

Loss of consciousness in Christchurch custody suite

Summary of the Incident

1. On 24 November 2019, Mr X was arrested for wilfully damaging property. He was held in the Custody Suite within the Christchurch Justice and Emergency Services Precinct ("the custody suite") to appear in court the next day. Mr X was well known to Police and Corrections Officers. He had a history of mental illness, substance abuse, violence, and attempts to self-harm.
2. While in custody, Mr X attempted to eat the lid of a food container and plastic utensils. He defecated on his bed, then for the remaining time in Police custody voluntarily alternated between being naked and in his dirty gown.
3. The following morning, 25 November, Mr X kicked an officer in the head. Later that afternoon, while being prepared for transport to prison, Corrections and Police officers used a Perspex shield to restrain him. Mr X was then taken to the ground while a waist restraint was put on him. During this time Mr X lost consciousness.
4. Officers applied first aid. Mr X regained consciousness before paramedics arrived and was taken to hospital.
5. Police notified the Authority of the incident due to Mr X losing consciousness while being restrained. During our investigation we interviewed Police officers and viewed the transcripts of the Corrections officers. Mr X did not wish to engage with the Authority. Corrections conducted its own investigation.

Issues examined by the Authority

Issue 1: Was the force used to restrain Mr X justified and reasonable?

Issue 2: Did Police provide Mr X with timely and appropriate medical care?

Issue 3: Was Mr X appropriately cared for while in Police custody?

Issue 4: Who has responsibility for remand prisoners in the custody suite?

The Authority's Findings

6. The Authority found:

- 1) the use of the waist restraint was necessary and reasonable;
- 2) it was reasonable for officers to use the shield to restrain Mr X, however, the procedure used was poorly executed;
- 3) the use of force used to restrain Mr X on the ground was reasonable;
- 4) officers provided Mr X with timely and appropriate medical care;
- 5) officers should have upheld Mr X's dignity by covering the lower half of his body when his gown was cut off him;
- 6) Mr X should not have been left in an unhygienic gown and cell;
- 7) the plastic eating utensils should have been removed from Mr X's cell;
- 8) officers were unsure who was in charge when Mr X was extracted from his cell; and
- 9) Police and Corrections officers at the custody suite do not have a clear understanding of who has responsibility for a remanded prisoner while in the custody suite.

Analysis of the Issues

7. Records on the Police database used to evaluate Mr X when he was taken into custody show he:

- was known to have mental illnesses, including schizophrenia, and was an outpatient of a mental health service;
- was "*not on meds*" and was presenting as being mentally unwell;
- was known to be addicted to drugs and alcohol, and Police did not know if he had recently consumed any alcohol or drugs;
- was behaving in an "*irrational*" and "*agitated*" manner;
- had a history of aggressive behaviour towards himself and others, with 'flags' for assaults against Police staff and family violence;¹ and
- had made previous attempts and threats to commit suicide.

¹ A Police safety alert on its database flags important information about the potential risks that an offender may pose to the Police officers he or she has contact with.

ISSUE 1: WAS THE FORCE USED TO RESTRAIN MR X JUSTIFIED AND REASONABLE?

8. At about 2.20pm on 25 November, Mr X (who is 6 feet tall and of a solid build) was being brought back to his cell after his court appearance, where he had been remanded into custody. He attempted to kick an authorised officer, so Authorised Officer A and Officer B pulled him onto the ground in a controlled manner.² Mr X then kicked Officer B on the side of his head.
9. When Mr X was being put back in his cell, an officer noticed he had a broken piece of plastic utensil in his mouth. This had to be forcibly removed by officers.
10. Shortly after 4pm, Authorised Officer A, Officers B and C, and Corrections Officers D, E and F, attempted to take Mr X out of his cell to be transported to prison.

Was the decision to use the waist restraint necessary and reasonable?



