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June 7, 2010

Honorable Peter Vallone, Jr.
Chair, Public Safety Committee
New York City Council
250 Broadway
New York, New York 10007

FOR THE RECORD

Dear Chairman Vallone:

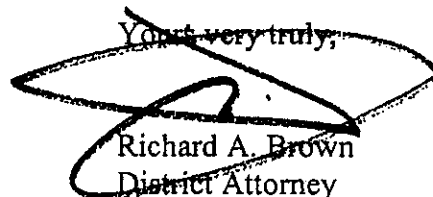
I write to express my strong support for the City Council resolution in favor of pending state legislation (S6987a/ A10161a) relating to strangulation offenses. This important legislation, introduced by the chairs of the Senate and Assembly Codes Committees, closes a significant loophole in existing law and provides increased protection to domestic violence victims. The proposal would create a new Article 121 of the Penal Law adding the Class A misdemeanor crime of Criminal Obstruction of Breathing or Blood Circulation and the Class D and C felonies of first and second degree Strangulation.

Domestic abusers often use strangulation to terrorize their victims as well as to render them unconscious so that it is easier to sexually assault or commit other crimes against them. Cutting off someone's air supply by compressing their neck or blocking their nose or mouth is a serious, intentional and violent act that should be treated seriously under the penal law. The difference between strangling someone into unconsciousness and causing serious injury or death can be only a matter of a few pounds of pressure applied for a few minutes. Yet under current law, unless strangulation is accompanied by evidence of physical injury, which it often is not, it is not considered assault and no other misdemeanor covers such conduct. Thus, it is frequently charged merely as harassment, a mere violation that does not reflect the seriousness of the conduct. Moreover, a police officer is not authorized to make a warrantless arrest for harassment unless the offense occurred in the officer's presence.

The failure of our current law to provide adequate penalties for suffocation and strangulation emboldens batterers to use this type of violence against their victims and makes it more difficult to intervene early in an abusive situation in order to prevent repeated and escalating conduct that may result in serious injury or death. The proposed legislation eliminates this dangerous deficiency in the law and would follow the lead of almost half the states in the country which have already adopted legislation specifically addressing strangulation.

For these reasons, I join my colleagues in law enforcement throughout the State in supporting the proposed strangulation legislation and urge you to adopt your proposed resolution.

Yours very truly,



Richard A. Brown
District Attorney



OFFICE OF THE DISTRICT ATTORNEY
RICHMOND COUNTY

DANIEL M. DONOVAN, JR.
DISTRICT ATTORNEY

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FOR THE RECORD

June 7, 2010

Hon Peter F. Vallone, Jr.
Chairman, Public Safety Committee
New York City Council
250 Broadway
New York, NY 10007

Re: Resolution in support of state legislation (S.6987-A/A.10161-A)

Dear Chairman Vallone:

As the District Attorney of Staten Island, I am particularly cognizant of domestic violence issues. In fact, I authored the Domestic Violence Act of 2010, portions of which are pending before the state legislature. With this in mind, I write in connection with the proposed resolution asking the State Legislature to enact a bill which would effectively increase the penalties for strangulation crimes.

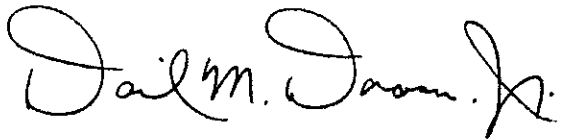
Over the years, we have seen many domestic assaults in which attackers do not punch or kick their partners but, instead, wrap their hands around their partners' neck in an attempt to choke their victims. This type of conduct often fails to result in physical injury as defined in the Penal Law, an element of the misdemeanor crime of third degree assault, and thus, law enforcement can only charge defendants who choke their partners with the mere violation of harassment.

Unfortunately, defendants who merely commit violations cannot be arrested and removed from the premises in which they may have committed the attack unless the offense was committed in the officer's presence. This is almost never the case. And, perhaps more importantly, the intentional and violent nature of the choking attack cannot thereby be punished in a fashion commensurate with its seriousness. Indeed, just recently, my office faced such a circumstance and was unable to bring the assault charge that the defendant's conduct plainly warranted.

The proposed strangulation bill will fill the charging gap. It will enable District Attorneys to charge defendants with the Class A misdemeanor of criminal obstruction of breathing or blood circulation when a batterer's attack involves an attempt to choke their partners, and, if the victim loses consciousness or suffers serious physical injury, it will enable the prosecutor to charge either the Class D or C felonies of second or first degree strangulation. Put simply, choking will be treated as the violent intentional criminal act that it is.

