

FINAL REPORT: IIU concludes investigation into serious injury to male during interaction with WPS

On February 18, 2022, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) of an incident in which a male (later identified as the affected person (AP)) sustained a serious injury during his interaction with WPS officers as a Mental Health Act (MHA) detention order was being enforced.

This notification disclosed the following information (edited for clarity):

“On Wednesday, February 16th, an MHA Form 2 was applied for by an employee for the Winnipeg Regional Health Authority providing members of the WPS with the authority to take AP into custody forthwith for the purpose of examination by a physician.

At the time of application, the WRHA employee described AP as wheelchair bound, but very strong/upper body strength. He was further described as extremely violent and off his medication for approximately one week.

On Thursday, February 17th, at approximately 10:17 p.m., West District General Patrol members, along with Winnipeg Fire and Paramedic Service (WFPS) personnel, were dispatched to AP’s residence for the purpose of apprehending the affected person under the MHA Form 2.

Upon arrival, AP immediately became belligerent and aggressive with police, paramedics and firefighters. All efforts to de-escalate the situation and negotiate a peaceful apprehension were unsuccessful.

At approximately 11:25 p.m., it was determined that AP would have to be secured with handcuffs and sedated due to his violent and unpredictable behaviour prior to transport to the hospital. As officers took hold of AP for the purpose of handcuffing him, AP resisted at which time a use of force encounter ensued which resulted in AP sustaining an injury to his left arm.

AP was sedated by WFPS personnel and subsequently conveyed to the Health Sciences Centre (HSC). Medical examination revealed AP sustained a fractured left humerus...”

A fractured humerus is defined as a serious injury pursuant to the provisions of IIU regulation 99/2015. Accordingly, IIU assumed responsibility for this mandatory investigation pursuant to section 65(4) of The Police Services Act (PSA). IIU Investigators were assigned to this investigation.

Among the agency information obtained by IIU Investigators included:

- WPS officers' notes and narratives
- WPS use of force report
- call history
- audio recordings of WPS radio communications
- video surveillance footage
- medical reports concerning AP
- WFPS personal care report
- copies of MHA forms 2 and 3 (Order for involuntary medical examination and notice to person in custody respectfully)

The civilian director designated the WPS officer who handcuffed AP as the subject officer (SO). The civilian director designated three WPS officers as witness officers (WO1- 3). IIU investigators met with and interviewed AP and four civilian witnesses (CW1 - 4). IIU investigators also consulted with the Chief Medical Examiner (CME) for the province to obtain medical opinions on the likely cause of AP's injury.

IIU Investigators received and reviewed video surveillance recordings from AP's apartment building. However, as the interaction between AP and police that resulted in his injury occurred within his suite, none of that was captured by the video surveillance.

Facts and Circumstances

On February 16, 2022, an application to Provincial Court, pursuant to the provisions of the MHA, was made seeking an order for the involuntary detention and treatment of AP.

Sections 10 and 11 of the MHA are relevant to this application:

10(1)

Any person may apply to a justice for an order that another person be examined involuntarily by a physician.

10(2)

The application must be made in writing, under oath, and must state reasons for the request.

10(3)

The justice shall consider the application as well as the evidence of any witnesses, and may do so without notice to the person named in the application.

11(1)

After considering an application made under section 10 and the evidence of any witnesses, the justice may issue an order that the person named in it be examined involuntarily by a physician, if the justice believes on reasonable grounds that the person

(a) is apparently suffering from a mental disorder;

(b) because of the mental disorder, is likely to cause serious harm to himself or herself or to another person, or to suffer substantial mental or physical deterioration;

(c) needs a medical examination to determine whether he or she should undergo a psychiatric assessment; and

(d) refuses to be medically examined.

11(2)

An order under this section

(a) may be directed to an individual peace officer or to all peace officers of the area in which the justice has jurisdiction; and

(b) is authority for a peace officer to take the person named in the order into custody as soon as possible, and then promptly to a place where the person may be detained and examined involuntarily by a physician.

11(3)

An order under this section expires at the end of the seventh day after the day it is made.

