CIVILIAN COMPLAINT REVIEW BOARD

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TASERS: AN EVALUATION OF TASER-RELATED COMPLAINTS FROM JANUARY 2014 THROUGH DECEMBER 2015

CCRB MISSION AND VALUES

The New York City Civilian Complaint Review Board ("CCRB") is an independent agency, created by Chapter 18-A of the New York City Charter. The Board is empowered to receive, investigate, mediate, hear, make findings, and recommend action on complaints against New York City police officers alleging the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language.

In fulfillment of its mission, the Board has pledged:

- To identify issues to track, including short reports or fact sheets, and additionally report apparent patterns of misconduct, relevant issues and policy matters to the Police Commissioner and the public.

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Tasers:
ISSUE BRIEF:
Taser Complaints
From January 1, 2014 through December 31, 2015

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EXECUTIVE SUMMARY

Across the United States, conducted energy devices, commonly known as "Tasers," are increasingly becoming a policing tool.[1] The New York City Police Department ("NYPD") has historically distributed Tasers on a limited basis, but as of early 2016, hundreds of new Tasers have been issued throughout the Department. As a result, the Civilian Complaint Review Board ("CCRB") can now begin to monitor the NYPD's Taser practices, including how officers are trained, the relevant contents of the NYPD Patrol Guide, and the patterns of police Taser conduct drawn from CCRB complaint data. When used properly, the Taser can be an effective weapon. Some reports on past experiences in New York City and across the country suggest that Tasers may pose health concerns and may be vulnerable to overuse.

There has been limited discussion of the NYPD's guidance on when to use the weapon. Until 2015, few NYPD officers carried Tasers, and those who did were either senior officers or part of specialized commands. The NYPD has adopted and is implementing practices for Taser use. This issue brief seeks to share two years of CCRB complaint data, current NYPD guidance and practices as a baseline for tracking Taser use as it relates to CCRB complaints.

The scope of the Report includes how Tasers are being used by the NYPD in Taser-related CCRB complaints from 2014 through 2015. Part I of the issue brief provides a short overview of the Taser, including its history, gradual adoption by the NYPD, and the NYPD's Taser policies and trainings.[2] Part II summarizes CCRB complaint data on Taser-related complaints from 2014 and 2015. Part III outlines current NYPD Guidance and identifies best practices. Part IV highlights next steps important for tracking and monitoring Taser use among NYPD officers.

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[1] For the purposes of this Study, 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] In June 2016, the NYPD issued a new guideline entitled *Use of Conducted Electrical Weapons (CEW)* as Section 221-08 of the Patrol Guide. This section is substantively similar to the prior and revoked Patrol Guide Section 212-117 on *Use of Conducted Energy Devices (CED)*. Both sections respectively define CEWs and CEDs as handheld devices that use energy to affect the central nervous system, but Section 221-08 specifically defines a CEW as a device manufactured by TASER International Inc. This issue brief examines Taser-related complaints that were filed with the CCRB between January 1, 2014 and December 31, 2015, a time period prior to the effectuation of Section 221-08. However, in order to ensure that this report's police policy discussions are germane to current NYPD practices, references to the Patrol Guide's Taser use guidelines will reflect the most recently issued language contained in Section 221-08.

Among the Taser Study's key statistical findings using the CCRB's data from January 1, 2014 to December 31, 2015[3]

- The 153 Taser-related complaints discussed in this report comprise 3% of all 4,494 complaints (fully and not fully investigated) the CCRB received during the period examined that involve at least one force allegation.[4]

- One hundred and fifty three Taser-related complaints were examined, including 51 fully investigated complaints and 85 truncations (not fully investigated). Truncations were examined solely to describe what CCRB has received.

- Among the 51 fully investigated complaints there were 51 allegations. A complaint may include more than one allegation.[5]

- Of the 51 Taser-related allegations in the 51 fully investigated complaints, 32 were exonerated, 3 substantiated, 3 unfounded, 10 unsubstantiated, and 3 were officer unidentified.[6] That is, no police misconducted was substantiated in 94% of the Taser related allegations fully investigated during the period examined.

- Of the 3 substantiated complaints, two involved Taser deployments. One involved the aiming of the red light beam with no Taser deployment.

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[3] This report uses descriptive statistics which do not speak to causality, and is not intended to generalize or represent all Taser incidents. The 153 incidents discussed in this report are not representative of all Taser incidents, and the data used within the study cannot surmise the total volume of NYPD Taser incidents.

[4] The CCRB uses the term "complaint" to refer to an incident filed that may contain one or more FADO allegations. Some Taser-related cases that were sent from NYPD's Internal Affairs Bureau (IAB) to the CCRB were truncated (i.e. not fully investigated) and many of these had no 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 what the CCRB is, or why they are being asked questions about the incident. This subset of complaints often ends with either a "Victim Unavailable," or "Complainant Uncooperative" determination.

[5] The percentages of fully investigated (33%) and truncated complaints (56%) in this Taser-related sample are similar to the percentages of overall CCRB fully investigated (38%) and truncated complaints (51%) during the same time period.

[6] The percentage of exonerated Taser-related allegations in this sample (63%) is substantially higher than the percentage of exonerated allegations among all CCRB fully investigated allegations during the same period (22%). Although the raw counts are small, 20% of Taser-related allegations in this sample were unsubstantiated, whereas 44% of all CCRB fully investigated allegations during the same period were unsubstantiated. Six percent of Taser-related allegations in this sample were substantiated, whereas 12% of all CCRB fully investigated allegations during the same period were substantiated. Six percent of Taser-related allegations in this sample were unfounded, whereas 8% of all CCRB fully investigated allegations during the same period were unfounded.

- Over half of civilians involved in the complaints examined are black (52%), closely mirroring statistics for CCRB complaints overall.[7]

- Forty-six of the 139 Taser-related complaints for which location was known took place in police custody (e.g., vehicle, precinct, holding cell) (33%).[8]

- In the 51 CCRB complaints fully investigated, the NYPD demonstrates commendable restraint on the number of cycles applied to a person in Taser-related complaints.[9] CCRB data included no cases in which more than three Taser cycles were applied to a person. NYPD policy requires exigent circumstances to apply more than three cycles; some of the controversial and deadly Taser incidents across the United States have involved officers that exceeded this amount.

Among the Taser Study's identified next steps for monitoring and tracking:

- 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". [10]

- 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

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[7] This percentage is for all complaints examined regardless of outcome.

[8] For the purposes of this study, a subject is deemed to be in police "custody" when such person is inside of a police vehicle, a police precinct building, or a precinct holding cell. This narrow definition of "custody" is strictly determined by the location where the Taser-related complaints occurred and should not be confused with the broader definition of police "custody" that applies in the context of a person's constitutional rights under the Fourth and Fifth Amendments.

[9] A standard cycle is a timed electrical discharge that takes place when the trigger is pressed and released. In some models, a Taser will continue to deliver an electrical discharge until the trigger is released. See http://www.aele.org/law/glossary_ecw.pdf

[10] As previously mentioned, the newly adopted Section 221-08 of the Patrol Guide, *Use of Conducted Electrical Weapons (CEW)* is substantively similar to the previous Patrol Guide Section 212-117. One major difference between the two guidelines is whether a police officer must issue a verbal warning to the intended Taser subject. Section 212-117 required officers to "issue an appropriate warning, consistent with personal safety, to the intended subject… prior to discharging the CED." Section 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."

whether Tasers are being used to coerce or attempt to pacify individuals who are non-violent, 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.

INTRODUCTION: BACKGROUND OF CCRB AND GLOSSARY

The Charter of the City of New York establishes the Civilian Complaint Review Board and empowers it to receive and investigate complaints from members of the public concerning misconduct by officers of the NYPD. *See* NYC Charter § 440(a). 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." *Id.* 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**." *Id.* § 440(c)(1). The CCRB is an all civilian review board. Members may not be current government employees. For more information on the Board and more information about the CCRB, please visit http://www.nyc.gov/html/ccrb/html/home/home.shtml.

Members of the public who file complaints with the CCRB 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 commit the actions that are alleged to be misconduct are categorized as "**subject officers**," while those who witnessed or acted pursuant to the command of their superior officers are categorized as "**witness officers**." When a complaint is filed with the CCRB, the CCRB assigns it a unique complaint identification number. CCRB also refers to "**complaints**" as "**cases**." A single complaint or case may contain multiple "**allegations**" relating to force, abuse of authority, discourtesy, and/or offensive language.

When the CCRB receives a complaint, complainants are offered the opportunity to receive mediation, if the allegations are eligible for mediation. If mediation is requested and is unsuccessful, or if mediation is not appropriate, the complaint is investigated by the CCRB's Investigations Division, and for making investigative findings. A panel of three Board members **("Board Panel")** reviews the findings and by majority vote determines whether or not to support the findings for each allegation in a complaint. The Board Panel can find allegation(s) are supported by a preponderance of the evidence **("Substantiated")**, there is not sufficient evidence to support findings that a police officer(s) acted outside of the rules of the NYPD or any laws **('Unsubstantiated"),** that there is enough evidence to show that the allegations do not appear to be true or accurate **("Unfounded")** or that the incident did happen, but that the evidence shows that police officer(s) acted within NYPD Patrol Guidance and applicable laws **("Exonerated").** In many cases, CCRB is unable to conduct a full investigation or mediation and must "**truncate**" the case.[11]

[11] 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

The most serious police misconduct cases are prosecuted by a 16-member Administrative Prosecution Unit. The prosecutors within the Unit are responsible for prosecuting, trying and resolving the most serious misconduct cases before a Deputy Commissioner of Trials at One Police Plaza. More information about additional units and functioning of the CCRB can be found on the CCRB website at http://www.nyc.gov/html/ccrb/html/home/home.shtml.

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."

SECTION ONE: BACKGROUND ON TASERS

History of the Taser

The first Taser was patented in 1973 by John Cover, who named his invention for the stun gun in the young adult novel *Tom Swift and his Electric Rifle*.[12] Pitching the Taser as a law enforcement alternative to metal batons, Cover's main contract, the LAPD, pulled back on Taser use after they played an ugly role in the infamous 1991 Rodney King beating. During the early 1990s, brothers Tom and Rick Smith reinvented the device to use compressed air rather than gunpowder, which meant their version of the Taser was no longer regulated as a firearm. The Smiths named their company TASER International Co., and by 1998 were marketing a more powerful and reliable Taser gun to police departments across the country, eventually dominating the conducted energy device market.[13] Today, Tasers are used by 17,000 law enforcement agencies in 107 countries.[14]

For the past decade most police forces, including the NYPD, have used the X26, a more effective model than its predecessors.[15] The X26 weighs seven ounces and is worn on an officer's belt. A cartridge containing wired darts is attached to the front of the Taser, which can fire the darts up to 25 feet and convey up to 50,000 volts.[16] The first dart fires straight, and the second at an angle with the goal of embedding the darts in the target's skin in two different places.[17] If one dart misses, the other will be ineffective until the shooter applies the Taser gun directly on the subject to complete the electrical circuit. The Taser initially conducts energy for five seconds automatically, at which point a shooter can maintain his finger on the trigger for another cycle or release.

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[12] The "A" in TASER is Swift's middle initial.

[13] A 2015 documentary, *Killing Them Safely*, provides a comprehensive history of the Taser and TASER International, Inc.

[14] Michel White & Justin Ready, *Examining Cognitive Functions Following TASER Exposure: A Randomized Controlled Trial*, Applied Cognitive Psychology at p.1 (July/August 2015).

[15] David Griffin, *Re-Charged, Taser's X26*, Police Magazine (2003). Available online at: http://www.policemag.com/channel/weapons/articles/2003/06/re-charged/page/2.aspx. According to the NYPD, the department has been gradually trading in the similar, but less effective M26 model for the X26, but the new purchases will all be X26s.

[16] According to the NYPD, although a Taser device can generate up to 50,000 volts, this only occurs when one probe has penetrated a subject's skin and the other is not in direct contact with skin (i.e. embedded in the person's clothing). The device recognizes this disconnect and can generate up to 50,000 volts allowing the current to arc or "jump" up to a one inch gap to the skin in order to produce a desired effect. If both probes have penetrated a person's skin, the Taser device only emits 1,200 volts in order to cause incapacitation.

