NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA

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May 6, 2015

File Number: 37PA-191555

VIA ELECTRONIC MAIL (jaginsberg@nola.gov)

Deputy Superintendent Jay Ginsberg
Compliance Bureau, New Orleans Police Department
714 South Broad Street
New Orleans, LA 70119

RE: Policy Approval

Dear Superintendent Ginsberg:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on revised policy Chapter 1.3.1.1, Handcuffing and Restraints. The OCDM has no objection to the policy as revised.

We believe that revised Operating Guidelines Chapter 1.3.1.1 incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 18.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.

Sincerely,

David Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
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WASHINGTON, DC 20006

CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)

* Appointed By Order Of The U.S. District Court For The Eastern District of Louisiana

NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 1.3.1.1

TITLE: HANDCUFFING AND RESTRAINT DEVICES

EFFECTIVE:
REVISED:

PURPOSE

This Chapter governs handcuffing and otherwise restraining suspects during detentions and arrests to provide adequately for the safety and security of the suspect being detained or in custody, the transporting officer, and the public.

POLICY STATEMENT

1. The New Orleans Police Department authorizes the use of handcuffs and restraint devices in order to control suspects who are actively, aggressively or aggravatedly resisting a lawful detention or arrest in accordance with this Chapter, **Chapter 1.3 - Use of Force** and department training.

2. Restraint devices **shall not** be used to demean, embarrass, punish, or display authority; they also shall not be used as a show of force.

3. Consistent with NOPD Policy concerning use of force generally, force shall not be use against an individual in handcuffs or other restraint device except as reasonably necessary to prevent imminent bodily harm to the officer or another person or persons.

4. The improper use of force against individuals in handcuffs or other restraining devices can constitute excessive force in violation of the United States Constitution and State law, and it may result in criminal prosecution as well as civil liability.

DEFINITIONS:
Definitions relevant to this Chapter include:

Active Resistance—Resistance exhibited by a suspect that is between passive resistance and aggressive resistance (e.g., attempts to leave the scene, flee, hide from detection, or pull away from the officer's grasp). Verbal statements, bracing, or tensing alone do not constitute active resistance.

Aggressive Resistance—Is a subject's attempt to attack or an actual attack of an officer. Exhibiting aggressive behavior (e.g., lunging toward the officer, striking the officer with hands, fists, kicks or any instrument that may be perceived as a weapon such as a knife or stick) are examples of aggressive resistance. Neither passive nor active resistance, including fleeing, pulling away, verbal statements, bracing, or tensing, constitute aggressive resistance.

Aggravated Resistance—When a subject's actions create an objectively reasonable perception on the part of the officer that the officer or another person is subject to imminent death or serious physical injury as a result of the circumstances and/or nature of an attack. Aggravated resistance represents the least encountered but most serious threat to the safety of law enforcement personnel or another person.

Agitated Delirium (also known as Excited Delirium)—A syndrome or condition characterized by extreme physical agitation, paranoid or irrational behavior, and/or pain insensitivity, often but not necessarily caused by mental illness or substance use.

Positional or compression asphyxia—When a subject's body position interferes with his or her breathing, either when the chest is restricted from expanding properly or when the position of the subject's head obstructs the airway. Death may occur from positional asphyxia.

Sudden Tranquility—When a subject who was acting violent suddenly becomes calm, sleepy, and appears to be resting.

ISSUANCE, MAINTENANCE AND CARRYING RESTRAINT DEVICES

5. Restraint devices described in this Chapter may be carried and used by officers of this Department only if the device has been issued or approved by the Superintendent of Police or their authorized designee.

6. Only officers, who have successfully completed Department training, maintained and demonstrated their qualifications in the use of any approved restraint devices are authorized to carry and use those devices.

7. Restraint devices may be used to restrain or arrest suspects who actively resist, aggressively resist, aggravatedly resist, or demonstrate an intent to resist (actively, aggressively, or aggravatedly) a lawful detention or arrest and the use of the restraint appears reasonable under the circumstances.

