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Insurance Fund

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TRINDEL MEMBER TRAINING ADVISORY

DATE: June 9, 2020
TO: SHERIFFS/COUNTY COUNSELS
FROM: Ed Obayashi, Trindel Law Enforcement Advisor
SUBJECT: CAROTID RESTRAINT/NECK RESTRAINT

The George Floyd incident has resulted in the predictable reactions in “self-banning” the Carotid Restraint by some high-profile law enforcement agencies across the nation and, in particular, California. Even legislators (local, state, and national) are pushing for banning this force option.

Further, the Commission on Peace Officer Standards and Training (POST) has also suspended its Carotid Restraint training curriculum at the direction of the Governor.

I have been asked by agencies if the POST action requires agencies to discontinue the use of the carotid restraint. The simple and definitive answer is: NO. The POST directive has no effect on an agency’s decision to continue or discontinue its use-that is strictly the agency’s prerogative. POST merely requires that the agency’s certified POST course (i.e. D-TAC) be modified to remove the carotid restraint training component. Importantly, POST specifically advises, “Should an agency wish to provide Carotid Control Hold training, they will need to do it outside of a POST-certified course.” So, if your agency continues to employ the hold, conduct regular training as you always have.

As I pointed out in an LA Times article this past week (see link below), our rural nature of policing does not afford us the option of discarding a legitimate force option that has been employed both properly and extremely infrequently over the past few years. Official DOJ statistics conclusively demonstrates this.

<https://www.latimes.com/california/story/2020-06-05/george-floyd-carotid-neck-hold-police>

With the foregoing in mind, this advisory addresses Trindel sheriff members that authorize its use.

The primary purpose of this advisory is to bring your attention to the current state of legal decisions, both state and federal, that deputies must be aware of when applying any force options affecting the subject's breathing. These legal considerations still remain generally unknown to many peace officers.

For the purposes of emphasizing what is important, I will not regurgitate a lengthy legal discussion common to the typical legal bulletins. Here is what you need to know:

IMPORTANT RULE #1: The Ninth Circuit Appeals Court clearly holds that a subject who says "I can't breathe" must be taken seriously. I have too often heard cops sincerely say that anyone who can talk, can therefore breathe. This is a dangerous fallacy and deputies should be trained to dispel this widespread assumption. Failing to consider the subject's breathing complaints has resulted in California tragedies like the Floyd incident and significant liability in civil unreasonable force cases. (*Drummond v. City of Anaheim*, 343 F.3d 1052 (2003)). Unfortunately, I have had to testify regarding this fallacy.

IMPORTANT RULE #2: California state appeals court has imposed a duty upon officers when applying pressure to the subject's body, making it difficult for the subject to breathe. If feasible, an officer, especially if there are multiple officers, must monitor and ensure that the subject is able to breathe. (*Mendoza v. City of West Covina*, 206 Cal. App.4th 702 (2012)). Of course, in the overwhelming majority of situations (unlike *Mendoza*), this will not be feasible and will require the officer to articulate why.

I realize there are questions about this issue that cannot be adequately addressed in this advisory. As always, please contact me anytime at eco@lawcop.net or 619-857-2359.

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