An order (known as a “Form 2”) issued from the Provincial Court, pursuant to section 11 of the MHA, which directed “...any and all peace officers in the Province of Manitoba...to take AP into custody as soon as possible and then promptly to HSC to be detained and examined involuntarily by a physician”.

On February 17, this order was provided to members of the WPS with a request to enforce the order. Information was provided to WPS that AP was bedridden and subject to physical limitations. WFPS personnel were contacted and requested to assist WPS officers in the enforcement of the order and transport of AP. WPS was further advised that AP behaviour was belligerent, uncooperative, aggressive and prone to making threats and violent actions.

At approximately 11:13 p.m., SO, WO1, WO2 and WO3, in the company of WFPS personnel arrived at AP’s apartment residence and gained entry¹. After WPS officers announced their presence, AP responded aggressively and made numerous threats of violence towards the police officers, such as: “Who wanted to be the first to get popped”, “F**k you guys and if any of you guys come near me, I’m going to take a poke at you guys”, followed by a “horking” sound as AP was preparing to spit at the police officers. The police officers attempted to deescalate the situation and tried to calm AP without success. WPS officers ultimately advised AP that he would be handcuffed and sedated due to his threatening behavior. WPS officers were involved in a physical struggle with AP as they attempted to handcuff him. SO placed AP’s right arm behind his back as AP pulled away from him. A sound of a pop was heard coming from AP’s left shoulder area. AP was placed onto the stretcher, sedated and taken in an ambulance to HSC.

A review of AP’s medical records from HSC, sent in response to his consent to release, indicated that AP sustained a spiral fracture to his left humerus. IIU Investigators contacted CME for a medical opinion whether AP’s injury was consistent with the force applied by the police officers. CME provided the following opinion:

¹ Section 12(2) of the MHA - A peace officer may take any reasonable measures when acting under this section or section 9 or 11 or subsection 44(1) or 48(2), including entering any premises to take the person into custody

"This one is pretty straight forward. Spiral fractures are produced by a twisting mechanism. Entirely consistent with the story of the subject's arm being forcefully twisted during the restraint process"

Furthermore, when asked if the injury was also consistent with AP's attempt to break free from police officers as they had secured his arm, CME responded, "Absolutely".

Conclusion

This investigation must consider whether the decision and action of the subject officer to use force on AP was reasonable, necessary and justified by law.

Sections 25 (1) and 26 of the Criminal Code of Canada are applicable to this analysis:

25 (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law

(a) as a private person

(b) as a peace officer or public officer

(c) in aid of a peace officer or public officer

(d) by virtue of his office, is,

if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

26. Everyone who is authorized by law to use force is criminally responsible for any excess thereof, according to the nature and quality of the act that constitutes the excess.

The critical question in this investigation is whether SO's decision to restrain AP and assist in his handcuffing was reasonable and necessary in all of the circumstances. The reasonableness of an officer's use of force must be assessed in regards to the circumstances, as they existed at the time the force was used and in light of the constraints that were present.

From a review of all of the available evidence:

- SO was in the lawful execution of his duties when he and other police officers attended the residence to effect AP's detention;
- WPS police officers were in possession of a lawful court order issued pursuant to the provisions of the MHA;
- WPS police officers were lawfully in AP's residence pursuant to the provisions of the MHA;
- AP was not prepared to be detained by police and was not willing to submit to an involuntary medical examination;
- AP threatened police officers with violence;
- WPS police officers attempted to deescalate the situation with AP and gain his compliance without success;

- WPS had the authority pursuant to the provisions of the MHA to use all reasonable measures to further the enforcement of the Form 2 order;
- I am satisfied that the restraint of AP with handcuffs was a reasonable measure;
- The medical opinion concerning AP's injury is consistent with a struggle between police and AP.

I am satisfied that from the evidence gathered from the variety of sources there is substantial support for the conclusion that the use of force by the subject officer was reasonable, necessary and justified by law.

There are no reasonable grounds to support any charges against the subject officer.

Accordingly, IIU has completed its investigation and this matter is now closed.

Final report prepared by:

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Independent Investigation Unit
January 25, 2023

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