

As Texans mourn the loss of each victim recognized in this report, we acknowledge that as advocates and systems partners we can and must do more to prevent inequitable murders of BIPOC victims. Our efforts should center on systems change to develop victim services responses that: 1) acknowledge the unique pain and trauma BIPOC victims experience as a consequence of both structural racism and sexism in society and 2) provide a blueprint for stakeholders to develop inclusive preventive programming and multidisciplinary responses that mitigate the risk of harm caused by domestic violence, especially in historically oppressed communities.

## SECTION VI

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### The Connection Between Strangulation Lethality and Survivors Who Kill Their Abusive Partners

Every year, many of the murders included in this report follow years of abuse, violence, and multiple reports to law enforcement by the victim. The nuanced and complex dynamics surrounding domestic and gender-based violence creates a challenge for a criminal legal system designed to address specific incidents rather than view those acts in the context of a long history or pattern of abuse. As a result, the criminal legal system often fails to protect many survivors and their children from harm. Offenders are put on bond, violate orders, and manipulate the victim as well as the system itself.

Coupled with the abusive partners' efforts to minimize their own responsibility or blame the victim for the abuse, survivors can easily lose faith in the system's ability to keep them safe. As reflected in many of the murders in this report, leaving an abusive relationship is dangerous and can cost the victim's life, the lives of their children, family, and pets. With no other guarantee of safety, many survivors will remain in the relationship, learn to manage their own safety, and take measures to protect themselves without the system. An advocate responding to a homicide case included in the narratives of this report stated, "She trusted his ability to kill her more than she trusted the system's ability to keep her safe."

**Research has shown that 43% of women killed by an intimate partner were murdered within a year of a non-fatal strangulation.**

#### *Strangulation as a Key Lethality Indicator*

When abusive partners employ strangulation as a method to assault their partner, the offender is now seven times more likely to kill this victim.<sup>54</sup> When reported, the system should be on notice that abuse is escalating and the potential for murder in the following year is significant. If their history includes multiple strangulations, which is the case in many of the homicides this year, the likelihood is even higher.<sup>55</sup>

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54 Glass, N., Laughon, K., Campbell, J., Wolf Chair, A. D., Block, C. R., Hanson, G., . . . Taliaferro, E. (2008). Non-fatal strangulation is an important risk factor for homicide of women. *Journal of Emergency Medicine*, 35(3), 329-335.

55 Messing, J.T., Patch, M., Sullivan Wilson, J., Kelen, G.D., & Campbell, J. (2018). Differentiating among attempted, completed, and multiple nonfatal strangulation in women experiencing intimate partner violence. *Women's Health Issues*, 28(1), 104-111.

Despite the increased risk, Texas law enforcement agencies struggle to properly identify, investigate, or prosecute these predictive cases. Most strangulation assaults, although potentially lethal, often lack obvious signs of external injury, like a bruising to the neck. Without specialized training to better identify these cases or the use of a standardized strangulation supplement to develop additional evidence, many cases get missed entirely or fail to end in a conviction. Many cases included in this year's report include women who were killed by abusers that had recently strangled them and in many cases had strangled previous partners. The imminence of the danger after non-fatal strangulation is significant, and the threat to their life is real.

The lack of accountability a strangulation offender faces after a report combined with the risk the survivor may face as a result of cooperation discourages survivors from reporting in the future. Moreover, because most victims who are strangled believe they are going to die, they often fight back to save their own life.<sup>56</sup> The superficial injuries on the abusive partner can misguide officers to believe that the victim is the true aggressor. In many cases, victims who are strangled are arrested and charged as the offender.

Over time, some victims will learn that their engagement with the criminal legal system has not improved their safety and has come with agonizing consequences such as a criminal conviction, losing custody of their children, or otherwise being punished as a result of calling the police for help. In a focus group of domestic violence survivors who had been convicted for using violence against their abuser, 75% specifically stated that they would not call the police again in the future, even when they needed help for themselves because of their experience. Most stated that they did not consider the criminal legal system a resource to help keep them safe.<sup>57</sup>

Many victims report that they believed they were going to die during a strangulation assault and as a matter of survival, will scratch or bite the abuser so that they can breathe. Although superficial, the injuries on the abuser and the lack of obvious injuries on the victim are often misunderstood by officers who may determine that the victim should be arrested.<sup>58</sup>

Strangulation victims who have suffered these personal and terrifying attacks often quickly determine they cannot rely on the criminal legal system to protect them against the escalating violence. In some cases, victims will kill their batterer and face re-entering the criminal legal system as a victim-defendant. In many of these cases, the death of the abusive partner is seen as a specific incident of physical violence and identified as an illegal act rather than in response to an on going pattern of abuse.

