
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 40 **Hearing Date:** April 18, 2017
Author: Roth
Version: December 5, 2016
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Domestic Violence*

HISTORY

Source: Riverside County District Attorney's Office

Prior Legislation: SB 870 (Roth) Not heard in Assembly Public Safety (2016)
SB 430 (Kehoe) Chapter 129, Stats. 2011

Support: Association of Deputy District Attorneys; Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California District Attorneys Association; California Narcotic Officers Association; California State Sheriff's Association; Crime Victims United; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Riverside Sheriffs Association; San Diego County District Attorney

Opposition: California Attorneys for Criminal Justice

PURPOSE

The purpose of this bill is to reframe existing strangulation provisions in the felony domestic violence statute as a stand-alone subdivision, with the same penalties as those in current law.

Existing law provides that any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, as defined, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony. (Penal Code § 273.5(a).)

Existing law provides that inflicting corporal injury resulting in a traumatic condition is punishable 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 \$6,000 or by both that fine and imprisonment. (Penal Code § 273.5(a).)

Existing law provides that 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. (Penal Code § 273.5(d).)

This bill removes the references to strangulation and suffocation in the above definition of “traumatic condition.”

This bill creates a separate subdivision and provide that any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described above, “where the corporal injury resulting in a traumatic condition is caused in whole or in part by strangulation or suffocation, 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 \$6,000, or by both that fine and imprisonment.

This bill provides that “for purposes of this paragraph, ‘strangulation’ and ‘suffocation’ include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.”

COMMENTS

1. Need for This Bill

According to the author:

In 2011, the legislature enacted SB 430 (Kehoe), the Diana Gonzalez Strangulation Prevention Act. This piece of legislation specifically recognized strangulation as a form of traumatic condition for the purposes of domestic violence and added California to the 38 states with laws prohibiting strangulation.

Strangulation is one of the most important risk factors in intimate partner violence due to its high correlation with attempted or completed homicide. Highlighting a unique danger of this type of domestic violence, non-fatal strangulation frequently leaves little in the way of observable injury, especially when compared with other severe forms of violence such as striking with a fist or object. Up to 50% of non-fatal strangulation cases leave no visible external injury. Identifying strangulation therefore becomes eminently more important as it takes as little as 8 pounds of pressure to cause loss of consciousness, permanent brain damage, or death.

Strangulation as a distinct form of domestic violence is a particularly cruel act characterized by lasting physical and mental effects for victims along with a sharp increase in the risk of homicide. Without recognition in code that strangulation violence is different from other types of domestic violence, it is difficult for researchers to learn more about strangulation, and for courts and probation departments to employ best treatment practices for offenders and to provide the necessary protection for victims.

By distinguishing strangulation in the existing law, SB 40 separates out this type of offender from other less lethal forms of domestic violence, thereby allowing for easier identification of offenders who strangle their victims. This would be accomplished without creating new a new offense or increasing state prison population.

Identifying this form of violence provides an additional tool to those operating in the criminal justice system to protect victims as well as those studying domestic violence. This bill allows for a strangulation conviction to become an evidence based data point for tracking strangulation and better assess its role in domestic violence and homicide. Law enforcement can use this information in order to evaluate the potential threat of the offender as they respond to a scene. Prosecutors and the courts can use this information to craft more appropriate sentences. Probation departments can use this identification to craft better programs for abusers. Victims benefit from the recognition that non-fatal strangulation is the most severe form of domestic violence short of homicide.

SB 40 does not create a new offense, nor is it a criminal enhancement. Finally the measure does not increase the penalty for domestic violence, and will not increase the state prison population. SB 40 will instead provide valuable data on ways we can avoid or prevent these horrible attacks.

2. What This Bill Would Do

SB 430 (Kehoe) was enacted into law in 2011 and specified that, for purposes of domestic violence, “traumatic condition” included an injury as a result of strangulation or suffocation, and that in this context “strangulation” and “suffocation” included impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.

This bill would amend these provisions by reframing the strangulation references as a stand-alone subdivision of the felony domestic violence statute. As explained above, a “traumatic condition,” which is a required element for felony domestic violence, already expressly includes strangulation. This bill creates a subdivision in the felony domestic violence statute expressly for instances where the injury resulting in a traumatic condition is caused in whole or in part by strangulation or suffocation. The penalty would be the same as it is under current law.

3. Background: Strangulation and Intimate Partner Violence

Research demonstrates the importance of understanding strangulation in the context of intimate partner violence. According to the CDC’s National Intimate Partner and Sexual Violence Survey¹, 9.7% of women and 1.1% of men responded that they had been choked or suffocated by an intimate partner during their lifetime. A 2008 study² found that strangulation is a significant predictor for future lethal violence. A 2014 law review article summarized the research surrounding strangulation in intimate partner relationships:

Both legal and medical studies have begun to emphasize the importance of strangulation in the context of responding to domestic violence. . . .[I]t is commonly alleged by women who have experienced domestic violence. . . .[and] is a relatively common cause of domestic violence-related homicide. . . .

¹ Black et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. https://www.cdc.gov/violenceprevention/pdf/NISVS_Report2010-a.pdf - p. 44

² Glass et al., *Non-fatal Strangulation is An Important Risk Factor for Homicide of Women*. (2008) 35 *Journal of Emergency Medicine* 329.

Strangulation is a significant concern for at least two reasons. First, it frequently affects the long-term health of the victim. . . .

Second, the risk to the victim of more serious injury or death is increased dramatically once the victim has experienced strangulation at the hands of their intimate partner or former intimate partner. Significant research about the prevalence of, and risks associated with, strangulation has taken place in the United States. In 2000, Block et al published the results of *The Chicago Women's Health Risk Study*. The *Chicago Study* conducted domestic violence screening for 2616 women who attended a hospital or health service for treatment in the Chicago area in 1995-96. The study found that having been choked in a previous domestic violence incident was a risk factor for later being seriously injured or killed. Strack and Gwinn state that there are a number of findings about non-fatal strangulation incidents that are now common knowledge. These include that there are often no visible injuries as a result of strangulation and yet there are often internal injuries; that the strangulation can have long-term physical and psychological impacts; that strangulation is a gendered crime (perpetrators are almost always men and victims are almost always women); and that victims of strangulation are much more likely eventually to become homicide victims.

In 2001, Stack, McClane and Hawley published a pivotal study in the United States. . . . Their study reviewed 300 cases of domestic violence involving non-fatal strangulation. The cases had all been submitted to the San Diego Attorney's office for prosecution. Almost all of the victims were women, and almost all of the perpetrators were their victim's current or former male intimate partner. In most cases, the perpetrator had used his hands to strangle the victim. In most cases (89 per cent), there was a prior history of domestic violence. . . .³

4. Argument in Support

The Los Angeles County Professional Peace Officers Association supports this bill stating:

Research has shown that a survivor of strangulation is eight times more likely to be the victim of a homicide, with nearly 1 out of 4 domestic violence cases involving strangulation. Strangulation violence is one of the most lethal forms of violence in domestic violence cases but despite this, current law does not separate acts of domestic violence that involve strangulation from those that do not, making it difficult for law enforcement to identify and prosecute these cases. SB 40 ensures the law makes this important distinction, ensuring law enforcement has the legal tools it needs to effectively prosecute and prevent domestic violence and homicide.

-- END --

³ Douglas and Fitzgerald, *Strangulation, Domestic Violence and the Legal Response* (2014) 36 Sydney L. Rev. 231.