Produced and distributed by:



**NATIONAL CENTER**  
on Domestic and Sexual Violence  
training • consulting • advocacy  
4612 Shoal Creek Blvd. • Austin, Texas 78756  
512.407.9020 (phone and fax) • [www.ncdsv.org](http://www.ncdsv.org)

Additional Power and Control Wheels, highlighting population specific considerations, are available through the Duluth Wheel Information Center at <https://www.theduluthmodel.org/wheel-gallery/>.

## RESOURCE LIST

1. **AEquitas: The Prosecutors' Resource on Violence Against Women.**

<http://www.aequitasresource.org/>. Aequitas' mission is to improve the quality of justice in sexual violence, intimate partner violence, stalking, and human trafficking cases by developing, evaluating, and refining prosecution practices that increase victim safety and offender accountability. AEquitas' staff is comprised of former prosecutors, with decades of experience, who conduct legal research; provide 24/7 case consultation; serve as mentors and trainers; and publish resources. The individualized assistance AEquitas provides is data driven and incorporates customized strategies that are easy to implement, resulting in prosecutors' ability to sustain effective practices and promote systemic change.

2. **National Center for the Prosecution of Violence Against Women (NCPVAW), National District Attorney's Association (NDAA).** [http://www.ndaa.org/ncpvaw\\_home.html](http://www.ndaa.org/ncpvaw_home.html).

The NCPVAW exists to serve prosecutors, members of the prosecution team and other allied professionals as they strive to deliver justice to all survivors of domestic violence/dating violence, sexual violence, and stalking and to hold criminals accountable. Services provided by the NCPVAW include the following:

- Hosting national training events, including the Annual National Multi-Disciplinary Conference on Domestic Violence and the Prosecuting Sexual Assault Cases Course.
- Designing and providing hands-on trial advocacy training geared towards developing and fine tuning litigation skills for prosecutors who handle sex crimes and domestic violence / dating violence and stalking cases.
- Providing training at state and local conferences on subjects that are relevant to the jurisdictions, expertly delivered by experienced and tested trial and appellate prosecutors as well as scientific and medical experts.
- Designing and conducting multi-day state and local trainings, in consultation with our hosts, to address the needs expressed by the jurisdiction and audience type.
- Providing resources on topics relevant to the prosecution of sexual assault, domestic violence, and domestic violence in late life, dating violence, stalking and cyber stalking.
- Providing case consultation for prosecutors, advocates and law enforcement, including consultations on jury selection (and the writing of jury selection questions), theme development, trial visuals, cross-examination of defense witnesses, assisting with expert witness identification and location and witness preparation.

- Advising prosecutors regarding the screening of cases, filing of charges, and offering of plea agreements.
3. **American Bar Association Commission and Domestic and Sexual Violence.** [http://www.americanbar.org/groups/domestic\\_violence.html](http://www.americanbar.org/groups/domestic_violence.html). The mission of the Commission is to increase access to justice for victims of domestic violence, sexual assault and stalking by mobilizing the legal profession. For two decades, the Commission has focused on policy initiatives and training for lawyers who represent victims of domestic and sexual violence.
  4. **ZeroV.** <https://www.zerov.org/> ZeroV is a coalition of Kentucky's fifteen regional domestic violence programs (shelters) providing services to victims of domestic violence and their children. In addition to advocating on behalf of victims of domestic violence, ZeroV assists the fifteen domestic violence programs by providing resources, training, and technical assistance. ZeroV's mission is to mobilize and support member programs and allies to end intimate partner violence.
  5. **Mary Byron Project.** <http://www.marybyronproject.org/>. The Mary Byron Project was established in 2000 in memory of the young woman whose tragic murder led to the creation of automated crime victim notification technologies. As a nationally recognized thought leader on domestic violence, the Mary Byron Project cultivates and supports efforts that extend beyond crisis management to attack the root causes of this epidemic and help build safer, healthier communities.
  6. **National Domestic Violence Hotline.** <http://www.thehotline.org/>. Operating around the clock, seven days a week, confidential and free of cost, the National Domestic Violence Hotline provides lifesaving tools and immediate support to enable victims to find safety and live lives free of abuse. Callers to The Hotline at 1-800-799-SAFE (7233) can expect highly trained, experienced advocates to offer compassionate support, crisis intervention information and referral services in over 170 languages. Visitors to this site can find information about domestic violence, safety planning, and local resources.
  7. **The Training Institute on Strangulation Prevention.** <https://www.strangulationtraininginstitute.com/>. The Institute, launched in October 2011, was developed in response to the increasing demand for Intimate Partner Violence Strangulation Crimes training and technical assistance (consulting, planning and support services) from communities across the world. It provides training, technical assistance, web-based education programs, a directory of national trainers and experts, and a clearinghouse of all research related to domestic violence and

sexual assault strangulation crimes. The goals of the Institute are to: enhance the knowledge and understanding of professionals working with victims of domestic violence and sexual assault who are strangled; improve policy and practice among the legal, medical, and advocacy communities; maximize capacity and expertise; increase offender accountability; and ultimately enhance victim safety.

8. **Lethality Assessment Program – Maryland Model (LAP).**

[http://mnadv.org/mnadvWeb/wp-content/uploads/2011/10/LAP\\_Info\\_Packet--as\\_of\\_12-8-10.pdf](http://mnadv.org/mnadvWeb/wp-content/uploads/2011/10/LAP_Info_Packet--as_of_12-8-10.pdf). The LAP, created by the Maryland Network Against Domestic Violence (MNADV) in 2005, is an innovative strategy to prevent domestic violence homicides and serious injuries. It provides an easy and effective method for law enforcement and other community professionals—such as health care providers, clergy members, case workers, and court personnel—to identify victims of domestic violence who are at the highest risk of being seriously injured or killed by their intimate partners, and immediately connect them to the local domestic violence service program. The LAP is a multi-pronged intervention that consists of a standardized, evidence-based lethality assessment instrument and accompanying referral protocol that helps first responders make a differentiated response that is tailored to the unique circumstances of High-Danger victims.

9. **Stalking and Harassment Assessment and Risk Profile (SHARP).**

<http://www.cdar.uky.edu/CoerciveControl/sharp.html>. The Stalking and Harassment Assessment and Risk Profile (SHARP) is a 43 item web-based assessment developed from the empirical research, clinical literature, stories from stalking victims, case studies, as well as feedback from victims, advocates, and other professionals in the field. SHARP provides an assessment of the “big picture” of the stalking situation. The goals of SHARP are accomplished in two ways. First, users respond to 43 stalking situation questions in the web-based assessment. Second, based on how the 43 questions are answered two individually tailored narrative reports are developed. The first report provides a narrative of the stalking situation and the risk profile and the second report provides information about stalking risks and safety suggestions.

10. **Kentucky Association of Sexual Assault Programs.** <http://www.kasap.org/>. The Kentucky Association of Sexual Assault Programs (KASAP) is the coalition of Kentucky's 13 Regional Rape Crisis Centers. Since it was established in 1990, KASAP has served as a central point of contact on sexual violence issues in Kentucky. KASAP provides technical assistance to member programs and other professionals, advocates for improvements in public policy, fosters coalition building among members and those with common concerns, and promotes prevention and public awareness regarding sexual violence and related issues.



11. **Stalking Resource Center.** <http://victimsofcrime.org/our-programs/stalking-resource-center/about-us>. In 2000, the National Center for Victims of Crime partnered with the U.S. Department of Justice Office on Violence Against Women to create the Stalking Resource Center (SRC). Since its inception, the SRC has trained over 100,000 professionals who work with victims in all 50 states and provided technical assistance to hundreds of communities seeking to enhance their response to stalking. The mission of the SRC is to enhance the ability of professionals, organizations, and systems to effectively respond to stalking. The SRC envisions a future in which the criminal justice system and its many allied community partners will have the best tools to effectively collaborate and respond to stalking, improve victim safety and well-being, and hold offenders accountable.

SRC services include: providing training that is victim-centered, research informed, and practice based at events sponsored by practitioners on the local, state, and national level and providing direct assistance to build the capacity of criminal justice and victim services organizations to respond effectively to stalking. Assistance includes developing a coordinated community response, developing and implementing effective stalking protocols and policies, accessing civil and criminal remedies for stalking victims and developing and enhancing services for victims of stalking.

12. **OutrageUs.** <https://www.outrageus.org/>. OutrageUs was established as a non-profit organization in 2009 by a small group of concerned citizens to bridge the divide between the experiences of partner violence victims and how others view, understand, and respond to those experiences. Through unique collaborations with institutions, communities, and survivors, OutrageUs has and is continuing to develop multimedia resources, services, tools and research informed strategies to help communities build on their strengths and effectively address partner violence. A variety of media, including original personal narrative pieces and short documentary films, have been created to attract and engage a wide and diverse audience.
13. **Bakhita Empowerment Initiative.** <https://cclou.org/bakhita-empowerment-initiative/>. Bakhita Empowerment Initiative is a program of Catholic Charities of Louisville. It provides technical assistance to local coalitions throughout the state as well as services to victims of human trafficking.
14. **Children's Law Center, Inc.** [www.childrenslawky.org](http://www.childrenslawky.org). CLC is a non-profit law center that provides free legal services for children and youth. CLC runs the Crime Victim Project, which provides legal services to children and youth, including representation in DVO/IPO hearings.

## RESPONSIBILITIES OF PROSECUTORS

### CRIME VICTIMS' BILL OF RIGHTS CHECKLIST

Case Name:	Victim Name:	Case #:
------------	--------------	---------

#### INFORMATION

*The attorney for the Commonwealth shall make a reasonable effort to insure that the victim receives available information on:*

DATE PROVIDED

- |   |   |
|---|---|
| <p>_____ <input type="checkbox"/> Protective services</p> <p>_____ <input type="checkbox"/> Emergency services</p> <p>_____ <input type="checkbox"/> Social services</p> <p>_____ <input type="checkbox"/> Medical services</p><br><p>_____ <input type="checkbox"/> How to register with VINE to be notified when a person has been released from a prison, jail, juvenile detention facility, (or psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized)</p> <p>_____ <input type="checkbox"/> How to receive information on being protected from intimidation, harassment, and retaliation</p> <p>_____ <input type="checkbox"/> The Victim-Witness Protection Program</p> | <p>_____ <input type="checkbox"/> Crime victim compensation (where applicable)</p> <p>_____ <input type="checkbox"/> Restitution (where applicable)</p> <p>_____ <input type="checkbox"/> Obtaining assistance from a victim advocate</p> <p>_____ <input type="checkbox"/> Community-based treatment programs</p> <p>_____ <input type="checkbox"/> Submitting a written victim impact statement</p> |
|---|---|

#### NOTIFICATION

*If victims so desire and if they provide a current address and telephone number, the attorney for the Commonwealth shall provide prompt notification, if possible, of judicial proceedings relating to the case, including but not limited to the following:*

DATE PROVIDED

- |  |   |
|--|---|
| <p>_____ <input type="checkbox"/> Defendant's release on bond and any special conditions of release</p> <p>_____ <input type="checkbox"/> Charges filed against the defendant</p> <p>_____ <input type="checkbox"/> The defendant's pleading to the charges</p> <p>_____ <input type="checkbox"/> Trial date</p> <p>_____ <input type="checkbox"/> Changes in custody of the defendant</p> <p>_____ <input type="checkbox"/> Changes in trial dates</p> <p>_____ <input type="checkbox"/> Trial verdict</p> <p>_____ <input type="checkbox"/> Right to submit a victim impact statement to the court at the time of sentencing</p> <p>_____ <input type="checkbox"/> Sentencing date</p> <p>_____ <input type="checkbox"/> Dates of Parole Board hearings held for the defendant</p> <p>_____ <input type="checkbox"/> Scheduled hearing for shock probation</p> <p>_____ <input type="checkbox"/> Scheduled hearing for bail pending appeal</p> | <p>_____ <input type="checkbox"/> resulting order</p> <p>_____ <input type="checkbox"/> resulting order</p> |
|--|---|

*The attorney for the Commonwealth shall make a reasonable effort to insure that*

- \_\_\_\_\_ ☐ Victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances



**AGENCY NAME**  
**Domestic Violence Lethality Screen for First Responders**

Officer: \_\_\_\_\_ Date: \_\_\_\_\_ Case #: \_\_\_\_\_  
 Victim: \_\_\_\_\_ Offender: \_\_\_\_\_

☐ Check here if victim did not answer any of the questions.

A "Yes" response to any of Questions # 1 – 3 automatically triggers the protocol referral.			
1.	Has he/she ever used a weapon against you or threatened you with a weapon?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
2.	Has he/she threatened to kill you or your children?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
3.	Do you think he/she might try to kill you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.

Negative responses to Questions # 1 – 3, but positive responses to at least four (4) of Questions # 4 -11 trigger the protocol referral.			
4.	Does he/she have a gun or can he/she get one easily?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
5.	Has he/she ever tried to choke you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
6.	Is he/she violently or constantly jealous or does he/she control most of your daily activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
7.	Have you left him/her or separated after living together or being married?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
8.	Is he/she unemployed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
9.	Has he/she ever tried to kill himself/herself?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
10.	Do you have a child that he/she knows is not his/hers?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
11.	Does he/she follow or spy on you or leave threatening messages?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.

♦ An officer may trigger the protocol referral, if not already triggered above, as a result of the victim's response to the below question, or whenever the officer believes the victim is in a potentially lethal situation.

♦ Is there anything else that worries you about your safety? (If "yes", what worries you?)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Check one:	<input type="checkbox"/> Victim screened in according to the protocol	** Officer required to make call
	<input type="checkbox"/> Victim screened in based on the belief of officer	** Officer required to make call
	<input type="checkbox"/> Victim did not screen in	
If victim screened in: After advising him/her of a high danger assessment, did victim speak with the hotline counselor?		<input type="checkbox"/> Yes <input type="checkbox"/> No

**Note:** The questions above and the criteria for determining the level of risk a person faces is based on the best available research on factors associated with lethal violence by a current or former intimate partner. However, each situation may present unique factors that influence risk for lethal violence that are not captured by this screen. Although most victims who screen "positive" or "high danger" would not be expected to be killed, these victims face much higher risk than that of other victims of intimate partner violence.

Office of the Attorney General  
 Office of Victims Advocacy – 800-372-2551 or 502-696-5312  
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**AGENCY NAME**  
**Domestic Violence Strangulation Worksheet**

**Submit this form with your Incident JC-3 Report**

Date: \_\_\_\_\_ Report #: \_\_\_\_\_  
 Victim's Name: \_\_\_\_\_ Suspect's Name: \_\_\_\_\_  
 Officer's Name: \_\_\_\_\_ Code #: \_\_\_\_\_

**Ask EVERY victim that reports being choked/strangled the following questions:**

1. Did the victim lose bladder control (urinate or defecate on self)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Does the victim describe or say "I couldn't breathe"?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Does the victim describe "everything was going dark"?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Did the victim lose consciousness/pass out?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. Did the suspect place his/her hands around your neck? <input type="checkbox"/> Right <input type="checkbox"/> Left <input type="checkbox"/> Both	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. Did the suspect apply pressure to your neck by some other method? Forearm: <input type="checkbox"/> Right <input type="checkbox"/> Left <input type="checkbox"/> Both      Knee: <input type="checkbox"/> Right <input type="checkbox"/> Left <input type="checkbox"/> Both Foot: <input type="checkbox"/> Right <input type="checkbox"/> Left <input type="checkbox"/> Both      Other: Ligature <input type="checkbox"/> Belt <input type="checkbox"/> Cord <input type="checkbox"/> Rope <input type="checkbox"/> Other	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. How long did the strangulation occur?      seconds      minutes <input type="checkbox"/> Unknown		
8. Was the victim smothered? If yes, with what?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. Were there multiple strangulation attempts? If yes, how many attempts?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10. Was the victim shaken during strangulation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11. Was the victim's head pounded against the wall, floor ground or other object? If yes, on what?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Ask the following questions about the suspect:**

1. Was the suspect consuming alcohol/drugs before or during this incident?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Is the suspect on probation or parole? Officer name/phone #:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. What is the suspect's dominant hand?	<input type="checkbox"/> Left	<input type="checkbox"/> Right <input type="checkbox"/> Both
4. What did the suspect say while strangling the victim?		
5. What was the suspect's demeanor during strangulation (appearance, behavior, etc.)?		
6. Are there any prior incidents of strangulation? If yes, how many?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Look for, and ask about, the following symptoms of injury in strangulation, mark all that apply:**

Breathing:	<input type="checkbox"/> Difficulty breathing	<input type="checkbox"/> Hyperventilating	<input type="checkbox"/> Unable to breathe	<input type="checkbox"/> Other:	
Voice:	<input type="checkbox"/> Raspy	<input type="checkbox"/> Hoarse	<input type="checkbox"/> Coughing	<input type="checkbox"/> Difficulty speaking	<input type="checkbox"/> Unable to speak
Throat/Neck:	<input type="checkbox"/> Trouble swallowing	<input type="checkbox"/> Painful swallowing	<input type="checkbox"/> Neck pain	<input type="checkbox"/> Nauseous	<input type="checkbox"/> Vomiting
Behavior:	<input type="checkbox"/> Amnesia/Unable to remember	<input type="checkbox"/> Agitated	<input type="checkbox"/> Stressed	<input type="checkbox"/> Hallucinating	<input type="checkbox"/> Combativeness
Other:	<input type="checkbox"/> Dizzy	<input type="checkbox"/> Headache	<input type="checkbox"/> Fainting	<input type="checkbox"/> Urination	<input type="checkbox"/> Defecation

**Look for visible signs of injury on the face, eyes, eyelids, nose, ears, mouth, under chin, chest, shoulders, neck and head. Look for redness, abrasions, scratches, bruises, swelling, bumps, impressions and pulled hair. Document in the narrative!**

*Office of the Attorney General  
 Office of Victims Advocacy – 800-372-2551 or 502-696-5312  
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AOC-275.3

Rev. 6-23

Doc. Code: ODV; IPO

Page 1 of 3 www.kycourts.gov KRS Chapter 403; KRS Chapter 456; FCRRP Part IV

**ORDER OF PROTECTION**

- ☐ DOMESTIC VIOLENCE ORDER  
☐ AMENDED DOMESTIC VIOLENCE ORDER  
☐ INTERPERSONAL PROTECTIVE ORDER  
☐ AMENDED INTERPERSONAL PROTECTIVE ORDER

Case No. \_\_\_\_\_

Court \_\_\_\_\_

County \_\_\_\_\_

State \_\_\_\_\_

Division \_\_\_\_\_

**PETITIONER/PLAINTIFF**

First

Middle

Last

- ☐ Petitioner filing on his/her own behalf; and/or  
☐ Petitioner filing on behalf of minor identified herein.

**V.****Persons Protected by this Order:**

- ☐ Petitioner: \_\_\_\_\_ DOB: \_\_\_\_\_  
☐ Minor on whose behalf Petition was filed:  
 Name: \_\_\_\_\_ DOB: \_\_\_\_\_  
☐ Other protected person(s) or protected minor(s):  
 Name: \_\_\_\_\_ DOB: \_\_\_\_\_  
 Name: \_\_\_\_\_ DOB: \_\_\_\_\_  
 Name: \_\_\_\_\_ DOB: \_\_\_\_\_  
 Name: \_\_\_\_\_ DOB: \_\_\_\_\_

**RESPONDENT/DEFENDANT**

First

Middle

Last

Relationship to Petitioner: ☐ spouse ☐ former spouse  
☐ unmarried, child in common ☐ unmarried, currently or formerly  
 living together ☐ parent ☐ child ☐ stepparent ☐ grandparent  
☐ grandchild ☐ adult sibling ☐ person who lives in the same  
 household as a child(ren) if the child(ren) is the alleged victim  
☐ currently or previously in a dating relationship  
☐ none of the above relationships apply, but Respondent is alleged  
 to have committed ☐ stalking or ☐ sexual assault  
 Respondent Address: \_\_\_\_\_

**RESPONDENT/DEFENDANT IDENTIFIERS**

SEX	RACE	DOB	HT	WT
EYES	HAIR	Social Security #		
DRIVERS LICENSE #		STATE	EXP. DATE	

Distinguishing Features: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CAUTION:** ☐ Weapon involved ☐ Armed and Dangerous ☐ Divorce/Custody/Visitation case pending

**THE COURT HEREBY FINDS:**

That it has jurisdiction over the parties and subject matter, and Respondent has been provided with reasonable notice and opportunity to be heard.

- ☐ Additional findings of this order are as set forth below.

**THE COURT HEREBY ORDERS:**

- ☐ That Respondent be restrained from committing further acts of abuse or threats of abuse, stalking, or sexual assault.  
☐ That Respondent be restrained from any unauthorized contact with Petitioner/Plaintiff or other protected person(s) named in this Order.  
☐ Additional terms of this order are as set forth below.

The terms of this order shall be effective until \_\_\_\_\_.

**WARNING TO RESPONDENT:**

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this Order of Protection.

## **Americans with Disabilities Act 1990**

### **Titles**

- I. Employment
- II. Public Service (State and Local Government)
- III. Public Accommodation
- IV. Telecommunications
- V. Miscellaneous Provisions

## **Americans with Disabilities Act (ADA) 2009**

### **Purpose**

- “To reinstate a broad scope of protection” by expanding the term “disability.”
- The original definition has previously been inappropriately narrowed by court decisions.
- It will now be much easier for individuals seeking the law’s protection to demonstrate that they meet the definition of “disability.”

### **ADA applies to over 6 million entities in the U.S. including:**

- State and local governments
- Private employers
- Employment agencies
- Labor unions
- Public schools and universities
- Law enforcement

### **ADA does not apply to:**

- Employers with fewer than 15 employees
- Executive branch of the federal government
- Private membership clubs
- Religious organizations
- Indian tribes

Individuals with disabilities:

- (1) An individual with a physical or mental impairment that substantially limits one or more of the major life activities of such individual.
- (2) An individual with a record of such a physical or mental impairment

An individual generally meets this criteria when, in the past, although not currently, had an impairment that substantially limited a major life activity; or was once misclassified as having a substantially limited impairment.

- (3) Regarded as having a physical or mental impairment. When an entity, or an employer takes an action prohibited by the ADA based on an actual or perceived impairment.

No longer does one have to show that the employer believed the real or perceived impairment substantially limited major life activity.

Major life activity

- Basic activity that most people in the general population can perform with little or no difficulty.

Major life activities recognized by the ADA include but are not limited to:

**Major life activities 1990 ADA**

walking	seeing	hearing	caring for oneself
breathing	speaking	learning	working
performing manual tasks			

**Major life activities added by the ADA Amendment Act 2009**

eating	sleeping	standing	concentrating
lifting	bending	reading	thinking
communicating	interacting with others		

AND

- Major bodily functions:

immune system	bowel	bladder
neurological	brain	endocrine
respiratory	circulatory	reproductive functions

### Mitigating measures

- Eliminate or reduce the symptoms or impact of an impairment
- Should be ignored in determining if an impairment substantially limits an individual in performing a major life activity (example: a prosthesis which allows an individual to walk cannot be considered when determining if a major life activity has been affected)
- Exception: eyeglasses or contact lenses are not included
- ADA allows consideration of the negative effects from the use of a mitigating measure in determining if a disability exists. Example: medication side effects

### Mitigating measures include but are not limited to:

medication    medical supplies    equipment or appliances    low vision devices  
prosthetics    mobility devices    oxygen therapy equipment and supplies  
hearing aid(s) and cochlear implant(s) or other implantable hearing devices  
use of assistive technology    reasonable accommodation  
learning behavior    behavioral therapy    physical therapy

### Disabilities that are episodic or in remission

- ADA, as amended, states that an impairment that is episodic or in remission meets the definition of disability if it would substantially limit a major life activity when active
- Examples:

epilepsy	hypertension	multiple sclerosis (MS)
asthma	diabetes	depression

## **Title 1: Employment**

### Qualified individual with a disability must be able to:

- 1) Satisfy the required skills, experience and education required for the position
- 2) Perform the essential job functions with or without reasonable accommodation

### Essential job functions:

- What the employer believes to be necessary for the job

- Tasks that are fundamental for the position
- May not include incidental duties

Items to be considered:

- Amount of time spent on a specific task or duty
- Duties performed by past and current workers in the position
- Positions exist to perform function
- Limited number of employees among whom that particular job can be distributed
- Employee has the expertise or ability to perform a particular function
- Update job descriptions when significant changes occur

**Employers are responsible for accommodations when the employee declares a disability or if a disability becomes known to the employer (either through observation or a credible third party.)**

When a disability is not obvious, the employer can request documentation.

Documentation should be:

- Current (within past three years, but no more than 5 years)
- Signed by a qualified professional
- Should include:
  - Description of the disability(s)
  - Impact on essential job functions
  - Current treatments and accommodations
  - Recommendations of proposed work related accommodations

Reasonable accommodations may include but are not limited to:

- Provide or modify equipment
- Make facilities accessible – removed barriers
- Provide readers or interpreters

Accommodations may include but are not limited to:

policies	phone adaptations	seating	technical assistance
oral instruction	interpreters	audio/visual materials	
accessible space	tapes of meetings	light switches	
calculators	extra time for tests	large print material	
note-takers	blocks under desk	flexible schedule	

### Rasonable Accommodations

- The employer is not required to provide accommodations requested by employee
- The employer can choose another accommodation
- It MUST be effective

### Required Interactive Process

The courts have held that an “interactive process” must be entered into in a good faith effort to find an appropriate accommodation.

- Request for accommodation(s)
- Documentation (if necessary)
- Discussions between employer and employee regarding potential effectiveness
- Accommodate in current position
- Reassign to a vacant position
- Montior

### Undue Hardship

- Size of business
- Financial resources
- Cost of accommodation
- Alteration or change in the delivery of service
- Disruption of other workers

### Medical

- An employer cannot require a medical examination prior to a job offer
- A drug test can be required prior to a job offer if required of all applicants. It should only test for drugs not prescribed to the potential employee.
- The cost of health insurance has not increased because more people with disabilities are employed.

## **Title II: Public Services**

Title II of the ADA prohibits discrimination against qualified individuals with disabilities by public entities (i.e., state or local government). All departments, agencies or activities, services, programs and facilities must be accessible to people with disabilities.



Examples:

employment	government offices open to the public
government meetings	public schools
universities	recreation and parks

### **Title III: Public Accommodation**

No individual shall be discriminated against on the basis of disability in the full and equal employment of any company open to the public.

Examples including but not limited to:

- Public gathering places
- Places of lodging
- Stores
- Social service centers
- Restaurants

### **Title IV: Telecommunications**

- Telecommunication relay services  
Voice and TDD  
711
- Closed captioning (Public service announcements)

### **Title V: Miscellaneous provisions**

Covered Activities

- State immunity
- Retalliation
- Attorney's fees
- Coverage of Congress
- Other Federal and State laws

## Topics of Frequently Asked Questions

### Service Animals

Under the ADA, a service animal is:

- Individually trained to perform tasks that the individual cannot perform for him/herself such as:
  - Guiding people who are blind people
  - Alerting individuals who are deaf or hard of hearing
  - Alerting people with seizures
  - Performing other tasks
- A dog [always] and a miniature horse [on a case-by-case basis]  
No other animal is recognized by the ADA as a service animal
- On a leash, under the control of the owner, and clean
- Permitted in all areas of a facility open to the public including but not limited to:

restaurants	hotels	taxis
buses	shuttles	grocery stores
stores	hospital	theaters
medical offices	zoos	health clubs
parks	etc.	

### Mobility Devices

Wheelchairs – are permitted anywhere the public is allowed to go

Other power driven mobility services

(Segways and other scooters are permitted unless they pose a direct threat, safety hazard or alters service, program or activities.)

### Effective Communication

The ADA requires effective communication. Methods of achieving effective communication may include:

- Interpreters
- 711 – relay service
- Video Remote Interpreting [VRI]

- Writing can be used to communicate with people who are deaf or hard of hearing in limited situations.

#### Places of lodging – reservations for accessible rooms

- Reservations must be allowed to be made during the same hours as other reservations
- Staff should be able to identify and describe features
- Hold accessible rooms until all others are taken
- Remove accessible rooms from outside reservation systems, such as Priceline, Expedia, etc.

#### ADA Enforcement – Federal

- Title I: Employment Opportunity Commission  
1-800-669-4000                      1-800-669-6820 (TTD)
- Title II and III: Department of Justice  
1-800-514-0301                      1-800-514-0383 (TTD)
- Title IV: Federal Communications Commission  
1-888-835-5322 (TTY)
- Office of Civil Rights, Department of Education  
1-800-421-3481

#### ADA Enforcement – State

- Protection and Advocacy  
502-564-2967                      1-800-372-2988 (V/T)  
[www.kypa.net](http://www.kypa.net)
- Kentucky Commission on Human Rights  
502-595-4024                      1-800-292-5566  
<http://kchr.ky.gov/>

## **Specialized ADA Information for Law Enforcement**

### **When making an arrest consider (for accommodations):**

- Does the person have mobility issues – use a cane, crutches, wheelchair and or walker?
- Is the person deaf or hard of hearing?
- Does the person have a visual impairment?
- How can this person be handcuffed?

### **Transporting a person with a disability**

- Ask the person what type of transportation he/she can use.
- Ask how to lift or assist him/her when transferring in/out of the vehicle.
- Some individuals who use assistive devices like crutches, braces, or even manual wheelchairs can be safely transported in patrol cars.
- Safe transport of other individuals who use manual or power wheelchairs may require departments to make modifications to existing cars or vans.
- Another option is to use lift-equipped vans or buses. Police departments may consider other community resources like accessible taxi services.

### **Effective Communication**

- The ADA requires that the expressed choice of the individual with the disability be given primary consideration in determining which communication aid to provide.
- A person with a disability is in the best position to know his/her needs.
- The ultimate decision re: method of communication is made by the police department.
- The department should honor the individual's choice unless it can demonstrate that another effective method of communication exists.
- Interpreters:
  - Police officers should generally not rely on family members (who are frequently emotionally involved or possible perpetrators) to provide interpreting.
  - Except in emergency situations when an interpreter isn't immediately available.
- Communicating with a person who has a visual impairment:
  - Identify yourself
  - State clearly and completely any directions or instructions – including any information that is posted visually
  - Officers must read aloud (in full) any documents that the person needs to sign. (The same applies to people who have difficulty with reading.)
  - Before taking photos or fingerprints, describe the procedures in advance so that the individual will know what to expect. (The same applies to people who have intellectual disabilities or brain injury.)

## **Etiquette: Tips for Interacting with People with Disabilities**

The following information is intended as general tips when interacting with people with disabilities. Since each person and situation is unique, the best advice is to ask the person with a disability the best way you can assist him/her.

### Person First Language

- The individual with the disability is a person first
- Person First Language:
  - Person with cerebral palsy
  - Person with a learning disability
  - Person who uses a wheelchair
  - Person with schizophrenia

### Sensitive Use of Language

- Do not refer to the disability unless it is relevant.
- Do not sensationalize a disability by saying, “victim of” or “afflicted with,” etc.
- Avoid emotional descriptions  
“Uses a wheelchair” not “confined to a wheelchair.”  
“Walks with crutches” not “is crippled.”
- People with disabilities use words such as “see”, “hear”, “run”, “walk.”
- When speaking with a person with a speech impairment and you don’t understand, feel free to ask him/her to repeat or rephrase the statement.
- Remember that American Sign Language is a language itself. English is considered as a second language for someone whose primary language is ASL.
- While not a protected disability right, Title VI of Civil Rights Act of 1964 requires public service agencies that receive federal monies to provide equal language access for all non-English speakers.

### Mobility Disabilities

- People who use crutches, canes or walkers should never be grabbed, they use their arms for balance
- Do not assume that using a wheelchair is a tragedy. It is a means of independence.
- Do not hang or lean of the wheelchair, it is an extension of the user’s personal space.
- Eye level > find somewhere to sit down when having a discussion

### Hearing Impairment

- People with varying levels of hearing loss who communicate via sign language – ASL (or another type of sign language) or spoken English.

- Hearing aids may be used. Remember that not all hearing aids allow individuals to hear speech; they may be used to hear loud noises.
- If needed, a person may use an American Sign Language (ASL) interpreter and also a Certified Deaf Interpreter.
- A Certified Deaf Interpreter is a person whose native language is ASL and have skills/ experience in working with individuals who are Deaf and have difficulty with ASL due to language deprivation, psychiatric or cognitive disability.
- When speaking with a person who uses an interpreter, maintain eye contact with the individual, not the interpreter.
- To get attention – tap on shoulder or arm
- Keep hands or objects away from mouth
- Use short sentences
- A small percentage of deaf individuals can read lips; the average accuracy of lip reading is about 30%

### Visual Impairment

- People who have varying levels of visual functioning; not everyone with visual impairments is considered as “blind.” Do not assume level of functioning.
- Announce when you enter or leave a room.
- Do not place new items on the floor that may impede the person’s movement about the room.
- Guiding a person who is visually impaired is best accomplished by offering your arm or shoulder.
- Do not pat or play with the guide dog when he/she is working, always ask the owner first.
- Walk on the side opposite the guide dog.
- Read written information, if asked.

### Learning Disabilities

- Average or above average intelligence
- Learning disabilities may occur:
 

spoken language	written language
arithmetic	reasoning
organizational skills	
- People with dyslexia may need verbal instruction.
- Ask how the individual the best way for them to receive information.

### Psychological Disabilities

- Making quick decisions may be difficult, allow time for a response.
- Do not assume that the person is dangerous based on diagnosis
- Do not assume that accounts of events are delusions

- People may have different reactions to questions/situations than what you would expect (example: may need extra time to process information)

### Intellectual Disability

- The term “mentally retarded” is no longer acceptable.
- Speak in clear, short sentences.
- Do not talk baby talk.
- Making quick decisions may be difficult, allow time for a response.
- People with intellectual disabilities rely on familiar situations. A change in their routine may require additional time and patience.

### Brain Injury

- People whose brains were injured in accidents, strokes, medication interactions, substance abuse, during military service, etc.
- People may have visible disability (mobility, vision, etc.) that resulted in the injury but not always.
- Speech and decision-making may be affected, allow time for a response.
- People with brain injuries rely on familiar situations. A change in their routine may require additional time and patience.
- Memory (short-term or long-term) may be affected. You may need to repeat yourself.
- Depending on where the brain was injured, people may display more emotions (crying, speak angry words, etc.)

### Service Animals

- Under ADA Amendment Act a service animal is defined as a:  
Dog (always) and a Miniature horse (on a case-by-case basis)
- No other animal is recognized by the ADA as a service animal
- Under the ADA a service animal is individually trained to perform tasks that the individual cannot perform for themselves.
- Examples:
  - Guiding people who are blind
  - Alerting people who are deaf
  - Alerting people who have seizures
  - Performing other tasks
- Must be on a leash
- Providing “emotional support” or comfort is not a task. Animals that only do this are not service animals.
- A service animal is permitted in all areas of a facility open to the public, including but not limited to:
 

restaurants	hotels	taxis
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buses shuttles  
hospital  
zoos

grocery stores  
theaters  
health clubs

stores  
medical offices  
parks                      jail

Additional Information

- Always ask if a person with a disability needs assistance before you help.
- Do not assume there are more disabilities than are obvious.
- Do not speak louder to a person who has a visible disability. Just because someone may have a physical disability, please do not assume there are other disabilities as well.
- Be sensitive about physical contact.

For further Information, please contact:

**Kentucky Protection & Advocacy**

**Phone: 502-564-2967**

**Toll Free: 1-800-372-2988 (V/T)**

**[www.kypa.net](http://www.kypa.net)**



## **Serving Victims with Limited English Proficiency**

As Kentucky's population continues to become more diverse, prosecutors and victim advocates are faced with new challenges on how to effectively communicate and provide notice to victims with limited English Proficiency. The following tips may assist you in serving these diverse populations:

**What is my legal obligation to provide language access?** Under Title VI of the Civil Rights Act of 1964, any agency receiving federal funding (even as a sub grantee) is required to provide "meaningful access" to individuals with Limited English Proficiency ("LEP"). Meaningful access entails providing equal access to the same services without difference or delay, including providing competent interpretation free of charge and translating vital documents.

**Who is Limited English Proficient?** **Anyone** who has difficulty reading, writing, speaking or understanding English is considered to be LEP and is entitled to notice of their right to free interpretation. **Do not forget that LEP also apply to those who are deaf or hard of hearing.** Your organization will need to identify how services will be provided to these individuals, as well. This includes defendants, victims and witnesses in a case.

**Who can interpret?** Title VI requires a "competent interpreter" to be used to interpret. Friends or family members are not considered to be competent interpreters, particularly in any case involving allegations of domestic violence, child abuse or sexual violence.

### **What is the best way to work with an interpreter?**

- If possible, introduce yourself to the interpreter before the conversation and give the interpreter know a summary of what you are going to discuss. Remind the interpreter to interpret everything the victim/witness says without adding or deleting anything, and to speak in the first person. The interpreter should be a neutral conduit and not clarify, answer or explain anything to the victim/witness.
- If you are using an in person interpreter, seat the interpreter slightly behind the victim/witness. Speak directly to the victim/witness. This will allow you to maintain control of the conversation and build trust with the victim/witness. Do not sit in a triangle with the interpreter and victim/witness as this may lead to both parties focusing their attention on the interpreter and prevent building trust and clear communication between the professional and victim/witness.
- Speak in the first person. For example, tell the victim/witness: "You will need to tell the truth" rather than "Tell her that she will need to tell the truth." This makes the conversation clearer and builds rapport with the victim/witness.

- Speak in short sentences. Avoid jargon, slang and acronyms (e.g. “EPO”). This will take patience and may seem slow, but is more efficient and accurate in the long run.
- Above all, maintain your control of the conversation so that the victim/witness knows that you are the person who can answer his/her questions. If the interpreter and victim/witness begin to engage in side conversations, gently steer the conversation back and ask the interpreter to interpret everything that the victim/witness has said.
- At the end of the conversation, check for understanding and make sure to let the victim/witness know how to communicate with your office in the future. If possible, put a note in the file indicating that an interpreter will be needed for all future conversations.

### **Where can I find competent interpreters in my community?**

The Administrative Office of the Courts certifies and registers interpreters for court proceedings. This trained pool of interpreters can be found at:

<http://courts.ky.gov/courtprograms/CIS/Documents/DirectoryInterpreters.pdf>. Many other agencies offer interpreters and translation services. For more information about interpreter resources and other legal rights of victims with limited English proficiency, contact the Office of Victims Advocacy at 502-696-5312.



# **RESPONDING TO STRANGULATION IN KENTUCKY**

**GUIDELINES FOR PROSECUTORS,  
LAW ENFORCEMENT, HEALTH CARE  
PROVIDERS, AND VICTIM ADVOCATES  
2025**

**OFFICE OF THE KENTUCKY ATTORNEY GENERAL**

Office of Victims Advocacy

Office: (502) 696-5312

Victim Resource and Referral Line: (800) 372-2551

[AG.KY.gov/victims](https://ag.ky.gov/victims)



## ATTORNEY GENERAL RUSSELL COLEMAN

January 15, 2025

Dear Colleagues,

Thank you for your commitment to pursuing justice for crime victims and their families. Your efforts are advancing public safety and helping to protect Kentucky families.



This Manual, Kentucky's first-ever comprehensive toolkit on the investigation and prosecution of strangulation, discusses our response to this horrific crime in our Commonwealth. It's the product of zealous collaboration among the Office of the Attorney General, law enforcement, medical professionals and experts from across Kentucky. This is one of the many tools developed to aid you in your pursuit of justice for victims, survivors and their families.

Strangulation is a deadly crime. People who strangle are some of the most dangerous criminals—not only with intimate partner violence, but they are also known to commit lethal crimes against other family members and police officers. People who are able to use their hands as lethal weapons need to be stopped.

In 2019, Kentucky's General Assembly passed legislation making Strangulation a serious felony crime. We are publishing "Responding to Strangulation in Kentucky" to promote best practices in handling these cases at every step from the investigation, to medical treatment, to prosecution and advocacy.

I hope you find this Manual a helpful resource to keep our Commonwealth safe. Please never hesitate to reach out to the Attorney General's Office of Victims Advocacy at (502) 696-5312 if you need additional assistance or have questions about this manual.

Gratefully,

A handwritten signature in blue ink that reads "Russ M. Coleman". The signature is fluid and cursive.

RUSSELL COLEMAN  
ATTORNEY GENERAL

## **ACKNOWLEDGMENTS**

The development of “Responding to Strangulation in Kentucky: Guidelines for Prosecutors, Law Enforcement, Health Care Providers, and Victim Advocates,” Kentucky’s first-ever manual to combat this horrific crime, was the result of zealous collaboration from professionals, experts and public servants from across Kentucky. We are incredibly grateful to these individuals for their commitment to protecting Kentuckians from this deadly crime and pursuing justice for crime victims. Their contributions made this Manual an effective resource that we hope will be heavily relied on in the years ahead.

The Responding to Strangulation in Kentucky Manual Working Group was a multidisciplinary team effort. This was led by the Kentucky Office of the Attorney General (KYOAG) Office of Victims Advocacy Executive Director Robyn Diez d’Aux. Prosecutors and legal professionals included Rewa Zakharia, KYOAG Criminal Chief, Aimee Clymer-Hancock, KYOAG Office of Victims Advocacy Deputy Executive Director, Kathy Phillips, KYOAG Prosecutors Advisory Council Domestic Violence Resource Prosecutor, Bill Knoebel, Boone County’s First Assistant County Attorney, and Denise Durbin, KYOAG Special Counsel. Sergeant Sarah Mantle of the Louisville Metro Police Department’s Professional Standards Unit represented law enforcement. Victim advocates included Erica Paske, KYOAG Victim Advocate, and Brittany Scordo, Clinical Program Manager for The Nest. Medical providers were Carla Hay, Kentucky Children’s Hospital Pediatric Forensic Nurse, Dr. Christina Howard, Kentucky Children’s Hospital Chief, Division of Pediatric Forensic Medicine, Jill Brummett, SANE, Forensic Nurse Manager with St. Elizabeth Healthcare, and Selena McCormick, Forensic Nurse and Violence Prevention Coordinator with St. Elizabeth Healthcare. Several University of Cincinnati Law students assisted with legal research. Meghan Rimer (’24), previously worked for two victim rights attorneys; Katherine Vuyk (’24), interned in the 54<sup>th</sup> Judicial Circuit, and Ainsley Ayres (’25), interned for both the Kenton County Commonwealth Attorneys Office and the U.S. Attorneys Office for the Southern District of Ohio.

We would also like to acknowledge the contribution and collaboration of The Training Institute on Strangulation Prevention, a program of Alliance for HOPE International. Specifically, Chief Executive Officer Gael Strack, President Casey Gwinn, Law Enforcement Support Coordinator Joe Bianco and Program Manager Fernanda España. Thank you to all professionals who contributed to the creation of the Alaska and California Strangulation Manuals, which provided the foundation for the Kentucky Manual. Finally, we acknowledge the expert guidance found in the multiple resources, publications and best practices guides developed by the National District Attorneys Association, AEquitas and the Blueprint for Safety.

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## Chapter 1: Introduction

“Men use strangulation for control and power over women. Once they learn it, they don’t stop.”  
Dr. Ellen Taliaferro

Strangulation impacts all professionals working on sexual assault, domestic violence, dating violence, and stalking cases. Today, it is understood unequivocally that strangulation is a lethal form of domestic violence.

Strangulation is one of the most accurate predictors for the subsequent homicide of victims of domestic violence. Strangulation is the calling card of a serial rapist. The problem of intimate partner violence (IPV) is multifaceted, but experts agree there are few offenses as indicative of an intent to control, harm, and/or kill than strangulation. In fact, if a person is strangled even one time, the victim’s chance of being killed by their abuser is increased by 750%.<sup>1</sup> IPV offenses result in approximately forty (40) deaths in Kentucky annually.<sup>2</sup> Perpetrators are most often male; their victims are usually female, and two-thirds of the time, the victim and the assailant live together.<sup>3</sup>

A historic failure to provide resources to strangulation assault victims, as well as systemic poverty, has caused Kentucky to have one of the highest IPV rates in the country and be placed it in the top ten states where men murder women.<sup>4</sup> As members of a multidisciplinary groups striving to end strangulation and to bring justice to victims, it is futile to act purely in a retroactive sense. In order to address the problem, it is imperative to understand where it came from and why Kentucky fosters an environment that cyclically excludes victims and enables and empowers these violent and dangerous offenders.

