

# NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE

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For more information on sexual assault, visit [http://www.opdv.ny.gov/whatisdv/about\\_dv/sexual\\_abuse/dvsexabuseinfo.html](http://www.opdv.ny.gov/whatisdv/about_dv/sexual_abuse/dvsexabuseinfo.html)

## Strangulation

Strangulation is all too common in domestic violence cases. Traditionally, this potentially fatal act has not always been treated as such, since victims often do not show physical signs of injury. Strangulation indicates an increased risk of homicide, with some studies indicating that the odds of homicide are almost ten times more likely if there was a prior attempt to strangle.

To reflect its serious nature, the crime of strangulation was added to the New York State Penal Law in November 2010. This new law provides a useful tool to law enforcement, enabling them to hold offenders accountable more effectively. In addition, providing a specific penal law designation has rightly drawn law enforcement's attention to this criminal conduct resulting in enhanced investigations and subsequent charges, where appropriate.

To learn more about strangulation and the new law, see the Q&A on page 3.

## Did you know...

Victims of the misdemeanor strangulation offense are now eligible to seek compensation through the NYS Office of Victim Services. This will be a useful resource for so many victims; since the law's passage in November of 2010, there have been over 11,750 individuals charged with misdemeanor and/or felony crimes of strangulation<sup>1</sup>. For more information: [http://www.criminaljustice.ny.gov/pio/press\\_releases/2011-12-29\\_pressrelease.html](http://www.criminaljustice.ny.gov/pio/press_releases/2011-12-29_pressrelease.html)

<sup>1</sup> As of January 20, 2012

## From the Executive Director



This issue of the OPDV Bulletin catches everyone at a busy time: it is Sexual Assault Awareness Month, and April 22 – April 28th is National Crime Victims' Rights Week.

These two topics are relevant to recently passed legislation that has been an important priority for the Governor: the expansion of the DNA Databank. This expansion will enable us to accurately identify more criminal offenders to give crime victims peace of mind, and prevent future crimes from taking place. If you don't know the legislation, take a look at Governor Cuomo's [DNA Stops Crime webpage](#). Most people who commit a violent offense have a history of previous convictions for lesser crimes. That would be true for a domestic violence victim burglarized by a former partner, or a victim of sexual assault who cannot identify their attacker. If the offenders in these cases had been convicted of previous crimes, under the new law, the DNA Databank will enable them to be identified for these new crimes, make conviction more likely, putting less of a burden on the victim, and ensuring that justice is served.

This issue of the Bulletin discusses some other important criminal justice information. We have an article by Andy Klein about the correlation between domestic violence offenders and other crime. We also feature a Q&A that revolves around the strangulation law we have been working with in New York since last November.

Enjoy, and as always, many thanks for your dedication and hard work.

*Amy Barasch*  
Executive Director

## But for Abuse, Are Domestic Violence Offenders Law-Abiding Citizens?

**Andrew R. Klein, Ph.D., Senior Research Analyst, Advocates for Human Potential, Inc.**

In regard to those abusers brought to the attention of police, courts and hospital emergency rooms, the answer is: "No."

That being said, we know there are some abusers who are not known to the criminal justice system. Both the older NVAWS and the more contemporary NCVS reports agree that victims do not report all cases of their victimization to police. According to the NVAWS, only 27 percent of women and 13.5 percent of men who were physically assaulted by an intimate partner reported their assault to law enforcement. Less than 20 percent of women victims reported intimate partner rapes to police. Reporting rates for stalking were higher, with 52 percent of women and 36 percent of men reporting stalking incidents to law enforcement. A succession of NCVS surveys over the past several decades find much higher reporting rates (but for far fewer victimizations). According to these surveys, reporting to police of nonfatal partner victimization has increased for all victims (male and female) to more than 62 percent, with no gap between male and female victim reporting rates.

While we know that some abusers do not come into contact with the criminal justice system, we also know that the majority of abusers so identified are already known to law enforcement and courts because they have been arrested before, although not necessarily for abuse. In fact, a state study found that abusers whose victims obtained civil orders of protection were more likely to have a prior criminal history for any crime than defendants arrested by police specifically for domestic violence.

The abusers that come into contact with the criminal justice system are those that cause the most pain and suffering to their victims. And such abusers do not confine their criminal behavior to "loved" ones and family members. Their domestic violence behavior is not compartmentalized, isolated behavior and vice versa. Is it surprising that males who commit violence outside the home are also violent within it? In a dozen police arrest studies, the lowest rate of arrested abusers with prior records was 49% in Portland, Oregon for prior arrests within 5 years. The highest rate was 89% documented in Toledo, Ohio. Extensive arrest studies in Chicago and Massachusetts revealed the arrested abuser averaged between five and 13 prior arrests for a variety of offenses.



### Implications

In terms of predicting the likelihood of future abuse, a prior arrest for ANY offense is as predictive of increased likelihood of reabuse as a prior arrest specifically for domestic violence! In other words, crimes committed outside the family cannot be separated from those committed from within. Considering an abuser as a "first" offender because it is his first domestic violence offense if he has other non-domestic violence offenses is like treating a murderer as a first offender, because his previous murder victim had different color hair.

