IPCA
Independent Police Conduct Authority
Mana Whanonga Pirihimana Motuhake

# Unconscious man in Manukau cell

## Summary of the Incident

1. At about 11.30am on 15 September 2019 Police received three phone calls reporting that a man, Mr X, was shouting and swearing at an address in Manurewa and was possibly assaulting his partner. They were told the man was drunk and smashing his head against a wall. Two officers attended and spoke to Mr X's partner, Ms Y, who said Mr X had been drinking then something made him *"flip"*.

2. The officers located Mr X about 25 metres down the driveway. He appeared to be asleep and was snoring loudly. Mr X had injuries to his face and was initially unresponsive so the officers requested an ambulance. Once woken, he became aggressive and uncooperative. Mr X was placed in handcuffs and attempted to self-harm, banging his head on a fence. Officers learned he was possibly under the influence of drugs.

3. Mr X was initially arrested for disorderly behaviour, then for possession of cannabis after a small amount was found on him when he was searched.

4. Officers were told there would be an extensive delay in an ambulance attending so decided to take Mr X directly to the custody unit at Manukau Police Station. While being assisted to the prisoner transport truck, Mr X fell to the ground and hit his head on the concrete driveway.

5. Once at the custody unit, Mr X was left in the prisoner transport truck cell for 44 minutes while a decision was made whether he should be taken to the hospital or received into the custody unit. He was eventually placed in a custody unit cell and seen by a Police doctor over an hour later.

6. The doctor said Mr X needed to go to hospital. It took 56 minutes before Police came to take him there. Overall, Mr X drifted in and out of consciousness for almost three hours in custody before officers took him to hospital.

7. Mr X remained in the Intensive Care Unit overnight and was released the following day. He has no recollection of his dealings with the Police during this incident.

8. Police notified the Authority and conducted their own investigation. We conducted an independent investigation regarding why Mr X was not taken directly to hospital given his state of health.

## Issues examined by the Authority

**Issue 1:** Was the initial Police response and decision-making appropriate?

**Issue 2:** Was Mr X treated appropriately when he arrived at the Police Station and should he have been accepted into the custody unit?

**Issue 3:** Did officers manage Mr X appropriately while he was in the custody unit?

## The Authority's Findings

9. The Authority found that:

1) officers had grounds to arrest Mr X but his health and wellbeing should have taken precedence and he should have been transported directly to hospital;

2) it was unacceptable to keep Mr X in the prisoner transport truck cell for 44 minutes at the Manukau Police Station. He should have been taken directly to hospital;

3) Officer F should have exercised his authority and instructed officers to take Mr X directly to hospital, without debate;

4) Officer E should have accepted Officer F's decision;

5) the Authority is unable to determine whether Officer G's decision was appropriate because of the conflicting accounts provided by Officers E, F and G;

6) Officer F should have ensured the ECM entry accurately reflected Mr X's condition;

7) officers should have placed Mr X in the recovery position in the cell; and

8) the delay in transporting Mr X to hospital following the doctor's assessment was unreasonable.

## Analysis of the Issues

### ISSUE 1: WAS THE INITIAL POLICE RESPONSE AND DECISION-MAKING APPROPRIATE?

10. Officers A and B arrived at the address at about 11.55am. Mr X was lying on his back near the bottom of the concrete driveway, which was about 30 metres long and sloped downwards. He appeared to be sleeping and was snoring loudly. Mr X had blood around his nose and mouth area. Officer A says he appeared to have cut his nose and maybe had dried blood coming from

his nostrils and his nose appeared to be swollen. She recalls he may have had a cut to the back of his head but that it was not bad enough to require immediate first aid.

11. Northern Communications Centre (NorthComms) contacted the ambulance, advising Mr X was drunk, had smashed his head against a wall, and his nose was split open. They were told there would be significant delays as there were no free ambulance units.

12. Records show at 11:58am, the ambulance service was told: "*male snoring currently*". They considered this a 'red flag' so asked for the officers at the scene to call the ambulance clinical desk urgently on an 0800 number that they supplied.[1]

13. Officer A says she was unaware of what the 0800 number was and did not call it, and Officer B cannot recall why the phone call was not made.

14. Officer A says she thought Mr X's loud snoring indicated that he was breathing and had clear airways. Officer B also believed snoring was a good sign as it meant Mr X was breathing and just asleep. The 'People in Police Detention' policy states: "*Loud snoring is a sign the person is deeply unconscious."*[2]

15. The officers prodded Mr X's arms, telling him to wake up. After several unsuccessful attempts, they eventually managed to wake him. Officer A says Mr X appeared to want to go back to sleep and not be interrupted by the officers. They asked Mr X if he was okay but he did not respond. Officer B recalls Mr X was initially "*drowsy or confused*".

