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Releasing the Stranglehold on Domestic Violence Victims: Implications and Effects of Rhode Island's Domestic Assault Strangulation Statute¹

Nicole Verdi*

I. INTRODUCTION

Strangulation is “one of the most lethal forms of violence” used by men against their intimate partners.² “Strangulation symbolizes an abuser’s power and control”; “the victim is

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1. Title courtesy of Tom Pagliarini.

2. Casey Gwinn & Gael Strack, *Background Information for a California Strangulation Statute*, NATIONAL FAMILY JUSTICE CENTER ALLIANCE: STRANGULATION TRAINING INSTITUTE (Jan 2011), <http://www.familyjusticecenter.org/Strangulation/Strangulation%20White%20Paper%20NFJCA%202010.pdf>. This article focuses on strangulation where the perpetrator is a male and the victim is a female, as the majority of studies and research has shown that a majority of domestic violence related strangulations occur where the male is the perpetrator and the female is the victim. *See id*; *see also* Gael B. Strack & George McClane, *How To Improve Your Investigation and Prosecution of Strangulation Cases* [hereinafter *How To Improve Strangulation Cases*], http://www.ncdsv.org/images/strangulation_article.pdf (last visited Mar. 20, 2013).

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completely overwhelmed . . . vigorously struggles for air, and is at the mercy of the abuser.”³ “A single traumatic experience of strangulation . . . [can] instill so much fear” in a victim that she can “get trapped in a pattern of control by the abuser.”⁴ What makes domestic partner non-fatal strangulation even more scary and deadly than other forms of domestic violence is that women who have been non-fatally strangled by their intimate partners are substantially more likely to be killed by that same partner. Thus, non-fatal strangulation has become a precursor to death for these victims, and because non-fatal strangulation is difficult to find, see, and prove, non-fatal strangulation is often undetected by law enforcement officials.⁵

This article examines a revision made to Rhode Island domestic violence law in 2012 when the crime of strangulation became classified as a felony,⁶ suggests that the new law is a necessary step for Rhode Island domestic violence law, and proposes practical methods for law enforcement and prosecutors to successfully utilize and enforce this strangulation statute.⁷ Section II provides relevant background information, including a brief history of Rhode Island domestic violence laws and the rationale behind the need for a specific strangulation statute. Section III examines the language of the strangulation statute. Next, section IV identifies possible criticisms of the strangulation statute. Section V responds to those possible criticisms and identifies why the criticisms do not negate the positive effect of the strangulation statute. Section VI makes recommendations to ensure that the strangulation statute is as effective as possible in preventing and decreasing domestic violence strangulation and death. Finally, Section VII concludes that the strangulation statute is a great first step in the fight against domestic violence, and as the community becomes more aware of the severity of non-fatal domestic partner strangulation, domestic violence strangulation and death will hopefully decrease.⁸

3. *Strangulation Assaults in Domestic Violence Cases: Fact Sheet*, ORTNER-UNITY: THE CENTER ON FAMILY-VIOLENCE, available at http://www.sp2.upenn.edu/ortner/docs/factsheet_strangulation.pdf.

4. *See id.*

5. *See id.*

6. R.I. GEN. LAWS § 11-5-2.3 (2012).

7. *See* Gwinn et al., *supra* note 2.

8. *See* Nancy Glass, *Non-Fatal Strangulation Is an Important Risk*

II. BACKGROUND

A. History of Rhode Island Domestic Violence Law

Over the past thirty years, Rhode Island domestic violence law has evolved dramatically. In 1988, the Rhode Island legislature passed the Domestic Violence Prevention Act (the “Act”).⁹ The purpose of the Act was to recognize the importance of domestic violence as a serious crime against society and to assure victims the maximum protection from abuse.¹⁰ Also, the Act established specific procedures for the criminal court system to handle domestic violence cases.¹¹ Some of those procedures included: mandatory arrests, victimless prosecutions, no contact orders, court advocates, and batterers’ intervention programs.¹² Further, the Act formed the Rhode Island Supreme Court Domestic Violence Training and Monitoring Unit (DV Unit), responsible for the development, printing, dissemination, and collection of the legislatively mandated Domestic Violence/Sexual Assault reporting forms to establish accurate data on the extent and severity of domestic violence, sexual assaults, and child molestation incidents, including arrests and non-arrests.¹³

Factor For Homicide of Women, 35 J. EMERG. MED. 329 (2008).

9. R.I. GEN. LAWS § 12-29 (1988).

10. See Domestic Violence Prevention Act, ch. 539, sec. 12, §12-29, 1988 R.I. Public Laws 1050.

11. See R.I. GEN. LAWS § 12-29 (1988).

12. See *id.* Rhode Island’s mandatory arrest law, §12-29-3(b)(1) states, “[w]hen a law enforcement officer responds to a domestic violence situation and has probable cause to believe that a crime has been committed, the officer shall exercise arrest powers.” R.I. GEN. LAWS § 12-29-3(b)(1). The Act also solidified that a prosecutor’s decision to charge a perpetrator with domestic violence shall not be dependent on consent of the victim, establishing, in writing, victimless prosecutions. R.I. GEN. LAWS § 12-29-3(b)(2). Section 12-29-8.1 established that all domestic violence and sexual assault protective orders must be filed in the Restraining Order No-Contact Order System (R.O.N.C.O) at the Attorney General’s Bureau of Criminal Identification (B.C.I.) unit and lists exactly what should be on the no-contact orders, as well as discusses the procedure for modifying and terminating the orders. R.I. GEN. LAWS § 12-29-8.1. Court advocates advise victims of their rights; assist victims in securing those rights; inform victims of protective orders; assist victims in obtaining protective orders; refer victims to shelter, counseling, and other social services; and monitor the justice system’s response to a treatment of victims of domestic violence. R.I. GEN. LAWS § 12-29-7.

13. *Domestic Violence Training and Monitoring Unit*, Rhode Island

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Rhode Island also created specific domestic violence laws relating to the Rhode Island Family Court and the Rhode Island District Court.¹⁴ The Domestic Abuse Prevention Act for the Family Court defined “domestic abuse” as:

the occurrence of one or more of the following acts between present or former family members, parents, stepparents, or persons who are or have been in a substantive dating or engagement relationship within the past one year in which at least one of the persons is a minor: (i) Attempting to cause or causing physical harm; (ii) Placing another in fear of imminent serious physical harm; or (iii) Causing another to engage involuntarily in sexual relations by force, threat of force, or duress[;] (iv) Stalking or cyberstalking.¹⁵

The Domestic Abuse Prevention Act also created Family Court protective orders, which allow victims to request and courts to grant temporary restraining orders, restraining orders, and orders requiring a defendant to vacate a household immediately.¹⁶ Similarly, Rhode Island created domestic abuse laws specific to Rhode Island District Courts.¹⁷ In the Rhode Island District Courts, “domestic abuse” is defined as abuse occurring between individuals who are living together or have a substantive dating relationship, and the courts looks to numerous factors when

Judiciary (October 27, 2012) <http://www.courts.ri.gov/publicresources/domesticviolenceunit/default.aspx>. This law mandated that all law enforcement responding or investigating any domestic violence or sexual assault must complete a Domestic Violence/Sexual Assault reporting form and deliver it to the DV Unit so that the information can be entered into a database, which provides statistics to be used by law enforcement and for research. *Id.*

14. See R.I. GEN. LAWS § 15-15 (2006) and R.I. GEN. LAWS § 8-8.1 (2006). The Rhode Island Family Court “has jurisdiction to hear and determine all petitions for divorce and any motions in conjunction with divorce proceedings”; petitions regarding support for parents and children; “matters relating to delinquent, wayward, dependent, neglected, abused, or mentally deficient or mentally disordered children”; matters relating to “adoptions, child marriages, paternity proceedings”; and matters involving *domestic relations*. *About The Family Court*, R.I. JUDICIARY, <http://www.courts.ri.gov/Courts/FamilyCourt/PDFs/AbouttheFamilyCourt.pdf> (last visited November 2, 2012) (emphasis added).

