



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL For Supplemental Packet 2

Meeting Date: July 9, 2019

Item Number: 18b

Item Description: Companion Report: Law Enforcement Use of Restraint Devices in the City of Berkeley

Submitted by: Andrew R. Greenwood, Chief of Police

This supplemental material includes the most recent (July 5, 2019) draft of BPD Policy 302, as well as information and outcomes reflecting the extensive collaborative policy review process between the Police Review Commission and the Berkeley Police Department on this matter.

Policy 302 “Handcuffing and Restraints” provides policy for the safe use of handcuffs and other restraints during detentions and arrests.

The Police Review Commission (PRC) Lexipol Sub-Committee reviewed and provided input to Policy 302 in fall 2018. Several changes were made, and in October 2018, the policy was issued to the Department.

In considering the recent Mental Health Commission’s item to Council, as well as the companion report, the PRC asked the Department to make a presentation regarding the use of spit hoods.

On June 12, 2019, BPD made a presentation to the full PRC, which can be viewed here: https://youtu.be/uU_VXxUdgyI, starting at the 1:50:35 mark. In the ensuing discussion, the PRC raised concerns which had been discussed during the subcommittee meeting immediately prior to the June 12 full commission meeting. We discussed those issues during the PRC meeting.

On June 14, 2019, BPD responded to the PRC’s input, returning a draft policy which addressed the concerns raised during the discussion, changing two instances of “should” to “shall” and strengthening language regarding medical concerns.

On June 18, 2019, the subcommittee discussed the draft as amended, and discussion continued at the June 26 meeting of the full commission.

On June 26, 2019, after substantial discussion, the full PRC passed a motion comprised of five elements. Please see below for our response on each element:

The PRC has voted to recommend approval of Policy 302 as follows:

1) In the second paragraph of Section 302.10, change the word “when” to “while” [so the sentence begins, “Spit hoods may be placed upon persons in custody while the officer reasonably believes...”];

Response: The attached policy incorporates the substitution of “while” for “when”, in section 302.10, second paragraph: “Spit hoods may be placed upon persons in custody **while** the officer reasonably believes the person will bite or spit...”

Based on input from the commission, though not a part of the PRC’s motion, we have added language regarding trauma in the first paragraph of Section 302.10: “As the Department recognizes that use of a spit hood **may be experienced as a traumatic event to the wearer, and** may cause alarm and concern to onlookers, this policy provides clear and specific guidelines for their use, in service of the safety of all parties involved.”

2) that the PRC endorses the BPD’s commitment to crisis intervention training (CIT) and de-escalation strategies, and promotes the use of CIT officers in their application of spit hoods when practical.

Response: Berkeley PD continues its years-long, ongoing commitment to CIT training. BPD continues to send staff to fill each available training slot to the full week course. The majority of BPD officers have had CIT training. While this makes it likely a CIT-trained officer may be present when spit hoods are used, officers will not be prohibited by this policy from using a spit hood simply because a CIT-trained officer is not present.

3) that the Chief propose data collection measures for the PRC’s consideration, including the types of circumstances hoods are used under.

Response: BPD is examining options to capture the number of times a spit hood (and the “Wrap” device as well) is used. It should be noted that according to this policy, spit hoods are *only* to be used “when the officer reasonably believes the person will bite or spit, either on a person or in an inappropriate place.” Absent the officer’s reasonable belief, spit hoods may not be applied. Body Worn Camera footage will support examination of any circumstances wherein a complaint is raised.

4) that the BPD utilize other available methods of restraint when possible, such as placing a person in a vehicle;

Response: Spit hoods are specifically designed to address the unique health and safety issues created by a person spitting or biting. Placement in a vehicle

is not a substitute for the proper utilization of a spit hood, when a subject is spitting and the officer reasonably believes the behavior will continue.

5) the use of spit hoods on pre-adolescent children is prohibited.

Response: There was substantial discussion of this issue with the PRC. We were unable to determine specific, clear definitional policy language on what “pre-adolescent” or similar terms mean in the context of a policy.

There is a de facto prohibition of the use of a spit hood on a small child within existing policy language.

Section 302.7 prohibits the use of any restraints on juveniles, (defined as persons “under 14 years old”) unless the person “is suspected of a dangerous felony or when the officer has a reasonable suspicion that the juvenile may resist, attempt escape, injure him/herself, injure the officer, or damage property.” Add to these limited circumstances that spit hoods may *only* be used where a person is already spitting or biting or reasonably believed to be about to do so, *and* that other restraints would generally be applied, it is difficult to imagine a scenario wherein a small child’s behavior would somehow justify use of a spit hood.