USE OF RESTRAINTS

8. Officers are responsible for the safety and well-being of the suspects in their custody and control. Suspects under restraint may evidence signs of **Positional Asphyxia**, **Agitated Delirium** or **Sudden Tranquility** due to recent physical exertions, existing physical conditions or drug use and must be continually monitored while under restraint.

9. Restraint devices described in this Chapter are authorized for use by officers who have successfully completed department-approved training in the use of those devices.

10. All routine maintenance of a restraint device shall be the responsibility of the officer to which it is issued, who carries it, or who uses it.

11. The following devices are approved for use:

    (a) Handcuffs –
        1. Smith and Wesson; Model 100; nickel or blue finish
        2. Peerless Model 700 (or equivalent); nickel or blue finish with universal size key
    (b) Flex cuffs - a commercially produced plastic flexible band cuff with a one-way locking system that can be fastened as a restraint around a person's wrists.
    (c) Leg restraints – Smith and Wesson Model 1900; satin nickel finish

12. When deciding whether to use an approved restraint device described in this Chapter, officers should carefully balance all safety concerns with factors that include, but are not limited to:

    (a) The circumstances of the detention or crime leading to the arrest;
    (b) The demeanor and behavior of the detained/arrested suspect;
    (c) The age and health of the person;
    (d) Whether the person 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;
    (f) Whether the individual has an injury or handicap which may be aggravated by handcuffing, and what reasonable accommodations may be made for such disability; and
    (g) Any other apparent disability or condition.

13. Once handcuffed, the arrested suspect shall be secured in the rear seat of the police unit. The safety belt shall be properly utilized. Once secured in the vehicle, the primary responsibility for the safety of the detainee or arrested suspect is with the transporting officer.

14. Officers shall use caution when securing a suspect in a police vehicle utilizing a seat belt. Seat belting a suspect places officers in an awkward physical position, exposing them to potential harm during the belting procedure. If possible, two officers should be present when belting suspects in a police vehicle.

DANGERS OF RESTRAINTS

15. Officers are reminded of the danger of "**positional asphyxia**," and will follow the guidelines for care of restrained subjects listed below:

    (a) Follow training guidelines for physical restraint of subjects.
    (b) If a subject has been placed on their stomach, turn them on the side or in a seated position as soon as handcuffs are properly applied.
    (c) If the subject continues to struggle, **do not** sit, lie or kneel on the subject's back. Hold the subject's legs down and secure their ankles with leg restraints (leg shackles, Hobble leg restraints, or flex ankle cuffs). The use of these restraints may require specialized training.
    (d) **Never** attach the handcuffs to leg or ankle restraints. The **use of any "hog-tying" technique is strictly prohibited**.
    (e) Ask the subject if they have used drugs recently or suffer from a cardiac, respiratory disease or condition such as asthma, bronchitis, or emphysema.
    (f) Monitor the subject carefully looking for breathing difficulties or loss of consciousness. Immediately transport to a medical facility or call for EMS.
    (g) If the subject is transferred to a detention facility, inform the facility's custodians of any preexisting conditions, treatment received or requested because of respiratory difficulty or loss of consciousness.

16. Officers are reminded of the danger of "**Agitated Delirium**" and will follow the guidelines for care of restrained subjects listed below. Subjects in the state of agitated delirium have easily identifiable symptoms and behavioral patterns. For the safety of both officers and subjects, recognition of these signs is important. This is especially true in cases when more than two or three of the symptoms are exhibited at the same time by the same person. Once a subject suspected of agitated delirium is in custody, EMS should be immediately contacted to evaluate the subject. Some of the symptoms include:

