

CRIMINAL STRANGULATION/ IMPEDING BREATHING



The National Center for Prosecution of Violence Against Women

Summary of Content

This document is a survey of U.S. federal, state, and territorial criminal statutes related to strangulation and other acts that impede breathing, such as asphyxiating, choking, smothering and suffocation.

Due to federalism and the separation of powers, each state legislature enacts its own laws independent of each other and mostly independent of the Federal government.¹ While some state laws influence each other, many solutions/remedies enacted into law on a single topic often vary greatly from state to state. Laws regarding strangulation, suffocation, and impeding breathing are no different. In 2001 Strack, McClane, and Hawley published a study, which reviewed 300 cases of domestic violence involving strangulation and demonstrated non-fatal strangulation was a strong predictor of future homicide.² Afterwards, many states enacted significant reforms. Forty-four states, the District of Columbia, the Federal government and two territories have some form of criminal strangulation or impeding breathing statute.

¹ Theodore J. Lowi et al., *Chapter 3: Federalism And The Separation Of Powers- Chapter Study Outline* in American Government: Power and Purpose (12th ed. 2012) available at, <http://www.norton.com/college/polisci/american-government12/brief/ch/03/outline.aspx>

² Gail B. Strack et. al, *A Review of 300 Attempted Strangulation Cases Part I: Criminal Legal Issues*, 21 J. Emergency Med. 303 (2001); George E. McClane et. al, *A Review of 300 Attempted Strangulation Cases Part II: Clinical Evaluation Of The Surviving Victim*, 21 J. Emergency Med. 311, 314 (2001); Dean A. Hawley et al., *A Review Of 300 Attempted Strangulation Cases Part III: Injuries In Fatal Cases* 21 J. Emergency Med. 317 (2001).

	No Statute	Child Abuse	Elder Abuse	Criminal Procedure Enhanced Penalties For Existing Felony	Familial Relationship Domestic Violence	Strangulation Specific Felony
AL				X	X	
AK				X		
AZ				X		
AR		X				
CA					X	
CO			X			
CT						X
DE		X				
DC		X				
FL		X			X	
GA				X		
HI				X	X	
ID					X	
IL				X	X	
IN						X
IA				X	X	
KS	X					
KY	X					
LA				X	X	
ME				X	X	
MD				X		
MA				X		
MI				X	X	
MN		X			X	
MS				X		
MO					X	
MT	X					
NE				X		X
NV				X	X	
NH				X	X	
NJ	X					

*

	No Statute	Child Abuse	Elder Abuse	Criminal Procedure Enhanced Penalties For Existing Felony	Familial Relationship Domestic Violence	Strangulation Specific Felony
NM	X					
NY						X
NC				X		
ND						
OH				X		
OK				X	X	
OR		X	X	X		X
PA		X				
RI					X	
SC			X			
SD				X		
TN				X		
TX				X		
UT		X				
VT				X		
VA				X	X	X
WA		X	X			
WV				X	X	
WI						X
WY					X	
F				X		
AS	X					
GU			X			
PR	X					
VI		X				

*

*

The survey was updated **September 2016**. The following search terms were used to compile the statutes.³ Please note that we recommend checking both case law and current legislation for later modifications to the statutes listed below. The dates on the citation of the statutes indicate they are up-to-date as of the year listed. The credits below each statute listed for its date of enactment and history.

For further assistance, consult the National District Attorneys Association's National Center for Prosecution of Child Abuse at 703.549.9222, or via the free online prosecution assistance service http://www.ndaa.org/ta_form.php

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³ STRANGUL! STRANGL! (BREATH! & ABUSE) CHOKI! SUFFOCATE! % DRIVING % BREATHALYZER

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ALABAMA:

ALA. CODE § 13A-6-133 (2016): ARREST WITHOUT WARRANT – GENERALLY

For the purposes of an arrest without a warrant pursuant to Section 15-10-3, the crimes of domestic violence in the first, second, and third degrees, and domestic violence by strangulation or suffocation shall be an offense involving domestic violence. A warrantless arrest for an offense involving domestic violence made pursuant to subdivision (8) of subsection (a) of Section 15-10-3, shall include a charge of a crime of domestic violence under this article.

CREDIT(S) (Act 2011-581, p. 1273, § 3.)

ALA. CODE § 13A-6-138 (2016): DOMESTIC VIOLENCE BY STRANGULATION OR SUFFOCATION

13A-6-138. Domestic violence by strangulation or suffocation.

- **(a)** For the purposes of this section, the following terms have the following meanings:
 - **(1) Strangulation.** Intentionally causing asphyxia by closure or compression of the blood vessels or air passages of the neck as a result of external pressure on the neck.
 - **(2) Suffocation.** Intentionally causing asphyxia by depriving a person of air or by preventing a person from breathing through the inhalation of toxic gases or by blocking or obstructing the airway of a person, by any means other than by strangulation.
- **(b)** A person commits the crime of domestic violence by strangulation or suffocation if he or she commits an assault with intent to cause physical harm or commits the crime of menacing pursuant to Section 13A-6-23, by strangulation or suffocation or attempted strangulation or suffocation against a victim, as the term is defined in Section 13A-6-139.1.
- **(c)** Domestic violence by strangulation or suffocation is a Class B felony punishable as provided by law.

CREDIT(S)

Code of Ala. § 13A-6-138 Acts 2011, No. 11-581, § 3, Sept. 1, 2011; Acts 2015, No. 15-493, § 2, Jan. 1, 2016.

ALASKA:

ALASKA. STAT. § 11.81.900 (2016). DEFINITIONS (CRIMINAL LAW)

....

(b) In this title, unless otherwise specified or unless the context requires otherwise,

...

(15) “dangerous instrument” means

(A) any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury; or

(B) hands or other objects when used to impede normal breathing or circulation of blood by applying pressure on the throat or neck or obstructing the nose or mouth;

.....

CREDIT(S)

SLA 1978, ch. 166, § 10; SLA 1980, ch. 102, §§ 29--32; SLA 1982, ch. 45, §§ 12--14; SLA 1982, ch. 143, §§ 12--15; SLA 1983, ch. 54, § 2; SLA 1984, ch. 79, § 5; SLA 1984, ch. 114, § 3; SLA 1984, ch. 116, §§ 1, 2; SLA 1990, ch. 171, § 1; SLA 1991, ch. 59, § 10; SLA 1991, ch. 91, § 3; SLA 1996, ch. 60, § 5; SLA 1998, ch. 86, § 4; SLA 2000, ch. 33, §§ 4, 5; SLA 2000, ch. 65, §§ 16, 17; SLA 2003, ch. 35, § 22; SLA 2004, ch. 139, § 3; SLA 2005, ch. 20, § 1; SLA 2006, ch. 73, § 6, eff. Sept. 14, 2006. Amended by SLA 2013, ch. 54, § 3, eff. Sept. 18, 2013.

ALASKA. STAT. § 11.41.200 (2016). ASSAULT IN THE FIRST DEGREE

(a) A person commits the crime of assault in the first degree if

(1) that person recklessly causes serious physical injury to another by means of a dangerous instrument;

(2) with intent to cause serious physical injury to another, the person causes serious physical injury to any person;

(3) the person knowingly engages in conduct that results in serious physical injury to another under circumstances manifesting extreme indifference to the value of human life; or

(4) that person recklessly causes serious physical injury to another by repeated assaults using a dangerous instrument, even if each assault individually does not cause serious physical injury.

(b) Assault in the first degree is a **class A felony**.

CREDIT(S)

(§ 3 ch 166 SLA 1978; am § 2 ch 143 SLA 1982; am § 2 ch 66 SLA 1988; am § 2 ch 79 SLA 1992)

ARIZONA:

ARIZ. REV. STAT. §13-1204 (2016): ASSAULT AND RELATED OFFENSES

.....

B. A person commits aggravated assault if the person commits assault by either intentionally, knowingly or recklessly causing any physical injury to another person, intentionally placing another person in reasonable apprehension of imminent physical injury or knowingly touching another person with the intent to injure the person, and both of the following occur:

1. The person intentionally or knowingly impedes the normal breathing or circulation of blood of another person by applying pressure to the throat or neck or by obstructing the nose and mouth either manually or through the use of an instrument.

2. Any of the circumstances exists that are set forth in § 13-3601, subsection A, paragraph 1, 2, 3, 4, 5 or 6.

C. A person who is convicted of intentionally or knowingly committing aggravated assault on a peace officer while the officer is engaged in the execution of any official duties pursuant to subsection A, paragraph 1 or 2 of this section shall be sentenced to imprisonment for not less than the presumptive sentence authorized under chapter 7 of this title and is not eligible for suspension of sentence, commutation or release on any basis until the sentence imposed is served.

D. Except pursuant to subsections E and F of this section, aggravated assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9, subdivision (a) of this section is a class 3 felony except if the victim is under fifteen years of age in which case it is a class 2 felony punishable pursuant to § 13-705. Aggravated assault pursuant to subsection A, paragraph 3 or subsection B of this section is a class 4 felony. Aggravated assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section is a class 6 felony.

E. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 2 felony. Aggravated assault pursuant to subsection A, paragraph 3 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph 8, subdivision (a) of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 5 felony unless the assault results in any physical injury to the peace officer while the officer is engaged in the execution of any official duties, in which case it is a class 4 felony.

F. Aggravated assault pursuant to:

1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony if committed on a prosecutor.
2. Subsection A, paragraph 3 of this section is a class 3 felony if committed on a prosecutor.
3. Subsection A, paragraph 8, subdivision (f) of this section is a class 5 felony if the assault results in physical injury to a prosecutor.

G. For the purposes of this section, "prosecutor" means a county attorney, a municipal prosecutor or the attorney general and includes an assistant or deputy county attorney, municipal prosecutor or attorney general.

CREDIT(S)

Added by Laws 1977, Ch. 142, § 61, eff. Oct. 1, 1978. Amended by Laws 1980, Ch. 229, § 15, eff. April 23, 1980; Laws 1984, Ch. 325, § 2; Laws 1985, Ch. 364, § 14, eff. May 16, 1985; Laws 1990, Ch. 152, § 1; Laws 1991, Ch. 225, § 2; Laws 1994, Ch. 121, § 1; Laws 1994, Ch. 200, § 12, eff. April 19, 1994; Laws 1995, Ch. 127, § 1; Laws 1996, Ch. 32, § 1, eff. March 25, 1996; Laws 1999, Ch. 261, § 16. Amended by Laws 2001, Ch. 124, § 3; Laws 2005, Ch. 166, § 3; Laws 2007, Ch. 47, § 1; Laws 2008, Ch. 179, § 1; Laws 2008, Ch. 301, § 52, eff. Jan. 1, 2009; Laws 2010, Ch. 97, § 1; Laws 2010, Ch. 241, § 1; Laws 2010, Ch. 276, § 2; Laws 2011, Ch. 90, § 6.

ARKANSAS:

ARK. CODE ANN. § 12-18-103 (2016): DEFINITIONS (MANDATED REPORTING CHILD ABUSE)

As used in this chapter "Child Maltreatment Act":

.....

(2)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the child's welfare, but excluding the spouse of a minor:

- (i) Extreme or repeated cruelty to a child;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

(iii) Injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior;

(iv) Any injury that is at variance with the history given;

(v) Any nonaccidental physical injury;

(vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:

(a) Throwing, kicking, burning, biting, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face or head; or

(vii) Any of the following intentional or knowing acts, with or without physical injury:

(a) Striking a child six (6) years of age or younger on the face or head;

(b) Shaking a child three (3) years of age or younger;

(c) Interfering with a child's breathing;

d) Pinching, biting, or striking a child in the genital area;

(e) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;

(f) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

(g) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:

(1) Marijuana;

(2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;

(3) A narcotic; or

(4) An over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;

(h) Exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine; or

(i) Subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel.

(B)(i) The list in subdivision (2)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C)(i) "Abuse" does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child.

(ii) "Abuse" does not include when a child suffers transient pain or minor temporary marks as the result of an appropriate restraint if:

(a) The person exercising the restraint is:

(1) An employee of a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.; and

(2) Acting in his or her official capacity while on duty at a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(b) The agency has policy and procedures regarding restraints;

(c) No other alternative exists to control the child except for a restraint;

(d) The child is in danger or hurting himself or herself or others;

(e) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques;

(f) The restraint is for a reasonable period of time; and

(g) The restraint is in conformity with training and agency policy and procedures.

(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian does not include any act that is likely to cause and which does cause injury more serious than transient pain or minor temporary marks.

(iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(13) "Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition;

.....

CREDIT(S)

Acts of 2009, Act 749, § 1, eff. July 31, 2009; Acts of 2011, Act 779, §§ 15 to 17, eff. July 27, 2011; Acts of 2011, Act 1143, §§ 2 to 5, eff. July 27, 2011; Acts of 2013, Act 725, §§ 2 to 4, eff. Aug. 16, 2013; Acts of 2013, Act 1006, §§ 1 to 6, eff. Aug. 16, 2013.

ARK. CODE ANN. §§ 9-27-303. DEFINITIONS (2016): DEFINITIONS (JUVENILE COURTS AND PROCEEDINGS)

.....

(3)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child, whether related or unrelated to the child, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

(i) Extreme or repeated cruelty to a juvenile;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

(iii) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior;

- (iv) Any injury that is at variance with the history given;
- (v) Any nonaccidental physical injury;
- (vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:
 - (a) Throwing, kicking, burning, biting, or cutting a child;
 - (b) Striking a child with a closed fist;
 - (c) Shaking a child; or
 - (d) Striking a child on the face; or
- (vii) Any of the following intentional or knowing acts, with or without physical injury:
 - (a) Striking a child six (6) years of age or younger on the face or head;
 - (b) Shaking a child three (3) years of age or younger;
 - (c) Interfering with a child's breathing;
 - (d) Urinating or defecating on a child;
 - (e) Pinching, biting, or striking a child in the genital area;
 - (f) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;
 - (g) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;
 - (h) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:
 - (1) Marijuana;
 - (2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;
 - (3) Narcotics; or

(4) Over-the-counter drugs if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or over-the-counter drug;

(i) Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used or generated during the manufacturing of methamphetamine; or

(j) Subjecting a child to Munchausen syndrome by proxy, also known as factitious illness by proxy, when reported and confirmed by medical personnel or a medical facility.

(B)(i) The list in subdivision (3)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C) "Abuse" shall not include:

(i) Physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child; or

(ii) Instances when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:

(a) The person exercising the restraint is an employee of a residential child care facility licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(b) The person exercising the restraint is acting in his or her official capacity while on duty at a residential child care facility or the residential child care facility is exempt from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(c) The agency has policies and procedures regarding restraints;

(d) Other alternatives do not exist to control the child except for a restraint;

(e) The child is in danger of hurting himself or herself or others;

(f) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; and

(g) The restraint is:

(1) For a reasonable period of time; and

(2) In conformity with training and agency policy and procedures.

(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause and that does cause injury more serious than transient pain or minor temporary marks.

(iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

....

CREDIT(S)

Acts of 1989, Act 273, § 3; Acts of 1993, Act 468, § 4, eff. March 12, 1993; Acts of 1993, Act 1126, §§ 1, 2, eff. Sept. 1, 1993; Acts of 1993, Act 1227, § 1; 1994 (2nd Ex. Sess.), Act 11, § 1, 1994 (2nd Ex. Sess.), Act 36, § 1; Acts of 1995, Act 532, §§ 1 to 4; Acts of 1995, Act 804, § 1; Acts of 1995, Act 811, § 2; Acts of 1995, Act 1261, § 13; Acts of 1997, Act 208, § 8; Acts of 1997, Act 1227, § 1, eff. April 7, 1997; Acts of 1999, Act 401, §§ 2 to 4, eff. March 4, 1999; Acts of 1999, Act 1192, § 12, eff. July 30, 1999; Acts of 1999, Act 1340, §§ 1 to 7, 35, eff. July 30, 1999; Acts of 2001, Act 1503, § 1, eff. Aug. 13, 2001; Acts of 2001, Act 1610, § 1, eff. Aug. 13, 2001; Acts of 2003, Act 1166, § 2, eff. July 16, 2003; Acts of 2003, Act 1319, §§ 1 to 8, eff. July 16, 2003; Acts of 2005, Act 1176, § 3, eff. March 24, 2005; Acts of 2005, Act 1191, § 1, eff. Aug. 12, 2005; Acts of 2005, Act 1990, § 1, eff. Aug. 12, 2005; Acts of 2007, Act 587, §§ 3 to 9, eff. July 31, 2007; Acts of 2009, Act 956, § 5, eff. April 6, 2009; Acts of 2011, Act 792, § 1 to 5, eff. July 27, 2011; Acts of 2011, Act 793, § 7, eff. July 27, 2011; Acts of 2011, Act 1175, § 1, eff. July 27, 2011; Acts of 2013, Act 761, § 1, eff. Aug. 16, 2013; Acts of 2013, Act 1055, §§ 1 to 7, 18, eff. Aug. 16, 2013; Acts of 2013, Act 1431, § 3, eff. Aug. 16, 2013.

CALIFORNIA:

CAL. PENAL CODE § 273.5 (2016): WILLFUL INFLICTION OF CORPORAL INJURY; VIOLATION; PUNISHMENT

(a) Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both that fine and imprisonment.

(b) Subdivision (a) shall apply if the victim is or was one or more of the following:

(1) The offender's spouse or former spouse.

(2) The offender's cohabitant or former cohabitant.

(3) The offender's fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243.

(4) The mother or father of the offender's child.

(c) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(d) As used in this section, "traumatic condition" means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.

(e) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.

(f)(1) Any person convicted of violating this section for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county jail for not more than one

year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to ten thousand dollars (\$10,000).

(2) Any person convicted of a violation of this section for acts occurring within seven years of a previous conviction under subdivision (e) of Section 243 shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(g) If probation is granted to any person convicted under subdivision (a), the court shall impose probation consistent with the provisions of Section 1203.097.

(h) If probation is granted, or the execution or imposition of a sentence is suspended, for any defendant convicted under subdivision (a) who has been convicted of any prior offense specified in subdivision (f), the court shall impose one of the following conditions of probation:

(1) If the defendant has suffered one prior conviction within the previous seven years for a violation of any offense specified in subdivision (f), it shall be a condition thereof, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 15 days.

(2) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of any offense specified in subdivision (f), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 60 days.

(3) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.

(i) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

(2)(A) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(B) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(j) Upon conviction under subdivision (a), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(k) If a peace officer makes an arrest for a violation of this section, the peace officer is not required to inform the victim of his or her right to make a citizen's arrest pursuant to subdivision (b) of Section 836.

CREDIT(S)

(Added by Stats.1977, c. 912, p. 2786, § 3. Amended by Stats.1980, c. 1117, p. 3589, § 3; Stats.1985, c. 563, § 1; Stats.1987, c. 415, § 2; Stats.1988, c. 576, § 1, eff. Aug. 26, 1988; Stats.1990, c. 680 (A.B.2632), § 1; Stats.1992, c. 163 (A.B.2641), § 104; Stats.1992, c. 183 (S.B.1545), § 1; Stats.1992, c. 184 (A.B.2439), § 3; Stats.1993, c. 219 (A.B.1500), § 216.4; Stats.1993-94, 1st Ex.Sess., c. 28 (A.B.93), § 2, eff. Nov. 30, 1994; Stats.1996, c. 1075 (S.B.1444), § 15; Stats.1996, c. 1077 (A.B.2898), § 16; Stats.1999, c. 660 (S.B.563), § 2; Stats.1999, c. 662 (S.B.218), § 9.5; Stats.2000, c. 287 (S.B.1955), § 5; Stats.2003, c. 262 (A.B.134), § 1; Stats.2007, c. 582 (A.B.289), § 1; Stats.2011, c. 129 (S.B.430), § 2; Stats.2014, c. 867 (S.B.1144), § 16; Stats.2013, c. 763 (A.B.16), § 1.)

COLORADO:

COLO. REV. STAT. ANN. § 26-3.1-101 (2016): DEFINITIONS (AT RISK ADULTS: CRIMINAL CODE)

As used in this article, unless the context otherwise requires:

(1) "At-risk adult" means an individual eighteen years of age or older who is susceptible to mistreatment as such term is defined in subsection (4) of this section or self-neglect as such term is defined in subsection (7) of this section because the individual is unable to perform or obtain services necessary for the individual's health, safety, or welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the individual's person or affairs.

(2) "Caretaker" means a person, as such term is defined in subsection (5) of this section, who is responsible for the care of an at-risk adult, as such term is defined in subsection (1) of this section, as a result of a family or legal relationship or who has assumed responsibility for the care of an at-risk adult.

(3) "Least restrictive intervention" means acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent situations of actual mistreatment or self-neglect.

(4) "Mistreatment" means an act or omission which threatens the health, safety, or welfare of an at-risk adult, as such term is defined in subsection (1) of this section, or which exposes the adult to a situation or condition that poses an imminent risk of death, serious bodily injury, or bodily injury to the adult. "Mistreatment" includes, but is not limited to:

(a) Abuse which occurs:

(I) Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;

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CREDIT(S)

Added by Laws 1991, S.B.91-84, § 2, eff. July 1, 1991. Amended by Laws 1992, S.B.92-133, § 54, eff. July 1, 1992; Laws 1993, H.B.93-1088, § 23, eff. July 1, 1993; Laws 1993, S.B.93-242, § 21, eff. July 1, 1993; Laws 2006, Ch. 298, § 17, eff. Aug. 7, 2006; Laws 2007, Ch. 425, § 1, eff. July 1, 2007; Laws 2010, Ch. 188, § 31, eff. April 29, 2010; Laws 2012, Ch. 279, § 1, eff. Aug. 15, 2012; Laws 2013, Ch. 233, § 3, eff. May 16, 2013; Laws 2013, Ch. 323, § 30, eff. March 1, 2014; Laws 2014, Ch. 103, § 1, eff. April 7, 2014.

COLO. REV. STAT. ANN. § 26-3.1-101 (2016) DEFINITIONS (PROTECTIVE SERVICES AT RISK ADULTS)

As used in this article, unless the context otherwise requires:

(1) "At-risk adult" means an individual eighteen years of age or older who is susceptible to mistreatment, self-neglect, or exploitation because the individual is unable to perform or obtain services necessary for his or her health, safety, or welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or affairs.

.....

(7) "Mistreatment" means an act or omission that threatens the health, safety, or welfare of an at-risk adult or that exposes an at-risk adult to a situation or condition that poses an imminent risk of death, serious bodily injury, or bodily injury to the at-risk adult. "Mistreatment" includes, but is not limited to:

(a) Abuse that occurs:

(I) Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;

.....

CREDIT(S)

Repealed and reenacted by Laws 1991, S.B.91-84, § 1, eff. July 1, 1991. Amended by Laws 2000, Ch. 258, § 2, eff. Jan. 1, 2001. Amended by Laws 2012, Ch. 226, § 1, eff. May 29, 2012; Laws 2013, Ch. 233, § 5, eff. May 16, 2013.

CONNECTICUT:

CONN. GEN. STAT. ANN. § 53A-64AA (2016): STRANGULATION IN THE FIRST DEGREE: CLASS C FELONY

(a) A person is guilty of strangulation in the first degree when such person commits strangulation in the second degree as provided in section 53a-64bb and (1) in the commission of such offense, such person (A) uses or attempts to use a dangerous instrument, or (B) causes serious physical injury to such other person, or (2) such person has previously been convicted of a violation of this section or section 53a-64bb.

(b) No person shall be found guilty of strangulation in the first degree and unlawful restraint or assault upon the same incident, but such person may be charged and prosecuted for all three offenses upon the same information. For the purposes of this section, "unlawful restraint" means a violation of section 53a-95 or 53a-96, and "assault" means a violation of section 53a-59, 53a-59a, 53a-59b, 53a-59c, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-61 or 53a-61a.

(c) Strangulation in the first degree is a class C felony.

Credits (2007, P.A. 07-123, § 8.).

CONN. GEN. STAT. ANN. § 53A-64BB (2016): STRANGULATION IN THE SECOND DEGREE: CLASS D FELONY

(a) A person is guilty of strangulation in the second degree when such person restrains another person by the neck or throat with the intent to impede the ability of such other person to breathe or restrict blood circulation of such other person and such person impedes the ability of such other person to breathe or restricts blood circulation of such other person.

(b) No person shall be found guilty of strangulation in the second degree and unlawful restraint or assault upon the same incident, but such person may be charged and prosecuted for all three offenses upon the same information. For the purposes of this section, “unlawful restraint” means a violation of section 53a-95 or 53a-96, and “assault” means a violation of section 53a-59, 53a-59a, 53a-59b, 53a-59c, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-61 or 53a-61a.

(c) Strangulation in the second degree is a class D felony.

Credits

(2007, P.A. 07-123, § 8.)

**CONN. GEN. STAT. ANN. § 53A-64CC (2016): STRANGULATION IN THE THIRD DEGREE:
CLASS A MISDEMEANOR**

(a) A person is guilty of strangulation in the third degree when such person recklessly restrains another person by the neck or throat and impedes the ability of such other person to breathe or restricts blood circulation of such other person.

(b) No person shall be found guilty of strangulation in the third degree and unlawful restraint or assault upon the same incident, but such person may be charged and prosecuted for all three offenses upon the same information. For the purposes of this section, “unlawful restraint” means a violation of section 53a-95 or 53a-96, and “assault” means a violation of section 53a-59, 53a-59a, 53a-59b, 53a-59c, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-61 or 53a-61a.

(c) Strangulation in the third degree is a class A misdemeanor.

Credits

(2007, P.A. 07-123, § 8.)

DELAWARE:

DEL. CODE ANN. TIT. 11, § 607 (2016): STRANGULATION; PENALTY; AFFIRMATIVE DEFENSE

(a)(1) A person commits the offense of strangulation if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person.

(2) Except as provided in paragraph (a)(3) of this section, strangulation is a class E felony.

(3) Strangulation is a class D felony if:

- a. The person used or attempted to use a dangerous instrument or a deadly weapon while committing the offense; or
- b. The person caused serious physical injury to the other person while committing the offense; or
- c. The person has been previously convicted of strangulation.

(b) It is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.

CREDIT(S)

Added by 77 Laws 2010, ch. 256, § 1, eff. May 14, 2010.

DEL. CODE ANN. TIT. 11, § 468 (2016): JUSTIFICATION--USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE OR SAFETY OF OTHERS

The use of force upon or toward the person of another is justifiable if it is reasonable and moderate and:

(1) The defendant is the parent, guardian, foster parent, legal custodian or other person similarly responsible for the general care and supervision of a child, or a person acting at the request of a parent, guardian, foster parent, legal custodian or other responsible person, and:

- a. The force is used for the purpose of safeguarding or promoting the welfare of the child, including the prevention or punishment of misconduct; and
- b. The force used is intended to benefit the child, or for the special purposes listed in paragraphs (2)a., (3)a., (4)a., (5), (6) and (7) of this section. The size, age, condition of the child, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; but
- c. The force shall not be justified if it includes, but is not limited to, any of the following: Throwing the child, kicking, burning, cutting, striking with a closed fist, interfering with breathing, use of or threatened use of a deadly weapon, prolonged deprivation of sustenance or medication, or doing any other act that is likely to cause or does cause physical injury, disfigurement, mental distress, unnecessary degradation or substantial risk of serious physical injury or death; or

(2) The defendant is a teacher or a person otherwise entrusted with the care or supervision of a child for a special purpose, and:

a. The defendant believes the force used is necessary to further the special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of force is consistent with the welfare of the child; and

b. The degree of force, if it had been used by the parent, guardian, foster parent or legal custodian of the child, would be justifiable under paragraph (1)a. and b. of this section and not enumerated under paragraph (1)c. of this section; or

(3) The defendant is the guardian or other person similarly responsible for the general care and supervision of a person who is incompetent, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the person who is incompetent, including the prevention of misconduct, or, when such person who is incompetent is in a hospital or other institution for care and custody, for the maintenance of reasonable discipline in such institution; and

b. The force used is reasonable and moderate; the size, age, condition of the person who is incompetent, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; and

c. The force is not enumerated under paragraph (1)c. of this section; and

d. The force is not proscribed as abuse or mistreatment under Chapter 11 of Title 16; or

(4) The defendant is a doctor or other therapist or a person assisting at the doctor's or other therapist's direction, and:

a. The force is used for the purpose of administering a recognized form of treatment which the defendant believes to be adapted to promoting the physical or mental health of the patient; and

b. The treatment is administered with the consent of the patient or, if the patient is a minor or a person who is incompetent, with the consent of a parent, guardian or other person legally competent to consent in the patient's behalf, or the treatment is administered in an emergency when the defendant believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent; or

(5) The defendant is a warden or other authorized official of a correctional institution, or a superintendent, administrator or other authorized official of the Division of Youth Rehabilitative Service, and:

a. The defendant believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and

b. The nature or degree of force used is not forbidden by any statute governing the administration of the institution; and

c. If deadly force is used, its use is otherwise justifiable under this Criminal Code; or

(6) The defendant is a person responsible for the safety of a vessel or an aircraft or a person acting at the responsible person's direction, and:

a. The defendant believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order; and

b. If deadly force is used, its use is otherwise justifiable under this Criminal Code; or

(7) The defendant is a person who is authorized or required by law to maintain order or decorum in a vehicle, train or other carrier or in a place where others are assembled, and:

a. The defendant believes that the force used is necessary for such purpose; and

b. The force used is not designed to cause or known to create a substantial risk of causing death, physical injury or extreme mental distress.

CREDIT(S)

58 Laws 1972, ch. 497, § 1; 68 Laws 1992, ch. 442, §§ 1, 2, 4; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 78 Laws 2012, ch. 224, §§ 12, 13, eff. April 19, 2012.

DISTRICT OF COLUMBIA:

D.C. CODE § 16-2301 (2016). DEFINITIONS (JUVENILE CODE)

As used in this subchapter-

.....

(23)(A) The term "abused", when used with reference to a child, means:

(i) infliction of physical or mental injury upon a child;

(ii) sexual abuse or exploitation of a child; or

(iii) negligent treatment or maltreatment of a child.

(B)(i) The term "abused", when used with reference to a child, does not include discipline administered by a parent, guardian or custodian to his or her child; provided, that the discipline is reasonable in manner and moderate in degree and otherwise does not constitute cruelty. For the purposes of this paragraph, the term "discipline" does not include:

(I) burning, biting, or cutting a child;

(II) striking a child with a closed fist;

(III) inflicting injury to a child by shaking, kicking, or throwing the child;

(IV) nonaccidental injury to a child under the age of 18 months;

(V) interfering with a child's breathing; and

(VI) threatening a child with a dangerous weapon or using such a weapon on a child. For purposes of this provision, the term "dangerous weapon" means a firearm, a knife, or any of the prohibited weapons described in section 22- 4514.

(ii) The list in sub-subparagraph (i) of this subparagraph is illustrative of unacceptable discipline and is not intended to be exclusive or exhaustive.

.....

