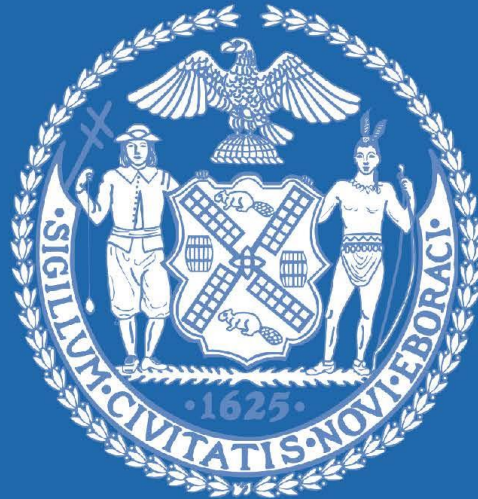


NYC CIVILIAN COMPLAINT REVIEW BOARD

BILL DE BLASIO, Mayor FREDERICK DAVIE, Chair JONATHAN DARCHE, Esq. Executive Director



Taser Use in CCRB Complaints, 2014-2017

November 2019

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MISSION

The New York City Civilian Complaint Review Board (CCRB) is an independent agency that is empowered to receive, investigate, prosecute, mediate, hear, make findings, and recommend action on civilian complaints filed against members of the New York City Police Department (NYPD or the Department) that allege the use of excessive or unnecessary Force, Abuse of Authority, Discourtesy, or the use of Offensive Language. The Board's staff, composed entirely of civilian employees, conducts investigations, mediations, and prosecutions in an impartial manner.

In fulfillment of its mission, the Board pledges to:

- encourage members of the community to file complaints when they believe they have been victims of police misconduct;
- respect the rights of civilians and officers;
- encourage all parties involved in a complaint to come forward and present evidence;
- expeditiously investigate each allegation thoroughly and impartially;
- make fair and objective determinations on the merits of each case;
- offer civilians and officers the opportunity to mediate their complaints, when appropriate, in order to promote understanding between officers and the communities they serve;
- recommend disciplinary actions that are measured and appropriate, if and when the investigative findings substantiate that misconduct occurred;
- engage in outreach in order to educate the public about the Agency and respond to community concerns;
- report relevant issues and policy matters to the Police Commissioner and the public; and
- advocate for policy changes related to police oversight, transparency, and accountability that will strengthen public trust and improve police-community relations.

LETTER FROM THE CHAIR



Dear Fellow New Yorkers,

Proper protocols for the use of conducted electrical weapons (referred to in this Report by the commonly-used brand name “Taser”) by members of law enforcement have long been a topic of discussion and debate by members of the public, police oversight practitioners, and academics. In 2016, the Civilian Complaint Review Board (CCRB) published its first report on this issue. The 2016 Taser Report reviewed two years’ worth of CCRB data on Taser-related complaints about members of the New York City Police Department (NYPD or “the Department”), and ultimately recommended that our Agency more closely track this issue. The CCRB committed itself to releasing this follow-up report, which includes not only a deeper dive into the cases initially discussed in 2016, but also analyzes complaints

closed by the Agency in 2016 and 2017.

The resulting analysis is comprehensive and detailed, and examines several issues identified in 2016 as requiring follow-up: whether officers were a) issuing verbal warnings in accordance with the Patrol Guide; b) tasing individuals who were handcuffed; c) using Tasers in response to mere noncompliance or simply to stop fleeing suspects; or d) inappropriately threatening individuals with Tasers. In the four-year period from 2014 to 2017, the CCRB found that NYPD officers acted within the boundaries of the law and the Patrol Guide most of the time—exonerating officers in 68% of the allegations it closed, and substantiating Taser allegations in only seven of 90 cases.

This in-depth review also reveals that more can be done by the NYPD to clarify for officers the Department’s policies surrounding the use of Tasers. This Report thus makes several important recommendations, including asking the Department to better define parameters for the use of Tasers in drive stun mode (when Tasers are pressed directly to the skin), better integrate executive and officer Taser training, use available technology to integrate Tasers and body-worn cameras, and better collect information on Taser discharges by requiring Taser device data to be downloaded and added to NYPD Threat, Resistance, and Injury (TRI) forms and mandating that officers record the number of Taser discharges on TRIs.

Finally, there are a small number of disturbing substantiated complaints contained in this Report, including officers threatening to tase high school students by pointing a Taser at one student’s head, and an officer repeatedly tasing a man who was handcuffed with his hands behind his back. While incidents like these are not the norm in CCRB cases, they are nonetheless deeply concerning. Going forward, the Agency intends to pay particular attention to the discipline meted out by the Police Commissioner in these types of complaints, and to regularly communicate with the Department on NYPD Taser use.

Sincerely,
Fred Davie

A handwritten signature in black ink, appearing to be the initials 'FD' with a large, sweeping flourish underneath.

THE BOARD AND AGENCY OPERATIONS

The Civilian Complaint Review Board (CCRB) is an agency of the City of New York. It became independent from the New York City Police Department (NYPD) and established in its current all-civilian form in 1993. Board members review and make findings on all misconduct complaints once they have been fully investigated.

The Board consists of 13 members who are all appointed by the Mayor. The City Council designates five Board members (one from each borough); the Police Commissioner designates three; and the Mayor designates five, including the Chair of the Board.

Under the New York City Charter, the Board must reflect the diversity of the City's residents, and all members must live in New York City. No member of the Board may have a law enforcement background, except those designated by the Police Commissioner, who must have had prior experience as law enforcement professionals. No Board member may be a public employee or serve in public office. Board members serve three-year terms, which can be renewed. They receive compensation on a per-session basis, although some Board members choose to serve pro bono.

From 1993 to 2013, all cases in which the Board determined that an officer committed misconduct were referred to the Police Commissioner with a discipline recommendation. Pursuant to a Memorandum of Understanding between the CCRB and the NYPD (effective April 11, 2013), a team of CCRB attorneys from the Agency's Administrative Prosecution Unit (APU) handles most of the cases in which the Board recommends that Charges and Specifications be brought against an officer. When the Board recommends discipline other than Charges and Specifications (e.g. Instructions, Formalized Training), the case is still referred directly to the Police Commissioner.

EXECUTIVE SUMMARY

On October 23, 2016, in the midst of increased attention to the use of conducted energy devices (or “Tasers”) as a policing tool,¹ the Civilian Complaint Review Board (CCRB or the Agency) released a report entitled, “Tasers: An Evaluation of Taser-Related Complaints from January 2014 through December 2015” (the “2016 Taser Report”).² As noted in that report, the New York City Police Department’s (NYPD) 2016 announcement of plans to increase the number of Tasers in circulation and to make Tasers available to more members of service,³ signaled that further investigation would be needed to determine whether Taser-related complaints substantively changed as a result of this development.

As documented in its 2017 Use of Force Report (released in December 2018), the NYPD has increased the number of Tasers assigned to precincts, from 1,710 in 2016 to 2,372 in 2017—a 38.7% increase.⁴ The number of officers trained to use Tasers has increased by 51.8%, from 10,832 uniformed officers in 2016 to 16,442 in 2017.⁵ The NYPD reported a 45.3% increase in Taser discharge events, from 501 in 2016 to 728 in 2017, which is commensurate with the increase in the number of Taser devices. The number of discharges per Taser device per year remained constant at approximately 0.3%.⁶ The increase in Taser usage is also commensurate with a 27.8% decline in the number of firearm discharges, from 72 in 2016 to 52 in 2017.⁷

This Report both updates and expands the review conducted in the 2016 Taser Report. Expanding upon the two-year time frame of the initial report by adding data from Taser-related complaints closed in 2016 and 2017, this Report provides descriptive statistics and an extensive qualitative analysis of 90 fully-investigated complaints closed by the CCRB between 2014-2017, in which the use of a Taser was independently verified or undisputed. In re-examining these complaints, the Agency seeks to provide the public with a more in-depth view of the circumstances surrounding the Taser incidents it reviews, whether or not the allegations of improper Taser use were substantiated.

In fulfillment of the 2016 Taser Report’s recommendation that the Agency track data on certain key indicators, this Report adds additional levels of analysis, including evaluations of: 1) the type and quality of verbal warnings given by officers prior to deploying a Taser; 2) whether complainants were restrained when they were tased; 3) whether civilians displayed any resistance before they were tased, and if so, what type of resistance; 4) officers’ Taser use on police suspects who were “in flight”; and 5) threats of Taser use. These data points were drawn from a thorough analysis of various records, including arrest reports, Taser device data, interview transcripts, NYPD Threat, Resistance, and Injury (TRI) forms, and medical records.

¹ For the purposes of this Report, the term “Taser” will refer to the conducted electrical weapons manufactured by TASER International, Inc., which are used by the NYPD and most police forces across the country. See, Patrol Guide S. 221-08 (Definitions).

² New York City Civilian Complaint Review Board, *Tasers: An Evaluation of Taser-Related Complaints from January 2014 through December 2015* (2016), available at: http://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/20161023_taser-report.pdf

³ 2016 Taser Report, p.13.

⁴ New York City Police Department, *Use of Force Report 2017* (2018), p. 29, available at: <https://www1.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2017.pdf>

⁵ *Id.*

⁶ *Id.* at 30.

⁷ *Id.* At 12.

This Report also provides updates on three additional recommendations from the 2016 Taser Report: 1) the CCRB should update its investigator training on Taser use; 2) the NYPD should issue an annual external report on Taser discharges; and 3) the CCRB should evaluate whether the NYPD's data-retention procedures for uploading and storing data from Taser devices are being followed.

In examining its Taser-related cases in detail, the CCRB noticed that a significant number of cases involved complainants who appeared to have been in the midst of a mental health crisis (or were what the NYPD refers to as “Emotionally Disturbed Persons” or “EDPs”) at the time they were tased. While the Agency does not specifically track whether complainants were deemed “EDPs” by the NYPD—thus prohibiting an accurate comparison of how frequently EDPs are involved in Taser-related cases and other types of complaints—this Report provides a descriptive analysis of these cases for public review. The Agency is currently exploring better ways to track this information in the future.

KEY FINDINGS

1. While in the majority of fully-investigated Taser allegations (68% of 114 allegations), the Board determined that the preponderance of the evidence showed that the member of service (MOS) used the Taser in accordance with the standards set forth by the NYPD Patrol Guide, the CCRB's review of case documents and NYPD training materials found that there is some room for improvement in how the Department defines and trains its officers on appropriate Taser use. While the NYPD Patrol Guide states that drive stun mode⁸ should not be used as the primary method of Taser deployment “unless exceptional circumstances exist,” it does not define the phrase “exceptional circumstances.” Training on Taser use also does not define this phrase, but it does advise officers to avoid using drive stun mode except 1) in conjunction with probe mode in an effort to complete a circuit with three-point contact, 2) to create reactionary distance when a subject is in close proximity to an officer, or 3) to obtain pain compliance via brief applications. The training notes that each Taser discharge must be legally justifiable and that Tasers should not be deployed in drive stun mode past the point at which it would be effective at gaining compliance. There are, however, no clear examples provided in training that might better elucidate the advised limitations of the use of a Taser in drive stun mode. NYPD training on Taser use would be bolstered by adding descriptions of situations in which using a Taser in drive stun mode would be considered excessive.⁹

⁸ Taser use in “drive stun mode,” which is where electrodes or an expended cartridge on the front of the Taser are brought into direct or close proximity contact with the body of the subject, is different than the use of a Taser in “cartridge mode” (otherwise known as “probe mode”), in which compressed nitrogen gas propels two darts on conductive wires from a cartridge attached to the Taser toward the body of the subject. Taser use in probe mode achieves compliance by overriding the subject's nervous system, while drive stun mode achieves compliance via infliction of pain.

⁹ The suggested guidelines of the company that produces Taser devices, Axon, advises users to “avoid repeated drive-stuns if compliance is not achieved.” Axon notes that pain tolerance differs among suspects who are tased, but that there are potential health risks associated with multiple applications of a Taser in drive-stun mode. See Axon Training Resources, “TASER Conducted Energy Weapon (CEW) Use Guidelines,” January 9, 2019. Available at <https://www.axon.com/training/resources>.

2. Observation of two NYPD trainings on Taser use revealed opportunity for better synergy between officer¹⁰ and executive training on Taser use and de-escalation tactics. The CCRB's review found that officer training on Taser use is comprehensive, appropriately focuses on de-escalation as a preferred first approach with "EDPs" when it is safe to do so, and notes the legal and procedural limits of Taser use. However, in the executive Taser training observed by CCRB staff,¹¹ the delineation between the treatment of "EDPs" and those experiencing excited delirium is not as clear as it could be and executives are trained that it is more effective and preferable to tase "EDPs" quickly in order to take them down and put them in handcuffs. Further, although both officers and executives are trained that MOS are not to tase a civilian who is running away, when assessing the totality of circumstances, executives were taught that MOS should consider whether or not the civilian can out run them in a foot chase, and to avoid a foot chase by tasing the individual.¹² Both of these elements in executive training are in conflict with de-escalation tactics discussed in the NYPD's Crisis Intervention Team (CIT) training, particularly for individuals who may be under the influence of drugs or experiencing a mental health crisis, and are not consistent with the more stringent lessons of officer training. As such, the CCRB's review indicates that the Department can do more to ensure consistency between executive and officer training.
3. At this time, the NYPD only downloads Taser device data (including when the given Taser was fired, the method in which it was discharged, the number of cycles utilized and the time that elapsed between cycles) in the event of a critical incident or suspected misconduct, rather than as a routine part of the completion of a Threat, Resistance, and Injury Worksheet (TRI).¹³ When the CCRB requests Taser data logs, a MOS from NYPD's Internal

¹⁰ While this report labels this training as "officer" training to easily differentiate it from executive training, this training is also given to front-line supervisors and members of service of any rank who will be using a Taser.

¹¹ Executive members of service generally includes those at the rank of captain or above, though the CCRB cannot verify the rank of any of the members of service who attended the training module that CCRB staff observed. While executives generally do not use Taser devices, they may be responsible for securing evidence and supervising investigations following the discharge of a Taser. The executive training that CCRB staff observed—the Executive Conducted Electrical Weapons/Evidence Collection & Analysis Certification module—is intended to be an abbreviated version of the full-day training on Taser use, using the same curriculum but with a slightly altered focus on executive roles and responsibilities.

¹² In a communication with the CCRB on October 18, 2019, the NYPD's Risk Management Bureau asserted that "the Department's desired goal is to obtain voluntary compliance without the use of any type of force while acknowledging that not all encounters result in achieving such compliance."

¹³ See Patrol Guide § 221-03, which specifies that MOS must complete a TRI worksheet to record all instances when:

- a. A subject or any non-member sustains a physical injury or dies as a result of a police action or while in the care and custody of the Department
- b. A member of the service sustains a physical injury or dies as a result of apprehending or attempting to apprehend a subject or control an individual or individuals
- c. A subject actively resists custody (regardless of injury to any person)
- d. A prisoner attempts or commits suicide while in the custody of the Department
- e. Any level of force, as described in this procedure is used by a member of the service, whether or not an injury is sustained
- f. Allegations of excessive force (including incidents with no apparent injury)
- g. Suspected excessive force (including incidents with no apparent injury)
- h. Force, as described in P.G. 221-06, "Member of the Service Subjected to Force While Performing Lawful Duty," is used against a member of the service, whether or not an injury is sustained

Affairs Bureau (IAB) must physically download the data and create a data log to send to the CCRB. In practice, this process has been long and arduous enough to discourage CCRB investigators from requesting the data logs in the first place. Of the 100 fully-investigated complaints of improper Taser use included in this Report, CCRB investigators requested data logs in 11 complaints. The Agency ultimately received the data in only three of these complaints. The CCRB intends to work with the Department to improve the Agency's access to Taser data relevant to CCRB investigations. Further, as a result of this review, the CCRB has changed its internal policy to require investigators to request data logs in all investigations of alleged improper Taser use.

RECOMMENDATIONS FOR THE NYPD

As a result of the above findings, the CCRB recommends the following changes to NYPD protocols:

1. The NYPD should give additional training guidance to MOS regarding what factors to consider before applying additional drive stun mode cycles.

Providing examples of improper Taser use to help clarify the advised limitations of the use of a Taser in drive stun mode would limit confusion among officers. This additional guidance would also further clarify the Department's standards, and assist the CCRB in making determinations on whether an officer improperly used a Taser in drive stun mode.

2. The NYPD should ensure consistency between Taser training for officers and training for executives.

It is important that MOS who use Tasers and those who supervise them have the same information when it comes to Taser use. Although CIT training and officer Taser training are well-integrated, the same cannot be said for the executive training. It is important to harmonize and update all Taser-related trainings, including: 1) reiterating a preference for de-escalation in the executive training, 2) requiring Taser-certified MOS to complete CIT training, and 3) integrating CIT and Taser policies and guidelines. Discrepancies and inconsistencies between NYPD policies, guidelines, and trainings have the potential to add confusion for officers in already complex situations.

3. The NYPD should require MOS to download Taser data by the end of the tour in which a Taser was fired, and include the data report as an attachment to the TRI.

Taser data should be downloaded by the MOS as soon as there is an event, and attached to the TRI. This will ensure that the information is preserved and readily available if there is a future CCRB complaint or a departmental investigation into the Taser's deployment. The CCRB has discussed this recommendation with the Department, and the NYPD stated that it is currently reviewing the feasibility of its implementation.

4. The TRI should require the officer to note the number of Taser discharges.

The current version of the TRI requires officers to note the number of firearm discharges by the MOS; there is no such requirement for Taser deployments. As part of completing the TRI, officers should be required to include the number of Taser discharges. This will ensure that TRI

i. A member of the service discharges O.C. pepper spray, a Conducted Electrical Weapon or firearm, regardless of whether an injury was caused (i.e., includes accidental discharges, discharges against animals, etc.).

data is more complete with regard to Taser use.

5. The NYPD should consider enabling its X26P Tasers to wirelessly report its status, enabling Body Worn Cameras (BWC) to begin recording automatically during critical situations.

There is technology available that allows a Taser to wirelessly report its status, such as being armed or the trigger being pulled, which would automatically activate all nearby cameras (including BWCs and dashboard cameras). The use of this technology would ensure that all potential uses of a Taser are recorded on BWCs, enabling greater oversight by NYPD supervisors, the CCRB, other oversight entities, and the public. While the NYPD has stated that the current BWC model does not support this software, the CCRB believes the Department should consider its implementation in the next hardware upgrade.

EMBARGOED

SUMMARY OF DATA FINDINGS

- Between January 1, 2014 and December 31, 2017, the CCRB closed 100 fully investigated complaints in which a Taser was alleged to have been improperly used, containing 114 separate allegations of improper Taser use. Of these 100 cases, 10 were determined to have not involved the use of a Taser (closed as unfounded), leaving 90 cases and 103 allegations for the CCRB's qualitative analysis.
- In 2014-2017, in the majority of fully-investigated Taser allegations investigated (68% of 114 allegations), the Board determined that the preponderance of the evidence showed that the accused member of service (MOS) used the Taser in accordance with the standards set forth by the NYPD Patrol Guide, and exonerated these allegations. Across all four years, 10 (9%) Taser use allegations were substantiated across seven complaints. There were 11 (10%) unfounded and 15 (13%) unsubstantiated allegations.
- In 2014-2017, there were 109 fully investigated allegations across 101 complaints closed by the CCRB that officers had improperly threatened the use of a Taser. Across all four years, nine (8%) of these allegations have been substantiated, 41 (38%) unsubstantiated, and 2534 (31%) exonerated.
- Compared with the racial makeup of complainants in other CCRB cases closed during the same period, complainant/victims in Taser-related complaints closed in 2014-2017 were more likely to self-identify as Black (53 complainant/victims, or 59%, compared with 46%), and slightly less likely to identify as white (eight complainant/victims, or 9% compared with 12%).
- Most complaints (86 of 90, or 96%) involved only one subject officer using a Taser device. Members of service (MOS) who were subject officers in complaints in which a Taser was used were more likely to be white than members of service in other CCRB complaints (64 officers, or 67% compared with 51%).¹⁴ This racial disparity is skewed by the fact that higher-ranking members of the NYPD are more likely to be white and as noted in the 2016 Taser Report, up until late 2016, only members of service with the rank of sergeant or above were permitted to use Tasers. As of January 2019, 45% of NYPD police officers were white, compared with 53% of detectives, 53% of sergeants, 63% of lieutenants, 65% of captains, 80% of deputy inspectors, and 78% of those with the rank of inspector or higher.
- The NYPD uses a Conducted Energy Weapon ("CEW") manufactured by Axon Enterprise, Inc. (formerly known as Taser International, Inc.). The X-26 and X-26p Taser models¹⁵

¹⁴ While the racial breakdown of complainants and subject officers in these cases is different than that of complainants and subject officers in other CCRB complaints, care should be taken to avoid interpreting this racial disproportionality as evidence of racial profiling, as no causality can be inferred from the data.

¹⁵ Following recommendations from the International Association of Chiefs of Police (IACP) and the Police Executive Research Forum (PERF), NYPD is currently in the process of upgrading to the X-26P Taser model. The X-26P is operationally the same as the X-26 model, but with enhanced data tracking mechanisms including time, date, temperature, duration of discharge, and battery status, and added trigger protections to prevent

utilized by NYPD can deliver an electrical charge in two ways, referred to by the NYPD Patrol Guide as “probe mode” (alternately called “cartridge mode”) and “drive stun mode.”¹⁶ In 77 cases (86%), only probe mode was used. In 25 of these 77 cases (32% of probe-mode-only cases), more than one round of probe mode was used. In 12 cases (13%), only drive stun mode was used. In six of those 12 cases (50% of drive-stun-only cases), more than one round of drive stun mode was used.

- In the largest proportion of Taser discharges (43%), officers gave civilians no warning, either verbally or non-verbally. In 37% of Taser discharges, officers gave adequate verbal warning in advance of Taser use, meaning the officer verbally told the subject they were about to be tased, gave a lawful order, and waited several seconds for compliance. In seven instances (9%), officers warned other members of service at the scene that they were about to deploy a Taser rather than warning the civilian. In 5% of Taser discharges, the officer gave a verbal warning but gave no time to the civilian to comply before discharging the Taser.
- According to the NYPD Patrol Guide, a Taser “should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present.”¹⁷ In all four years of cases under examination, the majority of complainants (89% of cases closed in 2014, 52% in 2015, 68% in 2016, and 75% in 2017) were found to have offered some form of active resistance or active resistance with violence, including kicking, flailing of the arms, and twisting of the body to avoid being handcuffed.¹⁸
- In 2014-2017, at the time they were tased, between 37% (in cases closed in 2015) and 67% (in cases closed in 2016) complainants were either deemed an “emotional disturbed person” (“EDP”) by officers, admitted intoxication or substance use, or exhibited erratic behavior on the scene that was later confirmed to have co-occurred with a medical mental health diagnosis.

