



ISSN 1935-0007

*Cite as: 2013 (12) AELE Mo. L. J. 101*

**Civil Liability Law Section – December 2013**

### **Civil Liability for the Use of Neck Restraints**

#### *Part 1 – This month:*

- **Introduction**
- *City of Los Angeles v. Lyons* and aftermath
- **Subsequent Law Enforcement Cases**

#### *Part 2 – (Next month):*

- **Correctional Settings**
- **Canadian Study**
- **Suggestions to Consider**
- **References and Resources**

#### **❖ Introduction**

Neck restraints are a valuable but sometimes still controversial procedure for the use of force by police officers and correctional personnel.

- When applied properly, a person's trachea is unaffected and breathing is not interrupted. The technique is sometimes called a "choke hold," but that term is incorrect. A choke hold applies pressure across the front of the person's neck, blocking or damaging the trachea, which can be fatal.

It is a procedure that is useful when police or correctional officers are in close proximity with suspects or prisoners.

While it can be very effective, it requires motor skills training, and attempts at such holds without proper training can turn an improperly applied hold into an air choke. This is especially the case when a subject attempts to resist the hold, such as by attempting to turn around, inadvertently putting pressure on their airway when none was intended.

What is intended is to compress the jugular veins and carotid arteries on both sides of the neck to restrict the flow of blood. This is done by applying a "V" or symmetrical pressure using the upper arm and the forearm on both sides of the neck. When done correctly, this can induce unconsciousness in as little as 15 seconds with a relatively quick recovery under

normal circumstances. The majority of those on whom the technique is used do not lose consciousness. The holds instead focus on capturing the suspect's balance and thus bringing them under an officer's effective control.

Improperly applied neck restraints that turn into choke holds and restrict the intake of breath can and have in some instances resulted in tragic consequences including death or permanent disability. In a number of such cases, these consequences have resulted in very large civil liability settlements or judgments. They have also resulted in some agencies greatly restricting or even banning the use of neck restraints altogether.

This two-part article begins with a discussion of a major U.S. Supreme Court case and its aftermath, moves on to a brief listing of some major damage awards that have resulted from litigation over the issue, and then examines some case law in which courts have discussed applicable liability principles. This is followed by a section on the use of neck restraints in a correctional context, an examination of an important 2007 Canadian study on the use of neck restraints in police work, and a section with some suggestions to consider for policy and training. Lastly, there is a section with some relevant resources and references.

### ❖ *City of Los Angeles v. Lyons* and aftermath

Despite the widespread and longtime use of carotid restraint holds by law enforcement in the U.S., there appears to have been few reported decisions over the technique prior to a major case filed against the city of Los Angeles that resulted in a ruling from the U.S. Supreme Court, [\*City of Los Angeles v. Lyons\*](#), #81-1064, 461 U.S. 95 (1983).

In that case, an African-American motorist named Adolph Lyons claimed that he had been stopped for a tail light-violation and then suddenly was subjected to a “choke hold” for little or no discernible or justifiable reason. He had filed a federal civil rights lawsuit asserting a claim for excessive force, allegedly way out of proportion to any offense he was suspected of having committed.

He sought both money damages for injuries he claimed to have suffered to his larynx from the application of force to his neck, as well as injunctive relief seeking to bar the use of carotid holds by the Los Angeles police. He asserted that he had offered the officers no resistance and had been compliant, but that they employed force that rendered him unconscious and seriously injured him.

The plaintiff argued that such holds were routinely being applied in circumstances where the officers were not threatened by the use of any deadly or significant force and that a good number of people were being injured in this manner. The basis for the request for an

injunction was Lyons' expressed fear that he might again be choked by officers without provocation during future encounters.

The trial court agreed, granting a preliminary injunction barring the use of "chokeholds" under any circumstances in which suspects did not present a threat of serious bodily harm or death. That ruling was upheld by a federal appeals court.

The litigation did not ultimately result in a legal ban on the use of carotid holds in Los Angeles or elsewhere. But the case, including growing controversy over so called "choke holds," and assertions that such holds were responsible for a number of deaths, did cause the Los Angeles Police Department's chief to ban the use of the bar arm choke hold on May 6, 1982, and the city's Police Commission to ban the use of a carotid control hold shortly thereafter on May 12, 1982.

That was based, in part, on concern over 16 deaths that were said by some to be associated with the use of one of these holds, a concern that was never backed up by a detailed scientific analysis of those deaths and what caused them, or the fact that, in the majority of these instances, other factors such as drug use by the suspects or the use of other techniques such as hog-tying were present.

The U.S. Supreme Court overturned the injunction issued against the use of the holds. It first took note of the fact that, while the case was pending, the city had brought the use of two types of neck restraints to a halt except in circumstances where deadly force would be justified, but found that this had not rendered the case moot, as the bans were not permanent.

The Supreme Court ruled, however, that Lyons did not have standing to seek the injunction against future police conduct. The Constitution requires that federal courts only respond to circumstances where litigants present a live "case or controversy," that is, to get injunctive relief against future conduct, they have to demonstrate that they are in immediate danger of suffering some direct injury from the conduct to be enjoined.

