

Assembly Bill No. 490

CHAPTER 407

An act to amend Section 7286.5 of the Government Code, relating to law enforcement agency policies.

[Approved by Governor September 30, 2021. Filed with
Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 490, Gipson. Law enforcement agency policies: arrests: positional asphyxia.

Existing law authorizes a peace officer to make an arrest pursuant to a warrant or based upon probable cause, as specified. Under existing law, an arrest is made by the actual restraint of the person or by submission to the custody of the arresting officer. Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

Existing law prohibits a law enforcement agency from authorizing the use of a carotid restraint or a choke hold, as defined.

This bill would additionally prohibit a law enforcement agency from authorizing techniques or transport methods that involve a substantial risk of positional asphyxia, as defined.

By requiring local agencies to amend use of force policies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 7286.5 of the Government Code is amended to read:

7286.5. (a) (1) A law enforcement agency shall not authorize the use of a carotid restraint or choke hold by any peace officer employed by that agency.

(2) A law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of positional asphyxia.

(b) As used in this section, the following terms are defined as follows:

(1) “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.

(2) “Choke hold” means any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.

(3) “Law enforcement agency” means any agency, department, or other entity of the state or any political subdivision thereof, that employs any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(4) “Positional asphyxia” means situating a person in a manner that compresses their airway and reduces the ability to sustain adequate breathing. This includes, without limitation, the use of any physical restraint that causes a person’s respiratory airway to be compressed or impairs the person’s breathing or respiratory capacity, including any action in which pressure or body weight is unreasonably applied against a restrained person’s neck, torso, or back, or positioning a restrained person without reasonable monitoring for signs of asphyxia.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.