



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Excessive use of force in Waihi

Summary of the Incident

1. At about 4.30pm on 28 December 2019, Police received two calls about a man (Mr X) driving dangerously. Officer A stopped the car a short time later. Mr X failed a roadside alcohol breath test so was required to have an evidential breath test.¹ He was argumentative and behaving erratically, so Officers B and C came to assist.
2. Mr X got into Officer A's patrol car but refused to get out again to allow the officers to search him before driving to the Waihi Police Station. After a struggle, Officers A, B and C managed to get him out of the car and onto the ground where he was placed in handcuffs.
3. Once at the Police station, Mr X was found to have 708 micrograms of alcohol per litre of breath. He was charged with driving with a breath alcohol level over 400 micrograms per litre of breath and resisting arrest. He pleaded guilty to both charges.
4. Mr X complained that the officers used excessive force on him while trying to remove him from the patrol car. He alleges Officer A kicked his legs; Officer B punched him multiple times; and Officer C knelt on his neck while he was on the ground, stopping him from breathing. Bystanders videoed the uses of force and also expressed concern about the way the Police officers dealt with Mr X.
5. The Authority conducted an independent investigation.

Issues examined by the Authority

- Issue 1:** Were the officers justified in attempting to search Mr X?
- Issue 2:** Were the uses of force justified?
- Issue 3:** Did the officers complete the required use of force report?

¹ It is an offence to exceed 400 micrograms of alcohol per litre of breath. A person who has failed a roadside breath screening test is obligated to accompany an enforcement officer pursuant to section 69 of the Land Transport Act 1998 and can be arrested for failing to do so. A person may choose to have either an evidential breath test, a blood test, or both.

The Authority's Findings

6. The Authority concluded that:
 - 1) the officers were justified in conducting a search of Mr X;
 - 2) Officer A did not kick Mr X's foot but tried to dislodge it from under the front passenger's seat;
 - 3) Officer B struck Mr X at least four times which was an unreasonable and disproportionate use of force;
 - 4) Officer C was justified in using the 'bottle top'.² However, he was unable to execute the technique correctly in the circumstances;
 - 5) Officer C did not deliberately put his knee on Mr X's upper shoulder/neck area;
 - 6) Officer C deliberately placed his knee on the side of Mr X's head. He should have used his hand to control him instead; and
 - 7) Officer B did not complete a Tactical Options Report but should have.

Analysis of the Issues

ISSUE 1: WERE THE OFFICERS JUSTIFIED IN ATTEMPTING TO SEARCH MR X?

7. Two members of the public called the Police after seeing a car being driven dangerously in the Karangahake Gorge. The description of the car was broadcast over the Police radio. A few minutes later, Officer A saw Mr X driving the car in Union Street, Waihi. She pulled him over and conducted a breath test.
8. Mr X appeared intoxicated, in a heightened emotional state, and was difficult to deal with.
9. After failing the breath screening test, Officer A explained to Mr X his rights under the New Zealand Bill of Rights Act and told him to come to her patrol car for further tests. Mr X was uncooperative so she called for assistance. Officer B arrived very soon afterwards.
10. The officers told Mr X he might be arrested if he refused to accompany Officer A. This led to Mr X complying with their instructions, getting out of his car, and walking towards the patrol car. However, he continued to argue, talking over Officer A when she tried to explain the process. He also took out his cell phone to video record the officers.

²A 'bottle top' is a manoeuvre used by Police to restrain someone. A handcuff that is secured to a person's wrist is used to pull them to the ground. Further detail is provided in paragraph 38.

