IMPROVING MPD'S POLICY ON THE USE OF CHOKEHOLDS AND OTHER NECK RESTRAINTS

REPORT AND RECOMMENDATIONS OF THE

POLICE COMPLAINTS BOARD

TO

MAYOR MURIEL BOWSER, THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND CHIEF OF POLICE CATHY L. LANIER

August 10, 2015

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I. INTRODUCTION AND OVERVIEW

Recently, the Office of Police Complaints (OPC) examined District law and the Metropolitan Police Department's (MPD) policies and procedures relating to chokeholds and neck restraints.[1]

District law prohibits MPD officers from utilizing one type of neck restraint, the trachea hold. The law permits another type of neck restraint, the carotid artery hold, only under certain circumstances and after the implementation of specialized training and issuance of specific policy guidance by the Department. OPC's review of MPD's policies and training indicates that MPD's current training is not adequate to allow officers to properly and lawfully use a carotid artery hold. In addition, MPD's current use of force policy, General Order 901.07, contains guidance on neck restraints that appears inconsistent with District law.

As a result of OPC's review, the Police Complaints Board (PCB), OPC's governing body, recommends that MPD modify its policies and training regarding chokeholds and neck restraints to ensure that the Department protects community members against improper uses of force, provides officers with proper guidance, applies best practices, minimizes litigation, and complies with District law. A more detailed discussion of the issues noted by the review, as well as the Board's recommendations, can be found in this report.[2]

II. THE DISTRICT'S CHOKEHOLD LAW

On January 25, 1986, the "Limitation on the Use of the Chokehold Act of 1985" (Act) was enacted into law. The goal of the statute was to treat chokeholds used by law enforcement officers as lethal force, to specify the circumstances under which these restraints would be permissible, and to require procedures that classify the chokehold in the same category as a service weapon.[3]

The law defines two types of neck restraints: a trachea hold and a carotid artery hold. A "trachea hold," also known as an "arm bar hold," or "bar-arm hold," is a technique "that attempts to control or disable a person by applying force or pressure against the trachea, windpipe, or the frontal area of the neck with the purpose or intent of controlling a person's movement or

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[1] The use of the terms "chokehold" and "neck restraint" have various meanings, depending on the context in which they are used. OPC notes that "chokehold" is often used in public discussions to mean any hold near the neck or throat, but, as discussed in this policy recommendation, has a specific meaning under District law. "Neck restraint" appears to be used by MPD regulations, as well as rules of other police departments, as a broader term that encompasses chokeholds. To be consistent, this report uses the term "neck restraint" as a broad catch-all phrase that refers to all kinds of neck holds, including chokeholds.

[2] PCB issues this report and makes these recommendations pursuant to D.C. Code § 5-1104(d) (2015), which authorizes the Board to recommend to the Mayor, the Council of the District of Columbia, and the Chiefs of Police of MPD . . . reforms that have the potential to reduce the incidence of police misconduct. PCB is grateful to the following persons who assisted in preparing the report and accompanying recommendations: OPC Executive Director Michael G. Tobin, who supervised the project with the assistance of Deputy Director Christian Klossner; Special Assistant Nicole Porter; and Ariel Douek, a rising third-year law student at Georgetown University Law Center.

[3] D.C. Code § 5-125.01 (2015).

rendering a person unconscious by blocking the passage of air through the windpipe."[4] A "carotid artery hold," also known as a "sleeper hold," or "v hold," is a technique "which is applied in an effort to control or disable a person by applying pressure or force to the carotid artery or the jugular vein or the sides of the neck with the intent or purpose of controlling a person's movement or rendering a person unconscious by constricting the flow of blood to and from the brain."[5]

Under the Act, the use of the trachea hold by a police officer is prohibited under any circumstances.[6] The carotid artery hold is prohibited except under the following circumstances: 1) "the use of lethal force is necessary to protect the life of a civilian or a law enforcement officer;" 2) the hold "has been effected to control or subdue an individual;" and 3) MPD has issued specific procedures and policies in place that require, at a minimum, all of the following:[7]

a. Satisfactory completion of a carotid artery hold training course by the officer;
b. The immediate rendering of first aid and medical treatment by the officer applying the hold if the individual becomes unconscious;
c. Upon resuscitation of the unconscious person, transport of the individual to a medical facility within one hour;
d. Transport of the individual to a medical facility within one hour if person is unconscious for three minutes or more, appears to be under the influence of alcohol or drugs, or has shown signs of acute medical disturbance. [8]