[17] In the event that a dart is lodged in a person's clothing, the discharge can "jump" up to an inch and convey the voltage. This does mean that a dart may be ineffective if blocked by bulky clothes, such as winter coats.

Early Tasers were designed to achieve compliance by generating enormous pain at the point of impact. However, the purpose of the X26 is to "override the central nervous system, causing uncontrollable contraction of the muscle tissue and instant collapse," essentially to cause involuntary muscle contractions that lead to temporary paralysis.[18] During the five-second shock cycle, the recipient feels pain, stiffens, and loses control of his muscles. If a person is standing, this will cause him or her to fall. In the aftermath of these shocks, it is easy to subdue and handcuff the target of an arrest. Because the darts are still connected to the Taser upon embedding in a person's skin, the shooter can keep his hand on the trigger to administer another shock cycle if necessary.

A shock can also be administered by pressing the Taser itself against the body – this is known as a "touch stun" or "drive stun," as it is most effective when the officer drives the Taser hard into a person's body. The touch stun does not affect the central nervous system, but it delivers the same amount of pain, which is why its use is known as "pain compliance." The touch stun may be an option in crowded situations ill-suited for firing sharp projectiles, though it is generally discouraged by policing guidelines, including the NYPD guidelines. Because the touch stun hurts without disabling, it can result in the Tased person flailing, making it harder to arrest the subject.

Tasers are not regulated under any national or state standards. Because they do not discharge gunpowder, they are not regulated by the Bureau of Firearms, Alcohol and Tobacco, and are in fact available for citizens to purchase in many states without any rules or regulations. New York is one of only five states in the United States in which purchasing Tasers is prohibited.

Finally, it bears stressing that much of the academic research traditionally done on Tasers overlooks their most obvious feature - the physical anguish they cause, albeit for short periods. A bevy of internet videos and quotes from Taser articles demonstrate an unmistakable agreement that Tasers are painful, with many recipients from law enforcement, who were shocked as part of their training, calling the experience the most painful of their lives. One firearms consultant remarked, "It is the most profound pain I have ever felt. You get total compliance because they don't want that pain again," and a county sheriff noted, "They call it the longest five seconds of their life…it's extreme pain, there's no question about it."[19] Another sheriff recalled, "It is the most pain I have ever felt in my life, from my head to my toes and everything – and I mean everything – in between."[20] One court described the effect as "excruciating pain that radiates through the body."[21] While some studies have shown that Tasers rarely lead to serious injury or

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[18] Stanford Criminal Justice Center, *Use of Tasers by Law Enforcement Agencies: Guidelines and Recommendations*, at p.4 (2005). Available online at http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/164097/doc/slspublic/tasersv2.pdf.

[19] Excessive and lethal force? *Amnesty International*, at p.6 (November 2004), citing *Associated Press* (August 12, 2003) and *The Kalamazoo Gazette* (March 7, 2004), respectively. Available at: http://www.amnestyusa.org/node/55449.

[20] "S.C. law enforcement's use of Tasers debated," *Island Packet* (September 18, 2010).

[21] *Bryan v. McPhereson*, 630 F.3d 805, 824 (9th Circ. 2010).

death, the degree of short-term pain they inflict should not be overlooked, particularly when discussing the risk of their overuse and abuse by law enforcement, and the impact that such overuse would have on police-community relations.[22]

National Conversation

The Taser has been widely discussed in the broader criminal justice community for years. Tasers are considered "less lethal" devices, meaning they are less lethal than guns. They are not "less than lethal" devices, such as pepper spray. In cities such as Miami, Seattle and Phoenix, Tasers have played a significant role in reducing police gun use, a stated reason why their use by police departments is on the rise.[23] As a 2015 US Department of Justice report notes, "Use of any technique comes with attendant risks, both for the public and for officers, and Tasers remain the subject of significant controversy." [24] It cites its 2011 study on Tasers in which it found that "An analysis of 12 agencies and more than 24,000 use-of-force cases `showed the odds of suspect injury decreased by almost 60% when a CEW was used'." There are anecdotal news reports that subjects already in police custody, in flight, or who have passively resisted arrest have died. It is difficult to discern the exact number of instances in which subjects already in police custody, in flight, or who have passively resisted arrest have died. Attention should also be paid to whether or not Tasing was the cause of these deaths.[25]

These incidents have often made local news. For example, in spring 2015, the Albany, New York community was shaken by the death of Donald Ivy, a former star student and athlete who was suffering from emotional issues at the time of an encounter with Albany police, and who had recently taken anti-schizophrenia medication. The incident escalated, and Ivy was Tased multiple times. His death was ruled a homicide by the medical examiner. The police officers involved were

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[22] It should be noted that between 2001 and 2012, Amnesty International found at least 500 people had died following Taser use during their arrest or in jail. Amnesty International. "USA: Statistical Analysis of Deaths Following Police Taser Use." February 15 2012. Available at: https://www.amnesty.org/en/documents/amr51/013/2012/en/

[23] Amnesty International: *'Less than Lethal?' The use of stuns weapons in US law enforcement*, at p.9 (2008).

[24] http://journalistsresource.org/studies/government/criminal-justice/u-s-department-of-justice-police-use-of-force-tasers-and-other-less-lethal-weapons

[25] http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database#)., *see*: "Prisoner dies after being Tased in Sulphur Springs," KYTX News (March 9, 2015). Available at: http://www.wfaa.com/story/news/crime/2015/03/09/prisoner-dies-after-being-tased-in-sulphur-springs/24678257/. "Hobart Man Dies After Being Tased at LC Jail," Northwest Indiana Gazette (March 29, 2015). Available at: "Kentucky man dies after struggle with police who tased him," CBS News (June 2, 2015). Available at http://www.cbsnews.com/news/kentucky-man-dies-after-struggle-with-police-who-tased-him/. For death fleeing from law enforcement, *see*: "Rally held in response to Taser-related death of DeKalb County man," 11 Alive News Atlanta (August 21, 2015). Available at: http://www.11alive.com/story/news/local/decatur/2015/08/21/rally-planned-taser-related-death-dekalb-county-man/32127863/. For death passively resisting arrest, *see*: "HPD Taser Case: Did Officers Follow Protocol When Sheldon Haleck Died?" Honolulu Civic Beat (July 20, 2015). Available at: http://www.civilbeat.com/2015/07/hpd-taser-case-did-officers-follow-protocol-when-sheldon-haleck-died/.

not charged in his death.[26] His death prompted protests, and called into question whether officers had been too quick to pull the trigger. The Albany Police Department responded by revising its Taser policies.[27]

Tasers have become prevalent policing tools and the NYPD is expanding Taser deployment. CCRB has received complaints with allegations related to Tasers. In an effort to understand Tasers in New York City, through CCRB complaints, CCRB hopes to monitor and inform the NYPD and the public. It should be noted that this issue brief is based solely on complaints received by CCRB and therefore does not inform the public of the prevalence of incidents of injury or violations compared to all incidents in which police officers use Tasers.

NYPD Taser Policies

The NYPD Taser policy is articulated in Section 221.08 of the Patrol Guide, Use of Conducted Electrical Weapons (CEW).[28] Section 221.08 explains, "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."

Traditionally, the NYPD only issued Tasers to supervising officers (Sergeants and Lieutenants), ESU officers, and Staten Island Ferry officers. The Department's new policy has significantly expanded who carries Tasers to supervisors, which includes all Lieutenants, Sergeants, and field training officers (police officers partnered on patrol with less experienced partners), and eventually, other patrol officers. In addition, every patrol team of the Department's new community policing project will carry Tasers. Every precinct will also retain at least one Taser at the stationhouse in case an incident arises there.

After using Tasers, officers are required to complete Less Lethal Restraint Device Reports. Also known as PD 320-150s, the reports must be filled out by someone, one rank above the officer using the Taser. For example, when a Lieutenant deploys a Taser, a Captain must ascertain the propriety of its use. If a Taser's "touch-stun" setting is deployed on a subject in custody, a Captain

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[26] "DA: Police will not face charges in death of Donald Ivy," *Albany Times Union*. (October 29, 2015.) Link available at: http://www.timesunion.com/local/article/Prosecutors-to-discuss-death-of-Donald-Ivy-who-6595969.php

[27] "Demilitarizing our police," Albany Times Union (May 23, 2015). Available at: http://www.timesunion.com/tuplus-opinion/article/Editorial-Demilitarizing-our-police-6283239.php.

[28] Patrol Guide S. 221-08, "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".

is required to investigate whether the use was proper. The reports contain identifying information about the officer, the effectiveness of the Taser, and brief descriptions of the incident. The information contained in these reports would be of great service to the public if they were distilled into annual reports, akin to the Firearm Discharge Annual Report.[29] 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.

One of the improved characteristics of the X26 model used by the NYPD is that it records and stores large amounts of information, which can be uploaded via flash drive. Recent CCRB experience suggests that the NYPD unit responsible for processing such information may need additional training on how to handle that data.[30] Given the ongoing expansion of Taser distribution, this deficiency should be remedied expeditiously.

NYPD Taser Adoption

Soon after the NYPD began piloting the weapon during the early 1980s, the Department endured a scandal in which Tasers were found being used to stun drug suspects into confession.[31] In 1984, police officers shot and killed Eleanor Bumpurs, a disturbed woman who wielded a knife when police attempted to evict her from her apartment.[32] The subsequent public response prompted the NYPD Emergency Services Unit ("ESU") to begin carrying Tasers, under the rationale that emotionally and mentally disturbed individuals are less likely to respond to police commands when confronted by law enforcement. Resolving such confrontations with a Taser seemed preferable than resorting to firearms. The ESU has carried Tasers ever since.

While Sergeants and Lieutenants from other commands were trained in Taser use, they rarely deployed them until the mid-2000s. John Jay professors Michael White and Justin Ready studied 243 NYPD Taser incidents from 2002 to 2004, and found that 95% of Taser victims or alleged victims were emotionally disturbed persons ("EDPs"), 41% were armed, and 93% were Tased by members of the ESU command, all at great variance with present-day Taser data.[33] The CCRB Taser Study, which may undercount EDPs if they are less likely to file complaints, found

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[29] *New York City Police Department Annual Firearms Discharge Report 2014*, NYPD (October 2015). Available at: http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/nypd_annual_firearms_discharge_report_2014V2.pdf.

[30] In one instance, the CCRB received a Taser's computer usage log in which the dates on the Taser were not properly calibrated, thus making it difficult to confirm which Taser used was related to the complaint in question. This is one example of why officer training on documentation procedures for Taser equipment is crucial.

[31] "New York City Police Study Use of Force; May Issue More Tasers," *New York Times* (July 22, 2014). Available at: http://www.nytimes.com/2014/07/23/nyregion/police-study-use-of-force-may-issue-more-tasers.html#.

[32] *Id.*

[33] White & Ready, *The TASER as a Less Lethal Force Alternative*, Police Quarterly at p.179 (2007). White & Ready conducted a follow-up study in 2008 that included 2005 data and expanded the sample size to 375. The results were similar: 93% of the Taser victims were EDPs, and 40% were armed. *See* White & Ready, *Shock value: A comparative analysis of news reports and official police records on TASER deployments*, Policing International Journal, at p. 158 (2008).

that only 25% of Taser victims or alleged victims were EDPs, only 4% were armed, and only a handful of subject officers were from the ESU command.[34]

In 2006, activist New Yorkers protested following an NYPD 50-bullet barrage that killed civilian Sean Bell. As part of its response, the NYPD commissioned the RAND Corporation to review its use of lethal force policies and issue recommendations.[35] The report suggested that Tasers could serve as effective less lethal options in certain situations, and should be expanded beyond the ESU.[36] The report noted that the NYPD was on pace to use the 160 Taser guns in circulation nearly 300 times in 2006.[37] The NYPD increased the number of Tasers in circulation, although it continued to restrict Taser access to supervising officers outside of the ESU and Staten Island Ferry units.