11. The officers appear to have mutually agreed that, given Mr X's unpredictable behaviour and demeanour, they should take him to the Police station for the evidential breath test rather than do it in Officer A's patrol car.
12. The Land Transport Act 1998 allows an officer to conduct an evidential breath test in either a Police vehicle or a Police station (and in other places). Given the circumstances, it was reasonable for the officers to decide to take Mr X to the Police station.
13. Officers have the power to search a person detained for breath testing procedures under section 85 of the Search and Surveillance Act 2012.³ Officer A says before Mr X got into the patrol car, she told him numerous times to put any items of property he had on him onto the roof of her patrol car as he was in their custody while he was undertaking the breath test procedure. However, Mr X refused and continued to talk over her.
14. Officer C arrived about this time. He recalls telling Mr X he was going to search him before he got into the patrol car.
15. However, Mr X got into the middle of the back seat of the patrol car, without being searched, and started reaching into his pockets. The officers all believed they needed to search his pockets to ensure he did not have anything he might use to harm himself or them during the drive to the Police station. Officers A and C say they told Mr X to get out of the car so he could be searched, and Officer A says she explained to Mr X why this was necessary.
16. Mr X claims that the officers did not tell him he needed to be searched. Based on the accounts of the officers, we accept Officers A and C did tell Mr X he needed to be searched before getting into the patrol car and while he was inside it. However, no-one told Mr X which legislation they were invoking, as law requires.
17. After the uses of force (discussed in Issue 2), when Mr X was eventually taken to the Police station in another patrol car, he was not searched before being transported. Officer B says this was because Mr X was in handcuffs by then. Officer B explained to us that he was holding Mr X's hands and the cuffs in front of him so he would not be able to access anything, which negated the need to search him.
18. Mr X refused to get out of the patrol car. He was highly agitated and emotional, continuing to question the process.
19. Mr X also continued recording the officers on his phone (or indicating that he was), which he is legally able to do. Officers A and C say they are often in situations where people are recording and they did not have a problem with Mr X filming them. Officer B says filming shows the behaviour of both the offender and Police officers and that he does not have a problem with people recording them. However, when we asked Officer B if he had a problem with Mr X recording he said: *"It was more the way he was doing it. Like in our face with the phone..."*

³ See paragraphs 90 and 96 for relevant law and policy.

20. Officers A, B and C all say Mr X's behaviour did not agitate them or cause them to lose control of themselves during the incident.

FINDING ON ISSUE 1

The officers were justified in conducting a search of Mr X at the roadside.

ISSUE 2: WERE THE USES OF FORCE JUSTIFIED?

21. According to the Search and Surveillance Act 2012, officers "*may use any force that is reasonable for the purposes of the search*".⁴
22. The Crimes Act 1961 also allows officers to "*use reasonable force in the execution of their duties*". However, it must be only "*such force as may be necessary*" to overcome the force used by the person resisting.⁵ Officers should try to carry out the process in the least violent manner possible.
23. Ms W, Mr Y and Mr Z, occupants of a nearby house, witnessed the interaction between Mr X and Police. They did not know Mr X prior to this incident. They initially watched from inside the house, video recording the incident through a front window, before coming outside. They had a clear view of what was happening. We consider them to be credible witnesses.
24. Mr Y and Mr Z made two recordings on cell phones: The first is 1.24 minutes long and captures officers talking with Mr X for about 20 seconds, followed by a struggle taking place for one minute before Mr X is pulled out of the car. The second recording is 4.12 minutes long. It shows officers restraining Mr X while they are handcuffing him on the ground, before standing him up and putting him in a different patrol car with the assistance of other officers who arrived to assist.

What did officers do to attempt to remove Mr X from the patrol car?

25. Without discussion, Officer B went around to the driver's side and got into the back of the patrol car next to Mr X, while Officers A and C remained on the passenger side.
26. Officer A says she attempted to reason with Mr X and to explain the process to him several times, in a way that she thought he would understand but: "*... unfortunately he wasn't going to reason with us so we had no choice but to use force to get him out of the car and restrain him.*" She says Mr X had every opportunity to co-operate and to get out of the car by himself before they pulled him out.
27. Officer C wrote in his tactical options report that Mr X was told he was going to be handcuffed due to his demeanour. He told us Mr X's demeanour was "*up and down*" and made him feel uneasy. He says: "*I didn't trust [Mr X's] behaviour. He's probably one of the most fidgety, unpredictable people that I've dealt with... for a wee while.*"

⁴ See paragraph 91.

⁵ See paragraphs 93 and 95 for relevant law, and paragraphs 99 to 103 for relevant policy.