Taser cycles in excess of five seconds. See Axon Taser X26P Home Page, <https://www.axon.com/products/taser-x26p>.

¹⁶ PG § 221-08; see also Axon Taser X26P Operation at <https://help.axon.com/hc/en-us/categories/202952907-TASER-X26P#operation>

¹⁷ PG § 221-08.

¹⁸ Active resistance is defined to include “physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody,” and active aggression, which is coded in this Report as “violence,” is defined as “Threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent” (PG § 221-08).

INTRODUCTION

BACKGROUND AND REVIEW OF NYPD POLICIES ON TASER USE

The New York City Police Department (NYPD or the Department) Taser policy is articulated in Section 221.08 of the Patrol Guide, Use of Conducted Electrical Weapons (CEW).¹⁹ Section 221.08 explains:

A Conducted Electrical Weapon (CEW) can be an effective means of subduing aggressive suspects and emotionally disturbed persons (EDPs). A CEW is classified as a less lethal device and is intended to augment and provide a greater margin of safety for MOS who might otherwise be forced to physically subdue a dangerous subject. The use of a CEW is classified as a significant intermediate use of force option such as O.C. pepper spray or impact techniques.

A CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present...It is prohibited to use a CEW in situations that do not require the use of physical force.²⁰

Prior to 2016, the NYPD only issued Tasers to supervising officers (sergeants and lieutenants), Emergency Services Unit (ESU) officers, and Staten Island Ferry officers. Since then, the Department has expanded the list of members of service (MOS) who carry Tasers to include all lieutenants, sergeants, and field training officers (police officers partnered on patrol with less experienced partners); the Department is in the process of further expanding Taser assignments. Thus far, the Department has assigned at least one Taser to every command and every patrol vehicle, with an ultimate goal of having a Taser assigned to at least one officer on each foot patrol team.

Prior to 2016, after a Taser discharge, an officer one rank above the officer using the Taser was required to complete Less Lethal Restraint Device Reports, also known as PD 320-150s. For example, when a Lieutenant deployed a Taser, a Captain was required to ascertain and document the propriety of its use. Following the Department's revision to its protocols related to documentation of force in 2016, officers who use Tasers are now required to follow Patrol Guide S. 221-03, "Reporting and Investigation of Force Incident or Injury to Persons During Police Action," and to instead, personally fill out a Threat, Resistance or Injury (TRI) Incident Worksheet:²¹

¹⁹ See 2016 Taser Report for a thorough review of the history of the Taser, academic research on the use of Tasers, the NYPD's Taser policies, the NYPD's adoption of Tasers, NYPD's Taser training, and the legal standard for Taser use.

²⁰ Patrol Guide § 221-08 includes the following definitions of resisting:

Active Resisting: "Includes physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody."

Active Aggression: "Threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent."

Passive Resistance: "Minimal physical action to prevent a member from performing their lawful duty. For example, a subject failing to comply with a lawful command and stands motionless and/or a subject going limp when being taken into custody."

²¹ Patrol Guide § 221-03 categorizes the use of a Taser in "cartridge mode" (otherwise known as "probe mode," in which compressed nitrogen gas propels two darts on conductive wires from a cartridge attached to the Taser toward the body of the subject) as the least serious level of force, Level 1, which includes hand or foot strikes,

Each member of the service who used force or whose actions caused an injury to a non-member, had force used against them, was injured attempting to apprehend a subject or control an individual or individuals, or was responsible for a prisoner who was injured or attempted/committed suicide must complete a separate THREAT, RESISTANCE OR INJURY (T.R.I.) INCIDENT WORKSHEET. For example, if a police officer is assaulted and three additional officers use force to effect the arrest, all four officers will prepare a separate WORKSHEET detailing the force used against them and the force used to effect the arrest, as well as any injuries sustained by all parties.²²

In addition, whenever a Taser is discharged, such discharge must be recorded in the officer's activity log, the precinct's command log, or "other appropriate Department record."²³ Finally, any persons injured by a Taser, including all persons for whom the darts embed in their skin, must be taken to a hospital following the completion of an arrest. Injuries that occur during Taser use are documented with photographs, and any probes remaining in the skin of the subject are removed by medical personnel.

The NYPD currently uses the X26 and X26p Taser models which record and store large amounts of information about the device's use in its internal memory, including the time, date, temperature, duration, and remaining battery strength of the last 2000 discharges, all of which can be uploaded to the NYPD's database. The NYPD does not currently upload this data following each deployment of a Taser device or any regular interval. Instead, the Department uploads data on an as-needed basis, including for the purpose of investigation of allegations of improper use of a Taser.²⁴

METHODOLOGY AND SCOPE

The Civilian Complaint Review Board (CCRB or the Agency) approached this issue-based report with two main objectives. First, this Report is meant to function as a follow-up to the Agency's 2016 Taser Report. To that end, this Report examines Taser-related complaint data from the two-year period following the prior report's December 31, 2015 cutoff. The current Report also revisits the Taser-related issues and recommendations raised in the previous report, noting subsequent updates to NYPD's Patrol Guide standards for Taser usage, CCRB's investigative and date-tracking practices, and relevant Taser-related scholarship.

The CCRB's second objective for this Report is to take a deeper look at the incidents behind each Taser-related complaint received. By conducting a thematic analysis of full case files, CCRB has identified recurring factual circumstances surrounding Taser encounters and closely examined how these circumstances manifest in the complaints that CCRB investigates. The data that emerged from this qualitative analysis forms the basis for the Agency's policy recommendations that are designed to emphasize de-escalation and protect vulnerable populations from being subjected to avoidable force. Because this type of analysis was not part of the 2016 Taser Report, the Agency re-reviewed

the use of O.C. pepper spray, and wrestling the subject to the ground. Taser use in "drive stun mode" (in which electrodes or an expended cartridge on the front of the Taser are brought into direct or close proximity contact with the body of the subject) is categorized as the next most serious type of force, Level 2, which includes striking subjects with objects and canine bites. Level 3 force is deadly force.

²² Patrol Guide § 221-03.

²³ This now includes Tasers used during "spark tests" conducted to ensure operability at the beginning of a tour and any accidental discharge of a Taser. Patrol Guide § 221-08.

²⁴ See *infra*. p. 49.

all the complaints analyzed in that report²⁵ in order to provide a depiction of incidents from complaints closed in 2014-2017.²⁶

To identify all complaints involving improper Taser use for this Report, the CCRB expanded its search of the Agency's complaint database to include all cases closed by the Board between 2014 and 2017 in which improper Taser deployment was alleged, resulting in a total of 100 complaints. Of these, 90 complaints were fully investigated²⁷ **and** were related to incidents in which the use of a Taser was confirmed to have occurred.²⁸ Given that full investigations compile far more information about incidents than investigations that are truncated or closed without being fully investigated, the review of cases in this Report focuses exclusively on these 90 complaints.²⁹

²⁵ The 2016 Taser Report identified 153 Taser-related complaints, 51 of which were fully investigated—however, these complaints were originally identified as being closed in 2014 and 2015 due to the date on the case's closing report. Since then, the CCRB has determined that a more methodologically stringent "closing date" is the date that the Board issues its final determination in the case. At the conclusion of full investigations, cases are reviewed by panels of three Board Members comprised of one mayoral designee, one police commissioner designee, and one city council designee. Board Panels vote on dispositions and disciplinary recommendations for these cases. While most of the time, Board Panels agree with the disposition recommendations of the investigator on the case, there are times in which Panels may request further investigation or change the ultimate disposition of an allegation from the investigator's original recommendation. Thus, dispositions are not truly finalized until the Board Panel closes the case.

²⁶ One of the recommendations proposed in the 2016 CCRB Taser report was for NYPD to issue an annual external report tracking the frequency and consequences of Taser deployment. Since that time, NYPD has begun posting Quarterly Use of Force Data on its website. This data is viewable by force category, with Taser discharge data listed as "Electrical Weapon (Includes Accidental)." However, because it is anonymized, CCRB has no way to confirm that the Taser complaints it has received correspond to the Taser discharge incidents reported by the NYPD. As a result, CCRB is unable to compare its complaint-intake rate against NYPD's Taser discharge data or calculate the percentage of tased civilians who file CCRB complaints. The NYPD reports that there were 501 total Taser discharges in 2016 and 728 in 2017 (NYPD data retrieved from NYPD, *Annual Use of Force/Firearms Discharge Report Data Tables* (Sept. 18, 2018), <https://www1.nyc.gov/site/nypd/stats/reports-analysis/firearms-discharge.page>). The 136 complaints closed by the CCRB during this same time frame, while not all fully investigated, represent 11% of the total number of Taser discharges reported by the NYPD. Further, because one incident may also result in multiple Taser discharges, it is likely that the number of people tased in 2016 and 2017 is lower than the reported number of Taser discharges.

²⁷ A complaint may contain one or more allegations, and may or may not result in a full investigation of those allegations. Cases that are not fully investigated are closed as "truncated," which occurs when the complainant withdraws the complaint, the complainant is uncooperative or unavailable, or the victim cannot be identified. Some types of complaints, like complaints that are sent from NYPD's Internal Affairs Bureau (IAB) to the CCRB, are more likely to be closed as truncated and have no listed complainant. This is because the IAB is required to send the CCRB complaints in which arrestees are injured in police custody. During Taser incidents, subjects frequently receive lacerations from the Taser darts, triggering this automatic reporting requirement. Unfortunately, many of the victims or alleged victims of these injuries are often unaware of the CCRB, or why they are being asked questions about the incident. These complaints are therefore more frequently closed as truncations.

²⁸ Ten cases were removed from analysis because the cases were closed as "Unfounded," meaning that the Board had determined that the alleged Taser use had not occurred, and so an analysis of Taser use during the incident was not possible.

²⁹ While the analytical approach in this report focuses on cases in which Taser use can be confirmed, and is therefore a review of cases with a greater amount of detailed information, such an approach limits direct comparisons to the original 2016 Taser Report. As such, all data analytics will include statistics from the entire 2014-2017 four-year time frame for temporal comparisons.

This Report provides an analysis of disposition, demographic, and other descriptive data for these 90 complaints. In addition, each complaint's case file was manually coded for the following factors that the CCRB identified in the 2016 Taser Report as recommended for the Agency's ongoing analysis of its Taser-related complaints, cited below as they appeared in the 2016 Taser Report:³⁰

- Track whether officers are issuing verbal warnings to intended subjects before firing Tasers. The Patrol Guide no longer contains a clear requirement to do so, but rather advises officers to give verbal warnings "when feasible."³¹
- Track whether officers are tasing handcuffed persons. There are circumstances where force is appropriate against a handcuffed person, such as when that person is trying to flee or kicking violently. The CCRB will track how this exception is applied. The CCRB believes that it should only apply where there is a risk to the physical well-being of officers or others and minimal risk to the arrestee.
- Track whether officers are using Tasers when an arrestee has "tensed," but is exhibiting no other signs of violence or threat to officer safety. Determine whether Tasers are being used to coerce or attempt to pacify individuals who are nonviolent, even if they are upset and verbally aggressive.
- Track whether officers are using Tasers against individuals who are in flight and have not committed a dangerous offense and are not a danger to officers or other civilians. It is improper to do so according to NYPD training protocols.
- Track whether officers are threatening Taser use in situations where it is not appropriate.

In addition to examining its own complaint data, CCRB consulted with members of the NYPD's Risk Management Bureau to ask Taser-related policy and protocol questions that were not easily answered by the Patrol Guide. Members of CCRB's Policy and Advocacy Unit also observed two NYPD Taser trainings, one for executives and one for officers, NYPD Crisis Intervention Team (CIT) Training at the New York City Police Academy, and spoke with NYPD staff about both trainings.

³⁰ See 2016 Taser Report pp.6-7.

³¹ § 221-08 of the Patrol Guide, Use of Conducted Electrical Weapons (CEW) is substantively similar to the previous Patrol Guide § 212-117, which was changed in June 2016. One major difference between the two guidelines is whether a police officer must issue a verbal warning to the intended Taser subject. § 212-117 required officers to "issue an appropriate warning, consistent with personal safety, to the intended subject... prior to discharging the CED." § 221-08 permits "[p]ointing and placing the laser dot of an activated CEW on a subject in order to attempt to achieve voluntary compliance," adding that, "[w]hen feasible," officers should "issue a verbal warning, consistent with personal safety, to the intended subject in conjunction with a laser warning."

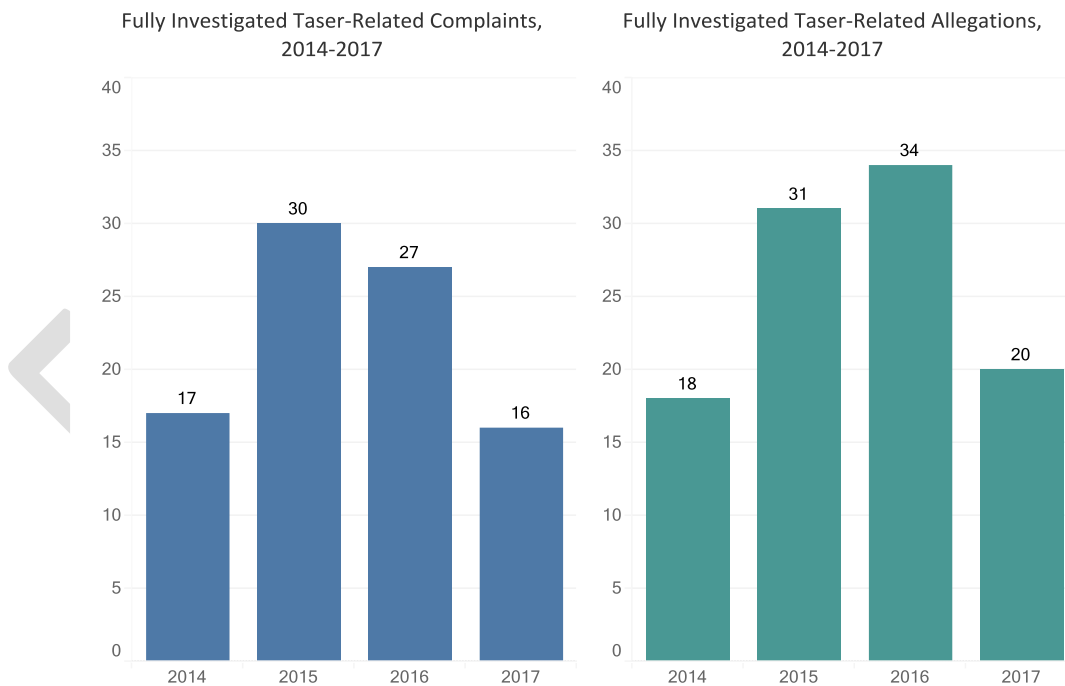
FINDINGS

ANALYSIS OF CIVILIAN COMPLAINT REVIEW BOARD (CCRB) DATA ON TASER-RELATED COMPLAINTS

Taser-Related Complaints and Allegations

In order to resolve its investigations fairly and in accordance with the New York City Charter, the CCRB generally needs the cooperation of at least one civilian complainant/alleged victim related to the case. The Board’s findings and recommendations cannot “be based solely upon an unsworn complaint or statement.” When the CCRB is able to complete the investigation of a complaint, the case is closed as a “full investigation.” Between January 1, 2014 and December 31, 2017, the CCRB closed 100 fully investigated complaints in which a Taser was alleged to have been improperly used, containing 114 separate allegations of improper Taser use. Of these 100 cases, 10 were determined to have not involved the use of a Taser (closed as unfounded), leaving 90 cases and 103 allegations for the CCRB’s qualitative analysis.³² One complaint may have multiple Taser-related allegations due to multiple complainants or multiple officers involved in the same incident, or multiple Taser-related allegations (such as improper use of a Taser generally *and* improper use of a Taser in drive-stun mode).

Figure 1: Fully Investigated Taser-Related Complaints and Allegations, 2014-2017

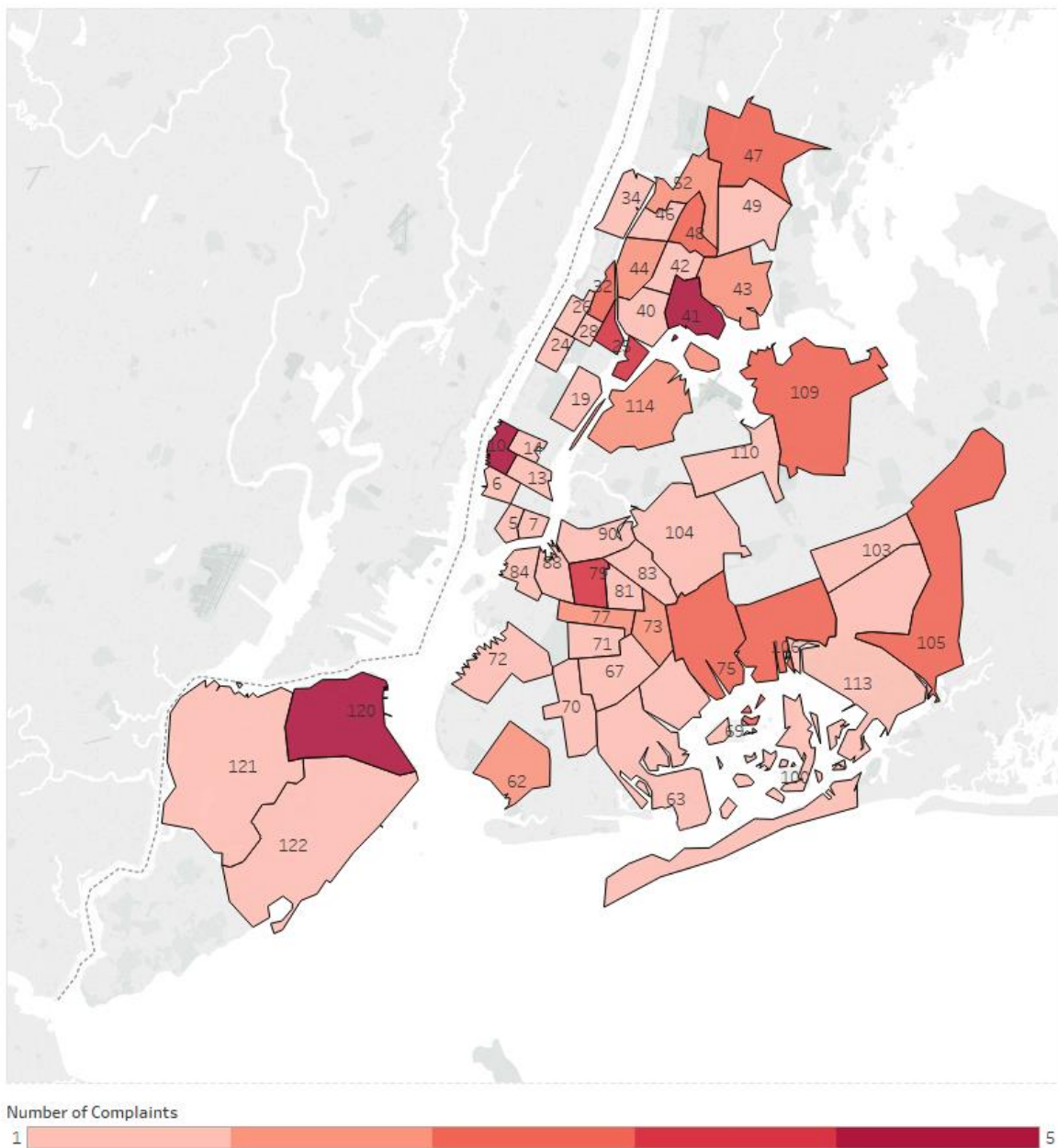


³² Unless otherwise stated, for the duration of this Report, “Complaints” will refer to fully-investigated complaints in which CCRB was able to confirm that a Taser was deployed or there was a threat to deploy a Taser.

Geographic Dispersion of Taser-Related Complaints

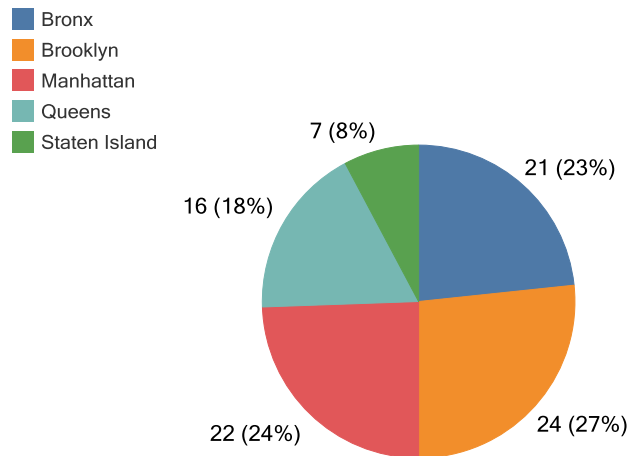
In the four-year time frame the Agency examined, no precinct had more than five Taser-related complaints. The precincts with the highest number of complaints (five) were the 120th Precinct in Staten Island, the 10th Precinct in Manhattan, and the 41st Precinct in the Bronx. The 25th Precinct in Manhattan and the 79th Precinct in Brooklyn each had four complaints. Figure 2 depicts the number of complaints closed in each precinct over the four-year period.

Figure 2: Taser Complaints per Precinct, 2014-2017



Despite the higher number of complaints in the 120th Precinct, Staten Island was the source of only 8% of the Taser-related complaints examined. Brooklyn had the highest proportion of complaints at 27%. Figure 3 depicts Taser-related complaints by borough.³³ The number of Taser complaints per borough closely mirrors the total Force allegations per borough for the same time frame, with Brooklyn having the highest proportion of Force allegations at 32% and Staten Island having 6% of Force allegations. These percentages also reflect the proportion of New Yorkers living in these boroughs, with 31% residing in Brooklyn and 6% in Staten Island.³⁴

Figure 3: Taser Complaints by Borough, 2014-2017



Complainants/Victims in Taser-Related Complaints

The 2016 Taser Report recommended that the Agency examine demographic data “to monitor for racial profiling in the use of Tasers.”³⁵ While demographic data alone cannot indicate profiling, comparisons of complainant demographics are helpful to describe demographic disproportionality.³⁶ As shown in Figure 4, compared with the racial makeup of complainants in other CCRB cases closed during the same period, complainant/victims³⁷ in Taser complaints closed

³³ According to the NYPD, 27.5% of Taser discharges in 2017 were in the Bronx, 27.3% in Brooklyn, 25% in Manhattan, 15.5% in Queens, 3.7% in Staten Island, and 1% outside of New York City. *Supra* note 4 at 33.

³⁴ According to the 2010 Census, 17% of New York residents live in the Bronx, 19% in Manhattan, and 27% in Queens. City demographic data was drawn from the United States Census by totaling the 2017 population estimates for the five counties that make up New York City (Bronx, Kings, New York, Queens, and Richmond). Census data is available at <http://factfinder.census.gov/>.