In 2008, a newer Taser model was distributed for Sergeants to wear around their belts. The older, heavier model had been kept in the trunk of police vehicles until it was needed, and was thus of limited utility in quickly developing situations.[38] The most controversial and tragic Taser incident in New York City memory took place that year. When Iman Morales, a mentally disturbed individual, acted out on a second-story fire escape, a Lieutenant gave a junior officer the order to Tase Morales, who then fell to his death. The Lieutenant committed suicide a week later.[39] The NYPD's Taser policy already prohibited firing at individuals who could fall from elevated platforms, but this is now more strongly reiterated in NYPD training.

In 2009, Taser International Inc. issued an advisory that safety research indicated its products should not be aimed at a person's chest, which the NYPD adopted as a directive to its officers.[40] That was the first admission by the company that Taser shocks could potentially result

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[34] An "EDP" is an Emotionally Disturbed Person. The NYPD definition of an emotionally disturbed person: "A person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others." For the purposes of this Study, there are two types of EDPs. First, if police respond to a call regarding an EDP, and the person clearly was or may have been an EDP, then this Report counts that person as an EDP. Second, if a police write-up or investigative report confidently asserted that the person was an EDP, this Study counts that person as EDP. The NYPD reported that out of the 852 NYPD reported Taser events between 2014 until 2015, 50% of the incidents were used against EDPs.

[35] *Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process*, RAND Corporation, at p. 63, fn. 12 (2008).

[36] *Id*. at Executive Summary (2008): "Analysis of the NYPD firearm-discharge cases and the experience of other police departments suggest that, if the NYPD had a broader deployment of a more robust less-than-lethal standoff weapon, such as TASER devices, it not only might prevent some incidents from escalating to deadly force but might also reduce injuries to officers and citizens alike, as has been the case in other departments."

[37] Between January 1, 2006, and November 10, 2006, Tasers were employed 258 times. *Id*. at p. 63, fn. 12 (2008).

[38] "NYPD Looks to Tasers to Avoid Shootings," *Gothamist* (June 8, 2008). Available at: http://gothamist.com/2008/06/08/nypd_looks_to_t_1.php.

[39] "2nd Victim of Taser Fire: Officer Who Gave Order," *New York Times* (Oct. 2, 2008). Available at: http://www.nytimes.com/2008/10/03/nyregion/03taser.html?_r=0.

[40] "No Taser shots to chest: NYPD order," *New York Daily News* (Oct. 17, 2009). Available at: http://www.nydailynews.com/news/crime/no-taser-shots-chest-nypd-order-article-1.385210.

in death, though the question of whether the shocks could kill without other factors present remains a topic of litigation.

Even as the NYPD gradually expanded its Taser distribution, from 160 Tasers in 2006 to about 670 in 2014, and supervising officers became more comfortable carrying them, the number of Taser incidents stabilized, following an initial bump.[41] When Justin Ready and Michael White published on NYPD Taser practices, they reported 243 total Taser incidents from 2002 through 2004 and 133 incidents in 2005.[42] That number climbed to approximately 300 in 2006, and rose again to 315 in 2007.[43] Commenting for a recent news story, the NYPD claimed it deployed Tasers between 300 and 400 times in 2014.[44]

This is consistent with CCRB complaint data. Before 2006, the CCRB received very few Taser complaints – fewer than one hundred total during the preceding two decades. As late as 1997, the CCRB did not receive a single Taser complaint. In 2006, alone, however, the CCRB received more than 100 complaints, a figure that has stabilized since then.[45]

Just as the death of Eleanor Bumpurs led to a change in Taser policy during the 1980s, an event during the winter of 2014 thrust Tasers into the public discussion. A disturbed man attacked yeshiva students at the Chabad-Lubavitch headquarters with a knife before being shot by NYPD officers, leading some to question whether the responding officers should have been armed with Tasers.[46] Soon after the incident, Commissioner Bratton announced that in 2015 the Department would be acquiring an additional 450 Tasers, and ending the restrictions imposed on which officers could be trained to use them.[47] This has resulted in Tasers being distributed to each NYPD precinct, with supervisors receiving them first, followed by other trained police officers.[48] The cost of the new Tasers will be $4.5 million budgeted over a five year period with the Department yet to purchase all of the 450 Tasers in the contract.[49] The mass training of officers to handle the new

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[41] "Tasers may soon be used by less experienced police officers," *New York Daily News* (Dec. 19, 2014). Available at: http://www.nydailynews.com/new-york/nyc-crime/tasers-experienced-nypd-officers-article-1.2050570.
[42] White & Ready (2007) at p.179 and White & Ready (2008) at p.158.
[43] The 2006 figure is from RAND (2008) at p.63, fn12, which noted 258 incidents through November 10, 2006. The 2007 figure is from "NYPD's use of Tasers down for 2008," New York Newsday (Dec. 24, 2008).
[44] Tasers may soon be used by less experienced police officers," *New York Daily News* (Dec. 19, 2014). Available at: http://www.nydailynews.com/new-york/nyc-crime/tasers-experienced-nypd-officers-article-1.2050570.
[45] Tasers had been primarily used by the ESU. Given the fact that taser applications involved mostly the EDP population, this leaves open the possibility that allegations of misconduct were being underreported, as EDPs are less likely to file CCRB complaints.
[46] "Man screaming 'I want to kill the Jews!' shot dead by cops in Brooklyn after stabbing student in the face at Chabad-Lubavitch headquarters in Brooklyn," *New York Daily News (Dec*. 9, 2014). Available at: http://www.nydailynews.com/new-york/nyc-crime/student-stabbed-chabad-lubavitch-crown-heights-article-1.2038761.
[47] "Tasers may soon be used by less experienced police officers," *New York Daily News*. (Dec. 19, 2014). Link available at: http://www.nydailynews.com/new-york/nyc-crime/tasers-experienced-nypd-officers-article-1.2050570.
[48] Information provided by the NYPD.
[49] "NYPD spending $4.5M so more cops can have Tasers, New York Post (August 8 2015). Available at: http://nypost.com/2015/08/08/nypd-spending-4-5m-so-more-cops-can-have-tasers/.

Tasers is underway, and recently the first of the newly trained officers have begun patrolling with them.

NYPD Taser Training

On September 16, 2015, an inspector from the NYPD Academy presented at the CCRB on the NYPD's Taser training and policies, detailing what officers learn before being permitted to carry and use Tasers. Some of the protocols presented during the training brought clarity to Patrol Guide regulations. Police officers who go through the full NYPD training are required to spend a day reviewing Taser policies and practicing usage on dummy targets at the NYPD's Firearms and Tactics Section. The following are some of the issues highlighted during the training.

A Taser is NOT a replacement for a gun. A Taser is meant as another weapon option for officers, alongside pepper spray and asps on the force continuum. While in the public conversation Tasers are sometimes touted as a means of preventing police-related gun deaths, the Best Practices section of this Study explains why there are questions regarding the impact of broader Taser distribution on NYPD gun use.

When to Shoot (a Taser): Perhaps the most important question of all, when to shoot, is guided by the language of the Patrol Guide: "[A]gainst 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."[50] This language is vague, but NYPD training offers some clarity as to when firing a Taser is appropriate. Officers also receive an annual refresher training:

1) **The context matters**. Officers must consider a variety of factors in assessing whether to use a Taser. These factors include, but are not limited to, a) the disparity between the size, strength and age of the officer and the civilian, b) the civilian's level of resistance and threat (to officers, himself, and the public), and c) the hostility of the location.

2) **Requirement of a verbal warning**. A verbal command can serve as a final warning for a subject to surrender, and alerts fellow officers that Taser darts are about to be fired. Courts have agreed that a verbal warning is essential, finding that without a warning, "a person cannot anticipate or prepare for [a Taser's] effects,"[51] and that the failure to give such notice "weighs in favor of finding a constitutional violation."[52] In *Negron v. City of New York*, the civil suit following the death of Iman Morales, the court held that Tasing a person without warning, particularly because that person was "in a precarious position" was a severe intrusion into such person's Fourth Amendment

[50] P.G. 221-08.
[51] *Mattos v. Agarano*, 661 F. 3d 433, 451 (9th Cir. 2011).
[52] *Bryan*, F.3d 630 at 831.

interests.[53] The older Section 212-117 of the Patrol Guide required that a police officer "issue an appropriate warning…to the intended subject…prior to discharging the [Taser]." In contrast, the more recently issued Patrol Guide Section 221-08 loosens this requirement significantly. Section 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… to the intended subject in conjunction with a laser warning." Both the previous and current guideline allow for exceptions under exigent circumstances and make it clear that an officer is not required to issue verbal warnings if doing so would compromise the officer's safety. However, prior Section 212-117 gave officers a directive to warn, while current Section 221-08 adds the phrase "if feasible," suggesting that verbally warning an intended subject prior to Taser use is not mandatory, but better practice for police officers. This conditional language is out of step with the strongly worded judicial opinions controlling this area of the law.

When Not to Shoot (a Taser): The Patrol Guide and Taser training make clear that using Tasers is ill-advised or not permitted in many circumstances:

1) **"Squaring up to fight" is not grounds for Tasing**. The phrase "squaring up to fight" is often used by officers to describe a level of aggression or anticipated aggression by arrest subjects; however, the term is insufficient to escalate the use of force to firing a Taser, because it does not, by itself, constitute physical aggression, unless the subject exhibits a pre-attack/assault indicator. According the NYPD's Taser training, "Squaring up to fight" entails a subject raising their hands in a fist and blading the body to a fighting stance as a telltale pre-attack/assault indicator, and one general indicators NYPD members are taught to identify that is indicative of exhibiting active aggression and thus one of the factors to be considered when deciding to utilize the Taser.

2) **Do not shoot at persons in flight after minor crimes**. Flight, on its own, does not constitute physical aggression. However, if a person is thought to be armed or otherwise a threat to nearby officers or civilians, then Tasing a fleeing person may be justified. The reason it is discouraged against subjects suspected of minor crimes is that the shot is more likely to lead to serious injury when the Tased person falls, in addition to the risk of hitting an accidental target. This policy is consistent with the Patrol Guide, which states, "Fleeing should not be the sole justification for using a CEW against a subject. Members should consider the severity of the offense, the subject's threat level to others, and the risk of serious injury to the subject before deciding to use a CEW on a fleeing subject."[54] This scenario arose in a recent CCRB case in which a drug suspect, not suspected of a violent crime or behaving violently, left his prone position on the ground to flee the arrest scene when the officers became distracted by other events. The officer fired a Taser at the

[53] 976 F. Supp. 2d 360, 370 (E.D.N.Y. 2013). The court decision notes that in 2009, when the incident took place, "there were no Supreme Court or Second Circuit decisions regarding excessive force and involving the use a Taser." At present, there are still none, although a number of district courts and circuit courts have weighed in, and they are referenced in the Legal Analysis section.
[54] P.G. 221-08 (16).

fleeing individual, but the prongs missed, and the individual was later tackled and arrested. This incident, and other CCRB complaints discussed in this Report, call into question whether the NYPD has generated a sufficiently clear flight policy and training.

3) **The Taser is not a tool of coercion or punishment**. While the plain language of the Patrol Guide is clear on this, NYPD training emphasizes that the Taser, "[I]s strictly prohibited to use the CEW on persons as a form of coercion or punishment and on persons who passively resist."[55] This is particularly relevant in the police custody context.

4) **There are categories of people who should not be Tased**. As stated in the Patrol Guide, "The CEW should generally not be used on children, the elderly, obviously pregnant females, the frail, against subjects operating or riding any moving device or vehicle… where subject may fall while it is in motion or in situations where the subject may fall from elevated surface."[56] This Taser Study finds that the NYPD is generally following these policies.

Where to Shoot: The NYPD's training specifically warns to avoid the heart/chest area, neck and face. The back is described as an ideal target because it offers a large target with high muscle mass and an unlikelihood of making contact with the heart, lungs or face. As will be discussed, the safety of being Tased in the chest is still being debated. Aside from safety concerns, however, the stomach/chest area is simply a less effective place to shoot, because of the low muscle mass most people carry in the front of their bodies. Examples of individuals ripping Taser prongs out of their skin during police encounters are almost always doing so in the front of their bodies, not the back.

