

# **Women's** **Policy Group NI**

**Response from the Women's Policy Group NI to:**

**Non-Fatal Strangulation: A Public Consultation**

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## Introduction

The [Women's Policy Group Northern Ireland](#) (WPG) is a platform for women working in policy and advocacy roles in different organisations to share their work and speak with a collective voice on key issues. It is made up of women from trade unions, grassroots women's organisations, women's networks, feminist campaigning organisations, LGBTQ+ organisations, migrant groups, support service providers, NGOs, human rights and equality organisations and individuals.

Over the years this important network has ensured there is good communication between politicians, policy makers and women's organisations on the ground. The WPG is endorsed as a group that represents all women of Northern Ireland on a policy level and we use our group expertise to lobby to influence the development and implementation of policies affecting women. This group has collective expertise on protected characteristics and focus on identifying the intersectional needs of all women.

We welcome this consultation and the opportunity to contribute on this vital issue. We are eager to see a new offence of non-fatal strangulation introduced in Northern Ireland. Our position is that there is an evident need for this offence to be introduced, for the necessary educational piece of work to be put in place, and for this roll out to be properly and fully resourced - doing so will save lives. Evidence from jurisdictions where this kind of legislation is in place already shows that it works when fully enacted and treated with due seriousness - New Zealand has had such a law since 2018 and while the enactment is occasionally less than perfect, progress is being made.<sup>1</sup>

We are also keen to emphasise that this crime is heavily gendered. As research has shown, the overwhelming majority of the victims of this crime are women, and the overwhelming majority of perpetrators are men. This does not mean that the wording of the legislation should not be gender neutral and apply to all, but it does mean that care must be given to the focus of the educational piece that accompanies this legislation, to ensure that first responders are aware of this phenomenon presenting in a very gendered way. It is also vital that the public is made aware that, fundamentally, the practice of non-fatal strangulation is not an example of a person "snapping" under pressure, rather a very calculated means of exerting control on a victim. It is deeply tied to patriarchal notions of power balances in relationships, of who is "active" and who is "passive" in sexual encounters, and that this needs to be unpacked when doing preventative work around this issue. Kate Manne argues that "strangulation is torture...It is characterised as a demonstration of authority and domination. As such, together with its gendered nature, it is a type of action paradigmatic of misogyny."<sup>2</sup>

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<sup>1</sup> Law Commission New Zealand, *Strangulation, the Case for a New Offence*  
<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R138.pdf>

<sup>2</sup> Manne, Kate (2018) *Down Girl, the Logic of Misogyny* (Oxford University Press) p. 3

There remains a need for a serious examination of violence against women and girls (VAWG) as a phenomenon, and a commitment to taking seriously the prevalence of this violence, understanding its causes as well as dealing with its effects. This will require resourcing to help victims and survivors but it will also require committed education and a broader conversation about this endemic social problem. We look forward to the forthcoming Executive VAWG strategy and hope that it is as wide-ranging, unflinching and ambitious as it needs to be in order to get to grips with the scale of the problem.

## Questions

### Question 1: Do you think the law in Northern Ireland is sufficient as it stands?

No

#### Please give reasons for your response:

The nature of the current law does not recognise what we now know about non-fatal strangulation; that it is often used as a tool of control and coercion, often within an intimate relationship, and not necessarily as a failed attempt at murder or “other indictable offence”.<sup>3</sup> At present it must be linked to another indictable offence and this does not capture fully the way that we now know non-fatal strangulation most often presents itself; specifically, as a tool of coercive control, and/or as part of sexual violence.

While non-fatal strangulation is often an indicator of an escalation of abuse, and this escalation may end with murder, tying it to the intent to commit a more serious offence in the law almost requires the situation to worsen and the danger to the victim’s life to reach a certain threshold before the law can intervene. The goal must be to protect potential victims from such an escalation, particularly when there is an abundance of evidence, from a diverse range of jurisdictions, that non-fatal strangulation is a very significant indicator that such an escalation may be imminent.<sup>4</sup> Therefore a stand-alone offence would be very welcome in terms of both addressing and acknowledging the seriousness of this crime and attempting to prevent any further escalation in individual cases by encouraging swift intervention.

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<sup>3</sup> <https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/21/1991-02-01>

<sup>4</sup> *Non Fatal Strangulation is an Important Risk Factor for Homicide of Women*, Glass et al, Journal of Emergency Medicine, 2007:  
[https://www.researchgate.net/publication/5883869\\_Non-fatal\\_Strangulation\\_is\\_an\\_Important\\_Risk\\_Factor\\_for\\_Homicide\\_of\\_Women](https://www.researchgate.net/publication/5883869_Non-fatal_Strangulation_is_an_Important_Risk_Factor_for_Homicide_of_Women)

Further, while the visible effects of non-fatal strangulation are less apparent than some other forms of physical assault that can characterise domestic abuse and coercive control, as well as of sexual violence, the actual effects can be extremely significant. These range from a loss of consciousness indicating brain injury, injury to the throat, neck or veins leading to further complications including stroke caused by blood clots, miscarriage, seizures, speech disorders and incontinence, to psychological impacts including PTSD, anxiety, depression, suicidal ideation and dissociation.