Waist Restraint

11. Authorised Officer A told the Corrections officers that Mr X had assaulted staff earlier and the Corrections officers made the decision to use the waist restraint. Senior Corrections Officer D says Corrections have dealt with Mr X several times and usually a waist restraint is used to prevent him harming himself.
12. Section 39 of the Crimes Act 1961 and section 83 of the Corrections Act 2004 allow for Police officers and Corrections officers respectively to use reasonable force in dealing with prisoners who are being resistive.³ Officers may not use more force than is necessary.
13. Police Policy, allows officers to use a waist restraint if a person is potentially violent and handcuffs would not be effective on their own.⁴
14. It was reasonable for Police officers to agree to use a waist restraint while Mr X was being moved as he had assaulted staff earlier that day. The faeces on his hands also created a health risk to staff.

² Authorised officers are non-sworn Police employees who have responsibility for managing the health, safety and secure custody of detainees. Other officers mentioned in this report are sworn Police officers or Corrections officers.

³ See paragraphs 81 to 84 for relevant law and paragraphs 92 to 96 for relevant policy about force.

⁴ See paragraphs 87 to 89 for relevant policy on waist restraints.

Was the use of the shield necessary and reasonable?

15. Authorised Officer A says the initial plan, which Correction's outlined to them, involved getting Mr X on his knees with his ankles crossed and hands on his head, which would enable them to place the waist restraint on him.
16. Corrections Officer D spoke to Mr X through the cell door flap, in the presence of both Authorised Officer A and Officer B. He asked him to wash the faeces off his hands and arm, which Mr X did. When Mr X came back to the door, Corrections Officer D told him they were going to take him to prison. Corrections Officer D told Mr X he was going to be placed in a waist restraint and asked him if he was going to fight them. In response, Mr X clenched his wrists and raised them up, punching his fists towards the window. He then walked to the opposite side of the cell before jumping back towards the door, making punching actions towards the officers with both fists.
17. Authorised Officer A and Officer B both considered Mr X to be 'assaultive' at this point due to the earlier incident where he kicked Officer B, and because of the way he was showing his fists at the officers.⁵ Officer B says Mr X "*appeared to be looking for an opportunity to fight with staff.*"
18. The training provided to Christchurch Police custody staff says generally a non-compliant or aggressive prisoner should remain where they are until they are more compliant, unless there are safety or danger issues with them remaining in the cell. There is no indication that officers considered doing this, but it would have been logistically difficult as the Corrections team transport several prisoners to the prison at the same time.
19. Corrections Officer F says he asked the Custody Sergeant, Officer H, if Police could use their pepper spray.⁶ Officer H refused as they already had one contaminated cell and did not want to contaminate another. Officer H told us pepper spray was not a feasible option as it did not meet the "*extraordinary circumstances*" required to use pepper spray in a confined space.
20. Authorised Officer A and Officer B assessed the risk Mr X posed. Factors they considered included that Mr X:
 - was not responding positively to Corrections Officer D's attempts to communicate;
 - indicated he intended to resist and assault staff by raising his fists at them;
 - had the capability of assaulting staff "*as he is fit and healthy and of a considerable size and temperament*";
 - was well-known to most of the officers as he was frequently detained in the cells. They knew him to be unpredictable and to have a propensity for violence and psychotic behaviour (evident on CCTV);

⁵ According to Police policy, 'assaultive' means someone who displays intent to cause harm, through body language or physical action.

⁶ Police carry pepper spray in the custody suite, but Corrections officers do not.

- was known to have “*an incredibly high pain tolerance*”, and had showed no reaction to normal pain compliance methods earlier in the day; and
 - had soiled his gown and hands with his own faeces, creating a health risk for the officers transporting him.
21. Authorised Officer A recalls discussing Mr X’s demeanour with the Corrections officers and says he suggested they use a shield.



The shield was a 1200mm rectangular polycarbonate interlocking “Enforcer” shield.