The Act also requires that a carotid artery hold be classified as a service weapon under MPD policies, and sets out criminal and administrative penalties for an officer who acting "under color of authority willfully and intentionally violates" the standards set forth by the Act or implementing policies. Lastly, if an officer fails to provide immediate medical aid after using a carotid hold, the Act creates, for the purposes of civil liability, a presumption of willful negligence and reckless disregard for the safety and well-being of the person who was subdued by the hold.[9]

III. MPD COMPLIANCE WITH THE ACT'S REQUIREMENTS

After the passage of the Act, MPD issued directives in an attempt to comply with the specific requirements of the law. MPD first issued Special Order 86-73, "Use of Carotid Neck-Restraint," effective December 31, 1986. That Special Order was rescinded by MPD Special Order 92.3, "Use of Carotid Neck-Restraint," effective May 6, 1992. Each of these Special Orders were largely, but not completely, in compliance with the requirements of the Act.

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4 D.C. Code § 5-125.02(1).
5 D.C. Code § 5-125.02(2).
6 D.C. Code § 5-125.03(a).
7 *Id.*
8 *Id.*
9 D.C. Code § 5-125.03(b).

On November 19, 1993, MPD issued Special Order 93.25, "Use of Carotid Artery Hold." This order rescinded Special Order 92.3, and was in full compliance with the Act's requirements. The directive provided detailed definitions of both the trachea hold and carotid artery hold. It specified that the use of the trachea hold was absolutely prohibited. The special order permitted the use of the carotid artery hold only under those circumstances where the use of lethal force was necessary to protect the life of a citizen or officer, the hold was effected to subdue or control an individual, and the "policies and procedures issued by the Metropolitan Police Department [were] followed." The directive required officers to satisfactorily complete MPD's training division course on the "Use of Carotid Neck Restraint" before using the hold. Officers up to the rank of sergeant were also required to be certified in First Aid/Carotid Recovery techniques before using the neck restraint. Consistent with the Act, the special order also required that the officer applying the hold render immediate first aid and medical treatment if the person becomes unconscious, and mandated an individual's transport to a medical facility within an hour for the same categories enumerated in D.C. Code § 5-125.03(a). The directive reiterated the Act's requirement that the use of the carotid artery hold should be classified as a use of a service weapon, and added that all cases involving carotid holds be handled in accordance with the general order relating to the use of firearms.

Special Order 93.25 also contained additional provisions that went even further than required by the Act, including pictures illustrating the difference between lawful and unlawful neck restraints, procedures for supervisory review of carotid artery hold incidents, and a stated amendment to the MPD Handbook for the Management of Mass Demonstrations to reflect that "the baton, or any object, cannot be used to apply any type of neck-restraint."

MPD General Order 901.07, "Use of Force," was issued in October 7, 2002. The order constitutes the Department's general use of force policy, yet it contains no mention of chokeholds, trachea holds, or carotid holds. Instead, there is a provision that states, "Members shall not employ any form of neck restraint except when an imminent threat of death or serious physical injury exists, and no other option is available."[10] Although Special Order 93.25 has ostensibly remained in effect since its issuance, the inconsistencies between it and General Order 901.07 raises questions as to whether officers are receiving clear guidance and are properly trained on the use of neck restraints.

IV. POLICY AND TRAINING CONCERNS

General Order 901.07 does not specify what constitutes a "neck restraint," nor are there requirements for specialized training prior to using this type of force or for medical treatment after it is used. The directive does not refer officers to Special Order 93.25 for guidance on the use of neck restraints, and does not conform with specific provisions of the Act in a number of ways.

