issues backgrounder

Number 3/September 2018

NSW Parliamentary Research Service

# NSW's strangulation offence: Time for further reform?

## CONTENTS

# 1. INTRODUCTION

Non-lethal strangulation is a significant form of domestic violence offending designed to exert physical and psychological control over victims. Non-lethal strangulation may also act as indicator of future violence, including homicide. Following concerns raised by the Domestic Violence Death Review Team that strangulation offences "were not being charged under the NSW offence of strangulation, but rather were being charged as common assault or assault occasioning actual bodily harm offences", the New South Wales Department of Justice has commenced a review into the effectiveness of section 37 of the *Crimes Act 1900*.[1]

This Issues Backgrounder presents recent data from the New South Wales Bureau of Crime Statistics and Research in order to determine whether, and to what extent, section 37 is being used, leads to convictions and results in appropriate penalties. It also provides information on recent court cases that have applied section 37, in order to illustrate the factors used by courts to assess non-fatal strangulation offences. As a further means of assessing section 37, a broad comparative base of strangulation offences across Australia and in selected overseas jurisdictions is provided. As that comparative exercise illustrates, strangulation offences vary considerably in their degree of inherent complexity. In particular, strangulation offences that require a specific precondition (such as the strangulation being committed in order to commit another offence) or a specific outcome (rendering a person unconscious, insensible or incapable of resistance) are inherently more complex, and therefore more difficult to prove, than offences prohibiting a person from strangling another person without consent.

# 2. STRANGULATION AND DOMESTIC VIOLENCE

The incidence of non-lethal strangulation in a domestic violence setting, its association with further domestic violence offences, and the physical and psychological consequences of non-lethal strangulation, were considered in a June 2017 literature review conducted by Queensland Health, entitled *A Health response to non-lethal strangulation in domestic and family violence*. The Queensland Health literature review states (p 3):

> **3.2 Incidence of non-lethal strangulation in DFV [Domestic and Family Violence]**
>
> Although the true prevalence of non-lethal strangulation in DFV is not immediately clear from the evidence to date, even the most conservative estimate suggests that many women in the community will have experienced strangulation by a partner, ex-partner or family member at some time in their lives.
>
> In 2010, a US national survey found that 9.7% of all women reported experiencing at least one incident of choking by an intimate partner in their lifetime. This figure increases between three-fold in research cohorts of women reporting domestic and family

[1] Common assault (section 61) carries a maximum penalty of 2 years imprisonment. Assault occasioning actual bodily harm (section 59(1)) carries a maximum penalty of 5 years imprisonment. Non-lethal strangulation (section 37(1)) carries a maximum penalty of 10 years imprisonment. If the non-lethal strangulation is committed with the intent of committing another indictable offence, section 37(2) provides for a maximum penalty of 25 years.

violence, and seven-fold, with one study revealing that 68% of the women in domestic violence shelters reporting experiences of strangulation.

In the only published study of its kind in Australia to date, researchers examined court files in relation to cross-applications for Domestic Violence Orders in two Queensland Magistrates Courts – Brisbane and Beenleigh - over a period of two years, examining a total of 656 cross-application files. 12% of women in the sample made unsolicited allegations of strangulation and 90% of the strangulation allegations were made by women.

In the 12 months following the introduction of stand-alone strangulation laws in Queensland in April 2016, almost 800 people had been charged with the offence, suggesting that prevalence rates are high.

### 3.2 Non-lethal strangulation as a risk factor in DFV

The evidence from across the developed world indicates that non-lethal strangulation in DFV is an indicator of an escalation in the severity of domestic and family violence. In Queensland researchers found that 87% of cases of non-lethal strangulation were accompanied by allegations of other serious violence including sexual assault, and verbal threats of murder. In a recent study in Kentucky in the United States, of 102 surviving victims of strangulation 97% of victims also sustained blunt force injuries in addition to injuries resulting from strangulation.

The evidence currently available also indicates that non-lethal strangulation is a risk factor for domestic femicide resulting from any form of violence. In a direct comparison of documented cases of domestic homicide or attempted domestic homicide against a control group of abused-only victims, Glass et al found that a prior experience of non-fatal strangulation increased six-fold the chances of becoming a victim of attempted domestic homicide, and seven-fold the chances of becoming a victim of domestic homicide.

### 3.3 Health consequences of non-lethal strangulation

The current body of evidence suggests the following:

• Injuries caused by strangulation are often not visible thus contributing to the minimisation of physical injury by victims, police and medical responders alike. In the San Diego study of 300 cases of strangulation, 50% showed no external signs of injury and 35% showed very minimal signs, leaving only 15% of victims demonstrating injuries that could be photographed by police for use as evidence in court, and the authors noted that even in fatal cases of strangulation there is often no external evidence of injury.

• In one retrospective review of 134 cases of survived strangulation it was found that the presence of petechiae – tiny, harmless, red/purple spots on the skin with a range of otherwise benign causes – are more indicative of a severe, life-threatening assault than are marks, bruises or abrasions on the neck.

• Immediate signs and symptoms may include difficulty breathing, cognitive changes include memory loss and agitation, neck/throat pain, difficulty in swallowing or thick feeling in the throat, raspy or hoarse throat, cough, bruising or swelling inside the lips, tiny red spots anywhere from the neck upwards, conjunctival haemorrhage, tinnitus, loss of consciousness or near loss of consciousness, victim thought she would die, nausea and vomiting, loss of bowel of bladder function at the time of assault, scratch marks or bruising in the jaw line or neck.

• Strangulation symptoms such as confusion, slurred speech and agitation can easily be overlooked by police and medical staff as drug use or mental health issues.

• Given the pain inflicted and its potential lethality, experiencing strangulation can induce a trauma response causing problems such as chronic insomnia and post-traumatic stress disorder, with victims reporting depression, anxiety, nightmares and suicidal ideation.

• The health impacts of strangulation appear to be cumulative with number of strangulations being positively correlated with frequency of negative health outcomes including neck and throat injuries, neurological disorders such as paralysis, memory loss, vision changes, and psychological disorders including depression and PTSD.

## 3. SECTION 37 OF THE *CRIMES ACT 1900*.

### 3.1 PRE-2014 FORM OF SECTION 37

Section 37 was an original provision of the *Crimes Act 1900* which remained essentially unchanged for 114 years. Prior to its amendment in 2014, section 37 of the *Crimes Act 1900* was in the following form:

> Whosoever:
>
> by any means attempts to choke suffocate or strangle any person, or
>
> by any means calculated to choke suffocate or strangle, attempts to render any person insensible unconscious or incapable of resistance,
>
> with intent in any such case to enable himself or herself or another person to commit, or with intent in any such case to assist any person in committing, an indictable offence,
>
> shall be liable to imprisonment for 25 years.

