



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

## Force used on youth justified but treatment while in custody inadequate

1. On 27 July 2022, Police arrested Z, a 14-year-old girl who was driving a stolen Toyota Aqua (Toyota). On 10 August 2022, Z's mother complained to the Authority about the treatment of her daughter during her arrest and while in custody.
2. Z was part of a convoy of three stolen cars that Police saw driving dangerously across Christchurch city. Officer A located the Toyota entering the Riccarton Mall McDonald's carpark. After Officer A parked his car behind the Toyota, Z rammed into Officer A's car about three times.
3. Officer A got out of his car and used his baton to smash the driver's window. Officer B joined him, and they pulled Z out through the window. Z urinated and soiled herself as Police removed her from the Toyota. She also suffered a cut to her head, glass in her right eye and bruises on her body.
4. Police arrested Z and took her into custody. They gave her access to a sink and a change of clothes but denied her request for a shower.
5. The Authority investigated this complaint, reviewing Police documentation and interviewing Z, the arresting officers (A and B) and the custody staff involved.

### The Authority's Findings

**Issue 1: Was the officers' use of force during Z's arrest reasonable?**

The officers' use of force against Z was justified.

## Issue 2: Was Z's care while in custody appropriate?

Police generally provided appropriate care to Z but should have given her an opportunity to shower.

## Analysis of the Issues

### ISSUE 1: WAS THE OFFICERS' USE OF FORCE DURING Z'S ARREST JUSTIFIED?

---

6. In this section we describe what happened during the arrest, and then assess whether the officers were legally justified in using force under the Crimes Act 1961. This requires us to consider whether the force the officers used was necessary, proportionate, and reasonable in the circumstances.

#### What happened?

7. At about 2.30am on 27 July 2022, Police saw a convoy of three stolen cars driving dangerously across Christchurch city. Police did not know the drivers' identities.
8. Officer B saw one of the cars, a Toyota, heading towards Riccarton Road. The driver (Z) stopped for a red light at an intersection but did not move when the light turned green. When Officer B drove up next to the Toyota, Z saw the marked Police car and drove off.
9. Officer B activated his car's emergency lights to signal the driver to stop but did not pursue the Toyota when it did not stop. Officer B could not identify the Toyota's driver, as Z was wearing a facemask and had the hood of her jacket up.
10. About ten minutes later, Officer A saw the Toyota entering the Riccarton Mall McDonald's carpark. Officer A says he did not see who was driving the car but assumed youths had stolen it. He was unsure how many people were inside because the Toyota Aqua model has high, fixed headrests which can be confused as occupants.
11. Z was alone in the car. She says she went to McDonald's to use the Wi-Fi so she could contact her friends who were driving the other two stolen cars. She parked the Toyota near the front door of the McDonald's.
12. The CCTV footage from the carpark shows Police entering the carpark and, about 75 seconds later, Police escorting Z to a Police car after her arrest. The footage does not show what happened during the arrest, so the Authority has had to rely on evidence, namely the accounts of Z, Officer A and Officer B, records of Z's injuries and physical damage to the Toyota and Officer A's Police car.

13. After following the Toyota into the carpark, Officer A parked across the back of it to prevent the driver from leaving. He says that, when he tried to get out, Z reversed the Toyota and rammed into the passenger's side of his Police car. Z drove forward, hit a bollard, and reversed into Officer A's car. Z then drove forward and hit the bollard a second time, and then reversed into Officer's A car for a third time.<sup>1</sup>
14. Z says that, after finding out where her friends were, she reversed the Toyota and unintentionally hit the Police car (which she had not realised was there). She then "*freaked out*", drove forward and hit the bollard. She tried to move away from the bollard, reversed and hit the Police car again. She stopped and waited for Officer A to exit his car, expecting him to knock on her window. She says she put the hood of her jacket down so Officer A could see she was a young female, and in the hope that he would "*not kill her*". Z also recalls putting her hands up to show she was not resisting.
15. Officer B had also arrived at the carpark and says he saw the Toyota ram into Officer A's Police car about three times. He parked next to the Toyota to box in the driver (Officer A's vehicle was behind, the bollard was in front, a civilian's car was to the right, and Officer B's vehicle was to the left).
16. Officer A exited his car when there was a pause in the ramming and approached the Toyota to arrest the driver. He says Z did not engage with him as she was struggling with the car's gear lever.
17. Officer A says he told the driver to get out of the car, advised her she was under arrest and asked to open the car door. When the driver did not respond, he tried to open the car door, but it was locked. He extended his baton and used it to smash the driver's window, hitting it at least twice in the bottom corner before it shattered.
18. Z does not remember Officer A saying anything to her. She recalls closing her eyes and turning her body away to the left side of the car because glass got in her eye. She says she was so frightened when the officer smashed the window that she urinated and soiled herself.
19. Officer B says he saw the driver move toward the passenger seat as Officer A was about to hit the window with his baton, and thought the driver was trying to escape. Once the window was broken, Officer B reached in to grab Z and pull her out of the Toyota. Officer A helped pull Z out and take her to the ground. Both say they realised at this point that the driver was female, and Officer B recalled her saying "*I am only 12.*"
20. Officer B arrested Z and two other officers took her into custody. Z had glass in her eye, a 2-centimetre cut<sup>2</sup> to her head and bruises to her body.
21. When we interviewed her, Z said the officers hit her on the head while she was on the ground. We asked if her head injury could have occurred when she was removed from the Toyota and she said: "*possibly, maybe from the glass*". She clarified that she felt her head hurting when she

