



## POLICE DEPARTMENT

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December 5, 2019

Honorable Fred Davie  
Chair  
Civilian Complaint Review Board  
100 Church Street  
10<sup>th</sup> Floor  
New York, NY 10007

Dear Chairman Davie:

The following is the Department's response to the most recent draft of CCRB's 2019 Taser<sup>1</sup> Report dated November 27, 2019 ("the Report").

While the Department appreciates the efforts of CCRB in this area, the Report misses the most salient factors in terms of NYPD's deployment of Tasers:

- To date, 28,000 uniformed personnel have been trained in the use of Tasers with more than 6,800 Tasers deployed in the field daily.
- During the period covered by the Report, the number of substantiated cases of misuse of a Taser is less than 0.39% (7/1800) of total intentional discharges<sup>2</sup>, an incredibly low number, and an extraordinary achievement in terms of policy making and training.
- The deployment of Tasers has saved innumerable lives by providing our police officers with a viable less lethal option than resort to firearms.

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<sup>1</sup> "Taser" is a tradename for the brand of Conducted Electrical Weapon or CEW utilized by NYPD.

<sup>2</sup> There were over 1,800 Taser intentional discharges in the period covered by the Report.

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To be more specific, since 2015, the Department, in its continuing efforts to preserve and protect human life, has dramatically increased the numbers of Tasers and the number of officers trained in their use. The increased number of incidents in which Tasers are utilized is consistent with the increased number of devices issued to officers. The Department is, of course, committed to further decreasing any misuse of Tasers, but firmly believes that, given the scale of the increased deployment, it has done a truly admirable job in relevant policy development and training, which should be celebrated.

While the Department appreciates the dialogue that we have had with CCRB on the topics covered by the Report, we do, as previously discussed with CCRB, take issue with the following:

1. There is a substantial amount of discussion around racial demographics of complainants and subject officers in the Report. CCRB, in its 2016 Taser Report, explicitly stated the limitation of its data by stating that “the scant numbers in this Taser study does not indicate racial profiling,” when the sample size was 153 complainants. The number of complaints covered in the current Report is 90, notwithstanding the much wider deployment and utilization of Tasers for the period of time covered by the Report. This racial demographic discussion becomes more problematic when the fact that 91% of these cases were exonerated, unsubstantiated, or unfounded. Furthermore, given the recent broad distribution of Tasers across ranks, we believe that the data reported about the race of officers deploying their Tasers is outdated and anomalous and merely reflects the race and rank of the officers initially outfitted with Tasers. Accordingly, this data should not be used to infer an increased rate of use of Tasers by officers of any particular race. Thus, we believe that the lengthy discussion regarding racial demographics is misplaced given the acknowledged fact that it is impossible to draw any conclusions as to any pattern or practice relative to the use, or in the seven substantiated cases, misuse, of Tasers.
2. CCRB noted that both officer and executive trainings do not clarify “exceptional circumstances” when discussing when drive stun mode is appropriate and that the trainings do not provide clear guidance on when drive stun discharge is excessive. This is inaccurate. Our training, coupled with the detailed procedure regarding Taser discharge in Patrol Guide Procedure 221-08 (“P.G. 221-08”), provides ample guidance to our officers as to when drive stun mode is appropriate. In addition to P.G. 221-08, the trainings teach that an officer should avoid using drive stun mode except in certain instances: (1) for three or four-point contact to complete a circuit or increase probe spread; (2) in order to “break contact” or as a distraction tactic to create reactionary distance; or (3) in a brief application to attempt pain compliance. Furthermore, officers are taught not to repeat drive stun discharge if compliance is not achieved and to not use drive stuns if pain is unlikely to gain compliance due to either mind-body disconnect (i.e. psychotic episode) or increased pain tolerance due to substance use. Lastly, the trainings emphasize that probe discharges are more

desirable and effective than drive stuns except for three-point discharges. In sum, “exceptional circumstances” aims to only capture those incredibly dynamic set of facts that would be infeasible to exhaustively list out. Most importantly, the safety measures noted above which are designed to reduce risk to the subject fully comport with the recommendations from the manufacturer, New York State Division of Criminal Justice Services, International Association of Chiefs of Police, and Police Executive Research Forum.

3. The Report also indicates that there were inconsistencies between the officer training and executive training CCRB observed. As discussed with CCRB during the drafting of the Report, the executive training is for executives who will not deploy Taser but rather a member who is at the rank of captain or above who may be responsible for securing evidence and supervising investigations following a Taser discharge. More importantly, these executives are not frontline supervisors who supervise and train officers who may deploy Taser. Therefore, the emphasis and the curriculum are substantially different than the officer training by design. The title of the executive training, which is *Executive Conducted Electrical Weapons/ Evidence Collection & Analysis*, demonstrates this point and is an abbreviated version of the training offered to officers and frontline supervisors. As we previously shared, the officer and the frontline supervisor trainings are identical and there are no inconsistencies on how the officers and frontline supervisors are taught regarding when and how to deploy a Taser. Furthermore, as noted in the Report, the officer and frontline supervisor training is consistent and well-integrated with Crisis Intervention Training, which emphasizes sensitivity to those going through mental health crises and prioritizes proper de-escalation. We wholly disagree that the executives are taught that the officer 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.” In both trainings, members are taught to consider the severity of crime committed by the fleeing subject as well as the immediate danger the subject poses to themselves, the public or to officers. The Department has long been focused on training our officers on de-escalation tactics and Taser training for officers, supervisors and executives, is no exception to that policy. The Department’s desired goal is always to obtain voluntary compliance without the use of any type of force, and in each instance in which the use of some force is necessary, to ensure that the least amount of force necessary is utilized.
4. The Department understands that in its 2016 report CCRB made a commitment to track when Tasers are discharged without a warning and therefore has included this data in the Report. However, as noted, the Department changed its policy since the 2016 report and no longer requires a warning before discharge if not feasible to do so safely. Though we appreciate the clarification that cases in which no warning was given were not analyzed to determine whether or not a warning was feasible

consistent with the Department's policy, without such analysis, the data is immaterial.

Again, we appreciate your courtesy in sharing the draft of the Report and, pursuant to our suggestions, making certain changes to promote the Report's accuracy. We will take each of the Report's recommendations under consideration, and, can assure you and the public that we will continue to seek to improve in this, and in all areas of policing.

Respectfully submitted,

Jeffrey Schlanger  
Deputy Commissioner  
Risk Management Bureau