

Alleged excessive force during arrest of 13-year-old boy after a pursuit in Auckland

OUTLINE OF EVENTS

1. At about 11.14pm on Saturday 19 May 2018, Officers A and B were patrolling in Pakuranga, Auckland. Officer A noticed a passing Subaru SUV being driven by a boy aged around 13-14 who seemed familiar to him. The officers attempted to stop the Subaru, but the driver took off at speed. They commenced a pursuit which lasted for approximately five minutes before being abandoned when the Subaru entered Casuarina Road Reserve.¹ Police had by now formed the belief that the Subaru was stolen, which later proved to be correct.²
2. A short time later, another Police unit saw the Subaru and attempted to stop it. The driver again failed to stop, and a second pursuit was commenced. This was soon taken over by the Police helicopter (Eagle) which tracked the Subaru for about 38 minutes as it crossed the Auckland Harbour Bridge and headed North on State Highway 1. Officers on the ground deployed road spikes and the Subaru eventually came to a stop near the Johnstone Hill Tunnels, with five Police vehicles stopping beside and behind it. By now, it was about midnight.
3. Officers approached the Subaru and found seven young people inside, all of whom they arrested. Officer A removed the front passenger (Mr X, aged 13) from the Subaru and handcuffed him on the ground with assistance from Officer C. During this, Mr X suffered cuts and bruising to his face.
4. Mr X was held in Police custody overnight where he was seen by a doctor at 11.50am on 20 May 2018 before being released to the care of Oranga Tamariki early that afternoon.

¹ Officer A is a Gold class driver, enabling him to engage in pursuits.

² The belief that the Subaru was stolen was formed when Officer B gave the Communications Centre the licence plate number over the Police radio and was advised that this belonged to a different vehicle. Police later realised that the licence plate number given to the Communications Centre was incorrect (the last two numbers had been transposed). However, it was found that the Subaru was indeed stolen.

5. On 21 May 2018, Mr X and his mother went to a Police station to make a complaint about Officers A and C. Mr X alleged that Officer A pulled him from the Subaru by his hair and hit him in the ribs, and that Officer C then kicked him in the ribs. Mr X said Officer A then deliberately rammed his head into the safety barrier on the side of the motorway and tried to do this a second time but was stopped by Mr X putting his hands on the barrier and pushing away. He said Officer A then punched him in his right eye and threw him to the ground, and he then felt a knee on his back and a foot on his head while he was being handcuffed.
6. Police notified the Independent Police conduct Authority of the complaint and the Authority conducted an independent investigation. Police also conducted an investigation.

THE AUTHORITY'S INVESTIGATION

7. The Authority interviewed Officers A, B, C, D, E, F and G, and viewed video footage of the incident captured by the Police helicopter, 'Eagle'. Mr X declined to be interviewed by the Authority. The Authority also had access to documents generated by Police during their investigation.
8. The Authority identified and considered the following issues:
 - 1) Were Police justified in arresting Mr X?
 - 2) What force was used during Mr X's arrest, and was it justified?
 - 3) Did Mr X receive timely and appropriate medical attention while in Police custody?
 - 4) Was Mr X's detention in Police custody justified given his age?

THE AUTHORITY'S FINDINGS

Issue 1: Were Police justified in arresting Mr X?

9. Officer A said when he first saw the Subaru and during the initial pursuit, he only saw the driver; he could not see whether there were any passengers inside because the Subaru had tinted windows, was some distance away, and it was dark. He did however think it was likely there would be passengers inside because he said this was usually the case with recently stolen cars. Because the Subaru was stolen, any passengers travelling in it were committing the offence of unlawfully getting into a vehicle and could be arrested.³
10. Officer A was also familiar with the law relating to arresting a child or young person without a warrant, having spent some time working in Police's Youth Aid section.⁴ Section 214 of the Oranga Tamariki Act 1989 requires that Police do not arrest a child or young person without a warrant, even if they would normally be empowered to, unless they are satisfied, on reasonable grounds:

³ Crimes Act 1961, section 226(2).

⁴ In the legislation being discussed, a child is defined as a person under the age of 14 years; a young person is someone of or over the age of 14 years but under 18 years.