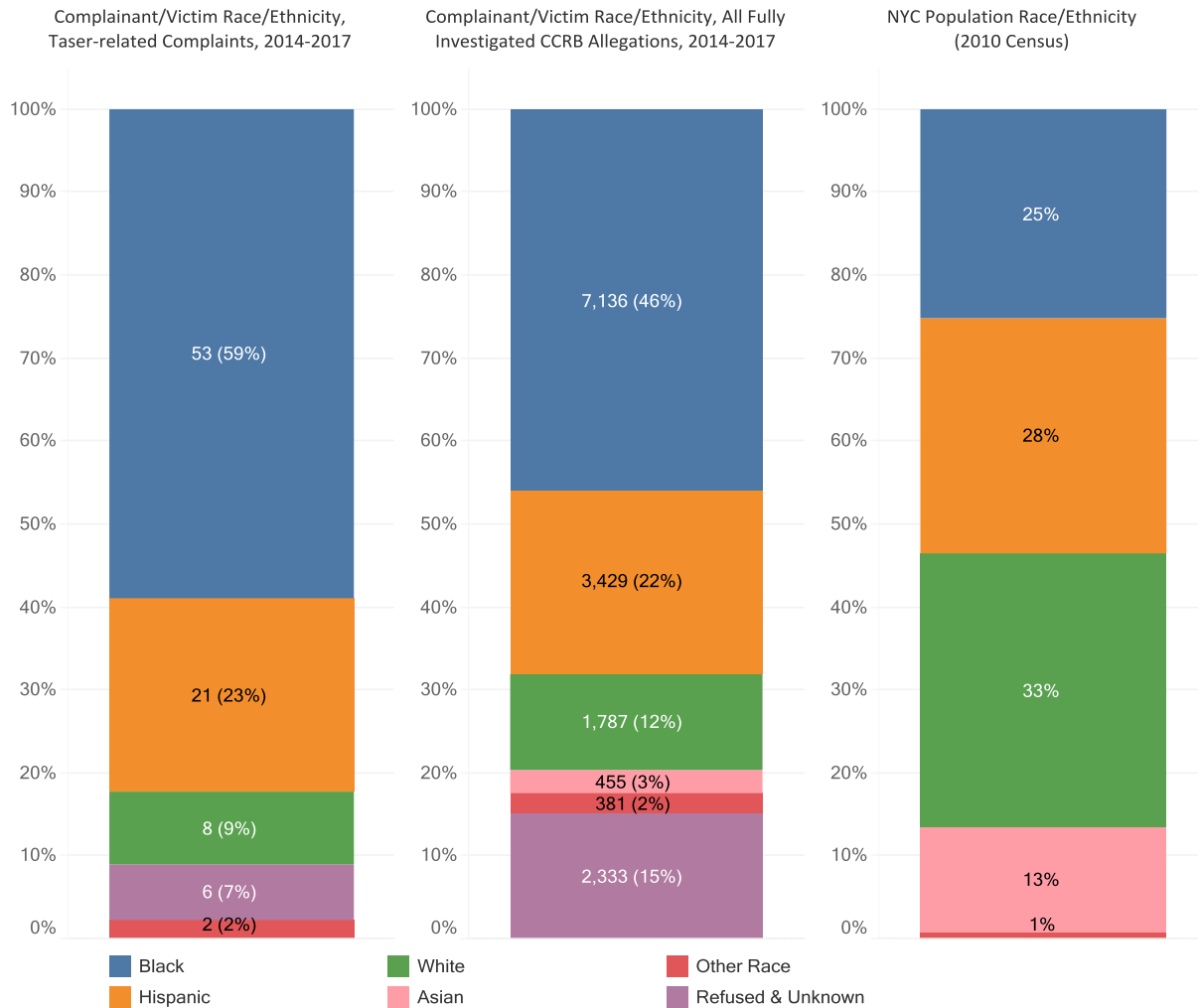
³⁵ 2016 Taser Report, p.42.

³⁶ As in all CCRB’s reports, demographic data for complainants and subject officers is provided as descriptive data only. No statistical comparisons have been drawn that can indicate statistical significance or any other patterns.

³⁷ “Complainant/victim” is a CCRB data term that indicates individuals who were the subject of police action – in this case, individuals who were tased. It is used to differentiate from complainant/witnesses, who reported alleged police misconduct but were not the subject of police action. It is also inclusive of those who may be

in 2014-2017 are more likely to self-identify as Black (59% compared with 46%), and slightly less likely to identify as white (9% compared with 12%).³⁸ As depicted in Figure 5, complainant/victims involved in these complaints were also predominantly men (91.1%).³⁹

Figure 4: Race/Ethnicity of Complainant/Victims in Taser Complaints Compared with All Fully- Investigated CCRB Complaints, 2014-2017

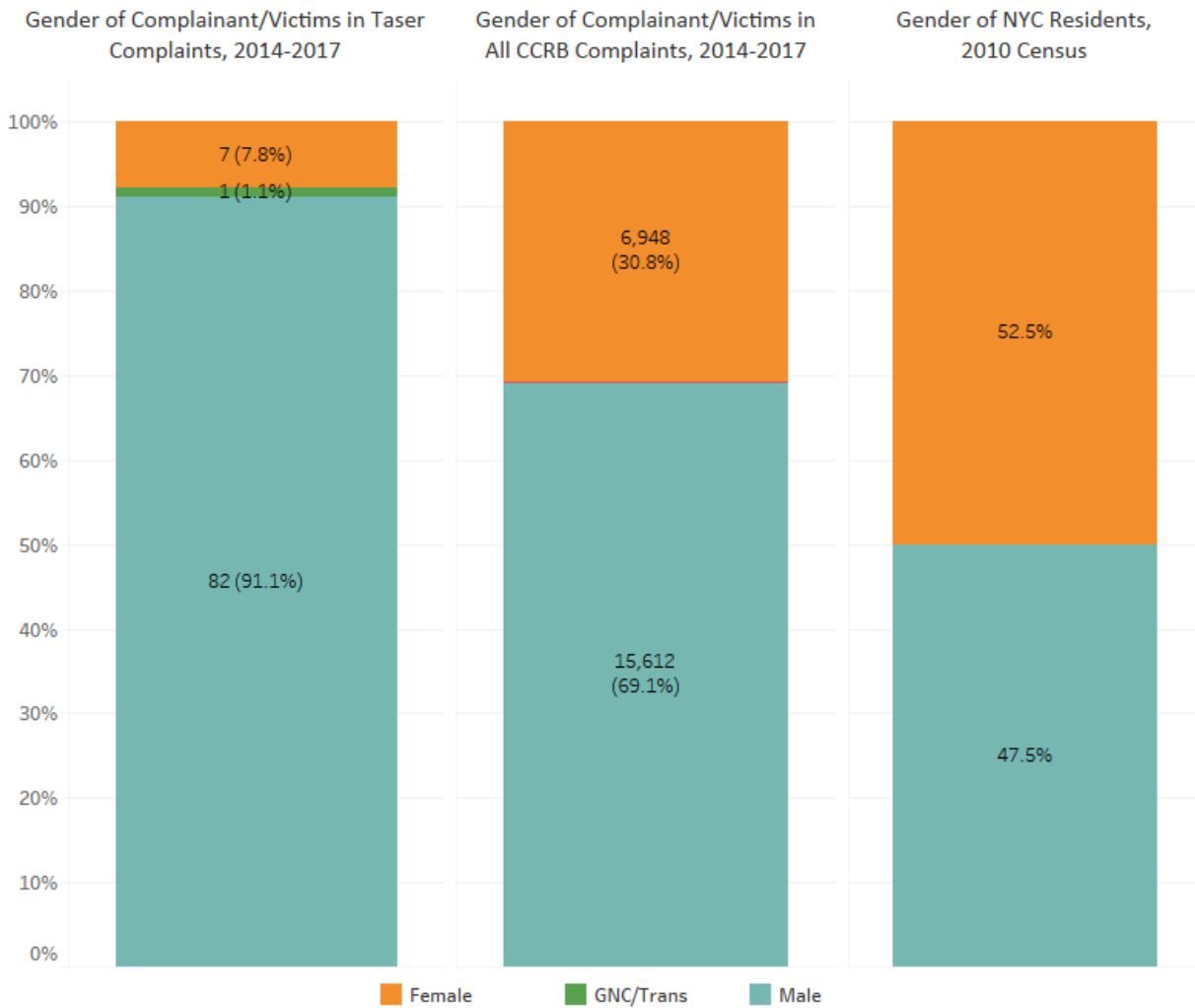


“victims” because the Board substantiated their allegations, and complainants who were the subject of police action and alleged misconduct, but the police action in question was either exonerated or unsubstantiated.

³⁸ As previously noted, demographic data for complainants and subject officers is provided as descriptive data only. No statistical comparisons have been drawn that can indicate statistical significance or any other patterns. In addition, some percentages may not add up to 100% due to rounding.

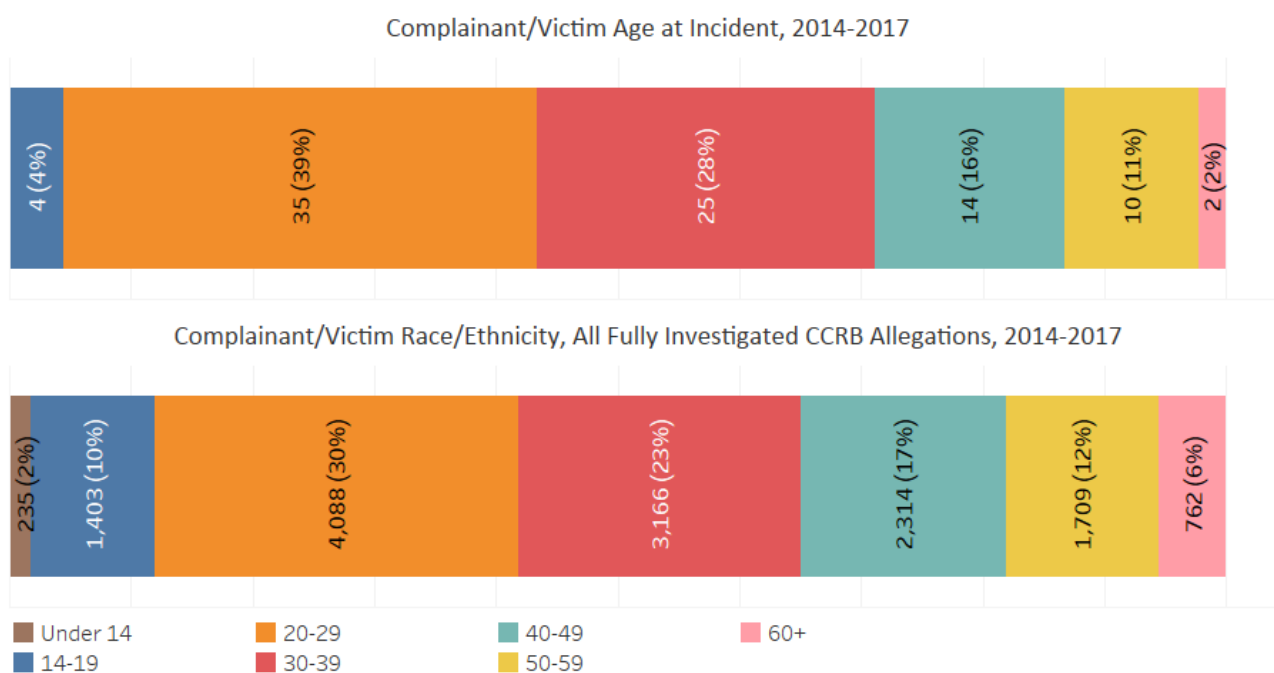
³⁹ In 2018, the CCRB added “gender non-conforming” as an option in its case tracking system. Figure 5 combined complainant/victims who identified as either gender-nonconforming (“GNC”) or transgender male or female (“trans”).

Figure 5: Gender Breakdown of Complainant/Victims in Fully-Investigated Taser Complaints



As seen in Figure 6, compared with all fully-investigated CCRB complaints, a greater proportion of complainant/victims in fully-investigated Taser-related complaints closed between 2014 and 2017 were between 20 and 29 years old (39% compared with 30%) and 30 and 39 years old (28% compared with 23%).

Figure 6: Age of Complainant/Victims in Taser Complaints Compared with All Fully Investigated CCRB Complaints, 2014-2017



Subject Officers in Taser-Related Complaints

The racial and ethnic breakdown of subject officers in complaints in which a Taser was used differs from what is seen with CCRB complaints overall. As depicted in Figure 7, MOS who were subject officers in complaints⁴⁰ in which a Taser was used were more likely to be white than members of service who had at least one complaint filed against them (67% compared with 51%).⁴¹ Officers in these Taser-related complaints were also less likely to be Black (7% compared with 15%) or Hispanic (19% as opposed to 28%) compared with MOS who had received at least one CCRB complaint in the period.

⁴⁰ In several Taser-related complaints under examination for this Report, there was more than one subject officer in a single complaint.

⁴¹ While the racial breakdown of complainants and subject officers in these cases is different than that of complainants and subject officers in other CCRB complaints, care should be taken to avoid interpreting this racial disproportionality as evidence of racial profiling, as no causality can be inferred from the data. This racial disparity is skewed by the fact that until late 2016, only members of service with the rank of sergeant or higher were permitted to use Tasers, and higher-ranking members of the NYPD are more likely to be white. As of January 2019, 45% of NYPD police officers were white, compared with 53% of detectives, 53% of sergeants, 63% of lieutenants, 65% of captains, 80% of deputy inspectors, and 78% of those with the rank of inspector or higher.

Figure 7: Race/Ethnicity of Subject Officers in Taser-Related Complaints Compared with All Fully- Investigated CCRB Complaints, 2014-2017

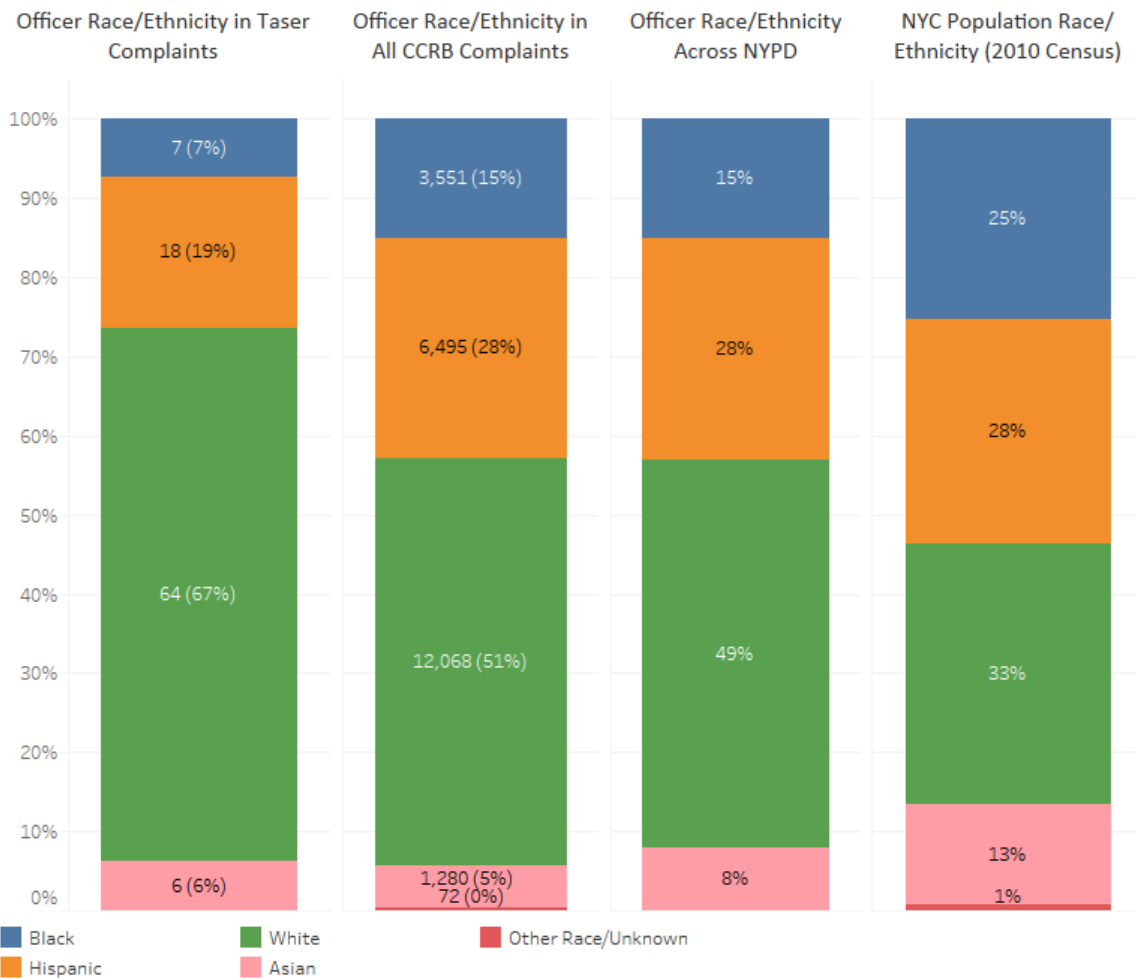


Figure 8 depicts the rank of subject officers involved in Taser complaints.⁴² Until 2015, only members of the NYPD’s Emergency Services Unit or those with the rank of sergeant or above were permitted to use Tasers.⁴³ As a result, all but two of the subject officers involved in Taser incidents closed in 2014 and 2015 were sergeants or lieutenants. Approximately 26% of Taser complaints closed in 2016 and 32% of those closed in 2017 involved MOS other than sergeants and lieutenants. The NYPD reports that police officers were responsible for approximately 66% (484 of 728) of Taser discharges in 2017, with MOS assigned to the Patrol Services Bureau responsible for 76% of all Taser discharges that year.⁴⁴

⁴³ *Supra* note 4 at 32.

⁴⁴ *Id.*

Figure 8: MOS Rank at Time of Incident

	2014	2015	2016	2017
Captain			1 (4%)	
Detective	1 (6%)	1 (3%)	1 (4%)	
Lieutenant	5 (28%)	4 (13%)	4 (14%)	3 (16%)
Sergeant	12 (67%)	25 (83%)	17 (61%)	10 (53%)
Police Officer			5 (18%)	6 (32%)
Grand Total	18 (100%)	30 (100%)	28 (100%)	19 (100%)

This shift accompanies a change in how the NYPD has assigned Tasers over the last two years analyzed in this Report as a result of increased budgeting for additional devices.⁴⁵ A number of Tasers are assigned to each command, and desk officers are responsible for assigning the devices in the following order: 1) a Taser device remains at the desk in each command, 2) each supervisor on patrol is then assigned a Taser, first to supervisors in police vehicles, and then to foot patrols, 3) any remaining Tasers are assigned to the other member of each police vehicle team. Discussions with the NYPD indicate that the Department plans to continue to increase the number of Tasers assigned to each command as additional funding becomes available. There are approximately 3,000 Tasers in the field and approximately 20,000 officers have received Taser training at the time of this writing. There are currently enough Tasers in circulation for each precinct to assign one Taser device to every car on patrol during each tour. As the Department expands the use of Tasers, they will be prioritizing patrol, housing and transit units, as well as precincts in the Bronx, Brooklyn North, and Brooklyn South.

⁴⁵ A full discussion of the NYPD's early expansion of the assignment of Tasers to lower-ranked officers can be found on pp.13-16 of the 2016 Taser Report.

DISPOSITIONS AND DISCIPLINE IN TASER-RELATED COMPLAINTS

At the conclusion of an investigation, the Investigations Division recommends a disposition for each allegation to the Board. In most cases,⁴⁶ a Panel of three Board Members comprised of a mayoral designee, a city council designee, and a police commissioner designee reviews the case and votes on each allegation.

There are five possible dispositions the Board may assign to fully-investigated allegations:

- An allegation is **substantiated** if the alleged conduct is found to have occurred and be improper based on a preponderance of the evidence.
- An allegation is **exonerated** if the alleged conduct is found to have occurred but was not found to be improper by a preponderance of the evidence.
- An allegation is **unfounded** if the alleged conduct is found not to have occurred by a preponderance of the evidence.
- An allegation is closed as **officer unidentified** if the CCRB was unable to identify any of the officers accused of misconduct.
- An allegation is **unsubstantiated** if there is not enough evidence to determine whether or not misconduct occurred.

Contained in the 100 complaints that were fully investigated, including those complaints closed as unfounded, were 114 allegations of improper Taser use: 21 in 2014, 32 in 2015, 39 in 2016, and 22 in 2017. In 2014, 81% of the allegations were exonerated, 14% were unfounded, and one (5%) was substantiated (Figure 9).⁴⁷ In 2015, 78% allegations were exonerated, 16% were unsubstantiated, one (3%) was unfounded, and one (3%) was substantiated.⁴⁸ In 2016, 56% were exonerated, 15% unsubstantiated, 13% unfounded, and 15% substantiated – the highest substantiation rate of the four-year time frame. In 2017, 64% were exonerated, 18% were unsubstantiated, 9% were unfounded, and 9% were substantiated.⁴⁹ As the 2016 Report notes, however, some aspects of these disposition breakdowns are markedly different than what is typically seen in CCRB closed cases.⁵⁰ Exonerations typically represent between 22% and 29% of allegation dispositions, while unsubstantiations have a typical range of 40%-49%.⁵¹ In most cases, investigators determined that the preponderance of the evidence showed that the accused MOS used the Taser in accordance with the standards set forth by the NYPD Patrol Guide.

⁴⁶ In highly-sensitive cases or in cases in which the Board panel is split, the full Board meets to vote on the case.

⁴⁷ Of all fully-investigated CCRB Force allegations closed in 2014-2017, 5% were substantiated, 35% were exonerated, 15% were unfounded, 34% were unsubstantiated, and 11% were closed as officer unidentified.

⁴⁸ To better depict Board recommendations in full, this graphic depicts all 100 fully investigated complaints, including the seven from 2016 and 2017 that were determined to have been unfounded.