The policy further provides substantial accountability, as section 302.13 requires officers to document within their report every instance wherein a spit hood is applied, and Body Worn Camera footage will support examination of any circumstance wherein a complaint of an inappropriate application is raised.

The Department’s revised policy is attached in two versions, one showing markup, and one without markup.

Attachments:

July 5, 2019 revision of Policy 302, Handcuffing and Restraints, with no markup

July 5, 2019 revision of Policy 302, Handcuffing and Restraints, with markup

Handcuffing and Restraints

302.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of handcuffs and other restraints during detentions and arrests.

302.2 POLICY

The Berkeley Police Department authorizes the use of restraint devices in accordance with this policy, the Use of Force policy and department training. Restraint devices shall not be used to punish, to display authority or as a show of force.

302.3 USE OF RESTRAINTS

Only members who have successfully completed Berkeley Police Department approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use any restraint, officers should carefully balance officer safety concerns with factors that include, but are not limited to:

- (a) The circumstances or crime leading to the arrest
- (b) The demeanor and behavior of the arrested person
- (c) The age and health of the person
- (d) Whether the person may be pregnant
- (e) Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes
- (f) Whether the person has any other apparent disability

302.4 RESTRAINT OF DETAINEES

Situations may arise where it may be reasonable to restrain an individual who may, after brief investigation, be released without arrest. Unless arrested, the use of restraints on detainees should continue only for as long as is reasonably necessary to assure the safety of officers and others. When deciding whether to remove restraints from a detainee, officers should continuously weigh the safety interests at hand against the continuing intrusion upon the detainee.

302.5 ALTERNATIVE MEANS OF RESTRAINT

Alternative Means of Restraint include but are not limited to:

- (a) Handcuffing the person with their hands in front of their body
- (b) Handcuffing the person with multiple sets of linked handcuffs
- (c) Use of the entire WRAP system

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- (d) Use of the WRAP's ankle strap
 - (e) Use of plastic handcuffs "flex-cuffs"
 - (f) An ambulance gurney with five point straps

302.6 RESTRAINT OF PREGNANT PERSONS

Persons who are known to be pregnant should be restrained in the least restrictive manner that is effective for officer safety and in no event shall these persons be restrained by the use of leg irons, waist chains or handcuffs behind the body.

No person who is in labor, delivery or recovery after delivery shall be handcuffed or restrained except in extraordinary circumstances and only when a supervisor makes an individualized determination that such restraints are necessary for the safety of the arrestee, officers or others (Penal Code § 3407; Penal Code § 6030).

302.7 RESTRAINT OF JUVENILES

A juvenile under 14 years of age should not be restrained unless he/she is suspected of a dangerous felony or when the officer has a reasonable suspicion that the juvenile may resist, attempt escape, injure him/herself, injure the officer or damage property.

302.8 NOTIFICATIONS

Whenever an officer transports a person with the use of restraints other than handcuffs, the officer shall inform the jail staff upon arrival at the jail that restraints were used. This notification should include information regarding any other circumstances the officer reasonably believes would be potential safety concerns or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration) that may have occurred prior to, or during transportation to the jail.

302.9 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS

Handcuffs, including temporary plastic cuffs (aka "flex-cuffs"), may be used only to restrain a person's hands to ensure officer safety.

Although recommended for most arrest situations, handcuffing is not an absolute requirement of the Department. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that regardless of the circumstances, every person should be handcuffed.

In most situations handcuffs should be applied with the hands behind the person's back. When feasible, handcuffs should be applied between the base of the palm and the ulna bone of the wrist. When feasible, handcuffs should be double-locked to prevent tightening, which may cause undue discomfort or injury to the hands or wrists.

In situations where one pair of handcuffs does not appear sufficient to restrain the individual or may cause unreasonable discomfort due to the person's size, officers should consider using alternative means of restraint.

If the person being handcuffed is on the ground or in a prone position, officers should, as soon as

possible, place the person in an upright sitting position or on their side for respiratory recovery and to mitigate the potential for positional asphyxia.

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

302.10 APPLICATION OF SPIT HOODS/MASKS/SOCKS

Spit hoods, aka “spit masks” or “spit socks” are temporary protective devices designed to prevent the wearer from transferring or transmitting fluids (saliva and mucous) to others. As the Department recognizes that use of a spit hood may be experienced as a traumatic event to a wearer, and may cause alarm and concern to onlookers, this policy provides clear and specific guidelines for their use, in service of the safety of all parties involved.

Spit hoods may be placed upon persons in custody while the officer reasonably believes the person will bite or spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport.

Officers utilizing spit hoods shall ensure that the spit hood is applied properly to allow for adequate ventilation and that the restrained person can breathe normally. Officers should provide assistance during the movement of restrained individuals due to the potential for impaired or distorted vision on the part of the individual. Officers should avoid comingling individuals wearing spit hoods with other detainees.