CREDIT(S)

(Dec. 23, 1963, 77 Stat. 586, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 523, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(a), 24 DCR 3341; Mar. 12, 1986, D.C. Law 6-90, § 2, 33 DCR 307; Mar. 15, 1990, D.C. Law 8-87, § 4(a), 37 DCR 50; June 8, 1990, D.C. Law 8-134, § 2(a), 37 DCR 2613; Mar. 6, 1991, D.C. Law 8-200, § 2, 37 DCR 7334; Mar. 16, 1995, D.C. Law 10-227, § 3(a), 42 DCR 4; May 23, 1995, D.C. Law 10-257, § 401(e), 42 DCR 53; Apr. 18, 1996, D.C. Law 11-110, § 65, 43 DCR 530; Mar. 24, 1998, D.C. Law 12-81, § 10(u), 45 DCR 745; June 27, 2000, D.C. Law 13-136, § 301(a)(1), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13- 277, § 3(a)(1), 48 DCR 2043; Oct. 19, 2002, D.C. Law 14-206, § 3(a), 49 DCR 7815; Mar. 13, 2004, D.C. Law 15-105, § 55, 51 DCR 881; Mar. 17, 2005, D.C. Law 15-261, § 202(a), 52 DCR 1188; Mar. 14, 2007, D.C. Law 16-274, § 2(a), 54 DCR 864; Sept. 12, 2008, D.C. Law 17-231, § 20(g), 55 DCR 6758; Mar. 8, 2011, D.C. Law 18-284, § 3(b), 57 DCR 10477; Sept. 26, 2012, D.C. Law 19-169, § 20(c)(2), 59 DCR 5567.)

FLORIDA:

FLA. STAT. ANN. § 39.01 (2016): DEFINITIONS (JUVENILE CODE)

When used in this chapter, unless the context otherwise requires:

.....

(30) "Harm" to a child's health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:

- a. Sprains, dislocations, or cartilage damage.
- b. Bone or skull fractures.
- c. Brain or spinal cord damage.
- d. Intracranial hemorrhage or injury to other internal organs.
- e. Asphyxiation, suffocation, or drowning.
- f. Injury resulting from the use of a deadly weapon.
- g. Burns or scalding.
- h. Cuts, lacerations, punctures, or bites.
- i. Permanent or temporary disfigurement.
- j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term "willful" refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term "drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

- a. Sprains, dislocations, or cartilage damage.
- b. Bone or skull fractures.
- c. Brain or spinal cord damage.
- d. Intracranial hemorrhage or injury to other internal organs.
- e. Asphyxiation, suffocation, or drowning.
- f. Injury resulting from the use of a deadly weapon.
- g. Burns or scalding.
- h. Cuts, lacerations, punctures, or bites.
- i. Permanent or temporary disfigurement.
- j. Permanent or temporary loss or impairment of a body part or function.
- k. Significant bruises or welts.

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CREDIT(S)

Laws 1951, c. 26880, § 1; Laws 1967, c. 67-585, §§ 1, 2; Laws 1969, c. 69-106, §§ 19, 35; Laws 1969, c. 69-353, § 3; Laws 1969, c. 69-365, § 4; Laws 1971, c. 71-117, § 1; Laws 1971, c. 71-130, § 1; Laws 1971, c. 71-355, § 10; Laws 1972, c. 72-179, §§ 4, 5; Laws 1972, c. 72-404, §§ 19, 30; Laws 1973, c. 73-231, §§ 2, 23; Laws 1974, c. 74-368, § 1; Laws 1975, c. 75-48, §§ 15, 27, 28; Laws 1977, c. 77-147, § 4; Laws 1978, c. 78-414, § 2; Laws 1979, c. 79-164, § 9; Laws 1979, c. 79-203, § 2; Laws 1980, c. 80-290, § 1; Laws 1981, c. 81-218, §§ 1, 17; Laws 1984, c. 84-311, §§ 4, 15; Laws 1985, c. 85-80, § 4; Laws 1985, c. 85-206, § 2; Laws 1986, c. 86-220, §§ 73, 78; Laws 1987, c. 87-133, § 1; Laws 1987, c. 87-289, § 1; Laws 1987, c. 87-397, § 12; Laws 1988, c. 88-319, § 1; Laws 1988, c. 88-337, § 10; Laws 1990, c. 90-53, § 2; Laws 1990, c. 90-208, § 3; Laws 1990, c. 90-306, § 3; Laws 1990, c. 90-309, § 2; Laws 1991, c. 91-45, § 69; Laws 1991, c. 91-183, § 1; Laws 1992, c. 92-158, § 1; Laws 1992, c. 92-170, § 1; Laws 1992, c. 92-287, §§ 1, 4[1st], 14; Laws 1993, c. 93-39, § 13; Laws 1993, c. 93-230, § 6; Laws 1994, c. 94-164, § 1; Laws 1994, c. 94-209, § 11; Laws 1994, c. 94-232, § 50; Laws 1995, c. 95-147, § 1333; Laws 1995, c. 95-152, § 8; Laws 1995, c. 95-212, § 1; Laws 1995, c. 95-228, § 4; Laws 1995, c. 95-266, § 1; Laws 1995, c. 95-267, §§ 3, 43; Laws 1996, c. 96-369, § 3; Laws 1996, c. 96-398, § 2; Laws 1996, c. 96-402, § 20; Laws 1997, c. 97-96, § 23; Laws 1997, c. 97-101, § 158; Laws 1997, c. 97-190, § 44; Laws 1997, c. 97-234, § 4; Laws 1997, c. 97-238, § 111; Laws 1997, c. 97-276, § 1. Amended by Laws 1998, c. 98-49, § 1, eff. May 12,

1998; Laws 1998, c. 98-166, § 176, eff. July 1, 1998; Laws 1998, c. 98-280, § 7, eff. June 30, 1998; Laws 1998, c. 98-403, § 20, eff. Oct. 1, 1998; Laws 1999, c. 99-2, § 15, eff. June 29, 1999; Laws 1999, c. 99-168, § 3, eff. July 1, 1999; Laws 1999, c. 99-186, § 2, eff. July 1, 1999; Laws 1999, c. 99-193, § 4, eff. July 1, 1999; Laws 2000, c. 2000-139, § 15, eff. July 1, 2000; Laws 2000, c. 2000-188, § 2, eff. July 1, 2000; Laws 2000, c. 2000-318, § 82, eff. July 1, 2000; Laws 2000, c. 2000-320, § 9, eff. Oct. 1, 2000; Laws 2002, c. 2002-1, § 14, eff. May 21, 2002; Laws 2006, c. 2006-62, § 2, eff. July 1, 2006; Laws 2006, c. 2006-86, § 1, eff. July 1, 2006; Laws 2006, c. 2006-194, § 4, eff. July 1, 2006; Laws 2007, c. 2007-124, § 4, eff. July 1, 2007; Laws 2008, c. 2008-90, § 1, eff. July 1, 2008; Laws 2008, c. 2008-154, § 1, eff. July 1, 2008; Laws 2008, c. 2008-245, § 1, eff. July 1, 2008; Laws 2009, c. 2009-21, § 1, eff. July 7, 2009; Laws 2012, c. 2012-105, § 3, eff. Jan. 1, 2013; Laws 2012, c. 2012-178, § 1, eff. July 1, 2012; Laws 2014, c. 2014-19, § 11, eff. July 1, 2014; Laws 2014, c. 2014-224, § 3, eff. July 1, 2014. Current through Ch. 255 (End) of the 2014 Sp. "A" Sess. of the Twenty-Third Legislature

FLA. STAT. ANN. § 784.041 (2016): FELONY BATTERY; DOMESTIC BATTERY BY STRANGULATION

(1) A person commits felony battery if he or she:

(a) Actually and intentionally touches or strikes another person against the will of the other; and

(b) Causes great bodily harm, permanent disability, or permanent disfigurement.

(2)(a) A person commits domestic battery by strangulation if the person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person. This paragraph does not apply to any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state.

(b) As used in this subsection, the term:

1. "Family or household member" has the same meaning as in s. 741.28.

2. "Dating relationship" means a continuing and significant relationship of a romantic or intimate nature.

(3) A person who commits felony battery or domestic battery by strangulation commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

Added by Laws 1997, c. 97-183, § 1, eff. Oct. 1, 1997. Amended by Laws 2007, c. 2007-133, § 1, eff. Oct. 1, 2007.

GEORIGIA:

GA CODE § 16-5-21 (2016). AGGRAVATED ASSAULT

(a) As used in this Code section, the term "strangulation" means impeding the normal breathing or circulation of blood of another person by applying pressure to the throat or neck of such person or by obstructing the nose and mouth of such person.

(b) A person commits the offense of aggravated assault when he or she assaults:

(1) With intent to murder, to rape, or to rob;

(2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury;

(3) With any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in strangulation; or

(4) A person or persons without legal justification by discharging a firearm from within a motor vehicle toward a person or persons.

(c) Except as provided in subsections (d) through (m) of this Code section, a person convicted of the offense of aggravated assault shall be punished by imprisonment for not less than one nor more than 20 years.

(d) A person who knowingly commits the offense of aggravated assault upon a peace officer while the peace officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(e) Any person who commits the offense of aggravated assault against a person who is 65 years of age or older shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years.

(f)(1) As used in this subsection, the term "correctional officer" shall include superintendents, wardens, deputy wardens, guards, and correctional officers of state, county, and municipal penal institutions who are certified by the Georgia Peace Officer Standards and Training Council pursuant to Chapter 8 of Title 35 and employees of the Department of Juvenile Justice who are known to be employees of the department or who have given reasonable identification of their employment. The term "correctional officer" shall also include county jail officers who are certified or registered by the Georgia Peace Officer Standards and Training Council pursuant to Chapter 8 of Title 35.

(2) A person who knowingly commits the offense of aggravated assault upon a correctional officer while the correctional officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(g) Any person who commits the offense of aggravated assault in a public transit vehicle or station shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years. For purposes of this Code section, "public transit vehicle" has the same meaning as in subsection (c) of Code Section 16-5-20.

(h) Any person who commits the offense of aggravated assault upon a person in the course of violating Code Section 16-8-2 where the property that was the subject of the theft was a vehicle engaged in commercial transportation of cargo or any appurtenance thereto, including without limitation any such trailer, semitrailer, container, or other associated equipment, or the cargo being transported therein or thereon, shall upon conviction be punished by imprisonment for not less than five nor more than 20 years, a fine not less than \$50,000.00 nor more than \$200,000.00, or both such fine and imprisonment. For purposes of this subsection, the term "vehicle" includes without limitation any railcar.

(i) Any person who commits the offense of aggravated assault involving the use of a firearm upon a student or teacher or other school personnel within a school safety zone as defined in Code Section 16-11-127.1 shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(j) Any person who commits the offense of aggravated assault involving the use of a firearm upon a student or teacher or other school personnel within a school safety zone as defined in paragraph (1) of subsection (a) of Code Section 16-11-127.1 shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(k) If the offense of aggravated assault is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished by imprisonment for not less than three nor more than 20 years.

(l) Any person who commits the offense of aggravated assault with intent to rape against a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than

50 years. Any person convicted under this subsection shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(m) A person who knowingly commits the offense of aggravated assault upon an officer of the court while such officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years. As used in this subsection, the term "officer of the court" means a judge, attorney, clerk of court, deputy clerk of court, court reporter, court interpreter, or probation officer.

(n) A person who knowingly commits the offense of aggravated assault upon an emergency health worker while the worker is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years. As used in this subsection, the term "emergency health worker" means hospital emergency department personnel and emergency medical services personnel.

CREDIT(S)

Laws 1833, Cobb's 1851 Digest, pp. 787-789; Laws 1840, Cobb's 1851 Digest, p. 788; Laws 1866, p. 151, § 1; Laws 1968, p. 1249, § 1; Laws 1976, p. 543, § 1; Laws 1982, p. 1242, § 2; Laws 1984, p. 900, § 1; Laws 1985, p. 628, § 1; Laws 1991, p. 971, §§ 3, 4; Laws 1994, p. 1012, § 8; Laws 1994, p. 1920, §§ 1, 2; Laws 1996, p. 988, § 1; Laws 1997, p. 1453, § 1; Laws 1999, p. 381, § 3; Laws 2000, p. 1626, § 1; Laws 2003, Act 9, § 16, eff. May 14, 2003; Laws 2004, Act 793, § 1, eff. July 1, 2004; Laws 2006, Act 571, § 4, eff. July 1, 2006; Laws 2010, Act 646, § 1, eff. July 1, 2010; Laws 2011, Act 245, § 16, eff. May 13, 2011; Laws 2014, Act 575, § 2-2, eff. July 1, 2014; Laws 2014, Act 576, §§ 2, 3, eff. July 1, 2014; Laws 2014, Act 604, § 3-1, eff. July 1, 2014.

HAWAII:

HAW. REV. STAT. § 709-906 (2016): ABUSE OF FAMILY OR HOUSEHOLD MEMBERS; PENALTY

1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.

For the purposes of this section, "family or household member" means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons in a dating relationship as defined under section 586-1, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

(2) Any police officer, with or without a warrant, may arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member and that the person arrested is guilty thereof.

(3) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(4) Any police officer, with or without a warrant, shall take the following course of action, regardless of whether the physical abuse or harm occurred in the officer's presence:

(a) The police officer shall make reasonable inquiry of the family or household member upon whom the officer believes physical abuse or harm has been inflicted and other witnesses as there may be;

(b) The police officer lawfully shall order the person who the police officer reasonably believes to have inflicted the abuse to leave the premises for a period of separation of forty-eight hours, during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects;

(c) When the incident occurs after 12:00 p.m. on any Friday, or on any Saturday, Sunday, or legal holiday, the order to leave the premises and to initiate no further contact shall commence immediately and be in full force, but the forty-eight hour period shall be enlarged and extended until 4:30 p.m. on the first day following the weekend or legal holiday;

(d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person;

(e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and

(f) The police officer shall seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.

(5) Abuse of a family or household member and refusal to comply with the lawful order of a police officer under subsection (4) are misdemeanors and the person shall be sentenced as follows:

(a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and

(b) For a second offense that occurs within one year of the first conviction, the person shall be termed a "repeat offender" and serve a minimum jail sentence of thirty days.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

(6) Whenever a court sentences a person pursuant to subsection (5), it also shall require that the offender undergo any available domestic violence intervention programs ordered by the court. However, the court may suspend any portion of a jail sentence, except for the mandatory sentences under subsection (5)(a) and (b), upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered intervention.

(7) For a third or any subsequent offense that occurs within two years of a second or subsequent conviction, the offense shall be a class C felony.

(8) Where the physical abuse consists of intentionally or knowingly impeding the normal breathing or circulation of the blood of the family or household member by applying pressure on the throat or the neck, abuse of a family or household member is a class C felony.

(9) Where physical abuse occurs in the presence of any family or household member who is less than fourteen years of age, abuse of a family or household member is a class C felony.

(10) Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided that the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting the arrest.

(11) The family or household member who has been physically abused or harmed by another person may petition the family court, with the assistance of the prosecuting attorney of the applicable county, for a penal summons or arrest warrant to issue forthwith or may file a criminal complaint through the prosecuting attorney of the applicable county.

(12) The respondent shall be taken into custody and brought before the family court at the first possible opportunity. The court may dismiss the petition or hold the respondent in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.

(13) This section shall not operate as a bar against prosecution under any other section of this Code in lieu of prosecution for abuse of a family or household member.

(14) It shall be the duty of the prosecuting attorney of the applicable county to assist any victim under this section in the preparation of the penal summons or arrest warrant.

(15) This section shall not preclude the physically abused or harmed family or household member from pursuing any other remedy under law or in equity.

(16) When a person is ordered by the court to undergo any domestic violence intervention, that person shall provide adequate proof of compliance with the court's order. The court shall order a subsequent hearing at which the person is required to make an appearance, on a date certain, to determine whether the person has completed the ordered domestic violence intervention. The court may waive the subsequent hearing and appearance where a court officer has established that the person has completed the intervention ordered by the court.

CREDIT(S)

Laws 1973, ch. 189, § 1; Laws 1980, ch. 106, § 1; Laws 1980, ch. 266, § 2; Laws 1981, ch. 82, § 37; Laws 1983, ch. 248, § 1; Laws 1985, ch. 143, § 1; Laws 1986, ch. 244, § 1; Laws 1987, ch. 360, § 1; Laws 1991, ch. 215, §§ 2, 4; Laws 1991, ch. 257, §§ 1, 2; Laws 1992, ch. 290, § 7; Laws 1994, ch. 182, §§ 1, 3; Laws 1995, ch. 116, § 1; Laws 1996, ch. 201, § 2; Laws 1997, ch. 321, § 1; Laws 1997, ch. 323, § 1; Laws 1997, ch. 383, § 70; Laws 1998, ch. 172, § 8; Laws 1999, ch. 18, § 18; Laws 2002, ch. 5, § 1; Laws 2006, ch. 230, § 46; Laws 2012, ch. 205, § 1, eff. July 3, 2012; Laws 2013, ch. 251, § 1, eff. July 1, 2013; Laws 2014, ch. 117, § 1, eff. June 20, 2014.

IDAHO:

IDAHO CODE ANN. § 18-923 (2016): ATTEMPTED STRANGULATION

(1) Any person who willfully and unlawfully chokes or attempts to strangle a household member, or a person with whom he or she has or had a dating relationship, is guilty of a felony punishable by incarceration for up to fifteen (15) years in the state prison.

(2) No injuries are required to prove attempted strangulation.

(3) The prosecution is not required to show that the defendant intended to kill or injure the victim. The only intent required is the intent to choke or attempt to strangle.

(4) "Household member" assumes the same definition as set forth in section 18-918(1)(a), Idaho Code.

(5) "Dating relationship" assumes the same definition as set forth in section 39-6303(2), Idaho Code.

CREDIT(S)
S.L. 2005, ch. 303, § 1.

ILLINOIS:

720 ILL. COMP. STAT. ANN. 5/12-3.05 (2016): AGGRAVATED BATTERY

(a) Offense based on injury. A person commits aggravated battery when, in committing a battery, other than by the discharge of a firearm, he or she knowingly does any of the following:

(1) Causes great bodily harm or permanent disability or disfigurement.

(2) Causes severe and permanent disability, great bodily harm, or disfigurement by means of a caustic or flammable substance, a poisonous gas, a deadly biological or chemical contaminant or agent, a radioactive substance, or a bomb or explosive compound.

(3) Causes great bodily harm or permanent disability or disfigurement to an individual whom the person knows to be a peace officer, community policing volunteer, fireman, private security officer, correctional institution employee, or Department of Human Services employee supervising or controlling sexually dangerous persons or sexually violent persons:

(i) performing his or her official duties;

(ii) battered to prevent performance of his or her official duties; or

(iii) battered in retaliation for performing his or her official duties.

(4) Causes great bodily harm or permanent disability or disfigurement to an individual 60 years of age or older.

(5) Strangles another individual.

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(h) Sentence. Unless otherwise provided, aggravated battery is a Class 3 felony.

Aggravated battery as defined in subdivision (a)(4), (d)(4), or (g)(3) is a Class 2 felony.

Aggravated battery as defined in subdivision (a)(3) or (g)(1) is a Class 1 felony.

Aggravated battery as defined in subdivision (a)(1) is a Class 1 felony when the aggravated battery was intentional and involved the infliction of torture, as defined in paragraph (14) of subsection (b) of Section 9-1 of this Code, as the infliction of or subjection to extreme physical pain, motivated by an intent to increase or prolong the pain, suffering, or agony of the victim.

Aggravated battery under subdivision (a)(5) is a Class 1 felony if:

(A) the person used or attempted to use a dangerous instrument while committing the offense; or

(B) the person caused great bodily harm or permanent disability or disfigurement to the other person while committing the offense; or

(C) the person has been previously convicted of a violation of subdivision (a)(5) under the laws of this State or laws similar to subdivision (a)(5) of any other state.

Aggravated battery as defined in subdivision (e)(1) is a Class X felony.

Aggravated battery as defined in subdivision (a)(2) is a Class X felony for which a person shall be sentenced to a term of imprisonment of a minimum of 6 years and a maximum of 45 years.

Aggravated battery as defined in subdivision (e)(5) is a Class X felony for which a person shall be sentenced to a term of imprisonment of a minimum of 12 years and a maximum of 45 years.

Aggravated battery as defined in subdivision (e)(2), (e)(3), or (e)(4) is a Class X felony for which a person shall be sentenced to a term of imprisonment of a minimum of 15 years and a maximum of 60 years.

Aggravated battery as defined in subdivision (e)(6), (e)(7), or (e)(8) is a Class X felony for which a person shall be sentenced to a term of imprisonment of a minimum of 20 years and a maximum of 60 years.

Aggravated battery as defined in subdivision (b)(1) is a Class X felony, except that:

(1) if the person committed the offense while armed with a firearm, 15 years shall be added to the term of imprisonment imposed by the court;

(2) if, during the commission of the offense, the person personally discharged a firearm, 20 years shall be added to the term of imprisonment imposed by the court;

(3) if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.

(i) Definitions. For the purposes of this Section:

"Building or other structure used to provide shelter" has the meaning ascribed to "shelter" in Section 1 of the Domestic Violence Shelters Act.

"Domestic violence" has the meaning ascribed to it in Section 103 of the Illinois Domestic Violence Act of 1986.

"Domestic violence shelter" means any building or other structure used to provide shelter or other services to victims or to the dependent children of victims of domestic violence pursuant to the Illinois Domestic Violence Act of 1986 or the Domestic Violence Shelters Act, or any place within 500 feet of such a building or other structure in the case of a person who is going to or from such a building or other structure.

"Firearm" has the meaning provided under Section 1.1 of the Firearm Owners Identification Card Act, and does not include an air rifle as defined by Section 24.8-0.1 of this Code.

"Machine gun" has the meaning ascribed to it in Section 24-1 of this Code.

"Merchant" has the meaning ascribed to it in Section 16-0.1 of this Code.

"Strangle" means intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual.

CREDIT(S)

Laws 1961, p. 1983, § 12-4, eff. Jan. 1, 1962. Amended by Laws 1961, p. 2457, § 1, eff. Aug. 1, 1961; Laws 1965, p. 294, § 1, eff. July 1, 1965; Laws 1965, p. 854, § 1, eff. July 1, 1965; Laws 1967, p. 341, § 1, eff. July 1, 1967; Laws 1967, p. 2595, § 1, eff. Aug. 3, 1967; Laws 1967, p. 3514, § 1, eff. Sept. 1, 1967; Laws 1968, p. 99, § 1, eff. Aug. 17, 1968; Laws 1968, p. 166, § 1, eff. Aug. 20, 1968; P.A. 76-836, § 1, eff. Aug. 19, 1969; P.A. 77-2638, § 1, eff. Jan. 1, 1973; P.A. 79-1001, § 1, eff. Oct. 1, 1975; P.A. 81-175, § 1, eff. Aug. 13, 1979; P.A. 81-571, § 1, eff. Sept. 14, 1979; P.A. 81-763, § 1, eff. Sept. 16, 1979; P.A. 81-925, § 1, eff. Sept. 22, 1979; P.A. 81-1509, Art. I, § 23, eff. Sept. 26, 1980; P.A. 83-423, § 1, eff. Jan. 1, 1984; P.A. 84-1083, § 1, eff. Dec. 2, 1985; P.A. 85-996, § 1, eff. July 1, 1988; P.A. 86-979, § 1, eff. July 1, 1990; P.A. 86-980, § 2, eff. July 1, 1990; P.A. 86-1028, Art. II, § 2-19, eff. Feb. 5, 1990; P.A. 87-921, § 1, eff. Jan. 1, 1993; P.A. 87-1083, § 1, eff. Jan. 1, 1993; P.A. 88-45, Art. II, § 2-57, eff. July 6, 1993; P.A. 88-433, § 5, eff. Jan. 1, 1994; P.A. 89-507, Art. 90, § 90L-93, eff. July 1, 1997; P.A. 90-115, § 5, eff. Jan. 1, 1998; P.A. 90-651, § 5, eff. Jan. 1, 1999; P.A. 90-735, § 5, eff. Aug. 11, 1998; P.A. 91-357, § 237, eff. July 29, 1999; P.A. 91-488, § 5, eff. Jan. 1, 2000; P.A. 91-619, § 5, eff. Jan. 1, 2000; P.A. 91-672, § 5, eff. Jan. 1, 2000; P.A. 92-16, § 88, eff. June 28, 2001; P.A. 92-516, § 5, eff. Jan. 1, 2002; P.A. 92-841, § 5, eff. Aug. 22, 2002; P.A. 92-865, § 5, eff. Jan. 3, 2003; P.A. 93-83, § 5, eff. July 2, 2003; P.A. 94-243, § 5, eff. Jan. 1, 2006; P.A. 94-327, § 5, eff. Jan. 1, 2006; P.A. 94-333, § 5, eff. July 26, 2005; P.A. 94-363, § 5, eff. July 29, 2005; P.A. 94-482, § 5, eff. Jan. 1, 2006; P.A. 95-236, § 5, eff. Jan. 1, 2008; P.A. 95-256, § 5, eff. Jan. 1, 2008; P.A. 95-331, § 1030, eff. Aug. 21, 2007; P.A. 95-429, § 5, eff. Jan. 1, 2008; P.A. 95-748, § 5, eff. Jan. 1, 2009; P.A. 95-876, § 315, eff. Aug. 21, 2008; P.A. 96-201, § 5, eff. Aug. 10, 2009; P.A. 96-363, § 5, eff. Aug. 13, 2009; P.A. 96-1000, § 600, eff. July 2, 2010. Renumbered and amended as § 12-3.05 by P.A. 96-1551, Art. 1, § 5, eff. July 1, 2011. Amended by P.A. 97-313, § 5, eff. Jan. 1, 2012; P.A. 97-467, § 5, eff. Jan. 1, 2012; P.A. 97-597, § 5, eff. Jan. 1, 2012; P.A. 97-1109, § 15-55, eff. Jan. 1, 2013; P.A. 98-369, § 5, eff. Jan. 1, 2014; P.A. 98-385, § 5, eff. Jan. 1, 2014; P.A. 98-756, § 695, eff. July 16, 2014.

720 ILL. COMP. STAT. ANN. 5/12-3.3 (2016): AGGRAVATED DOMESTIC BATTERY

(a) A person who, in committing a domestic battery, knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated domestic battery.

(a-5) A person who, in committing a domestic battery, strangles another individual commits aggravated domestic battery. For the purposes of this subsection (a-5), "strangle" means intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual.

(b) Sentence. Aggravated domestic battery is a Class 2 felony. Any order of probation or conditional discharge entered following a conviction for an offense under this Section must include, in addition to any other condition of probation or conditional discharge, a condition that the offender serve a mandatory term of imprisonment of not less than 60 consecutive days. A person convicted of a second or subsequent violation of this Section must be sentenced to a mandatory term of imprisonment of not less than 3 years and not more than 7 years or an

extended term of imprisonment of not less than 7 years and not more than 14 years.

(c) Upon conviction of aggravated domestic battery, the court shall advise the defendant orally or in writing, substantially as follows: "An individual convicted of aggravated domestic battery may be subject to federal criminal penalties for possessing, transporting, shipping, or receiving any firearm or ammunition in violation of the federal Gun Control Act of 1968 (18 U.S.C. 922(g)(8) and (9))." A notation shall be made in the court file that the admonition was given.

CREDIT(S)

Laws 1961, p. 1983, § 12-3.3, added by P.A. 91-445, § 5, eff. Jan. 1, 2000. Amended by P.A. 96-287, § 5, eff. Aug. 11, 2009; P.A. 96-363, § 5, eff. Aug. 13, 2009; P.A. 96-1000, § 600, eff. July 2, 2010; P.A. 96-1551, Art. 1, § 5, eff. July 1, 2011.

725 ILL. COMP. STAT. ANN. § 110-5 (2016). DETERMINING THE AMOUNT OF BAIL AND CONDITIONS OF RELEASE.

(a) In determining the amount of monetary bail or conditions of release, if any, which will reasonably assure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of bail, the court shall, on the basis of available information, take into account such matters as the nature and circumstances of the offense charged, whether the evidence shows that as part of the offense there was a use of violence or threatened use of violence, whether the offense involved corruption of public officials or employees, whether there was physical harm or threats of physical harm to any public official, public employee, judge, prosecutor, juror or witness, senior citizen, child or handicapped person, whether evidence shows that during the offense or during the arrest the defendant possessed or used a firearm, machine gun, explosive or metal piercing ammunition or explosive bomb device or any military or paramilitary armament, whether the evidence shows that the offense committed was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's membership in or allegiance to an organized gang, the condition of the victim, any written statement submitted by the victim or proffer or representation by the State regarding the impact which the alleged criminal conduct has had on the victim and the victim's concern, if any, with further contact with the defendant if released on bail, whether the offense was based on racial, religious, sexual orientation or ethnic hatred, the likelihood of the filing of a greater charge, the likelihood of conviction, the sentence applicable upon conviction, the weight of the evidence against such defendant, whether there exists motivation or ability to flee, whether there is any verification as to prior residence, education, or family ties in the local jurisdiction, in another county, state or foreign country, the defendant's employment, financial resources, character and mental condition, past conduct, prior use of alias names or dates of birth, and length of residence in the community, the consent of the defendant to periodic drug testing in accordance with Section 110-6.5, whether a foreign national defendant is lawfully admitted in the United States of

America, whether the government of the foreign national maintains an extradition treaty with the United States by which the foreign government will extradite to the United States its national for a trial for a crime allegedly committed in the United States, whether the defendant is currently subject to deportation or exclusion under the immigration laws of the United States, whether the defendant, although a United States citizen, is considered under the law of any foreign state a national of that state for the purposes of extradition or non-extradition to the United States, the amount of unrecovered proceeds lost as a result of the alleged offense, the source of bail funds tendered or sought to be tendered for bail, whether from the totality of the court's consideration, the loss of funds posted or sought to be posted for bail will not deter the defendant from flight, whether the evidence shows that the defendant is engaged in significant possession, manufacture, or delivery of a controlled substance or cannabis, either individually or in consort with others, whether at the time of the offense charged he or she was on bond or pre-trial release pending trial, probation, periodic imprisonment or conditional discharge pursuant to this Code or the comparable Code of any other state or federal jurisdiction, whether the defendant is on bond or pre-trial release pending the imposition or execution of sentence or appeal of sentence for any offense under the laws of Illinois or any other state or federal jurisdiction, whether the defendant is under parole, aftercare release, mandatory supervised release, or work release from the Illinois Department of Corrections or Illinois Department of Juvenile Justice or any penal institution or corrections department of any state or federal jurisdiction, the defendant's record of convictions, whether the defendant has been convicted of a misdemeanor or ordinance offense in Illinois or similar offense in other state or federal jurisdiction within the 10 years preceding the current charge or convicted of a felony in Illinois, whether the defendant was convicted of an offense in another state or federal jurisdiction that would be a felony if committed in Illinois within the 20 years preceding the current charge or has been convicted of such felony and released from the penitentiary within 20 years preceding the current charge if a penitentiary sentence was imposed in Illinois or other state or federal jurisdiction, the defendant's records of juvenile adjudication of delinquency in any jurisdiction, any record of appearance or failure to appear by the defendant at court proceedings, whether there was flight to avoid arrest or prosecution, whether the defendant escaped or attempted to escape to avoid arrest, whether the defendant refused to identify himself or herself, or whether there was a refusal by the defendant to be fingerprinted as required by law. Information used by the court in its findings or stated in or offered in connection with this Section may be by way of proffer based upon reliable information offered by the State or defendant. All evidence shall be admissible if it is relevant and reliable regardless of whether it would be admissible under the rules of evidence applicable at criminal trials. If the State presents evidence that the offense committed by the defendant was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's membership in or allegiance to an organized gang, and if the court determines that the evidence may be substantiated, the court shall prohibit the defendant from associating with other members of the organized gang as a condition of bail or release. For the purposes of this Section, "organized gang" has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.