The threat of an injury, the Court stated, had to be "real and immediate," rather than "conjectural" or "hypothetical," and the fact that something happened once, in 1976 in this case, did not show, by itself, a present case or controversy. Lyons did not show that he faced a real and immediate threat that he would again be stopped by police who would "disobey their instructions and again render him unconscious without any provocation. That was speculative, so the injunction was dismissed, although Lyons was free to pursue his claim for damages.

In the aftermath of Lyons, the standing rules were tightened up and it became clear that a plaintiff had to showing standing for each form of relief they were seeking, making

injunctive relief far harder to obtain than an award of money damages for past injuries. The controversy over “chokeholds” led to a number of municipalities abandoning their use by ordinance and others doing so by departmental policy.

### ❖ Subsequent Law Enforcement Cases

In a subsequent decision concerning the use of carotid holds by the California Highway Patrol, a federal appeals court overturned an injunction that barred the agency from using the holds except when necessary to prevent death or serious bodily harm, on the basis that the plaintiff, the decedent’s son, had not shown that he was personally likely to face the same harm as his father. [\*Nava v. City of Dublin\*](#), #95-16209, 121 F.3d 453 (9th Cir. 1997).

The trial court had awarded a total of \$470,000 in compensatory and punitive damages for the death of a man confronted by a CHP officer for illegally walking on the shoulder of a highway. During the course of a struggle that ensued to remove the man from the shoulder, a second officer endeavored to apply a carotid hold, causing the man to lose consciousness and subsequently die.

Over time, a significant number of large damage awards were made for the use of neck restraints that led to serious injuries or death:

- In *Edwards v. City of Miami*, U.S. Dist. Ct., Miami, Fla., reported in The New York Times, National Edition, p. A6 (July 1, 1993), the city agreed to pay \$75 million and lifetime medical bills to a man placed in an apparent permanent coma by an officer’s use of a choke hold.
- In *Hampton v. City of San Diego, Cal*, San Diego County Super. Ct., Cal., #652716, June 27, 1994, reported in 38 ATLA L. Rep. 140 (May 1995), the parents of a youth who died -- after a police cadet applied a carotid neck restraint hold on their son -- received a \$450,000 settlement in suit against the city alleging negligent training in the use of such holds.
- In *Mallet v. City of Phoenix*, Maricopa County Superior Court, Phoenix, Arizona, reported in the Chicago Tribune, p. 16 (March 13, 1998), a jury awarded \$45 million to the surviving family of a 25-year-old double amputee motorist who died following an altercation with an officer who had pulled him over. Both pepper spray and a neck hold were used to restrain the motorist.
- In *Baez v. Livoti*, Bronx County Sup. Ct., Bronx, New York, reported in The New York Times, National Edition, p. A23, October 2, 1998, New York City settled a “choke hold” death case for \$2.94 million.

Those early cases were not unique, and the issue of improperly applied neck restraints continues to result in significant liability. Today, under [\*Graham v. Connor\*](#), #87-6571, 490 U.S. 386 (1989), all claims that law enforcement officials have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other “seizure” of a free person are properly analyzed under the Fourth Amendment’s “objective reasonableness” standard.

The right to make an arrest or investigatory stop, the Court stated, necessarily carries with it “the right to use some degree of physical coercion or threat thereof to effect it.” All the law requires is that it be a reasonable amount of force.

- Such reasonableness, however, has to be judged in light of the facts and circumstances confronting the officer, rather than on the basis of their underlying “motivation” or intent. The issue is whether the officer acted in an “objectively reasonable” manner based on what they knew at the time.
- The reasonableness of each particular use of force has to be judged, the Court stated, from the perspective of a reasonable officer on the scene, and must make an allowance for the fact that police officers often have to make “split second” decisions about the amount of force that is necessary

In [\*Barnard v. Theobald\*](#), #11-16655, 721 F.3d 1069 (9th Cir. 2013), a man claimed that officers who came to his house to arrest his brother used excessive force against him when he answered the door, lying on top of him, applying a “chokehold,” and using pepper spray. The jury awarded the plaintiff over \$2 million in damages, which was reduced by \$500,000 to \$1,611,656.52 by the trial court.

A federal appeals court found that the jury’s award and their decision to believe the plaintiff’s version of the incident were supported by the evidence, and that the officers were not entitled to qualified immunity. It rejected the officers’ argument that if they mistakenly believed that the plaintiff was resisting them, they could use any amount of force -- as they were only entitled in that instance to use that force which was reasonably necessary.

A “reasonable officer,” the court stated, “would have known it violated clearly established law to use a chokehold on a non-resisting arrestee who had surrendered, pepper-spray him and apply such knee pressure on his neck and back that it would cause the collapse of five vertebrae in his cervical spine.” It also found that the trial court failed to adequately explain its reasons for reducing the amount of attorneys’ fees and in denying the plaintiff pre- and post-judgment interest, so further proceedings were required.