At the beginning of the twentieth century, Kentucky had not yet adopted the women’s rights reforms that other states had.<sup>5</sup> Because it had not seceded from the Union during the Civil War, it had not experienced the same post-war constitutional revisions that had improved women’s social state and economic rights in the former Confederate states.<sup>6</sup> It was not until the 1970s that Kentucky began instituting reforms for women’s rights in the state.<sup>7</sup>

Kentucky’s first rape crisis center was opened in Lexington in 1971, and its first domestic violence shelter opened in Louisville in 1977.<sup>8 9</sup> A decade later, shelters were operating in each

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<sup>1</sup> Glass, Nancy et al. “Non-fatal strangulation is an important risk factor for homicide of women.” *The Journal of emergency medicine* vol. 35,3 (2008): 329-35.

<sup>2</sup> <https://www.ncbi.nlm.nih.gov/books/NBK499924/>

<sup>3</sup> *Id.*

<sup>4</sup> <https://www.kentucky.gov/Pages/Activity-stream.aspx?n=SOS&prId=483>; See also “When Men Murder Women: An Analysis of 2020 Homicide Data”, (2022), Violence Policy Center. <https://vpc.org/when-men-murder-women-section-one/> (accessed July 8, 2024)

<sup>5</sup> Jordan, Carol E. “Violence against Women in Kentucky: A History of U.S. and State Legislative Reform.” University Press of Kentucky, 2014.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> [https://www.zerov.org/our\\_history](https://www.zerov.org/our_history) (accessed July 8, 2024).

of Kentucky's fifteen area development districts.<sup>10</sup> Despite these changes, there were still challenges – the Lexington rape crisis center was one of only four centers of their kind in the state.<sup>11</sup> Through the founding of rape crisis centers and domestic violence programs and the creation of state-level associations that addressed sexual assault and IPV, the bedrock for Kentucky's legislative reforms began to form.<sup>12</sup> In 2019 strangulation became a felony offense, making Kentucky one of the last five states to make strangulation a crime. Investigators can now charge a felony that fits the crime instead of an assault fourth degree misdemeanor. <sup>13</sup>

Domestic violence knows no barriers regarding education, social or economic status, or religion. However, risk factors such as poverty, low levels of education, and substance or drug abuse tend to be aggravating factors. For example, low-income individuals in abusive relationships tend to have little to no economic resources and often have no means to leave the abusive relationship.<sup>14</sup> Incidences of IPV are significantly higher in relationships with substance abusers as opposed to those without, as tobacco, alcohol, narcotics, and other substances can trigger violence.<sup>15</sup>

Kentucky, as it stands, is one of the poorest states in the country.<sup>16</sup> It ranked the fifth poorest in 2021, with 16.5% of the population living in poverty.<sup>17</sup> The unemployment rate is higher than the countrywide average by .4%, with approximately 80,000 individuals without work.<sup>18</sup> Opioid dependence is a significant concern.<sup>19</sup> Only 32.7% of Kentucky individuals 25 or older have a high school level of education, and only 27% have a Bachelor's degree or higher.<sup>20</sup> Comparatively, 37% of individuals have a Bachelor's degree or higher countrywide.<sup>21</sup> In comparison to the rest of the country, Kentucky has a significantly higher level of risk factors for domestic violence playing into the equation.

These statistics illustrate Kentucky's nature to cultivate an environment that is favorable for strangulation offenders, who go on to influence another generation. Young girls raised in an

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Jordan, Carol E. "Violence against Women in Kentucky: A History of U.S. and State Legislative Reform." University Press of Kentucky, 2014.

<sup>13</sup> Emery, Author: Tyler. "Kentucky Becomes One of the Last States to Make Non-Fatal Strangulation a Felony Crime." whas11.com, November 15, 2019.

<https://www.whas11.com/article/news/local/kentuckystrangulationlaw/417-be00e9de-73e9-4af1-ae29-dcbe4b398c88#:~:text=Kentucky%20is%20one%20of%20the,handled%20as%20an%20assault%20four>.

(accessed July 8, 2024).

<sup>14</sup> Slabbert, I. (2017). Domestic Violence and Poverty: Some Women's Experiences. *Research on Social Work Practice*, 27(2), 223-230. <https://journals.sagepub.com/doi/pdf/10.1177/1049731516662321> (accessed July 8, 2024).

<sup>15</sup> Bhatt, R.V., Domestic Violence and Substance Abuse (1998), *Int. J. of Gyn. & Obstetrics*, Volume 63, Issue S1. Pages S25-S31. <https://obgyn.onlinelibrary.wiley.com/doi/full/10.1016/S0020-7292%2898%2900181-7> (accessed July 8, 2024)

<sup>16</sup> <https://www.fcml.org/updates/2023-11/top-10-poorest-states-us> (accessed July 8, 2024).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> <https://kentucky.kvc.org/2022/12/30/what-you-need-to-know-about-the-opioid-epidemic-in-kentucky-2/> (accessed July 8, 2024).

<sup>20</sup> <https://www.kentucky.com/news/local/education/article128422124.html> (accessed July 8, 2024).

<sup>21</sup> <https://www.census.gov/newsroom/press-releases/2023/educational-attainment-data.html#:~:text=Bachelor's%20degree%20share%20has%20not,difference%20is%20not%20statistically%20significant>. (accessed July 8, 2024).



abusive home where they witness domestic violence are six times more likely to be abused than a girl who grows up in a home without abuse, whereas men are nearly ten times more likely to become abusers themselves.<sup>22</sup> How children are nurtured and exposed to violence has long-lasting impacts that perpetuate the cycle of abuse.

High rates of poverty, substance abuse, and a lack of education combined with inadequate resources for victims make it difficult for victims to escape this vicious cycle. The same factors multiplied with exposure to these violent behaviors as a child makes the problem all the worse. The result is a pervasive and systemic problem.

The Training Institute on Strangulation Prevention, a program of Alliance for HOPE International, and this document, “Responding to Strangulation in Kentucky”, are here to support, equip, and empower criminal justice professionals and their community partners to respond to these life-threatening crimes. Together, we can fight to end domestic violence in Kentucky.

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<sup>22</sup> <https://www.womenshealth.gov/relationships-and-safety/domestic-violence/effects-domestic-violence-children> (accessed July 8, 2024).

## Chapter 2: Strangulation Laws<sup>23</sup>

Victims of non-fatal strangulation have known for years what legal and law enforcement professionals are only now learning - many domestic violence offenders do not strangle their partners to kill them. Instead, they strangle to send a message that they *can* kill them, any time they wish. Once a victim believes this to be true, they live under the power and control of their perpetrator daily.

There are multi-faced reasons for not appreciating strangulation's lethality. When it comes to presenting cases of strangulation, prosecutors face numerous hurdles including non-participating or terrified victims, few, or no witnesses, lack of visible injury, and a lack of any documented physical evidence. As a result, many prosecutors decline to prosecute.

Fortunately for victims of strangulation, this attitude has begun to change. As a result of the efforts of medical professionals, an emphasis upon specialized training for police and prosecutors, and ongoing research, strangulation has become a focus area for policymakers and professionals working to reduce intimate partner violence and sexual assault.

### **Non-Fatal Strangulation Cases Should be Prosecuted as Felonies**

There are clear reasons why strangulation in domestic violence cases require separate felony statutes:

- Almost half of all domestic violence homicide victims have experienced at least one episode of strangulation prior to a lethal or near-lethal violent incident. Victims of one episode of strangulation are 700 percent more likely to be a victim of attempted homicide by the same partner and are 800 percent more likely of becoming a homicide victim at the hands of the same partner.<sup>24</sup>
- Strangulation is more common than professionals have realized. Recent studies have shown that 34 percent of abused pregnant women report being “choked” (Bullock, 2006). In another study, 47 percent of female domestic violence victims reported being “choked” (Block, 2000).<sup>25</sup>
- Victims of multiple non-fatal strangulation “who had experienced more than one strangulation attack, on separate occasions, by the same abuser, reported neck and throat injuries, neurologic disorders and psychological disorders with increased frequency.”<sup>26</sup>
- Even given the lethal and predictive nature of these assaults, the largest non-fatal

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<sup>23</sup> Special acknowledgement to Casey Gwinn, Esq., author of the Chapter 2, “Strangulation and the Law”, The Investigation and Prosecution of Strangulation Cases, a publication of the Training Institute on Strangulation Prevention and the California District Attorneys Association (Copyright 2013).

<sup>24</sup> Nancy Glass et. al., “*Non-fatal Strangulation Is an Important Risk Factor for Homicide of Women*,” (2008) 35. J. Emergency Med. 3: 329.

<sup>25</sup> U.S. Department of Justice, Office of Public Affairs, online release (Feb. 4, 2013) “Justice Department Holds First National Indian Country Training on Investigation and Prosecution of Non-Fatal Suffocation Offenses.” <https://www.justice.gov/opa/pr/justice-department-holds-first-national-indian-country-training-investigation-and-prosecution> (accessed July 8, 2024).

<sup>26</sup> Donald J. Smith, Jr. et al., “*Frequency and Relationship of Reported Symptomology in Victims of Intimate Partner Violence: The Effect of Multiple Strangulation Attacks*,” (2001) 21 J. Emergency Med., 3:2323, 325-326.

strangulation case study (the San Diego Study) ever conducted to date, found that most cases lacked physical evidence or visible injury of strangulation—only 15 percent of the victims had a photograph of sufficient quality to be used in court as physical evidence of strangulation, and no symptoms were documented or reported in 67 percent of the cases.<sup>27</sup>

- The San Diego Study found major signs and symptoms of strangulation that corroborated the assaults, but little visible injury.<sup>28</sup>
- Strangulation is more serious than professionals have realized. Loss of consciousness can occur within 5–10 seconds, and death within 4–5 minutes.<sup>29</sup> The seriousness of the internal injuries, even with no external injuries, may take a few hours to be appreciated and delayed death can occur days later.
- Because most strangulation victims do not have visible external injuries, strangulation cases are minimized by law enforcement, medical, advocacy, and mental health professionals.
- Even in fatal strangulation cases, there is often no external evident injury (confirming the findings regarding the seriousness of non-fatal, no-visible-injury strangulation assaults).<sup>30</sup>
- Experts across the medical profession now agree that manual or ligature strangulation is “lethal force” and is one of the best predictors of a future homicide in domestic violence cases.<sup>31</sup>
- Leading forensic pathologists have now determined that even homicides in strangulation assaults have not been identified at the scene of the crime, leading to poor crime-scene investigation (no photos, interviews, or trace evidence) due to misidentification of the case as a drug overdose.<sup>32</sup>
- When non-fatal strangulation is minimized by professionals, it sends the wrong message to victims and perpetrators, resulting in inadequate risk assessment and safety planning.<sup>33</sup>

Strangulation is a unique crime. It is cruel, inhumane, and dangerous. The victim’s realization that she is unable to breathe is one of the most terrifying events a person can endure. Domestic violence strangulation is usually about asserting control over the victim, that is, showing that the offender has the power of life and death over the victim. The intention behind strangling may not be about causing physical injury. Because an offender can strangle someone without leaving a visible injury, it is an effective method of abuse and control.

In contrast, jurors expect to see visible injuries. Our juries and judges will have difficulty

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<sup>27</sup> Gael B. Strack, George E. McClane, Dean Hawley, “A Review of 300 Attempted Strangulation Cases Part I: Criminal Legal Issues,” (2001) 21 J. Emergency Med. 3:303, 305-306.

<sup>28</sup> *Id.*

<sup>29</sup> Dean A. Hawley, *Forensic Medical Findings in Fatal and Non-Fatal Intimate Partner Strangulation Assaults* 6 (2012), available at

<https://dfcs.alaska.gov/ocs/Documents/childrensjustice/strangulation/16.%20Forensic%20Medical%20Findings%20in%20Fatal%20and%20Non-Fatal%20Intimate%20Partner%20Strangulation%20Assaults%20-%20Hawley%20-%202012.pdf> (accessed July 8, 2024).

<sup>30</sup> *Id.* At 1.

<sup>31</sup> Glass et al., *supra*, note 5, at 329.

<sup>32</sup> *Id.* At 3.

<sup>33</sup> See Gael B. Strack, *How to Improve Your Investigation and Prosecution of Strangulation Cases* (2007). See generally Kathryn Laughon et al., “Revision of the Abuse Assessment Screen to Address Nonlethal Strangulation,” 37 J. OGNN 4:502-507 (2008); Jacquelyn C. Campbell et al., “The Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide,” (2009) 24 J. Interpersonal Violence 653.

understanding the serious nature of the crime without clear guidance from expert witnesses and competent investigations and prosecutions from professionals with specialized training.

Effective intervention in non-homicide strangulation cases will increase victim safety, hold offenders accountable for the crimes they commit, and prevent future homicides.

## Kentucky Law

Kentucky's Strangulation statutes can be found in Kentucky Revised Code Chapter 508, Assault and Related Offenses.<sup>34</sup> Strangulation in the First Degree is a Class C felony, while Strangulation in the Second Degree is a Class D felony. They share common elements and are differentiated by the *mens rea*. The elements for each crime are as follows:

### Strangulation in the First Degree: Class C felony KRS 508.170

- A. Without consent.
- B. Intentionally.
- C. Impedes the normal breathing OR circulation of the blood of another by:
  - a. Applying pressure on the throat OR neck of the other person; OR
  - b. Blocking the nose OR mouth of the other person.
- D. Venue.

### Strangulation in the Second Degree: Class D felony KRS 508.175

- A. Without consent.
- B. Wantonly.
- C. Impedes the normal breathing OR circulation of the blood of another person by:
  - a. Applying pressure on the throat OR neck of the other person; OR
  - b. Blocking the nose OR mouth of the other person.
- D. Venue.

Strangulation in the First Degree requires evidence that the perpetrator acted intentionally, meaning, his conscious objective is to cause that result or to engage in that conduct.<sup>35</sup> Strangulation in the Second Degree requires evidence that the perpetrator acted wantonly, meaning, he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists.<sup>36</sup>

While the two statutes are differentiated by the *mens rea*, they both focus on the act of impeding breathing or blood flow to the brain. This impediment to breathing or blood flow can occur in a variety of ways. Some common presentations involve the perpetrator's hand or hands on the victim's neck, the perpetrator's arm around the victim's neck, the use of a ligature, the use of a pillow or other object, or even the use of a substance such as water.

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<sup>34</sup> KRS 508.

<sup>35</sup> KRS 501.020(1).

<sup>36</sup> KRS 501.020(3).

It is important to remember that regardless of the method by which the strangulation occurs, injury or loss of consciousness are not elements that need to be proven to obtain a conviction.

## **The Multi-Disciplinary Response in Kentucky**

Kentucky was the 48th state to pass a felony strangulation law. Implementation requires we expand our understanding of the seriousness of strangulation and work together to develop a plan to address these cases. Approaching strangulation from a multi-disciplinary angle is imperative to devising an effective community response. This includes training across a wide range of professionals who will encounter strangulation victims. Primary goals should be:

- Developing strangulation protocols.
- Offering resource materials.
- Identifying experts.
- Developing collaborative, multi-disciplinary teams.
- Improving advocacy and safety for victims; and
- Increasing accountability for offenders.

Different communities have unique strengths and areas of needed improvement. Rely on your community's strengths to tailor an implementation plan. Start by recognizing the agencies and/or professionals who are willing to learn, collaborate, and see the bigger picture. From there, willing professionals can identify gaps in services and need for training the region.

It is critical that the victim receives a multi-disciplinary response to ensure safety as well as further the goals of justice. To accomplish these goals, it is important to consider the following:

- 911 recording preservation.
- Medical documentation at every step in every case.
- Dispatchers trained on questions to ask to properly assess for strangulation.
- Emergency care services at the scene and transportation of victims to the hospital.
- Police and paramedics encouraging victims to be medically evaluated, as there can be non-visible acute and long-term health consequences.
- Paramedics and medical professionals should be trained to understand the lethality of strangulation including how to screen and diagnose it, document it, and most importantly, how to medically treat it.
- Forensic nurses should be trained to conduct forensic strangulation exams.
- Experts should be identified and used to present medical testimony regarding the physiology and lethality of strangulation during court proceedings.

Multi-disciplinary collaboration and training is vital to hold perpetrators accountable and address victim needs. Communication is imperative with the objective that vertical prosecution is accomplished.

## Chapter 3: Investigation

This chapter discusses the essential components of a strangulation investigation as well as the tools and tactics necessary to enhance law enforcement's response. Cases of domestic violence require a thorough investigation beginning with the initial / 911 call and continuing through trauma-informed interviews, evidence collection, forensic medical examinations, follow-up interviews and progressive photograph documentation to build a case based upon evidence.

Law enforcement's response must be informed and strategic since strangulation can cause loss of consciousness in seconds and death within minutes. However, since there may not be significant visible injury, or any visible injury at all, strangulation may unfortunately be treated as an assault fourth degree by law enforcement. Ultimately, victims of strangulation are not only affected physically, but also impacted socially, emotionally, and psychologically, which is why a comprehensive victim-centered, trauma-informed investigation is imperative.

Victim advocacy and support services aid rapport and victim participation throughout the criminal process. It is also imperative that law enforcement understand, appropriately identify, and document signs and symptoms of strangulation. The efforts made on the scene by the initial responding officer will directly impact the life of the victim and any future prosecution of the perpetrator.

### The Investigation

#### The 911 Call

The 911 call is pivotal. It contains vital information about the crime, often while it is still occurring. As former San Diego prosecutor Casey Gwinn says, "911 is the microphone into the domestic violence home and contains important evidence in almost every case." Whether the victim or a child is the one calling for help, or other witnesses or neighbors are calling, the 911 call must be thoroughly evaluated by both the investigator and the prosecutor. Depending upon the facts and circumstances of the case, the prosecutor may be able to use statements contained in the 911 call at trial if they fit within a hearsay exception. This beginning of the criminal investigation will often support an evidence-based prosecution even if the victim later declines to participate in the prosecution of the offender.

The 911 call often provides:

- The identities of the victim and any witnesses, including children
- Whether a weapon is involved
- Whether the threat/assault is ongoing or still occurring
- The identity of the perpetrator by name and/or physical description
- Perpetrator's location: whether the suspect is still on scene, left the scene, whereabouts and whether likely to return.
- Critical facts and/or statements by the victim
- Critical statements of witnesses
- Valuable insight into the demeanor of the victim, witnesses, and the perpetrator

- A sample of the victim's voice immediately following the act of strangulation
- Valuable time stamps
- Geographical locations
- Computer Aided dispatch (CAD)

The elements of the 911 call are recorded and maintained in an incident report, commonly referred to as the Computer Aided Dispatch or CAD report. The CAD report may be used by investigators and prosecutors to establish timelines of events, obtain victim and witness contact information, and gain an understanding of the assault as the information came to the 911 call center from the caller. This report not only documents the above listed information, but the CAD report also documents important response information such the names of the responding officers, the dispatched and arrival times, emergency medical services (EMS) information, run updates, and officer notes.

### *Recorded Statements and Body-Worn Cameras*

Victim and witness statements should be recorded, and Body-Worn Camera (BWC) used when available. BWC is a vital tool for documentation, preservation of evidence, officer credibility, and protection. BWC provides investigators, prosecutors, judges, and juries a priceless look into the crime scene, the parties involved, and the immediate aftermath of the criminal conduct. This footage is the closest the decision makers in the case will ever get to the reality of the crime and the surrounding scene.

BWC should be activated (both video and audio) prior to the officer's arrival on the scene and not discontinued until after the officer has cleared the run. By ensuring the BWC is recording at first entry to the scene, the investigator may capture nontestimonial statements from victims and witnesses who are still experiencing the emergency. It is essential that prosecutors watch and evaluate BWC footage to determine if hearsay exceptions are applicable; these exceptions to allow the use of nontestimonial statements by parties who may subsequently be unable to participate in the prosecution. As with 911 calls, BWC footage lays the foundation for an evidence-based investigation and prosecution.

### *Safety Considerations*

Domestic violence cases are notoriously volatile. It is critical for officer safety purposes that dispatch relays all pertinent information. Additionally, it is best practice for at least two officers to respond to domestic violence calls. Once on the scene, officers must locate and secure any weapons. Officers should confirm the existence of any protective orders and quickly assess the criminal history of the offender. If the perpetrator is still on the scene, law enforcement should separate the perpetrator and the victim, interview the parties separately, and provide direct quotes in the police report. If the suspect has fled the scene, officers should inquire about possible locations and make all attempts to locate and arrest when there is probable cause to do so.

### Medical Attention

The lethality of strangulation can be underestimated by both the victim and law enforcement due to the fact injury is not always visible. The reporting officer should immediately call paramedics to the scene to medically evaluate the victim and encourage the victim to go to the hospital for medical treatment and examination. In addition to life-saving intervention, medical examinations can provide forensic evidence and critical documentation when physical injuries are not visible. Ideally, victims of strangulation would receive a forensic nurse examination by a Sexual Assault Nurse Examiner (SANE). SANEs are trained and credentialed by the Kentucky Board of Nursing in forensic examinations and are specifically trained to conduct exams on victims of strangulation. In addition to collecting, preserving, and documenting evidence, these professionals can also interpret medical records and testify in legal proceedings. Forensic examiners can also explain the seriousness of strangulation to the jury which makes their testimony indispensable.

### Victim Interview

Law enforcement should engage in trauma-informed interviewing practices. The International Association of Chiefs of Police (IACP) has created an excellent short document on trauma-informed interviewing that all law enforcement officers should review.<sup>37</sup> While the IACP guidance is focused on sexual assault cases, it applies to strangulation assaults as well. There is also a certification for trauma-informed interviewing expertise known as the forensic experiential trauma interview (FETI).<sup>38</sup> A FETI certification is an excellent tool for successful investigators; however, even in the absence of FETI certification, investigators can be trained in the basics of trauma-informed interviewing techniques. The Training Institute on Strangulation Prevention focuses on four key concepts for investigators to practice and apply when working with trauma victims of all kinds:

- Non-Judgmental
- Interested
- Concerned
- Empathetic

First and foremost, officers should strive to approach the victim as empathetically as possible; it is important to treat the interviewee as a victim of a crime and not as a witness to a crime. Officers should ask open-ended questions, refrain from interrupting the victim's narrative, and respond with follow up questions when clarification is needed. Investigators should not insist that victims "start at the beginning" understanding that the cognitive response to trauma often makes a chronological recitation of facts difficult. It is important to ask memory-eliciting,

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<sup>37</sup> "Successful Trauma Informed Interviewing," (2017). <https://www.theiacp.org/sites/default/files/2020-06/Final%20Design%20Successful%20Trauma%20Informed%20Victim%20Interviewing.pdf> (accessed July 8, 2024).

<sup>38</sup> The Official Forensic Experiential Trauma Interview. <https://www.certifiedfeti.com/resources/an-introduction-to-the-certified-feti-methodology/>



sensory questions such as what the victim saw, heard, felt, thought, smelled, or tasted, and refrain from asking why questions. The BWC, or other recording devices when BWCs are not available, should be used to document the victim interview. The first responding officer at the scene is in the position to obtain the most critical, nontestimonial statements for an evidence-based prosecution. Once the scene is secure and the victim is medically cleared, the officer's priority should be to obtain a full statement from the victim.

### Photographs

#### *A. Photographing the Victim and The Suspect*

Comprehensive photographs of the victim, perpetrator, and crime scene should always be taken. Photographs document visible injury, or lack thereof, and help corroborate statements made to reporting officers. When a victim is strangled, the only crime scene available to officers may be the victim's body. Additionally, if there are any visible injuries, they more than likely are not going to be permanent. The victim's injuries will eventually heal, and photographs are key to preserving this evidence.

Every area where a victim describes a complaint of pain should be photographed even if there is no visible injury. This is especially important because injuries heal differently for different people. As visible injuries appear or heal, follow-up photos should be taken to show the progression or regression.

Officers should have an in-depth discussion about injuries with the victim. It should be determined if injuries were sustained from previous incidents or from this victimization. The documentation of these injuries should be maintained through a series of (at least) three photograph successions:

1. *Full body photographs* of the victim should be taken to help identify the victim.
  - These should be taken at a distance, and they should capture the victim's entire body from head to toe.
2. *Visible injury photographs* should be taken of the injured body part to document the location of the injury.
  - This aids investigators and prosecutors in identifying a specific injury.
3. *Scaled photographs* should also be taken of each injury.
  - These photographs should be taken at a 90-degree angle utilizing a scale for the most accurate perspective.

Due to the nature of strangulation, the following areas of the body should be specifically examined for possible injury and/or evidence:

1. The victim's neck, chin, and chest.
2. The whites of the victim's eyes and eyelids.
3. Inside the cheeks, lips, and back of the victim's throat.
4. Behind the victim's ears.

5. The victim's hands and fingernails.
6. The perpetrator's chest, arms, and hands.

Multiple photographs of these critical areas are needed and follow up photography is also necessary. Even if no injuries are visible, officers should note in their report, "No visible injuries present at this time." This reminds everyone that injuries can appear later, and the lack of injuries does not mean a crime has not occurred. Many fatally strangled victims had no visible, external injuries at the time of their death. If you can strangle someone to death with no visible injuries, you can strangle them *almost to death* with no visible injuries.

Photos of the suspect in strangulation cases are equally important. In many near-fatal strangulation assaults the offender may have more injuries than the victim. The offender's injuries may include scratch marks, bite marks, or other types of wounds inflicted by the victim while fighting to survive the assault. In strangulation assaults, the victim experiencing deadly violence has the right of self-defense and officers should not be fooled into thinking that the injuries on a potential suspect suddenly transform the suspect into a victim.

#### *B. Photographing the Crime Scene*

Perspective is important when photographing the crime scene. The room should be four-corner photographed. This is accomplished by taking photographs standing in each corner of the room, taking the picture toward the middle of the room. This ensures the entire state of the scene is captured. If evidence needs to be collected, that evidence should be photographed prior to collection so that the item's position prior to disruption is documented.

Remember that each relevant item observed corroborates a detail of the crime story. Years after this investigation, you may be in trial defending every action taken throughout the investigation. Be thorough and comprehensive because truth and justice demand meticulous detail. Examples of comprehensive documentation:

1. If the victim tells you the perpetrator threw a specifically identifiable item against the wall:
  - Photograph the item where it is found.
  - Take the item into evidence; and
  - Photograph the wall where the item hit.
2. If the witness tells you the perpetrator kicked the front door in:
  - Photograph the door.
  - Photograph damaged parts of the door if they were scattered throughout the room; and
  - If the damage is substantial, consider taking the door into evidence.

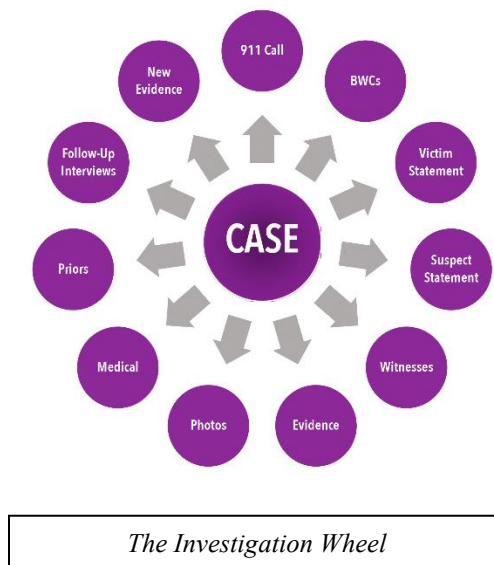
Law enforcement's meticulous investigation and documentation equips prosecutors with the ability to *show*, not just *tell*, the jury what happened. Corroborating evidence is powerful, compelling, and essential in crimes of domestic violence. The more law enforcement can confirm facts and evidence that corroborate the statement of the victim, the more likely the offender will be held accountable.

### *C. Body Worn Camera Does Not Replace Photographs or the Collection of Evidence*

BWC does not replace the best evidence, still photographs and media recordings BWCs can be affected by several factors and may not accurately depict the injuries sustained or the conditions of the scene. BWCs do not have the same capabilities as flash photography, and these limitations could hinder documentation efforts. Still photographs or any media recordings, such as security footage or phone recordings, should be collected and downloaded. This will be the best evidence for prosecutors and is not replaced by a BWC video. Additionally, if there is probable cause that the suspect's phone contains evidence of the crime, it should be seized, booked into evidence, and forensically examined with the authorization of a signed search warrant or court order.

#### *Investigative Aids*

Investigative aids may also be used to help document strangulations. Investigative aids may include documents such as worksheets, questionnaires, and checklists which law enforcement complete on the scene with the victim and help law enforcement conduct more detailed interviews. For example, the Investigation Wheel (below), first created by Detective Mike Agnew from Fresno, California and then made available to law enforcement across the country, is a tool the Training Institute on Strangulation Prevention recommends to law enforcement officers, both first responders and follow-up investigators, to help build an evidence-based case instead of relying only on the victim's statements. The Investigation Wheel highlights the types of evidence available in strangulation cases.



Additionally, victims of strangulation may have difficulty showing officers how exactly they were strangled without the ability to demonstrate the manner on a person. Victims can use items such as a doll, wig head, stuffed animal or even a pillow to demonstrate the manner of strangulation. Photographs may then document the victim's demonstration.

## *Report Writing*

Strangulation reports need to be thorough and contain up-to-date contact information for the victim, all witnesses, and even the suspect. Secondary contact information for the victim should be documented. Acquiring the contact information of a trusted family member or friend will help to ensure follow-up communication with the victim is successful, and obtaining suspect contact information may assist with future apprehension efforts.

Your report should provide a detailed explanation of how the strangulation occurred. The word “choking” is frequently used to describe strangulation. However, this description is medically and legally inaccurate. Choking defines an internal blockage of the individual’s trachea. The elements of the offense of strangulation should be articulated detailing how the perpetrator “impeded the normal breathing or circulation of the blood of another by applying pressure to the throat or neck or by blocking the nose or mouth of another.” Each element must be met and be well documented in the police report.

Victims may also report that they were “choked” but only describe the perpetrator grabbing them by the throat. To meet the elements of the Kentucky strangulation statute, a victim’s breathing or blood flow must be impeded. It is the job of law enforcement to differentiate whether the victim was simply grabbed by the throat or if they truly experienced strangulation; this investigative determination will be the difference between a felony charge and misdemeanor assault. Because this is such a critical distinction for the victim’s interview, law enforcement reports should include quotations from the victim’s exact verbiage. Through the use of strangulation checklists/questionnaires during victim interviews, law enforcement may obtain a more accurate description of the event for their report.

## *Dominant Aggressor*

Incidents of domestic violence are particularly volatile because of the relationship between the parties. There is typically a history of abuse between the victim and perpetrator, and at times, both parties may display visible injury as discussed above in near-fatal strangulation assaults. This can make it difficult for law enforcement to determine which party is the dominant aggressor.

Prosecutors must also recognize that lack of visible injuries should not minimize the severity of the incident. Likewise, the existence of injury does not necessarily identify the perpetrator or victim. Identifying the dominant aggressor is an important aspect of strangulation-case evaluation. The International Association of Chiefs of Police (IACP) defines “***predominant aggressor***” as “***the individual who poses the most serious, ongoing threat, which may not necessarily be the initial aggressor in a specific incident.***”<sup>39</sup>

It is important to note that in strangulation cases, victims may use self-defense methods such as biting, scratching, kicking, and punching to protect themselves. Victim’s self-defense efforts must be considered when both parties display visible injury or a complaint of pain. For example,

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<sup>39</sup> International Association of Chiefs of Police, Intimate Partner Violence Response Policy and Training Content Guidelines, 6 (2017)

if a suspect is standing behind a victim and using their forearm to strangle the victim, the suspect may sustain a bite-mark to his arm which is indicative of self-defense. Suspect's may also have scratch marks to their arms and hands which are also often indicative of the victims' self-defense.

Factors that may be considered to assist in determining the dominant aggressor are:

1. The history of abuse between the parties.
  - a. Evaluate current and former protection orders, police reports, calls for service, etc.
  - b. Review the suspect's criminal history to understand the level of violence the suspect has exhibited and to determine the risk of future violence.
2. The degree of injury and manner of assault as well as the consistency of injury based on reported statements.
3. The statements of witnesses on the scene.
  - a. If you believe there are child witnesses to acts of domestic violence, please conduct a limited, minimal facts interview to determine if the child saw the crime. If so, please contact your local Children's Advocacy Center to provide a forensic interview for child witnesses.
4. The presence and level of fear among the involved parties (i.e. Who is afraid of whom?).

To explain law enforcement's determination of the dominant aggressor, the report should note the totality of circumstances which lead to their conclusion. Law enforcement should articulate the signs and symptoms of strangulation, if the suspect has injuries, and describe how the injuries were determined to be defensive. ***Dual arrest is always discouraged.***

Visible injuries to the victim may not appear immediately after an incident of strangulation. If the reporting officer is unable to locate any visible injuries, symptoms supporting the presence of non-visible injuries should be described. These injuries could include loss of consciousness, difficulty breathing, and changes in vision. The correlation between the way the victim was strangled and the injuries to the suspect should be thoroughly explained in the narrative.

### *Manner of Strangulation*

Often when people think of strangulation, the perpetrator's hands are assumed to be the weapon; however, strangulation can occur in several ways:

1. *Ligature strangulation* occurs when a suspect uses an object wrapped around the circumference of the neck to impede breathing or blood flow.
  - a. Items such as cords, cables, clothes, belts, clothing, and purse straps are often used in this form of strangulation.
  - b. Visible injury in the form of a linear pattern is often indicative of ligature strangulation.
  - c. In cases of ligature strangulation, the ligature should be photographed, collected as evidence, and processed for additional evidence collection.
2. *Manual strangulation* occurs when the applied pressure is from the suspect's body part. Most strangulation assaults (97%) involve manual strangulation according to the research of Dr.

Dean Hawley, the Training Institute's first forensic pathologist. Dr. Hawley's research on this topic has even been retained on the resource site for the U.S. Supreme Court where the Training Institute's entire manual on the investigation and prosecution of strangulation cases is now available for judges to use when they take judicial notice of key facts about strangulation.<sup>40</sup>

Examples of manual strangulation can be:

- Suspect strangles the victim from behind using a forearm.
  - Suspect stepping on a victim's throat while she/he is lying on the floor.
  - Suspect strangling a victim by holding her by the neck against a wall.
3. *Aquatic strangulation* occurs where a perpetrator holds the victim's head underwater. In these cases, the victim would experience not only difficulty breathing, but their nose and mouth would also be blocked because of the water.
- a. Strangulation (or attempted murder) is an appropriate charge to consider where a perpetrator holds a victim's head in a bathtub of water or a toilet bowl.

### Victim Safety Planning

Law enforcement should discuss safety planning with victims at the scene. This includes a discussion of safe housing locations such as domestic violence shelters, advocacy services, child safety considerations, and an explanation of Marsy's Law Rights pursuant to KRS 421.500. Officers should provide victims with Marsy's Law literature, such as a card or pamphlet to articulate the rights and points of contact for support and follow up services. Victim safety planning should also involve follow up conversations with the officer to explore if any acts of intimidation or threats have occurred.

Law enforcement assistance to the victim may also include the transportation of a victim to petition for a protective order or to obtain medical treatment, if needed. The Training Institute has an entire section of their website focused on resources for victims of strangulation assaults, and many of these resources are available in this manual.<sup>41</sup>

For additional information as to victim's rights and services please contact the Office of the Attorney General. The Attorney General's office can provide the tools you need to be equipped for safety planning and resources around Kentucky for victims of strangulation.

### *Arrest*

Suspects should be interviewed as a part of the criminal investigation and arrested when there is probable cause to do so. If the suspect is not on the scene, all attempts must be made to locate, apprehend, interview, and arrest the suspect. Officers should inquire about any other past or

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<sup>40</sup> Hawley, D. "Death by Strangulation or Suffocation," Chapter 6, The Investigation and Prosecution of Strangulation Cases, (2013), Training Institute on Strangulation Prevention & the California District Attorneys Association. [https://www.supremecourt.gov/opinions/URLs\\_Cited/OT2021/21-783/21-783-1.pdf](https://www.supremecourt.gov/opinions/URLs_Cited/OT2021/21-783/21-783-1.pdf). (accessed July 8, 2024).

<sup>41</sup> <https://www.strangulationtraininginstitute.com/survivor-resources/> (accessed July 9, 2024).

pending charges or court cases involving the suspect. No warrant is required to arrest on strangulation, a felony offense, and an officer may also arrest a suspect for the offense of assault fourth degree domestic or dating violence without a warrant when there is probable cause to do so. Additionally, if there are any crimes involving the violation of a protective order (e.g. violations of Kentucky EPOs, DVOs, TIPO's or IPOs) or violations of the suspect's conditions of release of which the suspect has notice, KRS 431 mandates the suspect "shall" be arrested for these crimes.

## **Follow-Up Investigation**

### *Interviews*

Follow-up interviews are critically important for law enforcement to understand the full extent of the abuse and to document any acts of intimidation or threats from the perpetrator. Officers should anticipate recantation or minimization by the victim. Both recantation and minimization are behaviors which result from the power and control dynamic of domestic violence. A victim's opinion about the prosecution should never dictate the investigation, the charging decision, or the prosecution. The investigation must always focus on the evidence and what can be proven through the evidence even if the victim does not want to participate in the criminal justice process.

### *Photographs*

After the initial call for service and report has been completed, follow-up investigation is required. As stated previously, follow-up photographs of the victim's injuries are vital in strangulation cases. Follow-up photographs can help document the seriousness of physical injury or impairment. These follow-up photographs should be taken 24, 48, and 72 hours after the strangulation to document the full evolution of injury. **Many injuries, particularly bruising, may not develop right away after the assault. In the simplest of terms, if there is bleeding below the surface of the skin, it may take time for the blood to come to the surface and become visible to the naked eye. Therefore, it is necessary to discuss with the victim the importance of self-documentation throughout the process.** This can be accomplished simply by asking the victim to photograph the injured area daily and forward to photographs for documentation purposes.

### *Jail Phone Calls, Emailing, Messaging*

When suspects are arrested, they may be provided the opportunity to make outgoing phone calls, email or utilize a messaging platform from the jail. These phone calls, emails, and messaging platforms can and should be monitored by law enforcement. They may contain discussion of the underlying case, which could include admissions by the defendant.

Additionally, these phone calls are often used by the suspect to contact the victim to coerce, threaten, or intimidate, and they may support new charges against the defendant. If law enforcement hears direct or implied threats, they should immediately notify the prosecutor so they may evaluate the communication for the following additional charges:

1. Violation of a Kentucky Emergency Protective Order/Domestic Violence Order (KRS 403.763)
2. Terroristic Threatening Third Degree (KRS 508.080)
3. Intimidating a Participant in a Legal Process (KRS 524.040)
4. Retaliating against a Participant in the Legal Process (KRS 524.055)

Caveat: Law enforcement must never intercept attorney/client privilege communications. If law enforcement officers discover that a recorded jail phone call, email, or message was between the defendant and their attorney, law enforcement must notify the prosecutor and the jail immediately to ensure corrective mechanisms are in place to prevent further disclosure of privileged communications. The prosecutor must also inform the defense attorney, and all jail calls, emails, or messaging documentation will be provided to the defense in discovery compliance.

### *Multi-disciplinary Collaboration*

Investigators should contact the prosecutor's office early to determine if there is any additional information needed throughout the investigation. Remember, just because an arrest was made does not mean the case is closed; the pre-trial phase may be more labor-intensive than the initial investigation and arrest. It is vital that law enforcement communicate with their prosecutor to ensure they are exhausting their efforts to facilitate an evidence-based prosecution. When domestic violence cases receive a collaborative multi-disciplinary response, prosecutorial outcomes are improved, victims are safer, and offenders are held accountable.



## Chapter 4: Prosecution

In some respects, prosecuting strangulation is like prosecuting other types of domestic violence – investigators and prosecutors must rely on the same two key concepts for a successful prosecution:

- (1) Making the case more dependent on the evidence than it is upon the testimony of the victim and;
- (2) Developing as much corroborating evidence as possible.

However, prosecuting strangulation requires the additional step of explaining the seriousness of the act. Communicating lethality effectively may require expert testimony. Specially trained, victim-centered prosecutors should remain a consistent presence throughout every stage of the prosecution. Best practice includes vertical prosecution where a single prosecutor, who is trauma-informed and victim-centered, handles the case at every stage. The success of felony prosecution begins with the work of county attorneys. Thorough case review and proper charging at the district court level is critical to ensuring swift prosecution and successful offender accountability.

Remember the tips and techniques described in this chapter are applicable to all cases involving domestic violence, not just strangulation.

### Case Development

Prosecutors possess the ability and responsibility to collaborate with law enforcement to develop an effective response to strangulation. Because the initial investigation begins with law enforcement, prosecutors should collaborate with law enforcement to provide guidance on these cases. Evidence and documentation to consider should include:

- 911 calls (determine your agency retention period for calls)
- Recorded statements by the victim
- Recorded interviews of all witnesses (ensure you have all identifying information), including children<sup>42</sup>
- Computer-Aided Dispatch (CAD)/ Dispatch logs
- Record the Defendant's oral and written statement (after Miranda Warnings given and Miranda waiver signed, if applicable)
- Photographs of the crime scene and documentation of injuries/lack of visible injuries
- Follow-up photographs of victim injury
- Voice message left by the victim prior to strangulation for comparison to the post-strangulation voice
- Collection of any evidence not obtained initially by law enforcement
- Medical records
- Forensic exam records

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<sup>42</sup> Child witness interviews should be conducted by trained forensic interviewers at the regional child advocacy center. A minimal fact interview, only when necessary, can be conducted by law enforcement or social workers at the scene, but the full interview should be done by a forensic interviewer.

- Emergency Medical Service records
- Evidence of prior acts
- Police reports (current and prior)
- Prior or pending EPO/DVO/TIPO/IPO documentation and hearings
- Electronic evidence
- Recorded jail calls.

## **Developing a Rapport and Building Trust with the Victim**

Strangulation victims are often reluctant to participate in the criminal process. They frequently recant, minimize, and even avoid coming to court. Prosecutors should not be deterred by these behaviors, nor should they blame victims for their choices. While there are many reasons *why* this happens, a victim's reluctance is often caused by fear that participation could threaten their lives or their loved ones' safety. It is critical that prosecutors focus on the perpetrator's actions and not the victim's response. At every turn, the Training Institute for Strangulation Prevention recommends thinking of strangulation victims, not as "uncooperative" but as "terrified." If prosecutors replace the word "uncooperative" with "terrified", it will assist in better framing the complexity of victim recantation or victim minimization.

Building rapport and trust will often result in a more actively engaged victim. Similarly, providing support and services to victims can promote participation in the process. However, prosecutors should not assume the victim will be available and willing to participate in the prosecution of the case. Prosecutors should approach the case as if they are prosecuting a homicide, because homicide cases are always prosecuted without a victim's participation. This emphasis on evidence-based prosecution should not limit establishing a relationship with and attempting to obtain information from the victim. The best prosecutions are usually those where both solid evidence *and* victim participation exist.

While it is important that the prosecutor establish a trusting relationship with the victim, it is also vital to involve the victim advocate. Victim advocates can provide needed support, services, and resources. Victim Advocacy is discussed in Chapter 7.

## **Continued Case Preparation**

The prosecutor or designee should make every effort to meet with the victim to explain the prosecution process and explore issues that may have been unknown in the initial police investigation.<sup>43</sup> Consider always having a third-party present to document any information obtained during the meeting.<sup>44</sup>

Having conversations with the victim "provides prosecutors with the opportunity to build rapport, rebuild the victim's confidence, and listen to the victim's concerns and desired outcome."<sup>45</sup>

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<sup>43</sup> See KRS 421.500(5)(b) and National District Attorneys Association, *National Domestic Violence Prosecution Best Practices Guide*, 27 (2017)

<sup>44</sup> A third-party could also act as a witness should the need for impeachment arise.