16. The officers sat Mr X upright to try to talk to him and assess his facial injuries. Officer B says there was only a small amount of blood and he did not believe it required a bandage or stitches.

17. Mr X's speech was slurred and his eyes were very bloodshot. He found it hard to keep his eyes open. Officer A says Mr X:

> *"… was incoherent and grunting and unable to sit up on his own. His behaviour was erratic and his mood would change very quickly. [Mr X] would not remain still and would yell and swear and not cooperate or converse with Police. [Mr X] was wet as a result of lying on the wet ground and would unintentionally spit while he tried to speak."*

18. Officer B considered Mr X to be assaultive.[3] His behaviour was "*extremely uncooperative, aggressive, incoherent and erratic."* He would suddenly change from being passive to being aggressive.

[1] The 0800 number given to the officers was a 'clinical desk' answered by paramedics who provide an assessment of a patient over the phone. It is only available to emergency services.
[2] See paragraph 115 to 117 for relevant policy.
[3] 'Assaultive' in the Tactical Options Framework (a training and operational tool that assists constables to appropriately decide when, how, and at what level to use a tactical option) includes someone who displays intent to cause harm, through body language/physical action.

19. Officer B placed Mr X in handcuffs which enabled them to have more control over Mr X, in case he attempted to harm himself, the officers, or others.[4] (Mr X's partner and two of his young children were present.)

20. Officer B assisted Mr X to his feet. Mr X had difficulty standing and kept falling over, so he was helped onto a bench where he could sit upright, using the fence as support. Officer B stayed with him on the bench to assist Mr X with balancing. Officer B says Mr X's mood continued to be very erratic:

> *"He would be cooperative and sit patiently for a short while, and then he would suddenly become aggressive and shout at me, telling me to 'fuck off' and other swear words. He would attempt to stand up and move towards me in an aggressive stance."*

21. Mr X kept trying to swing his head around, attempting to hit his head on the fence, so officers restrained him to stop him injuring himself further.

22. Mr X's father-in-law, Mr Z, arrived around this time and helped to restrain him. Mr Z says Mr X: "*…would yell and scream and try to get up and other times he would be lucid enough to recognise me and also follow Police instructions to remain seated."*

23. Given the ambulance delay, Officer A requested the prisoner transport truck come to transport Mr X. Due to Mr X's erratic behaviour, she believed it would not be safe to transport Mr X in their patrol car. The truck was also preferable as Mr X was wet from lying on the ground and had blood and mucus on him. At 12:05pm the ambulance service was advised they were not needed as Police would take Mr X to the Manukau Police Station.

24. Mr Z told the officers Mr X has possibly taken the drug known as 'WAZ' or GHB. WAZ is a street name for gamma-hydroxybutyrate (GHB). GHB is most commonly known in New Zealand as fantasy or liquid ecstasy. It is a central nervous system depressant and can cause unconsciousness, respiratory failure and death if taken in high doses.[5]

25. Officer A says she did not know very much about GHB, except that it is "*quite a lethal drug".* Officers also learned that Mr X had drunk a full one litre bottle of spirits (which was later discovered to be whisky).

26. Officer B says he considered whether Mr X's behaviour could be due to him banging his head but believed it was more likely to be related to the drugs and alcohol he had consumed as Mr X "*didn't come across to me as someone who had hit his head very hard and damaged his brain."* Officer A also thought this was the case.

27. Officers C and D arrived with the prisoner transport truck and assisted Officer B in walking Mr X up the driveway. Officer B recalls Mr X was *"a little bit drowsy and confused"* at this point. He

[4] Mr X required two sets of handcuffs due to his size.
[5] See paragraph 118 for information about GHB.

was very reluctant to go with the officers and swore, refused to move, and attempted to pull away from them.

28. While walking, Mr X's legs gave way and he fell, hitting his forehead on the ground. Officer B was only able to slow Mr X down as he fell. Mr Z recalls:

> *"[Mr X] was a dead weight, sort of walking albeit reluctantly and not fully cooperating with the officers, and about a quarter of the way up, he slipped out of their grip and fell to the concrete hitting his head face on... I don't think he would have felt the fall at the time and it wasn't the officers' fault."*

29. Mr X was not alert enough to "*spring back up*" but was swearing. He did not allow the officers to have a close look at the injury to assess it but Officer B says there was a little bit of blood coming from his head as a result of the fall, which he did not believe needed bandaging. Officer C says the fall did not seem to affect Mr X's immediate behaviour based on what he had seen of Mr X since he was sitting by the fence.