For this reason, I write to support the Council's efforts to urge the Legislature to enact S6987-A and A10161A, sponsored in their respective houses by Senator Eric Schneiderman and Assemblyman Joe Lentol. Their bills would create the crimes of criminal obstruction of breathing or blood circulation and first and second degree strangulation and provide prosecutors with a new, important tool in the battle against partner abuse.

Sincerely yours,

A handwritten signature in black ink that reads "Daniel M. Donovan, Jr." with a stylized flourish at the end.

Daniel M. Donovan, Jr.
District Attorney, Richmond County

DMD:wjs

Ali Rosa-Salas

Public Safety Committee Hearing

June 8th, 2010

Testimony for Strangulation Prevention Act (S6987A)

Good Morning, my name is Ali Rosa-Salas. I am speaking on behalf of Executive Director Sonia Ossorio of the National Organization for Women of New York City in support of the Strangulation Prevention Act S6987A . Currently in New York, choking is not considered a serious crime unless the victim shows signs of physical injury. NOW-NYC believes that it is crucial for New York Legislatures to pass the Strangulation Prevention Act because it makes choking a crime. As the United States' largest women's rights organization, the National Organization for Women has historically been on the front lines, advocating for the end of violence against women as well as gender equality in our criminal justice system. The Strangulation Prevention Act will close a major loophole in our law by ensuring that abusers will be held accountable for their violence before their brutality results in the death of those they terrorize.

Choking is a terrifying form of abuse that often has more serious consequences than punching, hitting, and other kinds of physical violence; With 11 pounds of pressure placed on a neck for only 10 seconds, one can go completely unconscious. After a victim is choked, he or she can die hours or even days later due to damage to the neck and/or lack of oxygen to the brain. In the United States, one out of every ten deaths is due to strangulation. Choking is a crime that is all too common in domestic violence and sexual

abuse cases; it is important to note that it is an assault that often leaves very few or no visible signs at all. About half of the states in our country have enacted legislation that regards choking as a criminal offense. However in New York, the only charge police can file when a batterer chokes their victim is for harassment, which is not even a misdemeanor offense. Also, the bar for evidence of physical injury is set far too high to make an arrest even when choking evidently occurred. Because of this loophole in our state's law, batterers often use strangulation as a means to terrorize their victims. Many of these perpetrators become repeat offenders because their violence continues to go unpenalized.

It is critical that New York State have a law that criminalizes intentional strangulation that cuts off a person's airflow, whether or not physical evidence exists. In most strangulation cases, police cannot arrest an abuser if the victim does not show any proof of physical injury. NOW supports State Senator Eric Schneiderman's Strangulation Prevention Act because it will deem choking someone as a violent felony, whether or not a victim becomes unconscious or shows signs of physical injury. Senator Schneiderman's Strangulation Prevention Act will tackle a significant injustice in New York State legislation that disproportionately impacts women who are victims of domestic and sexual violence. If passed, this bill will make certain that when a victim who has been choked calls 911, their attacker will be held to consequences fitting of the horrendous crime committed upon them.



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NYS Domestic and Sexual Violence Hotlines: English: 800-942-6906 • Spanish: 800-942-6908 • TTY: 800-818-0656

Testimony of the New York State Coalition Against Domestic Violence

provided by

Elizabeth Bliss, Systems & Policy Specialist

to

The New York City Council - Committee on Public Safety

June 8, 2010

Good morning, and thank you for the opportunity to be here today to discuss the importance of strangulation legislation. I am Elizabeth Bliss, Systems & Policy Specialist for the New York State Coalition Against Domestic Violence (NYSCADV). NYSCADV is a membership organization comprised of over 140 domestic violence organizations located throughout the State of New York. NYSCADV is committed to ending domestic violence through education, advocacy and social change. Founded in 1978, NYSCADV is a driving force in the development of hundreds of programs throughout New York that provide services for victims who are abused and their children. For more information: www.nyscadv.org.

Domestic violence is a pattern of coercive tactics used to establish and maintain power and control over an intimate partner. These tactics range from non-physical acts such as isolation and economic abuse to physical acts such as assault and homicide. Some of these tactics are criminal acts; some of these tactics are non-criminal acts. While the New York State legislature has made a great effort protect victims of domestic violence, a missing piece is legislation that addresses the unique nature of strangulation.