(b) The amount of bail shall be:

(1) Sufficient to assure compliance with the conditions set forth in the bail bond, which shall include the defendant's current address with a written admonishment to the defendant that he or she must comply with the provisions of Section 110-12 regarding any change in his or her address. The defendant's address shall at all times remain a matter of public record with the clerk of the court.

(2) Not oppressive.

(3) Considerate of the financial ability of the accused.

(4) When a person is charged with a drug related offense involving possession or delivery of cannabis or possession or delivery of a controlled substance as defined in the Cannabis Control Act, the Illinois Controlled Substances Act, or the Methamphetamine Control and Community Protection Act, the full street value of the drugs seized shall be considered. "Street value" shall be determined by the court on the basis of a proffer by the State based upon reliable information of a law enforcement official contained in a written report as to the amount seized and such proffer may be used by the court as to the current street value of the smallest unit of the drug seized.

(b-5) Upon the filing of a written request demonstrating reasonable cause, the State's Attorney may request a source of bail hearing either before or after the posting of any funds. If the hearing is granted, before the posting of any bail, the accused must file a written notice requesting that the court conduct a source of bail hearing. The notice must be accompanied by justifying affidavits stating the legitimate and lawful source of funds for bail. At the hearing, the court shall inquire into any matters stated in any justifying affidavits, and may also inquire into matters appropriate to the determination which shall include, but are not limited to, the following:

(1) the background, character, reputation, and relationship to the accused of any surety; and

(2) the source of any money or property deposited by any surety, and whether any such money or property constitutes the fruits of criminal or unlawful conduct; and

(3) the source of any money posted as cash bail, and whether any such money constitutes the fruits of criminal or unlawful conduct; and

(4) the background, character, reputation, and relationship to the accused of the person posting cash bail.

Upon setting the hearing, the court shall examine, under oath, any persons who may possess material information.

The State's Attorney has a right to attend the hearing, to call witnesses and to examine any witness in the proceeding. The court shall, upon request of the State's Attorney, continue the proceedings for a reasonable period to allow the State's Attorney to investigate the matter raised in any testimony or affidavit. If the hearing is granted after the accused has posted bail, the court shall conduct a hearing consistent with this subsection (b-5). At the conclusion of the hearing, the court must issue an order either approving or disapproving the bail.

(c) When a person is charged with an offense punishable by fine only the amount of the bail shall not exceed double the amount of the maximum penalty.

(d) When a person has been convicted of an offense and only a fine has been imposed the amount of the bail shall not exceed double the amount of the fine.

(e) The State may appeal any order granting bail or setting a given amount for bail.

(f) When a person is charged with a violation of an order of protection under Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the Criminal Code of 2012,

(1) whether the alleged incident involved harassment or abuse, as defined in the Illinois Domestic Violence Act of 1986;

(2) whether the person has a history of domestic violence, as defined in the Illinois Domestic Violence Act, or a history of other criminal acts;

(3) based on the mental health of the person;

(4) whether the person has a history of violating the orders of any court or governmental entity;

(5) whether the person has been, or is, potentially a threat to any other person;

(6) whether the person has access to deadly weapons or a history of using deadly weapons;

(7) whether the person has a history of abusing alcohol or any controlled substance;

(8) based on the severity of the alleged incident that is the basis of the alleged offense, including, but not limited to, the duration of the current incident, and whether the alleged incident involved physical injury, sexual assault, **strangulation**, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim;

(9) whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending;

(10) whether the person has exhibited obsessive or controlling behaviors toward the alleged victim, including, but not limited to, stalking, surveillance, or isolation of the alleged victim or victim's family member or members;

(11) whether the person has expressed suicidal or homicidal ideations;

(12) based on any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint, the court may, in its discretion, order the respondent to undergo a risk assessment evaluation conducted by an Illinois Department of Human Services approved partner abuse intervention program provider, pretrial service, probation, or parole agency. These agencies shall have access to summaries of the defendant's criminal history, which shall not include victim interviews or information, for the risk evaluation. Based on the information collected from the 12 points to be considered at a bail hearing for a violation of an order of protection, the results of any risk evaluation conducted and the other circumstances of the violation, the court may order that the person, as a condition of bail, be placed under electronic surveillance as provided in Section 5-8A-7 of the Unified Code of Corrections.

CREDIT(S)

Laws 1963, p. 2836, § 110-5, eff. Jan. 1, 1964. Amended by P.A. 82-449, § 1, eff. Jan. 1, 1982; P.A. 82-1027, § 1, eff. Dec. 15, 1982; P.A. 84-945, § 2, eff. Sept. 25, 1985; P.A. 85-513, § 1, eff. Jan. 1, 1988; P.A. 86-984, § 1, eff. Dec. 13, 1989; P.A. 88-677, § 30, eff. Dec. 15, 1994; P.A. 88-679, § 30, eff. July 1, 1995; P.A. 89-235, Art. 2, § 2-140, eff. Aug. 4, 1995; P.A. 89-377, § 20, eff. Aug. 18, 1995; P.A. 93-254, § 5, eff. Jan. 1, 2004; P.A. 93-817, § 5, eff. July 27, 2004; P.A. 94-556, § 1080, eff. Sept. 11, 2005; P.A. 95-773, § 20, eff. Jan. 1, 2009; P.A. 96-688, § 10, eff. Aug. 25, 2009; P.A. 96-1551, Art. 1, § 965, eff. July 1, 2011; P.A. 97-1150, § 635, eff. Jan. 25, 2013; P.A. 98-558, § 80, eff. Jan. 1, 2014.

725 ILL. COMP. STAT. ANN. 5/110-5.1 (2016): BAIL; CERTAIN PERSONS CHARGED WITH VIOLENT CRIMES AGAINST FAMILY OR HOUSEHOLD MEMBERS

(a) Subject to subsection (c), a person who is charged with a violent crime shall appear before the court for the setting of bail if the alleged victim was a family or household member at the time of the alleged offense, and if any of the following applies:

(1) the person charged, at the time of the alleged offense, was subject to the terms of an order of protection issued under Section 112A-14 of this Code or Section 214 of the Illinois Domestic Violence Act of 1986 or previously was convicted of a violation of an order of protection under Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the Criminal Code of 2012 or a violent crime if the victim was a family or household member at the time of the offense or a violation of a substantially similar municipal ordinance or law of this or any other state or the United States if the victim was a family or household member at the time of the offense;

(2) the arresting officer indicates in a police report or other document accompanying the complaint any of the following:

(A) that the arresting officer observed on the alleged victim objective manifestations of physical harm that the arresting officer reasonably believes are a result of the alleged offense;

(B) that the arresting officer reasonably believes that the person had on the person's person at the time of the alleged offense a deadly weapon;

(C) that the arresting officer reasonably believes that the person presents a credible threat of serious physical harm to the alleged victim or to any other person if released on bail before trial.

(b) To the extent that information about any of the following is available to the court, the court shall consider all of the following, in addition to any other circumstances considered by the court, before setting bail for a person who appears before the court pursuant to subsection (a):

(1) whether the person has a history of domestic violence or a history of other violent acts;

(2) the mental health of the person;

(3) whether the person has a history of violating the orders of any court or governmental entity;

(4) whether the person is potentially a threat to any other person;

(5) whether the person has access to deadly weapons or a history of using deadly weapons;

(6) whether the person has a history of abusing alcohol or any controlled substance;
(7) the severity of the alleged violence that is the basis of the alleged offense, including, but not limited to, the duration of the alleged violent incident, and whether the alleged violent incident involved serious physical injury, sexual assault, **strangulation**, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim;
(8) whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending;
(9) whether the person has exhibited obsessive or controlling behaviors toward the alleged victim, including, but not limited to, stalking, surveillance, or isolation of the alleged victim;
(10) whether the person has expressed suicidal or homicidal ideations;
(11) any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint.

(c) Upon the court's own motion or the motion of a party and upon any terms that the court may direct, a court may permit a person who is required to appear before it by subsection (a) to appear by video conferencing equipment. If, in the opinion of the court, the appearance in person or by video conferencing equipment of a person who is charged with a misdemeanor and who is required to appear before the court by subsection (a) is not practicable, the court may waive the appearance and release the person on bail on one or both of the following types of bail in an amount set by the court:

- (1) a bail bond secured by a deposit of 10% of the amount of the bond in cash;
- (2) a surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the person.

Subsection (a) does not create a right in a person to appear before the court for the setting of bail or prohibit a court from requiring any person charged with a violent crime who is not described in subsection (a) from appearing before the court for the setting of bail.

(d) As used in this Section:

- (1) "Violent crime" has the meaning ascribed to it in Section 3 of the Rights of Crime Victims and Witnesses Act.
- (2) "Family or household member" has the meaning ascribed to it in Section 112A-3 of this Code.

CREDIT(S)

Laws 1963, p. 2836, § 110-5.1, added by P.A. 94-878, § 5, eff. Jan. 1, 2007. Amended by P.A. 96-1551, Art. 1, § 965, eff. July 1, 2011; P.A. 97-1150, § 635, eff. Jan. 25, 2013.

INDIANA:

IND. CODE §35-42-2-9 (2016). STRANGULATION

Sec. 9. (a) This section does not apply to a medical procedure.

(b) A person who, in a rude, angry, or insolent manner, knowingly or intentionally:

(1) applies pressure to the throat or neck of another person; or

(2) obstructs the nose or mouth of the another person;

in a manner that impedes the normal breathing or the blood circulation of the other person commits strangulation, a **Level 6 felony**.

CREDIT(S)

As added by P.L.129-2006, SEC.2. Amended by P.L.158-2013, SEC.432, eff. July 1, 2014.

IND. CODE §12-7-2-53.2 (2016). "DANGEROUS FELONY"

Sec. 53.2. "Dangerous felony", for purposes of IC 12-17.2, means one (1) or more of the following felonies:

(1) Murder (IC 35-42-1-1).

(2) Attempted murder (IC 35-41-5-1).

(3) Voluntary manslaughter (IC 35-42-1-3).

(4) Involuntary manslaughter (IC 35-42-1-4).

(5) Reckless homicide (IC 35-42-1-5).

(6) Aggravated battery (IC 35-42-2-1.5).

(7) Kidnapping (IC 35-42-3-2).

(8) Rape (IC 35-42-4-1).

(9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).

(10) Child molesting (IC 35-42-4-3).

(11) Sexual misconduct with a minor as a Class A felony (for a crime committed before July 1, 2014) or a Level 1 felony (for a crime committed after June 30, 2014) under IC 35-42-4-9(a)(2) or a Class B felony (for a crime committed before July 1, 2014) or a Level 2 felony (for a crime committed after June 30, 2014) under IC 35-42-4-9(b)(2).

(12) Robbery as a Class A or Class B felony (for a crime committed before July 1, 2014) or a Level 2 or Level 3 felony (for a crime committed after June 30, 2014) (IC 35-42-5-1).

(13) Burglary as a Class A or Class B felony (for a crime committed before July 1, 2014) or a Level 2 or Level 3 felony (for a crime committed after June 30, 2014) (IC 35-43-2-1).

(14) Battery as a felony (IC 35-42-2-1).

(15) Domestic battery (IC 35-42-2-1.3).

(16) Strangulation (IC 35-42-2-9).

(17) Criminal confinement (IC 35-42-3-3).

(18) Sexual battery (IC 35-42-4-8).

(19) A felony committed in another jurisdiction that is substantially similar to a felony in this section.

(20) An attempt to commit or a conspiracy to commit an offense listed in subdivisions (1) through (19).

CREDIT(S)

As added by P.L.287-2013, SEC.2, eff. July 1, 2013. Amended by P.L.168- 2014, SEC.27, eff. July 1, 2014.

IOWA:

IOWA CODE§ 236.12 (2016). PREVENTION OF FURTHER ABUSE--NOTIFICATION OF RIGHTS--ARREST-- LIABILITY

1. If a peace officer has reason to believe that domestic abuse has occurred, the officer shall use all reasonable means to prevent further abuse including but not limited to the following:

a. If requested, remaining on the scene as long as there is a danger to an abused person's physical safety without the presence of a peace officer, including but not limited to staying in the dwelling unit, or if unable to remain on the scene, assisting the person in leaving the residence.

b. Assisting an abused person in obtaining medical treatment necessitated by an assault, including providing assistance to the abused person in obtaining transportation to the emergency room of the nearest hospital.

c. Providing an abused person with immediate and adequate notice of the person's rights. The notice shall consist of handing the person a document that includes the telephone numbers of shelters, support groups, and crisis lines operating in the area and contains a copy of the following statement written in English and Spanish; asking the person to read the card; and asking whether the person understands the rights:

You have the right to ask the court for the following help on a temporary basis:

(1) Keeping your attacker away from you, your home and your place of work.

(2) The right to stay at your home without interference from your attacker.

(3) Getting custody of children and obtaining support for yourself and your minor children if your attacker is legally required to provide such support.

(4) Professional counseling for you, the children who are members of the household, and the defendant.

You have the right to seek help from the court to seek a protective order with or without the assistance of legal representation. You have the right to seek help from the courts without the payment of court costs if you do not have sufficient funds to pay the costs.

You have the right to file criminal charges for threats, assaults, or other related crimes.

You have the right to seek restitution against your attacker for harm to yourself or your property.

If you are in need of medical treatment, you have the right to request that the officer present assist you in obtaining transportation to the nearest hospital or otherwise assist you.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and other affected parties can leave or until safety is otherwise ensured.

2. a. A peace officer may, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph "a", if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed which did not result in any injury to the alleged victim.

b. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph "b", if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed which resulted in the alleged victim's suffering a bodily injury.

c. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph "c", if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed with the intent to inflict a serious injury.

d. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph "c", if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed and that the alleged abuser used or displayed a dangerous weapon in connection with the assault.

e. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph "d", if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed by knowingly impeding the normal breathing or circulation of the blood of another by applying pressure to the throat or neck of the other person or by obstructing the nose or mouth of the other person.

f. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 5, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed by knowingly impeding the normal breathing or circulation of the blood of another by applying pressure to the throat or neck of the other person or by obstructing the nose or mouth of the other person, and causing bodily injury.

3. As described in subsection 2, paragraph "b", "c", "d", "e", or "f", the peace officer shall arrest the person whom the peace officer believes to be the primary physical aggressor. The duty of the officer to arrest extends only to those persons involved who are believed to have committed an assault. Persons acting with justification, as defined in section 704.3, are not subject to mandatory arrest. In identifying the primary physical aggressor, a peace officer shall consider the need to protect victims of domestic abuse, the relative degree of injury or fear inflicted on the persons involved, and any history of domestic abuse between the persons involved. A peace officer's identification of the primary physical aggressor shall not be based on the consent of the victim to any subsequent prosecution or on the relationship of the persons involved in the incident, and shall not be based solely upon the absence of visible indications of injury or impairment.

4. A peace officer is not civilly or criminally liable for actions pursuant to this section taken in good faith.

CREDIT(S)

Added by Acts 1984 (70 G.A.) ch. 1258, § 1. Amended by Acts 1985 (71 G.A.) ch. 175, § 5; Acts 1986 (71 G.A.) ch. 1179, § 3; Acts 1987 (72 G.A.) ch. 154, § 6; Acts 1989 (73 G.A.) ch. 85, § 2; Acts 1990 (73 G.A.) ch. 1056, §§ 1, 2; Acts 1991 (74 G.A.) ch. 218, § 11; Acts 1992 (74 G.A.) ch. 1163, § 52; Acts 2009 (83 G.A.) ch. 133, S.F. 449, §§ 93, 94; Acts 2012 (84 G.A.) ch. 1002, S.F. 93, §§ 1, 2.

**IOWA CODE § 708.2A (2016). DOMESTIC ABUSE ASSAULT--MANDATORY MINIMUMS,
PENALTIES ENHANCED-- EXTENSION OF NO-CONTACT ORDER**

1. For the purposes of this chapter, "domestic abuse assault" means an assault, as defined in section 708.1, which is domestic abuse as defined in section 236.2, subsection 2, paragraph "a", "b", "c", or "d".

2. On a first offense of domestic abuse assault, the person commits:

a. A simple misdemeanor for a domestic abuse assault, except as otherwise provided.

b. A serious misdemeanor, if the domestic abuse assault causes bodily injury or mental illness.

c. An aggravated misdemeanor, if the domestic abuse assault is committed with the intent to inflict a serious injury upon another, or if the person uses or displays a dangerous weapon in connection with the assault. This paragraph does not apply if section 708.6 or 708.8 applies.

d. An aggravated misdemeanor, if the domestic abuse assault is committed by knowingly impeding the normal breathing or circulation of the blood of another by applying pressure to the throat or neck of the other person or by obstructing the nose or mouth of the other person.

3. Except as otherwise provided in subsection 2, on a second domestic abuse assault, a person commits:

a. A serious misdemeanor, if the first offense was classified as a simple misdemeanor, and the second offense would otherwise be classified as a simple misdemeanor.

b. An aggravated misdemeanor, if the first offense was classified as a simple or aggravated misdemeanor, and the second offense would otherwise be classified as a serious misdemeanor, or the first offense was classified as a serious or aggravated misdemeanor, and the second offense would otherwise be classified as a simple or serious misdemeanor.

4. On a third or subsequent offense of domestic abuse assault, a person commits a class "D" felony.

5. For a domestic abuse assault committed by knowingly impeding the normal breathing or circulation of the blood of another by applying pressure to the throat or neck of the other person or by obstructing the nose or mouth of the other person, and causing bodily injury, the person commits a class "D" felony.

6. a. A conviction for, deferred judgment for, or plea of guilty to, a violation of this section which occurred more than twelve years prior to the date of the violation charged shall not be considered in determining that the violation charged is a second or subsequent offense.

b. For the purpose of determining if a violation charged is a second or subsequent offense, deferred judgments issued pursuant to section 907.3 for violations of section 708.2 or this section, which were issued on domestic abuse assaults, and convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the offenses defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the offense charged shall be considered and counted as a separate previous offense.

c. An offense shall be considered a prior offense regardless of whether it was committed upon the same victim.

7. a. A person convicted of violating subsection 2 or 3 shall serve a minimum term of two days of the sentence imposed by law, and shall not be eligible for suspension of the minimum sentence. The minimum term shall be served on consecutive days. The court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence. This section does not prohibit the court from sentencing and the person from serving the maximum term of confinement or from paying the maximum fine permitted pursuant to chapters 902 and 903, and does not prohibit the court from entering a deferred judgment or sentence pursuant to section 907.3, if the person has not previously received a deferred sentence or judgment for a violation of section 708.2 or this section which was issued on a domestic abuse assault.

b. A person convicted of violating subsection 4 shall be sentenced as provided under section 902.9, subsection 1, paragraph "e", and shall be denied parole or work release until the person has served a minimum of one year of the person's sentence. Notwithstanding section 901.5, subsections 1, 3, and 5, and section 907.3, the person cannot receive a suspended or deferred sentence or a deferred judgment; however, the person sentenced shall receive credit for any time the person was confined in a jail or detention facility following arrest.

8. If a person is convicted for, receives a deferred judgment for, or pleads guilty to a violation of this section, the court shall modify the no-contact order issued upon initial appearance in the manner provided in section 664A.5, regardless of whether the person is placed on probation.

9. The clerk of the district court shall provide notice and copies of a judgment entered under this section to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications of the judgment in the same manner.

10. In addition to the mandatory minimum term of confinement imposed by subsection 7, paragraph "a", the court shall order a person convicted under subsection 2 or 3 to participate in a batterers' treatment program as required under section 708.2B. In addition, as a condition of deferring judgment or sentence pursuant to section 907.3, the court shall order the person to participate in a batterers' treatment program. The clerk of the district court shall send a copy of the judgment or deferred judgment to the judicial district department of correctional services.

CREDIT(S)

Added by Acts 1987 (72 G.A.) ch. 154, § 9. Amended by Acts 1991 (74 G.A.) ch. 218, § 27; Acts 1991 (74 G.A.) ch. 219, §§ 19, 20; Acts 1992 (74 G.A.) ch. 1163, § 118; Acts 1993 (75 G.A.) ch. 157, § 9; Acts 1994 (75 G.A.) ch. 1093, § 2; Acts 1995 (76 G.A.) ch. 90, § 1; Acts 1996 (76 G.A.) ch. 1131, § 3; Acts 1997 (77 G.A.) ch. 33, § 14; Acts 1998 (77 G.A.) ch. 1192, § 1; Acts 1999 (78 G.A.) ch. 65, § 4; Acts 1999 (78 G.A.) ch. 114, § 45; Acts 2002 (79 G.A.) ch. 1004, § 4; Acts 2006 (81 G.A.) ch. 1101, H.F. 2652, §§ 13, 14; Acts 2012 (84 G.A.) ch. 1002, S.F. 93, §§ 4, 5; Acts 2013 (85 G.A.) ch. 30, H.F. 417, § 249.

KANSAS:

No statutory provisions dealing specifically with strangulation

KENTUCKY:

No statutory provisions dealing specifically with strangulation

LOUISIANA:

LA. REV. STAT. ANN. § 5713 (2016). DUTY TO HOLD AUTOPSIES, INVESTIGATIONS, ETC.

A. The coroner shall either view the body or make an investigation into the cause and manner of death in all cases involving the following:

- (1) Suspicious, unexpected, or unusual deaths.
- (2) Sudden or violent deaths.
- (3) Deaths due to unknown or obscure causes or in any unusual manner.
- (4) Bodies found dead.
- (5) Deaths without an attending physician within thirty-six hours prior to the hour of death.
- (6) Deaths due to suspected suicide or homicide.
- (7) Deaths in which poison is suspected.
- (8) Any death from natural causes occurring in a hospital under twenty-four hours admission unless seen by a physician in the last thirty-six hours.
- (9) Deaths following an injury or accident either old or recent.
- (10) Deaths due to drowning, hanging, burns, electrocution, gunshot wounds, stabs or cutting, lightning, starvation, radiation, exposure, alcoholism, addiction, tetanus, strangulation,

suffocation, or smothering.

(11) Deaths due to trauma from whatever cause.

(12) Deaths due to criminal means or by casualty.

(13) Deaths in prison or while serving a sentence.

(14) Deaths due to virulent contagious disease that might be caused by or cause a public hazard, including acquired immune deficiency syndrome.

B. (1) The coroner may perform or cause to be performed by a competent physician an autopsy in any case in his discretion. The coroner shall perform or cause to be performed by a competent physician an autopsy in the case of any death where there is a reasonable probability that the violation of a criminal statute has contributed to the death.

(2) The coroner or the district attorney may order the disinterment of any dead body within his jurisdiction under the direction or supervision of the person ordering the disinterment or his designee, and may authorize the removal of such dead body to a place designated by the person ordering the disinterment for the purpose of examination and autopsy and, when such is completed, order the reinterment of the body.

(3) The coroner may hold any dead body for any length of time that he deems necessary. However, the coroner shall expedite any investigation at the scene of an accident involving a fatality so as not to unduly delay the removal of the dead body from the accident scene. However, if a bodily substance sample for a toxicology screen is extracted at the accident scene, the extraction procedure shall be performed outside of public view.

(4)(a) He may remove and retain for testing or examination any specimens, organs, or other portion of the remains of the deceased that he may deem necessary or advisable as possible evidence before a grand jury or court, subject to the limitation set forth in R.S. 32:661(A)(2).

(b) The coroner may also remove and retain any specimens or organs of the deceased which in his discretion are necessary or desirable for anatomical, bacteriological, chemical, or toxicological examination, subject to the limitation set forth in R.S. 32:661(A)(2).

C. (1)(a) The coroner shall perform or cause to be performed by a competent physician an autopsy in all cases of infants under the age of one year who die unexpectedly without explanation.

(b) The autopsy shall include microscopic and toxicology studies.

(c) The coroner shall furnish a death certificate based upon his autopsy with his statement, to the best of his knowledge, of the cause and means of death.

(2) If the coroner finds that the cause of death was Sudden Infant Death Syndrome, he shall notify the director of the parish health unit within forty-eight hours after such determination.

(3) In preparing the certificate of death, the coroner may not, in lieu of an autopsy, rely on statements of relatives, persons in attendance during the last sickness, persons present at the time of death, or other persons having adequate knowledge of the facts, even if such data may be permitted in other cases in this Section.

(4) The coroner shall not perform an autopsy if the parents of the infant provide to the coroner their objection in writing, unless the coroner finds that the facts surrounding the death require that an autopsy be performed in the interest of the public safety, public health, or public welfare.

D. If the family of the deceased objects to an autopsy on religious grounds, the autopsy shall not be performed unless the coroner finds that the facts surrounding the death require that an autopsy be performed in the interest of the public safety, public health, or public welfare. In such cases the coroner shall provide the family his written reasons for the necessity of the autopsy.

E. (1) The coroner shall furnish a death certificate based on his examination, investigation, or autopsy, and he shall state as best he can the cause and means of death.

(2) If it appears that death was due to accident, suicide, or homicide, he shall so state.

(3) The cause of death, and the manner or mode in which the death occurred, as incorporated in the death certificate as provided in the Vital Statistics Laws, R.S. 40:32 et seq., filed with the division of vital records of the Department of Health and Hospitals, shall be the legally accepted cause of death, unless the court of the parish in which the death occurred, after a hearing, directs otherwise.

(4) In the case of a death without medical attendance, if there is no reason to suspect the death was due to violence, casualty, or undue means, the coroner may make the certificate of death from the statement of relatives, persons in attendance during the last sickness, persons present at the time of death, or other persons having adequate knowledge of the facts.

F. The coroner or his designee shall examine all alleged victims of rape, carnal knowledge, sexual battery, incest, and crime against nature when such cases are under police investigation.

G. (1) Notwithstanding any provision of law to the contrary, when the coroner is required to furnish information for the issuance of a death certificate by the office of vital statistics, the coroner shall do so within ten working days after the receipt of all test and investigation results or information associated with the investigation into the cause and manner of death.

(2) If the coroner is unable to furnish the information required pursuant to Paragraph (1) of this Subsection within ten days after taking charge of the case, upon request, the coroner shall issue a written statement attesting to the fact of death, which shall constitute proof of death for all purposes, including but not limited to, any claim under any policy of insurance issued on the life of the deceased individual.

H. In deaths investigated by the coroner where he is not able to establish the identity of the dead body by visual means, fingerprints, or other identifying data, the coroner shall have a qualified dentist or forensic anthropologist or forensic pathologist carry out a dental examination of the dead body. If the coroner, with the aid of the dental examination, is still not able to establish the identity of the dead body, the coroner shall prepare and forward the dental examination and other identifying records to state and local law enforcement agencies. When the dead body may be that of an individual under the age of eighteen years, the coroner shall send this information to the Missing and Exploited Children Information Clearinghouse within the Department of Public Safety and Corrections, office of state police.

I. The coroner shall furnish a copy of his final report or autopsy report, or both, upon written request, to the last attending physician of the deceased or to the designated family physician of the deceased, provided that the family of the deceased has given written authorization to the

coroner or to the requesting physician for the release of such report.

J. Autopsy reports prepared by the coroner or his designee are public records. The coroner shall provide one copy of the autopsy report upon request by the next of kin at no charge to the next of kin. The coroner shall provide copies of the autopsy report at no charge to the appropriate law enforcement agencies as requested. The public records fee for any other copy of an autopsy report shall be the same as that charged by the registrar of vital records for the state for a death certificate.

K. (1) For the purposes of this Section, an autopsy report is the work product of the coroner or his designee. When a coroner investigates a death, the office of the coroner is required to make available for public inspection and copying the autopsy report which shall contain the following:

(a) Name, age, sex, race, and address of the deceased.

(b) Date and reported time of death.

(c) Physical location, including address if available, where the deceased was found.

(d) Date, time, and place of autopsy, and the name of the doctor performing the autopsy and the names of all persons present at the autopsy.

(e) Information regarding the autopsy, including whether the autopsy was requested or performed by operation of law, a listing of the physical findings of the autopsy, a summary in narrative form of the medical findings and conclusions, the cause of death, the manner and mechanism of death, and the classification of death as homicide, accidental, suicide, undetermined, or under investigation.

(2) Notwithstanding the provisions of Paragraph (1) of this Subsection, in a non-coroner case, no autopsy report shall be made available for public inspection or copying if the classification of death is that of natural causes except upon request by the next of kin or upon request in compliance with R.S. 13:3715.1.

(3) Notwithstanding the provisions of Paragraph (1) of this Subsection and notwithstanding the provisions of R.S. 13:5714(C), no autopsy report pertaining to criminal litigation as defined in

and in accordance with R.S. 44:3(A) shall be required to be made available for public inspection or copying except as otherwise provided by law.

L. (1) Liability shall not be imposed on an elected coroner or his support staff based upon the exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties.

(2) The provisions of Paragraph (1) of this Subsection are not applicable to any of the following:

(a) To acts or omissions which are not reasonably related to the legitimate governmental objective for which the policymaking or discretionary power exists; or

(b) To acts or omissions which constitute criminal, fraudulent, malicious, intentional, willful, outrageous, reckless, or flagrant misconduct.

(3) The legislature finds and states that the purpose of this Subsection is not to reestablish any immunity based on the status of sovereignty but rather to clarify the substantive content and parameters of application of such legislatively created codal articles and laws and also to assist in the implementation of Article II of the Constitution of Louisiana.

CREDIT(S)

Redesignated from R.S. 33:1563 by Acts 2011, No. 248, § 3. Acts 1984, No. 570, § 1. Amended by Acts 1985, No. 240, § 1; Acts 1985, No. 241, § 1; Acts 1986, No. 311, § 1; Acts 1986, No. 591, § 1; Acts 1987, No. 878, § 1; Acts 1988, No. 834, § 1; Acts 1999, No. 761, § 1, eff. July 2, 1999; Acts 1999, No. 1226, § 1; Acts 1999, No. 1293, § 1; Acts 1999, No. 1354, § 2; Acts 2001, No. 1177, § 1; Acts 2003, No. 794, § 1; Acts 2011, No. 70, § 1. Titles 2, 4, 8, 16, 19, 21, 27, 31, 34, 35, 41, and 43

LA. REV. STAT. ANN. § 14:35.3 (2016). DOMESTIC ABUSE BATTERY

A. Domestic abuse battery is the intentional use of force or violence committed by one household member upon the person of another household member.