<sup>45</sup> National District Attorneys Association, *National Domestic Violence Prosecution Best Practices Guide*, 15 (2017)

Additionally, it provides an opportunity for prosecutors to explain their role<sup>46</sup>, which is to seek justice, hold the perpetrator accountable, and prevent future harm. “The prosecutor should be mindful that domestic violence often minimizes or eliminates the victim’s control over her life and should be respectful of a victim’s frustrations.”<sup>47</sup>

Consistent communication creates an excellent opportunity to provide victims with information regarding their case and to dispel misinformation. The prosecutor can inquire about past incidents of domestic violence and any information that corroborates those incidents. If a victim is actively engaged in the conversation, it is important to seek as much detail as possible. The prosecutor or interviewer may not have another opportunity to gain this valuable information. Past incidents of domestic violence, may help establish a pattern of abuse and prove useful at many stages of the prosecution if the victim is later unavailable or if a forfeiture by wrongdoing issue arises at trial.<sup>48</sup>

Prosecutors should communicate with police to ensure they collect any additional evidence, including material records, evidence demonstrating the power and control dynamic,<sup>49</sup> and documentation of prior instances of domestic violence. Copies of these records (and any other records) should be obtained and provided to the prosecutor and provided in discovery compliance. After the initial trauma of the crime has subsided, the victim may be in a better position to recount what occurred. S/he may have already done so with a neighbor, a close friend, or a relative. It is important to collect information from individuals the victim has seen since the incident. Obtain follow-up interviews with those individuals, which may provide evidence that the victim was acting or speaking differently.

## **Medical Examination**

One of the best methods of collecting evidence for the prosecution is through a medical examination of the victim, or when available, a forensic medical examination with a nurse or doctor who has been specially trained in strangulation assaults. Properly trained medical personnel can provide not only crucial emergency medical treatment, but they can also provide accurate diagnoses and documentation of physical signs and symptoms. Alternate light sources, laryngoscopy, CT scans, MRIs, and other medical tools not only document evidence of strangulation, but also provide life-saving diagnostics. Prosecutors should work closely with their medical providers to develop effective protocols to document and treat strangulation victims.<sup>50</sup>

Documents associated with the medical examination are required to be turned over in standard discovery compliance.<sup>51</sup> Additionally, it may yield evidence that is material to the perpetrator’s

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<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> See Pretrial Motions.

<sup>49</sup> For more information about the Power and Control Wheel, visit [www.theduluthmodel.org](http://www.theduluthmodel.org). The Domestic Abuse Intervention Project (DAIP) is the home of the Duluth Model which developed what is commonly referred to as the Power and Control Wheel. The model is based upon the premise that battering is one form of domestic or intimate partner violence. It is characterized by the pattern of actions that an individual uses to intentionally control or dominate his intimate partner. That is why the words “power and control” are in the center of the wheel. A batterer systematically uses threats, intimidation, and coercion to instill fear in his partner. These behaviors are the spokes of the wheel. Physical and sexual violence holds it all together—this violence is the rim of the wheel.

<sup>50</sup> For more on medical examinations, see Chapter 5.

<sup>51</sup> Ky. Rules Criminal Procedure 7.24(1)(b).

defense. Part of the treatment and documentation process may reveal the victim used intoxicants either before or after the strangulation. The examination may also indicate the victim inflicted some of her own injuries which were actually sustained in a self-defense attempt to stop the abuser.

Regardless of the evidentiary benefit of the examination, the primary concern should always be that the victim receives proper treatment for her injuries, and the secondary purpose is that the injuries and other evidence are properly documented. Whether an item of evidence is favorable to the prosecution or to the defense turns on the argument of the lawyers and not the evidence itself.

### **Prosecution Review of Criminal Charges**

Prosecutorial review of criminal charges should occur as quickly as possible. A swift decision can protect the victim and help break the perpetrator's control over the victim. Additionally, evidence in strangulation cases can be lost quickly. Because of the evidence, strangulation cases deserve the highest priority attention of prosecutors. As noted in Chapter 1, strangulation is one of the most accurate predictors for the subsequent homicide of victims of domestic violence. Therefore, delays in the review and prosecution of a strangulation case may be lethal.

While reviewing the evidence, prosecutors must consider the dynamics of domestic violence. If a victim is perceived as disinterested in prosecution or minimizes the abuse, this is not a reason to decline holding the perpetrator accountable for criminal conduct. The focus of the case evaluation should always be on the criminal conduct of the perpetrator and not on the response of the victim.

At initial contact with the prosecution, some victims may be experiencing the final phase of the abuse cycle often referred to as the "honeymoon" phase.<sup>52</sup> This phase is often characterized by apology, promises, and attempts at reconciliation. Prosecutors who understand the cycle of abuse are not discouraged when the victim is reluctant to participate:

Recognizing the ploys of manipulation, the prosecutor should not be discouraged if the victim attempts to minimize the perpetrator's accountability for the criminal offense. By allowing the victim to make those prosecutorial decisions, the Commonwealth rewards perpetrators who are successful in the manipulation of their victim. The effect of disposing of a case according to the victim's wishes reinforces the perpetrator's conduct, giving him ultimate control over the disposition of his case.<sup>53</sup>

Prosecutors must also recognize that lack of visible injuries should not minimize the severity of the incident. Likewise, the existence of injury does not necessarily identify the perpetrator or victim. Identifying the dominant aggressor is an important aspect of strangulation-case evaluation. The International Association of Chiefs of Police (IACP) defines "predominant

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<sup>52</sup> <https://www.peaceoverviolence.org/iii-the-cycle-of-violence-and-power-and-control> (accessed July 9, 2024).

<sup>53</sup> 2024 KYOAG Domestic & Interpersonal Violence Prosecution Policy and Procedure Manual

aggressor” as “the individual who poses the most serious, ongoing threat, which man not necessarily be the initial aggressor in a specific incident.”<sup>54</sup>

The perpetrator may have numerous cuts, scratches, bite marks, or other injuries that were inflicted by the victim as a direct response to being strangled. This creates a misperception that the party with the visible injury must be the victim. This oversimplification should not lead to charges against actual victims, leaving them unprotected against the perpetrator. Careful investigation should be conducted to prevent dual arrests.

A thorough review of the facts will ensure accurate charging – it may be necessary to change existing or add new charges. The facts may support greater or lesser offenses, or removal of existing charges that may not fit the facts.

When the prosecution utilizes an evidence-based approach to prosecution, with or without the testimony of the victim, the victim’s attitude toward the prosecution of the case should not dictate the charging decision.

### **Proving the Case without Victim Participation**

Can you prove the case without the victim? It is important for the prosecution to remember the Training Institute’s admonition: “Treat the case like a homicide so it doesn’t become a homicide.” Obviously, if the perpetrator was successful in his efforts to strangle the victim to death, there would be no victim in court and no issue of “victim participation.” The fact the perpetrator failed to kill his victim should not change the approach to prosecution simply because the living victim is reluctant to participate.

Prosecutors should always initiate a prosecution with the assumption that the victim does not want to participate. Assume the victim will be pressured by the perpetrator and others to not testify. The victim may go into hiding, become uncooperative, or come to court and even face a judge attempting to hold the victim in contempt for refusing to testify.<sup>55</sup> If any of these things occur, consider how to establish the case without victim testimony and always advocate for the victim’s right to choose whether to participate in the prosecution of her partner.

A solid investigation increases the likelihood prosecutors can proceed without the victim’s testimony. Examine the physical evidence for statements made by the victim or perpetrator. Look for statements that might be admissible as an exception to the hearsay prohibition like an excited utterance, a statement made for the purposes of medical treatment or diagnosis, or otherwise admissible under the Kentucky Rules of Evidence. Remember that the confrontation right is a trial right that can be overcome if the statement is non-testimonial and otherwise admissible. It can also be overcome if there is evidence of witness intimidation by the defendant

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<sup>54</sup> International Association of Chiefs of Police, Intimate Partner Violence Response Policy and Training Content Guidelines, 6 (2017)

<sup>55</sup> Prosecutors should not request material witness warrants absent extraordinary circumstances. Trauma-informed prosecution requires consideration of victims’ safety. Allowing the victim to choose whether to participate in the criminal justice process is a form of victim autonomy and a way to honor the victim’s personal choices in her life.

in which case the defendant, under federal law and most state laws, forfeits his right to cross-examine the victim under the United States Supreme Court Case of *Crawford v. Washington*.<sup>56</sup> Remember, the *Crawford* rule does not apply to non-hearsay statements, that is, those statements not being offered for the truth of the matter.<sup>57</sup>

Both the decisions of *Crawford* and *Davis v. Washington*<sup>58</sup> acknowledge the doctrine of forfeiture by wrongdoing and Kentucky Rule of Evidence 804(5) codifies this doctrine and provides an exception to the rule against hearsay wherein "*A statement [is] offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.*" The analysis of whether the defendant intentionally caused the witness to be absent is heavily fact specific. Any claims of forfeiture by wrongdoing should be resolved by pre-trial evidentiary hearing.

If the case cannot be established without the victim's testimony, before dismissing a charge or an indictment, the prosecutor must determine the basis for the victim's reluctance to prosecute the case. If the victim's objection or reservation is the result of coercion or threats, the prosecutor should consider other charges that might be proven without the victim's participation. Additional or alternate charges to be considered are in the next section of this chapter.

Witness intimidation is common in cases of domestic violence. Stranglers are the most power and control-oriented abusers. Prosecutors, along with the victim's advocate should make victims aware of efforts by the defendant, and even family members, to manipulate and intimidate. Victims should be educated that their abuser's wrongful acts are not limited to criminal acts but may also include promises to change, declarations of love, and marriage proposals when intended to prevent victims from testifying.<sup>59</sup> When this intimidation occurs, prosecutor should consider additional charges.<sup>60</sup>

## Choice of Charges

When a person, without consent, intentionally or wantonly impedes the normal breathing or circulation of the blood of another by applying pressure to the throat or neck, or by blocking the nose or mouth of another person, the crime of strangulation is committed.<sup>61</sup>

As previously discussed in Chapter 2, Kentucky has two felony strangulation charges. The distinction between the two charges is the *mens rea*, or the intent of the offender. A person who acts intentionally is charged in the first degree, a Class C Felony. A person who acts wantonly is charged in the second degree, a Class D Felony. All other elements are the same.

KRS 501.020 defines mental states:

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<sup>56</sup> See Witness Intimidation: Meeting the Challenge, *Aequitas*, <https://aequitasresource.org/wp-content/uploads/2018/09/Witness-Intimidation-Meeting-the-Challenge.pdf> (accessed July 9, 2024).

<sup>57</sup> *Crawford v. Washington*, 541 U.S. 36, 52 (2004).

<sup>58</sup> *Davis v. Washington*, 126 S. Ct. 2266 (2006)

<sup>59</sup> Bonomi, A., and Martin, D., *Recantation and Domestic Violence: The Untold Story* (2023). <https://www.amazon.com/Recantation-Domestic-Violence-Untold-Story/dp/1032391685> (accessed July 9, 2024).

<sup>60</sup> See Section Charging Decisions

<sup>61</sup> KRS 508.170 and 508.175.

- KRS 501.020(2) “Intentionally – A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause that result or to engage in that conduct.”
- KRS 501.020(3) “Wantonly – A person acts wantonly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstances exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts wantonly with respect thereto.”

The crime of strangulation most commonly occurs within a factual scenario reflecting an intentional act which would support the charge of strangulation in the first degree. It is less common to see a factual scenario reflecting wanton conduct. Regardless, prosecutors are equipped with both Class C and D felonies to respond to this life-threatening crime and to hold perpetrators accountable.

Strangulation is often just one act of domestic violence occurring within the context of other criminal offenses. During case review, prosecutors must evaluate the facts and evidence to determine if other charges are appropriate<sup>62</sup>. It is important that the indictment reflect every distinct, independent criminal act that occurred within the factual scenario.

If the defendant has other charges pending which involve the same victim, when possible, prosecutors should join cases, which can help establish the severity of the relationship and abuse between the victim and their abuser.<sup>63</sup>

Although each case is unique, it is common to see the following criminal charges associated with acts of domestic violence:

**Strangulation, Assault, and crimes threatening physical injury or use of force include:**

- Strangulation in the First Degree – KRS 508.170
- Strangulation in the Second Degree – KRS 508.175
- Assault in the Fourth Degree – KRS 508.030
- Assault in the Fourth Degree (Enhancement of Penalty: Assault of family member of member of an unmarried couple)– KRS 508.032
- Assault in the Second Degree – KRS 508.020
- Wanton Endangerment in the First Degree – KRS 508.060
- Wanton Endangerment in the Second Degree – KRS 508.070
- Unlawful Imprisonment in the First Degree – KRS 509.020
- Unlawful Imprisonment in the Second Degree – KRS 509.030
- Kidnapping – KRS 509.040
- Stalking in the First Degree – KRS 508.140

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<sup>62</sup> See Choice of Charges section above.

<sup>63</sup> National District Attorneys Association, *National Domestic Violence Prosecution Best Practices Guide*, 25 (2017)

- Stalking in the Second Degree – KRS 508.150
- Intimidating a Witness in the Legal Process – KRS 524.040
- Retaliating Against a Participant in the Legal Process – KRS 524.055
- Terroristic Threatening in the Third Degree – KRS 508.080
- Robbery in the First Degree – KRS 515.020
- Robbery in the Second Degree – KRS 515.030
- Burglary in the First Degree – KRS 511.020
- Burglary in the Second Degree – KRS 511.30
- Criminal Trespass in the First Degree – KRS

### **Protective Orders, Conditions of Release, Tampering & property damage:**

- Violation of Order of Protection – KRS 403.763
- Violation of Conditions of Release – KRS 431.064
- Tampering with Physical Evidence – KRS 524.100
- Interference with Communications – KRS 438.210
- Criminal Mischief in the First Degree – KRS 512.020
- Criminal Mischief in the Second Degree – KRS 512.030
- Criminal Mischief in the Third Degree – KRS 512.040

### **Charges related to Sexual Violence:**

- KRS Chapter 510

### **Child Victims:**

In addition to the charges described above when children are victims of violence the following offenses may be considered.

- Assault charges in KRS Chapter 508 (seek medical attention)
- Criminal Abuse in the First Degree – KRS 508.100
- Criminal Abuse in the Second Degree – KRS 508.110
- Criminal Abuse in the Third Degree – KRS 508.120

### **Setting Bond and Other Safety Measures**

Bond hearings and pre-trial detention hearings play a critical role in strangulation and domestic violence cases for three key reasons:

1. Victims are at highest risk of danger when they attempt to leave their abuser,<sup>64</sup> thus conditions set at bond hearings are pivotal to the victim's protection early in the case.
2. They offer an opportunity for a victim to assert their right to be heard.
3. They educate the court about the defendant and the case.

It is a good practice for the prosecution to file, prior to arraignment, an objection to all bond reductions and request that all bond motions be made in writing.<sup>65</sup> During motion practice, the

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<sup>64</sup> Kentucky Office of the Attorney General, *Domestic Violence Prosecution Manual*.

<sup>65</sup> RCr 4.40 requires a "written motion" to apply for a change of conditions of release.



prosecution can take the opportunity to provide a summary of the case describing the evidence and arguments. This demonstrates the risks associated with strangulation and the underlying need for protective measures on behalf of the victim. Often, the pretrial detainment of the defendant allows the victim to engage available resources and options s/he may not otherwise be able to explore when under the defendant's influence and pressure.

In making this argument, the prosecutor may rely upon:

1. The seriousness of the offense
2. Use of weapons
3. Lethality of the defendant
4. The defendant's criminal record and history of violence
5. The defendant's history of noncompliance with court orders and outstanding warrants
6. The defendant's threats of harm directed toward the victim or to his or her own person.<sup>66</sup>

Lethality assessments serve to assess danger but can also help inform professionals of the risks most significant to the individual case. Judges can then use this information to support their decision on pretrial release and accompanying conditions.<sup>67</sup> Because domestic violence and strangulation cases demonstrate a high risk for lethality, the safest condition may be for the defendant to stay in custody. However, if the court releases a defendant pretrial, conditions should be imposed on the defendant to minimize the risk to the victim. These conditions may include:

- No further acts of abuse.
- Electronic monitoring.
- Prohibition against use of alcohol or controlled substances.
- Defendants may also be prohibited from possession of a firearm.
  - KRS 431.064(d) specifically allows an order prohibiting the person from using or possession a firearm or other weapon specified by the court. Firearm Removal reduces the risk of further violence and homicide and should be addressed as a condition of release.
  - When the defendant is moderate or high risk, KRS 431.067 also allows the court to order global positional monitoring (GPS) as a condition of release.
- No contact with victim or family, including electronic contact or third-party contact.
- Stay away from the victim (this is different than having no contact).
- KRS 431.064 further gives the court the authority for "any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court".<sup>68</sup>

Mutual "no-contact" orders should always be opposed. These ill-advised orders imply both parties are responsible for the defendant's criminal conduct. Permitting the defendant to dictate terms and conditions further subjects the victim to the defendant's power, control, and manipulation, not to mention orders of the court. While victims have a constitutional right, pursuant to *Marsy's Law*, to be heard in proceedings involving the defendant's release, it should not be forgotten that prosecutors are tasked with protecting the victim. This does not mean that the prosecutor's role

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<sup>66</sup> National District Attorneys Association, *National Domestic Violence Prosecution Best Practices Guide*, 26 (2017)

<sup>67</sup> *Pettingill v. Pettingill*, 480 S.W.3d 920 (Ky.2015).

<sup>68</sup> See KRS 431.064(f).

and legal positions will always align with the victim's wishes. Giving the victim an opportunity to have a voice in court can foster a sense of empowerment. While prosecutors should give due consideration to the victim's perspective, their primary responsibility is to ensure justice and hold the defendant responsible for violating the law.

If the bond conditions are violated, swift action should be taken to revoke bond. Pursuant to RCr 4.40 and 4.42, when a defendant has willfully violated a condition of release, an adversary hearing may be requested by written motion to establish the violation by clear and convincing evidence.

Violation of any condition of release is a Class A Misdemeanor. Kentucky Revised Statute 431.005 requires that upon verification that the Defendant has notice of the conditions of release in accordance with KRS 431.064, he *shall* be arrested without a warrant if there is probable cause that a pre-trial condition of release has been violated.

### **Preliminary Hearing and Grand Jury**

Both preliminary hearings and grand jury proceedings provide an opportunity to break the power and control of the abuser. Each proceeding makes it clear that the Commonwealth is the charging party, not the victim. Prosecutors should try to complete the preliminary hearing without the victim's testimony. Probable cause can be established by the investigator's synopsis, and hearsay is admissible at the hearing.<sup>69</sup>

While a common practice is to take a minimalist approach to grand jury and simply present the evidence and witnesses as quickly and as expeditiously as possible- a more thorough practice should be considered in domestic violence cases for the following reasons:

1. This is the time to thoroughly evaluate the case and to subpoena additional information. Grand jury proceedings can be utilized to secure the victim and witness testimony, often when they are more likely to still be cooperative.
2. Eliciting victim testimony before the grand jury should be carefully considered. Some prosecutors prefer to present victim testimony, especially in cases where recantation is likely.
  - a. By choosing to have the victim testify, even if the victim recants, the grand jury can consider the victim's testimony along with all of the additional evidence. If the grand jury chooses to indict despite the victim's position, it sends an even stronger message that the Commonwealth is the charging party and not being influenced by the victim's attempt to dismiss the charges on his behalf. This also encourages guilty pleas.
3. Presenting evidence regarding the dynamics of strangulation allows the prosecutor to educate the grand jury and the public about the seriousness of strangulation. His testimony could come from a forensic nurse, paramedic, or a law enforcement officer with specialized training and experience.

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<sup>69</sup> Kentucky Rule of Evidence 1101 exempts preliminary hearings and grand jury proceedings from evidentiary rules.

4. Prosecutors should consider presenting all information about the relationship of the individuals involved and any prior or current abuse including medical records, previous domestic violence petitions and applications, prior criminal charges involving the same victim, and any other relevant information.

As the case is developed at grand jury, it may be discovered that other criminal charges are appropriate.<sup>70</sup> Strangulation is often one component in a series of other criminal offenses. If the defendant has other charges with the same victim, prosecutors should also consider joining cases, which can help establish the severity of the relationship and abuse between the victim and their abuser.<sup>71</sup>

### **Combating Common Defense Theories**

Strangulation cases have a series of potential defenses that typically arise. Adequate case preparation involves being able to address these defenses:

1. The victim self-inflicted her injuries:
  - If the victim has readily apparent visible injuries, the defense can claim the victim self-inflicted the injuries.
  - The defense may play this off as a victim who is vindictive who inflicts her own injuries then contacts law enforcement to punish the defendant.
    - It is important to explain how the victim's injuries are the result of the defendant inflicting them or the victim defending against the defendant's attack.
    - It is common for the victim to self-inflict scratches on her neck, for example, when she is trying to remove the ligature or stop the manual strangulation assault.
2. The victim likes to be strangled:
  - Another claim that may arise is that the victim and defendant engage in strangulation as a consensual activity, likely intertwined with some type of sexual behavior.
3. The injury was an accident:
  - This defense involves the defendant claiming the strangulation occurred through some mistaken action. The defendant was trying to calm the victim and his hands—that were meant to be placed on her shoulders—accidentally slipped to the neck, the defendant/victim fell into the grasp of the hands, or some other form of seemingly innocent explanation.
    - The defense can be defeated with a detailed account during either the initial or follow-up investigation. Is the conduct described by the defendant consistent with the injuries received by the victim? When there is an accident, there is usually an apology after the accident. Was there any indication of this?
4. The defendant acted in self-defense/mutual combat/dominant aggressor:
  - This defense may be combined in some form with the other defenses. Under this

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<sup>70</sup> See Choice of Charges section above.

<sup>71</sup> National District Attorneys Association, *National Domestic Violence Prosecution Best Practices Guide*, 25 (2017)

- theory, the defendant was using force to combat or defend against attack by the victim. It is important to evaluate which party is the dominant aggressor. Determining the dominant aggressor is particularly complicated in strangulation cases because the victim may exhibit a lack memory or become combative due to oxygen deprivation from his or her strangulation.<sup>72</sup> Additionally, injuries may be difficult to assess as they may be non-visible, internal, or caused by the victim's self-defense.<sup>73</sup>
- Prosecutors sometimes mistakenly believe that the only way to introduce this type of defense is through the defendant's testimony. This is incorrect. The victim may recant and give this as an explanation for what occurred, that is, "Everything I told the officer was correct, except it all occurred after I attacked the defendant." Countering this defense requires a detailed investigation by law enforcement.

## **Victim Participation in Court**

Victims of domestic violence may be reluctant to testify against the defendant for a variety of complicated reasons including love, intimidation, threats, fear of loss of financial support, and issues involving children. Most defendants assume that if a victim refuses to testify, the criminal case becomes harder for the Commonwealth to pursue. However, if criminal justice professionals are focused on evidence-based prosecution, the victim's lack of prosecutorial engagement has less of an impact. Regardless of the victim's feelings towards prosecuting her offender, prosecutors must work to establish rapport and build trust with victims early on and then focus on the evidence in the case rather than the complexity of the victim's emotional, and often fear-driven, responses.

As discussed throughout this manual, determining the barriers to victim participation early, and referring the victim to support and services, may assist the victim in actively participating in the prosecution. When preparing for trial, prosecutors should consider basic needs like transportation to and from court, the needs of the victim's children, and the necessities of life which the victim may have lost because of the prosecution of her partner. Victims may need housing or food assistance. They may need ongoing medical assistance or counseling for their children. Working closely with the victim, the victim's advocate, and community-based advocates to assess the victim's needs and safety concerns can make a difference in avoiding more complex issues at trial and reduce the chances of the victim recant.

As with all witnesses, the victim should be subpoenaed to appear in court if her testimony is needed. If a victim does not comply with the subpoena, great consideration should be given to appropriate next steps. Given the complex nature of domestic violence victimization, incarceration of the victim is not the preferred response. Remember, it is the defendant's actions that have put the victim in this situation. Arresting or incarcerating the victim will not only

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<sup>72</sup> Traditionally, prosecutors have viewed a lack of memory as a weakness in a case. The Training Institute argues that a lack of memory is EVIDENCE in a case. Lack of memory is evidence of oxygen deprivation to the brain and the compromise of the hippocampus, the memory center of the brain. The first part of the brain to suffer damage from strangulation is the hippocampus and, once unconscious, the victim of strangulation loses memory from the event. See <https://www.frontiersin.org/journals/cellular-neuroscience/articles/10.3389/fncel.2023.1277375/full>. (accessed July 9, 2024).

<sup>73</sup> <https://evawintl.org/wp-content/uploads/DVReport1906.pdf> (accessed July 9, 2024).

provoke a sense of injustice but may also further jeopardize her safety and the safety of her children.

All efforts should be made to avoid issues of re-victimization and re-traumatization. If a victim is brought before the court for failure to comply with the court order, it should be done in the most victim-centered, trauma-informed manner. A multi-disciplinary approach should be utilized to create the proper response, while enlisting a safety plan tailored to the victim's needs.

If the victim has an attorney to protect her interests, it is important to respect and comply with her rights pursuant to KRS 421.500 and section 26A of the Kentucky Constitution (Marsy's Law).<sup>74</sup> The prosecutor should be in immediate contact with the victim's attorney. While prosecutors have a great deal of discretion in deciding whether to use compulsive measures beyond the issuance of a subpoena, the decision to do so should be made with great care and with an awareness of the potential consequences.

### **Pre-Trial Motions**

Prosecutors should practice the use of pre-trial motions in limine to control the quantity and quality of information sought to be introduced at trial.<sup>75</sup> Intimate partner violence evidence should be integrated in pre-trial motions to educate the court and support the Commonwealth's case.

The diagram known as the Power and Control Wheel<sup>76</sup> may be useful in pre-trial motion practice to provide a complete picture of the abuse. Understanding the violent dynamic of the relationship supports the admission of relevant evidence and exclusion of irrelevant evidence.

The following list of potential pre-trial motions in a strangulation case should be considered as the case advances towards trial:

- Rape Shield Law KRE 412
- Bond Motions KRS 431.064; RCr 4.40; RCr 4.42
- Motion to Join Offenses RCr 6.18
- Forfeiture by Wrongdoing
  - Hearsay exception for unavailable victim, KRS 804(b)(5)
- Motion to Limit Discovery of Victim
- Mental Health and Confidential Records (*Commonwealth v. Barroso*, 122 S.W.3d 554 (Ky.2003))
- Notice of Intent to Admit Other Acts of Defendant KRE 404(b)(c)
- Motion to Limit or Restrict Cross Examination of Victim
- Character Evidence (prior drug use, specific acts of conduct, or improper character evidence) KRE 404(a)(2), KRE 405

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<sup>74</sup> If the victim is represented by counsel, prosecutors must also adhere to Kentucky's Rules of Professional Conduct. Supreme Court Rule 3.130 prohibits any lawyer from communicating regarding the subject of representation with a person known to be represented by counsel.

<sup>75</sup> National District Attorneys Association, *National Domestic Violence Prosecution Best Practices Guide*, 27 (2017)

<sup>76</sup> See Appendix.

- Motion to Enforce Marsy's Law: Presence / participation upon request of Victim – KRS 196.280
- Notice Expert Testimony<sup>77</sup>
- *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)
- Motion for Testimonial Accommodations in cases of child strangulation during sexual activity KRS 421.350.
- Competency of Witness KRE 601
- Appointment of a Guardian Ad Litem for Child Victims KRS 26A.140.

## **Voir Dire**

Jury selection in a strangulation case involves the same subject matter commonly addressed in domestic or intimate partner violence offenses. Prosecutors must understand how potential jurors will react to these issues. Additionally, prosecutors should have awareness of juror biases to ask the right and most meaningful questions. Good prosecutors plant seeds in jury selection that will last through closing arguments.

The following is a compilation of possible topics to address in voir dire depending upon the facts and circumstances:

- Dynamics of domestic violence, including fear.
- Victim's potential minimization of the abuse.
- Victim's lack of participation or recantation is irrelevant to whether the crime was committed.
- Juror bias in domestic violence, strangulation, and gender-based violence crimes.
- Inconsistent statements/credibility.
- Bad judgment does not mean the victim lacks credibility.
- Victim may still love the perpetrator or has chosen to remain with him.
- Memory and trauma.
- Elements of strangulation.
- Recantation.
- Visible physical injury versus non-visible physical injury.
- Different recollections from the victim not being indicative of reasonable doubt.
- Acceptance of expert testimony on strangulation.
- Understanding of the importance of oxygen to the brain (through blood) for the brain to stay alive and healthy.
- Absence of recordings or witnesses of the strangulation – losing memory when you pass out or lose oxygen to your brain.
- Dying when you lose oxygen to your brain.

When educating jurors in voir dire, remember that it should be an education that the jury gives themselves and that your evidence then becomes consistent with. The Training Institute strongly recommends finding jurors who may have experienced episodes of fainting, that have ever fainted, suffered from low oxygen to the brain, or those who have training in the martial arts or from military service (where they may have learned about strangulation).

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<sup>77</sup> See Chapter 6, Use of Experts

Be mindful that jurors with backgrounds that frequently expose them to minor injuries (*e.g.* laborers, emergency room medical professionals, or athletes) may tend to regard scratches and redness as “non-injuries.” Spend extra time with these potential jurors to determine if they can be appropriate jurors on a strangulation case. If they cannot, the discussions with them might serve as good examples for other potential jurors about the seriousness of the offense.

Prosecutors should use voir dire as an opportunity to shift the focus of the case towards the perpetrator and away from victim. Another goal of voir dire should be seen as an opportunity to lower the jury’s expectations regarding the level of violence required to violate the law.

### **Shifting the Focus from the Victim to the Perpetrator**

Remind jurors that the defendant has no burden in a criminal trial, and that the Commonwealth accepts its burden to prove each element of the crime beyond a reasonable doubt. The defendant only has rights. He has a right to a jury trial regardless of the evidence against him, he has a right to testify or not to testify and if he doesn’t testify you cannot hold that against him. Most importantly if the defendant does testify, he is presumed innocent, he is not presumed to be truthful. Whether or not the defendant is being truthful is for the jury to judge. The jury needs to evaluate his credibility and any biases or motives he may have to tell the truth or to lie.

### **Opening Statement**

The importance of the opening statement cannot be overstated. The first words spoken are crucial and will set the tone for the rest of the opening, if not the entire trial. The jurors are eager and ready to learn about the case, so make those first words compelling and allow them the opportunity to judge the defendant’s actions – not the victim’s.

The jurors’ first impression of the case is often consistent with their ultimate verdict. In fact, in most cases, 85%, the jury’s view at the end of opening statement impacts their ultimate decision in a case.<sup>78</sup> During opening statements, jurors are deciding which point of view, theme, and story they identify with as they learn about the case. When the prosecution has a theme, the jurors begin to connect with the Commonwealth’s case. Finding true emotion in the narrative of the case and describing ways to create empathy for the witnesses is key. This can build rapport with jurors.

The structure of the opening statement should be delivered in a story-telling style versus the witness testimony sequence. Human beings are accustomed to listening to information given through story. The goal is to provide a compelling narrative that moves the jury to convict. The opening statement is an opportunity to educate the jurors about strangulation by telling them what your expert will testify about regarding the seriousness of the crime.

Do not be afraid to touch upon the weaknesses of the case. Do this in a manner that makes the weakness irrelevant. Unveiling weaknesses in the opening helps diminish them, rather than allowing the defense to point them out. At the close of your opening, explicitly tell the jurors

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<sup>78</sup> See <https://www.ojp.gov/ncjrs/virtual-library/abstracts/art-not-science-prosecutors-perspective-opening-statements>.

what the Commonwealth will be asking them to do at the end of the case.

### **Structuring the Presentation of the Case**

The manner of case presentation can impact credibility. It can be disturbing for a jury to listen to the opening statement of the prosecutor and a description of the facts of the case, only to have the victim testify and give a different version. For that reason, unless the prosecutor has absolute confidence the victim's testimony is consistent with the initial statement to law enforcement, another piece of evidence should be introduced first. Consider the following methods of presentation:

- 911 call introduced through the dispatcher/custodian of records.
- The neighbor who heard the spontaneous statements of the victim.
- The officer who observed the victim's demeanor and/or any injuries.
- Something that corresponds to the prosecutor's opening statement.

This has the impact of assuring the jury of the prosecutor's credibility. If later during the trial, the victim does testify and recants or testifies inconsistently, the jury will have already heard evidence that validates the prosecutor's opening statement. This tactic enhances the credibility of the prosecution's case. No jury should hear a strangulation case with a recanting victim without knowing the victim is likely to recant from the beginning of the case.

When considering case structure and presentation, it is critical that prosecutors review the 2023 Kentucky Supreme Court opinion Robertson v. Commonwealth, 2021-SC-0485-MR (not final). In this opinion, the Court opined:

*Both the defense and the Commonwealth should consider in their trial preparations whether a conflict may arise between Marsy's Law and KRE 615. If there is an anticipated conflict, the parties should bring it before the court pretrial. At that time, the trial court should conduct a hearing at which the parties can discuss the potential conflict, and the Commonwealth can put forth its proposed order of witnesses and the basic substance of the victim's testimony. With that information, the trial court should, to the best of its ability, determine the impact of the conflict on the proposed testimony of the victim. Then the court should determine if, in the interest of maintaining the integrity of the trial, a different order of Commonwealth witness presentation is mandated. We trust trial courts to use their discretion in making these determinations to help ensure as fair a trial process as possible, within the parameters of Marsy's Law.*

### **Additional Expert Testimony**

See Chapter 6.

### **Victim Testimony**

If the victim is going to testify, be prepared for that testimony to be inconsistent. The nature of these cases is that the victim might not feel safe to tell the truth. Moreover, trauma and brain injury in a strangulation case can impact memory and recitation of an event. Refrain from



criticizing a victim who testifies inconsistently with previous statements. The statements can almost always be confronted in a manner that is more reserved, professional, and demonstrates the terrified victim's recantation is a natural part of victimization. Prosecutors must be aware of tone and body language while in front of the jury and particularly if they must cross-examine a recanting victim.

### **Cross-examination of the Defendant**

The defendant's testimony will come after hearing from the prosecution witnesses, including the strangulation expert. Anticipate that the defendant's testimony will attempt to incorporate some aspects of your expert's testimony into his version of what occurred. If the expert mentions that some persons engage in strangulation as part of their sexual practices, for example, the defendant may adopt that as a part of his testimony. Always question whether the defendant raised this defense at the scene of the crime or only after consulting with a defense attorney.

Defendants who claim self-defense should be questioned about their fear of imminent harm and their prior statements to law enforcement evaluated for those claims at the scene.<sup>79</sup> Defendants who claim that they placed their hands on the victim to "calm them down" should be questioned in detail regarding how this action turned into strangulation.

### **Closing Argument**

The factual theory must support the legal theory.

Closing arguments tend to be the favorite part of trial for prosecutors. It is the last opportunity for the prosecutor to advance the case to support the theory, theme, and legal argument. For the closing argument to be effective, it is not the "argument" that will get the conviction, but the facts that support it. No matter how skilled an attorney, if the argument is not supported by the facts and evidence, the jury will not convict.

Closing arguments are where the prosecutor can explain to the jury how significant the evidence is and how it supports the case. "Arguments" require helping the jury connect the dots and draw inferences from them. Consider the following organization and structure for an effective closing argument.

#### Structure of the Closing Argument:

1. The Attention Step:
  - a. Get the attention of the jury right away, just as in opening statement. This can be done by conveying the case theme or perhaps with the 911 recording.
2. The Facts of the Case:

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<sup>79</sup> Strangulation offenders are well-known for not being willing to express fear of their victim. Why? Because they are not afraid of their partner. It is hard to even fake their fear. Prosecutors can often capitalize on this struggle for offenders. See <https://www.contracostaalliance.org/calendar/understanding-the-rage-and-lethality-of-men-who-strangle>. (accessed July 9, 2024).

- a. Do not just repeat the facts of the case the jury has already heard. Now is the time to discuss the evidence that supports and proves the factual theory of the case.
- 3. The Law that Supports the Facts:
  - a. Show how the legal theory is supported by the factual theory. Apply the facts to the law. Using the jury instructions during this phase is helpful.
    - i. The prosecutor is the teacher or facilitator. No matter how simple the prosecutor believes the jury instructions are, that is never the case for the lay person on the jury.
    - ii. Go through the instructions. Confusion can lead to reasonable doubt. Confusion is welcomed by the defense. Clearly explain to the jurors how to read, understand, and apply the facts of the case to the instructions.
    - iii. Consider using visuals, courtroom technology, a Power Point slideshow, or at minimum, a white board to aid in the explanation.
- 4. Closing Line:
  - a. Plan and develop this final part of closing. This should be strong, forceful, and definite. The prosecutor should let the jurors know it is their time to act and tell them what you expect from them: to return a verdict of guilty.
  - b. Reference the content of the attention step again.
  - c. Do not be afraid to pick-up your evidence.

Tip: Do not forget to explain in lay terms why the expert witness's opinion is important to the case. Reiterate to the jury that this testimony is evidence and emphasize how this evidence supports the Commonwealth's case.

For the closing argument to be most effective, the prosecutor must utilize the argument throughout the entire case and have a clear understanding of what she/he is trying to accomplish. Applying the facts to the law, while emphasizing the lethality of the crime, is the most persuasive closing argument.<sup>80</sup> At the end of the day, prosecutors must help the jury feel the terror that the victim felt when she realized he was capable of and willing to kill her. Then, the jury will be able to convict him of strangulation even without significant, or even any, visible injuries.

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<sup>80</sup> National District Attorneys Association Trial Advocacy Manual (2019).

## Chapter 5: Medical Evaluation

Strangulation is a very dangerous and potentially lethal form of interpersonal violence. Unfortunately, it is common in the context of sexual assault and domestic violence. Minimal pressure on the neck can cause serious injury and, even in fatal cases of strangulation, it is possible there may be no external visible signs of injury at all. Not only is the strangulation act itself a threat to life, but it is a significant risk factor for future homicide (by any method) for that strangulation victim. A history of a single act of non-fatal strangulation increases a victim's odds of subsequently being killed by that perpetrator by 7.5 times.

Health care providers working in the field of clinical forensic medicine commonly examine victims who were assaulted by strangulation. The strangled patient presents multiple challenges and questions. Are they medically stable or might they deteriorate? What evaluation is appropriate? What documentation is necessary, both medically and forensically? What was the intensity and duration of the assault? How does the assault translate into the level of threat posed to the victim's life?

A clarification of terms is important for the purposes of this discussion. The term “**forensic**,” refers to the interface between the law and medicine. “**Forensic pathology**” is the medical discipline that deals with the evaluation of *dead* victims. This differs from “**clinical forensic medicine**,” which is the medical discipline that deals with the evaluation and care (both medical and forensic) of *living* victims. Clinical forensic medicine includes attention to patient care needs, while forensic pathology does not.

### Strangulation 101: Understanding the Basics

Whether evaluating a strangled patient, investigating a strangulation case, or prosecuting a strangulation assault, everyone involved, including the jury, needs to understand the fundamental nature of strangulation. This starts with normal basic anatomy (structure of the body) and physiology (bodily functioning).

The brain needs a continuous supply of oxygen. The brain is the most sensitive organ in the body when deprived of oxygen. Without oxygen, brain cells quickly malfunction and die. When brain cells die, they do not regenerate, and the function they once supported is permanently gone. To ensure continuous oxygen supply, two vital bodily systems must work perfectly and in unison—the respiratory (breathing) system and the cardiovascular (blood flow) system. Multiple areas of vulnerability exist in both systems, and the compromise of a single area can rapidly produce a very bad outcome.

### Terms and Definitions to Understand

- **Respiration** describes the delivery of oxygen into the body via inhaled air, producing oxygen-rich or **oxygenated** blood. Air must pass through the mouth and nose into the upper air passages, the voice box (larynx), the windpipe (trachea), and finally into the lungs. The chest and the diaphragm muscle work together to create the “bellows” that

moves the air (breathing). Once oxygen is transferred to the cells throughout the body (including the brain), the blood becomes devoid of oxygen or **deoxygenated** and rich in carbon dioxide. Air must be able to pass freely out of the lungs, which allows carbon dioxide gas to shift from the blood into air in the lungs and then be exhaled into the atmosphere. Normal respiration is the unobstructed in and out of airflow.

- **Cardiovascular** refers to the system that includes the heart and blood vessels (arteries and veins). The heart provides the pumping action that moves the blood through the lungs (for oxygenation and carbon dioxide removal) and to and from the bodily tissues and organs. Arteries move oxygenated blood away from the heart and veins move deoxygenated blood back toward the heart.
- **Carotid arteries** (right and left) are the two main blood vessels in the neck that transport about 85 percent of the oxygenated blood to most of the brain cells. At the angle of the jaw, each common carotid artery divides into an **internal carotid** and an **external carotid** branch.
- **Vertebral arteries** (right and left) travel through the bony passages in the bones of the neck (cervical vertebrae) to supply about 15 percent of the oxygenated blood to the brain cells, mainly to the posterior parts of the brain.
- **Jugular veins** (right and left; also, with internal and external branches) are the blood vessels in the neck that transport oxygen-depleted, carbon dioxide-rich blood from the brain back to the heart.
- **Hypoxia** is an oxygen deficiency in body tissues.
- **Hypoxemia** is an oxygen deficiency in the blood.
- **Anoxia** is the absence or lack of oxygen in body tissues.
- **Asphyxia** is when the body does not receive or utilize adequate amounts of oxygen. In the context of strangulation, asphyxia occurs when brain cells do not receive adequate oxygen for normal functioning. This may result from compromise of respiration—the lungs being deprived of oxygen—or cardiovascular compromise—the brain being deprived of blood flow. Asphyxia may result from a combination of problems in both systems.
- **Under KRS 508.170 and 508.175, Strangulation** occurs when, without consent, a person intentionally or wantonly impedes the normal breathing or circulation of the blood of another by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person. There are two types of strangulation—manual and ligature. **Manual strangulation** can be accomplished with one hand, both hands, or another body part (e.g. a forearm or knee). **Ligature strangulation** is accomplished when an object is used to apply pressure to the neck (e.g. a cord, item of clothing, or necklace).

- **Suffocation** is a broad term encompassing various causes of asphyxia associated with oxygen deprivation. Suffocation can include choking, smothering, drowning, and compressive asphyxia.
  - **Choking** is what happens when an object mechanically blocks the upper airway, stopping airflow *internally*. Choking can occur when food or some other object gets stuck in the airway. *Caution:* This term is often used inappropriately. Patients may use it to describe what happened when they were strangled; however, these terms should not be used interchangeably.
  - **Smothering** is a mechanical obstruction of airflow into the nose and mouth (e.g. blocking the victim's nose and mouth or putting a pillow or other object over the victim's nose and mouth).
  - **Drowning** is a form of asphyxia caused by a liquid entering the lungs and preventing the absorption of oxygen, leading to cerebral hypoxia.
  - **Compressive asphyxia can occur with either compression to the chest or to the airway. The chest compression can** occur when an assailant puts his body weight on the victim (e.g. sitting on their chest), limiting the expansion of the lungs, which interferes with breathing. Airway compression compromises airflow by compressive force applied to the airway (typically at the level of the voice box [larynx] or windpipe [trachea]) that squeezes the airway closed. Examples of this include the external force of strangulation (manual or ligature) and the mass effect of an enlarging area of post-traumatic swelling and bleeding inside the neck that pinches the airway closed.
- **Symptoms** are a patient's subjective description of what they feel or experience. Symptoms may be current or past (resolved).
- **Signs** are objective medical observations. These may include physical findings from the examination, laboratory testing results, and imaging studies (e.g. x-rays, CT scans, MRI scans, etc.).

## Pathophysiology

Pathophysiology is the study of the functional changes associated with disease or injury. Because two complex systems (respiratory and cardiovascular) are involved in oxygenating the brain, functional vulnerabilities exist in many areas—alone or in combination. Functional changes may be temporary and resolve when the compromising force is removed. Examples include compression of the airway, the chest, a blood vessel, or a nerve. Restoration of normal functioning may be immediate, complete, and without serious consequence. The injuring force may cause mild structural damage that temporarily impairs function but will heal spontaneously. Other injuries may create significant damage. Examples include fractures, tears, ruptures, or crushing of airway or blood vessel structures. These injuries may pose an immediate threat to life. In the context of strangulation, there are two situations in which the initial presentation of the injury may appear trivial, with minimal or even no symptoms, yet a life-threatening problem

is beginning to evolve—bleeding and swelling. Even minimal force may cause bleeding and/or swelling in the injured tissue. Initially, both symptoms and signs may be mild or unrecognized. The great risk is that both bleeding and swelling can progress, often slowly, and not cause obvious problems until the airway is blocked or a vascular disaster occurs. A stroke resulting from vascular damage may occur hours, days, months, or even years after the strangulation event.

