
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1196 **Hearing Date:** August 7, 2020
Author: Gipson
Version: July 9, 2020
Urgency: Yes **Fiscal:** Yes
Consultant: GC

Subject: *Peace Officers: Use of Force*

HISTORY

Source: Alliance of Boys and Men of Color; National Action Network; PolicyLink

Prior Legislation: AB 392 (Weber), Ch. 170, Stats. of 2019
SB 230 (Caballero), Ch. 285, Stats. of 2019

Support: Advancement Project; The Arc; Alliance for Boys and Men of Color; Alliance San Diego; American Civil Liberties Union – California; Anti-Defamation League; Asian Americans Advancing Justice – California; Association of Black Women Physicians; California Association of Black Lawyers; Brady California United Against Gun Violence; California Academy of Family Physicians; California Association of Black Lawyers; California Attorneys for Criminal Justice; California Dental Association; California Department of Insurance; California Department of Justice; California Immigrant Policy Center; California Natural Gas Vehicle Coalition; California Nurses Association; California Pan-Ethnic Health Network; California Psychological Association; California Public Defenders Association, California State Council of Service Employees International Union; California State National Action Network; California Teachers Association; Californiahealth+ Advocates; City of Alameda; City of Lafayette; City of Long Beach; Communities United for Restorative Youth Justice; Community Clinic Association of Los Angeles County; Compass Family Services; Consumer Attorneys of California; Disability Rights California; Ella Baker Center for Human Rights; Empowering Pacific Islander Communities; Everytown for Gun Safety Action Fund; Fresno Barrios Unidos; Friends Committee on Legislation of California; Giffords Law Center; Having Our Say Coalition; Health Access California; Indivisible – Marin; Indivisible – Sausalito; Initiate Justice; John Burton Advocates for Youth; Latino Coalition for a Healthy California; Legal Services for Prisoners with Children; Los Angeles County; Los Angeles LGBT Center; Los Angeles Office of Education; Los Angeles Regional Reentry Partnership; Mid-City Community Advocacy Network; Momentum United; NARAL Pro-Choice California; National Action Network; National Association of Social Workers – California; Phi Beta Sigma Fraternity; Planned Parenthood – California; Public Health Advocates; Rubicon Programs; Showing Up for Racial Justice – San Diego; Silicon Valley Leadership Group; Stop Coalition; SURJ – Marin; Time for Change Foundation; UDW/AFSCME Local 3930; United Cerebral Palsy – California, W. Haywood Burns Institute; Youth Alive!; Youth Justice Coalition

Opposition: Association for Los Angeles Deputy Sheriffs; Association of Orange County Deputy Sheriffs; California Association of Highway Patrolmen; California Fraternal Order of Police; Peace Officers Research Association of California (PORAC); Riverside Sheriffs' Association; Sacramento County Deputy Sheriffs Association; San Bernardino County Safety Employees' Benefit Association

Assembly Floor Vote: Not relevant

PURPOSE

The purpose of this legislation is to prohibit law enforcement agencies from authorizing 1) carotid restraint holds; 2) choke holds, and 3) techniques or transport methods that involve a substantial risk of positional asphyxia.

Existing law defines “deadly force” as any use of force that creates a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, the discharge of a firearm. (Gov. Code, § 7286, subd. (a)(1).)

Existing law defines “feasible” means reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person. (Gov. Code, § 7286, subd. (a)(2).)

Existing law requires that each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a minimum standard on the use of force. Each agency’s policy shall include all of the following: (Gov. Code, § 7286, subd. (b).)

- A requirement that officers utilize deescalation techniques, crisis intervention tactics, and other alternatives to force when feasible.
- A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.
- A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.
- Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.
- A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.
- Procedures for disclosing public records in accordance with Section 832.7.
- Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents.
- A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.
- Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.
- An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased.

- Comprehensive and specific guidelines for the application of deadly force.
- Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice in compliance with Section 12525.2.
- The role of supervisors in the review of use of force applications.
- A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.
- Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors.
- Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.
- Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.
- Factors for evaluating and reviewing all use of force incidents.
- Minimum training and course titles required to meet the objectives in the use of force policy.
- A requirement for the regular review and updating of the policy to reflect developing practices and procedures.

Existing law requires that each law enforcement agency shall make their use of force policy adopted pursuant to this section accessible to the public. (Gov. Code, § 7286, *subd. (c).*)

Existing law mandates that the Commission on Peace Officers Standards and Training (POST) shall implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force and shall also develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for use of force. The guidelines and course of instruction shall stress that the use of force by law enforcement personnel is of important concern to the community and law enforcement and that law enforcement should safeguard life, dignity, and liberty of all persons, without prejudice to anyone. These guidelines shall be a resource for each agency executive to use in the creation of the use of force policy that the agency is required to adopt and promulgate pursuant to Section 7286 of the Government Code, and that reflects the needs of the agency, the jurisdiction it serves, and the law. The course or courses of the regular basic course for law enforcement officers and the guidelines shall include all of the following: (Penal Code, § 13519.10)

- Legal standards for use of force.
- Duty to intercede.
- The use of objectively reasonable force.
- Supervisory responsibilities.
- Use of force review and analysis.
- Guidelines for the use of deadly force.
- State required reporting.
- Deescalation and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence.

- Implicit and explicit bias and cultural competency.
- Skills including deescalation techniques to effectively, safely, and respectfully interact with people with disabilities or behavioral health issues.
- Use of force scenario training including simulations of low-frequency, high-risk situations and calls for service, shoot-or-don't-shoot situations, and real-time force option decision-making.
- Alternatives to the use of deadly force and physical force, so that deescalation tactics and less lethal alternatives are, where reasonably feasible, part of the decision-making process leading up to the consideration of deadly force.
- Mental health and policing, including bias and stigma and;
- Using public service, including the rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts.