30. Officer D stood in front of Mr X and wrapped his arms around Mr X's head, holding it against his chest, to stop him thrashing his head around and hurting himself or others.

31. Officers conducted a rub-down search on Mr X during which a small amount of cannabis was found on Mr X.

32. About half an hour after Officers B and A had first arrived at the address, Mr X was put into a small, single cell in the prisoner transport truck and taken to the custody unit.

### Were there grounds to arrest Mr X?

33. Mr X was arrested for disorderly behaviour under section 3 of the Summary Offences Act 1981 as he was deemed to be within view of a public place and was violent, or likely to cause violence. Although Mr X was down a long driveway, away from the street, it could be argued he was in view of the public as two of the phone calls to Police had been from neighbours and if a member of the public had come to the top of the driveway, they would have seen him.

34. Mr X was also arrested for possession of cannabis under the Misuse of Drugs Act 1975.

35. The officers had legal grounds to arrest Mr X.

### Was it appropriate to take Mr X to the Police Station rather than straight to hospital?

*Officers A and B*

36. Officer A says she believed Mr X posed a high risk to himself and hospital staff and she was not confident that her and Officer B would be able to sufficiently restrain him there as he was of a "*very large build*" and uncooperative. She also believed the custody unit was a safer environment for him as it was more secure and controlled.

37. Officer B says Mr X was awake and responsive at the time they decided to take him to the Police Station custody unit rather than to Middlemore Hospital. He believed the custody unit was a safe, controlled environment where Mr X could be monitored and assessed by the Police doctor whereas he would pose a risk to himself, Police officers, and members of the public at the hospital. He says there was no guarantee that Mr X would have been sedated or that he would be seen immediately at the hospital as Police detainees do not receive priority treatment. Officer B says:

> *"By taking him to hospital one staff member would have been required to stay in the patrol vehicle alone with [Mr X] while the other went in and organised hospital staff, exposing all staff and [Mr X] to additional risk."*

38. Officers A and B should have rung the 0800 number. If they had done so, a paramedic would have provided an assessment over the phone, which may have led to earlier medical intervention for Mr X. At the very least, the officers should have enquired about its purpose after being instructed to ring it urgently. They also could have rung the hospital or a senior officer for advice.

### *Officers C and D*

39. Officers C and D were told to transport "*a highly intoxicated male*" who had been smashing himself against a fence as it was not safe for him to be placed in the back of a patrol car. Officers A and B were busy dealing with Mr X when they arrived, so Officers C and D were not given a briefing and did not know what had occurred before they arrived.

40. Officer C says no-one told him Mr X was believed to have taken GHB however he thought this was possible based on Mr X's behaviour. He thought the Police station was: "*…probably a safer place for him to be dealt with and ambulance staff can always meet us there where he's in a secure environment with the availability of more staff."* Officer C believed the single cell of the prisoner transport truck was a safe place for Mr X as his movements would be restricted and he would remain in a seated position which would prevent positional asphyxia.[6]

41. Officer D, who was driving the prisoner transport truck, says his main focus was to get Mr X away from the address. He recalls hearing there was a possibility Mr X had used GHB once they were on the way to the custody unit. He believed that, given the way Mr X was presenting, it was best to take him to the custody unit where he could be securely watched and not pose a danger to ambulance staff and members of the public. He believed, based on previous experience, that the paramedics would refuse to transport Mr X because of his behaviour. He was under the impression the paramedics were going to the Police station to assess Mr X there.

### *Officer E*

42. An acting Sergeant (Officer E) arrived at the address at about 12:20pm, when Mr X was already in the prisoner transport truck. She did not personally assess him. She could hear Mr X banging on the walls of the truck so believed he was responsive and coherent.

[6] Positional asphyxia occurs when a person's position prevents them from breathing adequately.

43. Officer A briefed Officer E, explaining that:

- Mr X appeared to be asleep when they arrived at the property and they woke him up;
- Mr X's behaviour became more and more erratic and his mood was up and down, going from being calm to aggressive towards the officers;
- Mr X was believed to be under the influence of GHB, (which Officer E did not have much knowledge of);
- Mr X had been arrested for disorderly behaviour and was going to be transported to Manukau Police Station to be dealt with and assessed by ambulance staff;
- a small amount of cannabis had been found on Mr X; and
- while walking to the truck Mr X had fallen over and hit his head but that the blood on his nose and mouth had been present when they first arrived at the scene.

