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# Use of Taser at the Hamilton District Court

## INTRODUCTION

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1. On 26 January 2017 Mr X appeared at the Hamilton District Court and was remanded in custody. He was placed in a cell in the custody block awaiting transfer to the Spring Hill Corrections Facility. Shortly after midday the Police and Corrections custodial staff began loading the prisoners from their cells to the prison truck located on the ground floor loading bay.
  2. As Mr X made his way from his cell and downstairs to the loading bay, a struggle ensued where he was forcibly restrained by Police and Corrections officers. When Mr X did not comply with instructions to stop struggling, the Police Custody Sergeant used a Taser to apply two contact stuns to Mr X, following which he was restrained in handcuffs.
  3. The Independent Police Conduct Authority was notified of the incident initially by Mr X's wife, on his behalf. Mr X later complained directly to the Authority alleging excess force as he made his way from the cell to the loading bay, including the use of the Taser. The Authority conducted an independent investigation and this report sets out the results of that investigation and the Authority's findings.
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## Index of Police staff

Officers	Roles/Comment
Officer A	Corrections Department Officer.
Officer B	Corrections Department Officer.
Officer C	Police Authorised Officer.
Officer D	Police Sergeant, Officer in Charge, Court Escort Section.
Officer E	Senior Corrections Officer.
Officer F	Police Authorised Officer.
Officer G	Officer D's immediate supervisor.
Officer H	Waikato Police Operations Manager (reviewing officer).

## BACKGROUND

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### Summary of events

4. On 26 January 2017, Mr X made an appearance at the Hamilton District Court and was remanded in custody. In accordance with standard practice he was held in a court cell in the custody block pending transfer to a prison truck and transporting to the Spring Hill Corrections Facility.
5. At the Hamilton District Court the process for transferring prisoners from their cell to the prison truck comprises an established procedure. This involves the prisoner walking from their cell along the cell block corridor to a security area where their identity is checked by the Police Custody Sergeant or the Senior Corrections Officer. The prisoner then walks down a stairwell to the loading bay and loaded onto the prison truck.
6. At about 2.50pm Mr X was taken from his cell by Corrections Officers A and B to be escorted to the prison truck. Police Authorised Officer C was also standing nearby. It was during this transfer that Mr X alleges he was punched in the stairwell; had his head "*smashed*" against a wall in the loading bay; was stood on by officers causing his ribs to break; and was tasered.
7. Officer A said when Mr X was released from his cell he was abusive and yelling expletives at staff and prisoners, throwing his arms in the air and generally behaving in a threatening manner. He said that when Mr X reached the security area where Police Custody Sergeant D and Senior Corrections Officer E were standing, he appeared to be "*out of control*", focused on the sergeant and moving "*into the sergeant's comfort space*".
8. Officer B described Mr X as abusive and yelling aggressively as he walked down the corridor, and said he "*looked like he was working himself up*". He said Mr X was getting louder and louder as he walked down the corridor.