22. Authorised Officer A says he retrieved the shield as “*... it was agreed that the shield was an option*”. However, Corrections Officer D says he was not keen on using the shield as they get in the way and he personally believes it was not needed. He says Corrections officers train differently to Police and he would have preferred to just have one officer on each of Mr X’s arms:

“I said I don’t really want the shield, I’ve dealt with [Mr X] lots of times and moved him when he’s been in this sort of... way, and didn’t really want it but when we opened the door, [Police] had the shield there at the side.... ”

23. Authorised Officer A was the only officer present who was trained in using a shield to extract prisoners from cells, although we were advised that the use of a shield is a trained technique for custody staff.
24. The only planning amongst the officers before entering the cell with the shield appears to have been assigning roles; the Corrections officers were instructed to hold Mr X’s arms and Officer B was told to place pressure on Authorised Officer A’s back, supporting him as he held the shield.
25. Corrections Officer D instructed Mr X to kneel, facing the rear wall of the cell, which he did. Authorised Officer A stood off to the side while the Corrections officers made the first attempt to enter the cell. As the door was opened, Mr X raised one leg and turned towards the officers, as if he was going to get up. They pulled the door back, so it was almost closed. Mr X stayed in the corner, facing the wall, but did not kneel properly again, as instructed.

26. When the first attempt to enter the cell was unsuccessful, Authorised Officer A positioned himself to enter the cell.
27. Mr X stood up as Authorised Officer A entered the cell, holding the shield in front of him. Mr X was pushed into the corner, facing the shield, with it against his chest. Authorised Officer A says it was not ideal that Mr X was positioned in the corner.
28. Corrections Officers D and E attempted to each hold one of Mr X's wrists in a wristlock, and Officer B stood behind Authorised Officer A placing extra force on the shield.
29. In his tactical options report, Authorised Officer A says: "*During this time I was instructing [Mr X] to drop to his knees and stop resisting and I continued to apply pressure with the shield....*" Having reviewed the CCTV footage, it is apparent it would have been very difficult, and perhaps physically impossible, for Mr X to comply with these instructions while being restrained with the shield.
30. Officers say Mr X tried to bite Authorised Officer A. Shortly afterwards, Mr X managed to grab a large handful of Authorised Officer A's hair before his hand was pried free. The officers then pushed the shield harder into Mr X's body while they tried to restrain and handcuff his hands. Corrections Officer D says he ensured the shield "... never touched [Mr X's] throat or anything else like that. The area that it was pushed on was between [Mr X's] thighs and his chest."
31. Officer C approached the cell and saw what was happening. He recalls one of the Corrections officers suggesting they use pepper spray to subdue Mr X but he did not believe this would be suitable as the other officers were so close to Mr X and would be affected too.
32. Officer C sought the advice of Officer H. Officer H suggested he cuff Mr X's exposed hand and use a 'bottle top' manoeuvre.⁷ Officer C believed this was the best solution as it would enable him to control Mr X while the officers involved in extracting Mr X discussed what to do next.
33. Officer C says when he placed the cuff on Mr X's hand and applied the bottle top pressure, he could tell it was not going to have any effect as Mr X did not flinch or change his posture as expected.
34. The officers reassessed the situation and decided to take Mr X to the ground. They quickly decided how they would do this, then Authorised Officer A backed away from Mr X and the shield was taken out of the cell. Mr X had been restrained by the shield for about two minutes and 40 seconds.

⁷ 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.

35. There is no specific Police policy about the use of a shield when extracting a prisoner from a cell. However, the officers adhered to the local procedures and training provided in the custody suite.⁸
36. The Senior Sergeant who provided the outline of the training regime and procedures for extracting prisoners from cells in Canterbury says, in his opinion, when a level of force is required:

“... it is far more desirable for the prisoner and staff for the shield to be used than not. It is a broad, flat, smooth surface which distributes the pressure over a wide area. I also believe there is a far greater chance of injury if the shield is not used. It is also extremely effective at preventing the transfer of bodily fluids.”
37. It was reasonable for officers to use the shield to initially restrain Mr X. Given Mr X was resisting the officer's orders, they needed to establish a way of safely approaching and restraining him in order to put on the waist restraint. The shield was a lesser use of force than other options such as pepper spray or a Taser.
38. However, we consider the extraction was poorly executed. The extraction involved the use of three tactical options - the shield, handcuffs and the waist restraint, however it appears the officers had not considered the difficulty in applying these options and the transition between them. With Mr X pinned against the wall behind the shield, it was difficult to bring him under control and manoeuvre him into a position where the handcuffs and waist restraint could be put on him. More time should have been taken to plan Mr X's extraction from the cell and consideration given to leaving him in the custody suite until he was more compliant.