Spit hoods shall not be used in situations where there are indications that the restrained person has a medical condition evident in the area around the mouth or nose, such as difficulty breathing or vomiting. In such cases, prompt medical care should be provided. If the person vomits while wearing a spit hood, the spit hood shall be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should be thoroughly decontaminated including hair, head and clothing prior to application of a spit hood.

Those who have been placed in a spit hood should be continually monitored and shall not be left unattended until the spit hood is removed. Spit hoods shall be discarded after each use.

302.11 APPLICATION OF THE WRAP

The WRAP is a temporary restraining device comprised of a Velcro strapped leg panel, torso harness, ankle strap and backside handcuff carabiner. The device immobilizes the body into a straight-legged seated position. Used properly, it restricts a subject’s ability to do harm to oneself or others. Officer safety is enhanced and the risk of injury to the subject is reduced.

In determining whether to use the WRAP, officers should consider:

- (a) Whether the officer or others could be exposed to injury due to the assaultive or resistant behavior of a suspect.
- (b) Whether it is reasonably necessary to protect the suspect from his/her own actions (e.g., running away from the arresting officer while handcuffed, kicking at objects or officers).

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- (c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol unit).
 - (d) Whether conventional methods of restraint have failed.

302.11.1 GUIDELINES FOR USE OF THE WRAP

When applying the WRAP the following guidelines should be followed:

- (a) If practicable, officers should notify a supervisor of the intent to apply the WRAP. In all cases, a supervisor shall be notified as soon as practicable after the application of the WRAP.
- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) Restraint straps should be checked frequently for tightness, and adjusted as necessary until the WRAP is removed. The harness straps shall never be tightened to the point they interfere with the person's ability to breathe.
- (d) The restrained person should be continually monitored by an officer while the WRAP is in use. The officer should ensure that the person does not roll onto and remain on his/her stomach.
- (e) The officer should look for signs of distress such as sudden quiet or inactivity, complaints of chest pain, change in facial color, complaint of extreme heat, vomiting and/or labored breathing, and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
- (f) Movement of the person can be accomplished in three ways, depending on the level of their cooperation. The person can either be carried, allowed to stand and shuffle walk, or be transported in a vehicle.
- (g) Once secured in a vehicle, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.
- (h) If in custody and transported by ambulance/paramedic unit, the restrained person should be accompanied by an officer when requested by medical personnel. The transporting officer should describe to medical personnel any unusual behaviors or other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

302.11.2 DEVICE REMOVAL

Based on the person's combativeness or level of aggression, officers should employ appropriate control techniques and tactics when removing the WRAP.

302.11.3 THE WRAP'S ANKLE STRAP

The ankle strap is a part of the WRAP restraint system. The ankle strap may be used alone, without the rest of the WRAP system to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Use of the ankle strap will follow the same guidelines listed above for the WRAP.

302.12 APPLICATION OF AUXILIARY RESTRAINT DEVICES

Auxiliary restraint devices include transport belts, waist or belly chains, transportation chains, leg irons and other similar devices. Auxiliary restraint devices are intended for use during long-term restraint or transportation. They provide additional security and safety without impeding breathing, while permitting adequate movement, comfort and mobility.

Only department-authorized devices may be used. Any person in auxiliary restraints should be monitored as reasonably appears necessary.

302.13 REQUIRED DOCUMENTATION

If an individual is restrained and released without an arrest, the officer shall document the details of the detention and the need for handcuffs or other restraints.

If an individual is arrested, the use of restraints other than handcuffs shall be documented in the related report. The officer should include, as appropriate:

- (a) How the suspect was transported and the position of the suspect.
- (b) Observations of the suspect's behavior and any signs of physiological problems.
- (c) Any known or suspected drug use or other medical problems.

Handcuffing and Restraints

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- (a) The circumstances or crime leading to the arrest
- (b) The demeanor and behavior of the arrested person
- (c) The age and health of the person
- (d) Whether the person ~~may be is known to be~~ pregnant
- (e) Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes
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Situations may arise where it may be reasonable to restrain an individual who may, after brief investigation, be released without arrest. Unless arrested, the use of restraints on detainees should continue only for as long as is reasonably necessary to assure the safety of officers and others. When deciding whether to remove restraints from a detainee, officers should continuously weigh the safety interests at hand against the continuing intrusion upon the detainee.

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302-7302.8 NOTIFICATIONS

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Although recommended for most arrest situations, handcuffing is ~~discretionary and~~ not an absolute requirement of the Department. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that regardless of the circumstances, in order to avoid risk every person should be handcuffed. ~~regardless of the circumstances~~

In most situations handcuffs should be applied with the hands behind the person's back. When feasible, handcuffs should be applied between the base of the palm and the ulna bone of the wrist. When feasible, handcuffs should be double-locked to prevent tightening, which may cause undue discomfort or injury to the hands or wrists.

