

FINAL REPORT: IIU concludes investigation into death of Brandon male

On January 11, 2017, at 1:35 p.m., the Brandon Police Service (BPS) notified the Independent Investigation Unit (IIU) of an incident relating to a sudden death investigation of a male found by staff in a hotel room earlier that morning.

According to this notification, on January 10, at approximately 8:37 p.m., BPS received a report that a male (later identified as the affected person (AP)), was believed to be suicidal, based on comments attributed to him. BPS officers were dispatched to locate AP. Through their efforts, BPS officers made contact with AP and, at approximately 9:56 p.m., met with him at a supermarket parking lot in west Brandon. Upon speaking with AP, the officers were assured by him that comments he made were in “...*the heat of the moment*” and that he did not want to harm himself. The officers concluded that AP was not a danger to himself and they did not have grounds to arrest him under the *Mental Health Act*. The officers allowed AP to depart. On January 11, at 11:35 a.m., BPS was contacted by staff at a local hotel and advised that AP was deceased in a hotel room.

As this notification involved a fatality following an interaction with police, IIU assumed responsibility for the investigation in accordance with section 65(1) of the *Police Services Act* (PSA). The primary issue for this investigation was whether members of the BPS did anything, or failed to do anything, during their contact with AP that may have contributed to his death. IIU investigators attended to Brandon.

Furthermore, in accordance with section 70(1) of the PSA, the IIU was required to seek the appointment of a civilian monitor as this matter involved the death of a person. On January 13, 2017, the IIU formally requested the Manitoba Police Commission to appoint a civilian monitor. On February 7, the IIU was advised a civilian monitor had been assigned to this matter. The initial briefing with the civilian monitor took place on February 15 and the IIU conducted regular monthly briefings with the civilian monitor throughout the investigation.

IIU investigators received and reviewed:

- a complete file package from BPS including notes and incident reports;
- post-mortem reports respecting AP;
- all radio and telephone transmission recordings with BPS communication center;
- GPS records respecting BPS vehicles;
- surveillance video from the hotel;
- cell phone text messages;

- BPS policies and records respecting officer training concerning *Mental Health Act* involvements.

The IIU civilian director designated the BPS officers who contacted and met with AP the evening of January 10 as subject officers (SO1 - 2). As outlined under the PSA, a subject officer cannot be compelled to provide his notes to IIU investigators or to attend an interview with them. In this matter, both SO1 and SO2 agreed to provide their notes and reports to IIU investigators and each agreed to be interviewed.

IIU investigators identified and conducted interviews with a number of civilian witnesses, and three witnesses (CW1-3) were deemed key to this investigation.

The following facts have been determined:

CW1 advised that, during the evening of January 10, 2017, she and her husband, AP, were arguing at their home. Shortly after 8:00 p.m., AP left the house, telling CW1 that she "... wouldn't see him anymore" and that he was "...going to his dad's because that's where his guns were".

At 8:37 p.m., CW1 contacted BPS via a 911 telephone call. CW1 told the call taker she had "*a strong feeling AP is gonna try to commit suicide*" because of comments made during their argument. She also advised that AP told her that he was going to go to his father's residence because he knew his guns were there. After gathering background information, including details of a previous attempt by AP, the call-taker told CW1 that BPS would contact the RCMP to notify the father and to be on the lookout for AP. CW1 was told to call 911 immediately if she spoke with AP again.

At 8:48 p.m., CW1 called BPS a second time and spoke with the same call-taker. CW1 advised she had received some text messages from AP where he says, "he is sorry", that "he can't do this anymore" and for her "not to worry as she's going to get the house". AP did not reveal his location to CW1. At 9:41 p.m., AP texted that he was, "...going to meet with the police" and that he "...will be lucky if he's not put in confinement in the crisis unit for the night". At 10:03 p.m., AP texted that he had spoken with the police and he "will be fine", he just "...needs some space".

CW2 spoke with CW1 on the telephone during the evening of January 10. She was aware that CW1 was upset with AP and that text messages she was receiving "were getting serious". They decided that CW1 would call the Mobile Crisis Unit (MCU) and that CW2 would call the police.

CW2 told IIU investigators that she called the regular police line, and not 911, "closer to 7:30, maybe even 8:00." CW2 stated she told the operator that she was "very adamant AP was troubled ... very adamant that he needed to be picked up very adamant to the fact that I wanted him put in the 72-hour involuntary lock-up" and that she or CW1 "would sign to have AP committed involuntarily." CW2 also called AP's father, CW3, in case AP drove out to his residence for his guns. Shortly after 11:00 p.m., CW2 said the police did call her. She said they explained that they had spoken with AP and that he seemed fine. She stated that she "*tried hard to make the person understand on the other end that he needed to be picked up.*"

CW3 advised that he received a phone call from an RCMP officer (name unknown) on January 10, between 10:30 p.m. and 11:00 p.m. The officer asked if his weapons were secure and if he was aware that his son *"was wanting to come out to pick up a rifle."* CW3 advised the officer that his firearms were secure.