### 3.2 CURRENT FORM OF SECTION 37

On 5 June 2014 the present form of section 37 was inserted into the *Crimes Act 1900* by the *Crimes Amendment (Strangulation) Act 2014*. In the Second Reading speech to the Crimes Amendment (Strangulation) Bill 2014 the then Attorney General, Brad Hazzard MP, stated that the 2014 reforms aimed to "expand the application of section 37 … by creating a new simple offence of strangulation." The Attorney General further stated that creating a new simple offence of strangulation will:

> lead to more sentences being imposed on offenders, which will reflect the seriousness of domestic violence and the long-term impact of this particular behaviour. Further, more accurate records of these type of offences will be kept, and awareness of this type of offending will be raised in the legal and medical fields. Legislative recognition of this type of offending ultimately may assist domestic violence victims in reporting this often hidden form of abuse

Section 37 of the *Crimes Act 1900* currently states:

> (1) A person is guilty of an offence if the person:
>
> (a) intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and
>
> (b) is reckless as to rendering the other person unconscious, insensible or incapable of resistance.
>
> Maximum penalty: imprisonment for 10 years.

(2) A person is guilty of an offence if the person:

(a) chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and

(b) does so with the intention of enabling himself or herself to commit, or assisting any other person to commit, another indictable offence.

Maximum penalty: imprisonment for 25 years.

(3) In this section:

"another indictable offence" means an indictable offence other than an offence against this section.

The main features of section 37 are set out in Table 1:

| Table 1: Main features of section 37 of the Crimes Act 1900 | |
|---|---|
| Number of offences created | Two:<br>• Section 37(1): intentionally choke, suffocates or strangles another person.<br>• Section 37(2): chokes, suffocates or strangles another person with intent to commit another indictable offence |
| Maximum penalty | • Section 37(1): 10 years imprisonment.<br>• Section 37(2): 25 years imprisonment |
| **Section 37(1) offence** | |
| Elements of offence | • The victim is intentionally choked, suffocated or strangled by the offender.<br>• The victim is rendered unconscious, insensible **or** incapable of resistance.<br>• Recklessness |
| **Section 37(2) offence** | |
| Elements of offence | • The victim is choked, suffocated or strangled by the offender.<br>• The victim is rendered unconscious, insensible **or** incapable of resistance<br>• An intention to commit, or assist any other person to commit, another indictable offence |

## 3.3 RATIONALE FOR THE 2014 REFORMS

The rationale for the 2014 reform of section 37 was detailed in the following extracts from the Second Reading speech to the Crimes Amendment (Strangulation) Bill 2014.

1. Strangulation is a potentially fatal act, which causes significant physical and psychological trauma to victims.

2. It is prevalent in domestic violence incidents. The use of strangulation in this context is a recognised indicator of the risk of further harm to victims of domestic violence, including homicide.

3. The Director of Public Prosecutions raised concerns with the Government as to the adequacy of the current provision concerning strangulation in section 37 of the *Crimes Act*. He identified numerous cases of strangulation. Some of these were acts of intimidation while others were serious assaults resulting in unconsciousness. Time and again these cases were dealt with only as common assaults.

4. [Pre-2014] Section 37 has limited application in many domestic violence cases because it requires an intention to commit a separate indictable offence, such as sexual assault or robbery. Where the assault itself is the act of strangulation or choking, section 37 in its current form cannot apply.

5 …[M]ore serious assault charges such as assault occasioning actual or grievous bodily harm are difficult to establish, because they rely on proof of particular bodily harm. However, many people who survive strangulation have minimal visible external injuries, despite the seriousness of the offence.

6. As a result of the shortcomings of the current strangulation provision in the *Crimes Act*, 70 per cent of domestic violence assaults involving strangulation are charged as common assault in New South Wales. Common assault attracts a maximum penalty of two years imprisonment. Statistics obtained from the Bureau of Crime Statistics and Research show that the average prison term for domestic violence assault involving strangulation is six months.

## 3.4 CONCERNS WITH THE CURRENT FORM OF SECTION 37

Concerns with the current form of section 37 of the *Crimes Act 1900* have been raised by the Domestic Violence Death Review Team.

Recommendation 5 of the *Domestic Violence Death Review Team Report 2015-2017* states that (p xviii):

> 5.1 That the Attorney General, in consultation with relevant stakeholders, review the operation of the NSW offence of strangulation (contained at s37 of the Crimes Act 1900 (NSW)) to determine whether this offence is operating effectively.
>
> 5.2 That the NSW Police Force update its Standard Operating Procedures to require that where a victim discloses strangulation, police advise the victim to seek urgent medical attention given the potential long-term health consequences of this form of assault.

In its report, the Domestic Violence Death Review Team said (79-80):

> Strangulation is a serious domestic violence offence and presents unique risks to victims, including risks of future injury that may not be visible at the time of the assault. The literature also demonstrates a link between strangulation and domestic homicide, highlighting the importance of responding effectively to this particular form of violence. Further, the Team's focused intimate partner dataset reveals that in over a quarter of intimate partner homicides, the domestic violence abuser had strangled the domestic violence victim prior to the fatal assault …
>
> In a number of cases … the Team identified that strangulation offences were not being charged under the NSW offence of strangulation, but rather were being charged as common assault or assault occasioning actual bodily harm offences. This raised questions about the current form of the strangulation offence in NSW and whether difficulty in proving the elements of the offence has resulted in perpetrators being

> charged with [a] lesser offence where strangulation has been alleged to have occurred. …
>
> In considering this issue the Team examined recent data collected by NSW Police Force in relation to strangulation, which highlights that limitations persist around charging and conviction under the new offence. Although this is preliminary data, it suggests that the 2014 amendments have had limited effect on the issues they sought to address. . …
>
> The second related issue the Team discussed were the short and long term health complications that may specifically arise where a victim is non-fatally strangled. While strangulation may not leave many, if any, visible injuries on a victim, its potential long term health consequences are recognised in the literature, and specific medical examinations may be important for not only proving an offence, but to protect the victim's long term health.
>
> The Team was of the perspective that effectively promoting the health and wellbeing [of] victims of non-fatal strangulation as well as successfully securing convictions requires further action by police as first responders in ensuring victims seek appropriate medical care

Concerns with section 37 of the *Crimes Act 1900* were also raised in a November 2017 Redfern Legal Centre Briefing Paper entitled *Strangulation in the Context of domestic violence*. That paper states:

> Redfern Legal Centre (RLC) strongly supports the recent recommendation by the NSW Domestic Violence Death Review Team strongly supports the recent recommendation by the Domestic Violence Death Review Team that the NSW Attorney General consider a review of the operation of the NSW offence of strangulation to determine whether this offence is operating effectively.