15. R.I. GEN. LAWS § 15-15-1 (2006).

16. See R.I. GEN. LAWS § 15-15-3 (2006); R.I. GEN. LAWS § 15-15-4 (2006).

17. R.I. GEN. LAWS § 8-8.1-1 (2006).

determining if a relationship qualifies under domestic abuse laws.¹⁸ Laws such as this one help victims of domestic violence, not only by specifically defining “domestic abuse,” but by providing victims with mechanisms to further protect themselves from abuse.¹⁹

Rhode Island continued to develop additional laws to protect victims and prosecute abusers of domestic violence. In 1992, the legislature made stalking a crime.²⁰ The purpose of criminalizing stalking was “to eliminate behaviors which disrupt normal life for [a] victim, and to prevent such behaviors from escalating into violence” by “criminaliz[ing] certain acts of harassment in order to prevent more serious violent conduct.”²¹ Rhode Island, recognizing that offline stalking statutes were inadequate to deal with cyberstalking, made cyberstalking a crime in 2001, focusing on the victim’s fear rather than the perpetrator’s actions.²²

18. *Id.* The statute specifically states that “domestic abuse” is:

The occurrence of one or more of the following acts between cohabitants or against the minor child of a cohabitant, or the occurrence of one or more of the following acts between persons who are or have been in a substantive dating or engagement relationship within the past one year or against a minor child in the custody of the plaintiff; ‘domestic abuse’ shall be determined by the court’s consideration of the following factors: (i) The length of time of the relationship; (ii) The type of relationship; (iii) The frequency of the interaction between the parties; (iv) Attempting to cause or causing physical harm; (v) Placing another in fear of imminent serious physical harm; (vi) Causing another to engage involuntarily in sexual relations by force, threat of force, or duress; or (vii) Stalking or cyberstalking.

Id.

19. See R.I. GEN. LAWS § 8-8.1-3 (2006); R.I. GEN. LAWS § 8-8.1-4 (2006).

20. R.I. GEN. LAWS § 11-59-1 (2006).

21. Naomi Harlin Goodno, *Cyberstalking, A New Crime: Evaluating the Effectiveness of Current State and Federal Laws*, 72 MO. L. REV. 125, 128 (2007) (internal quotations omitted).

22. See R.I. GEN. LAWS § 11-52-4.2 (2006); see also Goodno, *supra* note 21, at 144, 146. Cyberstalking is “transmit[ting] any communication by computer or other electronic device to any person or caus[ing] any person to be contacted for the sole purpose of harassing that person or his or her family.” R.I. GEN. LAWS § 11-52-4.2. (Stalking, “harassing another person or willfully, maliciously and repeatedly following another person with the intent to place that person in reasonable fear of bodily injury,” requires a stalker have an intent to place another person in reasonable fear of bodily injury). See R.I. GEN. LAWS § 15-15-1. Cyberstalking does not require that specific intent element. See *id.*

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Additionally, Rhode Island made it illegal for health carriers to directly or indirectly engage in “an unfairly discriminatory act or practice against a subject of abuse.”²³ Previously, insurance companies had been denying health insurance coverage to patients who had been victims of domestic violence.²⁴ Advocates supporting domestic violence victims were worried that battered women would stop seeking help and stop reporting incidents to preserve necessary insurance coverage.²⁵ Thus, this Rhode Island law helps prevent battered women from having to forgo assistance and protection to remain insured or gain insurance.

Next, the Rhode Island legislature passed legislation to prevent employers from discriminating against victims of domestic violence during employment.²⁶ The legislature instituted employment protections, making it illegal to terminate a domestic violence victim due to the violence, and it provided benefits for victims if they leave a position for safety reasons.²⁷ Also, the Workplace Violence Protection Act allows an employer to file a restraining order for the place of business to protect an employee from a particular individual who has threatened or stalked an employee.²⁸ Further, over the past decade, Rhode Island has made strides to protect victims of domestic violence by passing legislation to protect their addresses in voting, child support, and Rhode Island Works records to make it more difficult for abusers to find and harm victims who have left a violent relationship.²⁹

Recently, the Rhode Island legislature passed a statute making strangulation a felony subject to a maximum penalty of ten years in jail.³⁰ This statute was passed in 2012 and is the

23. R.I. GEN. LAWS § 27-60-3 (2006).

24. Ariella Hyman, *Mandatory Reporting of Domestic Violence By Health Care Providers: A Policy Paper*, THE FAMILY VIOLENCE PREVENTION FUND (1997) at 11.

25. See Ellen J. Morrison, *Insurance Discrimination Against Battered Women: Proposed Legislative Protection*, 72 IND. L. J. 259, 260 (1996) (citing Monica C. Fountain, *Insurance Companies Hit Battered Women Too*, CHI. TRIB., June 4, 1995, sec. 6, at 1; Katharine Q. Seelye, *Insurability for Battered Women*, N.Y. TIMES, May 12, 1994, at A9).

26. See R.I. GEN. LAWS § 12-28-10; R.I. GEN. LAWS § 28-52-2.

27. See R.I. GEN. LAWS § 12-28-10.

28. See R.I. GEN. LAWS § 28-52-2.

29. See R.I. GEN. LAWS ANN. § 17-28-1 (2006); R.I. GEN. LAWS § 40-5.2-34 (2006); R.I. GEN. LAWS ANN. § 15-22-5 (2006).

30. See R.I. GEN. LAWS § 11-5-2.3 (2012).

focus of this article.³¹ The next section will discuss an in-depth analysis of the purpose, language, and consequences of strangulation statutes.

B. Purpose of Strangulation Statutes

As discussed more thoroughly below, to understand the purpose, determine the legislative intent, and assess the effectiveness of the strangulation statute passed in Rhode Island, one should understand what exactly strangulation consists of and how strangulation relates to domestic violence.³² Understanding this information provides necessary insight and background to shed light on the scary realities of non-fatal domestic partner strangulation.³³ Also, recognizing the different facets of domestic partner non-fatal strangulation provides a thorough foundation to appreciate the benefits of the new strangulation statute, as well as gauge the problems prosecutors and law enforcement officials may have when trying to utilize the new statute.³⁴

1. *What Is Strangulation?*

Generally, “strangulation . . . is produced by a constant application of pressure on the neck.”³⁵ More specifically, “strangulation is defined as a form of asphyxia (lack of oxygen) characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck.”³⁶ “Choking can refer to . . . the violent act of strangulation.”³⁷ Strangulation

31. *See id.*

32. *See generally* Ellen Taliaferro, Trevor Mills, & Sharon Walker, *Walking and Talking of Strangulation. Is There a New Epidemic? A Commentary*, 2 J. EMERG. MED. 293 (2001) [hereinafter *Walking and Talking Victims*].

33. *See id.*

34. *See* Allison Turkel, *Understanding, Investigating and Prosecuting Strangulation Cases*, THE PROSECUTOR, November/December 2007, at 20, 22-23.

35. Lee Wilbur, Michelle Higley, Hatfield, Zita Surprenant, Ellen Taliaferro, Donald J. Smith Jr. & Anthony Paolo, *Survey Results of Women Who Have Been Strangled While In An Abusive Relationship*, 21 J. EMERG. MED. 297, 298 (2001) [hereinafter *Survey Results*].

