

CRIMINAL STRANGULATION / IMPEDING BREATHING STATUTORY COMPILATION FOR THE UNITED STATES AND ITS TERRITORIES

Compiled by the National District Attorneys Association (June, 2010)

This compilation contains legislation, session laws, and codified statutes. All statutes, laws, and bills listed in this compilation have been signed by the relevant governor and enacted into law. This report was compiled using State Net, and Lexis Search Services. This compilation is up-to-date as of the month it was created. However, please note we recommend checking both case law and current legislation for any possible modifications to the statutes listed below.

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States	Specifications	Text
<p>1. Arizona</p>	<p>Felony</p>	<p style="text-align: center;">TITLE 13. CRIMINAL CODE CHAPTER 12. ASSAULT AND RELATED OFFENSES</p> <p>ARIZ. REV. STAT. § 13-1204. (2010). Aggravated assault; classification; definition</p> <p>B. A PERSON COMMITS AGGRAVATED ASSAULT IF THE PERSON COMMITS ASSAULT BY EITHER INTENTIONALLY, KNOWINGLY OR RECKLESSLY CAUSING ANY PHYSICAL INJURY TO ANOTHER PERSON, INTENTIONALLY PLACING ANOTHER PERSON IN REASONABLE APPREHENSION OF IMMINENT PHYSICAL INJURY OR KNOWINGLY TOUCHING ANOTHER PERSON WITH THE INTENT TO INJURE THE PERSON, AND BOTH OF THE FOLLOWING OCCUR:</p> <p>1. THE PERSON INTENTIONALLY OR KNOWINGLY IMPEDES THE NORMAL BREATHING OR CIRCULATION OF BLOOD OF ANOTHER PERSON BY APPLYING PRESSURE TO THE THROAT OR NECK OR BY OBSTRUCTING THE NOSE AND MOUTH EITHER MANUALLY OR THROUGH THE USE OF AN INSTRUMENT.</p> <p>2. ANY OF THE CIRCUMSTANCES EXISTS THAT ARE SET FORTH IN SECTION 13-3601, SUBSECTION A, PARAGRAPH 1, 2, 3, 4, 5 OR 6.</p>
<p>2. Arkansas</p> <p>Arkansas (cont'd)</p>	<p>Definition of Abuse</p>	<p style="text-align: center;">Title 12 Law Enforcement, Emergency Management, And Military Affairs Subtitle 2. Law Enforcement Agencies And Programs Chapter 18 Child Maltreatment Act Subchapter 1 -- General Provisions</p> <p>ARK. CODE ANN. § 12-18-103 (2010). Definitions</p> <p>As used in this chapter:</p> <p>(2) (A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent</p>

		<p>(c) Strangulation in the first degree is a class C felony.</p> <p>Conn. Gen. Stat. § 53a-64cc (2010). Strangulation in the third degree: Class A misdemeanor</p> <p>(a) A person is guilty of strangulation in the third degree when such person recklessly restrains another person by the neck or throat and impedes the ability of such other person to breathe or restricts blood circulation of such other person.</p> <p>(b) No person shall be found guilty of strangulation in the third degree and unlawful restraint or assault upon the same incident, but such person may be charged and prosecuted for all three offenses upon the same information. For the purposes of this section, "unlawful restraint" means a violation of section 53a-95 or 53a-96, and "assault" means a violation of section 53a-59, 53a-59a, 53a-59b, 53a-59c, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-61 or 53a-61a.</p> <p>(c) Strangulation in the third degree is a class A misdemeanor.</p>
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<p>4. Delaware</p>		<p style="text-align: center;">TITLE 11. CRIMES AND CRIMINAL PROCEDURE PART I. DELAWARE CRIMINAL CODE CHAPTER 5. SPECIFIC OFFENSES SUBCHAPTER II. OFFENSES AGAINST THE PERSON SUBPART A. ASSAULTS AND RELATED OFFENSES</p> <p>11 Del. C. § 607 (2010). Strangulation; penalty; affirmative defense</p> <p>(a) (1) A person commits the offense of strangulation if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person.</p> <p>(2) Except as provided in paragraph (a)(3) of this section, strangulation is a class E felony.</p> <p>(3) Strangulation is a class D felony if:</p> <p style="padding-left: 40px;">a. The person used or attempted to use a dangerous instrument or a deadly weapon while committing the offense; or</p> <p style="padding-left: 40px;">b. The person caused serious physical injury to the other person while committing the offense; or</p> <p style="padding-left: 40px;">c. The person has been previously convicted of strangulation.</p> <p>(b) It is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.</p>
<p>5. Florida</p>	<p>Felony</p>	<p style="text-align: center;">TITLE 46. Crimes (Chs. 775-896) CHAPTER 784. Assault; Battery; Culpable Negligence</p> <p>Fla. Stat. Ann. § 784.041 (2010). Felony battery; domestic battery by strangulation</p> <p>(1) A person commits felony battery if he or she:</p>

<p>Florida (cont'd)</p>		<p>(a) Actually and intentionally touches or strikes another person against the will of the other; and</p> <p>(b) Causes great bodily harm, permanent disability, or permanent disfigurement.</p> <p>(2) (a) A person commits domestic battery by strangulation if the person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person. This paragraph does not apply to any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state.</p> <p>(b) As used in this subsection, the term:</p> <ol style="list-style-type: none"> 1. "Family or household member" has the same meaning as in s. 741.28. 2. "Dating relationship" means a continuing and significant relationship of a romantic or intimate nature. <p>(3) A person who commits felony battery or domestic battery by strangulation commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p>
<p>6. Hawaii</p>	<p>Felony</p>	<p style="text-align: center;">DIVISION 5. Crimes and Criminal Proceedings TITLE 37 Hawaii Penal Code CHAPTER 709 Offenses Against the Family and Against Incompetents</p> <p>Haw. Rev. Stat. § 709-906(1),(8) (2010). Abuse of family or household members; penalty</p> <p>(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.</p>

<p>Hawaii (cont'd)</p>		<p>For the purposes of this section, "family or household member" means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.</p> <p>(8) Where the physical abuse consists of intentionally or knowingly impeding the normal breathing or circulation of the blood of the family or household member by applying pressure on the throat or the neck, abuse of a family or household member is a class C felony.</p>
<p>7. Idaho</p>	<p>Felony</p>	<p style="text-align: center;">Penal Code TITLE 18. Crimes and Punishments CHAPTER 9. Assault and Battery</p> <p>Idaho Code Ann. § 18-923 (2010). Attempted strangulation</p> <p>(1) Any person who willfully and unlawfully chokes or attempts to strangle a household member, or a person with whom he or she has or had a dating relationship, is guilty of a felony punishable by incarceration for up to fifteen (15) years in the state prison.</p> <p>(2) No injuries are required to prove attempted strangulation.</p> <p>(3) The prosecution is not required to show that the defendant intended to kill or injure the victim. The only intent required is the intent to choke or attempt to strangle.</p> <p>(4) "Household member" assumes the same definition as set forth in section 18-918(1)(a), Idaho Code.</p> <p>(5) "Dating relationship" assumes the same definition as set forth in section 39-6303(2), Idaho Code.</p>