This bill prohibits a law enforcement agency from authorizing the use of:

- A carotid restraint hold.
- A choke hold.
- Techniques or transport methods that involve a substantial risk of positional asphyxia.

This bill defines the following terms as follows:

- “Carotid restraint” means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person.
- “Choke hold” means any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.
- “Positional asphyxia” means situating a person in a manner that compresses an individual’s airway and reduces the likelihood that an individual will be able to breathe. This includes but is not limited to techniques or positioning that restrain a subject’s hands and legs together, leave a subject in control restraints lying on their back or stomach, put weight on the subject’s back or neck for a prolonged period, or keep a subject waiting for transportation in a restrained position, as described in this paragraph, without proper monitoring for signs of asphyxia.

COMMENTS

1. Need for This Bill

AB 1196 seeks to eliminate the use of chokeholds, carotid restraints, and techniques or transport methods with a high risk of positional asphyxia by law enforcement.

The carotid restraint is one of the most commonly used strangleholds. To perform this hold, a peace officer applies pressure on either side of the windpipe—but not on the windpipe itself—to slow or stop the flow of blood to the brain via the carotid arteries. While designed to render subjects unconscious, this hold can go wrong in two main ways: either when improperly

applied, or when a subjects' physical disposition—if they suffers from coronary artery disease, for example—makes the hold dangerous or lethal. Simply maintaining restricted blood flow for one minute after the suspect is rendered unconscious can lead to irreversible brain damage.

In the Eric Garner case, NY Commissioner James O’Neill said that the officer’s failure to relax his grip while subduing him triggered a fatal asthma attack. With the high profile death of George Floyd in Minneapolis, where a peace officer used his knee to subdue and detain him, it is clear that similar methods of restraining suspects are incredibly risky and should no longer be allowed.

Police Departments in cities such as San Francisco, Los Angeles, and San Diego have already taken steps to prohibit their use but statewide policies regarding neck restraints vary, which results in a lack of accountability for officers who use them. AB 1196 will create a uniform statewide policy on carotid restraints and similar techniques to ensure that these procedures can no longer be improperly applied on Californians.

2. California and the Use of Choke Holds and Carotid Restraint

Choke holds have been effectively banned in California, but not expressly banned. The practice fell out of favor over many years due to serious injury and death caused by the usage of the technique. Over many years both federal and State of California courts have found the practice subjects municipalities, government entities, and law enforcement agencies that permit the usage liable for wrongful death and serious injury to persons who have been subjected to the use of a choke hold by law enforcement agencies. As a result of these findings of liability, the usage of choke holds fell out of favor and cities and agencies routinely banned their usage. Additionally, the Commission on Peace Officer Standards and Training (POST) ceased instruction on the technique. However, the practice has never been expressly banned in California statute and this bill seeks to make that clarification.

Carotid restraint is very similar to a choke hold. The practice involves the cutting-off of blood circulation to the head of the person upon which the hold is placed. This process can cause the person to lose consciousness. This technique has conventionally been taught to be less deadly than a traditional choke hold which can more easily collapse the wind pipe because it’s focused on the front of the neck. However, a slight deviation in the placement of the arm of the person implementing the hold can convert a carotid restraint into a choke hold. Additionally, cutting off blood flow to a person’s brain has its own dangers.

This bill would prohibit both practices in the State of California by law enforcement. Additionally, this bill would make sure that law enforcement agencies need to transport detained persons and persons otherwise in the custody of law enforcement in a manner that will not result in asphyxiation.

3. Argument in Support

According to the National Action Network:

It is imperative peace officers remain vigilant protecting the community and serving the public with integrity. For too long we have witnessed law enforcement abuse their power with overzealous individuals using the color of law to inflict terror among its citizens. California State National Action Network (CA State NAN) recognizes there are many tactics to de-escalate and subdue a person suspected of committing a crime. We do not believe any of the tactics include killing the suspect if the officer recognizes it is not necessary to take his or her life. For this reason, CA State NAN is pleased to sponsor AB 1196, which seeks to eliminate the use of the carotid restraint statewide by law enforcement. The carotid restraint is a tactic commonly used to render suspects unconscious; however, police officers are aware this restraint can be deadly. Simply maintaining restricted blood flow for one minute after the suspect is rendered unconscious can lead to irreversible brain damage or death. For nearly twenty years as leader of NAN, our founder Rev. Al Sharpton has led efforts across the nation to recognize egregious acts of abuse by law enforcement and demands for justice and civil rights. Over the years one thing we know remains to be true; changing laws will not change the heart and mind of a racist but we pray before our God these laws deter peace officers from abusing their power and committing fatal crimes against the citizenry they are sworn to protect. For these reasons, CA State NAN is pleased to sponsor AB 1196.

4. Argument in Opposition

According to the Association of Los Angeles Deputy Sheriffs:

As currently drafted, AB 1196 would prohibit law enforcement agencies from authorizing the use of a carotid restraint and techniques or transport methods that involve a substantial risk of positional asphyxia. We certainly appreciate the author's intent, and condemn the tragic death of George Floyd in Minneapolis, MN. However, the language as drafted does not provide law enforcement officers the ability to use these trained techniques when their own life, or any other person, is at risk. It is for this reason that we request language be added to specify an officer can use these restraints if they reasonably fear they, or any other person, is in danger of great bodily injury or death. Further, to ensure the safety of a person put into carotid restraint, we suggest including language that requires a law enforcement officer to put the person into a recovery position to monitor them for signs of positional asphyxia and provide medical attention when feasible and necessary.

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