The NSW Government Response to the Domestic Violence Death Review Team Report 2015-17 states that the Government supports recommendations 5.1 and 5.2 of the Death Review Team's 2015-17 Report (p 3-4):

> The NSW Government recognises the need for an offence that effectively addresses the serious harm caused by non-fatal strangulation.
>
> The Department of Justice has commenced consideration of the operation of the offences of strangulation (sections 37(1) and 37(2) of the Crimes Act 1900 (NSW)), including analysis of BOCSAR data on charges and convictions. Relevant stakeholders will be consulted on the existing offences and any potential amendment in early 2018.
>
> The NSW Police Force will update its Standard Operating Procedures to reflect this requirement. It is noted this recommendation has arisen from a need to increase community and agency awareness of the serious (and often unnoticeable) injuries that can be caused by strangulation.

## 3.5 CHARGES, CONVICTIONS AND PENALTIES

Data from the NSW Bureau of Crime Statistics and Research is set out in Tables 2 and 3 in order to determine whether, and to what extent, section 37 is being used, leads to convictions and results in appropriate penalties.

Table 2 sets out the number of **finalised charges** under section 37(1) of the *Crimes Act 1900*, by jurisdiction and outcome. Table 3 sets out the **number of persons found guilty** in finalised court appearances whose **principal offence** was a charge under

section 37(1) of the *Crimes Act 1900*, by jurisdiction and principal penalty. The data presented in Tables 2 and 3 covers the period from June 2014 to March 2018.

Table 2 shows there were 831 finalised charges under 37(1) of the *Crimes Act 1900*; of which 739 (88.9%) were domestic violence offences. Of the 831 finalised charges under section 37(1):

- 247 (29.7%) resulted in an outcome of guilty,
- 139 (16.7%) resulted in an outcome of not guilty.
- 445 (53.5%) resulted in an outcome of "other"; which includes dismissed by lower courts due to mental illness, withdrawn by prosecution and otherwise disposed of.

Table 3 reveals that there were 164 persons found guilty of a principal offence against section 37(1); 146 (89%) of whom committed the offence in a domestic violence context.

Of the total number of 164 persons found guilty of a principal offence against section 37(1), 82 (50%) were sentenced to a term of imprisonment (with the average sentence length for the last full year, 2017, being 11 months).

Of the 146 persons found guilty of a domestic violence principal offence against section 37(1), 72 (49.3%) were sentenced to imprisonment (with the average sentence length for the last full year, 2017, being 10.8 months).

**Table 2: Number of finalised charges under section 37(1) of the Crimes Act 1900 by jurisdiction and outcome**

**DC= District Court, LC = Local Court, CC = Children's Court**

| Description | Outcome | June–December 2014 | | | | 2015 | | | | 2016 | | | | 2017 | | | | January– March 2018 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | DC | LC | CC | Total | DC | LC | CC | Total | DC | LC | CC | Total | DC | LC | CC | Total | DC | LC | CC | Total |
| Intentionally choke etc person with recklessness | Guilty | 0 | 3 | 0 | **3** | 0 | 4 | 0 | **4** | 3 | 5 | 1 | **9** | 2 | 6 | 1 | **9** | 1 | 1 | 1 | **3** |
| | Not Guilty | 0 | 2 | 0 | **2** | 0 | 4 | 0 | **4** | 0 | 3 | 0 | **3** | 1 | 0 | 0 | **1** | 0 | 0 | 0 | **0** |
| | Other* | 0 | 3 | 0 | **3** | 0 | 17 | 1 | **18** | 0 | 14 | 1 | **15** | 0 | 15 | 1 | **16** | 1 | 1 | 0 | **2** |
| | **Total** | **0** | **8** | **0** | **8** | **0** | **25** | **1** | **26** | **3** | **22** | **2** | **27** | **3** | **21** | **2** | **26** | **2** | **2** | **1** | **5** |
| Intentionally choke etc person with recklessness: Domestic Violence | Guilty | 0 | 8 | 0 | **8** | 3 | 57 | 0 | **60** | 14 | 55 | 1 | **70** | 9 | 57 | 1 | **67** | 1 | 13 | 0 | **14** |
| | Not guilty | 0 | 5 | 0 | **5** | 0 | 24 | 1 | **25** | 4 | 37 | 1 | **42** | 8 | 42 | 0 | **50** | 1 | 6 | 0 | **7** |
| | Other* | 0 | 11 | 0 | **11** | 1 | 92 | 4 | **97** | 6 | 113 | 4 | **123** | 5 | 119 | 4 | **128** | 0 | 31 | 1 | **32** |
| | **Total** | **0** | **24** | **0** | **24** | **4** | **173** | **5** | **182** | **24** | **205** | **6** | **235** | 22 | 218 | 5 | **245** | **2** | **50** | **1** | **53** |
| Total | Guilty | 0 | 11 | 0 | **11** | 3 | 61 | 0 | **64** | 17 | 60 | 2 | **79** | 11 | 63 | 2 | **76** | 2 | 14 | 1 | **17** |
| | Not Guilty | 0 | 7 | 0 | **7** | 0 | 28 | 1 | **29** | 4 | 40 | 1 | **45** | 9 | 42 | 0 | **51** | 1 | 6 | 0 | **7** |
| | Other* | 0 | 14 | 0 | **14** | 1 | 109 | 5 | **115** | 6 | 127 | 5 | **138** | 5 | 134 | 5 | **144** | 1 | 32 | 1 | **34** |
| | **Total** | **0** | **32** | **0** | **32** | **4** | **198** | **6** | **208** | **27** | **227** | **8** | **262** | **25** | **239** | **7** | **271** | **4** | **52** | **2** | **58** |