36. *See How To Improve Strangulation Cases*, *supra* note 2 (citations omitted).

37. George E. McClane, Gael B. Strack, & Dean Hawley, *A Review of 300 Attempted Strangulation Cases Part II: Clinical Evaluation of the Surviving*

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can be classified into four categories: (1) hanging strangulation, (2) ligature³⁸ strangulation, (3) manual strangulation, and (4) postural strangulation.³⁹ Strangulation by hanging involves the body being “suspended by a ligature of some sort.”⁴⁰ Ligature strangulation, also known as garroting, involves solely applying pressure by the ligature and not the weight of the body.⁴¹ Manual strangulation, also referred to as throttling, involves applying outside pressure by a hand or hands.⁴² Postural strangulation occurs “where the neck is placed over an object and the weight of the body applies pressure to the neck.”⁴³

A basic knowledge of the neck anatomy is critical to adequately understand the clinical features of a strangled victim.⁴⁴ The larynx is “made up of cartilage, not bone, and consists of two parts: the thyroid cartilage. . . and the tracheal rings.”⁴⁵ The carotid arteries, “the major vessels that transport oxygenated blood from the heart and lungs to the brain,” are at the side of the neck where a person would check for a pulse during cardio-pulmonary resuscitation (CPR).⁴⁶ The jugular veins transport deoxygenated blood from the brain back to the heart.⁴⁷ A victim of strangulation will lose consciousness if her carotid arteries are blocked, depriving the brain of oxygen; if the jugular veins are blocked, preventing deoxygenated blood from exiting the

Victim: Violence: Recognition, Management, and Prevention, 21 J. EMERG. MED. 311 (2011) [hereinafter *Part II*].

38. Merriam-Webster defines ligature as “something that is used to bind” and “the action of binding or tying.” *Ligature Definition*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/ligature> (last visited March 23, 2013).

39. See *Survey Results*, *supra* note 35, at 298. Another article categorized the four types of strangulation as: (1) hanging, (2) manual, (3) chokehold, and (4) ligature, thus, not including postural strangulation and separating chokehold as a different type of strangulation instead of including chokeholds as a type of manual strangulation. See Maureen Funk, Julie Schuppel, *Strangulation Injuries*, 102 WIS. MED. J. 41, 42 (2003).

40. *Survey Results*, *supra* note 35, at 298.

41. *Id.*

42. *Id.* “Almost all attempted or actual homicides by strangulation involve either ligature or manual strangulation.”; *How To Improve Strangulation Cases*, *supra* note 2, at 3.

43. *Survey Results*, *supra* note 35, at 298.

44. *How To Improve Strangulation Cases*, *supra* note 2, at 3.

45. *Id.*

46. *Id.*

47. *Id.*

brain; or if the airway is closed, causing the victim to be unable to breathe.⁴⁸

Pressure does not need to be severe as long as it is prolonged, because unconsciousness usually does not occur for several minutes.⁴⁹ The force required to compress the jugular veins is less than the force necessary to compress the carotids, and that is less than the force requisite to constrict the airway. The amount of force necessary, however, varies from person to person, “depending on [the] development of neck musculature[,] and the surface area for the application of force.”⁵⁰

Strangulation accounts for ten percent of all violent deaths annually in the United States.⁵¹ Of those ten percent, about ninety percent of those murders by strangulation are domestic violence related.⁵² However, as discussed below, strangulation does not always mean a victim is immediately killed.⁵³ Unfortunately, when dealing with domestic non-fatal strangulation, the odds a victim will eventually die increase dramatically, as studies have found non-fatal strangulation between intimate partners monumentally increases the likelihood a victim will be killed by their partner.⁵⁴ Thus, domestic non-fatal strangulation can be considered a prelude to death.⁵⁵ The section below discusses how domestic violence and the psychology behind domestic violence makes a perpetrator more likely to strangle an intimate partner and eventually kill that intimate partner.⁵⁶

48. *Id.*

49. See Dean A. Hawley, George E. McClane, & Gael B. Strack, *A Review of 300 Attempted Strangulation Cases Part III: Injuries in Fatal Cases*, 21 J. EMERG. MED. 317, 320 (2001) [hereinafter *Part III*].

50. See *id.* “If the force were applied over a very narrow surface area—a clothesline ligature as opposed to a broad belt, for example—then much less force would be necessary.” *Id.*

51. Memorandum from the Wisconsin Coalition Against Domestic Violence Legal Department: *Wisconsin Strangulation and Suffocation Law* (June 2008) available at http://www.wcadv.org/sites/default/files/resources/Wisconsin_Strangulation_Suffocation_Law.pdf

52. *Strangulation and Domestic Violence: Dynamics and Law*, Chicago Police Department (February 2010) available at <https://portal.chicagopolice.org/portal/page/portal/ClearPath/Communities/Domestic%20Violence/DomesticViolenceFeb10.pdf>.

53. See Glass, *supra* note 8.

54. See *id.*

55. See *id.*

56. See *Walking and Talking Victims*, *supra* note 32, at 293.

2. *Strangulation: As It Relates To Domestic Violence*

Strangulation “is a common means of domestic violence inflicted upon victims by their perpetrators.”⁵⁷ There are many views on why an abuser, specifically an intimate partner, would want to hurt someone he cares about.⁵⁸ One view is that strangulation is a way for an abuser to demonstrate power and control over a victim, as it puts an abuser in a position of power to prey on the person in the relationship who has less power.⁵⁹ An abuser uses strangulation to wear down and keep their victims “under his or her thumb.”⁶⁰ Another view is that abusers have “too little compassion” for themselves and others, and the abuse is a sign of an abuser self-destructing.⁶¹ Some believe that what makes a batterer turn to aggression is feeling disregarded, unimportant, accused, guilty, devalued, disrespected, rejected, powerless, inadequate, or unlovable.⁶² Thus, an abuser may strangle a victim to prove to an intimate partner he, the abuser, should be regarded highly, is important, has power, and deserves to be loved.⁶³

Over twenty years ago, physicians working in the area of intimate partner violence realized that victims survive manual strangulation more often than previously thought.⁶⁴ Since then, numerous studies and surveys have been conducted to determine the prevalence of strangulation in intimate partner violence.⁶⁵

In 1999, a San Diego district attorney and an emergency physician conducted a research study of 300 strangulation cases

57. *See id.*

58. *See* Hara Estroff Marano, *The Key to End Domestic Violence: Why Batters Harm the Person They Love*, PSYCHOLOGY TODAY, <http://www.psychologytoday.com/articles/200302/the-key-end-domestic-violence>: (Dec. 28, 2011); Strangulation Training Institute, *The Impact of Strangulation Crimes*, FAMILY JUSTICE CENTER ALLIANCE, <http://www.strangulationtraininginstitute.com/impact-of-strangulation-crimes.html> (last visited Dec. 21, 2012); *Understanding Domestic Violence and Abuse*, HELPGUIDE.ORG, http://www.helpguide.org/mental/domestic_violence_abuse_types_signs_causes_effects.htm (last visited Dec. 21, 2012).

59. *The Impact of Strangulation Crimes*, *supra* note 58.

60. *Understanding Domestic Violence and Abuse*, *supra* note 58.

61. Marano, *supra* note 58.

62. *See id.*

63. *See id.*

64. *Walking and Talking Victims*, *supra* note 32, at 294.

