



GOVERNMENT OF THE DISTRICT OF COLUMBIA OFFICE OF POLICE COMPLAINTS

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PCB POLICY REPORT #23-4: Policies and Procedures for Appropriate Use of Handcuffs During Investigatory Stops

Summary:

Metropolitan Police Department (MPD) officers encounter community members on a daily basis, under circumstances ranging from brief, amicable field contacts to investigatory stops and arrests. Handcuffs are a valuable tool used by law enforcement to protect officer and public safety or to prevent suspects from attempting to escape. However, handcuffing generally constitutes a deprivation of liberty and a use of force; thus, the application of the handcuffs must be objectively reasonable.¹ Consequently, it is important that there are proper procedures and training in place, as well as oversight, to ensure that when officers place individuals in handcuffs, they are balancing the goals of officer safety with respect for the constitutional rights of community members.²

Applicable Directive or Law:

The United States Supreme Court has avoided applying a bright-line rule to determine what police actions are permissible during an investigatory stop.³ Rather, each case turns on its particular facts.⁴ The appropriate constitutional question in each case is whether the officers' actions were reasonable based on the totality of the circumstances. Under the Fourth Amendment of the U.S. Constitution, officers may stop suspects on the street and frisk them without probable cause to arrest if the officer has reasonable suspicion that the person "has committed, is committing, or is about to commit a crime" and has "a reasonable belief that the person may be 'armed and presently dangerous.'"⁵

In the context of investigatory stops, handcuffing is permissible under certain circumstances. Courts have held that, "The measure of the scope of permissible police action in any investigative stop depends on whether the police conduct was reasonable under the

¹ *Sebastian v. Ortiz*, 918 F.3d 1301 (2019).

² The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

³ *Reynolds v. State*, 592 So. 2d 1082 (1992), citing *United States v. Sharpe*, 470 U.S. 675, 685, 105 S. Ct. 1568, 1574, 84 L. Ed. 2d 605 (1985).

⁴ *Id.* citing *Terry v. Ohio*, 392 U.S. at 29, 88 S. Ct. at 1884.

⁵ *Terry v. Ohio*, 392 U.S. 1 (1968).

circumstances.”⁶ The use of restraints is one thing to consider, “in weighing whether a detention for investigation crossed the line into the realm of arrest.”⁷ In considering the circumstances that would justify the use of handcuffs during an investigative stop, D.C. courts have specifically approved of the use of handcuffs in the context of an investigatory, or *Terry* stop, “where it was reasonably necessary to protect the officers’ safety or to thwart a suspect’s attempt to flee.”⁸ Pursuant to the issue of officer safety, the courts have upheld handcuffing during investigative stops when the suspected crime is inherently violent (such as robbery), when there is information that the suspect may have been armed during the commission of the crime, and when drug trafficking is involved.⁹

Acknowledging that officer safety is of primary significance during investigatory stops, Court rulings have also recognized, “No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.”¹⁰ If officers unlawfully handcuff individuals, they run the risk of suppression of evidence because of de-facto arrests or failure to provide *Miranda* warnings during custodial interrogation,¹¹ prolonged detention complaints, and civil rights violations. Placing an individual in handcuffs is undeniably a deprivation of liberty, if only temporary, that can cause fear, embarrassment, shame, and ultimately, distrust in the police department. Thus, it is imperative that officers understand when it is permissible and reasonable to utilize handcuffs during investigatory stops.

Current MPD Policies:

Handcuffing subjects is discussed briefly throughout several general orders,¹² making it difficult for officers to reference one order with guidance on the circumstances under which they are allowed to apply handcuffs. Many complaints received by OPC regarding unlawful handcuffing have begun with a field contact or stop. Yet, MPD General Order 304.10, Field Contacts, Stops, and Protective Pat Downs does not discuss handcuffing at all. General Order 304.10 merely stipulates, “Officers shall act with restraint and courtesy¹³ [...] Officers shall use the least coercive means necessary to conduct a stop.”¹⁴

MPD General Order 901.07, Use of Force, discusses handcuffing mainly in the context of forcible handcuffing. General Order 901.07 explains that where attempts to de-escalate a situation fail, in response to a perceived threat, members shall apply the proportionate and objectively reasonable force response ... consider[ing] the “level of threat or resistance presented by the suspect, the imminence of danger, the suspect’s mental capacity, his or her access to

⁶ *In re M.E.B.*, 638 A.2d 1123, 1127 (D.C. 1993), citing *United State v. Sharpe*, 470 U.S. 675, 682.