*Other includes dismissed by lower courts due to mental illness, withdrawn by prosecution, and otherwise disposed of (eg transferred to Drug Court, deceased)
NOTE: The data in Table 2 provides no information on the number of persons who were charged with these offences; it only provides information on the number of charges finalised in Court for these offences. **Source: NSW Bureau of Crime Statistics and Research**

| Table 3: Number of persons found guilty in finalised court appearances whose principal offence* was a charge under section 37(1) of the Crimes Act 1900 by jurisdiction and principal penalty<br>DC= District Court, LC = Local Court, CC = Children's Court | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Description** | **Penalty** | **June–Dec. 2014** | | **2015** | | | **2016** | | | | **2017** | | | **January– March 2018** | | | |
| | | **LC** | **Total** | **DC** | **LC** | **Total** | **DC** | **LC** | **CC** | **Total** | **DC** | **LC** | **Total** | **DC** | **LC** | **CC** | **Total** |
| Intentionally choke etc person with recklessness | Imprisonment: Number | 2 | **2** | 0 | 2 | **2** | 1 | 1 | 0 | **2** | 1 | 2 | **3** | 0 | 1 | 0 | **1** |
| | *Imprisonment: Average sentence length (months)* | *8* | ***8*** | *na* | *8* | ***8*** | *12* | *12* | *na* | ***12*** | *24* | *7.5* | ***13*** | *na* | *12* | *na* | ***12*** |
| | Juvenile Control Order | 0 | **0** | 0 | 0 | **0** | 0 | 0 | 0 | **0** | 0 | 0 | **0** | 0 | 0 | 1 | **1** |
| | Intensive Correction Order | 0 | **0** | 0 | 0 | **0** | 0 | 0 | 0 | **0** | 0 | 1 | **1** | 0 | 0 | 0 | **0** |
| | Community Service Order | 0 | **0** | 0 | 1 | **1** | 0 | 0 | 0 | **0** | 0 | 1 | **1** | 0 | 0 | 0 | **0** |
| | Juvenile Probation Order | 0 | **0** | 0 | 0 | **0** | 0 | 0 | 1 | **1** | 0 | 0 | **0** | 0 | 0 | 0 | **0** |
| | Bond with supervision | 1 | **1** | 0 | 0 | **0** | 0 | 0 | 0 | **0** | 0 | 1 | **1** | 0 | 0 | 0 | **0** |
| | Fine | 0 | **0** | 0 | 0 | **0** | 0 | 1 | 0 | **1** | 0 | 0 | **0** | 0 | 0 | 0 | **0** |
| | **Total** | **3** | **3** | **0** | **3** | **3** | **1** | **2** | **1** | **4** | **1** | **5** | **6** | **0** | **1** | **1** | **2** |

**Table 3: Number of persons found guilty in finalised court appearances whose principal offence* was a charge under section 37(1) of the Crimes Act 1900 by jurisdiction and principal penalty**

**DC= District Court, LC = Local Court, CC = Children's Court**

| Description | Penalty | June–Dec. 2014 | | 2015 | | | 2016 | | | | 2017 | | | January– March 2018 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | LC | Total | DC | LC | Total | DC | LC | CC | Total | DC | LC | Total | DC | LC | CC | Total |
| Intentionally choke etc person with recklessness: Domestic Violence | Imprisonment: Number | 2 | **2** | 2 | 19 | **21** | 5 | 15 | 0 | **20** | 3 | 21 | **24** | 1 | 4 | 0 | **5** |
| | *Imprisonment: Average sentence length (months)* | *9.5* | ***9.5*** | *17* | *9.2* | ***9.9*** | *19.8* | *7.5* | *na* | ***10.6*** | *20.7* | *9.4* | ***10.8*** | *47* | *12.5* | *na* | ***19.4*** |
| | Juvenile Control Order | 0 | **0** | 0 | 0 | **0** | 0 | 0 | 1 | **1** | 0 | 0 | **0** | 0 | 0 | 0 | **0** |
| | Intensive Correction Order | 0 | **0** | 0 | 2 | **2** | 0 | 3 | 0 | **3** | 0 | 1 | **1** | 0 | 3 | 0 | **3** |
| | Suspended sentence with supervision | 1 | **1** | 0 | 4 | **4** | 0 | 9 | 0 | **9** | 0 | 5 | **5** | 0 | 4 | 0 | **4** |
| | Suspended sentence without supervision | 0 | **0** | 0 | 1 | **1** | 0 | 4 | 0 | **4** | 0 | 4 | **4** | 0 | 0 | 0 | **0** |
| | Community Service Order | 0 | **0** | 0 | 1 | **1** | 0 | 3 | 0 | **3** | 0 | 2 | **2** | 0 | 1 | 0 | **1** |
| | Bond with supervision | 2 | **2** | 0 | 5 | **5** | 0 | 6 | 0 | **6** | 0 | 5 | **5** | 0 | 0 | 0 | **0** |
| | Bond without supervision | 1 | **1** | 0 | 3 | **3** | 0 | 1 | 0 | **1** | 0 | 0 | **0** | 0 | 0 | 0 | **0** |
| | Fine | 0 | **0** | 0 | 0 | **0** | 0 | 1 | 0 | **1** | 0 | 0 | **0** | 0 | 0 | 0 | **0** |
| | Bond without conviction | 0 | **0** | 0 | 0 | **0** | 0 | 1 | 0 | **1** | 0 | 0 | **0** | 0 | 0 | 0 | **0** |
| | **Total** | **6** | **6** | **2** | **35** | **37** | **5** | **43** | **1** | **49** | **3** | **38** | **41** | **1** | **12** | **0** | **13** |

**Table 3: Number of persons found guilty in finalised court appearances whose principal offence* was a charge under section 37(1) of the Crimes Act 1900 by jurisdiction and principal penalty**