## The rate of women's incarceration outpaces the rate for men.<sup>59</sup>

### *Women's Use of Force in Context*

The number of women getting arrested, convicted, and sentenced has increased dramatically during the last three decades and the rate of women's incarceration continues to outpace the rate for men.<sup>59</sup> When women use violence against their batterer, the system

56 White, C., (2021) Sexual assault and strangulation cases: I thought he was going to kill me, *Journal of Forensic and Legal Medicine*. AND Brady, P. PhD, (2021). Forfeiting Control: Enhancing the Admissibility of Victim Statements to the Police When Survivors of Nonfatal Strangulation Are Unavailable to Testify.

57 Scaia, M., (2017), National Clearinghouse for the Defense of Battered Women. "In Their Own Words: Victims of Battering Talk About Being Arrested and Convicted. Retrieved from: <https://www.ncdbw.org/in-their-own-words>

58 McKay, K., (2014). "A Closer Look at Strangulation Cases." The Texas Prosecutor.

59 The Sentencing Project, Fact Sheet: Incarcerated Women and Girls (2015)

misunderstands the significance of history, context, and gender. A survivor's criminal liability is considered through a lens that focuses on incidents rather than patterns of coercive control and does not account for inadequacies in evidence collection. Without understanding or consideration of the complex dynamics that surround domestic violence, these cases often fall outside the bounds of Texas self-defense law, and women are convicted of crimes that may be justified.

**“The incident-driven criminal (legal) system was never designed with the patterned nature of battering in mind.”<sup>60</sup>**

The law requires that the force a victim uses must be “immediately necessary to protect” them from the abuser.<sup>61</sup> However, most women who are abused have learned that it is not likely that they could win a physical fight against their batterer and might strategically time the killing when the batterer is vulnerable (while the batterer is asleep, or while their back is turned). Feeling hopeless in the face of no protection by the system, a strangulation victim

may arm themselves as they attempt to escape and if confronted by the batterer, they may shoot them out of fear of what may happen next. The law may see the threat in those cases as not being immediate, as required under self-defense law. As demonstrated in the case narratives that accompany this report, abusive partners often escalate to lethal violence following attempts to escape or end the relationship, and a confrontation with an abusive partner after such an attempt may be perceived as an immediate threat to anyone keenly familiar with their violence and abuse.

Especially for a victim who has experienced strangulation, officers who are not trained to collect strangulation evidence thoroughly may not understand that even without obvious injury, the victim had deadly force used against them. Because a victim who kills her abuser will likely use a firearm, knife, or a type of violence that results in obvious trauma, officers may not consider her reaction by deadly force justified.

Unless the officer, prosecutor, or defense attorney handling these cases has domestic violence-informed training, many victim-defendants who use violence against their abusive partners are convicted and given significant prison time. Multiple studies indicate that between 71% and 95% of incarcerated women have experienced physical violence from an intimate partner.<sup>62</sup> Additionally, women who kill their intimate partners receive lengthier sentences than men receive for killing female partners. On average, men who kill their female partners are sentenced to two to six years, while women who kill their male partners are sentenced to an average of 15 years.<sup>63</sup>

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Moreover, when the criminal legal system is an inconsistent or unreliable source of safety for victims, they are placed in a precarious position to protect and manage the safety of their families outside of the system. The complexity and nuances of victims using violence surround these cases with confusion, particularly when there is a long history of abuse or lesser-known forms of abuse like strangulation or coercive control.

Without a system-wide change that applies a new lens to the reality of a domestic violence victim's experience and their survival strategies, survivors will continue to be arrested, incarcerated, and be lost in the system designed to protect them. Roll call training and investigation tools are available to support effective response to strangulation to reduce the lethal risk these acts of violence pose to both survivors and their abusive partners.

60 Osthoff, S. and Sadusky, J. (2014). National Clearinghouse for The Defense of Battered Women. A Toolkit for Systems Advocacy on Behalf of Victims of Battering Charged with Crimes. Retrieved from: <https://drive.google.com/file/d/0BxgnKCMmnzJLazY0Z2NWd2stcUk/view?resourcekey=0--e3T2k1wbleg5NryQeox8g>

61 Texas Penal Code Sec 9.31 (a)

62 Dichter & Osthoff, Women's Experiences of Abuse.

63 ACLU. The Link Between Incarceration and Violence. Retrieved from: <https://www.aclu.org/other/words-prison-did-you-know?redirect=words-prison-did-you-know#l>