### Specific Functional Changes in Strangulation

In discussing the details of strangulation injuries and alteration of normal functioning, the question of how much force (or pressure) was applied is frequently posed. Only in experimental research situations where the forces are measured and monitored will there be accurate data on the issue. There is significant variability from one individual to the next in the thresholds of vulnerability for injury with a given force. The details of the exact quantity of force applied, the duration and direction of the force application, the surface area of the force distribution, and the exact anatomic location to which the force was applied, all influence the resultant findings. The reality is that—outside of a research experiment—the exact force cannot be known. With these caveats in mind, these “force numbers” should not be relied upon as exact values and only used as general guidelines for relative amounts of force. It is generally surprising how little force is required to cause significant alterations in function or a severe injury. For example, the following “forces of daily activities” provide a general knowledge context:

- An adult’s average maximum grip = 100-120 pounds
- A firm handshake = 60-80 pounds
- Opening a soda can or “pop top” = 20 pounds
- A handgun trigger pull = 6 pounds

**Airway compromise** may occur as a result of the compressive forces of strangulation, by squeezing the airway closed, with or without causing damage to the structures. Occlusion of the trachea requires about 33 pounds of pressure. Functional changes in a strangulation case may include injury to the larynx, such as bleeding, bruising, and swelling (edema), only requiring 22 pounds of pressure. Swelling is something that should be of grave concern given that it may not be apparent until hours after the strangulation occurs. Most of the structural components of the larynx and trachea are made of cartilage, which can sustain fractures at about 35 to 46 pounds of pressure. Fracture of the hyoid bone, which aids in tongue movement and swallowing, is rare but may occur in cases of non-fatal or fatal strangulation. Various combinations of functional changes may occur, leading to severe trauma to the upper airway. For example, the airflow can be compromised, the larynx fractured, and facial and neck swelling can be evident. Air can escape from the air passages and leak into the soft tissues (subcutaneous emphysema). These injuries can be very dangerous to a patient and may lead to death.

The forces of strangulation can compress blood vessels in the neck, which can diminish or stop blood flow in the arteries and/or veins. The impact of altered blood flow involves many variables: the specific vessel(s) involved, the duration of compression, and the nature of the

compressive force. **Arterial compromise** may occur, which alters the blood flow to the brain. Occlusion of the carotid arteries requires about 11 pounds of pressure. When a single carotid artery is compressed or blocked, there may be neurologic findings on the opposite side of the body. These findings include weakness, numbness, and tingling. When both carotid arteries are compressed or blocked, the result is neurologic dysfunction that may cause an alteration in consciousness (light-headedness or dizziness) or a loss of consciousness. As a result of more anatomic protection, more force (about 66 pounds of pressure) is required to compress the vertebral arteries. As with compression of the airway structures, there is a spectrum of dysfunction and injury that results from pressure on the arteries. Temporary closure may cause mild hypoxia in the brain, leading to brief dysfunction (without significant tissue damage) that resolves completely when the force is removed. If the compression is maintained for a longer period, brain cells may pass through hypoxia to anoxia and die, never to regenerate or be replaced. The potential outcomes are permanent brain damage or death.

Another very serious potential problem stemming from direct arterial pressure is damage to the artery itself. This is a subtle diagnosis. Trauma may tear a small flap of tissue in the lining of the artery and as the body tries to heal it, a blood clot (thrombus) inside the artery may form and grow. Eventually, blood flow through the artery may decrease or even stop. These developing blood clots can break off and travel to the brain (embolization) and block a distant artery. Neurologic findings may develop from the areas deprived of blood flow. This resembles both the mechanism and clinical findings of a stroke. Another possibility with a tear/dissection is that it may “balloon out” into the weaker outer layers of the arterial wall to form a pocket (false aneurysm or pseudoaneurysm). This creates an unstable situation where the abnormal pouch can continue to grow and press on adjacent structures. The blood flow in the wall may break back into the lumen or rupture through the remaining arterial wall allowing arterial blood to uncontrollably escape. This cascade of dangerous events is overwhelmingly asymptomatic at the onset, and the majority of patients have no obvious neurologic manifestations at presentation. The time course between injury, symptom development, and neurologic compromise is unpredictable and may be minutes, hours, days, weeks, or even years.

**Venous compromise** may occur if the return of blood from the brain is altered (venous outflow obstruction), causing deoxygenated blood coming back to the heart to back up. This creates a situation called *stagnant hypoxia*, which if prolonged, can cause unconsciousness, depressed respiration, and death. If bilateral jugular vein blockage occurs, an increase in pressure in the venous system will occur above the point of applied pressure. Occlusion of the jugular veins requires about 4.4 pounds of pressure. Common clinical findings in this situation are tiny surface blood vessels that rupture from increased internal pressure. Those found on the skin or mucous membranes are known as *petechiae*. Others may be found in the white part of the eye (sclera) and are called *subconjunctival hemorrhages*. Further, ruptured blood vessels may occur internally, so they are not visible.

The fact that relatively small amounts of force can create a spectrum of injury reinforces the reality of multiple variables in any given case.

## Clinical Symptoms Reported by Strangled Patients

Strangulation-related symptoms may result from the effects of traumatic compression on the various tissues and structures within the neck, causing injury; or related to a decreased oxygen supply to the brain cells because the neck compression has compromised blood flow, air flow, or both. Traumatic injuries may initially be asymptomatic and only begin producing symptoms later, after progression of the injury with swelling and bleeding.

Neck and throat pain is very common in victims of strangulation and is usually related to direct trauma (blunt force) to the neck structures. This physical trauma may be mild, and the symptoms resolve without treatment; however, these same symptoms may also be associated with more severe damage to internal neck structures, especially those related to the airway. Changes in breathing or difficulty breathing are also commonly reported. It is important to determine the onset, duration, nature, and severity of the breathing problem. During the compression, many patients report they “couldn’t get enough air” or had a complete inability to breathe. The majority of these breathing issues resolve after the compression stops. Hyperventilation may occur post-strangulation, with patients reporting they felt they could not “catch” their breath and may have experienced subsequent dizziness or light-headedness. Hyperventilation usually resolves spontaneously as the acute anxiety subsides. Pulmonary edema (fluid in the lungs), breathing problems, and worsening of other conditions such as asthma, may not be evident until hours or days after strangulation; therefore, patients should be given strict return precautions, should breathing issues occur after the initial medical evaluation.

Some patients report not being able to speak (aphonia) during the strangulation event, likely due to complete airway compression, which prevents air from passing through the larynx, thus preventing any sound generation. Aphonia usually resolves when compression is lifted. Voice changes (e.g. hoarse or raspy voice) and coughing may be observed after strangulation. Most voice changes resolve in hours to days after strangulation. Coughing is non-specific but may be due to airway irritation or injury, and usually clears spontaneously.

***Practice Tip for First Responders and Healthcare Personnel:*** It is helpful to ask a patient if they are speaking in their normal voice or if they notice a change, as this may not be obvious to personnel who have never otherwise heard the patient’s normal voice.

Patients often report difficulty swallowing (dysphagia) or painful swallowing (odynophagia) after strangulation. This may be due to injury or swelling (edema) of the larynx or esophagus. These symptoms may be immediate or delayed. Although uncommon in non-fatal strangulation, fracture of the hyoid bone also causes painful swallowing.

Mental status and consciousness changes may include lightheadedness and dizziness, loss of memory, and loss of consciousness. It may be difficult to establish loss of consciousness in the history because victims frequently cannot recall losing consciousness. Patients often report symptoms related to an altered state of consciousness (often preceding a loss of consciousness), including vision changes (blurry vision, blind spots, “seeing stars” or “seeing black”) and



hearing changes (ringing or loss of hearing in one or both ears). In these cases, some helpful follow-up questions to ask include:

- Do you remember everything clearly, or are there gaps in your memory?
- Regarding any gap, what is the last thing you remember before the gap and the next thing you recall after the gap?
- Did you start in one place and end up in another and can't recall how you got to the second place?
- Did you lose either urine or feces and not know when or why?

Behavioral changes that may appear during or immediately after the assault include agitation, restlessness, and combativeness. Victims may be fearful (or frantic) because they do not have enough oxygen. Weeks to months after an assault, a victim may display impairment in memory and concentration, and may have problems sleeping. Mental health problems can include anxiety, depression, and post-traumatic stress disorder. The mental health and behavioral changes are most commonly due to the brain cells being deprived of oxygen. If the interruption is brief, the symptoms and signs are temporary and generally resolve. However, if the interruption of oxygen to the brain is longer, the findings may be permanent and will not resolve. When brain cells die, resulting in a traumatic brain injury, the damage can be permanent and devastating.

Other neurologic signs and symptoms related to decreased oxygen supply to the brain may include facial or eyelid droop (palsy), one-sided body weakness (hemiparesis), incontinence (bladder or bowel), and seizure-like activity (anoxic convulsions or myoclonic jerks). Incontinence and seizure activity related to neck compression are preceded by a loss of consciousness.

***Practice Tip for First Responders and Healthcare Personnel:*** You may have to ask questions about incontinence because victims may not readily share this information.

It is important to remember that symptoms are subjective; they are described by the patient. Over time, symptoms will change or even resolve. Documentation is essential, and it must be thorough and detailed. Some symptoms may be non-specific and/or have multiple causes—these must be thoroughly explored and recorded.

***Practice Tip for First Responders and Healthcare Personnel:*** While many post-strangulation symptoms are self-limiting and resolve without treatment, persistent or worsening complaints should receive prompt medical evaluation.

The focus of this section has been the variety and frequency of symptoms experienced by victims of strangulation. The converse is also noteworthy; that is, the frequency of patients who report strangulation, but do not acknowledge any symptoms. Do not overinterpret or extrapolate the lack of documented symptoms to conclude that nothing happened, or that the patient is safe and healthy.

## Physical Findings Documented After Strangulation

The point just made, that lack of documented symptoms does not refute the history of a strangulation event nor assure the health and safety of the patient, buttresses the same point regarding visible injuries after strangulation. Patients who have experienced a non-fatal strangulation often do not have visible neck or head findings. In these situations, it is very dangerous to speculate about the seriousness of the event or try to predict the clinical outcome. Despite the lack of visible injury, the patient may experience pain (subjective discomfort described by the patient) or tenderness (discomfort with palpation). The common visible physical findings in strangled patients can include redness, abrasions, bruising, petechiae, and subconjunctival hemorrhages.

***Practice Tip for First Responders and Healthcare Personnel:*** The lack of visible findings or minimal injuries does not exclude a potentially life-threatening condition.

*Redness (erythema)* is usually not indicative of a structural injury and resolves rapidly. The redness is the result of pressure to the skin, which causes temporary dilation of the local blood vessels, so more blood is flowing close to the skin's surface. Note that redness can have other etiologies, including but not limited to infection, inflammation, allergic reaction, skin disease, sun burn, and emotional or drug-related flushing. Redness can also be the first finding of a bruise and represent blood that has leaked into the superficial skin tissue after structural injury. In this situation, the red area may be tender and will not blanch on palpation; the follow-up exam will likely reveal the development of a bruise.

*Abrasions* are caused by an abrading force damaging superficial skin tissue, which may remove layers of skin. The edges of abrasions are irregular, and the depth is variable. Depending on the age of the injury, there may be active bleeding or scabbing from healing. In strangulation, abrasions are often caused by the scratching of fingernails; these may be from the perpetrator's nails, or defensive wounds from the victim's nails in an attempt to remove the strangling force. Abrasions may also be caused by a ligature creating impact abrasions by the crushing of tissue; this type of abrasion may pattern the injuring object.

***Practice Tip for First Responders and Healthcare Personnel:*** If abrasions are noted to the neck, you may ask the patient if they know what caused them. The patient may additionally be able to detail garments of clothing they were wearing during the assault that acted as a ligature, such as a necklace or hooded top.

A *bruise* occurs when blunt force trauma ruptures blood vessels under the surface of the skin and blood escapes into the surrounding tissue. A bruise may also be referred to as a contusion. The area will not blanch with pressure and will usually be tender. Pattern bruises may give some information about the injuring object; in strangulation, the firm, focal pressure from finger and thumb tips may create fingertip bruises. Healthcare personnel should not speculate as to what has caused the bruise but may document objective findings and remarks made by the patient. A unique injury, sometimes seen in strangulation, is a bruise or abrasion underneath the victim's chin from chin drop. This can occur reflexively as the victim lowers their chin against the assailant's hands (or ligature) and moves their chin back and forth in an attempt to remove the

strangling force. There is no evidence to support aging or staging a bruise.

*Petechiae* are small (1-2mm), flat, oval, or round red spots of blood that are caused by rupture of tiny blood vessels because of increased pressure inside the veins (due to compression impeding venous blood flow). Petechia have four helpful distinguishing characteristics:

- They are non-palpable and “flat” and cannot be felt on palpation.
- They are non-tender and do not hurt when touched.
- They do not blanch and do not change color when pressed.
- They appear in crops with multiple petechiae in the same area above the point of applied pressure/compression.

#### 1. Geographic Petechiae

The physical and anatomic factors that cause geographic petechiae (those that occur above the point of compression) are specific. All four jugular veins must be simultaneously and completely blocked, while some degree of cerebral arterial blood flow must be maintained. This causes the veins within the brain (and above the constriction) to dilate to accommodate the influx of blood. If the total jugular obstruction is maintained for at least 10-30 seconds, the pressure in the venous system will increase to a point that the smallest and weakest venous structures (capillaries and venules) will rupture, creating petechiae. Petechiae will be visible when the ruptures are close to the surface of the skin or mucous membranes.



*Petechiae*

#### 2. Generalized Petechiae

Generalized petechiae are found bodywide and may occur as a result of suffocation. In suffocation, the incoming air is blocked from entering the body and as the victim struggles, unsuccessful attempts at inhalation create significant negative pressure in the chest, which can stop the general inflow of venous blood from the body back to the heart. This impeded venous return from the body can create the same scenario as seen in the neck and venous pressure will increase and cause ruptures and petechiae anywhere in or on the body. It is not uncommon for the perpetrator to both sit on the victim's chest and abdomen and simultaneously strangle the victim manually, thus creating petechiae from two mechanisms with a potentially confusing petechial pattern. Petechiae usually resolve

spontaneously in a few days. Of note, many non-assaultive, non-asphyxial activities can also cause petechiae, including the Valsalva maneuver; straining; vigorous coughing, sneezing, and vomiting; disease conditions; and infection. A thorough history of physical examination or a careful review of the medical records should be sufficient to exclude these less common causes of petechiae.

***Practice Tip for First Responders and Healthcare Personnel:*** The term “petechiae” is used inappropriately to describe direct blunt trauma findings, which should correctly be described as “micro hemorrhages.”

### 3. Subconjunctival hemorrhage

Another post-strangulation finding closely related to petechiae are subconjunctival hemorrhages (or hematomas). The same strangulation forces that increase venous pressure and cause geographic petechiae also increase venous pressure in the tiny veins in the lining of the eyeball (conjunctiva) and rupture vessels under the conjunctiva (subconjunctiva) to form a hemorrhage or hematoma. The reason this bleeding is not petechial is because the conjunctival tissue is so lax that bleeding is not contained into petechiae but continues to form much larger pools. They are not painful, and they do not impair vision. No treatment is required, and they resolve within days or weeks. These injuries can be very disturbing to the patient and those around them.



*Subconjunctival Hematomas. While distributing for the patient, this injury is not dangerous, painless, and does not affect vision. Subconjunctival hematomas resolve spontaneously within a few days to a week.*

It is important to understand the mechanism of injury. It allows the healthcare provider to compare and correlate the history of what happened to the physical findings. The follow-up exam should include forensic photography that can document emerging or evolving injuries. Further, it provides for a comparison and clarification of non-specific injuries (e.g. redness).

***Practice Tip for First Responders and Healthcare Personnel:*** A mannequin head can be a useful visual tool on which the patient can demonstrate the mechanism of strangulation and describe what happened.

*See Appendix for infographic: Strangulation Signs and Symptoms from The Training Institute on Strangulation Prevention.*

## **The Rossen Study**

What is experienced by the victim (and potentially seen by witnesses) will vary depending on the severity and duration of the neck compression. Physiologically, this corresponds to the temporal path from mild hypoxia in the brain to anoxia. The extreme situation occurs when all blood flow (and oxygen supply) to the brain is abruptly and completely cut off. There is some experimental work in humans that illustrates what happens. In 1944, Rossen studied the effects of sudden cessation of all cerebral blood flow (i.e. strangulation) using an experimental neck device on volunteers. For safety and ethical reasons, this study could never be done today, but the findings are instructive, providing us with several important physiologic benchmarks in estimating the duration of strangulation compression.

A specially designed vest was inflated to 600 mmHg within 1/8 of a second. This pressure immediately stopped all cerebral blood flow to the brain. The researchers made a number of observations and measurements during and after vest inflation. Fixation of the eyes occurred in about 5–6 seconds. Most subjects had fixation looking straight ahead while some fixated with their eyes in an upward gaze. About one second after eye fixation, the subjects lost consciousness; all lost consciousness within 10 seconds. Shortly after vest release, many subjects exhibited “anoxic convulsions” (or myoclonic jerks), which are brief periods (6–8 seconds) of rhythmic jerking of the extremities. All subjects returned to full consciousness within 3–12 seconds. None had any memory of the jerking. When questioned about the experience, some subjects recalled brief sensations of tingling in the extremities and some narrowing of vision or “spots” just before they went out. Awareness of these observations is important because even though the victim may have no memory of events (including no recollection of being unconscious), a witness may be able to confirm loss of consciousness by describing eye fixation or jerking.

In 1982, Reay and Holloway addressed the same issue by using “five muscular, athletic law enforcement volunteers” to undergo a “carotid sleeper” hold while being medically monitored to assess the physiologic effects of this law enforcement technique. This procedure reduced carotid blood flow to about 10 percent of normal and did so within about 6 seconds from the onset of compression while leaving vertebral blood flow intact. The range from onset of neck compression to loss of consciousness was 6.4–9.7 seconds with an average of 7.7 seconds. This is very consistent with Rossen’s data. After release, blood flow returned to normal in 7–23 seconds with an average of 13.7 seconds. This study also affirms that the 15 percent of cerebral blood flow in the vertebral arteries (and the distribution of that flow to the posterior brain structures) is not sufficient to maintain consciousness. The study also shows that in order to quickly lose consciousness, carotid flow does not have to be stopped completely, just significantly reduced.

The scientifically validated information about how quickly obstruction to blood flow in both carotid arteries can produce unconsciousness is a very important forensic benchmark in addressing the issue of duration of compression. Other temporal markers of compression

duration are urinary incontinence (15 seconds) and fecal incontinence (30 seconds). In the Rossen Study, not all subjects lost bodily fluids and the time from cessation of cerebral blood flow to incontinence varied, but no urine was lost before 15 seconds and no feces lost before 30 seconds.

In many real-life strangulation situations, time from onset of compression to sufficiently compromised carotid flow to produce unconsciousness may be longer than a few seconds because the victim is struggling and/or the compressive force is not consistent, strong enough, or properly placed. As the victim transitions more slowly from cerebral hypoxia to anoxia, brain asphyxia develops more gradually allowing more behaviors to manifest. The victim may also be able to describe more symptoms. Progressive hypoxia also occurs with many lung problems and has a fairly consistent clinical presentation. Initially, patients complain of shortness of breath or “air hunger”; the respiratory rate increases as does the pulse rate. A headache may develop. As more of the circulating blood contains less and less oxygen, the color of the blood gets less red and more bluish. This is known as cyanosis and is most visible in blood vessels closest to the skin’s surface (e.g., face, lips, and fingernails). From a behavioral perspective, early hypoxia creates anxiety, which, as it worsens, gives way to restlessness and agitation, and then desperation and panic. As the behavioral response escalates, mental status and functioning decrease from difficulty communicating, to confusion and disorientation, then weakness and lethargy, and finally unconsciousness. As strangulation victims slide further down this slope during compression, just before losing consciousness, many report the fear of death giving way to resignation and thoughts of their family.

### **Was the Neck Compression Brief or Prolonged?**

Forensic science has provided some reliable benchmarks based on physical findings:

- If geographic petechiae (above the level of constriction) are present, enough sustained, uninterrupted, bilateral compression of the neck occurred for at least 10–30 seconds in order to occlude all four jugular veins.
- If loss of consciousness occurred during the neck compression, then bilateral, simultaneous pressure occluded both carotid arteries for at least 5–10 seconds.
- If the victim was incontinent of urine during neck compression, then bilateral, simultaneous pressure occluded both carotids for at least 15 seconds. Note: Given this mechanism and length, the victim would have been unconscious and unresponsive for at least five seconds before urine was lost.
- If the victim was incontinent of stool during neck compression, both carotids were simultaneously compressed without interruption for at least 30 seconds. The victim would have been obviously unconscious for at least 20 seconds before stool was released.

*See Appendix for Physiological Consequences of Strangulation Timeline from The Training Institute on Strangulation Prevention.*

## **Was This a Life-Threatening Event?**

This is usually the most important question for the criminal justice system and the jury even if it is not an element of the crime. The victim has survived a strangulation assault. The fundamental issues are:

- Was there a mechanism of injury present that could create a lethal outcome?
- Were there symptoms or findings present that confirm the patient was on the path to death?

There are two basic lines of inquiry. First is the presence of geographic petechiae. Petechiae confirm that bilateral, simultaneous occlusion pressure was present for at least 10–30 seconds. This is the requisite mechanism for the path to stagnant hypoxia and, if sustained, to death.

The next avenue is more complicated with wider possibilities. The final common pathway is asphyxia of the brain. Sustained asphyxia will lead to death. There are two mechanisms that lead from normal to cerebral hypoxia to fatal asphyxia. First is impairment of arterial blood flow to the brain. Without adequate arterial blood flow, there will be inadequate oxygen for normal brain cell activity and cells will begin to malfunction.

Manifestations of brain cell malfunction include:

- Altered mental status (light-headedness, dizziness, confusion, hallucinatory phenomena). loss of consciousness;
- Incontinence (bladder or bowel); and
- Visual loss or disturbance.

These findings, individually or in combination, indicate the path toward death has begun. If the arterial blood flow interruption continues, death will follow.

The second mechanism to brain asphyxia is airway compromise that interrupts arterial oxygenation. Impaired oxygenation will eventually lead to the final common pathway of brain asphyxia with same findings just described. But before that point, airway compromise has unique symptoms that indicate the mechanism is in place:

- Inability to breathe;
- Inability to speak;
- Hoarseness or change in voice; and
- Shortness of breath or difficulty breathing.

If airway compromise is sustained, oxygenation will fail, brain asphyxia will progress, and death will ensue. There are fundamentally only two kinds of strangulation victims: dead ones and near misses. The line between survival and death rests on the degree of force applied and the duration of that force.

## **Medical Forensic Evaluation of the Strangled Patient**

In clinical forensic medicine, there are two sets of needs the medical professional must address. The first is the patient's needs. This includes evaluating and stabilizing any acute medical issues, emotional support, and crisis intervention. It may also include health issues and prevention strategies for sexually transmitted infections and pregnancy in the sexually assaulted patient.



Safety and social issues must also be addressed, including risk and lethality assessment, safety planning, and follow-up care. The second area that must be addressed is the criminal justice needs. The proper collection of evidence and documentation of physical findings are necessary precursors to developing an expert medical opinion and later, expert testimony.

There are a number of medical and forensic issues that prove to be challenging in these types of cases. Historically, both inadequate research and limited medical training have allowed a casual clinical response to prevail. It is not unusual for personnel involved in the case to under-appreciate and minimize the medical risk of strangulation. Patients may initially present with seemingly minimal or subtle injuries and symptoms. Consequently, this can result in limited medical evaluation and treatment, which may lead to clinical deterioration and a poor outcome for the victim. Forensic issues, related to lack of understanding and subsequent minimization, may include limited or poor documentation and little or no medical testing, which compromises objective proof of injury.

Strangulation is a potentially life-threatening event. A benign initial presentation (patient looks well, normal vital signs, minimal symptoms, absent or minimal visible injury) does not exclude a serious medical condition or predict a good outcome. All strangled patients need a thorough evaluation by a trained healthcare professional. A medical forensic evaluation requires specialized training, typically outside the scope of standard medical education.

A medical forensic evaluation should only be performed with patient consent or assent. A detailed history of the assault is the first step in the medical forensic evaluation, to determine the mechanism(s) of injury and subsequently guide the physical examination. The narrative history should be in the patient's own words, using quotation marks. Clinicians should document patient symptoms at the time of the assault, after the assault, and at the time of the medical encounter. Clinicians should record both the words used to describe the event as well as actions demonstrated by the patient regarding the event. It is important to note that it can be difficult to obtain a complete linear history due to a variety of factors that impair the patient's ability to recall the events, including the use of drugs/alcohol; the effects of a traumatic experience on memory creation; head trauma; and the act of strangulation itself limiting oxygenation, which affects the area of the brain (hippocampus) that is responsible for memory formation. The history will direct the physical exam, which should consist of a comprehensive head-to-toe assessment, focusing on illness and injury identification. Injuries should be described using size, shape, color, and type of injury. Photographic documentation of injuries should be part of the medical forensic evaluation. Documentation of these encounters must be detailed, thorough, and complete.

Currently, there is no standard protocol or recommendation for obtaining touch DNA in the context of strangulation, therefore healthcare personnel should follow their facility and jurisdictional guidelines. Neck swabs may be collected from a strangled patient, with their informed consent or assent, for the purpose of forensic evidence collection. Touch DNA samples may be indicated if the strangulation occurred within 24 hours of hospital presentation, and the patient has not bathed or showered. One neck swab (sterile cotton-tipped swab) should be lightly moistened (with sterile water) and gently rolled over the neck with specific attention to the site the patient reported contact. This motion should be repeated with one dry swab. Areas of injury may have a higher concentration of touch DNA. Buccal swabs should be collected as a patient



reference DNA sample, to distinguish their DNA from that of the perpetrator. Personnel should follow their jurisdictional policies for packaging, labeling, and sealing evidence. Chain of custody must be maintained by all parties handling, transferring, and storing evidence.

The next branch in the medical decision tree is imaging. In the context of strangulation, the two most common imaging modalities are basic (non-enhanced) magnetic resonance imaging (MRI) and computed tomographic angiography (CTA). CTA is the gold standard for evaluation of vessels and bony/cartilaginous structures, while MRI is the best study for detection of soft tissue trauma.

*See Appendix for Recommendations for the Medical/Radiographic Evaluation from The Training Institute on Strangulation Prevention.*

Many experts recommend admission/observation for all strangulation patients for at least 24 hours after the assault. Most recent guidelines indicate that the period of observation should be between 12 and 24 hours. Red flags that should be taken very seriously (and many experts agree necessitate imaging studies and/or observation) include a history of loss of consciousness, facial and/or conjunctival petechiae, neck soft-tissue injury (either on physical exam or imaging), incontinence (urinary or fecal), intoxication, and/or the potential for poor home observation (such as in those with transient housing or who live alone).

The fundamental pitfall is that medical science cannot reliably predict which strangled patient is at risk for deterioration and which is not. Until better data is available, the only prudent course of action is an abundance of caution. Clinically, this translates into doing more for each strangled patient and accepting (and for the patient's benefit, embracing) a high percentage of negative imaging studies and inconsequential observations.

Healthcare personnel should address the following issues with patients prior to discharge:

- Make sure patients' medical and mental health needs related to the assault have been addressed.
- Provide patients with verbal and written medical discharge instructions, including return precautions.
- Arrange follow-up appointments and discuss follow-up medical contact procedures.
- Address patients' physical comfort needs.
- Help patients plan for their safety and well-being (*ideally, a community advocate should be involved in this process.*)

*See Appendix for Strangulation Assessment Sheet & Strangulation and/or Suffocation Discharge Information from the Training Institute on Strangulation Prevention.*

Injuries sustained in a non-fatal strangulation evolve, so a follow-up medical visit, ideally within 72 hours, is helpful. A follow-up exam may include neck remeasurement (for comparison to the neck circumference at the time of the initial exam), the continued documentation (including photography) of evolving symptoms and physical findings for the medical forensic evaluation, and further safety assessment including psychological risk assessment.

## Pediatric Considerations

As highlighted previously, strangulation is very dangerous and potentially lethal. Minimal pressure on the neck can cause serious injury, but even in fatal cases of strangulation, up to 40 percent may have no visible external injuries of the neck which can complicate the investigation and medical care of patients who have experienced strangulation<sup>81</sup>. These same difficulties are encountered when pediatric patients are victims of strangulation. Furthermore, strangulation also occurs in very young children, or in children who are developmentally unable to provide histories for their assaults. These situations present even more challenges for law enforcement and health care professionals when working with this unique population as the strangulation event is unknown. This section will discuss considerations which are intended to guide one's evaluation in cases where strangulation of the pediatric patient is suspected or witnessed.

**Age and Development factors:** Pediatric non-fatal strangulation protocols are typically divided into "14 years old and under" and "Ages 15-17", however development is also a large factor in the assessment.

### Challenges in evaluating pediatric strangulation cases.

A number of unique challenges are present when evaluating pediatric patients who have suspected, witnessed or confirmed histories of a strangulation assault. In general, these hurdles mostly affect the child's ability to provide an accurate history of their assault.

Typically, children under the age of 3 will be unable to participate in a forensic interview. While many children have astounding capacities for vocabulary prior to the age of three, their brain development may not allow them to put together an accurate timeline which could be used in a legal investigation, or for the purposes of collecting a medical history. In addition, many children over the age of three years have limited speech development for a variety of reasons and still may not be able to provide an accurate history. As a child ages, their cognitive ability to provide an accurate historical account and timeline will improve, assuming their development is typical. Children who are affected by cognitive, behavioral, or physical disabilities may be slower to develop this capacity, and for some children, this ability may never come, depending on the extent of their disabilities or developmental delays. Given the increased rates of abuse in children with disabilities, these limitations can be quite frustrating for professionals.

In addition, children are most often abused by people that they know and trust. As a result, children might be hesitant to disclose details of their assault if they feel they might cause trouble for a caregiver or loved one, especially when being questioned by law enforcement. It would be appropriate to consult with the closest Child Advocacy Center to inquire about the possibility of gathering histories from pediatric strangulation victims in a child friendly, non-leading, non-traumatic fashion. Also, it is possible that a caregiver who has perpetrated strangulation on a child may have told the child not to be honest about the assault. They may have threatened the

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<sup>81</sup> Gill JR, Cavalli DP, Ely SF, Stahl-Herz J. Homicidal neck compression of females: autopsy and sexual assault findings. *Acad Forensic Pathol*. 2013;3(4):454-457

child with emotional or physical harm should they disclose what happened to them. Finally, children who grow up in environments of chronic domestic violence have often been told by caregivers to not provide information to law enforcement or medical personnel that could affect the family. The child might also not understand that this type of assault is out of the norm, especially if strangulation is something that occurs often in the home when people are in trouble, angry or upset.

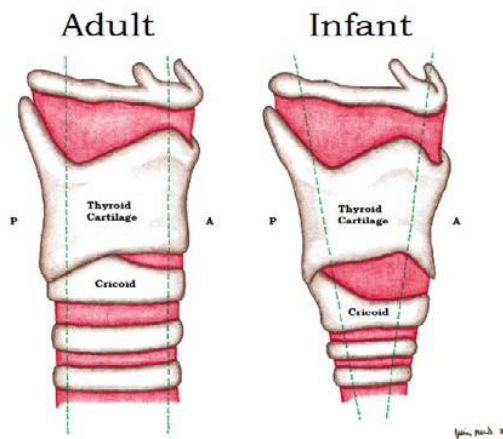
In conclusion, the emotional, behavioral, cognitive, and developmental status of a child will have a significant impact on their ability to provide an accurate account of their strangulation assault, further complicating the job of medical professionals and law enforcement personnel.

### **Pediatric Anatomy of the head and neck**

Pediatric patients have distinct differences in their anatomical structures when compared to adults. It cannot be assumed that children are “little adults” and that their bodies are simply smaller. The differences in the pediatric anatomy of the head and neck have significant implications when considering potential findings and sequela after a strangulation assault. It is outside the scope of this chapter to completely review all anatomical structures of the head and neck. Rather, the differences in pediatric anatomy when compared to adult anatomy will be discussed. While there is an absence of literature that has specifically studied the exact implications of these anatomical differences during the course of a strangulation assault, health care providers can glean educated inferences supported by literature from other disciplines such as anesthesia, biomechanics and infant and child car seat safety studies.

#### ***Airway***

As the pediatric patient ages, the difference in the structures of the airway when compared to adults becomes much less marked. The most notable differences are found when comparing the infant airway with the adult airway (below image). The infant as well as the pediatric airway are higher in the neck when compared to that of an adult. Also, rather than being a linear structure, the airway in an infant and the young pediatric patient is actually funnel shaped, with the cricoid cartilage as the narrowest component. More specifically, at birth, the lower border of the cricoid cartilage lies opposite the lower border of the fourth cervical vertebra. At 6 years of age, the cricoid cartilage is at the level of the fifth cervical vertebra and in the adult, it lies at the level of the sixth cervical vertebra. An important factor to consider after a strangulation assault in the pediatric patient is that because the cricoid cartilage is smaller and forms a complete ring around the trachea, mucosal edema at this site will severely compromise the airway.



*Adult and Infant differences in the airway*

Another difference in the pediatric airway is the shape of the epiglottis. This structure is typically broad leaf shaped in the adult and its axis lies parallel to that of the trachea. Conversely, in the infant patient, the epiglottis is narrower, softer and more horizontally positioned than in the adult. By the time the pediatric patient reaches the age of 4 or 5 years, the epiglottis is more consistent with the adult form.<sup>82</sup> It is unknown what implications these differences may have during a strangulation assault. The medical provider may infer however, that given the position and softer form of the epiglottis in the younger pediatric patient, there may be an increased risk of aspiration.

Many other anatomical differences create an increased vulnerability in the pediatric patient for an obstructed or compromised airway. For instance, given their proportionally larger head and occiput relative to body size, pediatric patients are more susceptible to flexion of the neck, potentially obstructing the airway when lying in a supine position. In addition, pediatric patients have smaller nasal apertures which can become easily obstructed by secretions, edema, or blood.<sup>83</sup> It is known that infants are obligate nasal breathers and the above differences can create a situation in which the infant will need to work much harder to breath. Also, given the relatively large tongue size and decreased muscle tone of the pediatric patient, there is a decrease in the size of the oral cavity allowing obstruction to occur more easily.<sup>84</sup> While there is no literature

<sup>82</sup> Adewale, L (2009) Anatomy and assessment of the pediatric airway. *Pediatric Anesthesia*, 19 Suppl 1 1-8 doi: 10.1111/j.1460-9592.2009.03012.

<sup>83</sup> Ommaya, A.K., Goldsmith, W., Thibault, L. (2002). Biomechanics and neuropathology of adult and pediatric head injury. *British Journal of Neurosurgery*, 16(2): 220-242.

<sup>84</sup> Burdi, A.R., Huelke, D.F., Snyder, R.G., Lowrey, G.H. (1969). Infants and children in the adult world of automobile safety design: Pediatric and anatomical considerations for design of child restraints. *Journal of Biomechanics*, 2: 267-280

which discusses the implications of these anatomical differences during a strangulation assault, in general, the medical provider can infer that the pediatric airway is simply more susceptible to compromise.

### ***Head and Neck***

One major difference of the infant head when compared to the adult head is that the skull in the adult patient is a rigid structure. In an infant and also in the pediatric patient, there is a compliant nature to the skull. It is made up of curved plates of bone that are loosely associated. The curved plates are brittle and nearly elastic and they can resist compression and shear forces. This means that the infant skull is not capable of supporting bending loads, especially across suture lines or fontanels. This remains true through early pediatric developmental. The skull becomes more rigid as the child ages. Clinical data collected from impact injury studies shows that the unique properties of infant skulls result in a lower level of injury threshold for the infant brain. In addition, the adult skull is better equipped to withstand forces that may cause a fracture. In fact, the adult skull's resistance to fracture is eleven times greater than for a neonate and over twice that for a young child. Given the relative proportional differences of the pediatric head size, differential motion of the brain and skull is amplified because of the weak neck in infants and young children.<sup>85</sup> Finally, the vascular system in infants is also thought to be more fragile and much more susceptible to abrupt pressure changes when compared to adults.<sup>86</sup> Given these differences, it is clear that the medical provider can logically infer that infants and young children can be more susceptible to serious injury from a strangulation assault, especially if that strangulation includes differential motion (or shaking) of the head and neck structures.

In conclusion there is a lack of literature which supports exact implications of pediatric and infant anatomy in susceptibility to injury from a strangulation assault. However, available knowledge and research (from basic anatomy and physiology as well as literature which examines injuries from shaking assault of infants, as well as biomechanical and infant injury literature) allows the medical provider to infer that infants and children, especially young children, are significantly more susceptible to serious injury from a strangulation assault.

### **Clinical Presentation of Pediatric Patients**

It is common for strangulation injuries to be missed or underestimated in children, where the clinical spectrum may range from mild self-limiting symptoms to severe neurologic sequelae or death. Children are most commonly abused by someone they know, often a parent or parent figure, so that the incident may be reported late or not at all. The child may be preverbal or unable to articulate exactly what they experienced or their current symptoms. Some symptoms in adults may not be as helpful in assessing young children, such as incontinence. And just as in adults, up to 50% of children will not have clinically apparent signs of strangulation.

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<sup>85</sup> Jain et al. Strangulation Injury, A Fatal Form of Child Abuse. Indian Journal of Pediatrics 2001;86:571-572

<sup>86</sup> Dayapala et al. An Uncommon Delayed Sequela After Pressure on the Neck. Am J Forensic Med Pathol 2012, 33(1):80-82.

Typical symptoms reported by children include voice changes, sore throat or neck pain, difficulty breathing, and problems swallowing. Older children may report urinary and/or fecal incontinence. Children may report dizziness or a loss or near-loss of consciousness. First responders and health care providers should be alert that a child may describe their symptoms in ways that are very different than an adult but are developmentally appropriate, such as “I talked like a duck,” “I saw sparkles in my eyes” or “I fell asleep.” Some children may be able to articulate that they thought they were going to die.

Children may present due to physical findings that are noted by neighbors, teachers, daycare providers or family members who then report to child protection or law enforcement. Findings may include:

- Petechiae of neck, face, conjunctivae
- Bruising of neck, potentially patterned, from fingers or thumbs, ligatures, or clothing
- Swelling in the neck and face
- Defensive scratch marks on neck
- Abrasions or patterned injury from jewelry worn by child or assailant
- Bruising and injuries elsewhere on the child’s body.

Children may also present initially with:

- Seizures or altered level of consciousness due to hypoxic brain injury.
- Altered mental status including agitation or confusion likely due to hypoxic brain injury
- Respiratory distress due to acute lung injury, aspiration, or hypoxic brain injury.

Some case reviews that included imaging studies have found fractures of the bony and cartilaginous structures of the neck in up to 25% of pediatric strangulation deaths, including the thyroid cartilage and the hyoid bone.<sup>87,6</sup> Others have found these injuries to occur much less frequently in children than adults, while sequelae from soft tissue edema in the neck was more common in children.

Severe delayed effects of strangulation have been reported in children, including vocal cord paralysis, hypoxic- ischemic encephalopathy, cerebral edema, cerebral infarction, aspiration pneumonia, fractures of the hyoid bone or thyroid cartilage, behavioral changes, cognitive deficits, injury to the carotid artery, and death.<sup>88,89,90,91</sup> Thyroid storm induced by strangulation has been reported as an uncommon but potentially life-threatening complication in adults.<sup>92</sup> Poor

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<sup>87</sup> Verma, S. K. Pediatric and adolescent strangulation deaths. *J Forensic and Legal Medicine* 2007, 14:61-64

<sup>88</sup> Bird et al. Strangulation in child abuse: CT Diagnosis. *Radiology* 1987, 163(2):373-5.

<sup>89</sup> Jain et al. Strangulation Injury, A Fatal Form of Child Abuse. *Indian Journal of Pediatrics* 2001,86:571-572.

<sup>90</sup> Dayapala et al. An Uncommon Delayed Sequela After Pressure on the Neck. *Am J Forensic Med Pathol* 2012, 33(1):80-82.

<sup>91</sup> Yadav et al. Carotid sheath haematoma: A case report. *Journal of Forensic and Legal Medicine* 2008, 16:411-13.

<sup>92</sup> Ramirez et al. Thyroid Storm Induced by Strangulation. *Southern Medical Journal* 2004, 97(6):608-610.

prognostic signs include prolonged coma, seizures, need for ventilatory support, elevated intracranial pressure, diabetes insipidus, or blood sugar >300 on admission.<sup>93</sup>

Most reported deaths in strangled children have been due to cerebral asphyxia from obstruction of carotid artery flow to the brain and jugular venous return, however early and delayed deaths due to carotid hematomas and cerebral infarction have been reported and it is possible cardiac dysrhythmias play a role.

Consideration should always be given to concurrent additional types of child abuse including sexual abuse/ assault, abusive head trauma, and other forms of physical abuse.

## **Other Considerations in pediatric patients**

### ***Choking game***

Known by a number of different names, including choke out, pass out game, rush, and flat lining, the “choking game” is an activity in which persons strangulate themselves or others to achieve euphoria through brief hypoxia. The CDC identified the earliest choking game death as occurring in 1995, with very few deaths annually until 2005 when rates increased. The majority of deaths (86.6%) were boys with a mean age of 13.3 years and the youngest being 6. The age distribution for choking game deaths in children and teens differed from suicides by hanging or suffocation: choking game deaths tend to occur in younger children, peaking at age 13, whereas suicides by hanging or suffocation became more prevalent with age.<sup>94</sup> A survey conducted in Oregon found that 36.2% of 8<sup>th</sup> grade respondents had heard of the “choking game,” 30.4% had heard of someone participating, and 5.7 had participated themselves. Hispanic and American Indian/Alaska Native youth as well as youth living in rural areas had the highest rates of participation. In addition, participants were significantly more likely to report substance use and mental health problems.<sup>95</sup> Primary care and emergency medicine medical providers should be alert to symptoms that can include blood shot eyes, marks on the neck, altered mental status, severe headache, vision loss, seizures, and syncopal episodes. A thorough medical history should include questions about the choking game as part of routine assessment of other risk-taking behaviors.<sup>96,97,98</sup>

### ***Accidental***

Infants and young children are especially vulnerable to accidental strangulation injuries from cribs, other furniture, ropes and cords, and entanglement in clothing, highchairs, and playground equipment.<sup>98</sup> A careful history that includes child’s developmental status along with a scene

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<sup>93</sup> Sabo et al. Strangulation Injuries in Children. Part 1. Clinical Analysis. *The Journal of Trauma: Injury, Infection, and Critical Care* 1996; 40(1):68-72.

<sup>94</sup> Unintentional Strangulation Deaths from “The Choking Game” Among Youths Aged 6-19 Years – United States, 1995-2007. *MMWR* 2008; 57(6).

<sup>95</sup> “Choking Game” Awareness and Participation Among 8<sup>th</sup> Graders – Oregon, 2008. *MMWR* 2010; 59(1).

<sup>96</sup> Egge et al. The Choking Game: A Cause of Unintentional Strangulation. *Pediatric Emergency Care* 2010; 26(3):206-208.

<sup>97</sup> Andrew et al. Update on “The Choking Game”. *The Journal of Pediatrics* 2009; 155(6):777-780.

<sup>98</sup> Feldman, K. and Simms, R. Strangulation in Childhood: Epidemiology and Clinical Course. *Pediatrics* 1980; 65(6):1079-1085.

investigation and re-enactment by law enforcement partners in the multidisciplinary team will help distinguish accidental from inflicted strangulation.

### ***Suicide***

It may be challenging to distinguish strangulation by suicide from the “choking game” or auto-erotic asphyxiation. Studies have indicated teen-aged males are at higher risk for suicide by strangulation, and that the age distribution is somewhat different for suicide attempts or completions vs injuries related to the “choking game” or accidental strangulation. Again, a careful history that includes prior behavioral health concerns as well as scene investigation from law enforcement will help determine the cause of the injuries found.