⁷ *Id.* at 1128.

⁸ *Womack v. United States*, 673 A.2d 603 (D.C. 1996), citing *In re M.E.B* at 1128.

⁹ See *People v. Arnold*, 394 Ill.App.3d 63, 71 (Ill. App. Ct. 2009).

¹⁰ *Terry v. Ohio*, 392 U.S. 1 (1968), citing *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

¹¹ Holcomb, J. W., & Rezai, J. (2016, February 10). *When Does Handcuffing Constitute Custody for Purposes of Miranda?* FBI Law Enforcement Bulletin, Legal Digest. Available [here](#).

¹² MPD’s General Orders available [here](#).

¹³ MPD General Order 304.10 (II)(B)(4)(b)(1), available [here](#).

¹⁴ *Id.* at (II)(B)(5).

weapons, agency policies, and available options (e.g., calling upon [other] members ... for assistance.”¹⁵ Still, 901.07 does not discuss under what circumstances officers may reasonably apply handcuffs nor define “objectively reasonable.”

General Order 502.01, Transportation of Prisoners, provides sufficient detail on procedures for handcuffing prisoners, but only after the decision has been made to arrest an individual.¹⁶ While not an exhaustive list, several other general orders briefly discuss handcuffing: General Order 702.03, Search Warrants, notes that all occupants shall be handcuffed during searches;¹⁷ General Order 502.07, Medical Treatment and Hospitalization of Prisoners, instructs members to handcuff prisoners during transport;¹⁸ General Order 305.01, Interacting with Juveniles, contains a brief section instructing members how and when to handcuff juveniles;¹⁹ and, General Order 308.04, Interacting with Mental Health Consumers, instructs members to handcuff mental health consumers during transport to the Comprehensive Psychiatric Emergency Program (CPEP).²⁰ Nevertheless, none of these general orders discuss handcuffing during *Terry* stops.

Although these general orders individually provide instructions on how to apply handcuffs and discuss certain special populations, they are largely vague and do not provide the level of specificity that may assist officers in determining when to apply handcuffs. The lack of specificity has contributed to contentious interactions that negatively affect community trust when officers unreasonably handcuff community members. This proposal discusses the need for a single order for officers to reference that provides clear direction on when officers can lawfully handcuff individuals during investigatory stops.

Case Examples:

Over the past decade, OPC has received multiple complaints with allegations of unlawful handcuffing, with more than ten being sustained by a Complaint Examiner. The reasons that MPD members have proffered in these cases for handcuffing individuals have varied widely. Officers have handcuffed individuals who only vaguely matched a lookout description,²¹ to demand identification,²² to get a witness statement regarding a homicide,²³ and when subjects have been verbally argumentative.²⁴ However, given that Courts have ruled that police officers must have reasonable suspicion that criminal activity is afoot prior to initiating a stop, officers need to be able to articulate reasonable suspicion in order to stop and lawfully handcuff an individual.²⁵ As previously discussed, D.C. courts have specifically approved of the use of handcuffs in the context of a *Terry* stop “where it was reasonably necessary to protect the officers’ safety or to thwart a suspect’s attempt to flee.”²⁶

¹⁵ MPD General Order 901.07 (II)(A)(6)(a), available [here](#).

¹⁶ MPD General Order 502.01, available [here](#).

¹⁷ MPD General Order 702.03, available [here](#).

¹⁸ MPD General Order 502.07, available [here](#).

¹⁹ MPD General Order 305.01, available [here](#).

²⁰ MPD General Order 308.04, available [here](#).

²¹ OPC 22-0167.

²² OPC 22-0411, available [here](#).

²³ OPC 23-0489.

²⁴ OPC 18-0678, available [here](#).

²⁵ *Terry v. Ohio*, 391 U.S. 1 (1968).

²⁶ *Womack v. United States*, 673 A.2d 603 (D.C. 1996), citing *In re M.E.B* at 1128.