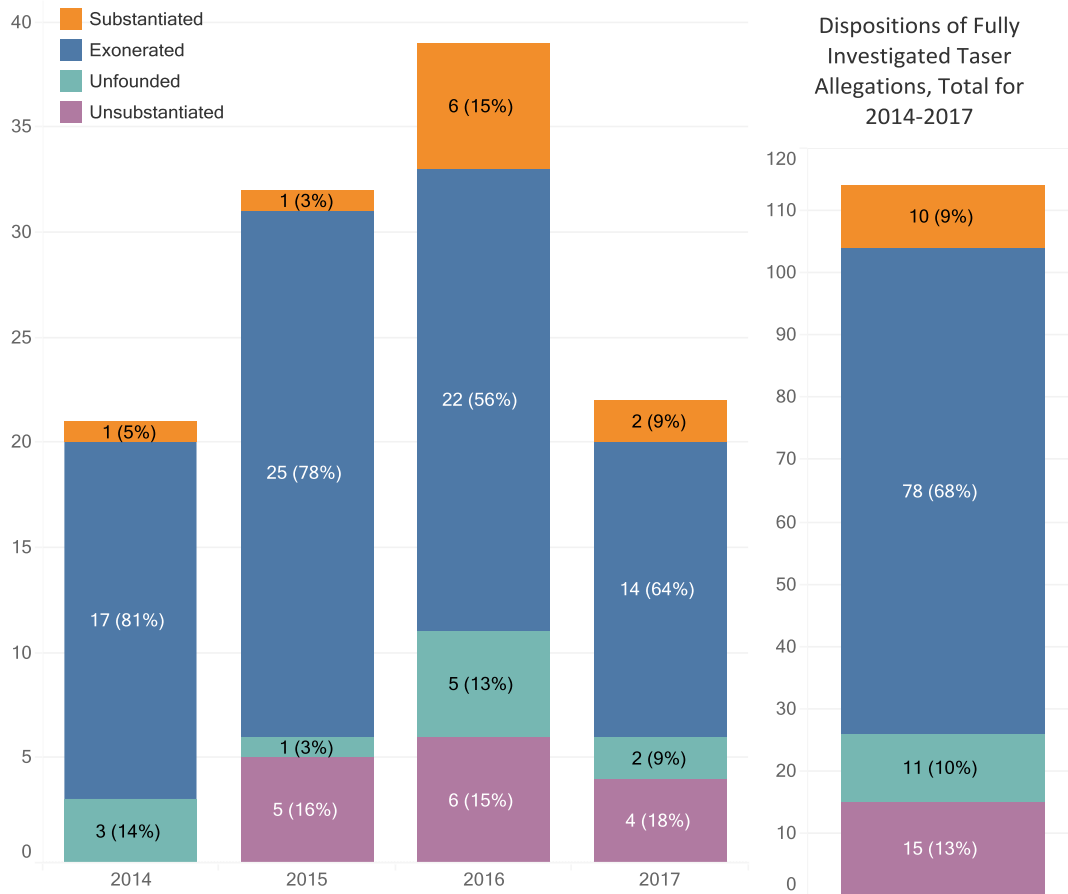
⁴⁹ While this Report breaks down annual data for many of its analyses, it is important to note that due to the small raw number of cases in each year, fluctuations from year to year in all variables examined in this Report cannot be used to imply causality or correlation with any other variable shifts over time.

⁵⁰ 2017 Annual Report Figure 25 p. 27
https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf

⁵¹ Substantiations of allegations have ranged from 9% to 14% over the past five years, and unfounded allegations have ranged from 6% to 9%. See New York City Civilian Complaint Review Board, Annual Report January-December 2017 Annual Report, 27 (2017), available at:

https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf
https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf

Figure 9: Dispositions of Fully-Investigated Taser Allegations, 2014-2017



Although the Board can recommend the discipline it deems appropriate for a subject officer, the Police Commissioner has final approval over MOS discipline. The Commissioner can accept, reject, or modify the recommendation made by the CCRB. For each allegation of misconduct, the Board recommends one of five basic types of discipline, listed below in ascending order of severity:

1. **Instructions:** Guidance issued by a commanding officer.
2. **Formalized Training:** Formalized Training is given at the Police Academy or the Legal Bureau.
3. **Command Discipline A:** Command Discipline A is issued by the commanding officer and may include a penalty ranging from Instructions up to the forfeiture of five vacation days.⁵² A Command Discipline A is automatically removed from a MOS's Central Personnel Index after one year.⁵³
4. **Command Discipline B:** Command Discipline B is issued by the commanding officer and may include a penalty ranging from Instructions up to the forfeiture of 10 vacation days. A MOS can request that a Command Discipline B be removed from their Central Personnel Index after three years.

⁵² Prior to 2014, the Board did not distinguish between "Command Discipline A" and "Command Discipline B." The corresponding disciplinary recommendation was simply "Command Discipline."

⁵³ A Central Personnel Index is a member of service's personnel record.

5. **Charges and Specifications:** Charges and Specifications lead to an administrative trial process during which a MOS may either plead guilty or go to trial before the NYPD Deputy Commissioner of Trials (DCT) or an Assistant Deputy Commissioner of Trials (ADCT). In all cases, the Police Commissioner has final approval of all dispositions, but generally follows the recommendation of the DCT or ADCT.

When the CCRB recommends Instructions, Formalized Training, or Command Discipline against an MOS, that recommendation is sent to the NYPD Department Advocate’s Office (DAO). The DAO reviews the case and recommends to the Police Commissioner whether to impose or modify the discipline recommended by the CCRB. When the CCRB recommends Charges and Specifications, the substantiated allegations are generally prosecuted by the CCRB’s Administrative Prosecution Unit (APU), which became operational in 2013.⁵⁴

The eight Taser-related allegations closed as substantiated in 2016 and 2017 were pled against five MOS across seven different complaints (Figure 10). The Board recommended Charges and Specifications in four of these complaints; three resulted in the forfeiture of vacation days and one resulted in the officer receiving no discipline.⁵⁵ In one substantiated case, the Board recommended Formalized Training and the Police Commissioner ultimately imposed Instructions, though in this case, due to the NYPD having concurrent jurisdiction over Force complaints, had been independently investigated by the NYPD and adjudicated prior to the Board’s recommendation of Formalized Training. In another substantiated case, the Board recommended Command Discipline A and no discipline was imposed; and in the final substantiated case, the Board recommended Command Discipline B and no discipline was imposed.

Figure 10: Discipline Recommended and Imposed, Complaints Closed 2014-2017

	CCRB Disposition	CCRB Discipline Recommendation	NYPD Discipline Imposed
1	Substantiated	Charges & Specifications	Vacation Forfeiture
2	Substantiated	Command Discipline A	No Discipline Imposed
3	Substantiated	Charges & Specifications	No Discipline Imposed
4	Substantiated	Charges & Specifications	Vacation Forfeiture
5	Substantiated	Charges & Specifications	Vacation Forfeiture
6	Substantiated	Command Discipline B	No Discipline Imposed
7	Substantiated	Formalized Training	Previously Adjudicated by the NYPD: Instructions

⁵⁴ Under the terms of a Memorandum of Understanding between the CCRB and the NYPD, in effect since 2013, the APU prosecutes misconduct before the DCT or ADCT. The MOS may also enter into a plea agreement in lieu of trial. If the MOS chooses to go to trial and is subsequently found guilty, the trial commissioner will recommend a penalty. The Police Commissioner may accept, reject, or modify any trial verdict or plea.

⁵⁵ The Board recommends discipline for the complaint as a whole, rather than for each individual allegation in a complaint. As such, Figure 10 depicts the disciplinary recommendation for each of the seven substantiated Taser complaints rather than eight allegations separately.

TASER USE IN CIVILIAN COMPLAINT REVIEW BOARD (CCRB) COMPLAINTS: “PROBE MODE” AND “DRIVE STUN MODE” CASES

As outlined in the 2016 Taser Report, NYPD uses Conducted Energy Weapons (CEW) manufactured by Axon Enterprise, Inc. (formerly known as Taser International, Inc.). The X-26 and X-26p Taser models⁵⁶ utilized by NYPD can deliver an electrical charge in two ways, referred to by the NYPD Patrol Guide as “probe mode” (alternately called “cartridge mode”) and “drive stun mode.”⁵⁷

The NYPD identifies probe mode as the preferred method of Taser deployment, with 87% of 2017’s 728 Taser discharges deployed in this mode.⁵⁸ In probe mode, when the Taser is deployed, the weapon utilizes compressed nitrogen gas to propel two wired darts at a target.⁵⁹ The darts, which are barbed probes designed to penetrate the skin, remain connected to the Taser by conductive wires that deliver a powerful electric current to the probes. Once the darts make contact, NYPD Tasers are programmed to automatically conduct energy through the subject’s body for five seconds.⁶⁰ The resulting charge is intended to override the subject’s central nervous system by causing uncontrollable muscle contractions.⁶¹ As the wired darts stay attached to the Taser, the Taser’s trigger can be pulled repeatedly to deliver additional five-second Taser cycles, so long as the darts remain embedded in the subject’s skin. Any incident involving the use of a Taser in probe mode must be investigated by an NYPD member of service (MOS) with the rank of inspector or higher.⁶²

In probe mode, the Taser only completes an electrical circuit when both darts are successfully embedded in a subject’s skin. If one prong misses or fails to fully penetrate the subject’s clothing, the Taser can be rendered ineffective. Because the Taser’s darts are designed to separate when fired, it is not uncommon for one or both prongs to miss the intended target completely. The NYPD reports that of the 728 Taser discharges in 2017, 133 (18%) were unintentional discharges, and 147 (20%) were deemed ineffective.⁶³ The most common reasons for ineffective discharges included probes missing, falling out, or being removed by the subject, the subject fighting through the pain of the Taser discharge to continue to resist police efforts to subdue them, or the prongs

⁵⁶ Following recommendations from the International Association of Chiefs of Police (IACP) and the Police Executive Research Forum (PERF), NYPD is currently in the process of upgrading to the X-26P Taser model. The X-26P is operationally the same as the X-26 model, but with enhanced data tracking mechanisms including time, date, temperature, duration of discharge, and battery status, and added trigger protections to prevent Taser cycles in excess of five seconds. See Axon Taser X26P Home Page, <https://www.axon.com/products/taser-x26p>.

⁵⁷ PG § 221-08; see also Axon Taser X26P Operation at <https://help.axon.com/hc/en-us/categories/202952907-TASER-X26P#operation>

⁵⁸ New York City Police Department, *supra* note 4 at 31. There were 46 deployments of Tasers in drive stun mode in 2017.

⁵⁹ PG § 221-08.

⁶⁰ When using the X-26 Taser model, a single trigger pull will deliver a 5 second shock. However, the shock will last longer than 5 seconds if the trigger is held down for longer than 5 seconds. The X-26P Taser model has a safety mechanism that limits the shock to 5 seconds even when the trigger is held down. The user must pull the trigger again in order to administer additional shocks.

⁶¹ U.S. Department of Justice Office of Justice Programs, National Institute of Justice, *Research in Brief: Police Use of Force, Tasers and Other Less-Lethal Weapons* (May 2011), available at: <https://www.ncjrs.gov/pdffiles1/nij/232215.Pdf>.

⁶² PG § 221-08.

⁶³ *Supra* note 4 at 32.

having poor spread across the subject's body (i.e. being too far apart to complete a circuit).⁶⁴ When only one prong embeds in the target's skin, the circuit can be completed by applying the Taser to the Target's body in drive stun mode. When used in this way, the Taser will override the target's nervous system (as in probe mode), whereas drive stun mode used without any embedded prongs only functions as a pain compliance tool, and does not have an immobilizing effect.⁶⁵

As noted above, a Taser used in probe mode is capable of delivering numerous five-second Taser applications. The NYPD's Taser protocols consider each Taser application an individual use of force. This means that before each subsequent application of a Taser after the initial five seconds, the MOS must take into account whether the subject has had the opportunity or ability to comply with an officer's commands. The Patrol Guide states that "[a]ll applications must be independently justifiable, and the risks should be weighed against other force options."⁶⁶

In drive stun mode, the Taser's front electrodes are pressed into the subject's body, delivering an electrical charge through direct contact.⁶⁷ Although this method of deployment does not override the subject's central nervous system and cause physiological incapacitation (as in probe mode), it facilitates compliance by causing the subject extraordinary pain.⁶⁸ As a result, the Patrol Guide notes that the Taser may be of limited effectiveness in achieving pain compliance in drive stun mode, especially on people under the influence of certain narcotics that diminish pain. In fact, when used repeatedly, drive stun mode "may even exacerbate the situation by inducing rage in the subject."⁶⁹ Although probe mode incidents can be investigated by a NYPD supervisor in the rank of lieutenant or above, incidents involving the use of a Taser in drive stun mode can only be investigated by NYPD MOS with the rank of captain or higher.⁷⁰

Based on the potential for health risks associated with repeated Taser cycles, Patrol Guide Section 221-08 advises members of service as follows:

Members should use a CEW for one standard cycle (five seconds) while constantly assessing the situation to determine if subsequent cycles are necessary. Members should consider that exposure to the CEW for longer than fifteen seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. All applications must be independently justifiable, and the risks should be weighed against other force options.

Although the health risks associated with Taser use vary greatly depending upon health factors and situational circumstances, there is a general consensus that Tasers "are safe for use on healthy individuals who are not under the influence of drugs or alcohol, are not pregnant, and do not suffer from mental illness—so long as the individual receives only a standard five-second shock to an approved area of the body."⁷¹ Research indicates that Taser-related deaths may be more likely

⁶⁴ *Id.*

⁶⁵ New York City Police Department, *supra* note 4 at 31.

⁶⁶ PG § 221-08.

⁶⁷ PG § 221-08.

⁶⁸ Police Executive Research Forum, *2011 Electronic Weapon Control Guidelines* (March 2011), available at: http://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf.

⁶⁹ *Id.*

⁷⁰ PG § 221-08.

⁷¹ Jared Strote & H. Range Hutson, *Taser Use in Restraint-Related Deaths*, 10 PREHOSPITAL EMERGENCY CARE 6, 447-50 (2006); see also, *Study of Deaths Following Electro Muscular Disruption: Special Report*, US Department of Justice, Office of Justice Programs, National Institute of Justice (May 2011), available at <https://www.ncjrs.gov/pdffiles1/nij/233432.pdf> (last viewed October 12, 2018); Jena Neuscheler & Akiva

among individuals who have prior cardiovascular issues or are under the influence of drugs.⁷² While numerous studies have determined that there is a low risk of physiological damage related to general Taser use on otherwise healthy individuals, particularly when compared to other types of police force,⁷³ the Police Executive Research Forum (PERF) notes in its 2011 guidelines on Taser use that “multiple applications or continuous cycling of [a Taser] resulting in an exposure longer than 15 seconds (whether continuous or cumulative) may increase the risk of serious injury or death **and should be avoided**” (emphasis added).⁷⁴ The research in this area is sparse, but some studies have found that multiple Taser cycles or multiple officers simultaneously deploying a Taser may increase the likelihood of Taser-related injuries due to the confluence of bodily contact with multiple prongs.⁷⁵ These injuries may include ocular impairment due to impalement with Taser darts,⁷⁶ thoracic spine compression fractures,⁷⁷ or testicular trauma.⁷⁸

Figure 11 depicts the type of Taser use in each of the 90 complaints in which a Taser was confirmed to have been used.⁷⁹ Because data from the Taser devices were not always obtainable or

Freidlin, *Report on Electronic Control Weapons (ECWs) Submitted to the City of Berkeley*, Stanford Crim. Just. Center at Stanford L. School (June 2015); *Police Use of Force, Tasers and Other Less-Lethal Weapons*, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (2011), available at <https://www.ncjrs.gov/pdffiles1/nij/232215.pdf> (last viewed October 12, 2018); *‘Less Than Lethal’?: The Use of Stun Weapons in US Law Enforcement*, Amnesty International (2008), available at <https://www.amnesty.org/download/Documents/52000/amr510102008en.pdf> (last viewed October 12, 2018)

⁷² See TASER® X3™, X26™, and M26™ ECD Warnings, Instructions, and Information: Law Enforcement Important ECD Product Safety and Health Information pg. 3, available at <https://fingfx.thomsonreuters.com/gfx/rngs/USA-TASER/0100503907S/images/warnings-2010.pdf> (last viewed on November 15, 2018); see also Jared Strote & H. Range Hutson, *Taser Use in Restraint-Related Deaths*, 10 PREHOSPITAL EMERGENCY CARE 6, 447-50. (2006).

⁷³ See, e.g., Vilke GM, Sloane CM, Bouton KD, et al, *Physiological Effects of a Conducted Electrical Weapon on Human Subjects*, 50 ANNALS OF EMERGENCY MEDICINE 5, 569-75; (2007); Michael R. Smith, Robert J. Kaminski, Jeffrey Rojek, Geoffrey P. Alpert, & Jason Mathis, *The Impact of Conducted Energy Devices and Other Types of Force and Resistance on Officer and Suspect Injuries*, 30 POLICING: AN INT’L J. OF POLICE STRATEGIES & MGMT, 3, 423-446; (2007); and Gary M., Vilke & Theodore C. Chan, *Less Lethal Technology: Medical Issues.*, 30 POLICING: AN INT’L J. 3, 341-357 (Aug. 28, 2007,).

⁷⁴ Police Executive Research Forum, *supra* note 37, at 13.

⁷⁵ See, e.g., Dawes, Donald M., Jeffrey D. Ho, James D. Sweeney, Erik J. Lundin, Sebastian N. Kunz, & James R. Miner, *The Effect of an Electronic Control Device on Muscle Injury as Determined by Creatine Kinase Enzyme*, 7 FORENSIC SCI., MED. & PATHOLOGY 1, 3-8 (2011) summarizing pooled data from five human studies that used creatine kinase (CK) as a marker for muscle injury. CK was then measured in five separate studies involving four TASER electronic control devices with different exposure durations and number of circuits or contact points.

⁷⁶ See, e.g., Jay S. Han, Anil Chopra, & David Carr, *Ophthalmic Injuries from a TASER*, 11 CANADIAN J. OF EMERGENCY MED. 1, 90-93 (2009).

⁷⁷ James E. Winslow, William P. Bozeman, Michael C. Fortner, & Roy L. Alson, *Thoracic Compression Fractures as a Result of Shock From a Conducted Energy Weapon: A Case Report*, 50 ANNALS OF EMERGENCY MEDICINE 5, 584-586 (2007).

⁷⁸ Katherine Theisen, Rick Slater, & Nathan Hale, *Taser-Related Testicular Trauma*, 88 UROLOGY 5 (2016).

⁷⁹ Because each application of a Taser constitutes an individual use of force that must be justified, it is possible for an officer’s initial use of a Taser to be justified but for subsequent applications to be deemed excessive under the circumstances.

requested,⁸⁰ the cycle numbers and durations are estimates based on the totality of evidence in each complaint, including officer, witness, and complainant interviews and medical records.⁸¹

Figure 11: Taser Mode Deployment

	Year Complaint Closed	Number of Officers	Number of Taser Prong Cycles Completed (Total for Entire Incident)	Number of Prongs that Struck the Complainant/Victim	Number of Taser Drive Stun Cycles (Total for Entire Incident)
1	2014	1	Unknown	Both prongs struck but circuit not completed due to clothing	No drive stun used
2	2014	2	3	2 prongs struck	No drive stun used
3	2014	1	1	2 prongs struck	No drive stun used
4	2014	1	Drive stun only	Drive stun only	At least one, total unknown
5	2014	1	Drive stun only	Drive stun only	2
6	2014	1	1	2 prongs struck	No drive stun used
7	2014	1	1	2 prongs struck	At least one, total unknown
8	2014	1	1	2 prongs struck	Unknown/unconfirmed
9	2014	1	2	2 prongs struck	No drive stun used
10	2014	1	1	2 prongs struck	At least one, total unknown
11	2014	1	Drive stun only	Drive stun only	At least one, total unknown
12	2014	1	0	Both prongs struck but circuit not completed due to clothing	2
13	2015	1	2	2 prongs struck	No drive stun used
14	2015	1	1	2 prongs struck	No drive stun used
15	2014	1	2	2 prongs struck	No drive stun used
16	2014	1	Unknown	2 prongs struck	No drive stun used
17	2015	1	Drive stun only	Drive stun only	2

⁸⁰ See pages 51-52 for further information and findings on Taser device data.

⁸¹ When estimating the cycle numbers and durations, any available hard evidence, including Taser data, video evidence, and/or medical records indicating the number of prong wounds, was examined alongside interview responses, with additional weight given to the hard evidence. In the absence of hard evidence, all interview evidence was weighed collectively, and the recorded data reflects either what all sources agreed happened, or reflects the ambiguity of the situation (e.g. “at least one, total unknown” recorded under “number of cycles”).

	Year Complaint Closed	Number of Officers	Number of Taser Prong Cycles Completed (Total for Entire Incident)	Number of Prongs that Struck the Complainant/Victim	Number of Taser Drive Stun Cycles (Total for Entire Incident)
18	2014	1	2	2 prongs struck	No drive stun used
19	2014	1	3	2 prongs struck	No drive stun used
20	2014	1	Drive stun only	Drive Stun only	1
21	2015	1	Drive stun only	Drive Stun only	1
22	2015	1	2	2 prongs struck	No drive stun used
23	2015	1	Unknown	At least one, total unknown	No drive stun used
24	2015	1	1	2 prongs struck	No drive stun used
25	2015	1	Drive stun only	Drive stun only	2
26	2015	1	0	Both prongs struck but circuit not completed due to clothing	No drive stun used
27	2015	1	At least one, total unknown	2 prongs struck	No drive stun used
28	2015	1	0	Both prongs missed	No drive stun used
29	2015	1	0	1 prong struck	1
30	2015	1	Unknown	2 prongs struck	No drive stun used
31	2015	1	0	1 prong struck	No drive stun used
32	2015	1	Unknown	Unknown	Unknown
33	2015	1	2	2 prongs struck	No drive stun used
34	2016	1	Unknown	2 prongs struck	No drive stun used
35	2015	1	1	2 prongs struck	No drive stun used
36	2015	1	2	2 prongs struck	1
37	2015	1	1	2 prongs struck	No drive stun used
38	2015	1	1	2 prongs struck	No drive stun used
39	2015	1	2	2 prongs struck	No drive stun used
40	2015	1	1	2 prongs struck	No drive stun used
41	2015	1	More than one, total unknown	2 prongs struck	No drive stun used
42	2015	1	1	2 prongs struck	2
43	2016	1	More than one, total unknown	2 prongs struck	No drive stun used
44	2016	1	2	2 prongs struck	No drive stun used

	Year Complaint Closed	Number of Officers	Number of Taser Prong Cycles Completed (Total for Entire Incident)	Number of Prongs that Struck the Complainant/Victim	Number of Taser Drive Stun Cycles (Total for Entire Incident)
45	2015	1	1	2 prongs struck	1
46	2015	1	1	2 prongs struck	No drive stun used
47	2015	1	1	2 prongs struck	No drive stun used
48	2016	1	1	2 prongs struck	No drive stun used
49	2015	1	1	2 prongs struck	No drive stun used
50	2015	1	1	2 prongs struck	No drive stun used
51	2016	1	Drive stun only	Drive stun only	4+
52	2015	1	2	2 prongs struck	No drive stun used
53	2016	1	1	2 prongs struck	No drive stun used
54	2016	1	1	2 prongs struck	No drive stun used
55	2016	1	Drive stun only	Drive stun only	2
56	2016	1	2	2 prongs struck	No drive stun used
57	2016	1	1	2 prongs struck	1
58	2016	1	1	2 prongs struck	No drive stun used
59	2017	1	1	2 prongs struck	No drive stun used
60	2016	1	0	1 prong struck	1
61	2016	1	2	2 prongs struck	No drive stun used
62	2016	1	1	2 prongs struck	No drive stun used
63	2016	1	2	2 prongs struck	No drive stun used
64	2016	1	2	2 prongs struck	No drive stun used
65	2016	1	0	1 prong struck	1
66	2016	1	1	2 prongs struck	No drive stun used
67	2016	1	1	2 prongs struck	No drive stun used
68	2016	2	2	2 prongs struck	No drive stun used
69	2016	1	Drive stun only	Drive stun only	2
70	2017	3	4+	2 prongs struck	No drive stun used
71	2016	1	0	Both prongs struck but circuit not completed due to clothing	1
72	2016	1	3	2 prongs struck	No drive stun used
73	2016	1	0	Both prongs missed	1
74	2016	1	1	2 prongs struck	No drive stun used

	Year Complaint Closed	Number of Officers	Number of Taser Prong Cycles Completed (Total for Entire Incident)	Number of Prongs that Struck the Complainant/Victim	Number of Taser Drive Stun Cycles (Total for Entire Incident)
75	2016	1	Drive stun only	Drive stun only	1
76	2016	1	1	2 prongs struck	No drive stun used
77	2017	1	1	2 prongs struck	No drive stun used
78	2017	1	1	1 prong struck	No drive stun used
79	2017	1	2	2 prongs struck	3
80	2017	1	0	Both prongs missed	1
81	2017	2	1	2 prongs struck	No drive stun used
82	2017	1	0	1 prong struck	No drive stun used
83	2017	1	2	2 prongs struck	No drive stun used
84	2017	1	1	2 prongs struck	No drive stun used
85	2017	1	Drive stun only	Drive stun only	1
86	2017	1	More than one, total unknown	2 prongs struck	No drive stun used
87	2017	1	2	2 prongs struck	No drive stun used
88	2017	1	0	Both prongs missed	No drive stun used
89	2017	1	1	2 prongs struck	No drive stun used
90	2017	1	0	1 prong struck	No drive stun used

Most complaints (86 of 90, or 95.5%) involved only one subject officer using a Taser device. Four complaints involved more than one officer using a Taser device on a single individual. In each complaint in which there was more than one officer, only probe mode was used during the incident: in one case, one cycle of probe mode was used; in another, each officer separately used one probe mode cycle for a total of two cycles; in the third, three cycles were completed by two officers and in the fourth, at least four confirmed cycles of probe mode were used by three officers in rapid succession – this exonerated complaint is discussed in more detail in *Case Study Sidebar 1*.