### ***Medical***

Some children and adolescents (as well as adults) may develop facial and conjunctival petechiae from prolonged vomiting, coughing, or other significant Valsalva maneuvers, even in the absence of a bleeding diathesis. A thorough medical history and exam should usually distinguish medical causes of petechiae from strangulation injuries.

### **Recommendations for first responders and healthcare personnel**

It is critical to remember that a lack of visible external neck injuries does not mean that strangulation did not occur, and that strangulation victims may die without visible external injuries.<sup>99</sup> A medical history should include:

- The situation in which the strangulation occurred.
- The method of strangulation.
- Symptoms the child may have experienced during and after the strangulation episode as well as current symptoms at the time of presentation to medical care, remembering that children may describe their symptoms differently than adults.
  - Ask specifically about loss of urine or stool during the incident, as this information may not be spontaneously volunteered.
- Time elapsed between the strangulation episode and presentation to medical care.
- Presence or absence of witnesses.
- Presence of any medical conditions that might predispose the child to facial and conjunctival petechiae.
- Child’s developmental level.
- History of prior or concurrent additional forms of child abuse.

*See Appendix for Pediatric Strangulation Evaluation and Documentation from the Training Institute on Strangulation Prevention.*

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<sup>99</sup> Shields et al. Living Victims of Strangulation. *Am J Forensic Med Pathol* 2010; 31(4):320-325.



### ***Physical exam***

A child presenting with a potential strangulation injury should have a thorough medical evaluation that includes:<sup>100</sup>

- Vital signs including pulse oximetry.
- Complete survey of all skin surfaces, particularly looking for petechiae, bruising, bites, redness, tenderness, patterned marks (such as from ligatures, fingers, etc.), and areas of tenderness.
- Assessment for intraoral injury, including frenular tears, petechiae, bruising, tongue injuries.
- Initial and serial measurements of the neck circumference every 10-12 hours (in the same marked spot each time) if admitted for observation; the admitting physician should be notified promptly if neck swelling increases.
- Assessment for respiratory distress, stridor, difficulty swallowing or speaking, voice changes, cough, hemoptysis, voice changes.
- Eye exam for petechiae and redness with consideration of a dilated retinal exam by an ophthalmologist.
- Otoloscopic exam if any ear complaints.
- External examination of anal-genital area.
- Neurologic exam including age-appropriate mental status assessment, presence of irritability, somnolence, behavioral changes, seizures, or localizing findings.

### ***Forensic Evaluation***

Depending on how long ago the strangulation incident occurred and interim hygiene activities, it may be possible to find forensic evidence on the child's body. If applicable and according to state guidelines for touch DNA:

- Collect debris or foreign material. Label, seal, and maintain chain of evidence until transferred to law enforcement.
- Swab the child's neck for possible assailant epithelial cells left on the skin. Follow local crime laboratory directions for the technique to use for swabbing.

Additional forensic evidence collection may be indicated, such as situations where strangulation occurs during sexual abuse or sexual assault.

Please refer to Children's Advocacy Centers of Kentucky Medical resources at <https://cackentucky.org/medical-resources/> for state protocol for evidence collection.

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<sup>100</sup> Faugno et al. Strangulation Forensic Examination – Best Practice for Health Care Providers. *Advanced Emergency Nursing Journal* 2013, 35(4):314-327.

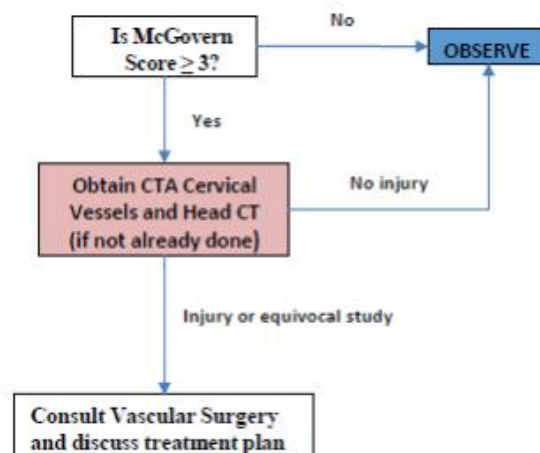
## Diagnostic Testing

Depending on the clinical presentation of the child and time elapsed since strangulation incident (recommend low threshold for transfer for acute events), consideration should be given to transfer to a pediatric treatment center where the following will be considered:

- CT angiogram remains gold standard for evaluation of vessels and bony/cartilaginous structures, less sensitive for soft tissue trauma or MRA of carotid/vertebral arteries.<sup>101,102</sup>
  - Blunt cerebrovascular injuries (BCVI) are rare. Most patients are symptomatic. According to Herbert, et al., the McGovern score is the first BCVI screening tool to incorporate the mechanism of injury in screening criteria. This can allow physicians to minimize the use of radiation and determine which patient are high risk and which actually need angiographic imaging<sup>103</sup>. Please refer to pediatric trauma center's protocols for up-to-date information.

McGovern Score	
Criteria	Points
GCS score $\leq 8$	1
Focal Neuro Deficit	2
Carotid Canal Fracture	2
Mechanism (MVC, HBC)	2
Petrous temporal bone fracture	3
Cerebral infarction on CT	3
Score $\geq 3$ points signifies high risk for BCVI. The patient should undergo angiography.	

**NOTE: If neuro decline, ACTIVATE STROKE ALERT**



- Imaging studies of the neck, including:
  - Neck x-rays to identify fractures of bony structures of neck
  - Neck CT to identify injuries to bony, cartilaginous, and soft tissues in the neck
  - Neck MRI to identify intramuscular hemorrhage, hematomas and swelling in other soft tissues, and hemorrhage into lymph nodes (all associated with more severe, life-threatening strangulation)<sup>104,105</sup>
- Pharyngoscopy or laryngoscopy if stridor or voice changes

<sup>101</sup> Brommeland T, Helseth E, Aarhus M, et al. Best practice guidelines for blunt cerebrovascular injury (BCVI). *Scan J Trauma Resusc Emerg Med*. 2018; 26 (1):90.

<sup>102</sup> Bruguier C, Genet P, Zerlauth JB, et al. Neck-MRI experience for investigation of survived strangulation victims. *Forensic Sci Res*. 2019;5(2): 113-118.

<sup>103</sup> Herbert JP; Venkataraman SS, et al. Pediatric blunt cerebrovascular injury: the McGovern screening score. *J Neurosurg Pediatr*. 2018; 21:639-49. DOI: 10.3171/2017.12.PEDS17498.

<sup>104</sup> Christe et al. Life-threatening versus non-life-threatening manual strangulation: are there appropriate criteria for MR imaging of the neck? *Eur Radiol* 2009, 19(8):1883-1889.

<sup>105</sup> life for survivors of manual strangulation? A statistical analysis. *Legal Medicine* 2010, 12:228-232.

- Chest x-ray if any respiratory symptoms
- EEG if concerns for hypoxic-ischemic encephalopathy
- Head CT or MRI if concerns for intracranial injury or hypoxic-ischemic encephalopathy
- Age appropriate child abuse work-up including:
  - Skeletal survey for occult fractures in children <2years of age, with consideration for children up to 5 depending on development
  - Trauma labs for children <5 years of age and within 72 hours of the reported assault including CBC, CMP, PT, PTT, amylase, lipase, urinalysis.

Diagnostic testing may not be indicated in children presenting days after the strangulation incident with no current symptoms. Consideration should still be given to obtaining a skeletal survey in very young children, as studies have indicated a significant yield of occult fractures in young children with other physical abuse findings.

### ***Documentation***

Comprehensive documentation improves patient care and increases the likelihood of achieving both justice and future safety for child victims. Documentation should include:

- Child or adolescent's verbatim description of the strangulation incident(s), demeanor and mental and emotional status including clearing identifying the source of information.
- Any disclosure of prior or concurrent other abuse.
- History provided by caregiver accompanying the child (if present.)
- Any subjective complaints such as pain, sore throat, difficulty swallowing, loss of memory – using the child's own words.
- Shape, size, color, and location of any observed injuries, both described with words as well as drawn on traumagrams.
- Photographs of any observed injuries
  - Photos of each injury should include a distance orientation image, a close up, and a close up with scale.
  - Photos should also be taken of areas where pain or tenderness are present even if no current visible injury, as bruises may surface later.
  - Follow up photos should be obtained until near or complete resolution of visible injuries.

*See Appendix for a specific pediatric strangulation assessments and documentation tools from the Training Institute on Strangulation Prevention.*

### ***Follow-up***

Discharge instructions should include specific warning signs that would indicate a child should be brought back for urgent re-evaluation. These include:

- Difficulty breathing or shortness of breath
- Loss of consciousness
- Changes in voice or difficulty speaking
- Difficulty swallowing, lump in throat, or muscle spasms in throat or neck

- Swelling of tongue, neck, or throat Prolonged nose bleed
- Persistent cough or coughing up blood Persistent vomiting or vomiting up blood
- Left or right sided weakness, numbness or tingling
- Headache not relieved by over the counter pain medication taken as directed on bottle
- Seizures
- Behavior changes or memory loss
- Thoughts of harming self or others

A scheduled follow up exam with the Child Abuse Team, clinic, emergency department or child's primary care provider should occur preferably 72 hours-2 weeks after reported injury.

Strangulation may cause both acute and long-term psychological consequences therefore counseling is recommended.

Long-term neurologic sequelae have been reported in some children who have sustained either inflicted or accidental strangulation injuries, ranging from mild learning problems to severe cognitive and motor impairment<sup>106</sup>. It is therefore important that these children have appropriate long-term medical follow up for monitoring and treatment of any identified adverse outcomes.

### ***Reporting***

Kentucky law requires a report to the Department for Community Based Services if there is reasonable cause to suspect that child abuse or neglect has occurred. Since strangulation is a criminal act, a concurrent report to the appropriate local law enforcement agency is also indicated.

### **Summary**

The significance and potential lethality of strangulation injuries in children is often underestimated due to delayed presentation and barriers to communicating details about the event as well as their symptoms. Recognition of potential strangulation signs and symptoms, a thorough medical evaluation, detailed documentation, and prompt involvement of child protection workers and law enforcement officers will help provide current and future safety for the affected child. Medical providers with specialized child abuse and forensic training can provide invaluable assistance with forensic evidence collection and photo-documentation, as well as recommendations and referrals.

Kentucky has two child abuse programs that are available for consultation:

1. Kentucky Children's Kosair for Kids Center for Safe and Healthy Children at families at (859)218-6727 or 24/7 through UKMD at (859)257-5522
2. Norton Children's Pediatric Protection Specialists Services at (502)629-6000.

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<sup>106</sup> Sabo et al; Strangulation Injuries in Children. Part 1. Clinical Analysis. J of Trauma, Infection and Critical Care 1996; Vol. 40, No. 1.

## Chapter 6: Use of Experts

Expert testimony can overcome a jury's belief in myths about sexual assault or domestic violence, particularly in the case of strangulation. It can explain the lack of injury, minor injury, or the victim's reaction to the assault. An expert is a person qualified to testify because of special knowledge, skill, experience, training, or education sufficient to qualify him or her as an expert on the subject to which his or her testimony relates.

Expert testimony is important to educate the jury on subjects not typically known to a lay person. It also works to dispel commonly held myths and misconceptions about sexual assault and domestic violence, particularly in strangulation cases. It explains the lack of visible injury, minor injury, or the victim's reaction to the assault.

Experts are persons qualified to testify because of their specialized knowledge, skill, experience, training, or education.<sup>107</sup> Expert witness can be used for various reasons, including educating judges and jurors about medical, technical, or scientific principles. Experts may also be able to express opinions after evaluating the significance of the facts of the case.

Lack of physical evidence and injury may lead jurors to handle strangulation cases as minor incidents rather than serious and life-threatening. Even when the victim has not received medical treatment, it is critical to use an expert to educate the judge and jurors about the seriousness of strangulation.

### Developing, Selecting, and Using Experts

Prosecutors may be able to use an expert at different stages of the proceedings. Do not overlook the possibility of using an expert at a bond hearing, trial, or sentencing hearing. Also, determine what kind of expert the case requires. If there are significant injuries, the expert may be the treating physician who can provide detailed descriptions of injuries. For a general discussion of medical issues, the case may warrant the use of medical experts such as medical examiners, emergency room physicians, forensic nurses, paramedics, or even a coroner who has been trained and has experience handling strangulation cases.<sup>108</sup>

Preparing for the use of experts is instrumental in a successful presentation of expert witnesses. When using experts, prosecutors should check references and the background of any expert with whom they are not familiar. Verify credentials, conduct internet searches, review transcripts, and talk to others who have hired the expert or had the expert testify against them in the past. For those who are handling strangulation the Institute's four-day Advanced Course on Strangulation Prevention is a must. The course is taught virtually and in-person multiple times per year.<sup>109</sup>

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<sup>107</sup> Kentucky Rule of Evidence 702.

<sup>108</sup> NDAA, Introducing Expert Testimony to Explain Victim Behavior in Sexual and Domestic Violence Prosecutions, p. 35.

<sup>109</sup> Go to [www.strangulationtraininginstitute.com](http://www.strangulationtraininginstitute.com) to find Advanced Courses available for all professionals.

## **Motions**

Expert testimony can be admitted when:

- (1) The testimony is relevant to the case;
- (2) The testimony is related to a matter sufficiently beyond common experience; and
- (3) The opinion of the expert would assist the trier of fact.<sup>110</sup>

Remember, a written pretrial notice of expert testimony is required for admissibility and provides an opportunity to educate the court and defense on the offense and its lethality.

## **Preparation of the Expert**

Pretrial preparation of even the most seasoned expert is essential. No prosecutor should ever put on an expert without meeting with the expert and preparing for a *Daubert* hearing and trial together.

### ***Qualifications:***

- Experts should review their curriculum vitae (CV) both independently and with the prosecutor to ensure that it is current.
- Prosecutors must file their Notice of Intent to Use Expert Testimony.
- Prosecutors should prepare the expert for any challenges to his or her qualifications.

The prosecution should never stipulate to the qualifications of the expert. It is imperative that the jury hear about all the education, training, and experience that qualify the expert to testify. After questioning the witness on their qualifications, approach the bench and move to qualify them as an expert witness.

### ***Subject Matter/Case Specific***

Pretrial preparation should also include a discussion about the subject matter on which the prosecutor seeks to offer the witness as an expert. Prosecutors should meet with the expert to go over the purpose and focus of the expert's direct testimony. Caution should be taken when working with a credentialed expert to make sure that unless the expert has been hired to testify about a particular victim, a diagnosis or evaluation of the victim is not the focus of the testimony.

### ***Questions for the Expert***

This is not an exhaustive list of questions—it is merely a starting point for prosecutors.

1. Name.
2. Title.
3. Education.
4. Licenses.

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<sup>110</sup> Kentucky Rule of Evidence 702; See e.g. *Stringer v. Commonwealth*, 956 (S.W.2d 883 (Ky. 1997)).

5. Certificates.
6. Professional organizations teaching experience (if applicable)
7. Any experience in local policy development regarding the evaluation or care of strangled patients.
8. Published writings (if applicable).
9. Pertinent presentations at professional meetings.
10. Previously qualified as an expert witness and how many times.
11. Testified for the prosecution.
12. Testified for the defense.
13. Current employer.
14. Current duties.
15. Years employed in current position.
16. Prior work experience.
17. Medical training (if applicable) including board or sub-specialty board certification(s).
18. Law enforcement training (If applicable).
19. Strangulation training.
20. Examine patients who have reported being strangled (if applicable).
21. How many patients have they examined as a treating physician (If applicable). For academic physicians (medical schools or teaching hospitals) ask additional questions about experience and responsibilities for teaching doctors in training about the evaluation and management of the strangled patient.

### ***Questions Related to a Non-Fatal Strangulation Case***

1. Define “choking”.
2. Define “strangulation” [Strangulation is external pressure to the neck, by any means, that blocks airflow or blood flow, or both.]
3. Difference between choking and strangulation?
4. Describe the methods of strangulation. In this case, is the strangulation manual or ligature. If manual, was it one hand, both hands, or the use of some body part.
5. Define asphyxia. [Asphyxia is specific to lack of oxygen for brain cells; hypoxia is a generic lack of oxygen in the blood. So, asphyxia is brain hypoxia.]
6. Define hypoxia.
7. In strangulation, what causes hypoxia? [Impaired respiration, impaired blood flow to the brain or both.]
8. What happens to the brain when there is a lack of oxygen after 10 seconds, 20 seconds, 30 seconds, 1 minute, 2 minutes, 3 minutes, 4 minutes.
9. What is hypoxic encephalopathy.
10. What is the difference between hypoxia and asphyxia.
11. What happens to the brain when there is asphyxia or an interruption of oxygenation.
12. Can lack of oxygen to the brain result in either temporary or permanent brain injury.
13. Other than unconsciousness, are there other signs of temporary hypoxia or asphyxia.
14. What are behavioral changes? Difference between “acute” changes while oxygen starvation of the brain is occurring, and “delayed” changes, which may surface later.
15. How much external pressure and time does it take to cause unconsciousness.
16. Discuss the spectrum of “altered” consciousness beginning with light-headedness and dizziness to the other extreme of death. What are some of the variables.

17. What are the signs or symptoms of unconsciousness.
18. How long does it take a strangled victim to regain consciousness after unconsciousness. What are the variables?
19. How much external pressure must be applied before death occurs. What are some of the variables.
20. Aside from unconsciousness or behavioral disorders, are there other signs and symptoms of strangulation.
21. Would a chart help you explain those signs and symptoms. Did you bring a chart with you today.
22. Describe the external signs of strangulation.
23. Where would you find visible findings such as redness or scratch marks.
24. Impression marks, or claw marks.
25. What is petechia.
26. What does it look.
27. Where can it be seen on victims after strangulation has occurred.
28. How long does it last.
29. Are there other causes for it.
30. Why could there be swelling to the neck from strangulation.
31. Are there other internal injuries associated with strangulation.
32. Are there internal injuries associated with hypoxia.
33. What would cause the tongue to swell.
34. What are some of the symptoms of strangulation.
35. Can strangulation cause voice changes.
36. Can strangulation cause changes in swallowing.
37. Do some victims of strangulation vomit or feel like vomiting.
38. Do some victims of strangulation urinate and defecate.
39. Is there a way to tell how close a strangulation victim has come to death.
40. What information and/or documents did you review in this case prior to testifying (if applicable). [Remember, it is not necessary for your expert to review any documents in your case.]
41. From your review, what are the signs and symptoms the victim exhibited.
42. In your opinion are those signs and symptoms consistent with someone who has been strangled.

### ***Exhibits for the Expert***

Exhibits should be utilized to help the jury understand complex medical structure and function in cases of strangulation. A diagram or a model of the internal workings of the neck may be a valuable tool in court to use while the expert is explaining the anatomy of the neck area.

When available, a photograph of the victim where signs of strangulation appear should be used as the expert testifies. The expert can point out these signs and/or injuries and indicate they are consistent with strangulation. If medical record exists from a post-strangulation exam, it should be reviewed by the expert for any symptoms or findings consistent with strangulation.

Audio recordings, including the 911 dispatch recording, should be reviewed by the expert to detect and explain voice change, hoarseness, and shortness of breath. If there are other



recordings of the victim's voice, they may demonstrate changes and resolution of injuries after the assault.

## **Anticipated Cross-Examination Questions**

There are four areas that are typically attacked during the cross-examination of an expert witness:

- Qualifications
- Basis of opinion
- Substance of opinion
- Bias, and motive or prejudice

### ***Qualifications***

Less experienced experts can expect that the defense will attempt to challenge their background education and experience. Experts should never over inflate or exaggerate their experience. Experts should know their CV inside and out. Remember that experience obtained through practice with strangled patients—especially following or managing them over time—is the most germane and significant qualification of an expert, and this may not be adequately captured on the CV.

### ***Basis of Opinion***

The defense may question prosecution experts about reports, studies, or evidence they have not reviewed. They may ask questions that insinuate that the experts' opinion is only as good as the assumptions and facts they are accepting. Defense counsel may also ask questions that ask experts to admit they are relying only on the victim's version of events versus the defendant's version of the events. This supports the importance of the history—including ALL versions of what the victim said happened and what they experienced—from police officer(s), paramedics, nursing personnel, the family, and the ER doctor.

### ***Substance of Opinion***

This is the area where defense counsel may attempt to gain concessions from the expert. Defense counsel may attempt to get experts to concede facts that are consistent with the defense theory. (Note: It is always helpful for the expert to have some understanding ahead of time about where the defense theory is going.) Experts should not try to anticipate the motive behind the questions; they should simply answer them truthfully. Good experts always concede the limitations of their opinions.

### ***Bias/Motive/Prejudice***

Questions may include how the expert is being compensated for his or her testimony, whether the expert has ever testified for the defense, and what percentage of the expert's income, if any, is derived from courtroom testimony. The Training Institute teaches a course on expert testimony and recommends that expert witnesses attend this course.

If the question posed contains incorrect information about the expert's testimony (or incorrect assumptions that become agreement if the expert answers without clarification), the expert needs to correct that information before answering the question. Experts may be asked the same questions in different ways, and they will want to make every effort to be consistent in their answers.

Experts should be alert for compound questions, and they should be sure to clarify what part of the question they are answering. If there are other possible conclusions, experts need to be willing to acknowledge they exist.

## **Tips for the Testifying Experts**

### ***Pretrial***

Quality courtroom testimony starts with pretrial preparation.

Beyond the pretrial preparation referred to above, a potential expert should:

1. Be familiar with relevant strangulation publications.
2. Know pertinent membership qualifications for professional organizations.
3. Know the ethical obligations or protocols that govern profession practice.
4. If possible, observe other expert testimony.
5. Anticipate and discuss potential questions for direct- and cross-examination.
6. Review any available transcripts of respected transcripts.

### ***In Court***

1. Always demonstrate professionalism. Jurors make observations both inside and outside of the courtroom.
2. Consider Power Point presentations or visual aids to assist the jury's understanding if it is technologically available (The Training Institute offers free visual aids for experts).
3. Look at the jury and make eye contact while testifying.
4. Listen to the question asked and answer only that question.
5. When an objection is made, pause, and let the attorneys communicate and receive a ruling from the judge.
6. Listen carefully to objections and follow the court's rulings.
7. Ask for clarification if a question is not understood.
8. During cross-examination remain poised and respectful—do not spar or argue with the defense.
9. Rely on the prosecutor to make objections to improper questions and poor treatment by the defense.
10. Never overstate the facts or opinions.
11. Do not exceed the scope of experience or expertise.
12. Always be accurate and precise.

For additional assistance with questions for an expert witness contact the Office of the Attorney General for resources.

## **Chapter 7: Victim Advocacy**

*Editor's Note:* Throughout this manual we use the example of a female victim and a male perpetrator for illustrative purposes only. It is critical to remember that victims of strangulation can and do represent every gender.

### **Victim Advocacy in Strangulation Cases**

Guiding advocacy principles should be grounded in an understanding of trauma and victimology. Services and interactions should speak to the unique challenges confronting women in violent relationships. Advocates who understand trauma and victimology issues will be better equipped to meet the needs of strangulation victims.

#### **Guiding principles**

- Victims should be treated with dignity, fairness, and respect, even when choosing not to participate with law enforcement or prosecution.
- Victims are not responsible for the violent behavior of the perpetrator.
- Victims are deserving of respect with regard to their cultural background and belief systems.
- Victims are best positioned to assist professionals in assessing the danger posed by the perpetrator.
- Victims have the right to make their own decisions, and have those decisions supported with dignity and respect.

#### **Advocacy Goals**

- Victim safety.
- Decreasing trauma-related symptoms.
- Preventing secondary victimization. Supporting the victim during the investigation and prosecution.
- Validating the victim's feelings.

#### **Advocacy Roles and Services**

- Clearly informing victims of their rights throughout the criminal justice system, pursuant to Marsy's Law, KRS 421.500 and Section 26A of the Kentucky Constitution. Providing information on the criminal justice process.
- Helping victims with safety planning.
- Empowering, non-judgmental emotional support.
- Accompaniment/advocacy during the investigation and court proceedings.
- Assistance with filing a police report or with reporting the violation of a protective order.
- Assistance in filing for crime victims' compensation, preparing victim impact statements for sentencing, and preparing applications for protective orders.
- Facilitating communication with law enforcement and prosecution.

## **Victim Engagement**

The initial victim contact is critical in building trust between the advocate and the victim and should be initiated at the earliest possible time. The primary purposes of the initial contact are to respond to the needs of the victim; assess the level of risk; assist with safety planning for the victim and any children residing with the victim; and informing the victim of their rights and options. To effectively serve victims of strangulation, advocates should be familiar with the dangers associated with strangulation and be able to explain the dangers to the victim. It is important to ensure victims understand as much as possible about the dangers of strangulation. A language interpreter should be used when appropriate. If your office would like information on interpreter services or if other advocacy resources are needed, contact the Office of the Attorney General's Office of Victim Advocacy for assistance.

The advocate should understand the importance of certain behaviors as risk factors for homicide. Risk factors associated with higher levels of violence include the following:

- Whether the perpetrator has threatened to kill the victim.
- Whether the perpetrator threatens suicide if the victim leaves.
- Whether the perpetrator threatens to harm the children if the victim leaves.
- Whether the perpetrator has brandished a knife or gun.
- Whether the perpetrator has been abusive to animals or pets.
- Whether the perpetrator has strangled the victim.

Strangulation epitomizes the power and control dynamic and is a predictor for a perpetrator's escalation to more lethal behavior. Strangulation generally occurs as part of an on-going pattern of escalating abuse and is strongly correlated with an increased risk of lethality. It is one of the ultimate forms of power and control because the perpetrator can demonstrate control over the victim's next breath.

Victims will feel terror and severe pain and, if the strangulation persists, unconsciousness will occur. Before lapsing into unconsciousness, victims will usually resist violently, often producing injuries to their own neck in an effort to fight off the perpetrator. In this effort, they also frequently inflict injury on the face or hands of their assailant. (These defensive injuries may not be present if the victim is physically or chemically restrained.)

Victims often refer to strangulation as "choking" and minimize the incident. It is important for advocates to refer to the act as "strangulation" and for victims to understand that strangulation is correlated with an increased risk of lethality and that strangulation can easily become homicide. The use of the term "strangulation" helps convey the seriousness of the offense. If the victim states that they have been "choked" it is important to involve the prosecutor and law enforcement to facilitate a follow-up interview. Advocates can help victims by discussing with them the increased risks of serious injury or even death if strangulation has occurred.

## **Trauma-Informed Service Delivery**

The fundamental principle underlying trauma-informed services is an understanding of the impact of domestic violence on victims, including cultural context and common coping and adapting strategies used by victims. Per KRS 521.570(2), victim advocates should complete training on the appropriate intervention when working with victims of domestic violence. Trauma-informed services emphasize safety and personal choice. Trauma-informed services are not meant to treat the specific symptoms of trauma, but rather to support resilience and self-care.

The victim advocate should strive for a collaborative relationship with the victim, establishing goals together. The advocate should be clear about their own role and what confidentiality they can or cannot provide. The experiences and choices of the victim should be validated. Advocate approaches must be perceived by the victim as being supportive, safe, and predictable.

## **Victims' Rights**

Section 26A of the Constitution of Kentucky ensures crime victims' rights are "respected and protected by law in a manner no less vigorous than the protections afforded to the accused." Marsy's Law does not give crime victims the same rights as the accused. However, the rights given to crime victims have equal protection under the law.

Under Marsy's Law, crime victims have the constitutional right to:

- Timely notice of all proceedings.
- Be heard in any proceeding involving release, plea, sentencing, or consideration of pardon, commutation, granting of reprieve, or other matter involving the right of a victim.
- Be present at all proceedings, other than grand jury proceedings.
- Proceedings free from unreasonable delay.
- Consult with the attorney for the Commonwealth or County or the attorney's designee.
- Reasonable protection from the accused.
- Timely notice of release or escape of the accused.
- Have their safety and their family's safety considered in setting bond, the defendant's release and conditions of release.
- In certain situations, full restitution to be paid by the convicted defendant.
- Fairness and consideration of the victims' safety, dignity, and privacy.
- Be informed of these rights and standing to assert these right.

These constitutional rights are not all provided by the prosecutor's office but should be given to the victim at the appropriate stage of the proceeding.

## **Victim Impact Statements**

Victims have the right to provide written victim impact statements. The victim should express how the crime has impacted her life. KRS 532.055(2)(7).

Some questions you might want to discuss with the victim:

- How has your life changed since the crime occurred?
- How has the crime affected you emotionally or psychologically?
- How has the crime affected you financially?
- What do you want to happen to the defendant? (jail/prison/treatment, etc.)
- How do you think it will affect you, your family, or the community if the defendant is released?

It is important for advocates to remember that victim impact statements are about how the victim's life has been impacted as a result of the crime. This is not a recitation of the facts, the facts have already been established.

Victim advocates play a critical role in ensuring victim safety and engagement throughout the criminal justice process. Systems-based advocates have a particularly complex role. Advocates based in the offices of prosecutors or law enforcement must support the victim while remaining constantly vigilant as to the defendant's constitutional rights. Systems-based advocates cannot promise confidentiality to victims. If a victim discloses information to an advocate that mitigates the defendant's conduct or exculpates the defendant, the advocate must inform the prosecutor immediately and the prosecutor will make the appropriate disclosures to the defense. Likewise, victim advocates are not investigators. If the advocate is in a discussion where the victim is disclosing new or different information, inform the prosecutor and involve law enforcement for all follow-up interview needs.

## **Chapter 8: Conclusion**

“It is our collective hope that this manual inspires others to develop comprehensive response protocols to strangulation crimes in every state in the nation...we must now all become passionate allies in this work.” Gael Strack J.D.

The Kentucky Office of the Attorney General is proud to have partnered with local and nationally recognized experts to create Kentucky’s first manual on Responding to Strangulation in KY. In all our endeavors, our office strives to support YOU, the front-line responders to Kentucky’s most heinous and violent criminal offenses. It is because of your courage and dedication to justice that victims of strangulation can hope for a safer tomorrow. It will take a state-wide, comprehensive, and multi-disciplinary response to end the prevalence of strangulation and save victims’ lives. The Kentucky Attorney General’s office is grateful to be your ally in the fight. Together, we can create a safer and more peaceful Commonwealth of Kentucky.

When assisting someone who has suffered domestic violence or sexual assault

# ALWAYS ASK

IF ANY PRESSURE HAS BEEN APPLIED TO THE NECK

AND ...

D

Help **DOCUMENT** the abuse

O

Take the time to **OBSERVE** the victim for subtle signs and symptoms of strangulation and suffocation

M

Encourage the victim to seek **MEDICAL ATTENTION**

O

**OFFER HOPE** by educating victims about their rights, local resources, and the science of Hope

R

Make sure to conduct a **RISK ASSESSMENT**

E

**EDUCATE** the victim and others about the seriousness, lethality and long-term consequences of non-fatal strangulation assault



## THE TRAINING INSTITUTE ON STRANGULATION PREVENTION

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888.511.3522 [Institute@allianceforhope.com](mailto:Institute@allianceforhope.com)

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# STRANGULATION

## IN INTIMATE PARTNER VIOLENCE

### STRANGULATION

is the obstruction of blood vessels and/or airflow in the neck resulting in asphyxia.



**1 in 4**

women will experience  
**INTIMATE PARTNER VIOLENCE**  
(IPV) in their lifetime<sup>1</sup>

Of women at high risk, between  
**68-80%** will experience  
**NEAR-FATAL STRANGULATION BY THEIR PARTNER**<sup>2</sup>

Strangulation survivors have the **LOWEST HOPE**  
scores of all victims of domestic violence,  
with a 31% increase in suicidal ideation<sup>3</sup>



Strangulation is among the most  
lethal forms of Domestic Violence.  
Loss of consciousness can occur within  
5 - 10 seconds. Death within minutes<sup>4</sup>



of women who  
have experienced  
IPV, including  
strangulation, are  
estimated to have  
suffered some type  
of a TBI<sup>5</sup>



are strangled  
along with  
sexual assault/  
abuse<sup>6</sup>  
**9%** are  
also pregnant<sup>7</sup>



of children  
witnessed their  
mothers  
being strangled<sup>8</sup>



of strangled  
women believed  
they were going  
to die<sup>9</sup>



are strangled  
manually  
(with hands)<sup>10</sup>



report losing  
consciousness<sup>11</sup>

And odds for homicide increase **750%**  
for victims who have been previously strangled,  
compared to victims who have never been strangled<sup>12</sup>

The majority of all **POLICE OFFICERS KILLED**  
**IN THE LINE OF DUTY** are killed  
by men who have strangled women<sup>13</sup>

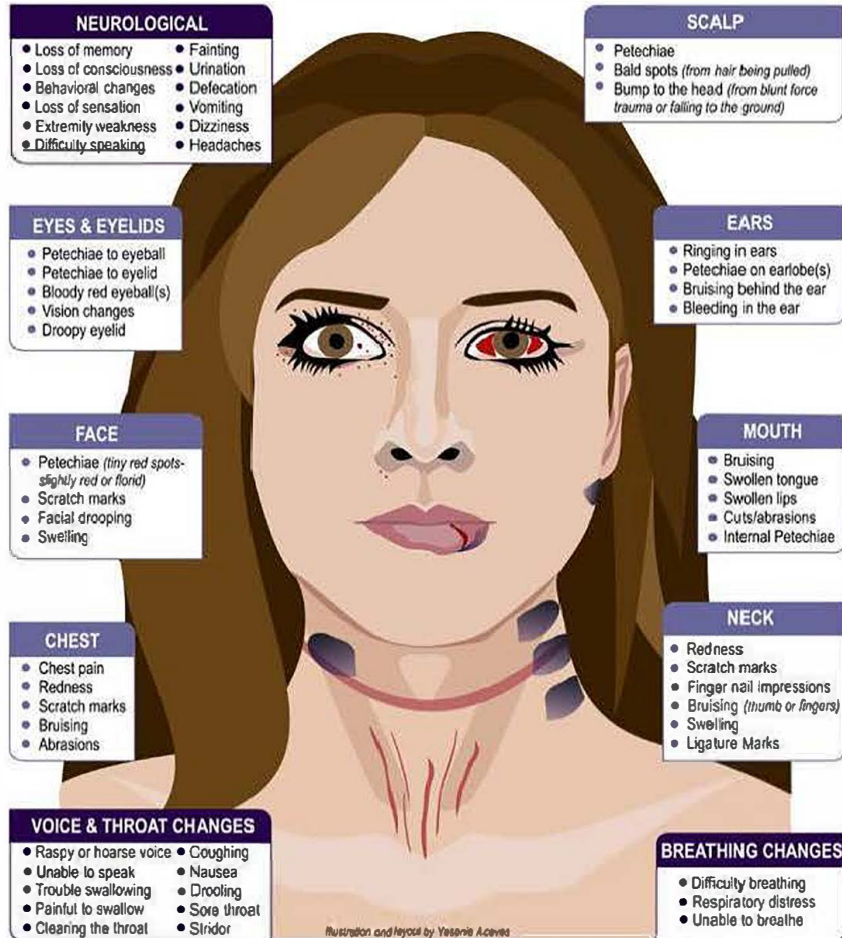
Today, **50 States, 22 Tribes**  
and **2 US Territories** have passed  
felony strangulation laws<sup>14</sup>

**Strangulation and suffocation**  
are included in **Federal (2013)**  
and **Military (2019) Codes**<sup>14</sup>



# STRANGULATION

## SIGNS AND SYMPTOMS<sup>2</sup>



## CONSEQUENCES<sup>15</sup>

### PSYCHOLOGICAL NEUROLOGICAL INJURY and TBI

PTSD, depression, suicidal ideation, memory problems, nightmares, anxiety, severe stress reaction, amnesia, and psychosis.

### DELAYED FATALITY

Death can occur days or weeks after the attack due to carotid artery dissection and respiratory complications such as pneumonia, acute respiratory distress syndrome, stroke due to the risk of blood clots traveling to the brain (embolization).

**HOWEVER...** Oftentimes, even in fatal cases, there are **NO EXTERNAL SIGNS** of injury<sup>16</sup>



<sup>1</sup> Breidling, et al (2011). Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization—National Intimate Partner and Sexual Violence Survey, United States. MMWR 2014; 63(SS-8):1-18.

<sup>2</sup> Taliaferro, et al (2009). Strangulation in Intimate Partner Violence. Intimate Partner Violence: A Health-Based Perspective. Oxford University Press, Inc., 217-235; Messing, et al (2018). Differentiating Among Attempted Completed and Multiple Non-Fatal Strangulation in Women Experiencing Intimate Partner Violence. Women's Health Issues, 28(3), 104-111; Wilbur, et al (2001). Survey results of women who have been strangled while in an abusive relationship. 21J. Emergency Medicine 297.

<sup>3</sup> Gwinn, et al (2018). Hope Rising: How the Science of Hope Can Change Your Life, 113; Wilbur, et al (2001). Survey results of women who have been strangled while in an abusive relationship. 21J. Emergency Medicine 297.

<sup>4</sup> Patch, et al (2022). Emergency Evaluation of Nonfatal Strangulation Patients: A Commentary on Controversy and Care Priorities. Journal of Emergency Nursing, 48(3), 243-247.

<sup>5</sup> Zieman, et al (2017). Traumatic Brain Injury in Domestic Violence Victims: A Retrospective Study at the Barrow Neurological Institute. Journal of Neurotrauma, 876-880.

<sup>6</sup> Zilkens, et al (2016). Non-Fatal Strangulation in Sexual Assault, Journal of Forensic and Legal Medicine, 43, 1-7.

<sup>7</sup> Campbell, et al, (2018) The Effects of IPV and Probable Traumatic Brain Injury on Central Nervous System, Journal of Women's Health, 27 (6).

<sup>8</sup> Fitzgerald, et al (2022). The Prosecution of Non-Fatal Strangulation cases: An Examination of Finalised Prosecution cases in Queensland, 2017-2020; The University of Melbourne and The University of Queensland.

<sup>9</sup> Thomas, et al (2014). Do You Know What It Feels Like to Drown. Psychology of Women Quarterly, 38, 124-137.

<sup>10</sup> Strack, et al (2001). A review of 300 attempted strangulation cases: Part I: Criminal Legal Issues. Journal of Emergency Medicine, 21(3), 303-309; Brady, et al (2021). How Victims of Strangulation Survived. Violence Against Women, 1(26).

<sup>11</sup> Shields, et al (2010). Living Victims of Strangulation: A 10-year review of cases in a metropolitan community. American Journal of Forensic Medical Pathology, 31, 320-325.

<sup>12</sup> Glass, et al (2008). Non-fatal strangulation is an important risk factor for homicide of women. The Journal of Emergency Medicine, 35(3), 329-335.

<sup>13</sup> Gwinn, et al (2018). Hope Rising: How the Science of Hope Can Change Your Life, 90.

<sup>14</sup> Training Institute on Strangulation Prevention (2023). <https://www.strangulationtraininginstitute.com/resources/legislation-map/>

<sup>15</sup> Bergin, et al (2022). Describing Non-Fatal Intimate Partner Strangulation Presentation and Evaluation in a Community-Based Hospital. Journal of Head Trauma Rehabilitation, 37(1), 5-14.

<sup>16</sup> DiPaolo, et al (2009). Unexpected Delayed Death After Manual Strangulation, Monaldi Arch Chest Dis, 71(3), 132-134; Luke (1966). Strangulation as a Method of Homicide, Arch Path, Vol. 83.



# FIVE MYTHS ABOUT STRANGULATION

Prepared by Gerald Fineman, Assistant District Attorney, Riverside County, and Dr. William Green, Medical Director, California Clinical Forensic Medical Training Center/ CDA

1

## MYTH

**STRANGULATION AND CHOKING ARE THE SAME THING**

## FACT

### STRANGULATION

is the external application of physical force that impedes either air or blood to or from the brain.

**CHOKING** is an internal obstruction of the airway by a foreign object.

## SOLUTION

Use a diagram.  
Compare to the flow of electrical current.  
Compare to the flow of air/water through a closed system (fish tank).

2

## MYTH

**STRANGULATION ALWAYS LEAVES VISIBLE INJURIES**

## FACT

Studies show that over half the victims of strangulation lack visible external injury. A victim without visible external injury can still die from strangulation.

## SOLUTION

Demonstrate cutting off blood flow to your fingertips by squeezing your wrist with your other hand. Upon release of the grip, you will likely have no identifiable marks. If you do, they will be very short in duration.

3

## MYTH

**IF THE VICTIM CAN SPEAK, SCREAM, OR BREATHE, THEY ARE NOT BEING STRANGLED**

## FACT

Since strangulation involves obstruction of blood flow, a person can have complete obstruction and continue breathing until the moment they die from lack of oxygenated blood flow to the brain.

## SOLUTION

Again, grab your wrist and squeeze. You can still breathe, yet blood flow is obstructed to the fingertips. If this was the victim's neck, they could still have an open trachea (windpipe) but have lack of blood flow to the brain.

4

## MYTH

**STRANGULATION CANNOT BE HARMFUL BECAUSE MANY PEOPLE PRACTICE IT (MARTIAL ARTS, MILITARY, LAW ENFORCEMENT)**

## FACT

Martial arts are a form of combat. The military and law enforcement use strangulation as a lethal form of force.

## RISK

There are numerous incidents of death resulting from strangulation. This can even occur during otherwise supervised events, such as sporting events, law enforcement training, etc.

5

## MYTH

**STRANGULATION VICTIMS SHOULD BE ABLE TO DETAIL THEIR ATTACK**

## FACT

Trauma impacts the brains ability to store memory. In addition, the hippocampus (part of the brain where memory is stored) is the most sensitive to oxygen deprivation.

When a victim is strangled, both factors can impact the ability to recall.

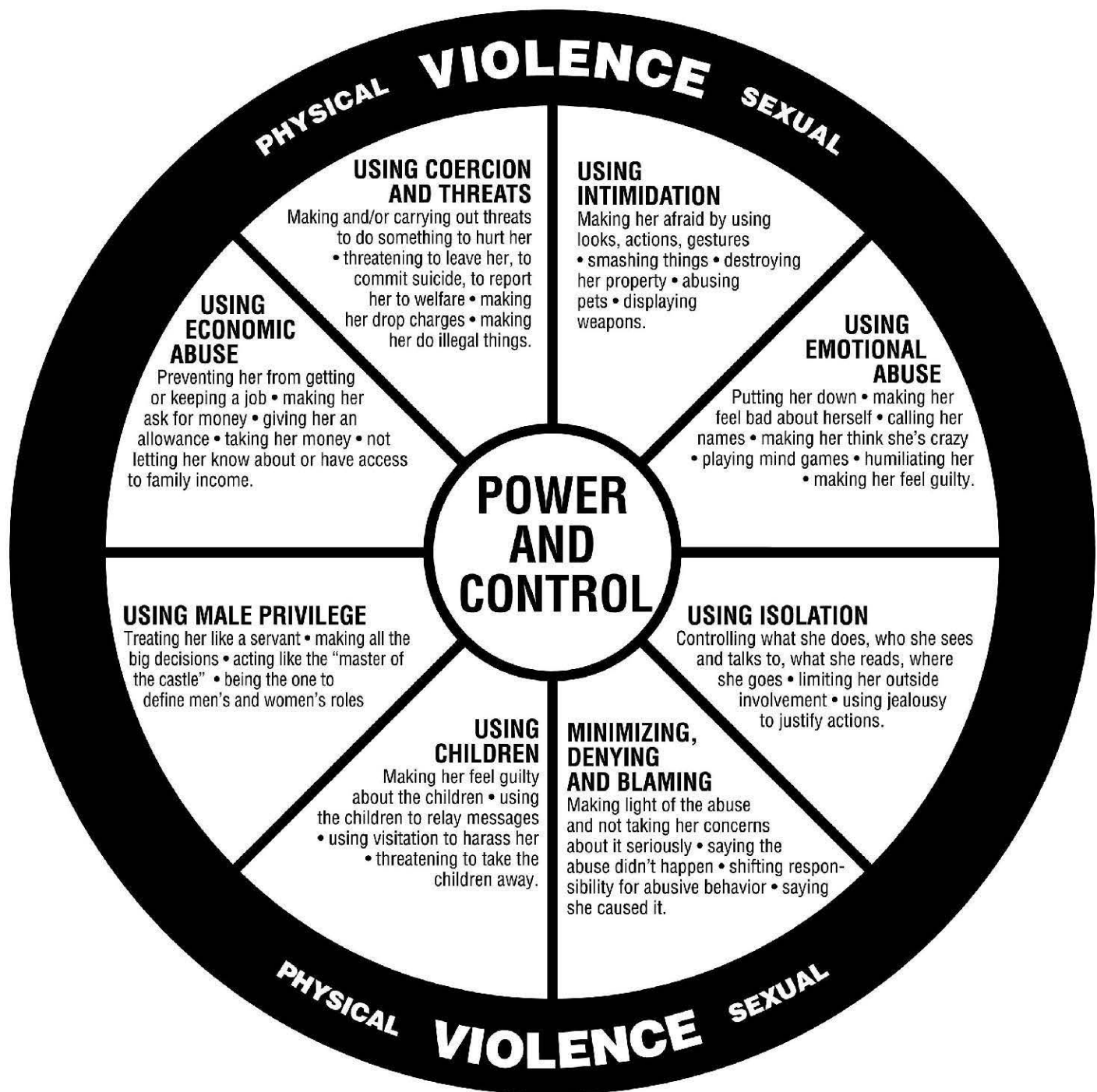
## SOLUTION

Give the example of how limiting the flow of electricity to a digital recording device will prevent it from recording.