These impacts reiterate the seriousness of non-fatal strangulation, regardless of whether there is an escalation of violence, regardless of whether the behaviour is repeated, and regardless of whether any given victim experiences all or even some of these effects. The reality of the act of non-fatal strangulation is that it carries a profound threat; the victim is made acutely aware that their life is very literally in their attacker's hands, that they can choose at any moment to end it. The impacts of this are significant, both in the moment and in the longer term, and a stand alone offence is the appropriate way to tackle it.

“Strangulation is an effective and cruel way of asserting dominance and control over a person through the terrifying experience of being starved of oxygen and the very close personal contact with the victim who is rendered helpless at the mercy of the offender. The intention of the offender may be to create a shared understanding that death, should the offender so choose, is only seconds away. The act of strangulation symbolizes an abuser's power and control over the victim, most of whom are female.”<sup>5</sup>

## Question 2: Which of the following is your preferred option?

Please select:

- (a) No change?
- (b) Make strangulation a statutory aggravating factor to be taken into account by the courts when sentencing for any offence?
- (c) Create a new stand-alone offence of non-fatal strangulation with appropriate maximum sentence?**
- (d) Other?

The best course of action is to create a new stand-alone offence of non-fatal strangulation with appropriate sentencing guidelines. As outlined above, this course of action will properly

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<sup>5</sup> R-v-Campbell Allen [2020] NICA 25

recognise the seriousness of this offence in and of itself, regardless of its connection to other offences. It will also make it possible for the legal system to recognise the harm caused and danger posed by this offence alone, and used properly will help to ensure the safety of those who are victims of this particular offence.

We are mindful also of the realities of how courts tend to process cases where aggravating factors are added after conviction. Not only does this require a conviction to take place - which like the existing law requires another crime to have occurred but, as Judge Marrinan outlined in his Hate Crime Review, all too often these aggravating factors are not pursued by the PPS for assorted reasons. This offence is too serious and too dangerous to allow it to be seen as an option - it must be an offence in and of itself.

There are other benefits of making this a stand-alone offence also. Firstly, while we do have cases where Judges have explicitly addressed the phenomenon we are here calling non-fatal strangulation, we can only guess at the scale of the problem. Therefore, a new offence will help to monitor the frequency and pattern of these occurrences if accurate statistics are gathered, and consequently allow the police service to allocate resources accordingly.

In addition, if this becomes a stand alone offence it should be accompanied by a campaign to raise awareness of the issue. This will help to prevent future occurrences by raising awareness about the seriousness of non-fatal strangulation and educate people about red flags and also help current victims who may be living with this abuse gather the courage to report it and seek help.

**Question 3: if a new strangulation offence is developed, should it be capable of being tried in the magistrates' courts and in the Crown Court?**

**Please select:**

- In Crown Court only**

We are mindful of the fact that the use of Magistrates' Courts generally allows for a more efficient process and therefore the more swift delivery of justice. We are aware that this is a valuable goal in itself, particularly because there is a great deal of anxiety and fear on the part of the victim/survivor, generated by the experience of suffering from non-fatal strangulation alone or alongside a broader kind of abuse or coercive control.

With that said, the Magistrates' Court is limited in terms of the maximum sentence that it can impose, to such an extent that it may not be sufficient to capture the seriousness of the offence and the harm caused to the victim, even if the maximum sentence is always imposed.

For that reason we argue that these cases should be heard only in Crown Court, commensurate with the nature of the crime and the risk posed by perpetrators. The issue of delays in the system is an issue impacting the delivery of justice in a wide variety of cases, and the system as a whole needs investment so that this problem is alleviated.

**Question 4: If a new offence could be tried in the magistrates' courts should the maximum sentence be (a) 6 months; (b) 12 months; or (c) 2 years?**

**Please Select:**

- (a) 6 months**
- (b) 12 Months**
- (c) 2 years.**

N/A

We believe that the offence of non-fatal strangulation is too serious to be appropriately heard or sentenced in a Magistrates Court, and should be reserved for Crown Court.

**Question 5: If a new offence could be tried in the Crown Court, should the maximum sentence be (a) 5 years; (b) 7 years; or (c) other?**

**Please select:**

- (a) 5 years**
- (b) 7 years**
- (c) Other**

It is vital that sentencing for this offence is commensurate with the seriousness of the offence and recognises the risk that the perpetrator may still pose to the victim/survivor.

7 years as a maximum sentence is appropriate given the dire risk to life that is posed by the act of non-fatal strangulation, simultaneously enacting coercive control and enacting an act of extreme violence intended to highlight the victim's vulnerability.

In addition, while non-fatal strangulation is inherently not fatal, there are serious and sometimes life-long consequences for those who are assaulted in this way. Survivors may experience both physical impacts short of fatality that may be serious and long-term, and also may experience profound psychological impacts.

**Question 6: Do you agree that expenditure on a programme of education to increase awareness of the problems associated with non-fatal strangulation is required?**

**Please select:**

Yes

**Please give reasons for your response:**

This legislation is designed to be effective at prosecuting those who are guilty of committing the offence of non-fatal strangulation, but effective legislation will also work to prevent such offences from occurring in the first place.