**DC= District Court, LC = Local Court, CC = Children's Court**

| Description | Penalty | June–Dec. 2014 | | 2015 | | | 2016 | | | | 2017 | | | January– March 2018 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | LC | Total | DC | LC | Total | DC | LC | CC | Total | DC | LC | Total | DC | LC | CC | Total |
| Total | Imprisonment: Number | 4 | **4** | 2 | 21 | **23** | 6 | 16 | 0 | **22** | 4 | 23 | **27** | 1 | 5 | 0 | **6** |
| | *Imprisonment: Average sentence length (months)* | *8.8* | ***8.8*** | *17* | *9* | ***9.7*** | *18.5* | *7.8* | *na* | ***10.7*** | *21.5* | *9.2* | ***11*** | *47* | *12.4* | *na* | ***18.2*** |
| | Juvenile Control Order | 0 | **0** | 0 | 0 | **0** | 0 | 0 | 1 | **1** | 0 | 0 | **0** | 0 | 0 | 1 | **1** |
| | Intensive Correction Order | 0 | **0** | 0 | 2 | **2** | 0 | 3 | 0 | **3** | 0 | 2 | **2** | 0 | 3 | 0 | **3** |
| | Suspended sentence with supervision | 1 | **1** | 0 | 4 | **4** | 0 | 9 | 0 | **9** | 0 | 5 | **5** | 0 | 4 | 0 | **4** |
| | Suspended sentence without supervision | 0 | **0** | 0 | 1 | **1** | 0 | 4 | 0 | **4** | 0 | 4 | **4** | 0 | 0 | 0 | **0** |
| | Community Service Order | 0 | **0** | 0 | 2 | **2** | 0 | 3 | 0 | **3** | 0 | 3 | **3** | 0 | 1 | 0 | **1** |
| | Juvenile probation order | 0 | **0** | 0 | 0 | **0** | 0 | 0 | 1 | **1** | 0 | 0 | **0** | 0 | 0 | 0 | **0** |
| | Bond with supervision | 3 | **3** | 0 | 5 | **5** | 0 | 6 | 0 | **6** | 0 | 6 | **6** | 0 | 0 | 0 | **0** |
| | Bond without supervision | 1 | **1** | 0 | 3 | **3** | 0 | 1 | 0 | **1** | 0 | 0 | **0** | 0 | 0 | 0 | **0** |
| | Fine | 0 | **0** | 0 | 0 | **0** | 0 | 2 | 0 | **2** | 0 | 0 | **0** | 0 | 0 | 0 | **0** |
| | Bond without conviction | 0 | **0** | 0 | 0 | **0** | 0 | 1 | 0 | **1** | 0 | 0 | **0** | 0 | 0 | 0 | **0** |
| | **Total** | **9** | **9** | **2** | **38** | **40** | **6** | **45** | **2** | **53** | **4** | **43** | **47** | **1** | **13** | **1** | **15** |

*If a person is found guilty of more than 1 offence, the offence which received the most serious penalty is the principal offence. **Source: NSW Bureau of Crime Statistics and Research**

## 3.6 CASES

The following Court of Criminal Appeal, District Court and Local Court cases provide an insight into the manner in which courts assess section 37(1) offences.

### 3.6.1 R v Hollaway [2016] NSWCCA 166

The respondent and victim were living together in a domestic relationship. When Police attended the unit at which the respondent and victim lived they (at [7]):

> … saw the respondent sitting on the victim who was face down. The respondent had her hands around the victim's throat and was pulling her neck backwards. The victim was screaming and attempting to crawl to the door. Police observed that her resistance was fading.

The respondent was found guilty by a jury of an offence of attempting to intentionally choke the victim, contrary to section 37(1). She also had pleaded guilty to offences of damaging property and breaching an Apprehended Domestic Violence Order.

For the section 37(1) offence, the respondent was sentenced to imprisonment for 1 year and 9 months, with a non-parole period of 1 year. The Crown appeal against that sentence. One of the grounds of appeal was that the sentence was manifestly inadequate.

The Court of Criminal Appeal (RA Hulme J, Payne JA and Adamson J agreeing) dismissed the appeal. Addressing the manifestly inadequate ground, RA Hulme J said (at [42]):

> The respondent did not suffocate or strangle her victim. She did not render her unconscious or insensible. She *attempted* to choke in order to render her incapable of resistance. It was undoubtedly a serious matter as the judge found, but he also found it occurred in the context of a "torrid and dysfunctional relationship marked by episodes of violence"; he could not determine how the fight started although it was likely to have arisen out of some dispute between the pair earlier in the day and whilst they were both very significantly affected by alcohol. There was also the fact, as the judge noted, that the victim did not sustain any apparent permanent injury but that the respondent did.

### 3.6.2 R v Peifeng Yu [2016] NSWDC 257

The offender pleaded guilty to a number of offences committed in a domestic violence setting, including intentionally choking with recklessness, contrary to section 37(1). The other offences included assault causing actual bodily harm and intimidation. For the section 37(1) offence, the offender was sentenced to a non-parole period of 12 months followed by a parole period of 12 months.

Judge Tupman described the facts of the strangulation offence as follows (at [15]):

> The offender then came into the bedroom and took the phone from her again and there was another argument. He slapped her in the back of the head with his hand. She yelled out for help to try and attract the neighbours. He then grabbed her face, placed one had around her mouth and the other around the front of her neck and applied pressure to her throat. He squeezed her neck hard. She felt she could not breathe. She closed her eyes and let her body drop so that he would let go. He did release his hold but said *"You can die, but not now, the police will catch me".* He also said *"Did you hear about that*

> *lady killed in the car park at Auburn? You know why, because she is a bitch that went off with another man. Today I had control, I just hurt you bad but if I don't have control I will use a knife and kill you"*. He then left and went back downstairs.

Judge Tupman said (at [16]) that the choking offence was "clearly enough very serious". Further, it was aggravated by the fact that it was committed in a domestic situation and occurred in the same premises where there were young children, who on the facts were probably still in their beds in the same room at the time the offence occurred. However, the offence "occurred for a very short period of time. There was no loss of consciousness, but recklessness on his part in the strangulation". Her Honour found the section 37(1) offence to be "below the mid-range in terms of seriousness, but nonetheless extremely serious".

### 3.6.3 DPP (NSW) v Johnson [2015] NSWLC 31

The offender pleaded guilty to a strangulation offence against 37(1) and reckless wounding, contravene an Apprehended Domestic Violence Order, destroy property and enter inclosed lands. He was sentenced by Local Court Magistrate Stewart to an aggregate sentence of 4 years imprisonment, with a non-parole period of 2 years and 6 months. An indicative sentence of 2 years was imposed for the section 37(1) strangulation offence.

Local Court Magistrate Stewart said (at [13]–[15]):

> The seriousness of each offence cannot be assessed properly without considering the context of the overall criminal conduct. It is inappropriate for example to consider the choking offence in isolation. It occurred follow[ing] a protracted, brutal assault both inside and outside of the offender's home after the victim had been stabbed three times, beaten, kicked and punched, dragged by the hair and had objects thrown at her and dropped on her. I reject the Crown submission that the choking offence is below mid-range. When considered in context, the offence is extremely serious as the victim was even more vulnerable at the time that she was choked and less in a position to do anything about the attack upon her. The offence is at or above mid-range. The contravene AVO matter is at the top of the range.
>
> The victim's vulnerability is an aggravating factor regarding the choking and reckless wounding matters, within the meaning of s 21A(2)(l) *Crimes (Sentencing Procedure) Act*.
>
> The moral culpability of the offender is extremely high. These are serious and significant examples of domestic violence – a scourge that plagues the community.