B. For purposes of this Section:

(1) "Community service activities" as used in this Section may include duty in any morgue, coroner's office, or emergency treatment room of a state-operated hospital or other state-operated emergency treatment facility, with the consent of the administrator of the morgue, coroner's office, hospital, or facility.

(2) "Household member" means any person of the opposite sex presently living in the same residence or living in the same residence within five years of the occurrence of the domestic abuse battery with the defendant as a spouse, whether married or not, or any child presently living in the same residence or living in the same residence within five years immediately prior to the occurrence of domestic abuse battery, or any child of the offender regardless of where the child resides.

(3) "Strangulation" means intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of the victim.

C. On a first conviction, notwithstanding any other provision of law to the contrary, the offender shall be fined not less than three hundred dollars nor more than one thousand dollars and shall be imprisoned for not less than thirty days nor more than six months. At least forty-eight hours of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless either of the following occur:

(1) The offender is placed on probation with a minimum condition that he serve four days in jail and participate in a court-approved domestic abuse prevention program, and the offender shall not own or possess a firearm throughout the entirety of the sentence.

(2) The offender is placed on probation with a minimum condition that he perform eight, eight-hour days of court-approved community service activities and participate in a court-approved domestic abuse prevention program, and the offender shall not own or possess a firearm throughout the entirety of the sentence.

D. On a conviction of a second offense, notwithstanding any other provision of law to the contrary, regardless of whether the second offense occurred before or after the first conviction, the offender shall be fined not less than seven hundred fifty dollars nor more than one thousand dollars and shall be imprisoned for not less than sixty days nor more than six months. At least ninety-six hours of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless either of the following occur:

(1) The offender is placed on probation with a minimum condition that he serve thirty days in jail and participate in a court-approved domestic abuse prevention program, and the offender shall not own or possess a firearm throughout the entirety of the sentence.

(2) The offender is placed on probation with a minimum condition that he perform thirty eight-hour days of court-approved community service activities and participate in a court-approved domestic abuse prevention program, and the offender shall not own or possess a firearm throughout the entirety of the sentence.

E. On a conviction of a third offense, notwithstanding any other provision of law to the contrary and regardless of whether the offense occurred before or after an earlier conviction, the offender shall be imprisoned with or without hard labor for not less than one year nor more than five years and shall be fined two thousand dollars. The first year of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence.

F. (1) Except as otherwise provided in Paragraph (2) of this Subsection, on a conviction of a fourth or subsequent offense, notwithstanding any other provision of law to the contrary and regardless of whether the fourth offense occurred before or after an earlier conviction, the offender shall be imprisoned with hard labor for not less than ten years nor more than thirty years and shall be fined five thousand dollars. The first three years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence.

(2) If the offender has previously received the benefit of suspension of sentence, probation, or parole as a fourth or subsequent offender, no part of the sentence may be imposed with benefit of suspension of sentence, probation, or parole, and no portion of the sentence shall be imposed concurrently with the remaining balance of any sentence to be served for a prior conviction for any offense.

G. (1) For purposes of determining whether a defendant has a prior conviction for violation of this Section, a conviction under this Section, or a conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state which prohibits the intentional use of force or violence committed by one household member upon another household member of the opposite sex presently or formerly living in the same residence with the defendant as a spouse, whether married or not, shall constitute a prior conviction.

(2) For purposes of this Section, a prior conviction shall not include a conviction for an offense under this Section if committed more than ten years prior to the commission of the crime for which the defendant is being tried, and such conviction shall not be considered in the assessment of penalties hereunder. However, periods of time during which the offender was incarcerated in a penal institution in this or any other state shall be excluded in computing the ten-year period.

H. An offender ordered to participate in a domestic abuse prevention program required by the provisions of this Section shall pay the cost incurred in participation in the program. Failure to make such payment shall subject the offender to revocation of probation, unless the court determines that the offender is unable to pay.

I. This Subsection shall be cited as the "Domestic Abuse Child Endangerment Law." When the state proves, in addition to the elements of the crime as set forth in Subsection A of this Section, that a minor child thirteen years of age or younger was present at the residence or any other scene at the time of the commission of the offense, of the sentence imposed by the court, the execution of the minimum mandatory sentence provided by Subsection C or D of this Section, as

appropriate, shall not be suspended, the minimum mandatory sentence imposed under Subsection E of this Section shall be two years without suspension of sentence, and the minimum mandatory sentence imposed under Subsection F of this Section shall be four years without suspension of sentence.

J. Any crime of violence, as defined in R.S. 14:2(B), against a person committed by one household member against another household member, shall be designated as an act of domestic violence.

K. If the victim of domestic abuse battery is pregnant and the offender knows that the victim is pregnant at the time of the commission of the offense, the offender, who is sentenced under the provisions of this Section, shall be required to serve a minimum of forty-five days without benefit of suspension of sentence for a first conviction, upon a second conviction shall serve a minimum of one year imprisonment without benefit of suspension of sentence, upon a third conviction shall serve a minimum of two years with or without hard labor without benefit of probation, parole, or suspension of sentence, and upon a fourth and subsequent offense shall serve a minimum of four years at hard labor without benefit of probation, parole, or suspension of sentence.

L. Notwithstanding any other provision of law to the contrary, if the domestic abuse battery involves strangulation, the offender shall be imprisoned at hard labor for not more than three years.

M. Notwithstanding any other provision of law to the contrary, if the domestic abuse battery is committed by burning that results in serious bodily injury, the offense shall be classified as a crime of violence, and the offender shall be imprisoned at hard labor for not less than five nor more than fifty years without benefit of probation, parole, or suspension of sentence.

MAINE:

ME. REV. STAT. TIT. 17-A § 208 (2016). AGGRAVATED ASSAULT

1. A person is guilty of aggravated assault if he intentionally, knowingly, or recklessly causes:

A. Serious bodily injury to another; or

B. Bodily injury to another with use of a dangerous weapon; or

C. Bodily injury to another under circumstances manifesting extreme indifference to the value of human life. Such circumstances include, but are not limited to, the number, location or nature of the injuries, the manner or method inflicted, the observable physical condition of the victim or the use of strangulation. For the purpose of this paragraph, "strangulation" means the intentional impeding of the breathing or circulation of the blood of another person by applying pressure on the person's throat or neck.

2. Aggravated assault is a Class B crime.

CREDIT(S)

1975, c. 499, § 1, eff. May 1, 1976; 1977, c. 740, § 43, eff. May 1, 1976; 1977, c. 510, § 44; 1981, c. 317, § 6; 2011, c. 640, § B-2.

ME. REV. STAT. TIT. 17-A § 2803-B (2016). REQUIREMENTS OF LAW ENFORCEMENT AGENCIES

1. Law enforcement policies. All law enforcement agencies shall adopt written policies regarding procedures to deal with the following:

A. Use of physical force, including the use of electronic weapons and less-than-lethal munitions;

B. Barricaded persons and hostage situations;

C. Repealed. Laws 2013, c. 147, § 16, eff. Oct. 9, 2013.

D. Domestic violence, which must include, at a minimum, the following:

(1) A process to ensure that a victim receives notification of the defendant's release from jail;

(2) A process for the collection of information regarding the defendant that includes the defendant's previous history, the parties' relationship, whether the commission of an alleged crime included the use of strangulation as defined in Title 17-A, section 208, subsection 1, paragraph C, the name of the victim and a process to relay this information to a bail commissioner before a bail determination is made;

(3) A process for the safe retrieval of personal property belonging to the victim or the defendant that includes identification of a possible neutral location for retrieval, the presence of at least one law enforcement officer during the retrieval and giving the victim the option of at least 24 hours' notice to each party prior to the retrieval;

(4) Standard procedures to ensure that protection from abuse orders issued under Title 19-A, section 4006 or 4007 are served on the defendant as quickly as possible; and

(5) A process for the administration of a validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C, and approved by the Department of Public Safety and the conveyance of the results of that assessment to the bail commissioner, if appropriate, and the district attorney for the county in which the domestic violence occurred.

E. Hate or bias crimes;

F. Police pursuits;

G. Citizen complaints of police misconduct;

H. Criminal conduct engaged in by law enforcement officers;

I. Death investigations, including at a minimum the protocol of the Department of the Attorney General regarding such investigations;

J. Public notification regarding persons in the community required to register under Title 34-A, chapters 15 [FN1] and 17;

K. Digital, electronic, audio, video or other recording of law enforcement interviews of suspects in serious crimes and the preservation of investigative notes and records in such cases;

L. Mental illness and the process for involuntary commitment; and

M. Freedom of access requests. The chief administrative officer of a municipal, county or state law enforcement agency shall certify to the board annually that the agency has adopted a written policy regarding procedures to deal with a freedom of access request and that the chief administrative officer has designated a person who is trained to respond to a request received by the agency pursuant to Title 1, chapter 13.

The chief administrative officer of each agency shall certify to the board that attempts were made to obtain public comment during the formulation of policies.

2. Minimum policy standards. The board shall establish minimum standards for each law enforcement policy pursuant to subsection 1 with the exception of the freedom of access policy under subsection 1, paragraph M. Minimum standards of new mandatory policies enacted by law must be adopted by the board no later than December 31st of the year in which the law takes effect.

3. Agency compliance. The chief administrative officer of each law enforcement agency shall certify to the board annually no later than January 1st of each year that the agency has adopted written policies consistent with the minimum standards established or amended by the board and that all officers have received orientation and training with respect to new mandatory policies or new mandatory policy changes pursuant to subsection 2. New mandatory policies enacted by law must be implemented by all law enforcement agencies no later than the July 1st after the board has adopted the minimum standards.

4. Repealed. Laws 2005, c. 331, § 17.

5. Annual standards review. The board shall review annually the minimum standards for each policy to determine whether changes in any of the standards are necessary to incorporate improved procedures identified by critiquing known actual events or by reviewing new enforcement practices demonstrated to reduce crime, increase officer safety or increase public safety.

6. Repealed. Laws 2013, c. 147, § 23, eff. Oct. 9, 2013.

7. Repealed. Laws 2013, c. 147, § 24, eff. Oct. 9, 2013.

CREDIT(S)

1993, c. 744, § 5; 2001, c. 686, § B-1; 2003, c. 185, § 1; 2003, c. 361, § 1; 2003, c. 370, §§ 1 to 4; 2003, c. 656, §§ 1 to 4; 2003, c. 677, §§ 1 to 4; R.R.2003, c. 2, §§ 89 to 91; 2005, c. 397, § C-17, eff. June 17, 2005; 2005, c. 331, §§ 16, 17; 2009, c. 336, § 18; 2009, c. 451, §§ 1 to 5; 2009, c. 652, §§ A-37, A-38, eff. April 14, 2010; 2011, c. 265, §§ 2 to 4; 2011, c. 640, § D-1; 2011, c. 680, §§ 4 to 6; 2013, c. 147, §§ 16 to 24, eff. Oct. 9, 2013.

MARYLAND:

MD. CODE ANN., CRIM. LAW § 3-303 (2016): RAPE IN THE FIRST DEGREE

a) A person may not:

(1) engage in vaginal intercourse with another by force, or the threat of force, without the consent of the other; and

(2)(i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;

(ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;

(iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;

(iv) commit the crime while aided and abetted by another; or

(v) commit the crime in connection with a burglary in the first, second, or third degree.

Prohibited--Child kidnapping

(b) A person may not violate subsection (a) of this section while also violating § 3-503(a)(2) of this title involving a victim who is a child under the age of 16 years.

Prohibited--Children under age 13

(c) A person 18 years of age or older may not violate subsection (a) of this section involving a victim who is a child under the age of 13 years.

Penalty

(d)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life.

(2) A person who violates subsection (b) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole.

(3) A person who violates subsection (a) or (b) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole if the defendant was previously convicted of violating this section or § 3-305 of this subtitle.

(4)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (c) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment for not less than 25 years and not exceeding life without the possibility of parole.

(ii) A court may not suspend any part of the mandatory minimum sentence of 25 years.

(iii) The person is not eligible for parole during the mandatory minimum sentence.

(iv) If the State fails to comply with subsection (e) of this section, the mandatory minimum sentence shall not apply.

Required notice

(e) If the State intends to seek a sentence of imprisonment for life without the possibility of parole under subsection (d)(2), (3), or (4) of this section, or imprisonment for not less than 25 years under subsection (d)(4) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2002, c. 187, § 1, eff. Oct. 1, 2002; Acts 2003, c. 21, § 1, eff. April 8, 2003; Acts 2005, c. 482, § 1, eff. Oct. 1, 2005; Acts 2006, c. 44, § 6, eff. April 8, 2006; Acts 2006, 1st Sp.

Sess., c. 4, § 1, eff. June 22, 2006; Acts 2007, c. 494, § 1, eff. Oct. 1, 2007; Acts 2007, c. 495, § 1, eff. Oct. 1, 2007; Acts 2008, c. 36, § 6, eff. April 8, 2008; Acts 2008, c. 345, § 1, eff. Oct. 1, 2008; Acts 2009, c. 60, § 1, eff. April 14, 2009.

MD. CODE ANN., CRIM. LAW § 5-305 (2016): SEXUAL OFFENSE IN THE FIRST DEGREE

(a) A person may not:

(1) engage in a sexual act with another by force, or the threat of force, without the consent of the other; and

(2)(i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;

(ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;

(iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;

(iv) commit the crime while aided and abetted by another; or

(v) commit the crime in connection with a burglary in the first, second, or third degree.

Prohibited--Child kidnapping

(b) A person may not violate subsection (a) of this section while also violating § 3-503(a)(2) of this title involving a victim who is a child under the age of 16 years.

Prohibited--Children under age 13

(c) A person 18 years of age or older may not violate subsection (a) of this section involving a victim who is a child under the age of 13 years.

Penalty

(d)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of sexual offense in the first degree and on conviction is subject to imprisonment not exceeding life.

(2) A person who violates subsection (b) of this section is guilty of the felony of sexual offense in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole.

(3) A person who violates subsection (a) or (b) of this section is guilty of the felony of sexual offense in the first degree and on conviction is subject to imprisonment not exceeding life

without the possibility of parole if the defendant was previously convicted of violating this section or § 3-303 of this subtitle.

(4)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (c) of this section is guilty of the felony of sexual offense in the first degree and on conviction is subject to imprisonment for not less than 25 years and not exceeding life without the possibility of parole.

(ii) A court may not suspend any part of the mandatory minimum sentence of 25 years.

(iii) The person is not eligible for parole during the mandatory minimum sentence.

(iv) If the State fails to comply with subsection (e) of this section, the mandatory minimum sentence shall not apply.

Required notice

(e) If the State intends to seek a sentence of imprisonment for life without the possibility of parole under subsection (d)(2), (3), or (4) of this section, or imprisonment for not less than 25 years under subsection (d)(4) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2002, c. 187, § 1, eff. Oct. 1, 2002; Acts 2003, c. 21, § 1, eff. April 8, 2003; Acts 2005, c. 482, § 1, eff. Oct. 1, 2005; Acts 2006, c. 44, § 6, eff. April 8, 2006; Acts 2006, 1st Sp. Sess., c. 4, § 1, eff. June 22, 2006; Acts 2007, c. 494, § 1, eff. Oct. 1, 2007; Acts 2007, c. 495, § 1, eff. Oct. 1, 2007; Acts 2008, c. 36, § 6, eff. April 8, 2008; Acts 2008, c. 345, § 1, eff. Oct. 1, 2008; Acts 2009, c. 60, § 1, eff. April 14, 2009.

MD. CODE ANN., CRIM. LAW § 3-307 (2016): SEXUAL OFFENSE IN THE THIRD DEGREE

(a) A person may not:

(1)(i) engage in sexual contact with another without the consent of the other; and

(ii) 1. employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;

2. suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;

3. threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or

4. commit the crime while aided and abetted by another;

(2) engage in sexual contact with another if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual;

(3) engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim;

(4) engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or

(5) engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

Penalty

(b) A person who violates this section is guilty of the felony of sexual offense in the third degree and on conviction is subject to imprisonment not exceeding 10 years.

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2002, c. 187, § 1, eff. Oct. 1, 2002; Acts 2003, c. 21, § 1, eff. April 8, 2003; Acts 2005, c. 482, § 1, eff. Oct. 1, 2005; Acts 2006, c. 44, § 6, eff. April 8, 2006; Acts 2006, 1st Sp. Sess., c. 4, § 1, eff. June 22, 2006; Acts 2007, c. 494, § 1, eff. Oct. 1, 2007; Acts 2007, c. 495, § 1, eff. Oct. 1, 2007; Acts 2008, c. 36, § 6, eff. April 8, 2008; Acts 2008, c. 345, § 1, eff. Oct. 1, 2008; Acts 2009, c. 60, § 1, eff. April 14, 2009.

MASSACHUSETTS:

MASS. GEN. LAWS ANN. CH. 6 § 116A. (2016). DOMESTIC VIOLENCE; ENFORCEMENT GUIDELINES

<[Text of section effective until July 1, 2015. For text effective July 1, 2015, see below.]>

(a) The municipal police training committee shall establish within the recruit basic training curriculum a course for regional and municipal police training schools on or before January first, nineteen hundred and eighty-seven for the training of law enforcement officers in the commonwealth in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for

battered women in the presentation of training.

As used in this section, "law enforcement officer" shall mean any officer of a local police department, the office of environmental law enforcement, the University of Massachusetts, capital and state police. As used in this section, "victim" shall mean any child or adult victim of abuse, including elder victims.

(b) The course of basic training for law enforcement officers shall, no later than January first, nineteen hundred and eighty-seven, include at least eight hours of instruction in the procedures and techniques described below:

(1) The procedures and responsibilities set forth in chapter two hundred and nine A of the General Laws relating to response to and enforcement of court orders, including violations of said chapter two hundred and nine A orders.

(2) The service of said chapter two hundred and nine A complaints and orders.

(3) Verification and enforcement of temporary restraining and vacate orders when the suspect is present and the suspect has fled.

(4) The legal duties imposed on police officers to offer protection and assistance, including guidelines for making felony and misdemeanor arrests, and for mandatory reporting of child and elder abuse cases.

(5) Techniques for handling domestic violence incidents that minimize likelihood of injury to the officer and that promote the safety of the victim.

(6) The nature and extent of domestic violence.

(7) The legal rights and the remedies available to victims of domestic violence.

(8) Documentation, report writing and evidence collection.

(9) Tenancy and custody issues, including those of married and unmarried couples.

(10) The impact of law enforcement intervention on children in domestic violence situations.

(11) The services and facilities available to victims of abuse, including the victim's compensation programs, emergency shelters and legal advocacy programs.

(c) All law enforcement recruits shall receive the course of basic training for law enforcement officers, established in subsections (a) and (b), as part of their required certification process.

(d) The course of basic training for law enforcement officers shall be taught as part of the crisis intervention and conflict resolution components of the recruit academy training, so that there will not be an increase in the currently required four hundred and eighty hours of recruit training curriculum.

(e) The course of instruction, the learning and performance objectives, the standards for training, and the guidelines shall be developed by the municipal police training committee in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence.

(f) The municipal police training committee periodically may include within its in-service training curriculum a course of instruction on handling domestic violence complaints consistent with the provisions of subparagraphs one through eleven of paragraph (b) of this act.

116A. Domestic violence and sexual violence complaints; basic training course; guidelines for law enforcement response

<[Text of section as amended by 2014, 260, Sec. 1 effective July 1, 2015. See 2014, 260, Sec. 50. For text effective until July 1, 2015, see above.]>

(a) The municipal police training committee shall establish, within the recruit basic training curriculum, a course for regional and municipal police training schools for the training of law enforcement officers in the commonwealth in the handling of domestic violence and sexual violence complaints and also shall develop guidelines for law enforcement response to domestic violence and sexual violence. The course of instruction and the guidelines shall stress

enforcement of criminal laws in domestic violence and sexual violence situations, availability of civil remedies and community resources and protection of the victim. The course of instruction and guidelines shall also include specific training on adolescent development, trauma and family dynamics. As appropriate, the training presenters shall include domestic violence and sexual violence experts with expertise in the delivery of direct services to victims of domestic violence and sexual violence, including utilizing the staff of community based domestic violence, rape and sexual assault service providers and survivors of domestic violence, rape or sexual assault in the presentation of the training.

As used in this section, "law enforcement officer" shall mean any officer of a local police department, the office of environmental law enforcement, the University of Massachusetts and state police. As used in this section, "victim" shall mean any child or adult victim of such abuse, including elder victims.

(b) The course of basic training for law enforcement officers shall include at least 8 hours of instruction in the following procedures and techniques:

(1) the procedures and responsibilities set forth in chapter 209A relating to response to, and enforcement of, court orders, including violations of orders issued pursuant to said chapter 209A;

(2) the service of said chapter 209A complaints and orders;

(3) verification and enforcement of temporary restraining and vacate orders when the suspect is present or the suspect has fled;

(4) the legal duties imposed upon law enforcement officers to offer protection and assistance, including guidelines for making felony and misdemeanor arrests, and for mandatory reporting of child and elder abuse cases and cases involving individuals with disabilities;

(5) techniques for handling domestic violence and sexual violence incidents that minimize the likelihood of injury to the law enforcement officer;

(6) techniques for handling domestic violence and sexual violence incidents that promote the safety of the victim, including the importance of keeping the victim informed as to the whereabouts of the suspect and other such information helpful for victim safety planning;

(7) the nature and extent of domestic violence and sexual violence, including the physiological and psychological effects of the pattern of domestic violence and sexual violence on victims, including children who witness such abuse;

(8) the increased vulnerability of victims who are gay, lesbian, bisexual, transgender, low-income, minority or immigrant, including training on ways in which the indicators of dangerousness in these communities may be different from those in non-marginalized communities;

(9) the dynamics of coercive controlling behavior that increases dangerousness even when such patterns of behavior are not themselves violent;

(10) the legal rights and the remedies available to victims of domestic violence and sexual violence;

(11) documentation, report writing and evidence collection, which shall include methods for assessing the degree of risk of homicide involved in situations of domestic violence, including, but not limited to, gathering information from the victim regarding the suspect's past reported and non-reported behavior and dangerousness, such as: (i) whether the suspect has ever used a weapon against the victim or threatened the victim with a weapon; (ii) whether the suspect owns a gun; (iii) whether the suspect's physical violence against the victim has increased in severity or frequency; (iv) whether the suspect has threatened to kill the victim; (v) whether the suspect has ever threatened or attempted suicide; (vi) whether the suspect has used or threatened physical violence against the victim's family, other household members or pets; (vii) whether the suspect uses illegal drugs; (viii) whether the suspect abuses alcohol; and (ix) whether there have been specific instances of strangulation or suffocation of the victim by the suspect;

(12) tenancy and custody issues, including those of married and unmarried couples;

(13) the impact of law enforcement intervention on children in domestic violence and sexual violence situations;

(14) the services and facilities available to victims of abuse, including the victim's compensation programs, emergency shelters and legal advocacy programs; and

(15) techniques for increasing cooperation and immediate data sharing among different areas of law enforcement in combating domestic violence and sexual violence.

(c) All law enforcement recruits shall receive the course of basic training for law enforcement officers, established in subsections (a) and (b), as part of their required certification process.

(d) The course of basic training for law enforcement officers shall be taught as part of the crisis intervention and conflict resolution components of the recruit academy training. Such training shall not increase in the currently required 480 hours of recruit training curriculum.

(e) The course of instruction, the learning and performance objectives, the standards for training and the guidelines shall be developed by the municipal police training committee in consultation with appropriate groups and individuals having an interest and expertise in the fields of domestic violence and sexual violence.

(f) The municipal police training committee shall, subject to appropriation, periodically include within its in-service training curriculum a course of instruction on handling domestic violence and sexual violence complaints consistent with paragraphs (1) to (15), inclusive, of subsection (b).

CREDIT(S)

Added by St.1986, c. 617. Amended by St.2002, c. 196, § 4; St.2003, c. 26, § 6, eff. July 1, 2003; St.2010, c. 262, § 2, eff. Nov. 5, 2010; St.2014, c. 260, § 1, eff. July 1, 2015.

MASS. GEN. LAWS ANN. CH. 12 § 33 (2016). DOMESTIC VIOLENCE AND SEXUAL VIOLENCE TRAINING PROGRAM FOR DISTRICT ATTORNEYS AND ASSISTANT DISTRICT ATTORNEYS

<[Text of section added by 2014, 260, Sec. 5 effective July 1, 2015. See 2014, 260, Sec. 50.]>

The Massachusetts District Attorneys' Association shall provide training on the issue of domestic violence and sexual violence in the commonwealth, at least once biannually, to all district attorneys and assistant district attorneys. Such training shall include, but not be limited to, the dissemination of information concerning:

(1) misdemeanor and felony offenses in which domestic violence and sexual violence are often involved;

(2) the civil rights and remedies available to victims of domestic violence and sexual violence;

(3) methods for assessing the degree of risk of homicide involved in situations of domestic violence including, but not limited to, gathering information from the victim regarding the suspect's past reported and non-reported behavior and dangerousness, such as: (i) whether the suspect has ever used a weapon against the victim or threatened the victim with a weapon; (ii) whether the suspect owns a gun; (iii) whether the suspect's physical violence against the victim has increased in severity or frequency; (iv) whether the suspect has threatened to kill the victim; (v) whether the suspect has ever threatened or attempted suicide; (vi) whether the suspect has used or threatened physical violence against the victim's family, other household members or pets; (vii) whether the suspect uses illegal drugs; (viii) whether the suspect abuses alcohol; and (ix) whether there have been specific instances of **strangulation or suffocation** of the victim by the suspect;

(4) law enforcement techniques, information sharing and methods of promoting cooperation among different areas of law enforcement in combating domestic violence and sexual violence, including the importance of keeping victims informed as to the whereabouts of suspected abusers and other such information helpful for victim safety planning;

(5) the physiological and psychological effects of the pattern of domestic violence and sexual violence on its victims, including children who witness such abuse;

(6) the increased vulnerability of victims who are gay, lesbian, bisexual, transgender, low-income, minority or immigrant, and including training on ways in which the indicators of dangerousness in these communities may be different from those in non-marginalized communities;

(7) the dynamics of coercive controlling behavior that increases dangerousness even when such patterns of behavior are not themselves violent;

(8) the underlying psychological and sociological causes of domestic violence and sexual violence and the availability of batterer's intervention programs;

(9) the availability of community based domestic violence, rape, and sexual assault shelter and support services within the commonwealth, including, to the extent practicable, specific shelter and support services available in a district attorney's district; and

(10) techniques for increasing cooperation and immediate data sharing among different areas of law enforcement and the court system in combating domestic violence and sexual violence.

The Massachusetts District Attorneys' Association may appoint such expert, clerical and other staff members as the operation of the training program may require. As appropriate, the training presenters shall include domestic violence and sexual violence experts with expertise in the delivery of direct services to victims of domestic violence and sexual violence, including utilizing community based domestic violence, rape and sexual assault service providers and survivors of domestic violence, rape or sexual assault in the presentation of the training.

CREDIT(S)

Added by St.2014, c. 260, § 5, eff. July 1, 2015.

<[Text of section added by 2014, 260, Sec. 18 effective July 1, 2015. See 2014, 260, Sec. 50.]>

The chief justice of the trial court department shall provide training on the issue of domestic violence and sexual violence in the commonwealth, at least once biannually, to all appropriate court personnel of the municipal, district, probate and family, juvenile and superior courts throughout the commonwealth, including but not limited to judges, clerks of court, probation officers, court officers, security officers and guardians ad litem. Such training shall include, but not be limited to, the dissemination of information concerning:

(1) misdemeanor and felony offenses in which domestic violence and sexual violence are often involved;

(2) the civil rights and remedies available to victims of domestic violence and sexual violence;

(3) methods for assessing the degree of risk of homicide involved in situations of domestic violence, including, but not limited to, gathering information from the victim regarding the suspect's past reported and non-reported behavior and dangerousness, such as: (i) whether the suspect has ever used a weapon against the victim or threatened the victim with a weapon, (ii) whether the suspect owns a gun; (iii) whether the suspect's physical violence against the victim has increased in severity or frequency; (iv) whether the suspect has threatened to kill the victim; (v) whether the suspect has ever threatened or attempted suicide; (vi) whether the suspect has used or threatened physical violence against the victim's family, other household members or pets; (vii) whether the suspect uses illegal drugs; (viii) whether the suspect abuses alcohol; and (ix) whether there have been specific instances of **strangulation** or suffocation of the victim by the suspect;

(4) law enforcement techniques, information sharing and methods of promoting cooperation among the various court departments in combating domestic violence and sexual violence, including the importance of keeping victims informed as to the whereabouts of suspected abusers and other such information helpful for victim safety planning;

(5) the physiological and psychological effects of the pattern of domestic violence and sexual violence on its victims, including children, who witness such abuse;

(6) the increased vulnerability of victims who are gay, lesbian, bisexual, transgender, low-income, minority or immigrant, and including training on ways in which the indicators of dangerousness in these communities may be different from those in non-marginalized

communities;

(7) the dynamics of coercive controlling behavior that increases dangerousness even when such patterns of behavior are not themselves violent;

(8) the underlying psychological and sociological causes of domestic violence and sexual violence and the availability of batterer's intervention programs;

(9) the availability of community based domestic violence, rape and sexual assault shelter and support services within the commonwealth, including, to the extent practicable, specific shelter and support services available in a court's geographical area; and

(10) techniques for increasing cooperation and immediate data sharing among different areas of law enforcement and the court system in combating domestic violence and sexual violence.

The chief justice of the trial court may appoint such expert, clerical and other staff members as the operation of the training program may require. As appropriate, the training presenters shall include domestic violence and sexual violence experts with expertise in the delivery of direct services to victims of domestic violence and sexual violence, including utilizing community based domestic violence, rape and sexual assault service providers and survivors of domestic violence, rape or sexual assault in the presentation of the training.

CREDIT(S)

Added by St.2014, c. 260, § 18, eff. July 1, 2015.

**MASS. GEN. LAWS ANN. CH. 265 § 15D (2016). STRANGULATION OR SUFFOCATION;
PENALTY; AGGRAVATING FACTORS; BATTERER'S INTERVENTION PROGRAM**

<[Text of section added by 2014, 260, Sec. 24 effective August 8, 2014.]>

(a) For the purposes of this section the following words shall have the following meanings, unless the context clearly indicates otherwise:

"Serious bodily injury", bodily injury that results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ or creates a substantial risk of death.

"Strangulation", the intentional interference of the normal breathing or circulation of blood by applying substantial pressure on the throat or neck of another.

"Suffocation", the intentional interference of the normal breathing or circulation of blood by blocking the nose or mouth of another.

(b) Whoever strangles or suffocates another person shall be punished by imprisonment in state prison for not more than 5 years or in the house of correction for not more than 2 1/2 years, or by a fine of not more than \$5,000, or by both such fine and imprisonment.