    (a) Bizarre and/or aggressive behavior such as self-inflicted injuries; jumping into water; shouting (frequently irrationally); hiding behind cars, trees, and bushes; public disrobing (due to high body temperature or hyperthermia);
    (b) Irrational or incoherent speech;
    (c) Dilated pupils; shivering; high body temperatures (as high as 106 - 108 degrees Fahrenheit +); or profuse sweating (due to high body temperature);
    (d) Fear, paranoia, or panic;
    (e) Violence toward others; violence toward objects, especially glass; or violence in general;
    (f) High resistance to pain (standard defensive tactics and OC spray may be ineffective); and
    (g) Unexpected physical strength;
        1. For officer safety, **NEVER** engage a subject displaying symptoms of agitated delirium one-on-one.
        2. Subjects who display these symptoms and initially resist arrest violently may become extremely tranquil, appearing to have given up and accepted their fate. They may seem to be sleepy and resting. This is termed "**Sudden Tranquility**" and usually occurs just prior to death.
        3. When faced with a subject displaying these symptoms, officers will follow the guidelines for "positional asphyxia" listed above.

RESTRAINT OF SUSPECTS BEING DETAINED

17. It may be necessary to restrain an individual who is detained but not under arrest. The use of restraints on suspects being detained should only continue for as long as is reasonable to assure the safety of the suspect, officers and the public.

18. **Investigative Stops--**Officers have authority to handcuff a person when the officer has a reasonable suspicion, based on individually articulable facts that the person has committed a crime, **and**:

    (a) A reasonable suspicion based on articulable facts that the person will flee if not restrained;
    (b) A reasonable suspicion based on articulable facts that the person might present an immediate threat of serious physical injury to the officer or others present if not restrained; or
    (c) The person is, or the officer reasonably suspects based on articulable facts that the person will be, physically uncooperative with the officer in a way that interferes with the officer's ability to pursue the investigation or conduct the stop safely if the person is not restrained;

19. The authority to handcuff during investigatory stops continues only as long as one of the circumstances listed above exists, or as long as continued restraint serves to avoid one of the circumstances. If a change in situation eliminates all justification for the handcuffing, and the officers on scene do not reasonably believe that any of the circumstances listed above will exist if the person is released from the handcuffs, the handcuffs must be removed.

20. Officers shall note on the electronic Field Interview Card if the individual was handcuffed and the reasons why.

21. **Detentions for investigation of infractions and violations**--Officers have authority to handcuff a person when the officer has authority to detain the person (Traffic Infraction Investigation and Citation), **and**:

(a) A reasonable suspicion based on articulable facts that the person will flee if not restrained;
(b) A reasonable suspicion based on articulable facts that the person might present an immediate threat of serious physical injury to the officer or other present if not restrained; or
(c) The person is, or the officer reasonably suspects based on articulable facts that the person will be, physically uncooperative with the officer in a way that interferes with the officer's ability to pursue the investigation or conduct the detention safely if the person is not restrained.

The authority to handcuff during investigatory stops continues only as long as one of the circumstances listed above exists, or as long as continued restraint serves to avoid one of the circumstances. If a change in situation eliminates all justification for the handcuffing, and the officers on scene do not reasonably believe that any of the circumstances listed above will exist if the person is released from the handcuffs, the handcuffs must be removed.

22. **Other authority to handcuff** - Officers have authority to handcuff a person when they have authority to detain under the following circumstances:

(a) Detox holds.
(b) Detentions for conducting mandatory fingerprinting and photographing of sex offenders and Uniform Controlled Substances Act violators.
(c) Detentions to determine identity of a person for the purpose of issuing a citation for a violation or infraction.
(d) When an officer has a lawful right to detain the person and has a reasonable suspicion based on articulable facts that the person will flee if not restrained.
(e) A reasonable suspicion based on articulable facts that the person might present an immediate threat of serious physical injury to the officer or others present if not restrained.
(f) The person is, or the officer reasonably suspects based on articulable facts that the person will be, physically uncooperative with the officer in a way that interferes with the officer's ability to pursue the investigation or conduct the detention safely if the person is not restrained.

