
Tougher Measures: How the New Massachusetts Strangulation Law Demonstrates the Need for Stricter Penalties and “No-Drop” Prosecution Policies in Domestic Violence Disputes

*“Generally, it only takes eleven pounds of pressure applied for ten seconds to cause unconsciousness. After another minute, most victims will not survive.”*¹

I. INTRODUCTION

In domestic violence disputes, strangulation is one of the strongest indicators that the perpetrator will murder the victim; stranglers often use this violent act to demonstrate their power and control over their victims.² Several studies reveal that thirty to sixty-eight percent of women in abusive relationships were strangled by their significant other during the relationship.³ Non-fatal strangulation victims are seven times more likely to be murdered by their partners.⁴ As a result of these ghastly figures, many states have passed strangulation laws in the last decade, making it a felony to knowingly obstruct a person’s ability to breathe.⁵

In the wake of the murder of Jennifer Martel at the hands of Jared Remy, the Massachusetts legislature passed An Act Relative to Domestic Violence (AARDV) to crack down on repeat domestic offenders.⁶ Among various

1. Archana Nath, *Survival or Suffocation: Can Minnesota’s New Strangulation Law Overcome Implicit Biases in the Justice System?*, 25 LAW & INEQ. 253, 267 (2007).

2. See Gael B. Strack & Casey Gwinn, *On the Edge of Homicide: Strangulation As a Prelude*, 26 CRIM. JUST. 32, 34-35 (2011) (detailing dangers of strangulation and its prevalence in domestic abuse cases). Strangulation is used by domestic abusers to establish control and strike fear in their victims. See *id.* at 35.

3. Nath, *supra* note 1, at 268 (noting frequency with which partners employ strangulation in abusive relationships).

4. Nancy Glass et al., *Non-Fatal Strangulation Is an Important Risk Factor for Homicide of Women*, 35 J. EMERGENCY MED. 329, 332 (2008) (documenting likelihood domestic abusers who previously strangled their significant others will subsequently murder their partners). The study identifies non-fatal strangulation as a crucial indicator that a female victim of intimate partner violence will die at the hands of her abusive partner. See *id.* at 335. This study also suggests that strangulation is a common form of abuse in intimate partner violence. *Id.*

5. *States Cracking Down on Strangulation Attempts*, USA TODAY (May 13, 2012), <http://usatoday30.usatoday.com/news/nation/story/2012-05-13/strangulation-crackdown-law/54935268/1> [<http://perma.cc/Z7GQ-A7RY>] [hereinafter USA Today] (listing several states that recently passed laws making strangulation felony under certain circumstances).

6. An Act Relative to Domestic Violence, ch. 260, 2014 Mass. Acts 1042 (2014) (establishing new laws aimed at combatting domestic violence); Michael Levenson, *Lawmakers Cite Remy Case in Move to Toughen Laws*, BOS. GLOBE (Apr. 1, 2014), <http://www.bostonglobe.com/metro/2014/04/01/lawmakers-aim-toughen->

statutory amendments and programs tailored toward combatting domestic violence, AARDV contains a new statute criminalizing strangulation or suffocation (strangulation law).⁷ First time offenders face a maximum of five years and/or a \$5,000 fine, while the penalty is more severe for perpetrators who cause serious bodily injury, strangle pregnant women, or repeatedly strangle their victim.⁸

Despite the statute's progressive initiative, its practical application has yielded low rates of convictions.⁹ In a sample of several Massachusetts counties including Bristol, Norfolk, Essex, Middlesex, and Plymouth, taken over a nine-month period following the strangulation law's enactment, only about ten percent of strangulation charges resulted in convictions since the bill passed in 2014.¹⁰ These low numbers raised questions about how prosecutors are enforcing the law, and whether new methods are needed to achieve meaningful results.¹¹ One advocate, in particular, called for Massachusetts prosecutors to adopt a no-drop policy, which would prevent victims from dropping the charges against their abusers.¹² The need for no-drop policies exposes a gender bias in the criminal justice system, as prosecutors routinely treat domestic violence cases differently than other crimes.¹³ Prosecutors maintain broad power to dismiss cases, and usually do not consider victims' protestations for dismissal in most criminal cases; however, prosecutors use this discretion to drop domestic violence cases at a victim's request or at any sign of hesitancy indicating the victim does not want to move forward with the

state-domestic-violence-laws-wake-remy-allegations/iLeoGwj2lpWqjVxm0myczl/story.html [http://perma.cc/F4PE-8R84] (considering high-profile murder of Jennifer Martel motivation for new Massachusetts strangulation law). The Massachusetts Speaker of the House, Robert A. DeLeo, described the Martel murder as a "horrific act waiting to happen," and determined that the legislature had to act to stop such tragic attacks against women. See Levenson, *supra*; see also Daniel Cappetta, *New Domestic Violence Bill Proposed at Statehouse*, MASS. CRIM. LAW. BLOG (Apr. 17, 2014), <http://www.massachusettscriminal-lawyer-blog.com/2014/04/new-domestic-violence-bill-proposed-statehouse.html> [http://perma.cc/4Y4Q-SGFP] (explaining influence of Remy's violent, abusive history and subsequent murder of Martel).

7. MASS. GEN. LAWS ch. 265, § 15D (2016).

8. See *id.* § 15D(b)-(c) (listing penalties under strangulation law).

9. See MASS. DIST. ATT'Y ASS'N, DA DOMESTIC VIOLENCE DATA, S.D. 2134, 189th Gen. Court (2015) (providing conviction statistics from various Massachusetts counties regarding strangulation law).

10. See *id.* (reporting low conviction results according to data compiled by district attorneys across Massachusetts); see also Maria Papadopoulos, *New Domestic Violence Law Yielding Few Convictions*, PATRIOT LEDGER (July 14, 2015), <http://www.patriotledger.com/article/20150714/NEWS/150718690> [http://perma.cc/2H35-TMBY] (examining low number of convictions in Bristol, Plymouth, and Norfolk counties).

11. See Papadopoulos, *supra* note 10 (highlighting reactions to statistics compiled in district attorneys' report). Wendy Murphy, a former prosecutor and nationally recognized expert on sex crimes, blames the low rates of convictions on prosecutorial policies in Massachusetts that allow victims to drop the charges they bring against their abusers. See *id.*

12. See *id.* (explaining studies show no-drop policies save lives).

13. See Wendy Murphy, *Gender Bias in the Criminal Justice System*, 20 HARV. WOMEN'S L.J. 14, 15 (1997) (arguing system treats women less fairly in cases involving domestic violence than other crimes).

charge.¹⁴

This Note will examine whether strangulation deserves the heightened legal consequences created by the strangulation law, and whether no-drop policies are needed to enforce the new law effectively.¹⁵ In Part II, this Note will explore when and why strangulation laws gained traction across the United States, particularly in Massachusetts.¹⁶ Specifically, this Note will analyze the results of strangulation statutes in other states, juxtaposing them with how the strangulation law has been enforced in Massachusetts.¹⁷ Furthermore, this Note will focus on the history of no-drop policies, and the implementation of such policies in various states.¹⁸

In Part III, this Note will argue that Massachusetts should adopt an evidence-based, no-drop prosecution policy to punish domestic abusers more effectively, and to help eliminate the gender bias women face in the justice system.¹⁹ This Note analyzes the legal and policy reasons behind criminalizing strangulation.²⁰ This Note further advances the argument that strangulation should be a standalone crime.²¹ Part III.B will discuss the statutory construction of the new Massachusetts strangulation law, and recommends that Massachusetts incorporate a provision encompassing reckless attempts to strangle.²² Furthermore, Part III.B will consider the reasons for and against adopting no-drop policies in an attempt to find a middle ground that satisfies the concerns raised by advocates on each side.²³ The Note will conclude by supporting both the heightened legal consequences associated with the new strangulation law, as well as the need for no-drop policies to protect victims, punish their abusers, and combat the gender bias in the criminal justice system.²⁴

14. See Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 N.Y.U. REV. L. & SOC. CHANGE 191, 220-21 (2008) (highlighting contrast between prosecutorial discretion in domestic violence cases and other criminal cases). Advocates of no-drop policies cite “gender-biased assumptions” and “historic inaction of prosecutors” as reasons to implement such policies. *Id.* at 220; see also *Gender and Justice in the Courts: A Report to the Supreme Court of Georgia by the Commission on Gender Bias in the Judicial System*, 8 GA. ST. U. L. REV. 539, 567 (1992) [hereinafter *Gender and Justice Report*] (comparing manner in which Georgia handles domestic and nondomestic cases involving violent injury).

15. See *infra* Part III (analyzing need for strangulation legislation and importance of no-drop policies).

16. See *infra* Part II (tracing history of strangulation laws in United States and need for legislative response).

17. See *infra* Parts II.B-C.

18. See *infra* Part II.D (discussing history of no-drop prosecution policies and implications of adopting such policies).

