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## Restraint or Constraint: Accountability and Reform in Police Use of Potentially Dangerous Restraint Techniques

By K. Chike Odiwe

**T**here is a good reason that the use of controversial law enforcement practices employed during the apprehension, detention, and arrest of suspected criminal offenders has come under public scrutiny. It is a complex issue involving multiple factors, including but not limited to law enforcement safety, the protection of mentally ill/impaired subjects, racial bias, economic disadvantage, and the protection of the suspected offender's civil rights.

The stated objective of the use of restraints by law enforcement is for police officers to gain control over a dangerous individual and protect themselves, the restrained person, or third parties. Although police officers and their departments may risk civil and/or criminal liability associated with the use of these restraints—including the use of metallic and non-metallic handcuffs, neck restraints, body wraps, waist chains, leg braces, single-use disposable restraints, restraint bags, and handcuff blocks—the restrained

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individuals face greater risks in the form of nerve damage, neurological damage, and asphyxia. In short, law enforcement restraint techniques can lead to an officer using deadly force. If this use of deadly force is not objectively reasonable, the law enforcement officer has violated the suspect's Fourth Amendment rights. Any use of force by a law enforcement officer must meet both federal and statutory law.

### **Restraint Techniques**

There is a wide array of techniques that law enforcement officers use to restrain subjects. Some examples include neck restraint, the WRAP device, and hogtying.

#### *Neck Restraint*

Neck restraint is a technique where an officer restrains a subject by manipulating his or her neck. There are many techniques that fall under this broad category. Law enforcement agencies have used several types of neck restraints to gain control of suspects for decades. They are often collectively and erroneously called "chokeholds," a term reserved for a specific type of hold. The two main types of neck restraints law enforcement officers use are "carotid restraints" and "chokeholds."

The carotid restraint involves the constriction of pressure against the carotid neck arteries; this hold is referred to variously as a "carotid hold," "lateral vascular neck restraint," "sleeper hold," "bilateral neck restraint," and "blood choke." All these names refer to a similar technique.

The term "chokehold" is distinguishable from carotid restraint because a carotid restraint requires the application of force to the sides of the subject's neck, whereas a chokehold applies pressure to the front of the subject's throat. The goal of the carotid restraint is to constrict the carotid artery, thereby stemming the flow of blood to the brain. Unconsciousness occurs because obstructing the blood flow deprives the brain of oxygen.

Although the carotid restraint does not apply pressure to the laryngeal structures of the neck, there are risks of forced manipulation of the cervical spine. The technique can cause dislocation, fracture, or other injuries to the spinal cord from excessive force. In addition, it can cause the formation of a blood clot due to the pressure on either the vertebral or the carotid arteries, which can result in a stroke or death.

#### *The WRAP Device*

The WRAP device from manufacturer Safe Restraints, Inc., is now used by numerous law enforcement agencies. The black-and-yellow harness with straps and buckles locks a person's legs together and clips his or her torso into a seated position. The manufacturer claims that the WRAP can be used to immobilize a person without restricting his or her breathing. After three decades on the market, more than 20,000 WRAPs are in use across the United States.

The WRAP is marketed as proven to save lives. However, as the device has become more widely used, lawsuits over in-custody deaths and allegations of torture related to the use of the WRAP are emerging.

#### *Hogtying*

Among the most controversial law enforcement restraint techniques is hogtying. Hogtying is an inhumane and dangerous act. It involves law enforcement officers putting people on their stomach and tying their cuffed hands to their bound feet behind their back with an adjustable nylon belt, a device known as a "hobble." Law enforcement officers have said the hogtie position is used to restrain individuals who cannot be restrained any other way and would otherwise pose a danger to themselves and those around them. However, the hobble device can be used to restrain someone's legs without placing them in the compromised hogtie position.

The U.S. Department of Justice (DOJ) warned against hogtying as far back as 1995 in a bulletin instructing police on how to prevent in-custody deaths. DOJ instructed officers to move subjects off their stomach as soon as they were handcuffed. DOJ also warned law enforcement never to tie the handcuffs to a leg or ankle restraint.

Although many police departments have banned hogtying for decades, independent investigations have found that the dangerous practice has persisted in many places because of outdated guidelines and lax oversight. As such, the use of the hobble and hogtie may be even more widespread than can be determined because there are no national reporting requirements, and many police departments do not account for the statistics.

Several in-custody deaths have occurred as a result of law enforcement using the hobble to either tie a person's hands and feet together behind him or her and then apply pressure on the person's back with body weight or leave the person prone for longer than recommended. Many law enforcement departments do not track in their use-of-force data the use of the hobble device or when it is used to hogtie. But in those law enforcement departments that do keep records, the hobble has been used hundreds of times in recent years. As of now, there is no federal standardized way to use the hobble, and there are various points within the process where a mistake could be deadly. Law enforcement agencies have used different policies regarding the hobble device. Some allow the hands and feet to be tied together, while others instruct the cuffs to be attached to a belt around the waist. The tying of the hobble, the positioning of the person, and his or her subsequent transport all can contribute to injury or death.

