



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: February 10, 2022
COMMITTEE MEETING DATE: February 24, 2022
BOARD REPORT # 2202C01

Regular

TO: Vancouver Police Board Service and Policy Complaint Review Committee
FROM: Drazen Manojlovic, Director, Planning, Research and Audit Section
SUBJECT: Service or Policy Complaint #2021-020 Use of Wagons to Transport

RECOMMENDATION:

THAT the Vancouver Police Board Service and Policy Complaint Review Committee (Committee) conclude its review of the complaint based on the information outlined in this report.

SUMMARY:

The complainant was arrested for two criminal offences in September 2021, and was subsequently transported to the Vancouver Jail by a detainee transport van or “wagon”. The complainant filed a Service or Policy Complaint in October 2021, reporting they felt that transportation by wagon is unsafe, inhumane, and that the Vancouver Police Department (VPD) does not offer any other means of transportation for persons under arrest. The Service and Policy Complaint sub-committee reviewed the complaint and requested a report back that included information on the application of handcuffs when a detainee is in the wagon, if there are ways of securing the detainee, and other possible methods or transportation.

The VPD reviewed the safety records pertaining to transportation by wagon, as well as transportation alternatives that exist within the VPD. The VPD also conducted an environmental scan of 38 other North American police agencies to examine the practices and policies in place in comparison to Vancouver. The VPD examined the complainant’s experience being transported by wagon to determine if this method of transportation would be broadly viewed as inhumane and also compared alternative methods of transportation currently available within the VPD.

The findings indicate that the wagon has an exceptional safety record. As a means of transportation it offers a private, climate controlled environment that is accessible to most levels of mobility. With regards to the complainant’s concern that no other means of transportation are available, the VPD does have alternatives such as partition cars, which can be utilized when circumstances including availability and/or timeliness of transport make transportation by wagon inappropriate or impossible.

It is recommended that the Committee conclude its review of this complaint based on the information in this report.

RELEVANT POLICY AND LEGISLATION:

Regulations and Procedure Manual (RPM) 1.12.1(iii) *Transportation of Persons in Custody*
Motor Vehicle Act Regulations B.C. Reg. 235/2021

BACKGROUND:

On September 13, 2021, at approximately 5:00pm, the VPD Public Safety Unit (PSU) responded to an unlawful demonstration in the area of the 600 block of West Broadway Avenue. Protestors positioned themselves on the roadway, blocked vehicular traffic, and ignored lawful requests by police to clear the area.

While the VPD respects citizens' section 2 Charter rights to freedom of peaceful assembly and freedom of association, members must balance those rights against their common law duties and statutory authorities. In this circumstance, the demonstration was deemed unlawfully.

Incident Timeline

PSU broadcast three scripted announcements at 5-minute intervals on a loudhailer, directing protestors to clear the roadway and disperse from the area. Members of the PSU video recorded the demonstration, including reading the announcements that any person who did not depart the roadway may be arrested for Mischief. PSU members approached on foot and spoke to protestors, asking them to leave the roadway. All but three of the protestors left the area and those individuals were arrested.

Arrest teams of two PSU members approached each of the three and informed them they were under arrest; one of the individuals changed their mind and informed the PSU members they wished to leave the area and PSU immediately released them and allowed them to proceed on their way. The remaining two individuals told police they refused to leave the area and wished to be arrested. These two individuals were each offered several opportunities over the next 11 minutes to depart the area and not be arrested, but both declined and said they wished to be arrested. They were transported to the Vancouver Jail (Jail) in separate compartments in the wagon. They arrived at the Jail at 6:38pm, where they were released on undertakings to appear on a specific court date to respond to charges.

Service or Policy Complaint

On October 29, 2021, the Vancouver Police Board received a Service or Policy Complaint regarding this incident. The complainant reported to the Office of the Police Complaint Commissioner (OPCC) that they had concerns about the VPD's use of wagons as they felt this method of transportation is unsafe, particularly when an occupant is handcuffed.

There are three components to this complaint:

1. The complainant feels that transporting people in a wagon is inhumane and frightening;
2. The complainant feels this method of transporting people is unsafe and that transporting people in handcuffs could lead to injury due to the person's limited ability to brace themselves while restrained;

3. The complainant finds it unacceptable that there is no alternate method of transportation, and particularly notes that they believe the transport van is used to transport “people in their 70s, 80s and people in wheelchairs”.

The VPD spoke with the complainant on two occasions and exchanged a few e-mail messages during the investigation into this complaint.

DISCUSSION:

1. The complainant feels that transporting people in a VPD transport wagon is inhumane and frightening.

The transport wagons employed by the VPD are divided into four compartments: the front driver’s compartment, two single-seat smaller compartments behind the driver/front passenger with sliding van doors, and one large compartment with rear-facing bench seating at the rear of the van. The large compartment has two sets of double doors to enter. The innermost double doors have a metal grate for security, with transparent plexiglass outside the grate. The outer-most double doors have opaque plexiglass that provides privacy for the occupant. The compartments are each equipped with a light and ventilation, temperature controlled by the driver, live-feed video so that the driver can monitor detainees during transport, and a two-way intercom that allows the driver to communicate with detainees. Each compartment has steps and doors that open wide to allow ease of entry.