19. See *infra* Part III.

20. See *infra* Parts II, III.A (analyzing rationale behind creation of new strangulation-specific law).

21. See *infra* Part III.A (arguing strangulation deserves status as standalone crime).

22. See *infra* Part III.B.

23. See *infra id.*

24. See *infra* Part IV.

II. HISTORY

In 1995, the gruesome murders of two young women in San Diego, California galvanized the City Attorney's Office to conduct a study of "choking" incidents in an attempt to improve criminal investigations of strangulation cases.²⁵ Until the 1980s, little medical research focusing on strangulation existed.²⁶ By examining 300 strangulation cases submitted for prosecution in San Diego, the City Attorney's Office aimed to document any patterns associated with strangulation and to use that data to help investigate future reported strangulations.²⁷ In 2001, the *Journal of Emergency Medicine* published the findings in a three-part article: *A Review of 300 Attempted Strangulation Cases (San Diego Study)*.²⁸ The shocking results of the study inspired additional research, investigation procedures, and strangulation legislation across the country.²⁹

A. Strangulation Uncovered

1. Misidentification and Faulty Investigations

Strangulation is one of several categories of asphyxiation; however, it is commonly misidentified as a less serious form: choking.³⁰ Choking is defined as the process in which a foreign body partially or completely obstructs the trachea, and typically occurs accidentally.³¹ Strangulation, on the other hand, occurs when external pressure is applied to the neck resulting in a loss of consciousness.³² This distinction is particularly important because strangulation is intentional in the vast majority of case.³³ In the same vein,

25. See Gael B. Strack et al., *A Review of 300 Attempted Strangulation Cases Part I: Criminal Legal Issues*, 21 J. EMERGENCY MED. 303, 307 (2001) [hereinafter *Criminal Legal Issues*] (tracing events that catapulted strangulation to forefront of United States's domestic abuse problem). In March 1995, a seventeen-year-old girl reported to San Diego police that her ex-boyfriend had choked her. *Id.* One week later, her ex-boyfriend stabbed her to death in the presence of her friends. *Id.* Six months later, a man strangled his pregnant, sixteen-year-old ex-girlfriend, and set her ablaze, leaving her for dead in a field. *See id.*

26. See Ellen Taliaferro et al., *Walking and Talking Victims of Strangulation. Is There a New Epidemic? A Commentary*, 2 J. EMERGENCY MED. 293, 293-295 (2001) (reviewing strangulation literature available before San Diego study).

27. See *Criminal Legal Issues*, *supra* note 25, at 307 (citing objectives of study).

28. See Strack & Gwinn, *supra* note 2, at 33 (documenting San Diego study publication).

29. See *id.* (positing major findings of San Diego Study jumpstarted effort to learn more about strangulation).

30. See J. Stephan Stapczynski, *Strangulation Injuries*, EMERGENCY MED. REP. (Aug. 1, 2010), <http://www.ahcmedia.com/articles/19950-strangulation-injuries> [<https://perma.cc/R5CV-Y2PV>] (differentiating between various forms of asphyxiation); Allison Turkel, *Understanding, Investigating, and Prosecuting Strangulation Cases*, 41 PROSECUTOR 20, 20 (2007) (explaining strangulation often times mistaken for choking).

31. See Stapczynski, *supra* note 30 (defining choking).

32. See *id.* (defining strangulation).

33. See Ellen Taliaferro et al., *Strangulation in Intimate Partner Violence, in INTIMATE PARTNER VIOLENCE: A HEALTH BASED PERSPECTIVE*, 217, 219 (Connie Mitchell & Deirdre Anglin eds., 2009)

strangulation should not be confused with attempted strangulation.³⁴ The San Diego Study revealed that because victims commonly report the attack as choking, the justice system often handles the “most lethal form of domestic violence” as a minor incident.³⁵

Before the San Diego Study and subsequent research on the topic, the scarcity of external injury evidence posed a significant obstacle to the investigation and prosecution of strangulation attacks.³⁶ In sixty-seven percent of the 300 cases examined in the San Diego Study, victims reported no signs or symptoms.³⁷ Unless the victim suffered from noteworthy, observable injuries, police and prosecutors regularly determined that such cases lacked sufficient probable cause to warrant an arrest or conviction.³⁸

Furthermore, because professionals knew little of the severity of strangulation injuries and the medical repercussions, law enforcement officials failed to elicit the necessary information from the victims for effective investigation.³⁹ While only five percent of victims sought medical care within

(considering manual strangulation, which makes up ninety-seven percent of cases, intentional strangulation). Manual strangulation occurs when an assailant compresses a victim’s neck with hands, forearms, knees, or other body parts. *Id.* at 219. Incidents of accidental strangulation rarely occur. *See id.*

34. *See* RESPONDING TO STRANGULATION IN ALASKA: GUIDELINES FOR LAW ENFORCEMENT, HEALTH CARE PROVIDERS, ADVOCATES, AND PROSECUTORS 10 (Gael Strack & Casey Gwinn eds.) [hereinafter STRANGULATION IN ALASKA], <http://dhss.alaska.gov/ocs/Documents/childrensjustice/strangulation/strangulation.pdf> (last visited Jan. 5, 2017) [<http://perma.cc/GJB2-Y6HG>] (repudiating idea surviving victims suffered from “attempted strangulation”). Advocates argue the word “attempted” does not apply to strangulation because once an abuser intentionally impedes oxygen flow to the brain, he has not tried to strangle—he has completed the crime. *See id.* “Non-fatal strangulation” is the correct term to refer to strangulation where the victim survives. *See id.*

35. *See* Strack & Gwinn, *supra* note 2, at 33-34 (suggesting professionals in field must employ proper terminology to better identify severity of attack). Encouraging the use of accurate terminology properly focuses the attention of criminal justice professionals and victims, who may finally realize the gravity of the situation. *See* HEATHER WOLFGAM, WATCH, THE IMPACT OF MINNESOTA’S FELONY STRANGULATION LAW 4-5 (2007), http://www.ncdsv.org/images/WATCH_ImpactOfMn’sFelonyStrangulationLaw_1-24-07.pdf [<http://perma.cc/2Y4A-62GV>] (describing impact of using proper terminology).

36. *See Criminal Legal Issues, supra* note 25, at 306. According to the San Diego Study, only fifteen percent of the 300 test subjects had photos of the proper quality for courtroom use. *Id.* Fifty percent did not show any visible injuries, and thirty-five percent had injuries too minimal to photograph. *Id.* Even in fatal cases, visible signs of strangulation often do not appear on the victim. *See* Dean A. Hawley et al., *A Review of 300 Attempted Strangulation Cases Part III: Injuries in Fatal Cases*, 21 J. EMERGENCY MED. 317, 317 (2001) [hereinafter *Injuries in Fatal Cases*].

37. *See Criminal Legal Issues, supra* note 25, at 305 (reporting statistics regarding visible signs and symptoms). The few victims who did report symptoms complained of pain in the throat, problems swallowing, vomiting blood, loss of consciousness, defecation, seeing black spots, and trouble moving. *See id.*

38. *See id.* at 308 (stating without visible injuries, professionals treated strangulation victims “as if the victim had been slapped”). Gael Strack, the executive director of the National Family Justice Center Alliance, describes the minimization of the crime: “[W]hen a victim is strangled and survives, no one seeks the blood or the bruising or the swelling[.] . . . It’s hard for them to understand that she’s just like the victim who was stabbed or shot and survived.” USA Today, *supra* note 5.

39. *See Criminal Legal Issues, supra* note 25, at 308 (considering absence of strangulation training at police academies and domestic violence conferences problematic). Due to the lack of training, officials investigating attacks failed to report relevant information about the attack. *See id.* Additionally, investigators

forty-eight hours of the attack, the stark contrast between the descriptions in the police and medical reports evidence the need for enhanced investigations.⁴⁰ The San Diego Study exposed the professionals responsible for handling strangulation cases as underqualified, prompting advocates to fund training organizations and to author literature to help promote thorough investigations.⁴¹

2. *Strangulation Injuries*

While the external injuries of strangulation fail to capture the gravity of the crime, the internal injuries and risk of death appropriately convey the dangers.⁴² A victim will lose consciousness with as little as eleven pounds of force—for as little as ten seconds—applied to both carotid arteries.⁴³ Within minutes, the victim will become brain dead.⁴⁴ In some fatal cases, victims experience a drawn out period with brain damage due to the loss of blood to the brain before death.⁴⁵ In non-fatal cases, nearly eighty-five percent of women suffer from

did not know the proper questions to ask to ascertain whether the victim suffered from any resulting side effects. *See id.*

40. *See id.* at 306 (highlighting discrepancy in description of identical injuries between investigator and attending physician). For example, in one case where the physician described the patient's injuries as "multiple linear contusions to both sides of neck with overlying redness, mild edema and tenderness," the responding officer at the scene of the crime described the injury as "red abrasion to the neck." *See id.*

41. *See* Gael B. Strack & Dr. George McClane, *How to Improve Your Investigation and Prosecution of Strangulation Cases*, NAT'L FAM. JUST. CTR. ALLIANCE 6, <http://fvpf.confex.com/nchdv/2009/record/ingredirect.cgi/id/235> (last updated Sept. 2007) [<http://perma.cc/XH7F-3WD9>] [hereinafter *Improve Strangulation Cases*] (realizing need for professional training programs). Strack and McClane highlight the need for professionals to ask specific questions because victims often do not recognize documentable symptoms and may need prompting. *See id.* at 7; *see also What We Do*, TRAINING INST. ON STRANGULATION PREVENTION, <http://www.strangulationtraininginstitute.com/what-we-do> (last visited Jan. 5, 2017) [<http://perma.cc/2GCK-B22M>] (providing training resources and programs to "over 5,000 professionals per year"). Through on-site and online webinars, the Training Institute on Strangulation Prevention provides training on how to "identify the signs and symptoms of near-fatal strangulation cases; understand and recognize the anatomy and medical aspects of surviving and non-surviving victims; investigate and document cases for prosecution; prosecute cases, including using experts in court; and, most importantly, enhance victim safety through trauma-informed advocacy services." *Id.* Such resources have led to increased prosecution of strangulation cases because personnel tasked with investigating and prosecuting such cases can readily identify the signs associated with the crime, and document the incident in a manner conducive to effective prosecution. *See id.*

42. *See* Strack & Gwinn, *supra* note 2, at 34-35 (distinguishing severity of internal injuries from lack of external injuries).