<p>8. Illinois</p>	<p>Strangulation is an issue to be considered in bail determination</p>	<p style="text-align: center;">CHAPTER 725. Criminal Procedure Code of Criminal Procedure of 1963 TITLE III. Proceedings After Arrest ARTICLE 110. Bail</p> <p>725 Ill. Comp. Stat. Ann. 5/110-5.1 (2010). Bail; certain persons charged with violent crimes against family or household members</p> <p>1. Subject to subsection (c), a person who is charged with a violent crime shall appear before the court for the setting of bail if the alleged victim was a family or household member at the time of the alleged offense, and if any of the following applies:</p> <p>(1) the person charged, at the time of the alleged offense, was subject to the terms of an order of protection issued under Section 112A-14 of this Code [725 ILCS 5/112A-14] or Section 214 of the Illinois Domestic Violence Act of 1986 [750 ILCS 60/214] or previously was convicted of a violation of an order of protection under Section 12-30 of the Criminal Code of 1961 [720 ILCS 5/12-30] or a violent crime if the victim was a family or household member at the time of the offense or a violation of a substantially similar municipal ordinance or law of this or any other state or the United States if the victim was a family or household member at the time of the offense;</p> <p>(2) the arresting officer indicates in a police report or other document accompanying the complaint any of the following:</p> <p>(A) that the arresting officer observed on the alleged victim objective manifestations of physical harm that the arresting officer reasonably believes are a result of the alleged offense;</p> <p>(B) that the arresting officer reasonably believes that the person had on the person's person at the time of the alleged offense a deadly weapon;</p> <p>(C) that the arresting officer reasonably believes that the person presents a credible threat of serious physical harm to the alleged victim or to any other person if released on bail before trial.</p>
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<p>Illinois (cont.)</p>		<p>(b) To the extent that information about any of the following is available to the court, the court shall consider all of the following, in addition to any other circumstances considered by the court, before setting bail for a person who appears before the court pursuant to subsection (a):</p> <p>(a):</p> <ol style="list-style-type: none"> (1) whether the person has a history of domestic violence or a history of other violent acts; (2) the mental health of the person; (3) whether the person has a history of violating the orders of any court or governmental entity; (4) whether the person is potentially a threat to any other person; (5) whether the person has access to deadly weapons or a history of using deadly weapons; (6) whether the person has a history of abusing alcohol or any controlled substance; (7) the severity of the alleged violence that is the basis of the alleged offense, including, but not limited to, the duration of the alleged violent incident, and whether the alleged violent incident involved serious physical injury, sexual assault, strangulation, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim; (8) whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending; (9) whether the person has exhibited obsessive or controlling behaviors toward the alleged victim, including, but not limited to, stalking, surveillance, or isolation of the alleged victim; (10) whether the person has expressed suicidal or homicidal ideations;
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<p>Illinois (cont.)</p>		<p>(11) any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint.</p> <p>(c) Upon the court's own motion or the motion of a party and upon any terms that the court may direct, a court may permit a person who is required to appear before it by subsection (a) to appear by video conferencing equipment. If, in the opinion of the court, the appearance in person or by video conferencing equipment of a person who is charged with a misdemeanor and who is required to appear before the court by subsection (a) is not practicable, the court may waive the appearance and release the person on bail on one or both of the following types of bail in an amount set by the court:</p> <p>(1) a bail bond secured by a deposit of 10% of the amount of the bond in cash;</p> <p>(2) a surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the person.</p> <p>Subsection (a) does not create a right in a person to appear before the court for the setting of bail or prohibit a court from requiring any person charged with a violent crime who is not described in subsection (a) from appearing before the court for the setting of bail.</p> <p>(d) As used in this Section:</p> <p>(1) "Violent crime" has the meaning ascribed to it in Section 3 of the Rights of Crime Victims and Witnesses Act [725 ILCS 120/3].</p> <p>(2) "Family or household member" has the meaning ascribed to it in Section 112A-3 of this Code [725 ILCS 5/112A-3].</p>
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<p>9. Indiana</p>	<p>Felony</p>	<p>TITLE 35 Criminal Law and Procedure ARTICLE 42 Offenses Against the Person CHAPTER 2 Battery and Related Offenses</p> <p>Ind. Code Ann. § 35-42-2-9 (2010). Strangulation</p> <p>(a) This section does not apply to a medical procedure.</p> <p>(b) A person who, in a rude, angry, or insolent manner, knowingly or intentionally:</p> <p>(1) applies pressure to the throat or neck of another person; or</p> <p>(2) obstructs the nose or mouth of the another person;</p> <p>in a manner that impedes the normal breathing or the blood circulation of the other person commits strangulation, a Class D felony.</p>
<p>10. Louisiana</p>	<p>Imprisonment at hard labor for not more than three years.</p>	<p>TITLE 14. Criminal Law CHAPTER 1. Criminal Code PART 2. Offenses Against the Person SUBPART B. Assault and Battery (with Related Offenses)</p> <p>La. Rev. Stat. Ann. § 14:35.3(B)(3) (2010). Domestic abuse battery</p> <p>(3) "Strangulation" means intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of the victim.</p>
<p>11. Maryland</p>	<p>Element of rape in the first degree</p>	<p>Criminal Law TITLE 3. Other Crimes Against the Person SUBTITLE 3. Sexual Crimes</p> <p>Md. Code Ann., [Crim. Law] § 3-303(a) (2010). Rape in the first degree</p> <p>(a) Prohibited. -- A person may not:</p>

<p>Maryland (cont.)</p>	<p>(1) engage in vaginal intercourse with another by force, or the threat of force, without the consent of the other; and</p> <p>(2) (i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;</p> <p>(ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;</p> <p>(iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;</p> <p>(iv) commit the crime while aided and abetted by another; or</p> <p>(v) commit the crime in connection with a burglary in the first, second, or third degree.</p> <p>CASE NOTES: THIS SECTION REQUIRES MORE THAN PLACING VICTIM IN FEAR OF PHYSICAL INJURY GENERALLY; it specifically requires the victim to be placed in fear of serious physical injury which, in the context of the statute, means being placed in fear of physical injury analogous to "death, suffocation, strangulation or disfigurement." <u>Mayes v. State, 50 Md. App. 628, 440 A.2d 1093 (1982).</u></p> <p>EVIDENCE SUFFICIENT TO PROVE ATTEMPTED RAPE. --Evidence that victim shouted "no" before being grabbed around the neck and held against her will at knifepoint, provided ample evidence that it was the defendant's intention to engage in sex with the victim. <u>Paz v. State, 125 Md. App. 729, 726 A.2d 880 (1999).</u></p> <p>Md. Code Ann., [Crim. Law] § 3-305(a) (2010). Sexual offense in the first degree</p> <p>(a) Prohibited. -- A person may not:</p>
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<p>Maryland (cont.)</p>		<p>(1) engage in a sexual act with another by force, or the threat of force, without the consent of the other; and</p> <p>(2) (i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;</p> <p>(ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;</p> <p>(iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;</p> <p>(iv) commit the crime while aided and abetted by another; or</p> <p>(v) commit the crime in connection with a burglary in the first, second, or third degree</p> <p>.</p> <p><u>CASE NOTES:</u> BURDEN OF PROOF FOR JUVENILE CHILD IN NEED OF ASSISTANCE PETITION. - -Defendant's acquittal in a criminal case of child abuse and sex offense charges did not require the dismissal of a juvenile Child in Need of Assistance petition based upon the same conduct, since the lower burden of proof in the juvenile petition proceedings precludes the application of collateral estoppel. In re Neil C., 308 Md. App. 591, 521 A.2d 329 (1987).</p> <p>Md. Code Ann., [Crim. Law] § 3-307(a)(1) (2010). Sexual offense in the third degree</p> <p>(a) Prohibited. -- A person may not:</p> <p>(1) (i) engage in sexual contact with another without the consent of the other; and</p> <p>(ii) 1. employ or display a dangerous weapon, or a physical object that the victim</p>
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<p>Maryland (cont.)</p>	<p>reasonably believes is a dangerous weapon;</p> <p>2. suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;</p> <p>3. threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;</p> <p>CASE NOTES:</p> <p>MERGER.--Where the sexual offense in the third degree is a required element of the child abuse, the conviction for the sexual offense should merge into the conviction for child abuse. <u>Vogel v. State, 76 Md. App. 56, 543 A.2d 398 (1988), aff'd, 315 Md. 458, 554 A.2d 1231 (1989).</u></p> <p>BURDEN OF PROOF FOR JUVENILE CHILD IN NEED OF ASSISTANCE PETITION. - -Defendant's acquittal in a criminal case of child abuse and sex offense charges did not require the dismissal of a juvenile Child in Need of Assistance petition based upon the same conduct, since the lower burden of proof in the juvenile petition proceedings precludes the application of collateral estoppel. <u>In re Neil C., 308 Md. 591, 521 A.2d 329 (1987).</u></p> <p>USE OF CLOSED CIRCUIT TELEVISION. --The provisions of former § 9-102 of the Courts Article (now § 11-303 of the Criminal Procedure Article) providing that the taking of the testimony of a child abuse victim be taken outside the courtroom and shown in the courtroom by means of closed circuit television when certain conditions are met, apply to charges of third degree sexual offense, and are not limited to a charge of child abuse. <u>Wildermuth v. State, 310 Md. 496, 530 A.2d 275 (1987).</u></p> <p>INTENT TO HAVE SEXUAL INTERCOURSE NOT REQUIRED. --The crime of third degree sexual offense does not in any way require an intent to have sexual intercourse with the victim. <u>United States v. Eades, 455 F. Supp. 436 (D. Md. 1978), aff'd in part and rev'd in part, 615 F.2d 617 (4th Cir.), modified on reh'g, 633 F.2d 1075 (4th Cir. 1980), cert. denied, 450 U.S. 1001, 101 S. Ct. 1709, 68 L. Ed. 2d 203 (1981).</u></p>
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<p>12. Massachusetts</p>	<p>Attempted murder by strangling is a felony</p>	<p style="text-align: center;">PART IV Crimes, Punishments and Proceedings in Criminal Cases TITLE I Crimes and Punishments CHAPTER 265 Crimes Against the Person</p> <p>Mass. Ann. Laws ch. 265, § 16 (2010). Attempt to Murder by Poisoning, Drowning or Strangling</p> <p>Whoever attempts to commit murder by poisoning, drowning or strangling another person, or by any means not constituting an assault with intent to commit murder, shall be punished by imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two and one half years.</p> <p><u>CASE NOTES:</u></p> <p>There is no such crime as attempted involuntary manslaughter, since attempt to commit crime involves intent to do so and involuntary manslaughter is homicide unintentionally caused. <u>Commonwealth v. Hebert (1977) 373 Mass 535, 368 NE2d 1204.</u></p> <p>Evidence that defendant brutally beat 5-year-old girl and put his hands around her neck, with thumbs in front of her neck, that there were abrasions on her neck and that he repeatedly struck her head against rock fracturing her skull and concussing her brain warranted influence that he intended to strangle her and to kill her. <u>Commonwealth v. Grogan (1981) 11 Mass App 684, 418 NE2d 1276.</u></p> <p>Assault and battery is not necessarily lesser included offense within crime of attempted murder by strangulation, because there is possibility of attempted murder by strangulation without physical touching. <u>Commonwealth v. Dixon (1993) 34 Mass App 653, 614 NE2d 1027</u></p> <p>One may be found guilty of attempted murder under either general attempt statute [ALM GL c 274 § 6] or under particular attempt statute [ALM GL c 265 § 16], the latter carrying a</p>