For years, advocates for victims of domestic violence have stressed to police and prosecutors how dangerous any act of strangulation is. Strangulation does not always result in death, however research shows that ten percent of the violent deaths in the United States are attributable to strangulation¹. Injury can occur, but not be visible, and the victim may not realize the impact of that injury until hours or days later. Studies show that strangulation is a significant risk factor for attempted or completed homicide. For example, a study of women killed by a male partner in Chicago concluded that 53% of the victims had experienced strangulation in the preceding year and 18% of the victims had been killed by strangulation.² The act of strangulation is intimate and terrifying. Domestic violence offenders use strangulation to control their victim, to render their victim helpless. It ends a conversation. It gets the offender what he or she wants - power and control.

¹ Gael B. Strack, JD, George E. McClane, MD, Dean Hawley, MD. A Review Of 300 Attempted Strangulation Cases, Part I: Criminal Legal Issues: The Journal of Emergency Medicine, Vol. 21, No. 3, pp. 303-309 (2001).

² Block, C. R., Devitt, C. O., Fonda, D., Fugate, M., Martin, C., McFarlane, J., et al. (2000). *The Chicago Women's Health Study: Risk of serious injury or death in intimate violence: A collaborative research project*. Washington, DC: U.S. Department of Justice, National Institute of Justice.

Imagine that during an interaction with your intimate partner, your partner uses one hand against your throat to push you against a wall, applying pressure to the carotid arteries, which are the major vessels that transport oxygenated blood from the heart and lungs to the brain. This pressure causes severe pain, and could lead to unconsciousness, followed by traumatic brain injury or brain death. Let's assume that you do not lose consciousness, but you certainly do experience pain and fear. Your intimate partner releases you and walks away. You call the police, who respond. You tell them what happened and they write a domestic incident report for harassment in the second degree. Your intimate partner who just strangled you does not get arrested because the act you described is "just" a violation. The police officers concluded this because your description meets the standards of harassment in the second degree, not assault in the third degree. The threshold of assault is very high. Assault in the third degree requires physical injury, which is not always readily apparent in strangulation cases. The Penal Law §10.00(9) defines physical injury as "impairment of physical condition or substantial pain." This definition can vary widely because of officer interpretation and discretion placing a heavy burden on the victim to describe their physical injury. If the victim can't clearly articulate impairment of physical condition or substantial pain, the offender may not be charged with assault. Right now, you, the victim, can only say, "he choked me." The result is that many victims are left with the offender who does not get arrested or prosecuted.

We commend Senator Schneiderman and Assemblyman Lentol for drafting the "Strangulation and Related Offenses" legislation to hold offenders accountable for acts of strangulation. We thank the New York City Council resolution sponsors Julissa Ferreras, Peter Vallone and Christine Quinn for supporting this legislation. NYSCADV supports this legislation because it addresses the unique and intricate nature of strangulation, creating misdemeanor and felony levels for this crime. The titling of the misdemeanor level of the crime "criminal obstruction of breathing and blood circulation" is descriptive of the act and is more understandable to people less familiar with the consequences of strangulation. With the passage of this legislation, gone are the days of the expectation of unconsciousness or bruising and red marks around the neck. Police, prosecutors, victims and - most importantly - offenders, will know that obstruction of breathing and blood circulation is an act of violence for which a person must be held accountable. Strangulation laws will allow victims to feel heard and protected when police respond. Strangulation laws inform the public of the uniqueness and dangerousness of the act. Strangulation laws protect the citizens of New York. Because of this, we ask that the leaders of New York State make strangulation a crime.

STATEMENT OF
CYRUS R. VANCE, JR.
NEW YORK COUNTY DISTRICT ATTORNEY
BEFORE THE COMMITTEE ON PUBLIC SAFETY

JUNE 8, 2010

Good afternoon Chairman Vallone, and members of the Council. I am Executive Assistant District Attorney Leroy Frazer, Jr. and I am presenting testimony on behalf of New York County District Attorney Cyrus R. Vance, Jr. Thank you for this opportunity to discuss why your resolution supporting S.6987-A and A10161-A is so important to victims of domestic violence.

When prosecuting strangulation cases, assistant district attorneys are faced with unnecessary barriers in protecting victims and punishing perpetrators of domestic violence crimes. Under the present penal law statutes, we often have to charge misdemeanor assault resulting in low bail being set and thereby allowing the assailant an opportunity to escalate his actions to cause further injury. S.6987-A and A10161-A allow for felony charges commensurate with the criminal act. These bills, which Council Members Ferreras, Vallone, and Speaker Quinn are proposing this resolution in support of, will provide the appropriate tools to hold abusers accountable for their crimes. The act of strangulation may last a short time, leave little or no visible damage, but have profound effects on the victim.

Let me provide some background that will highlight why we need these laws.