Did officers use necessary and reasonable force when restraining Mr X on the ground?

39. After Authorised Officer A withdrew with the shield, Officer C held Mr X's left arm while Corrections Officer D locked his arms around Mr X from behind and spun him around. Corrections Officer D then pulled Mr X down onto the ground with the assistance of other officers. Officers rolled Mr X over so he ended up lying on his stomach, face-down.
40. As Mr X was pulled to the ground, Corrections Officer D's legs got caught underneath him. It is difficult to establish the exact position of Corrections Officer D's legs in relation to Mr X's body using CCTV footage. The accounts of officers indicate his legs were lying diagonally underneath Mr X, across the lower part of his chest and down towards Mr X's legs.
41. Officer B restrained Mr X's legs and placed cable ties on them. Corrections Officer E tried to put the waist restraint on Mr X from his left side, and Corrections Officer F held his head. Officer C recalls Corrections Officer E struggled to put the waist restraint belt on Mr X as Corrections Officer D's legs were in the way.

⁸ See paragraphs 107 to 115 for procedures for cell extractions in the Custody Suite within the Christchurch Justice and Emergency Services Precinct.

42. Corrections Officer F held Mr X's head to try to stop him from hitting his face into the concrete floor. He turned Mr X's head around to make sure he could breathe and was not going to swallow his tongue.
43. Officer C and Corrections Officer F noticed Mr X urinating while on the ground.
44. Officer C says: "... standing on my own feet I continued to hold [Mr X's] hand in the wrist lock and placed my knee on his thigh or knee to lock his leg in position." Footage showed him leaning over Mr X, using the wall to lean on, which appears to be taking most of his weight.
45. Corrections Officer D managed to get his legs out from under Mr X after about two minutes. Mr X was restrained on the ground for a total of almost three minutes. Due to the position of the CCTV camera it is unclear at what point Mr X lost consciousness,⁹ and none of the officers were able to say when this occurred.
46. Having reviewed the footage of Mr X being restrained on the ground, the officers' use of force was reasonable under the circumstances. There is no obvious indication any officer restrained Mr X in a way which would have caused him to struggle to breathe and Corrections Officer F consciously held his head in an appropriate position to prevent this from happening.

Loss of consciousness

47. After Corrections Officer D managed to pull his legs out from underneath Mr X, Officer C noticed Mr X's head and ear looked purple. He recalls saying, "Is he alright? He looks a bit purple". Officer C says he could feel Mr X was providing no resistance to the wrist lock and he was mindful that positional asphyxia is a risk if someone is on their stomach for a prolonged period of time.¹⁰ He recalls a Corrections officer responded that Mr X was "fine", but is unsure who this was. It is likely this was Corrections Officer F who was by Mr X's head.
48. Officer C says about 30 seconds later, officers tried to place Mr X's left hand into a handcuff, but it was under his upper left side of his body. When his hand was pulled out, it was limp. Officer C again asked "Is he alright? He looks purple" and the Corrections officers again said Mr X was fine.
49. Authorised Officer A checked Mr X's pulse in his neck and could not find one, and Mr X was not breathing. At this point the officers all released Mr X and he was pulled out of the cell to create space to apply first aid.
50. Officers say they stopped restraining Mr X as soon as they became aware he was changing colour, indicating something was wrong. CCTV footage shows this occurred about one minute after Corrections Officer D managed to get his legs free from underneath Mr X.
51. The exact cause of Mr X losing consciousness is undetermined. Corrections officers said Mr X was known to hold his breath to make himself lose consciousness, but the Police officers and

⁹ The angle of the camera shows the backs of the officers, but Mr X is not visible lying on the ground.

¹⁰ See paragraphs 90 and 91 for relevant policy about positional asphyxia.

Correction officers could not say whether this was the case in this particular incident. A medical report from the Christchurch Hospital Emergency Department said a possible explanation for Mr X's loss of consciousness is that he had low blood pressure or he fainted, which can happen following a physical struggle, and that this caused a "*weak and difficult to detect pulse*" which could easily have been mistaken as an absent pulse.