In 77 of the 90 cases (86%), only probe mode was used. In 25 of those 77 cases (32%), more than one round of probe mode was used.

In 12 of the 90 cases (13%), only drive stun mode was used.⁸² In six of the 12 cases (50%), more than one round of drive stun mode was used. One of these cases involved a complainant who was tased in drive stun mode nine times. This case is described in more detail in *Case Study Sidebar 2*.

In nine cases (10%), the subject officer used the Taser in both probe mode and drive stun mode.⁸³ In three of those cases, the officer used drive stun mode once after using probe mode once. In four cases, the officer used drive stun mode at least once after using probe mode once. In one case, the officer used probe mode twice and then drive stun mode once. In the final case, an officer used probe mode twice, followed by three drive stun rounds. This case is described in detail in *Case Study Sidebar 3*.

In 15 of the 90 cases (17%), the officer's initial attempt at probe mode did not succeed:

Case Study Sidebar 1

Officers in NYPD's Emergency Services Unit (ESU) responded to the complainant's residence, where he had barricaded himself after repeatedly yelling at passers-by from his fire escape, while nude, to call 911. When officers arrived, the man was covered in blood and throwing flower pots from his the fire escape. The man did not respond to any of the officers' orders, and instead began scraping his own body with a pair of scissors, cutting himself, and threatening to kill himself and others. An officer tased him, but the complainant pulled the prongs out of his own skin. Following a second Taser deployment by the same officer, the officers and ESU personnel were able to physically remove the man from his the fire escape, but the man began punching and kicking the officers and rolling his body onto his arms in an effort to avoid being handcuffed. Finally, another officer deployed his Taser, and the man was finally subdued and removed to the hospital for psychiatric treatment. It was later confirmed that the complainant had a history of psychiatric issues and a history of behaving violently when officers attempted to remove him to the hospital.

The first officer deployed his Taser for two cycles and a total of 10 seconds, followed by a sergeant who deployed his Taser for two cycles and a total of 32 seconds. The third officer deployed his Taser for two cycles and a total of nine seconds. Medical personnel confirmed that there were eight wounds from Taser prongs on the man's complainant's body.

While the sergeant who tased the man for 32 seconds deployed his Taser in a manner exceeding the standard Patrol Guide recommendations, the Board found the complainant's behavior to be a greater risk to his own life than the sergeant's use of the Taser. Thus, the allegations of improper Taser use were exonerated.

⁸² In one case, though Taser use was not disputed, there was insufficient information in the case file to determine in what mode the Taser was used.

⁸³ In each of these cases, the officer used probe mode initially, followed by drive stun mode. While the circuit completed and both prongs made contact, in all of these cases, the initial Taser discharge did not stop the subject's movement.

- In two cases, both prongs missed; the officer then switched to drive stun mode.
- In two cases, both prongs missed; the officer did not subsequently use drive stun mode.
- In three cases, only one prong struck the subject; the officer then switched to drive stun mode.
- In four cases, only one prong struck the subject; the officer did not subsequently use drive stun mode.
- In two cases, both prongs struck the subject, but the circuit was not completed due to interference from the subject's clothing; the officer then switched to drive stun mode.
- In two cases, both prongs struck the subject, but the circuit was not completed due to interference from the subject's clothing; the officer did not subsequently use drive stun mode.

Case Study Sidebar 2

Officers arrived at a residence in response to a 911 call regarding an assault that happened the night before. The civilian who called 911 was at the scene when the officers arrived and informed them that the man who assaulted her was “a fighter” and likely under the influence of PCP. The man refused to exit his bedroom and the officers unsuccessfully attempted to pull him out. The officers called for back-up and a sergeant arrived at the scene to assist. The sergeant was informed by his fellow officers that the male subject had “super-strength.” The man was eventually pulled from his bedroom, but he continued to resist being handcuffed. The sergeant attempted to compel the man's compliance by deploying his Taser in drive stun mode. The sergeant explained to CCRB investigators that because the struggle occurred in close quarters with several people present, using the Taser in probe mode was not feasible under the circumstances. The man did not have any initial reaction to being tased; he reported having eight pairs of Taser burn marks on his body after the incident. Although the sergeant admitted to tasing the man more than once, he denied having used it more than three times.

The Taser's usage log corroborated the complainant's version of events, revealing that it dispensed nine charges in a two-minute period. The first four cycles lasted for five seconds each. The following cycles lasted for six seconds, five seconds, nine seconds, twelve seconds, and thirteen seconds, respectively. In total, the complainant was tased in drive stun mode for more than one minute. In assessing whether the sergeant's Taser use was excessive, the Board felt that it was unable to rely on the Patrol Guide for guidance, noting: “While the use of Tasers is limited to three bursts from the stun device, there are no rules in the procedure addressing the number of times or length of shock a Taser can be used” in drive stun mode. Given both the man's active resistance and the Patrol Guide's lack of specific limits on drive stun use, the Board exonerated the sergeant's use of the Taser.

Officers use drive stun mode as a method of achieving pain compliance. However, there is often no visible injury to the individual, though there may be localized burn marks at the site that the Taser made impact.⁸⁴ This can make it difficult for officers to understand exactly how much pain they are inflicting. Although the Patrol Guide does not set a maximum number of drive stun Taser cycles, injuries may be a helpful barometer as to whether force was excessive and punitive or reasonably necessary.

The CCRB has found multiple drive stun deployments to be excessive in cases in which the subject was not given adequate time to comply with directives following a Taser deployment in probe mode, as was the case in *Case Study Sidebar 3*.

Alternatively, the allegation in *Case Study Sidebar 2* was exonerated by the Board partly because it felt that the Patrol Guide limitations on the number of drive stun cycles that MOS are permitted to use are not clear enough, particularly in scenarios where civilians are actively and aggressively resisting. It is important to note that in both executive training at the Police Academy and officer training at Rodman's Neck Outdoor Range, MOS are informed that officers should not repeat drive stuns if compliance is not achieved. Furthermore, officers and executives are trained that a three-cycle limit applies for both probe mode and drive stun mode.

Case Study Sidebar 3

Officers stopped a man they believed had purchased drugs in a park. The man attempted to walk away, but was stopped by a sergeant. Shortly thereafter, the man and sergeant began to grapple. The sergeant stated that the man pushed him twice and broke his shield, prompting him to take out his Taser. The man then raised his arms. It is disputed whether or not he clenched his fists. The sergeant could not remember if he issued any verbal warning, but believed he gave the man a second to comply. After the man did not lower his arms, the sergeant deployed the Taser from approximately three feet away, with one five-second burst. The man told the investigator that after being tased, he fell to the ground, but the sergeant stated that he tased the man a second time because he continued to resist. The Board unsubstantiated this allegation due to the differing accounts provided by the parties.

After being tased, the man was placed in handcuffs. Video footage obtained from a bystander witness depicts the sergeant lifting the man off the ground while telling him: "If you do one more thing, I'll do it again." The man yells at the sergeant to stop and threatens to sue him. The sound of a Taser being activated is heard, and the man continues to yell. Shortly thereafter, the sergeant brings the man back to the ground and instructs the man to stop kicking him. The video footage does not show the man kicking the sergeant and witnesses can be heard confirming that the man is not kicking the sergeant. In the background, the sound of a Taser being activated is heard. The man then goes quiet before yelling about the sergeant shocking him. The man screams: "Stop tasing me! He's tasing me!" The sound of an active Taser is heard again as the sergeant leans over the man, Taser in hand.

Drawing on the video footage provided, the investigation determined that after the man was rear-cuffed, the sergeant deployed his Taser at least three additional times. During this time, the man did not actively resist or exhibit active aggression. The investigation concluded that the sergeant was not justified in using the Taser, and the Board substantiated the Taser-related allegation.

⁸⁴ Ho J.D., Dawes D.M. (2012) Conducted Electrical Weapon Drive-Stun Wounds. In: Ho J., Dawes D., Kroll M. (eds) Atlas of Conducted Electrical Weapon Wounds and Forensic Analysis. Springer, New York, NY

The company that produces Taser devices, Axon, states in its training materials that: “The use of a handheld CEW in drive-stun mode is painful, but generally does not cause incapacitation. Drive-stun use may not be effective on emotionally disturbed persons or others who may not respond to pain due to a mind-body disconnect. Avoid using repeated drive-stuns on such individuals if compliance is not achieved.”⁸⁵ Axon suggests the following guidelines⁸⁶ for use of Tasers in drive stun mode:

- Avoid using CEW drive (touch/contact)-stun except:
 - 3 or 4-point contact to complete circuit or [increase] probe spread
 - “break-contact” or distraction tactic when assaulted or tied up with subject
 - brief application to attempt pain-compliance; must give reasonable time and opportunity to comply
- Avoid repeated drive-stuns if compliance is not achieved, particularly with EDPs.

The NYPD Patrol Guide states that drive stun should not be used as the primary method of Taser deployment “unless exceptional circumstances exist.” Unfortunately, the Patrol Guide provides no explanation or examples of “exceptional circumstances.” This makes it difficult for the CCRB to substantiate certain drive-stun allegations. As outlined by the Board in the closing documentation of one case in which the allegations of improper Taser use were unsubstantiated: “[w]hile the Patrol Guide indicates that drive-stun mode should only be used in exceptional circumstances, it does not provide any guidelines for when it would or would not be appropriate to use the Taser in this manner. It is thus unclear whether the circumstances [the officer] described fell within this category.”

Training on Taser use also does not define “exceptional circumstances,” but it does advise officers to avoid using drive stun mode except 1) in conjunction with probe mode in an effort to complete a circuit with three-point contact; 2) to create reactionary distance when a subject is in close proximity to an officer; or 3) to obtain pain compliance via brief applications. This training also notes that each Taser discharge must be legally justifiable and that a Taser should not be deployed in drive-stun mode past the point in which it would be effective at gaining compliance. There are also no clear examples provided in training that might better elucidate these limitations on the use of a Taser in drive-stun mode. NYPD training on Taser use would be bolstered by adding descriptions of situations in which a Taser used in drive-stun mode would be considered excessive.

⁸⁵ Axon Training Resources, “Instructor and User: Warnings, Risks & Release Agreement,” December 20, 2018. Available at <https://www.axon.com/training/resources>.

⁸⁶ *Supra* note 7.

FOLLOWING UP ON RECOMMENDATIONS FROM THE 2016 TASER REPORT: ANALYSIS OF TASER-RELATED COMPLAINT DATA

The 2016 Taser Report contained several recommendations suggesting that the Civilian Complaint Review Board (CCRB or the Agency) conduct additional data analytics to examine specific issues related to Taser use, stated below as they were initially published in the 2016 Report:⁸⁷

- Track whether officers are issuing verbal warnings to intended subjects before firing Tasers. The Patrol Guide no longer contains a clear requirement to do so but rather advises officers to give verbal warnings “when feasible.”
- Track whether officers are tasing handcuffed persons. There are circumstances where force is appropriate against a handcuffed person, such as when that person is trying to flee or kicking violently. The CCRB will track how this exception is applied. The CCRB believes that it should only apply where there is a risk to the physical well-being of officers or others and minimal risk to the arrestee.
- Track whether officers are using Tasers just because an arrestee has “tensed,” yet is exhibiting no other signs of violence or threat to officer safety. Similarly, determine whether Tasers are being used to coerce or attempt to pacify individuals who are nonviolent, even if they are upset and verbally aggressive.
- Track whether officers are using Tasers against individuals who are in flight and have not committed a dangerous offense and are not a danger to officers or other civilians. It is improper to do so according to New York City Police Department (NYPD) training protocols.
- Track whether officers are threatening Taser use in situations where it is not appropriate.

Each of these issues was examined via a thorough substantive review of the 90 Taser-related complaints closed in 2014-2017 in which a Taser was confirmed to have been used. Though the Agency considers these recommendations implemented with this Report’s analysis, the CCRB will continue to periodically review the NYPD’s use of Tasers in these areas.

Issuing Verbal Warnings

The 2016 Taser Report noted that while the Patrol Guide no longer contains an explicit requirement to issue verbal warnings to civilians before using a Taser, it does advise officers to give verbal warnings “when feasible,” and such warnings are emphasized in NYPD Taser training. Patrol Guide Section 221-08 states:

When feasible, issue an appropriate verbal warning, consistent with personal safety, to the intended subject and other members of the service present prior to discharging CEW.

⁸⁷ The 2016 Taser Report also contained two additional next steps related to data collection and analysis. The first, to “Monitor demographic data to monitor for racial profiling in the use of Tasers,” was discussed earlier in this Report in the section on complainant/victim race, age, and gender. The second was that, “Beginning with the 2015 Annual Report, the CCRB will publish basic statistics on CCRB cases involving the use of Tasers. If the frequency of NYPD Taser usage climbs significantly following the widespread issuance of Tasers in 2016, the CCRB will consider adding Taser data to its monthly Executive Director’s Report.” While Taser-related complaints were reported in the 2015 Annual Report, Annual and Semi-Annual Reports have since eliminated this tracking due to the low raw number of Taser-related complaints.

The verbal warning may be used in conjunction with laser/arc warnings⁸⁸ in order to gain voluntary compliance and prevent the need to use force.

The 2016 Taser Report recommended that the Agency track whether officers are issuing warnings before firing Tasers, in part because the NYPD changed its protocols in 2016 to remove the requirement that officers issue verbal warnings, and instead noted that officers should give verbal warnings when feasible and allow for nonverbal warnings, like pointing a Taser and placing a laser targeting dot on the individual.⁸⁹ To assess the quality of Taser warnings, the CCRB reviewed the case files of the 90 fully-investigated Taser-related complaints closed in 2014-2017 in which a Taser was confirmed to have been used to determine whether officers gave a verbal warning, a nonverbal warning, or no warning, and whether the civilian was given time to comply with the officer’s directives following the warning. *Figure 12* depicts these findings.

Figure 12: Taser Warnings Issued to Civilians

Type of warning issued, if issued		Year								Total	% of Total
		2014		2015		2016		2017			
		Number	% of Year	Number	% of Year	Number	% of Year	Number	% of Year		
No verbal warning, but non-verbal or laser arc warning given		2	12%							2	2%
No verbal warning or nonverbal warning		7	41%	15	50%	11	41%	7	44%	40	44%
Warning directed to another MOS only				2	7%	2	7%	2	13%	6	7%
Warning but no time to comply	Verbal warning only			2	7%	2	7%			4	4%
	Also accompanied by non-verbal or laser arc warning	1	6%							1	1%
Warning was adequate	Verbal warning only	6	35%	9	30%	11	41%	7	44%	33	37%
	Also accompanied by non-verbal or laser arc warning	1	6%	2	7%	1	4%			4	4%
Total		17	100%	30	100%	27	100%	16	100%	90	100%

⁸⁸ A laser arc warning is a display of visible electric current at the front of the Taser that occurs when an officer presses and holds the Taser’s ARC switch while the Taser has the safety switch engaged.

⁸⁹ The revised § 221-08 of the Patrol Guide, *Use of Conducted Electrical Weapons (CEW)* is substantively similar to the section it replaced in 2016, Patrol Guide § 212-117. One major difference between the two guidelines is whether a police officer must issue a verbal warning to the intended Taser subject. Patrol Guide § 212-117 required officers to “issue an appropriate warning, consistent with personal safety, to the intended subject... prior to discharging the CED.” Patrol Guide § 221-08 permits “[p]ointing and placing the laser dot of an activated CEW on a subject in order to attempt to achieve voluntary compliance,” adding that, “[w]hen feasible,” officers should “issue a verbal warning, consistent with personal safety, to the intended subject in conjunction with a laser warning.”

In the 90 cases under examination, there were 103 individual allegations of improper Taser use, each of which constitutes a separate instance of Taser use by an officer. In the largest proportion of Taser discharges (43%), officers gave civilians no warning, either verbally non-verbally.⁹⁰ The change in Patrol Guide procedures did not seem to impact this category. Of the cases closed in 2014, two (40%) had no verbal or nonverbal warnings, compared with 12 (52%) cases closed in 2015, 12 (35%) in 2016, and ten (50%) in 2017.

In 37% of Taser discharges, officers gave adequate verbal warning in advance of Taser use, meaning the officer verbally told the subject they were about to be tased, gave a lawful order, and waited several seconds for compliance; 4% of Taser discharges included both an adequate verbal warning as well as a non-verbal warning that was not a laser arc. The change in Patrol Guide procedures did not seem to make much of a difference in this category, either. Of the cases closed in 2014, one (20%) had adequate verbal warnings, compared with 7 (30%) of cases closed in 2015, 14 (41%) in 2016, and eight (40%) in 2017.

In seven instances (9%), officers warned other MOS at the scene that they were about to deploy a Taser rather than warning the civilian. In 5% of Taser discharges, the officer gave a verbal warning but gave no time to the civilian to comply before discharging the Taser; in one instance, the officer gave both a verbal and nonverbal warning but gave the civilian no time to comply before discharging the Taser. This latter allegation, substantiated by the Board, is the same case previously described in *Case Study Sidebar 3*.

Tasing Complainants who are Handcuffed

Patrol Guide § 221-08 prohibits the use of conducted electrical weapons on individuals who are rear-cuffed, and replaced a prior NYPD protocol, Patrol Guide § 212-117, which did not contain such a provision. Although tasing a suspect in other kinds of restraint circumstances is not expressly prohibited by the Patrol Guide, it often suggests excessive force. Previously, the Patrol Guide expressly prohibited the use of Tasers on subjects who are rear cuffed (handcuffed with their hands behind their backs),⁹¹ and indicated that members of service should refrain from using “any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape or to overcome active physical resistance or assault.”⁹² However, Patrol Guide § 221-01 now states that: “Any violations of the above force prohibitions may be reviewed on a case-by-case basis by the Use of Force Board to determine whether, under the circumstance, the actions were reasonable and justified. The review may find that, under exigent or exceptional circumstances, the use of the prohibited action may have been justified and within guidelines.” During training, officers and executives are alerted to this change in the Patrol Guide.⁹³ Complaints involving subjects who are tased while already in police custody are also reviewed by the Board with heightened scrutiny, as less intrusive means of assuring compliance are often available to officers under those circumstances.

CCRB’s 2016 Taser report noted that “[t]here are circumstances where force is appropriate against a handcuffed person, such as when that person is kicking violently or trying to flee after the

⁹⁰ These cases were not assessed to determine whether the subject officer believed a warning was feasible given the circumstances, merely whether a warning was issued.

⁹¹ PG § 221-08.

⁹² PG § 221-01.

⁹³ NYPD Executives Taser Training by Detective DeRespris, attended by CCRB staff on May 15, 2018; and NYPD Officer Taser Training by Detective DeRespris, attended by CCRB staff on August 1, 2019.

commission of a serious crime,” and recommended that the Agency “track how this exception is applied.”⁹⁴ To assess the use of Tasers on complainants who were handcuffed or otherwise physically restrained at the time they were tased, the CCRB reviewed the case files of the 90 full investigations of Taser-related complaints closed in 2014-2017 in which a Taser was confirmed to have been used to determine complainants’ restraint status and custody status at the time a Taser was used on them. Figure 13 depicts findings from these cases.