28. Police policy allows officers to handcuff someone if they believe they pose a “*clear and identified risk*”.⁶ Officer C says he thought Mr X could jump into the driver’s seat and steal the car. Officers B and C say they thought Mr X could possibly have had a weapon on him, though there was no reason to believe this was the case. Officers were justified in handcuffing Mr X.
29. Officer C attempted to put a handcuff on Mr X’s left wrist but was unable to, as Mr X kept pulling away from him. Mr X hooked his feet under the front passenger seat by the pillar and refused to move.
30. According to Officers A, B and C, Mr X had been ‘passively resistant’ up to the point where officers told him to step out of the car to be searched. However, he now became ‘actively resistant’.⁷ Officer A says although Mr X was resisting them, he was not threatening, and did not assault any of the officers.
31. Mr X denies resisting the officers; however, we agree that he was ‘actively resistant’ based on the accounts of the officers and witnesses and footage showing the officers trying to get Mr X out of the car, with him yelling “*get off me*”. The situation quickly escalated once Mr X started to resist.
32. Officers A and C individually considered their options at this point. Officer C says one option was to leave Mr X in the car. However, an officer would have had to sit next to him, which would have placed them at risk of assault if they were unable to first ensure he did not have any weapons on him. Officer A considered using pepper-spray on Mr X but did not believe it was a suitable option as it would also affect the other officers.
33. Mr X says Officer B restrained him around the waist, holding him in the car, while Officers A and C tried to pull him out. Officers do not agree. They say Officer B was trying to push Mr X from inside the car while Officers A and C tried to pull him out. We cannot determine if there was any stage where Mr X was being restrained while also being pulled.
34. Footage captures Mr X repeatedly yelling: “*You didn’t ask me*”. He says this was because the officers just started pulling at him.
35. Mr X says Officer B then “*started smothering my face so I’d shut up*”. However, Officer B denies doing this. He says he would not put his hand over someone’s mouth, as he has seen people get bitten when doing this. We are unable to determine if this happened: no witnesses saw it occur; the angle of the footage does not allow Mr X’s face to be seen inside the car; and medical records do not show any injuries to Mr X’s face, head, or chest.

Did Officer C use an appropriate technique to attempt to pull Mr X out of the patrol car?

36. Officer C managed to get one cuff on Mr X, but not the other.

⁶ See paragraphs 97 and 98 for relevant policy about using handcuffs.

⁷ According to Police policy, someone who is ‘passively resistant’ refuses verbally or with physical inactivity, whereas someone who is ‘actively resistant’ pulls away, pushes away, or runs away. An ‘assaultive’ person shows intent to cause harm, which is expressed verbally and/or through body language and/or physical action.

37. Officer C says he could not use pepper spray on Mr X as it would affect the other officers and he ruled out using a baton or Taser as too forceful because Mr X was not assaultive. He decided to use the 'bottle top' technique to try to pull Mr X out of the car.
38. A 'bottle top' is a manoeuvre used by Police to restrain someone. When a handcuff is secured on a person's wrist, the handcuff can be twisted backwards or forwards which digs the handcuff into the underside of the arm and into the wrist bone. It can then be twisted, putting leverage onto the wrist, causing the person to flex, enabling them to be pulled to the ground.
39. Officer C's attempt to use this technique was unsuccessful. He was not able to get the control needed due to Mr X's strength and efforts to pull away from him, and the cuff not being in the right position.
40. Cell phone footage shows Officer C trying to pull Mr X out, tugging on his arm with significant force for at least four seconds. Mr Y can be heard commenting: *"It looks like he's about to break his f**king arm."*
41. Mr X says Officer C:

"...grabbed my arm and pulled against it as hard [as] he could... while I was still being held inside the car which is what has caused this nerve damage which has bugged me up for half this year."
42. Medical records confirm Mr X received ongoing treatment for shoulder pain attributed to this incident.
43. Officer C was justified in attempting to use the 'bottle top' technique. However, he was unable to execute the technique correctly in the circumstances due to the positioning of the cuff on Mr X's wrist.
44. The situation was clearly escalating and the officers should have stopped to consider ways to de-escalate it.

Did Officer A kick Mr X's foot?

45. Mr X alleges Officer A tried to kick his legs while he was in the car.
46. Although the car door obstructs the view, footage shows that Officer A pushes her foot twice near Mr X's feet. Officer A explained to us that she pushed her foot against Mr X's foot in an attempt to dislodge it from under the front passenger seat. She says she could not use her hands to try to pull them out as Mr X potentially could have kicked her in the face.
47. We accept Officer A's explanation and do not believe she tried to kick Mr X's legs. Given his resistance, it was reasonable for her to use a low level of force to try to dislodge his foot by pushing it.

Did Officer B punch Mr X multiple times?