How Long to Shoot for: The NYPD has adopted policies regarding multiple Taser discharges. Many of the national headline-grabbing examples of Taser misuse involve police officers who use Tasers on the same subject repeatedly or apply the Taser to the subject for extended periods. As this Issue Brief notes, current CCRB data suggests restraint by officers in Taser discharges. The NYPD has adopted a policy, which maintains voltage for 5 seconds.[57] The Patrol Guide states that "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." Even a three-cycle limit is not universally safe; heart attacks set off by a heart condition or bad chemical mix can be triggered by a single cycle. The NYPD also acknowledges that each Taser application is an individual use of force, and that each subsequent application of a Taser must take into account

[55] P.G. 221-08 (16).
[56] P.G. 221-08 (16).
[57] Information provided by NYPD.

whether the subject has had the opportunity to comply with or can comply with an officer's commands, as articulated in *Beaver v. City of Federal Way*.[58]

When to Use Touch Stun: As noted earlier, touch stuns do not incapacitate an individual, but rather administer localized pain in the area where the stun is applied. The NYPD Taser training discourages the use of touch stun. Because touch stun does not incapacitate, it may lead to a person flailing in pain, making the handcuffing process harder, not easier. Whenever the touch stun setting is used, an investigation is undertaken by a Captain to determine whether the Taser was properly used.

Taser Certification: Every NYPD officer must undergo a one-day training before being certified to carry or use a Taser. This is a firm policy – supervising officers cannot delegate the use of a Taser. The training is comprehensive, though largely passive, reviewing the relevant laws, Patrol Guide sections, and technical issues associated with the Taser. At the conclusion of the training, officers take a written test, on which they must score 90%, and a field test involving dummy targets. NYPD officers are not Tased as part of their training, which is the practice in some departments elsewhere.

Legal Standard for Taser Use

The Patrol Guide requires officers to use "only that amount of force necessary to overcome resistance […] to effect an arrest or take a mentally ill or emotionally disturbed person into custody."[59] Though the federal legal standard is slightly less restrictive than the Patrol Guide, it nevertheless offers important guidance on the proper limits on the use of force, including the use of Tasers. The Fourth Amendment protects against the use of excessive force by police during an arrest.[60] The federal standard assessing police force uses a "reasonableness" test determined by three factors, laid out in the Supreme Court decision, *Graham v. Connor*: (1) the nature and severity of the crime, (2) whether the suspect poses an immediate threat to the officer or others, and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight.[61] Notably, the NYPD Taser training ranked the *Graham* factors as follows: (1) threat to officers, (2) active resistance, (3) surrounding context, (4) severity of crime, (5) and flight, with flight inextricably tied to the severity of the crime.[62]

Courts have generally treated the use of Tasers as they do other police uses of force, weighed for reasonableness under the *Graham* factors. These decisions have concluded that a

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[58] 507 F.Supp 2d 1137 (W.D. Wa. 2007).
[59] P.G. 203-11.
[60] *Greenfield v. Tomaine*, 2011 Dist. LEXIS 74697, *8-10 (S.D.N.Y. 2011).
[61] 490 U.S. 386, 297 (1989).
[62] The use of a Taser against someone in flight turns on whether that person is a danger to officers or other civilians, which is often related to the crime or alleged crime at issue.

finder of fact might find the use of force unreasonable in a variety of situations when the subject is:[63]

(1) being verbally (but not physically) aggressive;[64]
(2) fleeing and not threatening violence;[65]
(3) making no physical contact with a police officer;[66]
(4) passively resisting arrest, and showing no other sign of aggressiveness;[67]
(5) Tased for a second time after being subdued by the first Taser.[68]

A Ninth Circuit court has articulated the position that each Taser application is an individual use of force, and that application must consider whether the subject has had the opportunity to comply with or can comply with an officer's commands, as articulated in *Beaver v. City of Federal Way*.[69] Courts have also written critically of officers applying the touch stun in the absence of exigent circumstances.[70]

Neither the U.S. Second Circuit nor Court of Appeals (New York's highest state court) have weighed in on Tasers, which means the above cases provide persuasive, not binding, judicial authority. In the years ahead, courts will continue to see cases involving excessive force and improper use of Tasers. Because many of these cases will settle out of court, it may take time for a jurisprudential philosophy on Tasers to take hold, but existing guidance suggests that the court system treats the Taser as a serious weapon that must be used judiciously.

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[63] Most of these decisions involved the defendant police officer or municipality seeking to dismiss the plaintiff's excessive force motion, or seeking summary judgment. In such motions, the court must assess the facts in a light most favorable to the plaintiffs. Thus, the courts here are not determining that the following events happened, but only that a judge or jury might find these levels of force unreasonable if they turned out to be true.
[64] *Orem v. Rephann*, 523 F.3d 442, 445 (4th Cir. 2008).
[65] *Bombard v. Volp*, 2014 U.S. Dist. Lexis 12490 (D. Vt. 2014).
[66] *Dudley v. City of Glen Falls*, 2013 U.S. Dist. Lexis 136157 (N.D.N.Y 2013)
[67] *Mattos v. Agarano*, 661 F.3d 443 (9th Cir. 2011).
[68] *Greenfield v. Tomaine*, 2011 Dist. Lexis 74697, *8-10 (S.D.N.Y. 2011); *Towsley v. Frank*, 2010 U.S. Dist. Lexis 137005 (D. Vt. 2010).
[69] 507 F.Supp 2d 1137 (W.D. Wa. 2007).
[70] *People v. Smith*, 940 N.Y.S.2d 373 (N.Y. App.4th Dept. 2012). (Swabbing a person's mouth for DNA improper grounds for applying touch stun.) *See also Orell v. Muckle*, 2012 U.S. Dist. Lexis 115077 (D. Conn 2012); *Garcia v. Dutchess County*, 2014 U.S. Dist. Lexis 116756 (S.D.N.Y. 2014).

SECTION TWO: ANALYSIS OF CCRB DATA ON TASER COMPLAINTS[71]

1. Methodology

This is the latest study of Taser incidents in New York City since 2011, when the NYCLU issued a report on statewide Taser issues, and one of the first since the NYPD expanded its Taser distribution a decade ago.[72] CCRB's robust database allows for thorough analysis of the officers, civilians and locations involved with Taser-related complaints. The limits of CCRB data should be acknowledged; this study relies on complaints New Yorkers have filed with the CCRB, and cannot surmise the total volume of NYPD Taser incidents. This data analysis will begin with a discussion of the study's methodology, followed by a demographic breakdown of what type of officers are using Tasers, who is being Tased, where people are being Tased, how Tasers are used, and finally, the CCRB dispositions of Taser-related CCRB investigations.

To analyze incidents of Taser threats or Taser use by members of the NYPD against CCRB victims or alleged victims, the Taser Study searched the CCRB database for all closing reports and complaint narratives in which the word "Taser" appeared from January 1, 2014 through December 31, 2015. Once false positives, such as complaints with insufficient information and "Unfounded" dispositions were removed, the CCRB database yielded 153 relevant complaints and 154 Taser-related allegations.[73] These 153 complaints will form the basis of the Taser Study.[74] However, because not every complaint contained data on every issue analyzed, some of the issues discussed below will analyze fewer than 153 complaints.

An allegation involving Taser usage (nonlethal restraining device) is one of 17 possible types of allegations that fall under CCRB's Force jurisdiction. To put these numbers in context, from January 1, 2014 through December 31, 2015, the CCRB received 4,494 complaints (fully

[71] This report uses descriptive statistics which do not speak to causality, and is not intended to generalize or represent all Taser-related incidents. The 153 complaints discussed in this report are not representative of all Tase-related incidents, and the data used within the study cannot surmise the total volume of NYPD Taser-related incidents.

[72] *Taking Tasers Seriously: The Need for Better Regulation of Stun Guns in New York*, New York Civil Liberties Union (2011). Available at: http://www.nyclu.org/files/publications/nyclu_TaserFinal.pdf.

[73] Two common false positives include complaints in which the civilian was in possession of a Taser or when a subject officer is identified as having had a previous Taser-related complaint in his officer history. An example of insufficient information would be a truncated case in which virtually no useful information was provided regarding the user of the Taser and recipient of a Taser threat or discharge. If a full investigation determined, by a preponderance of the evidence, that the allegation of a Taser threat or discharge was "Unfounded," then that case was not included in any study of actual Taser usage.

[74] The NYPD reported that Tasers were deployed in 746 instances in 2014 and were used in 376 incidents (includes cartridge, cartridge and drive stun, and drive stun modes). In 2015, Tasers were deployed in 1,669 instances and used in 476 incidents.

and not fully investigated) with at least one allegation involving the use of force.[75] The 153 Taser-related complaints discussed in this report compose 3% of total complaints involving at least one force allegation during this time period. These 4,494 complaints (fully and not fully investigated) included 7,881 force allegations of all types. The 154 Taser-related allegations discussed in this report compose 2% of total allegations (fully and not fully investigated) involving the use of force during this time period.

Generally, CCRB policy reports focus on fully investigated complaints, but the inclusion of truncated complaints was appropriate for this study to the extent it shows the types of complaints the CCRB has received. It was important for the Taser Study's accuracy to begin the timeline on January 1, 2014. January 2014 saw the city's leadership transition to Mayor Bill de Blasio and former Police Commission William Bratton, who have prioritized new policing goals. One of those goals, articulated at the end of 2014, was to significantly expand the distribution of Tasers to NYPD officers. Given the short timeline from which to draw Taser complaints, this Study chose to include truncations where probative to increase the data set. As it turned out, many truncations were Taser complaints referred from the NYPD's Internal Affairs Bureau, and were sufficiently detailed and reliable with respects to the demographic details of the officer, civilian, and location of incident.

2. Profile of Police Officers in Taser Incidents

The 153 NYPD Taser-related complaints from January 1, 2014 through December 31, 2015, yielded data relating to the subject police officers. This data is also provided for demographic information about civilians involved in these complaints below. It is important to note that this report uses descriptive statistics which do not speak to causality, and is not intended to generalize or represent all Taser-related complaints. The demographic data discussed in this report is not representative of all members of service or civilians involved in Taser-related complaints. The following data specifically reflects the officers that used or threatened to use Tasers, not their partners or other officers present at the scene. Six of the officers were the subject of two Taser incidents, two officers were the subject of three Taser incidents, and five officers were not identified, resulting in a total of 139 officers identified. Eight of the officers (6%) were female, significantly lower than the percentage of female officers in the NYPD (17%), while 94% were male.

The racial composition of subject officers in Taser-related complaints is largely consistent with the racial diversity of the Department, and also comports with the racial breakdown of Sergeants, who were responsible for most Taser incidents during the period studied.

[75] This total number of force complaints includes 1,467 complaints that were fully investigated.

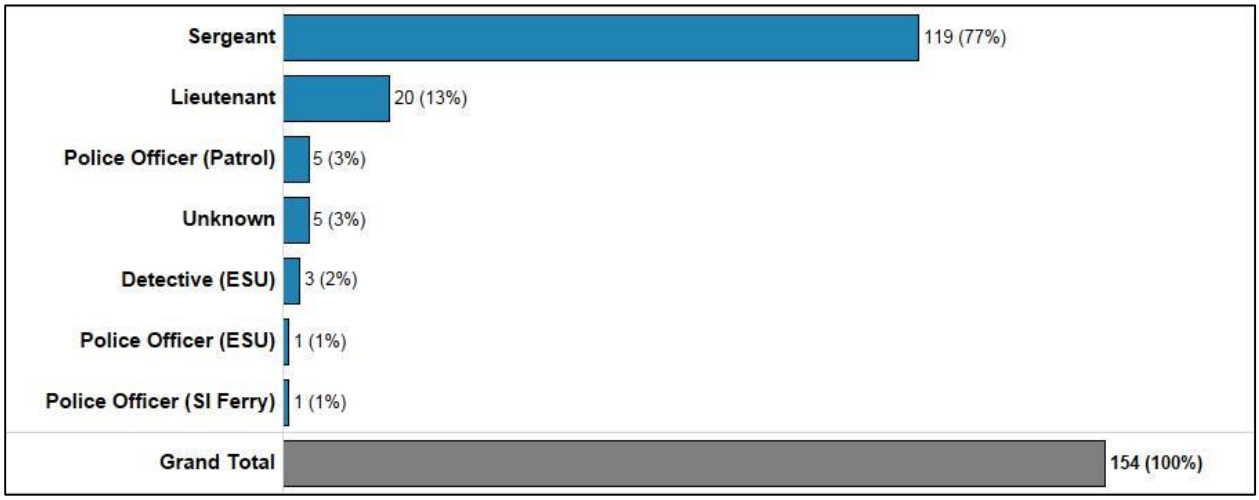
Figure 1: Race of Subject Officers in Taser Incidents[76]
(January 1, 2014 – December 31, 2015)

Race of Subject Officer	Number of Incidents	Percentage of Incidents	Percentage of Department	Percentage of Sergeants
White	75	54%	51%	53%
Hispanic	35	25%	27%	24%
Black	18	13%	15%	16%
Asian	11	8%	7%	7%

a. Rank

Until recently, the distribution of Tasers in the NYPD was limited to a small subset of officers. In general, no one ranked below Sergeant was permitted to carry or use a Taser. The two exceptions were members of the Emergency Services Unit and officers stationed on the Staten Island Ferry. This policy is reflected in Figure 2, where Sergeants account for 77% of all identified members of service involved in Taser incidents.