(c) Whoever: (i) strangles or suffocates another person and by such strangulation or suffocation causes serious bodily injury; (ii) strangles or suffocates another person, who is pregnant at the time of such strangulation or suffocation, knowing or having reason to know that the person is pregnant; (iii) is convicted of strangling or suffocating another person after having been previously convicted of the crime of strangling or suffocating another person under this section, or of a like offense in another state or the United States or a military, territorial or Indian tribal authority; or (iv) strangles or suffocates another person, with knowledge that the individual has an outstanding temporary or permanent vacate, restraining or no contact order or judgment issued under sections 18 or 34B of chapter 208, section 32 of chapter 209, sections 3, 4 or 5 of chapter 209A or sections 15 or 20 of chapter 209C, in effect against such person at the time the offense is committed, shall be punished by imprisonment in state prison for not more than 10 years, or in the house of correction for not more than 2 1/2 years, and by a fine of not more than \$10,000.

(d) For any violation of this section, or as a condition of a continuance without a finding, the court shall order the defendant to complete a certified batterer's intervention program unless, upon good cause shown, the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention.

CREDIT(S)

Added by St.2014, c. 260, § 24, eff. Aug. 8, 2014.

MASS. GEN. LAWS ANN. CH. 265 § 16 (2016): ATTEMPT TO MURDER

Whoever attempts to commit murder by poisoning, drowning or strangling another person, or by any means not constituting an assault with intent to commit murder, shall be punished by

imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two and one half years.

HISTORICAL AND STATUTORY NOTES

St.1832, c. 62.

R.S.1836, c. 125, § 12.

G.S.1860, c. 160, § 21.

P.S.1882, c. 202, § 21.

R.L.1902, c. 207, § 16.

St.1914, c. 635.

St.1918, c. 257, § 464.

St.1919, c. 5.

St.1920, c. 2.

MICHIGAN:

MICH. COMP. LAWS ANN. § 750.84 (2016). ASSAULT WITH INTENT TO DO GREAT BODILY HARM LESS THAN MURDER; ASSAULT BY STRANGULATION OR SUFFOCATION; PENALTIES; VIOLATIONS OF LAW ARISING OUT OF THE SAME CONDUCT

Sec. 84. (1) A person who does either of the following is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both:

(a) Assaults another person with intent to do great bodily harm, less than the crime of murder.

(b) Assaults another person by strangulation or suffocation.

(2) As used in this section, "strangulation or suffocation" means 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.

(3) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same conduct as the violation of this section.

CREDIT(S)

Amended by P.A.2012, No. 367, Eff. April 1, 2013.

MICH. COMP. LAWS ANN. § 750.91 (2016): ATTEMPT TO MURDER

Any person who shall attempt to commit the crime of murder by poisoning, drowning, or strangling another person, or by any means not constituting the crime of assault with intent to murder, shall be guilty of a felony, punishable by imprisonment in the state prison for life or any term of years.

Source:

P.A.1931, No. 328, § 91, Eff. Sept. 18.
C.L.1948, § 750.91.
C.L.1970, § 750.91.

MINNESOTA:

MINN. STAT. ANN. § 125A.0942 (2016). STANDARDS FOR RESTRICTIVE PROCEDURES (USED IN SCHOOLS PRE-KINDERGARTEN TO 12TH GRADE)

...

Subd. 4. Prohibitions. The following actions or procedures are prohibited:

- (1) engaging in conduct prohibited under section 121A.58;
- (2) requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain;
- (3) totally or partially restricting a child's senses as punishment;
- (4) presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;
- (5) denying or restricting a child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible;
- (6) interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under section 626.556;
- (7) withholding regularly scheduled meals or water;

(8) denying access to bathroom facilities; and

(9) physical holding that restricts or impairs a child's ability to breathe, restricts or impairs a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or results in straddling a child's torso.

Subd. 5. Training for staff. (a) To meet the requirements of subdivision 1, staff who use restrictive procedures, including paraprofessionals, shall complete training in the following skills and knowledge areas:

(1) positive behavioral interventions;

(2) communicative intent of behaviors;

(3) relationship building;

(4) alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;

(5) de-escalation methods;

(6) standards for using restrictive procedures only in an emergency;

(7) obtaining emergency medical assistance;

(8) the physiological and psychological impact of physical holding and seclusion;

(9) monitoring and responding to a child's physical signs of distress when physical holding is being used;

(10) recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used;

(11) district policies and procedures for timely reporting and documenting each incident involving use of a restricted procedure; and

(12) schoolwide programs on positive behavior strategies.

(b) The commissioner, after consulting with the commissioner of human services, must develop and maintain a list of training programs that satisfy the requirements of paragraph (a). The commissioner also must develop and maintain a list of experts to help individualized education program teams reduce the use of restrictive procedures. The district shall maintain records of staff who have been trained and the organization or professional that conducted the training. The district may collaborate with children's community mental health providers to coordinate trainings.

Subd. 6. Behavior supports; reasonable force. (a) School districts are encouraged to establish effective schoolwide systems of positive behavior interventions and supports.

(b) Nothing in this section or section 125A.0941 precludes the use of reasonable force under sections 121A.582; 609.06, subdivision 1; and 609.379. For the 2014-2015 school year and later, districts must collect and submit to the commissioner summary data, consistent with subdivision 3, paragraph (b), on district use of reasonable force that is consistent with the definition of physical holding or seclusion for a child with a disability under this section.

CREDIT(S)

Laws 2009, c. 96, art. 3, § 11, eff. Aug. 1, 2011. Amended by Laws 2011, 1st Sp., c. 11, art. 3, § 2, eff. July 1, 2011; Laws 2012, c. 146, §§ 2, 3, eff. April 3, 2012; Laws 2013, c. 116, art. 5, § 4, eff. July 1, 2013; Laws 2014, c. 312, art. 17, § 1, eff. May 21, 2014. M. S. A. § 125A.0942, MN ST § 125A.0942

MINN. STAT. ANN. § 626.556 (2016). REPORTING OF MALTREATMENT OF MINORS

Subdivision 1. Public policy. The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse. While it is recognized that most parents want to keep their children safe, sometimes circumstances or conditions interfere with their ability to do so. When this occurs, families are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child maltreatment. In furtherance of this public policy, it is the intent of the legislature under this section to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all

settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused or neglected children.

In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require a family assessment, when appropriate, as the preferred response to reports not alleging substantial child endangerment; to require an investigation when the report alleges substantial child endangerment; and to provide protective, family support, and family preservation services when needed in appropriate cases.

Subd. 2. Definitions. As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

...

(g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 125A.0942 or 245.825.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

(1) throwing, kicking, burning, biting, or cutting a child;

(2) striking a child with a closed fist;

(3) shaking a child under age three;

(4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;

(5) unreasonable interference with a child's breathing;

....

Subd. 3. Persons mandated to report. (a) A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:

(1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, correctional supervision, probation and correctional services, or law enforcement; or

(2) employed as a member of the clergy and received the information while engaged in ministerial duties, provided that a member of the clergy is not required by this subdivision to report information that is otherwise privileged under section 595.02, subdivision 1, paragraph (c).

The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency, or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing. The county sheriff and the head of every local welfare agency, agency responsible for assessing or investigating reports, and police department shall each designate a person within their agency, department, or office who is responsible for ensuring that the notification duties of this paragraph and paragraph (b) are carried out. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school, or agency.

(b) Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing.

(c) A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility

under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245D; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b. A board or other entity whose licensees perform work within a school facility, upon receiving a complaint of alleged maltreatment, shall provide information about the circumstances of the alleged maltreatment to the commissioner of education. Section 13.03, subdivision 4, applies to data received by the commissioner of education from a licensing entity.

(d) Any person mandated to report shall receive a summary of the disposition of any report made by that reporter, including whether the case has been opened for child protection or other services, or if a referral has been made to a community organization, unless release would be detrimental to the best interests of the child. Any person who is not mandated to report shall, upon request to the local welfare agency, receive a concise summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child.

(e) For purposes of this section, "immediately" means as soon as possible but in no event longer than 24 hours.

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CREDIT(S)

Laws 1975, c. 221, § 1. Amended by Laws 1977, c. 130, § 9, eff. May 20, 1977; Laws 1977, c. 212, §§ 2, 3; Laws 1978, c. 755, §§ 1 to 9; Laws 1979, c. 143, § 1; Laws 1979, c. 255, § 7, eff. Aug. 1, 1979; Laws 1980, c. 509, §§ 50, 181; Laws 1981, c. 240, § 2; Laws 1981, c. 273, § 12, eff. May 29, 1981; Laws 1981, c. 311, § 39; Laws 1981, 1st Sp., c. 4, art. 1, § 15; Laws 1982, c. 393, §§ 1, 2; Laws 1982, c. 545, § 24; Laws 1982, c. 636, §§ 1 to 4, eff. March 24, 1982; Laws 1983, c. 217, § 8, eff. Aug. 1, 1983; Laws 1983, c. 229, §§ 1, 2, eff. Aug. 1, 1983; Laws 1983, c. 345, §§ 13 to 19, eff. Aug. 1, 1983; Laws 1984, c. 484, § 3, eff. Aug. 1, 1984; Laws 1984, c. 573, § 10, eff. Aug. 1, 1984; Laws 1984, c. 577, §§ 1 to 6, eff. April 27, 1984; Laws 1984, c. 588, § 12, eff. April 27, 1984; Laws 1984, c. 654, art. 5, § 58; Laws 1984, c. 655, art. 2, § 14, subd. 1, eff. April 27, 1984; Laws 1985, c. 266, §§ 5 to 15; Laws 1985, c. 283, §§ 2 to 4; Laws 1985, c. 286, §§ 19, 20; Laws 1985, c. 293, §§ 3 to 5; Laws 1986, c. 351, § 19, eff. Aug. 1, 1985; Laws 1986, c. 351, § 20, eff. March 20, 1986; Laws 1986, c. 380, § 3, eff. March 20, 1986; Laws 1986, c. 444; Laws 1986, c. 469, § 2; Laws 1986, 1st Sp., c. 3, art. 1, § 77; Laws 1987, c. 91, §§ 1 to 3, eff. Aug. 1, 1987; Laws 1987, c. 110, § 2; Laws 1987, c. 135, §§ 1 to 3; Laws 1987, c. 211, § 1; Laws 1987, c. 352, §§ 9, 10; Laws 1988, c. 543, §§ 11, 12; Laws 1988, c. 625, §§ 2 to 8; Laws 1988, c. 662, § 4; Laws 1989, c. 177, §§ 2, 3; Laws 1989, c. 209, art. 2, § 1; Laws 1989, c. 282, art. 2, §§ 200, 201; Laws 1989, c. 290, art. 5, § 4; Laws 1990, c. 426, art. 1, § 55; Laws 1990, c. 542, §§ 20 to 26; Laws 1991, c. 181, § 1; Laws 1991, c. 319, §§ 24, 25; Laws 1993, c. 13, art. 1, § 50; Laws 1993, c. 296, § 3; Laws 1993, c. 306, §§ 18, 19; Laws 1993, c. 326, art. 6, § 23; Laws 1993, c. 351, §§ 37, 38; Laws 1994, c. 434, §§ 8 to 10; Laws 1994, c. 631, § 31; Laws 1994, c. 636, art. 2, §§ 57 to 59; Laws 1994, c. 636, art. 4, § 30; Laws 1995, c. 187, §§ 1 to 7; Laws 1995, c. 229, art. 4, § 20, eff. Oct. 1, 1995; Laws 1997, c. 203, art. 5, §§ 25 to 30; Laws 1997, c. 245, art. 2, § 8; Laws 1997, 1st Sp., c. 3, § 44; Laws 1997, 3rd Sp., c. 3, § 10; Laws 1998, c. 406, art. 1, § 36, eff. April 21, 1998; Laws 1998, c. 406, art. 4, §§ 2 to 7; Laws 1998, c. 407, art. 9, § 35, eff. April 22, 1998; Laws 1998, 1st Sp., c. 3, § 25; Laws 1999, c. 139, art. 4, § 2; Laws 1999, c. 227, § 22; Laws 1999, c. 241, art. 2, § 54; Laws 1999, c. 241, art. 10, § 3; Laws 1999, c. 245, art. 4, § 102; Laws 1999, c. 245, art. 8, §§ 66 to 79; Laws 2000, c. 401, § 1, eff. April 15, 2000; Laws 2000, c. 447, art. 2, § 47, eff. Jan. 1, 2001; Laws 2001, c. 7,

§ 88; Laws 2001, c. 136, § 1, eff. May 22, 2001; Laws 2001, c. 178, art. 1, §§ 40, 44; Laws 2001, c. 178, art. 2, §§ 7 to 17, eff. May 26, 2001; Laws 2001, 1st Sp., c. 6, art. 3, § 16, eff. July 1, 2001; Laws 2001, 1st Sp., c. 9, art. 11, § 6; Laws 2001, 1st Sp., c. 9, art. 11, § 7, eff. July 1, 2001; Laws 2001, 1st Sp., c. 9, art. 11, § 8; Laws 2001, 1st Sp., c. 9, art. 11, §§ 9 to 11, eff. July 1, 2001; Laws 2001, 1st Sp., c. 9, art. 11, § 12; Laws 2001, 1st Sp., c. 9, art. 14, § 29; Laws 2002, c. 375, art. 1, § 21; Laws 2002, c. 379, art. 1, § 107; Laws 2002, c. 385, § 9; Laws 2003, c. 15, art. 1, § 33, eff. April 18, 2003; Laws 2003, c. 130, § 12; Laws 2004, c. 288, art. 1, § 78; Laws 2004, c. 288, art. 1, § 79, eff. May 30, 2004; Laws 2004, c. 294, art. 5, § 18; Laws 2005, c. 56, § 1; Laws 2005, c. 136 art. 3, § 25, eff. Aug. 1, 2005; Laws 2005, c. 159, art. 1, §§ 1 to 13; Laws 2005 1st Sp., c. 4, art. 1, § 54; Laws 2006, c. 263, art. 7, § 6; Laws 2006, c. 283, § 1, subd. 1; Laws 2007, c. 112, §§ 52 to 54, eff. Aug. 1, 2007; Laws 2007, c. 147, art. 1, §§ 24 to 31; Laws 2007, c. 147, art. 10, § 15, eff. July 1, 2007; Laws 2008, c. 361, art. 6, §§ 55, 56, eff. Aug. 1, 2008; Laws 2009, c. 79, art. 8, § 74, eff. July 1, 2009; Laws 2009, c. 86, art. 1, § 86, eff. Aug. 1, 2009; Laws 2009, c. 142, art. 2, §§ 43 to 45, eff. Aug. 1, 2009; Laws 2009, c. 173, art. 1, § 39, eff. July 1, 2009; Laws 2010, c. 276, §§ 1, 2, eff. Aug. 1, 2010; Laws 2010, c. 301, art. 3, § 10, eff. Aug. 1, 2010; Laws 2010, c. 329, art. 1, §§ 19, 20, eff. Aug. 1, 2010; Laws 2010, c. 329, art. 2, § 5, eff. May 14, 2010; Laws 2010, c. 385, § 13, eff. Aug. 1, 2010; Laws 2012, c. 153, § 2, eff. July 1, 2012; Laws 2012, c. 216, art. 1, §§ 47 to 50, eff. Aug. 2, 2012; Laws 2012, c. 216, art. 6, §§ 7 to 12, eff. Aug. 1, 2012; Laws 2012, c. 247, art. 3, § 24, eff. July 1, 2012; Laws 2013, c. 82, § 38, eff. Aug. 1, 2013; Laws 2013, c. 108, art. 9, §§ 13 to 15, eff. Jan. 1, 2014; Laws 2013, c. 125, art. 1, § 99, eff. July 1, 2013; Laws 2014, c. 262, art. 5, § 5, eff. Aug. 1, 2014; Laws 2014, c. 272, art. 4, § 12, eff. May 17, 2014; Laws 2014, c. 275, art. 1, § 130, eff. Aug. 1, 2014; Laws 2014, c. 291, art. 1, § 10, eff. July 1, 2014; Laws 2014, c. 291, art. 11, §§ 36, 37, eff. July 1, 2014.

M. S. A. § 626.556, MN ST § 626.556

MINN. STAT. ANN. § 609.2247 (2016): DOMESTIC ASSAULT BY STRANGULATION

a) As used in this section, the following terms have the meanings given.

(b) “Family or household members” has the meaning given in section 518B.01, subdivision 2.

(c) “Strangulation” means 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.

Subd. 2. Crime. Unless a greater penalty is provided elsewhere, whoever assaults a family or household member by strangulation is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

CREDIT(S)

Laws 2005, c. 136, art. 17, § 13.

MISSISSIPPI:

MISS. CODE ANN. § 97-3-7 (2016): SIMPLE AND AGGRAVATED ASSAULT; SIMPLE AND AGGRAVATED DOMESTIC VIOLENCE

(1)(a) A person is guilty of simple assault if he (i) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; (ii) negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (iii) attempts

by physical menace to put another in fear of imminent serious bodily harm; and, upon conviction, he shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not more than six (6) months, or both.

(b) However, a person convicted of simple assault upon any of the persons listed in subsection (14) of this section under the circumstances enumerated in subsection (14) shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than five (5) years, or both.

(2)(a) A person is guilty of aggravated assault if he (i) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; (ii) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (iii) causes any injury to a child who is in the process of boarding or exiting a school bus in the course of a violation of Section 63-3-615; and, upon conviction, he shall be punished by imprisonment in the county jail for not more than one (1) year or in the Penitentiary for not more than twenty (20) years.

(b) However, a person convicted of aggravated assault upon any of the persons listed in subsection (14) of this section under the circumstances enumerated in subsection (14) shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than thirty (30) years, or both.

(3)(a) When the offense is committed against a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child, a person is guilty of simple domestic violence who:

- (i) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another;
- (ii) Negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or
- (iii) Attempts by physical menace to put another in fear of imminent serious bodily harm.

Upon conviction, the defendant shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not more than six (6) months, or both.

(b) Simple domestic violence: third. A person is guilty of the felony of simple domestic violence third who commits simple domestic violence as defined in this subsection (3) and who, at the time of the commission of the offense in question, has two (2) prior convictions, whether against the same or another victim, within seven (7) years, for any combination of simple domestic violence under this subsection (3) or aggravated domestic violence as defined in subsection (4) of this section or substantially similar offenses under the law of another state, of the United States, or of a federally recognized Native American tribe. Upon conviction, the defendant shall be sentenced to a term of imprisonment not less than five (5) nor more than ten (10) years.

(4)(a) When the offense is committed against a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child, a person is guilty of aggravated domestic violence who:

(i) Attempts to cause serious bodily injury to another, or causes such an injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life;

(ii) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or

(iii) Strangles, or attempts to strangle another.

Upon conviction, the defendant shall be punished by imprisonment in the custody of the Department of Corrections for not less than two (2) nor more than twenty (20) years.

(b) Aggravated domestic violence; third. A person is guilty of aggravated domestic violence third who, at the time of the commission of that offense, commits aggravated domestic violence as defined in this subsection (4) and who has two (2) prior convictions within the past seven (7) years, whether against the same or another victim, for any combination of aggravated domestic violence under this subsection (4) or simple domestic violence third as defined in subsection (3) of this section, or substantially similar offenses under the laws of another state, of the United States, or of a federally recognized Native American tribe. Upon conviction for aggravated domestic violence third, the defendant shall be sentenced to a term of imprisonment of not less than ten (10) nor more than twenty (20) years.

(5) Sentencing for fourth or subsequent domestic violence offense. Any person who commits an offense defined in subsection (3) or (4) of this section, and who, at the time of the commission of that offense, has at least three (3) previous convictions, whether against the same or different victims, for any combination of offenses defined in subsections (3) and (4) of this section or substantially similar offenses under the law of another state, of the United States, or of a federally recognized Native American tribe, shall, upon conviction, be sentenced to imprisonment for not less than fifteen (15) years nor more than twenty (20) years.

(6) In sentencing under subsections (3), (4) and (5) of this section, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under sixteen (16) years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, or the residence where the offense occurred.

(7) Reasonable discipline of a child, such as spanking, is not an offense under subsections (3) and (4) of this section.

(8) A person convicted under subsection (4) or (5) of this section shall not be eligible for parole under the provisions of Section 47-7-3(1)(c) until he shall have served one (1) year of his sentence.

(9) For the purposes of this section:

(a) "Strangle" means to restrict the flow of oxygen or blood by intentionally applying pressure on the neck, throat or chest of another person by any means or to intentionally block the nose or mouth of another person by any means.

(b) "Dating relationship" means a social relationship as defined in Section 93-21-3.

(10) Every conviction under subsection (3), (4) or (5) of this section may require as a condition of any suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

(11)(a) Upon conviction under subsection (3), (4) or (5) of this section, the court shall be empowered to issue a criminal protection order prohibiting the defendant from any contact with the victim. The court may include in a criminal protection order any other condition available under Section 93-21-15. The duration of a criminal protection order shall be based upon the seriousness of the facts before the court, the probability of future violations, and the continued safety of the victim or another person. However, municipal and justice courts may issue criminal protection orders for a maximum period of time not to exceed one (1) year. Circuit and county courts may issue a criminal protection order for any period of time deemed necessary.

(b) A criminal protection order shall not be issued against the defendant if the victim of the offense, or the victim's lawful representative where the victim is a minor or incompetent person, objects to its issuance, except in circumstances where the court, in its discretion, finds that a criminal protection order is necessary for the safety and well-being of a victim who is a minor child or incompetent adult.

(c) Criminal protection orders shall be issued on the standardized form developed by the Office of the Attorney General and a copy provided to both the victim and the defendant.

(d) It shall be a misdemeanor to knowingly violate any condition of a criminal protection order. Upon conviction for a violation, the defendant shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not more than six (6) months, or both.

(12) When investigating allegations of a violation of subsection (3), (4), (5) or (11) of this section, whether or not an arrest results, law enforcement officers shall utilize the form prescribed for such purposes by the Office of the Attorney General in consultation with the sheriff's and police chief's associations. However, failure of law enforcement to utilize the uniform offense report

shall not be a defense to a crime charged under this section. The uniform offense report shall not be required if, upon investigation, the offense does not involve persons in the relationships specified in subsections (3) and (4) of this section.

(13) In any conviction under subsection (3), (4), (5) or (11) of this section, the sentencing order shall include the designation "domestic violence." The court clerk shall enter the disposition of the matter into the corresponding uniform offense report.

(14) Assault upon any of the following listed persons is an aggravating circumstance for charging under subsections (1)(b) and (2)(b) of this section if the person is:

(a) A statewide elected official; law enforcement officer; fireman; emergency medical personnel; public health personnel; social worker, family protection specialist or family protection worker employed by the Department of Human Services or another agency; youth detention center personnel; training school juvenile care worker; any county or municipal jail officer; superintendent, principal, teacher or other instructional personnel, school attendance officer or school bus driver; a judge of a circuit, chancery, county, justice, municipal or youth court or a judge of the Court of Appeals or a justice of the Supreme Court; district attorney or legal assistant to a district attorney; county prosecutor or municipal prosecutor; court reporter employed by a court, court administrator, clerk or deputy clerk of the court; or public defender when that person is acting within the scope of his duty, office or employment;

(b) A legislator while the Legislature is in regular or extraordinary session or while otherwise acting within the scope of his duty, office or employment; or

(c) A person who is sixty-five (65) years of age or older or a person who is a vulnerable person, as defined in Section 43-47-5.

CREDIT(S)

Laws 1974, Ch. 458, § 1; Laws 1992, Ch. 431, § 2; Laws 1993, Ch. 580, § 1; Laws 1998, Ch. 425, § 1; Laws 1998, Ch. 525, § 1, eff. July 1, 1998; Laws 1999, Ch. 552, § 2, eff. July 1, 1999; Laws 2000, Ch. 552, § 1, eff. July 1, 2000; Laws 2001, Ch. 566, § 1, eff. July 1, 2001; Laws 2002, Ch. 353, § 1, eff. July 1, 2002; Laws 2004, Ch. 489, § 9, eff. July 1, 2004. Amended by Laws 2006, Ch. 600, § 11, eff. July 1, 2006; Laws 2006, Ch. 589, § 1, eff. July 1, 2006; Laws 2007, Ch. 589, § 10, eff. July 1, 2007; Laws 2008, Ch. 391, § 2, eff. July 1, 2008; Laws 2008, Ch. 553, § 1, eff. July 1, 2008; Laws 2009, Ch. 433, § 3, eff. July 1, 2009. Amended by Laws 2010, Ch. 536, § 1, eff. July 1, 2010; Laws 2011, Ch. 481, § 3, eff. July 1, 2011; Laws 2012, Ch. 514, § 8, eff. July 1, 2012; Laws 2013, Ch. 565 (H.B. 709), § 1, eff. July 1, 2013; Laws 2014, Ch. 463 (S.B. No. 2476), § 1, eff. July 1,

MISSOURI:

Mo. REV. STAT. § 565.073 (2016): DOMESTIC ASSAULT IN THE SECOND DEGREE, PENALTY

<Text of section eff. until Jan. 1, 2017. See, also, section eff. Jan. 1, 2017.>

1. A person commits the crime of domestic assault in the second degree if the act involves a family or household member, including any child who is a member of the family or household, as defined in section 455.010, and he or she:

(1) Attempts to cause or knowingly causes physical injury to such family or household member by any means, including but not limited to, by use of a deadly weapon or dangerous instrument, or by choking or strangulation; or

(2) Recklessly causes serious physical injury to such family or household member; or

(3) Recklessly causes physical injury to such family or household member by means of any deadly weapon.

2. Domestic assault in the second degree is a class C felony.

CREDIT(S)(L.2000, H.B. Nos. 1677, 1675 & 1676, § A. Amended by L.2012, S.B. No. 628, § A.)

MONTANA:

No statutory provisions dealing specifically with strangulation

NEBRASKA:

NEB. REV. STAT. § 28-310.01 (2016): STRANGULATION; PENALTY; AFFIRMATIVE DEFENSE

(1) A person commits the offense of strangulation if the person knowingly or intentionally impedes the normal breathing or circulation of the blood of another person by applying

pressure on the throat or neck of the other person.

(2) Except as provided in subsection (3) of this section, strangulation is a Class IV felony.

(3) Strangulation is a Class III felony if:

- (a) The person used or attempted to use a dangerous instrument while committing the offense;
- (b) The person caused serious bodily injury to the other person while committing the offense; or
- (c) The person has been previously convicted of strangulation.

(4) It is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.

CREDIT(S)

Laws 2004, LB 943, § 2. Neb. Rev. St. § 28-310.01, NE ST § 28-310.01

NEB. REV. STAT. 29-4503 (2016).. ELECTRONIC RECORDATION OF STATEMENTS AND WAIVER OF RIGHTS REQUIRED; (DURING CUSTODIAL INTERROGATION)

(1) All statements relating to crimes described in subsection (2) of this section and statements regarding rights described in section 29-4501 or the waiver of such rights made during a custodial interrogation at a place of detention that are described in subsection (2) of this section shall be electronically recorded.

(2) Statements subject to subsection (1) of this section are those statements relating to:

- (a) Crimes resulting in death or felonies involving (i) sexual assault, (ii) kidnapping, (iii) child abuse, or (iv) **strangulation**; or
- (b) Offenses being investigated as part of the same course of conduct as the offenses described in subdivision (a) of this subsection.

CREDIT(S)

Laws 2008, LB 179, § 3, eff. July 18, 2008.

NEVADA:

NEV. REV. STAT. 193.166 (2016):ADDITIONAL PENALTY: FELONY COMMITTED IN VIOLATION OF ORDER FOR PROTECTION OR ORDER TO RESTRICT CONDUCT; RESTRICTION ON PROBATION

1. Except as otherwise provided in NRS 193.169, a person who commits a crime that is punishable as a felony, other than a crime that is punishable as a felony pursuant to subsection 6 of NRS 33.400, subsection 5 of NRS 200.591 or subsection 5 of NRS 200.378, in violation of:

- (a) A temporary or extended order for protection against domestic violence issued pursuant to NRS 33.020;
- (b) An order for protection against harassment in the workplace issued pursuant to NRS 33.270;
- (c) A temporary or extended order for the protection of a child issued pursuant to NRS 33.400;
- (d) An order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS;
- (e) A temporary or extended order issued pursuant to NRS 200.591; or
- (f) A temporary or extended order issued pursuant to NRS 200.378, shall, in addition to the term of imprisonment prescribed by statute for the crime, be punished by imprisonment in the state prison, except as otherwise provided in this subsection, for a minimum term of not less than 1 year and a maximum term of not more than 20 years. If the crime committed by the person is punishable as a category A felony or category B felony, in addition to the term of imprisonment prescribed by statute for that crime, the person shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years.

2. In determining the length of the additional penalty imposed pursuant to this section, the court shall consider the following information:

- (a) The facts and circumstances of the crime;
- (b) The criminal history of the person;
- (c) The impact of the crime on any victim;
- (d) Any mitigating factors presented by the person; and
- (e) Any other relevant information.

The court shall state on the record that it has considered the information described in paragraphs (a) to (e), inclusive, in determining the length of the additional penalty imposed.

3. The sentence prescribed by this section:

(a) Must not exceed the sentence imposed for the crime; and

(b) Runs concurrently or consecutively with the sentence prescribed by statute for the crime, as ordered by the court.

4. The court shall not grant probation to or suspend the sentence of any person convicted of attempted murder, battery which involves the use of a deadly weapon, battery which results in substantial bodily harm or battery which is committed by strangulation as described in NRS 200.481 or 200.485 if an additional term of imprisonment may be imposed for that primary offense pursuant to this section.

5. This section does not create a separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.

CREDIT(S)

Added by Laws 2003, c. 290, § 1. Amended by Laws 2005, c. 269, § 1, eff. July 1, 2005; Laws 2007, c. 28, § 1, eff. July 1, 2007; Laws 2007, c. 525, § 14, eff. July 1, 2007; Laws 2009, c. 42, § 1, eff. May 6, 2009; Laws 2009, c. 68, § 1, eff. May 11, 2009.

NEV. REV. STAT. 200.400 (2016): DEFINITION, PENALTIES

1. As used in this section:

(a) “Battery” means any willful and unlawful use of force or violence upon the person of another.

(b) “Strangulation” has the meaning ascribed to it in NRS 200.481.

2. A person who is convicted of battery with the intent to commit mayhem, robbery or grand larceny is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

3. A person who is convicted of battery with the intent to kill is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years.

4. A person who is convicted of battery with the intent to commit sexual assault shall be punished:

(a) If the crime results in substantial bodily harm to the victim or is committed by strangulation, for a category A felony by imprisonment in the state prison:

(1) For life without the possibility of parole; or

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served,

as determined by the verdict of the jury, or the judgment of the court if there is no jury.

(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, for a category A felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of life with the possibility of parole.

(c) If the crime does not result in substantial bodily harm to the victim and the victim is a child under the age of 16, for a category A felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of life with the possibility of parole.

In addition to any other penalty, a person convicted pursuant to this subsection may be punished by a fine of not more than \$10,000.

Amended by Laws 1967, p. 471; Laws 1971, p. 1385; Laws 1973, p. 1805; Laws 1977, p. 1628; Laws 1979, p. 1426; Laws 1981, p. 903; Laws 1985, p. 247; Laws 1991, p. 123; Laws 1995, p. 1188; Laws 2005, c. 507, § 28, eff. July 1, 2005; Laws 2009, c. 42, § 2, eff. May 6, 2009.

