

March 18, 2021

To: Board of Fire and Police Commissioners and Executive Director Todd

From: Paul Mozina

Re: FPC21058 SOP 460 – Use of Force, modify or eliminate the exception to the ban on choke holds

At your March 4th Regular meeting during the discussion of SOP 460 and banning the use of choke holds by MPD members – with no exceptions – acting MPD Chief Jeffery Norman cited Wisconsin Statute § [939.48 SUBCHAPTER III DEFENSES TO CRIMINAL LIABILITY](#)

939.48 Self-defense and defense of others.

(1) A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

Police officers are ***“privileged”*** to use force when they make arrests. With this ***“privilege”*** comes weighty responsibility.

A law enforcement officer’s use of a choke hold is not a typical self-defense scenario as described in 939.48 and alluded to by Chief Norman.

The following statute in the same subchapter is more applicable to the case of a police officer in the performance of their law enforcement duties.

[939.45 Privilege](#). The fact that the actor's conduct is privileged, although otherwise criminal, is a defense to prosecution for any crime based on that conduct. The defense of privilege can be claimed under any of the following circumstances:

(4) When the actor's conduct is a reasonable accomplishment of a lawful arrest; or...

Choke holds are not “reasonable” for the accomplishment of a lawful arrest when — given the proper training — many other more reasonable (by virtue of their reduced risk of harm), approaches to subduing a suspect are available.

Is it reasonable to say that the only option the officer had was to apply a choke hold, possibly unknowingly or unaware of the imminent risks? With the right training it seems that it would be very “reasonable” to ban the use of choke holds.

To do this, Officers must first be trained on what choke holds are, what forms they might take, and the particular risks associate with each technique. In addition, they must be trained on alternatives that are equally or more effective and do not risk the death of the subject. If this requires the MPD to conduct more comprehensive hand to hand defense and control techniques — so be it.

If officers are trained on the use of choke holds and then ordered not to apply them (with reasons provided) and given alternatives — then banning them becomes the “reasonable” thing to do and officers are forewarned.

The Fire and Police Commission has the authority to unequivocally ban the use of use choke holds. A condition of employment as a City of Milwaukee Police Officer is adherence to the Standard Operating Procedures of the Department. If a person is fully cognizant of the fact that the MPD bans choke holds and that he/she will be terminated immediately if she/he applies them in any circumstance, then that person has a clear choice: Am I willing to forego the use of choke holds in my own defense and comply with the SOPs and Code of Conduct of the MPD? If not, that person should not apply.

A question like this could be asked during the psychological evaluation of MPD candidates and made part of the application process itself.

The Fire and Police Commission should ban the use of choke holds and make sure that MPD members know exactly what that means.