43. *Improve Strangulation Cases*, *supra* note 41, at 4 (describing vulnerability of neck). Thirty-three pounds of pressure applied to the neck will completely block the trachea. *Id.*

44. *Id.* (explaining effects of persistent strangulation after several minutes); *Injuries in Fatal Cases*, *supra* note 36, at 320 (discussing causes of death by strangulation).

45. *See Injuries in Fatal Cases*, *supra* note 36, at 320. The persistent loss of blood to the brain results in anoxic encephalopathy, where some brain cells survive for several days before the victim dies due to oxygen deprivation. *See id.* When this occurs, the resulting brain death leaves little hope for recovery, and the victim will require life support for survival. *See id.* If the victim survives, she will face complications such as a herniated brain—a condition in which the extreme swelling of the brain forces the brain through the opening in the bottom of the skull and into the spinal cord. *See* Taliaferro et al., *supra* note 33, at 222.

breathing difficulties during the two weeks following the strangulation.⁴⁶

In addition to the risk of death and serious physical injury, the mental trauma victims experience also speaks to the severity of the crime.⁴⁷ Medical literature and clinical experience suggest that strangulation causes behavioral changes and neurological disorders in survivors.⁴⁸ Victims of non-fatal strangulation regularly describe a sequence of four experiences that crossed their minds as they began to lose consciousness: denial about the situation, a realization of the severity of the circumstances, a primal urge to fight to survive, and resignation that they will die.⁴⁹ Due to the distress inflicted by an attack, some victims exhibit suicidal tendencies.⁵⁰ Strangulation is exceptionally inhumane because of the sheer terror inflicted on the victim during the episode.⁵¹

3. *Strangulation and Intimate Partner Violence*

Strangulation, a gender-specific crime, is a prevalent form of domestic abuse; sixty-eight percent of non-fatal strangulation victims have a history of strangulation attacks.⁵² One study found that eighty-seven percent of women strangled by their partners also received death threats from that abuser.⁵³ Of these threatened women, seventy percent believed they would die at the hands of their abuser while being strangled.⁵⁴ Research suggests that strangulation in

46. See Stapczynski, *supra* note 30 (observing clinical manifestation in strangulation victims). Other problems include laryngeal injuries, facial droop, and swelling of the soft tissues in the neck. *Id.* Victims may also have difficulty swallowing if the larynx or hyoid bone is harmed. See *Improve Strangulation Cases*, *supra* note 41, at 4.

47. See 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, 313 (2001) [hereinafter *Evaluation of Surviving Victim*] (identifying behavioral and emotional issues in surviving victims).

48. See *id.* (linking strangulation with long-term or permanent disorders). Victims may develop post-traumatic stress disorder, psychosis, or amnesia. See *id.*

49. See *id.* (detailing victim's "stream of consciousness" during strangulation). In the denial phase, victims—almost always women—feel like they were watching the strangulation as a bystander because they could not believe it was happening to them. See *id.* Realization that the victim is indeed being strangled sinks in quickly, and the victim transitions to primal instincts to save herself. See *id.* If powerless to resist, the victim will "resign [herself] to the fact that 'this is it—this is how [she will] die.'" See *id.*

50. See *id.* at 314 (suggesting need for medical professionals to take suicide precautions when assisting victims).

51. See STRANGULATION IN ALASKA, *supra* note 34, at 12 (describing terrifying sequence experienced during strangulation attack). The brain immediately recognizes that it will die without oxygen and automatically reacts to the stimulus, which usually results in increased violence from the strangler as the victim attempts to save herself. See *id.* Strangulation is especially depraved because of its frequent use for intimidation and control over the victim. See *id.*

52. See Lee Wilbur et al., *Survey Results of Women Who Had Been Strangled While in an Abusive Relationship*, 21 J. EMERGENCY MED. 297, 299 (2001) (presenting survey results of women in abusive relationships); see also Strack & Gwinn, *supra* note 2, at 33 (revealing women make up ninety-nine percent of strangulation victims).

53. See Wilbur et al., *supra* note 52, at 299, 302 (providing statistics about intimate partner violence).

54. See *id.* (exposing strangulation victim's proximity to death). Most abusers do not use strangulation as a tool to kill; rather, they use strangulation to demonstrate their ability to kill their partner. See Strack & Gwinn, *supra* note 2, at 33. Strangulation is one of the most lethal forms of domestic violence because it puts

abused women indicates a higher risk of serious ongoing violence.⁵⁵ Intimate partner violence is the most common cause of non-fatal injuries to women in the United States.⁵⁶ The reoccurrence of strangulation in abusive relationships is particularly dangerous because with each attack the victim becomes more susceptible to grave injuries and possible death.⁵⁷ States must not ignore the overwhelming truth that strangulation is a strong precursor of future homicide.⁵⁸

B. The States React

In response to new information exposing the dangers of strangulation and its prevalence in intimate partner violence, many states enacted legislation aimed at criminalizing the act itself.⁵⁹ This subsection will discuss the manner in which three of the thirty-eight states have addressed the strangulation problem legislatively.⁶⁰

Before the strangulation law passed in Minnesota, strangulation was generally charged as a misdemeanor, if charged at all.⁶¹ Recognizing that Minnesota's domestic violence laws were ill-equipped to address strangulation crimes, the Minnesota legislature passed the Domestic Assault by Strangulation statute in order to shield abused women previously unprotected by Minnesota law.⁶² The new statute only requires that the perpetrator intend to hamper

the victim on the brink of death. *See id.*

55. *See* Wilbur et al., *supra* note 52, at 302. In twenty-four percent of the cases studied, the abuser exhibited a history of strangling other victims in previous relationships. *See id.* at 299.

56. *See* Donald J. Smith Jr. et al., *Frequency and Relationship of Reported Symptomology in Victims of Intimate Partner Violence: The Effect of Multiple Strangulation Attacks*, 21 J. EMERGENCY MED. 323, 323 (2001) (reporting 1.5 million American women suffer from intimate partner violence).

57. *See id.* at 323-24 (evaluating effects of multiple strangulation attacks). By comparing single attack victims with multiple attack victims, the study showed the latter group suffered from more injuries to the neck and throat. *See id.* at 325-26. Repeated attacks also increase the likelihood a victim will develop neurological disorders, paralysis, and memory loss. *See id.* at 326; *see also* Nath, *supra* note 1, at 269 (describing when, in course of abusive relationship, strangulation occurs). Strangulation suggests that the violence is growing more deadly; it typically occurs later in an abusive relationship, "escalating in both frequency and severity." *See* Nath, *supra* note 1, at 269.

58. *See* Nath, *supra* note 1, at 254 (considering strangulation "predictive risk factor for future" murders).

59. *See Strangulation in Intimate Partner Violence Fact Sheet*, TRAINING INST. ON STRANGULATION PREVENTION, <https://www.strangulationtraininginstitute.com/wp-content/uploads/2015/07/Strangulation-Info-graphic-2016-v5.pdf> (last visited Jan. 5, 2017) [<https://perma.cc/7XZD-JSCY>] (showing thirty-eight states have legislation specifically designed to address crime of strangulation).

60. *See infra* Part II.B (exploring strangulation legislation in Minnesota, New York, and Texas).

61. *See* Nath, *supra* note 1, at 270 (noting strangulation charged as fifth-degree misdemeanor amounts to "slap on the wrist"). When research regarding the dangers of strangulation surfaced, the Minnesota legislature received petitions for stricter penalties that matched the crime. *See id.* at 272.