Also, deprived of his victim, many abusers go onto another, indicating that abuse is not a relationship crime. A statewide study of abusers on probation found that within one year, 28% were rearrested for a new domestic violence crime against a new victim. Similarly, another study found that 25% of court restrained abusers had up to eight new orders taken out against them by as many different victims over the subsequent six years.

So, what does this mean for the criminal justice system? In making charging decisions and sentencing recommendations, an abuser with a prior record for any crime should be assumed to be a high-risk domestic violence offender, not a low-risk "first" offender. Law enforcement officers should attempt to track down the suspect who leaves the scene and aggressively serve warrants to protect victims from higher risk abusers. Prosecutors should carefully review defendants' prior arrest records for warrant and bail status at the time of the domestic violence arrest to accurately gauge defendant risk. Judges should understand that if an abuser has a prior record for any crime, he is a high-risk domestic-violence offender, and should demand access to prior criminal and abuse histories before fashioning civil orders, making pretrial release decisions, or sentencing abusers.

Abusers who confine their crime to their partners are the exception. The criminal justice system needs to respond to abusers as robustly as they do all other criminals.

*This is extracted from A. Klein, [Practical Implications of Domestic Violence Research, National Institute of Justice Special Bulletin, 2009](#), updated by the author. All studies cited are referred in this publication.*

## Q&A About Strangulation



*This Q&A was conducted with Johanna Sullivan, Counsel at the New York State Office for the Prevention of Domestic Violence.*

### **Q: How common is strangulation in domestic violence cases?**

**A:** Strangulation, unfortunately, is a very common form of power and control that an abuser may use on their victim. In a San Diego study, 89 percent of strangulation cases had a prior domestic violence history. In New York as well, a large percentage of New York State domestic incident or arrest reports indicate that the victim was “choked”. Other national studies have found that between 30 to 68% of women experiencing domestic violence are strangled during the course of their relationship. Therefore, it is critical that in every domestic violence case, law enforcement, domestic violence service providers, and all those working with victims inquire as to whether the victim was strangled.

### **Q: What are some signs or symptoms that someone has been strangled?**

**A:** A victim who was strangled will frequently have either minimal or no visible signs of injury. The San Diego study referenced above found that of 300 strangulation incidents, there was no evidence of visible injury in 50 percent of the incidents, and only minor levels of injuries in another 35 percent of the incidents. But while there may be no or minimal visible signs of the physical injuries sustained by a strangulation victim, there may be other indicators that strangulation has occurred, including: difficulty swallowing, hoarseness or loss of voice, vision changes, loss of

bodily functions, altered mental state, fainting and loss of memory. Minor physical injuries that you might see include: scratches (both offensive and defensive), redness, bruising behind the ears, petechiae and tongue swelling.

### **Q: Why was the new strangulation law needed in New York State?**

**A:** Prior to this legislation’s passage, there was no specific crime that adequately captured the criminality of this behavior. Prosecutors and law enforcement were forced to try to charge Assault in the Third Degree, P.L. § 120.00 (1), an A misdemeanor, which requires proof that the defendant caused physical injury to the victim. The case law places a very high burden on establishing physical injury. Some courts dismissed charges or reduced charges involving strangulation cases stating that the physical injury requirement had not been met even when victims experienced involuntary urination as a result of the strangulation, or where there was evidence of redness on the victim’s neck. However, other courts held that the physical injury element had been met when the victim lost consciousness and experienced a sore and achy throat. The high physical injury requirement combined with the inconsistent court decisions made it very difficult for law enforcement to bring assault charges, and frequently left prosecutors and law enforcement only able to charge violation-level harassment charges, clearly not representative of the severity of the crime.

### **Q: What is the new law?**

**A:** On November 11, 2010 the new law went into effect which created three new penal law crimes:

1. Criminal Obstruction of Breathing or Blood Circulation, P.L. § 121.11, which makes it an A Misdemeanor to intend to impede someone’s ability to breathe by: applying pressure on

the throat or neck or blocking the nose or mouth (there is no physical injury requirement);

2. Strangulation in the Second Degree, P.L. § 121.12 which makes it a class D Violent Felony to commit Criminal Obstruction of Breathing or Blood Circulation and cause either: stupor, or loss of consciousness for any period of time; or any other physical injury or impairment (many of the signs and symptoms described above can be utilized to meet these elements of the crime); and

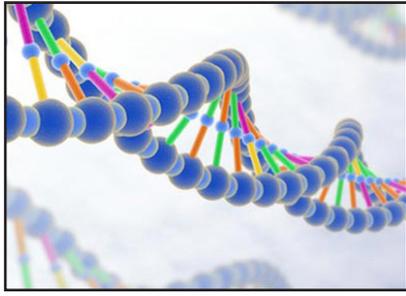
3. Strangulation in the First Degree, P.L. § 121.13 which makes it a C Violent Felony to commit the crime of Criminal Obstruction of Breathing or Blood Circulation and cause serious physical injury.