“(a) that it is necessary to arrest that child or young person without warrant for the purpose of—

- (i) ensuring the appearance of the child or young person before the court; or*
- (ii) preventing that child or young person from committing further offences; or*
- (iii) preventing the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the enforcement officer has reasonable cause to suspect that child or young person of having committed, or preventing interference with any witness in respect of any such offence; and*

(b) where the child or young person may be proceeded against by way of summons, that proceeding by way of summons would not achieve that purpose”.

11. When Mr X and the other passengers were removed from the Subaru and it became obvious that they were all children or young people, attending officers needed to turn their minds to section 214. Officer A said he believed it was necessary to arrest them to prevent further offending:

“Obviously if they’d taken off into the night they’ve still got tools on them, they’re gonna try and steal another car to get back home. If they’re from the Pakuranga area and they’re a 40 minute drive away they’re not gonna get back on foot”

He also said it was necessary to arrest the youths so that they could be identified in order to ensure their appearance before the court or Youth Aid.

12. After Officers A and C handcuffed Mr X, they handed him over to the acting sergeant in charge of the scene, Officer D. Officer D had decided that the stretch of motorway they were stopped on should be cleared quickly and all the youths transported to Ormiston Police Station. He obtained Mr X’s details and advised him that he was under arrest for unlawfully getting into a vehicle.
13. Police discovered that Mr X was breaching a bail condition relating to a charge from a previous incident in which he was subject to a 24-hour curfew. He had been found breaching this multiple times over the 6 weeks prior to this incident, each time receiving a warning that any further breaches would result in his arrest. Police were therefore able to arrest him under section 214A of the Oranga Tamariki Act which relates to arresting a child or young person for breach of bail conditions when they have done so on two or more previous occasions.⁵
14. In these circumstances, the Authority is satisfied that Police were justified in arresting Mr X.

FINDING ON ISSUE 1

Police were justified in arresting Mr X.

⁵ See paragraph 71.

Issue 2: What force was used during Mr X's arrest, and was it justified?

15. When the Subaru came to a stop, there was a gap of about 1 metre between the front passenger side and the motorway safety barrier. Officer A said that when he approached the front passenger door, he was still unsure if there were any passengers; he could not see into the Subaru because its windows were tinted, there was no street lighting, and flashing Police lights were "*backlighting*" it. He opened the passenger door and, still unable to see who was there, yelled "*Get out of the car*".
16. Mr X said in his Police statement that he put his hands up and replied "*I'm only 13*", and that Officer A replied "*I don't care*" and pulled him out by his hair. Officer A denied this; he told the Authority he heard no response so reached in, felt there was someone there, and pulled Mr X out by grabbing what he believed was his left upper arm.
17. Mr X said Officer A punched him in the ribs, either before or just after he pulled him out of the Subaru, and that once ejected, Officer C kicked him in the ribs. He said Officer A then punched him in the face, grabbed him by the side of his head and "*smashed*" his head into the motorway barrier, causing him to feel "*dazed*". Mr X said Officer A tried to do this again, but he stopped this by putting his hands on the barrier and pushing away. He said Officer A then punched him in the face again, hitting his right eye, grabbed him by his jersey and threw him to the ground.
18. Officer A said he reached into the Subaru and grabbed Mr X around his upper left arm, taking hold of his clothing, and that as he pulled him out, he tried to gain control of him by also grabbing his right arm. He said he pulled Mr X out of the Subaru and to his left, towards the back of the Subaru where there was more room to deal with him.
19. Officer A said he felt Mr X move in a downwards direction and hit the motorway barrier and he thought Mr X had either pulled away from him or tripped over. He denied pushing Mr X into the barrier on purpose and said that at the time he thought it was Mr X's arm or knee that had hit the barrier. It was not until they got to the Police station that he saw that Mr X had a bump on his head and a cut on his face. Officer A said he thought the only time this could have happened was when he pulled Mr X from the Subaru, and he denied ever punching him in the face. Officer A said he moved Mr X to the rear of the Subaru straight away and put him on the ground, face down.
20. The Eagle video footage, shot in night-vision mode, shows the figures of Police staff and the young people as white silhouettes. The footage is not sufficiently clear to show whether Officer A deliberately pushed Mr X into the barrier. The footage does however support Officer A's account that he did not punch Mr X at this point and that he moved him to the rear of the Subaru very quickly after removing him from the vehicle.
21. Officer C came to assist Officer A in handcuffing Mr X and said Mr X was on the ground when she reached them. She denied ever kicking Mr X. Her account is supported by Officer A and the Eagle footage.
22. Mr X said he felt a knee on his back while he was on the ground. Both officers said this could have been them as they were kneeling and would have been holding Mr X down in some way.