### **Disproportionate Impact of People of Color and Those with Mental Disabilities**

It is well-known that people of color and persons with mental disabilities disproportionately have encounters with law enforcement. Law enforcement officers across the nation are often called on to manage incidents involving subjects with a mental illness or who are experiencing a mental health crisis. In the ideal scenario, nobody would be restrained, but that would be unrealistic. However, the goal of law enforcement should be to maximize the use of de-escalation techniques and the assistance of a crisis intervention team (CIT) to turn what may initially appear to the officer to be an unavoidable physical confrontation or encounter into a safe detention or arrest. Specialized training on the topic of mental health helps to prepare law enforcement to resolve these incidents in a safe and effective manner. Because law enforcement has an unparalleled and special power to detain individuals and to use force, officers must be held accountable for their actions. Police officers have a duty to protect a citizen's civil rights in all circumstances, even in the face of difficult situations, such as when detaining subjects with mental illness.

### **De-escalation Techniques**

Law enforcement should use de-escalation techniques prior to the application of harmful restraints. De-escalation is a term for the reduction of the level of intensity during a law enforcement encounter. During every single law enforcement encounter, officers should work to de-escalate adverse circumstances. For example, the law enforcement officer should first slow down an encounter by backing off from immediate intervention or action. Not every situation where an officer is involved requires immediate action. This has been a significant lesson in the field training of new officers. Second, the law enforcement officer must be compassionate but firm in communicating and defusing a tense situation before escalation by either a law enforcement officer or a subject occurs.

Law enforcement officers should cooperate with a CIT prior to and during the detention or arrest of impaired subjects. A CIT is a community partnership between law enforcement, county health services, mental health advocates, and mental health consumers. The CIT addresses the needs of those who

encounter law enforcement while experiencing a mental health crisis. In more than 3,000 communities in the nation, CIT programs create connections between peace officers, mental health providers, hospital emergency services, and people with mental illness. Through collaborative partnerships and training, CITs improve communication, identify mental health resources for those in crisis, and help increase both law enforcement and community safety. CITs also reduce the detention, arrests, and unnecessary restraint of people with mental illnesses while simultaneously increasing the probability that these individuals will receive mental health treatment. CITs are associated with improved law enforcement knowledge about mental illness.

### **Lack of Government Oversight of Restraint Techniques**

The lack of federal, state, and local oversight of law enforcement restraint techniques is a contributing factor to the continued use of improper restraints and avoidable deaths. Currently, no federal or state law addresses law enforcement restraints. The use of law enforcement restraints is a controversial subject that must be addressed head-on because the use of dangerous restraints may cause serious bodily injury, mental impairment, and even death. However, both police departments and states have fallen short in addressing the issue of improper restraints. In addition, the judiciary has differing opinions on whether the use of a restraint amounts to an unreasonable use of force, and the judiciary does not adequately supply a remedy to victims or take aggressive measures to deter this conduct in the future.

### **Law Enforcement Accountability**

Civil rights attorneys have adopted the strategy of suing law enforcement officers to increase police accountability for misconduct. The hope is that the accumulated impact of numerous civil rights lawsuits will spur reform, including the banning of deadly restraint techniques and the oversight of departments that continue to use them.

One approach taken by civil rights attorneys to combat a pattern and practice of civil rights violations by a law enforcement department is to file a *Monell* claim. *Monell* claims are named after the case *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S. Ct. 2018 (1978), in which the U.S. Supreme Court uprooted absolute immunity for public entities and held that a municipality may be accountable for the actions of employees if the actions alleged are pursuant to an unconstitutional policy statement, ordinance, regulation, or decision officially adopted and promulgated by the entity. *Monell* claims create a private cause of action for damages against government agencies and officials for violations of the U.S. Constitution. *Monell* claims are brought against a public entity as the employer, supervisor, and policy maker. For a *Monell* claim to be successful, the civil rights attorney must establish that a public entity had an unconstitutional policy either by an actual written policy or an unofficial custom or practice exercised repeatedly. It is rare that an agency would have a written policy in conflict with the Constitution; as such, it is more typical for a plaintiff to allege that the law enforcement agency had a pattern of constitutional violations so prevalent in the department that the practice was customary. Here, the particular practice at issue is the department's use of improper and/or deadly restraint techniques.

Law enforcement accountability is a major factor in dealing with the issue of controversial restraints. Accountability requires accepting responsibility, which must start with individual peace officers and police departments openly acknowledging that their actions were wrong and harmful. Many people are not optimistic that this will ever happen so long as law enforcement officers govern themselves. Usually, law enforcement departments use their own internal affairs divisions to investigate potential criminal and professional misconduct—such as use of improper restraints—attributed to members of the police agency. As such, an internal affairs investigation is a mechanism of self-governance, or as civil rights attorneys commonly say, “it is the police investigating themselves.”

**Conclusion**

Law enforcement officers must do all within their ability and training to engage in more regulated and appropriate restraints of subjects. This includes the exhaustion of de-escalation techniques, as well as mandating the involvement of CITs in cases where the subject is clearly impaired mentally or otherwise. In addition, there needs to be further oversight (through legislation and civil actions) at the local, state, and federal levels to accurately account for the true frequency and degree to which law enforcement officers are employing the use of deadly restraint techniques. Further, there needs to be criminal liability for law enforcement's use of needless restraint techniques that lead to deadly outcomes. This includes liability for the use of the carotid restraint, lying subjects prone on their stomach for an extended period of time after applying the WRAP device, and the use of any inhumane hogtying techniques.

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