44. Officer E does not recall Officer A telling her that Mr X had been snoring when they arrived.

45. Based on the briefing Officer A gave her and her observations of Mr X in the prisoner transport truck, Officer E did not believe Mr X needed to be immediately taken to hospital. She does not recall considering that Mr X's behaviour may be a result of his head injuries. She thought he could be taken to the Police station, seen by their medical professional, and a decision could be made then whether to take him to hospital. She also had concerns about the risk Mr X would pose with only two staff available to try to control him at the hospital.

46. Officer A says she told Officer E at the scene that she had been asked to ring the 0800 number but had not done so as she did not know what it was for. However, Officer E only recalls becoming aware of the 0800 number request when she saw the job text on her mobile phone once back at the custody unit.

*Was the officers' decision making appropriate?*

47. Police have a legal obligation to take reasonable steps to ensure anyone in their care is provided with necessities and protected from harm.[7]

48. The 'People in Police Detention' policy states that if a detainee is partially responsive: "*Treat this as a medical emergency and arrange for the person to be taken to hospital"*. It says if they are unresponsive:

> *"This is a medical emergency and immediate hospitalisation is required. If you expect a delay in the ambulance's arrival or the persons' condition calls for immediate action, use a Police vehicle."*

49. Policy also says Police employees need to be aware that intoxication can mask other conditions and to be aware of the risks posed by the mixture of alcohol, drugs, and medical issues.

[7] See paragraphs 109 to 114 and relevant law and policy.

50. The officers prioritised physical safety over Mr X's medical safety. They should have taken Mr X directly to hospital as:

- he had been snoring loudly and did not initially respond to several attempts to wake him when officers first arrived at the property;
- he had consumed a large amount of alcohol and appeared intoxicated;
- he had most likely consumed GHB;
- he was behaving erratically;
- he had injured himself by hitting his head against his house wall and attempted to bang his head on the fence;
- he had dropped to the ground, hitting his head on concrete; and
- his level of responsiveness and consciousness kept changing.

51. The officers say they believed a Police doctor would assess Mr X at the custody unit, however no-one appears to have arranged for this to happen at this point. Records show the ambulance was stood down at about 12.05pm and was not asked to go to the custody suite until about 12.41pm. The Police doctor was not asked to see Mr X until after this time (see paragraph 65). Therefore, there was about half an hour where no medical assessment was organised.

### FINDING ON ISSUE 1

Officers had grounds to arrest Mr X but his health and wellbeing should have taken precedence and he should have been transported directly to hospital.

## ISSUE 2: WAS MR X TREATED APPROPRIATELY WHEN HE ARRIVED AT THE POLICE STATION AND SHOULD HE HAVE BEEN ACCEPTED INTO THE CUSTODY UNIT?

52. Mr X was constantly monitored through a live-feed camera during the 10-minute drive to the custody unit. The prisoner transport truck arrived at the custody unit at 12.37pm and parked in the secure garage where Police unload detainees (the 'sally port').

**Was it reasonable for Mr X to be kept in the cell in the prisoner transport truck prior to being received into custody?**

53. Officer C says when he opened the door to Mr X's cell he appeared to be asleep and was muttering to himself.

54. Records show at 12:41pm a dispatcher asked for an ambulance to attend the custody unit to see a "*male involved in domestic split nose or something with blood*". The information provided to the ambulance service was inadequate. If they had been given more details, Mr X may have received greater priority.

55. Officer E arrived at the Police station and advised Officer F (the officer in charge of the custody unit) that Mr X was believed to be under the influence of drugs and needed to be assessed by ambulance staff due to his facial injuries, drug-induced state, and erratic behaviour. She explained the ambulance had been called to come to the Police station but was significantly delayed.

56. Officer E told Officer F she wanted Mr X to be issued with a Public Safety Order so he could not immediately return to the address where Ms Y and their children were.[8] She made the decision that the issue of Mr X's possession of cannabis would be dealt with by way of an Iwi Community Panel, with Mr X receiving a pre charge warning.

57. Officer F assessed Mr X in the truck and found Mr X "*wasn't responding to anything*". He was "*asleep or unconscious"* and did not wake when shaken or told to wake up. Officer F noticed a lump on Mr X's forehead "*that had been bleeding a lot"* and that he had vomited on the front of his shirt. He was unaware Mr X had been found snoring and had been unresponsive earlier at the property. Officer F says:

> *"I spent approximately 2 minutes in the truck assessing him and felt there was a great risk to his health if he was left in Police custody. He had a head injury, he wasn't responsive, we weren't sure what amount of drugs or alcohol he had consumed, and by him being aggressive to staff on the street and then unresponsive in the sally port."*[9]

58. Officer F believed Mr X should be taken to hospital to get medical assistance and should not be admitted to the custody unit as "*he shouldn't be in a cell in the condition he was in*". Officer F was aware Police only have basic first aid equipment and training and do not have the appropriate medical facilities to monitor and treat people in Mr X's state. He told staff he did not want Mr X taken out of the truck as he was in the best position to be assessed by ambulance staff, who he believed were on their way to the custody unit.