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# STRANGULATION

SOURCE: *Strangulation in Intimate Partner Violence, Chapter 16*

## SIGNS & SYMPTOMS

Visible injuries.

Injuries not visible to the naked eye; may be observable only to the victim.

### NEUROLOGICAL

- Loss of memory
- Loss of consciousness
- Behavioral changes
- Loss of sensation
- Extremity weakness
- Difficulty speaking
- Fainting
- Urination
- Defecation
- Vomiting
- Dizziness
- Headaches

### SCALP

- Petechiae (tiny red spots)
- Bald spots (from hair being pulled)
- Swelling on the head (from blunt force trauma or falling to the ground)

### EYES & EYELIDS

- Petechiae to eyeball
- Petechiae to eyelid
- Bloody red eyeball(s)
- Vision changes
- Droopy eyelid

### EARS

- Ringing in ears
- Petechiae on earlobe(s)
- Bruising behind the ear
- Bleeding in the ear

### FACE

- Petechiae
- Scratch marks
- Facial drooping
- Swelling

### MOUTH

- Bruising
- Swollen tongue
- Swollen lips
- Cuts/abrasions
- Internal Petechiae

### CHEST

- Chest pain
- Redness
- Scratch marks
- Bruising
- Abrasions

### NECK

- Redness
- Scratch marks
- Finger nail impressions
- Bruising (thumb or fingers)
- Swelling
- Ligature or Clothing Marks

### VOICE & THROAT CHANGES

- Raspy or hoarse voice
- Unable to speak
- Trouble swallowing
- Painful to swallow
- Clearing the throat
- Coughing
- Nausea
- Drooling
- Sore throat
- Stridor

### BREATHING CHANGES

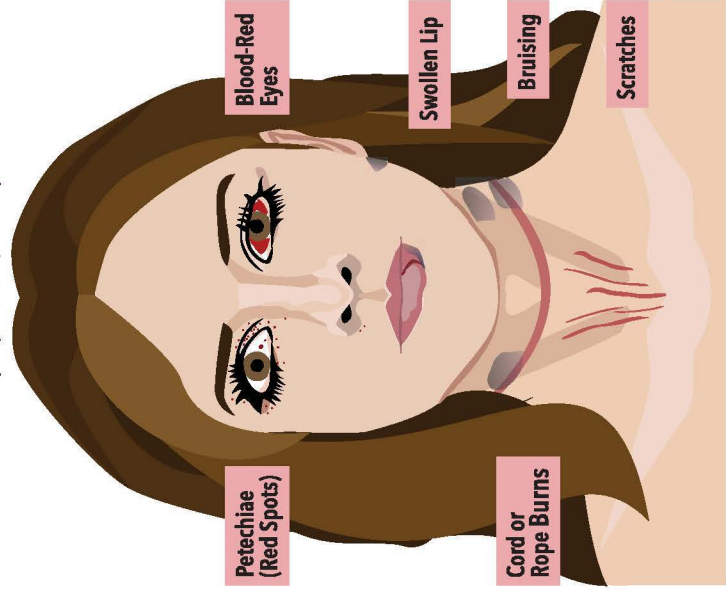
- Difficulty breathing
- Respiratory distress
- Unable to breathe

Illustration & Graphics by Yesenia Aceves



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## VISIBLE SIGNS (may not be present)



**ADDITIONAL RESOURCES** are available for download on our resource library at:

[allianceforhope.com/training/online-resource-library/](http://allianceforhope.com/training/online-resource-library/) including a larger and more detailed version of the **SIGNS AND SYMPTOMS** graphic shown above. It is available in Adult English, Spanish, and Arabic versions. Pediatric versions in English and Spanish are also available.

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Illustrations and Graphic Design by Yesenia Aceves

**STRANGULATION** has only recently been identified as one of the most lethal forms of domestic violence: unconsciousness may occur within seconds and death within minutes. When domestic violence perpetrators choke (strangle) their victims, not only is this a felonious assault, but it may be an attempted homicide. Strangulation is an ultimate form of power and control, where the batterer can demonstrate control over the victim's next breath; having devastating psychological effects or a potentially fatal outcome.

Sober and conscious victims of strangulation will first feel terror and severe pain. If strangulation persists, unconsciousness will follow. Before lapsing into unconsciousness, a strangulation victim will usually resist violently, often producing injuries of their own neck in an effort to claw off the assailant, and frequently also producing injury on the face or hands to their assailant. These defensive injuries may not be present if the victim is physically or chemically restrained before the assault.

**DOCUMENTATION** by photographs sequentially for a period of days after the assault is very helpful in establishing a journal of physical evidence.

Victims should also seek medical attention if they experience difficulty breathing, speaking, swallowing or experience nausea, vomiting, lightheadedness, headache, involuntary urination and/or defecation, especially pregnant victims. A medical evaluation may be crucial in detecting internal injuries and saving a life.

**LOSING CONSCIOUSNESS** is a common symptom in strangulation victims; it is caused by any one or all of the following methods: blocking of the carotid arteries in the neck (depriving the brain of oxygen), blocking of the jugular veins (preventing deoxygenated blood from exiting the brain), and closing off the airway, making breathing impossible.

Agency's Contact Information  
Anything they want to appear here is fine,  
we recommend general phone number and physical  
address whenever possible.

ALLIANCE for  
**HOPE**  
INTERNATIONAL

# Vital FACTS for Victims of STRANGULATION



Monitor Your SYMPTOMS	
DATE/TIME	DESCRIBE SYMPTOMS

Monitor Your SIGNS	
DATE/TIME	DESCRIBE SIGNS

DESCRIBE ANY OTHER SENSATIONS	
DATE/TIME	

## SYMPTOMS of Strangulation

**VOICE CHANGES** Raspy and/or hoarse voice, coughing, unable to speak, complete loss of voice.

**SWALLOWING CHANGES** Trouble swallowing, painful swallowing, neck pain, nausea/vomiting, drooling.

**BREATHING CHANGES** Difficulty breathing, hyperventilation, unable to breathe.

**BEHAVIORAL CHANGES** Restlessness or combativeness, problems concentrating, amnesia, agitation, Post-traumatic Stress Syndrome, hallucinations.

**VISION CHANGES** Complete loss or black & white vision, seeing 'stars', blurry, darkness, fuzzy around the eyes.

**HEARING CHANGES** Complete loss of hearing, gurgling, ringing, buzzing, popping, pressure, tunnel-like hearing.

**OTHER CHANGES** Memory loss, unconsciousness, dizziness, headaches, involuntary urination or defecation, loss of strength, going limp.

## SIGNS of Strangulation

**HEAD** Pinpoint red spots (petechiae ) on scalp, hair pulled, bump(s), skull fracture, concussion.

**FACE** Red or flushed, petechiae, scratch marks.

**EYES AND EYELIDS** Petechiae to the left or right eyeball, bloodshot eyes.

**EAR** Petechiae (external and/or ear canal), bleeding from ear canal.

**NOSE** Bloody nose, broken nose, petechiae.

**MOUTH** Bruising, swollen tongue, swollen lips, cuts/abrasions.

**UNDER THE CHIN** Redness, scratch marks, bruise(s), abrasions.

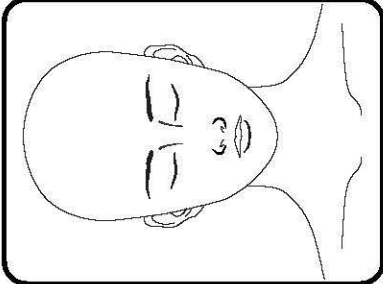
**NECK** Redness, scratch marks, fingernail impressions, bruise(s), abrasions, swelling, ligature marks.

**CHEST AND SHOULDERS** Redness, scratch marks, bruise(s), abrasions.

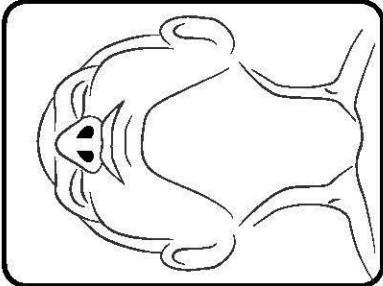
## Mark Visible Injuries

Use a pen or marker to indicate any visible signs of strangulation in the diagrams below:

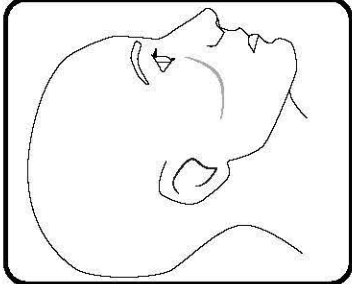
FRONT



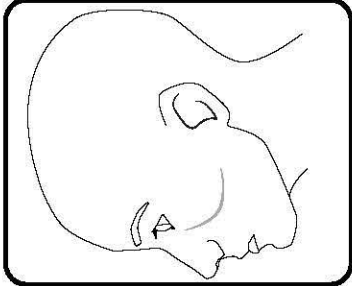
UNDER CHIN



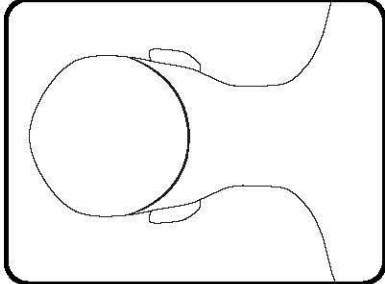
RIGHT SIDE



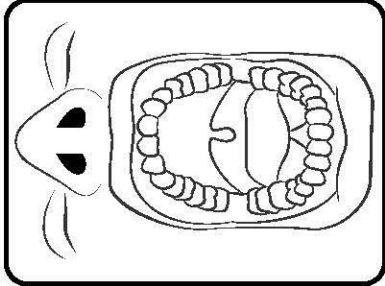
LEFT SIDE



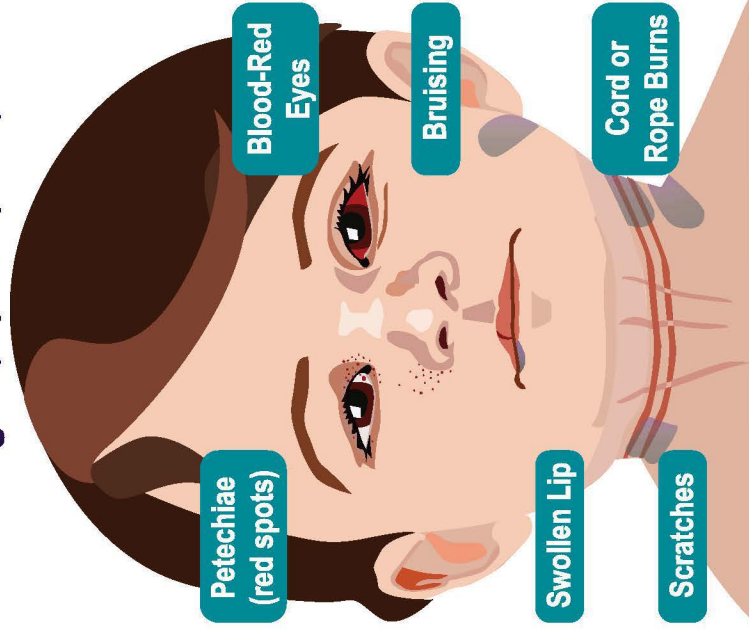
BACK



INSIDE MOUTH



## Visible Signs (may not be present)



## Additional Signs and Symptoms

A larger version of the graphic above which contains detailed signs and symptoms is available for download at [strangulationtraininginstitute.com/resources/library/pediatric/](https://strangulationtraininginstitute.com/resources/library/pediatric/)

This project is supported all or in part by Grant No. 2016-TA-AX-K067 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.



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Illustrations and graphic design by Yesenia Acoves

## STRANGULATION

Strangulation is often under-recognized in children but no less serious than in adults. Unconsciousness may happen within seconds and death within minutes. Children may be strangled when caregivers lose control, as part of physical and/or sexual assault, or as a way of demonstrating ultimate power and control over the child. Regardless, strangulation of a child can have long-lasting physical and mental health effects and can result in death even months later.

Child victims of strangulation may feel terror and extreme pain. If strangulation continues, unconsciousness will follow. Before sliding into unconsciousness, a child victim may resist violently, producing injuries to their own neck or to the face or hands of their attacker. These defensive injuries may not be present in young or developmentally disabled children, or if the victim is physically or chemically restrained.

### Observing Changes

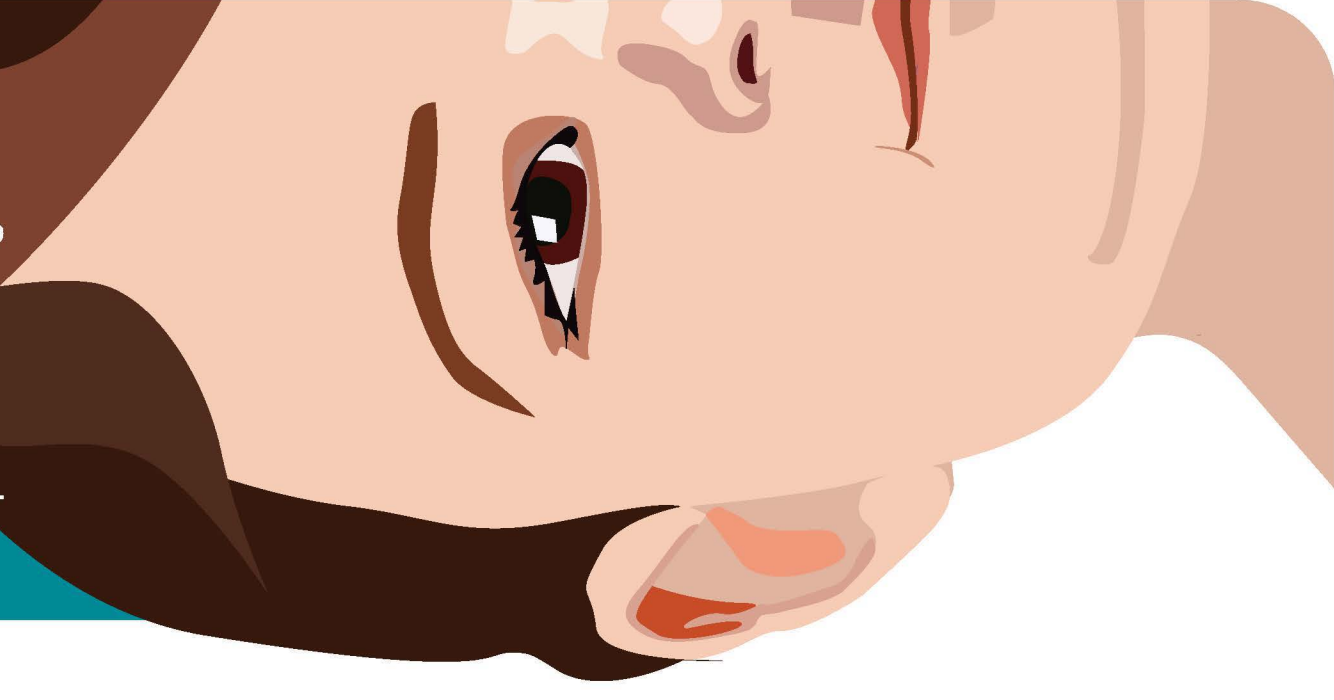
Documentation by photographs organized in order, for a period of days after the attack is very helpful in beginning and building a journal of proof. Victims should be given medical attention if they experience difficulty breathing, speaking, swallowing or experience nausea, vomiting, lightheadedness, headache or holding head, accidental urination and/or bowel movement in children not diapered. A medical evaluation may be extremely important in detecting internal injuries and saving a life.

### Loss of Consciousness

Victims may lose awareness or faint by any one or all of the following methods: blocking of the blood vessels from the heart in the neck (taking away oxygen from the brain), blocking of the large veins in the neck (preventing deoxygenated blood from exiting the brain), and closing off the tube from the mouth to the lungs, making breathing impossible.

# STRANGULATION

IMPORTANT INFORMATION  
for parents and guardians





## Monitor the Signs

Write down signs on the child, include time/date


## Signs of Strangulation

**HEAD**—loss of hair, bruises, skull fracture, concussion, red spots (petechiae).  
**FACE**—reddened marks, petechiae, scratches.  
**EYES AND EYELIDS**—petechiae on one or both eyeballs, red and/or bloody eyes.  
**EAR**—petechiae (external and/or ear canal), bleeding from ear canal.  
**NOSE**—bloody nose, broken nose, petechiae.  
**MOUTH**—bruising, swollen tongue, swollen lips, cuts/abrasions (scrapes).  
**UNDER THE CHIN**—redness, scratches, bruises, abrasions.  
**NECK**—redness, scratch marks, fingernail marks, bruise(s), abrasions, swelling, ligature(tie) or clothing marks.  
**CHEST AND SHOULDERS**—redness, scratch marks, bruise(s), abrasions.

## Monitor the Symptoms

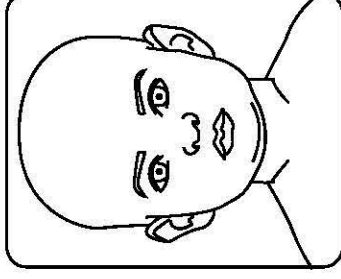
Write down symptoms in the child, include time/date


Additional notes:

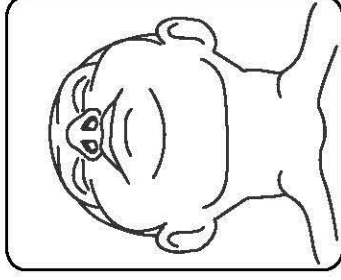

## Diagrams to Mark VISIBLE LESIONS

Use a pencil or pen to mark any visible signs

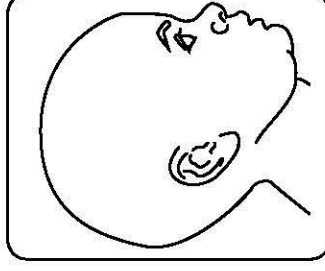
Front



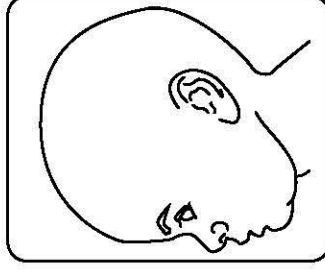
Under Chin



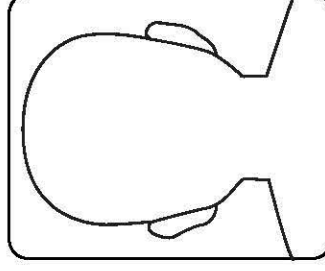
Right Side



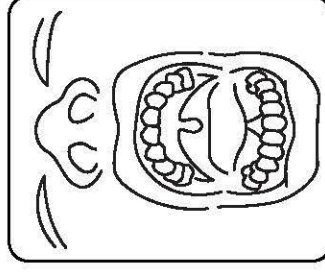
Left Side



Back



Inside Mouth



# DANGER ASSESSMENT-5 (DA-5)

## BRIEF RISK ASSESSMENT FOR CLINICIANS

Copyright 2009, 2017 • [www.dangerassessment.org](http://www.dangerassessment.org)

The DA-5 is a brief risk assessment that identifies victims at high risk for homicide or severe injury by a current or former intimate partner.<sup>1-3</sup> It should be used when intimate partner violence has been identified in the Emergency Department or other health care settings, protective order or child custody hearings, or other brief-treatment/practice settings. Presence of these risk factors could mean the victim is in danger of serious injury and/or homicide. Evidence-based risk assessments should be used in combination with survivor self-determination and practitioner expertise to collaboratively develop the best way forward for each individual.

Mark **Yes** or **No** for each of the following questions.

- \_\_\_\_\_ 1. Has the physical violence increased in severity or frequency over the past year?
- \_\_\_\_\_ 2. Has your partner (or ex) ever used a weapon against you or threatened you with a weapon?
- \_\_\_\_\_ 3. Do you believe your partner (or ex) is capable of killing you?
- \_\_\_\_\_ \*4. Has your partner (or ex) **ever tried** to choke/strangle you or cut off your breathing?
- \_\_\_\_\_ 4a. If yes, did your partner ever choke/strangle you or cut off your breathing? check here: \_\_\_\_\_
- \_\_\_\_\_ 4b. About how long ago? \_\_\_\_\_
- \_\_\_\_\_ 4c. Did it happen more than once? \_\_\_\_\_
- \_\_\_\_\_ 4d. Did it make you pass out or black out or make you dizzy? \_\_\_\_\_
- \_\_\_\_\_ 5. Is your partner (or ex) violently and constantly jealous of you?
- \_\_\_\_\_ **Total "Yes" answers**

\*can be asked instead of or in addition to: Have you ever been beaten by your partner (or ex) while you were pregnant?

Scoring Instructions	Brief Strangulation Protocol
<p><b>4 or 5 "yes" responses:</b></p> <ul style="list-style-type: none"><li>Tell the victim they are in danger. Give them the choice of reporting to the police and/or a confidential hotline (800-799-7233). Make the call with the victim and/or complete an in-person hand-off to a knowledgeable advocate.</li></ul> <p><b>3 "yes" responses:</b></p> <ul style="list-style-type: none"><li>If the victim is female and you are trained to use the DA:<ul style="list-style-type: none"><li>Complete the full DA using the calendar and weighted scoring. Inform the victim of her level of danger. Do safety planning based on the full DA results.</li></ul></li><li>If the victim is female and you are NOT trained to use the DA:<ul style="list-style-type: none"><li>Refer and hand-off the victim to someone certified to administer the full DA (in-person or voice-to-voice hand-off is preferable).</li></ul></li></ul> <p><b>2 "yes" responses:</b></p> <ul style="list-style-type: none"><li>Tell the victim there are 2 risk factors for serious injury/assault/homicide. If victim agrees, refer and hand-off to a knowledgeable advocate (in-person or voice-to-voice hand-off is preferable).</li></ul> <p><b>0-1 "yes" responses:</b></p> <ul style="list-style-type: none"><li>Proceed with normal referral/procedural processes for domestic violence.</li></ul>	<p>If the victim answered <b>yes</b> to 4a, follow this strangulation protocol for further assessment and/or refer to someone who is trained to conduct the following assessment.</p> <p><b>If the strangulation was less than a week ago:</b></p> <ul style="list-style-type: none"><li>Examine the inside of the throat, neck, face, and scalp for physical signs of strangulation.</li><li>Refer to the strangulation assessment and radiographic evaluation information at <a href="http://www.strangulationtraininginstitute.com">www.strangulationtraininginstitute.com</a></li><li>Proceed with emergency medical care for strangulation, especially if loss of consciousness or possible loss of consciousness (victims are commonly unsure about loss of consciousness) particularly if they became incontinent—ask if the victim "wet themselves".</li></ul> <p><b>If there were multiple strangulations:</b></p> <ul style="list-style-type: none"><li>Conduct a neurological exam for brain injury or refer for examination. Inform the victim of increased risk for homicide.</li></ul> <p><b>If the victim wants, notify police and/or prosecutors</b></p> <ul style="list-style-type: none"><li>Know state/local law on strangulation and mandatory reporting and inform the victim.</li></ul> <p>For more information, visit <a href="http://www.dangerassessment.org">www.dangerassessment.org</a></p>

<sup>1</sup> This is a brief adaptation of the Danger Assessment (2003). The full DA with weighted scoring provides the most accurate assessment of risk. The DA and its revisions are evidence-based risk assessments intended for use with survivors to educate them and their supports about their risk of lethality or reassault and to inform their decision-making. <sup>2</sup> Snider, C., Webster, D., O'Sullivan, S.C., & Campbell, J. (2009). Intimate partner violence: Development of a brief risk assessment for the emergency department. *Society for Academic Emergency Medicine*, 16, 1209-1216. <sup>3</sup> Messing, J.T., Campbell, J.C., & Snider, C. (2017). Validation and adaptation of the Danger Assessment-5 (DA-5): A brief intimate partner violence risk assessment. *Journal of Advanced Nursing*, 73, 3220-3230.



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## DANGER ASSESSMENT

Jacquelyn C. Campbell, Ph.D., R.N. Copyright, 2003; update 2019; [www.dangerassessment.com](http://www.dangerassessment.com)

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Several risk factors have been associated with increased risk of homicides (murders) of women and men in violent relationships. We cannot predict what will happen in your case, but we would like you to be aware of the danger of homicide in situations of abuse and for you to see how many of the risk factors apply to your situation.

Using the calendar, please mark the approximate dates during the past year when you were abused by your partner or ex-partner. Write on that date how bad the incident was according to the following scale:

1. Slapping, pushing; no injuries and/or lasting pain
  2. Punching, kicking; bruises, cuts, and/or continuing pain
  3. "Beating up"; severe contusions, burns, broken bones
  4. Threat to use weapon; head injury, internal injury, permanent injury, miscarriage or choking\* (use a © in the date to indicate choking/strangulation/cut off your breathing- example 4©)
  5. Use of weapon; wounds from weapon
- (If any of the descriptions for the higher number apply, use the higher number.)
- 

Mark **Yes** or **No** for each of the following. ("He" refers to your husband, partner, ex-husband, ex-partner, or whoever is currently physically hurting you.)

- \_\_\_\_\_ 1. Has the physical violence increased in severity or frequency over the past year?
- \_\_\_\_\_ 2. Does he own a gun?
- \_\_\_\_\_ 3. Have you left him after living together during the past year?  
3a. (If you have *never* lived with him, check here: \_\_\_\_\_)
- \_\_\_\_\_ 4. Is he unemployed?
- \_\_\_\_\_ 5. Has he ever used a weapon against you or threatened you with a lethal weapon? (If yes, was the weapon a gun? check here: \_\_\_\_\_)
- \_\_\_\_\_ 6. Does he threaten to kill you?
- \_\_\_\_\_ 7. Has he avoided being arrested for domestic violence?
- \_\_\_\_\_ 8. Do you have a child that is not his?
- \_\_\_\_\_ 9. Has he ever forced you to have sex when you did not wish to do so?
- \_\_\_\_\_ 10. Does he ever try to choke/strangle you or cut off your breathing?  
10a. (If yes, has he done it more than once, or did it make you pass out or black out or make you dizzy? check here: \_\_\_\_\_)
- \_\_\_\_\_ 11. Does he use illegal drugs? By drugs, I mean "uppers" or amphetamines, "meth", speed, angel dust, cocaine, "crack", street drugs or mixtures.
- \_\_\_\_\_ 12. Is he an alcoholic or problem drinker?
- \_\_\_\_\_ 13. Does he control most or all of your daily activities? For instance, does he tell you who you can be friends with, when you can see your family, how much money you can use, or when you can take the car? (If he tries, but you do not let him, check here: \_\_\_\_\_)
- \_\_\_\_\_ 14. Is he violently and constantly jealous of you? (For instance, does he say: "If I can't have you, no one can.")
- \_\_\_\_\_ 15. Have you ever been beaten by him while you were pregnant? (If you have never been pregnant by him, check here: \_\_\_\_\_)
- \_\_\_\_\_ 16. Has he ever threatened or tried to commit suicide?
- \_\_\_\_\_ 17. Does he threaten to harm your children?
- \_\_\_\_\_ 18. Do you believe he is capable of killing you?
- \_\_\_\_\_ 19. Does he follow or spy on you, leave threatening notes or messages, destroy your property, or call you when you don't want him to?
- \_\_\_\_\_ 20. Have you ever threatened or tried to commit suicide?

\_\_\_\_\_ Total "Yes" Answers

**Thank you. Please talk to your nurse, advocate, or counselor about what the Danger Assessment means in your situation.**

# STRANGULATION QUESTIONNAIRE

pg 1 of 2

If at any time during intake, the survivor discusses or discloses being choked/strangled during an incident, discuss questions. This is a guide to better understand the dangers of strangulation.

1. Has the abuser strangled/choked you more than once?

- ☐ 1 time      ☐ 2 to 3 times      ☐ 4 or more times      ☐ Unsure

NOTES:

2. When you were previously strangled/choked what method was used?

- ☐ With hands, arm, other body part (manually)  
☐ With rope, cord, or something placed around the neck

NOTES:

3. Did the strangulation occur while having sex? | Did you consent to the strangulation during sex?

- ☐ Yes      ☐ No      ☐ Yes      ☐ No

4. Did you experience any of the following while being strangled/choked? *Check all that apply.*

- |  |   |
|--|---|
| <input type="checkbox"/> Changes in vision or hearing          | <input type="checkbox"/> Difficulty breathing               |
| <input type="checkbox"/> Feeling lightheaded/dizzy             | <input type="checkbox"/> Pass out or black out              |
| <input type="checkbox"/> Wake up not remembering what happened | <input type="checkbox"/> Unsure <input type="checkbox"/> No |

NOTES:

5. While being strangled/choked did you lose any bodily functions?

- |  |  |
|--|--|
| <input type="checkbox"/> Urination – losing control of bladder | <input type="checkbox"/> Defecation – losing control of bowels |
| <input type="checkbox"/> Unsure                                | <input type="checkbox"/> No                                    |

NOTES:



**6. Was anyone else present while you were being strangled/choked?**

- |   |   |
|---|---|
| <input type="checkbox"/> Child/Children | <input type="checkbox"/> Roommate or other family member in the house |
| <input type="checkbox"/> Unsure         | <input type="checkbox"/> No one was present at the time               |

**NOTES:****7. Did the abuser say anything before or during the strangulation/choking happened?  
What were you feeling or thinking while it was happening? What made the abuser stop?****DESCRIPTION:****8. Did you experience any of the following changes immediately after being strangled/choked?**

- |   |                                 |                                |
|---|---------------------------------|--------------------------------|
| <input type="checkbox"/> Breathing changes (difficulty breathing, hyperventilation (breathing very fast, unable to breathe) |                                 |                                |
| <input type="checkbox"/> Voice changes (raspy or hoarse, whispering or soft voice, coughing or unable to speak)             |                                 |                                |
| <input type="checkbox"/> Swallowing changes (trouble or painful swallowing, nausea or vomiting, neck pain)                  |                                 |                                |
| <input type="checkbox"/> Bruising, scrapes or scratches, redness or swelling, etc.  |                                 |                                |
| <input type="checkbox"/> None of the above  | <input type="checkbox"/> Unsure | <input type="checkbox"/> Other |

**NOTES:****9. Was law enforcement involved? If so, did the police officer(s) ask or talk to you about the strangulation/choking?**

- |  |
|--|
| <input type="checkbox"/> Yes law enforcement was involved, yes they spoke about the strangulation/choking        |
| <input type="checkbox"/> Yes law enforcement was involved, no they did not speak about the strangulation/choking |
| <input type="checkbox"/> No law enforcement was not involved   |

**10. Did you seek medical attention? If yes, did the medical provider ask or talk to you about the strangulation/choking? What medical procedures were conducted?****DESCRIPTION:**



# VITAL NECK STRUCTURES

## Arteries, Veins and Cartilage

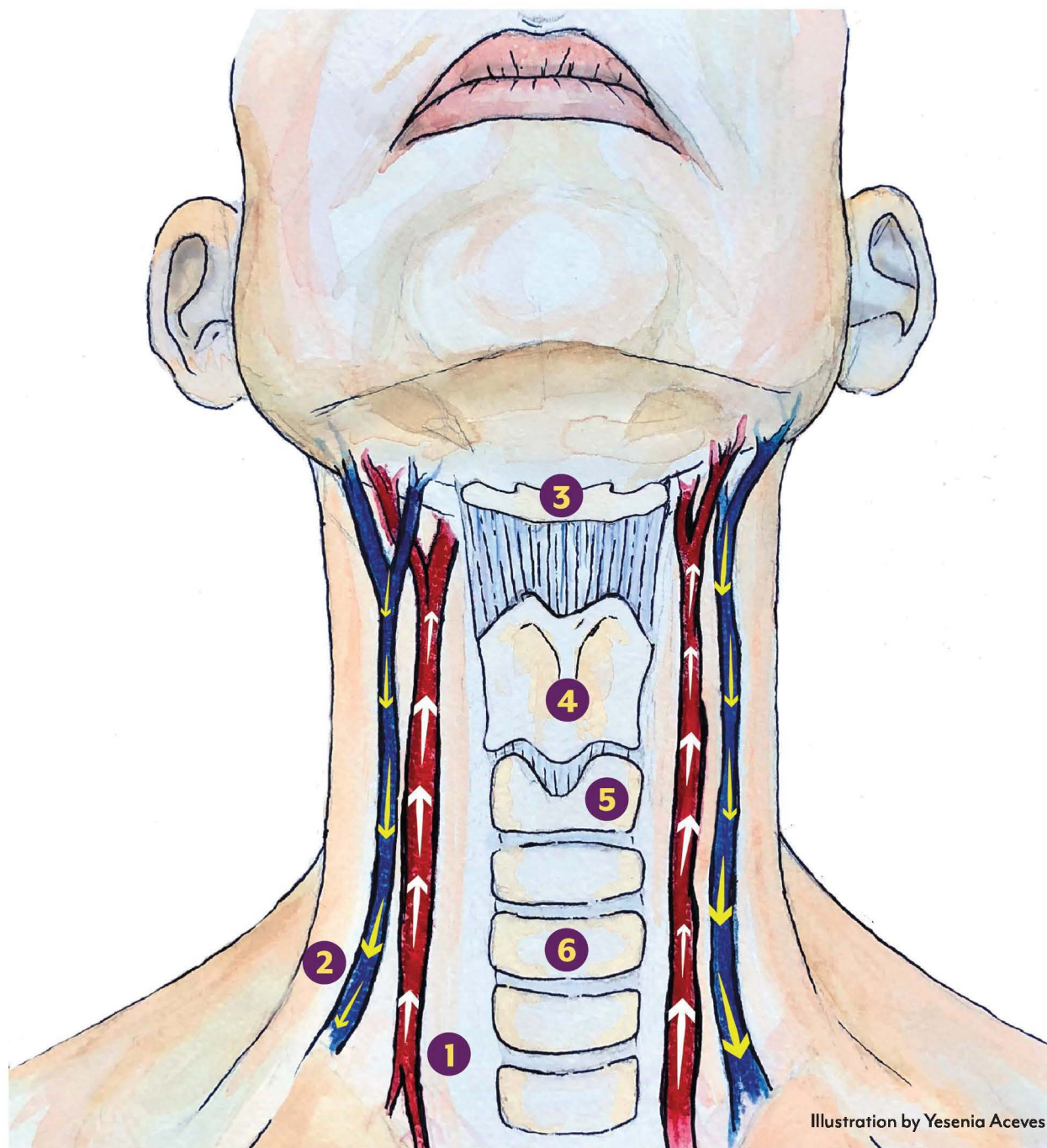


Illustration by Yesenia Aceves

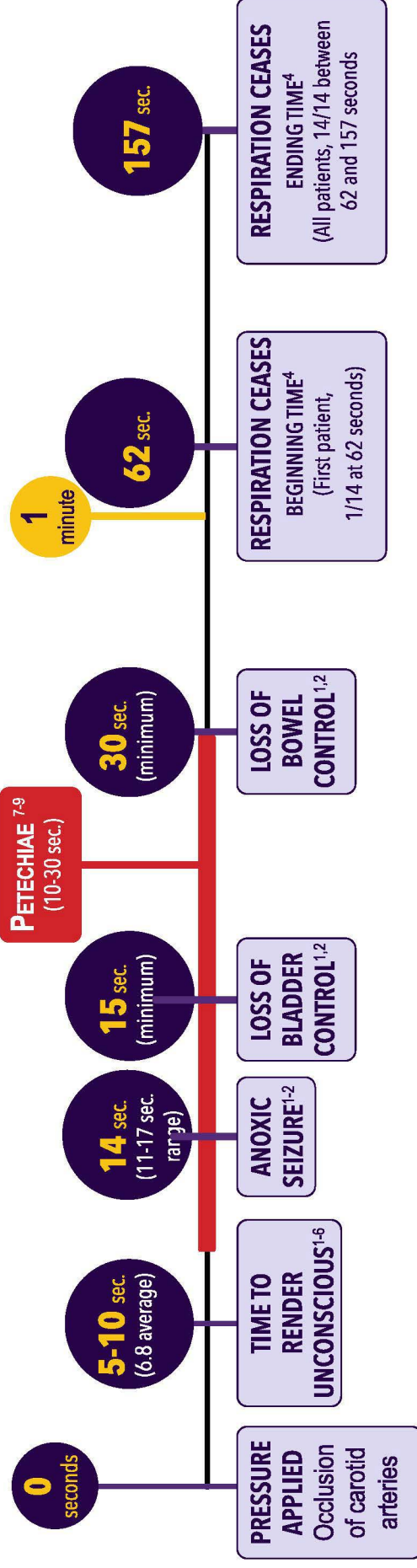
- |                         |                            |                            |
|-------------------------|----------------------------|----------------------------|
| <b>1</b> Carotid Artery | <b>3</b> Hyoid Bone        | <b>5</b> Cricoid Cartilage |
| <b>2</b> Jugular Vein   | <b>4</b> Thyroid Cartilage | <b>6</b> Tracheal Rings    |

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# PHYSIOLOGICAL CONSEQUENCES OF STRANGULATION

## Occlusion of Arterial Blood Flow: Seconds to Minutes Timeline

CREATED BY: Ruth Carter, MD; Bill Smock, MD; Gael Strack, JD; Sean Dugan, MD; Marisol Martinez, MA ; Yesenia Aceves; and Ashley Peck



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[strangulationtraininginstitute.com](http://strangulationtraininginstitute.com)

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# STRANGULATION ASSESSMENT SHEET

SIGNS	SYMPTOMS	CHECKLIST	TRANSPORT
<ul style="list-style-type: none"> <li>• Red eyes or spots (Petechiae)</li> <li>• Neck swelling</li> <li>• Nausea or vomiting</li> <li>• Unsteady</li> <li>• Loss or lapse of memory</li> <li>• Urinated</li> <li>• Defecated</li> <li>• Possible loss of consciousness</li> <li>• Ptosis – droopy eyelid</li> <li>• Droopy face</li> <li>• Seizure</li> <li>• Tongue injury</li> <li>• Lip injury</li> <li>• Mental status changes</li> <li>• Voice changes</li> </ul>	<ul style="list-style-type: none"> <li>• Neck pain</li> <li>• Jaw pain</li> <li>• Scalp pain (from hair pulling)</li> <li>• Sore throat</li> <li>• Difficulty breathing</li> <li>• Difficulty swallowing</li> <li>• Vision changes (spots, tunnel vision, flashing lights)</li> <li>• Hearing changes</li> <li>• Light headedness</li> <li>• Headache</li> <li>• Weakness or numbness to arms or legs</li> <li>• Voice changes</li> </ul>	<p><b>S</b> <b>SCENE AND SAFETY</b> Take in the scene. Make sure you and the victim are safe.</p> <p><b>T</b> <b>TRAUMA</b> The victim is traumatized. Be kind. Ask: what do you remember? See? Feel? Hear? Think?</p> <p><b>R</b> <b>REASSURE AND RESOURCES</b> Reassure the victim that help is available and provide resources.</p> <p><b>A</b> <b>ASSESS</b> Assess the victim for signs and symptoms of strangulation and TBI.</p> <p><b>N</b> <b>NOTES</b> Document your observations. Put victim statements in quotes.</p> <p><b>G</b> <b>GIVE</b> Give the victim an advisal about delayed consequences.</p> <p><b>L</b> <b>LOSS OF CONSCIOUSNESS</b> Victims may not remember. Lapse of memory? Change in location? Urination? Defecation?</p> <p><b>E</b> <b>ENCOURAGE</b> Encourage medical attention or transport if life-threatening injuries exist.</p>	<p>If the victim is <b>Pregnant</b> or has life-threatening injuries which include:</p> <ul style="list-style-type: none"> <li>• Difficulty breathing</li> <li>• Vision changes</li> <li>• Difficulty swallowing</li> <li>• Loss of consciousness</li> <li>• Petechial hemorrhage</li> <li>• Urinated</li> <li>• Defecated</li> </ul>
<b>DELAYED CONSEQUENCES</b> Victims may look fine and say they are fine, but just underneath the skin there would be internal injury and/or delayed complications. Internal injury may take a few hours to be appreciated. The victim may develop delayed swelling, hematomas, vocal cord immobility, displaced laryngeal fractures, fractured hyoid bone, airway obstruction, stroke or even delayed death from a carotid dissection, bloodclot, respiratory complications, or anoxic brain damage. <small>Taliaferro, E., Hawley, D., McClane, G.E. &amp; Strack, G. (2009). Strangulation in Intimate Partner Violence. <i>Intimate Partner Violence: A Health-Based Perspective</i>. Oxford University Press, Inc.</small>			

## ADVISAL TO PATIENT

- After a strangulation assault, you can experience internal injuries with a delayed onset of symptoms, usually within 72 hours. These internal injuries can be serious or fatal.
- Stay with someone you trust for the first 24 hours and have them monitor your signs and symptoms.
- Seek medical attention or call 911 if you have any of the following symptoms: difficulty breathing, trouble swallowing, swelling to your neck, pain to your throat, hoarseness or voice changes, blurred vision, continuous or severe headaches, seizures, vomiting or persistent cough.
- The cost of your medical care may be covered by your state's victim compensation fund. An advocate can give you more information about this resource.
- The National Domestic Violence Hotline number is **1-888-799-SAFE**.

## NOTICE TO MEDICAL PROVIDER

- In patients with a history of a loss of consciousness, loss of bladder or bowel control, vision changes or petechial hemorrhage, medical providers should evaluate the carotid and vertebral arteries, bony/cartilaginous and soft tissue neck structures and the brain for injuries. A list of medical references is available at [strangulationtraininginstitute.com](http://strangulationtraininginstitute.com)
- Life-threatening injuries include evidence of petechial hemorrhage, loss of consciousness, urination, defecation and/or visual changes.
- If your patient exhibits any of the above symptoms, medical/radiographic evaluation is strongly recommended. Radiographic testing should include: a CT angiography of carotid/vertebral arteries (most sensitive and preferred study for vessel evaluation) or CT neck with contrast, or MRA/MRI of neck and brain.
- ED/Hospital observation should be based on severity of symptoms and reliable home monitoring.
- Consult Neurology, Neurosurgery and/or Trauma Surgery for admission.
- Consider an ENT consult for laryngeal trauma with dysphonia, odynophagia, dyspnea.
- Discharge home with detailed instructions to return to ED if neurological signs/symptoms, dyspnea, dysphonia or odynophagia develops or worsens.