9. Officer D, who was standing in the security area beside Officer E, said Mr X was yelling expletives as he walked towards him, describing him as *"puffed up, fists balled, and arms out in a 'ready' stance"*.
10. Officer D said that when Mr X reached him, he believed that either he or Officer E was going to be assaulted and he had no doubt that Mr X wanted to fight them. Officer D said he was so concerned that he decided to draw his Taser but hold it in a concealed position.
11. When interviewed by the Authority Mr X denied having his fists clenched or acting in the manner described, although he did acknowledge telling one of the officers to *"fuck off"*. He made reference to a *"fat Maori officer"* in the corridor who was aggressive towards him as he moved from the cell to the security area. However, none of the officers interviewed by the Authority can recall any officer present in the corridor and the Authority believes that Mr X is referring to Officer E (who is part Maori and was standing next to Officer D at the security area).
12. Officer E also described Mr X as aggressive and yelling abuse as he approached them at the security area. He said that Mr X was *"pumped up, in fight mode, with both fists clenched"*. He says when Mr X arrived in front of him he directed him to the stairwell but he did not comply.
13. Officer D, who had the Taser concealed in one hand, then took Mr X by the upper arm and pushed him towards the stairwell. He led Mr X down the three flights of stairs, followed by Officers E and C. He says that Mr X twice tried to lunge forward down the stairwell but was prevented from doing so by his grip. Officer D says Mr X was yelling out *"beat me up"* and this was later acknowledged by Mr X.
14. Mr X said that when he was led down the stairs he was punched by the 'Maori officer'. Again, the Authority believes Mr X is referring to Officer E who was walking behind Mr X in the stairwell.
15. At the bottom of the stairwell Mr X was led into the loading bay where he said the Maori officer *"smashed my head into the wall"*, causing him to become dizzy.
16. During its investigation the Authority interviewed Mr Y, a prisoner who was inside the prison truck in the loading bay. Through one of the truck windows, Mr Y witnessed the struggle in the loading bay, including Mr X being pushed up against the wall.
17. Mr Y said he heard Mr X yelling and swearing as he came down the stairwell. He said he looked out the truck window and saw Mr X having a *"confrontation"* with an officer who was *"trying to get him to behave"*. He said the officer then threw Mr X up against the wall and then three other officers assisted and dragged him to the ground.
18. When interviewed by the Authority, however, it was Officer D who acknowledged pushing Mr X up against the wall. He said he believed Mr X wanted to fight so he pushed and held him against the wall to control him until other officers came to assist. He denied pushing Mr X's head against the wall.

19. Officers A and B, who were still upstairs, heard the commotion in the loading bay and ran down the stairwell to assist. When they arrived they saw Officers D and E struggling with Mr X. Officer A said he saw Mr X throw two punches at Officer E, so he took Mr X's arm and assisted to restrain him. Officer C said he saw Mr X take a *"haymaker swing"* at one of the officers, so he assisted by taking hold of Mr X's upper body. Officer A described the struggle with Mr X as akin to *"wrestling with a bull"*.

#### *Taser contact stun*

20. Officer D was still holding the Taser, so he stepped back allowing the other officers to restrain Mr X while they were struggling against the wall. Officer D yelled for Mr X to be taken to the ground.
21. Mr X was taken to the ground initially on his back while the officers tried to handcuff him.<sup>1</sup> Officer A said he was amazed at Mr X's strength and said he was *"fighting like a bull"*. Officer C said Mr X's legs were kicking out and he was throwing punches.
22. At this point Officer D yelled a warning to Mr X, *"Taser for a contact stun"*. Officer D then immediately applied the Taser to the upper thigh of Mr X and activated the trigger. Seven seconds later Officer D yelled another warning to Mr X and applied a second contact to his upper thigh area. After this contact the officers turned Mr X onto his stomach and were able to put his hands behind his back and handcuff him.
23. Mr Y said he saw the officers struggling with Mr X who was resisting and trying to get the officers off him. He said he did not see any punches being thrown, nor did he see Mr X punching or kicking. He said he saw an officer taser Mr X during this struggle and then he was lifted to his feet.
24. The Authority also interviewed Officer F who was in the loading bay standing at the rear of the prison truck. Officer F said he heard the commotion in the stairwell then he peered around the side of the truck to see Mr X being restrained by the officers who were trying to get him to the ground. He said Mr X was swearing at the officers and not listening to their commands. He said the struggle continued when Mr X was on the ground but he was unable to see what Mr X was doing at the moment the Taser was used because of the officers struggling with him.
25. When Officer D completed his Tactical Options Report on the matter he reported that he believed Mr X was *"assaultive"* and *"ready to fight"* as he walked from his cell. He said that, when they arrived at the loading bay, Mr X was lashing out with his arms and feet and he feared he or one of the other officers was going to get kicked and hurt.
26. When interviewed by the Authority Officer D said he believed that an assault was imminent and there was a risk of serious harm to one of the officers. He said that despite the number of staff struggling with Mr X, he was still lashing out with his arms and feet.

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<sup>1</sup> It is Corrections policy that all prisoners are handcuffed before they are loaded onto the truck.

