



CONSENT CALENDAR
April 27, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin (Author), Councilmember Hahn (Co-Sponsor), and Councilmember Harrison (Co-Sponsor)

Subject: Support for AB-490: positional asphyxia

RECOMMENDATION

Send a letter of support to Assemblymember Mike Gipson (D-Carson), Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Assembly Bill 490, which would prohibit law enforcement agency use of force policies to prohibit techniques and transport methods with substantial risk of positional asphyxia.

BACKGROUND

In the wake of the well-documented murder of George Floyd by Minneapolis police in 2020 and Black Lives Matter protests throughout the country responding to racist treatment against Black Americans by law enforcement, Assemblymember Mike Gipson introduced AB 1196¹ to prohibit choke holds and carotid restraint in law enforcement use of force policies. The bill was signed by Governor Newsom on September 30, 2020.

On February 8, 2021, Asm. Gipson introduced AB 490, which would further prohibit “techniques or transport methods that involve a substantial risk of positional asphyxia” to be defined in California Government Code Section 7286.5 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.”²

¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1196

² https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB490

RATIONALE FOR RECOMMENDATION

In December 2020, Antioch resident Angelo Quinto died three days after Antioch police officers knelt on his neck for nearly five minutes, and according to a wrongful death lawsuit filed by the family, Quinto had already been handcuffed and was not resisting.³ According to family members, Quinto said “please don’t kill me, please don’t kill me” to the officers before losing consciousness. Antioch Police have asserted that officers did not use any illegal restraint techniques, but did not disclose information about Quinto’s death until January 25, 2021, in response to media inquiries.⁴

In a June 1995 memorandum on positional asphyxia⁵ distributed by the U.S. Department of Justice, the National Law Enforcement Technology Center (NLETC) recommended: “As soon as the suspect is handcuffed, get him off his stomach.” And furthermore: “If prone positioning is required, subjects should be closely and continuously monitored.”

25 years later, Antioch Police appear to not have followed these recommendations, given allegations that they continued to restrain Quinto after he was already handcuffed. Stronger regulations on use of force policies are necessary to ensure that all law enforcement techniques with substantial risk of positional asphyxia are prohibited.

ENVIRONMENTAL IMPACTS

None.

FISCAL IMPACTS

None.

CONTACT

Councilmember Terry Taplin, District 2, 510-981-7120

ATTACHMENTS/SUPPORTING MATERIALS

1. Letter of Support

³ Fortin, J. (2021, Feb. 25). California Man Died After Police Knelt on Him for 5 Minutes, Family Says. *The New York Times*. Retrieved from <https://www.nytimes.com/2021/02/25/us/angelo-quinto-death-police-kneel.html>

⁴ KGO. (2021, March 3). Antioch PD says no illegal chokeholds used on Angelo Quinto after family files wrongful death lawsuit. *ABC 7 News*. Retrieved from <https://abc7news.com/angelo-quinto-wrongful-death-lawsuit-antioch-police-claim/10383974/>

⁵ National Institute of Justice. (1995). Positional Asphyxia—Sudden Death. *National Law Enforcement Technology Center Bulletin*. Retrieved from <https://www.ojp.gov/pdffiles/posasph.pdf>

The Honorable Mike Gipson
State Capitol
Sacramento, CA 94249

Assemblymember Gipson:

The City Council of the City of Berkeley hereby registers its support of Assembly Bill 490, which would prohibit law enforcement officers from using methods that involve a substantial risk of positional asphyxia.

In the wake of George Floyd's traumatizing and well-documented murder at the hands of Minneapolis police, it is incumbent on us as public servants to ensure that law enforcement agencies are regulated and held accountable for producing real public safety outcomes, rather than terrorizing communities of color and undermining trust in their constituencies. Government Code Section 7286.5 prohibits choke holds and carotid restraint, but this section should also prohibit a broader category of restraint techniques to protect public health and prevent violent encounters.

Less than an hour away from Berkeley, Antioch resident Angelo Quinto, a Navy veteran, died in December of 2020 three days after a police officer knelt on his neck for nearly five minutes. Quinto had already been handcuffed and did not resist. Quinto's family has filed a wrongful death lawsuit, but the Antioch Police claims they did not use any illegal techniques.

We cannot credibly claim to have adequate public safety standards in the state of California if kneeling on a handcuffed man's neck for five minutes is not clearly and unambiguously illegal. In a June 1995 memorandum on positional asphyxia distributed by the U.S. Department of Justice, the National Law Enforcement Technology Center (NLETC) recommended: "As soon as the suspect is handcuffed, get him off his stomach." And furthermore: "If prone positioning is required, subjects should be closely and continuously monitored."

George Floyd and Angelo Quinto's killings demonstrate that these methods of restraint are not being carefully monitored, and indeed are used recklessly with tragic consequences. Therefore, any techniques with a substantial risk of positional asphyxia should be prohibited statewide.

Thank you for your leadership on this critical issue.

Signed,

Berkeley City Council
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