

Minnesota's Felony Assault by Strangulation

Each year, the State Legislatures appear to add more tools to their arsenal against domestic abuse by refining or adding criminal assault charges or increasing penalties for such offenses.

In 2005, the State of Minnesota has added a felony charge for domestic assault by strangulation. To fall under the statute, a victim must be a "family or household member" as set forth in Minnesota Statutes section 518B.01, subdivision 2.

"Strangulation" is defined as the "intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person." Strangulation may occur by a person's bare hand, a cord, article of clothing or even a plastic bag.

As a felony, domestic assault by strangulation is punishable by up to three years imprisonment, a fine of \$5,000, or both. Prior to the 200 law, first offenses of domestic abuse, even where strangulation was used, were chargeable as misdemeanors.

In most cases where felony domestic assault by strangulation is alleged, the evidence is weak. In most cases, there are no eyewitness reports and the primary evidence often boils down to a case of credibility and "he said – she said." Cases are most often charged when an alleged victim claims that strangulation has occurred and offers, as proof, marks related to the offense including "bruising," "red marks," "scratches," "raspy voice," "shortness of breath," or "lightheadedness."

All too often little investigation occurs beyond the initial contact with the victim. Few efforts are made to determine if the person accused was defending themselves from attack or part of a more mutual exchange. Certainly, little consideration is given to the respective psychological stability of the victim, the victim's level of intoxication, or other indicia as to the credibility of statements of the perspective witnesses.

In cases of domestic assault, victim recantation is prevalent. Unfortunately, prosecutors often see such inconsistencies in victim testimony only as additional evidence that they suffer from abused consistent with such questionable psychological theories as "Battered Woman's Syndrome." As a result, victim recantation does not mean that the charges will be dismissed. Instead, prosecutors often persist relying on photographs of injuries and initial statements made to law enforcement to support their case. Often, the outcome of a case may depend on how thorough law enforcement officers were when they initially investigated the complaint, including acquiring physical evidence and recorded at the scene and injuries alleged.

The consequences of a conviction for domestic assault are significant. That is true whether it is a misdemeanor or felony offense. In addition to the significant consequences of prison time and fines, there are numerous collateral considerations.

First, if convicted of a domestic assault, employers who require a background check will not hire you. That is particularly true if you work closely with customers or in some other service oriented profession.

Second, many landlords now perform background checks for applicants and, if you decide to rent, you may be denied an apartment with a crime of violence such as an assault on your record.

Third, a conviction for assault may result in licensing problems for certain occupations or interfere with acceptance into some schools of higher learning.

Finally, it is also compelling that a non-citizen may suffer deportation and, even a citizen would lose their right to possess a weapon, even for hunting purposes, after a conviction.

Often, the best defense is a good offense. In most instances, an argument for self defense may be made and Motions should be served to acquire all statements and medical records from the prosecution. Often, with skilled legal representation jail time and convictions can be avoided.