62. *See* MINN. STAT. § 609.2247 (2016) (laying out Minnesota strangulation statute); Nath, *supra* note 1, at 270-71 (explaining why domestic violence laws proved ineffective to combat strangulation). The specificity required by the then-existing laws posed problems because strangulation did not fit within the statutory confines. *See* Nath, *supra* note 1, at 270-71. For example, strangulation fails to meet the requirements of second-degree assault, which involves the use of a deadly weapon, because most abusers use their hands—

ordinary breathing.⁶³ Since the statute's enactment in 2005, WATCH, an organization devoted to making the justice system more responsive to domestic violence, conducted a pair of studies to test the impact of the law on strangulation cases.⁶⁴ The results demonstrated the law's positive impact on overall awareness, victim safety, and offender accountability.⁶⁵

New York, on the other hand, charges strangulation as a misdemeanor unless the attack results in loss of consciousness or physical injury.⁶⁶ As a result, New York has only convicted roughly nine percent of strangulation defendants with a felony charge.⁶⁷

The Texas strangulation statute provides a solid example of a comprehensive strangulation law because it clearly identifies the crime as a felony, includes "reckless" conduct, and the penalties increase for repeat offenders.⁶⁸ To rely less on the victim's testimony, a Texas assistant district attorney stressed that the state should educate prosecutors, investigators, and communities to dispel common misconceptions about strangulation.⁶⁹

which are not considered deadly weapons—to strangle their victims. *See id.* at 270. Similarly, strangulation does not constitute third-degree assault because juries often fail to find that strangulation injuries amounted to "substantial bodily harm," an element required for the crime. *See id.* at 270-71.

63. *See* § 609.2247(c). The strangulation statute differs from other domestic violence laws in that it abandons the physical harm requirement, which is helpful in strangulation cases where visible injuries rarely appear. *See* Nath, *supra* note 1, at 270.

64. *See* MARNA L. ANDERSON, WATCH, WATCH REPORT PART II: THE IMPACT OF MINNESOTA'S FELONY STRANGULATION LAW 18-19 (May 2009), http://www.stopvaw.org/uploads/strangulation_report_ii_-_resource.pdf [<http://perma.cc/ZKP8-73RB>] (compiling results of studies conducted between 2005 and 2008). While prosecutors only charged 341 stranglers in the first year after the law passed, prosecutions increased in 2006, 2007, and 2008 to 1105, 1097, and 1095, respectively. *See id.* at 19.

65. *See* WOLFGRAM, *supra* note 35, at 4 (discussing beneficial repercussions of new strangulation laws). The law succeeded in exposing to the public the lethality of strangulation, which encouraged the State to devote more resources to these cases. *See id.* at 3. This increased awareness led to better training, which contributed to an increase in convictions. *See id.* at 4-5. Many city attorneys and probation officers who were interviewed about the law said strangulation is an immediate "red flag," and they treat these cases "very seriously." *See id.* at 4. By making strangulation a felony, the law has increased strangulation convictions, which "promotes victim safety" and holds the offender accountable by decreasing the number of dismissals. *See id.* at 5.

66. *See* N.Y. PENAL LAW §§ 121.11-12 (McKinney 2010) (outlining New York's strangulation statute).

67. *See* Julie Besonen, *A New Crime, but Convictions Are Elusive*, N.Y. TIMES (Feb. 16, 2013), <http://www.nytimes.com/2013/02/17/nyregion/choking-someone-is-now-a-felony-but-convictions-are-elusive.html> (analyzing challenges posed by requiring element of physical harm). As a result of the difficulty in proving physical injury, the State failed to convict all of the second-degree felony charges brought against alleged stranglers. *See id.*

68. *See* TEX. PENAL CODE ANN. § 22.01(b)(2)(B) (West 2015); STRANGULATION IN ALASKA, *supra* note 34, at 11 (considering Texas's statute model for other states). Specifically defining the crime, covering relevant states of culpability, and providing methods of implementation, are necessary to create a comprehensive strangulation law. *See* STRANGULATION IN ALASKA, *supra* note 34, at 11.

69. Kelsey McKay, *A Closer Look at Strangulation Cases*, TEX. DISTRICT & COUNTY ATT'YS ASS'N, <http://www.tdcaa.com/journal/closer-look-strangulation-cases> (last visited Jan. 5, 2017) [<https://perma.cc/N2Y4-WMSS>] (reviewing steps to effectively prosecute strangulation cases). Assistant District Attorney, Kelsey McKay, contends that training criminal justice personnel helps reduce the burden on—and danger to—victims who testify against their abusers because prosecutors can rely on evidence compiled by investigators as opposed to exclusively depending on the victim as a witness. *See id.* The goal is to prevent "today's victim"

C. History of Strangulation Law in Massachusetts

Prior to the enactment of the strangulation law in Massachusetts, the State did not treat strangulation as a separate offense; rather, only the attempted murder statute referenced strangulation.⁷⁰ Under this statute, strangulation constituted a specific act, which would support a murder indictment.⁷¹ To convict someone with attempted murder by strangulation, however, the State must prove beyond a reasonable doubt that the defendant had the specific intent to murder the victim via the distinct act of strangling, but failed to do so.⁷² The Norfolk County District Attorney explained that because of the intent element, prosecutors found it difficult to succeed on that charge; thus the State instead charged defendants with assault and battery.⁷³ Yet, pursuant to Massachusetts law, courts may dismiss assault and battery charges if the defendant and the victim reach an agreement to set aside the charges.⁷⁴

In August 2014, the Massachusetts legislature passed AARDV, impelled in part by the high-profile murder of Jennifer Martel at the hands of her ex-boyfriend, Jared Remy.⁷⁵ Remy, a repeat domestic abuser, appeared in court for the charge of assault and battery on his girlfriend days before her murder.⁷⁶

from becoming a “character witness for the defense tomorrow” because many factors complicate a victim’s choice to participate in the legal process. *See id.*

70. *See* MASS. GEN. LAWS ch. 265, § 16 (2016). The statute provides, in relevant part: “Whoever attempts to commit murder by . . . strangling another person” is subject to “not more than twenty years [in state prison] or a fine” and not more than two and a half years imprisonment in jail. *See id.*

71. *See* Commonwealth v. Beattie, 560 N.E.2d 714, 717 (Mass. App. Ct. 1990) (holding strangulation satisfies act necessary for attempted murder).

72. *See* Commonwealth v. Dixon, 614 N.E.2d 1027, 1029 (Mass. App. Ct. 1993) (dissecting elements of attempted murder statute).

73. *See* Neal Simpson, *With New Law, Strangling Becomes Its Own Crime*, TAUNTON DAILY GAZETTE (Aug. 18, 2014), <http://www.tauntongazette.com/article/20140814/News/140817253> [<http://perma.cc/YPZ3-UJ22>] (considering penalty for assault and battery insufficient considering severity of strangulation crimes). Norfolk County District Attorney, Michael Morrisey, faced difficulty while prosecuting strangulation perpetrators with attempted murder; he recognized “[t]he intent is in someone else’s head[.] . . . How do you get that out?” *See id.*

74. *See* MASS. GEN. LAWS ch. 276 § 55 (2016) (allowing for accord and satisfaction agreements). These agreements pose a serious problem to victims as they “may not be in any position to resist” and may be coerced into them. *See To Crack Down on Abusers, Two Simple Changes to the Law*, BOS. GLOBE (Sept. 30, 2013), <https://www.bostonglobe.com/opinion/editorials/2013/09/30/two-simple-changes-law-could-help-fight-domestic-violence/hCxmloqZj7hcVM0ggxj990/story.html> (considering accord and satisfaction agreements “loopholes” in system).

75. An Act Relative to Domestic Violence, ch. 260, 2014 Mass. Acts 1042 (2014) (outlining new legislation addressing domestic violence); Shira Schoenberg, *House Speaker Robert DeLeo, AG Martha Coakley Unveil Anti-Domestic Violence Legislation*, MASSLIVE (Apr. 1, 2014), http://www.masslive.com/politics/index.ssf/2014/04/house_speaker_robert_deleo_ag.html [<http://perma.cc/S7Y4-97ST>] (explaining Martel’s murder inspired new law and criticizing judges for Remy’s previous lenient sentences). Then-Attorney General, Martha Coakley, explained that the Remy case demonstrated how the justice system neglected victims and failed to adequately punish serial abusers. *See* Schoenberg, *supra*.

