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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

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**Bill No:** AB 490                      **Hearing Date:** July 13, 2021  
**Author:** Gipson  
**Version:** March 18, 2021  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** GC

**Subject:** *Law enforcement agency policies: arrests: positional asphyxia*

## HISTORY

**Source:** California Faculty Association

**Prior Legislation:** AB 1196 (Gipson), Ch. 324, Stats. of 2020  
AB 392 (Weber), Ch. 170, Stats. of 2019  
SB 230 (Caballero), Ch. 285, Stats. of 2019

**Support:** ACLU California Action; Alliance for Boys and Men of Color; American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties; Berkeley, City of; Black Leadership Council; California Attorneys for Criminal Justice; California Dental Association; California Department of Insurance; California Public Defenders Association; California Public Defenders Association (CPDA); Consumer Attorneys of California; Disability Rights California; Everytown for Gun Safety Action Fund; Initiate Justice; Los Angeles County District Attorney's Office; Moms Demand Action for Gun Sense in America; National Action Network - Sacramento Chapter; National Association of Social Workers, California Chapter; San Francisco Board of Supervisors; Students Demand Action for Gun Sense in America

**Opposition:** California Police Chiefs Association; California State Sheriffs' Association

**Assembly Floor Vote:** 55 - 15

## PURPOSE

***The purpose of this bill is to ban a law enforcement agency from authorizing techniques or transportation methods that involve a substantial risk of positional asphyxiation.***

*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.

*Existing law* prohibits a law enforcement agency from authorizing the use of carotid restraint or choke holds by peace officers.

*This bill* prohibits a law enforcement agency from authorizing techniques or transportation methods that involve a substantial risk of positional asphyxia.

*This bill* defines “positional asphyxia” as situating a person in a manner that compresses their airway and reduces the likelihood that they will be able to breathe normally. This includes, without limitation, the use of any physical restraint technique, device, or position that causes a person’s respiratory airway to be compressed or impairs the person’s breathing or respiratory capacity, including any technique in which pressure or body weight is unreasonably applied against a restrained person’s neck, torso, or back, or positioning a restrained person in a prone or supine position without proper monitoring for signs of asphyxia.

## COMMENTS

### 1. Need for This Bill

Last year, after the high profile death of George Floyd by law enforcement in Minneapolis, social unrest sprawled around the nation. With the support of many beside me, I championed landmark legislation to ban law enforcement from using chokeholds. While designed to incapacitate or render subjects unconscious, the holds were proven in practice to be dangerous and often lethal. However, there is still work to be done - the technique used by law enforcement on Floyd regarded a “knee-to-neck” restraint, encompassed by the term “positional asphyxia.” In December of last year, Angelo Quinto, a Navy veteran from Northern California, was tragically killed by police. Quinto had been suffering from a mental health episode when his family called the police for help in order to de-escalate the situation. While Quinto lay facedown and bloodied with hand cuffs behind his back, a responding officer knelt on Quinto’s neck for nearly five minutes while another officer restrained his legs. Quinto lost and never regained consciousness – he died in hospital three days later. The circumstances of Angelo Quinto’s death are a stark parallel to George Floyd’s, which both exposed gray area and loopholes in use-of-force policies. AB 490 will create a uniform statewide policy on positional asphyxia restraints, which encompass the knee-to-neck and other similarly dangerous techniques that are not currently banned, to ensure that they can no longer be improperly applied on Californians. This bill is an extension of last year’s effort and is even more critical

### 2. Expands California’s Ban on Choke Holds and Carotid Restraints Implemented in 2020

The Legislature passed, and the Governor signed, AB 1196 (Gipson) in 2020. AB 1196 codified a ban on choke holds in California and banned the use of carotid restraint in the state. Choke holds had 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 the years both federal and State of California courts 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 had never been expressly banned in California statute and AB 1196 made 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. AB 1196 prohibited both practices in the State of California by law enforcement.

This bill would expand the section created by AB 1196 to include banning law enforcement agencies from authorizing techniques and forms of transportation that have a substantial likelihood of resulting in positional asphyxiation.

The opponents of the bill argue that the definitions contained in the prohibition to law enforcement agencies are subjective and ambiguous. They argue that in order to combat and arrest aggressive individuals they must occasionally result to restraints, holds, and restrictive positioning.

Proponents of the legislation point to the recent killings of Angelo Quinto, Mario Gonzalez, and George Floyd as highlighting the need to ban law enforcement's use of these practices with a passage of a uniform statewide policy on restraints that have a substantial likelihood of causing positional asphyxia.

### **3. Argument in Support**

According to the ACLU:

Last year, after the high-profile death of George Floyd by law enforcement in Minneapolis, social unrest rightly engulfed the nation. California responded by passing AB 1196 (Gipson) to ban law enforcement from using chokeholds. While designed to incapacitate or render subjects unconscious, the holds have proven in practice to be extremely dangerous and often lethal.

However, the technique used by law enforcement on Floyd was another form of "positional asphyxia" – a "knee-to-neck" restraint, rather than a chokehold.

In December of last year, Angelo Quinto, a Navy veteran from Northern California, was tragically killed by police. Quinto had been suffering from a mental health episode when his family called the police for help to de-escalate the situation. The circumstances of Angelo Quinto's death dramatically parallel George Floyd's, and both exposed gray area and loopholes in use-of-force policies. While Quinto lay face down and bloodied with hand cuffs behind his back, a responding officer knelt on Quinto's neck for nearly five minutes while another officer restrained his legs. Quinto lost and never regained consciousness – he died in hospital three days later.

While current statewide use-of-force policy prohibits law enforcement from using any type of chokehold, including the carotid restraint, it does not explicitly address using a "personal body weapon" that reduces one's ability to breathe. AB 490 will create a uniform statewide policy on restraints that cause positional asphyxia to ensure that they can no longer be improperly applied on Californians.

#### 4. Argument in Opposition

According to the California Police Chiefs Association:

On behalf of the California Police Chiefs Association (CPCA), I must respectfully inform you of our opposition to AB 490, which sets new prohibitions on restraint techniques that are subjective and unclear.

Specifically, AB490 adds a prohibition on “techniques or transport methods that involve a substantial risk of positional asphyxia.” Although the bill attempts to define the types of restraint techniques in question, the restrictions remain subjective. Furthermore, the definition of “substantial risk” begets additional ambiguity. To combat and arrest an aggressive individual, officers must occasionally resort to restraints, holds and restrictive positioning. Some of those restraint techniques have been found more dangerous than others. CPCA fully supported the removal of the carotid restraint and chokehold, but to remove the additional holds noted in this bill would remove tools needed to overcome dangerous individuals, and would create unnecessary risk for the public, and for our officers.

The language in AB 490 lacks the clarity and specificity an issue of this magnitude deserves, and therefore, CPCA must oppose this measure. However, we remain committed to improving law enforcement techniques, including ensuring non-resistant and restrained individuals are not subjected to unnecessary risks of positional asphyxia.

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