The law also adds these crimes to the list of enumerated family offenses and to various sections of existing law for other considerations, such as DNA collection, hate crime prosecution, etc.

### **Q: What have we learned since the law went into effect?**

**A:** In the first 14 months since the law’s passage, strangulation charges brought at the arrest and arraignment stages have been unprecedented: over 11,750 as of January 20, 2012. This clearly indicates a glaring gap in the penal law and a desire by law enforcement to hold offenders of this kind of crime accountable for their action. These charges have been primarily (81%) for the misdemeanor charge of Criminal Obstruction of Breathing or Blood Circulation. While law enforcement has shown its commitment to taking these charges seriously, continued attention to consistent documentation of the signs and symptoms of strangulation, discussed above, could further enable the charging of the D violent felony charge of Strangulation in the Second Degree.

## Legislative Update



### The "All-Crimes DNA Bill"

The New York State legislature passed the Governor's bill that expands New York State's DNA Databank. According to the National Academy of Sciences, DNA is the most reliable form of forensic evidence available to law enforcement today.

DNA is collected as evidence at crime scenes and stored in the Databank. DNA is also collected upon conviction (not arrest) of those committing Penal Law felonies and some misdemeanors. Currently only 48% of New York's Penal Law convictions are included in the Databank. The new law expands the Databank to include all felonies and all Penal Law misdemeanors, with the exception of a class B Misdemeanor for marijuana possession.

Crime scene DNA is collected and run against the stored DNA profiles. Research shows that offenders who commit serious crimes often also commit minor crimes. This new law allows DNA to be collected from those convicted of minor crimes, a reform that promises to solve thousands of crimes and prevent thousands of others.

This legislation will also allow defendants in certain criminal cases to obtain DNA testing prior to trial to demonstrate their innocence. Further, under appropriate circumstances defendants convicted after a guilty plea will be allowed access to such testing and access to property and other materials to demonstrate their actual innocence. Together, these reforms will help to ensure that innocent defendants are not convicted or, if convicted after a plea, are able to demonstrate their actual innocence.

This new law will better protect all victims of crime including domestic violence and sexual assault crime victims.

The law takes effect 10/1/12. For more information, see the [DNA Stops Crime webpage](#).

## NYS Domestic Violence Advisory Council

The mission and activities of the NYS Office for the Prevention of Domestic Violence (OPDV) are articulated in Executive Law 575; section 4 of this provision established the NYS Domestic Violence Advisory Council. The mission of the Council is to:

- Make recommendations on domestic violence related issues and effective strategies for preventing domestic violence.
- Help develop appropriate policies and priorities for effective intervention, public education and advocacy.
- Facilitate and assure communication and coordination of efforts among

state agencies and between different levels of government, state, federal and municipal, for the prevention of domestic violence.

The Council includes representation from 14 state agencies, as well as three members appointed by the Governor, and six members appointed by the Governor upon recommendation of the legislature. The appointed members represent a broad cross-section of service providers, including advocates, civil attorneys, prosecutors, judges and legislators. The Council is directed to meet twice annually.

Over the past several years the Council has become a vibrant interagency entity that has driven significant policy changes in the area of domestic violence at no additional cost to the

state. It has enhanced data collection; encouraged and facilitated dialogue between agencies and organizations; and strengthened OPDV's efforts to increase public awareness through the incorporation of domestic violence into the work of the various State agencies represented on the Council.

Annually, the Council identifies a focus topic. Past topics have included teen dating violence and prevention. Screening has been identified as the topic for 2012 and the Council is moving forward to institute new and improved screening efforts within their agencies and/or system. Additionally, the Council produces an [Annual New York State Domestic Violence Report](#). The 2011 Annual Report is due out in June.

## National Crime Victims' Rights Week

April 22 – 28, 2012 is National Crime Victims' Rights Week (NVCVW). This year's theme is "Extending the Vision: Reaching Every Victim." In this spirit, there will be events held across the state to promote awareness about victims' rights and services. Communities will hold events, such as candlelight vigils, rallies, educational programs, and poster and essay contests. The National Center for Victims of Crime and the U.S. Office for Victims of Crime (OVC) have created a wealth of resources to help communities prepare for the week. To find these materials and to learn more, visit the OVC

website: <http://ovc.ncjrs.gov/ncvrv2012/index.html>

To kick off NVCVW in New York State, the Crime Victims' Assistance Task Force, a nonprofit coalition made up of representatives from state and local government and victim assistance agencies, is holding its Annual Memorial Brick Dedication Ceremony on April 20. Every year since 1996, crime victims and their loved ones have purchased bricks inscribed with victims' names that are placed in the walkway at the Crime Victims' Memorial in Albany. Bricks can be purchased by and for victims of any type of crime.

For more information on the Brick Ceremony and



other events happening around the state, or to register an event you are holding, visit the NYS Office of Victim Services: <http://www.ovs.ny.gov>

**NYS Office for the Prevention of Domestic Violence** [www.opdv.ny.gov](http://www.opdv.ny.gov)

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