65. *See id.*; *Survey Results*, *supra* note 35, at 297.

submitted for misdemeanor prosecution to determine the signs and symptoms of attempted strangulation.⁶⁶ The study revealed, among other things, that police and prosecutors overlook symptoms of strangulation and rely too heavily on the visible signs of strangulation, which leads them to miss opportunities for higher level prosecution and for prevention of more severe victim abuse.⁶⁷ Of the 300 domestic violence cases involved in the study, 50% of the victims had no visible injuries and 35% of the victims had injuries too minor to photograph.⁶⁸ Non-visible signs of strangulation were often missed or overlooked by law enforcement officials and emergency room doctors, as battered women who have been strangled usually have a broad range of physical complaints but their injuries may not always appear serious.⁶⁹ Thus, victims usually receive only a cursory history and physical examination, if they were even taken to the hospital and seen by a doctor.⁷⁰

Unfortunately, even when signs or symptoms of strangulation are noticed, they can easily be misidentified as symptoms of other conditions.⁷¹ For example, subconjunctival hemorrhages⁷² can be diagnosed as pink eye; voice hoarseness can be attributed to a victim screaming during an argument with her partner; and hyperventilating may be a symptom of numerous pathological conditions secondary to a strangulation attempt.⁷³ Thus, it is difficult for law enforcement and medical professionals to detect strangulation, especially when an abuser uses intimidation and

66. See Gael B. Strack, George E. McClane, & Dean Hawley, *A Review of 300 Attempted Strangulation Cases Part I: Criminal Legal Issues*, 21 J. EMERG. MED. 303 (2001) [hereinafter *Part I*].

67. See *id.* at 308.

68. See *id.* The injuries are too minor to photograph, as they are not visible to the naked eye. See *id.*

69. See *id.* at 308; see *Part II, supra* note 37, at 312.

70. See *Part II, supra* note 37, at 312.

71. *Id.*

72. The conjunctiva, the outermost protective coating of the eyeball, is the thin, transparent membrane covering the white part of the eye and the inside of the eyelids. The conjunctiva contains nerves and many fragile small blood vessels, which are usually barely visible. When the walls of these veins break, subconjunctival hemorrhage occurs. A subconjunctival hemorrhage is commonly called "bleeding in the eye" and appears as a bright red or dark red patch in the eye. See *Subconjunctival Hemorrhage*, WEBMD.COM, <http://www.webmd.com/eye-health/bleeding-in-the-eye> (last visited Jan. 3, 2012).

73. See *Part II, supra* note 37, at 312.

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control techniques to ensure the victim does not volunteer any information about the strangulation to these professionals.⁷⁴

Because the horrors of intimate partner violence have been publicized more by women's rights agencies and domestic violence advocacy groups, more is now known about the signs and symptoms of strangulation.⁷⁵ Some of the most common signs and symptoms of domestic violence strangulation are as follows: voice changes; swallowing changes; breathing changes; mental status changes, including restlessness and combativeness; involuntary urination and defecation; miscarriage; swelling of the neck; lung injury, pneumonia and pulmonary edema can develop hours after strangulation; visible injuries to the neck, including scratches, abrasions, and scrapes; chin abrasions; ligature marks; petechiae;⁷⁶ subconjunctival hemorrhage; neurological findings, including facial droop, unilateral weakness, paralysis, or loss of sensation; and psychiatric symptoms, including memory problems, depression, suicidal ideation, insomnia, night-mares, and anxiety.⁷⁷ Unfortunately, some of these symptoms are not easily detectable, especially if the victim is not willing to discuss the incident and the injuries do not warrant being taken to a hospital or remaining in a hospital for longer than a few hours.

Furthermore, the statistics regarding domestic violence related strangulation are startling. Ten percent of all violent deaths in the United States are caused by strangulation.⁷⁸ Studies indicate that "33% to 47.3% [of] women report that their partner had tried to strangle them in the past year."⁷⁹ "Strangulation is a significant risk factor for attempted or completed homicide of women by their male [partners]."⁸⁰ Recent

74. *Strangulation Assaults: Fact Sheet*, *supra* note 3.

75. *See id.*; *Family Violence Strangulation in Texas: Know The Laws And How to Work With Survivors*. TEXAS COUNCIL ON FAMILY VIOLENCE, available at http://www.tcfv.org/pdf/resource-center-assets/Strangulation_Advocates.pdf

76. Petechiae are round spots that appear on the skin as a result of bleeding under the skin. *See Petechiae*, MAYOCLINIC.COM, <http://www.mayoclinic.com/health/petechiae/MY01104> (last visited Jan. 1, 2013).

77. *See* Maureen Funk & Julie Schuppel, *Strangulation Injuries*, 102 WIS. MED. J. 41, 43 (2003). [hereinafter *Strangulation Injuries*].

78. *Id.* at 41.

79. *See Strangulation Assaults: Fact Sheet*, *supra* note 3 (citations ommitted).

80. *Id.*

studies have found that 30-68% of women in abusive relationships have been strangled by their partners at some point in their relationship.⁸¹ Additionally, 87% of the incidents of non-fatal strangulation were accompanied by death threats.⁸² In fact, in one study, the odds of becoming a victim of attempted homicide increased by an incredible 800% for women who had been strangled by their partner.⁸³ Thus, victims of domestic violence non-fatal strangulation are much more likely to be eventually killed by their abuser.⁸⁴

As research on intimate partner violence and strangulation continues, the medical community is developing protocols to address the safety needs of victims.⁸⁵ Presently, healthcare officials should specifically ask about strangulation and try to identify non-lethal strangulation.⁸⁶ Hospital based domestic abuse/sexual assault programs are part of the growing trend to better treat victims.⁸⁷ High-quality programs usually have a written policy and procedure concerning assessment and treatment of domestic violence/sexual assault victims, mandated ongoing training on domestic violence/sexual assault, an interdisciplinary task force, posters and brochures displayed throughout the hospital, state wide referral information, follow-up contact and direct service programs, on-site victim advocacy services, and sexual assault nurse examiners for forensic evidence collection.⁸⁸ Healthcare officials have come to understand that victims of non-lethal strangulation are at a higher risk for additional severe abusive events; thus, providing follow-up services is vitally important.⁸⁹

Not only has the medical community realized the horrors of

81. Archana Nath, *Survival or Suffocation: Can Minnesota's New Strangulation Law Overcome Implicit Biases in the Justice System?*, 25 LAW & INEQ. 253, 268-69 (2007) [hereinafter *Survival or Suffocation*].

82. *Id.*

83. Gael B. Strack & Casey Gwinn, *On the Edge of Homicide: Strangulation as a Prelude*, 26 CRIM. J. 32, 34 (2011) (citation omitted).

84. *See id.*; see e.g., Jacquelyn Campbell, et al, *Risk Factors for Femicide in Abusive Relationships*, 93 AM. J. PUB. HEALTH 1089, 1095 (2003).

85. *See Strangulation Injuries*, *supra* note 7, at 43-44.

86. *See id.* at 45.

87. *See id.*

88. *See id.*

89. *See id.* at 45.

domestic non-fatal strangulation and instituted measures to better care and protect victims of domestic non-fatal strangulation, the political and legal community in the United States has also taken measures to prevent strangulation and protect victims.⁹⁰ Recently, Rhode Island decided to prevent and prosecute domestic non-fatal strangulation by passing legislation, making non-fatal domestic partner strangulation a felony.⁹¹ The next section of this article describes and analyzes that statute, concluding that the statute is a positive step forward for domestic violence victims and their families.