---

<sup>1</sup> Photographs of the damage show the Toyota rammed the Police car multiple times.

<sup>2</sup> As described by the doctor who saw Z in custody.

was on the ground. Z also told her father just after the incident that she felt the officers hit her body with what she believed to be a baton several times while she was on the ground and screaming “*stop, stop, stop!*”.

22. Officers A and B denied hitting Z while she was on the ground. Officer B said the only force he used while Z was on the floor was to grab her right hand which was underneath her body to effect her arrest. Once she was arrested, two other officers took Z to their Police car (as seen on the CCTV footage).
23. When asked if Z complained about any injuries at the time of her arrest, Officer A said he could not recall. He explained that extracting a person out of a car happens quickly and is typically forceful, so she may have injured her head when she was removed from the car. We asked whether he could have hit Z’s head with the baton when he was smashing the window, but he said he did not fully swing the baton and only struck the corner of the window.
24. The doctor who saw Z while she was in custody described ~~it~~ her head injury as a “*clean cut*”, which suggests it was caused by glass while being removed from the car rather than blunt force from a baton. Therefore, it is most likely that Z’s head injury occurred as the officers pulled her through the Toyota’s window.
25. Our conclusion is that the officers did not hit Z in the head or body while on the ground as there is insufficient evidence to support this allegation.

#### **What are the possible justifications for the officers’ use of force?**

26. The Crimes Act 1961 provides legal justification for using force in certain circumstances:
  - a) 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.
  - b) Section 40 empowers Police to use “*such force as may be necessary*” to prevent the escape of someone who takes to flight in order to avoid arrest.
  - c) Section 48 provides that any person is justified in using “*reasonable*” force in defence of themselves or another.
27. Officers A and B chose different justifications for the force they used to extract Z from the car. Officer A says he used force to overcome Z’s resistance to arrest under section 39, and Officer B says he used force to prevent Z from escaping arrest under section 40. In our assessment, section 39 is the appropriate potential justification for both officers, because Z was boxed in, and it was very unlikely she could escape.

#### **Were Officers A and B legally justified using force against Z under section 39 of the Crimes Act 1961?**

28. The law empowers Police to use “*such force as may be necessary*” to overcome any force used in resisting arrest or the execution of any sentence, warrant, or process. “*Necessary*” force in

this context is generally accepted as meaning “reasonable” and “proportionate to the degree of force being used to resist.”

29. Under section 39, the Authority must determine:

- whether the officer believed on reasonable grounds that the person was using force to resist arrest; and,
- If so, whether the degree of force used to overcome that resistance was proportionate and reasonable in the circumstances as the officer reasonably believed them to be (that is, whether the officer could reasonably have overcome the resistance and effected the arrest by using less force or some other method short of force, such as tactical communications).

*Did Officers A and B believe on reasonable grounds that Z was using force to resist arrest?*

30. Z had rammed Officer A’s car about three times and did not get out of the Toyota when asked to do so. Officer A says he used force as Z’s actions up until that point suggested he would have to use force against her to effect an arrest.

31. We accept that the officers had reasonable grounds to believe that Z was using the Toyota as a weapon to resist arrest.

*Was the use of force reasonable and proportionate?*

32. Officers A and B explained that they needed to act quickly and remove Z through the window because:

- The Toyota was still running and, considering Z’s ramming of the Police car, the officers did not feel safe going behind or in front of the Toyota to the passenger door.
- Officer B says he was unable to turn off the car as it was jumpstarted (there was no key), which is supported by photographs of the Toyota.
- The Toyota Aqua has the door lock located inside the car (near the handle), and Officer B did not want to put his hand in the door to try and unlock it while the Toyota was still turned on.
- The officers did not know the identity of the driver and the actions of Z suggested that she was motivated to avoid the Police (failing to stop for Officer B and ramming Officer A’s Police car multiple times).

