

**RESOLUTION 15-05-2017 (REVISED)**

**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.

**RESOLUTIONS COMMITTEE ANALYSIS**

History:

Similar to Resolution 08-10-2015, which was withdrawn, and Resolution 01-11-2016, which was disapproved.

Reasons:

This resolution adds Penal Code section 835b to prohibit peace officers from applying carotid restraint holds and choke holds as control holds.

This resolution seeks to decrease deaths and injuries from improperly used control techniques on suspects and arrestees.

The Resolutions Committee initially recommended disapproval of this resolution. The Conference voted to approve.

**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:

- 1 § 835b
- 2 Peace Officers are prohibited from using the following control holds:
- 3 (a) carotid restraint,
- 4 (b) choke hold – choking by means of pressure to the subject’s trachea or other means
- 5 that prevent breathing.

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

**PROPONENT:** 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 simultaneously 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](http://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 section 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.")

*City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).

*See* HR 2052, "Excessive Use of Force Prevention Act of 2015," 114<sup>th</sup> Congress (2015-2016) to amend 18 U.S.C. 242 – Deprivation of rights under color of law.

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

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**RESPONSIBLE FLOOR DELEGATE:** James Brosnahan and Catherine Rucker

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## COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

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### SAN DIEGO COUNTY BAR ASSOCIATION

The SDCBA Delegation urges Disapproval of Resolution 15-05-2017. Eliminating chokeholds as a method of accomplishing detention and arrest of resisting suspects means there is one fewer means of less-than-lethal force available to peace officers and this has the potential adverse consequence of increasing the risk of use of lethal force. The use of less-than-lethal means of accomplishing arrest and detention should be encouraged and fostered through training in the proper use of such techniques, not their criminalization.