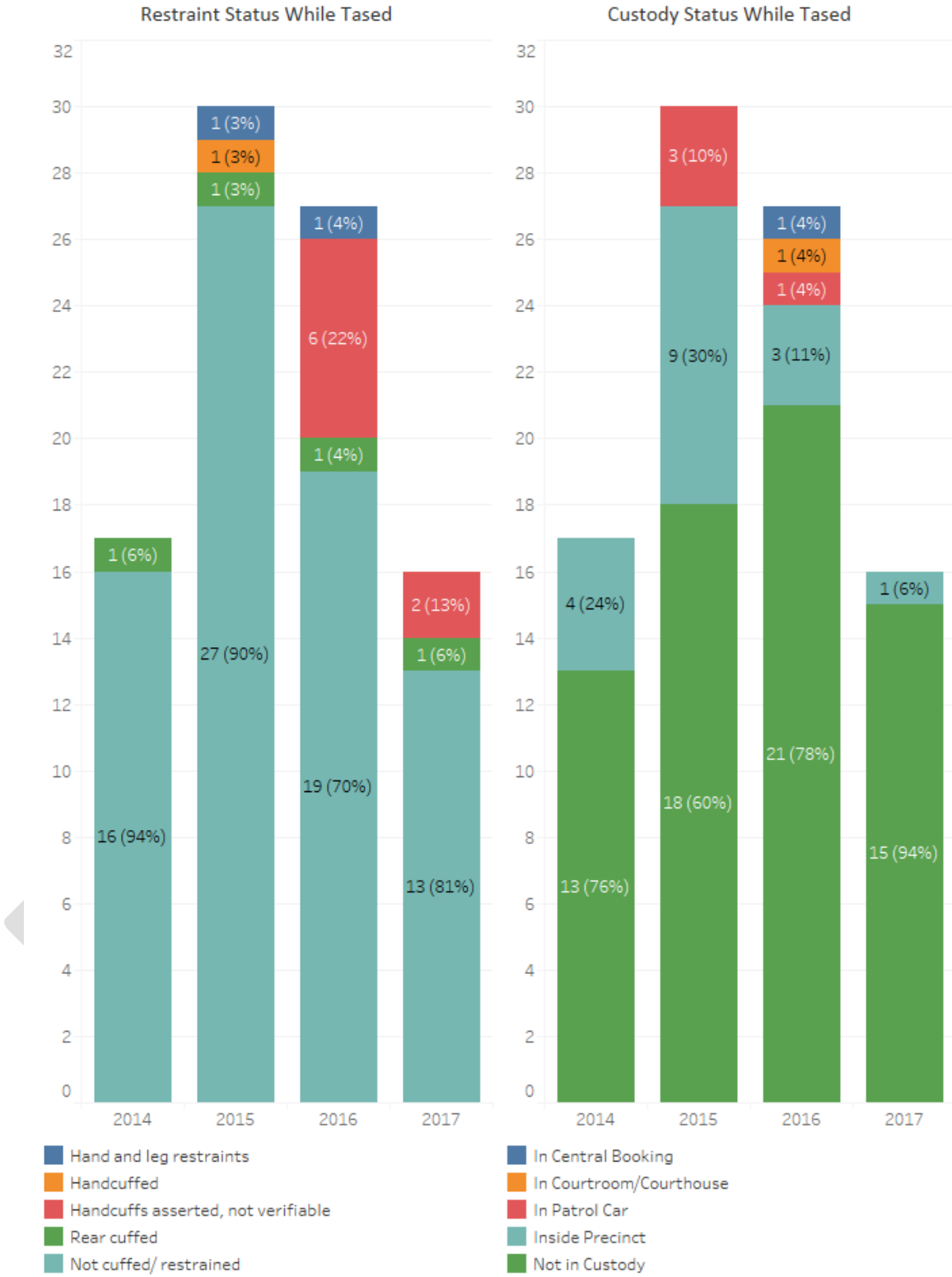
Across all four years of cases examined, the large majority of complainants were not handcuffed or restrained in any way when they were tased. In eight cases (six closed in 2016 and two closed in 2017), complainants asserted that they had been handcuffed at the time they were tased, but these assertions were not verifiable. In four cases, one case closed in each of 2014, 2015, 2016, and 2017, complainants were rear cuffed at the time they were tased. Patrol Guide § 221-08 prohibits the use of conducted electrical weapons on individuals who are rear-cuffed, and replaced a prior NYPD protocol, Patrol Guide § 212-117, which did not contain such a provision. The CCRB substantiated one of these complaints, while exonerating the remaining three, all closed prior to the revision of the Patrol Guide, and all due to the fact that complainants were extremely aggressive and actively resisting at the time they were tased, despite being restrained. In one case, closed in 2015, the complainant was handcuffed during tasing. In two cases, one each closed in 2015 and 2016, complainants were restrained with both handcuffs and leg restraints. One such case is described in more detail in *Case Study Sidebar 4*.

Case Study Sidebar 4

A sergeant used a Taser on a 17-year-old female robbery suspect who was non-compliant during the booking and fingerprinting process. She was in hand and leg restraints at the time, inside of an NYPD stationhouse. It is undisputed that the woman resisted being fingerprinted by clenching her fists and flailing her arms. The sergeant stated he told the woman that she would be tased if she did not comply with his commands, at which time she got into a fighting stance. However, at the time of the incident, the woman was in leg shackles and the officer was approximately a foot taller and 200 pounds heavier than the woman. The officer deployed his Taser against the woman, but one of the prongs missed. The sergeant then tased the woman by touching the Taser device directly to her body in drive stun mode. Given the significant size disparity between the officer (who was approximately a foot taller and 200 pounds heavier) and the complainant, the number of officers present when the incident occurred, and the fact that the incident occurred inside of a police precinct, the investigation concluded that the officer should have used an alternative form of force under the circumstances. As a result, the Board substantiated the Taser-related allegation.

⁹⁴ 2016 Taser report

Figure 13: Complainant/Victim Restraint and Custody Status While Tased



Complainant Resistance, “Tensing,” and Taser Use

There are multiple determining factors in deciding whether an officer appropriately deployed a Taser against a civilian, including the behavior exhibited by the complainant prior to the Taser deployment. According to the NYPD Patrol Guide, a Taser “should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present.”⁹⁵ Active resistance is defined to include “physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.”⁹⁶ On the other hand, a civilian who fails to comply with a lawful command or goes limp when taken into custody exhibits “passive resistance.”⁹⁷ Taser use on a civilian who passively resists or as a form of coercion or punishment is “strictly prohibited” by Patrol Guide Section 221-08.

The 2016 Taser Report recommended that the Agency examine whether Tasers are being used to subdue individuals who are not actively resisting or violent to ensure that Tasers are not being “used to punish an arrestee for failure to follow instructions.”⁹⁸ To assess the use of Tasers on complainants of varying resistance levels, the CCRB reviewed the case files of the 90 full investigations of Taser-related complaints closed in 2014-2017 in which a Taser was confirmed to have been used to determine whether complainants actively resisted, engaged in or threatened violence, passively resisted, or simply did not comply with officers’ orders.

In all four years of cases under examination, the majority of complainants (89% in cases closed in 2014, 52% in 2015, 68% in 2016, and 75% in 2017) were found to have offered some form of active resistance or active resistance with violence, including kicking, flailing of the arms, and twisting of the body to avoid being handcuffed (Figure 14). In ten cases, all closed in 2015, complainants exhibited violent behavior toward either officers on the scene or a civilian third party, and in two cases closed in 2017, the complainant was actively engaged in physical self-harm. In eight cases, one closed in 2014, one in 2015, and six in 2016, the complainant was verbally threatening violence to officers, civilian third parties, or themselves at the time they were tased.

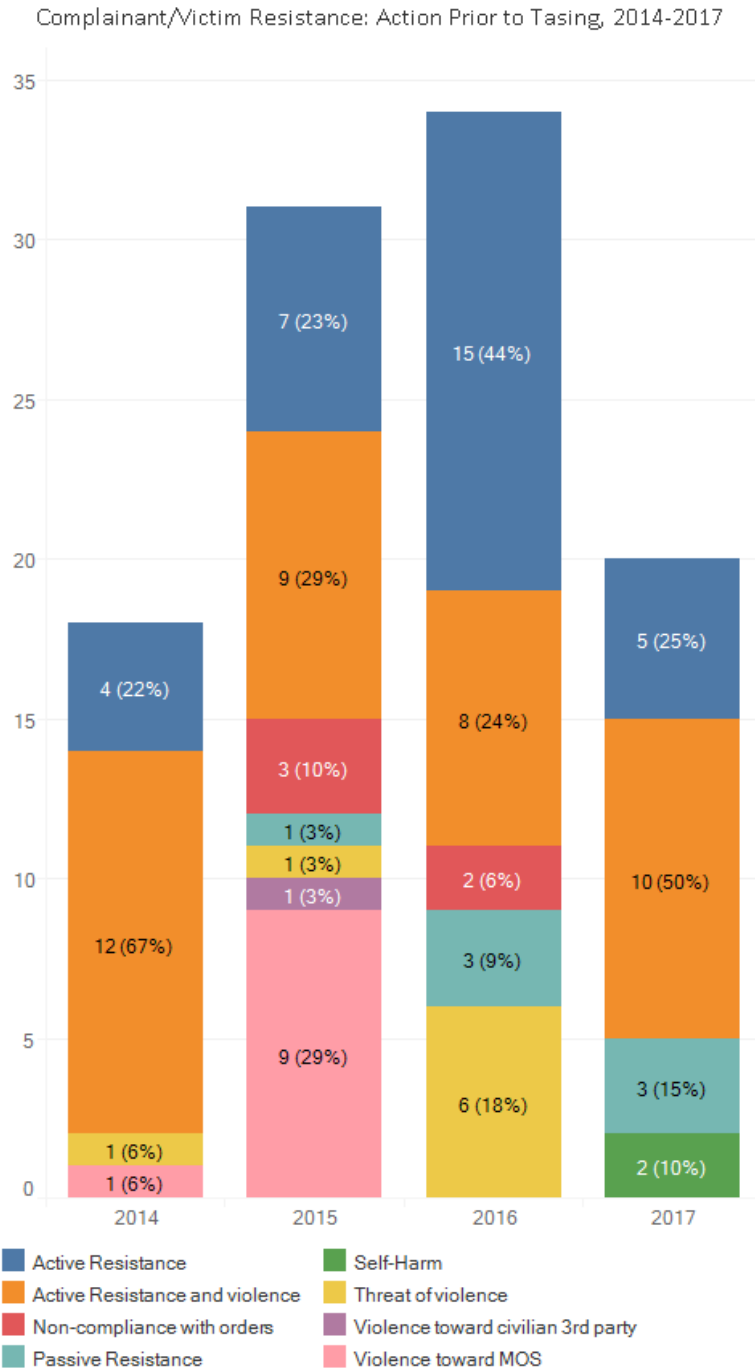
⁹⁵ PG § 221-08.

⁹⁶ PG § 221-08. Although “tensing” falls within the Patrol Guide definition of active resistance, the CCRB’s 2016 Taser report recommended tracking “whether officers are using Tasers just because an arrestee has ‘tensed’, yet is exhibiting no other signs of violence or threat to officer safety.” After a close review of the CCRB complaints closed in the past two years, there were no complaints identified in which the subject’s “tensing” was the sole reason for Taser deployment.

⁹⁷ PG § 221-08. “Passive resistance” is defined as “Minimal physical action to prevent a member from performing their lawful duty. For example, a subject failing to comply with a lawful command and stands motionless and/or a subject going limp when being taken into custody.” PG § 221-08.

⁹⁸ 2016 Taser Report, p. 42. The 2016 Taser Report also recommended that the Agency “[e]valuate whether the NYPD is following best practices with respect to Taser use on persons in police custody. Of course, when an arrestee is a violent threat to fellow cellmates or officers, action must be taken, but the Taser cannot be used to punish an arrestee for failure to follow instructions.” Given that the review of best practices overlaps with this section, the current evaluation applies to this recommendation, as well.

Figure 14: Complainant/Victim Resistance Prior to Tasing



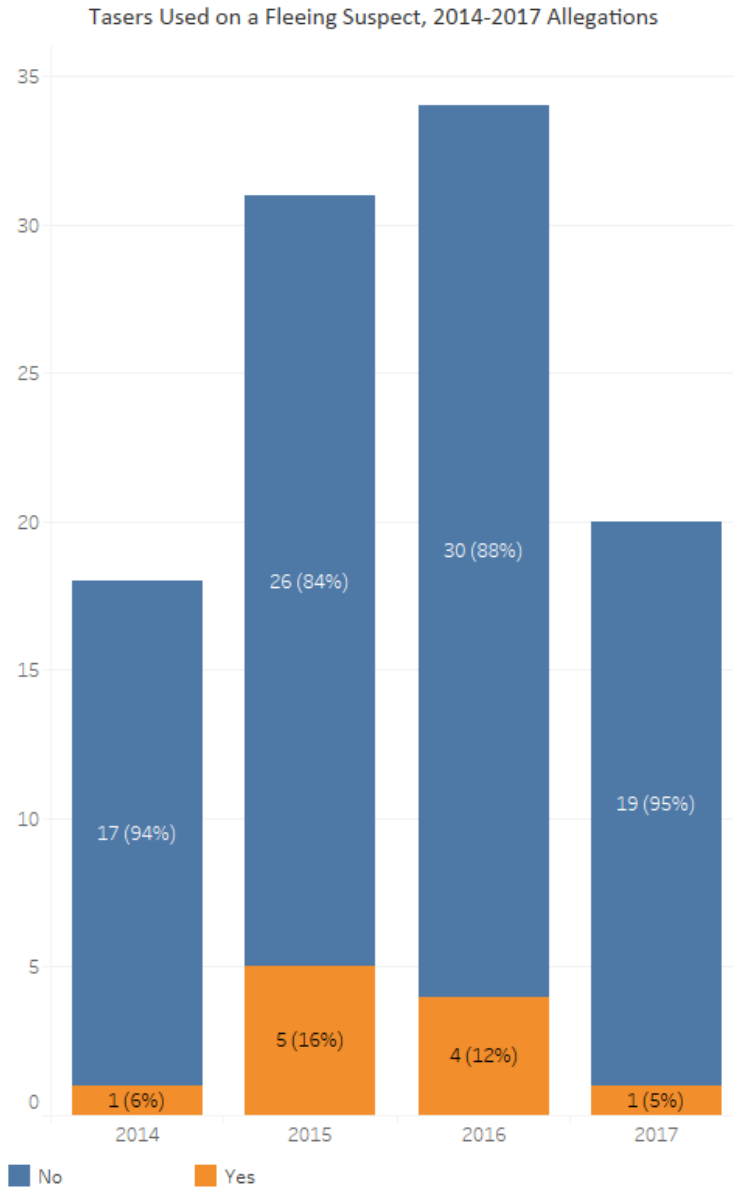
The Patrol Guide prohibits the use of a Taser on individuals for mere passive resistance or noncompliance with officers' orders. In seven cases, one closed in 2015, three closed in 2016 and three in 2017, complainants were tased for offering passive resistance, and the Board substantiated all but one of these allegations of improper Taser use, and one such substantiated case was outlined in *Case Study Sidebar 4*. However, in one case, the Board closed the case as unsubstantiated because it could not determine with any degree of certainty whether the complainant had engaged in any additional violence or resistance aside from noncompliance, and exonerated another because the complainant was experiencing a mental health crisis and was moving toward the officers and refusing orders to stop when he was tased. Five complaints, three closed in 2015 and two in 2016, involved noncompliance with orders as the sole form of resistance. The Board substantiated one of these allegations of improper Taser use, and closed another as unsubstantiated. In the latter case, the complainant had actively resisted prior to being tased once, but the Board was unable to determine the amount of time between the first Taser discharge and a second Taser discharge, or the effect that the first discharge had on the complainant. As such, the allegation that the second Taser discharge was improper was unsubstantiated. In the remaining three cases, the Board exonerated the subject officers because it found that in all three cases, the officers were acting in an effort to prevent injury to themselves or others. In one such case, officers were responding to a call of an "emotionally disturbed person" ("EDP") with a knife. Upon arrival at the scene, officers spent 15-20 minutes attempting to convince the civilian to put down the knife to no avail. When the civilian turned to move toward another bedroom in the apartment in which there was a child, a sergeant on the scene tased the man. The Board exonerated the allegations of improper Taser use in this case.

Taser Use on Complainants "In Flight"

Figure 15⁹⁹ depicts the breakdown of whether a Taser had been used on a fleeing suspect in the cases analyzed. In each year, in the majority of cases (94% in cases closed in 2014, 84% in 2015, 88% in 2016, and 95% in 2017) the complainant was not fleeing from police at the time the Taser was discharged. There were 11 cases (one closed in 2014, five in 2015, four in 2016, and one in 2017), however, in which officers did deploy a Taser on a fleeing suspect in an effort to stop the suspect from getting away. One such case, which was substantiated by the Board, is described in *Case Study Sidebar 5*. Overall, the Board substantiated one and exonerated nine of these allegations of improper Taser use due to prior active resistance, violence, or active threat of violence on the part of the complainant. One case was unsubstantiated, and is the same case previously discussed under the passive resistance section of this Report.

⁹⁹ Figure 15 depicts these incidents by individual allegation, since one incident may involve multiple Taser discharges with only one involving use of a Taser on a fleeing suspect.

Figure 15: Tasers Used on a Fleeing Suspect, 2014-2017 Allegations



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Case Study Sidebar 5

Officers initially stopped a man for riding his bicycle on the sidewalk. After further investigation, they discovered the man had an open warrant, and exited their vehicle to arrest him. As shown in video footage captured by a bystander, the man protested his arrest and walked away from the officers. A lieutenant attempted to stop the man by grabbing his arm, but the man pulled free, and continued to walk away from the officers. In response, the lieutenant fired his Taser into the man's back; one prong stuck. The Taser appeared to have minimal effect because the man continued to walk, while telling the officers to leave him alone. Another officer then intercepted the man and brought him to the ground. As the officer and the man struggled on the ground, the lieutenant again approached the man and deployed his Taser twice, using the drive stun mode, into the man's back. The lieutenant explained that he decided to use drive stun mode because his first attempt to tase had been ineffective, and the man continued to resist. After being tased, the man was eventually handcuffed and escorted to a police vehicle.

The investigation found that while the man displayed a low level of active resistance, the officers had no reason to believe he was armed or under the influence of any substances. Minimal effort was made by the officers, who were both bigger than the man, to physically apprehend him before he was first tased. As for the subsequent uses of the Taser in drive stun mode, although the man was actively struggling with an officer on the ground, the lieutenant made minimal effort to manually assist his partner. Additionally, no exceptional circumstances existed for use of the Taser in drive stun mode. The investigation thus determined by a preponderance of the evidence that the lieutenant's use of the Taser in all three instances was excessive given the man's level of resistance. As a result, the Board substantiated the Taser-related allegations.

Threats of Taser Use

Not all Taser-related complaints that the CCRB receives are about improper use of a Taser. Civilians also file complaints alleging that officers improperly threatened them with a Taser. NYPD officers threatening force must do so to effect a valid police purpose, not to intimidate.¹⁰⁰

One emblematic example of a Taser threat took place in April of 2017, when an NYPD officer threatened to tase a group of high school students who had been throwing snowballs at one another. A civilian bystander captured the incident on video and the recording quickly went viral. The video shows two officers, one of whom is holding a baton, walking closely behind three high school students who are complying with instructions to leave the location. One officer appears to use his baton to lightly push one of the teens from behind and the teen says, "stop touching me." The officer then taunts the teen, saying: "What are you going to do about it?" The officer repeats this phrase seven times and then says: "Do something about it." At that point in the video, one of the other teens picks up a handful of snow and the officer with the baton uses his other hand to unholster his Taser. The teen drops the snow but both officers continue following the group. The video shows the officer holding his Taser at his side, following the teens down the sidewalk, saying: "Pick that shit up again. Pick that shit up again. You want to ride the lightning?"—a clear reference

¹⁰⁰ *NYPD v. Briscoe*, OATH Index No. 1328/00 (Sept. 29, 2000).

to the Taser's electric charge. The teens then cross the street to get away from the officers, at which point the officer holding the Taser says: "You better walk away." In addition to the significant press coverage by televised, online and print news sources,¹⁰¹ the video of this incident has been viewed on youtube.com more than 50,000 times.¹⁰²

The 2016 Taser Report recommended that the Agency "track whether officers are threatening Taser use in situations where it is not appropriate."¹⁰³ In 2014-2017, there were 109 fully-investigated allegations of improper Taser threats across 101 complaints closed by the CCRB. Figure 16 depicts the dispositions for these allegations.¹⁰⁴ Across all four years, nine of these allegations have been substantiated: one closed in 2015, two in 2016, and six in 2017. Of the six allegations substantiated in 2017, three were part of a single case in which an officer was found to have improperly threatened several high school students in a school cafeteria with a Taser during a fight, including the pointing of a Taser at a seventeen-year-old student's face.

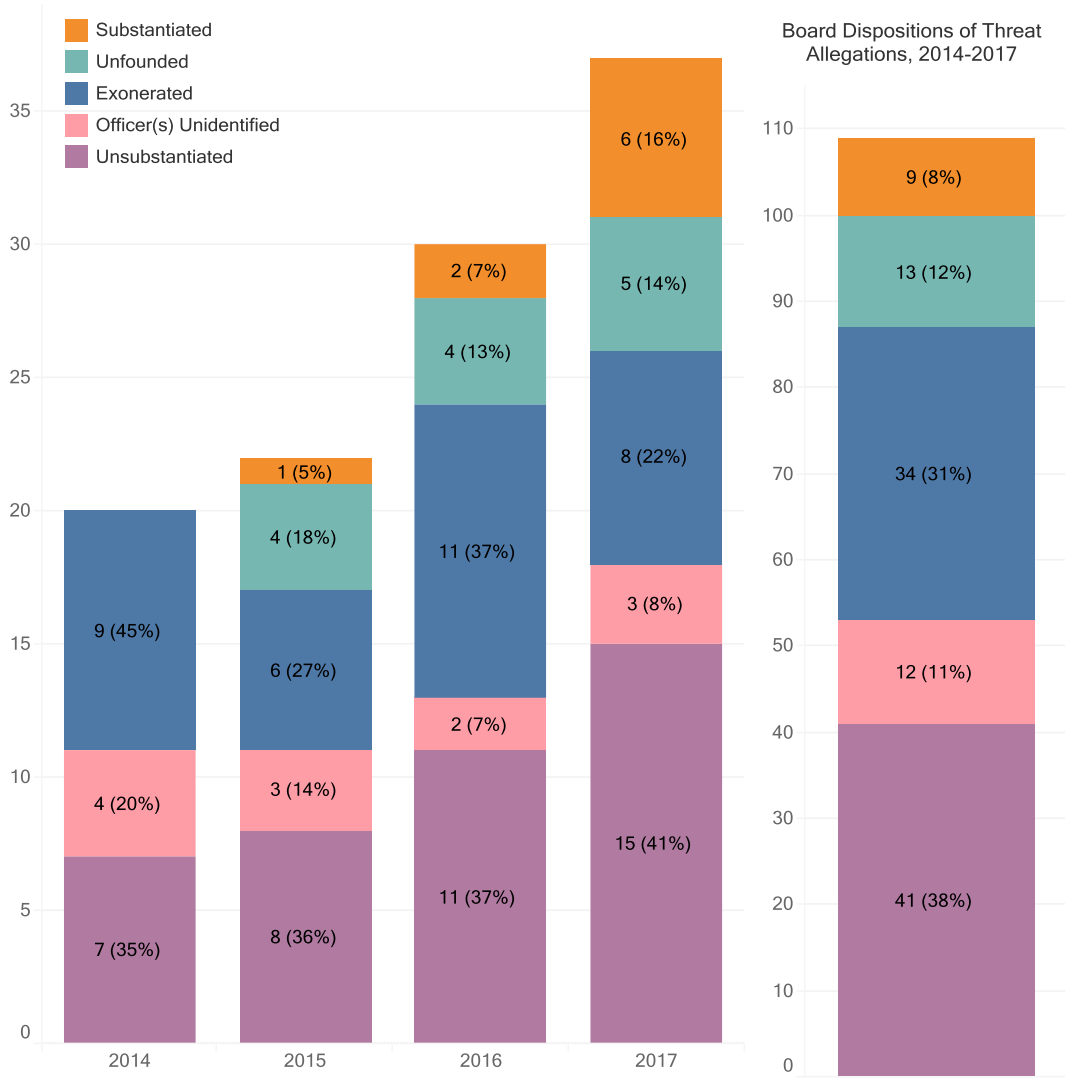
¹⁰¹ Ross Keith, *See It: NYPD Cop Pulls Out Taser While Shooting Brooklyn Students From Corner, Asks, 'Do You Wanna Ride the Lightning?'*, DAILY NEWS, April 2, 2017, <http://www.nydailynews.com/new-york/brooklyn/nypd-pulls-taser-shooing-brooklyn-students-article-1.3016296>.