FINDINGS ON ISSUE 1

The use of the waist restraint was necessary and reasonable.

It was reasonable for officers to use the shield to restrain Mr X, however, the procedure used was poorly executed.

The use of force used to restrain Mr X on the ground was reasonable.

ISSUE 2: DID POLICE PROVIDE MR X WITH TIMELY AND APPROPRIATE MEDICAL CARE?

52. Authorised Officer A called out to custody staff that they needed first aid. An ambulance was called, and Authorised Officer G, who has advanced training in first aid, came to assist. Authorised Officer A says: "*I removed [Mr X] from the cell and began to place him in the recovery position. He took a rasping breath and 10 seconds later, another one.*"
53. The defibrillator arrived within 20 seconds of Mr X being pulled into the corridor. Officers prepared to begin CPR but did not need to as Mr X began breathing again. Authorised Officer A described Mr X's breathing as intermittent and raspy. Mr X's gown was cut off, down the centre, to give access to his chest.
54. Paramedics arrived less than five minutes after Mr X was brought out of the cell.
55. We are satisfied Police provided timely and appropriate medical care to Mr X.

Did officers consider Mr X's dignity?

56. Officers C and B pulled Mr X's gown down three times to cover his genitals, as it was short and rode up while he was lying in the corridor receiving first aid. However, when his gown was cut off him, his genitals were exposed for about 14 minutes before he was covered and placed on a stretcher. Authorised Officer A asked for the cell windows to be fogged so other prisoners could not see Mr X.¹¹
57. Section 23 of the New Zealand 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.*"
58. Although we appreciate the officers were primarily focused on providing Mr X with medical treatment, the lower half of his body should have been covered rather than leaving him exposed.

¹¹ The cell windows have glass that can be switched to be either clear or opaque ('fogged').

FINDINGS ON ISSUE 2

Officers provided Mr X with timely and appropriate medical care.

Officers should have upheld Mr X's dignity by covering the lower half of his body when his gown was cut off him.

ISSUE 3: WAS MR X APPROPRIATELY CARED FOR WHILE IN POLICE CUSTODY?

59. Shortly after Mr X was taken into custody, he was placed in a tear-resistant gown. He was evaluated and placed in a cell on frequent monitoring, being checked five times an hour at irregular intervals.

Mr X's hygiene

60. At 2.32pm on Sunday, 24 November Mr X soiled himself while lying on his bed. His gown, the mattress, and the basin by Mr X's water fountain all became contaminated with faeces. Mr X ate some of his dinner when it arrived at about 6.30pm, and it appears he contaminated it with faeces shortly afterwards before continuing to eat it.
61. Mr X was not showered and did not receive a clean gown. He remained in the unclean cell until 2.30pm the following day.
62. Officers tell us prisoners are not always moved to a clean cell, if their own is messy or soiled, due to the shortage of cells when there are a number of prisoners in the custody suite.
63. Neither custody sergeant could recall being told Mr X had soiled himself. Officer I, who was the Custody Sergeant during the early shift before the incident, says Mr X soils himself regularly when in custody, however he could not specifically remember him doing so on this occasion. He says moving Mr X from his cell is high-risk to officers as he is unpredictable and can be assaultive and it is also unpleasant for staff when he is covered in excrement. He says there is also no guarantee Mr X will not soil a new cell, if moved. Officers will often attempt to shower prisoners and provide a change of clothing; however, they must weigh up the risk of doing this.
64. Authorised Officer G was one of a number of officers in the custody team who would have conducted checks on Mr X. She says she was very aware he had made "*quite a mess in the cell*". However, as Mr X kept taking off his gown, she did not consider it was appropriate for her to be checking him every time so asked "*the boys*" if they could "*to try and give him a little bit of dignity as well*".
65. In accordance with the New Zealand Bill of Rights Act 1990 (see paragraph 57), officers should not have left Mr X unclean for such a long period of time. It created a hygiene risk for Mr X and all staff who were dealing with him. Mr X showed a lack of ability to make sound decisions around his own hygiene, so officers had a duty of care to assist as much as possible. A plan should have been made to clean his cell. He should also have been showered, but if that was not feasible, at least given a clean gown.