III. RHODE ISLAND'S STRANGULATION STATUTE

Over the past decade, the legal and political community worked together to combat intimate partner strangulation by enacting legislation that specifically targeted and addressed intimate partner strangulation.⁹² Since the early 2000's, numerous states have passed legislation making domestic violence strangulation a felony.⁹³ Rhode Island is currently one of over thirty states that passed legislation making domestic partner non-fatal strangulation a felony, bringing attention and awareness to the horrifying realities of the crime.⁹⁴ This section specifically analyzes the language of the Rhode Island statute, compares the language to that used in other similar state statutes, and discusses possible consequences of the strangulation statute.

A. Statutory Interpretation

The Rhode Island domestic assault strangulation statute (the "Statute") states:

11-5-2.3. Domestic assault by strangulation.

(a) Every person who shall make an assault or battery, or both, by strangulation, on a family or household member as

90. *See id.*

91. *See* R.I. GEN. LAWS § 11-5-2.3 (2012).

92. *See* Strack, *supra* note 83, at 69.

93. Turkel, *supra* note 34, at 22. Previously, in most states strangulation could be charged and prosecuted as merely a misdemeanor because of the usual lack of physical markings. *See id.*

94. Criminal Strangulation/Impeding Breathing Statutory Compilation For The United States And Its Territories (Jun. 2010), http://www.ncdsv.org/images/NDAA_Strangulation_Chart_2010.pdf.

defined in subsection 12-29-2(b), shall be punished by imprisonment for not more than ten (10) years.

(b) Where the provisions of “The Domestic Violence Prevention Act”, chapter 29 of title 12, are applicable, the penalties for violation of this section shall also include the penalties as provided in section 12-29-5.

(c) “Strangulation” means knowingly and intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person, with the intent to cause that person harm.⁹⁵

1. Scope

First, the Statute only applies to domestic relationships.⁹⁶ A domestic relationship is defined as, “family or household member” meaning spouses, former spouses, adults related by blood or marriage, adults residing together or who resided together in the past three years, people who have a child in common, and people who have been in a substantive dating or engagement relationship within the past year.⁹⁷ The Statute specifically enumerates three factors courts can consider when determining the status of a relationship between a victim and defendant.⁹⁸ Those three factors are: (1) the length of time of the relationship; (2) the type of relationship; and (3) the frequency of the interaction between the parties.⁹⁹ Thus, the Statute is generally inclusive and allows courts to include relationships that may not be specifically mentioned in the Statute.¹⁰⁰

95. R.I. GEN. LAWS § 11-5-2.3 (2012).

96. *See id.*

97. *See* R.I. GEN. LAWS § 12-29-2(b) (2006).

98. *See id.*

99. *See id.*

100. Many states that passed similar statutes to Rhode Island’s strangulation statute include similar language as to the scope of the Statute; they usually include language like “family or household member.” *See* IDAHO CODE ANN. § 18-923 (2012); MINN. STAT. ANN. § 609.2247 (WEST 2009); MO. ANN. STAT. § 565.073 (West 2012). However, some states, for example, Missouri, include children who are members of the family or household, as well as adults, in the scope of the strangulation statute. *See* § 565.073. It appears that under the Statute a court could find a child qualifies under the scope of this statute because the title specifically says “family . . . member” and listing those three factors allow a prosecutor to have leeway in charging a defendant with a crime under this statute. *See* R.I. GEN. LAWS § 11-5-2.3

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Next, the Statute states that every person who shall make an assault or battery, or both, by strangulation on the class mentioned above “shall be punished by imprisonment for not more than ten (10) years.”¹⁰¹ The Statute makes domestic partner non-fatal strangulation a felony in Rhode Island.¹⁰² Therefore, the Statute created a predictable penalty for the crime of domestic partner non-fatal strangulation.¹⁰³

3. *Definition of Strangulation Within the Statute*

The Statute defines strangulation as “knowingly and intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person, with the intent to cause that person harm.”¹⁰⁴ The crucial part of this strangulation definition is the last phrase, “intent to cause that person harm,” as this phrase allows perpetrators to be successfully prosecuted even if a perpetrator could prove he did not intend to kill a victim.¹⁰⁵ This definition also does not require a prosecutor demonstrate “serious bodily injury.” Recognizing the difficulty in providing physical

(2012). Also, there might be other statutes that specifically include children; thus, just because this statute does not specifically apply to a parent who strangles their child, that does not mean the government has no resources to prosecute that parent. Not only could the prosecutor possibly use the Statute, but, there are also other possible crimes that a prosecutor could charge the parent with, which may have more of a penalty than this statute. For example, a prosecutor could use assault with a deadly weapon, the hands being the deadly weapon. *See* R.I. GEN. LAWS § 11-5-1 (2002). Rhode Island also has other statutes and crimes that specifically work to protect children. Thus, even though the Statute does not specifically apply to children, the way the Statute was drafted children could be covered, and even if they are not, prosecutors still have resources at their disposal to punish a parent or any individual who strangled a child.

101. § 11-5-2.3.

102. *See id.*

103. *See id.* Previously, domestic partner non-fatal strangulation could have been prosecuted as multiple crimes with multiple sentencing schemes. *See* R.I. GEN. LAWS ANN. § 11-5-2; *States Cracking Down on Strangulation Attempts*, USATODAY.COM, May 13, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-05-13/strangulation-crackdown-law/54935268/1>.

104. § 11-5-2.3.

105. *See id.*

evidence that a victim suffered “serious bodily injury” after being strangled, the legislature focused on the perpetrators intent to impede breath or blood circulation.¹⁰⁶ Hopefully, the language used in the Statute will encourage medical professionals, law enforcement officials, and victims to work together to ensure the evidence is present and preserved to prove strangulation occurred.¹⁰⁷

It appears the Statute was passed by Rhode Island’s legislature, like many other states’ legislatures, in response to research and surveys conducted on the prevalence of domestic partner non-fatal strangulation and a determination that non-fatal domestic partner strangulation is a precursor to death for many victims.¹⁰⁸ The Statute was the mechanism that the Rhode Island legislature chose to take to prevent and deter the crime of non-fatal strangulation.¹⁰⁹ Because the Statute was just recently passed in 2012, it is unclear if the Statute will have its intended effect.¹¹⁰ To determine the effectiveness of the Statute, the next section of this article analyzes the possible consequences the Statute will have in Rhode Island by comparing the Statute with similar statutes passed previously in other states.

B. Consequences

As the Statute was just recently passed on June 19, 2012, not enough time has gone by for the legal community and domestic violence advocacy community to study the effects of this law. However, as Rhode Island is one of over thirty states to pass this type of statute, numerous other states’ strangulation laws have been studied and analyzed.¹¹¹ Therefore, Rhode Island can hypothesize on what is to be expected by looking at the effect other states’ similar statutes have had on domestic non-fatal

106. *See id.*

107. *See id.*

108. *See Strangulation Assaults: Fact Sheet, supra note 3; Family Violence Strangulation in Texas: Know The Laws And How to Work With Survivors, TEXAS COUNCIL ON FAMILY VIOLENCE, available at http://www.tcfv.org/pdf/resource-center-assets/Strangulation_Advocates.pdf; Glass, supra note 8; Part I, supra note 66, at 305-06.*

109. *See* § 11-5-2.3.