27. When asked about other options he could have taken, Officer D said he felt that the use of pepper spray was not appropriate in that close environment and other forms of physical restraint would have also required close contact with Mr X. He said he believed the contact stun was the best and most effective option, based on his assessment at the time.
28. In support of this assessment, Officer D relayed a similar incident that occurred in September 2016 in the court cell block where he and an Authorised Officer were struggling with a prisoner on the ground. The Authorised Officer was holding the prisoner's feet and was kicked in the face, rendering him unconscious. The Authority has confirmed the validity of that incident, and notes it was the catalyst for Officer D to be authorized to carry a Taser in the court cell complex.

### *Aftercare*

29. Mr X was returned to a cell and was seen soon after by an ambulance paramedic. He complained of a headache and discomfort to the left lower rib cage. A small scratch was observed by his left eye. He declined pain medication offered to him and was advised to follow up with an x-ray and further assessment if pain persisted. After the examination Mr X was escorted to the prison truck and transported to Spring Hill Corrections Facility.
30. Mr X was not seen by a registered medical practitioner as required by Police policy (see paragraph 60). When interviewed by the Authority Officer D confirmed that aftercare in this case was arranged by Officer E because Mr X was in the custody of the Corrections Department who had responsibility for him. He said that, by having Mr X examined by a paramedic, he believed that he had fulfilled both Police and Corrections obligations.

### *Taser camera footage*

31. During its investigation, the Authority analysed the video footage of the incident provided by the camera in Officer D's Taser (Taser Cam Footage). The Taser Cam began recording after Officer D activated it near the top of the stairwell in the security area. The recording lasted for 5.50 minutes from 14.56.38pm (2.56pm).
32. The footage commences in the stairwell as Mr X is being led downstairs to the loading bay. Only the officers' lower legs and boots are visible with a brief glimpse of Mr X's jangled foot. This passage down the stairwell is only of a few seconds duration but it is clear that Mr X is being quickly led down the stairs while he is heard to yell "*beat me up*" repeatedly.
33. When they reach the loading bay the footage again only shows the officers' lower legs and boots but it is clear they are having difficulty with Mr X. Officer D can be heard shouting "*on the ground, on the ground*".
34. The footage then shows Mr X on the ground on his back with officers above him attempting to restrain him. The officers are only visible from the waist down. Mr X's knees are bent upwards with his lower legs free. Only his lower legs are visible. No kicking is observed.

35. Officer D is then heard to shout, *“Taser for a contact stun”*, and he then applies a contact to Mr X’s upper left thigh. As the stun is applied, Officer D yells at Mr X, *“stop struggling, stop struggling or I’ll do it again”*. At this point the officers are still having difficulty in restraining Mr X. Again, only his lower legs are visible and they are not seen to be kicking.
36. Seven seconds later Officer D yells again at Mr X, *“Taser for a contact stun, stop struggling”*, and he applies a second contact to the upper thigh. He then instructs the officers to roll Mr X over so that he is on his stomach. The footage then shows Mr X on his stomach with Officer D shouting, *“give me your hands, do what you’re told and you won’t get hurt”*. Mr X is then handcuffed by the other officers and brought to his feet. Much of the remaining footage could be described as a calming period where one of the Corrections officers is instructing Mr X to settle down. The other officers remain close by until Mr X is led to a cell.
37. The event log generated by the Taser shows that the first Taser stun was arced for between one and two seconds (only whole seconds are recorded) which is consistent with the pulse logs relating to the event which show that Mr X received a shock of approximately 50 micro-coulombs over a period of 1.4 seconds.
38. It is clear, however, from both the event log and the footage generated by the camera that, despite Officer D’s belief, only the first stun generated any shock to Mr X. The second stun did not.
39. When advised of this, Officer D said he was not surprised as he suspected at the time that only one of the contacts had generated a shock. He said, though, that he believed it was the *first* contact that did not arc, hence the reason in part to apply the second stun.

#### *Post incident procedures*

40. Officer D completed a Tactical Options Report (TOR) as he is required to do.<sup>2</sup>
41. Officer G filled out the supervisor’s section of the TOR after viewing both the firing log and Taser Cam footage. He noted that only one contact stun was recorded on the firing log. He reported he had *“no issues”* with the discharge and noted that the Police and Corrections officers’ skills and drills seemed to *“meld together well in the circumstances”*.
42. Officer H, the TOR Reviewer,<sup>3</sup> viewed the Taser Cam footage and reviewed Officer D’s TOR. She stated that she was satisfied that Mr X was assaultive initially and that Officer D considered him to be assaultive at the time he applied the contact stun. She and Officer G later met with Officer D to discuss his Taser use and his assessment of the situation when he applied the contact stuns.