Officer A said not much pressure would have been applied, just enough to prevent Mr X from getting to his feet and trying to run away. Mr X said he also felt a shoe on his head; Officer A said neither he nor Officer C had their foot on his head.

23. Officers A and C said Mr X was holding his arms underneath his body while he was on the ground. Officer A said he instructed Mr X to put his hands behind his back so he could be handcuffed; when Mr X did not, Officer A punched him two or three times in the ribs. Officer A said this is a technique that uses a mid-strength punch to cause a reflex action in which the person will bring their arms backwards. He said the punches were not intended to hurt Mr X and were not *“excessively hard”*. This had the desired effect in that Mr X released his arms from beneath him and Officers A and C were able to take hold of them and apply handcuffs. When asked how long he waited for Mr X to comply before punching him, Officer A said *“I’m not sure how long I gave [Mr X] to get his arms out, but it would not have been more than a few seconds, as there were multiple other offenders still to be dealt with.”*
24. Officer D then took custody of Mr X and put him into his Police car to be transported back to the Ormiston Police Station.
25. Mr X was seen by a doctor in Police custody at 11.50am the following day. The doctor’s report and photographs taken by Police confirm that Mr X had a cut and bruising to his forehead, a cut above his lip, bruising to his right eye, and grazing to his left hand, elbow and right knee. Mr X told the doctor he had been hit against the motorway barrier.
26. The Authority agrees that the cuts to both areas of Mr X’s face and bruising to his forehead were likely caused by his head hitting the motorway barrier when Officer A removed him from the Subaru, as acknowledged by Officer A. Some of Mr X’s grazes appeared to be old, however some grazing and the bruising to his eye could have occurred accidentally when he was removed from the Subaru or restrained on the ground.
27. On balance, the Authority is satisfied that Mr X was not punched or kicked during his arrest, other than the two or three punches delivered by Officer A to his ribs while Mr X was being restrained on the ground. Though Mr X said he was punched by Officer A and kicked by Officer C just after being removed from the Subaru, this is denied by them and they are consistent in their accounts that Officer C did not arrive to assist until Mr X was on the ground behind the Subaru. This is also supported by the Eagle footage. Mr X said he felt *“dazed”* after hitting his head; this, along with him having felt punches while he was face down on the ground, may have influenced his recollection of the sequence of events and the force used.

Was the force used justified?

Force used by Officer A to remove Mr X from the Subaru

28. Section 39 of the Crimes Act 1961 provides for Police officers to use reasonable force to carry out an arrest.⁶

⁶ See paragraph 62.

29. Police policy refers to New Zealand case law and states that reasonable force includes force that is necessary and proportionate, given all the circumstances known at the time.
30. Officer A said that in his experience of similar incidents, occupants of fleeing vehicles usually got out and ran in different directions. He felt he and the other officers present needed to act quickly to prevent this, both to ensure the occupants of the stolen Subaru were apprehended and that they did not run across the motorway into the path of traffic.
31. Officer A was also concerned that the occupants of the vehicle may try to assault Police with tools they might have used to steal the car (such as screwdrivers) or weapons. He was aware of a recent pursuit in which a firearm was found in the vehicle. He felt that another reason he and the other officers needed to act quickly was to prevent the occupants from gaining the “upper hand”.
32. Officer A therefore made the decision to open the front passenger door and apprehend the front passenger, if there was one; however, he confirmed that he still could not see if there was.⁷
33. Officer A said he yelled “Get out of the car” and, on hearing no response, reached in, felt there was someone there, and pulled them out, still acting on the belief that he needed to act quickly to safely effect an arrest, and not knowing that the front passenger, Mr X, was in fact a child. The level of force Officer A used to pull Mr X from the vehicle was therefore intended for a larger and heavier person than Mr X turned out to be, resulting in a degree of momentum that caused Mr X to hit the nearby motorway barrier after being removed.
34. When asked by the Authority what he could have done differently, Officer A acknowledged that he could have shone his torch into the passenger side of the Subaru before opening the door to see who, if anyone, was sitting there. Officer A also acknowledged that as he had not used his torch he could have shut the passenger car door when he received no response, since he could not see and was concerned that anyone sitting there could be a threat to him.
35. The Authority finds that Officer A did not intentionally cause Mr X to hit the barrier, but that he could have taken more care to avoid this occurring. Mr X’s injury was the unintended outcome of a use of force which was justified and reasonable in the circumstances known to Officer A at the time but turned out to be disproportionate due to Mr X’s age and size, of which Officer A was unaware.