110. *See id.*

111. *Id.*

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strangulation cases.¹¹²

For example, in 2005 Minnesota passed a similar statute to the Statute passed in Rhode Island, and the impact has been reported on and analyzed.¹¹³ Women At The Court House (WATCH), an organization monitoring how courts handle cases of violence against women and children, issued a report in 2007 analyzing Minnesota's felony strangulation law.¹¹⁴ The report stated that the law "enhance[ed] victim safety and [held] offenders accountable, as well as. . . increas[ed] general awareness of the severity and potential deadliness of domestic strangulation."¹¹⁵ The report also stated that inconsistencies were found regarding enforcement and offered some recommendations for improvement, noting that recovering and recording physical evidence at the scene of the crime "remains crucial in securing a favorable verdict and protecting victims."¹¹⁶ Probably the greatest consequence of the passage of the Minnesota statute was that it "heightened awareness of the dangers of domestic violence and the need for proactive intervention," which compelled law enforcement agencies to enact other protocols to assess and respond to domestic violence incidents.¹¹⁷

A study of the New York strangulation law "found that perpetrators who had previously avoided any punishment because of a lack of visible injuries were now facing criminal sanctions for their life-threatening behavior."¹¹⁸ In fact, researchers concluded, as they have in many states, that the new strangulation statute is closing the previous gap in the law—between no charges and murder charges.¹¹⁹

Also, even though the Statute was just passed a few months

112. *See States Cracking Down on Strangulation Attempts*, USATODAY.COM, May 13, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-05-13/strangulation-crackdown-law/54935268/1>; Deborah Debare, Op-Ed. *Don't Delay Strangle Ban*, PROVIDENCE J., May 20, 2012, <http://www.ricadv.org/en/media/press-clips/275-projo-oped-on-anti-strangulation-bill>.

113. Kelly Francis, *Minnesota's New Domestic Abuse Strangulation Statute*, BENCH & B. MINN., Sept. 2008, at 26-28.

114. *See id.* at 27.

115. *See id.* at 28.

116. *See id.*

117. *See id.*

118. *See On the Edge of Homicide: Strangulation As A Prelude*, *supra* note 83, at 35, 69.

119. *See id.* at 69.

ago, Rhode Island has already begun to see and feel the effects of the Statute. For example, in October of 2012, just four months after the Statute was passed, police in the town of Westerly charged a man under the Statute.¹²⁰ He was originally charged with simple assault/battery, but the charge was dismissed and he was arraigned on the new charge of domestic strangulation.¹²¹ This man's case may have been simply dismissed had the Statute not been passed.¹²² Therefore, the Statute is likely to have similar consequences as seen in the studies of other states' similar strangulation statutes; it is likely to rectify a gap that previously existed before the passage of strangulation statutes.¹²³

Nevertheless, probably the biggest consequence of the passage of the Statute and the passage of similar statutes in more than thirty states is that that passage of these new laws "shine[] a light on" the severity of the crime.¹²⁴ This increased publicity on the horrific realities involved in domestic partner non-fatal strangulation increases awareness.¹²⁵ However, even as awareness increases, criticisms about the Statute and similar strangulation statutes still exist. The next section briefly details some of the major criticism regarding the Statute.

IV. CRITICISMS OF THE STATUTE

Unfortunately, even though other states have seen success in prosecuting strangulation perpetrators and increasing awareness in the law enforcement, legal, and medical community, there are still those that do not understand the severity of non-fatal domestic partner strangulation.¹²⁶ To understand the importance of the Statute, this article acknowledges three major criticisms of

120. *Westerly Police Charge Man Under New Strangulation Law*, THE WESTERLY SUN, October 1, 2012, http://www.thewesterlysun.com/news/westerly-police-charge-man-under-new-strangulation-law/article_d43f695c-0bcd-11e2-a084-0019bb2963f4.html.

121. *Id.*

122. *See id.*

123. *See id.*; *On the Edge of Homicide: Strangulation As A Prelude*, *supra* note 83, at 69.

124. *See States Cracking Down on Strangulation Attempts*, *supra* note 112.

125. *See id.*

126. *On the Edge of Homicide: Strangulation As A Prelude*, *supra* note 83, at 69; *States Cracking Down on Strangulation Attempts*, *supra* note 112.

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the Statute. Then, the next section explains why these criticisms are either incorrect or miss the point as they fail to see the necessity of the Statute.

One possible criticism of the Statute is that the Rhode Island legislature passed an unnecessary law only to call attention to the harms of domestic violence and domestic violence related non-fatal strangulation. Similarly, critics find the Statute to be unnecessary, arguing that there are already numerous statutes that prosecutors can use to put perpetrators in jail and adding another statute just to bring awareness is an example of the legislature using its law making power to unfairly prejudice defendants.¹²⁷ Thus, some argue the Statute is needless, as there are other statutes available for police officers and prosecutors to charge perpetrators with strangulation.¹²⁸

Also, before the Statute was enacted, strangulation could have been prosecuted as a “felony assault” if the hands were considered a dangerous weapon and the strangulation caused serious bodily injury.¹²⁹ In Rhode Island, successfully prosecuted felony assaults can result in up to twenty years in prison.¹³⁰ Therefore, some feel that the Statute is superfluous because strangulation previously could have been prosecuted under simple assault or battery, or felony assault.¹³¹ Opponents of these types of laws, “say that enough laws are in place to protect victims and that new measures will create excessive prosecution.”¹³² Also, some feel that this statute does not carry out the drafters’ intent because it awards perpetrators of domestic violence strangulation with a less severe penalty than what they would have received had they been charged with a felony assault.¹³³

A third criticism of the Statute is that the language used in the Statute, even though it achieves the drafters intent and makes

127. See R.I. GEN. LAWS § 11-5-2.3 (2012); R.I. GEN. LAWS § 11-5-2 (2002).

128. See *id.*

129. See § 11-5-2. Prosecutors still have the discretion to prosecute strangulation cases under this statute.

130. See *id.*

131. Speaking with Kim Ahern, a prosecutor at the Rhode Island Attorney General's office brought this criticism to light.

132. See *States Cracking Down on Strangulation Attempts*, *supra* note 112.

133. The Statute has a penalty of up to ten years, while the felony assault statute has a penalty of up to twenty years. See § 11-5-2.3(a); § 11-5-2.

it easier for law enforcement officials to prosecute and prevent domestic violence related homicides, goes too far and will give prosecutors “too much leverage to secure guilty pleas.”¹³⁴ Further, some argue that the laws, like the Statute, are flawed because they “allow for felony prosecution without objective proof of a victim’s injury.”¹³⁵

These criticisms are logical; however, in some cases, they are incorrect, and in other cases, they forget about the intent of the legislature, losing focus on the hopeful result of the Statute. The next section describes how these criticisms are incorrect or completely disregard the importance of the Statute.

V. RESPONSE TO CRITICISMS ABOUT THE STATUTE

A. The Statute *is* Necessary!

The criticisms regarding the Statute being unnecessary are completely incorrect. First, the staggering statistics discussed in the background section of this article detail exactly why the legislature had to take action. If the legislature did not take action, if nothing was done, more and more women would be strangled and killed by their intimate partners.¹³⁶ Since the odds of becoming a homicide victim increase dramatically for women who have been strangled by their partners and victims may present no visible injuries after strangulation, the need to support the adoption of a law that addresses the specifics of domestic strangulation solidifies.¹³⁷

Thus, bringing awareness to the legal community, law enforcement, prosecutors, and the community at large is a necessary consequence of the Statute.¹³⁸ As seen in other states, statutes like this Statute have started and increased law enforcement agencies education and training about domestic strangulation.¹³⁹ Also, many law enforcement agencies have

134. See *States Cracking Down on Strangulation Attempts*, *supra* note 112.

135. See *id.*

136. See Glass, *supra* note 8, at 329; *On the Edge of Homicide*, *supra* note 83, at 34-35.

137. See Glass, *supra* note 8, at 329; *On the Edge of Homicide*, *supra* note 83, at 34.

138. See *On the Edge of Homicide*, *supra* note 83, at 34.

139. See *id.*

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instituted specific protocols when handling a possible strangulation case in order to be more accurate and detailed in preserving evidence and protecting victims.¹⁴⁰ Thus, if the Statute helps law enforcement officials prosecute perpetrators of domestic violence related non-fatal strangulation, then it prevents the victims from becoming homicide victims.¹⁴¹ Therefore, by raising awareness the Statute protects public health and is necessary.¹⁴²

