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Resolution 15 05 2017 prohibiting police chokeholds.pdf

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RESOLUTION 15-05-2017

DIGEST
Chokeholds: Ban on Police Use
Adds Penal Code section 835b to prohibit peace officers from applying carotid restraint holds and choke holds as control holds.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Penal Code section 835b to read as follows:

§ 835b
Peace Officers are prohibited from using the following control holds:
(a) carotid restraint,
(b) choke hold – choking by means of pressure to the subject’s trachea or other means that prevent breathing.

(Proposed new language underlined; language to be deleted stricken)

PROPOONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: There are two types of control holds that can be applied to a person’s neck. One is a “choke hold,” which involves applying pressure across the front of a person’s neck in order to cut off the person’s air supply and to cause the person to lose consciousness. The other is a “carotid restraint hold.” With the carotid restraint hold, the goal is to simultaneous squeeze the two neck arteries, that are located on either side of the windpipe (trachea). When both arteries are squeezed, the flow of oxygenated blood to the brain is cut off, and the person will lose consciousness. And if a person becomes unconscious for a few seconds, then a peace officer has time to put handcuffs on the person to provide more effective control. Unfortunately, a carotid restraint hold can shift into a chokehold, the person’s airway can become crushed, and then the person can die.

For example, in 2014, Eric Garner, of Staten Island, New York, died while being taken into police custody. The coroner found that Mr. Garner’s windpipe (trachea) had been crushed. As a result, New York City paid a 5.6 million dollar settlement to Mr. Garner’s family. Similarly, in 2012, Los Angeles Police Officers applied a chokehold to Mr. Vachel Howard’s neck, and the LA City Council paid a 2.85 million dollar settlement. See also Ian Millhiser, “How the Supreme Court Helped Make It Possible For Police To Kill by Chokehold,” thinkprogress.org (Dec. 4, 2014).

In December 2016, the San Francisco Police Commission established General Order 5.01 for “Use of Force.” The introduction explains that the Order is based upon the broad principles in Graham v. Connor 490 U.S. 386 (1989), but is “more restrictive than the constitutional standard
and state law.”

The Order specifies that San Francisco Police Officers are prohibited from applying either carotid restraint holds or choke holds as “control holds.” The Order also prohibits “other means that prevent breathing,” such as applying pressure to a person’s chest to restrict lung function.

The Solution: This resolution copies San Francisco Police Department General Order 5.01, part VI for “Force Options,” part (B)(3) for “Prohibited Use of Control Holds” (December 21, 2016) and would place it into Penal Code § 835 for “Arrest, by Whom and How Made.”

IMPACT STATEMENT
The resolution does not affect any other statute or case law other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
San Francisco Police Department General Order 5.01, Use of Force, adopted Dec. 21, 2016, available at: http://sanfranciscopolice.org/use-force-documents (“Officers are prohibited from using the following control holds: a. carotid restraint, b. choke hold – choking by means of pressure to the subject’s trachea or other means that prevent breathing.”).

Graham v Connor, 490 U.S. 386, 397 (1989) (“The ‘reasonableness’ inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”)


See CCBA Resolutions 01-11-2016 and 08-10-2015.

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