
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 870 **Hearing Date:** April 5, 2016
Author: Roth
Version: February 22, 2016
Urgency: No **Fiscal:** Yes
Consultant: AA

Subject: *Felony Domestic Violence: Strangulation*

HISTORY

Source: Riverside District Attorney

Prior Legislation: SB 430 (Kehoe) – Ch. 129, Statutes of 2011

Support: California District Attorneys Association; California Police Chiefs Association; Peace Officers Research Association of California; one individual

Opposition: California Public Defenders Association

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.

Current law provides 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, 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. (Penal Code § 273.5(a).)

Current 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 would delete the references to strangulation and suffocation in the above definition of “traumatic condition.”

This bill instead would 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 would provide 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.”

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;

- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Stated Need for This Bill

The author states:

This bill would amend the penal code to identify where the defendant inflicts the traumatic condition, in whole or in part, by means of strangulation. Current legislation does not separate an act of domestic violence involving strangulation from an act of domestic violence which does not.

- Strangulation accounts for 10% of all violent deaths annually in the United States.
- At least 25% of all domestic violence cases include strangulation.
- 50% of non-fatal strangulation cases leave no visible external injury. 35% result in injuries too difficult to document by photograph. Only 3% of these victims seek medical attention.
- Victims of strangulation often don't understand the dangerousness of the act and are therefore reluctant to seek medical attention.
- As little as 8 pounds of pressure (the same force necessary to pull the trigger on a handgun) can cause loss of consciousness, permanent brain damage, or death.
- In a 2006 study, 34% of abused pregnant women reported being "choked."
- In a study conducted in San Diego, California, researchers found that children were present in 50% of the strangulation cases.
- In a 2011 study of men enrolled in batterer intervention program, 27% admitted they had strangled a partner during their lifetime. 35% of those indicated it occurred more than once. 83% of those incidents included other abusive behavior.
- Studies link a history of strangulation to those individuals committing homicidal violence against law enforcement.

(This measure would not create any new offense and would not result in any increase in state prison and population)

2. What This Bill Would Do

In 2011, SB 430 (Kehoe) was enacted into law to specify that, for purposes of felony 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 these 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 instead 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 current law.

The Riverside District Attorney, which is the sponsor of this bill, submits in part:

SB 870 allows us to readily identify offenders who strangle their victims. Without creating a new offenses or increasing the state prison population, it separates out this type of offender from other domestic violence offenders. This identification becomes critical throughout the criminal justice system. Law enforcement can use this information in order to assess the potential lethality of the offender. Prosecutors and the courts can use this information to craft appropriate sentences. Probation 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.

3. Background: Strangulation and Domestic Violence

As the author’s statement indicates, research demonstrates the importance of understanding strangulation in the context of domestic violence. As one commentator explained in a 2014 Australian law review article:

Both legal and medical studies have begun to emphasize the importance of strangulation in the context of responding to domestic violence. . . . Strangulation is now established as a predictive risk factor for future severe domestic violence and for homicide, and it is commonly alleged by women who have experienced domestic violence. . . . (S)trangulation is a relatively common cause of domestic violence-related homicide. . . .

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 Hawley²² 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. . . .

The links between the risk of further serious injury and death subsequent to an attempted strangulation has been of particular interest to a number of researchers. In one study, researchers concluded that the odds of becoming a homicide victim as a result of further domestic violence were increased by 800 percent for women who had previously experienced strangulation by their partners. . . .¹

-- END --

¹ Douglas and Fitzgerald, *Strangulation, Domestic Violence and the Legal Response* (2014) 36 Sydney L. Rev. 231.