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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE 2023-03

TO: All Law Enforcement Chief Executives

FROM: Matthew J. Platkin, Attorney General

DATE: August 21, 2023

SUBJECT: Directive Establishing Breathing/Blood flow Restriction Event: Advocacy, Treatment, Help, and Empowerment (BREATHE) Team

I. Introduction

This Directive establishes the framework for the creation of Breathing/Blood flow Restriction Event: Advocacy, Treatment, Help and Empowerment (BREATHE) Teams in each county to respond to crimes of nonfatal strangulation and smothering statewide. While this Directive is focused on offenses of strangulation and/or smothering against a person who is a domestic violence victim, anyone who survives a strangulation or smothering assault will be afforded access to BREATHE Team services.

Strangulation is one of the most lethal forms of domestic violence and correlates, approximately, to a 750 percent increased risk of homicide of the domestic violence victim by the offender.¹ Individuals with a history of strangling intimate partners have been linked to being perpetrators in officer-involved critical incidents, intentional line of duty homicides, and mass murders.² Many victims of strangulation exhibit no visible signs of injuries, but because of the trauma inflicted, may sustain life-threatening internal injuries, including traumatic brain injury, damage to carotid arteries, stroke, and/or permanent visual impairment. Even when victims exhibit visible injuries associated with strangulation, the injuries may appear minor and limited to the area of the body where pressure was applied.³ Forensic Nurse Examiners (FNEs) are specifically

¹ Nancy Glass et al., Non-fatal Strangulation is an Important Risk Factor for Homicide of Women, 35 J. of Emergency Med. 329, 332 (2008).

² Casey Gwinn & Gael B. Strack, Introduction and Overview of Strangulation and Suffocation Assaults, in CAL. DIST. ATT'YS ASS'N, INVESTIGATION AND PROSECUTION OF STRANGULATION CASES 11, 13 (2020), available at https://www.familyjusticecenter.org/wp-content/uploads/2020/09/Strangulation_2020-Online-Version.pdf.

³ Gael B. Strack et al., Investigating Strangulation Cases, in THE INVESTIGATION AND PROSECUTION OF

trained to evaluate patients who have reported strangulation and/or smothering victimization. FNEs utilize specialized training, techniques, and equipment to gather samples, specimens and photographs that may be used in the investigation and/or prosecution of these cases. As a result, forensic medical examinations of strangled and/or smothered victims can provide critical, life-saving medical services as well as preserve potential evidence for future prosecution.

Several counties in New Jersey have already developed and implemented procedures for a strangulation and smothering response team to include a qualified FNE performing a forensic medical exam, a law enforcement officer, and a victim advocate. This Directive builds on the great work already accomplished and directs the expansion of these services to the entire state. This Directive will also set forth clear parameters that will help establish better emergency care to victims of these crimes and improve the quality of forensic evidence and information collected during these investigations for future prosecution.

Therefore, pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the directives outlined below when responding to or otherwise handling any matters related to offenses of nonfatal strangulation and smothering under N.J.S.A. 2C:12-1.

II. Policy

BREATHE Team services shall be available to victims who experience pressure on the throat or neck or blocking of the nose or mouth, thereby obstructing the breathing and/or blood circulation of the victim and causing reduced oxygen and blood flow to the brain. These incidents are classified as strangulation, commonly referred to as “choking” and/or smothering.

While this Directive is focused on offenses of strangulation and/or smothering against a person who, with respect to the actor, meets the definition of a victim of domestic violence, as defined by N.J.S.A. 2C:25-19(d), anyone who survives a strangulation or smothering assault will be afforded access to BREATHE Team services, to include a forensic medical exam performed by a qualified FNE.

Each county shall create a mechanism to activate BREATHE Team responses to all reported incidents of nonfatal strangulation and/or smothering. While activation protocols may vary by county, activation must include a mechanism for deployment of an FNE to the appropriate treating facility within one hour of a reported strangulation and/or smothering event.

The Division of Criminal Justice (DCJ) will provide training for nurses, prosecutors, law enforcement, and advocates on the implementation of this Directive and the services to be provided by BREATHE Teams to victims statewide no later than November 1, 2023.

BREATHE Teams will consist of an FNE, a law enforcement officer, and a Domestic Violence Response Team (DVRT) Advocate, if the strangulation and/or smothering occurs against a person who, with respect to the actor, meets the definition of a victim of domestic violence, or a Confidential Sexual Violence Advocate (CSVA) if the victim also experienced an act of sexual violence.

The role of each BREATHE Team member will be as follows:

Forensic Nurse Examiner:

A forensic nurse examiner (FNE) is a registered nurse with specialized training to perform a forensic medical examination. The role of the FNE is to assess and care for a victim's medical condition, and to obtain and collect samples, specimens, and photographs which may have evidential value.

The standardized procedure for completing the forensic medical examination will be approved by the DCJ Director, or their designee, after consultation with the Forensic Nurse Coordinators Association. DCJ will provide training for FNEs on standardized forensic examination procedures for strangulation and/or smothering victims no later than November 1, 2023.

Law Enforcement:

Police officers from Municipal Police Departments, New Jersey State Police, the County Prosecutor's Offices, and/or County Sheriff's Department Criminal Investigations Units will initiate any criminal investigation and provide safety and security for the victim and the BREATHE Team.