The reporting officer noted in the general occurrence report that the complainant said they were claustrophobic and this statement is also heard on the video footage from the PSU. The officers took several steps to assist and provide compassionate support to the complainant:

1. When the complainant insisted on being arrested, they were offered the largest compartment in the wagon, and advised it was the largest compartment. This compartment could fit potentially 3-4 adults, and may be used for single-person transport when conditions permit. In this case, the complainant was the only occupant of the large compartment for the entire trip.
2. While the doors to the largest compartment were open in front of the complainant, officers asked the complainant five times if they wished to leave, whereupon the complainant would have been released. The complainant chose to be arrested in all five enquiries.
3. The officers did not force the complainant to enter the wagon; instead they provided verbal reassurance, telling them they understood the hesitancy to enter, and provided strategies to deal with their anxiety such as deep breathing. Through this process they were also offered opportunities to leave the area and avoid arrest.
4. The assisting officers asked the complainant if they wanted their face mask removed during the drive, which would help reduce the anxiety of claustrophobia. The complainant agreed to have their mask removed and an officer assisted with this.
5. The wagon driver began driving at 6:26pm and arrived at the Jail at 6:38pm (12 minutes), reporting their mileage as approximately 4km. According to Google Maps, the average driving time is 12 minutes and the most direct route is 3.5km. These efforts to use the most direct route resulted in minimal time spent inside the transport van.

6. Upon arriving at the Jail, CCTV video shows the wagon driver immediately opening the opaque double doors to the complainant's compartment (6:39pm) to check on their well-being and alleviate the feeling of claustrophobia. The complainant was able to see out the windows similar to a person waiting in a car. The wagon driver kept the exterior double doors open for the entire duration of the time the complainant was in the wagon while court appearance documents were prepared.

The area that the wagon first arrives at the Jail is known as a "sally port", which is also a roadway. Other law enforcement vehicles enter and exit this secure area. Other detainees and inmates from correctional facilities pass through this area as they enter and leave the Jail and, as such, detainee and officer security and safety is paramount. There is no waiting area for detainees in the sally port. As the complainant was to be released with court appearance documents, there was no need to bring them into the Jail. Therefore, the most appropriate place for the complainant to wait while the documents were prepared was in the wagon, where the wagon driver was best able to ensure their safety and provide a private and controlled environment. The complainant exited the wagon at 7:02pm, was served court appearance documents, and was released. The complainant left the sally port at 7:10pm.

The steps taken by the officers demonstrated compassion, patience, and respect. They made great efforts to reduce the perception that the transport van was a frightening or inhumane experience.

The complainant stated that they felt they waited a long time in the wagon once it arrived at the Jail (23 minutes). In this situation, the arresting officer was planning to release the complainant on court appearance documents, not lodge them in Jail for judicial release, and therefore shorten their time in police custody. In situations where an individual is going to be admitted to Jail, the delay is due to operationally necessary reasons.

2. The complainant feels this method of transporting people is unsafe and that transporting people in handcuffs could lead to injury due to the person's limited ability to brace themselves while restrained.

Transporting Handcuffed Persons

The VPD's policy on *Transportation of Persons in Custody* RPM section 1.12.1(iii) states:

"14. All persons in custody transported by police wagon shall be handcuffed, unless pregnancy, infirmity, disability or other circumstances would make handcuffing impractical."

All of the 38 police agencies that responded to the VPD's request for information require in policy that detainees are handcuffed during transport unless exigent circumstances exist. The vast majority further specify that the detainee should be handcuffed behind their back when possible.

It is essential for police officer and detainee safety that the detainee is handcuffed during transportation. Handcuffing with hands behind the back reduces a person's ability to assault others and allows the police officer greater reaction time to evade the assault. Handcuffing in this manner also limits ease of access to weapons or drugs that may be concealed on the detainee's person.

As per the *Transportation of Persons in Custody* RPM policy, the arresting police officer conducts a frisk search at the time of arrest, and the transporting officer conducts a second frisk search prior to placing the detainee in the wagon. These searches are not perfect and items that are hidden in private places on a detainee's person could be missed. Frisk searches conducted at roadside are limited in scope, as they must balance a search for evidence or contraband with preservation of the detainee's dignity. If the arresting police officer believes the detainee is concealing contraband such as drugs in their undergarments, this search must be conducted in a private setting, such as in the designated search room at the Vancouver Jail.

Handcuffing reduces the detainee's ability to self-harm and/or consume drugs during transport. A person's age or gender are not predictors of their intention or ability to cause harm to themselves or another person or to conceal and use illicit drugs while in police custody.