33. We asked Officer A what other options were available to him, and he explained: “*given she was using deadly force, the options from there become fairly extreme fairly quickly.*” We asked whether he considered using road spikes (placing them behind the vehicle), and he explained that the carpark did not offer him cover which limited the element of surprise and therefore would have placed him at a high risk of being injured by the Toyota.

34. We asked if he could have continued to keep observations of the Toyota (instead of parking behind Ms Z), and if there was a need to apprehend Ms Z at that point. Officer A said he believed action was required because of the manner of Z's driving, the fact the vehicle was stolen and the increased risk to Police and the public if Z continued to drive the Toyota.
35. In our view, the force used by Officers A and B was reasonable, necessary and proportionate to the force Z used in resistance. Therefore, the officers' actions in response to Z's resistance were justified under section 39 of the Act.

## FINDING ON ISSUE 1

The officers' use of force against Z was justified.

## ISSUE 2: WAS Z'S CARE WHILE IN CUSTODY APPROPRIATE?

36. In this section we describe what happened while Z was in custody and assess whether Police complied with their policy for managing people in custody and their duty under section 23(5) of the New Zealand Bill of Rights Act 1990 to treat detainees with humanity and respect.

### What happened?

37. Z arrived at the Christchurch custody suite at about 2.54am, and Custody Officer C (who is female) searched her in the sally port. As Z had soiled herself, she was taken to the private search cell and provided with a change of clothes (which included sweatpants and a sanitary product<sup>3</sup>), toilet paper and a plastic bag. The cell had access to running water. Custody Officer C and another female officer waited outside the door while Z got changed.
38. Z was then moved to an observation cell. CCTV footage shows Z pacing around in the cell and appearing to be upset. Z later complained that she was denied a shower.
39. Z also said that Police officers used derogatory and demeaning terms such as "*poopy pants*" and were laughing at her because she had soiled herself. We asked all the officers who we interviewed about this, and they all denied this allegation. There is no other evidence to support this and therefore we are unable to make a finding on this part of Z's complaint.
40. Z says a doctor visited her; however, she declined the doctor's assistance to treat her head injury (which the doctor described as a "*2cm scalp laceration*"). The doctor was satisfied that the injury was ok to be left alone but advised Z to see a doctor upon her release. Police called the doctor again at about 8.59am as Z had a small amount of fresh blood at the wound site, but the doctor was not concerned about this.
41. Meanwhile, at about 5.24am Police visited Z's mother and advised her of Z's arrest. Z appeared in Christchurch Youth Court at 9.22am, where she was remanded in custody at Te Puna Wai o Tūhinapō Youth Facility.

---

<sup>3</sup> The custody unit did not stock underwear so provided Ms Z with a "*nappy style*" sanitary pad.

## Did Police comply with policy for managing people in custody?

42. We are satisfied that Police generally provided Z with appropriate care and complied with policy on medical treatment and notifying Z's parent of her arrest.
43. However, Police policy says that detainees who are held for less than 24 hours may be given the opportunity to shower if practicable. There is no information to suggest that offering Z a shower would have been impracticable during her time in custody, but Z's custody evaluation record completed by Officer C states: *"no has been given to all requests including hairbrush, shower, call to mum (mother has been contacted by O/C)"*.
44. We received conflicting accounts as to why Z was not given a shower. Z says when she asked for a shower, Police told her there were no shower facilities in the Custody Unit. Custody Officer C does not recall Z asking for a shower but told us that the discretion to give a detainee a shower sits with the Custody Supervisor.
45. Police provided the following explanation why Z was not allowed a shower, *"Z was a challenge to deal with and it was deemed safer to provide her with clean water and tissues in a cell to clean herself....the Custody Supervisor was uncomfortable to leave Z in the shower unit alone and out of the view of staff for safety reasons."*
46. The Custody Supervisor says he does not recall Z requesting a shower. However, if he had been approached with this request, he would have said no due to the risk Z posed to herself and Police. The Custody Supervisor says there needed to be an element of trust to have left Z on her own. When asked about Z's behaviour, the Custody Supervisor said he was subjected to a *"rain of abuse"* when he first approached Z in the sallyport, and she was upset, angry, abusive, belligerent and *"bordering on non-compliant"*.
47. However, there is no information in Z's evaluation or custody documentation which suggests she or Police would be at risk if she was given a shower. The custody evaluation describes Z's behaviour as *"nil concerns. Listens and follows instructions."* The CCTV footage also shows Z's behaviour was compliant and is supported by Custody Officer's C observations as she described Z's behaviour as *"probably frightened but she was calm and following my instructions"*. In addition, we find no difference in risk between Ms Z being alone in the search room to change and clean herself or being given the opportunity to shower.
48. Section 23(5) of the Bill of Rights Act 1990 says: *"Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person."* This is reflected in the 'New Zealand Bill of Rights' policy, which notes Police have a positive obligation to ensure people who are arrested to be treated with humanity and respect for the inherent dignity of the person.<sup>4</sup> Considering Z had defecated and urinated on herself, her time in Police custody (over 5 hours) and her vulnerability (due to her detention and age), our view is that by not allowing her to shower, Police breached the Manual (and also acted inconsistently with s23(5) of the Bill of Rights Act 1990).