Meal implements in Mr X's cell

66. Mr X's meal container and utensils from Sunday's dinner remained in Mr X's cell until he was moved into a new cell, at 2.30pm the following day. His Monday morning breakfast packaging also remained in his cell until this time. Over this time he ate part of the container lid and used the utensils for a variety of purposes: banging them on the bed, pretending to stab his neck, sticking a handle up his nose, making cutting motions on his wrist, and breaking the utensils into pieces and putting them in his mouth.
67. Officer I says meal utensils are usually removed from a cell and they should have been taken from Mr X's cell if it could be done safely. Officer I said he should have been notified if staff could not remove them, but he could not recall if he was.
68. Officer J, the acting Officer in Charge of the custody suite, first became aware of the state of the cell when Mr X was returned to it after his court appearance. This is when officers also removed a piece of utensil from his mouth. Officer J instructed Mr X be moved to a clean cell. He also says his expectation is that items that create a risk to the prisoner are removed from cells and he is unsure why this was not done.
69. Mr X had a history of self-harming and showed the intent to do so with the utensils. They should have been removed from his cell.

Overall

70. Officers are required to record everything that happens in relation to a detainee on the electronic system.¹² Comments recorded relating to Mr X included that he was moving around his cell, sleeping, visibly breathing, and that meals were given to him. There were no comments recorded relating to his hygiene or that he was eating his meal container and utensils and using them to indicate he may self-harm.
71. Other than Authorised Officer G's comment in paragraph 64, it is unclear why officers in the custody team who conducted checks, or the Custody Sergeants, did not address the issue of Mr X's unclean gown and cell earlier. The faeces and utensils would have been visible during physical checks of Mr X and on the CCTV cameras as part of his monitoring.
72. Officers have a duty to ensure prisoners are cared for and reasonable steps are taken to protect them from injury.¹³
73. Although Mr X presented a risk to officers, he was a vulnerable person in their care, therefore they should have cleaned him and his cell.

FINDINGS ON ISSUE 3

Mr X should not have been left in an unhygienic gown and cell.

The plastic eating utensils should have been removed from Mr X's cell.

¹² See paragraphs 97 to 101 for policy relating to caring for people in detention.

¹³ See paragraphs 85 and 86 for relevant law.

ISSUE 4: WHO HAS RESPONSIBILITY FOR REMAND PRISONERS IN THE CUSTODY SUITE?

Who was in charge of the extraction of Mr X from his cell?

74. During our investigation it became apparent that the Corrections officers and the Police officers were unsure exactly who was in charge of the extraction.
75. In his initial report about the incident, Officer J wrote:

"Whilst I am aware [Mr X] was effectively in the custody of Corrections at this time, it was appropriate for Police to assist with the extraction and use the equipment Police are familiar with rather than have Corrections use it... Should any incident occur in the custody suite regardless of who custody the prisoner is in, Police will [be] the answerable agency."

Who is in charge of a prisoner who is remanded into Corrections custody?

76. The Ministry of Justice, Department of Corrections and Police all jointly use the custody suite. The facility is primarily managed by Police, however there are functions carried out within it that are the responsibility of Corrections. Police have overall responsibility for the health and safety of the custody suite detainees,¹⁴ though Corrections are legally responsible for remand prisoners.
77. The Police and Corrections officers spoken to were uncertain about when and how responsibility shifts when a prisoner is remanded from Police to Corrections custody - whether this occurs the moment of the court decision, when the 'paperwork' is completed, or only when the prisoner is moved for transporting to the Corrections facility.
78. The Custody Suite Operations Plan does not specifically address this issue. There is nothing in the Operations Plan that addresses responsibility for internal prisoner movements within and between the custody suite and the courts, and when prisoners are moved from their cell for transport to prison. This was evident, for example, by Authorised Officer A and Officer D's differing views about the use of the shield to extract Mr X from the cell.
79. There needs to be an agreement between Corrections and Police, clarifying responsibilities for remand prisoners throughout their detention in the custody suite. Failure to do so could potentially lead to liability issues.