The authority to handcuff during the above situations continues only as long as one of the circumstances listed above exists, or as long as continued restraint serves to avoid one of the circumstances. If a change in situation eliminates all justification for the handcuffing, and the officer on the scene does not reasonably believe that any of the circumstances listed above will exist if the person is released from the handcuffs, the handcuffs must be removed.

23. **Execution of search warrant at private residence**--Officers have authority, to handcuff people they encounter on the premises as is reasonably necessary for the execution of the search warrant with all practicable safety. Subject to the other restrictions contained in this Chapter, officers shall consider the following factors in deciding whether to handcuff individuals at a private residence during the execution of a search warrant:

    (a) The legitimate law enforcement interest in preventing flight in the event that incriminating evidence is found;
    (b) Minimizing the risk of harm to the officers; and
    (c) The orderly completion of the search, which may be facilitated if the occupants of the premises are present.

24. **Execution of search warrants at business premises open to the public** (restaurants, bars, public area of offices, etc.) - Officers engaged in a lawful police activity can justify the handcuffing of a person who is not a suspect if it reasonably appears under the circumstances that handcuffing is necessary to protect an officer or others from physical harm. Resistance to handcuffing under these circumstances does not support a charge of Resisting Arrest because the person is handcuffed not as part of an arrest, but only as a means of self-defense or defense of others. These kinds of detentions are not based on criminal conduct and the justification for the handcuffing can dissipate rapidly. Officers must pay close attention to the circumstances which justify these handcuffings, and if a change in circumstances eliminates all justification for the handcuffing, the handcuffs must be removed.

25. When deciding whether to remove restraints from a suspect, officers should weigh the safety interests at hand against the continuing intrusion upon the suspect's freedom of movement.

RESTRAINT OF PREGNANT PERSONS

26. Females in labor shall not be handcuffed or restrained except in extraordinary circumstances and only when such restraints are necessary to prevent escape or injury.

27. Females who are known to be pregnant should be restrained in the least restrictive manner effective to assure the safety of the suspect, officers and the public.

28. Females in labor **shall not** be handcuffed or restrained except in extraordinary circumstances when they actively resist, aggressively resist or aggravatedly resist a lawful detention or arrest and the use of the restraint appears reasonable under the circumstances and such restraints are necessary to prevent escape or injury.

29. Supervisory approval is required when officers handcuff pregnant persons or females in labor.

RESTRAINT OF JUVENILES

30. A juvenile under 10 years of age should not be restrained unless he or she is suspected of a dangerous felony and actively resists, aggressively resists or aggravatedly resists, or demonstrates an intent to resists (actively, aggressively, or aggravatedly) a lawful detention or arrest and the use of the restraint appears reasonable under the circumstances.

31. Mechanical restraints, including handcuffs, shall never be used with juvenile status offenders, including curfew offenders, in the absence of a real and credible threat that the juvenile will use force against another person.

32. Juveniles shall not be handcuffed behind the back in the absence of a real and credible threat that the juvenile will use force against another person.

33. Juveniles shall not be restrained with mechanical restraints other than handcuffs.

34. Juveniles shall never be handcuffed to a fixed object, such as a bench or a pole.

35. In addition to the above provisions, when a child is held in NOPD **secure custody** at the Juvenile Intake Unit:

    (a) Handcuffs should not be used except when cases of uncontrollable behavior present serious threats to the safety of the juvenile or others. All reasonable alternatives including verbal counseling or use of minimum physical restraint shall be attempted before resorting to the use of handcuffs.
    (b) Juveniles who are handcuffed must be isolated to protect them from abuse, and shall be directly observed by an NOPD officer at least twice in every 30 minutes to ensure the safety and well-being of the juvenile.
    (c) Handcuffs shall not be used for a time period in excess of one hour, and shall immediately be removed as soon as the juvenile is no longer a serious threat to his or her own safety or the safety of others.
    (d) NOPD officers shall not handcuff juveniles during juvenile court proceedings absent a reasonable real and credible threat that the juvenile will use force against another person, or specifically directed by the juvenile court judge in each instance.