NEV. REV. STAT. 200.481 (2016): BATTERY; DEFINITIONS; PENALTIES

<Amendments to this section contingent upon approval of Senate Joint Resolution No. 14 at the general election on Nov. 4, 2014; see Historical and Statutory Notes.>

1. As used in this section:

(a) "Battery" means any willful and unlawful use of force or violence upon the person of another.

(b) "Child" means a person less than 18 years of age.

(c) "Officer" means:

(1) A person who possesses some or all of the powers of a peace officer;

(2) A person employed in a full-time salaried occupation of fire fighting for the benefit or safety of the public;

(3) A member of a volunteer fire department;

- (4) A jailer, guard, matron or other correctional officer of a city or county jail or detention facility;
- (5) A justice of the Supreme Court, district judge, justice of the peace, municipal judge, magistrate, court commissioner, master or referee, including, without limitation, a person acting pro tempore in a capacity listed in this subparagraph; or
- (6) An employee of the State or a political subdivision of the State whose official duties require the employee to make home visits.

(d) "Provider of health care" has the meaning ascribed to it in NRS 200.471.

(e) "School employee" means a licensed or unlicensed person employed by a board of trustees of a school district pursuant to NRS 391.100.

(f) "Sporting event" has the meaning ascribed to it in NRS 41.630.

(g) "Sports official" has the meaning ascribed to it in NRS 41.630.

(h) "Strangulation" means intentionally impeding the 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 in a manner that creates a risk of death or substantial bodily harm.

(i) "Taxicab" has the meaning ascribed to it in NRS 706.8816.

(j) "Taxicab driver" means a person who operates a taxicab.

(k) "Transit operator" means a person who operates a bus or other vehicle as part of a public mass transportation system.

2. Except as otherwise provided in NRS 200.485, a person convicted of a battery, other than a battery committed by an adult upon a child which constitutes child abuse, shall be punished:

(a) If the battery is not committed with a deadly weapon, and no substantial bodily harm to the victim results, except under circumstances where a greater penalty is provided in this section or NRS 197.090, for a misdemeanor.

(b) If the battery is not committed with a deadly weapon, and either substantial bodily harm to the victim results or the battery is committed by strangulation, for a category C felony as provided in NRS 193. 130.

(c) If:

(1) The battery is committed upon an officer, provider of health care, school employee, taxicab driver or transit operator who was performing his or her duty or upon a sports official based on the performance of his or her duties at a sporting event;

(2) The officer, provider of health care, school employee, taxicab driver, transit operator or sports official suffers substantial bodily harm or the battery is committed by strangulation; and

(3) The person charged knew or should have known that the victim was an officer, provider of health care, school employee, taxicab driver, transit operator or sports official,

for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, or by a fine of not more than \$10,000, or by both fine and imprisonment.

(d) If the battery is committed upon an officer, provider of health care, school employee, taxicab driver or transit operator who is performing his or her duty or upon a sports official based on the performance of his or her duties at a sporting event and the person charged knew or should have known that the victim was an officer, provider of health care, school employee, taxicab driver, transit operator or sports official, for a gross misdemeanor, except under circumstances where a greater penalty is provided in this section.

(e) If the battery is committed with the use of a deadly weapon, and:

(1) No substantial bodily harm to the victim results, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

(2) Substantial bodily harm to the victim results or the battery is committed by strangulation, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$10,000.

(f) If the battery is committed by a probationer, a prisoner who is in lawful custody or confinement or a parolee, without the use of a deadly weapon, whether or not substantial bodily harm results and whether or not the battery is committed by strangulation, for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years.

(g) If the battery is committed by a probationer, a prisoner who is in lawful custody or confinement or a parolee, with the use of a deadly weapon, and:

(1) No substantial bodily harm to the victim results, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years.

(2) Substantial bodily harm to the victim results or the battery is committed by strangulation, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years.

CREDIT(S)

Added by Laws 1971, p. 1385. Amended by Laws 1973, p. 1444; Laws 1975, p. 1063; Laws 1977, p. 736; Laws 1979, pp. 213, 1427; Laws 1981, pp. 12, 614; Laws 1983, p. 673; Laws 1985, pp. 248, 2171; Laws 1987, p. 515; Laws 1989, p. 1178; Laws 1991, pp. 154, 774; Laws 1995, pp. 22, 903, 1191, pp. 1321, 1335; Laws 1997, c. 160, § 3; Laws 1997, c. 314, § 4; Laws 1997, c. 476, § 19, eff. Jan. 1, 1998; Laws 1999, c. 57, § 2; Laws 2001, c. 33, § 2; Laws 2003, c. 23, § 2; Laws 2005, c. 64, § 3; Laws 2009, c. 42, § 3, eff. May 6, 2009; Laws 2013, c. 343, § 137 (contingent).

NEV. REV. STAT. 200.485 (2016): BATTERY WHICH CONSTITUTES DOMESTIC VIOLENCE: PENALTIES; REFERRING CHILD FOR COUNSELING; RESTRICTION AGAINST DISMISSAL, PROBATION AND SUSPENSION; DEFINITIONS

1. Unless a greater penalty is provided pursuant to subsection 2 or NRS 200.481, a person convicted of a battery which constitutes domestic violence pursuant to NRS 33.018:

(a) For the first offense within 7 years, is guilty of a misdemeanor and shall be sentenced to:

(1) Imprisonment in the city or county jail or detention facility for not less than 2 days, but not more than 6 months; and

(2) Perform not less than 48 hours, but not more than 120 hours, of community service.

The person shall be further punished by a fine of not less than \$200, but not more than \$1,000. A term of imprisonment imposed pursuant to this paragraph may be served intermittently at the discretion of the judge or justice of the peace, except that each period of confinement must be not less than 4 consecutive hours and must occur at a time when the person is not required to be at his or her place of employment or on a weekend.

(b) For the second offense within 7 years, is guilty of a misdemeanor and shall be sentenced to:

(1) Imprisonment in the city or county jail or detention facility for not less than 10 days, but not more than 6 months; and

(2) Perform not less than 100 hours, but not more than 200 hours, of community service.

The person shall be further punished by a fine of not less than \$500, but not more than \$1,000.

(c) For the third and any subsequent offense within 7 years, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

2. Unless a greater penalty is provided pursuant to NRS 200.481, a person convicted of a battery which constitutes domestic violence pursuant to NRS 33.018, if the battery is committed by strangulation as described in NRS 200.481, is guilty of a category C felony and shall be punished as provided in NRS 193.130 and by a fine of not more than \$15,000.

3. In addition to any other penalty, if a person is convicted of a battery which constitutes domestic violence pursuant to NRS 33.018, the court shall:

(a) For the first offense within 7 years, require the person to participate in weekly counseling sessions of not less than 1 1/2 hours per week for not less than 6 months, but not more than 12 months, at his or her expense, in a program for the treatment of persons who commit domestic violence that has been certified pursuant to NRS 228.470.

(b) For the second offense within 7 years, require the person to participate in weekly counseling sessions of not less than 1 1/2 hours per week for 12 months, at his or her expense, in a program for the treatment of persons who commit domestic violence that has been certified pursuant to NRS 228.470.

If the person resides in this State but the nearest location at which counseling services are available is in another state, the court may allow the person to participate in counseling in the other state in a program for the treatment of persons who commit domestic violence that has been certified pursuant to NRS 228.470.

4. An offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.

5. In addition to any other fine or penalty, the court shall order such a person to pay an administrative assessment of \$35. Any money so collected must be paid by the clerk of the court to the State Controller on or before the fifth day of each month for the preceding month for credit to the Account for Programs Related to Domestic Violence established pursuant to NRS 228.460.

6. In addition to any other penalty, the court may require such a person to participate, at his or her expense, in a program of treatment for the abuse of alcohol or drugs that has been certified

by the Health Division of the Department of Health and Human Services.

7. If it appears from information presented to the court that a child under the age of 18 years may need counseling as a result of the commission of a battery which constitutes domestic violence pursuant to NRS 33.018, the court may refer the child to an agency which provides child welfare services. If the court refers a child to an agency which provides child welfare services, the court shall require the person convicted of a battery which constitutes domestic violence pursuant to NRS 33.018 to reimburse the agency for the costs of any services provided, to the extent of the convicted person's ability to pay.

8. If a person is charged with committing a battery which constitutes domestic violence pursuant to NRS 33.018, a prosecuting attorney shall not dismiss such a charge in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for any other reason unless the prosecuting attorney knows, or it is obvious, that the charge is not supported by probable cause or cannot be proved at the time of trial. A court shall not grant probation to and, except as otherwise provided in NRS 4.373 and 5.055, a court shall not suspend the sentence of such a person.

9. As used in this section:

(a) "Agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.

(b) "Battery" has the meaning ascribed to it in paragraph (a) of subsection 1 of NRS 200.481.

(c) "Offense" includes a battery which constitutes domestic violence pursuant to NRS 33.018 or a violation of the law of any other jurisdiction that prohibits the same or similar conduct.

Added by Laws 1997, c. 476, § 18, eff. Jan 1, 1998. Amended by Laws 1999, c. 394, § 17, eff. July 1, 1999; Laws 2001, c. 7, § 1, eff. March 27, 2001; Laws 2001, c. 49, § 40, eff. May 10, 2001; Laws 2001, c. 515, § 1; Laws 2001, c. 575, §§ 53, 71.7, eff. July 1, 2001; Laws 2003, c. 284, § 38, eff. July 1, 2003; Laws 2005, c. 18, § 1, eff. July 1, 2005; Laws 2005, c. 162, § 1, eff. July 1, 2005; Laws 2007, c. 327, § 52; Laws 2007, c. 327, § 53, eff. July 1, 2009; Laws 2009, c. 42, § 4, eff. May 6, 2009; Laws 2009, c. 42, § 5, eff. July 1, 2009.

NEV. REV. STAT. 202.876 (2016): VIOLENT OR SEXUAL OFFENSE DEFINED

"Violent or sexual offense" means any act that, if prosecuted in this State, would constitute any of the following offenses:

.....

11. Battery which is committed with the use of a deadly weapon or which results in substantial bodily harm as described in NRS 200.481 or battery which is committed by strangulation as described in NRS 200.481 or 200.485.

12. An offense involving pornography and a minor pursuant to NRS 200.710 or 200.720.
13. Intentional transmission of the human immunodeficiency virus pursuant to NRS 201.205.
14. Open or gross lewdness pursuant to NRS 201.210.
15. Lewdness with a child pursuant to NRS 201.230.
16. An offense involving pandering or sex trafficking in violation of NRS 201.300 or prostitution in violation of NRS 201.320.
17. Coercion pursuant to NRS 207.190, if the coercion involves the use or threatened use of force or violence against the victim or the use or threatened use of a firearm or a deadly weapon.
18. An attempt, conspiracy or solicitation to commit an offense listed in this section.

CREDIT(S)

Added by Laws 1999, c. 631, § 10. Amended by Laws 2009, c. 42, § 6, eff. May 6, 2009; Laws 2013, c. 261, § 2; Laws 2013, c. 426, § 45, eff. July 1, 2013.

NEW HAMPSHIRE:

N.H. REV. STAT. ANN. § 631:2 (2016): SECOND DEGREE ASSAULT

- I. A person is guilty of a class B felony if he or she:
- (a) Knowingly or recklessly causes serious bodily injury to another; or
 - (b) Recklessly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he or she shall be sentenced in accordance with RSA 651:2, II-g; or
 - (c) Recklessly causes bodily injury to another under circumstances manifesting extreme indifference to the value of human life; or
 - (d) Purposely or knowingly causes bodily injury to a child under 13 years of age; or
 - (e) Recklessly or negligently causes injury to another resulting in miscarriage or stillbirth; or
 - (f) Purposely or knowingly engages in the **strangulation of another.**

II. In this section:

(a) "Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus.

(b) "Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion.

(c) "Strangulation" means the application of pressure to another person's throat or neck, or the blocking of the person's nose or mouth, that causes the person to experience impeded breathing or blood circulation or a change in voice.

<[Paragraph III effective January 1, 2015.]>

III. Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, a conviction under this section shall be recorded as "Second Degree Assault-- Domestic Violence."

HISTORY

Source. 1971, 518:1. 1979, 126:2. 1985, 181:1. 1990, 95:3. 1991, 75:2, eff. Jan. 1, 1992. 2010, 8:1, eff. Jan. 1, 2011. 2014, 152:4, eff. Jan. 1, 2015.

NEW JERSEY:

No statutory provisions dealing specifically with strangulation

NEW MEXICO:

No statutory provisions dealing specifically with strangulation

NEW YORK:

N. Y. CRIMINAL PROCEDURE LAW § 530.11 (2016). PROCEDURES FOR FAMILY OFFENSE MATTERS

1. Jurisdiction. The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the

first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. For purposes of this section, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this section, "members of the same family or household" with respect to a proceeding in the criminal courts shall mean the following:

....

CREDIT(S)

(Added L.1980, c. 530, § 15. Amended L.1981, c. 416, § 20; L.1983, c. 925, § 2; L.1984, c. 948, § 13; L.1986, c. 847, § 2; L.1990, c. 667, § 1; L.1992, c. 345, § 6; L.1994, c. 222, §§ 34 to 39; L.1994, c. 224, § 7; L.1995, c. 349, § 5; L.1995, c. 440, § 2; L.1997, c. 186, §§ 7 to 9, eff. July 8, 1997; L.1998, c. 597, § 11, eff. Dec. 22, 1998; L.1999, c. 125, §§ 1, 2, eff. June 29, 1999; L.1999, c. 635, § 3, eff. Dec. 1, 1999; L.2007, c. 541, § 2, eff. Nov. 13, 2007; L.2008, c. 326, § 11, eff. July 21, 2008; L.2009, c. 476, § 3, eff. Dec. 15, 2009; L.2010, c. 405, § 11, eff. Nov. 11, 2010; L.2013, c. 526, § 10, eff. Dec. 18, 2013.)

N. Y. CRIMINAL PROCEDURE LAW § 70.02 (2016). SENTENCE OF IMPRISONMENT FOR A VIOLENT FELONY OFFENSE

1. Definition of a violent felony offense. A violent felony offense is a class B violent felony offense, a class C violent felony offense, a class D violent felony offense, or a class E violent felony offense, defined as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30,

arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven, eight, nine or ten of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20,

falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

(d) Class E violent felony offenses: an attempt to commit any of the felonies of criminal possession of a weapon in the third degree as defined in subdivision five, six, seven or eight of section 265.02 as a lesser included offense of that section as defined in section 220.20 of the criminal procedure law, persistent sexual abuse as defined in section 130.53, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, falsely reporting an incident in the second degree as defined in section 240.55 and placing a false bomb or hazardous substance in the second degree as defined in section 240.61.

2. Authorized sentence.

(a) [Eff. until Sept. 1, 2015, pursuant to L.1995, c. 3, § 74, par. d. See, also, par. (a) below.] Except as provided in subdivision six of section 60.05, the sentence imposed upon a person who stands convicted of a class B or class C violent felony offense must be a determinate sentence of imprisonment which shall be in whole or half years. The term of such sentence must be in accordance with the provisions of subdivision three of this section.

....

(b) For a class C felony, the term must be at least three and one-half years and must not exceed fifteen years, provided, however, that the term must be: (i) at least seven years and must not exceed twenty years where the sentence is for the crime of aggravated manslaughter in the second degree as defined in section 125.21 of this chapter; (ii) at least seven years and must not exceed twenty years where the sentence is for the crime of attempted aggravated assault upon a police officer or peace officer as defined in section 120.11 of this chapter; (iii) at least three and one-half years and must not exceed twenty years where the sentence is for the crime of aggravated criminally negligent homicide as defined in section 125.11 of this chapter; and (iv) at least five years and must not exceed fifteen years where the sentence is imposed for the crime of aggravated criminal possession of a weapon as defined in section 265.19 of this chapter;

(c) For a class D felony, the term must be at least two years and must not exceed seven years, provided, however, that the term must be: (i) at least two years and must not exceed eight years where the sentence is for the crime of menacing a police officer or peace officer as defined in section 120.18 of this chapter; and (ii) at least three and one-half years and must not

exceed seven years where the sentence is imposed for the crime of criminal possession of a weapon in the third degree as defined in subdivision ten of section 265.02 of this chapter;

(d) For a class E felony, the term must be at least one and one-half years and must not exceed four years.

4. (a) Except as provided in paragraph (b) of this subdivision, where a plea of guilty to a class D violent felony offense is entered pursuant to section 220.10 or 220.30 of the criminal procedure law in satisfaction of an indictment charging the defendant with an armed felony, as defined in subdivision forty-one of section 1.20 of the criminal procedure law, the court must impose a determinate sentence of imprisonment.

(b) In any case in which the provisions of paragraph (a) of this subdivision or the provisions of subparagraph (ii) of paragraph (c) of subdivision two of this section apply, the court may impose a sentence other than a determinate sentence of imprisonment, or a definite sentence of imprisonment for a period of no less than one year, if it finds that the alternate sentence is consistent with public safety and does not deprecate the seriousness of the crime and that one or more of the following factors exist:

(i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or

(ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution; or

(iii) possible deficiencies in proof of the defendant's commission of an armed felony.

(c) The defendant and the district attorney shall have an opportunity to present relevant information to assist the court in making a determination pursuant to paragraph (b) of this subdivision, and the court may, in its discretion, conduct a hearing with respect to any issue bearing upon such determination. If the court determines that a determinate sentence of imprisonment should not be imposed pursuant to the provisions of such paragraph (b), it shall make a statement on the record of the facts and circumstances upon which such determination is based. A transcript of the court's statement, which shall set forth the recommendation of the district attorney, shall be forwarded to the state division of criminal justice services along with a copy of the accusatory instrument.

5. Renumbered.

CREDIT(S)

(Added L.1978, c. 481, § 3. Amended L.1980, c. 233, § 2; L.1980, c. 234, §§ 1, 2; L.1980, c. 583, § 1; L.1981, c. 175, § 1; L.1986, c. 124, § 1; L.1988, c. 450, § 3; L.1991, c. 496, § 4; L.1991, c. 521, § 1; L.1993, c. 291, §§ 1, 2; L.1995, c. 3, § 4; L.1996, c. 122, § 2; L.1996, c. 181, § 1; L.1996, c. 632, § 1; L.1996, c. 646, § 1; L.1996, c. 647, § 1; L.1998, c. 1, §§ 5 to 9, eff. Aug. 6, 1998; L.1998, c. 378, § 2, eff. Nov. 1, 1998; L.1999, c. 33, §§ 1 to 4, eff. Nov. 1, 1999; L.1999, c. 635, § 10, eff. Dec. 1, 1999; L.2000, c. 189, §§ 6, 7, eff. Nov. 1, 2000; L.2001, c. 300, § 2, eff. Sept. 17, 2001; L.2001, c. 301, § 8, eff. Sept. 17, 2001; L.2003, c. 264, § 6, eff. Nov. 1, 2003; L.2003, c. 584, § 3, eff. Nov. 1, 2003; L.2004, c. 1, pt. A, § 6, eff. July 23, 2004; L.2005, c. 764, § 1, eff. Dec. 21, 2005; L.2005, c. 765, §§ 4 to 6, eff. Dec. 21, 2005; L.2006, c. 110, § 2, eff. Nov. 1, 2006; L.2006, c. 320, § 5, eff. Nov. 1, 2006; L.2007, c. 7, § 32, eff. April 13, 2007; L.2010, c. 405, § 1, eff. Nov. 11, 2010; L.2011, c. 62, pt. C, subpt. B, § 122, eff. March 31, 2011; L.2011, c. 148, § 2, eff. Nov. 17, 2011; L.2013, c. 1, §§ 27 to 30, eff. March 16, 2013.)

N. Y. PENAL LAW § 121.11 (2016). CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION

A person is guilty of criminal obstruction of breathing or blood circulation when, with intent to impede the normal breathing or circulation of the blood of another person, he or she:

a. applies pressure on the throat or neck of such person; or

b. blocks the nose or mouth of such person.

Criminal obstruction of breathing or blood circulation is a class A misdemeanor.

CREDIT(S)

(Added L.2010, c. 405, § 2, eff. Nov. 11, 2010.)

N. Y. PENAL LAW § 121.12 (2016) STRANGULATION IN THE SECOND DEGREE

A person is guilty of strangulation in the second degree when he or she commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article, and thereby causes stupor, loss of consciousness for any period of time, or any other physical injury or impairment.

Strangulation in the second degree is a **class D felony**.

CREDIT(S)

(Added L.2010, c. 405, § 2, eff. Nov. 11, 2010.)

McKinney's Penal Law § 121.12, NY PENAL § 121.12

N. Y. PENAL LAW § 121.13 (2016) STRANGULATION IN THE FIRST DEGREE

A person is guilty of strangulation in the first degree when he or she commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article, and thereby causes serious physical injury to such other person.

Strangulation in the first degree is a class C felony.

CREDIT(S)

(Added L.2010, c. 405, § 2, eff. Nov. 11, 2010.)
McKinney's Penal Law § 121.13, NY PENAL § 121.13
Current through L.2014, chapters 1 to 329,
332, 339, 340, 343, 349, 350.

NORTH CAROLINA:

N.C. GEN. STAT. ANN. § 14-32.4 (2016): ASSAULT INFLECTING SERIOUS BODILY INJURY; STRANGULATION; PENALTIES

(a) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts serious bodily injury is guilty of a Class F felony. "Serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(b) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts physical injury by strangulation is guilty of a Class H felony.

CREDIT(S)

Added by Laws 1996 (2nd Ex. Sess.), c. 18, § 20.13(a), eff. Jan. 1, 1997. Amended by S.L. 2004-186, § 9.1, eff. Dec. 1, 2004.

NORTH DAKOTA:

N.D. CODE § 11-19.1-01 (2016). DEFINITIONS

As used in this chapter, unless the context otherwise requires:

1. "Autopsy" means the inspection or dissection of a deceased human body and retention of organs, tissue, or fluids for diagnostic, educational, public health, or research purposes.
2. "Casualty" means death arising from accidental or unusual means.
3. "City" means a city organized under the laws of this state.
4. "Physician" includes physicians and surgeons licensed under chapter 43-17.
5. "Reportable circumstances" includes one or more of the following factors:
 - a. Obvious or suspected homicidal, suicidal, or accidental injury;
 - b. Firearm injury;
 - c. Severe, unexplained injury;
 - d. Occupant or pedestrian motor vehicle injury;
 - e. An injury to a minor;
 - f. Fire, chemical, electrical, or radiation;
 - g. Starvation;
 - h. Unidentified or skeletonized human remains;
 - i. Drowning;
 - j. Suffocation, smothering, or strangulation;
 - k. Poisoning or illegal drug use;
 - l. Prior child abuse or neglect assessment concerns;
 - m. Open child protection service case on the victim;
 - n. Victim is in the custody of the department of human services, county social services, the department of corrections and rehabilitation or other correctional facility, or law enforcement;
 - o. Unexplained death or death in an undetermined manner;
 - p. Suspected sexual assault; or
 - q. Any other suspicious factor.

CREDIT(S) S.L. 1955, ch. 115, § 1; S.L. 1995, ch. 116, § 1; S.L. 2009, ch. 212, § 1, eff. Aug. 1, 2009.

OHIO:

OHIO REV. CODE ANN. § 2919.251 (2016): FACTORS TO BE CONSIDERED WHEN SETTING BAIL; BAIL SCHEDULE; APPEARANCE BY VIDEO CONFERENCING EQUIPMENT

(A) Subject to division (D) of this section, a person who is charged with the commission of any offense of violence shall appear before the court for the setting of bail if the alleged victim of the offense charged was a family or household member at the time of the offense and if any of the following applies:

(1) The person charged, at the time of the alleged offense, was subject to the terms of a protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code or previously was convicted of or pleaded guilty to a violation of section

2919.25 of the Revised Code or a violation of section 2919.27 of the Revised Code involving a protection order or consent agreement of that type, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to either section, a violation of section 2909.06, 2909.07, 2911.12, or 2911.211 of the Revised Code if the victim of the violation was a family or household member at the time of the violation a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the offense;

(2) The arresting officer indicates in a police report or other document accompanying the complaint any of the following:

(a) That the arresting officer observed on the alleged victim objective manifestations of physical harm that the arresting officer reasonably believes are a result of the alleged offense;

(b) That the arresting officer reasonably believes that the person had on the person's person at the time of the alleged offense a deadly weapon or dangerous ordnance;

(c) That the arresting officer reasonably believes that the person presents a credible threat of serious physical harm to the alleged victim or to any other person if released on bail before trial.

(B) To the extent that information about any of the following is available to the court, the court shall consider all of the following, in addition to any other circumstances considered by the court and notwithstanding any provisions to the contrary contained in Criminal Rule 46, before setting bail for a person who appears before the court pursuant to division (A) of this section:

(1) Whether the person has a history of domestic violence or a history of other violent acts;

(2) The mental health of the person;

(3) Whether the person has a history of violating the orders of any court or governmental entity;

(4) Whether the person is potentially a threat to any other person;

(5) Whether the person has access to deadly weapons or a history of using deadly weapons;

(6) Whether the person has a history of abusing alcohol or any controlled substance;

(7) The severity of the alleged violence that is the basis of the offense, including but not limited to, the duration of the alleged violent incident, and whether the alleged violent incident involved serious physical injury, sexual assault, strangulation, abuse during the alleged victim's

pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim;

(8) Whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending;

(9) Whether the person has exhibited obsessive or controlling behaviors toward the alleged victim, including but not limited to, stalking, surveillance, or isolation of the alleged victim;

(10) Whether the person has expressed suicidal or homicidal ideations;

(11) Any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint.

(C) Any court that has jurisdiction over charges alleging the commission of an offense of violence in circumstances in which the alleged victim of the offense was a family or household member at the time of the offense may set a schedule for bail to be used in cases involving those offenses. The schedule shall require that a judge consider all of the factors listed in division (B) of this section and may require judges to set bail at a certain level if the history of the alleged offender or the circumstances of the alleged offense meet certain criteria in the schedule.

(D)(1) Upon the court's own motion or the motion of a party and upon any terms that the court may direct, a court may permit a person who is required to appear before it by division (A) of this section to appear by video conferencing equipment.

(2) If in the opinion of the court the appearance in person or by video conferencing equipment of a person who is charged with a misdemeanor and who is required to appear before the court by division (A) of this section is not practicable, the court may waive the appearance and release the person on bail in accordance with the court's schedule for bail set under division (C) of this section or, if the court has not set a schedule for bail under that division, on one or both of the following types of bail in an amount set by the court:

(a) A bail bond secured by a deposit of ten per cent of the amount of the bond in cash;

(b) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the person.

(3) Division (A) of this section does not create a right in a person to appear before the court for the setting of bail or prohibit a court from requiring any person charged with an offense of violence who is not described in that division from appearing before the court for the setting of bail.

(E) As used in this section:

(1) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(2) "Dangerous ordnance" and "deadly weapon" have the same meanings as in section 2923.11 of the Revised Code.

CREDIT(S)

(2005 H 29, eff. 8-26-05; 2003 S 50, eff. 1-8-04; 1995 S 2, eff. 7- 1-96; 1992 H 536, eff. 11-5-92; 1990 S 3; 1985 H 475)

OKLAHOMA:

OKLA. ST. ANN. TIT. 21, § 644 (2016): ASSAULT – ASSAULT AND BATTERY – DOMESTIC ABUSE

A. Assault shall be punishable by imprisonment in a county jail not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

B. Assault and battery shall be punishable by imprisonment in a county jail not exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

.....

J. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted **strangulation** against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall, upon conviction, be guilty of domestic abuse by strangulation and shall be punished by imprisonment in the custody of the Department of Corrections for a period of not less than one (1) year nor more than three (3) years, or by a fine of not more than Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment. Upon a second or subsequent conviction for a violation of this section, the defendant shall be punished by imprisonment in the custody of the Department of Corrections for a period of not less than three (3) years nor more than ten (10) years, or by a fine of not more than Twenty Thousand Dollars (\$20,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction of a violation of this subsection. As used in this subsection, "strangulation" means any form of asphyxia; including, but not limited to, asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck or the closure of the nostrils or mouth as a result of external pressure on the

head.

K. Any district court of this state and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers certified by the Attorney General;
2. Attend counseling or treatment services ordered as part of any suspended or deferred sentence or probation; and
3. Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers, certified by the Attorney General.

L. There shall be no charge of fees or costs to any victim of domestic violence, stalking, or sexual assault in connection with the prosecution of a domestic violence, stalking, or sexual assault offense in this state.

M. In the course of prosecuting any charge of domestic abuse, stalking, harassment, rape, or violation of a protective order, the prosecutor shall provide the court, prior to sentencing or any plea agreement, a local history and any other available history of past convictions of the defendant within the last ten (10) years relating to domestic abuse, stalking, harassment, rape, violation of a protective order, or any other violent misdemeanor or felony convictions.

N. Any plea of guilty or finding of guilt for a violation of subsection C, F, G, I or J of this section shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any court imposed probationary term; provided, the person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or a felony.

O. For purposes of subsection F of this section, “great bodily injury” means bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death.

CREDIT(S)

R.L.1910, § 2343; Laws 1986, c. 143, § 1, emerg. eff. April 21, 1986; Laws 1996, c. 197, § 2, emerg. eff. May 20, 1996; Laws 1997, c. 133, § 217, eff. July 1, 1999; Laws 1999, c. 309, § 1, eff. Nov. 1, 1999; Laws 2000, c. 6, § 31, emerg. eff. March 20, 2000; Laws 2004, c. 516, § 1, eff. July 1, 2005; Laws 2005, c. 1, § 12, eff. July 1, 2005; Laws 2005, c. 348, § 9, eff. July 1, 2005; Laws 2006, c. 284, § 1, emerg. eff. June 7, 2006; Laws 2008, c. 174, § 1, eff. Nov. 1, 2008; Laws 2008, c. 318, § 1, eff. Nov. 1, 2008; Laws 2009, c. 2, § 1, emerg. eff. March 12, 2009; Laws 2009, c. 87, § 1, eff. Nov. 1, 2009; Laws 2010, c. 113, § 1; Laws 2010, c. 348, § 1, eff. Nov. 1, 2010; Laws 2011, c. 385, § 2, eff. Nov. 1, 2011.

OKLA. ST. ANN. TIT. 22, § 58 (2016): MANDATORY REPORTING OF DOMESTIC ABUSE – EXCEPTIONS

A. Criminally injurious conduct, as defined by the Oklahoma Crime Victims Compensation Act, which appears to be or is reported by the victim to be domestic abuse, as defined in Section 60.1 of this title, or domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child, as defined in Section 644 of Title 21 of the Oklahoma Statutes, shall be reported according to the standards for reporting as set forth in subsection B of this section.

B. Any physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be domestic abuse or is reported by the victim to be domestic abuse, as defined in Section 60.1 of this title, or domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child, as defined in Section 644 of Title 21 of the Oklahoma Statutes, shall not be required to report any incident of what appears to be or is reported to be domestic abuse, domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child if:

1. Committed upon the person of an adult who is over the age of eighteen (18) years; and
2. The person is not an incapacitated adult.