59. Officer F says he believes detainees are not in his care until they have been received into the custody unit. He says: *"In this instance, I told the constables to keep observations on [Mr X], and even though he was in the sally port he was still under their care."*

60. Mr X remained handcuffed in the cell truck for about 44 minutes at the custody unit. He was sitting upright and his cell door was left partially open to allow for adequate air flow. He was constantly monitored by Officer B.

61. Officer B says he kept Mr X handcuffed as he believed Mr X was assaultive. Even though Mr X was behaving in a "*much calmer manner, he would suddenly become very aggressive*", threatening to fight him and swearing and shouting abuse at him. Officer F also believed it was safer for staff if Mr X remained handcuffed.

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[8] A Police Safety Order (PSO) is issued by Police when they have reasonable grounds to believe that family violence has occurred or may occur. During the length of the PSO, the served person cannot assault, harass, threaten, stalk or intimidate the protected person, or go near any land or building that they occupy. A PSO can last for up to five days.

[9] A sally port is secure drive-in entrance area.

62. Officer B considered Mr X's level of consciousness to be "*drowsy or confused"* as he was still able to respond to his communication. Officer B says:

> *"At times [Mr X] would remain quiet however I never had any concerns that he was unconscious or was having a medical event. When I spoke to him he would respond, albeit if it was by simply making a noise or grunt... I do not believe that throughout this time, [Mr X] was either asleep or unconscious."*

63. Officer C says Mr X appeared *"heavily intoxicated and in and out of responsiveness*" while he remained in the truck. Officer A recalls Mr X was asleep.

64. Officer B says he considered taking Mr X out of the truck and placing him in the recovery position, however decided this was not a suitable option due to the possibility he would become aggressive. He thought the truck was the safest place for him as he was in a good position, leaning against the truck walls, and he was not a risk to anyone while there.

65. While waiting for the ambulance to arrive, Officer F processed other prisoners. During this time, the on-call doctor was asked to come to the custody unit to attend to an injured prisoner. The doctor advised he would be at the custody unit in about 45 minutes.

66. When Officer E told Officer F that the ambulance was delayed he again became concerned for Mr X's wellbeing and repeated that he did not want Mr X to be taken into the custody unit because of his condition. As the officer in charge of the unit at the time, Officer F ultimately had the authority to make decisions about whether or not he would accept Mr X into the custody unit.

67. Officer F's direction to take Mr X to the hospital, rather than admitting him into the custody unit, was well-founded based on the information he had available to him and his personal assessment. He should have instructed officers to take Mr X directly to hospital for the reasons stated in paragraph 50 and because it was also now known that Mr X had vomited.

*Discussions with the District Command Centre Senior Sergeant, Officer G*

*First meeting: Between Officer E and Officer G*

68. Officer E disagreed with Officer F's view that Mr X should be taken to hospital rather than taken into the custody unit. At 12.50pm she went to state her case for keeping Mr X in custody to Officer G, who was her supervisor for that shift. Her decision to challenge Officer F's direction was unreasonable as he had the authority to decide who was accepted into the custody unit and had made a decision that was in line with policy and prioritised the well-being of Mr X.

69. Officer E says she explained to Officer G that:

- multiple calls had been received regarding Mr X's behaviour which included reports he had been heard beating a female and had banged his head on the side of his house, splitting his nose. Callers had said Mr X appeared to be under the influence of drugs and had heard Mr X screaming, yelling, and swearing;

- Mr X was asleep when officers first arrived and had become verbally abusive and aggressive towards staff when woken. His behaviour was erratic and his mood was unstable;
- she believed that if Mr X were taken to Middlemore Hospital he would pose a risk to himself, hospital staff and patients, and Police staff;
- she believed it was preferable for Mr X to remain in the controlled environment of the custody unit where he would present less of a risk to others if his behaviour escalated;
- if Mr X were assessed by ambulance staff then taken to the hospital, he could be sedated so his behaviour would no longer pose a risk; and
- the ambulance was not expected to arrive for some time.