Safety of Transportation by Wagon

With regards to the concern that use of transport vans or wagons is unsafe, the VPD's Collision Investigation Unit collects, tracks, and reviews data on all police vehicle collisions as well as any injuries resulting from these collisions. The VPD's Professional Standards Section tracks and accounts for all reportable injuries to persons in police custody.

The VPD deploys wagons 24 hours a day, 7 days a week. In 2021, the Vancouver Jail received 11,466 detainees and estimates that over 10,000 of these arrived by VPD wagon. The average number of detainees being lodged at the Vancouver Jail in the last 2 years is 955 per month.

In the last 10 years (2011 – 2021), two detainees of a conservatively estimated 103,000 wagon transports sustained injuries in relation to collisions. Both received minor injuries, were transported to hospital for treatment and subsequently released back to police custody.

In addition to collision-related events, there have been 20 reportable injuries (defined in the *BC Police Act* as "an injury requiring emergency care by a medical practitioner or nurse practitioner and transfer to a hospital") incurred during transportation by wagon since 2011. Many of these types of injuries involved intentional self-harm, drug overdose, or detainees fighting in a shared compartment. No nexus has been established between a detainee being handcuffed and the aforementioned reportable injuries.

Seat Belt Laws

The transport van compartments are not equipped with seatbelts. Section 220 of the BC Motor Vehicle Act (MVA) states:

Seat belt assembly

220 (1)*In this section, "seat belt assembly" means a device or assembly suitably fastened to the motor vehicle composed of straps, webbing or similar material that restrains the movement of a person in order to prevent or mitigate injury to the person and includes a pelvic restraint, an upper torso restraint or both of them.*

(2)*A person must not sell, offer for sale or operate on a highway a motor vehicle required to be registered and licensed only under this Act and manufactured or assembled after December 1, 1963, other than a motorcycle, unless it is equipped with not less than 2 seat belt assemblies for use in the front seat in accordance with the regulations.*

Additionally, section 32.04 of the MVA Regulations provides an exemption for police transport wagons with respect to general seatbelt requirements under the MVA.

Exemption — emergency vehicle

32.04 (1) *An emergency vehicle driven by or on behalf of a peace officer in the discharge of his duty is exempt from the requirement that*

- (a) upper torso restraints,*
- (b) a seat belt assembly in the centre front seat seating position, and*
- (c) seat belt assemblies in the rear seating position, not be removed, rendered partly or wholly inoperative or modified so as to reduce their effectiveness.*

(2) A person who is in the custody or care of a peace officer is exempt from section 220(4) of the Act.

(3) A peace officer who, in the lawful performance of his duty, is transporting a person in his custody or care is exempt from section 220 (3), (4) and (6) of the Act.

(4) When a peace officer has reasonable and probable grounds to believe the use of a seat belt assembly would obstruct the performance of his duties, the peace officer and any passenger is exempt from section 220 (3), (4) and (6) of the Act.

As the transport vans used by the VPD are emergency vehicles being driven by a peace officer and they have two seatbelts in the front driver compartment, these vehicles are in compliance with law.

3. The complainant finds it unacceptable that there is no alternate method of transportation, and particularly notes that they believe the transport van is used to transport “people in their 70s 80s and people in wheelchairs”.

The VPD has eight partition vehicles or that are designed for detainee transport. Some of these vehicles are permanently assigned to specific positions such as Yankee-10, (Y10) which is a partnership between the VPD and the Ministry of Children and Family Development’s Youth Justice Services. Position-specific partition cars are not available for general use. Patrol designated partition cars may be signed out at any point during a shift by any officer if needed – and so if a need for one should arise, it could be deployed quickly at that time. An example of when a partition car might be used instead of a wagon could be if a detainee in an advanced stage of pregnancy required transportation.

A disadvantage to the use of a partition car is that they do not offer optimal privacy for the detainee, as members of the public can clearly see into the vehicle. This may cause embarrassment for the detained individual. The windows are tinted to offer a degree of privacy, but cannot be made opaque like those in the wagon as the driver must be able to see through the windows to drive safely. Most detainees, particularly those with mobility issues, find that the step stool and higher bench seating in the wagons is far more accessible, accommodating, and comfortable (in terms of personal space), and officers can steady and assist them.

CONCLUSION:

The VPD acknowledges the complainant’s perspective on the use of wagons to transport detainees. The VPD also appreciates the complainant’s experience that they found the wagon frightening and inhumane, particularly as they are claustrophobic. A review of this situation and the general experience of detainees suggest this is a rare impression and that in this case officers took extensive measures to provide the complainant with alternatives and support. The use of wagons provides a safe, efficient, and appropriate method of transporting detainees in Vancouver.

The VPD recommends that the Committee conclude its review of the complaint based on the information outlined in the report.

Author: Sergeant Erin Holtz

Date: February 10, 2022

Submitting Executive Member:

Deputy Chief Howard Chow

Date: February 15, 2022