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<sup>2</sup> A Tactical Options Report is a report that an officer is required to complete 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.

<sup>3</sup> A senior officer, who is an inspector or above, must view the Taser cam footage after the supervisor and decide whether the use of the Taser was justified in accordance with policy. They enter their comments on the TOR after the first supervisor has done so.

## Mr X

43. Mr X was 42 years old at the time of this incident. He is of small to medium build.
44. Mr X was a remand prisoner when he appeared in court, having previously been remanded in custody on a charge of wounding with intent to cause grievous bodily harm. The fixture was a call-over day where the charge was upgraded to one of attempted murder. This is only relevant to the extent it is suggested as being a reason why Mr X was so angry when he left his cell.
45. Mr X is of Egyptian ethnicity. Although he speaks English he can be difficult to understand. He said he had a “*bad memory*” of the incident which made him “*shaky*” when he thought about it. The Authority however was able to capture the central issues of his complaint and has had regard of his memory and command of English during its investigation.

## LAWS AND POLICIES

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### Use of force by Police

#### *Legal provisions*

46. Section 39 of the Crimes Act 1961 provides for a Police officer 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.*”
47. Section 48 of the Crimes Act 1961 states: “*Everyone is justified in using, in 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.*”
48. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for excessive use of force.

#### *Police guidance on use of force*

49. The Police’s *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.
50. 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) operational threat assessment.

51. Police define TENR as:

- ‘Threat’ is about how serious the situation is (or could be), and the present or potential danger the situation, environment, or suspect presents to themselves, other members of the public or Police. Police must assess the threat posed by the suspect, based on all available information including what they see and hear, and what is known about the suspect.
- ‘Exposure’ is about the potential harm to Police employees, Police operations, Police reputation and to others. Exposure can be mitigated through assessment and planning.
- ‘Necessity’ is the assessment to determine if there is a need for the operation or intervention to proceed now, later or not at all.
- ‘Response’ means the proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.

52. The overriding principle when applying TENR is ‘safety is success’. 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.

53. An officer 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).

54. 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.

### *Use of Taser*

55. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is assaultive (defined as “*actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm*”) and cannot be used on a person who uses passive resistance in relation to Police.



56. Police policy expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance.
57. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the deployment of a Taser unless it is impractical or unsafe to do so. The warning relevant to the presentation of a Taser is *“Taser 50 000 volts”*. The warning relevant to a discharge or contact stun is *“Taser, Taser, Taser”*.
58. A ‘discharge’ is an *“application by firing two probes over a distance from an air cartridge attached to the Taser, or subsequent applications of electrical current via the probes, which are in contact with the subject after firing, in conjunction with a verbal warning”*. A ‘contact stun’ is *“activating the Taser with or without the air cartridge attached while the device is applied to the body of the subject, in conjunction with a verbal warning”*.
59. Police policy also states that subsequent applications and extended cycles of the Taser should be avoided, but where they are unavoidable must be reasonable, necessary and proportionate in the circumstances. The Taser policy further provides that supervisors must:
- attend the scene as soon as possible and ensure proper aftercare and any appropriate medical attention has been provided;
  - preserve and photograph the scene;
  - ensure that all evidence, including discharged cartridges, wires, probes and sufficient (4-5) cartridge identification tags (CIT) are recovered from the scene and secured appropriately;
  - determine whether the use of the Taser was in accordance with policy;
  - ensure the operator fills out the Taser register;
  - ensure the operator submits a TOR;
  - ensure the operator involved uploads the incident into Evidence.Com; and
  - informs the district Taser coordinator of the incident.
60. The Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is practicable. It also states that Mental Health patients are among those at greatest risk from any harmful effects of a Taser.

### *Tactical Options Report*

61. On the TOR form there is a requirement that the senior officer/inspector reviewing the use of the Taser must view the Taser Cam footage and firing log and note that they have done so in their comments.