C. Any physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating a victim shall be required to report any incident of what appears to be or is reported to be domestic abuse, domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child, if requested to do so either orally or in writing by the victim. A report of any incident shall be promptly made orally or by telephone to the nearest law enforcement agency in the county wherein the domestic abuse occurred or, if the location where the conduct occurred is unknown, the report shall be made to the law enforcement agency nearest to the location where the injury is treated.

D. In all cases of what appears to be or is reported to be domestic abuse, the physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be domestic abuse shall clearly and legibly document the incident and injuries observed and reported, as well as any treatment provided or prescribed.

E. In all cases of what appears to be or is reported to be domestic abuse, the physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending or treating the victim of what appears to be domestic abuse shall refer the victim to domestic violence and victim services programs, including providing the victim with the twenty-four-hour statewide telephone communication service established by Section 18p-5 of Title 74 of the Oklahoma Statutes.

F. Every physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional making a report of domestic abuse pursuant to this section or examining a victim of domestic abuse to determine the likelihood of domestic abuse, and every hospital or related institution in which the victim of domestic abuse was examined or treated shall, upon the request of a law enforcement officer conducting a criminal investigation into the case, provide copies of the results of the examination or copies of the examination on which the report was based, and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to the investigating law enforcement officer.

Credits

Laws 2005, c. 53, § 3, eff. Nov. 1, 2005; Laws 2007, c. 156, § 4, eff. Nov. 1, 2007; Laws 2009, c. 234, § 127, emerg. eff. May 21, 2009.

OKLA. ST. ANN. TIT. 22, § 1105 (2016): DEFENDANT DISCHARGED ON GIVING BAIL – EXCEPTIONS

A. Except as otherwise provided by this section, upon the allowance of bail and the execution of the requisite recognizance, bond, or undertaking to the state, the magistrate, judge, or court, shall, if the defendant is in custody, make and sign an order for discharge. The court, in its discretion, may prescribe by court rule the conditions under which the court clerk or deputy court clerk, or the sheriff or deputy sheriff, may prepare and execute an order of release on behalf of the court.

B. No police officer or sheriff may release a person arrested for a violation of an ex parte or final protective order as provided in Sections 60.2 and 60.3 of this title, or arrested for an act constituting domestic abuse as specified in Section 644 of Title 21 of the Oklahoma Statutes, or arrested for any act constituting domestic abuse, stalking or harassment as defined by Section 60.1 of this title, or arrested for an act constituting domestic assault and battery or domestic assault and battery with a deadly weapon pursuant to Section 644 of Title 21 of the Oklahoma Statutes, without the violator appearing before a magistrate, judge or court. To the extent that any of the following information is available to the court, the magistrate, judge or court shall consider, in addition to any other circumstances, before determining bond and other conditions of release as necessary for the protection of the alleged victim, the following:

1. Whether the person has a history of domestic violence or a history of other violent acts;
2. The mental health of the person;
3. Whether the person has a history of violating the orders of any court or governmental entity;

4. Whether the person is potentially a threat to any other person;
5. Whether the person has a history of abusing alcohol or any controlled substance;
6. Whether the person has access to deadly weapons or a history of using deadly weapons;
7. The severity of the alleged violence that is the basis of the alleged offense including, but not limited to:
 - a. the duration of the alleged violent incident,
 - b. whether the alleged violent incident involved serious physical injury,
 - c. whether the alleged violent incident involved sexual assault,
 - d. whether the alleged violent incident involved strangulation,
 - e. whether the alleged violent incident involved abuse during the pregnancy of the alleged victim,
 - f. whether the alleged violent incident involved the abuse of pets, or
 - g. whether the alleged violent incident involved forcible entry to gain access to the alleged victim;
8. Whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending;
9. Whether the person has exhibited obsessive or controlling behaviors toward the alleged victim including, but not limited to, stalking, surveillance, or isolation of the alleged victim;
10. Whether the person has expressed suicidal or homicidal ideations; and
11. Any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint.

C. No police officer or sheriff may release a person arrested for any violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, without the violator appearing before a magistrate, judge, or court. In determining bond and other conditions of release, the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular, illegal use of any controlled dangerous substance. A rebuttable presumption that no conditions of release on bond would assure the safety of the community or any person therein shall arise if the state shows by clear

and convincing evidence:

1. The person was arrested for a violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, relating to manufacturing or attempting to manufacture a controlled dangerous substance, or possessing any of the substances listed in subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes with the intent to manufacture a controlled dangerous substance; and
2. The person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular illegal use of a controlled dangerous substance, and the violation referred to in paragraph 1 of this subsection was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.

CREDIT(S)

R.L.1910, § 6107; Laws 1995, c. 297, § 4, eff. Nov. 1, 1995; Laws 1997, c. 2, § 25, emerg. eff. Feb. 26, 1997; Laws 1997, c. 368, § 4, eff. Nov. 1, 1997; Laws 2004, c. 59, § 2, emerg. eff. April 6, 2004; Laws 2005, c. 128, § 1, eff. Nov. 1, 2005; Laws 2010, c. 116, § 6, eff. Nov. 1, 2010; Laws 2011, c. 385, § 5, eff. Nov. 1, 2011.

OREGON:

OR. REV. STAT. § 124.105 (2016). PHYSICAL ABUSE (CIVIL ACTION FOR ABUSE OF VULNERABLE PERSON)

(1) An action may be brought under ORS 124.100 for physical abuse if the defendant engaged in conduct against a vulnerable person that would constitute any of the following:

- (a) Assault, under the provisions of ORS 163.160, 163.165, 163.175 and 163.185.
- (b) Menacing, under the provisions of ORS 163.190.
- (c) Recklessly endangering another person, under the provisions of ORS 163.195.
- (d) Criminal mistreatment, under the provisions of ORS 163.200 and 163.205.
- (e) Rape, under the provisions of ORS 163.355, 163.365 and 163.375.
- (f) Sodomy, under the provisions of ORS 163.385, 163.395 and 163.405.
- (g) Unlawful sexual penetration, under the provisions of ORS 163.408 and 163.411.
- (h) Sexual abuse, under the provisions of ORS 163.415, 163.425 and 163.427.
- (i) Strangulation, under ORS 163.187.

(2) An action may be brought under ORS 124.100 for physical abuse if the defendant used any unreasonable physical constraint on the vulnerable person or subjected the vulnerable person to prolonged or continued deprivation of food or water.

(3) An action may be brought under ORS 124.100 for physical abuse if the defendant used a physical or chemical restraint, or psychotropic medication on the vulnerable person without an order from a physician licensed in the State of Oregon or under any of the following conditions:

- (a) For the purpose of punishing the vulnerable person.
- (b) For any purpose not consistent with the purposes authorized by a physician.

(c) For a period significantly beyond that for which the restraint or medication was authorized by a physician.

CREDIT(S)

Laws 1995, c. 671, § 2; Laws 2003, c. 577, § 4; Laws 2005, c. 386, § 2.

OR. REV. STAT. § 135.703 (2016). CRIMES WHICH MAY BE COMPROMISED

(1) When a defendant is charged with a crime punishable as a misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised, as provided in ORS 135.705, except when it was committed:

- (a) By or upon a peace officer while in the execution of the duties of office;
- (b) Riotously;
- (c) With an intent to commit a crime punishable only as a felony; or
- (d) By one family or household member upon another family or household member, as defined in ORS 107.705, or by a person upon an elderly person or a person with a disability as defined in ORS 124.005 and the crime was:
 - (A) Assault in the fourth degree under ORS 163.160;
 - (B) Assault in the third degree under ORS 163.165;
 - (C) Menacing under ORS 163.190;
 - (D) Recklessly endangering another person under ORS 163.195;
 - (E) Harassment under ORS 166.065; or
 - (F) Strangulation under ORS 163.187.

(2) Notwithstanding subsection (1) of this section, when a defendant is charged with violating ORS 811.700, the crime may be compromised as provided in ORS 135.705.

CREDIT(S)

Formerly 134.010; Laws 1991, c. 938, § 1; Laws 1995, c. 657, § 21; Laws 1995, c. 666, § 26; Laws 1999, c. 738, § 9; Laws 2003, c. 264, § 9; Laws 2003, c. 577, § 5; Laws 2007, c. 70, § 35, eff. Jan. 1, 2008.

OR. REV. STAT. § 133.055 (2016). WHEN ISSUED; DOMESTIC DISTURBANCES; ABUSE

(1) A peace officer may issue a criminal citation to a person if the peace officer has probable cause to believe that the person has committed a misdemeanor or has committed any felony that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy of the criminal citation to the person. The criminal citation shall require the person to appear at the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the person were arrested for the offense.

(2)(a) Notwithstanding the provisions of subsection (1) of this section, when a peace officer responds to an incident of domestic disturbance and has probable cause to believe that an assault has occurred between family or household members, as defined in ORS 107.705, or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.

(b) When the peace officer makes an arrest under paragraph (a) of this subsection, the peace officer is not required to arrest both persons.

(c) When a peace officer makes an arrest under paragraph (a) of this subsection, the peace officer shall make every effort to determine who is the assailant or potential assailant by considering, among other factors:

- (A) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear of physical injury;
- (B) If reasonably ascertainable, the history of domestic violence between the persons involved;
- (C) Whether any alleged crime was committed in self-defense; and
- (D) The potential for future assaults.

(d) As used in this subsection, "assault" includes conduct constituting strangulation under ORS 163.187.

(3) Whenever any peace officer has reason to believe that a family or household member, as defined in ORS 107.705, has been abused as defined in ORS 107.705 or that an elderly person or a person with a disability has been abused as defined in ORS 124.005, that officer shall use all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community and giving each person immediate notice of the legal rights and remedies available. The notice shall consist of handing each person a copy of the following statement:

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IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you can ask the district attorney to file a criminal complaint. You also have the right to go to the circuit court and file a petition requesting any of the following orders for relief: (a) An order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing your attacker from entering your residence, school, business or place of employment; (d) an order awarding you or the other parent custody of or parenting time with a minor child or children; (e) an order restraining your attacker from molesting or interfering with minor children in your custody; (f) an order awarding you other relief the court considers necessary to provide for your or your children's safety, including emergency monetary assistance. Such orders are enforceable in every state.

You may also request an order awarding support for minor children in your care or for your support if the other party has a legal obligation to support you or your children.

You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in the small claims department of a court if the total amount claimed is under \$10,000.

Similar relief may also be available in tribal courts.

For further information you may contact: _____.

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CREDIT(S)

Laws 1969, c. 244, § 2; Laws 1977, c. 845, § 1; Laws 1981, c. 779, § 1; Laws 1991, c. 303, § 1; Laws 1995, c. 666, § 23; Laws 1997, c. 707, § 28; Laws 1999, c. 617, § 1; Laws 1999, c. 738, § 8; Laws 1999, c. 1051, § 54; Laws 2003, c. 264, § 8; Laws 2007, c. 70, § 33, eff. Jan. 1, 2008; Laws 2007, c. 125, § 7, eff. Jan. 1, 2008; Laws 2011, c. 595, § 53b, eff. July 1, 2011, operative Oct. 1, 2011; Laws 2011, c. 666, § 3, eff. Jan. 1, 2012.

OR. REV. STAT. § 135.951 (2016). AVAILABILITY OF MEDIATION FOR CRIMINAL CHARGES; FACTORS

(1) Law enforcement agencies, city attorneys and district attorneys may consider the availability and likely effectiveness of mediation in determining whether to process and prosecute criminal charges. If it appears that mediation is in the interests of justice and of benefit to the offender, victim and community, the law enforcement agency, city attorney or district attorney may propose mediation through a qualified mediation program.

(2) In determining whether mediation is in the interests of justice and of benefit to the offender, victim and community, the law enforcement agency, city attorney or district attorney shall consider, at a minimum, the following factors:

- (a) The nature of the offense;
- (b) Any special characteristics of the offender or the victim;
- (c) Whether the offender has previously participated in mediation;
- (d) Whether it is probable that the offender will cooperate with and benefit from mediation;
- (e) The recommendations of the victim;
- (f) Whether a qualified mediation program is available or may be made available;
- (g) The impact of mediation on the community;
- (h) The recommendations of the involved law enforcement agency; and
- (i) Any mitigating circumstances.

(3) Mediation may not be used for:

- (a) Disputes between family or household members, as defined in ORS 107.705, that involve conduct that would constitute assault under ORS 163.160, 163.165, 163.175 or 163.185 or strangulation under ORS 163.187; or
- (b) Offenses that involve sex crimes, as defined in ORS 181.805.

CREDIT(S)

Laws 1995, c. 323, § 1; Laws 2003, c. 577, § 6.

OR. REV. STAT. § 163.187 (2016): CRIME OF STRANGULATION

(1) A person commits the crime of strangulation if the person knowingly 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) Subsection (1) of this section does not apply to legitimate medical or dental procedures or good faith practices of a religious belief.

(3) Strangulation is a Class A misdemeanor.

(4) Notwithstanding subsection (3) of this section, strangulation is a Class C felony if:

(a) The crime is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or the victim;

(b) The victim is under 10 years of age;

(c) During the commission of the crime, the person used, attempted to use or threatened to use a dangerous or deadly weapon, as those terms are defined in ORS 161.015, unlawfully against another;

(d) The person has been previously convicted of violating this section or of committing an equivalent crime in another jurisdiction;

(e) The person has been previously convicted of violating ORS 163.160, 163.165, 163.175, 163.185 or 163.190 or of committing an equivalent crime in another jurisdiction, and the victim in the previous conviction is the same person who is the victim of the current conviction; or

(f) The person has at least three previous convictions of any combination of ORS 163.160, 163.165, 163.175, 163.185 or 163.190 or of equivalent crimes in other jurisdictions.

(5) For purposes of subsection (4)(a) of this section, a strangulation is witnessed if the strangulation is seen or directly perceived in any other manner by the child.

CREDIT(S)

Laws 2003, c. 577, § 2; Laws 2011, c. 666, § 1, eff. Jan. 1, 2012; Laws 2012, c. 82, § 1, eff. March 27, 2012.

PENNSYLVANIA:

23 PENN. STAT. § 6303 (2016). DEFINITIONS (CHILD ABUSE)

(a) General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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(b.1) Child abuse.--The term "child abuse" shall mean intentionally, knowingly or recklessly doing any of the following:

- (1) Causing bodily injury to a child through any recent act or failure to act.
- (2) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- (3) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- (4) Causing sexual abuse or exploitation of a child through any act or failure to act.
- (5) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.
- (6) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
- (7) Causing serious physical neglect of a child.
- (8) Engaging in any of the following recent acts:
 - (i) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.
 - (ii) Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.
 - (iii) Forcefully shaking a child under one year of age.
 - (iv) Forcefully slapping or otherwise striking a child under one year of age.
 - (v) Interfering with the breathing of a child.
 - (vi) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.
 - (vii) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:
 - (A) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders), [FN8] where the victim of the sexual offense was under 18 years of age when the crime was committed.
 - (B) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(C) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(9) Causing the death of the child through any act or failure to act.

(c) Restatement of culpability.--Conduct that causes injury or harm to a child or creates a risk of injury or harm to a child shall not be considered child abuse if there is no evidence that the person acted intentionally, knowingly or recklessly when causing the injury or harm to the child or creating a risk of injury or harm to the child.

(d) Child abuse exclusions.--The term "child abuse" does not include any conduct for which an exclusion is provided in section 6304 (relating to exclusions from child abuse).

CREDIT(S)

1990, Dec. 19, P.L. 1240, No. 206, § 2, effective in 90 days. Amended 1994, Dec. 16, P.L. 1292, No. 151, § 1, effective July 1, 1995; 1995, March 31, P.L. 985, No. 10 (Spec. Sess. No. 1), § 14, effective in 60 days; 2002, Dec. 9, P.L. 1549, No. 201, § 2, effective in 60 days; 2004, Nov. 29, P.L. 1291, No. 160, § 1, effective in 60 days [Jan. 28, 2005]; 2006, Nov. 9, P.L. 1358, No. 146, § 2, effective in 180 days [May 8, 2007]; 2006, Nov. 29, P.L. 1581, No. 179, § 2, effective in 180 days [May 29, 2007]; 2008, July 3, P.L. 276, No. 33, § 1, effective in 180 days [Dec. 30, 2008]; 2013, Dec. 18, P.L. 1170, No. 108, § 1, effective Dec. 31, 2014; 2013, Dec. 18, P.L. 1195, No. 117, § 1, effective Dec. 31, 2014; 2013, Dec. 18, P.L. 1201, No. 119, § 1, effective Dec. 31, 2014; 2014, Jan. 22, P.L. 6, No. 4, § 1, effective in 90 days [April 22, 2014]; 2014, April 7, P.L. 388, No. 29, § 1, effective Dec. 31, 2014; 2014, April 15, P.L. 417, No. 33, § 1, effective Dec. 31, 2014; 2014, May 14, P.L. 645, No. 44, § 1, effective Dec. 31, 2014; 2014, May 14, P.L. 653, No. 45, § 1, effective Dec. 31, 2014; 2014, July 2, P.L. 843, No. 91, § 2, effective in 60 days [Sept. 2, 2014]. Current through 2014 Regular Session Acts 1 to 130

RHODE ISLAND:

R.I. GEN. LAWS § 11-5-2.3 (2016). 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 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 § 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.

CREDIT(S)

P.L. 2012, ch. 278, § 1, eff. June 19, 2012; P.L. 2012, ch. 284, § 1, eff. June 19, 2012.

Gen. Laws, 1956, § 11-5-2.3, RI ST § 11-5-2.3

SOUTH CAROLINA:

S.C. CODE ANN. § 43-35-10 (2016): DEFINITIONS (VULNERABLE ADULT)

As used in this chapter:

(1) “Abuse” means physical abuse or psychological abuse.

(2) “Caregiver” means a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is not limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.

(3) “Exploitation” means:

(a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient;

(b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or

(c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) undue influence, (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property.

(4) “Facility” means a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

(5) “Investigative entity” means the Long Term Care Ombudsman Program, the Adult Protective Services Program in the Department of Social Services, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, or the Medicaid Fraud Control Unit of the Office of the Attorney General.

(6) “Neglect” means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.

(7) “Occupational licensing board” means a health professional licensing board which is a state agency that licenses and regulates health care providers and includes, but is not limited to, the Board of Long Term Health Care Administrators, State Board of Nursing for South Carolina, State Board of Medical Examiners, State Board of Social Work Examiners, and the State Board of Dentistry.

(8) “Physical abuse” means intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, **choking**, pinching, burning, actual or attempted sexual battery as defined in Section 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.

(9) “Protective services” means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

(10) “Psychological abuse” means deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

(11) “Vulnerable adult” means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately

provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

(12) "Operated facility" means those facilities directly operated by the Department of Mental Health or the Department of Disabilities and Special Needs.

(13) "Contracted facility" means those public and private facilities contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

CREDIT(S)

HISTORY: 1993 Act No. 110, § 1, eff three months after June 11, 1993; 2004 Act No. 301, § 1, eff September 8, 2004; 2006 Act No. 301, § 2, eff May 23, 2006; 2010 Act No. 223, §§ 1 to 3, eff June 7, 2010.

SOUTH DAKOTA:

S.D. CODIFIED LAWS § 22-18-1.1 (2016). AGGRAVATED ASSAULT--FELONY

Any person who:

(1) Attempts to cause serious bodily injury to another, or causes such injury, under circumstances manifesting extreme indifference to the value of human life;

(2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous weapon;

(3) Deleted by SL 2005, ch 120, § 2;

(4) Assaults another with intent to commit bodily injury which results in serious bodily injury;

(5) Attempts by physical menace with a deadly weapon to put another in fear of imminent serious bodily harm; or

(6) Deleted by SL 2005, ch 120, § 2;

(7) Deleted by SL 2012, ch 123, § 4;

(8) Attempts to induce a fear of death or imminent serious bodily harm by impeding the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck, or by blocking the nose and mouth; is guilty of aggravated assault. Aggravated assault is a Class 3 felony.

Source: SDC 1939, §§ 13.1601, 13.2101, 13.2202, 13.2302, 13.2404; SL 1941, ch 46; SDCL §§ 22-18-9 to 22-18-11, 22-18-15, 22-18-21; SL 1976, ch 158, § 18-2; SL 1977, ch 189, §§ 46, 47; SL

1980, ch 173, § 3; SL 1981, ch 13, § 5; SL 1986, ch 180; SL 1997, ch 130, § 4; SL 2002, ch 106, § 1; SL 2005, ch 120, § 2; SL 2012, ch 122, § 1; SL 2012, ch 123, § 4.

TENNESSEE:

TENN. CODE § 39-13-102 (2016): AGGRAVATED ASSAULT

(a)(1) A person commits aggravated assault who:

(A) Intentionally or knowingly commits an assault as defined in § 39-13-101, and the assault:

(i) Results in serious bodily injury to another;

(ii) Results in the death of another;

(iii) Involved the use or display of a deadly weapon; or

(iv) Was intended to cause bodily injury to another by strangulation or bodily injury by strangulation was attempted; or

(B) Recklessly commits an assault as defined in § 39-13-101(a)(1), and the assault:

(i) Results in serious bodily injury to another;

(ii) Results in the death of another; or

(iii) Involved the use or display of a deadly weapon.

(2) For purposes of subdivision (a)(1)(A)(iii) "strangulation" means intentionally impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth of another person.

(b) A person commits aggravated assault who, being the parent or custodian of a child or the custodian of an adult, intentionally or knowingly fails or refuses to protect the child or adult from an aggravated assault as defined in subdivision (a)(1) or aggravated child abuse as defined in § 39-15-402.

(c) A person commits aggravated assault who, after having been enjoined or restrained by an order, diversion or probation agreement of a court of competent jurisdiction from in any way causing or attempting to cause bodily injury or in any way committing or attempting to commit an assault against an individual or individuals, intentionally or knowingly attempts to cause or causes bodily injury or commits or attempts to commit an assault against the individual or individuals.

(d) A person commits aggravated assault who, with intent to cause physical injury to any public employee or an employee of a transportation system, public or private, whose operation is

authorized by title 7, chapter 56, causes physical injury to the employee while the public employee is performing a duty within the scope of the public employee's employment or while the transportation system employee is performing an assigned duty on, or directly related to, the operation of a transit vehicle.

(e)(1)(A) Aggravated assault under:

(i) Subsection (d) is a Class A misdemeanor;

(ii) Subdivision (a)(1)(A)(i), (iii), or (iv) is a Class C felony;

(iii) Subdivision (a)(1)(A)(ii) is a Class C felony;

(iv) Subdivision (b) or (c) is a Class C felony;

(v) Subdivision (a)(1)(B)(i) or (iii) is a Class D felony;

(vi) Subdivision (a)(1)(B)(ii) is a Class D felony.

(B) However, the maximum fine shall be fifteen thousand dollars (\$15,000) for an offense under subdivision (a)(1)(A), subdivision (a)(1)(B), subsection (c), or subsection (d) committed against any of the following persons who are discharging or attempting to discharge their official duties:

(A) Law enforcement officer;

(B) Firefighter;

(C) Medical fire responder;

(D) Paramedic;

(E) Emergency medical technician;

(F) Health care provider; or

(G) Any other first responder.

(2) In addition to any other punishment that may be imposed for a violation of this section, if the relationship between the defendant and the victim of the assault is such that the victim is a victim as defined in § 36-3-601(5), and if, as determined by the court, the defendant possesses the ability to pay a fine in an amount not in excess of two hundred dollars (\$200), then the court shall impose a fine at the level of the defendant's ability to pay, but not in excess of two hundred dollars (\$200). The additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the fine to the general fund. All fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding family violence shelters and shelter services. Such appropriation shall be in addition to any amount appropriated pursuant to § 67-4-411.

(3) (A) In addition to any other punishment authorized by this section, the court shall order a person convicted of aggravated assault under the circumstances set out in this subdivision (e)(3) to pay restitution to the victim of the offense. Additionally, the judge shall order the warden, chief operating officer, or workhouse administrator to deduct fifty percent (50%) of the restitution ordered from the inmate's commissary account or any other account or fund established by or for the benefit of the inmate while incarcerated. The judge may authorize the deduction of up to one hundred percent (100%) of the restitution ordered.

(B) Subdivision (e)(3)(A) applies if: (i) The victim of the aggravated assault is a correctional officer, guard, jailer, or other full-time employee of a penal institution, local jail, or workhouse;

- (ii) The offense occurred while the victim was in the discharge of official duties and within the victim's scope of employment; and
- (iii) The person committing the assault was at the time of the offense, and at the time of the conviction, serving a sentence of incarceration in a public or private penal institution as defined in § 39-16-601.

CREDIT(S)

1989 Pub.Acts, c. 591, § 1; 1990 Pub.Acts, c. 980, § 2; 1990 Pub.Acts, c. 1030, §§ 12, 13; 1993 Pub.Acts, c. 306, § 1, eff. May 12, 1993; 1995 Pub.Acts, c. 452, § 1, eff. June 12, 1995; 1996 Pub.Acts, c. 830, § 1, eff. July 1, 1996; 1996 Pub.Acts, c. 1009, § 19, eff. Nov. 1, 1996; 1998 Pub.Acts, c. 1049, § 9, eff. May 18, 1998; 2002 Pub.Acts, c. 649, § 2, eff. July 1, 2002; 2005 Pub.Acts, c. 353, § 10, eff. June 7, 2005; 2009 Pub.Acts, c. 394, § 1, eff. June 9, 2009; 2009 Pub.Acts, c. 412, § 2, eff. July 1, 2009; 2010 Pub.Acts, c. 981, § 3, eff. May 27, 2010; 2011 Pub.Acts, c. 401, § 1, eff. July 1, 2011; 2013 Pub.Acts, c. 325, § 2, eff. July 1, 2013; 2013 Pub.Acts, c. 407, § 1, eff. July 1, 2013; 2013 Pub.Acts, c. 461, §§ 2, 3, eff. July 1, 2013. 2015, ch. 283, § 1; 2015, ch. 306, §§ 1, 2.

TEXAS:

TEXAS PENAL CODE § 22.01 (2016). ASSAULT

(a) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;

(2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or

(3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

(1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;

(2) a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if:

(A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11 against a person

whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or

(B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth;

(3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), Penal Code, or Section 51.02(13) or (14), Family Code, or an employee of that person:

(A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or

(B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract;

(4) a person the actor knows is a security officer while the officer is performing a duty as a security officer; or

(5) a person the actor knows is emergency services personnel while the person is providing emergency services.

(b-1) Notwithstanding Subsection (b)(2), an offense under Subsection (a)(1) is a felony of the second degree if:

(1) the offense is committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;

(2) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; and

(3) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.

(c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the offense is committed under Subsection (a)(3) against an elderly individual or disabled individual, as those terms are defined by Section 22.04; or

(2) a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either:

(A) while the participant is performing duties or responsibilities in the participant's capacity as a sports participant; or

(B) in retaliation for or on account of the participant's performance of a duty or responsibility within the participant's capacity as a sports participant.

(d) For purposes of Subsection (b), the actor is presumed to have known the person assaulted was a public servant, a security officer, or emergency services personnel if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer or emergency services personnel.

(e) In this section:

(1) "Emergency services personnel" includes firefighters, emergency medical services personnel as defined by Section 773.003, Health and Safety Code, emergency room personnel, and other individuals who, in the course and scope of employment or as a volunteer, provide services for the benefit of the general public during emergency situations.

(2) Repealed by Acts 2005, 79th Leg., ch. 788, § 6.

(3) "Security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

(4) "Sports participant" means a person who participates in any official capacity with respect to an interscholastic, intercollegiate, or other organized amateur or professional athletic competition and includes an athlete, referee, umpire, linesman, coach, instructor, administrator, or staff member.

(f) For the purposes of Subsections (b)(2)(A) and (b-1)(2):

(1) a defendant has been previously convicted of an offense listed in those subsections committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in those subsections is a conviction of the offense listed.

(g) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or both sections.

CREDIT(S)

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., 1st C.S., p. 55, ch. 2, §§ 12, 13, eff. July 22, 1977; Acts 1979, 66th Leg., p. 260, ch. 135, §§ 1, 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 367, ch. 164, § 2, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 5311, ch. 977, § 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 1052, § 2.08, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 739, §§ 1 to 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, § 284(23) to (26), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 334, § 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 366, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 165, § 27.01, eff. Sept. 1, 1997; Acts 1995, 74th Leg., ch. 318, § 5, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 659, § 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, §§ 27.01, 31.01(68), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 15.02(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1158, § 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 294, § 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1019, §§ 1, 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1028, § 1, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 728, §§ 16.001, 16.002, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 788, §§ 1, 2, 6, eff. Sept. 1, 2005; Acts 2007, 80th Leg., ch. 623, §§ 1, 2, eff. Sept. 1, 2007; Acts 2009, 81st Leg., ch. 427, § 1, eff. Sept. 1, 2009; Acts 2009, 81st Leg., ch. 665, § 2, eff. Sept. 1, 2009; Acts 2013, 83rd Leg., ch. 875 (H.B. 705), § 1, eff. Sept. 1, 2013.

UTAH:

UTAH CODE 1953 § 76-5-109 (2016): CHILD ABUSE – CHILD ABANDONMENT

(1) As used in this section:

...

(f)(i) "Serious physical injury" means any physical injury or set of injuries that:

(A) seriously impairs the child's health;

(B) involves physical torture;

(C) causes serious emotional harm to the child; or

(D) involves a substantial risk of death to the child.

(ii) "Serious physical injury" includes:

(A) fracture of any bone or bones;

(B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;

(C) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;

(D) any injury caused by use of a dangerous weapon as defined in Section 76- 1-601;

(E) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;

(F) any damage to internal organs of the body;

(G) any conduct toward a child that results in severe emotional harm, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function;

(H) any injury that creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;

(I) any conduct that causes a child to cease breathing, even if resuscitation is successful following the conduct; or

(J) any conduct that results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.

(2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

- (a) if done intentionally or knowingly, the offense is a felony of the second degree;
- (b) if done recklessly, the offense is a felony of the third degree; or
- (c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

- (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
- (b) if done recklessly, the offense is a class B misdemeanor; or
- (c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) A person who commits child abandonment, or encourages or causes another to commit child abandonment, or an enterprise that encourages, commands, or causes another to commit child abandonment, is:

- (a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or
- (b) guilty of a felony of the second degree, if, as a result of the child abandonment:
 - (i) the child suffers a serious physical injury; or
 - (ii) the person or enterprise receives, directly or indirectly, any benefit.

(5)(a) In addition to the penalty described in Subsection (4)(b), the court may order the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and prosecuting the offense and the costs of securing any forfeiture provided for under Subsection (5)(b).

(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to criminal or civil forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(6) A parent or legal guardian who provides a child with treatment by spiritual means alone

through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to have committed an offense under this section.

(7) A parent or guardian of a child does not violate this section by selecting a treatment option for the medical condition of the child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child.