Punches used by Officer A when attempting to handcuff Mr X

36. Officer A confirmed that once he had removed Mr X from the Subaru and restrained him on the ground behind it, Officer C came to assist him; he then told Mr X to give him his hands, and he waited a few seconds for Mr X to comply before punching him two or three times in his ribs. Officer A said this force was not excessive and was necessary to get Mr X in handcuffs quickly so that he and Officer C could assist in dealing with the other occupants.

⁷ See paragraph 15.

37. Police training materials on control and restraint techniques discuss the option available to officers to use ‘distractions’:

“Distractions

Restraint techniques are not always easy to apply – the subject’s strength or size may stop an officer from applying a hold. To overcome any resistance, an officer may perform a distraction technique.”⁸

38. Police policy confirms that officers can use ‘empty hand’ techniques to physically control someone or distract them.

39. Officer A said the following regarding the punches to Mr X’s ribs:

“...it’s something I’ve stopped doing now I’ve been taught a different sort of mechanism that’s more effect[ive] and a lot less aggressive. But it’s sort of a mid strength punch just to kind of give him that little shock and they tend to have a reflex action of pulling their arms backwards to defend against it”.

40. The Authority does not accept that it was necessary for Officer A to punch Mr X in order to handcuff him. By this time, Officer A could see that Mr X was young, of small stature, and someone he could easily overpower. Constable C had also arrived to assist. The Authority is of the view that Officer A should have given Mr X more time to comply and made further attempts to encourage this through clear communication (referred to by Police as tactical communication).⁹

FINDINGS ON ISSUE 2

The force Officer A used to remove Mr X from the Subaru in order to arrest him was justified, and the level of force used was proportionate in the circumstances known to Officer A. Mr X was smaller and lighter than Officer A expected, and the level of force caused him to hit his head on the nearby motorway barrier, resulting in his injury. Officer A could have taken more care to prevent this from occurring.

On balance, the Authority is satisfied that Mr X was not punched or kicked during his arrest, other than two or three punches delivered by Officer A to his ribs while Mr X was being restrained on the ground.

The two or three punches used by Officer A to get Mr X to release his arms while he was being restrained on the ground were not justified.

Issue 3: Did Mr X receive timely and appropriate medical attention while in Police custody?

41. Officer D noticed the injury to Mr X’s face in the Police car; he asked him what happened and if he was feeling alright. Mr X was crying and did not reply at first, but then told Officer D he had a headache. Officer D told Mr X a doctor could come and assess him, but he said Mr X said “No, it’s fine, I just wanna go home”.

⁸ ‘Control and Restraint Techniques: Trainers Guide’, March 2018.

⁹ See paragraph 67.

42. Once at Ormiston Police Station, Officer D saw that there was a lump on Mr X's head and again asked Mr X what happened. He said Mr X replied "It was one of you guys", so he asked who had done it and what had happened, but Mr X replied that he did not know.
43. Officer D said he considered calling an ambulance for Mr X but decided not to because Mr X told him he did not want one. Officer D photographed Mr X as part of the custody process; he then handed Mr X over to the care of Officer E and said Officer E told him he would get someone to look at the injury. Officer E told the Authority he saw the bump on Mr X's head and asked him if he wanted to see a doctor, but Mr X again said no.
44. After taking a statement from Mr X, Officer E took him to the Counties Manukau District Custody Unit (DCU) to await collection by Oranga Tamariki. Police custody records show Mr X was received at the DCU at 4.13am on 20 May 2018. The evaluation completed by custody staff said:

*"Head Injury – less than 12 hrs ago
Has a large bruise/cut on forehead. Numerous other minor cuts and scrapes. All from tonight's incident. States his head is at a 7/10 on pain scale. Told if gets worse and/or becomes dizzy to immediately notify us. Placed in S2 on frequent monitoring for this reason. Doctor to be brought in."*¹⁰

45. Police custody records show that Mr X went to sleep in his cell while staff continued to observe him. A doctor was called at 8.59am and arrived to assess Mr X at 11.50am.¹¹
46. The Authority finds that due to Mr X's age and the nature of his injury Police should have arranged for him to receive medical attention as soon as possible, despite him saying he did not want this. Police neglected their duty of care in failing to do so. It is also concerning that there was a delay of almost 3 hours in the doctor arriving, with no apparent follow up calls from Police regarding this, and that Mr X was allowed to go to sleep before being medically assessed, when it was possible he had a concussion.