## THE AUTHORITY'S FINDINGS

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62. The Authority's investigation considered the following issues: -
- 1) Was excessive force used on Mr X as he walked from his cell to the loading bay?
  - 2) Was Officer D's use of the Taser justified?
  - 3) Was appropriate medical care given to Mr X after he was tasered?
  - 4) Did Officer D's supervisors take appropriate action to review whether his use of the Taser was in accordance with policy?

### Issue 1: Was excessive force used on Mr X as he walked from his cell to the loading bay?

63. Sections 39 and 48 of the Crimes Act 1961 provide legal justification for Police to use reasonable force to arrest an offender and in defence of themselves or another.
64. The Authority has investigated four areas where force is acknowledged by the officers or alleged by Mr X, prior to him being tasered.
65. The first is at the security area located at the end of the corridor before the stairwell. It is here that Officer D describes Mr X as non-compliant and *"ready to fight"*. Officer D said that when Mr X refused to comply with a direction to walk to the stairwell he took him by the upper arm and *"lifted to get him onto the balls of his feet"*. Officer D said *"I did that really quickly.....and pushed him towards the stairs"*.
66. Mr X did not describe or complain specifically about this application of force. However, the Authority is satisfied that it was not excessive and was reasonable in the circumstances as a means of propelling Mr X to the stairwell and loading bay.
67. The second is Mr X's allegation that he was punched as he was descending the stairwell.
68. It is clear that Mr X was led down the stairwell by Officer D who was firmly holding his upper arm. Officer D was followed by Officer E, who was followed a short distance behind by Officer C.
69. The Authority when inspecting the cell block noted the stairwell to be quite narrow, allowing only single file.
70. Mr X says he was punched in the stairwell by the Maori officer. Again, the Authority believes Mr X is referring to Officer E.
71. When interviewed by the Authority, Officers C, D and E denied punching Mr X. The Taser Cam Footage does not assist, as it only shows the lower legs of the officers and Mr X as they descend the stairs.

72. The paramedic that attended to Mr X did not note any injury or bruising to Mr X, other than the scratch near his eye.
73. The Authority is therefore unable to substantiate the allegation that Mr X was punched in the stairwell.
74. The third area is in the loading bay where Mr X alleges that the Maori officer “*smashed*” his head against the wall.
75. There is no dispute that Mr X was pushed up against the concrete wall when he entered the loading bay. This is acknowledged by Officer D who still had hold of Mr X after descending the stairwell. Officer D denied hitting Mr X’s head against the wall. He said the push “*wasn’t gentle*” but did not cause Mr X’s head to hit the wall or cause injury. Officer D is not Maori or part Maori and the Authority believes Mr X is again mistaken.
76. The Authority notes that Mr Y witnessed Mr X being pushed up against the wall but did not see his head hit the wall.
77. The paramedic who later attended Mr X in the court cell did not note any injury consistent with Mr X’s head being smashed against a wall, although he recorded that Mr X did complain of having a headache.
78. The Authority accepts that Mr X was pushed up against the wall by Officer D but finds that his head was not smashed against the wall as alleged.
79. The fourth area is the allegation that all the officers stood on Mr X’s back and broke his ribs.
80. When Mr X was seen by the paramedic, he complained of having pain to his lower rib, although no injury or bruising was noted (the paramedic, in his subsequent report, referenced Mr X’s *left* side rib). After examining Mr X the paramedic advised the Corrections officers of the possibility that Mr X could have a fractured rib, but an X-Ray would be required to confirm this.
81. Mr X continued to complain to prison medical staff about pain to his abdomen and on 3 March 2017 an X-Ray revealed he had a fracture of the *right 7<sup>th</sup>* rib. When the paramedic was advised of this result, he acknowledged the possibility that his report may have incorrectly referred to Mr X’s left side.
82. The Taser Cam footage of the struggle while Mr X is on the ground shows him on his stomach after being tasered. The footage shows a Police officer’s boot on top of Mr X’s upper legs, holding him to the floor. The officer is not standing on Mr X with his full weight. His boot is resting there, restraining Mr X to the floor. The footage continues to record Mr X’s back as he is handcuffed and brought to his feet.