<p>Massachusetts (cont'd)</p>		<p>greater penalty. <u>Commonwealth v. Dixon (1993) 34 Mass App 653, 614 NE2d 1027.</u></p> <p>Overt act required for attempted murder by strangling need not in all cases be strangling. <u>Commonwealth v. Dixon (1993) 34 Mass App 653, 614 NE2d 1027.</u></p> <p>While strangling or choking, manually or by ligature, usually constitutes overt act required for attempted murder by strangulation, it is possible for act to occur when plainly imminent strangulation is interrupted by external event. <u>Commonwealth v. Dixon (1993) 34 Mass App 653, 614 NE2d 1027.</u></p> <p>Simple assault is lesser included offense within attempted murder by strangulation, because commission of overt act intended to cause death by strangulation which comes very close to accomplishment necessarily is attempt to commit battery. <u>Commonwealth v. Dixon (1993) 34 Mass App 653, 614 NE2d 1027.</u></p> <p>At trial of defendant charged with attempted murder by means not constituting assault with intent to commit murder, judge did not err in denying defendant's request to instruct jury on simple assault as lesser included offense, since simple assault was not lesser included of attempted murder charged in indictment. <u>Commonwealth v. Murray (2001) 51 Mass App 57, review denied (2001) 434 Mass 1104.</u></p> <p>There was sufficient evidence that defendant intended to kill the victim; after warning the victim to say nothing, defendant choked the victim with pantyhose until the victim lapsed into unconsciousness, and then defendant left the victim in a locked room. <u>Commonwealth v. Ormonde (2002) 55 Mass App 231, review denied (2002) 437 Mass 1108.</u></p>
<p>13. Michigan</p>	<p>Attempt to murder by strangulation is a felony</p>	<p>CHAPTER 750 Michigan Penal Code The Michigan Penal Code CHAPTER XII. Attempts</p> <p>Mich. Comp. Laws Serv. § 750.91 (2010). Attempt to murder</p> <p>Attempt to murder by poisoning, etc.-Any person who shall attempt to commit the crime of murder by poisoning, drowning, or strangling another person, or by any means not</p>

		constituting the crime of assault with intent to murder, shall be guilty of a felony, punishable by imprisonment in the state prison for life or any term of years.
14. Minnesota	Felony	<p>Crimes, Criminals CHAPTER 609 Criminal Code Crimes Against the Person</p> <p>Minn. Stat. § 609.2247 (2009). Domestic assault by strangulation</p> <p>Subdivision 1. Definitions.</p> <p>(a) As used in this section, the following terms have the meanings given.</p> <p>(b) "Family or household members" has the meaning given in section 518B.01, subdivision 2.</p> <p>(c) "Strangulation" means 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.</p> <p>Subd. 2. Crime.</p> <p>Unless a greater penalty is provided elsewhere, whoever assaults a family or household member by strangulation is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.</p> <p><u>CASE NOTES:</u> (Unpublished Opinion) In a trial for felony domestic assault by strangulation, in violation of Minn. Stat. § 609.2247, subd. 2 and Minn. Stat. § 609.101, subd. 2, a detective's testimony that strangulation cases did not necessarily result in physical marks on a victim was relevant, under Minn. R. Evid. 401, 702, because the victim had no discernible injury to her neck. <u>State v. Supino, 2009 Minn. App. Unpub. LEXIS 587 (Minn. Ct. App. June 2 2009).</u></p>