---

<sup>4</sup> See the 'New Zealand Bill of Rights' policy at page 18.

## FINDING ON ISSUE 2

Police generally provided appropriate care to Z but should have given her an opportunity to shower.

### Subsequent Police Action

49. Police reviewed the incident. They found the force used in the arrest was justified and proportionate.
50. With respect to Z's treatment in custody, Police found:
  - Z's evaluation was not completed to the level required by Police. A professional conversation was had with Custody Officer C.
  - A shower should have been offered to Z. Police have addressed this by way of debrief/training session for the Custody Suite supervisors.
51. The Christchurch Custody Suite has also increased its stock of clean clothes (including now stocking underwear) and toiletries to ensure it can better meet the demands of the detainees.
52. The Authority agrees with the Police's subsequent actions.



**Judge Kenneth Johnston KC**

Chair  
Independent Police Conduct Authority

21 September 2023

IPCA: 22-14671

## Appendix

### ORANGA TAMARIKI ACT 1989

---

#### Power to arrest a child or young person without a warrant

53. Section 214(1) of the Oranga Tamariki Act 1989 says:

*“Subject to 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.”*

54. Section 214(2A) says:

*“Nothing in subsection (1) prevents a constable from arresting a child or young person without warrant under section 214A if the criteria in that section are met.”*

55. Section 214A says:

*“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 two or more previous occasions breached a condition of that bail (whether or not the same condition).”*

**Legal justifications for using force**

56. Section 39 of the Crimes Act 1961 says:

*“Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest, that justification or protection shall extend and apply to the use by him or her of such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner:*

*provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.”*

**NEW ZEALAND BILL OF RIGHTS ACT 1990**

---

**Rights of persons arrested or detained**

57. Section 23 of the Bill of Right Act 1990 says:

*“(1) Everyone who is arrested or who is detained under any enactment—*

*(a) shall be informed at the time of the arrest or detention of the reason for it; and*

*(b) shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and*

*(c) shall have the right to have the validity of the arrest or detention determined without delay by way of habeas corpus and to be released if the arrest or detention is not lawful.*

*(2) Everyone who is arrested for an offence has the right to be charged promptly or to be released.*

*(3) Everyone who is arrested for an offence and is not released shall be brought as soon as possible before a court or competent tribunal.*

*(4) Everyone who is—*

*(a) arrested; or*

*(b) detained under any enactment—*

*for any offence or suspected offence shall have the right to refrain from making any statement and to be informed of that right.*

*(5) Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.”*

## 'USE OF FORCE' POLICY

---

58. 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.
59. 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.
60. The overriding principle when applying TENR is that of "*safety is success*". Public and Police employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
61. The TENR risk assessment must balance the ongoing exposure to harm, with the current threat and the necessity to respond. This will determine the Police response.
62. 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)).
63. A key part of an officer's decision about 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.
64. 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 takes precedence, and every effort must be taken to minimise harm and maximise safety.
65. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

## 'PEOPLE IN POLICE CUSTODY' POLICY

---

66. Details the requirements on police staff with respect to procedures, and the responsibilities and duties of the custodial management with respect to detainees. Of relevance, the 'Hygiene' section of the policy states detainees held more than 24 hours should be given an opportunity to shower and change in fresh clothes. Detainees held for a lesser period "*may be offered these if practicable.*"

## 'NEW ZEALAND BILL OF RIGHTS' POLICY

---

67. Details the rights protected by the Bill of Rights Act 1990 and outlines Police obligations. Of relevance, the 'Rights of people arrested or detained' section of the policy states that Police have a positive obligation to ensure that all people who are arrested, detained or deprived of their liberty are treated with humanity and respect for the inherent dignity of the person.

---

## 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 Kenneth Johnston KC.

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. 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](http://www.ipca.govt.nz)

---