Domestic Violence Response Team Advocate:

Domestic Violence Response Team (DVRT) advocates are individuals who have completed specialized training to provide trauma-informed support, assist with safety planning, and to educate and connect victims to additional domestic violence and community resources. The DVRT program is a state mandate of the Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-20(c). Alternatively, another designee from a local domestic violence provider may respond in the place of a DVRT advocate so long as said designee has completed the minimum forty (40) hours of domestic violence training under the supervision of a domestic violence provider agency, meets the requirements of a Victim Counselor as defined by N.J.R.E. 517, and the alternative designee's response is contemplated in the county-specific protocol.

Confidential Sexual Violence Advocate:

Confidential Sexual Violence Advocates (CSVAs) are individuals that have completed the statutory (N.J.S.A. 2A:84A-22.14) minimum forty (40) hours of Division of Women (DOW) and New Jersey Coalition Against Sexual Violence (NJCASA) approved Sexual Violence Advocacy training and are under the supervision of a Sexual Violence Service Organization that is funded by the DOW. The CSVAs shall assist with safety planning and ensure victims are educated and connected to additional domestic and sexual violence services, as well as community resources.

III. Victim Rights and Notifications

Upon reporting a strangulation and/or smothering assault, victims shall be advised of their right to accept all, or any portion of, BREATHE Team services as soon as possible. Victims who do not initially report to law enforcement, may access BREATHE Team services through contact at health care facilities or advocacy agencies.

If a victim reports a nonfatal strangulation and/or smothering incident to a health care facility or advocacy agency, the victim may choose to undergo a forensic medical examination and decline to release the records and evidence collected during the exam to law enforcement. In such cases, the forensic nurse coordinator will retain the medical records and any specimens collected so that they may be provided to law enforcement if the victim chooses to report the strangulation and/or smothering assault at a later time, or if law enforcement independently discovers the assault occurred and initiates an investigation.

Should a law enforcement agency become aware of an offense or crime of domestic violence, it is still required to investigate and charge as required by the Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17 to -35, regardless of the victim's decision to release documentation and evidence collected during the forensic exam. N.J.S.A. 2C:25-21. Further, law enforcement and prosecutors may obtain the victim(s)' forensic examination report, specimens collected, and photographs if law enforcement independently discovers the assault occurred and initiates an investigation.

All records made and evidence collected during the forensic medical exam for unreported and uninvestigated incidents of strangulation and/or smothering will be retained for five (5) years from the date of the assault, which is the duration of the statute of limitations for a crime committed under N.J.S.A. 2C:12-1.⁴ Records and evidence collected during the forensic exam for reported and/or investigated incidents of strangulation and/or smothering will be retained in accordance with Attorney General Directive 2011-1, Guidelines for the Retention of Evidence, dated January 6, 2011. Such records generated as a result of the forensic medical exam pursuant to this Directive shall not be subject to the Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

The victim may request a copy of the forensic examination records and photographs be provided directly to themselves or may consent to release records directly to the Superior Court, Family Division, for the purpose of obtaining a final restraining order.

⁴ See N.J.S.A. 2C:1-6.

Victims shall also be informed how the medical information and evidence collected will be stored. Victims shall be advised how to obtain copies of their forensic exam record in the future. Finally, victims shall be notified that he/she/they may be financially responsible for any medical evaluations and tests beyond the immediate forensic exam.

IV. BREATHE Team Activation Procedures

Pursuant to this Directive, I am requiring County Prosecutors to develop and implement procedures for referring victims of nonfatal strangulation and/or smothering for a forensic medical examination. The BREATHE Team FNE can respond to any reported cases of strangulation and/or smothering which meets the following criteria:

1. The victim describes being strangled and/or smothered;
2. The victim consents to the forensic medical examination; and
3. The incident occurred within the past five (5) days and/or the victim exhibits continued visible signs of strangulation and/or smothering injury, or reports experiencing continued symptoms of strangulation and/or smothering.

All law enforcement agencies and hospitals operating within the state will be advised by the respective County Prosecutor's Office in the county in which they operate that any case of nonfatal strangulation and/or smothering meeting established activation criteria are eligible for BREATHE Team services. Agencies that will receive written BREATHE Team procedures will include, but not be limited to the following:

1. All law enforcement agencies operating within the county boundaries;
2. All hospitals and emergency healthcare facilities operating within county boundaries;
3. All mental health/counseling agencies operating within the county boundaries;
4. All school administrators and school nurses operating within the county boundaries;
5. All college healthcare and counseling departments operating within the county boundaries; and
6. All relevant state agency offices, including the New Jersey Department of Children and Families, Division of Child Protection and Permanency and Division on Women, Department of Human Services and Adult Protective Services, Department of Health, Department of Education, New Jersey Long-term Care Ombudsman, and the Division of Consumer Affairs.

BREATHE Team activation procedures must be established and distributed to stakeholders at least one month prior to the full implementation of this Directive, and no later than December 1, 2023.

V. Other Provisions

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the document shall not be affected.
- C. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the DCJ Director, or their designee.
- D. ***Effective date.*** This Directive shall take effect immediately and each county's BREATHE Team shall be implemented no later than January 1, 2024. The provisions of this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



Matthew J. Platkin
Attorney General

ATTEST:



Lyndsay V. Ruotolo
First Assistant Attorney General

Dated: August 21, 2023