FINDING ON ISSUE 3

Police should have arranged for Mr X to receive medical attention as soon as possible, since he had an obvious head injury. They neglected their duty of care in failing to do so.

Issue 4: Was Mr X's detention in Police custody justified given his age?

47. As required by law, Officer E telephoned Mr X's mother at 1.50am and informed her that Police had arrested Mr X and taken him to Ormiston Police Station to question him about an offence.¹² Officer E asked Mr X's mother to come to the Police station and be present during his interview because Mr X had requested her as his nominated person.¹³ Officer E told the Authority Mr X's

¹⁰ As Mr X was evaluated as in need of frequent monitoring, Police policy required that he be checked at least five times an hour at irregular intervals.

¹¹ See paragraph 25.

¹² Section 229 Oranga Tamariki Act 1989.

¹³ Section 221 of the Oranga Tamariki Act requires that children and young people are only questioned by Police in the presence of a legal representative or nominated person (as defined by section 222 of the Act).

mother declined to attend or collect him and said she had “*had enough [Mr X’s] antics*”. As such, Police arranged for a volunteer to act as Mr X’s nominated person for his interview.

48. At 1.57am, while Officer E was dealing with Mr X, Officer G telephoned Oranga Tamariki requesting that they take custody of Mr X once he had been interviewed because Police felt that section 235(1A) of the Oranga Tamariki Act 1989 applied in the circumstances. This section states that, in particular circumstances, Police may place a child or young person in the custody of the chief executive of Oranga Tamariki.¹⁴
49. When Police decide that a child or young person should be placed into the custody of the chief executive of Oranga Tamariki, they must do so as soon as possible and no later than 24 hours after their arrest.
50. On this occasion, Oranga Tamariki staff advised Police that they were unable to take custody of Mr X until they could find a suitable placement for him. As such, after Mr X had finished making his statement, Officer E had no option but to take him to the Counties Manukau DCU to remain there until Oranga Tamariki could collect him.
51. Officer G started work at the Counties Manukau District Command Centre (DCC) early that morning. He said he heard about Mr X being in custody at the Counties Manukau DCU because officers are required to advise the DCC of any children or young people remaining in Police custody. He told the Authority he was concerned to learn that Mr X had been in Police custody for several hours awaiting collection by Oranga Tamariki, and he could see that DCC staff on the night shift had telephoned Oranga Tamariki again at 4.45am. He telephoned them twice more, at 7.06am and 8.36am to request that they urgently collect Mr X.
52. Officer G signed off the necessary paperwork regarding Mr X’s placement into the custody of the chief executive of Oranga Tamariki, adding that “*Police are of the opinion that the family have no control of [Mr X] and he comes and goes as he wishes*”.
53. Oranga Tamariki staff collected Mr X from the DCU at 1.05pm, almost 13 hours after his arrest.
54. The Authority is satisfied that Police were justified in their assessment of Mr X as requiring placement into the custody of the chief executive of Oranga Tamariki. The detention of Mr X in Police custody for almost 13 hours was undesirable; however, the Authority finds that this was outside of Police’s control.

FINDING ON ISSUE 4

Police were justified in detaining Mr X in Police custody until he could be released into the custody of Oranga Tamariki.

¹⁴ See paragraph 73

SUBSEQUENT POLICE ACTION

55. The Police investigation reached similar conclusions to the Authority regarding the force used by Officer A, and Officer A subsequently completed additional training on tactical communication and decision making.
 56. Police also found that Officers D and E should have arranged for Mr X to receive medical attention as soon as possible, regardless of whether he said he wanted this or not. This was addressed with Officer D. Officer E had since left Police.
 57. Police wrote to Mr X and his mother explaining their findings regarding the complaint of excessive force and apologising for the stress the incident had caused them.
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CONCLUSIONS