<p style="text-align: center;">Minnesota (cont'd)</p>		<p>Where defendant was convicted of domestic assault by strangulation in violation of Minn. Stat. § 609.2247, subd. 2, the district court did not abuse its discretion by allowing the arresting officer to testify that defendant was the primary aggressor. The prosecutor did not commit misconduct by referring to domestic-abuse themes during closing argument. <u>State v. Simmons, 2008 Minn. App. Unpub. LEXIS 971, 12 No. 33 Minn. Lawyer 41 (2008), review denied by 2008 Minn. LEXIS 610, 12 No. 44 Minn. Lawyer 14 (2008).</u></p> <p>(Unpublished Opinion) Where a police officer went to defendant's home to investigate a report of domestic assault, where he spoke with defendant's wife and noticed that she had several bruises, bumps, and red marks on face, head, and neck, and where defendant's wife told the officer that defendant had repeatedly beaten, raped, and choked her, the evidence was sufficient to support defendant's conviction of domestic assault by strangulation under Minn. Stat. § 609.2247, subd. 2. Although defendant claimed that he grabbed but did not squeeze the victim's neck, photographs of the injuries were admitted into evidence, and the jury could permissibly conclude that defendant applied sufficient pressure to leave visible marks and applied enough pressure to the victim's neck to impede her normal breathing, an act constituting strangulation under Minn. Stat. § 609.2247, subd. 1(c). <u>State v. Williams, 2009 Minn. App. Unpub. LEXIS 1008 (Minn. Ct. App. Sept. 8 2009).</u></p> <p>Defendant's conviction for fifth-degree assault was reversed because fifth-degree assault was a lesser included offense of another charged offense, domestic assault by strangulation, because proving that an assault by strangulation occurred necessarily proved an attempt to harm another, which was an element of the assault charge. <u>State v. Benson, 2008 Minn. App. Unpub. LEXIS 402, 12 No. 17 Minn. Lawyer 27 (2008), review denied by 2008 Minn. LEXIS 440 (Minn. June 25, 2008).</u></p> <p>Because the two offenses of domestic assault by strangulation and making terroristic threats were part of the same behavioral incident under Minn. Stat. 609.035, and because the instructions given to the sentencing jury were inadequate because they did not refer to the aggravating factor of victim vulnerability, defendant's upward durational departure sentence was improper. <u>State v. Vasser, 2007 Minn. App. Unpub. LEXIS 1168, 11 No. 51 Minn. Lawyer 50 (2007), review denied by 2008 Minn. LEXIS 91, 12 No. 8 Minn. Lawyer 4</u></p>
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<p style="text-align: center;">Minnesota (cont'd)</p>		<p><u>(2008).</u></p> <p>Defendant's conviction for fifth-degree assault was reversed because fifth-degree assault was a lesser included offense of another charged offense, domestic assault by strangulation, because proving that an assault by strangulation occurred necessarily proved an attempt to harm another, which was an element of the assault charge. <u>State v. Benson, 2008 Minn. App. Unpub. LEXIS 402, 12 No. 17 Minn. Lawyer 27 (2008), review denied by 2008 Minn. LEXIS 440 (Minn. June 25, 2008).</u></p> <p>District court's failure to give the jury a cautionary instruction regarding two incidents of relationship evidence admitted at defendant's trial for domestic assault by strangulation under Minn. Stat. § 609.2247 did not constitute plain error under Minn. R. Crim. P. 31.02 entitling defendant to a new trial; first, there was no evidence in the record indicating that the jury convicted defendant based on the victim's testimony regarding his prior bad acts. On the contrary, the State presented substantial evidence of defendant's guilt, including the victim's and a police officer's testimony and police photos taken of the victim's neck on the day of the incident, and did not unduly focus on the relationship evidence; second, in light of the strong evidence of defendant's guilt, there was no indication that the trial court's omission of a cautionary instruction significantly affected the jury's verdict. <u>State v. Kiazolu, 2008 Minn. App. Unpub. LEXIS 614, 12 No. 22 Minn. Lawyer 61 (2008).</u></p>
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<p>15. Mississippi</p>	<p>Strangling or Attempting to Strangle a person living as a spouse is aggravated domestic violence.</p>	<p>Miss. Code Ann. § 97-3-7 (2010). Simple assault; aggravated assault; simple domestic violence; aggravated domestic violence, amended by Sen. B. 2923, Leg., Reg. Sess. (Miss. 2010) (enacted).</p> <p>[*1] SECTION 1. Section 97-3-7, Mississippi Code of 1972, is amended as follows:</p> <p>(4) A person is guilty of aggravated domestic violence who commits aggravated assault as described in subsection (2) of this section against [A> , OR WHO STRANGLES, OR ATTEMPTS TO STRANGLE, <A] a current or former spouse or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant [A> OR A CHILD OF THAT PERSON <A] , other persons related by consanguinity or affinity who reside with or formerly resided with the defendant* * * , a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child [A> . <A] Upon conviction, the defendant shall be punished [A> BY IMPRISONMENT IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS FOR NOT LESS THAN TWO (2) YEARS <A] ; however, upon a third or subsequent [A> CONVICTION <A] of aggravated domestic violence, whether against the same or another victim and within five (5) years, the defendant shall be guilty of a felony and sentenced to a term of imprisonment of not less than [A> TEN (10) <A] nor more than twenty (20) years. In sentencing, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under sixteen (16) years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, or the residence where the offense occurred. Reasonable discipline of a child, such as spanking, is not an offense under this subsection (4). [A> A PERSON CONVICTED OF AGGRAVATED DOMESTIC VIOLENCE SHALL NOT BE ELIGIBLE FOR PAROLE UNDER THE PROVISIONS OF SECTION 47-7-3(1)(C) UNTIL HE SHALL HAVE SERVED ONE (1) YEAR OF HIS SENTENCE. <A]</p>
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<p>Mississippi (cont'd)</p>		<p>[A> FOR THE PURPOSES OF THIS SECTION, "STRANGLE" MEANS TO RESTRICT THE FLOW OF OXYGEN OR BLOOD BY INTENTIONALLY APPLYING PRESSURE ON THE NECK OR THROAT OF ANOTHER PERSON BY ANY MEANS OR TO INTENTIONALLY BLOCK THE NOSE OR MOUTH OF ANOTHER PERSON BY ANY MEANS. <A]</p> <p>(5) "Dating relationship" means a social relationship as defined in Section 93-21-3.</p> <p>(6) Every conviction of domestic violence may require as a condition of any suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.</p> <p>(7) When investigating allegations of a violation of subsection (3) or (4) of this section, law enforcement officers shall utilize the form prescribed for such purposes by the Office of the Attorney General in consultation with the sheriff's and police chief's associations.</p> <p>(8) In any conviction of assault as described in any subsection of this section which arises from an incident of domestic violence, the sentencing order shall include the designation "domestic violence." The court shall forward a copy of each sentencing order bearing the designation "domestic violence" to the Office of the Attorney General.</p>
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<p>16. Missouri</p> <p>Missouri (cont'd)</p>	<p>Felony</p>	<p>TITLE 38. Crimes and Punishment; Peace Officers and Public Defenders (Chs. 556-600) CHAPTER 565. Offenses Against the Person</p> <p>Mo. Rev. Stat. § 565.073 (2010). Domestic assault, second degree -- penalty</p> <p>1. A person commits the crime of domestic assault in the second degree if the act involves a family or household member or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010, RSMo, and he or she:</p> <p>(1) Attempts to cause or knowingly causes physical injury to such family or household member by any means, including but not limited to, by use of a deadly weapon or dangerous instrument, or by choking or strangulation; or</p> <p>(2) Recklessly causes serious physical injury to such family or household member; or</p> <p>(3) Recklessly causes physical injury to such family or household member by means of any deadly weapon.</p> <p>2. Domestic assault in the second degree is a class C felony.</p>
<p>17. Nevada</p>		<p>NRS 200.400 Definition; penalties.</p> <p>1. As used in this section:</p> <p>(a) “Battery” means any willful and unlawful use of force or violence upon the person of another.</p> <p>(b) “Strangulation” has the meaning ascribed to it in NRS 200.481.</p> <p>2. A person who is convicted of battery with the intent to commit mayhem, robbery or grand larceny is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.</p> <p>3. A person who is convicted of battery with the intent to kill is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years.</p>