76. *See* Colleen Quinn, *DA at Center of Remy Case Presses for Domestic Violence Prevention Bill*, PATRIOT LEDGER (Dec. 14, 2013), <http://www.patriotledger.com/x915452545/DA-at-center-of-Remy-case-presses-for-domestic-violence-prevention-bill> [<http://perma.cc/5PUZ-3CVC>] (focusing on criticism district

Moments before stabbing Martel to death, Remy pinned her to the ground with his hands on her throat and knocked her out with a punch to her face.⁷⁷ The brutal murder, combined with Remy's history of violence against women and subsequent lack of punishment, caused public unrest and convinced Massachusetts lawmakers that victims of domestic violence needed more protection.⁷⁸

The strangulation law, passed as a section of AARDV, prohibits the "intentional interference of the normal breathing or circulation of blood by applying substantial pressure on the throat or neck of another."⁷⁹ First-time offenders face up to five years in state prison and/or a fine of \$5,000.⁸⁰ Repeat offenders, defendants who cause serious bodily injury, and batterers who strangle pregnant women, face up to ten years in prison and/or a fine of \$10,000.⁸¹ Additionally, the first section of AARDV mandates biannual training for all district attorneys, assistant district attorneys, and law enforcement personnel in order to better assess whether strangulation has occurred in a particular instance.⁸²

While prosecutors and domestic violence advocates praise the new law, criminal defense pundits criticize the strangulation law as "redundant."⁸³ Other

attorney's office received for failing to handle case appropriately); *see also Timeline: Jared Remy's Troubled Past*, BOS. GLOBE, <http://www.bostonglobe.com/2014/03/22/jared-remy-timeline/RnIJqOgNMk6tryV11YjATN/story.html> (last visited Jan. 5, 2017) [<http://perma.cc/SG6Z-TRY7>] [hereinafter *Timeline*] (outlining Remy's dangerous history). *Timeline* reveals several allegations of verbal and physical violence against women, including assaulting and threatening to kill former girlfriends. *See Timeline, supra*. In multiple court appearances, Remy admitted sufficient facts for a finding of guilty; however, the judge repeatedly ordered a continuance without a finding. *See id.*

77. *See* Eric Moskowitz, *Jared Remy Pleads Guilty to Murder of Jennifer Martel*, BOS. GLOBE (May 27, 2014), <http://www.bostonglobe.com/metro/2014/05/27/jared-remy-due-woburn-courtroom-today-latest-hear-ing-jennifer-martel-murder-case/QRd1y01jtYjZFPtZcc19VN/story.html> (detailing Martel's last moments).

78. *See* Rachel B. Biscardi, *Winter 2015 Newsletter: Civil Provisions of the Act Relative to Domestic Violence*, BOS. BAR ASS'N, <http://www.bostonbar.org/sections-forums/sections/family-law/family-law-newsletter/2015/04/07/winter-2015-newsletter-civil-provisions-of-the-act-relative-to-domestic-violence> (last visited Jan. 5, 2017) [<https://perma.cc/9DYN-V54M>] (describing public disapproval and contents of AARDV).

79. MASS. GEN. LAWS ch. 265, § 15D(a) (2016) (laying out provisions of statute). The strangulation law also criminalized suffocation. *See id.*

80. *See id.* § 15D(b). Alternatively, base line offenders could face up to 2.5 years in the house of correction. *See id.*

81. *See* MASS. GEN. LAWS ch. 265, § 15D(c). Additionally, whoever strangles a person with a no contact or restraining order out faces the enhanced sentence under section 15D(c). *See id.*

82. *See* An Act Relative to Domestic Violence, ch. 260, §1(a), 2014 Mass. Acts 1042 (2014) (describing mandated training programs under AARDV).

83. *See* Dan Crowley, *Jared Remy Murder Inspires New Domestic Violence Laws—Stiffer Penalties, Times Off Work, But Arrests Will No Longer Be Part of Public Record*, DAILY HAMPSHIRE GAZETTE (Aug. 5, 2014), <http://www.gazettenet.com/home/13025228-95/stronger-domestic-violence-laws-await-governors-signat-urepublic-access-to-police-logs-diminished> [<http://perma.cc/9QYL-UAWZ>] (commenting new law "fills a very big gap" created by assault and battery charges); Schoenberg, *supra* note 75 (highlighting critics' argument existing laws suffice to handle strangulation cases). Elizabeth Lunt, President of the Massachusetts Association of Criminal Defense Lawyers, argues that the problem was not the absence of appropriate laws, but instead a lack of enforcement. *See* Schoenberg, *supra* note 75.

critics focus on the controversial provision that prevents the names of domestic violence arrestees from being published in police logs.⁸⁴ Furthermore, data compiled by each district attorney's office in Massachusetts between August 2014 and May 2015 reveals, on average, significantly more dismissals than convictions for offenders charged with strangulation.⁸⁵

Low conviction rates have a former prosecutor and sex crimes expert calling for Massachusetts to adopt a no-drop policy—which would preclude victims from dropping previously filed charges—in a vigorous attempt to hold abusers accountable for their crimes.⁸⁶ The former prosecutor criticized the State for allowing battered women to drop charges because research has shown this enables and instigates more abuse.⁸⁷ Scholars argue that adopting no-drop policies presents a check on prosecutorial discretion by narrowing a prosecutor's right to determine whether to prosecute.⁸⁸ Historically, prosecutors have enjoyed broad discretion with regard to the charges they choose to bring, and judges have been hesitant to check this discretion.⁸⁹

D. No-Drop Policies: Are They Harmful or Effective?

In the 1980s and 1990s, the battered women's movement inspired a change in the way district attorneys' offices responded to incidents of domestic violence.⁹⁰ Deviating from the standard procedure applied in other crimes,

84. See Crowley, *supra* note 83 (claiming this provision only serves to shield abusers, not protect victims).

85. See DOMESTIC VIOLENCE DATA, *supra* note 9 (showing disparity between strangulation convictions and dismissals across Massachusetts counties). For example, of the 159 people charged with strangulation in Bristol County, 18 were convicted and 53 were dismissed. See *id.*

86. See Papadopoulos, *supra* note 10 (quoting Murphy regarding Massachusetts's "disturbing policy of letting victims 'drop the charges'").

87. See Wendy Murphy, *Courts Fail Victims of Domestic Violence*, PATRIOT LEDGER (Aug. 22, 2013), <http://www.patriotledger.com/article/20130822/NEWS/308229701> [<http://perma.cc/JW6H-JY8F>] (calling for prosecutors to adopt such policies). Former prosecutor, Wendy Murphy, believes the state has not done enough to effectively combat strangulation and domestic violence. See *id.*

88. See *Criminal Legal Issues*, *supra* note 25, at 303 (noting decision to prosecute domestic abuse cases involving strangulation falls within purview of prosecutorial discretion). Whether a prosecutor chooses to prosecute depends on several factors, including: level of violence, resulting injury, availability of witness testimony, medical records, and suspect and victim's criminal records. See *id.* at 303-04; see also Peter Krug, *Prosecutorial Discretion and Its Limits*, 50 AM. J. COMP. L. 643, 660 (2002) (stating "prosecutors have not been compelled to represent the interests of the victim").

89. See *Wayte v. United States*, 470 U.S. 598, 608 (1985) (describing prosecutors' wide discretion and judicial hesitation to review prosecutors' decisions). Yet, even the broad discretionary power prosecutors wield is "not unfettered" and must adhere to the "constitutional constraints" of equal protection. See *id.* at 608 (citations omitted). Prosecutors choose which charges to bring, where to file the charges, and when to initiate the charges. See Leslie C. Griffin, *The Prudent Prosecutor*, 14 GEO. J. LEGAL ETHICS 259, 266 (2001). If there exists probable cause that an offender committed a crime, it is within a prosecutor's discretion to decide whether or not prosecute. See *id.*

90. See Deborah Epstein, *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1857 (2002) (criticizing domestic violence prosecution tactics). In the rare event that prosecutors brought domestic violence charges, they typically did not see the case through to trial, and

prosecutors allowed victims to control whether the State proceeded with the domestic violence charge, which not only interfered with prosecutors' discretion, but also contributed to victims' lack of faith in the legal system.⁹¹ In most nondomestic crimes involving violent injuries, the prosecutor does not "shift the burden" to the victim to decide whether to drop the charge.⁹² No-drop policies surfaced as a response to the high attrition rates of domestic violence crimes, stemming from a vicious cycle of "legal noncooperation" and "victim noncooperation."⁹³ The absence of effective assistance from prosecutors, judges, and court personnel discouraged victim participation, which made convicting abusers in domestic violence cases nearly impossible.⁹⁴ Moreover, prosecutors' discretionary choice not to prosecute reflected the existence of gender bias in the criminal justice system, which served to discredit female litigants.⁹⁵

frequently discouraged victims from taking legal action. *See id.*

91. *See* Angela Corsilles, Note, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?*, 63 *FORDHAM L. REV.* 853, 868 (1994) (pointing out differential treatment concerning domestic violence cases). Permitting victims to decide whether to take legal action makes the victim feel responsible for what happens to the abuser, and "invites batterers" to threaten victims into retracting the initiated charges. *See id.*

92. *See Gender and Justice Report*, *supra* note 14, at 567 (explaining stark difference in prosecutorial treatment of domestic violence cases in Georgia). The decision to let victims decide the future of the case departs from traditional criminal law practice and "stems from the gender-biased belief in society that domestic violence is more a private family matter than a crime." *Id.*

93. *See* Corsilles, *supra* note 91, at 865 (providing explanation for high rates of attrition). "Under a no-drop policy, prosecutors often are directed to: 1) pursue most cases notwithstanding the reluctance of the victim; 2) stress prosecutorial control of the case to the victim; and 3) facilitate victim cooperation with state efforts." *Id.* at 859; *see also* Thomas L. Hafemeister, *If All You Have Is a Hammer: Society's Ineffective Response to Intimate Partner Violence*, 60 *CATH. U. L. REV.* 919, 982-83 (2011) (noting impetus for no-drop policies stem from prosecutors' discretion and predisposition to avoid domestic violence cases).