48. Mr X says Officer B then “*got on top*” of him and punched him about four or five times in the chest. (Mr X’s initial complaint says he was punched in the face and chest. However, he later clarified it was in the chest.)
49. Officer B denies punching Mr X. Rather, he says he was pushing Mr X to get him out of the car. Officer B explained to us that he was “*holding onto [Mr X’s] right wrist as he was striking out with his hands*”. Officer B is unsure if Mr X’s hands were open or closed while he was doing this.
50. Officer B says he then used “*more than trifling force*” to push Mr X with two hands, with open palms, in order to get him out of the car. He is unsure how many times he did this and cannot recall where his hands were positioned on Mr X’s body. Officer B acknowledges that what he describes as a ‘push’, others could deem to be a ‘strike’.
51. Mr Y says he saw Officer B “*...punching [Mr X] like two to three times and they were like fully extended like frontal jabs*”. He says Mr X’s head was pushed down so his shoulder was near to the side of his face, so the punches appeared to be to the head and shoulder area. Mr Y says there was no possible way Mr X could have moved towards Officer B “*in any form of aggressive manner*” due the position he was in. Footage captures Mr Y yelling “*...don’t f**ken punch him*”. He then ran outside and continued yelling at Officer B.
52. Mr Z recalls seeing Officer B punch Mr X in the head six to eight times and says Officer B “*laid into him*”.
53. Ms W says she did not see actual punching but did see Officer B’s “*arm go quite aggressively into [Mr X]*”.
54. Officers A and C say they were not looking at what Officer B was doing, so cannot confirm or deny the alleged punching. Officer A says she could not see into the car because Officer C was in the doorway and Officer B was on the other side. Officer C says he had his head facing downwards so he did not hit his head on the arch of the doorway. Looking at their positions on the footage, we accept this.
55. The cell phone footage shows Officer B appearing to lean towards Mr X. Although Officer B’s arm and hand cannot be seen, his shoulder then moves in a way that is consistent with him administering a short jab or punch. Officer B’s arm can then clearly be seen moving towards Mr X in a fast, sharp, forward-thrusting action three times. The action seen is not consistent with a push. This leads us to conclude Officer B struck Mr X at least four times. We cannot establish whether Officer B’s hands were open or closed, and whether they landed on Mr X’s chest or face.
56. Footage shows that Officer B struck Mr X while Officer C was pulling Mr X towards the door. This meant Mr X was leaning sideways or backwards, away from Officer B. By the third and fourth strike, it is clear from the footage that Officer C is holding Mr X’s left hand above his head, trying to pull him out of the door. So, while Mr X was being struck, it appears Officer B had hold of his right wrist and Officer C had hold of his left wrist.

57. The only force being used by Mr X appears to be that he was pulling his body back from Officers A and C and hooking his feet under the front passenger seat, in an effort to remain in the car. It does not appear Mr X tried to strike the officers, based on Officer C's account that Mr X was trying to pull his hand away from him. Officers A and C say they did not consider Mr X to be assaultive at any stage during the incident.

Was Officer B legally justified in using force against Mr X under section 39 of the Crimes Act 1961?

58. Officer B told us his authority to use force was under section 39 of the Crimes Act 1961. Section 39 empowers Police to use "such force as may be necessary" to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process.

Were officers executing a process or arrest?

59. Mr X was initially required to accompany Officer A to the patrol car for a breath alcohol test. At this point he was not technically under arrest but was being held (or "detained") by Police. According to section 59 of the Land Transport Act 1998, a person commits an offence if they refuse to accompany the officer to the testing place, which means they can be arrested.

Did Officer B believe on reasonable grounds that Mr X was using force to resist them while they executed their duties?

60. Officer B told us that Mr X was actively resisting being removed from the car, and was doing so by:

- not following instructions;
- pulling his hand away from Officer C, who was trying to place a handcuff on his left wrist;
- hooking his foot under the front passenger seat; and
- "striking out with his hands".

61. We accept Officer B believed on reasonable grounds that Mr X was using force to resist the officers from searching him and placing him in handcuffs.

Was Officer B's use of force proportionate and reasonable in the circumstances?

62. We accept it was reasonable for Officer B to use some low level force to push Mr X out of the car. However, we consider the four strikes used by Officer B were unnecessary, unreasonable, and disproportionate to the resistance offered by Mr X. Despite the difficulty the officers were having extracting Mr X from the car, there were three officers present who should have been able to manoeuvre him without the need for Officer B to strike him.

Was Officer B legally justified using force against Mr X under section 48?

63. When we interviewed Officer B he did not say that he was acting in self-defence or defence of others. However, this was raised by Police in their submissions in response to our draft report.