Figure 2: Members of Service in Taser Incidents
(January 1, 2014 to December 31, 2015)



*All three Patrol Officers' incidents are from the second half of 2015.

The reasoning behind assigning Tasers to supervising officers is that those officers bring experience to handling the type of confrontational incidents in which Tasers might be used. Tasers are dangerous weapons, and more experienced officers are more likely to use them as a last resort. Seven of the officers involved in multiple Taser incidents were Sergeants, and one was a Lieutenant. One of the concerns about putting Tasers in the hands of less experienced officers is

[76] Racial composition of NYPD figures taken in December 2015.

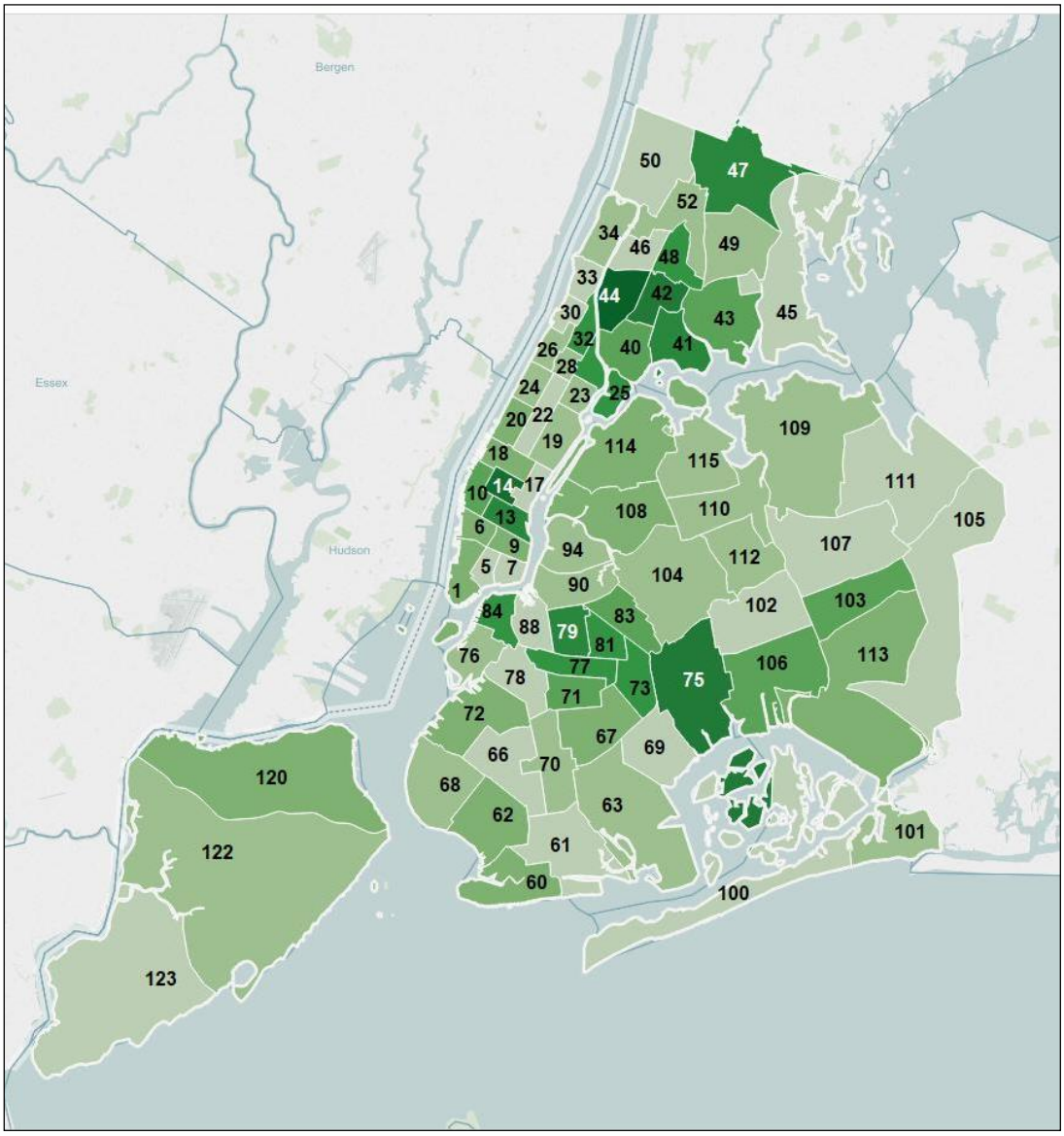
that they may rely on Tasers more often early in their careers, and not develop less dangerous techniques, such as verbal persuasion.[77]

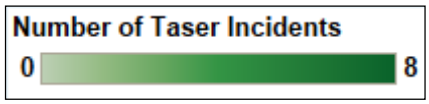
b. Precinct

The CCRB tracks the location of incidents by police precinct. Thus, if an incident takes place within the boundaries of the 44th Precinct, it will be categorized as such, even if another command unit, such as the Narcotics Unit, is directly involved with the incident.

[77] It should be noted that the NYPD recognizes utility in equipping police officers with Tasers, thus eliminating the need for supervisors to utilize the Taser. According to the NYPD, supervisors should not be the actors or be engaged in the application of the use of force, but rather, police officers should take action under the direction of a supervisor.

Figure 3: NYPD Precincts by Number of Taser Incidents (#)
(January 1, 2014 to December 31, 2015)





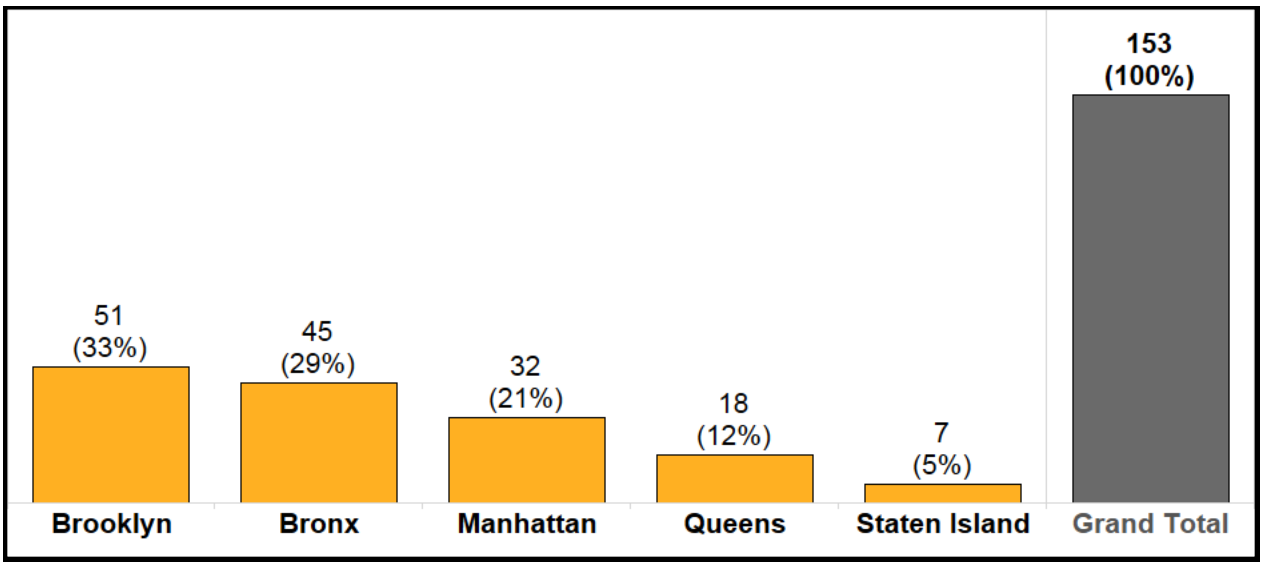
For the period under examination, the thirteen precincts with the most Taser incidents (a fifth of NYPD precincts) account for 45% of Taser incidents in New York City.[78] Many of these precincts regularly rank among the precincts with the highest number of CCRB complaints overall,

[78] It should be noted that these precincts may have varying degrees of reported crime, calls for service and deployment of officers, as well as 911/311 calls.

such as the 44th and 75th precincts.[79] Several, such as the 14th and 84th precincts, are generally considered low-incident neighborhoods. Five of the thirteen precincts are located in the Bronx, while none are located in Queens or Staten Island.

In general, Taser complaint patterns follow other CCRB complaint trends. There are 153 Taser complaints for which the CCRB has precinct data. As with many CCRB metrics, Brooklyn, the city's most populous borough, has been home to the greatest number of Taser complaints – 51 since January 2014. The Bronx and Manhattan are next, with 45 and 32 complaints, respectively, followed by Queens (18), and Staten Island (7). The 45 incidents in the Bronx are disproportionate to its population, as well as the number of police precincts and commands in the borough.

Figure 4: Taser Incidents by Borough
(January 1, 2014 to December 31, 2015)



3. Profile of Taser Victims or Alleged Victims

Since the beginning of 2014, the CCRB has investigated the NYPD's use of Tasers on 153 New Yorkers.[80] These 153 victims or alleged victims are not necessarily representative of all Taser victims or alleged victims. For example, emotionally disturbed persons ("EDPs") may be underrepresented in CCRB data, as they may be less likely to pursue the CCRB process generally.

[79] The CCRB's Complaint Activity Maps can be viewed at the CCRB website: http://www.nyc.gov/html/ccrb/html/news/complaint-maps.shtml.
[80] This figure excludes cases in which investigators found that Taser use most likely did not occur.

a. Race

Figure 5 breaks down the race of Taser victims or alleged victims, information that is maintained by both the NYPD and CCRB. For some victims or alleged victims this information could not be ascertained, and their race is listed as "Unknown."

Figure 5: Race of Taser Complainant/Victims or Alleged Victims (January1, 2014 to December 31, 2015)

	Number of Civilians	Percentage of Civilians	Number of non-EDP Civilians	Percentage of non-EDP Civilians	Number of EDP Civilians	Percentage of EDP Civilians
Black	79	52%	66	61%	14	37%
Hispanic	39	25%	23	21%	12	32%
White	14	9%	9	8%	4	11%
Other	4	3%	3	3%	1	3%
Unknown	17	11%	8	7%	7	18%
Total	153	100%	109	100%	38	100%

*The EDP status of six subjects is unknown.

Figure 5 shows that just over half of Taser victims or alleged victims are black (52%). The right-hand side of the table divides the data between EDPs who are often policed by the ESU, as well as non-EDPs. The percentage of non-EDP Taser victims or alleged victims who were black rose to 59% of all victims or alleged victims. The issue of racial profiling in policing has been written and debated voluminously, in New York City and elsewhere, and the scant numbers in this Taser study do not indicate racial profiling. However, the racial breakdown of Taser victims or alleged victims merit scrutiny going forward.