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# RECOMMENDATIONS FOR THE MEDICAL/RADIOGRAPHIC EVALUATION OF ACUTE ADULT NON/NEAR FATAL STRANGULATION

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Endorsed by the National Medical Advisory Committee:

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## GOALS:

1. Evaluate for acute medical conditions requiring immediate management/stabilization
2. Evaluate carotid and vertebral arteries for injuries (dissection/thrombosis)
3. Evaluate airway structures and other bony/cartilaginous/soft tissue neck structures

## STRANGULATION PATIENT PRESENTS TO THE EMERGENCY DEPARTMENT

### HISTORY (ANY of the following; current OR assault related and now resolved)

1. Loss of consciousness
2. Visual changes: "spots," "flashing lights," "tunnel vision"
3. History of altered mental status: "dizzy," "confused," "lightheaded," "loss of memory," "any loss of awareness"
4. Breathing changes: "I couldn't breathe," "difficulty breathing"
5. Incontinence (bladder or bowel)
6. Neurologic symptoms: seizure-like activity, stroke-like symptoms, headache, tinnitus, decreased hearing, focal numbness, amnesia
7. Ligature mark or neck contusion
8. Neck tenderness or pain/sore throat/pain with swallowing
9. Change in voice: unable to speak, hoarse or raspy voice

### PHYSICAL EXAM (ANY Abnormality)

1. Functional assessment of breathing, swallowing, and voice
2. Thorough examination of neck, eyes, TMs, oral mucosa, nose, airway, upper torso for: tenderness, swelling, bruising, abrasions, crepitance, bruit
3. Venous congestion/petechial hemorrhages/scleral hemorrhages
4. Ligature mark = **HIGH RISK**
5. Tenderness of airway structures/carotid arteries = **HIGH RISK**
6. Mental status/complete neurologic exam

CONSIDER ADMINISTRATION OF ONE 325MG ASPIRIN IF THERE IS ANY DELAY IN OBTAINING A RADIOGRAPHIC STUDY

### RECOMMENDED RADIOGRAPHIC STUDIES TO RULE OUT LIFE-THREATENING INJURIES\* (including delayed presentations of up to 1 year)

1. CT Angio of carotid/vertebral arteries (GOLD STANDARD for evaluation of vessels and bony/cartilaginous structures, less sensitive for soft tissue trauma) or
2. MRA of carotid/vertebral arteries
3. Carotid Doppler Ultrasound (NOT RECOMMENDED - Unable to adequately evaluate vertebral arteries or proximal internal carotid arteries)
4. Plain Radiographs (NOT RECOMMENDED - Unable to evaluate vascular and soft-tissue structures)
5. Consider fiberoptic direct laryngoscopy to evaluate possible laryngeal injury or airway compromise

### POSITIVE RESULTS

1. Consult Neurology/Neurosurgery/Trauma Surgery for admission
2. Consider ENT consult for laryngeal trauma or dysphonia
3. Perform a lethality assessment per institutional policy

### NEGATIVE RESULTS

**Discharge home with detailed instructions, including a lethality assessment, and to return to ED if:** neurological signs/symptoms, dyspnea, dysphonia orodynophagia develops or worsens

**IF THE CTA IS NEGATIVE, CONSIDER OBSERVATION OF NEAR-FATAL STRANGULATION PATIENT IF THE AIRWAY IS OF CONCERN. OBSERVATION HAS NO ROLE IN RULING OUT A VASCULAR INJURY.**



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*Recommendations based upon case reports, case studies, and cited medical literature. Click below for hyperlinks, please note that some sources may require purchase or subscription.*

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**ATTACHMENT 5-1**  
**Strangulation History and Exam**

STRANGULATION HISTORY #1			
<b>NATURE OF STRANGULATION</b>			<input type="checkbox"/> Unknown
How many episodes of strangulation?			<input type="checkbox"/> Unknown
How long did the worst episode last?		____ seconds    ____ minutes	<input type="checkbox"/> Unknown
During the strangulation, was the victim also:			
» Shaken?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Straddled?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Held against a wall or other object?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Was the victim's head pounded against a wall, floor, or other object?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Did the assailant intentionally cover the victim's			
» Mouth	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Nose	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
If yes, describe: _____			
<b>METHOD OF STRANGULATION</b>			<input type="checkbox"/> Unknown
Assailant position			<input type="checkbox"/> Unknown
» In front of the victim	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Behind the victim	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Sitting on the victim	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Ligature		<input type="checkbox"/> None	<input type="checkbox"/> Unknown
» Rope	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Wire	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Cord	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Clothing	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Other: _____			
One hand		<input type="checkbox"/> Yes	<input type="checkbox"/> No
» Left	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Right	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
Both hands		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Chokehold		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, describe: _____			
Pressure from other body part		<input type="checkbox"/> Yes	<input type="checkbox"/> No
» Forearm	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Knee, leg, or foot	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
» Other: _____			
Was the victim's neck stretched or twisted?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, describe: _____			

## STRANGULATION HISTORY #2

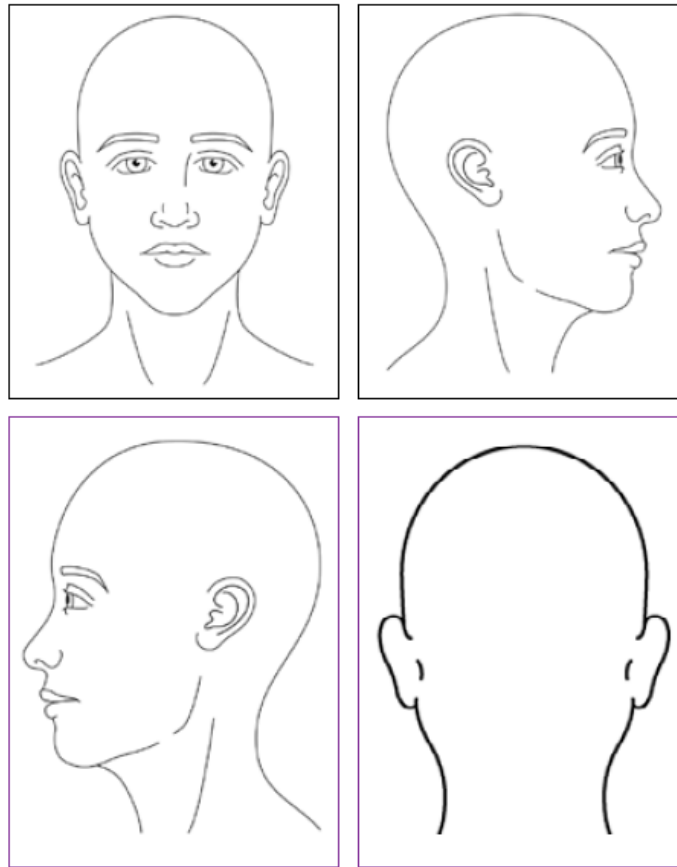
SYMPTOM	None	Onset During Strangulation	Onset After Strangulation	Now Resolved	Present Unchanged	Present Getting Better	Present Getting Worse*	Unknown
<b>Neck Pain</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Sore Throat</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Breathing Changes</b>	<input type="checkbox"/>							
» Unable to breathe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Painful breathing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Short of breath	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Hyperventilation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Voice Changes</b>	<input type="checkbox"/>							
» Raspy voice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Hoarse voice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Coughing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Unable to speak	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Swallowing Changes</b>	<input type="checkbox"/>							
» Difficulty swallowing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Painful swallowing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Nausea</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Vomiting</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Neurologic Changes</b>	<input type="checkbox"/>							
» Vision changes or difficulty	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Ringing in ears	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Facial or eyelid droop	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» One-sided body weakness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Headache	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Loss of bowel control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Loss of urine control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Mental Status Changes</b>	<input type="checkbox"/>							
» Dizzy/lightheaded	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Confusion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Hallucinations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Loss of memory	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Loss of consciousness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Behavioral Changes</b>	<input type="checkbox"/>							
» Restlessness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Agitation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Combativeness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
» Fear of death	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other Symptoms</b> Explain _____ _____ _____ _____								

\* Needs immediate medical evaluation

## STRANGULATION EXAM #1: CURRENT FINDINGS

Date _____		Time _____			
VS	T _____	P _____	R _____	BP _____	SAT _____
<b>Eyes</b>					
	<input type="checkbox"/> Perla	<input type="checkbox"/> Abnormal _____			
	<input type="checkbox"/> EOMi	<input type="checkbox"/> Abnormal _____			
	VA	OD ____/____ OS ____/____			
<b>Voice</b>					
	<input type="checkbox"/> Normal	<input type="checkbox"/> Abnormal _____			
<b>Airway</b>					
	<input type="checkbox"/> Normal	<input type="checkbox"/> Tender	<input type="checkbox"/> Crepitance	<input type="checkbox"/> Other _____	
<b>Carotid Arteries</b>					
	<input type="checkbox"/> Normal	<input type="checkbox"/> Tender R L	<input type="checkbox"/> Bruit R L	<input type="checkbox"/> None	
<b>Swallowing</b>					
	<input type="checkbox"/> Normal	<input type="checkbox"/> Abnormal _____			
<b>Lungs</b>					
	<input type="checkbox"/> Normal	<input type="checkbox"/> Abnormal _____			
<b>Mental Status</b>					
	<input type="checkbox"/> Normal	<input type="checkbox"/> Abnormal _____			
<b>CN 2-12</b>					
	<input type="checkbox"/> Normal	<input type="checkbox"/> Abnormal _____			
<b>Motor</b>					
	<input type="checkbox"/> Normal	<input type="checkbox"/> Abnormal _____			
<b>Sensation</b>					
	<input type="checkbox"/> Normal	<input type="checkbox"/> Abnormal _____			
<b>Cerebellar/Gait</b>					
	<input type="checkbox"/> Normal	<input type="checkbox"/> Abnormal _____			
<b>Reflexes</b>					
	<input type="checkbox"/> Normal	<input type="checkbox"/> Abnormal _____			

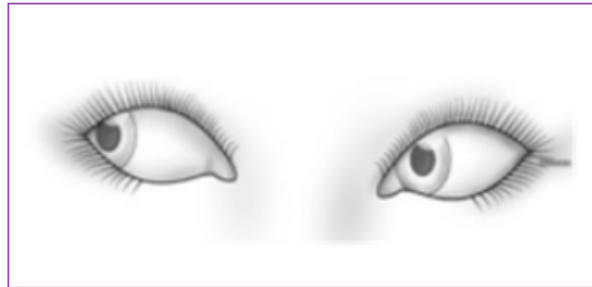
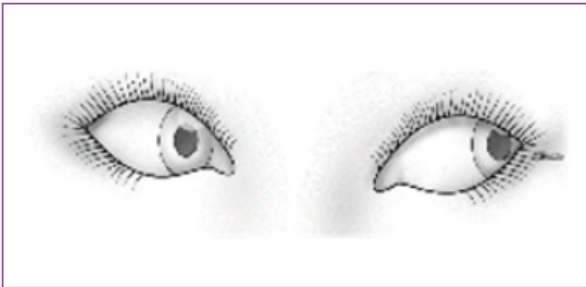
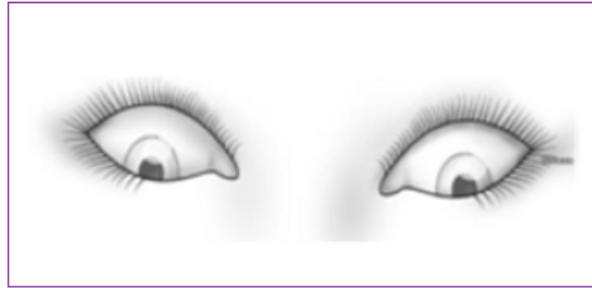
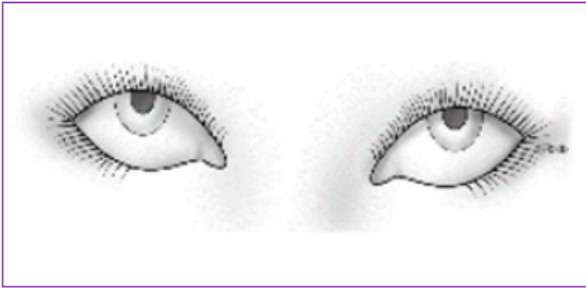
## STRANGULATION EXAM #2



HEAD AND SCALP	FACE	EARS
<input type="checkbox"/> No Findings <input type="checkbox"/> Redness (ER) <input type="checkbox"/> Bruise (EC) <input type="checkbox"/> Abrasion/Scratch (AB) <input type="checkbox"/> Laceration (LA) <input type="checkbox"/> Swelling (SW) <input type="checkbox"/> Petechiae (PE) <input type="checkbox"/> Tenderness (TE) <input type="checkbox"/> Alopecia <input type="checkbox"/> Other Finding _____ _____ _____	<input type="checkbox"/> No Findings <input type="checkbox"/> Redness (ER) <input type="checkbox"/> Bruise (EC) <input type="checkbox"/> Abrasion/Scratch (AB) <input type="checkbox"/> Laceration (LA) <input type="checkbox"/> Swelling (SW) <input type="checkbox"/> Petechiae (PE) <input type="checkbox"/> Tenderness (TE) <input type="checkbox"/> Facial Droop <input type="checkbox"/> Eyelid Droop <input type="checkbox"/> Other Finding _____ _____ _____	<input type="checkbox"/> No Findings <input type="checkbox"/> Blood in Ear Canal <input type="checkbox"/> R <input type="checkbox"/> L <input type="checkbox"/> TM Performance <input type="checkbox"/> R <input type="checkbox"/> L <input type="checkbox"/> Hemotympanum <input type="checkbox"/> R <input type="checkbox"/> L <input type="checkbox"/> External Petechiae (PE) <input type="checkbox"/> R <input type="checkbox"/> L <input type="checkbox"/> Canal Petechiae (PE) <input type="checkbox"/> R <input type="checkbox"/> L <input type="checkbox"/> Other Finding _____ _____ _____



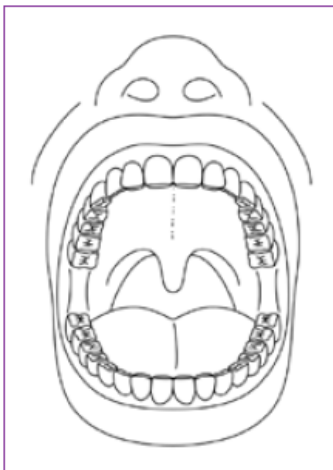
## STRANGULATION EXAM #3



### EYES

- ☐ Petechiae (PE)
- ☐ Subconjunctival hematoma (SCH)
- ☐ Other Finding \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



### NOSE AND NARES

- ☐ No Findings
- ☐ Active Bleeding
- ☐ Dried Blood
- ☐ Bruise (EC)
- ☐ Abrasion (AB)
- ☐ Laceration (LA)
- ☐ Swelling (SW)
- ☐ Acute Deformity
- ☐ Petechiae (PE)
- ☐ Tenderness
- ☐ Other Finding \_\_\_\_\_

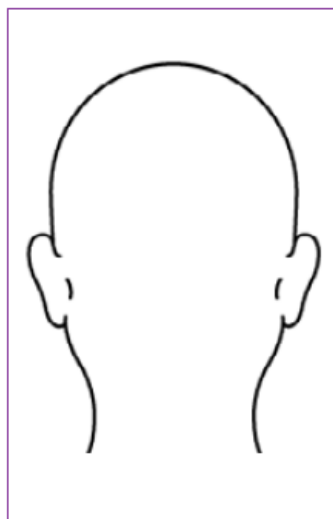
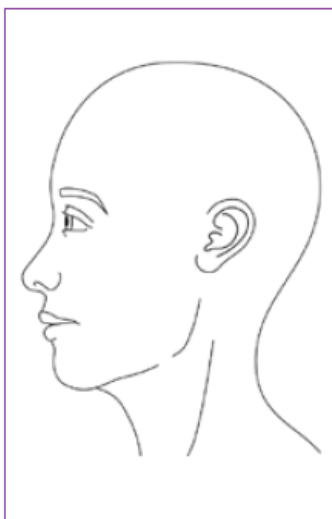
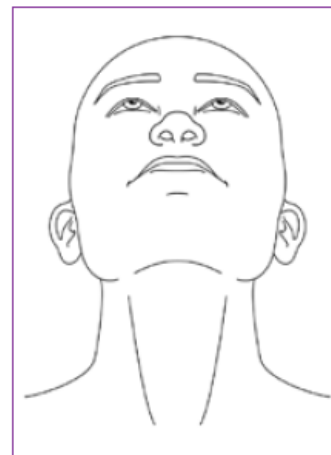
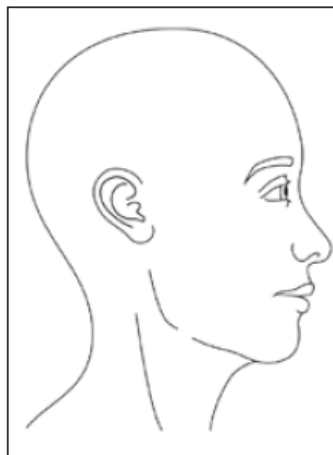
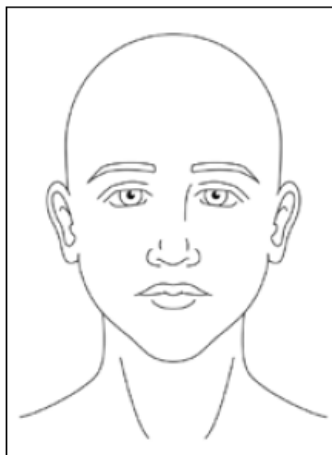
\_\_\_\_\_  
\_\_\_\_\_

### MOUTH

- ☐ No Findings
- ☐ Redness (ER)
- ☐ Bruise (EC)
- ☐ Abrasion (AB)
- ☐ Laceration (LA)
- ☐ Swelling (SW)
- ☐ Petechiae (PE)
- ☐ Tenderness (TE)
- ☐ Other Finding \_\_\_\_\_

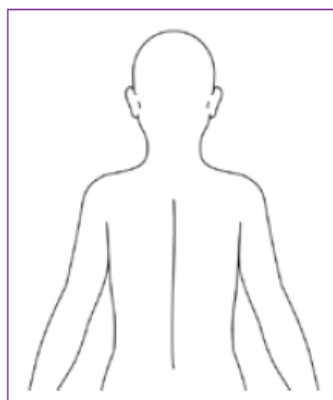
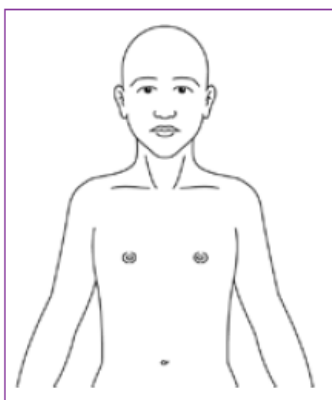
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## STRANGULATION EXAM #4



### UNDER CHIN AND NECK

- ☐ No Findings
- ☐ Redness (ER)
- ☐ Bruise (EC)
- ☐ Abrasion/Scratch (AB)
- ☐ Laceration (LA)
- ☐ Swelling (SW)
- ☐ Petechiae (PE)
- ☐ Ligature Marks (LM)
- ☐ Arterial Tenderness (AT)
- ☐ Laryngeal or Tracheal Tenderness (LT)
- ☐ Carotid Bruit (CB)
- ☐ Other Tenderness
- ☐ Other Finding \_\_\_\_\_



### UPPER TORSO

- ☐ No Findings
- ☐ Redness (ER)
- ☐ Bruise (EC)
- ☐ Abrasion (AB)
- ☐ Laceration (LA)
- ☐ Swelling (SW)
- ☐ Petechiae (PE)
- ☐ Tenderness (TE)
- ☐ Other Finding \_\_\_\_\_





strangulationtraininginstitute.com  
Illustration and layout of this tool by Yesenia Aceves

## PEDIATRIC-ADOLESCENT FOLLOW-UP EVALUATION

Name of Examining Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Date of Initial Exam: \_\_\_\_\_ Date of Today's Exam: \_\_\_\_\_ Time: \_\_\_\_\_

Case Number(s): \_\_\_\_\_

Name of Patient: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_

Accompanied By: \_\_\_\_\_

Others Present: \_\_\_\_\_

### PATIENT RELEASE STATEMENT

I, \_\_\_\_\_, hereby request and authorize the staff of (agency/agencies) \_\_\_\_\_ to conduct a medical-forensic follow-up evaluation and clinical procedures, including collection and examination of specimens as are necessary for diagnosis and treatment as well as investigation. Furthermore, I hereby authorize and request the medical staff to supply all items of evidence (\_\_\_\_ initials) and copies of medical and laboratory reports (\_\_\_\_ initials) to the appropriate investigative agency for use in the investigation and any resulting legal proceedings.

Patient Examined: \_\_\_\_\_ Date: \_\_\_\_\_

Parent or Guardian: \_\_\_\_\_ Witness: \_\_\_\_\_

### PHOTOGRAPHIC RELEASE

I, \_\_\_\_\_, hereby request and authorize the staff of (agency/agencies) \_\_\_\_\_ to capture and produce photographs of body surface or colposcope images of injury, healing injury or normal anatomy. The release of these photographs is conditioned upon the images being viewed only by those persons officially involved in the investigation or legal proceedings. De-identified photos may be used and viewed for education/teaching purposes.

Patient Examined: \_\_\_\_\_ Date: \_\_\_\_\_

Parent or Guardian: \_\_\_\_\_ Witness: \_\_\_\_\_

**Patient's Name:** \_\_\_\_\_

1. Review of initial exam documentation ☐ Yes ☐ No ☐ N/A
2. Reason for follow-up examination ☐ Physical Abuse ☐ Strangulation ☐ Other \_\_\_\_\_

Summary of acute strangulation evaluation: \_\_\_\_\_

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Description of injury/abuse event(s) in patient's own words: \_\_\_\_\_

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Name of examiner: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Patient Label

**Patient's Name:** \_\_\_\_\_

Vital Signs: T \_\_\_\_\_ P \_\_\_\_\_ R \_\_\_\_\_ B/P \_\_\_\_\_ Pulse Ox \_\_\_\_\_

Neck Circumference \_\_\_\_\_ (Anterior) \_\_\_\_\_ (Lateral)

Mental Status/Behavior/Appearance: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## REVIEW OF SYSTEMS

Neurological: \_\_\_\_\_

Cardiovascular: \_\_\_\_\_

Respiratory: \_\_\_\_\_

HEENT: \_\_\_\_\_

Gastrointestinal: \_\_\_\_\_

Genito-urinary: \_\_\_\_\_

OB/Gynecological: \_\_\_\_\_

Skin/Muscle/Bone: \_\_\_\_\_

Psych/Social: \_\_\_\_\_

**Since the strangulation, has the patient noted any of the following symptoms:**

- |   |   |  |                                       |                                       |                                   |
|---|---|--|---------------------------------------|---------------------------------------|-----------------------------------|
| <input type="checkbox"/> Coughing                         | <input type="checkbox"/> Drooling             | <input type="checkbox"/> Dyspnea       | <input type="checkbox"/> Dysphagia    | <input type="checkbox"/> Odynophagia  | <input type="checkbox"/> Headache |
| <input type="checkbox"/> Lightheadedness                  | <input type="checkbox"/> Neck pain            | <input type="checkbox"/> Neck swelling | <input type="checkbox"/> Nose pain    | <input type="checkbox"/> Nausea       | <input type="checkbox"/> Vomiting |
| <input type="checkbox"/> Crepitus                         | <input type="checkbox"/> Uncontrolled shaking | <input type="checkbox"/> Combativeness | <input type="checkbox"/> Irritability | <input type="checkbox"/> Restlessness |                                   |
| <input type="checkbox"/> Otherwise altered mental status  | Describe: _____                               |  |                                       |                                       |                                   |
| <input type="checkbox"/> Voice changes                    | Describe: _____                               |  |                                       |                                       |                                   |
| <input type="checkbox"/> Vision changes                   | Describe: _____                               |  |                                       |                                       |                                   |
| <input type="checkbox"/> Bleeding                         | Describe: _____                               |  |                                       |                                       |                                   |
| <input type="checkbox"/> Weakness/numbness of extremities | Describe: _____                               |  |                                       |                                       |                                   |

Name of examiner: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Patient's Name:** \_\_\_\_\_

Pain score: \_\_\_\_\_ ☐ Numbered scale used ☐ Wong Baker scale used (insert score) \_\_\_\_\_

On a scale of 0-10, with 0 being no pressure and 10 being the worst pressure you can imagine, how strong was the grip during your strangulation (Circle one): 0 1 2 3 4 5 6 7 8 9 10

Is the patient **pregnant**? ☐ Yes ; How many weeks? \_\_\_\_\_ ☐ N/A

☐ **Petechiae** Locations: ☐ Conjunctivae ☐ Face ☐ Palate ☐ Ears ☐ Scalp  
☐ Tympanic Membrane(s) ☐ Neck ☐ Chest

☐ **Tongue or oral cavity injury** Describe: \_\_\_\_\_

☐ **Neurological findings**  
☐ Ptosis ☐ Facial droop ☐ Paralysis ☐ Unilateral weakness  
☐ Loss of sensation ☐ Other: \_\_\_\_\_  
☐ Absence of normal crepitus when manipulating cricoid cartilage  
☐ Visible injury (describe on body maps below)  
☐ Digital photography complete

**Method/Manner of Strangulation:**

☐ One hand Estimated length of time: \_\_\_\_\_seconds \_\_\_\_\_minutes  
☐ Two hands Estimated length of time: \_\_\_\_\_seconds \_\_\_\_\_minutes  
☐ "Choke-hold" Estimated length of time: \_\_\_\_\_seconds \_\_\_\_\_minutes  
☐ Approached from the front  
☐ Approached from behind  
☐ Multiple strangulation attempts during incident How many? \_\_\_\_\_  
☐ Jewelry on patient's neck during strangulation  
☐ Ligature used Describe if possible: \_\_\_\_\_  
☐ Smothering attempt Describe: \_\_\_\_\_  
☐ Other Describe: \_\_\_\_\_

**During the strangulation did the patient note any of the following:**

☐ Loss of consciousness/blacking out/passing out Number of times: \_\_\_\_\_  
☐ Incontinence of urine Incontinence of stool  
☐ Bleeding Describe: \_\_\_\_\_  
☐ Patient's feet lifted off the ground  
☐ Patient's shirt was tightened around their neck

**During the follow up evaluation were symptoms noted by the examiner?**

☐ Yes: \_\_\_\_\_ ☐ No

Name of examiner: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Patient's Name: \_\_\_\_\_

<b>BEST EYE RESPONSE (E)</b>	Spontaneous--open with blinking at baseline	<b>4</b>
	Opens to verbal command, speech, or shout	<b>3</b>
	Opens to pain, not applied to face	<b>2</b>
	None	<b>1</b>
<b>BEST VERBAL RESPONSE (V)</b>	Oriented	<b>5</b>
	Confused conversation, but able to answer questions	<b>4</b>
	In appropriate responses, words discernible	<b>3</b>
	Incomprehensible speech	<b>2</b>
	None	<b>1</b>
<b>BEST MOTOR RESPONSE (M)</b>	Obeys commands for movement	<b>6</b>
	Purposeful movement to painful stimulus	<b>5</b>
	Withdraws from pain	<b>4</b>
	Abnormal (spastic) flexion, decorticate posture	<b>3</b>
	Extensor (rigid) response, decerebrate posture	<b>2</b>
	None	<b>1</b>

Patient's Name: \_\_\_\_\_

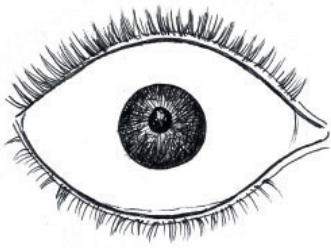
NERVE	ASSESSMENT		NOTES
CN I <b>Olfactory</b>	Identifies a familiar scent with eyes closed (coffee)	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess
CN II <b>Optic</b>	Read one eye at a time, visual fields tested by having patient cover one eye and identifying number of fingers in each visual field	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess
CN III <b>Oculomotor</b>	Check pupillary response with light, check accommodation by moving your finger towards the patient's nose, check for EOMs	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess
CN IV <b>Trochlear</b>	Have patient look down and in	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess
CN V <b>Trigeminal</b>	Ask patient to open mouth while you attempt to close it, have them attempt to move jaw laterally. Have patient close their eyes, touch their face with cotton and have patient identify where they were touched	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess
CN VI <b>Abducens</b>	Have patient move their eyes from side to side	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess
CN VII <b>Facial</b>	Ask patient to smile and raise eyebrows, ask them to keep eyes and lips closed while you try to open them	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess
CN VIII <b>Acoustic/Vestibular</b>	Test hearing with rubbing fingers or whispering	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess
CN IX <b>Glossopharyngeal</b>	Observe patient swallow and check gag reflex	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess
CN X <b>Vagus</b>	Assess gag and swallowing with IX, assess patient's voice characteristics	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess
CN XI <b>Spinal Accessory</b>	Have patient shrug shoulders with resistance, have patient move head from side to side	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess
CN XII <b>Hypoglossal</b>	Have patient stick out tongue and move it internally from right to left, assess articulation	<input type="checkbox"/> WLN	<input type="checkbox"/> Unable to assess

Describe abnormalities here: \_\_\_\_\_

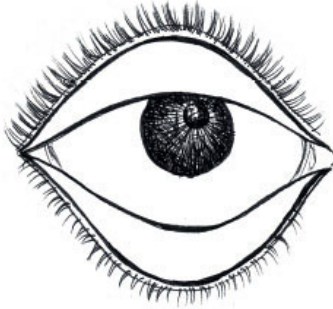
☐ Cranial nerve assessment normal

**Patient's Name:** \_\_\_\_\_

**RIGHT CONJUNCTIVA**



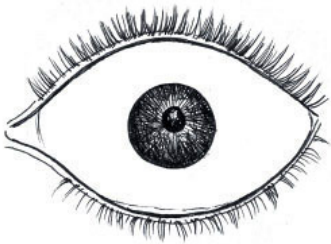
**RIGHT INNER EYE LID**



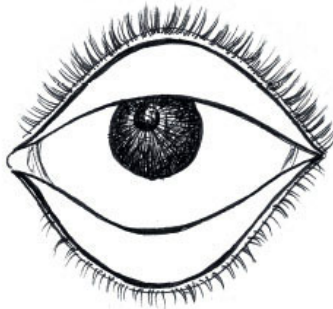
**RIGHT OUTER EYE LID**



**LEFT CONJUNCTIVA**



**LEFT INNER EYE LID**



**LEFT OUTER EYE LID**

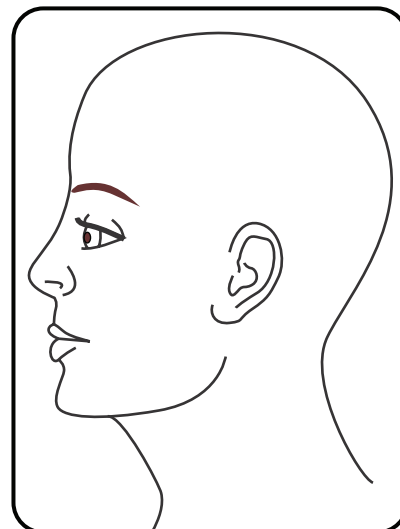
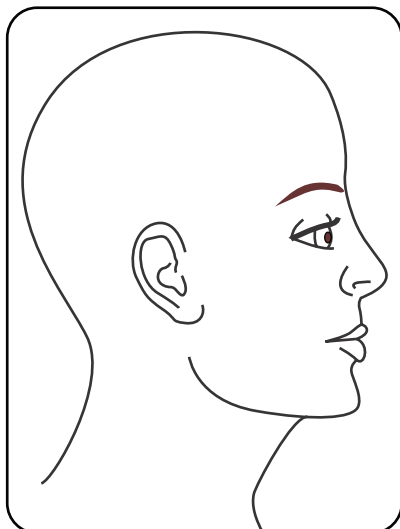
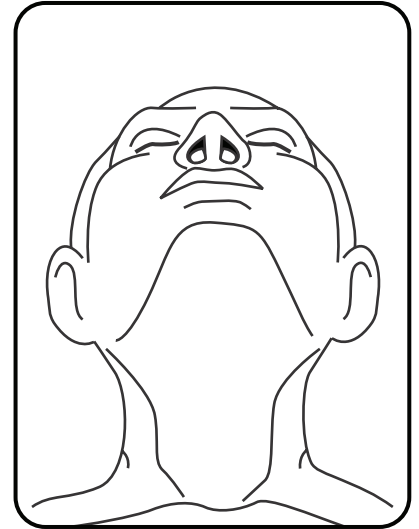
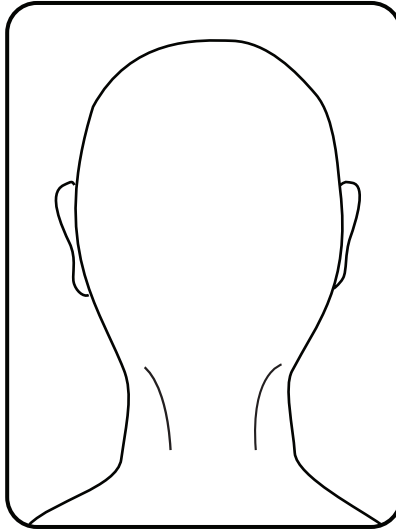
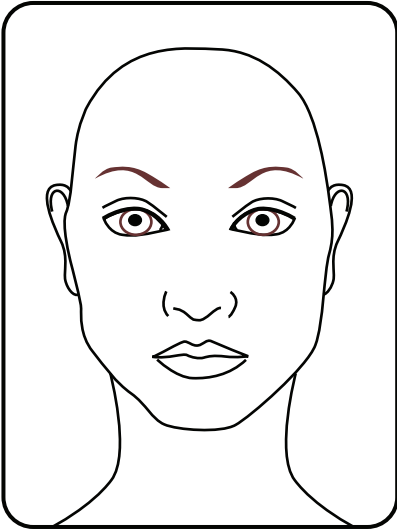
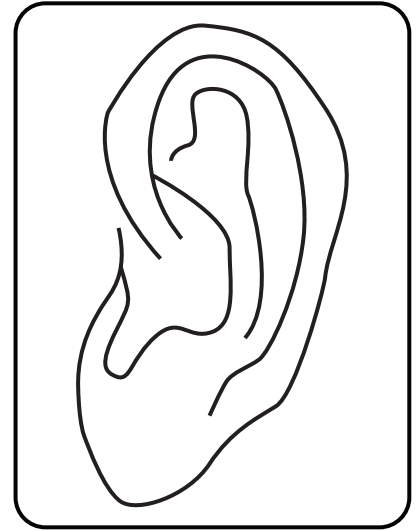
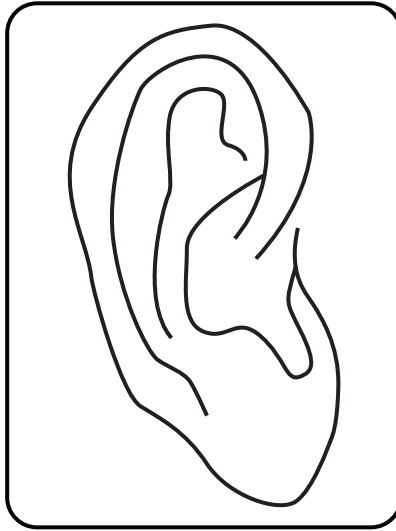
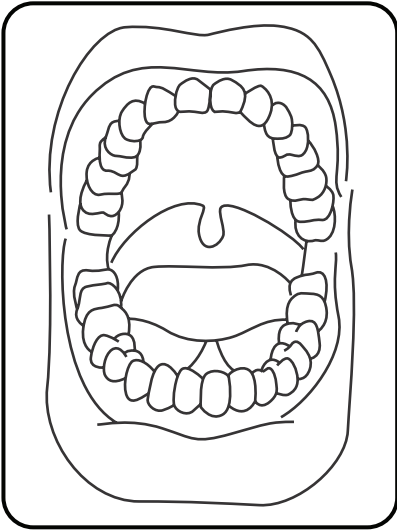


Name of examiner: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Patient's Name: \_\_\_\_\_



Name of examiner: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



Patient's Name: \_\_\_\_\_

## SUMMARY ASSESSMENT

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## PLAN OF CARE & RECOMMENDATIONS

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☐ Pediatric Strangulation Discharge Instructions

Name of examiner: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Patient's Name: \_\_\_\_\_

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_
11. \_\_\_\_\_
12. \_\_\_\_\_
13. \_\_\_\_\_
14. \_\_\_\_\_
15. \_\_\_\_\_
16. \_\_\_\_\_
17. \_\_\_\_\_
18. \_\_\_\_\_
19. \_\_\_\_\_
20. \_\_\_\_\_
21. \_\_\_\_\_
22. \_\_\_\_\_

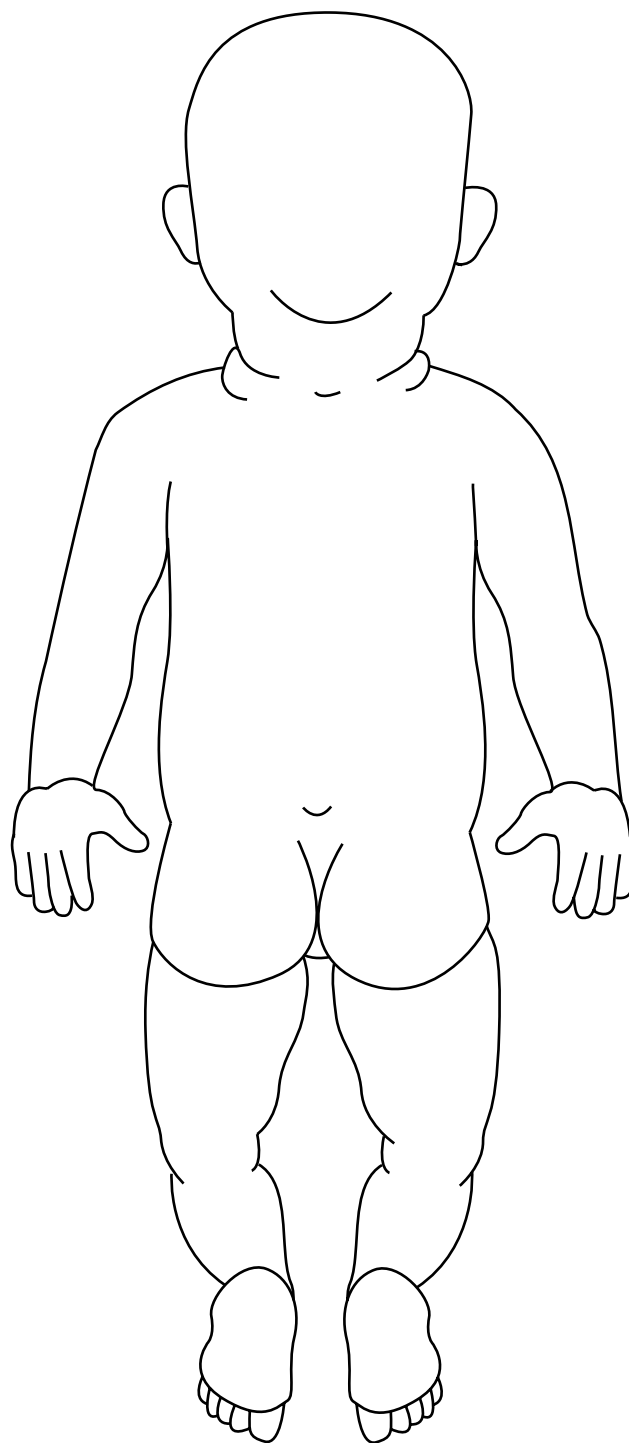
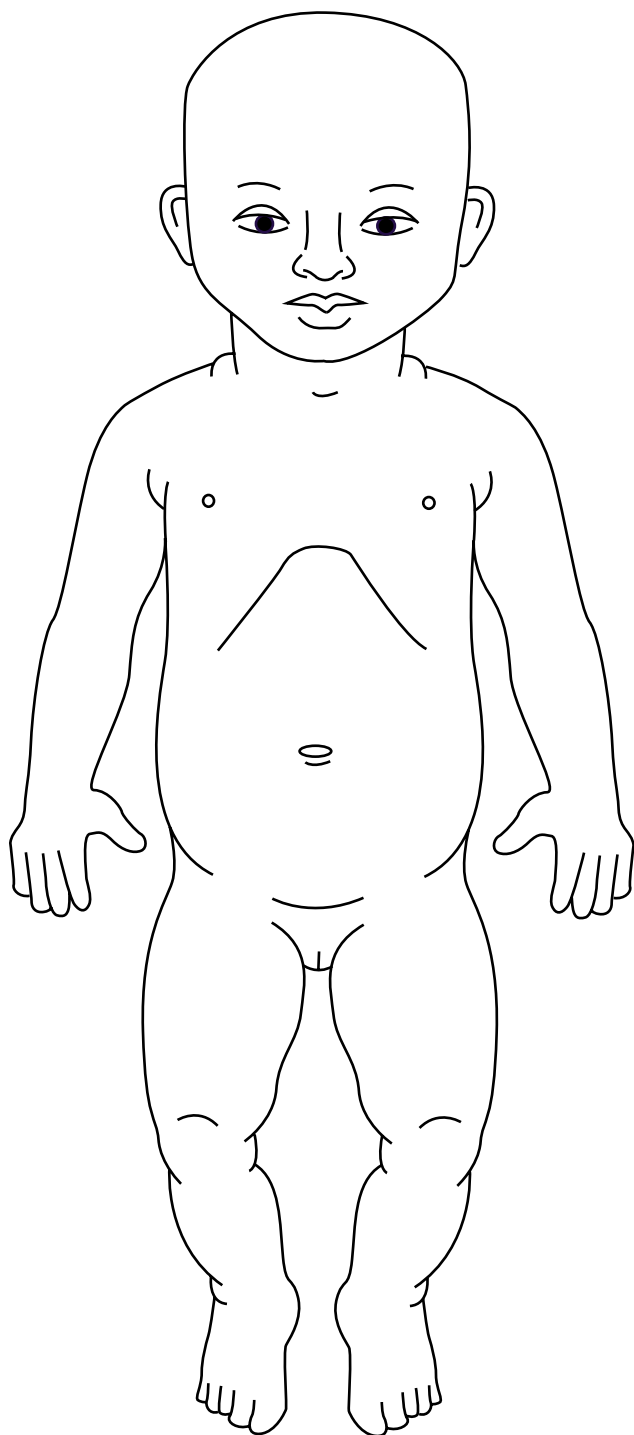
*If more space is required, please use a progress note and check the box below.*

☐ Please see progress note for additional findings.

