

AMENDED IN ASSEMBLY MARCH 18, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 490

Introduced by Assembly Member Gipson

February 8, 2021

An act to amend Section ~~637.3 of the Penal Code~~, 7286.5 of the Government Code, relating to ~~privacy~~: law enforcement agency policies.

LEGISLATIVE COUNSEL'S DIGEST

AB 490, as amended, Gipson. ~~Privacy: recording systems. 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.

~~Existing law prohibits a person or entity from using a system that examines or records the voice prints or other voice stress patterns of another person to determine the truth or falsity of statements without the express written consent of the person who is being recorded, as specified.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
 State-mandated local program: ~~no~~-yes.

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

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

3 7286.5. (a) (1) A law enforcement agency shall not authorize
 4 the use of a carotid restraint or choke hold by any peace officer
 5 employed by that agency.

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

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

11 (1) “Carotid restraint” means a vascular neck restraint or any
 12 similar restraint, hold, or other defensive tactic in which pressure
 13 is applied to the sides of a person’s neck that involves a substantial
 14 risk of restricting blood flow and may render the person
 15 unconscious in order to subdue or control the person.

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

18 (3) “Law enforcement agency” means any agency, department,
 19 or other entity of the state or any political subdivision thereof, that

1 employs any peace officer described in Chapter 4.5 (commencing
2 with Section 830) of Title 3 of Part 2 of the Penal Code.

3 (4) *“Positional asphyxia” means situating a person in a manner*
4 *that compresses their airway and reduces the likelihood that they*
5 *will be able to breathe normally. This includes, without limitation,*
6 *the use of any physical restraint technique, device, or position that*
7 *causes a person’s respiratory airway to be compressed or impairs*
8 *the person’s breathing or respiratory capacity, including any*
9 *technique in which pressure or body weight is unreasonably*
10 *applied against a restrained person’s neck, torso, or back, or*
11 *positioning a restrained person in a prone or supine position*
12 *without proper monitoring for signs of asphyxia.*

13 SEC. 2. *If the Commission on State Mandates determines that*
14 *this act contains costs mandated by the state, reimbursement to*
15 *local agencies and school districts for those costs shall be made*
16 *pursuant to Part 7 (commencing with Section 17500) of Division*
17 *4 of Title 2 of the Government Code.*

18 SECTION 1. ~~Section 637.3 of the Penal Code is amended to~~
19 ~~read:~~

20 ~~637.3. (a) A person or entity in this state shall not use a system~~
21 ~~that examines or records in any manner voice prints or other voice~~
22 ~~stress patterns of another person to determine the truth or falsity~~
23 ~~of statements made by the other person without their express~~
24 ~~written consent given in advance of the examination or recordation.~~

25 ~~(b) This section shall not apply to a peace officer, as defined in~~
26 ~~Section 830, while the peace officer is carrying out their official~~
27 ~~duties.~~

28 ~~(c) A person who has been injured by a violator of this section~~
29 ~~may bring an action against the violator for their actual damages~~
30 ~~or one thousand dollars (\$1,000), whichever is greater.~~