B. The Statute is *not* Superfluous!

Another criticism to the Statute is that non-fatal domestic partner strangulation was already charged as a felony in Rhode Island, and instead of a maximum penalty of ten years, the maximum penalty was twenty years in jail for an assault and battery with a deadly weapon.¹⁴³ Similarly, some argue that the Statute is redundant and less of a deterrent than the laws previously passed to deal with similar type crimes.¹⁴⁴

First, it appears that some states, including Rhode Island, did not pass this type of domestic assault strangulation statute merely to ensure perpetrators were put in jail for the most amount of time possible. It is highly unlikely that prison time for perpetrators was the main focus of such legislatures. Rather, the legislature likely passed the Statute to target the specific difficulties involved in proving a crime of non-fatal strangulation, as strangulation often does not leave markings on victims.¹⁴⁵

In fact, before the passage of these types of strangulation statutes, law enforcement officials were less successful in prosecuting domestic assault strangulation cases.¹⁴⁶ As non-fatal strangulation does not always leave visible markings, it is more difficult for law enforcement officials to present evidence that the strangulation occurred. Also, victims of domestic violence have a history of recanting, making it more difficult to prosecute

140. *See id.* at 35.

141. *See id.*

142. In fact, it is likely a court would uphold a law that's only consequence was to spread awareness to protect victims of domestic violence.

143. *See* R.I. GEN. LAWS § 11-5-2.3 (2012); R.I. GEN. LAWS § 11-5-2 (2002).

144. *See* § 11-5-2.3; § 11-5-2.

145. *See* Campbell, *supra* note 84, at 1095; Glass, *supra* note 83, at 34; *Survival or Suffocation*, *supra* note 81, at 268-9.

146. *See* Glass, *supra* note 83, at 34.

perpetrators; symptoms of strangulation do not always appear right after the strangulation has occurred, making it difficult for law enforcement officials who may not be with the victim a few days after the incident to collect evidence of the strangulation. Further, the medical community had not studied the correlation between non-fatal strangulation of domestic partners and the increased likelihood for that victim to eventually be murdered by that same partner.¹⁴⁷ If the Statute increases the number of successful prosecutions, even though the perpetrators may not be in jail for twenty years, hopefully the perpetrators will actually be punished and kept from murdering the victims they strangled.¹⁴⁸

Ultimately, just because the Statute does not have a maximum penalty of up to twenty years in jail, that does not mean it will not be effective in bringing the domestic strangulation problem to the forefront and help law enforcement officials gain much needed education to better prosecute domestic assault strangulation cases.¹⁴⁹ In fact, other states that passed similar domestic assault strangulation statutes have seen immediate success, and some of them include more lenient penalties than the penalty included in the Statute in Rhode Island.¹⁵⁰

147. See Campbell, *supra* note 84.

148. See *Survival or Suffocation*, *supra* note 81, at 271. It appears that prosecutors were having a difficult time proving the elements necessary for perpetrators to be convicted of assault and battery with a deadly weapon. See *id.* Therefore, even though the maximum penalty under the Statute is less than the maximum penalty under the previous law used to charge domestic partner strangulation, the Statute is likely more effective at keeping perpetrators from harming their victims. See *id.*

149. See, e.g., *Westerly Police Charge Man Under New Strangulation Law*, *supra* note 120.

150. See Francis, *supra* note 113, at 26-28; *On the Edge of Homicide: Strangulation As A Prelude*, *supra* note 83, 34-35, 69. For example, just a year after Minnesota passed a similar strangulation law where the maximum jail sentence was three years, Minnesota saw a slight reduction of domestic strangulation and a decrease in domestic homicides. See Francis, *supra* note 113, at 28. Also, in New York, where under a similar strangulation statute a defendant can be incarcerated for seven to fifteen years depending upon the class of the offense, 2,003 charges were filed against perpetrators within the first fifteen weeks of the law's passage, and a study "found that perpetrators who had previously avoided I punishment because of a lack of visible injuries were now facing criminal sanctions for their life-threatening behavior." See *On the Edge of Homicide: Strangulation As A Prelude*, *supra* note 83, at 35, 69.

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C. The Prosecution Still Must Prove The Elements of The Crime

A third criticism that opponents of the Statute may raise or have raised is that the Statute allows for felony prosecution without objective proof of a victim's injury.¹⁵¹ This criticism is entirely incorrect as the Statute does mandate the prosecution demonstrate proof of strangulation, which is, in itself, an injury to a victim.¹⁵²

The Statute does not eliminate the prosecution's burden of proof, nor does it allow a prosecutor to put someone in jail without proving the crime of strangulation.¹⁵³ The Statute states that a person is guilty of strangulation if he or she "knowingly and intentionally imped[es] normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person, with the intent to cause that person harm."¹⁵⁴ Thus, a prosecutor must prove, by physical evidence, testimonial evidence, or circumstantial evidence that the perpetrator intentionally strangled the victim with the intent to cause harm.¹⁵⁵

Yes, the Statute does not require proof of serious bodily injury; however, the Statute does require proof of strangulation with intent to cause harm.¹⁵⁶ The Statute does not require specific proof of injury because science and research discovered that in a majority of non-fatal strangulation cases, physical injuries will not be present to the naked eye.¹⁵⁷ Therefore, if the Statute had required proof of physical injuries, the Statute would be completely ineffective.¹⁵⁸ Nevertheless, the Statute still requires that a prosecutor prove strangulation,¹⁵⁹ and usually the

151. See *States Cracking Down on Strangulation Attempts*, *supra* note 103.

152. See R.I. GEN. LAWS § 11-5-2.3 (2012).

153. See *id.*

154. *Id.*

155. *Id.*

156. See *id.*

157. See *Part I*, *supra* note 66, at 305-306; see generally Wolfgang Grellner & Mark Benecke, *The quantitative alteration of the DNA content in strangulation marks is an artifact*, 89 *FORENSIC SCIENCE INT'L* 15 (1997); see also P. Wiegand & M. Kleiber, *DNA typing of epithelial cells after strangulation*, 110 *INT. J. OF LEGAL MED.* 181 (1997).

158. See R.I. GEN. LAWS § 11-5-2.3 (2012).

159. See *id.*

prosecutor will only be able to do that with some corroborating physical evidence, which is why, as discussed below, it will be extremely important for doctors, law enforcement officials, prosecutors, and the community to work together to ensure that physical signs are noted, recorded, and testified to.

Even though the critics are incorrect, the Statute is not perfect and will not completely solve the problem of domestic non-fatal strangulation. The legislature was likely rational and realistic, and understood that the Statute is simply one positive step amongst multiple steps that should be taken to protect victims. The next section of this article details some recommendations that could be taken to ensure the statute is effective and further protects victims from the horrors of domestic non-fatal strangulation.

VI. RECOMMENDATIONS

The key to the success of the Statute is in educating law enforcement agencies and the community of the specifics and severity of the crime. Decreasing domestic non-fatal strangulation related assaults and homicides will greatly depend on law enforcement and prosecution education and enforcement. Also, its effect will hinge on educating the community on the severity of strangulation to protect victims of domestic violence from strangulation.