☐ Please see age appropriate diagrams (appendices) for additional findings

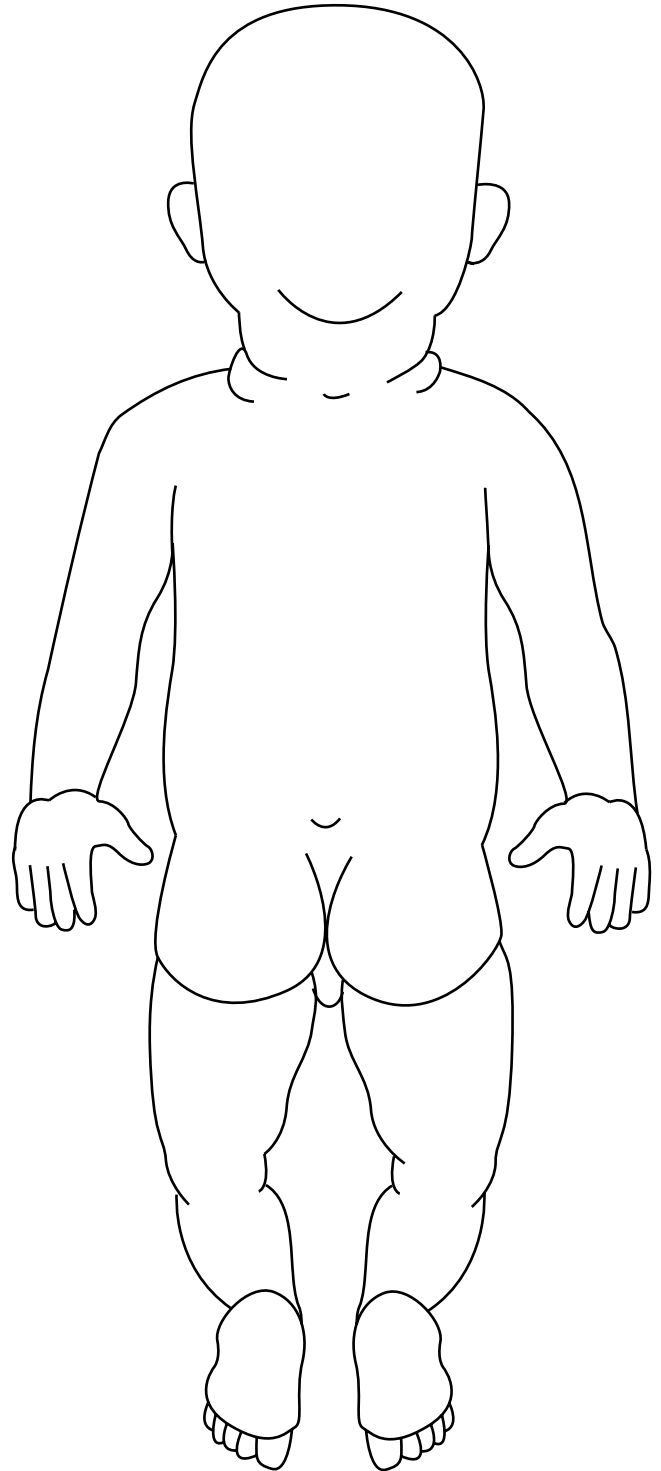
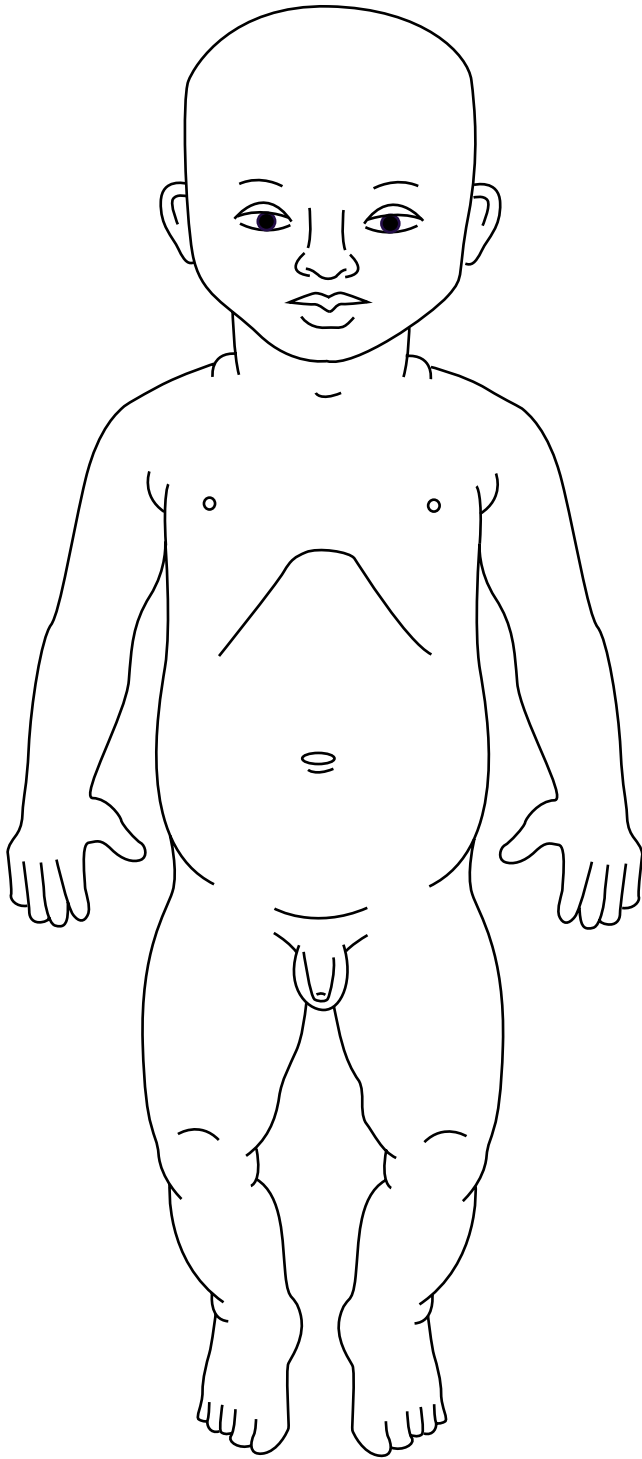
**Patient's Name:** \_\_\_\_\_

**Numerically mark each finding (1, 2, 3...) and provide a detailed description.**



**Patient's Name:** \_\_\_\_\_

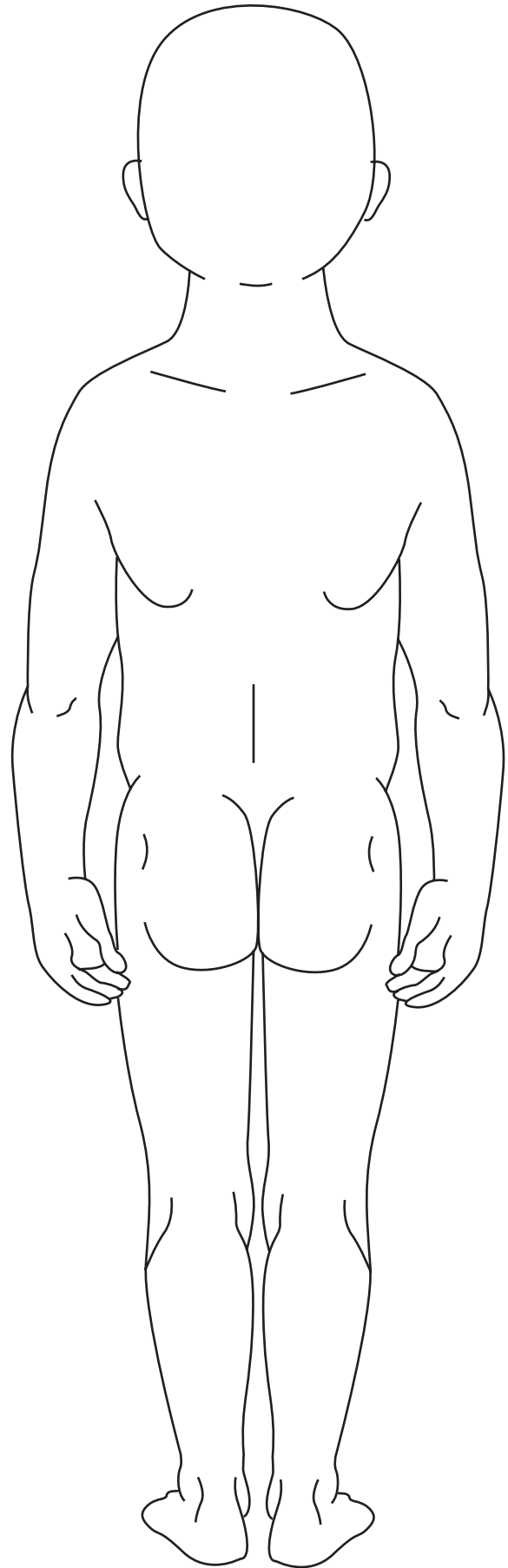
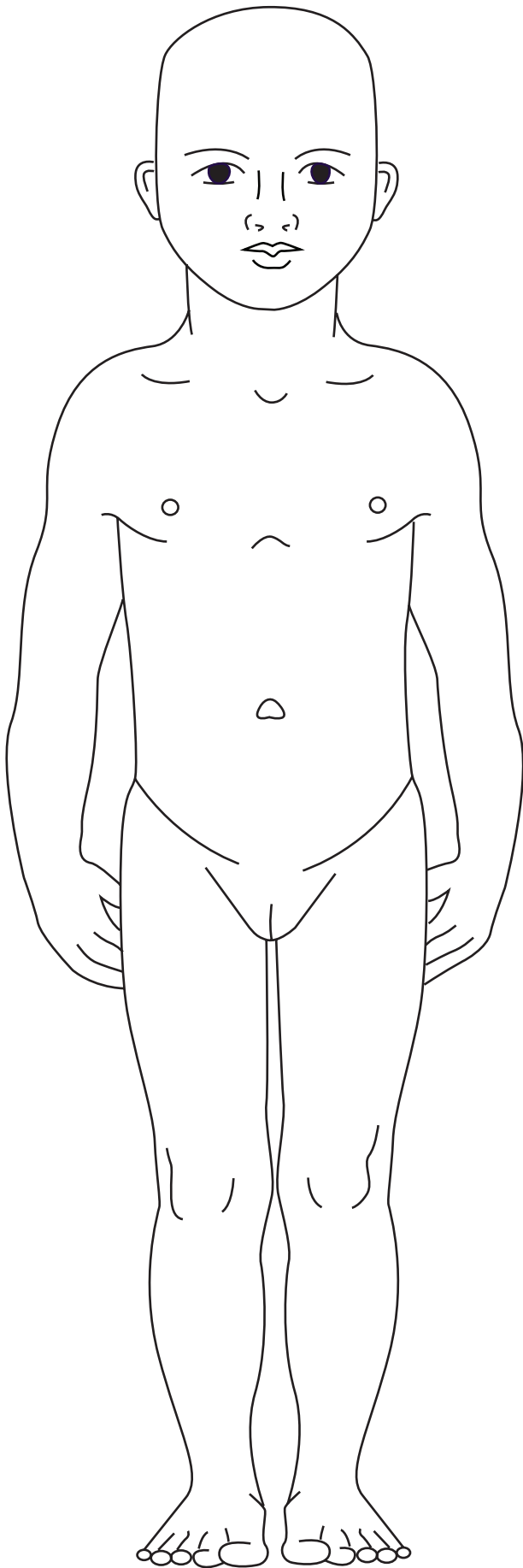
**Numerically mark each finding (1, 2, 3...) and provide a detailed description.**



**Patient's Name:** \_\_\_\_\_

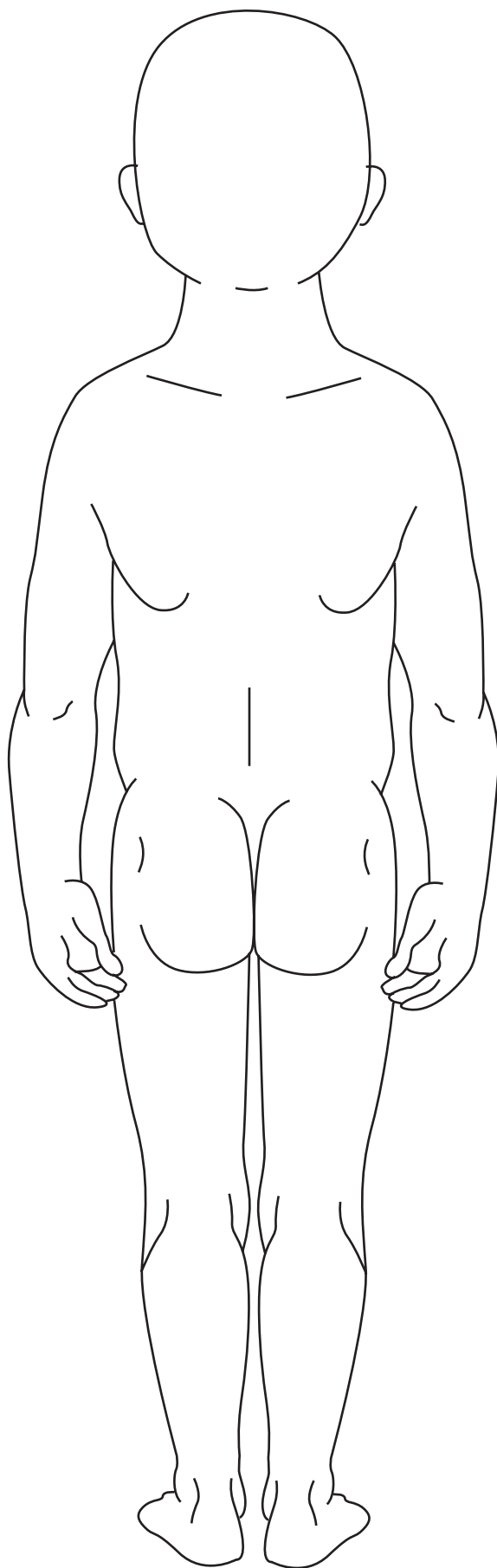
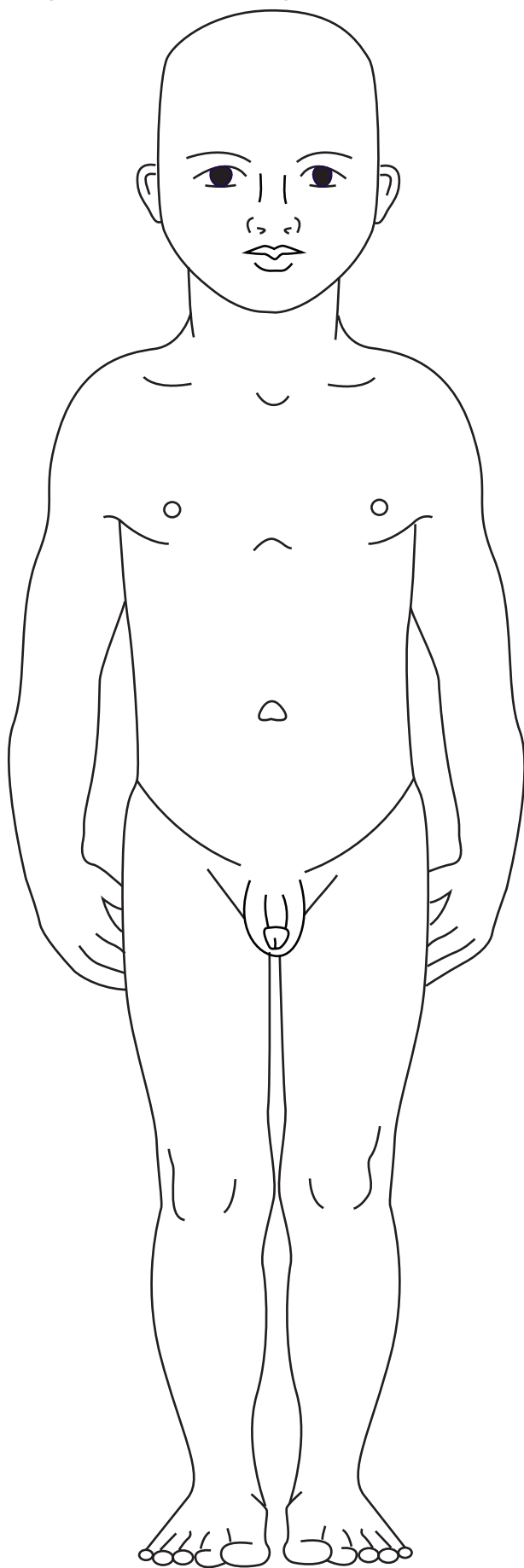
**Patient's Name:** \_\_\_\_\_

**Numerically mark each finding (1, 2, 3...) and provide a detailed description.**



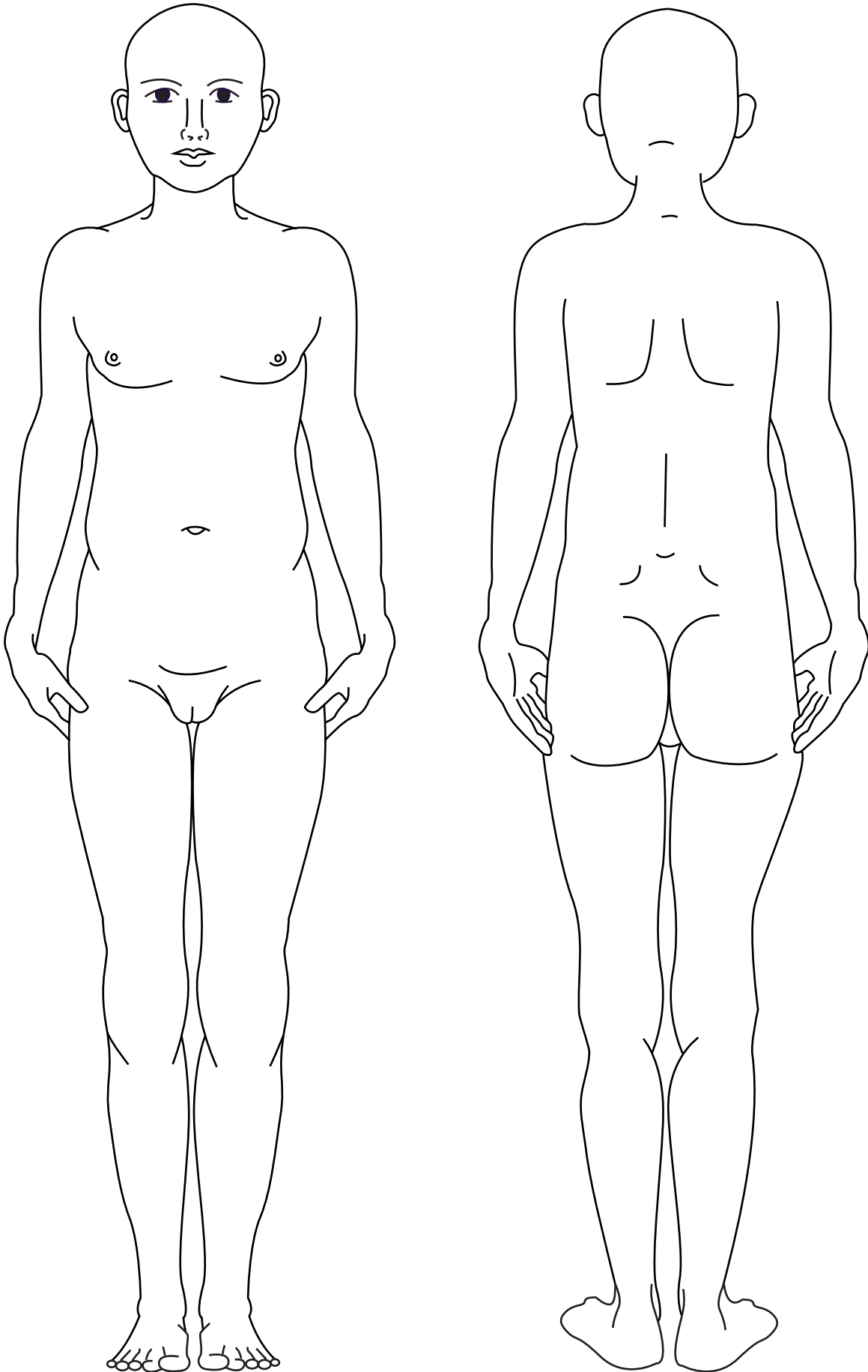
**Patient's Name:** \_\_\_\_\_

**Numerically mark each finding (1, 2, 3...) and provide a detailed description.**



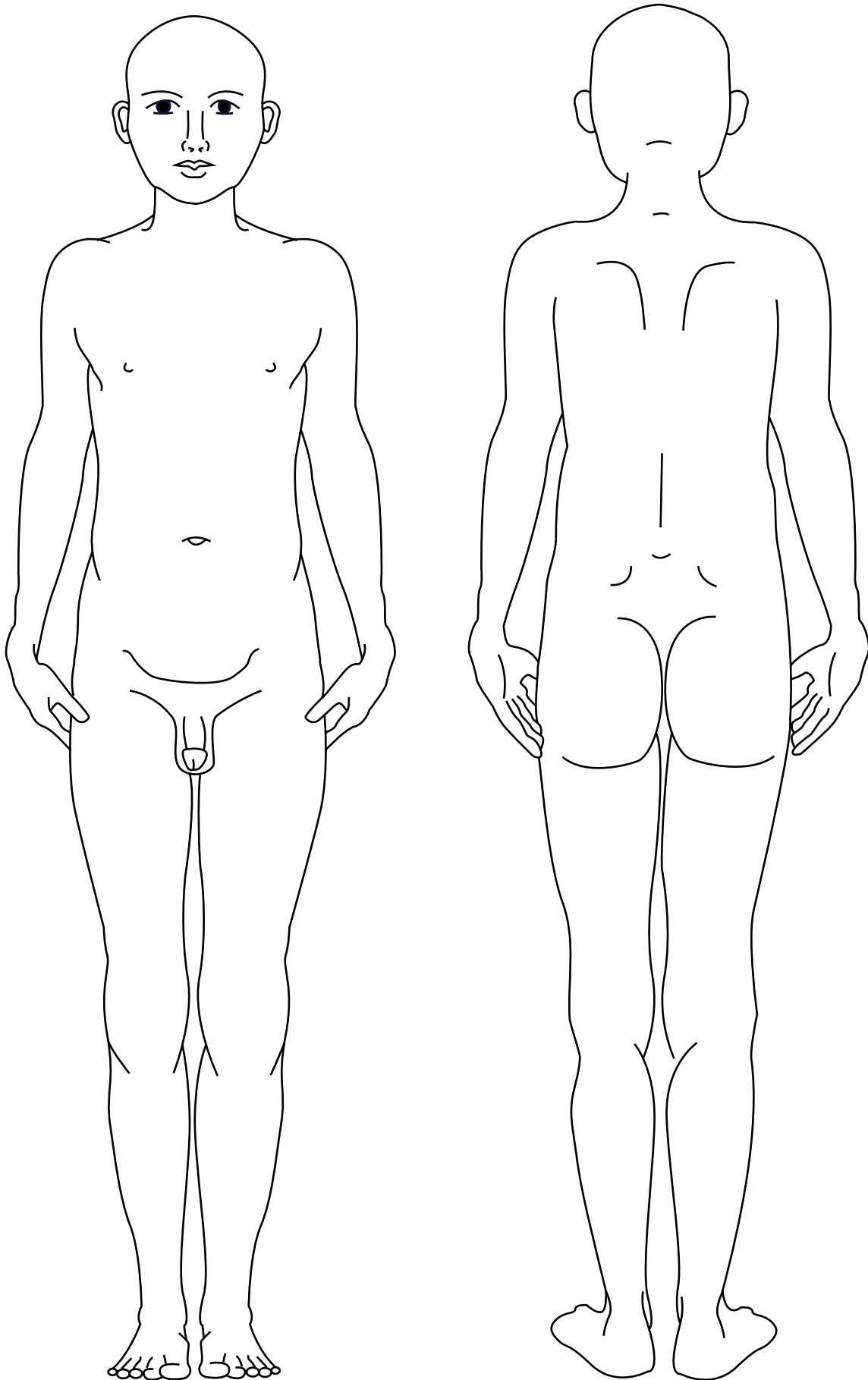
**Patient's Name:** \_\_\_\_\_

**Numerically mark each finding (1, 2, 3...) and provide a detailed description.**



**Patient's Name:** \_\_\_\_\_

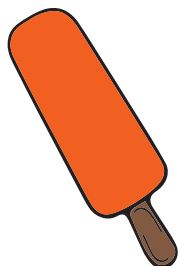
**Numerically mark each finding (1, 2, 3...) and provide a detailed description.**





# PEDIATRIC STRANGULATION DISCHARGE INSTRUCTIONS

Because your child has reported being “**choked**” or **strangled**, we are providing you with the following instructions:



**Consider a small ice pack to the neck area for relief of pain.  
Offer popsicles or offer fluids that are cooling to the throat. Kids like this.  
Make sure someone is with your child for the next 24-48 hours.**

**Please report to the nearest **ER** or call **911 immediately** if you notice the following symptoms or changes in your child:**

- Difficulty breathing or shortness of breath
- Loss of consciousness or “passing out”
- Changes in your child’s voice or difficulty speaking
- Difficulty swallowing, lump in throat, or muscle spasms in throat or neck
- Tongue swelling and/or drooling
- Swelling to throat or neck, new, worsening or persisting throat pain (“My throat still hurts”)
- Prolonged nose bleed (greater than ten minutes)
- Continues to cough or coughing up blood
- Continues to vomit or vomiting up blood
- Left or right-sided weakness, numbness, or tingling (child cannot use arm or leg)
- New or Worsening headache
- Seizures (Abnormal, rhythmic or shaking movements)
- Behavioral changes or memory loss
- Thoughts of harming self or others ie: (“I do not want to live”) (“I am going to hurt him”)

**It is important that the above symptoms be evaluated by a physician.**

After your child’s evaluation, keep a list of any changes in symptoms for your child’s physician and law enforcement.

**If symptoms worsen, report to your child’s physician or nearest ER.** You should follow-up with law enforcement regarding documentation of any and all information about your child’s symptoms.

**It is important that you have a follow-up medical screening in 1-2 weeks at the clinic or with your child’s physician.** Make sure to bring these discharge instructions with you.

**IF** you misplace these instructions call \_\_\_\_\_ or your provider for a copy.

I have been made aware of and understand the importance of following the above outlined instructions.

\_\_\_\_\_  
Patient/Parent Signature

1 copy patient file

\_\_\_\_\_  
Provider Signature

1 copy patient

\_\_\_\_\_  
Date

# STRANGULATION and/or SUFFOCATION DISCHARGE INFORMATION

Because you have reported pressure applied to your neck and/or difficulty breathing, we are providing you with some important discharge information.

- After a choking, strangulation and/or suffocation assault, victims can experience **delayed symptoms** of internal injuries.
- Symptoms of internal injuries may appear quickly or develop over a few days after the event. **Internal injuries can be serious and even fatal.**

- It is important that someone you trust stays with you for the **next 24–72 hours** to help you monitor your signs and symptoms.
- We recommend you keep a **list of your symptoms** to share with your healthcare provider and advocate.

*(Internal) The individual filling out the form should check off items discussed with the patient as part of their discharge. Written discharge instructions should be provided to all patients.*

**Please check all the following actions that apply:**

- |   |   |
|---|---|
| <input type="checkbox"/> Reviewed after-care instructions and strangulation warning signs | <input type="checkbox"/> Referred to primary care in _____ days for follow up |
| <input type="checkbox"/> Provided resource handouts and phone numbers                     | <input type="checkbox"/> Other: _____   |
| <input type="checkbox"/> Safety plan reviewed   | _____   |

The **NATIONAL DOMESTIC VIOLENCE HOTLINE** number is **1-800-799-SAFE (3722)** or get help without saying a word at <https://www.thehotline.org/>

Please follow up with the crisis/advocacy center to talk to a confidential victim advocate about your **options and safety planning** by calling:

\_\_\_\_\_

If you have questions about your **legal case**, please contact the police department, officer involved, prosecutor or victim witness advocate by calling:

\_\_\_\_\_

\_\_\_\_\_  
**Name of Forensic Nurse**

\_\_\_\_\_  
**Office Phone**



# EMERGENCY CARE REQUIRED

If you notice any of the following symptoms, you should **CALL 911**  
or go right away to the nearest **EMERGENCY ROOM**:

- Difficulty breathing
- Persistent cough or coughing up blood
- Loss of consciousness or “passing out”
- Changes in your voice, difficulty speaking, or understanding speech
- Difficulty swallowing, feelings of a lump in your throat or a muscle spasm in your throat or neck
- Swelling to your throat, neck, or tongue
- Increased neck pain
- Drooping eyelid
- Weakness, numbness or tingling on the left or right side of your body
- Difficulty walking
- Headache, not relieved by pain medication
- Dizziness, lightheadedness or changes in vision
- Seizures
- Behavioral changes, memory loss, or confusion
- If you are having thoughts of harming yourself or others



If you are **PREGNANT**, report any of the following symptoms to your doctor **IMMEDIATELY**:

- Decreased baby movement
- Stomach pain
- Vaginal spotting or bleeding
- Contractions

## NORMAL REACTION

Sometimes the **PHYSICAL SYMPTOMS** of a traumatic event are:

- Trembling or shaking
- Stomach tightening or churning
- Pounding heart
- Feeling dizzy or faint
- Rapid breathing
- Cold sweats
- Lump in throat; feeling choked up
- Racing thoughts



Call the **CRISIS CENTER** or **A FRIEND** to talk about your emotions and feelings.



If you notice some **bruising or mild discomfort**,  
apply ice to the sore areas for **20 minutes** at a time, **4 times** per day, for the first **2 days**.

If you go to the **EMERGENCY ROOM**,  
**TAKE THIS PAPER WITH YOU** and refer personnel to:

<https://www.familyjusticecenter.org/resources/recommendations-medicalradiographic-evaluation-acute-adult-non-fatal-strangulation/>



# STRANGULATION/SUFFOCATION INVESTIGATIVE WORKSHEET

AGENCY NAME \_\_\_\_\_

## VICTIM/OFFENDER/WITNESS INFORMATION

## REPORT NUMBER: \_\_\_\_\_

Victim's name: \_\_\_\_\_ DOB: \_\_\_\_\_

Offender's name: \_\_\_\_\_ DOB: \_\_\_\_\_

Relationship: \_\_\_\_\_ Length of relationship: \_\_\_\_\_ Relationship status? \_\_\_\_\_

History of D.V.: \_\_\_\_\_

Is there an active Order of Protection? ☐ Yes ☐ No ☐ Unsure If so, issue date: \_\_\_\_\_ Court: \_\_\_\_\_

Who else was present during the attack? \_\_\_\_\_

Who have you called, texted or spoken with about this incident? \_\_\_\_\_

## MEDICAL

Was the victim transported to the hospital? ☐ Yes ☐ No Transporting EMS: \_\_\_\_\_

Name of Hospital: \_\_\_\_\_ Medical Professional: \_\_\_\_\_

Medical Release obtained? ☐ Yes ☐ No Is the victim pregnant? ☐ Yes ☐ No If so, how far along? \_\_\_\_\_

Recent Hospital, ER, or Urgent Care visits? \_\_\_\_\_

## MANNER AND METHOD OF STRANGULATION/SUFFOCATION

One Hand (L or R) Two Hands Forearm Knee/Foot Strangulation Hold

Object over Nose & Mouth (Manual or Object) Ligature Pressure to Chest/Abdomen

Other: \_\_\_\_\_

Duration the victim was strangled/suffocated: \_\_\_\_\_ Sec. \_\_\_\_\_ Min. \_\_\_\_\_ Unsure Did it happen multiple times? ☐ Yes ☐ No ☐ Unsure

Do you have pain now? ☐ Yes ☐ No Describe: \_\_\_\_\_

Were you simultaneously shaken while being strangled? ☐ Yes ☐ No ☐ Unsure Was your head hit in any way? ☐ Yes ☐ No ☐ Unsure

Pressure exerted on your neck/nose/mouth (1=Weak - 10=Very Strong): \_\_\_\_\_ Did you lose of consciousness? ☐ Yes ☐ No ☐ Unsure

Extent of pain experienced during strangulation/suffocation (1=Weak - 10=Very Strong): \_\_\_\_\_

Have there been prior incidents of strangulation/suffocation? ☐ Yes ☐ No If Yes, how many times? \_\_\_\_\_

Describe: \_\_\_\_\_

## VICTIM'S BREATHING:

Was there a time when you could not talk or scream while being strangled? ☐ Yes ☐ No Was it difficult for you to breathe? ☐ Yes ☐ No

Describe your ability to breathe (1=Normal-10=Unable to breathe): \_\_\_\_\_ Pain while breathing? ☐ Yes ☐ No Shallow breathing? ☐ Yes ☐ No

Any other changes to your breathing? ☐ Yes ☐ No Clearing of the throat? ☐ Yes ☐ No Rapid breathing? ☐ Yes ☐ No

## INTENTION/OFFENDER MENTAL STATE

What did the offender say during/after the attack? \_\_\_\_\_

What did you think was going to happen to you? \_\_\_\_\_

What caused the attack to stop? \_\_\_\_\_

Describe the offender's demeanor and facial expressions during the attack: \_\_\_\_\_

## INVESTIGATIVE/CRIME SCENE/ADVOCACY

☐ Lethality/Risk/Danger Assessment completed ☐ DV Forensic Exam completed by a Forensic Nurse Examiner

☐ Does the Offender have access to firearms? ☐ Yes ☐ No Location of firearms: \_\_\_\_\_ Firearms seized? \_\_\_\_\_

☐ Photographs of all Injuries and physical evidence: ☐ Victim ☐ Suspect ☐ Scene(s). Taken by: \_\_\_\_\_

☐ Audio Recordings of all interviews ☐ Body-worn Camera Recording ☐ DV Pamphlets/Crisis/Referral Information given to the victim

☐ Evidence Collection (ligature, weapon, soiled clothing, surveillance videos, cell phone messages/voice recordings, etc.)

☐ Detective notified or responded: \_\_\_\_\_ Victim Advocate notified: \_\_\_\_\_

strangulationtraininginstitute.com | institute@allianceforhope.com | (888) 511-3522

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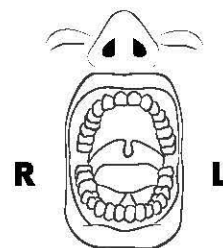
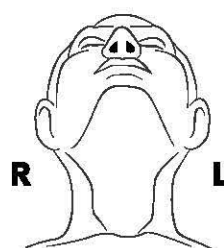
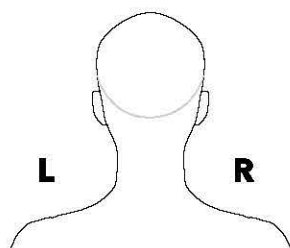
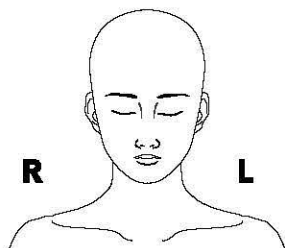
**SYMPTOMS** (mark/annotate all that apply)

SYMPTOMS	DURING	AFTER	UNSURE	NO	DESCRIPTION
Headache					
Dizziness/Feel Faint					
Disoriented					
Loss or changes in vision					
Loss or changes in hearing					
Raspy/Hoarse Voice					
Difficulty Speaking					
Unable to Speak					
Painful to Swallow					
Trouble Swallowing					
Sore Throat					
Neck Pain					
Coughing					
Nausea					
Vomiting/Dry Heaving					
Physical Pain					
*Involuntary Urination					
*Involuntary Defecation					
Other					

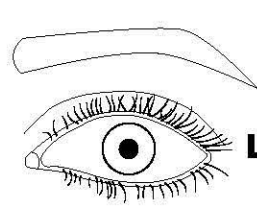
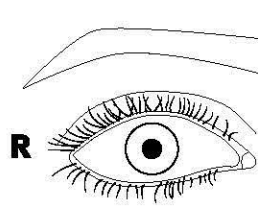
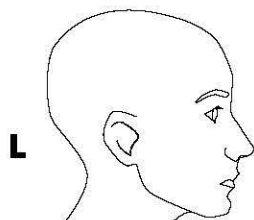
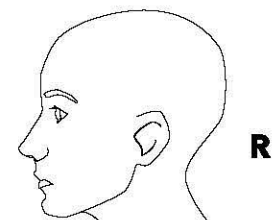
**\*Is the victim wearing the same clothes that they were wearing during the attack? Did they change clothes?**

**VISIBLE SIGNS** (mark/annotate all that apply)

NECK			HEAD	
Redness or Bruising	Location:		Bumps	Hair pulled
Scratches/Abrasions	Impression marks	Location:	Petechiae on scalp	Hair missing
Ligature Marks	Petechiae	Location:	Scratches/Abrasions	Laceration(s)
Describe:			Describe:	



CHEST	SHOULDERS	UNDER CHIN	MOUTH
Redness or Bruising	Redness or Bruising	Redness or Bruising	Swollen Lip(s)
Scratches/Abrasions	Scratches/Abrasions	Scratches/Abrasions	Abrasions/Lacerations
Laceration(s)	Laceration(s)	Laceration(s)	Swollen tongue
Describe:	Describe:	Describe:	Petechiae (palate)



FACE	EARS		NOSE	EYES & EYELIDS		
Redness or Flushed	Swelling		Scratches/Abrasions	Petechiae in eye(s)	Right	Left
Scratches/Abrasions	Bruising		Swelling	Petechiae on eyelid(s)	Right	Left
Petechiae	Petechiae	Right	Nasal fracture	Blood in eyeball(s)	Right	Left
Bruising	Bleeding from ear(s)	Right	Petechiae	Orbital fracture(s)	Right	Left



Being strangled (choked) could end your life within 4 minutes

# LET'S CREATE YOUR **SAFETY PLAN**

**"NOW IS THE TIME  
TO TELL WHAT HAPPENED"**

SURVIVOR

This informational brochure was created by  
The Institute on Strangulation Prevention, a program of Alliance for HOPE International  
[strangulationtraininginstitute.com](http://strangulationtraininginstitute.com)



**W**hen domestic violence perpetrators strangle (choke) their victims, this is a crime. Strangulation can be charged as a felony assault and could be considered attempted homicide.

Strangulation is an ultimate form of power and control, where the batterer demonstrates control over the victim's next breath, having devastating psychological effects and a potentially fatal outcome.

**A SMALL AMOUNT OF PRESSURE AROUND THE NECK CAN RESULT IN A LOSS OF CONSCIOUSNESS IN 6.8 SECONDS. DEATH CAN OCCUR WITHIN 62 SECONDS ALL THE WAY TO 152 SECONDS. TO LEARN MORE VISIT [youtube.com/watch?v=\\_i79\\_xdEgK8](https://www.youtube.com/watch?v=_i79_xdEgK8)**

Victims of non-fatal strangulation are at a higher risk of being re-assaulted by their abuser/perpetrator and **750%** more likely of being killed by their abuser. If the abuser/perpetrator has access to firearms the risk of being killed increases to **1100%**.

## Safety **BEFORE** Strangulation

- Educate yourself on the seriousness of strangulation.
- If your abuser/perpetrator has threatened to strangle, choke or suffocate you in the past, take it seriously.
- If your abuser/perpetrator talks about using strangulation/choking during sex or as "play," take this seriously for the health reasons mentioned previously.
- If strangulation is imminent try to remove scarves, jewelry, loose strings or cords that could be easily used to strangle you.
- If possible, avoid rooms like the bedroom, and bathroom where the risk for suffocation by pillow or drowning may increase.
- If comfortable, learn self-defense strategies to try to stop your abuser/perpetrator from strangling, like pressing your chin to your chest to block hands/arms from tightening and kneeing the abuser/perpetrator in the groin.
- If you can sense abuse coming, then you can try to manage it by implementing your safety plan (i.e. leave the home, tell someone you trust, ask someone to check on you, leave the room etc.)
- Remain calm and trust your judgment.
- If you have more questions connect with a victim advocate for additional support and safety planning.
- Keep this document in a safe place away from the abuser/perpetrator.

## Safety **DURING** Strangulation

- Comply with abuser/perpetrator if necessary to stay alive.
- Leave if possible. Your life is at risk.
- Keep pressure off at least one side of your neck in order to keep from losing consciousness.
- If the abuser/perpetrator relaxes their hold, try to escape if you can.
- Trust your instincts, whether fighting back or not is most effective.

Often survivors are reluctant to tell anyone about the abuse.

However, **IF SOMEONE HAS STRANGLED/CHOKED YOU, OR IF ANYONE HAS EVER CAUSED YOU TO BE UNABLE TO BREATHE, YOU MUST SHARE THIS PIECE OF YOUR STORY; IT IS MOST IMPORTANT TO TELL BECAUSE IT CAN SAVE YOUR LIFE.**

## Safety **AFTER** Strangulation

- Get away immediately, call for help, and go to a safe place.
- Seek immediate medical attention.....**IT MAY SAVE YOUR LIFE!**
- Know that you are not alone and there is **HOPE FOR A BRIGHTER FUTURE.**
- If you go to the hospital, tell the doctor/nurse you were strangled and request a CTA scan.
- Give your medical provider the Medical Assessment Card in order to get a complete medical exam.
- Do not be left alone for at least 48 to 72 hours after a strangulation assault.
- Take photos of your injuries immediately and/or few days afterwards.
- Do not be embarrassed if there was involuntary urination or defecation, as this is a symptom of strangulation.
- Do not wash your clothes (which could be evidence).
- It is important to **FULLY** explain to your medical provider everything that happened to you, and to follow up after your initial appointment.
- Follow up with an Advocate for appropriate safety planning and additional resources and support.



**USE THE CHART BELOW TO KEEP TRACK OF YOUR SIGNS, SYMPTOMS AND ANY OTHER SENSATIONS. IF YOU ARE UNABLE TO MONITOR ON YOUR OWN, ASK SOMEONE CLOSE TO YOU TO DO IT FOR YOU.**  
Please request the Facts of Strangulation brochure or download it at [www.familyjusticecenter.org/wp-content/uploads/2017/11/Facts-Victims-of-Strangulation-Choking-Need-to-Know-Brochure-2017.pdf](http://www.familyjusticecenter.org/wp-content/uploads/2017/11/Facts-Victims-of-Strangulation-Choking-Need-to-Know-Brochure-2017.pdf)

MONITOR AND JOURNAL SIGNS, INCLUDE DATE/TIME	
Date/Time	Sign(s)
MONITOR AND JOURNAL SYMPTOMS, INCLUDE DATE/TIME	
Date/Time	Symptom(s)
MONITOR AND JOURNAL OTHER SENSATIONS, INCLUDE DATE/TIME	
Date/Time	Other Sensations

NAME AND PHONE NUMBERS OF WHO TO CALL FOR HELP/SUPPORT	
Name	Phone/Email



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domestic  
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Over 2 million  
survivors and  
professionals  
served annually.



DomesticShelters.org  
talks about  
the important things  
we need to know.  
- DV Advocate, Wyoming



The leading online source  
of domestic violence information and resources.



#### Find Shelters and Programs

The first and largest  
searchable database  
of agencies, programs  
and shelters in the U.S.  
and Canada.

#### Resources and Education

The leading online  
library of domestic  
violence education,  
information, news  
and tools.

#### Free Professional Tools

Expert webinar training  
helps professionals serve  
their clients even better.

Automate donation  
purchasing and delivery  
via the Wishlist Platform.

#### Purple Ribbon Awards

The first comprehensive  
awards program  
honoring the countless  
heroes of the domestic  
violence movement.

DomesticShelters.org strives to be  
the catalyst that those experiencing abuse  
need for positive change.

ALLIANCE for  
**HOPE**  
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DomesticShelters.org is a program of Alliance for HOPE International  
allianceforhope.com





# THE TRAINING INSTITUTE ON STRANGULATION PREVENTION

## THE TRAINING INSTITUTE ON STRANGULATION

**PREVENTION** (Institute) is a program of Alliance for HOPE International. The Institute was launched with support from the United States Department of Justice, Office on Violence Against Women. The Institute provides consulting, training, resources, and support services to professionals working in the fields of domestic violence and sexual assault.

**OUTCOMES** from past training sessions reflect an increased awareness in cases involving strangulation; improved documentation and investigation of strangulation cases; increased prosecution of strangulation cases; and increased offender accountability and victim safety.

The Institute trains over 48,000 professionals per year on Domestic Violence and Sexual Assault Strangulation Crimes.

## NATIONAL ADVISORY BOARD AND COMMITTEES

for the Institute include 93 experts, physicians, nurses, law enforcement officers, prosecutors, advocates, researchers and trainers from the United States.

## WHAT PAST ATTENDEES ARE SAYING:

*"This course was fantastic! I would attend again and will recommend to anyone in my field."*

*"I truly enjoyed the experience and I will take with me what I learned for a lifetime."*

*"Excellent information with engaging presenters - you can see/hear/"feel" the passion of the speakers, which always makes for a great day!"*

*"This is the most important and relevant information out there for our law enforcement, judges, children services, doctors, prosecutors, nurses, and social workers - we need to work as a team instead of against each other!"*

*"The most dangerous domestic violence offenders strangle their victims. They are more likely to kill police officers, kill children, and kill their partners."*

Casey Gwinn, President, Alliance for HOPE International

**STRANGULATION** has been identified as one of the most lethal forms of domestic violence and sexual assault: unconsciousness may occur within seconds and death within minutes. When domestic violence perpetrators choke (strangle) their victims, not only is this felonious assault, but it may be an attempted homicide. Strangulation is an ultimate form of power and control where the batterer can demonstrate control over the victim's next breath: it may have devastating psychological effects or a potentially fatal outcome.

The Institute provides training, technical assistance, education programs, a directory of national trainers and experts, and a clearinghouse of all research related to domestic violence and sexual assault strangulation crimes.

*"The lack of visible injuries and the lack of training caused the criminal justice system to minimize strangulation. But now we know it is lethal."*

Gael Strack, CEO, Alliance for HOPE International

## THE GOALS OF THE INSTITUTE ARE TO:

Enhance the knowledge and understanding of professionals working with victims of domestic violence and sexual assault who are strangled;

Improve policy and practice among the legal, medical, and advocacy communities;

Maximize capacity and expertise;

Increase offender accountability; and ultimately

Enhance victim safety.



survivor resources

[strangulationtraininginstitute.com/survivor-resources/](http://strangulationtraininginstitute.com/survivor-resources/)

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[strangulationtraininginstitute.com/training/](http://strangulationtraininginstitute.com/training/)



training