FINDINGS ON ISSUE 4

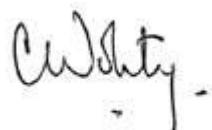
Officers were unsure who was in charge when Mr X was extracted from his cell.

Police and Corrections officers at the custody suite do not have a clear understanding of who has responsibility for a remanded prisoner while in the custody suite.

¹⁴ See paragraphs 102 to 106 for further information regarding how the Custody Suite is organised.

Recommendations

80. We recommend that Police review the Custody Suite Operations Plan with Corrections and Ministry of Justice to clearly state at which point each agency is responsible for remanded prisoners and ensure staff have an understanding of this.

A handwritten signature in black ink that appears to read "Colin Doherty".

Judge Colin Doherty

Chair
Independent Police Conduct Authority

26 November 2020

IPCA: 19-1555

Appendix – Laws and Policies

LAW

Law on use of force

81. 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.*”

Corrections Act 2004

82. Section 83 of the Corrections Act 2004 allows for officers to use physical force when dealing with a prisoner if they have “*reasonable grounds for believing that the use of physical force is reasonably necessary*”. The physical force used must not be more than is reasonably necessary in the circumstances.
83. Force may only be used:
- in self-defence, defence of another person or to protect the prisoner from injury;
 - if a prisoner is attempting to escape or has escaped; or
 - to prevent a prisoner from damaging property; or
 - “*in the case of active or passive resistance to a lawful order*”.

Crimes Act 1961

84. Under section 62 of the Crimes Act 1961 anyone who is authorised by law to use force is criminally responsible for any excessive use of force.
85. Section 151 of the Act states that everyone with “*actual care or charge*” of a vulnerable adult, who is unable to provide himself or herself with “*necessaries*” is under a legal duty to provide that person with necessities, and to take reasonable steps to protect that person from injury.
86. The Act defines a ‘vulnerable person’ as “*a person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person.*” All detainees are, therefore, vulnerable people under the Act. The Act also defines ‘necessaries’ as the basic requirements of life, such as food, water and adequate warmth.

POLICY

'Mechanical restraints' policy

87. A waist restraint belt can be used in conjunction with handcuffs if a person is violent or potentially violent and the use of handcuffs on their own would be ineffective or inappropriate. A person in a waist restraint must be frequently monitored.
88. Officers must be trained in using the waist restraint. They should notify a supervisor whenever a waist restraint is used, however their authority is not required.
89. When putting on a waist restraint, officers must understand their role. They must conduct a risk assessment to "*assist in deciding whether it is necessary (or not) to apply mechanical restraints*" and reassess the risk frequently during and after the waist restraint has been used.

Positional asphyxia

90. A person has an increased risk of asphyxiation if their legs and wrists are restrained. "*Positional asphyxia is a clear and material risk and the person must be kept under constant monitoring and never allowed to lie face down.*" This is especially so if a waist restraint belt and ankle restraint belt are linked by plastic ties.
91. Policy states that:

"Positional asphyxia arises when a restrained person is unable to obtain sufficient oxygen to meet physiological requirements. This is likely to occur as a result of a number of risk factors, such as:

- *Increased oxygen requirement in a highly stressed or agitated person*
- *Pressure on abdomen and chest will restrict the mechanics of breathing*
- *Restriction of the airway (facial covering or pressed against a surface)*
- *Alcohol or drugs may inhibit respiration...."*

'Use of force' policy

92. 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.
93. 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.

94. 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)).
95. 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.
96. 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.

'People in Police detention' policy

97. Policy says:

"Police employees are responsible for the safety of themselves and others, and also the care and security of everyone detained including at scenes, during transport, within Police stations and cells at courts."

Meals and hygiene

98. Detainees who are held for more than 24 hours should be given the opportunity to shower and change into fresh clothes. Detainees held for less than this may be offered a shower if practicable.
99. Adequate cleaning must be carried out.