58. The Authority found that Officer A used force to remove Mr X from the Subaru and restrain and handcuff him on the ground behind it; the latter involved punching Mr X two or three times in the ribs. Officer C assisted Officer A in holding Mr X on the ground while he was being handcuffed. On balance, the Authority is satisfied that Mr X was not punched or kicked during his arrest, other than the two or three punches delivered by Officer A to his ribs while Mr X was being restrained on the ground.
59. The force Officer A used to remove Mr X from the Subaru in order to arrest him was justified, and the level of force used was proportionate in the circumstances known to Officer A. Unfortunately, Mr X was smaller and lighter than Officer A expected, and the level of force caused him to hit his head on the nearby motorway barrier, resulting in his injury. Officer A could have taken more care to prevent this from occurring.
60. The two or three punches used by Officer A to get Mr X to release his arms while he was being restrained on the ground were not justified.
61. The Authority also found that:
- 1) Police were justified in arresting Mr X.
 - 2) Police should have arranged for Mr X to receive medical attention as soon as possible, since he had an obvious head injury. They neglected their duty of care in failing to do so.
 - 3) Police were justified in detaining Mr X in Police custody until he could be released into the custody of Oranga Tamariki. The delay in this occurring was outside their control.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

23 April 2020

IPCA: 17-2448

Law on the use of force

62. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use “such force as may be necessary” to overcome any force used in resisting the law enforcement process unless the process “can be carried out by reasonable means in a less violent manner.”
63. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police Use of Force policy

64. The Police ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
65. Police policy provides a Tactical Options Framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
66. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer’s Perceived Cumulative Assessment (PCA).
67. Wherever possible and appropriate, officers should use tactical communication throughout an incident, alone or with any other tactical options. Tactical communication is crucial to safely de-escalating an incident with uncooperative subjects. Tactical communication should be attempted in every incident where Police action is necessary in response to uncooperative subjects, including those that may require force to be used.

68. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
69. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

Oranga Tamariki Act 1989

70. Section 214 - Arrest of child or young person without warrant:

“(1) Subject to section 214A and sections 233 and 244, where, under any enactment, any enforcement officer has a power of arrest without warrant, that officer shall not arrest a child or young person pursuant to that power unless that officer is satisfied, on reasonable grounds,—

(a) that it is necessary to arrest that child or young person without warrant for the purpose of—

- (i) ensuring the appearance of the child or young person before the court; or*
- (ii) preventing that child or young person from committing further offences; or*
- (iii) preventing the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the enforcement officer has reasonable cause to suspect that child or young person of having committed, or preventing interference with any witness in respect of any such offence; and*

(b) where the child or young person may be proceeded against by way of summons, that proceeding by way of summons would not achieve that purpose”.

71. Section 214A - Arrest of child or young person in breach of bail condition:

A constable may arrest a child or young person without a warrant if—

(a) the child or young person has been released on bail; and

(b) the constable believes, on reasonable grounds, that—

- (i) the child or young person has breached a condition of that bail; and*
- (ii) the child or young person has on 2 or more previous occasions breached a condition of that bail (whether or not the same condition).”*

72. Section 234 - Custody of child or young person following arrest:

“Subject to sections 235, 236, and 244, where a child or young person is arrested with or without warrant, a constable shall—

release the child or young person; or

where the child or young person may be released on bail under section 21 of the Bail Act 2000, release the child or young person on bail; or

deliver the child or young person into the custody of—

any parent or guardian or other person having the care of the child or young person; or

with the agreement of the child or young person, any iwi social service or cultural social service; or

with the agreement of the child or young person, any other person or organisation approved by the chief executive or a constable for the purpose.”

73. Section 235 - Child or young person who is arrested may be placed in custody of chief executive:

(1) Notwithstanding section 234 but subject to section 244, a constable, in relation to any child or young person who has been arrested and if subsection (1A) applies,—

(a) must place the child or young person in the custody of the chief executive in accordance with subsection (2); and

(b) must do so as soon as practicable and not later than 24 hours after the arrest.

(1A) This subsection applies if—

(a) the constable believes, on reasonable grounds, that—

(i) the child or young person is not likely to appear before the court; or

(ii) the child or young person may commit further offences; or

(iii) it is necessary to prevent—

(A) the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the constable has reasonable cause to suspect the child or young person of having committed; or

(B) interference with any witness in respect of any such offence; or

(b) the child or young person has been arrested under section 214A and is likely to continue to breach any condition of bail.

ABOUT THE AUTHORITY

Who is the Independent Police Conduct Authority?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

What are the Authority's functions?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140

Freephone 0800 503 728

www.ipca.govt.nz