70. Officer E did not tell Officer G that Mr X had consumed alcohol or was suspected of consuming GBH.

71. Officer G does not recall Officer E telling him about Mr X's head injury or that he had lost consciousness. He just recalls being told that Mr X "*kept nodding off".*

72. From what Officer E told Officer G, his understanding was that Mr X was asleep and behaved violently when awake. Consequently, he told Officer E to receive Mr X into the custody unit and monitor him. He said to call a Police doctor to assess Mr X if the ambulance was going to be delayed for too long.

73. Very soon after this first meeting, Officer E told Officer F what Officer G had said. They both then returned to speak with Officer G.

*Second meeting: Between Officers E, F and G*

74. Officer F says he explained to Officer G that he did not believe Mr X should be in Police custody as he was unresponsive, had a potential head injury and had vomited. Officer G asked how bad the head injury was, as the injury was new information to him. He was told Mr X's head was "*bleeding a bit*" but could be managed by them.

75. Officer F told Officer G the Police doctor had been contacted about another detainee and would see Mr X if an ambulance did not arrive before then. It appears at that stage the doctor was expected in about 20-25 minutes.

76. Officer G recalls asking Officer E if Mr X was "*on drugs*" and being told he most likely was. He does not recall Officer E going into any detail about the type of drug Mr X had taken and did not get the impression it was "*a big deal"* or any different to the many people taken into custody who are under the influence of drugs. Officer E thinks she told Officer G that Mr X had taken GHB but cannot recall his response.

77. After hearing from both officers, Officer G's impression was that *"there wasn't that much to worry about".* He did not believe he needed to assess Mr X personally based on what he was told by Officers E and F.

78. Although Officers E and F are of the view that Officer G was given all the relevant information, documentation completed by them at the time indicates some key information was missed. Officer G was not made aware that Mr X had been initially found to be snoring loudly. Officer G also says: "*At no time was I informed that [Mr X] had lapsed into unconsciousness".* Rather, he says, he was told Mr X "*kept nodding off*".

79. Officer G says although it was up to Officer F to decide whether Mr X was received into the custody unit, he seemed "*a little shy of making a decision that may be controversial"* so Officer G made the decision for him. Officer F says he believed he needed to follow the direction of Officer G, as he was of a higher rank than him.

80. Officer G decided Mr X should be constantly monitored in a camera cell until he was assessed by ambulance staff or the doctor as he felt this was less of an organisational risk than transporting him. He was uncomfortable with the idea of Mr X being transported to hospital by the officers in case something happened during transit as the officers are not medically trained. He says if he had been told Mr X had lost consciousness, he would have ensured Mr X received urgent and immediate medical attention rather than been received into the custody unit.

81. Officers E, F and G all give different accounts of what information was conveyed to Officer G. If Officer G was aware that Mr X had been unresponsive, he should have directed that Mr X be taken to hospital. However, we are unable to determine whether he knew that, due to the conflicting accounts.

82. It was unacceptable for Police to keep Mr X in the prisoner transport truck cell and handcuffed for 44 minutes while the decision was made whether or not to admit him into the custody unit.

### FINDINGS ON ISSUE 2

It was unacceptable to keep Mr X in the in the prisoner transport truck cell for 44 minutes at the Manukau Police Station. He should have been taken directly to hospital.

Officer F should have exercised his authority and instructed officers to take Mr X directly to hospital, without debate.

Officer E should have accepted Officer F's decision.

The Authority is unable to determine whether Officer G's decision was appropriate because of the conflicting accounts provided by Officers E, F and G.

## ISSUE 3: DID OFFICERS MANAGE MR X APPROPRIATELY WHILE HE WAS IN THE CUSTODY UNIT?

**What condition was Mr X in when he was removed from the truck cell and taken into the custody unit?**

83. Officer D says:

> *"I placed my arm under his right arm to assist [Mr X] getting out of the cell however he immediately stood up thrusting his hips into the air and straightening*

*his leg. I was able to manoeuvre [Mr X] out of the cell before he again dropped his weight onto the floor of the truck."*

84. CCTV footage shows Mr X was carried out by four officers, headfirst and face down, with his hands still handcuffed behind his back. He was placed on the ground outside the truck.

85. Officers rolled Mr X onto each shoulder so Authorised Officer H could search him.[10] They found a plastic bag with cannabis buds inside, taking the total amount of cannabis found on Mr X to 5.36 grams.

86. Officer E says Mr X was making moaning and grunting noises and occasionally shouted out while being searched. She says his head moved backwards and forward, his legs bent and his toes clenched.