83. On the basis of the Taser Cam footage, the Authority considers on the balance of probabilities that the fracture to Mr X's rib was caused during the struggle with the officers. However, it is not able to conclude that this resulted from the application of excessive force.

## FINDINGS

The force used on Mr X at the security area was reasonable under the circumstances.

Due to conflicting accounts, the Authority is unable to substantiate the allegation that Mr X was punched in the stairwell.

Officer D did not smash Mr X's head against the loading bay wall.

One Police Officer did use his foot to restrain the top of Mr X's legs to hold him down, but not with his full weight.

The officers did not stand on Mr X's back and break his ribs. The Authority is satisfied that the fracture to Mr X's rib was caused during the struggle with the officers but was not the result of the application of excessive force.

## Issue 2: Was Officer D's use of the Taser justified?

84. The principle governing the use of a Taser and the training received by officers is summarised above in paragraphs 55 - 60.
85. The Authority notes that Officer D drew his Taser and held it in a concealed position at an early stage while Mr X was at the security area. Officer D told the Authority he did this because he was certain that Mr X was going to "have a go" and there was going to be a fight.
86. It is clear that immediately preceding the Taser contact stun there was a brief but significant struggle with Mr X against the concrete wall in the loading bay during which Mr X was taken to the ground. By this stage Officer D had withdrawn from the struggle, allowing the other officers to subdue Mr X.
87. From the Taser Cam Footage and the officer interviews it would appear that Officers A, C and E were engaged in the struggle with Mr X while Officer D stood nearby recording with the Taser camera, shouting instructions for Mr X to stop struggling.
88. Officer A described Mr X on the ground as "extremely strong" and "fighting the whole time....like wrestling with a bull". Officer C said Mr X's legs were "kicking out and he was throwing punches" while Officer E said Mr X "just kept fighting and wouldn't give up".
89. The Taser Cam footage records a time span of approximately 30 seconds from the time Mr X reached the loading bay to the time of the first contact stun. Whilst it is not possible to precisely gauge from the footage, it appears this consists of approximately 15 seconds of struggling with Mr X against the wall, and the other 15 seconds struggling on the ground.

90. The footage confirms that Officer D yelled a warning to Mr X before applying both contact stuns. The Authority notes that the warnings were given immediately before the stuns were applied.
91. The footage does not show the top half of Mr X's body until *after* he is Tasered. There is no footage therefore of the movement of his arms. Nor does the footage show Mr X kicking with his legs immediately preceding or after the first contact stun and before the second, although his legs are seen to be unrestrained and free. What is clear is that the officers are having difficulty in restraining Mr X and, because the footage is restricted to his lower legs, much of the wider activity is obscured from Taser Cam view.
92. When interviewed, Mr Y said he saw Mr X taken to the ground and the officers struggling to restrain him before he was stunned. Mr Y said he did not see any punches being thrown, nor did he see Mr X punching or kicking out.
93. When Officer D was interviewed by the Authority, he said he considered Mr X to be assaultive at the time he applied the contact stun. He said he believed Mr X needed to be controlled to avoid someone being kicked and assaulted. This view was shared by the other officers interviewed by the Authority. Officer D said he held the same belief when he applied the second contact stun seven seconds later.
94. When asked about other tactical options that could have been used, Officer D said he considered using OC Spray to subdue Mr X, but considered this problematic in a cell block area. The Authority agrees with this assessment.
95. Officer D said he also considered other close contact options but they posed the same risk of injury that the officers were already facing. For this reason Officer D said he chose to contact stun Mr X, not to make him comply, but to stop him from being assaultive.
96. When the other officers were asked about this issue, and specifically why their collective manpower did not restrain Mr X, they acknowledged that they could have continued to struggle with Mr X until he was subdued, but said this would have prolonged the risk of injury to everyone involved.
97. The Authority accepts that Mr X was non-compliant and actively resisting attempts to be restrained in the loading bay. However, the Authority is satisfied on the evidence that he was not assaultive at the time he was tasered. The Authority is of the view Mr X could and should have been restrained by the officers who were struggling with him, without the need to apply a contact stun.

## FINDINGS

Mr X was not assaultive at the time Officer D applied both contact stuns.