¹⁰² Unlike other case synopses included herein, the press coverage in this case has made it impossible to anonymize this incident for the purposes of this report. Pursuant to Civil Rights Law 50-a, CCRB is unable to confirm whether CCRB investigated this incident.

¹⁰³ 2016 Taser Report, p. 42.

¹⁰⁴ One complaint may have multiple Taser threat allegations, sometimes due to multiple officers allegedly making threats, and sometimes due to one officer allegedly making threats against multiple complainants.

Figure 16: Dispositions of Taser Threat



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Civilian Complaint Review Board Investigator Training

The 2016 Taser Report stated that the Civilian Complaint Review Board (CCRB or the Agency) “will ensure that its investigators are trained with respect to Tasers, including but not limited to the NYPD Patrol Guide policies on CEWs and CEDs, as well as NYPD training protocols.”¹⁰⁵ Since then, there have been a number of changes in how CCRB investigators are trained on New York City Police Department’s (NYPD) use of Tasers.

Starting in 2016, New Investigator Training contains a separate section on Tasers as part of the Use of Force training, which provides training on the objective reasonable standard, factors to determine reasonableness of force, types of resistance, de-escalation tactics, as well as general guidelines to consider. The Taser-specific training includes when an officer may use a Taser, the different types of Taser deployment, the importance of assessing each individual Taser application, when a Taser should not be used, and where to find additional related evidence (including command logs, roll call, data sheets, and memo books).

Given these developments, the CCRB considers this recommendation implemented.

NYPD Taser Data

The 2016 Taser Report recommended that:

The NYPD should issue an annual external report akin to the Annual Firearms Discharge Report. As the Taser becomes an increasingly important and potentially dangerous tool of law enforcement, the public is entitled to know basic information about the frequency of its deployment, and the consequences of that deployment. The NYPD and New York City could become national leaders on this issue, as there is currently no national registry on Taser deployments and outcomes.¹⁰⁶

Following a set of laws enacted by City Council in 2016,¹⁰⁷ the NYPD is now required to report on statistics on officers’ use of force, including the use of Tasers, in more detail. These reports are published by NYPD on its website on a quarterly basis.¹⁰⁸ While data on the number of Taser discharges are available by precinct and officer duty status, the NYPD releases officer and subject injury data separately.

Despite the lack of ability to connect Taser use to injuries, the CCRB considers this recommendation implemented.

¹⁰⁵ 2016 Taser Report, p. 42.

¹⁰⁶ 2016 Taser Report, p. 43.

¹⁰⁷ NYPD Reports Relating to Use of Force Incidents, N.Y.C. Local Law No. 85 (2016), N.Y.C. Admin. Code § 14-158; NYPD Use of Force Encounter Reports, N.Y.C. Local Law No. 86 (2016), N.Y.C. Admin Code § 14-159; and NYPD to Report in Relation to Deployment, N.Y.C. Local Law 88 (2016), N.Y.C. Admin. Code § 14-160.

¹⁰⁸ NYPD, Annual Use of Force/Firearms Discharge Report Data Tables, <https://www1.nyc.gov/site/nypd/stats/reports-analysis/firearms-discharge.page> (last visited September 18, 2018).

Accessibility of NYPD's Taser Data

A frequently encountered obstacle in substantiating improper Taser use is the extreme difficulty that CCRB investigators face in obtaining Taser deployment data, despite the fact that NYPD has the capacity to retain this data. The X-26 Taser model used by NYPD can store a large amount of data, including when the given Taser was fired, the method in which it was discharged, the number of cycles utilized and the time that elapsed between cycles. This information can be tremendously helpful to investigators who are trying to ascertain whether an officer's Taser use was reasonable, particularly in complaints where witnesses to the incident provide inconsistent statements about what transpired. As such, the 2016 Taser Report recommended that the Agency determine whether "data retention procedures for uploading and storing data from Taser devices are being properly followed."

Since it began requesting data logs in late 2014,¹⁰⁹ the CCRB has had a difficult time obtaining Taser data upon request. At the time of this writing, the Department only downloads Taser data if misconduct is suspected, or if a critical incident involving the use of a Taser has occurred. In order to obtain the relevant Taser data for a given complaint, CCRB must place a request through the CCRB liaison in the NYPD's Internal Affairs Bureau ("IAB"). At that point, if data from the Taser is required to be uploaded, a Borough Investigations Unit will be notified.¹¹⁰ Currently, IAB Group 54 – Force, and the Borough Investigations units are responsible for downloading the Taser data. When the CCRB requests Taser data logs, someone from IAB must physically download the data and create a data log to send to the CCRB. In practice, this process has been long and arduous enough to discourage CCRB investigators from requesting the data logs in the first place. Of the 100 fully-investigated complaints of improper Taser use included in the analysis in this Report, CCRB investigators requested data logs in 11 complaints. The Agency ultimately received the data in only three of those cases.

Though this does not currently occur, as a matter of practice, Taser information could be downloaded as a PDF by the MOS as soon as there is an event, and attached to the Threat, Resistance, Injury Report (TRI) the officer is required to prepare. This would ensure that the information is preserved and readily available both if there is a future CCRB complaint and if there is a departmental investigation into the Taser deployment. Officers and executives are informed of the ability to download the Taser information during training.

The CCRB intends to work with the Department to improve the Agency's access to Taser data required for CCRB investigations. Suggested next steps are discussed in the Recommendations section of this report.

¹⁰⁹ A review of CCRB practices for this Report found that while some CCRB investigators and investigative managers were aware of the existence of these logs, this knowledge was not widespread.

¹¹⁰ PG § 221-08.

ADDITIONAL ISSUES IN THE DEPLOYMENT OF TASERS: TASER USE ON PEOPLE IN MENTAL HEALTH CRISIS

As the CCRB evaluated the full case files of the 90 Taser-related complaints closed in 2014-2017 in which a Taser was confirmed to have been used, one additional issue not examined in the 2016 Taser Report emerged: the high percentage of individuals who appeared to be in significant mental health crisis,¹¹¹ either due to mental illness or substance use,¹¹² at the time they were tased. Taser use against “Emotionally Disturbed Persons” (EDP) is not all that common when compared with the large number of EDP calls the Department receives. According to the NYPD, “[t]he 228 CEW discharges during EDP incidents in 2017 constitute 0.13% of the 176,153 calls for service classified as 10-54 “EDP” calls. In the vast majority of these assignments, officers managed the incident without resorting to a CEW.”¹¹³ However, of the NYPD’s 728 Taser discharges that year, 228 (31%) involved officers subduing EDPs.¹¹⁴ This section reviews research on this topic more broadly, as well as findings from the Agency’s analysis of its case files.

Taser Use on CCRB Complainants in Possible Mental Health Crisis

In order to determine how many complainants were in possible mental health crisis, the CCRB reviewed all case files of fully investigated Taser-related complaints closed in 2014-2017 in which Taser use was confirmed, and identified complainants who had 1) been deemed “EDPs” by the tasing officers; 2) were admittedly under the influence of an intoxicant; or 3) were confirmed through medical records to have been experiencing some form of mental health crisis related to mental illness or substance use when the incident occurred. The CCRB’s analysis revealed that at the time they were tased, between 37% (in cases closed in 2015) and 67% (in cases closed in 2016) were either deemed “EDPs” by officers, admitted intoxication or substance use, or exhibited erratic behavior on the scene that was later confirmed to have co-occurred with a medical mental health diagnosis (Figure 17).

For cases in which the officer deemed the complainant an “EDP,” the CCRB’s analysis also documented whether the officer made that determination before or after encountering the civilian—in other words, whether the officer had information on the possible mental health crisis of

¹¹¹ NYPD uses the term “Emotionally Disturbed Person” (or “EDP”) to refer to individuals suffering from mental illnesses or psychological distress, related to either mental health concerns or substance use. This study will refer to such individuals as “persons in mental health crisis” or “persons in crisis” unless specifically citing NYPD’s practices and policies. The phrasing “mental health crisis” is used by mental health professionals and advocates to describe circumstances in which a person with a mental health condition experiences a health emergency related to their condition. See, e.g., National Alliance on Mental Illness, “Navigating a Mental Health Crisis,” available at <https://www.nami.org/About-NAMI/Publications-Reports/Guides/Navigating-a-Mental-Health-Crisis>. Using the phrasing “person in mental health crisis” instead of “emotionally disturbed person” also follows recommended guidelines set forth by the Americans with Disabilities Act National Network, which advises referring to people first, and disabilities second: “Labeling a person equates the person with a condition and can be disrespectful and dehumanizing. A person isn’t a disability, condition or diagnosis; a person has a disability, condition or diagnosis. This is called Person-First Language.” See ADA National Network, “Guidelines for Writing About People With Disabilities,” available at <https://adata.org/factsheet/ADANN-writing>.

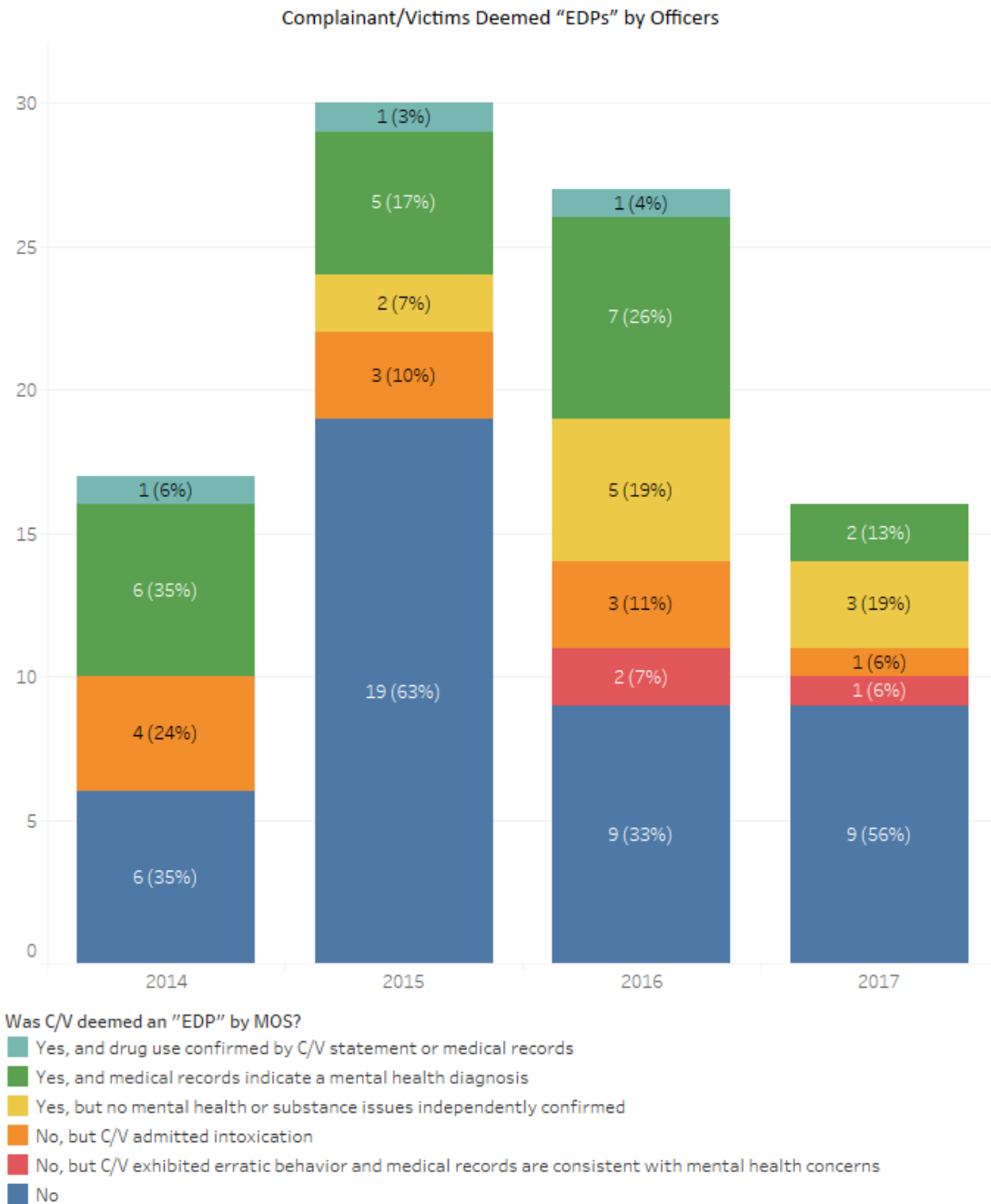
¹¹² Given that people with mental illnesses, particularly those of little means, may self-medicate with drugs or alcohol to cope with symptoms, and that officers may not be able to tell from behavior alone whether a person’s behavior is the result of mental illness or intoxication, the Agency’s use of the phrase “persons in mental health crisis” applies regardless of the cause of the behavior.

¹¹³ New York City Police Department, *supra* note 4 at 30.

¹¹⁴ *Id.*

the civilian as a result of communication provided by dispatch or a fellow officer at the scene, or had made this determination based on the observed behavior of the civilian.

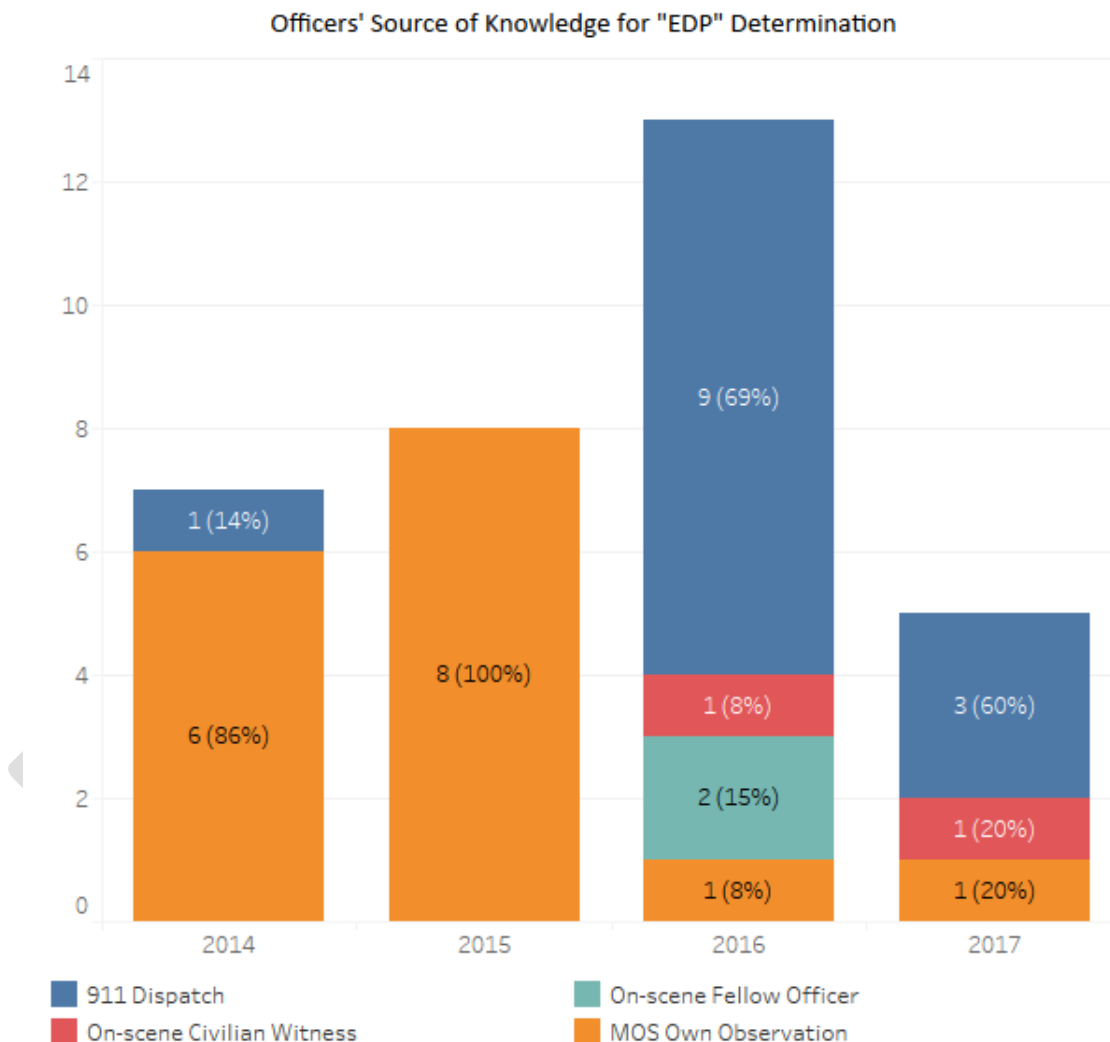
Figure 17: Complainant/Victims Deemed “EDPs” by Officers in Fully Investigated Taser Complaints, 2014-2017



As seen in Figure 18, in the vast majority of cases in which the officer had determined that the civilian who was tased was an “EDP,” the officer went into the situation with prior knowledge of the civilian’s possible mental health crisis in cases closed in 2016 and 2017, but the reverse was true for cases closed in the prior two years.¹¹⁵ For cases closed in 2016 and 2017, foreknowledge mostly came from 911 dispatch, with “EDP” classifications coming to officers this way 69% of the time for cases closed in 2016 and 60% of the time for cases closed in 2017.

While the raw number of cases reviewed in this section is small, this analysis indicates that the CCRB should continue to monitor this issue in the future.

Figure 18: Officers’ Prior Knowledge of Civilian Possible Mental Health Crisis



¹¹⁵ This knowledge generally came from 911 dispatch, information provided by other officers at the scene, civilian witnesses at the scene, or a warrant.

Taser Training and People in Mental Health Crisis

Observation of two NYPD trainings on Taser use revealed opportunity for better synergy between officer¹¹⁶ and executive training on Taser use and de-escalation tactics. The CCRB's review found that officer training on Taser use is comprehensive, appropriately focuses on de-escalation as a preferred first approach with "EDPs" when it is safe to do so, and notes the legal and procedural limits of Taser use. However, in the executive Taser training observed by CCRB staff,¹¹⁷ the delineation between the treatment of "EDPs" and those experiencing excited delirium is not as clear as it could be and executives are trained that it is more effective and preferable to tase "EDPs" quickly in order to take them down and put them in handcuffs. Further, although both officers and executives are trained that MOS are not to tase a civilian who is running away, when assessing the totality of circumstances, executives were taught that MOS should consider whether or not the civilian can out run them in a foot chase, and to avoid a foot chase by tasing the individual.¹¹⁸ Both of these elements in executive training are in conflict with de-escalation tactics discussed in the NYPD's Crisis Intervention Team (CIT) training, particularly for individuals who may be under the influence of drugs or experiencing a mental health crisis, and are not consistent with the more stringent lessons of officer training. As such, the CCRB's review indicates that the Department can do more to ensure consistency between executive and officer training.

Taser Training and Technology

While observing training, CCRB staff learned about available technology that automatically activates all nearby cameras (including BWC and dashboard cameras) when an officer activates their Taser. In an effort to continuously improve oversight, the NYPD should consider incorporating that technology ensuring that all uses of the Taser device are recorded on camera. Axon's Signal Performance Power Magazine¹¹⁹ automatically enables an officer's BWC to begin recording at critical situations, ensuring that officers "can confidently capture the scene from start to finish, without pressing a button."¹²⁰ The Signal Performance Power Magazine can report when a Taser is armed, when the trigger is pulled, and/or when the arc is engaged to alert Axon cameras to begin recording.¹²¹ The incorporation and automation of this technology by the NYPD would ensure greater oversight.

¹¹⁶ While this report labels this training as "officer" training to easily differentiate it from executive training, this training is also given to front-line supervisors and members of service of any rank who will be using a Taser.

¹¹⁷ Executive members of service generally includes those at the rank of captain or above, though the CCRB cannot verify the rank of any of the members of service who attended the training module that CCRB staff observed. While executives generally do not use Taser devices, they may be responsible for securing evidence and supervising investigations following the discharge of a Taser. The executive training that CCRB staff observed—the Executive Conducted Electrical Weapons/Evidence Collection & Analysis Certification module—is intended to be an abbreviated version of the full-day training on Taser use, using the same curriculum but with a slightly altered focus on executive roles and responsibilities.

¹¹⁸ In a communication with the CCRB on October 18, 2019, the NYPD's Risk Management Bureau asserted that "the Department's desired goal is to obtain voluntary compliance without the use of any type of force while acknowledging that not all encounters result in achieving such compliance."

¹¹⁹ The signal performance power magazine is a Taser battery that reports to Axon cameras when Tasers are armed so it can start recording. Axon, *Signal Performance Power Magazine*, <https://www.axon.com/products/signal-ppm> (last viewed Aug. 15, 2019).

¹²⁰ *Id.*

¹²¹ *Id.*

RECOMMENDATIONS

Given the findings of this Report, the CCRB recommends the following actions:

1. The NYPD should give additional training guidance to MOS regarding what factors to consider before applying additional drive stun mode cycles.

Providing examples of improper Taser use to help clarify the advised limitations of the use of a Taser in drive stun mode would limit confusion among officers. This additional guidance would also further clarify the Department's standards, and assist the CCRB in making determinations on whether an officer improperly used a Taser in drive stun mode.

2. The NYPD should ensure consistency between Taser training for officers and training for executives.

It is important that MOS who use Tasers and those who supervise them have the same information when it comes to Taser use. Although CIT training and officer Taser training are well-integrated, the same cannot be said for the executive training. It is important to harmonize and update all Taser-related trainings, including: 1) reiterating a preference for de-escalation in the executive training, 2) requiring Taser-certified MOS to complete CIT training, and 3) integrating CIT and Taser policies and guidelines. Discrepancies and inconsistencies between NYPD policies, guidelines, and trainings have the potential to add confusion for officers in already complex situations.