Monitoring

100. When checking a detainee, they can be observed through the window. If their well-being cannot be confirmed, a verbal check should be done. If well-being still cannot be established, and if there is no response, a physical check must be conducted. It is not sufficient to use CCTV to carry out checks.

101. Officers must record any risk information, special care instructions, “*and everything that happens in relation to a detainee, from processing to release*” in the Electronic Custody Module.

THE CUSTODY SUITE WITHIN THE CHRISTCHURCH JUSTICE AND EMERGENCY SERVICES PRECINCT

102. The custody suite is located on the ground floor of the Christchurch Justice and Emergency Services Precinct building, which opened in September 2017. It has 30 cells and seven holding cells/day rooms and has the capacity to hold 57 prisoners in the 30 cells. It accommodates male and female prisoners, youths and adults.
103. The custody suite accommodates and manages people who have been detained or arrested by Police, remanded into custody by the courts, or brought into custody from prison to attend court hearings.
104. The Police, Ministry of Justice, and the Department of Corrections all have joint responsibility for the Custodial Suite, however it is primarily managed by Police. Any person who is in Police custody is overseen by Police staff. Corrections only oversee people who are in their custody.
105. Police have a senior sergeant as the Officer in Charge of the custody suite (a sergeant was acting in this role during this incident) and the day to day shift management is undertaken by the Police Custody Sergeant.
106. The acting Officer in Charge during this incident explained to us that three teams operate during the day; two Police teams, and one Corrections team. Each team has different responsibilities:
- The Police custody team consists of the Custody Sergeant and about four Police staff. Their responsibilities include processing prisoners and conducting checks.
 - The Police Court Escort team consists of a Sergeant and about 12 Police staff, who are responsible for moving prisoners to different areas, such as to the District Court and to booths to see their lawyers or use the phone. They sometimes assist Corrections in moving prisoners for transporting.
 - The Corrections team are responsible for transporting prisoners between prison and the custody suite and taking them to the High Court.

Training and procedures for extracting prisoners from the custody suite cells

107. There is no Manual of Instruction regarding using a shield to extract prisoners from cells. The tactic has evolved over time with input from Corrections staff and lessons from the Australian public order tactics. A number of Canterbury Police Support Unit (PSU) staff have completed the New South Wales Public Order Instructors Course and some of the tactics learned have been adapted to be used locally. PSU officers have traditionally trained general duties staff and recently, Authorised officers, in cell extraction tactics. The PSU can be called in to provide support for the Police custodial team in extracting violent prisoners from cells.

108. All newly graduated staff receive one-off training in their induction week. Authorised officers also receive some training on a more ad-hoc basis. The issue of positional asphyxia has recently been specifically included as part of training staff.
109. Officers should assess the risk of extracting the prisoner before and during the extraction. (see paragraphs 93 to 95) When assessing the level of threat the prisoner poses, officers should consider the prisoner's intent, capability and opportunity in the given environment.
110. Police Policy states:

"Staff are instructed that unless there are safety or danger issues in relation to a non-compliant or aggressive prisoner remaining in a cell then generally the prisoner should remain where they are until they are more compliant."
111. Communication should always be the first tactical option used, and should continue throughout the extraction process, if practical.
112. An extraction team should consist of four officers. The lead officer holds the Enforcer shield (1200mm rectangular polycarbonate interlocking shield) when entering the cell. Two other officers stand one of each side of the lead officer, by their shoulder. The lead officer is also the communicator. They should tell the prisoner to move to the back of the cell and face the rear wall with their arms outstretched against the wall, palms facing to their rear.
113. The extraction team should approach the prisoner slowly, then use the shield to sandwich the prisoner against the wall. The two officers by the lead officer's shoulders should secure the arms of the prisoner once he or she is against the cell wall. The fourth officer comes in last, supporting and helping the lead officer to balance once the prisoner has been secured against the wall. Ideally, a prisoner should remain on their feet during this process.
114. If a prisoner needs to be searched when moved to a new cell, they are taken to ground in a controlled manner, protecting the head and neck and preventing a "face plant".
115. Ideally, the Custody Supervisor oversees extractions and ensures the officers are constantly reassessing the situation to ensure the level of force being used is appropriate.

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.



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