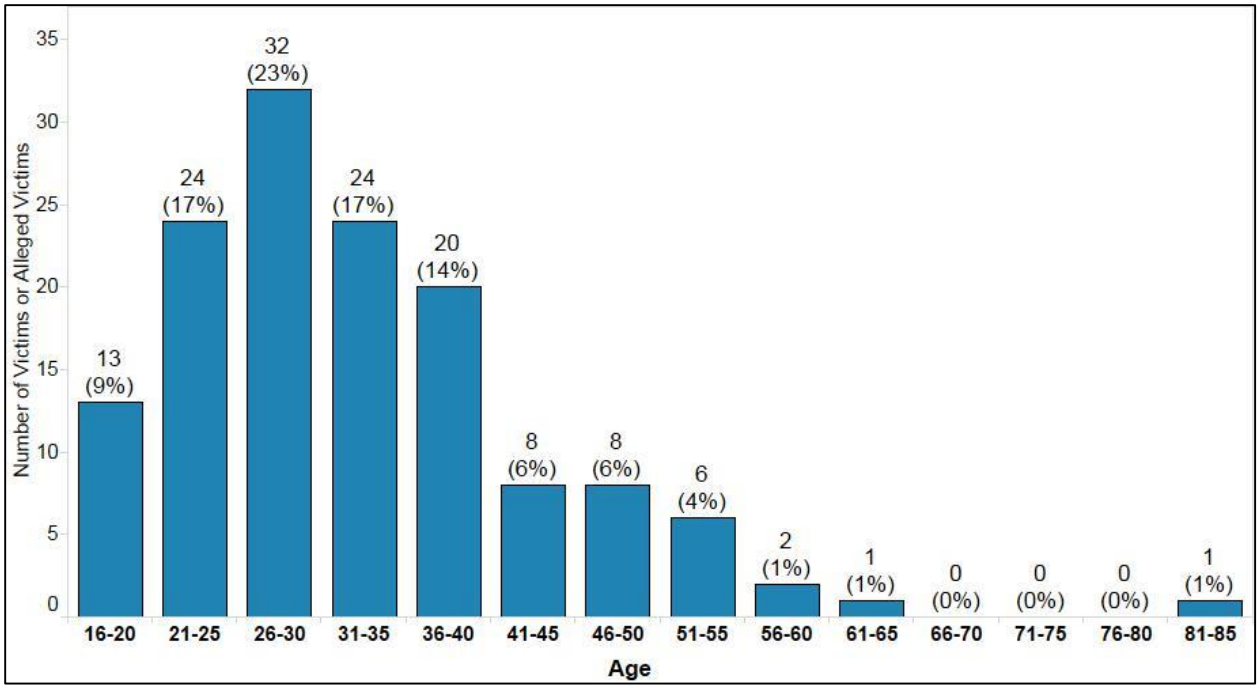
b. Gender

As with most police-civilian encounters, Taser incidents overwhelmingly involve males. The victims or alleged victims in 142 (93%) of the complaints were male, while 11 (7%) were female. When the data was adjusted to remove "threat of Taser" complaints, the percentage of males who were subject to actual Taser use was even higher.

c. Age

While Taser incidents, when broken down by race and gender, occur in heavily-policed demographic groups, the age of Taser subjects does not follow this trend. The average age of Taser subjects within the Taser Study is 32, while the median age is 30. Figure 6 breaks down the age range of the 139 Taser subjects for whom the CCRB had age data.

Figure 6: Age of Victims or Alleged Victims Regarding Taser Discharge of Threat (January 1, 2014 to December 31, 2015)



NYPD Taser policy discourages the Tasing of minors and seniors. No Taser victim in the CCRB data set was younger than 16. Only two Taser victims or alleged victims were older than 60. The incident involving an 85-year-old is currently under investigation. The number of Taser victims or alleged victims over the age of 45 was somewhat surprising given the usual demographics of police-civilian encounters. Further review found that ten of the seventeen were categorized as emotionally disturbed persons.

d. Emotionally Disturbed Persons

There are certain circumstances in which law enforcement deems Tasers to be particularly effective tools for situations involving violent EDPs. EDPs, either due to reasons of incapacity, illness or substance abuse, are a population that might be less likely to respond to verbal commands or rational requests from officers. If they exhibit violence, officers are left with few options to restrain EDPs without injuring them or risking injury to themselves. That is why officers in the Emergency Services Unit have been equipped with Tasers since the mid-1980s, two decades longer than supervising officers from other units, and three decades longer than peer officers. As recently as 2002-2004, a study found that 93% of NYPD Taser victims or alleged victims were EDPs.[81] It bears mentioning that mental health advocates have expressed concern that the EDPs are a particularly vulnerable population, often without the means or ability to file complaints in situations in which they are the subject of Taser use.

[81] White & Ready (2007) at p.179.

Data analysis regarding EDPs is complicated. ESU units are sometimes called to deal with an EDP situation even if the person is not an EDP. Likewise, regular patrol units may unexpectedly encounter confrontations with EDPs. From January 1, 2014 to December 31, 2015, at least 38 Taser-related complaints involved an EDP or someone who responding officers believed to be an EDP. At least 111 complaints involved a person who was not an EDP. In five complaints, no information was provided to clarify a person's EDP status. Thus, 25% of Taser incidents in which EDP status was recorded involved an EDP.

Persons under the control of an illicit substance are often characterized as EDPs, given their inability to make rational decisions during police encounters.[82] Currently the NYPD training lists a person's ability to withstand pain because of narcotics as a reason in favor of using a Taser. For example, a person on "K2", a dangerous synthetic drug, might not respond to asp strikes as other people might. Complicating matters is the fact that police officers are not always able to differentiate behavior induced by narcotic consumption from mental illness. However, the literature on Tasers suggests that its electric shocks mix poorly with narcotics.[83] This creates a competing interest between health and safety in the case of narcotics that dull pain, and counsels for an examination of policy when a person is under the influence of certain narcotics that do not dull pain.

e. Armed

One of the most compelling justifications for expanding Taser access and use among officers is the added flexibility that Tasers allow in dealing with subjects armed with non-firearm weapons. It should be noted that such scenarios are not common. Of the 140 Taser incidents for which weapon information was provided, in six (4%) the subject possessed a weapon, most often a knife. In each of these complaints, the victim or alleged victim was an EDP. In five more incidents (4%), the responding officers reasonably believed that the victim or alleged victim was armed. In 130 (93%) of the incidents, the victim or alleged victim was not armed or reasonably believed to be armed. A significant expansion of Tasers will equip officers an additional less-lethal option to handle situations where the use of force may not be desirable or as effective and may have more serious consequences, whether the individual is armed or unarmed. Although the low percentage of complaints involving weapons of any kind, even perceived, should serve as caution that Tasers may more readable be deployed against unarmed individuals.

4. Location of Taser Incidents

Though Taser complaints allege or have substantiated allegations that took place from January 1, 2014 until December 31, 2015, throughout the City, the alleged or *known* locations can

[82] At least four incidents in this study involved individuals under the influence of narcotics.
[83] Michael White & Justin Ready, *Examining fatal and nonfatal incidents involving the Taser*, Arizona State University (2009). Available online at:
https://cvpcs.asu.edu/sites/default/files/content/projects/Taser%20Media%20CPP.pdf.

be broken down into three broad categories: 54 incidents (39% of known locations) [84] occurred in *public areas*, 39 (28%) in *private residences*, and 46 (33%) in *police custody*.[85] The location of 14 incidents was unknown. The subsequent sections describe patterns within each of these three areas.

a. Public Areas

For the purposes of this study, public areas are defined as city streets, subways and parks. Fifty-four (39%) Taser incidents occurred in public areas. Taser incidents in public areas are often fluid and chaotic. Officers may be without back-up, subjects may become flight risks, and prolonged arrest situations may attract crowds. Most pertinently for Taser analysis, the subject of an incident might be or become a threat to other persons.

Despite the many circumstances in which a Taser might be permissible to use in a public area when dealing with a noncompliant arrestee or detainee, public areas are also dangerous places to Tase people. People fleeing or off balance from police contact often collapse to the concrete pavement once Tased, leading to many injuries, both minor and serious.

b. Private Buildings

For the purposes of this study, private residences are defined as private homes, apartments, or common areas inside of apartment buildings. Thirty-nine (28%) Taser incidents occurred in private residences. Several incidents reviewed for this study raised questions as to whether officers' escalated to the use of a Taser too quickly, given the increased control officers have in a confined space as opposed to a public area, particularly in complaints that describe a large number of officers present. One incident resulted in the threat of a Taser purely due to a complainant's understandable outrage that police had entered her room without her permission or a warrant. Given the sanctity of the home, the NYPD should be cautious in threatening or using Tasers before lower-scale uses of force have been exhausted.

c. Police Custody

For the purposes of this study, policy custody is defined as a victim or alleged victim being in a police vehicle, general area of a police precinct, or precinct holding cell. Out of the incidents studied from January 1, 2014 until December 31, 2015, 46 (33%) Taser incidents occurred in police custody.[86] The greatest value the Taser brings to an officer's arsenal is the ability to subdue violent individuals and handcuff them. Once a person is in police custody, the threat has usually been neutralized. There are, of course, arrestees who continue to act violently when handcuffed, and some of the reviewed incidents occurred once a prisoner was un-cuffed in his cell – but whether such situations call for Taser usage should be reviewed by the NYPD and scrutinized by the CCRB.

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[84] An additional four (3%) took place in "Other" locations, and the location could not be determined for 15 incidents (10%).

[85] As previously stated, for the purpose of this study, a subject is deemed to be in police "custody" when such person is inside of a police vehicle, a police precinct building, or a precinct holding cell.

[86] According to the NYPD, out of the 852 NYPD reported Taser events from 2014 and 2015, 11% of the incidents occurred in police custody.

While there is no doubt that some prisoners act in a manner that threatens officers who respond by using Tasers for their own safety, there is concern that Tasers are being used in response to unruly or obstinate behavior. Tasing is not permitted as a form of punishment – that is explicitly written in the Patrol Guide, and reinforced during the police training.[87] In fact, the NYPD Taser training specifically articulates that a failure to cooperate with an officer's verbal instructions inside a cell is *not* grounds for Tasing.

Especially due to the high truncation rate of police custody complaints (only eleven such complaints were fully investigated), there is no evidence of widespread police misconduct of this kind. However, given the absence of camera evidence and the absence of independent witnesses, the high volume of such in-custody incidents, even from this small snapshot in time from January 1, 2014 until December 31, 2015, is disconcerting. It also bears mentioning that a 2007 review of NYPD Taser policy flagged the high number of cases that took place in police custody.[88]

5. Taser Usage

When presented with a situation that may call for a Taser, an officer should, ideally, issue a warning, and then fire the Taser darts at a person's back or legs if the warning is not heeded. If the shot is a clean hit, one cycle should be sufficient to subdue a person long enough to handcuff him or her. Of course, complaints are full of unpredictable turns. Figure 7 provides an overview of how Tasers were used by officers in the complaints received by the CCRB.

Figure 7: Specific Taser Usage in CCRB Complaints
(January 1, 2014 to December 31, 2015)

	Number of Taser-related Incidents	**Percent of Taser-related Incidents**
Darts Only – One Cycle	69	45%
Darts Only – Two Cycles	7	5%
Darts Only – Three Cycles	2	1%
Darts and One Touch Cycle	12	8%
Darts and Two Touch Cycles	4	3%
Touch Stun Only – One Cycle	20	13%
Touch Stun Only – Two Cycles	12	8%
Touch Stun Only – Three Cycles	1	.01%
Threat Only	18	12%
Details Uncertain	8	5%

[87] P.G. 203-11.
[88] White & Ready (2007), at p.183. In that study, 35 incidents (14% of sample) took place in police custody.