Case Example 1:

In May 2017, the complainant filed a complaint with OPC alleging that he was unlawfully handcuffed during a traffic stop.²⁷ The complainant was pulled over by the subject officers for failure to use his turn signal. The subject officer requested the complainant's driver's license and the complainant complied. The subject officer asked the complainant if everything was okay since his hands were visibly shaking. The complainant replied that he had just finished playing basketball. There was a basketball in plain view on the front passenger seat of the complainant's car and the complainant was dressed in athletic clothing. The subject officer asked the complainant to step out of the vehicle and frisked him for weapons. No contraband was found during the frisk. The subject officer told the complainant he asked him to exit the car because the complainant appeared to be "more and more nervous" during the interaction. The complainant explained that he was nervous and did not feel safe as a Black male being pulled over by three White officers. The subject officer then pointed out that the complainant was sweating and his hands were visibly shaking and asked if there was a gun or drugs in the car. The complainant denied having either. The subject officer asked if he could search the car and the complainant said no. The subject officer said again that the complainant was shaking and sweaty and the complainant said he was sweaty because he just played basketball. The subject officer asked the complainant to sit on the curb. The complainant began to sit, but then stood up and asked why he had to sit on the curb. The subject officer replied that the complainant was making him nervous. The complainant told the officers that he would prefer to stand because being in the presence of three armed officers who thought he had a gun in the car made him nervous. The second subject officer then told the complainant they were going to detain him and placed him into handcuffs. After finally consenting to a vehicle search where nothing was found, the officers removed the handcuffs and the complainant was given a traffic ticket and was free to leave.

During their interviews with OPC, both subject officers stated that the complainant was handcuffed because they were concerned he might flee. Additionally, one subject officer stated that the complainant was also handcuffed because he thought he might fight. Both subject officers stated that the only basis for their concerns regarding flight was that the complainant was sweaty and shaking, and that in the past they had one similarly-acting suspect who fled the scene. A Complaint Examiner sustained the allegation of unlawful handcuffing against the subject officer because given the totality of the circumstances, the fact that the complainant was sweating and shaking did not support the subject officers' contentions that handcuffs were necessary to prevent flight or fight, especially given that multiple officers were present. Thus, the totality of the circumstances demonstrated that the subject officers' detention of the complainant in handcuffs during the traffic stop was unnecessary and unreasonable.

Case Example 2:

In May 2022, OPC received a complaint²⁸ wherein the complainant alleged that he was unlawfully handcuffed. On March 21, 2022, the complainant was standing with six other adult men near a car, which did not belong to any of the men. Three MPD officers approached the group. The complainant's shoulder bag was frisked by an officer but no weapons were found. One officer noted that he thought the complainant had a vehicle key fob hanging from his belt or pants. Several officers searched the vehicle and, among other items, recovered a firearm and

²⁷ OPC 17-0381, available [here](#).

²⁸ OPC 22-0411, available [here](#).

ammunition. By the time of the car search, the seven men were gone from the scene. A search of the vehicle revealed that it was registered to a female. While on patrol on March 23, 2022, the subject officer saw the complainant walking and recognized him from the previous encounter. The complainant was again carrying a shoulder bag with a key fob attached to his pants or belt. He was stopped and immediately handcuffed. The subject officer and another officer frisked the complainant's bag and concluded that the bag did not contain a weapon. The complainant was not physically resisting but refused to provide identification. The subject officer told the complainant that he was stopped because the officers recognized him from the March 21 encounter and that the gun found in the vehicle might have belonged to him. The complainant refused to provide identification despite several requests from the officers. After an officer retrieved the complainant's identification and searched his name in the database, the handcuffs were removed and the complainant was free to leave. The complainant remained in handcuffs for approximately eight minutes.

The subject officer, during his interview, told OPC that he used handcuffs because he was concerned for his safety, and the complainant was a "big guy and argumentative." Yet, the subject officer, upon encountering the complainant, immediately handcuffed him without any dialogue. Moreover, he immediately determined that the shoulder bag did not contain a weapon. The complainant was not physically resisting, nor did he attempt to flee as he was surrounded by two officers. The complainant merely exercised his right not to identify himself either verbally or by providing documents of identification. Nevertheless, the complainant remained handcuffed for eight minutes while two officers repeatedly asked for his identification. A Complaint Examiner sustained the allegation of unlawful handcuffing against the subject officer because there was no objective evidence linking the complainant to the contraband found in the vehicle. Nevertheless, the subject officer immediately handcuffed the complainant, even though he showed no signs of aggression or attempt to flee. Further, the handcuffs remained on the complainant notwithstanding the determination that he did not have a weapon. The fact that the complainant was a large man did not support the application of handcuffs.

