

SENATE BILL REPORT

SB 5953

As Passed Senate, March 10, 2007

Title: An act relating to penalties for acts of violence by strangulation.

Brief Description: Increasing penalties for acts of domestic violence involving strangulation.

Sponsors: Senators Eide, Stevens, Delvin, Regala, Sheldon, Benton, Marr, Shin, Rasmussen and Holmquist; by request of Attorney General.

Brief History:

Committee Activity: Judiciary: 2/21/07, 2/28/07 [DP, w/oRec].

Passed Senate: 3/10/07, 44-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; Hargrove, Murray, Roach and Weinstein.

Minority Report: That it be referred without recommendation.

Signed by Senator Carrell.

Staff: Juliana Roe (786-7405)

Background: Under current law, assault by strangulation is difficult to prove without significant medical evidence. The act of strangulation is generally charged under domestic violence statutes, carrying the punishment of a gross misdemeanor, which is up to 365 days in jail and/or a \$5,000 fine.

In the case of *In the Matter of Personal Restraint Petition of Shawn Andress*, 147 Wn.2d 602, 56 P.3d 981 (2002), the Court held that assault cannot serve as the predicate felony for second degree felony murder under RCW 9A.32.050. In 2003, the Legislature amended RCW 9A.32.050 to specifically include assault as an applicable predicate offense. (Majority: Madsen, Alexander, Smith, Johnson, and Sanders. Dissent: Ireland, Bridge, Chambers, and Owens.)

In *State v. Bingham*, 105 Wn.2d 820, 719 P.12d 109 (1986), the Supreme Court upheld that evidence of manual strangulation alone was insufficient to show premeditation required for a first degree murder conviction. (Majority: Goodloe, Dolliver, Utter, Brachtenbach, Pearson. Dissent: Callow, Dore, Andersen, and Durham.)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Proponents believe that strangulation is an intentional, potentially lethal, form of violence that inflicts physical and psychological effects upon the victim. They further believe that the cruelty of this offense merits its categorization as a ranked felony offense.

Summary of Bill: Assault by strangulation is listed as one way that a person commits assault in the second degree which is a class B felony. This crime is a level IV felony punishable by three to nine months for a first offense. "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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Assaults by strangulation are among the most serious crimes in the criminal justice system. Felony statutes make it difficult to prove strangulation without significant medical evidence. The most common charge when strangulation is involved is simple assault. This crime deserves to be categorized as a felony.

When an individual is strangled, the arteries in the neck are compressed. This stops the blood flow to the brain and after only ten seconds, the victim can lose consciousness. After four minutes of strangulation, brain cells begin to die and irreversible brain damage sets in. The amount of brain damage that occurs depends upon the amount of time a victim is strangled. There are ways to determine whether strangulation occurred. Many times, the injuries are internal, such as internal bruising, swelling of the airway, hoarseness, sore throat, and damaged blood vessels. Some of the injuries can be visible, such as red marks, bruising, fingernail marks, and pin point bleeding in the eyes and neck. This is a public health issue.

CON: There are concerns about false domestic violence reporting. If this bill passed, a person could face felony charges due to an angry significant other's false reporting. This crime is already covered under the attempted murder statutes. If a victim is strangled, that means the offender is trying to kill the victim. That should be charged as attempted murder. Any touching or grabbing around the neck that leaves a red mark could be charged as a felony if this bill passes. The police need to enforce Washington's current laws, not create more crimes.

Persons Testifying: PRO: Chris Johnson, Washington State Attorney General's Office; David Martin, King County Prosecuting Attorney's Office; J. Matthew Lacy, King County Medical Examiner's Office; Grace Huang, Washington State Coalition Against Domestic Violence.

CON: Lisa Scott, Taking Action against Bias in the System; Pat Lessard, Weston Career Resources Center; Andy Maris, citizen.