<p>Nevada (cont'd)</p>		<p>4. A person who is convicted of battery with the intent to commit sexual assault shall be punished:</p> <p>(a) If the crime results in substantial bodily harm to the victim or is committed by strangulation, for a category A felony by imprisonment in the state prison:</p> <p>(1) For life without the possibility of parole; or</p> <p>(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served,</p> <p>Ê as determined by the verdict of the jury, or the judgment of the court if there is no jury.</p> <p>(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, for a category A felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of life with the possibility of parole.</p> <p>(c) If the crime does not result in substantial bodily harm to the victim and the victim is a child under the age of 16, for a category A felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of life with the possibility of parole.</p> <p>Ê In addition to any other penalty, a person convicted pursuant to this subsection may be punished by a fine of not more than \$10,000.</p> <p>[1911 C&P § 148; RL § 6413; NCL § 10095]—(NRS A 1967, 471; 1971, 1385; 1973, 1805; 1977, 1628; 1979, 1426; 1981, 903; 1985, 247; 1991, 123; 1995, 1188; 2005, 2875; 2009, 87)</p>
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<p>18. Nebraska</p>	<p>Felony</p>	<p style="text-align: center;">CHAPTER 28. Crimes and Punishments ARTICLE 3. Offenses Against the Person (a) General Provisions</p> <p>Neb. Rev. Stat. Ann. § 28-310.01 (2010). Strangulation; penalty; affirmative defense</p> <p>(1) A person commits the offense of strangulation if the person knowingly or intentionally impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person.</p> <p>(2) Except as provided in subsection (3) of this section, strangulation is a Class IV felony.</p> <p>(3) Strangulation is a Class III felony if:</p> <p style="padding-left: 40px;">(a) The person used or attempted to use a dangerous instrument while committing the offense;</p> <p style="padding-left: 40px;">(b) The person caused serious bodily injury to the other person while committing the offense; or</p> <p style="padding-left: 40px;">(c) The person has been previously convicted of strangulation.</p> <p>(4) It is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.</p>
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<p>19. New Hampshire</p>	<p>Felony</p>	<p style="text-align: center;">TITLE LXII. Criminal Code CHAPTER 631. Assault and Related Offenses</p> <p>N.H. REV. STAT. ANN. § 631:2 (2010). Second Degree Assault. [RSA 631:2 effective January 1, 2011.]</p> <p>I. A person is guilty of a class B felony if he or she:</p> <ul style="list-style-type: none"> (a) Knowingly or recklessly causes serious bodily injury to another; or (b) Recklessly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he or she shall be sentenced in accordance with RSA 651:2, II-g; or (c) Recklessly causes bodily injury to another under circumstances manifesting extreme indifference to the value of human life; or (d) Purposely or knowingly causes bodily injury to a child under 13 years of age; or (e) Recklessly or negligently causes injury to another resulting in miscarriage or stillbirth; or (f) Purposely or knowingly engages in the strangulation of another. <p>II. In this section:</p> <ul style="list-style-type: none"> (a) "Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus. (b) "Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion. (c) "Strangulation" means the application of pressure to another person's throat or neck, or the blocking of the person's nose or mouth, that causes the person to experience impeded breathing or blood circulation or a change in voice.
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<p>20. North Carolina</p>	<p>Felony</p>	<p style="text-align: center;">CHAPTER 14. Criminal Law SUBCHAPTER 03. Offenses Against the Person ARTICLE 8. Assaults</p> <p>N.C. Gen. Stat. § 14-32.4 (2010). Assault inflicting serious bodily injury; strangulation; penalties</p> <p>(a) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts serious bodily injury is guilty of a Class F felony. "Serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.</p> <p>(b) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts physical injury by strangulation is guilty of a Class H felony.</p> <p><u>CASE NOTES:</u></p> <p>WHAT IS SERIOUS BODILY INJURY. -- Proof of "serious bodily injury" requires proof of a more severe injury than the "serious injury" element of other assault offenses. State v. Williams, 150 N.C. App. 497, 563 S.E.2d 616 (2002).</p> <p>"SERIOUS BODILY INJURY" UPON A LAW ENFORCEMENT OFFICER. - -G.S. 14-34.7 was ambiguous because the statute's title referred to assaults inflicting "serious injury" while the statute text specified assaults inflicting "serious bodily injury" -- under North Carolina law, the terms "serious injury" and "serious bodily injury" were not interchangeable; however, when interpreting ambiguous statutes, the principal goal is to effectuate the purpose of the legislature, and the "manifest purpose" of the legislature in enacting G.S. 14-34.7 was to make an assault inflicting "serious injury" or "serious bodily injury" against a law enforcement officer a felony. State v. Crawford, 167 N.C. App. 777, 606 S.E.2d 375 (2005),</p>

<p>North Carolina (cont.)</p>	<p>cert. denied, 359 N.C. 412, 612 S.E.2d 324 (2005).</p> <p>SERIOUS BODILY INJURY SHOWN. -- Evidence that the victim had to have his jaw wired shut for two months, causing him to lose a great deal of weight, and that he continued to suffer from back spasms as a result of two broken ribs, all as a result of his assault, was sufficient evidence of "serious bodily injury." State v. Williams, 150 N.C. App. 497, 563 S.E.2d 616 (2002).</p> <p>Evidence that defendant struck eight-year-old daughter on the buttocks with a board multiple times while disciplining her and that the blows caused a large bruise that was crusted around the outside, had a spot near the middle that was open and oozing, and was painful to the touch was sufficient for a jury to reasonably infer that defendant caused great pain and suffering, and the trial court did not err by denying defendant's motion to dismiss charges of felonious child abuse, in violation of G.S. 14-318.4(a), and felonious assault inflicting serious bodily injury, in violation of G.S. 14-32.4. State v. Williams, 154 N.C. App. 176, 571 S.E.2d 619 (2002).</p> <p>Evidence was sufficient to support defendants' convictions for assault inflicting serious bodily injury where the victim testified that his facial injuries were "very" painful, and that he suffered pain for about a month, and a doctor testified that the injuries suffered by the victim were the type that caused "severe" and "extreme" pain. State v. Brown, -- N.C. App. --, 628 S.E.2d 787 (2006).</p> <p>LESSER INCLUDED OFFENSE. -- As assault inflicting serious bodily injury is not a lesser included offense of assault with a deadly weapon with intent to kill and inflict serious injury, the trial court committed reversible error in submitting the former to the jury. State v. Hannah, 149 N.C. App. 713, 563 S.E.2d 1 (2002), cert. denied, 355 N.C. 754, 566 S.E.2d 81 (2002).</p> <p>PROSECUTION UNDER <u>G.S. 14-32</u> AND THIS SECTION DOUBLE JEOPARDY. -- Defendant could not be convicted and sentenced for both assault with a deadly weapon with intent to kill inflicting serious injury, pursuant to <u>G.S. 14-32(b)</u>, and assault inflicting serious bodily injury, <u>G.S. 14-32.4</u>, for the same conduct without violating the double jeopardy provisions of the <u>United States and North Carolina Constitutions</u>. State v. Ezell, 159 N.C. App. 103, 582 S.E.2d 679 (2003).</p>
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<p>North Carolina (cont.)</p>		<p>Trial court violated defendant's right to be free of double jeopardy when it sentenced him for both assault with a deadly weapon inflicting serious injury under <u>G.S. 14-32(b)</u> and misdemeanor assault inflicting serious injury under <u>G.S. 14-33(c)(1)</u> based on an incident in which defendant punched his girlfriend into a wall and stabbed her multiple times in the arm and leg; because defendant's convictions under <u>G.S. 14-32(b)</u> provided for greater punishment than <u>G.S. 14-32.4</u> or <u>14-33(c)</u>, the trial court could not convict and sentence defendant under two statutes for the same conduct in each incident without violating the double jeopardy provisions of USCS Const. Amend. 5 and <u>N. C. Const. art. I, § 19</u>. <u>State v. McCoy</u>, 174 N.C. App. 105, 620 S.E.2d 863 (2005).</p> <p>APPLIED in <u>State v. Wampler</u>, 145 N.C. App. 127, 549 S.E.2d 563 (2001).</p> <p>CITED in <u>State v. Uvalle</u>, 151 N.C. App. 446, 565 S.E.2d 727 (2002), cert. denied, 356 N.C. 692, 579 S.E.2d 95 (2003); <u>State v. Lowe</u>, 154 N.C. App. 607, 572 S.E.2d 850 (2002).</p>
<p>21. Ohio</p>	<p>Used in consideration of bail determination</p>	<p>TITLE XXIX. Crimes -- Procedure CHAPTER 2919. Offenses Against The Family Domestic Violence</p> <p>Ohio Rev. Code Ann. 2919.251(A),(B)(7) (2010). Factors to be considered when setting bail; bail schedule; appearance by video conferencing equipment</p> <p>(A) Subject to division (D) of this section, a person who is charged with the commission of any offense of violence shall appear before the court for the setting of bail if the alleged victim of the offense charged was a family or household member at the time of the offense and if any of the following applies:</p> <p>(B) To the extent that information about any of the following is available to the court, the court shall consider all of the following, in addition to any other circumstances considered by the court and notwithstanding any provisions to the contrary contained in <u>Criminal Rule 46</u>, before setting bail for a person who appears before the court pursuant to division (A) of this section:</p>