The hotel surveillance video was reviewed by IIU investigators on January 13. AP was observed at the check-in counter on January 10 at 11:26 p.m. and was then observed to enter a room at 11:30 p.m. A person, believed to be AP, was observed on three more occasions between 11:33 p.m. and 11:55 p.m., standing either outside the room or near his vehicle. CW1 continued to receive text messages from AP between 12:12 a.m. and 12:39 a.m. on January 11. No other persons were observed to enter or exit the hotel room until 11:21 a.m. on January 11, when cleaning staff entered the room and located AP.

SO1 was dispatched at 9:09 p.m. on January 10 to attempt to locate AP. SO1 stated that he spoke with CW1 at 9:23 p.m., was told of AP's history and that AP did not actually say that he was going to commit suicide. At 9:38 p.m., SO1 radioed that he has spoken with AP on his cell phone and that AP had agreed to meet police at the Sobeys parking lot, *"just to make sure everything's alright."*

SO2 overheard a police call that AP may be suicidal but had not made any comments about killing himself on this date. SO2 stated that at 9:39 p.m., SO1 had radioed that he had spoken with AP by phone and arranged to meet him at the Sobeys West parking lot. SO2 drove to that parking lot.

AP arrived at the Sobeys West parking lot at 9:55 p.m. SO1 stood alongside AP's vehicle and spoke with him while SO2 listened through his open car window. AP told SO1 that he was aware of MCU and their services but that he was not in need of them, as he was not having suicidal thoughts. AP showed SO1 the text messages between himself and CW1. AP stated that *"...if he was thinking of killing himself he would not have agreed to meet with police and/or returned to Brandon to do so"*. AP told SO1 that he *"...did not want to harm himself"* and that his comments were made in *"...the heat of the moment."* He told SO1 that he was going to his father's residence for the night and would contact MCU if he had any thoughts of hurting himself. Based on conversation with AP, SO1 and SO2 agreed they did not have grounds to detain AP under provisions of the *Mental Health Act*. AP was allowed to leave and the incident was closed.

At 10:11 p.m., SO1 radioed that he had spoken with AP, who assured SO1 that he did not intend to harm himself tonight. SO1 radioed that he had spoken with CW1 and updated her regarding his meeting with the AP. At 10:14 p.m., SO1 was advised by BPS communication center that CW2 had contacted BPS. SO1 advised that he would call CW2 despite the comment that a return call was not necessary. SO1 contacted CW2 and explained to her that the police did not have sufficient grounds to detain AP under the *Mental Health Act*. GPS coordinates for SO1 and SO2's police vehicles while they were dealing with AP show them to be stationary from 9:40 p.m. to 10:25 p.m. at the Sobeys West location.

According to BPS policy regarding the *Mental Health Act*, members of the Police Service shall receive entry level training on the *Mental Health Act* and refresher training every three years.

Both SO1 and SO2 had participated in and received the required mental health refresher training in November 2015. SO1, who has been a BPS officer since 2014, also participated in other mental health training courses in 2014. SO2, who has been a BPS officer since 1988, has participated in, or has taught, more than 10 mental health and related courses from 2001 to 2015.

The post mortem examination was conducted in Brandon on January 11 and noted the cause of death was suicide.

Issues, Assessment and Conclusions:

Under certain conditions, police officers in Manitoba have the authority, granted under the *Mental Health Act*, to involuntarily detain someone and transfer them into custody to an appropriate place for a psychiatric examination by a physician. This authority to detain a person for an involuntary psychiatric assessment may arise following:

- an application by a physician to the medical director of a facility;
- the issuance of a judicial order; or
- if the officer believes, on reasonable grounds, that a person has threatened or attempted to cause bodily harm to him or herself.

The relevant sections (8, 9, 11 and 12) of the *Mental Health Act* outlining the circumstances and considerations respecting involuntary psychiatric assessments are:

8(1) *When a physician examines a person and is of the opinion that he or she*

(a) is 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; and

(c) is unwilling to undergo or is not mentally competent to consent to a voluntary psychiatric assessment;

the physician may apply to the medical director of a facility for an involuntary psychiatric assessment of the person.

8(2) *In determining whether a person is mentally competent to consent to a voluntary assessment under clause (1)(c), the physician shall consider whether the person understands the nature and purpose of an assessment and whether the person's condition affects his or her ability to appreciate the consequences of giving or withholding consent.*

8(3) *The application must be made within two days after the examination.*

8(4) *The application must be in the prescribed form and must indicate*

(a) that the physician personally examined the person;

(b) the date of the examination;

(c) the facts on which the physician formed the opinion that the criteria under subsection (1) are met, distinguishing the facts the physician observed from the facts communicated to him or her by others; and

(d) that the physician inquired carefully into the facts necessary to form the opinion.

9(1) *The application by a physician under section 8 is sufficient authority*

(a) for any peace officer to take the person into custody as soon as possible, and then promptly to a hospital, all or part of which is designated as a facility;

(b) for the person to be detained, restrained and observed in a facility for not more than 72 hours; and

(c) for a psychiatrist to examine and assess the person's mental condition to determine whether involuntary admission is necessary under section 17.

9(2) *The authority to take a person into custody under clause (1)(a) expires at the end of the seventh day after the day the physician signs 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.