- Light pressure on the carotid arteries and veins in the neck for as little as 10 seconds can cause unconsciousness.
- Strangulation can have substantial physical (e.g., dizziness, nausea, sore throat, voice changes, throat and neck injuries, breathing problems, swallowing problems, ringing in the ears, vision change), neurological (e.g., eyelid droop, facial droop, left or right side weakness, loss of sensation, loss of memory, paralysis) and psychological (e.g., PTSD, depression, suicidal ideation, insomnia) health effects.
- The more often a person is the victim of strangulation, the higher the number of adverse health conditions they will suffer.
- Strangulation attacks can have long-term impact on victims' abilities to concentrate on work and to multi-task.
- If the trachea is closed off, brain death can occur in 4-5 minutes.

Women are exposed to these terrifying realities more often than we might imagine. Studies indicate that as many as 68% of female victims of domestic violence experienced at least one strangulation assault, and up to 47% of such women report their partner tried to strangle them in the past year.

Moreover, strangulation is seen as a key sign of escalating domestic violence. Take, for instance, the example of a recent Chicago hospital study where 68 female participants revealed that their partner had tried to strangle them in the preceding year. Of those women, 65% reported that they experienced a severe incident in the period between the initial and follow up interview. "Severe incident" meant that the incident resulted in permanent injury, internal injury, head injury, broken bones; threat or attack with a weapon; being completely "beaten up," strangled or burned. A felony strangulation statute would send a strong message to the abuser and hopefully reduce the number of "severe incidents" in the future.

There is no question that strangulation is a crime that is seen far too often in prosecutors' offices. Yet, because there is no penal law crime of strangulation in New York State, prosecutors are forced to charge these crimes as other, sometimes ill-fitted penal laws crimes. For instance, if strangulation is charged under the assault statutes, the language of the statute requires the prosecutor prove "serious physical injury" or assault "with intent to cause physical injury...by means of a deadly weapon or dangerous instrument." In the first example, strangulation often does not leave tell-tale physical injuries. Often times the act of strangulation may leave the victim with a slight bruising. Such an injury would not satisfy the penal law definition of serious physical injury or even the developed case law defining physical injury. Were it to reach the level of physical injury and not *serious* physical injury, the assault must be committed by means of a deadly weapon or a dangerous instrument. In New York's penal law, a deadly weapon includes a loaded weapon, switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, dagger, Billy, blackjack, plastic knuckles, or metal knuckles; a dangerous instrument is an instrument, article, substance or vehicle that is readily capable of causing death or other serious instrument. Hands, arms, or other extremities fall outside of these definitions – yet they are the hallmark instruments of strangulation.

Finally, the felony assault laws require that the crime be committed with *intent* to cause physical injury or serious physical injury. Often, in these cases, the intent is quite different. The abuser may want to silence his partner; he may want her to stop breathing; he may want to terrify her. In some cases, women are strangled for the purposes of the commission of a sex crime against them. These cases are no less deserving of a felony-level charge simply because the intent doesn't fit with existing penal law language.

Because of these gaps in the law, prosecutors are thus left with the A misdemeanor charge of Assault in the Third Degree. This charge carries a maximum sentence of one year in city jail; defendants rarely serve even close to the full sentence. In the more egregious strangulation cases, the low-level charges and brief sentences shortchange victims and send the wrong message to abusers.

The law proposed by Senator Schneiderman and Assemblyman Lentol, and supported by this resolution sponsored by Council Members Ferreras, Vallone and Speaker Quinn, remedies each of the current legal gaps referred to in my testimony. The law would afford three classes of crime: the A misdemeanor of Criminal Obstruction of Breathing or Blood Circulation; the D felony of Strangulation in the Second Degree; and the C violent felony of Strangulation in the First Degree.

More than 27 states already have some sort of strangulation statute. In one of those states, Minnesota, a study on the effectiveness of the law found that the felony domestic strangulation statute enhanced victim safety, increased offender accountability, and, given those facts, may prevent future domestic homicides. It is time that New York followed suit by passing this law.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/8/10

(PLEASE PRINT)

Name: Leroy Frazer JR

Address: 1 Hogan Pl

I represent: NY County District Attorney

Address: 1 Hogan

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Elizabeth Buss

Address: 350 New Scotland Ave, Albany NY

I represent: NYSCAD

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/8/10

(PLEASE PRINT)

Name: Ali Rosa-Salas

Address: 309 Court St Bklyn NY 11231

I represent: National Organization for Women

Address: 150 W 28th St NYC

Please complete this card and return to the Sergeant-at-Arms