



Department Source: Police

To: City Council

From: City Manager & Staff

Council Meeting Date: October 19, 2020

Re: Response to Council Request for Information on Use of Choke Holds

## Executive Summary

This document responds to Councilman Thomas' request for a staff report, and to subsequent conversations between Councilman Thomas, Councilman Trapp and Chief Jones, regarding the use of choke holds and the application of deadly force. The use of choke holds is banned and prohibited by Columbia Police Department (CPD) policy, but the policy could be revised to incorporate and/or differently define choke hold prohibition and application as deadly force.

## Discussion

### **Background**

The following sources were reviewed as this report was prepared: CPD policies related to choke holds and the application of deadly force; and applicable Missouri statutes including Execution of public duty (§563.021, RSMo); Law enforcement officer's use of force in making an arrest (§563.046, RSMo); and Justification generally (§563.026, RSMo). Throughout this report, italics are used for special emphasis.

### **CPD Policy 300 Use of Force/Response to Resistance**

**Sec. 300.3, Definitions**, defines Deadly Force as, "*Physical force which the actor uses with the purpose of causing or which he/she knows to create a substantial risk of causing death or serious physical injury (§563.011, RSMo).*"

**Sec. 300.11.4, Strangle and Choke Holds**, currently states, "Choke, strangle or similar holds which restrict the flow of blood to the brain or the person's ability to breathe are prohibited except where the officer reasonably believes there is an *imminent threat of death or serious physical injury to him/herself or a third party and this action is the only reasonable means at the time to stop the threat.*"

**Sec. 300.10, Deadly Force Applications**, currently states, "Use of deadly force is justified in the following circumstances: a. An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an *imminent threat of death or serious bodily injury.*"

When examining each of the sections, the use of "choke holds" is clearly banned and prohibited unless it is used as a means of deadly force. CPD takes this prohibition further by stipulating that it be the only reasonable means at the time to stop the threat, with that threat being identified as "*imminent threat of death or serious physical injury.*" All other applications are prohibited.



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Missouri law and case law give general “justifications” (§563.026, RSMo) and specific circumstances in which deadly force is “justified” (§563.046, RSMo): *in short, when the application of deadly force is “justified” and not criminal conduct.*

Councilman Thomas contacted Robin S. Engel, Pd.D., Professor of Criminal Justice at the University of Cincinnati and Director of the International Association of Chiefs of Police/University of Cincinnati Center for Police Research and Policy. Dr. Engel's correspondence offered sample policy language.

*“The UCPD recognizes that in a deadly force encounter, an officer may be unable to access authorized force options and actions which are prohibited may be determined to be reasonable and justified based on the exigent or exceptional circumstances. Therefore, any violations of the above force prohibitions may be reviewed on a case-by-case basis by the Use of Force Review Board to determine whether, under the circumstances, the actions were reasonable, justified, and otherwise consistent with this policy and the mission of the UCPD. The review may find that, under exigent or exceptional circumstances, the prohibited action may be deemed to have been justified, an [sic] if so, would not be considered a violation of this policy and therefore not subject to reprimand or discipline.”*

Dr. Engel suggests, and I concur, *“Focusing on de-escalation training, and inclusion of de-escalation tactics expressly in your use of force policy may be a better place to focus your efforts. In most agencies, choke holds and neck restraints are infrequently used, and as a result the banning of these practices has become largely symbolic rather than leading to meaningful reductions in the frequency and severity of use of force.”*

## **Training**

The use of choke holds or similar “holds” is banned and prohibited by CPD policy. Therefore, it is not taught in training nor practiced, endorsed or implemented. CPD has trained personnel in de-escalation techniques and, going forward, the Missouri's Peace Officer Standards and Training (POST) Commission will require annual training on this topic for all law enforcement officers.

## **Application**

There is no planned or trained use of any choke hold or vascular neck restraint, since it is prohibited. The use of deadly force can take many different forms, but the intended outcome is the same: stop the threat of serious physical injury or death. The consequence of using any deadly force could be the infliction of serious physical injury or death. Not all lethal-force options, either authorized or not, have the same probability of lethality.

As an example, an officer might observe a subject standing over another person and cutting at their throat with a knife. The officer in this example would most likely be justified in using lethal force. The officer could choose different options to stop the threat that are likely to cause serious injury or death (deadly force). If an officer were to choose to shoot the subject, the chances of death or serious injury are likely. A choke hold, even if not a trained



and authorized technique, is far less likely to cause death or serious injury, even though it is treated as deadly force for purposes of accountability. By removing a “deadly force” option, it would actually increase the lethality of a deadly force encounter in some instances.

Regardless, the use of force would be “justified” by the courts and would not be considered criminal behavior.

### Fiscal Impact

Short-Term Impact: NA

Long-Term Impact: NA

### Strategic & Comprehensive Plan Impact

#### Strategic Plan Impacts:

Primary Impact: Public Safety, Secondary Impact: Not Applicable, Tertiary Impact: Not Applicable

#### Comprehensive Plan Impacts:

Primary Impact: Livable & Sustainable Communities, Secondary Impact: Not applicable, Tertiary Impact: Not Applicable

### Legislative History

| Date       | Action   |
|------------|--|
| 09/21/2020 | Councilman Thomas proposes and Council agrees to ask City staff for a report and possible draft ordinance relating to choke holds, for the purpose of discussion |

### Suggested Council Action

The use of choke holds is banned and prohibited by CPD policy, and the application of this force is viewed, evaluated and adjudicated as deadly force. In the narrow instances where deadly force is applied within the policy, that use is “justified” and deemed as non-criminal conduct by state law. A City ordinance prohibiting choke holds would be “largely symbolic.”

CPD staff proposes either **leaving the current policy in place or revising it to incorporate and/or differently define choke hold prohibition and application as deadly force, to include the following.**

*“Choke, strangle or similar holds which restrict the flow of blood to the brain or the person’s ability to breathe are prohibited. The Department recognizes that in a deadly force encounter, an officer may be unable to access authorized force options, and actions which*



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*are prohibited may be determined to be reasonable and justified based on exigent or exceptional circumstances. Therefore, any violations of the above force prohibitions may be reviewed as defined by CPD Internal Affairs Policy 1020 and Chapter 21 of the Columbia Code of Ordinances to determine whether, under the circumstances, the actions were reasonable, justified and otherwise consistent with this policy. The review may find that, under exigent or exceptional circumstances, the prohibited action may be deemed to have been justified and, if so, would not be considered a violation of this policy and, therefore, not subject to reprimand or discipline."*