## 4. OTHER JURISDICTIONS

In order to provide a broad comparative base by which to assess section 37 of the *Crimes Act 1900*, this Issues Backgrounder sets out strangulation offences across Australia and in the selected overseas jurisdictions of Canada, New Zealand, the United Kingdom and the United States. This comparative exercise suggests that strangulation offences that require a specific precondition (such as the strangulation being committed in order to commit another offence) or a specific outcome (rendering a person unconscious, insensible or incapable of resistance) are inherently more complex, and therefore more difficult to prove, than offences prohibiting a person from strangling another person without consent.

## 4.1 QUEENSLAND

The relevant Queensland provisions are sections 315 and 315A of the *Criminal Code 1899 (Qld)*.

Section 315, which is entitled *Disabling in order to commit indictable offence*, states:

> Any person who, by any means calculated to choke, suffocate, or strangle, and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance, is guilty of a crime, and is liable to imprisonment for life.

Section 315A, which is entitled *Choking, suffocation or strangulation in a domestic setting*, states:

> (1) A person commits a crime if—
>
> (a) the person unlawfully chokes, suffocates or strangles another person, without the other person's consent; and
>
> (b) either—
>
> (i) the person is in a domestic relationship with the other person; or
>
> (ii) the choking, suffocation or strangulation is associated domestic violence under the *Domestic and Family Violence Protection Act 2012* .
>
> **Penalty:** Maximum penalty—7 years imprisonment.
>
> (2) An assault is not an element of an offence against *subsection (1)*.

| **Table 4: Main features of sections 315 and 315A of the Criminal Code 1899 (Qld)** | |
|---|---|
| Number of offences created | Two:<br>• Section 315: Disabling in order to commit indictable offence<br>• Section 315A: Choking, suffocation or strangulation in a domestic setting |
| Maximum penalty | • Section 315: Imprisonment for life<br>• Section 315A: 7 years imprisonment |
| **Section 315 offence** | |
| Elements of offence | • Render or attempt to render any person incapable of resistance.<br>• By any means calculated to choke, suffocate or strangle<br>• Intention to commit (or facilitate the commission of) an indictable offence; **or**<br>• Intention to facilitate the flight of an offender after the commission (or attempted commission) of an indictable offence. |

| Section 315A offence | |
|---|---|
| Elements of offence | • Choke, suffocate or strangle another person<br>• The offender and victim are in a domestic relationship; **or**<br>• The choking, suffocation or strangulation is associated domestic violence under the *Domestic and Family Violence Protection Act 2012 (Qld)*<br>• Unlawfully<br>• Without consent |

Section 315A was inserted into the *Criminal Code 1899 (Qld)* by the *Criminal Law (Domestic Violence) Amendment Act 2016 (Qld)* , which commenced on its date of assent of 5 May 2016.

On 19 April 2016, as part of the Second Reading speech to the Criminal Law (Domestic Violence) Amendment Bill (No 2) (Qld), the Queensland Attorney General, Yvette D'ath said:

> **…** a new offence of choking, suffocation and strangulation in a domestic setting is inserted into the Criminal Code. The new offence reflects that this sort of violence is not only inherently dangerous but predictive of an escalation in domestic violence offending including homicide. The new offence acknowledges the importance of identifying this conduct to assist law enforcement and related agencies in assessing risk to victims and increasing protections for them. **…**
>
> Firstly, in relation to the new strangulation offence, questions arose about why absence of consent is an element of the offence. The new offence is intended to target the insidiously threatening and dangerous strangulation and choking behaviours in a domestic and family violence context. The requirement for lack of consent in the offence reflects the necessity not to criminalise the consensual touching of the body. …
>
> Another concern with the new offence raised during the consultation process was the use of the term 'domestic setting' in the new offence title 'Choking, suffocation or strangulation in a domestic setting'. The use of the term 'domestic setting' is not intended to impose any limitation on the location of offending. While section 35C of the Acts Interpretation Act 1954 provides that a heading to a section forms part of the section, the term 'domestic setting' is not an element of the new offence. The term therefore must be read in the context of the offence, which provides no qualification on the location of the offending but provides the overall context or circumstances of the offence.
>
> Another issue raised with the new offence was with the element of the offence that the offender is in a 'domestic relationship' with the victim, or the choking, suffocation or strangulation is associated domestic violence under the Domestic and Family Violence Protection Act 2012. Some submitters expressed concern that the requirement that the offender is in a domestic relationship with the victim is unduly limiting and may be difficult to prove. The term 'domestic relationship' is defined in section 1 of the Criminal Code. The Criminal Code definition adopts the definition of 'relevant relationship' contained in section 13 of the Domestic and Family Violence Protection Act, which is an intimate personal relationship, a family relationship, or an informal care relationship as defined under the Domestic and Family Violence Protection Act. The term 'associated domestic violence' is defined in section 9 of the Domestic and Family Violence Protection Act. These phrases are successfully proved in applications under the Domestic and Family Violence Protection Act on a regular basis.

> While acknowledging that proceedings under the Domestic and Family Violence Protection Act are determined on the balance of probabilities, it is not anticipated that evidentiary issues will arise in proving a domestic relationship et cetera to the criminal standard of proof. Further, in a trial for a defendant charged with an offence arising out of conduct on which an application under the Domestic and Family Violence Protection Act is based, the existence of an order made under the Domestic and Family Violence Protection Act is admissible with the leave of the court.
>
> … Whilst the new strangulation offence does not specifically legislate for attempted choking, suffocation or strangulation, attempted conduct of this kind is still captured by the general attempts provision in section 535 of the Criminal Code. Section 4 of the Criminal Code defines the term 'attempt'. Further, the general provision applying to attempts provides that an attempt to commit an indictable offence will carry a punishment equal to one-half of the relevant maximum penalty. I am satisfied that the general 'attempts' provisions in the Criminal Code adequately provide for attempts to commit the proposed new section 315A.