First, the general order does not categorically prohibit the use of trachea holds, as required by the Act. The policy does not define or delineate between trachea holds and carotid artery holds, instead generally referring only to "neck restraints." Second, because of the order's broad language, the directive appears to permit trachea holds, and allow carotid artery holds

[10] *See* MPD General Order 901.07, "Use of Force," (effective Oct. 7, 2002) Part V(F)(3).

under a wider range of circumstances than the Act sanctions. While the Act limits the use of a carotid artery hold to, among other things, instances where the hold is "effected to control or subdue an individual," General Order 901.07 contains no such limitation, and permits the use of neck restraints where "an imminent threat of death or serious physical injury exists, and no other option is available." This creates the impression that the general order sanctions the use of a neck restraint as a means of lethal force as opposed to a method of control. Although in general, MPD requires officers to provide immediate medical assistance to individuals in police custody who are injured or indicate a need for treatment, [11] the section in General Order 901.07 pertaining to neck restraints does not require officers to receive specialized training, render immediate aid and medical treatment to unconscious individuals, or transport certain individuals to a medical facility within one hour as mandated by the Act. Finally, General Order 901.07 does not incorporate the Act's mandate that the use of a carotid artery hold be treated in the same fashion administratively as the use of a service weapon.

An inquiry into MPD's training materials raised additional concerns about the Department's compliance with the Act. MPD currently does not have a training program for the use of a carotid artery, neck, or throat hold. The holds are not included in lesson plans and there are no such holds in the use of force training continuum. Although MPD does not teach any types of neck restraints to its members, 901.07 allows officers to use a neck restraint when an imminent threat of death or serious injury exists and no other option is available. While the Department has indicated that the neck region is identified as a deadly force area to all officers in training, no specific training in the legality, application, or use of neck restraints is provided.

Even though MPD no longer teaches the use of carotid artery holds, it does not appear that officers are specifically instructed that pursuant to District law, the carotid artery holds can only be used under very limited circumstances, or that trachea holds are completely prohibited. This could lead officers to assume that Special Order 93.25 is no longer in effect, since the directive is not incorporated in their academy training. Officers that rely on the neck restraint provision contained in General Order 901.07 may utilize tactics that are inconsistent with District law and not accompanied by any applicable Departmental training.[12]

While 901.07 appears to amply address other uses of force, it lacks specific guidance on the use of neck restraints. Having detailed force policies is a national best practice. The President's Task Force on 21st Century Policing (Task Force), in its recently-issued report, recommends that police departments have comprehensive use of force policies.[13] According to the Task Force, the policies must be clear and concise.[14] Similarly, comprehensive training on use-of-force options is also important. The International Association of Chiefs of Police (IACP),

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[11] *See*, *e.g.*, MPD General Order 201.26 Part V(D), MPD General Order 901.07 Part V(A), and MPD General Order 502.07.

[12] Although it could be argued that a general "catch all" neck restraint provision like 901.07V(F)(3) is needed for situations where lethal force is necessary, as referenced earlier in this report, District law intends neck restraints to be used as a method of control, not a means of lethal force. The best tool in an officer's arsenal when faced with an imminent threat of danger or serious injury, and one that protects both officers and citizens, is a Departmentally-reviewed and approved tactic that the officer has been fully trained to use.

[13] *See* Final Report of the President's Task Force on 21st Century Policing, Recommendation 2.2, p. 20 (May 2015).

[14] *Id.*

a law enforcement policy organization that conducts advocacy, training, and research on policing issues, believes that use of force training "should effectively translate the general guiding principles of agency policy and operational procedures into real-world scenarios through explication and practice."[15] As noted by the IACP, "[t]raining shares an equal, if not greater, responsibility in departmental efforts to control and manage the use of force."[16]

Neck restraints have fallen out of favor with some police departments. Atlanta and Miami, for example, have discontinued the practice of neck restraints.[17] Elected officials are also rethinking the use of chokeholds and other neck restraints. In New York City, the City Council recently introduced a bill that would prohibit all neck restraints and criminalize police use of the tactic.[18] A federal bill is currently pending in the U.S. House of Representatives that would amend 18 U.S.C. § 242, the nation's criminal civil rights law, to prohibit the use of trachea holds under the statute.[19] Moreover, the Police Executive Research Forum (PERF), a police research and policy organization in Washington, D.C., recently recommended that the Fairfax County, Virginia Police Department revise its policies to prohibit the use of chokeholds and other neck restraints as a use of force option. According to PERF, the police department has issued a directive implementing the recommendation.[20] Although research regarding the safety risks associated with neck restraints has not been fully developed, at least one report has documented the medical risks involved with the application of the carotid artery hold.[21]