Total	**153**	**100%**

a. Shots

Taser darts were fired in 94 complaints reviewed for this study, and possibly in six others. Of the 94 in which darts were certainly fired, one full cycle was applied or attempted in 85 cases, two cycles were applied in seven cases, and three cycles were applied in two cases. Of the 94 cases in which darts were fired, the darts connected with the chest on eleven occasions (12%), despite Departmental guidelines to avoid shooting at the chest area out of concern for potential cardiac-related incidents. This number is higher than the 27% of Taser shots that were fired at a person's chest in the 2011 NYCLU study, though that study was of officers across the state, not only NYPD.[89]

b. Touch Stuns

The "touch stun" or "drive stun" mode was used in 47 complaints reviewed for this study, and possibly in five other cases. Of the 47 complaints in which touch stun was certainly used, one cycle was applied 32 times, two cycles were applied 16 times, and three cycles were applied once. The NYPD's Taser training stresses the limited applicability and effectiveness of touch stuns. When less experienced officers are issued Tasers in 2016, their use of touch stuns should be closely monitored to ensure that they are only being used in the limited circumstances in which pain compliance is necessary to effect an arrest, as opposed to punishment for misbehavior.

c. Threats and Warnings

A less common CCRB complaint is the *threat* of Taser use. In at least 18 cases, individuals were threatened with Tasers, either verbally ("If you don't cut it out, I'll Tase you," e.g.), through the unholstering of a Taser, or a combination of the two. (In one substantiated case, the complainant saw the red site lights on his person.) The CCRB has, to date, not analyzed Taser threats under the same criteria that it analyzes actual Taser force. As a rule, NYPD officers threatening force must do so to effect a valid police purpose, not to intimidate.[90]

The Taser warning is a cousin to the Taser threat. Previous Section 212-117 of the Patrol Guide required that a police officer "issue an appropriate warning… to the intended subject… prior to discharging the [Taser]" but the more recently issued Patrol Guide Section 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," police officers should also "issue a verbal warning… to the intended subject in conjunction with a laser warning." Current NYPD trainings teach officers that it is best practice to issue warnings before firing their Taser.[91] In training, officers are told that exigent circumstances obviate a verbal warning. So far, CCRB investigations

[89] NYCLU (2011) at p.22.
[90] *NYPD v. Briscoe*, OATH Index No. 1328/00 (Sept. 29, 2000).
[91] P.G. 221-08 (16).

have generally not scrutinized whether verbal warnings are given in practice. As a result, there is insufficient data to determine whether the warning requirement is followed with regularity.

d. Injuries

Over the years, reports have been issued extolling the safety of Tasers.[92] Tasers are safe in at least two respects, though a review of Taser-related complaints shows the fallacy of downplaying their risks. First, it has been said that Tasers are a much safer form of affecting arrests for officers than the alternative, which otherwise might include physical combat, tackling, and wrestling on the ground with arrestees. There is nothing in this Taser Study to dispute that.

Second, intuitive concerns with shocking people with electricity has given rise to studies that have concluded, with caveats, that it is safe to Tase people. One caveat is that recipients of prolonged Taser charges can experience cardiac incidents. To this end, the NYPD's Taser policy strongly discourages using more than three five-second cycles, barring exigent circumstances.

However, there is a danger in overstating the safety of Tasers. This Taser study counts at least 14 serious injuries alleged in complaints surrounding police encounters in which Tasers were claimed to have been used, including a broken rib, broken hand, broken leg, and numerous gashes and fractures in subjects' facial areas. Given that there were only 128 Taser-related complaints in which a Taser was allegedly used, that 11% of Taser-related complaints involved serious injury suggests monitoring. Sometimes it was difficult to isolate the Taser as the specific cause of injury, due to a physical confrontation preceding the Taser's use or by the subject falling upon the application of Taser voltage. Outdoors in New York City, most people who fall after being demobilized by Tasers will fall onto concrete sidewalks. This issue is briefly discussed during officers' Taser training, and officers are specifically instructed to consider the reasonable chance of injury before using a Taser. In addition to these serious injuries, numerous subjects whose skin was penetrated by Taser prongs received localized stitches for lacerations. Of course, given that most Taser allegations involve some form of resistance, struggle or flight, it is possible that a certain number of injuries would have resulted from alternative policing tactics if Tasers had not been used.

6. Disposition of Taser Complaints

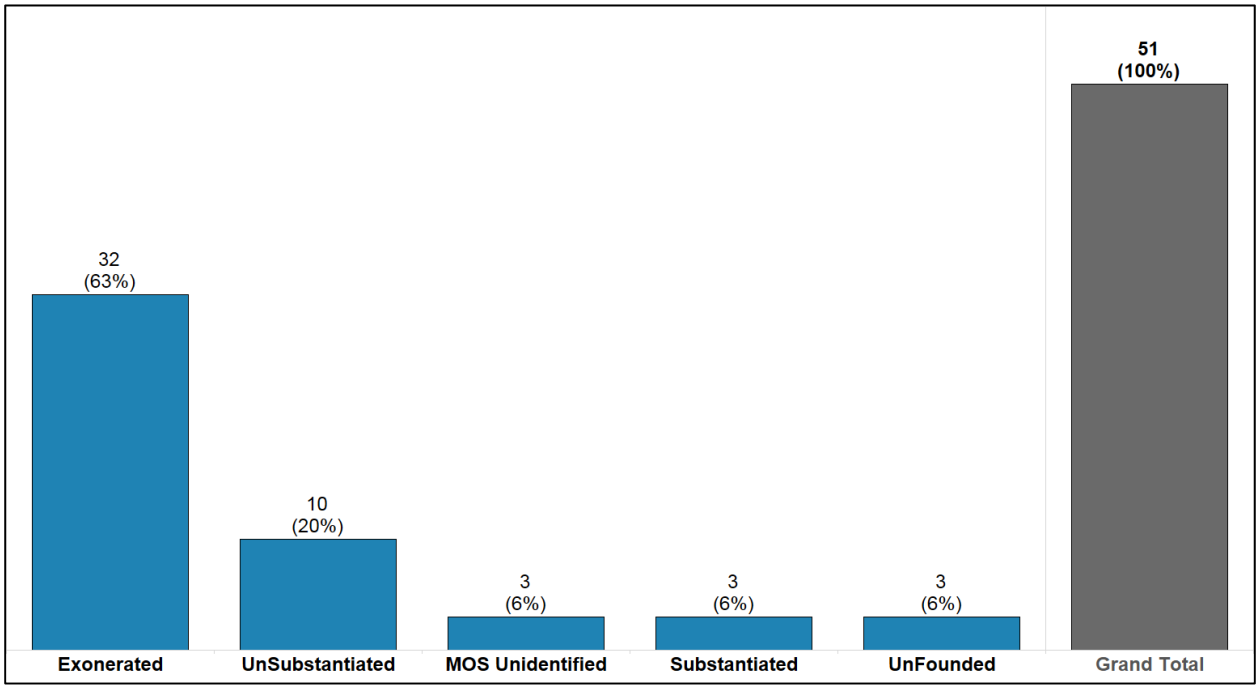
This study analyzes the 153 complaints that involve the NYPD's use or threat of Tasers that resulted in CCRB complaints from January 2014 through December 31, 2015. Fifty-one of these complaints were fully investigated (33%), 85 were truncated (52%), one was mediated, and 16 were administratively closed (10%).[93] The 51 fully investigated complaints had specific Taser-

[92] For a reputable study advancing this argument, see "Police Use of Force, Tasers, and Other Less-Lethal Weapons," National Institute of Justice (2011). Available at https://www.ncjrs.gov/pdffiles1/nij/232215.pdf.

[93] Administrative closure is a special category that deals with cases referred from NYPD's Internal Affairs Bureau as spin off cases with no complainant/victim, and in which CCRB attempts to locate or identify a

related allegations with the following dispositions: 32 exonerated, 10 unsubstantiated, 3 officer unidentified, 3 substantiated, and 3 unfounded. Two officers with substantiated allegations received a penalty recommendation of Command Discipline A (a loss of up to five vacation days).[94] As of October 11, 2016, the CCRB had not received a final penalty decision on these two cases. The third officer with a substantiated allegation received a recommendation of Formalized Training by the CCRB, and a No Penalty decision by the Department.[95]

Figure 8: Disposition of Fully Investigated Taser Allegations
(January 1, 2014 to December 31, 2015)



Overall, the disposition numbers indicate that NYPD officers are largely using Tasers in accordance of the Patrol Guide. A lack of clarity on when Taser use is appropriate both in the NYPD Patrol Guide and under New York law may have led to excessive deference to officers involved in CCRB Taser-related complaints. As for the 10 unsubstantiated allegations - unsubstantiated complaints reflect an inability of the CCRB to find a preponderance of evidence in favor of or opposed to whether the events constituted misconduct.

complainant/victim has yielded no results.

[94] The DAO requested a reconsideration on one of these cases, and the CCRB changed its disciplinary recommendation from Command Discipline B to Command Discipline A. The CCRB received email communication on October 11, 2016 indicating that DAO would request a reconsideration on this second case.

[95] The DAO requested a reconsideration on this case. The CCRB decided to maintain its recommendation of Formalized Training.

Full Investigation Case Studies (Summaries of Actual CCRB Complaints)

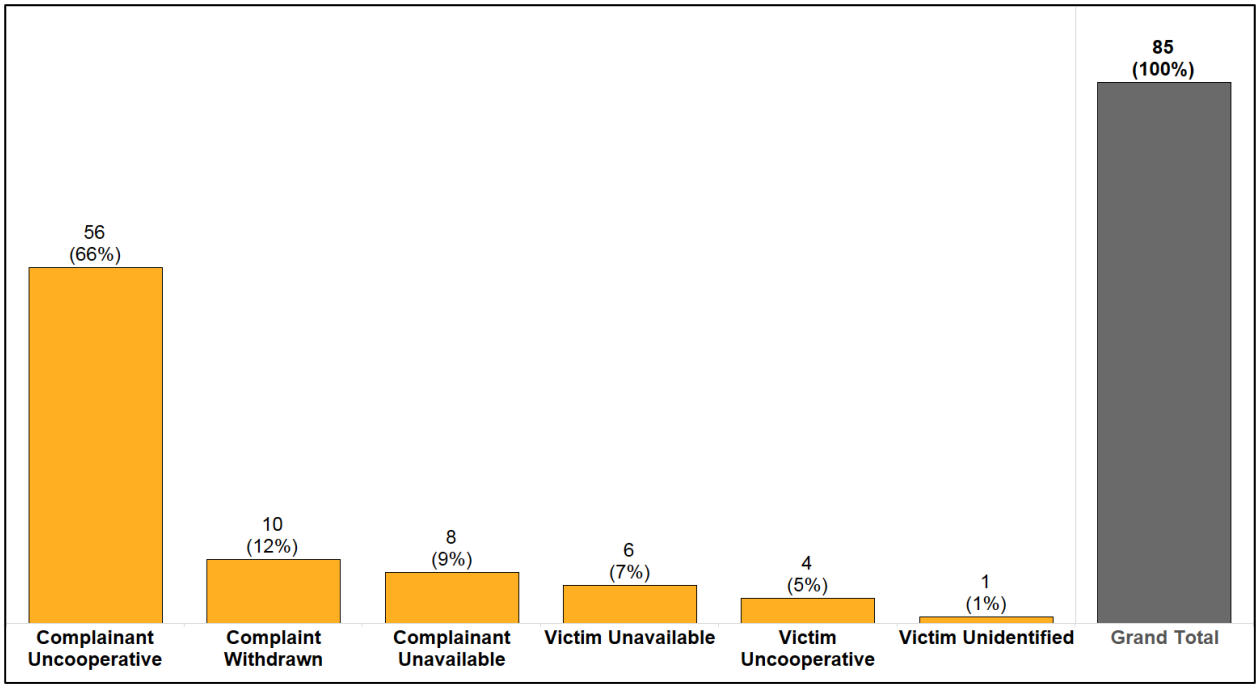
Exonerated: After leading officers on a car chase and causing two accidents, the complainant fled from his car before being taken to the ground by officers. The complainant kicked and swung wildly, injuring two officers. Upon being Tased, however, he submitted to arrest. The officer was justified in using his Taser, and the excessive force charge was exonerated.

Unsubstantiated: During an arrest, there was no dispute that the complainant was on the ground, initially resisting as a group of officers attempted to handcuff him. According to the complainant, when he heard "We're going to Tase him," he stopped resisting and put his hands on his head. According to the subject officer, the complainant was struggling until he was Tased. The other officers present could not remember precisely what took place, and the video was inconclusive. Had the complainant stopped resisting, using the Taser would have been inappropriate, but if he was still resisting, the Taser would have been appropriate. Without a preponderance of the evidence for either scenario, the CCRB found this allegation to be unsubstantiated.

Substantiated: Police officers ticketed a young man for riding his bicycle from its parked spot outside of a store directly onto the street. Upon running his identification, the officers found an open warrant, and told the man he was under arrest. The man, in an act of refusal, walked past the officers, at which point the officer shot his Taser into the man's back. This did not subdue him, and a second officer took the man to the ground. The first officer applied the Taser in touch stun mode for two separate cycles. The CCRB found that all three of the Taser discharges were improper, excessive uses of force, and that his use of the touch stun mode also put his fellow officer at risk of being hit by the open Taser discharge.

