

24 June 2024

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Tēnā koe Malcolm

Request for information

Thank you for your Official Information Act 1982 (OIA) request dated 28 May 2024. You wrote:

If reference to the policy manual on Mechanical Restraints and the Use of Force Review.

They describe a pain compliance technique and refer to not using pain compliance on plastic hand cuffs , but does not mention metal handcuffs The mechanical restraints policy refers to minimum force. They also refer to filing TOR reports needing to be filed.

This gives several questions.

1) The mechanical restraints policy has contradictory information around the use of pain compliance able to be used on plastic handcuffs. In on part is says it cant be used and in another says a TR report must be made when used. Will this be resolved ?

The Mechanical Restraints chapter of Police Instructions does mention metal handcuffs:

You must submit a TOR form if you use:

- metal or plastic handcuffs, a waist restraint belt, and a vehicle leg restraint:*
- with pain compliance*
- without pain compliance, but only when handcuffs, waist restraint belt, and/or vehicle leg restraint are used with another reportable tactical option.*

This means that if a person is handcuffed with either metal or plastic handcuffs, and pain compliance techniques are used, then a Tactical Options Report (TOR) must be submitted; and that if metal or plastic handcuffs are used without a pain compliance technique, but with another different restraint option such as a waist restraint belt, or vehicle leg restraint, then a TOR must be submitted.

It's not that using plastic handcuffs with a pain compliance technique would be against policy, but rather plastic handcuffs are not used as a pain compliance technique. Therefore, police staff would not find this policy to be contradictory.

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However, I do understand how the risk factor information could appear ambiguous from your perspective, so I have arranged for the wording used in that part of Police Instructions to be reviewed, so that it is clear that plastic handcuffs are not used as a pain compliance technique (which is different from using them with a pain compliance technique).

2) What manual covers the use and regulation of this compliance technique more fully ? For example what is minimum force in pain compliance and when is it allowed to be used?

The definition of minimum force used is from the Crimes Act 1961, Section 39: Force used in executing process or in arrest¹, and is described as such force as may be necessary to overcome any force used in resisting such execution or arrest.

While there is not a specific chapter of Police Instructions for each use of force technique available to police staff, for all decision-making about whether to use force, Police uses a threat assessment methodology called TENR.

TENR is a tool that enables better decision-making where: T - the threat is assessed, E - the exposure is managed, N - the necessity to intervene is considered, R - and any response is proportionate, and based on a considered risk assessment of threat, exposure, and necessity.

Along with the two chapters of Police Instructions you have referenced, Use of Force: Overview and Use of Force: Mechanical restraints², the chapter about TENR is also relevant to your request.

The TENR: Operational threat assessment chapter is publicly available on the Police website³.

TENR is a decision-making process that supports the timely and accurate assessment of information directly relevant to the safety of Police and others. The response to any given situation must be considered, timely, proportionate, and appropriate.

The overriding principle when applying TENR is that of 'safety is success'. Victim, public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.

The Perceived Cumulative Assessment (PCA) is used to inform police's decision-making. The PCA is the officer's subjective assessment, and continuous reassessment, of an incident, using the TENR model, based on information known about the situation and the subject's behaviour.

The officer's actions determined by their PCA may escalate or de-escalate more than once during an incident. The officer's decision to escalate or de-escalate their response, and their choice of tactical options(s), must be continuously reassessed, using the TENR model, so they choose the most reasonable option, given all the circumstances known at the time.

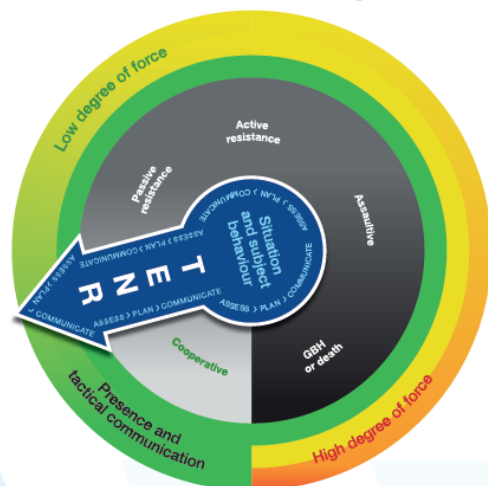
¹ <https://www.legislation.govt.nz/act/public/1961/0043/latest/DLM328255.html>

² <https://www.police.govt.nz/about-us/publication/use-force-police-manual-chapters>

³ <https://www.police.govt.nz/about-us/publication/tenr-operational-threat-assessment-police-manual-chapter>

There are five categories in the PCA, which are represented in the Tactical Options Framework, in the grey ring shown in the image below.

Tactical Options Framework



- THREAT** The subjects intent, capability or opportunity along with the physical environment
- EXPOSURE** Awareness of safety, security or public trust and confidence issues
- NECESSITY** Assessment of the need to intervene (act) now, later, or not at all
- RESPONSE** Proportionate, timely, reasonable, and lawful Police actions using tactics and tactical options
- TENR** requires assessment and constant reassessment, planning and communication to be successful

- Perceived cumulative assessment**
Your subjective assessment and continuous reassessment of an incident, using the TENR model, based on information known about the situation and the subject's behaviour. The PCA may escalate and/or de-escalate more than once during an incident.
There are five categories in the PCA, which are represented in the TOF – cooperative, passive resistance, active resistance, assaultive, GBH or death.
- Engage, disengage or delay?**
Your decision to escalate or de-escalate your response, and your choice of tactical option(s), must be continuously reassessed, using the TENR model, so you choose the most reasonable option, given all the circumstances known at the time.
Effective communication between police is as critical as effective tactical communication with the subject(s). Constant assessment, planning and communication between police should occur throughout a use of force incident.
- Presence and tactical communication**
Tactical communication is Police's preferred option for resolving incidents. Use tactical communication throughout an incident, alone or in conjunction with any other tactical option used.
- Tactical options and degrees of force**
 - officer presence and tactical communication
 - mechanical restraints eg handcuffing
 - empty hand techniques eg physical restraints and strikes
 - OC spray
 - baton – taser – dogs – weapon(s) of opportunity
 - resins and other force with serious implications
- Prepare, show and use force**
"Prepare" force means carriage of a tactical option.
"Show" force means presenting a tactical option at a subject.
"Use" force means the application of force on a subject.
- Reporting use of force**
The Use of Force chapter of the Police Manual outlines which "shows" and "uses" of force you are required to report. Reporting force facilitates evidence-based decision-making to improve employee and public safety.

The legal authority to use force is derived from the law, not the TOF. If you use force that is not authorised by law, or is excessive, the fact that you relied on the TOF will not justify or legitimise the use of that force.

Reasonable force includes force that is necessary and proportionate, given all the circumstances known at the time.



3) How is a TOR report obtained by an arrested human or member of the public.

Advice about how to access information held by Police can be found on the Police website⁴.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that as part of its commitment to openness and transparency, Police proactively releases some information and documents that may be of interest to the public. An anonymised version of this response may be publicly released on the New Zealand Police website.

Ngā mihi

Superintendent Dave Greig
Director Operational Capability

⁴ <https://www.police.govt.nz/advice-services/accessing-information>