## 4.2 AUSTRALIAN CAPITAL TERRITORY

Section 27(3)(a) of the *Crimes Act 1900 (ACT)* states:

> A person who intentionally and unlawfully chokes, suffocates or strangles another person so as to render that person insensible or unconscious … is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Section 28(2)(a) of the *Crimes Act 1900 (ACT)* states:

> A person who intentionally and unlawfully chokes, suffocates or strangles another person … is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

| **Table 5: Main features of sections 27 and 28 of the Crimes Act 1900 (ACT)** | |
|---|---|
| Number of offences created | Two:<br>• Section 27(3)(a) of the *Crimes Act 1900 (ACT)*<br>• Section 28(2)(a) of the *Crimes Act 1900 (ACT)* |
| Maximum penalty | • Section 27(3)(a): 10 years imprisonment<br>• Section 28(2)(a): 5 years imprisonment |
| **Section 27 offence** | |
| Elements of offence | • Choke, suffocate or strangle another person.<br>• Render person insensible or unconscious.<br>• Intentionally<br>• Unlawfully. |
| **Section 28 offence** | |
| Elements of offence | • Choke, suffocate or strangle another person<br>• Intentionally<br>• Unlawfully. |

## 4.3 TASMANIA

Section 168 of the *Criminal Code Act 1924 (Tas)*, which is entitled *Disabling to aid commission of offence or flight of offender*, states:

> Any person who, by any means whatever calculated to choke, suffocate, or strangle, or, by any violent means whatever, renders any person incapable of resistance, with intent thereby to facilitate the commission of an offence, or to facilitate the flight of an offender after the commission or attempted commission of an offence, is guilty of a crime.

Section 168 does not specify the penalty that applies to the offence of disabling to aid commission of offence or flight of offender. As such, section 389(3) of the *Criminal Code Act 1924 (Tas)* applies. Section 389(3) states:

> Subject to the provisions of the Sentencing Act 1997 or of any other statute, and except where otherwise expressly provided, the punishment for any crime shall be by imprisonment for 21 years, or by fine, or by both such punishments, and shall be such as the judge of the court of trial shall think fit in the circumstances of each particular case.

| Table 6: Main features of section 168 of the Criminal Code Act 1924 (Tas) | |
|---|---|
| Number of offences created | One:<br>• Section 168 of the *Criminal Code Act 1924 (Tas)* |
| Maximum penalty | • No maximum penalty specified. By virtue of s 389(3), a maximum penalty of 21 years applies. |
| **Section 168 offence** | |
| Elements of offence | • render person incapable of resistance.<br>• choke, suffocate, or strangle by any means whatever, **or**<br>• any violent means whatever.<br>• intent to facilitate the commission of an offence, **or**<br>• intent to facilitate the flight of an offender after the commission or attempted commission of an offence |

## 4.4 NORTHERN TERRITORY

Section 175 of Schedule 1 of the *Criminal Code Act (NT)*, which is entitled *Disabling in order to commit indictable offence*, states:

> Any person who, by any means calculated to choke, suffocate or strangle and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance is guilty of an offence and is liable to imprisonment for life.

| Table 7: Main features of section 175 of the Criminal Code Act (NT) | |
|---|---|
| Number of offences created | One:<br>• Section 175 of the *Criminal Code Act (NT)* |
| Maximum penalty | • Imprisonment for life. |
| **Section 175 offence** | |
| Elements of offence | • choke, suffocate or strangle by any means<br>• render person incapable of resistance **or**<br>• attempt to render any person incapable of resistance.<br>• intent to commit or to facilitate the commission of an indictable offence, **or**<br>• intent to facilitate the flight of an offender after the commission or attempted commission of an indictable offence |

## 4.5 SOUTH AUSTRALIA, WESTERN AUSTRALIA AND VICTORIA

South Australia, Western Australia and Victoria have no specific strangulation offences but, rather, rely on more general criminal law provisions.

Victoria did have a choking offence in a repealed section 20 of the *Crimes Act 1958 (Vic)*:

> Whosoever attempts to choke suffocate or strangle any person or by any means calculated to choke suffocate or strangle attempts to render any person insensible unconscious or incapable of resistance, with intent in any such case to enable himself or any other person to commit or with intent in any such case to assist any other person in committing any indictable offence, shall be guilty of felony and shall be liable to imprisonment for a term of not more than fifteen years.

That previous choking offence was repealed on 24 March 1986 by section 8(2) of the *Crimes (Amendment) Act 1985 (Vic)*.[2]

For recent developments in South Australia, Western Australia and Victoria see, respectively:

- O'Connor C, Choking, non-fatal strangulation offences already in Queensland the focus of new push for WA, *ABC News*, 23 July 2018.
- Maclennan L, New domestic violence law being drafted in South Australia, *ABC News*, 9 July 2018.
- Fitz-Gibbon K et al, Victorian government should be wary of introducing a stand-alone offence of non-fatal strangulation, *The Conversation*, 3 August 2018. This article discusses a coronial inquest where the State Coroner, Judge Sara Hinchey, said (at [163]):

[2] See also: Schedule 8 of the *Crimes Act 1958 Vic*.

> The introduction of a stand-alone offence for strangulation, suffocation or choking in Victoria may significantly help to ensure strangulation is treated commensurate with the risk it poses to victims, and remove the need to prove particular bodily harm or intent to cause injury. Such an offence will more effectively hold perpetrators to account for serious offending. Further, the new offence may build further awareness of the dangers and potential lethality of strangulation among police members, courts and community services practitioners.

The authors point out that "the coroner does not go as far as recommending the introduction of the new offence", and further state that:

> There are concerns that introducing new family violence offences such as strangulation may distract attention from systemic failures to properly utilise existing laws, and from police failure to comply with operational policies and procedures related to family violence.

- Royal Commission into Family Violence, *Volume III: Report and Recommendations*, 2016, Victorian Government.
- Doherty E, Royal Commission into Family Violence: Call for new cruelty, strangulation laws to plug gaps in justice system, *Herald Sun*, 6 August 2016
- Price J, This is the 'last warning shot' before a man kills his partner, *Sydney Morning* Herald, 9 August 2018.

## 4.6 CANADA

Section 246 of the *Criminal Code* states:

> Every one who, with intent to enable or assist himself or another person to commit an indictable offence,
>
> > (a) attempts, by any means, to choke, suffocate or strangle another person, or by any means calculated to choke, suffocate or strangle, attempts to render another person insensible, unconscious or incapable of resistance, or …
>
> is guilty of an indictable offence and liable to imprisonment for life.