94. *See* Corsilles, *supra* note 91, at 867-68 (asserting when senior prosecutors and judges downplay domestic violence, junior prosecutors avoid trying such cases). Prosecutors often refused to bring domestic violence charges, believing "victims [were] somehow to blame," tended to change their minds, or the cases were too difficult to win. *See id.* at 867. Some prosecutors feared pursuing domestic violence cases because, without victim participation, prosecutors could not meet their goals of achieving high conviction rates and preserving the meager resources available. *See id.* Furthermore, prosecutors directly deterred victims from pursuing legal action by "urging reconciliation" with their abusers, and also indirectly deterred victims by "downplaying the seriousness of the crimes." *See id.* at 868-69. Presently, lack of cooperation from prosecutors, in conjunction with an "increased risk of intimidation" to drop charges and remain in an abusive relationship, explains why few victims follow through with domestic violence charges against their abusers. *Id.* at 870. Moreover, children often complicate a victim's decision; a woman's connection to her children may dissuade her from prosecuting, in the interest of keeping her family together. *See id.* at 871; *see also* Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 *YALE J.L. & FEMINISM* 3, 6 (1999) [hereinafter *Rethinking Roles*] (calling attention to anti-victim bias of judges and court personnel). The lack of understanding and training regarding domestic violence among judges and clerks explains the "long-standing hostility" toward domestic violence victims. *See* Epstein, *supra*, at 6.

95. *See* Leigh Goodmark, *Telling Stories, Saving Lives: The Battered Mothers' Testimony Project, Women's Narratives, and Court Reform*, 37 *ARIZ. ST. L.J.* 709, 745-46 (2005) (reporting findings of gender bias task forces in several states). In Massachusetts, the Gender Bias Study Committee (GBSC) report revealed that female litigants must hurdle "unnecessary and unacceptable obstacles" as a result of their gender. *Id.* at

To rectify the nonresponsiveness by law enforcement and lack of victim cooperation, many states adopted no-drop policies, which preclude prosecutors from dropping charges if the victim requests, recants, or is otherwise unavailable.⁹⁶ Supporters of mandatory prosecution policies assert that no-drop policies ultimately protect the victim from her abuser, alleviating worries of vengeance and retaliation.⁹⁷ Across observing jurisdictions, no-drop prosecution models vary between “victim-coercive” or “hard” policies, and “non-coercive” or “soft” policies.⁹⁸ In hard no-drop jurisdictions the State prosecutes the perpetrator at all costs, and subpoenas the victim to testify with the looming threat of imprisonment should the victim fail to appear.⁹⁹ In soft no-drop jurisdictions, on the other hand, prosecutors employ an evidence-based strategy similar to murder trials, which allows the victim to determine her own participation in the legal process.¹⁰⁰

749. This bias places an undue burden on women because it undermines their credibility. *See id.* GBSC found that the justice system’s habit of discrediting domestic violence victims and blaming them for their own victimization both inhibits its ability to protect domestic violence victims, and hinders “victims’ willingness to seek relief.” *See id.* Asking victims “what they had done to deserve the abuse,” or why “they were bothering the courts with their problems,” exemplified how judges and prosecutors perpetuated this gender bias in the system. *See id.* at 749-50; Krug, *supra* note 88, at 661-62 (introducing factors prosecutors consider in deciding whether to prosecute). Prosecutors could dismiss a case if they believed the complainant acted on an “improper motive.” *See* Krug, *supra* note 88, at 662; *see also* Murphy, *supra* note 13, at 25-26 (explaining prosecutors’ motives to drop domestic violence cases and resulting harm to female credibility). Due to the level of difficulty involved in winning a domestic violence case, prosecutors are eager to drop such cases because of concern that a weak win/loss ratio would cost the prosecutor a re-election. *See* Murphy, *supra* note 13, at 26. Yet, this result-driven motivation implies that domestic violence does not qualify as criminal conduct that deserves the attention of prosecutors. *See id.*

96. *See* Erin L. Han, Note, *Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B.C. THIRD WORLD L.J. 159, 161 (2003) (defining no-drop policies). The prosecutor, not the victim, decides whether to prosecute a domestic abuser. *See* Kalyani Robbins, *No-Drop Prosecution of Domestic Violence: Just Good Policy, or Equal Protection Mandate?*, 52 STAN. L. REV. 205, 216 (1999) (stating victim loses option to drop charges once she files charges and case must proceed); Han, *supra*, at 181 (expressing lack of victim prerogative to drop charges once formally brought); *see also* Deborah Epstein et al., *Transforming Aggressive Prosecution Policies: Prioritizing Victims’ Long-Term Safety in the Prosecution of Domestic Violence Cases*, 11 AM. U. J. GENDER SOC. POL’Y & L. 465, 466 (2003) (explaining no-drop policies).

97. *See* Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1865 (1996) (providing rationale behind no-drop policies). Fearing that their partner will retaliate for pressing charges is among several reasons why female victims do not seek protection under the law. *See id.* at 1884-85. Because no-drop policies place the burden on the State as opposed to the victim as “plaintiff,” abusing partners are less likely to take revenge if they believe the State is controlling the process. *See id.* at 1865.

98. Han, *supra* note 96, at 181-82, 187-89 (differentiating between hard and noncoercive no-drop policies); *see also* Hanna, *supra* note 97, at 1863 (referring to “hard” and “soft” no-drop policies).

99. *See* Leigh Goodmark, *Law Is the Answer? Do We Know That For Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 17 (2004) (elaborating on drastic measures employed in hard no-drop jurisdictions). Hard no-drop jurisdictions require active victim participation to prepare for trial. *See id.*

100. *See* Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 561 (1999) (equating prosecutorial conduct in murder trials to no-drop prosecution with unavailable victim). In homicide trials where the victim’s death causes unavailability, prosecutors must rely on

Despite the success in lowering the amount of charges dropped and encouraging victim involvement, no-drop policies remain fairly controversial.¹⁰¹ Advocates favoring no-drop prosecution argue that such policies empower the victim, promote the victim's safety, advance societal goals, and have a proven record of effectiveness.¹⁰² While opponents acknowledge the impact of no-drop prosecution on dismissal rates, they criticize the policy because it "revictimizes" the victim, stripping her of her already diminished autonomy.¹⁰³ Critics also argue that adopting no-drop policies may legislatively interfere with the separation of powers by infringing on traditional prosecutorial discretion.¹⁰⁴ Yet, an effective no-drop policy ultimately leaves room for prosecutorial discretion.¹⁰⁵

III. ANALYSIS

Although the dangers of strangulation largely evaded the legal community until the mid-1990s, the efforts of anti-domestic violence advocates in conjunction with new medical studies, like the San Diego Study, emphasize

other evidence to prove the defendant's guilt. *See id.*; *see also* Han, *supra* note 96, at 188 (referencing various forms of evidence replacing unwilling victim's testimony). If a victim refuses to testify, prosecutors continue forward with the case by relying on any other evidence including, but not limited to, testimony from police and other witnesses, medical records, prior criminal history of the defendant, and excited utterances. *See* Han, *supra* note 96, at 188; *see also* Erin Leigh Claypoole, *Evidence-Based Prosecution: Prosecuting Domestic Violence Cases Without a Victim*, 39 PROSECUTOR 18, 19 (2005) ("defining evidence-based prosecution"). In the domestic violence context, evidence-based prosecution employs "independent corroborative evidence" to circumvent victim testimony to prove the elements of the crime. *See* Claypoole, *supra*, at 19. Importantly, when prosecuting under an evidence-based scheme, the prosecutor should stress that the case involves "The State vs. the Defendant" to distance the victim from the process further. *See id.*

101. *See* Corsilles, *supra* note 91, at 873-74 (comparing dismissal rates in jurisdictions with and without no-drop policies). Domestic violence dismissal rates in jurisdictions without no-drop policies ranged between 50% to 80% as opposed to 10% to 35% in no-drop jurisdictions. *See id.* at 873. Additionally, advocates associate no-drop policies with a decrease in domestic violence, citing a significant drop in domestic homicides in San Diego between 1985-1994 following the adoption of no-drop policies. *See* Goodmark, *supra* note 99, at 18; *see also* BARBARA E. SMITH ET AL., U.S. DEP'T OF JUSTICE, 98-WT-VX-0029, EVALUATION OF EFFORTS TO IMPLEMENT NO-DROP POLICIES: TWO CENTRAL VALUES IN CONFLICT, FINAL REPORT 78 (2001) [hereinafter NO-DROP EVALUATION], <https://www.ncjrs.gov/pdffiles1/nij/grants/187772.pdf> [<http://perma.cc/M2FP-HRUF>] (finding vast increase in conviction rates and trials).

102. *See* Han, *supra* note 96, at 181-85 (posing arguments in support of no-drop policies). *See generally* NO-DROP EVALUATION, *supra* note 101 (highlighting jurisdictions with effective no-drop policies in place).