Ohio (cont'd)		(7) The severity of the alleged violence that is the basis of the offense, including but not limited to, the duration of the alleged violent incident, and whether the alleged violent incident involved serious physical injury, sexual assault, strangulation, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim;
22. Oklahoma	Felony	<p style="text-align: center;">TITLE 21. Crimes and Punishments PART III. Crimes Against the Person CHAPTER 20. Assault and Battery</p> <p>Okla. Stat. Ann. tit. 21, § 644(I) (2010). Assault -- Assault and battery -- Domestic abuse</p> <p>I. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall, upon conviction, be guilty of domestic abuse by strangulation and shall be punished by imprisonment in the custody of the Department of Corrections for a period of not less than one (1) year nor more than three (3) years, or by a fine of not more than Three Thousand Dollars (\$ 3,000.00), or by both such fine and imprisonment. Upon a second or subsequent conviction, the defendant shall be punished by imprisonment in the custody of the Department of Corrections for a period of not less than three (3) years nor more than ten (10) years, or by a fine of not more than Twenty Thousand Dollars (\$ 20,000.00), or by both such fine and imprisonment. As used in this subsection, "strangulation" means a form of asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck.</p> <p>Okla. Stat. Ann. tit. 22, § 58 (2010). Mandatory reporting of domestic abuse— Exceptions.</p>

<p>Oklahoma (cont'd)</p>		<p>A. Criminally injurious conduct, as defined by the Oklahoma Crime Victims Compensation Act, which appears to be or is reported by the victim to be domestic abuse, as defined in Section 60.1 of this title, or domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child, as defined in Section 644 of Title 21 of the Oklahoma Statutes, shall be reported according to the standards for reporting as set forth in subsection B of this section.</p> <p>B. Any physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be domestic abuse or is reported by the victim to be domestic abuse, as defined in Section 60.1 of this title, or domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child, as defined in Section 644 of Title 21 of the Oklahoma Statutes, shall not be required to report any incident of what appears to be or is reported to be domestic abuse, domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child if:</p> <ol style="list-style-type: none"> 1. Committed upon the person of an adult who is over the age of eighteen (18) years; and 2. The person is not an incapacitated adult. <p>C. Any physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating a victim shall be required to report any incident of what appears to be or is reported to be domestic abuse, domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child, if requested to do so either orally or in writing by the victim. A report of any incident shall be promptly made orally or by telephone to the nearest law enforcement agency in the county wherein the domestic abuse occurred or, if the location where the conduct occurred is unknown,</p>
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<p>Oklahoma (cont'd)</p>		<p>the report shall be made to the law enforcement agency nearest to the location where the injury is treated.</p> <p>D. In all cases of what appears to be or is reported to be domestic abuse, the physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be domestic abuse shall clearly and legibly document the incident and injuries observed and reported, as well as any treatment provided or prescribed.</p> <p>E. In all cases of what appears to be or is reported to be domestic abuse, the physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending or treating the victim of what appears to be domestic abuse shall refer the victim to domestic violence and victim services programs, including providing the victim with the twenty-four-hour statewide telephone communication service established by Section 18p-5 of Title 74 of the Oklahoma Statutes.</p> <p>F. Every physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional making a report of domestic abuse pursuant to this section or examining a victim of domestic abuse to determine the likelihood of domestic abuse, and every hospital or related institution in which the victim of domestic abuse was examined or treated shall, upon the request of a law enforcement officer conducting a criminal investigation into the case, provide copies of the results of the examination or copies of the examination on which the report was based, and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to the investigating law enforcement officer.</p> <p>Okla. Stat. Ann. tit. 22, § 1105 (2010). Defendant discharged on giving bail— Exceptions, amended by H.B. 2827, 52nd Legis. Sess., 2nd Sess. (Okla. 2009) (enacted).</p> <p>[*6] SECTION 6. AMENDATORY 22 O.S. 2001, Section 1105, as last amended by</p>
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<p>Oklahoma (cont'd)</p>		<p>Section 1, Chapter 128, O.S.L. 2005 (22 O.S. Supp. 2009, Section 1105), is amended to read as follows:</p> <p>Section 1105. A. Except as otherwise provided by this section, upon the allowance of bail and the execution of the requisite recognizance, bond, or undertaking to the state, the magistrate, judge, or court, shall, if the defendant is in custody, make and sign an order for discharge. The court, in its discretion, may prescribe by court rule the conditions under which the court clerk or deputy court clerk, or the sheriff or deputy sheriff, may prepare and execute an order of release on behalf of the court.</p> <p>B. No police officer or sheriff may release a person arrested for a violation of an ex parte or final protective order as provided in Sections 60.2 and 60.3 of this title, or arrested for an act constituting domestic abuse as specified in Section 644 of Title 21 of the Oklahoma Statutes, or arrested for any act constituting domestic abuse, stalking or harassment as defined by Section 60.1 of this title without the violator appearing before a magistrate, judge or court. [D> The <D] [A> TO THE EXTENT THAT ANY OF THE FOLLOWING INFORMATION IS AVAILABLE TO THE COURT, THE <A] magistrate, judge or court shall [D> determine <D] [A> CONSIDER, IN ADDITION TO ANY OTHER CIRCUMSTANCES, BEFORE DETERMINING <A] bond and other conditions of release as necessary for the protection of the alleged victim [A> , THE FOLLOWING: <A]</p> <p>[A> 1. WHETHER THE PERSON HAS A HISTORY OF DOMESTIC VIOLENCE OR A HISTORY OF OTHER VIOLENT ACTS; <A]</p> <p>[A> 2. THE MENTAL HEALTH OF THE PERSON; <A]</p> <p>[A> 3. WHETHER THE PERSON HAS A HISTORY OF VIOLATING THE ORDERS OF ANY COURT OR GOVERNMENTAL ENTITY; <A]</p> <p>[A> 4. WHETHER THE PERSON IS POTENTIALLY A THREAT TO ANY</p>
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<p>Oklahoma (cont'd)</p>		<p>OTHER PERSON; <A]</p> <p>[A> 5. WHETHER THE PERSON HAS A HISTORY OF ABUSING ALCOHOL OR ANY CONTROLLED SUBSTANCE; <A]</p> <p>[A> 6. WHETHER THE PERSON HAS ACCESS TO DEADLY WEAPONS OR A HISTORY OF USING DEADLY WEAPONS; <A]</p> <p>[A> 7. THE SEVERITY OF THE ALLEGED VIOLENCE THAT IS THE BASIS OF THE ALLEGED OFFENSE INCLUDING, BUT NOT LIMITED TO: <A]</p> <p>[A> A. THE DURATION OF THE ALLEGED VIOLENT INCIDENT, <A]</p> <p>[A> B. WHETHER THE ALLEGED VIOLENT INCIDENT INVOLVED SERIOUS PHYSICAL INJURY, <A]</p> <p>[A> C. WHETHER THE ALLEGED VIOLENT INCIDENT INVOLVED SEXUAL ASSAULT, <A]</p> <p>[A> D. WHETHER THE ALLEGED VIOLENT INCIDENT INVOLVED STRANGULATION, <A]</p> <p>[A> E. WHETHER THE ALLEGED VIOLENT INCIDENT INVOLVED ABUSE DURING THE PREGNANCY OF THE ALLEGED VICTIM, <A]</p> <p>[A> F. WHETHER THE ALLEGED VIOLENT INCIDENT INVOLVED THE ABUSE OF PETS, OR <A]</p> <p>[A> G. WHETHER THE ALLEGED VIOLENT INCIDENT INVOLVED FORCIBLE ENTRY TO GAIN ACCESS TO THE ALLEGED VICTIM; <A]</p>
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<p>Oklahoma (cont'd)</p>	<p>[A> 8. WHETHER A SEPARATION OF THE PERSON FROM THE ALLEGED VICTIM OR A TERMINATION OF THE RELATIONSHIP BETWEEN THE PERSON AND THE ALLEGED VICTIM HAS RECENTLY OCCURRED OR IS PENDING; <A]</p> <p>[A> 9. WHETHER THE PERSON HAS EXHIBITED OBSESSIVE OR CONTROLLING BEHAVIORS TOWARD THE ALLEGED VICTIM INCLUDING, BUT NOT LIMITED TO, STALKING, SURVEILLANCE, OR ISOLATION OF THE ALLEGED VICTIM; <A]</p> <p>[A> 10. WHETHER THE PERSON HAS EXPRESSED SUICIDAL OR HOMICIDAL IDEATIONS; AND <A]</p> <p>[A> 11. ANY INFORMATION CONTAINED IN THE COMPLAINT AND ANY POLICE REPORTS, AFFIDAVITS, OR OTHER DOCUMENTS ACCOMPANYING THE COMPLAINT <A] .</p> <p>C. No police officer or sheriff may release a person arrested for any violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, without the violator appearing before a magistrate, judge, or court. In determining bond and other conditions of release, the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular, illegal use of any controlled dangerous substance. A rebuttable presumption that no conditions of release on bond would assure the safety of the community or any person therein shall arise if the state shows by clear and convincing evidence:</p> <p>1. The person was arrested for a violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, relating to manufacturing or attempting to manufacture a controlled dangerous substance, or possessing any of the substances listed in subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes with the intent to</p>
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<p>Oklahoma (cont'd)</p>		<p>manufacture a controlled dangerous substance; and</p> <p>2. The person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular illegal use of a controlled dangerous substance, and the violation referred to in paragraph 1 of this subsection was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.</p> <p>[*7] SECTION 7. This act shall become effective November 1, 2010.</p>
<p>23. Oregon</p>	<p>Misdemeanor</p>	<p style="text-align: center;">TITLE 16. Crimes and Punishments CHAPTER 163. Offenses Against Persons Assault and Related Offenses</p> <p>Or. Rev. Stat. § 163.187 (2010). Strangulation</p> <p>(1) A person commits the crime of strangulation if the person knowingly impedes the normal breathing or circulation of the blood of another person by:</p> <ul style="list-style-type: none"> (a) Applying pressure on the throat or neck of the other person; or (b) Blocking the nose or mouth of the other person. <p>(2) Subsection (1) of this section does not apply to legitimate medical or dental procedures or good faith practices of a religious belief.</p> <p>(3) Strangulation is a Class A misdemeanor.</p> <p>CASE LAW: State v. Lazaro-Martinez, 142 P.3d 120 (Or. Ct. App. 2006) (Inapplicable appeals case that merely mentions defendant was convicted of strangulation under the statute in addition to other assault charges.)</p>
<p>24. Texas</p>	<p>Increases the penalty</p>	<p>Tex. Penal Code Ann. § 22.01 (2010). Assault</p> <p>(a) A person commits an offense if the person:</p>