What kind of evidence is required to prove that the use of neck restraints is an excessive use of force? In [\*Thompson v. City of Chicago\*](#), #04-3177, 472 F.3d 444 (7th Cir. 2006), the plaintiff in the lawsuit claimed that the officers had used excessive force, including a chokehold, in attempting to place a man under arrest, resulting in his death. The trial court was found not to have abused its discretion in barring expert testimony concerning excessive force.

The plaintiff sought to introduce such testimony by a police department Office of Professional Standards inspector and a police sergeant who had investigated the claim of excessive force during the arrest, and to ask them whether the officer used excessive force or violated departmental General Orders, policies or procedures. The appeals court upheld a trial court ruling that the “probative value” of such evidence was “substantially outweighed” by the danger of unfair prejudice, and that it would not assist the jury in reaching a decision, but rather would cause “confusion.”

- The court also upheld a ruling barring evidence concerning the department’s General Orders on the appropriate use of force, since the issue of whether or not the officer violated a departmental regulation was different from whether his use of force was unconstitutional.

In [\*Wasserman v. Bartholomew\*](#), #S-9604, 38 P.3d 1162 (Alaska 2002), *cert denied*, #01-9702, 536 U.S. 929 (2002), a trial court’s determination that a trooper who had detained a shopper in a grocery store did not use a choke hold in the apprehension was supported by the evidence that the officer had grabbed the detainee around the shoulders, rather than by the throat or neck, as well as by the officer’s testimony that he never used choke holds and had never been taught or trained to use them.

In a federal civil rights lawsuit over an arrestee’s death, genuine issues of fact as to whether the arresting officer was justified in using a choke hold to subdue the arrestee precluded summary judgment for the officer. [\*Griffith v. Coburn\*](#), #05-2720, 473 F.3d 650 (6th Cir. 2007). If the plaintiff’s version was believed, that the officer almost immediately, and without provocation, jumped on the man and began choking him, then the force used was objectively unreasonable.

The officer, in contrast, stated that the man resisted being arrested, and had unsnapped one or two snaps of his holster, so that he feared that he was trying to gain control of the officer’s gun, which would present an entirely different story in which a greater use of force would plainly be justified.

The court pointed to the training given to the officer. While the municipality had no written policy on the use of neck restraints, a police academy program had been completed that

included certification in “pressure point control tactics,” including neck restraints, taught by a certified instructor.

A manual used stated that “vascular neck restraints are justified when the officer’s attempt at lower forms of subject-control have failed, or when the officer believes that lower forms of subject control would not be successful,” and that the restraint “is designed to control high levels of resistance.”

- The instructor explained that the neck restraint is a technique that is to be used in situations such as where someone is being “violent” or assaulting an officer: “You wouldn’t use this technique on someone who is just sitting there, and saying I’m not going; I’m not going to leave, you wouldn’t use this force on someone who is not attacking you or anything. You’re going to use this, again, for someone who is highly agitated, who is violent.”

Given this evidence about the training provided, the case still hinged on the determination of what was the actual situation faced by the officer.

More recently, in [\*Boone v. Las Vegas Metro Police Dept.\*](#), #2:10-cv-00759, U.S. Dist Ct., (D. Nev. June 30, 2011), a city paid \$1 million to the surviving family of a morbidly obese man with mental problems who died after an officer put him in a lateral-vascular neck restraint, cutting the blood flow to his brain. He had been reported as acting erratically and off his medication. Officers talked to the man for an hour at his home, after which a struggle occurred, and he retreated into his backyard, at which point a decision was made to take him into custody. When the neck restraint was used, he lost consciousness, stopped breathing, and died.

The [complaint](#) in the lawsuit contended that the force used was excessive because the man was not engaged in any criminal conduct, had no history of violent or aggressive conduct, was unarmed, made no threats, presented no immediate danger to officers, to himself or to others, did not pose a risk of escape, and was particularly vulnerable to the force used because of obesity (a side effect of his medications for mental illness) and his mental health condition.

- 
- ★ John Peters, Ph.D., of the [Institute for the Prevention of In-Custody Deaths](#), and W. Ken Katsaris, a prominent litigation consultant, provided substantive input for this article.

---

## **AELE Monthly Law Journal**

Bernard J. Farber  
Civil Liability Law Editor  
P.O. Box 75401  
Chicago, IL 60675-5401 USA  
E-mail: [bernfarber@aele.org](mailto:bernfarber@aele.org)  
Tel. 1-800-763-2802

© 2013, by the AELE Law Enforcement Legal Center

**Readers may download, store, print, copy or share this article,  
but it may not be republished for commercial purposes. Other  
web sites are welcome to link to this article.**

---

- The purpose of this publication is to provide short articles to acquaint the reader with selected case law on a topic. Articles are typically six to ten pages long. Because of the brevity, the discussion cannot cover every aspect of a subject.
  - The law sometimes differs between federal circuits, between states, and sometimes between appellate districts in the same state. AELE Law Journal articles should not be considered as “legal advice.” Lawyers often disagree as to the meaning of a case or its application to a set of facts.
- 

**[AELE Home Page](#) --- [Publications Menu](#) --- [Seminar Information](#)**

This article appears in the [IACP Net](#) database.