87. CCTV footage shows Mr X to be calm and compliant while being searched. He was helped to his feet by four officers.

88. Six officers then escorted Mr X through to the custody unit, with three of them assisting him to walk. One officer stood on either side of Mr X, holding his arms, which were still handcuffed behind his back. Another officer stood behind Mr X, holding his wrist at times. Mr X was positioned leaning forward, with his head drooping. He appears to be unsteady on his feet but generally able to support his own weight. He was taken straight through to a cell, rather than stopping to be processed at the custody unit desk as he was not in a fit state to be answering the evaluation questions himself.

89. The officers' assessments of Mr X at this time were varied:

- Officer A says he was unresponsive;
- Officer B says he was drowsy or confused;
- Officer D believes Mr X was deliberately dropping his weight to make it difficult for Police to escort him;
- Authorised Officer H says he went between partially responsive and unresponsive; and
- Authorised Officer J says he went between being alert and drowsy or confused.

90. Mr X was placed face down on a padded mattress on the bed with his head propped slightly to the side. He should have been placed in the recovery position but was not. Officer F checked Mr X's breathing and there was no mucus by his mouth and he had no issues breathing.

91. Mr X's handcuffs were removed. His hands remained in the cuffed position for a further two minutes before his right arm dropped to his side.

[10] An authorised officer is a non-sworn Police employee who has responsibility for managing the health, safety and secure custody of detainees.

92. At first Authorised Officer H maintained constant watch over Mr X, sitting outside the cell and monitoring him through the cell window, then Authorised Officer J took over.

93. At about 1.49pm Officer F conducted a physical check on Mr X. He discussed with Authorised Officer H whether Mr X needed to be placed into the recovery position but decided it was unnecessary. Officer F says in hindsight, he believes Mr X should have been placed in the recovery position.

### Processing Mr X

94. Mr X was 'received' into the custody unit at about 1:26pm. His information and evaluations were entered into the Electronic Custody Module (ECM).[11]

95. Officer F completed the custody question regarding Mr X's level of intoxication, saying he was extremely intoxicated. When a person is entered as having an 'extreme' level of intoxication, an automatic alert pops up on the screen saying: "*If the detainee has been affected by alcohol to an extreme measure consideration should be made whether hospitalisation is required*". Officer F does not recall seeing this alert, or any others.

96. Authorised Officer J completed the ECM responsiveness evaluation however, he did not have any direct interactions with Mr X himself. He knew Mr X was suspected of being under the influence of drugs and alcohol and that he had been aggressive towards the officers during his arrest but had no other knowledge of prior events.

97. Mr X's level of consciousness was recorded as: "*Alert – able to engage in a coherent conversation AWAKE AND SPEAKING".* Authorised Officer J says this was based on him seeing Mr X walking with assistance to the cell. He says Mr X: "*…was speaking loudly, however what he was saying was incoherent."* The ECM suggested Mr X needed to be frequently monitored (five times an hour), based on the evaluation, however, he was monitored constantly.

98. The information contained in the ECM was not an entirely accurate reflection of Mr X's condition due to Authorised Officer J having limited knowledge of him. Officer F should have ensured the ECM entry was accurate.

99. Once again, at this point, an understanding of the People in Police Detention policy should have resulted in Mr X being taken to hospital.

100. It is evident the officers who were involved with Mr X at different stages of this incident had a range of ideas about what an unresponsive or unconscious person presented like. It is also possible that due to Mr X's volatility, officers who dealt with him at various stages of his detention may have got different impressions of his condition, which may not have accurately reflected his overall condition.

[11] The Electronic Custody Module (ECM) is where staff record risk information, any special care instructions, and everything that happens in relation to a detainee, from their processing to their release.

**Did Mr X receive timely medical attention after being examined by the doctor?**

101. Mr X lay in the same position, occasionally moving his arms and legs briefly. Mr X had been in the cell for 59 minutes when the doctor arrived to assess him.

102. The doctor's notes show Mr X was comatose and needed to be taken to hospital by ambulance, though he told Officer F that Police could also take Mr X themselves. Officer F updated Officer G and mentioned to him that the late shift was about to come on duty and they could be asked to transport Mr X.

103. Officer G called Officer E at about 2.30pm. He instructed her to arrange for officers from the late shift to take Mr X to Middlemore Hospital due to the ambulance delays. Officer E says: "*I wasn't given any direction as to the urgency of that transport*". She thought if there was any immediate urgency the staff that were about to finish their shift would have been directed to take him. Officer E explained the situation to the next shift supervisor at about 2.45pm.

104. At about 3pm, Officers K and L were instructed to take the Police prisoner van from Manurewa and go to the Manukau custody unit to take Mr X to Middlemore Hospital. They arrived at the custody unit at about 3.25pm.

105. Mr X lay in an unresponsive state in his cell for about 56 minutes after the doctor completed his assessment, before officers came to get him to take him to hospital. He appeared to be semi-conscious and lost control of his bladder while being carried to the sally port by five officers.

