

RESTRAINTS TO PHYSICAL OBJECTS



Cities are sometimes tasked with restraining individuals awaiting transport to a jail facility after an arrest. If not done properly, cities are availing themselves to potential liability. KCL Insurance Services recommends reviewing your policies regarding restraining individuals to physical objects. The following information can be used to assist in your review and revision of current policies.

I. Juveniles

Juveniles should **never** be restrained to a physical object pursuant to KRS 610.220(3). The statute states, “[a]ny child held in custody pursuant to this section shall be sight and sound separated from any adult prisoners held in secure custody at the same location, and **shall not be handcuffed to or otherwise securely attached to any stationary object.**” (emphasis added).

II. Adults

While restraining adult arrestees or detainees to a physical object is not inherently illegal, it can lead to excessive force claims under the Fourth and Fourteenth Amendments, especially if the arrestee is handcuffed to a physical object as a matter of course, regardless of whether they are being otherwise compliant.

A. Liability under 42 U.S.C. § 1983

There are considerable liability concerns related to unreasonable or extended handcuffing of inmates to a fixed physical object.

Section 1983 provides a federal cause of action for the deprivation of “any rights, privileges, or immunities secured by the Constitution

and law.” 42 U.S.C. § 1983. “To state a claim under Section 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42 (1988). “In addressing an excessive force claim brought under § 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force.” *Graham v. Connor*, 490 U.S. 386, 394, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

There is caselaw which supports a successful 1983 claim based on improper handcuffing. The court in *Morrison v. Bd. Of Trustees Of Green Twp.*, 583 F.3d 394, 401 (6th Cir. 2009) found that a viable excessive force claim can be premised upon handcuffing. (excessive force claim can be premised upon handcuffing if officer knew plaintiff had an injured arm and also knew plaintiff posed no threat); see also *Martin v. Heideman*, 106 F.3d 1308 (6th Cir.1997) (overly tight application of handcuffs despite protestations of plaintiff can state excessive force claim); *Kostrzewa v. City of Troy*, 247 F.3d 633(6th Cir.2001) (same).

The court in *Neague v. Cynkar*, 258 F.3d 504, 507 (6th Cir. 2001) outlined the “objectively reasonable standard”:

We recently explained how to determine whether an officer was “objectively reasonable” in these terms:

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In determining whether an officer's actions were reasonable, the specific facts of each case are key. Courts should pay particular attention to "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." While courts must look to the totality of the circumstances in determining whether a seizure was reasonable, they must be sure to view those facts "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 639 (citations to *Graham v. Connor* omitted).

The reason for this is that once the detainee ceases to pose a threat to the safety of the officers or others, the legitimate government interest in the application of significant force dissipates. *Morrison*, 583 F.3d at 404 (citing *Phelps v. Coy*, 286 F.3d 295, 301-02 (6th Cir. 2003)). This rule also applies to suspects who are handcuffed and not resisting. *McDowell v. Rogers*, 863 F.2d 1302, 1307 (6th Cir. 1988).

If city police departments are handcuffing arrestees to fixed physical objects as a matter of course without analyzing the nature of the crime allegedly committed, the temperament and behavioral status of the offender, or without good justification, they are opening themselves to liability.

The U.S. Supreme Court in *Hope v. Pelzer*, 536 U.S. 730 (2002) addressed a case where an inmate in an Alabama correctional facility was handcuffed to a "hitching post." A "hitching post" is a "horizontal bar placed between 45 to 57 inches from the ground. Inmates are handcuffed to it in a standing position and remain standing during the entire time they are placed on the hitching post." The plaintiff alleged that he was attached to the post for approximately seven hours in the hot June Alabama sun, and that during that time he was given water only once or twice and was given no bathroom breaks. The Supreme Court held that these allegations, if proven, violated

clearly established constitutional law. The court noted that the practice smacked of "obvious cruelty" and that its use was "antithetical to human dignity." The court held that it was obvious from its past precedents that it was unconstitutional to be "hitched to a post for an extended period of time in a position that was painful and under circumstances that were both degrading and dangerous."