103. *See* Hanna, *supra* note 97, at 1891 (suggesting no-drop policies endanger victims). Opponents of no-drop policies argue that the victim should ultimately have the final decision because mandatory prosecution policies "forc[e] the victim into a process over which she has no control," stripping her of what little autonomy she has left. *See id.* at 1865.

104. *See* Corsilles, *supra* note 91, at 875 (discussing potential problem with encroachment on prosecutorial discretion).

105. *See* Robbins, *supra* note 96, at 216 (highlighting prosecutors' retained discretion in no-drop policy implementation). The main goal of a no-drop policy is to protect women; therefore, a prosecutor must exercise discretion in pursuing a case if a victim's safety is in question. *See id.* It is crucial for prosecutors to "make clear the distinction between dropping domestic violence cases because they are less important and dropping a rare case to save the victim's life." *Id.* at 216-17.

that strangulation necessitates its own offense categorization.¹⁰⁶ Accordingly, the lethality and prevalence of strangulation in the context of domestic violence justify the heightened legal consequences that accompany strangulation legislation.¹⁰⁷ While the Massachusetts strangulation law represents a step in the right direction in addressing this fatal crime, the law's inability to yield substantial convictions evidences Massachusetts's failure to protect female victims, and speaks to the gender bias women face in the justice system.¹⁰⁸ To effectively enforce the strangulation law, Massachusetts should implement no-drop prosecution policies that would "stop the revolving door at the courthouse" by precluding prosecutors from dropping domestic violence charges at the victim's request or her reluctance to press onward.¹⁰⁹

A. *Strangulation Should Constitute a Standalone Crime*

Statistically speaking, strangulation is not only a lethal crime, but it is also a telling indicator both that the victim has been strangled before and that the victim is significantly more likely to perish at the hands of her abuser.¹¹⁰ Those victims fortunate enough to survive a strangulation attack, however, endure a host of severe physical—often invisible—injuries and psychological trauma.¹¹¹ In addition to the ruthlessness of the act, the increased rate and brutality of subsequent incidents articulates the need for legislative reform aimed at strictly punishing perpetrators for their reprehensible conduct.¹¹² Moreover, investigators and prosecutors lack the proper training to effectively identify, respond to, and prosecute instances of strangulation, which further bolsters the need for legislation that attaches elevated, felony-level consequences.¹¹³ Similarly, many judges and court personnel have little knowledge about

106. See *supra* notes 25-30 and accompanying text (discussing effect of advocacy and medical literature on raising strangulation awareness).

107. See *supra* Part II.A (explaining dangers of strangulation and regularity of use by abusive partners); *supra* text accompanying note 8 (outlining penalties for stranglers in new Massachusetts law).

108. See *supra* notes 9-10 and accompanying text (presenting data of low conviction rates after strangulation law passed).

109. Murphy, *supra* note 87 (arguing no-drop policies help address State's inaction); see *supra* note 93 and accompanying text (introducing no-drop policies remedying ineffective prosecution tactics).

110. See Nath, *supra* note 1, at 268-69 (citing study about previously strangled women later murdered by their abusers). One report revealed that 56.4% of women murdered by an abuser had been strangled before their death. See *id.*; see also *supra* notes 4, 55 and accompanying text (explaining interconnectedness between increased risk of homicide associated with strangulation and likelihood of reoccurrence).

111. See *supra* Part II.A.2 (listing numerous consequences for non-fatal victims).

112. See *Rethinking Roles*, *supra* note 94, at 7 (justifying reform based on repetitive nature of domestic violence attacks). The longer an abuser is allowed to maintain an abusive relationship before facing domestic violence charges, the more likely he is to commit a murder-suicide. See *id.*; *supra* note 57 and accompanying text (acknowledging victims' increased susceptibility to graver injuries with each subsequent strangling); see also *supra* note 51 and accompanying text (illustrating depraved cruelty and sheer terror linked to strangulation).

113. See *supra* Part II.A.1 (recognizing law enforcement professionals ill-equipped to handle strangulation incidents, evidenced by regular misidentification).

domestic violence, which perpetuates an “anti-victim bias” in the justice system.¹¹⁴ Legislating a stand-alone crime for strangulation removes the obstacles faced by prosecutors attempting to charge a strangler with assault and battery or attempted murder.¹¹⁵ Finally, criminalizing strangulation as a felony fosters public awareness about the gravity of the crime, and encourages adequate training of law enforcement and legal professionals, each of which helps to combat strangulation effectively.¹¹⁶

B. Massachusetts Should Incorporate a “Reckless” State of Mind in the Strangulation Law

In addition to the need for a coherent training plan to successfully execute the strangulation law, an examination of strangulation laws in various states suggests that the statutory language is also imperative for effective enforcement.¹¹⁷ In the strangulation law, the legislature correctly defines

114. See *Rethinking Roles*, *supra* note 94, at 6 (explaining judges and clerks do not understand social and psychological issues associated with domestic violence). Many judges and court personnel believe victims of domestic violence can leave their abusive relationship without considering several factors that make a victim’s decision to leave their abusive partner more difficult than a non-abusive relationship. See *id.* at 39. Law clerks may resent domestic violence cases, perceiving them as too much work, especially because victims will likely end up dropping the charges. See *id.* Clerks, therefore, have avoided such cases by failing to tell victims about protective orders, discouraging them from filing for such orders, or refusing to help victims fill out necessary forms. See *id.* at 39-40. When victims who have previously dropped charges appear in court again, some judges have gone as far as threatening the victim with sanctions for repeatedly calling upon the justice system. See *id.* at 40. Additionally, judges and court personnel often lack the education necessary to understand the psychological impact of domestic abuse, and such mental trauma often interferes with a victim’s ability to testify. See *id.* at 40-41. While “batterers can appear charming, respectful, and persuasive; by contrast, abused women can appear hysterical, vindictive, or prone to exaggeration.” Hanna, *supra* note 97, at 1878. As a result, judges view this behavior as proof that the victim lacked credibility. See *Rethinking Roles*, *supra* note 94, at 41. Accordingly, “judges, prosecutors, jurors, and defense attorneys often identify with the batterer, not with the victim.” Hanna, *supra* note 97, at 1878.

115. See *supra* notes 66-70 and accompanying text (elucidating struggle faced by prosecutors when trying to hold abusers accountable for strangulation).

116. See *supra* notes 60-65 and accompanying text (pointing to connection between awareness and victim safety). Exposing the crime’s lethality forced Minnesota to apportion more resources to train legal actors involved with strangulation cases. See WOLFGAM, *supra* note 35, at 4; see also STRANGULATION IN ALASKA, *supra* note 34, at 11 (recommending training plans for judges, prosecutors, police, and medical professionals to effectively implement strangulation laws); see also McKay, *supra* note 69 (explaining impact of properly educating police, jurors, and prosecutors on “successfully prosecuting strangulation cases”). By learning to identify strangulation injuries, asking the appropriate questions, properly collecting relevant evidence, and encouraging the victim to seek medical care, law enforcement agents can significantly increase convictions in strangulation cases. See *generally Improve Strangulation Cases*, *supra* note 41. Physical evidence is critical to prosecuting domestic violence cases because it forces juries to consider hard evidence as opposed to relying on misconceptions and bias. See Hanna, *supra* note 97, at 1901. Specifically, police officers should implement strategies to effectively gather evidence and document copious details including the description of the scene, statements from involved parties and witnesses, and any evidence indicating use of alcohol. See *id.* at 1901-02. Furthermore, employing more expert witnesses to testify at trial—such as medical experts specializing in strangulation injuries—increases the likelihood of success by vividly illustrating to both juries and judges the terror of strangulation. See Strack & Gwinn, *supra* note 2, at 69.

117. See STRANGULATION IN ALASKA, *supra* note 34, at 11 (analyzing lessons learned from

strangulation and identifies reasons for stricter punishment, while section one of AARDV mandates training.¹¹⁸ Despite the progressive step Massachusetts took in passing strangulation legislation, the strangulation law as currently constructed fails to include language incorporating a “reckless” state of mind.¹¹⁹

Instead, the strangulation law only criminalizes the conscious effort to cause harm.¹²⁰ In most strangulation cases, the attacker does not intend to cause the victim bodily harm; rather, strangulation is used to gain control over the victim, or as a means to assert the attacker’s power.¹²¹ By including recklessness as a culpable state of mind, the law would account for batterers who attack without the intention of causing harm.¹²² Separate and apart from the explicit intent requirement, the strangulation law is ineffective because it narrowly defines the injury necessary for relief as “serious bodily injury.”¹²³ This definition excludes a swath of severe injuries associated with strangulation that do not permanently or visibly maim the victim, such as internal structural damage or psychological trauma.¹²⁴ The statute only recognizes harm that causes a substantial risk of death, leaving a class of injured victims unprotected.¹²⁵

C. Massachusetts Should Adopt a Soft No-Drop Prosecution Policy to Effectively Enforce the Strangulation Law

Although the strangulation law has many positive aspects, it still needs improvement; for example, the statutory construction does not account for the Massachusetts district attorneys offices’ dismal conviction rates.¹²⁶ The

implementation of strangulation laws in various states). The wording of the statute must encompass the life-threatening nature associated with the loss of blood to the brain. *See id.* Each state should establish a training scheme in order to equip prosecutors, investigators, and trial experts with the tools and resources needed to appropriately handle strangulation cases. *See id.*

118. *See* MASS. GEN. LAWS ch. 265, § 15D (2016) (including effective provisions in new strangulation statute); An Act Relative to Domestic Violence, ch. 260, §1, 2014 Mass. Acts 1042 (2014) (outlining required training programs).