A. Investigators Must Be Educated To Deal With Non-Fatal Strangulation

First, “to properly assess . . . the legal standards necessary for charging . . . [and] to understand the lethality of the assault,” law enforcement officials and investigators must fully document what transpired.¹⁶⁰ Investigators need to be educated on the severity of non-fatal strangulation and on the fact that a lack of physical injuries does not mean a crime has not been committed. If there is any indication, from the victim, a neighbor, a child, the perpetrator, or even a slightly visible mark on a victims neck, investigators should be trained to treat the situation as if a non-fatal strangulation may have occurred, and they should proceed

160. Turkel, *supra* note 34, at 21.

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with that in mind. Thus, if injuries are not visible, any potential victim of strangulation should be taken for a medical exam as soon as possible.¹⁶¹

When an investigator suspects that a victim was strangled, they should be trained to do the following: record the victim's exact words; get a description of how the victim was injured; document the pressure used, where the perpetrators hands were, and if the victim reported any problems breathing; ask and write down what the victim perceived, if anything, during the strangulation; ask and document what the perpetrator did immediately before the strangulation; document any words the victim heard the perpetrator use; ask the victim if she lost consciousness and if she knows how long she lost consciousness; document any pain or problems with swallowing, sore throat or hoarseness, or if her voice changed; look and photograph any petechiae under the eyes, face, or neck; check and document any external injuries, scratches and bruises; look at the assailants body for any defensive wounds, scratches and bruises; document both parties demeanors; ask about and document any nausea or vomiting; document any muscle injuries; ask and document if the victim is dizzy or having trouble focusing or paying attention; and determine if anyone else may have heard and seen anything and write down any information obtained.¹⁶²

Also, while writing down information is key, photographing and even videotaping should be available to investigators and done regularly when presented with a possible strangulation victim. Investigators should photograph both the victims and the perpetrators injuries, no matter how minor.¹⁶³ If a victim appears to have difficulty swallowing, her voice is hoarse, or her voice

161. *See id.*

162. *See id.* at 21-22. It might seem commonsensical for investigators to ask these types of questions and document this information. However, law enforcement officials are not always aware of the seriousness of strangulation unless they see physical markings. Thus, they are less likely to obtain a detailed report without what they deem as necessary to warrant such a detailed report. Nevertheless, educating law enforcement officials on the horrific statistics regarding non-fatal strangulation, what they should be looking for, and what type of questions to ask to ensure the non-fatal strangulation was documented, is necessary so the incident can be successfully prosecuted.

163. *See id.*

appears to have changed, the victim should be audio/videotaped to document those changes.¹⁶⁴ Also, obtaining “follow-up voice information as well as pre-cursor voice information (i.e., home video or telephone answering machine)” should be gathered and stored.

Once investigators and other law enforcement officials are trained on the severity of non-fatal strangulation and what they can do to help protect and prevent victims from being hurt again, they will likely implement protocols that mandate investigators and law enforcement officials ask similar questions and document the information in a similar manner to that stated above. In fact, “[s]ome jurisdictions have created specific reports for strangulation cases so that” all the pertinent information is recorded.¹⁶⁵

The purpose of this education and training of investigators is to ensure that prosecutors will have enough evidence to prove strangulation at trial. Even with the Statute, a lack of physical evidence or a lack of a victim’s statement may make it difficult to prove that strangulation occurred. However, investigators conducting thorough interviews and documenting everything will likely lead to more successful prosecutions with or without victim testimony, which will help protect victims in the future. Thus, to promote investigators conducting these types of investigations, they must be educated to the specific horrors and characteristics of domestic strangulation.

Law enforcement officials and prosecutors are not the only individuals who can ensure the Statute is effective and protects victims. Awareness throughout the community will be helpful in preventing strangulation and protecting victims. The more the community becomes aware of the severity of non-fatal domestic strangulation, the more victims will understand the need to speak up when they are strangled by an intimate partner, which will hopefully decrease domestic homicides. The next and last section of this article describes how community awareness is vital to the success of the Statute.

B. Increasing Education Throughout The Community Will Also

164. *See id.*

165. *See id.* at 22.

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Help The Effectiveness Of The Statute

Only time will tell how successful the Statute will be in preventing domestic strangulation and protecting victims from future domestic homicide. As community awareness to the specifics of non-fatal strangulation and as law enforcement officials are educated and trained in investigative techniques, prosecutors will be better able to prosecute perpetrators under the Statute.

However, even with the passage of the Statute, victims will likely continue to be hesitant and sometimes refuse to testify, and juries may not believe that a victim who refuses to testify was actually strangled. This makes it all the more crucial for domestic violence organizations or victim help services to team up with law enforcement officials and the medical community to communicate, not just to investigators, but to the community as well, how domestic violence non-fatal strangulation is a precursor to death.¹⁶⁶

Currently, in Rhode Island, the newly formed Child Abuse Unit at the Rhode Island Attorney General's Office works with medical doctors, Day One¹⁶⁷ specialists, and members of the Department of Children, Youth and Families (DCYF) to ensure everyone is educated on all the up-to-date protocols and procedures, and to ensure all departments are doing what is best to protect and help abused children. Also, during the summer, Day One holds informational sessions with representatives from local Rhode Island Police Departments on the new techniques and procedures that should be used to best investigate and handle suspected child abuse cases.

This holistic approach of focusing on a problem from all different angles, with different agencies working together, is

166. Glass, *supra* note 8, at 331.

167. Day One provides services to victims of sexual assault, domestic violence, and other violent crimes and educates the public throughout Rhode Island. Their services include a twenty-four hour victims of crime helpline, crisis intervention, consultation, adult advocacy for victims and their families, legal advocacy, the Office of Victim Services at the RI Department of Corrections, Law Enforcement Advocates, the RI Children's Advocacy Center, prevention education, and psycho-educational services for incarcerated men and women who are victim of child abuse and assault. See <http://www.dayoneri.org/whatwedo.htm> (last visited Dec, 31 2012).

exactly the type of action that Rhode Island needs to help ensure the Statute will be as effective as possible. The passage of the Statute is not the whole solution. Rather, it is merely part of numerous measures that should be taken to reach the solution of decreasing domestic violence strangulation, preventing domestic violence homicide, thereby decreasing domestic violence in general.

Thus, in order for the Statute to be effective, enforcement is important. For enforcement to be successful, education is vital. Hopefully, as law enforcement officials learn and are educated and trained on how to correctly handle domestic strangulation investigations, prosecutors will be able to prosecute perpetrators under the Statute. Also, as the community becomes aware, hopefully victims and their families will speak up and speak out more when they have been strangled, which will hopefully decrease domestic violence related deaths.¹⁶⁸

VII. CONCLUSION

The need for the Statute that the Rhode Island legislature passed in June of 2012 is overwhelming in its importance. The statistics regarding domestic non-fatal strangulation are startling.¹⁶⁹ Learning that one study found victims of domestic non-fatal strangulation are, in fact, 800% more likely to be killed by their partner shows how crucial it is that the Statute be successful.¹⁷⁰ The Statute comes after numerous studies demonstrated the need for this type of statute and how similar statutes in other states have provided some relief for victims.¹⁷¹ It will likely help law enforcement agencies and prosecutors provide relief for victims, though it will not solve the problem completely. However, as the Statute brings awareness, hopefully it will bring the medical community, legal community, and domestic violence advocacy community together to educate, train, and provide a holistic approach to protecting victims and preventing domestic violence. The Statute is an example of the Rhode Island

168. *See generally*, Glass, *supra* note 8.

169. *See id.*

170. *See On the Edge of Homicide: Strangulation as a Prelude, supra* note 8, at 34

171. *See Survival or Suffocation supra* note 81, at 270-71.

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legislature exercising its lawmaking function to help victims of non-fatal strangulation and help bring awareness to provide a means to successfully combat domestic violence.¹⁷²

172. *See id.*