V. RECOMMENDATIONS

Therefore, based on its examination of the information and issues discussed above, PCB makes the following recommendations to the Mayor, the Council of the District of Columbia, and MPD's Chief of Police:[22]

1. MPD should ensure that its neck restraint policies comply with best practices and current District law.

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15 IACP National Law Enforcement Policy Center, Use of Force Concepts and Issues Paper at 4 (rev. February 2006).

16 *Id.*

17 *See* Atlanta Standard Operating Procedures 3010, Use of Force (effective Aug. 29, 2008) ("Employees will not use neck restraints, carotid artery holds, or other weaponless control techniques that are not taught or approved by the Department due to the potential for serious injury or death."); Miami Police Department Personnel Resources Management, Departmental Order 8, Chapter 21 ("Police officers are prohibited from utilizing the Lateral Vascular Neck Restraint (LVNR), chokehold, neck hold, and/or any other restraint that restricts free movement of the neck or head.").

18 Int. No. 540-A, Sess. (N.Y. 2014).

19 H.R. 2052, 114th Cong. (2015).

20 *See* Police Executive Research Forum, Use-of-Force Policy and Practice Review of the Fairfax County Police Department, June 2015.

21 *See* Christine Hall and Chris Butler, Canadian Police Research Centre, National Study on Neck Restraint in Policing, January 2007, http://publications.gc.ca/collections/collection_2007/ps-sp/PS63-2-2007-1E.pdf. The report ultimately found that the hold, *when properly applied*, is unlikely to cause serious medical injury (emphasis added).

22 PCB circulated a draft of this report and set of recommendations to MPD shortly before its issuance. MPD is in the process of incorporating detailed neck restraint training into its new scenario-based training curriculum. The new curriculum is expected to be implemented in the fall of 2015.

The Department should review its policies and ensure they adhere to District law regulating the use of neck restraints. MPD should consider immediately revising the neck restraint provision in General Order 901.07 to meet the standards set forth in the Act. The Department should also explicitly notify its officers that the use of trachea holds are prohibited under any circumstances, and that willful or intentional violations of the Act by officers could result in criminal and administrative sanctions. Although Special Order 93.25 is fully compliant with District law, due to the age of the directive, MPD should review the special order to determine whether any updates or reissuances of the directive are needed.

2. **MPD should develop comprehensive recruit and in-service training on the use of neck restraints that comply with best practices and current District law.**

3. **As a long term measure, MPD and the District Council should consider reviewing the Act and determining whether the 1986 law concerning the use of chokeholds and neck restraints should be amended.**

In light of the medical, legal, and community relations risks associated with the application of the carotid artery hold and other neck restraints, MPD should review all current best practices and available research on the safety and effectiveness of chokeholds and neck restraint techniques and, in conjunction with the District Council, determine whether the Act should be revised to provide additional or more effective protections for officers and community members.

4. **The District Council should consider expanding OPC's authority to include the ability to monitor and review all use of force incidents singularly and in the aggregate, make recommendations, and issue public reports where appropriate.**

No issue is more divisive for community relations than the perception that police use of force has been inappropriate, excessive, or disproportionate. The credibility of a police department can quickly erode after a single instance of inappropriate use of force if safeguard mechanisms are not in place. One mechanism that can greatly improve community trust is objective reporting by an outside agency on the police use of force. OPC possesses the personnel and experience to immediately implement an independent, objective, and professional reporting system at minimal cost to taxpayers. Such independent reporting systems have been implemented in many jurisdictions because they increase community understanding and trust in the police. OPC, as an independent District government agency, can assist MPD in continuing to build community trust and reduce adverse litigation through the implementation of this recommendation.