The court said, "A reasonable officer would have known that using a hitching post as Hope alleged was unlawful. The obvious cruelty inherent in the practice should have provided respondents with some notice that their conduct was unconstitutional. In addition, binding circuit precedent should have given them notice. *Gates v. Collier*, 501 F.2d 1291, found several forms of corporal punishment impermissible, including handcuffing inmates to fences or cells for long periods, and *Ort v. White*, 813 F. 2d 318, 324, warned that "physical abuse directed at [a] prisoner after he terminate[s] his resistance to authority would constitute an actionable Eighth Amendment violation."

While the facts of Hope deal with an inmate already convicted and an analysis under the Eighth Amendment, the court's logic can be a warning to our police departments about handcuffing arrestees to fixed objects.

B. Other Potential Liability

If arrestees are handcuffed to fixed physical objects they must be supervised at all times. Other potential concerns with handcuffing arrestees to physical objects are:

1. If the arrestee has a medical event/injury related to handcuffing position
2. Environmental safety concern (need to evacuate in case of fire, etc.)
3. Using the restraint as a substitute for proper supervision

The caselaw supports the position that temporarily handcuffing an arrestee to a fixed physical object is not inherently illegal or unconstitutional. However, in order to mitigate risk, a policy should be in place regarding when, how long, and the need for individual assessments surrounding handcuffing arrestees to fixed objects (like benches or bars). Handcuffing to physical objects should never be used

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as a punishment and should not be used in place of proper supervision.

C. Other Agencies

It is common for agencies to address the practice of handcuffing to fixed objects in their SOPs. The following are some examples of how individual agencies have approached the issue:

1. Federal Bureau of Prisons

There is a federal regulation which prohibits the Federal Bureau of Prisons from handcuffing inmates to fixed physical objects. The regulation states:

28 CFR § 552.22 - Principles governing the use of force and application of restraints.

- a. Restraint equipment or devices (e.g., handcuffs) may not be used in any of the following ways:
 - i. As a method of punishing an inmate.
 - ii. About an inmate's neck or face, or in any manner which restricts blood circulation or obstructs the inmate's airways.
 - iii. In a manner that causes unnecessary physical pain or extreme discomfort.
 - iv. To secure an inmate to a fixed object, such as a cell door or cell grill, except as provided in § 552.24.

2. San Diego Police Department SOP

"Prisoners within a police facility shall not be locked into any room. Additionally, prisoners may not be handcuffed to any fixed object or furniture within a police facility."

3. City of Pine Bluff

"Officers shall not handcuff prisoners to a fixed object except in an emergency."

4. Bozeman Police Department

Restrained persons should not be handcuffed to any part of any object unless it is necessary to protect another from bodily harm, death, or escape.

5. Independence (Missouri) Police Department

Department employees shall not handcuff any prisoner to a fixed object unless it is a ring or a bar in a detention facility designed for that purpose.

The act of handcuffing to physical objects is not illegal or unconstitutional on its face. However, many departments across the country, as well as the federal government, have taken the position that inmates/arrestees should not be handcuffed to physical objects due to the potential liability with improperly handcuffing an inmate or arrestee. This situation is one where it can be done right one way and wrong a hundred ways. In order to mitigate risk, the Kentucky League of Cities Municipal Law Department recommends prohibiting the practice. However, if it is impractical to prohibit the practice, there needs to be a clear policy surrounding handcuffing arrestees to physical objects. The policy should dictate when an arrestee can be handcuffed (i.e., emergencies, protection of self or others, etc.) and for how long the person can remain handcuffed to the physical object. There should also be considerations for the physical abilities of the arrestees and what should be done in the case of an emergency (fire, severe weather, etc.).



Questions? KLC is here to help!

Please contact John Clark (jclark@klc.org) or Brian Nunn (bnunn@klc.org) with KLC Loss Control Law Enforcement at 800.876.4552 or visit klc.org for more information.



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