12(1) A peace officer may take a person into custody and then promptly to a place to be examined involuntarily by a physician if

(a) the peace officer believes on reasonable grounds that the person

(i) has threatened or attempted to cause bodily harm to himself or herself,

(ii) has behaved violently towards another person or caused another person to fear bodily harm from him or her, or

(iii) has shown a lack of competence to care for himself or herself;

(b) the peace officer is of the opinion that the person is apparently suffering from a mental disorder of a nature that will likely result in serious harm to the person or to another person, or in the person's substantial mental or physical deterioration; and

(c) the urgency of the situation does not allow for an order for an examination under section 11.

12(2) 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.

In this matter, there was no application by a physician or judicial order for an involuntary detention. Therefore, the issue to be considered is whether the subject officers' actions in dealing with AP the evening of January 10 complied with section 12 of the *Mental Health Act*.

While there is a social difference between people taken into custody for health reasons and those arrested because they allegedly committed a criminal offence, it is important to remember that, in general, when appropriate circumstances exist (in either scenario), police officers are authorized to detain and arrest. There is really no substantive distinction between the act of forcibly taking someone into custody, and the act of arresting someone. Interfering with an individual's liberty to reduce the risk of harm to self is a less clearly justifiable form of state action. It is apparent that this may be necessary to enhance the freedom of the individual directly affected by authorizing action that will ensure their long-term well-being, given the potential for a self-destructive individual to make potentially dangerous and irreversible decisions if left alone. With that said, reasonable grounds must exist in order for that authorization to be lawful.

In *R. v. Storrey*, [\[1990\] S.C.J. No. 12](#) (S.C.C.), the Supreme Court of Canada defined the concept of reasonable and probable grounds in the following way:

In summary then, the Criminal Code requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in that position of the officer, must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds.

Investigating officers must take into account all information available to them and are only allowed to disregard information which they have good reason to believe is unreliable. Further, reasonable and probable grounds can still exist, even where the information relied upon changes at a future date or otherwise turns out to be inaccurate. The requirement is that the information be reliable at the time the decision was made to arrest the accused (see *R. v. Golub*, [\[1997\] O.J. No. 3097](#) (Ont. C.A.)).

Police officers are not required to evaluate information that they receive according to legal standards, nor are they required to make legal judgments. Police are required to weigh evidence to some extent in the course of an investigation. Nevertheless, they are not required to evaluate evidence according to legal standards to make legal judgments.

Police officers are not to be judged with the benefit of hindsight nor should they be held to a “standard of perfection.” Investigations are frequently carried out in dynamic and changing circumstances. The fact that a different investigation, or a more detailed investigation, may have led to a different or a more optimal result is not determinative of whether reasonable and probable grounds existed. The conduct cannot be examined in minute detail on an after-the-fact basis. The question is whether their conduct was reasonable in the circumstances (*Charlton v. St. Thomas Police Services Board*, (2009), 190 C.R.R. (2d) 103 (Ont. SCJ)).

In the present investigation, the issue is not whether a detention of AP would have been lawful but whether the subject officers’ decision not to detain him is supported by the assessment of all of the objective evidence available at that time.

Following due consideration of all the circumstances of this matter and a careful, thorough review of all evidence and material facts obtained in this investigation, I am satisfied that:

- BPS communication center was provided background information on AP by CW1, including that she had a “strong feeling that AP is going to try to commit suicide”;
- BPS communication center radioed out this information and call for service noting the potential serious nature of the call;
- SO1 made contact with both CW1 and AP. He received additional background information about a previous attempt by AP;
- SO1 convinced AP to meet him at a Brandon parking lot to discuss his situation;
- AP did in fact attend the predetermined location and had a full and frank conversation with both SO1 and SO2;

- SO1 and SO2 spent a considerable time (16 minutes) meeting with, talking to and assessing AP at the parking lot. During this conversation, AP shared his text messages with the officers and repeatedly assured them that he had no intentions of harming himself;
- SO1 and SO2 had received mental health training in compliance with existing BPS policy;
- SO1 and SO2 were cognizant to their authority under the *Mental Health Act* and properly assessed all of the circumstances and information known to them at the time.

I am satisfied that the subject officers were in the lawful execution of their duties, in accordance with the powers conferred during the time they were in the presence of AP. I am satisfied the subject officers had sufficient information available to them to conclude, both objectively and subjectively, that appropriate reasonable grounds did not exist to detain AP that night.

Mental health crises always present difficult decisions, compounded by a balance of personal liberties and interceding medical treatment. This is a tragic set of circumstances and AP's family and friends are left with a great loss.

However, the advantage of "20/20 hindsight" is an unfair measure to assess the appropriateness of a decision made by the subject officers at the crucial time. All of the facts and circumstances known at the time must be the guide to assess the reasonableness of the decisions of the subject officers. In this regard and following a full and complete review, I am satisfied that the decision by SO1 and SO2 to release AP and not detain under the *Mental Health Act* should not and will not attract consequences.

No charges are recommended against either subject officer. The IIU investigation is now completed and this matter is now closed.

Final report prepared by:
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Independent Investigation Unit
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