64. Under section 48 of the Crimes Act 1961, a Police officer is legally justified in using such force as is reasonable in the circumstances as they believe them to be for the purpose of defending themselves or others.⁸
65. Officer B told us the reason he used force was:
- *“to remove Mr X from the rear of the vehicle otherwise he would have remained unrestrained, and out of control in the back seat of the patrol car”*;
 - *“because [Mr X] wasn’t following instructions to get out of the car”*; and
 - to remove any property from him for Mr X’s own safety because he did not believe any of the officers *“felt comfortable with him, not knowing... what items he may or may not have had on him”*.
66. We have considered whether Officer B’s use of force was based on a belief that he needed to defend himself or others from the force being used by Mr X. Although Mr X’s behaviour was considered to be actively resistant, none of the officers say they considered him to be threatening or violent.
67. During our interview, Officer B only mentioned defending himself and others in the context of Mr X posing a *“significant risk”* to them if he was not sufficiently searched.
68. At the time Officer B struck Mr X, both of Mr X’s wrists were being held by officers, he was leaning away from them, and no weapon had been seen. He was not posing an immediate risk to the officers.
69. The fact that the officers had not been able to carry out the search process did not provide justification for striking Mr X four times. Officer B’s use of force was not for the purpose of defending himself or others. Even if this had been his purpose, we consider the force would have been unreasonable in the circumstances as he believed them to be. We do not believe the strikes can be justified under section 48.

Did Officer C deliberately place his knee on Mr X’s neck/shoulder or head area while he was on the ground being handcuffed?

70. Officers A and C pulled Mr X out of the car about eight seconds after the striking occurred. Officer C told Police he attempted the ‘bottle top’ technique again to do this. Video footage shows he pulled Mr X’s arm, while Mr X was positioned with his back towards Officers A and C. Mr X landed on his back on the grass, with his legs coming out of the patrol car last. Officer B followed Mr X out of the patrol car.
71. All three officers then attempted to restrain Mr X while he struggled with them. Officer C says they told Mr X several times to stop resisting and to put his hands behind his back so they could handcuff him. However, Mr X continued thrashing around on the ground.

⁸ See paragraph 94.

72. Officer B says his personal assessment of the threat posed by Mr X was that he was assaultive, kicking with his feet once he was on the ground. Of note, Officers A and C's personal assessments were that they did not consider him to be assaultive. We believe it was understandable that Mr X's legs were flailing due to the position he was in, with three officers restraining him. There is no evidence to suggest Mr X was deliberately trying to kick the officers.
73. Mr X alleges Officer C used all of his weight to *"put his knee on my neck [and] on my throat..."* He says Officer A tapped Officer C, at which point Officer C repositioned himself, putting his knee onto Mr X's head. Mr X says he could not breathe with the knee on his throat. Footage captures Mr X yelling, *"please, you're killing me"*, and other similar phrases during this time. The witnesses and officers were also yelling loudly at the time, making it difficult to hear exactly what Mr X was saying.
74. Ms W recalls hearing Mr X yelling out that he could not breathe. She says she became so concerned with the situation that she started to panic.
75. Mr Y says he was outside of the house, standing about three to four metres away from Mr X at this stage. He says Officer C *"...put his knee on the guy's neck and was pretty much like choking the guy..."*
76. Mr Z recalls seeing Mr X being *"pinned down"* and thinks it was by his neck. He also recalls hearing Mr X screaming for Officer C to get off his neck.
77. Officer A says she noticed Officer C's knee had landed on Mr X's upper body so she pushed him off straight away. She believed the knee was *"sort of on [Mr X's] shoulder"* and does not think it was on his head. Officer A says: *"...there was no concern...that [Mr X] couldn't breathe or anything like that, it was just something I'd seen and I just pushed [Officer C] off."* She remembers saying to Officer C: *"Get off his neck" or "get off his shoulder"*.
78. Officer B says he does not recall seeing Officer C kneel on Mr X at all.
79. At the end of the first video, after pulling Mr X out of the car, Officer C put his left leg on Mr X's chest/shoulder and used his left open hand to hold his head, as is Police practice.
80. It is unclear how much time elapsed before the second video began. During that time, Mr X moved a little further away from the car and the officers changed positions. Officer C was positioned at the top of Mr X's head, on the right side.
81. The following can be seen in the first 11 seconds of the second video:
- 1) Mr X is lying with his head on the ground, facing upwards. Officer C's knee appears to be placed on Mr X's right shoulder, close to the neck area. (It is unclear how long it had been in this position before this second recording started.)
 - 2) Officer A nudges Officer C. Mr X's head turns right, towards Officer C.
 - 3) Officer C places his hand on Mr X's head, redirecting it so his face is to the left, away from Officer C. (Officer C explained to us this was so Mr X would not spit at him or bite him.)