119. *See* MASS. GEN LAWS ch. 265, § 15D (addressing only strangulation committed with intent to cause bodily harm).

120. *See id.* (providing perpetrator must intend to cause harm).

121. *See* STRANGULATION IN ALASKA, *supra* note 34, at 11 (describing motivations for abusers to strangle victims).

122. *See id.* (arguing reckless conduct provision removes prosecutor’s burden to prove intent to cause harm).

123. *See* MASS. GEN LAWS ch. 265, § 15D(a) (defining serious bodily injury). Section 15(D)(a) defines serious bodily injury as “permanent disfigurement, loss or impairment of a bodily function, limb or organ or creates a substantial risk of death.” *Id.*

124. *See supra* Part II.A.2 (discussing injuries caused by strangulation).

125. *See id.* (identifying various injuries that would not satisfy injury element under current statute). Aside from the harmful physical injuries caused by the abuser, terror inflicted by strangulation causes severe mental trauma and psychological problems, including psychosis and post-traumatic stress disorder. *See Evaluation of Surviving Victim, supra* note 47, at 314.

126. *See supra* notes 10-11 and accompanying text (presenting data from various districts evidencing low conviction rates). Despite the increased number of charges initiated under the new law, dismissals largely

problem lies in the gender bias female victims face in the justice system, which creates a cycle of noncooperation from both victims and prosecutors.¹²⁷ Gender bias—manifested in prosecutorial attitudes towards victims—answers the question why prosecutors abandon their traditional discretion and grant the victim the power to determine the course of action.¹²⁸ To remedy this problem, Massachusetts should adopt a no-drop policy and follow the example of other states by writing it into law.¹²⁹ Specifically, Massachusetts should focus on a soft no-drop policy to assuage concerns about mandated victim participation.¹³⁰

Under a soft policy, prosecutors would encourage victim participation and rely primarily on an evidence-based strategy instead of forcing victim participation as outlined in the “victim-coercive” approach.¹³¹ Accordingly, Massachusetts must focus on satisfactorily instructing the proper personnel in gathering sufficient evidence to prosecute stranglers as mandated in the strangulation law.¹³² Not only will such a policy increase convictions, but it will also aid in eliminating the underlying female bias by compelling prosecutors to follow through with domestic violence charges, despite the inclination to drop them based on deeply rooted stereotypes.¹³³

Critics of no-drop policies raise legitimate apprehensions about victim safety, autonomy, and empowerment; however, a soft no-drop policy addresses concerns of autonomy by affording the victim partial control over her affairs, and shifts the focus from the victim to the prosecutor.¹³⁴ The success of no-

outnumber the convictions. See DA DOMESTIC VIOLENCE DATA, *supra* note 9 (noting discrepancy between dismissals and convictions).

127. See *supra* notes 86-90 and accompanying text (explaining gender bias in justice system and noncooperation on parts of prosecutors and victims).

128. See *supra* notes 88-93 and accompanying text (examining departure from prosecutorial tradition and biased treatment by prosecutors).

129. See Corsilles, *supra* note 91, at 863 (describing Wisconsin, Florida, and Minnesota’s exemplary legislated no-drop policies). Wisconsin, for example, has a written policy that provides “that a prosecutor’s decision not to prosecute . . . should not be based . . . [u]pon the victim’s consent to any subsequent prosecution of the other person.” *Id.*

130. See *supra* notes 98-100 and accompanying text (elaborating on differences between hard and soft no-drop policies).

131. See *supra* note 100 and accompanying text (providing specific evidence that assists in cases with unwilling victims).

132. See *supra* note 100 and accompanying text (reiterating impact of evidence in cases where victim refuses to testify); *supra* note 38 (identifying organizations devoted to training personnel tasked with investigating strangulation).

133. See *supra* notes 93-94 and accompanying text (providing reasons explaining prosecutor hesitation to commit to domestic violence charges); see also Corsilles, *supra* note 91, at 878 (contending no-drop policies “counteract historical and organizational biases towards inaction”).

134. See NO-DROP EVALUATION, *supra* note 101, at 79 (including victim’s point-of-view); *supra* note 100 and accompanying text (demonstrating how soft no-drop policies satisfy concerns related to mandatory prosecution). After evaluating several jurisdictions with no-drop policies, the American Bar Association Criminal Justice Section concluded that victims may see no-drop policies as advantageous—even those victims who wanted to avoid seeking assistance through the justice system altogether. See NO-DROP EVALUATION, *supra* note 101, at 79.

drop policies also counters critics' empowerment concerns because victims become more emboldened to pursue legal action, which in turn reduces violence toward the victim.¹³⁵ While the success of no-drop policies is dependent on prosecutors and judges' cooperation, the increased conviction rates and trials in jurisdictions that observe no-drop policies demonstrate the need to implement a similar policy in Massachusetts.¹³⁶

Opponents of no-drop policies also argue that mandatory prosecution interferes with the separation of powers by deciding on behalf of the prosecutor whether to prosecute.¹³⁷ While no-drop policies indeed push for vigorous prosecution, prosecutors ultimately retain the decision to press forward based on the strength of evidentiary support.¹³⁸ No-drop policies ensure that prosecutors exercise their discretion appropriately, and demonstrate to victims that they can find protection under the law.¹³⁹

IV. CONCLUSION

Domestic violence is both a social and legal problem that the criminal justice system has failed to handle appropriately, which has led to a mutual distrust between victims and justice system personnel. By harboring gender biases, prosecutors and judges alike propagate the common belief among victims that no one can help them, which in turn dissuades victims from seeking legal action against their abusers. Strangulation, the most lethal form of domestic violence, is no exception. As demonstrated by the new strangulation law in Massachusetts and the corresponding conviction rates, legislation alone does

135. See Goodmark, *supra* note 99, at 18 (discussing how legal action under no-drop policy benefits victim). No-drop advocates contend that such policies help initially reluctant victims cooperate, which ultimately "result[s] in feelings of empowerment for [the victim] that can alter the balance of power in the battering relationship and lower rates of future violence." See *id.* (citation omitted). Furthermore, no-drop policies are associated with lower rates of violence and recidivism. See *id.*

136. See NO-DROP EVALUATION, *supra* note 101, at 78-79 (listing lessons learned during study evaluating positive results of no-drop policies). As demonstrated in San Diego, judges must be willing to admit evidence such as excited utterances or prior bad acts for prosecutors to succeed in cases without victim cooperation. See *id.*

137. See Corsilles, *supra* note 91, at 875 (pointing to potential balance of powers problem).

138. See Hanna, *supra* note 103, at 1867 (noting prosecutors retain ultimate decision in whether to prosecute cases based on evidence). The mandatory aspect of no-drop policies ensures enough evidence points beyond the presumption of innocence, but does not strip prosecutors of the decision to dismiss a case if evidentiary support is lacking. See *id.* No-drop policies compel prosecutors to make charging decisions based on the evidence as opposed to whether the victim wants to proceed. See *id.* at 1867-88; Robbins, *supra* note 96, at 231 (recognizing prosecutor's right to determine which cases warrant further pursuit). Prosecutors must rely on the "severity and likelihood of conviction" to avoid incorrectly dismissing the case. See Robbins, *supra* note 96, at 231; see also NO-DROP EVALUATION, *supra* note 101, at 78 (considering prosecutors "rational decision-makers"). In practice, prosecutors in no-drop jurisdictions do not pursue cases if they lack sufficient evidence to support their position. See NO-DROP EVALUATION, *supra* note 101, at 78.

139. See NO-DROP EVALUATION, *supra* note 101, at 78 (reiterating ways how no-drop policies provide victims with safe harbors in legal system); see also Corsilles, *supra* note 91, at 879 (arguing no-drop policies express "social commitment" to address domestic violence).

not go far enough in addressing the crime, or the bias women face in the justice system.

First and foremost, Massachusetts and other states must focus on providing comprehensive training to police officers, investigators, judges, prosecutors, and other personnel involved in the prosecution of strangulation and other domestic violence cases. Educating this group not only helps to fight unsubstantiated biases, but also promotes effective collection and documentation of evidence about a strangulation incident, both of which improve the likelihood of conviction. Yet training programs still do not do enough to rectify the disturbing policies prosecutors practice in allowing the victim to determine the course of legal action. By electing to permit the victim to decide whether to prosecute a case, prosecutors abandon their traditional discretion and give the impression that they value prosecuting domestic violence less than other crimes. No-drop policies not only force the discretion back into the hands of the prosecutor, but they also have a proven track record of effectiveness. In order to hold prosecutors accountable to victims and abusers accountable to the law, Massachusetts should implement no-drop prosecution policies.

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