36. In addition to the above provisions, when a child is held in NOPD **non-secure custody** at the Juvenile Intake Unit:

    (a) Handcuffs shall never be used except when cases of uncontrollable behavior present serious threats to the safety of the juvenile or others. All reasonable alternatives including verbal counseling or use of minimum physical restraint shall be attempted before resorting to the use of handcuffs.
    (b) A supervisor shall approve the use of handcuffs before they are applied.
    (c) Handcuffed juveniles – like all other juveniles in non-secure custody – must be under the continuous observation of an NOPD officer for the duration of their time in NOPD custody.
    (d) Handcuffs shall not be used for a time period in excess of one hour, and shall immediately be removed as soon as the juvenile is no longer a serious threat to his or her own safety or the safety of others.

37. **Reporting** - For each incident when handcuffs are used for a juvenile in custody at the Juvenile Intake Unit, whether secure or non-secure, the officer using the handcuffs must appropriately document the following:

    (a) Name of the juvenile.
    (b) Date and time the restraints were applied and by whom.
    (c) Persons notified, and when and from whom approval is obtained.
    (d) Location and confinement.
    (e) Staff member assigned to supervise.

RESTRAINTS ON PERSONS WITH DISABILTIES

38. Unless exigent circumstances do not permit, after securing the scene and reasonably ensuring that there is no threat to human life, officers should make objectively reasonable modifications to standard cuffing and restraint practices in order to provide necessary, reasonable accommodations based on a suspect's known or apparent disability.

APPLICATION OF HANDCUFFS OR FLEX CUFFS

39. Handcuffs, including flex cuffs, may only be used to restrain a suspect's hands. Special care should be made to insure that the flex cuffs are not so tight as to cut off circulation to the hands.

40. The same handcuffing procedures used for standard handcuffing should be used for applying flex cuffs.

41. Some of the tactics used in standard handcuffing will not apply due to the nature and characteristics of the flex cuffs.

42. Caution should be taken to ensure flex cuffs are properly fitted and not over tightened.

43. Flex cuffs shall not be removed with any sharp and/or pointed object (i.e., knives, pointed scissors, etc.) A removal tool designed for safely removing flex cuffs should be used.

44. Because of the nature of the ratcheting mechanism of flex cuffs and their inability to be double locked, officers shall make frequent checks to insure the suspect secured has not tightened them restricting blood flow .

45. Handcuffing is not an absolute requirement of the Department. Officers should consider handcuffing any person they have legally detained or arrested when they reasonably believe that degree of restraint is necessary. **Officers should not assume every person should be handcuffed regardless of the circumstances**.

46. If a CEW is used, the officer should attempt to handcuff a suspect during the CEW activation cycle if possible. This is referred to as "controlling/cuffing under power". (see **Chapter 1.7.1 – CEW**)

47. When handcuffs are employed and always prior to the suspect being placed in a unit for transport, handcuffs shall be double-locked and checked to make sure the double-lock is set to prevent tightening and injury.

48. When one pair of handcuffs is not sufficient to restrain the individual due to size, injury or other physical condition and a single pair of handcuffs may cause an unreasonable level of discomfort, officers should consider alternatives, such as using an additional set of handcuffs linked in a chain or multiple flex cuffs.

49. An officer's handcuffs should be removed as soon as reasonable after the person has been seated, accepted for processing/custody by the jailor and is safely confined within a detention facility.

NOTIFICATION RESTRAINT USE OTHER THAN HANDCUFFS

50. When an officer transports a suspect with the use of restraints **other than handcuffs**, the officer shall inform the jail or detention facility staff upon arrival at the jail or facility that restraints were used.

51. This notification should include all information regarding the circumstances the officer reasonably believes would present a safety concern or medical risk to the suspect (e.g., prolonged struggle, extreme agitation, impaired respiration) that may have occurred prior to, or during the suspect's transportation to the jail / facility.