- 4) Officer C repositions his right knee so that it is on the right side of Mr X's head for about four seconds (his left leg is on the grass). Officer C immediately releases Mr X's head once the handcuffs are secured.
82. In the footage, Mr Y can be heard yelling at the officers: *"Your f**ken knee's on his neck. Get the f**k off his neck"*.
83. Officer C recalls putting his shin on Mr X's head briefly. He says this was unintentional and he only realised he was doing this when Officer A tapped him on his shoulder and pushed him away. He says his shin was there *"for a millisecond"* and that *"I wouldn't deliberately put any pressure on someone's head"*. He says he was unaware of what the bystanders were yelling out as he was so focused on what he was doing that he was not listening to them at this point.
84. It is clear from the footage and witness accounts that Officer C initially had his knee positioned on Mr X's upper shoulder, rather than his neck. We accept there was no malice or recklessness in that action, but rather Officer C ended up in that position while attempting to hold him down. We also accept he removed his knee as soon as he became aware it was positioned there, after Officer A nudged him.
85. However, it appears from footage that when Officer C moved his knee from the upper shoulder area, he then deliberately placed his knee on the side of Mr X's head briefly to control him until the handcuffs were applied. This is not a technique taught to officers. It is our view that putting a knee near any person's neck or head is dangerous. Officer C should have continued to use his hand to control Mr X's head, rather than his knee.

FINDINGS ON ISSUE 2

Officer A tried to dislodge Mr X's foot from under the front passenger seat rather than kicking it.

Officer B struck Mr X at least four times which was an unreasonable and disproportionate use of force.

Officer C was justified in using the 'bottle top'. However, he was unable to execute the technique correctly in the circumstances.

Officer C did not deliberately put his knee on Mr X's upper shoulder/neck area.

Officer C deliberately placed his knee on the side of Mr X's head. He should have used his hand to control him instead.

ISSUE 3: DID THE OFFICERS COMPLETE THE REQUIRED USE OF FORCE REPORT?

Did officers complete the required use of force report?

86. Officers must complete a Tactical Options Report after using force on a member of the public. In the report, officers must describe the force used by them and their reason for doing so.⁹
87. Officer C completed a report on the evening of the incident, as required.

⁹ See paragraph 104.

88. Officer A was not required to complete a report because her use of force was not significant.
89. Officer B says he did not complete his own report because his use of force was referenced in Officer C's report. This is against policy. Officer B should have completed his own report to explain his own decision-making around the force he used.

FINDING ON ISSUE 3

Officer B did not complete a Tactical Options Report but should have.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

28 September 2021

IPCA: 20-1851

Appendix – Laws and Policies

LAW

Search and Surveillance Act 2012

90. Section 85 of the Act allows officers to carry out a rub-down search of a person when they are arrested or detained in order to ensure they are not carrying anything that may be used to harm someone or to help them escape.
91. According to section 125(e) of the Act, officers “*may use any force that is reasonable for the purposes of the search*”. Police have an obligation under section 125 to tell the person the reason for the search and the Act which authorises it.

Summary Offences Act 1981

92. Under section 23 of the Summary Offences Act 1981, a person “*who resists or intentionally obstructs*” a Police officer who is “*acting in the execution of his duty*”, may be imprisoned for up to three months or fined up to \$2,000.

Crimes Act 1961

93. 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.*”
94. Section 48 of the Crimes Act states: “*Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.*”
95. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

POLICY

‘Searching people’ policy

96. The Police ‘Searching people’ policy says officers should conduct a rub-down search for weapons or easily disposed items as soon as practicable after a person is detained, before placing them in a vehicle.

‘Mechanical Restraints’ policy

97. Police officers must conduct a risk assessment to assist them in deciding whether or not to apply mechanical restraints, such as handcuffs. Officers are instructed to consider: *“In the particular circumstances, what possible risks are posed by the person?”*
98. If a person is not under arrest, officers can only place them in handcuffs if there is a *“clear and identified risk”*. Under no circumstances can this be a pre-determined decision.

‘Use of force’ policy

99. 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.
100. Police policy provides a 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.
101. 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)).
102. 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.
103. 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.

104. An officer is required to complete a Tactical Options Report (TOR) when he or she has used force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it. Policy states that officers must report: “*empty hand techniques **excluding** touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground*”.

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.

We are not part of the Police – the law requires us 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. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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