(8) A person is not guilty of an offense under this section for conduct that constitutes:

(a) reasonable discipline or management of a child, including withholding privileges;

(b) conduct described in Section 76-2-401; or

(c) the use of reasonable and necessary physical restraint or force on a child:

(i) in self-defense;

(ii) in defense of others;

(iii) to protect the child; or

(iv) to remove a weapon in the possession of a child for any of the reasons described in

Subsections (8)(c)(i) through (iii).

CREDIT(S)

Laws 1981, c. 64, § 1; Laws 1992, c. 192, § 1; Laws 1997, c. 289, § 5, eff. May 5, 1997; Laws 1997, c. 303, § 2, eff. May 5, 1997; Laws 1998, c. 81, § 1, eff. May 4, 1998; Laws 1999, c. 67, § 1, eff. March 17, 1999; Laws 2000, c. 125, § 1, eff. May 1, 2000; Laws 2005, c. 95, § 4, eff. May 2, 2005; Laws 2006, c. 75, § 14, eff. May 1, 2006; Laws 2008, c. 45, § 2, eff. May 5, 2008; Laws 2011, c. 366, § 161, eff. May 10, 2011.

U.C.A. 1953 § 76-5-109, UT ST § 76-5-109

VERMONT:

VT. STAT. § 1021 (2014). DEFINITIONS

For the purpose of this chapter:

(1) "Bodily injury" means physical pain, illness or any impairment of physical condition.

(2) "Serious bodily injury" means:

(A) bodily injury which creates any of the following:

(i) a substantial risk of death;

(ii) a substantial loss or impairment of the function of any bodily member or organ;

(iii) a substantial impairment of health; or

(iv) substantial disfigurement; or

(B) strangulation by 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.

(3) "Deadly weapon" means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

CREDIT(S)

1971, Adj. Sess., No. 222, § 1; 1993, No. 95, § 3; 2005, Adj. Sess., No. 192, § 6.

Formerly: 1957, No. 178; V.S. 1947, § 8458; P.L. 1933, § 8592; G.L. 1917, § 6997; P.S. 1906, § 5870; 1906, No. 200, § 8; 1898, No. 120, § 1; V.S. 1894, § 5043n; R.L. 1880, § 4228; G.S. 1862, 116, § 1; R.S. 1840, 98, § 1; 1826, No. 14, § 1; R. 1821, P. 12; R. 1797, P. 187, § 21; R. 1788, P. 9.

VT. STAT. § 1023 (2016). SIMPLE ASSAULT

(A) A PERSON IS GUILTY OF SIMPLE ASSAULT IF HE OR SHE:

(1) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) negligently causes bodily injury to another with a deadly weapon; or

(3) attempts by physical menace to put another in fear of imminent serious bodily injury.

(b) A person who is convicted of simple assault shall be imprisoned for not more than one year or fined not more than \$1,000.00, or both, unless the offense is committed in a fight or scuffle entered into by mutual consent, in which case a person convicted of simple assault shall be imprisoned not more than 60 days or fined not more than \$500.00 or both.

Credits:

Amended 1971, No. 222 (Adj. Sess.), § 2, eff. April 5, 1972; 1981, No. 223 (Adj. Sess.), § 23.

VT. STAT. § 1024 (2016). AGGRAVATED ASSAULT

(a) A person is guilty of aggravated assault if the person:

(1) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life; or

(2) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or

(3) for a purpose other than lawful medical or therapeutic treatment, the person intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to the other person without the other person's consent a drug, substance, or preparation capable of producing the intended harm; or

(4) with intent to prevent a law enforcement officer from performing a lawful duty, the person causes physical injury to any person; or

(5) is armed with a deadly weapon and threatens to use the deadly weapon on another person.

(b) A person found guilty of violating a provision of subdivision (a)(1) or (2) of this section shall be imprisoned for not more than 15 years or fined not more than \$10,000.00, or both.

(c) A person found guilty of violating a provision of subdivision (a)(3), (4), or (5) of this section shall be imprisoned for not more than five years or fined not more than \$5,000.00, or both.

(d) Subdivision (a)(5) of this section shall not apply if the person threatened to use the deadly weapon:

(1) In the just and necessary defense of his or her own life or the life of his or her husband, wife, civil union partner, parent, child, brother, sister, guardian, or person under guardianship;

(2) In the suppression of a person attempting to commit murder, sexual assault, aggravated sexual assault, burglary, or robbery; or

(3) In the case of a civil or military officer lawfully called out to suppress a riot or rebellion, prevent or suppress an invasion, or assist in serving legal process, in suppressing opposition against him or her in the just and necessary discharge of his or her duty.

(e) Subsection (d) of this section shall not be construed to limit or infringe upon defenses granted at common law.

CREDIT(S)

1971, Adj. Sess., No. 222, § 1; 1993, No. 95, § 3; 2005, Adj. Sess., No. 192, § 6.

Formerly: 1957, No. 178; V.S. 1947, § 8458; P.L. 1933, § 8592; G.L. 1917, § 6997; P.S. 1906, § 5870; 1906, No. 200, § 8; 1898, No. 120, § 1; V.S. 1894, § 5043n; R.L. 1880, § 4228; G.S. 1862, 116, § 1; R.S. 1840, 98, § 1; 1826, No. 14, § 1; R.

VIRGINIA:

VA. CODE ANN. § 18.2-51.6 (2016). STRANGULATION OF ANOTHER; PENALTY

Any person who, without consent, impedes the blood circulation or respiration of another person by knowingly, intentionally, and unlawfully applying pressure to the neck of such person resulting in the wounding or bodily injury of such person is guilty of strangulation, a Class 6 felony.

CREDIT(S)

Added by Acts 2012, c. 577; Acts 2012, c. 602 VA Code Ann. § 18.2-51.6, VA ST § 18.2-51.6

VA. CODE ANN. § 18.2-57.2 (2016). ASSAULT AND BATTERY AGAINST A FAMILY OR HOUSEHOLD MEMBER; PENALTY

A. Any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor.

B. Upon a conviction for assault and battery against a family or household member, where it is alleged in the warrant, petition, information, or indictment on which a person is convicted, that such person has been previously convicted of two offenses against a family or household member of (i) assault and battery against a family or household member in violation of this section, (ii) malicious wounding or unlawful wounding in violation of § 18.2-51, (iii) aggravated malicious wounding in violation of § 18.2-51.2, (iv) malicious bodily injury by means of a substance in violation of § 18.2-52, (v) strangulation in violation of § 18.2-51.6, or (vi) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, in any combination, all of which occurred within a period of 20 years, and each of which occurred on a different date, such person is guilty of a Class 6 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4, except if the defendant is a minor, an emergency protective order shall not be required.

D. The definition of "family or household member" in § 16.1-228 applies to this section.

CREDIT(S)

Acts 1991, c. 238; Acts 1992, c. 526; Acts 1992, c. 886; Acts 1996, c. 866, eff. July 1, 1997; Acts 1997, c. 603; Acts 1999, c. 697; Acts 1999, c. 721; Acts 1999, c. 807; Acts 2004, c. 448; Acts 2004, c. 738; Acts 2009, c. 726.

VA. CODE ANN. § 18.2 – 58 (2016): HOW PUNISHED (ROBBERY)

If any person commit robbery by partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever, he shall be guilty of a felony and shall be punished by confinement in a state correctional facility for life or any term not less than five years.

CREDIT(S)

Acts 1975, c. 14; Acts 1975, c. 15; Acts 1975, c. 605; Acts 1978, c. 608.
VA Code Ann. § 18.2-58, VA ST § 18.2-58

VA. CODE ANN. § 18.2 – 58.1 (2016): CARJACKING; PENALTY

A. Any person who commits carjacking, as herein defined, shall be guilty of a felony punishable by imprisonment for life or a term not less than fifteen years.

B. As used in this section, “carjacking” means the intentional seizure or seizure of control of a motor vehicle of another with intent to permanently or temporarily deprive another in possession or control of the vehicle of that possession or control by means of partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever. “Motor vehicle” shall have the same meaning as set forth in § 46.2-100.

C. The provisions of this section shall not preclude the applicability of any other provision of the criminal law of the Commonwealth which may apply to any course of conduct which violates this section.

Acts 1993, c. 500.
VA Code Ann. § 18.2-58.1, VA ST § 18.2-58.1

WASHINGTON:

WASH. REV. CODE § 9A.01.110 (2014): DEFINITIONS

In this title unless a different meaning plainly is required:

- (1) “Acted” includes, where relevant, omitted to act;
- (2) “Actor” includes, where relevant, a person failing to act;
- (3) “Benefit” is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;
- (4)(a) “Bodily injury,” “physical injury,” or “bodily harm” means physical pain or injury, illness, or an impairment of physical condition;
- (b) “Substantial bodily harm” means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;
- (c) “Great bodily harm” means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;
- (5) “Building,” in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale, or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;
- (6) “Deadly weapon” means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a “vehicle” as defined in this section, 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 substantial bodily harm;
- (7) “Dwelling” means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;
- (8) “Government” includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

- (9) “Governmental function” includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;
- (10) “Indicted” and “indictment” include “informed against” and “information”, and “informed against” and “information” include “indicted” and “indictment”;
- (11) “Judge” includes every judicial officer authorized alone or with others, to hold or preside over a court;
- (12) “Malice” and “maliciously” shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty;
- (13) “Officer” and “public officer” means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;
- (14) “Omission” means a failure to act;
- (15) “Peace officer” means a duly appointed city, county, or state law enforcement officer;
- (16) “Pecuniary benefit” means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;
- (17) “Person,” “he or she,” and “actor” include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;
- (18) “Place of work” includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;
- (19) “Prison” means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;
- (20) “Prisoner” includes any person held in custody under process of law, or under lawful arrest;
- (21) “Projectile stun gun” means an electronic device that projects wired probes attached to the device that emit an electrical charge and that is designed and primarily employed to incapacitate a person or animal;

(22) "Property" means anything of value, whether tangible or intangible, real or personal;

(23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(24) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(25) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

(26) "Strangulation" means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe;

(27) "Suffocation" means to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe;

(28) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his or her health, safety, business, financial condition, or personal relationships;

(29) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(30) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular.

WASH. REV. CODE § 9A.16.100. USE OF FORCE ON CHILDREN--POLICY--ACTIONS PRESUMED UNREASONABLE

It is the policy of this state to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. However, the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child. Any use of force on a child by any other person is unlawful unless it is reasonable and moderate and is authorized in advance by the child's parent or guardian for purposes of restraining or correcting the child.

The following actions are presumed unreasonable when used to correct or restrain a child: (1) Throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; (3) shaking a child under age three; (4) interfering with a child's breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate. This list is illustrative of unreasonable actions and is not intended to be exclusive.

CREDIT(S)

[1986 c 149 § 1.]

West's RCWA 9A.16.100, WA ST 9A.16.100

WASH. REV. CODE 9A.36.021 (2016): ASSAULT IN THE SECOND DEGREE

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

- (a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or
- (b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or
- (c) Assaults another with a deadly weapon; or
- (d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or
- (e) With intent to commit a felony, assaults another; or
- (f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or
- (g) Assaults another by strangulation or suffocation.

(2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

(b) Assault in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

CREDIT(S)

[2011 c 166 § 1, eff. July 22, 2011; 2007 c 79 § 2; 2003 c 53 § 64, eff. July 1, 2004; 2001 2nd sp.s. c 12 § 355; 1997 c 196 § 2. Prior: 1988 c 266 § 2; 1988 c 206 § 916; 1988 c 158 § 2; 1987 c 324 § 2; 1986 c 257 § 5.]

**WASH. REV. CODE 74.35.035 (2016): REPORTS--MANDATED AND PERMISSIVE--
CONTENTS—CONFIDENTIALITY**

(1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) When there is reason to suspect that the death of a vulnerable adult was caused by abuse, neglect, or abandonment by another person, mandated reporters shall, pursuant to RCW 68.50.020, report the death to the medical examiner or coroner having jurisdiction, as well as the department and local law enforcement, in the most expeditious manner possible. A mandated reporter is not relieved from the reporting requirement provisions of this subsection by the existence of a previously signed death certificate. If abuse, neglect, or abandonment caused or contributed to the death of a vulnerable adult, the death is a death caused by unnatural or unlawful means, and the body shall be the jurisdiction of the coroner or medical examiner pursuant to RCW 68.50.010.

(6) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(7) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

(8) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

- (c) The name and address of the legal guardian or alternate decision maker;
 - (d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;
 - (e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;
 - (f) The identity of the alleged perpetrator, if known; and
 - (g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.
- (9) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential.

WEST VIRGINIA:

W. VA. CODE § 48-27-1002 (2016). ARREST IN DOMESTIC VIOLENCE MATTERS; CONDITIONS

(a) Notwithstanding any provision of this code to the contrary, if a person is alleged to have committed a violation of the provisions of subsection (a) or (b), section twenty-eight, article two, chapter sixty-one of this code against a family or household member, in addition to any other authority to arrest granted by this code, a law-enforcement officer has authority to arrest that person without first obtaining a warrant if:

- (1) The law-enforcement officer has observed credible corroborative evidence that an offense has occurred; and either:
- (2) The law-enforcement officer has received, from the victim or a witness, an oral or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of this code; or
- (3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(b) For purposes of this section, credible corroborative evidence means evidence that is worthy of belief and corresponds to the allegations of one or more elements of the offense and may include, but is not limited to, the following:

(1) Condition of the alleged victim. -- One or more contusions, scratches, cuts, abrasions, or swellings; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

(2) Condition of the accused. -- Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.

(3) Condition of the scene. -- Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle.

(4) Other conditions. -- Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; written statements by witnesses.

(c) Whenever any person is arrested pursuant to subsection (a) of this section, the arrested person shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

(d) If an arrest for a violation of subsection (c), section twenty-eight, article two, chapter sixty-one of this code is authorized pursuant to this section, that fact constitutes prima facie evidence that the accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeen-c, article one-c, chapter sixty-two of this code.

(e) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant to section five hundred nine or subsections (b) and (c), of section six hundred eight, article five of this chapter the arresting officer, subject to the requirements of the Constitutions of this state and of the United States:

(1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence;

(2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons; and

(3) May seize all weapons that are possessed in violation of a valid protective order.

CREDIT(S)

Acts 2001, c. 91, eff. Sept. 1, 2001; Acts 2009, c. 74, eff. July 9, 2009; Acts 2010, c. 53, eff. June 11, 2010.

W. VA. CODE § 61-2-12 (2016): ROBBERY OR ATTEMPTED ROBBERY; PENALTIES

(a) Any person who commits or attempts to commit robbery by:

(1) Committing violence to the person, including, but not limited to, partial strangulation or suffocation or by striking or beating; or (2) uses the threat of deadly force by the presenting of a firearm or other deadly weapon, is guilty of robbery in the first degree and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than ten years.

(b) Any person who commits or attempts to commit robbery by placing the victim in fear of bodily injury by means other than those set forth in subsection (a) of this section or any person who commits or attempts to commit robbery by the use of any means designed to temporarily disable the victim, including, but not limited to, the use of a disabling chemical substance or an electronic shock device, is guilty of robbery in the second degree and, upon conviction thereof, shall be confined in a correctional facility for not less than five years nor more than eighteen years.

(c) If any person: (1) By force and violence, or by putting in fear, feloniously takes, or feloniously attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management or possession of, any bank, he shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than ten nor more than twenty years; and (2) if any person in committing, or in attempting to commit, any offense defined in the preceding clause (1) of this subsection, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, disabling chemical substance or an electronic shock device, he shall be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than ten years nor more than twenty-five years.

CREDIT(S)

Acts 1882, c. 118, § 12; Acts 1939, c. 28; Acts 1961, c. 25; Acts 2000, c. 80, eff. 90 days after March 6, 2000.

WISCONSIN:

Wis. STAT. § 813.129 (2016). GLOBAL POSITIONING SYSTEM TRACKING

(1) If a person knowingly violates a temporary restraining order or injunction issued under s. 813.12 or 813.125, in addition to other penalties provided in those sections, the court may report the violation to the department of corrections immediately upon the person's conviction and may order the person to submit to global positioning system tracking under s. 301.49.

(2) Before issuing an order under sub. (1), the court must find that the person is more likely than not to cause serious bodily harm to the person who petitioned for the restraining order or injunction, weighing the following factors:

(a) Whether the person has allegedly caused physical injury, intentionally abused pets or damaged property, or committed sexual assault, an act of strangulation or forcible entry to gain access to the petitioner.

(b) Whether the person has threatened any individual, including the petitioner, with harm.

(c) Whether the person has a history of improperly using or threatening to use a firearm or other dangerous weapon.

(d) Whether the person has expressed suicidal ideation.

(e) Whether the person has exhibited obsessive or controlling behavior toward the petitioner or any member of the petitioner's family, including stalking, surveillance, or isolation of the petitioner or any member of the petitioner's family.

(f) The person's mental health history.

(g) Whether the person has a history of abusing alcohol or a controlled substance.

(3) The court may request the department of corrections to provide a validated risk assessment of the person in order to make the findings required in sub. (2).

(4) If a court enters an order under sub. (1), the court shall provide the person who petitioned for the restraining order or injunction with a referral to a domestic violence or sexual assault victim service provider.

(5) If, after weighing the factors set forth under sub. (2), the court determines that a person is more likely than not to cause serious bodily harm to the person who petitioned for the restraining order or injunction, and the court determines that another alternative, including imprisonment, is more likely to protect the person who petitioned for the restraining order or injunction, the court may not enter an order under sub. (1).

<<For credits, see Historical Note field.>>

2011 Act 266, § 6, eff. Jan. 1, 2014.

2013 Act 20, §§ 2283g, 2283r, eff. Jan. 1, 2014.

2013 Legislation:

2013 Act 20 renumbered subsec. (3)(a) as (3) and repealed subsec. (b).

W. S. A. 813.129, WI ST 813.129

Wis. STAT. § 940.235 (2016): STRANGULATION AND SUFFOCATION

(1) Whoever intentionally impedes the normal breathing or circulation of blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person is guilty of a Class H felony.

(2) Whoever violates sub. (1) is guilty of a Class G felony if the actor has a previous conviction under this section or a previous conviction for a violent crime, as defined in s. 939.632(1)(e)1.

Credits:

2007 a. 127.

WYOMING:

WYO. STAT. § 6-2-509 (2016). STRANGULATION OF A HOUSEHOLD MEMBER; PENALTY

(a) A person is guilty of strangulation of a household member if he intentionally and knowingly or recklessly causes or attempts to cause bodily injury to a household member by impeding the normal breathing or circulation of blood by:

- (i) Applying pressure on the throat or neck of the household member; or
- (ii) Blocking the nose and mouth of the household member.

(b) Strangulation of a household member is a felony punishable by imprisonment for not more than five (5) years.

(c) For purposes of this section, "household member" means as defined in W.S. 35-21-102(a)(iv)(A) through (D), (G) and (H).

CREDIT(S)

Laws 2011, ch. 136, § 1, eff. July 1, 2011.

FEDERAL GOVERNMENT AND TERRITORIES

UNITED STATES:

18 U.S.C. § 2A2.2 (2014). AGGRAVATED ASSAULT

(a) Base Offense Level: 14

(b) Specific Offense Characteristics

(1) If the assault involved more than minimal planning, increase by 2 levels.

(2) If (A) a firearm was discharged, increase by 5 levels; (B) a dangerous weapon (including a firearm) was otherwise used, increase by 4 levels; (C) a dangerous weapon (including a firearm) was brandished or its use was threatened, increase by 3 levels.

(3) If the victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

Degree of Bodily Injury Increase in Level

(A) Bodily Injury add 3

(B) Serious Bodily Injury add 5

(C) Permanent or Life-Threatening Bodily Injury add 7

(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 4 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 6 levels.

However, the cumulative adjustments from application of subdivisions (2) and (3) shall not exceed 10 levels.

(4) If the assault was motivated by a payment or offer of money or other thing of value, increase by 2 levels.

(5) If the offense involved the violation of a court protection order, increase by 2 levels.

(6) If the defendant was convicted under 18 U.S.C. § 111(b) or § 115, increase by 2 levels.

<Effective November 1, 2014, absent contrary Congressional action, par. (4) is redesignated as par. (5) and a new par. (4) is added to read as follows:>

<(4) If the offense involved strangling, suffocating, or attempting to strangle or suffocate a spouse, intimate partner, or dating partner, increase by 3 levels.>

<However, the cumulative adjustments from application of subdivisions (2), (3), and (4) shall not exceed 12 levels.>

PROPOSED REDESIGNATION OF PARS. (4) THROUGH (6) AS PARS. (5) THROUGH (7)

<Effective November 1, 2014, absent contrary Congressional action, pars. (4) through (6) are redesignated as pars. (5) through (7) to read as follows:>

<(5) If the assault was motivated by a payment or offer of money or other thing of value, increase by 2 levels.>

<(6) If the offense involved the violation of a court protection order, increase by 2 levels.>

<(7) If the defendant was convicted under 18 U.S.C. § 111(b) or § 115, increase by 2 levels.>

COMMENTARY

<Application Notes:>

<1. Definitions.--For purposes of guideline:>

<"Aggravated assault" means a felonious assault that involved (A) a dangerous weapon with intent to cause bodily injury (i.e., not merely to frighten) with that weapon; (B) serious bodily injury; or (C) an intent to commit another felony.>

<"Brandished," "bodily injury," "firearm;" "otherwise used," "permanent or life threatening bodily injury," and "serious bodily injury," have the meaning given those terms in § 1B1.1 (Application Instructions), Application Note 1.>

<"Dangerous weapon" has the meaning given that term in § 1B.1, Application Note 1, and includes any instrument that is not ordinarily used as a weapon (e.g., a car, a chair, or an ice pick) if such an instrument is involved in the offense with the intent to commit bodily injury.>

<2. Application of Subsection (b)(1).--For purposes of subsection (b)(1), "more than minimal planning" means more planning than is typical for commission of the offense in a simple form. "More than minimal planning" also exists if significant affirmative steps were taken to conceal the offense, other than conduct to which § 3C1.1 (Obstructing or Impeding the Administration

of Justice) applies. For example, waiting to commit the offense when no witnesses were present would not alone constitute more than minimal planning. By contrast, luring the victim to a specific location or wearing a ski mask to prevent identification would constitute more than minimal planning.>

<3. Application of Subsection (b)(2).--In a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).>

<4. Application of Official Victim Adjustment.--If subsection (b)(6) applies, § 3A1.2 (Official Victim) also shall apply.>

<Background: This guideline covers felonious assaults that are more serious than minor assaults because of the presence of an aggravating factor, i.e., serious bodily injury, the involvement of a dangerous weapon with intent to cause bodily injury, or the intent to commit another felony. Such offenses occasionally may involve planning or be committed for hire. Consequently, the structure follows § 2A2.1 (Assault with Intent to Commit Murder, Attempted Murder). This guideline also covers attempted manslaughter and assault with intent to commit manslaughter. Assault with intent to commit murder is covered by § 2A2.1. Assault with intent to commit rape is covered by § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse.)>

<An assault that involves the presence of a dangerous weapon is aggravated in form when the presence of the dangerous weapon is coupled with the intent to cause bodily injury. In such a case, the base offense level and the weapon enhancement in subsection (b)(2) take into account different aspects of the offense, even if application of the base offense level and the weapon enhancement is based on the same conduct.>

<Subsection (b)(6) implements the directive to the Commission in subsection 11008(e) of the 21st Century Department of Justice Appropriations Act (the "Act"), Public Law 107-273. The enhancement in subsection (b)(6) is cumulative to the adjustment in § 3A1.2 (Official Victim) in order to address adequately the directive in section 11008(e)(2)(D) of the Act, which provides that the Commission shall consider "the extent to which sentencing enhancements within the Federal guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by" 18 U.S.C. §§ 111 and 115.>

42 U.S.C.A. § 16901, 42 USCA § 16901Current through P.L. 113-163 (excluding P.L. 113-128)
approved 8-8-14

AMERICAN SAMOA:

No statutory provisions dealing specifically with strangulation

GUAM:

GUAM CODE TIT. 10 § 2951 (2014). DEFINITIONS (ADULT PROTECTIVE SERVICES)

Definitions as used in this Article:

(a) Abandonment refers to the desertion of an elderly or adult with a disability by his or her caregiver under circumstances in which a reasonable person would continue to provide care or custody.

(b) Adult with a Disability is any person eighteen (18) years or older who:

(1) has a physical or mental impairment which substantially limits one (1) or more major life activities; or

(2) has a history of, or has been classified as having, an impairment which substantially limits one (1) or more major life activities.

(c) Bodily Injury means physical pain, illness, unconsciousness or any impairment of physical condition, in accordance with Chapter 16 of Title 9 Guam Code Annotated.

(d) Bureau of Adult Protective Services means the "Bureau" established by § 2955 of this Article.

(e) Caregiver is any family member or any person, health facility, community care facility, clinic, home health care agency or legal guardian who has the care or custody of the elderly or adult with disability.

(f) Department refers to the Department of Public Health and Social Services.

(g) Desertion refers to the act by which a person abandons and forsakes, without justification, a condition of public, social, or family life, renouncing its responsibilities and evading its duties.

(h) Elderly refers to a person age sixty (60) years or older.

(i) Elderly or Adult with a Disability Abuse means self-neglect or any one (1) or more of the following acts inflicted on an elderly or adult with a disability by other than accidental means by another person: physical abuse, neglect, or abandonment.

(j) Emotional or Psychological Abuse means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts or false or misleading statements made with

malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elderly or adult with a disability.

(k) Expunged means the sealing of records to all persons outside of the Bureau of Adult Protective Services and law enforcement agencies of Guam, and the federal agencies entitled thereto, and a refusal by such agencies to admit the existence of such records to persons not entitled to examine them.

(l) Financial or Property Exploitation means illegal or improper use of an elderly or adult with a disability's money, property, or other resources for monetary or personal benefit, profit or gain. This includes, but is not limited to, theft, misappropriation, concealment, misuse or fraudulent deprivation of money or property belonging to the elderly or adult with a disability.

(m) Investigation means that activity undertaken to determine the validity of a report of elderly or adult with a disability abuse.

(n) Major Life Activities include, but are not limited to: caring for oneself, performing manual tasks, standing, walking, seeing, hearing, eating, sleeping, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking and working.

(o) Neglect means the failure of a reasonable caregiver to provide for the physical, mental or emotional health and well-being of the elderly or adult with a disability and includes, but is not limited to:

- (1) Failure to assist or provide personal hygiene for the elderly or adult with a disability.
- (2) Failure to provide adequate food, water, clothing or shelter.
- (3) Failure to provide medical care for the physical and mental health of the elderly or adult with a disability. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
- (4) Failure to protect an elderly or adult with a disability from health, safety hazards, or physical harm.

(p) Physical Abuse means the willful infliction of or omission which results in physical harm. It includes, but is not limited to, cruel punishment resulting in physical harm or pain or mental anguish, such as direct beatings, slapping, kicking, biting, choking, burning or unreasonable physical restraint or confinement resulting in physical injury.

(q) Physical Harm means bodily pain, injury, impairment or disease.

(r) Self-Neglect Abuse is characterized as the behavior of an elderly or adult with a disability that threatens his/her own health or safety. Self-neglect generally manifests itself when an elderly or adult with a disability refuses to provide him/herself with adequate food, clothing, shelter, personal hygiene, medication (when indicated), and safety precautions. The definition of self-

neglect excludes a situation in which a mentally competent elderly or adult with a disability, who understands the consequences of his/her decisions, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice.

(s) Serious Abuse means an act or omission resulting in serious bodily injury which creates: serious permanent disfigurement; a substantial risk of death or serious, permanent disfigurement; severe or intense physical pain or protracted loss or impairment of consciousness or of the function of any bodily member or organ, as defined in Chapter 16 of Title 9, Guam Code Annotated; or sexual offenses pursuant to Chapter 25 of Title 9, Guam Code Annotated.

(t) Sexual Abuse means any form of non-consensual sexual contact, including but not limited to, unwanted or inappropriate sexual gratification, touching, rape, sodomy, sexual coercion, sexually explicit photographing, sexual harassment, involuntary exposure to sexually explicit material or language, and as defined in the penal code of Guam.

(u) Substantiated Report means a report made pursuant to this Chapter, if an investigation by the Bureau of Adult Protective Services, or its authorized agency, determines that there is sufficient evidence to support the existence of the abuse or neglect.

(v) Unsubstantiated Report means a report made pursuant to this Chapter, if an investigation by the Bureau of Adult Protective Services or its authorized agency determines that there is insufficient or inconclusive evidence of abuse, but existence of the abuse cannot be disproved to the satisfaction of the Bureau of Adult Protective Services.

SOURCE: Added by P.L. 19-054:1; Subsection (m) added by P.L. 21-033:10, subsequent subsections were re-lettered. Repealed and reenacted by P.L. 31- 278:3 (Dec. 28, 2012).

10 G.C.A. § 2951, GU ST T. 10, § 2951 Current through Public Law 31-285

PUERTO RICO:

No statutory provisions dealing specifically with strangulation

VIRGIN ISLANDS:

V.I. CODE ANN. TIT. 14, §13- 296 (2011): ASSAULT IN THE SECOND DEGREE

Whoever willfully-

(1) mingles any poison with any food, drink, or medicine, with intent that the same shall be taken by any human being, to his injury; or

(2) poisons any spring, well, or reservoir of water; or

(3) strangle or attempts to strangle any person in an act of domestic violence; or

(4) places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, pepper, hot water, or chemical of any nature with intent to injure the flesh or disfigure the body or clothes of such person-

shall be imprisoned not more than 10 years and if the conviction results from an act of domestic violence, the person shall be fined no less than \$1,000 and shall successfully complete certified mandatory Batters Intervention Program.

Amended Aug. 20, 2010, No. 7180, § 5(a), (b), Sess. L. 2010, p. 112 .Current through Act 7578 of the 2013 Regular Session. Annotations current through April 7, 2014

V.I. CODE TIT. 14, § 13-507 (2014): REASONABLE AND MODERATE PHYSICAL DISCIPLINE EXCEPTED; UNREASONABLE ACTS

Nothing in this Chapter shall be interpreted to prevent a parent, guardian, or person acting at the direction of a child's parent or guardian, from using reasonable and moderate physical discipline to correct, restrain or discipline a child. The following actions are examples of unreasonable conduct when used by any person to correct, restrain or discipline a child:

(1) throwing, kicking, burning, or cutting a child;

(2) striking a child with a closed fist;

(3) willful and violent shaking of a child in such a way as to cause physical injury to the child;

(4) interfering with a child's breathing;

(5) threatening a child with a deadly weapon; or

(6) doing any other act that is likely to cause and that does cause bodily harm greater than transient pain or minor temporary marks.

The age, size, and condition of the child and the location of the injury shall be considered when determining whether the physical discipline is reasonable and moderate. The list of unreasonable actions is illustrative and is not intended to be exclusive.

Added Oct. 20, 1992, No. 5818, § 1, Sess. L. 1992, p. 157.
Current through Act 7578 of the 2013 Regular Session.
Annotations current through April 7, 2014