**Question 7: If YES, to question 6, what should such a programme cover?**

Education is the most effective tool in attempting to prevent such offences, and effective education will be aimed at a wide variety of audiences. As such we recommend;

- **Education for service providers and first responders** Those people who may be first to encounter victims of non-fatal strangulation need to recognise the signs that it has taken place, which are often subtle and not immediately apparent. In the case of police in particular, who may be first responders to a domestic dispute where NFS has taken place, the victim may be unwilling to name what has happened in the presence - or even in the absence - of their abuser. Where police, emergency medicine practitioners and social workers are concerned, it is vital that they are equipped with sufficient tools to recognise where the life or health of a victim of NFS might be at risk; either in that moment or at a later stage. Because time is of the essence, “fact sheets” should be produced as well as additional training, especially for specialist police services.
- **Education can help ensure convictions and proper sentencing** when these cases arrive at court by informing the public who will make up any jury of the seriousness of and danger posed by non-fatal strangulation.
- **Education will help people recognise that, while the injury might be less visible than some others, non-fatal strangulation can be an indicator of a much more serious pattern of coercive control** that puts the victim in imminent fear for their life and therefore victims find it harder to reach out for help. For that reason education will have a valuable role in encouraging support organisations to look beyond the most obvious forms of injury and to exercise patience with regards to the needs of victims, who may take time to come to terms with what is happening to them and to seek help.
- **Education has a preventative effect** – people recognise “red flags” more easily and doubt themselves less when the behaviour they experience has been the subject of a concerted educational campaign.
- **RSE in schools needs to include an honest discussion on non-fatal strangulation alongside a discussion on domestic abuse and sexual violence.** This needs to be placed both in the context of modelling healthy relationships and in the context of a frank discussion on erotic asphyxiation, which young people are increasingly exposed

to through online pornography but rarely have the opportunity to hear about in an honest, dispassionate way. These conversations must be frank and direct, and address issues that are often seen as uncomfortable at best and considered deviant at worst - people must be made aware of the ways in which certain practices are portrayed as entirely unremarkable, for example in pornography, and may also pose very real risks that accompany those practices. This is the most effective way to expose and undermine myths and also to ensure that those who do choose to engage in these acts do so with the best possible information on how to do so as safely as possible.

**Question 8: Do you consider something more/different is required to address non-fatal strangulation in Northern Ireland?**

**Please select:**

**Yes**

If **YES** please give details:

In addition to a new stand-alone offence of non-fatal strangulation, the new law should ensure the following;

- The law must set out clearly what non-fatal strangulation means, how it presents itself, the impacts of it and the range of punishments for it
- As outlined above, we need appropriate and thorough training on this for the general public and for professionals who may encounter this in their work
- A “checklist” or toolkit should be devised for professionals that may encounter non-fatal strangulation, to help them to recognise non-fatal strangulation when they encounter it, similar to that developed by the International Association of Forensic Nurses.<sup>6</sup> This should be accompanied by training for first responders including police, EMTs and other relevant medical staff.
- We need public awareness and educational programmes that link non-fatal strangulation with its role in coercive control / domestic abuse / “rough sex” respectively, so that people understand that it may appear in a variety of settings and present in various ways, and know that this is criminal behaviour and that help is available.

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<sup>6</sup> <https://www.forensicnurses.org/page/STPreface>



- The roll out of the law needs to be monitored carefully so that useful statistics can be gathered, sensitive to section 75 characteristics, and helping legislators, support providers and the general public to understand the nature of the problem in enough detail to provide targeted and helpful interventions.
- All of this must be linked to a broader Violence Against Women and Girls (VAWG) strategy, which is presently planned by the Executive Office.
- A multi-disciplinary approach to the issue would benefit victims/survivors most, incorporating the various ways that this presents itself and also the ways that survivors may seek support, justice, or both.
- We again recommend that the Department of Justice re-examine the issue of the so-called “rough sex defence”. While definitionally not the same as non-fatal strangulation, where the victim survives to give their own testimony, we reiterate our argument that the current status quo does not adequately recognise the nature of strangulation during sex that results in death<sup>7</sup>. These cases very rarely include evidence that the death was planned in advance (the *mens rea* or murderous intent), meaning that prosecution services are almost always unable to charge the defendant with murder. This leaves manslaughter as the only option for a charge - a situation that often leaves families feeling like justice has failed them and that also fails to capture the recklessness of the act that led to the death of the victim. We proposed a route that would address this gap more thoroughly, as it would create a new law capturing the fact that the death was caused by reckless activity and disregard for consequence, as opposed to resulting from an accident, and this would attract appropriate sentencing structures as well as more accurately reflect the nature of the wrong done to the victim.

We see this proposed offence as complementary to and parallel to the proposed non-fatal strangulation offence; both fill a gap in the current legislation that recognises the unique danger and harm caused by strangulation, whether it results in death or not.

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<https://wrda.net/wp-content/uploads/2021/01/Consent-to-harm-for-sexual-gratification-not-a-defence-by-WP-G.pdf>