<p>Texas (cont'd)</p>		<p>(1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;</p> <p>(2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or</p> <p>(3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.</p> <p>(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:</p> <p>(1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;</p> <p>(2) <i>[2 Versions: As amended by Acts 2009, 81st Leg., ch. 427]</i> a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if:</p> <p>(A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or</p> <p>(B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth;</p> <p>(2) <i>[2 Versions: As amended by Acts 2009, 81st Leg., ch. 665]</i> a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if it is shown on the trial of the offense that the defendant has been previously</p>
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<p>Texas (cont'd)</p>		<p>convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;</p> <p>(3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), Penal Code, or Section 51.02(13) or (14), Family Code, or an employee of that person:</p> <p>(A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or</p> <p>(B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract;</p> <p>(4) a person the actor knows is a security officer while the officer is performing a duty as a security officer; or</p> <p>(5) a person the actor knows is emergency services personnel while the person is providing emergency services.</p> <p>(b-1) Notwithstanding Subsection (b)(2), an offense under Subsection (a)(1) is a felony of the second degree if:</p> <p>(1) the offense is committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;</p> <p>(2) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; and</p> <p>(3) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the</p>
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		<p>person's throat or neck or by blocking the person's nose or mouth.</p> <p>(c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor, except that the offense is:</p> <p>(1) a Class A misdemeanor if the offense is committed under Subsection (a)(3) against an elderly individual or disabled individual, as those terms are defined by Section 22.04; or</p> <p>(2) a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either:</p> <p>(A) while the participant is performing duties or responsibilities in the participant's capacity as a sports participant; or</p> <p>(B) in retaliation for or on account of the participant's performance of a duty or responsibility within the participant's capacity as a sports participant.</p> <p>(d) For purposes of Subsection (b), the actor is presumed to have known the person assaulted was a public servant, a security officer, or emergency services personnel if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer or emergency services personnel.</p> <p>(e) In this section:</p> <p>(1) "Emergency services personnel" includes firefighters, emergency medical services personnel as defined by Section 773.003, Health and Safety Code, and other individuals who, in the course and scope of employment or as a volunteer, provide services for the benefit of the general public during emergency situations.</p> <p>(2) [Repealed by Acts 2005, 79th Leg., ch. 788 (S.B. 91), § 6, effective September 1, 2005.]</p> <p>(3) "Security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section</p>
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		<p>1702.221, Occupations Code.</p> <p>(4) "Sports participant" means a person who participates in any official capacity with respect to an interscholastic, intercollegiate, or other organized amateur or professional athletic competition and includes an athlete, referee, umpire, linesman, coach, instructor, administrator, or staff member.</p> <p>(f) For the purposes of Subsections (b)(2)(A) and (b-1)(2):</p> <p>(1) a defendant has been previously convicted of an offense listed in those subsections committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and</p> <p>(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in those subsections is a conviction of the offense listed.</p> <p>(g) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or both sections.</p>
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<p>25. Utah</p>	<p>Felony (2nd Degree)- intentionally or knowingly</p> <p>Felony (3rd Degree)- recklessly</p> <p>Class A misdemeanor- if done with criminal negligence</p>	<p style="text-align: center;">TITLE 76. UTAH CRIMINAL CODE CHAPTER 5. OFFENSES AGAINST THE PERSON PART 1. ASSAULT AND RELATED OFFENSES</p> <p>UTAH CODE ANN. § 76-5-109 (2010). Child abuse -- Child abandonment</p> <p>(1) As used in this section:</p> <p>(a) "Child" means a human being who is under 18 years of age.</p> <p>(b) (i) "Child abandonment" means that a parent or legal guardian of a child: (A) intentionally ceases to maintain physical custody of the child; (B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and (C) (I) intentionally fails to provide the child with food, shelter, or clothing; (II) manifests an intent to permanently not resume physical custody of the child; or (III) for a period of at least 30 days: (Aa) intentionally fails to resume physical custody of the child; and (Bb) fails to manifest a genuine intent to resume physical custody of the child.</p> <p>(ii) "Child abandonment" does not include: (A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or (B) giving legal consent to a court order for termination of parental rights: (I) in a legal adoption proceeding; or (II) in a case where a petition for the termination of parental rights, or the termination of a guardianship, has been filed.</p> <p>(c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in Section 76-5-109.1.</p> <p>(d) "Enterprise" is as defined in Section 76-10-1602.</p> <p>(e) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including: (i) a bruise or other contusion of the skin; (ii) a minor laceration or abrasion; (iii) failure to thrive or malnutrition; or</p>
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<p>Utah (cont'd)</p>		<p>(iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(f).</p> <p>(f) (i) "Serious physical injury" means any physical injury or set of injuries that:</p> <p>(A) seriously impairs the child's health;</p> <p>(B) involves physical torture;</p> <p>(C) causes serious emotional harm to the child; or</p> <p>(D) involves a substantial risk of death to the child.</p> <p>(ii) "Serious physical injury" includes:</p> <p>(I) any conduct that causes a child to cease breathing, even if resuscitation is successful following the conduct; or</p>
<p>26. Vermont</p>		<p>TITLE THIRTEEN. CRIMES AND CRIMINAL PROCEDURE PART 1. CRIMES CHAPTER 19. BREACH OF THE PEACE; DISTURBANCES SUBCHAPTER 4. OTHER DISTURBANCES OF THE PEACE</p> <p>13 V.S.A. § 1021 (2010). Definitions</p> <p>For the purpose of this chapter:</p> <p>(1) "Bodily injury" means physical pain, illness or any impairment of physical condition.</p> <p>(2) "Serious bodily injury" means:</p> <p>(A) bodily injury which creates any of the following:</p> <p>(i) a substantial risk of death;</p> <p>(ii) a substantial loss or impairment of the function of any bodily member or organ;</p> <p>(iii) a substantial impairment of health; or</p> <p>(iv) substantial disfigurement; or</p> <p>(B) strangulation by 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.</p>