Clause 95 of Bill C-75 proposes to amend section 267 of the *Criminal Code*, which currently states:

> Every one who, in committing an assault,
>
> (a) carries, uses or threatens to use a weapon or an imitation thereof, or
>
> (b) causes bodily harm to the complainant,
>
> is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Clause 95 proposes that section 267 will state:

> Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or is guilty of an offence punishable on summary conviction who, in committing an assault,
>
> (a) carries, uses or threatens to use a weapon or an imitation thereof,

(b) causes bodily harm to the complainant, or

(c) chokes, suffocates or strangles the complainant.

Clause 99 of Bill C-75 proposes to amend section 272(1) of the *Criminal Code*, which currently reads:

(1) Every person commits an offence who, in committing a sexual assault,

(a) carries, uses or threatens to use a weapon or an imitation of a weapon;

(b) threatens to cause bodily harm to a person other than the complainant;

(c) causes bodily harm to the complainant; or

(d) is a party to the offence with any other person.

Clause 99 proposes to strike out the "or" at the end of paragraph (c) and insert after paragraph c: "(c.1) chokes, suffocates or strangles the complainant; or".

## 4.7 NEW ZEALAND

Strangulation is encompassed by a general prohibition against "disabling". As section 197(1) of the *Crimes Act 1961 (NZ)* states:

> Every one is liable to imprisonment for a term not exceeding 5 years who, wilfully and without lawful justification or excuse, stupefies or renders unconscious any other person.

In a 2016 report entitled *Strangulation: The case for a new offence*, the New Zealand Law Reform Commission recommended:

> Part 8 of the *Crimes Act 1961* should be amended to make a person who strangles or suffocates another person liable to imprisonment for a term not exceeding seven years
>
> In that offence, "strangles or suffocates" should mean impedes normal breathing or circulation of the blood by intentionally applying force on the neck or by other means.

On March 2017 it was reported in the New Zealand media that:

> The government has introduced new legislation to overhaul the Domestic Violence Act **…** The law would create three new offences: strangulation, coercion to marry and assault on a family member … The Law Commission last year recommended making non-fatal strangulation a separate offence to assault. The commission said studies had shown that if a woman was strangled, there was a high risk of her being killed in the future by her attacker.

A strangulation offence is contained in a Bill currently before Parliament. Clause 93 of the Family and Whānau Violence Legislation Bill (NZ), which proposes to insert section 189A into the *Crimes Act 1961 (NZ)*, states:

**93 New section 189A inserted (Strangulation or suffocation)**

After section 189, insert:

**189A Strangulation or suffocation**

Everyone is liable to imprisonment for a term not exceeding 7 years who intentionally or recklessly impedes another person's normal breathing, blood circulation, or both, by doing (manually, or using any aid) all or any of the following:

(a) blocking that other person's nose, mouth, or both:

(b) applying pressure on, or to, that other person's throat, neck, or both.

## 4.8. UNITED KINGDOM

Section 21 of the *Offences Against the Person Act 1861 (UK)* prohibits strangulation that is committed with intent to commit any indictable offence. Section 21 states:

> Whosoever shall, by any means whatsoever, attempt to choke, suffocate, or strangle any other person, or shall by any means calculated to choke, suffocate, or strangle, attempt to render any other person insensible, unconscious, or incapable of resistance, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and being convicted thereof shall be liable . . . to be kept in penal servitude for life

Section 76 of the *Serious Crime Act 2015 (UK)* also provides for a generic domestic violence offence of controlling or coercive behaviour in an intimate or family relationship. Section 76 states:

(1) A person (A) commits an offence if—

(a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,

(b) at the time of the behaviour, A and B are personally connected,

(c) the behaviour has a serious effect on B, and

(d) A knows or ought to know that the behaviour will have a serious effect on B.

(2) A and B are "personally connected" if—

(a) A is in an intimate personal relationship with B, or

(b) A and B live together and—

(i) they are members of the same family, or

(ii) they have previously been in an intimate personal relationship with each other.

…

(4) A's behaviour has a "serious effect" on B if—

(a) it causes B to fear, on at least two occasions, that violence will be used against B, or

(b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities. …

(11) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

### 4.9. UNITED STATES

Section 113(8) of Title 18 (Crimes and Criminal Procedure) of the *United States Code* expressly prohibits a person from assaulting "a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate". A maximum penalty of 10 years imprisonment applies. The terms "strangling" and "suffocating" are defined in section 113(4) and (3) as follows:

> (4) the term "strangling" means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim; and
>
> (5) the term "suffocating" means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

For an interactive map of strangulation offences in each State of the United States, see: Training Institute on Strangulation Prevention, Legislation Map.

## 5. ADDITIONAL SOURCES

### 5.1 ACADEMIC SOURCES, REPORTS AND SUBMISSIONS

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Fitz-Gibbon K et al, Strangulation, risk and intimate partner violence, 2018, *Monash Gender and Family Violence*.

Gombru A, Brignell G and Donnelly H, Sentencing for Domestic Violence, 2016 (45) *Sentencing Trends and Issues*.

*Inquiry into the Introduction of a New Strangulation Offence*, *Legal Aid NSW Submission to the Department of Attorney General and Justice*, July 2013

Pritchard A, Reckdenwald A and Nordham C, Non-fatal Strangulation as part of Domestic Violence: A Review of Research, 2017 18(4) *Trauma, Violence and Abuse* 407. (link to abstract only)

*Strangulation offences in NSW*, Law Society NSW submission to the Department of Justice, 27 June 2018

### 5.2 PROSECUTION AND POLICE SOURCES

*Domestic Violence Handbook for Police and Crown Prosecutors in Alberta*, 2014, Alberta Justice and Solicitor General, Alberta Crown Prosecution Service, Chapter 20.

Family Justice Centre Alliance and Georgia Commission on Family Violence, *Responding to Strangulation: A Training Video for Law Enforcement*

Queensland Police, *Operational Procedures Manual*, Chapter 9 (Domestic Violence), effective 9 August 2018, p 13.

## 5.3 MEDIA SOURCES

Almost 800 charged with strangulation in Queensland domestic violence crackdown, 7 May 2017, *The Guardian*

Caldwell F, "It's about power and control": 900 strangulation charges laid in 13 months, 20 July 2017, *Brisbane Times*

Harris L, Domestic Violence crisis: More defendants using mental health reasons to avoid conviction, 30 April 2017, *The Daily Telegraph*

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**Last updated:** 3 September 2018

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**Acknowledgement:** The NSW Parliamentary Research Service acknowledges the support of the New South Wales Bureau of Crime Statistics and Research in providing the data presented in this paper.