Officer D's use of the Taser to contact stun Mr X twice was contrary to policy and unjustified.

### Issue 3: Was appropriate medical care given to Mr X after he was tasered?

98. As previously stated, the Police policy on aftercare requires a person who has been exposed to the application of a Taser to be examined by a registered medical doctor as soon as practicable.
99. On this occasion Corrections took responsibility to arrange aftercare for Mr X as he was in their custody and was to be transferred to a Corrections facility. When interviewed, Officer D said he believed that the aftercare arranged by Corrections met the obligations of both departments.
100. Although this course of action was not in accordance with Police policy, the Authority does not see this as a material breach under the circumstances.

#### FINDING

Mr X received appropriate medical care after he was tasered.

### Issue 4: Did Officer D's supervisors take appropriate action to review whether his use of the Taser was in accordance with policy?

101. The Taser policy requires a supervisor and an Inspector to determine whether the use of the Taser was in accordance with policy.
102. Officer G is Officer D's immediate supervisor and he reviewed Officer D's TOR and Taser Cam footage. He also ensured that the supervisory requirements, as they relate to a contact stun, were completed. He recorded that he had "no issues" with Officer D's use of the Taser.
103. Officer H, a Police Inspector, reviewed Officer D's TOR and Taser Cam footage. After the review Officer H sought to clarify the circumstances and Officer D's PCA at the time he used the Taser. She also referred the matter to the District Taser Assurance Panel for an opinion on whether policy was complied with.
104. This was followed by a meeting held by Officers G and H with Officer D to clarify Mr X's behaviour and Officer D's PCA at the time of the contact stun. Officer D reiterated to his supervisors that he believed Mr X to be assaultive and he feared for his safety and the officers around him.
105. Officer H confirmed for the Authority the previous incident in 2016 (para 28) where one of Officer D's staff was concussed after being kicked in the face while struggling with a prisoner on the ground. The Authority notes Officer D's reference to this when he was assessing the risk posed by Mr X.

106. Officer H confirmed that Officer D was Taser trained and was approved to carry a Taser in the court cells due to the high risk environment. She advised that this was the second time Officer D had contact stunned a prisoner in the court cells and therefore considered it prudent to meet with him to ensure compliance with policy and to discuss tactical options in the situation that presented.
107. As a result of this process Officer H reported she was satisfied that Officer D was justified in using the Taser based on his PCA at the time.

#### FINDING

The Authority finds that Officer D's supervisors took appropriate action to review whether Officer D's use of the Taser was in accordance with policy.

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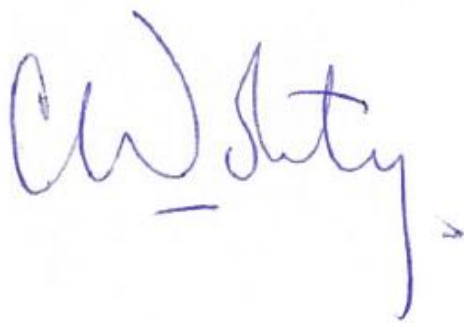
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## CONCLUSIONS

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108. The Authority has determined that:

- 1) The force used on Mr X at the security area was reasonable in the circumstances.
- 2) Due to conflicting accounts, the Authority is unable to substantiate the allegation that Mr X was punched in the stairwell.
- 3) The Authority finds that Mr X did not have his head “*smashed*” against the loading bay wall.
- 4) One Police officer did use his foot to restrain Mr X’s legs to hold him down, but not with his full weight.
- 5) The officers did not stand on Mr X’s back and break his ribs. The Authority is satisfied that the fracture to Mr X’s rib was caused during the struggle with the officers but was not the result of the application of excessive force.
- 6) Mr X was not assaultive at the time Officer D applied both contact stuns.
- 7) Officer D’s use of the Taser to contact stun Mr X twice was contrary to policy and unjustified.
- 8) Mr X received appropriate medical care after he was tasered.
- 9) Officer D’s supervisors took appropriate action to review whether Officer D’s use of the Taser was in accordance with policy.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

12 September 2017

**IPCA: 16-1518**







## ABOUT THE AUTHORITY

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### 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?

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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.



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