Case Example 3:

In January 2022, the complainant filed a complaint alleging that he was unlawfully handcuffed during an investigatory stop.²⁹ The complainant was pulled over by the subject officers for stop sign and window tint violations and was stepped out of his vehicle. The subject officers asked the complainant multiple times if he had any guns on him and he repeatedly denied having any weapons. One of the subject officers called the canine unit to sweep the complainant's car for guns. The two subject officers patted the complainant down, claiming they saw a "bulge" in the complainant's jacket. No gun or other contraband was found. After the canine arrived and indicated a positive response on the vehicle, the subject officers instructed two witness officers to place the complainant into handcuffs while they searched his vehicle. At the time, almost 30 minutes into the encounter, the complainant was standing in the area of the stop, cell phone in hand, not acting in a threatening manner, and under the observation of at least four officers.

One subject officer told OPC that although the complainant was mostly compliant, he was placed in handcuffs as a preventive measure to ensure that he would not try to leave the scene while his

²⁹ OPC 22-0198, available [here](#).

car was searched. According to that officer, some individuals run once the dog makes a positive identification, although it is rare. The officer explained that he did not want to unnecessarily chase or use force against the complainant in the event that he went from compliant to resistive, assaultive, or fleeing. The second subject officer also said the complainant's demeanor was normal. However, he decided to handcuff the complainant to prevent unnecessary use of force. The second officer claimed that even though they already patted the complainant down, he still did not know whether the complainant had any weapons since the pat down was limited to the bulge. To ensure that nothing flipped on them, since in the past multiple people had fought or fled in a moment, the officers detained the complainant before they searched his car and while he was still calm. The officers said the complainant did not do anything to indicate that he might flee. The second officer said they had multiple issues with people who were initially compliant but then started fighting or fleeing once the officers searched their car.

A Complaint Examiner sustained the allegation of unlawful handcuffing against the subject officers because the subject officers lacked reasonable suspicion to believe that the complainant was armed and dangerous. Notably, the traffic stop was for stop sign and window tint violations, not an inherently violent crime. The subject officers patted down the complainant 16 minutes before they placed him in handcuffs, at which time they determined his alleged bulge was not a weapon. The complainant was also physically cooperative. Here, the complainant was standing uncuffed for about 30 minutes and had not acted in a threatening manner nor did he indicate he might flee. It is highly unlikely the complainant even could have fled since he was under the constant observation of a large number of officers. Given the totality of the circumstances, the subject officers' detention of the complainant in handcuffs during the traffic stop was determined to be unnecessary and unreasonable.

Nationwide Policies:

Many police departments' policies throughout the U.S. currently include guidance for officers on when, on whom, and how to apply handcuffs properly and lawfully. These departments also provide training to their members on lawful handcuffing with the primary goal of officer safety. For example, Philadelphia Police Department's Directive 10.5, Prisoner Constraints: Handcuffs, Flex Cuffs, and Leg Restraints,³⁰ notes, "The purpose of this directive is to provide instruction on when and how to apply physical restraints, such as handcuffs, flex cuffs, and leg restraints."³¹ The Directive goes on to state, "Handcuffs and flex cuffs shall be applied if an officer reasonably believes: 1. A detained individual may harm the officer or another person. 2. A detained individual may harm themselves, or will attempt to escape."³² Particularly, Directive 10.5 explicates, "Handcuffs, flex cuffs, and leg restraints are to be used by police personnel to temporarily restrain and secure persons in police custody only. THEY ARE NOT TO BE USED AS WEAPONS."³³ [...] Handcuffing of individuals who are not under arrest, but are detained, should be done only if reasonably necessary. The reason for their application should be documented in the required reports and/or the Patrol Activity Log. Handcuffing individuals shall

³⁰ Philadelphia Police Department: Directive 10.5, PRISONER CONSTRAINTS: HANDCUFFS, FLEX CUFFS, AND LEG RESTRAINTS, available [here](#).

³¹ Philadelphia PD Directive 10.5 (1)(A).

³² Philadelphia PD Directive 10.5 (2) (A) (1) (2).

³³ Philadelphia PD Directive 10.5 (2) (B).

not be used to demean, embarrass, punish, or display authority, or be used as a show of force.”³⁴ The Directive includes clear, yet simple instructions for officers on when handcuffing is reasonable.