106. The officers' assessments of Mr X at this time ranged between him being partially responsive to unresponsive. He became more alert, resisting officers when they were trying to put him into the Police van.

107. It was unacceptable for it to take almost an hour for Mr X to be taken to hospital following the doctor's assessment. Officer F says, in hindsight, he should have got officers who were already on duty to take Mr X immediately.

FINDINGS ON ISSUE 3

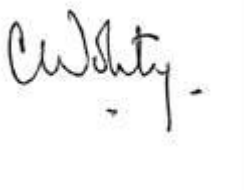
Officer F should have ensured the ECM entry accurately reflected Mr X's condition.

Officers should have placed Mr X in the recovery position in the cell.

The delay in transporting Mr X to hospital following the doctor's assessment was unreasonable.

## Subsequent Police Action

108. Police found there was no evidence of criminal negligence by Police employees, however, found they should have taken Mr X to hospital earlier and should have placed him in the recovery position in the cell. The Police investigator made recommendations which included improvements to the first aid training provided to staff regarding drugged and intoxicated people.



**Judge Colin Doherty**

Chair
Independent Police Conduct Authority

22 April 2021

**IPCA: 19-0976**

# Appendix – Laws and Policies

## LAW

### Crimes Act 1961

109. Section 151 of the Crimes Act 1961 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 necessaries, and to take reasonable steps to protect that person from injury.

110. 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.

111. Failing to fulfil this duty may be sufficient for criminal liability where there is a resulting death or injury, or where there is a risk of harm, by way of criminal nuisance, manslaughter, injuring (where, if death had occurred, there would be liability for manslaughter), or ill-treatment of a vulnerable adult.

112. Under section 150A(2) of the Crimes Act, liability for any of these offences will only arise if the failure is *"a major departure from the standard of care expected of a reasonable person."* This is commonly referred to as a gross negligence standard. A person who simply fails to provide a reasonable standard of care, without more, cannot be convicted.

## POLICY AND INFORMATION

### 'People in Police detention' policy

113. 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."*

114. Police are responsible for the care, safety, and security of a person from the moment they are arrested or detained, until they are released or transferred into the care of another agency, individual, or family member.

#### *Level of consciousness*

115. Officers must always consider the detainee's level of consciousness. *"Immediate hospitalisation is required if they are unresponsive – this is a medical emergency. Detainees who are only partially responsive, should also be taken to hospital."*

116. When specifically dealing with detainees who may be affected by drugs, alcohol, or medical complications, if the person is:

- *"Alert - able to engage in a coherent conversation ... THEN - Follow the procedures for custody area staff.*
- *Drowsy or confused - responds to voice and able to reply. May need some assistance to walk ... THEN - Follow the procedures for custody area staff. Be aware that the level of consciousness may change over time due to intoxication or medical complications.*
- *Partially responsive - responds to pain only (e.g. nail-bed pressure) ... THEN - Treat this as a medical emergency and arrange for the person to be taken to hospital.*
- *Unresponsive - does not respond to any stimuli ... THEN - This is a medical emergency and immediate hospitalisation is required. If you expect a delay in the ambulance's arrival or the person's condition calls for immediate action, use a Police vehicle."*

117. Policy advises that employees need to be aware of the risks posed by the mixture of alcohol, drugs and current or pre-existing medical issues.

> *"Intoxication can mask underlying medical conditions which can go undetected when custody personnel assume the person just needs to 'sober up'." Note: Loud snoring is a sign the person is deeply unconscious."*

**GHB**

118. The New Zealand Drug Foundation provides the following information about WAZ/GHB:

> *G, fantasy, liquid ecstasy*
>
> *Gamma hydroxybutyrate (GHB) was originally synthesised for use as an anaesthetic. Gamma-Butyrolactone (GBL) is a more potent version of GHB. It usually comes as a clear liquid with a bitter aftertaste but can also be a white powder or a bright blue liquid known as blue nitro. It is usually swallowed as a liquid or mixed in a drink and is uncommon in New Zealand.*
>
> *GHB slows down the body and the most common effects include feelings of euphoria, increased sex drive and lowered inhibitions. GHB can also cause memory lapses, clumsiness and/or loss of motor control, dizziness or headaches, lowered body temperature and heart rate, nausea, diarrhoea, and difficulties urinating. The effects of GHB depend on the size, weight and health of the person taking it.*
>
> *The effects of GHB/GBL are usually felt within 15 to 20 minutes and may last up to three or four hours depending on the strength and quantity consumed.*

# 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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