In situations where one pair of handcuffs does not appear sufficient to restrain the individual or may cause unreasonable discomfort due to the person's size, officers should consider using alternative

Commented [SSM1]: Jun 2019 - Section changed back to Lexipol language from our prior H6 language - per the PRC 6/18/19

~~means of restraint alternatives, such as using an additional set of handcuffs or multiple plastic cuffs~~

~~If the person being handcuffed is on the ground or in a prone position, officers should, as soon as possible, place the person in an upright sitting position or on their side for respiratory recovery and to mitigate the potential for positional asphyxia.~~

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

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Spit hoods ~~shall~~ should not be used in situations where ~~the restrained person is bleeding profusely from the area around the mouth or nose, or if~~ there are indications that the ~~restrained~~ person has a medical condition ~~evident in the area around the mouth or nose~~, such as difficulty breathing or vomiting. In such cases, prompt medical care should be ~~provided~~ obtained. If the person vomits while wearing a spit hood, the spit hood ~~shall~~ should be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should be thoroughly decontaminated including hair, head and clothing prior to application of a spit hood.

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Commented [SSM2]: Sep 2018 - Added per PRC request from 9/17/18

Commented [SSM3]: Jun 2019 - Changed back to "hoods" per PRC 6/18/19 meeting

Commented [SSM4]: Jun 2019 - Chief's language

Commented [GA5]: July 5 language added re: traumatic to the wearer

Commented [GA6]: July 5 language added, using "while" instead of "when", based on PRC input

Commented [SSM7]: Jun 2019 - Shall per PRC 6/18/19 meeting

Commented [SSM8]: Jun 21 - changed back to shall - accidental deletion in previous version.

Commented [SSM9]: Jun 12 2019 Chief's changes

Commented [SSM10]: Jun 2019 - Per PRC

~~Leg restraints may be used to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Only restraint devices approved by the Department shall be used.~~

In determining whether to use the WRAP leg restraint, officers should consider:

- (a) Whether the officer or others could be exposed to injury due to the assaultive or resistant behavior of a suspect.
- (b) Whether it is reasonably necessary to protect the suspect from his/her own actions (e.g., ~~hitting his/her head against the interior of the patrol unit~~, running away from the arresting officer while handcuffed, kicking at objects or officers).
- (c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol unit).
- (d) Whether conventional methods of restraint have failed.

302.11.1 GUIDELINES FOR USE OF THE WRAP LEG RESTRAINTS

When applying the WRAP leg restraints the following guidelines should be followed:

- (a) If practicable, officers should notify a supervisor of the intent to apply the ~~ankle WRAP strap device~~. In all cases, a supervisor shall be notified as soon as practicable after the application of the ~~ankle strap device~~ WRAP.
- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) Restraint straps should be checked frequently for tightness, and adjusted as necessary until the WRAP is removed. The harness straps shall never be tightened to the point they interfere with the person's ability to breathe.
- (d) The restrained person should be continually monitored by an officer while the WRAP ankle strap is in use. The officer should ensure that the person does not roll onto and remain on his/her stomach.
- (e) The officer should look for signs of distress such as sudden quiet or inactivity, complaints of chest pain, change in facial color, complaint of extreme heat, vomiting and/or labored breathing, and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
- (f) Movement of the person can be accomplished in three ways, depending on the level of their cooperation. The person can either be carried, allowed to stand and shuffle walk, or be transported in a vehicle.
- (g) Once secured in a vehicle, the person should be placed in a seated or upright position,

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Commented [SSM12]: Per PRC 6/18/19

secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.

(h) If in custody and transported by ambulance/paramedic unit, the restrained person should be accompanied by an officer when requested by medical personnel. The transporting officer should describe to medical personnel any unusual behaviors or other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

302.11.2 DEVICE REMOVAL

Based on the person's combativeness or level of aggression, officers should employ appropriate control techniques and tactics when removing the WRAP.

302.11.3 THE WRAP'S ANKLE STRAP

The ankle strap is a part of the WRAP restraint system. The ankle strap may be used alone, without the rest of the WRAP system to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Use of the ankle strap will follow the same guidelines listed above for the WRAP.

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~~(a)~~ The amount of time the suspect was restrained.

~~(b)~~ (a) How the suspect was transported and the position of the suspect.

~~(c)~~ (b) Observations of the suspect's behavior and any signs of physiological problems.

~~(d)~~ (c) Any known or suspected drug use or other medical problems.