Out of the 85 truncated complaints, 56 were due to an uncooperative complainant, followed by complaint withdrawn (10), complainant unavailable (8), victim unavailable (6), victim uncooperative (4), and victim unidentified (1). Many Taser-related truncations stem from how the CCRB receives certain Taser complaints. In general, the CCRB receives the overwhelming majority of its complaints from either its own intake process, or from complaints filed by civilians with the NYPD's Internal Affairs Bureau (IAB) that are then sent to the CCRB. 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 what the CCRB is, or why they are being asked questions about the incident. This subset of complaints often ends with either a "Victim Unavailable," or "Complainant Uncooperative" determination.

Figure 9: Truncations and Other Closures of Taser Allegations
(January 1, 2014 to December 31, 2015)



Truncation Case Study

Complainant Uncooperative: When an officer responded to a domestic violence call, the complainant was verbally uncooperative, but it was unclear if he physically resisted before application of Taser. The Captain recommended investigation. The complainant did not respond to CCRB inquiries, and the case was closed as Complainant Uncooperative.

SECTION THREE: BEST PRACTICES

Criminology literature is generally supportive of Taser use, finding it less likely to lead to serious injury for both officers and civilians than hand-to-hand takedowns and batons.[96] However, experts agree that Taser technology can result in serious consequences if deployed incorrectly, and in poor policing if deployed too often.

The International Associations of Chiefs of Police ("IACP") has published an extensive report stressing the importance of training, comparing Taser training to instruction for conventional weapons, complete with a certification process, written test, and re-qualification.[97] The NYPD currently has a rigorous training course, written test, and field test, and also requires a refresher course as part of the promotion from Sergeant to Lieutenant. Additionally, all NYPD members of service conduct a yearly recertification with the Taser during the firearms requalification cycle.

The Police Executive Research Forum ("PERF") has published a set of "Taser Guidelines" that incorporate a number of best practice recommendations.[98] Most of PERF's recommendations are congruous with NYPD policy, but two clauses are worth noting. First, PERF states that CEWs "should be used only against subjects who are exhibiting active aggression or who are resisting in a manner that, in the officer's judgment, is likely to result in injuries to themselves or others."[99] This is a more stringent standard than that of the NYPD, which allows Taser use when an arrestee may be stiff-arming or squirming, but not exhibiting intent to harm the arresting officers. The NYPD currently views virtually any non-cooperation with an arrest as "actively resisting arrest" other than "going limp or offering no physical resistance," such as the behavior of non-violent political protesters.[100]

Similarly, the U.S. Department of Justice's National Institute for Justice ("NIJ") released a report favorable to Taser usage titled *Police Use of Force, Tasers and Other Less-Lethal Weapons*. The NIJ report identifies a fissure between police departments on whether Tasers should be used "if the subject is tensed and pulled when an officer tries to handcuff him or her."[101] Whether such acts constitute an escalation by the arrestee is a question that arises in many use-of-

[96] Electro-Muscular Disruption Technology, International Association of Police Chiefs, at 9. Available at: http://www.theiacp.org/portals/0/pdfs/emdt9steps.pdf. See also National Institute of Justice (2011), at p.ii.
[97] Electro-Muscular Disruption Technology, International Association of Police Chiefs, at 16. Available at: http://www.theiacp.org/portals/0/pdfs/emdt9steps.pdf.
[98] *Police Executive Research Forum TASER Guidelines*, Available at: http://www.policeone.com/police-products/less-lethal/TASER/articles/3590368-TASER-guidelines-updated-for-first-time-since-2005/.
[99] *Id*., at Guideline #25.
[100] NYPD Student Guide, Use of Force chapter, at p. 16 (July 2014).
[101] National Institute of Justice (2011) at p.5.

force cases, not only Taser incidents. The NYPD should caution officers against using a Taser just because an arrestee has "tensed."

Even in the context of a NIJ report that is otherwise strongly supportive of Taser use, the paper's conclusion cautions that their "ease of use and popularity among officers raise the specter of overuse… [Tasers] can be used inappropriately at low levels of suspect resistance."[102] For officers who have less policing experience than Sergeants, there may be a temptation to develop an over-reliance on Tasers early in their careers, for situations where a lesser level of force would have sufficed. "Some officers may turn to a CEW too early in an encounter and may relying (sic) on a CEW rather than rely on the officer's conflict resolution skills or even necessary hands-on applications."[103]

University of South Carolina criminology professor Geoffrey Alpert shares the NIJ's concern, and has voiced skepticism of Tasers' necessity: "I am often told by officers, 'We had no choice.' And to which I respond, 'What do you think the police did before Tasers?'" Alpert sees Tasers' value when used correctly, but worries that officers may turn to them too quickly once becoming used to them.[104] Recently this proved to be the case in Milwaukee, where widespread distribution led to high initial use and abuse.[105] Closer to home, during the 2014 public discussion of the NYPD Taser expansion, John Jay College professor Eugene O'Donnell noted, "If you hand a tool to somebody I think human nature and some research shows you may rely on that more than using a non-violent approach."[106]

Despite the risk that some officers may become over reliant on Tasers, there is some question about whether the expanded use of Tasers in New York City will reduce police shootings of civilians. The NYPD has made a public commitment to reducing its use of firearms for many years, and has steadily reduced the number of firearm discharges since the 1970s. According to the NYPD Annual Firearms Discharge Report of 2014, the NYPD was involved in 35 adversarial incidents, involving 58 officers who intentionally fired on subjects. This resulted in 14 subjects injured and eight killed.[107] In 23 of the 35 incidents, officers fired on subjects who were in possession of or presumed to be in possession of firearms, scenarios for which the use of Tasers clearly would have been inappropriate.[108] That leaves at most a dozen incidents in which Tasers

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[102] *Id*. at 15.
[103] *Id.* at 16.
[104] "Use of Tasers is Scrutinized after Walter Scott Shooting," *New York Times* (June 1, 2015). Available at: http://www.nytimes.com/2015/06/01/us/use-of-tasers-is-scrutinized-after-walter-scott-shooting.html.
[105] "Police Use New Tasers Frequently; Stun Guns Subdue 105 People in First 4 Months," Milwaukee Journal Sentinel (August 29, 2014). Available at http://www.policeone.com/police-products/less-lethal/articles/91449-Police-Use-New-Tasers-Frequently-Stun-Guns-Subdue-105-People-in-First-4-Months/.
[106] *Id*.
[107] *NYPD Annual Firearms Discharge Report 2014*, at p.13 (October 2015). Available at http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/nypd_annual_firearms_discharge_report_2014V3.pdf.
[108] *Id*. at 14.

could potentially have been used, rather than firearms, to arrest subjects. This assumes none of the remaining incidents involved close combat, for which Tasers are generally ineffective. In some cities, providing police officers Tasers may reduce their firearm discharges, thus increasing public safety. New York City does not have a serious firearm discharge problem. Therefore, it is unclear whether the widespread introduction of Tasers should be expected to have a significant impact on the number of NYPD firearm discharges.

There are at least two other "best practices" that would serve the NYPD. Even after issuing its warning to police departments not to aim for the chest, TASER International insists that the likelihood of cardiac arrests is rare, a claim the NYPD echoes in its training. However, Dr. Douglas Zipes, a critic of TASER, Intl., who has frequently testified against them in court, has suggested that certain circumstances are far more dangerous, such as "if the barbs are in the chest, particularly the left chest near the heart," or when the Taser victim is in the prone position, which brings the heart into closer proximity with the chest wall.[109] If a person is brought to ground before he is Tased or brought to ground by a first Taser cycle before a second cycle issued, the victim risks being in the prone position.

Second, PERF has called for departments to forbid the use of Tasers on handcuffed persons, barring extenuating circumstances.[110] Because a high percentage of CCRB Taser incidents that took place in police custody truncated, the CCRB does not have quality data on whether the Tasing of handcuffed persons is an issue in New York City, but to the extent the NYPD does not have a policy in this area, the CCRB recommends it adopts the PERF standard.

Setting aside policy concerns, basic medical questions need to be answered in order to generate best practice recommendations. The internet is replete with officers being Tased as part of their training, and these men and women, who are very fit and prepared for the incoming Taser, still report the experience as enormously painful. Whether there is risk attenuated with Tasing weaker, less prepared persons, who may or may not have health issues or psychological conditions, is a question the medical community is currently seeking to answer. Recent literature has raised questions over whether the Taser's effect on the heart is understated.[111] Likewise, Taser experts have acknowledged that Taser testing is generally done on a cohort healthier than the population

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[109] "Dr. Douglas Zipes Warns of Cardiac Hazards Associated With TASER," Practice Update (January 3, 2013). Available at http://www.practiceupdate.com/content/dr-douglas-zipes-warns-of-cardiac-hazards-associated-with-taser/17238

[110] *Police Executive Research Forum TASER Guidelines*, Guideline #29: "[CEWs] should not be used on handcuffed subjects unless doing so is necessary to prevent them from causing serious bodily harm to themselves or others and if lesser attempts of control have been ineffective." (2011.) Available at: http://www.policeone.com/police-products/less-lethal/TASER/articles/3590368-TASER-guidelines-updated-for-first-time-since-2005/. This position is also shared by the International Association of Chiefs of Police.

[111] Douglas Zipes, *TASER Electronic Control Devices Can Cause Cardiac Arrest in Humans*, Circulation (2015).

of policed Taser victims.[112] The NYPD already has a policy of not firing at the chest area, a policy made abundantly clear during its training.

Medical literature has also raised questions about the psychological impact of Tasers on shock recipients, particularly emotionally disturbed or mentally ill individuals. In 2014 the American Medical Association called for a uniform medical protocol on persons who had been subjected to Taser discharges, citing concerns of the impact it might have on persons with mental illness.[113] One recent study was unable to make firm conclusions about the lasting impact of Tasers on psychological and cognitive functioning, but it counseled for further research.[114]

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[112] White & Ready (2015), at p. 13.

[113] "AMA House Calls for Protocols for Post-'Taser' Medical Assessments," Psychiatric News (2014). Available at: http://alert.psychnews.org/2014/06/ama-house-calls-for-protocols-for-post.html.

[114] Michel White & Justin Ready, *Examining Cognitive Functions Following TASER Exposure: A Randomized Controlled Trial*, Applied Cognitive Psychology at p.15 (July/August 2015). "The health of participants in these studies stands in stark contrast to the poor health of individuals who receive TASER exposure in "real-life" encounters with police. Individuals who are "tased" by police are often under the influence of drugs or alcohol, are mentally ill and in crisis, and have a number of serious medical and psychological conditions."

SECTION FOUR: NEXT STEPS

Until recently, the CCRB had not focused closely on NYPD Taser use. As the independent oversight agency monitoring NYPD misconduct, it behooves the CCRB to adopt rigorous practices for tracking Taser use and misuse, including the following:

- 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.

- The CCRB 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.

- Track whether officers are issuing warnings before firing Tasers. The requirement to do so is no longer clear in the Patrol Guide, although the importance of verbal warnings is emphasized in the NYPD Taser training, and verbal warnings are, according to police reports, already given by some officers.

- Monitor demographic data to monitor for racial profiling in the use of Tasers.

- Evaluate 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 his fellow cellmates or officers, action must be taken, but the Taser cannot be used to punish an arrestee for failure to follow instructions.

- Track whether officers are tasing handcuffed persons. There are circumstances where force is appropriate against a handcuffed person, such as when that person is kicking violently or trying to flee after the commission of a serious crime. (Policies currently prohibit tasing rear-cuffed persons.) 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 non-violent, 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.

- Determine whether Taser-related CCRB complaints show that data retention procedures for uploading and storing data from Taser devices are being properly followed.

- Track whether officers are threatening Taser use in situations where it is not appropriate.

- 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.

"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..."

(NYC Charter, Chapter 18-A, effective July 4, 1993)

CIVILIAN COMPLAINT REVIEW BOARD
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Complaints: 1-800-341-2272 or 311 | Outside NYC: 212-New-York
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