3. The NYPD should require MOS to download Taser data by the end of the tour in which a Taser was fired, and include the data report as an attachment to the TRI.

Taser data should be downloaded by the MOS as soon as there is an event, and attached to the TRI. This will ensure that the information is preserved and readily available if there is a future CCRB complaint or a departmental investigation into the Taser's deployment. The CCRB has discussed this recommendation with the Department, and the NYPD stated that it is currently reviewing the feasibility of its implementation.

4. The TRI should require the officer to note the number of Taser discharges.

The current version of the TRI requires officers to note the number of firearm discharges by the MOS; there is no such requirement for Taser deployments. As part of completing the TRI, officers should be required to include the number of Taser discharges. This will ensure that TRI data is more complete with regard to Taser use.

5. The NYPD should consider enabling its X26P Tasers to wirelessly report its status, enabling Body Worn Cameras (BWC) to begin recording automatically during critical situations.

There is technology available that allows a Taser to wirelessly report its status, such as being armed or the trigger being pulled, which would automatically activate all nearby cameras (including BWCs and dashboard cameras). The use of this technology would ensure that all potential uses of a Taser are recorded on BWCs, enabling greater oversight by NYPD supervisors, the CCRB, other oversight entities, and the public. While the NYPD has stated that the current BWC model does not support this software, the CCRB believes the Department should consider its implementation in the next hardware upgrade.

BACKGROUND OF THE CCRB AND GLOSSARY

The Charter of the City of New York established the CCRB and empowered it to receive and investigate complaints from members of the public concerning misconduct by members of the NYPD. The CCRB is required to conduct its investigations “fairly and independently, and in a manner in which the public and the police department have confidence.” Under the City Charter, the CCRB has jurisdiction to investigate the following categories of police misconduct: **Force, Abuse of Authority, Discourtesy, and Offensive Language**, collectively known as **FADO**. The CCRB will also note **other misconduct** when it uncovers conduct by NYPD officers during the course of its investigation that falls outside its jurisdiction, which the Department has requested be noted or is considered important to bring to the Department’s attention. Examples of other misconduct include failures by officers to enter necessary information in their activity logs (memo books), failures to complete required documentation of an incident, and evidence suggesting that officers have made false official statements.

The **Board** consists of 13 members all appointed by the Mayor. The City Council designates five Board members (one from each borough); the Police Commissioner designates three; and the Mayor designates five, including the Chair of the Board. Under the City Charter, the Board must reflect the diversity of the city’s residents and all members must live in New York City. No member of the Board may have a law enforcement background, except those designated by the Police Commissioner, who must have had a law enforcement vocation. No Board member may be a public employee or serve in public office. Board members serve three-year terms, which can be, and often are, renewed.

The **Executive Director** is appointed by the Board and is the Chief Executive Officer, who is responsible for managing the day-to-day operations of the Agency and overseeing its nearly 200 employees. The Agency consists of a 90-member **Investigations Division** responsible for investigating allegations of police misconduct within the Agency’s jurisdiction (**FADO**), and for making investigative findings. The most serious police misconduct cases, for which the Board has substantiated misconduct and recommended discipline in the form of Charges and Specifications, are prosecuted by a 14-member **Administrative Prosecution Unit (APU)**. The APU began operating in April 2013, after the CCRB and the NYPD signed a **Memorandum of Understanding** establishing the unit. The prosecutors within the unit are responsible for prosecuting, trying, and resolving cases before a Deputy Commissioner of Trials or Assistant Deputy Commissioner of Trials at One Police Plaza.

The Agency also includes a **Mediation Unit** with trained third-party mediators who may be able to resolve less serious allegations between a police officer and a civilian. A complainant may **mediate** his or her case with the subject officer, in lieu of an investigation, with the CCRB providing a neutral, third-party mediator. The **Outreach and Intergovernmental Affairs Unit** acts as a liaison with various entities, and is responsible for intergovernmental relations, outreach presentations, and community events throughout the five boroughs of New York City.

Members of the public who file complaints regarding alleged misconduct by NYPD officers are referred to as **complainants**. Other civilians involved in the incident are categorized as **victims** or **witnesses**. Officers who are alleged to have committed acts of misconduct are categorized as **subject officers**, while officers who witnessed or were present for the alleged misconduct are categorized as **witness officers**. The CCRB’s investigators in the **Intake Unit** receives complaints filed by the public in-person, by telephone, voicemail, an online complaint form, or referred to the Agency by the NYPD. When a **complaint** is filed, the CCRB assigns it a unique complaint

identification number. The CCRB also refers to complaints as **cases**. A single complaint or case may contain multiple FADO **allegations**.

Allegations regarding improper entries, searches, or failures to show a warrant are considered allegations falling within the CCRB's Abuse of Authority jurisdiction. The vast majority of complaints regarding improper entries, searches, or warrant executions involve only a single incident of entry or search, but some complaints involve more than one entry or search (occurring on the same day or on different days). Each allegation is reviewed separately during an investigation.

During an **investigation**, the CCRB's civilian investigators gather documentary and video evidence and conduct interviews with complainants, victims, civilian witnesses, subject officers, and witness officers in order to determine whether the allegations occurred and whether they constitute misconduct. At the conclusion of the investigation, a **closing report** is prepared, summarizing the relevant evidence and providing a factual and legal analysis of the allegations. The closing report and investigative file are provided to the Board before it reaches a disposition. A panel of three Board members (a **Board Panel**) reviews the material, makes findings for each allegation in the case, and if allegations are substantiated, provides recommendations as to the discipline that should be imposed on the subject officer(s).

The **Disposition** is the Board's finding of the outcome of a case (i.e., if misconduct occurred). The Board is required by its rules to use a **preponderance of the evidence** standard of proof in evaluating cases. Findings **on the merits** result when CCRB is able to conduct a full investigation and obtain sufficient credible evidence for the Board to reach a factual and legal determination regarding the officer's conduct. In these cases, the Board may arrive at one of the following findings on the merits for each allegation in the case: **substantiated, exonerated, or unfounded**.

Substantiated cases are those where it was proven by a preponderance of evidence that the alleged acts occurred and the acts constituted misconduct. Exonerated cases are those where it was shown by a preponderance of the evidence that the alleged acts occurred, but the acts did not constitute misconduct. Unfounded cases are those where there was a preponderance of the evidence that the acts alleged did not occur. **Unsubstantiated** cases are those where the CCRB was able to conduct a full investigation, but there was insufficient evidence to establish by a preponderance of the evidence whether or not an act of misconduct occurred. In some cases, the CCRB is unable to conduct a full investigation or mediation and must **truncate** the case.¹²²

¹²² Fully investigated cases comprise complaints disposed of as substantiated, unsubstantiated, exonerated, unfounded, officers unidentified, or miscellaneous. Miscellaneous cases are those where an officer retires or leaves the Department before the Board receives the case for decision. Truncated cases are disposed of in one of the following ways: complaint withdrawn, complainant/victim uncooperative, complainant/victim unavailable, and victim unidentified.

NEW YORK CITY CHARTER

Chapter 18-A

Civilian Complaint Review Board

§ 440 Public complaints against members of the police department.

(a) It is in the interest of the people of the city of New York and the New York City police department that the investigation of complaints concerning misconduct by officers of the department towards members of the public be complete, thorough and impartial. These inquiries must be conducted fairly and independently, and in a manner in which the public and the police department have confidence. An independent civilian complaint review board is hereby established as a body comprised solely of members of the public with the authority to investigate allegations of police misconduct as provided in this section.

(b) Civilian complaint review board.

1. The civilian complaint review board shall consist of thirteen members of the public appointed by the mayor, who shall be residents of the city of New York and shall reflect the diversity of the city's population. The members of the board shall be appointed as follows: (i) five members, one from each of the five boroughs, shall be designated by the city council; (ii) three members with experience as law enforcement professionals shall be designated by the police commissioner; and (iii) the remaining five members shall be selected by the mayor. The mayor shall select one of the members to be chair.

2. No member of the board shall hold any other public office or employment. No members, except those designated by the police commissioner, shall have experience as law enforcement professionals, or be former employees of the New York City police department. For the purposes of this section, experience as a law enforcement professional shall include experience as a police officer, criminal investigator, special agent, or a managerial or supervisory employee who exercised substantial policy discretion on law enforcement matters, in a federal, state, or local law enforcement agency, other than experience as an attorney in a prosecutorial agency.

3. The members shall be appointed for terms of three years, except that of the members first appointed, four shall be appointed for terms of one year, of whom one shall have been designated by the council and two shall have been designated by the police commissioner, four shall be appointed for terms of two years, of whom two shall have been designated by the council, and five shall be appointed for terms of three years, of whom two shall have been designated by the council and one shall have been designated by the police commissioner.

4. In the event of a vacancy on the board during the term of office of a member by reason of removal, death, resignation, or otherwise, a successor shall be chosen in the same manner as the original appointment. A member appointed to fill a vacancy shall serve for the balance of the unexpired term.

(c) Powers and duties of the board.

1. The board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of Force, Abuse of Authority, Discourtesy, or use of Offensive Language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. The findings and recommendations of the board, and the basis therefore, shall be submitted to the police commissioner. No finding or recommendation shall be

based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any such finding or recommendation.

2. The board shall promulgate rules of procedure in accordance with the city administrative procedure act, including rules that prescribe the manner in which investigations are to be conducted and recommendations made and the manner by which a member of the public is to be informed of the status of his or her complaint. Such rules may provide for the establishment of panels, which shall consist of not less than three members of the board, which shall be empowered to supervise the investigation of complaints, and to hear, make findings and recommend action on such complaints. No such panel shall consist exclusively of members designated by the council, or designated by the police commissioner, or selected by the mayor.

3. The board, by majority vote of its members, may compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of complaints submitted pursuant to this section.

4. The board shall establish a mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation.

5. The board is authorized, within appropriations available therefore, to appoint such employees as are necessary to exercise its powers and fulfill its duties. The board shall employ civilian investigators to investigate all complaints.

6. The board shall issue to the mayor and the city council a semi-annual report which shall describe its activities and summarize its actions.

7. The board shall have the responsibility of informing the public about the board and its duties, and shall develop and administer an on-going program for the education of the public regarding the provisions of this chapter.

(d) Cooperation of police department.

1. It shall be the duty of the police department to provide such assistance as the board may reasonably request, to cooperate fully with investigations by the board, and to provide to the board upon request records and other materials which are necessary for the investigation of complaints submitted pursuant to this section, except such records or materials that cannot be disclosed by law.

2. The police commissioner shall ensure that officers and employees of the police department appear before and respond to inquiries of the board and its civilian investigators in connection with the investigation of complaints submitted pursuant to this section, provided that such inquiries are conducted in accordance with department procedures for interrogation of members.

3. The police commissioner shall report to the board on any action taken in cases in which the board submitted a finding or recommendation to the police commissioner with respect to a complaint.

(e) The provisions of this section shall not be construed to limit or impair the authority of the police commissioner to discipline members of the department. Nor shall the provisions of this section be construed to limit the rights of members of the department with respect to disciplinary action, including but not limited to the right to notice and a hearing, which may be established by any provision of law or otherwise.

(f) The provisions of this section shall not be construed to prevent or hinder the investigation or prosecution of members of the department for violations of law by any court of competent jurisdiction, a grand jury, district attorney, or other authorized officer, agency or body.

BOARD MEMBERS

MAYORAL DESIGNEES

Fred Davie, Chair of the Board

Fred Davie serves as the Executive Vice President for the Union Theological Seminary located in New York City, which prepares students to serve the church and society. Additionally, he is a member of the Mayor's Clergy Advisory Council (CAC) and is co-convenor of its Public Safety Committee, which is focused on building community safety and improving police-community relations. Before working at Union Theological Seminary, Mr. Davie served as Interim Executive Director and Senior Director of Social Justice and LGBT Programs at the Arcus Foundation, which funds organizations worldwide that advance an inclusive, progressive public policy agenda. Mr. Davie served on President Barack Obama's transition team and was later appointed to the White House Council of Faith-based and Neighborhood Partnerships. Mr. Davie has served the City as Deputy Borough President of Manhattan and Chief of Staff to the Deputy Mayor for Community and Public Affairs. Mr. Davie is a mayoral designee to the Board appointed by Mayor Bill de Blasio.

M. Div., Yale Divinity School; B.A., Greensboro College

Corinne A. Irish, Esq.

Corrine Irish is an attorney with the international law firm Squire Patton Boggs, where she litigates and counsels clients on a variety of complex commercial matters, ranging from contract disputes to enforcing intellectual property rights to advising clients on regulatory compliance. Ms. Irish is also a founding member of the firm's Public Service Initiative, where she has litigated death penalty, criminal, and civil rights cases involving a miscarriage of justice or a denial of fundamental rights on behalf of indigent clients. She also has served as counsel for amici clients before the U.S. Supreme Court in important cases of criminal constitutional law. Ms. Irish previously served as a law clerk, first to the Honorable William G. Young of the U.S. Court for the District of Massachusetts and then to the Honorable Barrington D. Parker of the U.S. Court of Appeals for the Second Circuit. Ms. Irish is a lecturer-in-law at Columbia Law School, where she has taught since 2012. She was also an adjunct professor at Brooklyn Law School in 2008 and 2009. Ms. Irish was recognized for six consecutive years as a Rising Star in New York Super Lawyers and recently has been named to The National Black Lawyers – Top 100. Ms. Irish is a mayoral designee to the Board appointed by Mayor Bill de Blasio.

J.D. Harvard Law School; B.A., University of Pennsylvania

John Siegal, Esq.

John Siegal is a partner in BakerHostetler, a national business law firm, where he handles litigation, arbitrations, and appeals for clients in the financial services, media, and real estate industries. Mr. Siegal's practice also includes constitutional law, civil rights, Article 78, and other cases against government agencies. He has been admitted to practice law in New York since 1987. Mr. Siegal's public service experience includes working as an Assistant to Mayor David N. Dinkins and as a Capitol Hill staff aide to Senator (then Congressman) Charles E. Schumer. Throughout his legal career, Mr. Siegal has been active in New York civic, community, and political affairs. Mr. Siegal is a mayoral designee to the Board appointed by Mayor Bill de Blasio.

J.D., New York University School of Law; B.A., Columbia College

Erica Bond, Esq.

Erica Bond has experience in the government, non-profit, public policy, and legal sectors. Most recently, Ms. Bond served as Special Advisor for Criminal Justice to the First Deputy Mayor of New York City. In this role, she advised and supported the First Deputy Mayor in management of the City's criminal justice agencies. Prior to joining city government, Ms. Bond was a Director of Criminal Justice at the Laura and John Arnold Foundation, where she worked to develop new research, policy reforms, and evidenced-based innovations with the goal of transforming criminal justice systems nationwide. In this role, she partnered with criminal justice practitioners, researchers, and policymakers on initiatives to improve community safety, increase trust and confidence in the criminal justice system, and ensure fairness in the criminal justice process. After graduating from law school, Ms. Bond began a legal career as a Litigation Associate at Kaye Scholer (now Arnold & Porter Kaye Scholer LLP), an international law firm where she represented clients on a variety of matters, including government investigations, regulatory compliance issues, and commercial disputes. Ms. Bond is a mayoral designee to the Board appointed by Mayor Bill de Blasio.

J.D. Fordham University School of Law; B.A., Wesleyan University

CITY COUNCIL DESIGNEES**Joseph A. Puma**

Joseph Puma's career in public and community service has been exemplified by the various positions he has held in civil rights law, community-based organizations, and local government. As a paralegal with the NAACP Legal Defense and Education Fund, Mr. Puma handled cases involving criminal justice, voting rights, employment discrimination, and school desegregation. Prior to joining NAACP LDF, he worked for more than six years at the NYC Office of Management and Budget, where he served in roles in intergovernmental affairs, policy, and budget. From 2003 to 2004, he served as a community liaison for former NYC Council Member Margarita López. Since 2007, Mr. Puma has been involved with Good Old Lower East Side (GOLES), a community organization helping residents with issues of housing, land use, employment, post-Sandy recovery and long-term planning, and environmental and public health. A lifelong city public housing resident, Mr. Puma currently serves on GOLES's Board of Directors, and has participated in national public housing preservation efforts. Mr. Puma is a City Council designee to the Board first appointed by Mayor Michael Bloomberg and reappointed by Mayor Bill de Blasio.

Certificate, Legal Studies, Hunter College, City University of New York; B.A., Yale University

Ramon A. Peguero, Esq.

Ramon Peguero is the Executive Director of The Committee for Hispanic Children and Families, Inc. Prior to this role, Mr. Peguero served as Executive Director of Southside United HDFC (Los Sures), the largest multi-service organization in Williamsburg, Brooklyn focused on developing affordable housing, preventing tenant displacement, running a senior center and food pantry, and managing affordable housing projects. Mr. Peguero spent 15 years working in grassroots organizations that tackled the most challenging issues facing low-income residents in New York: HIV and AIDS awareness, child and substance abuse, child development issues, and health and nutrition education. Mr. Peguero also serves on the boards of several organizations focused on enhancing the lives of New Yorkers. He is a mayoral appointee to the Board of Directors of the Brooklyn Navy Yard Development Corporation; founder and director of an annual community Thanksgiving dinner; founder and director of an Annual Dominican Independence Day Celebration; Board Chair of

Nuestros Niños Preschool Center; and was the first President of the Community Education Council (formerly the School Board); and past Board Member of Brooklyn Legal Services Corporation A. Mr. Peguero is a City Council designee to the Board appointed by Mayor Bill de Blasio. *J.D. CUNY School of Law, Queens College; M.A., Metropolitan College; B.A., Stony Brook University, State University of New York*

Marbre Stahly-Butts, Esq.

Marbre Stahly-Butts is a former Soros Justice Fellow and now Policy Advocate at the Center for Popular Democracy. Her Soros Justice work focused on developing police reforms from the bottom up by organizing and working with families affected by aggressive policing practices in New York City. Ms. Stahly-Butts also works extensively on police and criminal justice reform with partners across the country. While in law school, Ms. Stahly-Butts focused on the intersection of criminal justice and civil rights, and gained legal experience with the Bronx Defenders, the Equal Justice Initiative, and the Prison Policy Initiative. Before law school, Ms. Stahly-Butts worked in Zimbabwe organizing communities impacted by violence, and taught at Nelson Mandela’s alma mater in South Africa. Ms. Stahly-Butts is a City Council designee to the Board appointed by Mayor Bill de Blasio.

J.D., Yale Law School; M.A., Oxford University; B.A., Columbia University

Michael Rivadeneyra, Esq.

Michael Rivadeneyra is the Senior Director of Government Relations at the YMCA of Greater New York, where he develops the legislative and budgetary agenda for the organization. Prior to this role, Mr. Rivadeneyra served in various capacities as a legislative staffer to Council Members James Vacca, Annabel Palma, and Diana Reyna. While in law school, Mr. Rivadeneyra served as a legal intern at Main Street Legal Services, where he represented immigrant survivors of gender violence and advocated on behalf of undergraduate students from disadvantaged backgrounds. Mr. Rivadeneyra also worked to advance immigrants’ rights as an intern at the New York Legal Assistance Group during law school. Mr. Rivadeneyra is a City Council designee to the Board appointed by Mayor Bill de Blasio.

J.D., CUNY School of Law, Queens College; B.A., State University of New York at Albany

Nathan N. Joseph

Nathan N. Joseph is a retired physician assistant who served New York City as a health care administrator and practitioner. Mr. Joseph most recently was a facility administrator at DaVita South Brooklyn Nephrology Center in Brooklyn, where he conducted budget analysis and staff training and development.

Prior to working as a facility administrator, Mr. Joseph was an associate director for ambulatory services at Kings County Hospital Center, where he previously was a physician assistant. Mr. Joseph’s experience in health care also includes work in detention facilities within New York City, including the Manhattan Detention Complex, the Spofford Juvenile Detention Center, and Rikers Island Prison, where he provided daily sick call and emergency treatment of inmates. Mr. Joseph is the Staten Island City Council designee to the Board appointed by Mayor Bill de Blasio.

A.A.S Staten Island Community College

POLICE COMMISSIONER DESIGNEES

Salvatore F. Carcaterra

Salvatore F. Carcaterra began his law enforcement career in 1981 with the NYPD, where he served

for 21 years. Starting as a Patrol Officer, he was promoted through the ranks to the position of Deputy Chief. As a Deputy Chief, he served as the Executive Officer to the Chief of Department, where, among many duties, he organized and implemented the NYPD's overall response to the threat of terrorism following the 9/11 attack on the World Trade Center. Prior to that, Mr. Carcaterra was a Deputy Inspector in command of the Fugitive Enforcement Division. As a Deputy Inspector, he also served in the Office of the Deputy Commissioner for Operations, managing COMPSTAT, and commanding the Hate Crimes Task Force, increasing its arrest rate by over 50 percent. He served in the NYPD Detective Bureau as a Captain in the 70th Precinct and as Deputy Inspector in the 66th Precinct. After retiring from the NYPD, Mr. Carcaterra became the president of a security firm and now heads his own security company, providing personal and physical protection to individuals and corporations. Mr. Carcaterra is a police commissioner designee to the Board appointed by Mayor Bill de Blasio.

B.S., John Jay College of Criminal Justice, City University of New York; Graduate, Federal Bureau of Investigation National Academy; Graduate, Columbia University Police Management Institute

Frank Dwyer

Frank Dwyer, a Brooklyn native and current Queens resident, consults with and teaches at police departments and educational institutions throughout the United States. In 1983, he joined the NYPD and served in Queens, Brooklyn, and Manhattan in a variety of assignments including as a Police Academy Law Instructor, the Commanding Officer of the 7th Precinct on the Lower East Side of Manhattan, and the Commanding Officer of the Office of the Deputy Commissioner for Operations. He worked in Lower Manhattan on 9/11 and in months that followed. Retiring in 2012 at the rank of Deputy Inspector, Mr. Dwyer is currently pursuing a doctorate in Criminal Justice. He has consulted for several police departments, including Newark, New Jersey and Wilmington, Delaware. He has also taught at or consulted for the following educational institutions: John Jay College of Criminal Justice, Teachers College, Boston College, Morgan State University, and the University of San Diego. Mr. Dwyer is a police commissioner designee to the Board appointed by Mayor Bill de Blasio.

M.S.W., Hunter College, City University of New York; M.St., Cambridge University; M.P.A., Harvard University; M.A., Fordham University; B.A., Cathedral College

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Co-Chief of Investigations: Chris Duerr

Co-Chief of Investigations: Winsome Thelwell

Deputy Executive Director of Administration: Jeanine Marie

Senior Staff

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Deputy Chief Prosecutor: Suzanne O'Hare, Esq.

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Director of Data Processing: Lincoln MacVeagh

Interim Director of Human Resources: Jennelle Brooks

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