APPLICATION OF AUXILIARY RESTRAINT DEVICES

52. Only Department authorized devices may be used by officers. Any person in auxiliary restraints and being placed in the custody or control of the NOPD shall be continuously monitored by the officers or members in whose custody or control they remain.

APPLICATION OF LEG RESTRAINTS

53. An officer may use leg restraints on a suspect when they are or demonstrate the intent to actively resist, aggressively resist or aggravatedly resist a lawful detention or arrest, the use of the restraint appears reasonable under the circumstances and it is reasonable to do so during the course of detention, arrest or transportation. Only leg restraint devices approved by the Department shall be used.

ADDITIONAL LEG RESTRAINT CONSIDERATIONS

54. In determining whether to use a leg restraint, officers should consider:

(a) Whether the suspect, officers and the public could be injured due to the violent behavior of a suspect and the safety of the suspect, officers and the public requires it;
(b) Whether it is necessary to protect the suspect from their own actions (e.g., hitting his or her head against the interior of the transport unit, running from the arresting officer while handcuffed, kicking at objects or officers); and
(c) Whether it is necessary to avoid damage to property (e.g., kicking at windows of the transport unit).

GUIDELINES FOR THE USE OF LEG RESTRAINTS

55. The following guidelines should be followed when applying leg restraints:

(a) If practicable, officers should notify a supervisor of the intent to apply the leg restraint device prior to use. A supervisor shall be notified as soon as possible after the application of the leg restraint device.
(b) Once applied, absent a medical emergency, restraints should remain in place until the officer arrives at the detention facility or the suspect no longer appears to pose a threat.
(c) Once secured, a suspect **shall not** be placed on his or her stomach for an extended period. This position could reduce the person's ability to breathe. The person should be placed in a seated position in a police unit and secured with a seat belt.
(d) The restrained suspect shall be continually monitored by an officer while in leg restraints. The monitoring officer should ensure the suspect does not roll onto and remain on their stomach.

(e) Officers shall look for signs of labored breathing and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
(f) Ask the prisoner if the circulation is adequate and adjust the tension to the extent necessary for adequate circulation to be maintained
(g) Visually inspect the prisoner's legs, ankles, and/or feet for swelling, discoloration, or any other indication of inhibited circulation.
(h) When transported by ambulance/paramedic unit and requested by medical personnel, the restrained person should be accompanied by an officer. The transporting officer should describe to medical personnel any behaviors or circumstances they believe would present potential safety or medical risks to the suspect (e.g., prolonged struggle, extreme agitation, impaired respiration).
(i) When transported by NOPD the prisoner should be maintained in an upright position using the vehicle's seat belt restraint system.

EXTENDED TRANSPORT TIMES

56. When the transportation or NOPD custody of a suspect is expected to last for an extended period, officers shall be cognizant of the status and position of restraints on the suspect and the suspect's position at all times. Any adjustment to the status or position of the restraints should be made as soon as the officer(s) become aware of a potential need. For safety, one officer should reapply the restraints while a second officer maintains a cover position.

REQUIRED DOCUMENTATION

57. If a suspect is detained, restrained and released without arrest, the officer shall document the details of the detention, restraint and release. This documentation shall be in the form of a Departmental Electronic Field Interview Card or on an Electronic Police Report under an appropriate signal.

58. If a suspect is arrested, the use of restraints shall be documented in the related Electronic Police Report and any reports / forms (**Form 114**) required under **Chapter 1.3.6 – Reporting Use of Force**. The reporting officer shall include, as appropriate:

(a) The amount of time the suspect was restrained;
(b) How the suspect was transported and the position of the suspect;
(c) Observations of the suspect's behavior during arrest and transport as well as any signs of physiological problems;
(d) Any known or suspected drug use or other possible medical problems; and
(e) The type and manner of restraints used.