Las Vegas Metropolitan Police Department’s Policy 3.110, Use of Force,³⁵ approves the use of handcuffs “during investigative detentions where one or more of the following factors are present and only for as long as the circumstances exist, not to exceed 60 minutes: articulable facts that the subject is physically uncooperative; articulable facts that a subject's actions may present physical danger to themselves or others if not restrained; reasonable possibility of flight based on the actions of the subject; information that the subject is currently armed; the stop closely follows a violent crime, and the subject matches specific parts of a description; articulable facts that a crime of violence is about to occur; suicidal persons; during a search warrant service, as is reasonably necessary, to safely execute the warrant; persons being transported to detoxification facilities; and, by officers moving in-custody subjects.”³⁶

Las Vegas’s Policy also defines “objectively reasonable,” as, “An objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances presented at the moment the force is used.” Similar to the Philadelphia PD’s Directive, the Las Vegas PD’s Policy addresses situations where the use of handcuffs is disapproved, such as with special populations. The Policy notes, “When reasonable, officers should gather information about the incident, assess the risks, assemble resources and equipment, attempt to slow momentum, and communicate and coordinate a response. Officers should start to develop a tactical plan prior to arriving at the scene and, when applicable, utilize intervention techniques by coordinating approaches to persons who are in crisis, are believed to be mentally ill, or have developmental disabilities. When subjects are at extremes of age (under 13 over 70), physically frail, visibly or known to be pregnant, or disabled, officers will carefully weigh these factors and utilize de-escalation techniques, crisis intervention, or other alternatives to force when reasonable.”³⁷ The Las Vegas Policy is a singular reference that provides detailed guidance for officers on when handcuffing is reasonable and also includes direction on using de-escalation tactics prior to any type of force.

Oakland Police Department’s Policy 302, Handcuffing and Restraints,³⁸ explicates, “The use of handcuffs and other restraints is intrusive and can impact the community’s trust in the police. As courts put it, the use of handcuffs ‘substantially aggravates the intrusiveness of an otherwise routine investigatory detention and is not part of a typical Terry (investigative) stop.’ The application of restraints shall never be considered a part of standard operating procedure.”³⁹ Oakland’s Policy discusses reasonable use of handcuffs in detail, explaining: “The use of handcuffs during investigative stops is authorized when the use of restraints is a reasonable and brief response to the investigating officer’s articulable safety concerns and when one or more of the below factors is present. The totality of circumstances is what matters most. Simply because

³⁴ Philadelphia PD Directive 10.5 (3) (E) (F)

³⁵ Las Vegas Metropolitan Police Department’s Policy 3.110, Use of Force, available [here](#).

³⁶ Las Vegas PD Use of Force Policy 3.110.2, (2. Approved Use for Handcuffs).

³⁷ Las Vegas PD Use of Force Policy 3.110 (De-Escalation).

³⁸ Oakland Police Department’s Policy 302, Handcuffing and Restraints, available [here](#).

³⁹ Oakland PD Policy 302.2 (Policy).

one of the below factors is present will not always mean that it is reasonable to use handcuffs: The stop is for a crime that commonly involves weapons or violence; there is circumstantial evidence that the person is armed or dangerous; the officer has to transport the person to another location and there is reason to believe that the person poses a danger; the suspect is uncooperative or does something that raises a reasonable chance that he or she may flee; the stop closely follows a violent crime; the officer has information that a crime involving violence is about to occur; the stop is for a suspected high-value drug deal; the person refuses to keep his hands in sight; the person pulls away from officers; the person is hostile or agitated; the person tries to reach inside his clothing despite being told not to do so; officers are outnumbered and the totality of circumstances presents a reasonable safety concern.”⁴⁰ This policy is another example of a clear, instructive guide to help officers determine when the application of handcuffs is reasonable.

RECOMMENDATIONS

To help improve community relations and trust between MPD and community members, the Police Complaints Board recommends that:

1. MPD must create a standalone general order on handcuffing.

Consolidating and supplementing handcuffing guidance from the aforementioned MPD general orders into a single document will ease accessibility and provide instructions to help officers determine when it is reasonable to handcuff individuals. This general order should amalgamate instructions from other MPD general orders on handcuffing special populations such as mental health consumers, juveniles, pregnant, and physically handicapped individuals. Officers will be able to reference a single document for procedural instruction. This will alleviate confusion and allow for more seamless interactions with community members.

2. MPD should train officers on the new general order and other related guidance to ensure that officers understand when it is appropriate to apply handcuffs.

The OPC cases indicate that MPD either does not provide training to its officers regarding when handcuffing is reasonable, or officers are generally unaware of such training. Training new and veteran officers would provide much needed clarity to officers regarding the appropriate use of handcuffs. MPD can accomplish this with roll-call training and by updating its training for new recruits.

⁴⁰ Oakland PD Policy 302.4 (Detentions).