<p>Vermont (cont'd)</p>		<p>(3) "Deadly weapon" means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.</p> <p>13 V.S.A. § 1024 (2010). Aggravated assault</p> <p>(a) A person is guilty of aggravated assault if the person:</p> <p>(1) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life; or</p> <p>(2) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or</p> <p>(3) for a purpose other than lawful medical or therapeutic treatment, the person intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to the other person without the other person's consent a drug, substance, or preparation capable of producing the intended harm; or</p> <p>(4) with intent to prevent a law enforcement officer from performing a lawful duty, the person causes physical injury to any person; or</p> <p>(5) is armed with a deadly weapon and threatens to use the deadly weapon on another person.</p> <p>(b) A person found guilty of violating a provision of subdivision (a)(1) or (2) of this section shall be imprisoned for not more than 15 years or fined not more than \$ 10,000.00, or both.</p> <p>(c) A person found guilty of violating a provision of subdivision (a)(3), (4), or (5) of this section shall be imprisoned for not more than five years or fined not more than \$ 5,000.00, or both.</p> <p>(d) Subdivision (a)(5) of this section shall not apply if the person threatened to use the deadly weapon:</p> <p>(1) In the just and necessary defense of his or her own life or the life of his or her husband, wife, civil union partner, parent, child, brother, sister, guardian, or ward;</p> <p>(2) In the suppression of a person attempting to commit murder, sexual assault, aggravated</p>
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<p>Vermont (cont'd)</p>		<p>sexual assault, burglary, or robbery; or</p> <p>(3) In the case of a civil or military officer lawfully called out to suppress a riot or rebellion, prevent or suppress an invasion, or assist in serving legal process, in suppressing opposition against him or her in the just and necessary discharge of his or her duty.</p> <p>(e) Subsection (d) of this section shall not be construed to limit or infringe upon defenses granted at common law.</p> <p><u>CASE NOTES:</u></p> <p>5. STRANGULATION.</p> <p>Defendant's choking of victim constituted serious bodily injury under provision of this section defining aggravated assault as the causing of serious bodily injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to value of human life. <u>State v. Blakeney (1979) 137 Vt. 495, 408 A.2d 636.</u></p> <p>Whether evidence in aggravated assault prosecution established that there was a substantial risk of death when victim was choked was a question of fact for the jury, and with the introduction of contradictory evidence it was the exclusive province of the jury as the fact-finder to resolve the conflict and decide whom and what to believe. <u>State v. Blakeney (1979) 137 Vt. 495, 408 A.2d 636.</u></p> <p>Jury trying defendant for aggravated assault could have reasonably concluded that choking of victim for three or four minutes placed victim under a substantial risk of death. <u>State v. Blakeney (1979) 137 Vt. 495, 408 A.2d 636.</u></p>
<p>27. Virginia</p>	<p>Felony</p>	<p>TITLE 18.2. Crimes and Offenses Generally CHAPTER 4. Crimes Against The Person ARTICLE 5. Robbery</p> <p>Va. Code Ann. § 18.2-58.1 (2010). Carjacking; penalty</p> <p>A. Any person who commits carjacking, as herein defined, shall be guilty of a felony punishable by imprisonment for life or a term not less than fifteen years.</p> <p>B. As used in this section, "carjacking" means the intentional seizure or seizure of control of a motor vehicle of another with intent to permanently or temporarily deprive another in</p>

<p>Virginia (cont'd)</p>		<p>possession or control of the vehicle of that possession or control by means of partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever. "Motor vehicle" shall have the same meaning as set forth in § 46.2-100.</p> <p>Va. Code Ann. § 18.2-58 (2010). How punished</p> <p>If any person commit robbery by partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever, he shall be guilty of a felony and shall be punished by confinement in a state correctional facility for life or any term not less than five years.</p>
<p>28. Washington</p>	<p>Felony – assault of a child in the second degree (Class B)</p>	<p>TITLE 9A. Washington Criminal Code CHAPTER 9A.04. Preliminary Article</p> <p>Wash. Rev. Code Ann. § 9A.04.110(26) (2010). Definitions</p> <p>(26) "Strangulation" means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe;</p> <p>TITLE 9A. Washington Criminal Code CHAPTER 9A.36. Assault -- Physical Harm</p> <p>Wash. Rev. Code Ann. § 9A.36.021 (2010). Assault in the second degree</p>

<p>Washington (cont.)</p>		<p>(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:</p> <ul style="list-style-type: none"> (a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or (b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or (c) Assaults another with a deadly weapon; or (d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or (e) With intent to commit a felony, assaults another; or (f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or (g) Assaults another by strangulation. <p>(2) (a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.</p> <p>(b) Assault in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.</p> <p>NOTES: FINDING -- 2007 C 79: "The legislature finds that assault by strangulation may result in immobilization of a victim, may cause a loss of consciousness, injury, or even death, and has been a factor in a significant number of domestic violence related assaults and fatalities. While not limited to acts of assault against an intimate partner, assault by strangulation is often knowingly inflicted upon an intimate partner with the intent to commit physical injury, or substantial or great bodily harm. Strangulation is one of the most lethal forms of domestic violence. The particular cruelty of this offense and its potential effects upon a victim both physically and psychologically, merit its categorization as a ranked felony offense under chapter 9A.36 RCW." [2007 c 79 § 1.]</p> <p>Wash. Rev. Code Ann. § 9A.36.130(1)(a) (2010). Assault of a child in the second degree</p> <p>(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the second degree if the child is under the age of thirteen and the person:</p>
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		(a) Commits the crime of assault in the second degree, as defined in RCW 9A.36.021, against a child
29. West Virginia	When used during a robbery or attempted robbery, the person is guilty of robbery in the first degree. Imprisoned for not less than 10 years	<p style="text-align: center;">CHAPTER 61. Crimes and Their Punishment ARTICLE 2. Crimes Against The Person</p> <p>W. Va. Code Ann. § 61-2-12(a) (2010). Robbery or attempted robbery; penalties</p> <p>(a) Any person who commits or attempts to commit robbery by: (1) Committing violence to the person, including, but not limited to, partial strangulation or suffocation or by striking or beating; or (2) uses the threat of deadly force by the presenting of a firearm or other deadly weapon, is guilty of robbery in the first degree and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than ten years.</p>
30. U.S. Virgin Islands	Felony	<p style="text-align: center;">TITLE FOURTEEN Crimes Chapter 24. Child Protection</p> <p>V.I. Code Ann. tit. 14, § 506 (2010). Aggravated child abuse and neglect A person perpetrates an act of aggravated child abuse or neglect when:</p> <p>(1) the child suffers serious physical injury; or</p> <p>(2) the child suffers serious mental or emotional injury; or</p> <p>(3) the child dies from such abuse or neglect. A person who is convicted of aggravated child abuse or neglect shall be punished by imprisonment of not less than 5 years but not more than 30 years.</p>

<p>U.S. Virgin Islands (cont'd)</p>		<p>V.I. Code Ann. tit. 14, § 507 (2010). Reasonable and moderate physical discipline excepted; unreasonable acts</p> <p>Nothing in this Chapter shall be interpreted to prevent a parent, guardian, or person acting at the direction of a child's parent or guardian, from using reasonable and moderate physical discipline to correct, restrain or discipline a child. The following actions are examples of unreasonable conduct when used by any person to correct, restrain or discipline a child:</p> <ol style="list-style-type: none"> (1) throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; (3) willful and violent shaking of a child in such a way as to cause physical injury to the child; (4) interfering with a child's breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and that does cause bodily harm greater than transient pain or minor temporary marks. <p>The age, size, and condition of the child and the location of the injury shall be considered when determining whether the physical discipline is reasonable and moderate. The list of unreasonable actions is illustrative and is not intended to be exclusive.</p>
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