



July 29, 2024

Mr. Max A. Caproni  
Executive Director, Chicago Police Board  
30 North LaSalle Street, Suite 1220  
Chicago, Illinois 60602

Via Email

RE: Request for Review, Log #2021-0003504, Officer Jonathon Zarate #10508

Dear Mr. Caproni,

Pursuant to the Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedure Section VI, please consider this letter a Request for Review of a non-concurrence between the Civilian Office of Police Accountability (COPA) and the Superintendent of the Chicago Police Department (CPD) in Log # 2021-0003504.<sup>1</sup>

As set forth in detail in COPA's Final Summary Report dated July 10, 2023 (FSR), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation of Officer Jonathon Zarate.<sup>2</sup> COPA recommended Officer Zarate receive discipline of a 45-day suspension and retraining based on Officer Zarate's excessive use of his Taser on ██████████ (██████████) which consisted of eighteen Taser activations and three drive stuns.

## I. BACKGROUND

### A. Relevant Factual Background<sup>3</sup>

On September 5, 2021, Officer Zarate and Officer Zachery McClanahan responded to a 911 call of a disturbance in an apartment building at ██████████. The officers met two individuals who explained that their neighbor, ██████████ (██████████) had aggressively pushed their door open and entered their apartment without permission, injuring one of the callers' toes in the process.

The officers then spoke to ██████████ at his apartment door. ██████████ refused the officers' request to step into the hallway and later refused the officers' command to come downstairs with them. ██████████ retreated into his apartment and pulled away when Officer McClanahan attempted to reach out to him. A struggle ensued between ██████████ and Officer McClanahan as the officers entered the apartment. ██████████ wife, ██████████ put her hands out and repeatedly pushed and grabbed at the officers during the struggle.

Officer Zarate engaged his Taser eighteen times during the struggle and inflicted three drive stuns upon ██████████ for a total of 28 seconds of electrical discharges. COPA found that the initial uses of the Taser, including the initial drive stun, were within policy, but the continued use of the Taser, well after ██████████ stopped actively resisting, violated CPD policy.

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<sup>1</sup> As required by the Police Board Rules of Procedure, enclosed are copies of COPA's final summary report, CPD's non-concurrence letter, and the certificate of meeting.

<sup>2</sup> Star # 10508

<sup>3</sup> A more detailed factual summary can be found in the FSR.

## B. Disputed Findings and Recommendations

The Superintendent disputes COPA's finding that Officer Zarate violated CPD policy on Taser Use Incidents and argues Officer Zarate should not be disciplined.

## C. Applicable CPD Policy

### 1. Authorization of Taser Use

According to General Order G03-02-04, "Department members' use of a Taser must be objectively reasonable, necessary, and proportional to the threat, actions, and level of resistance offered by a subject, under the totality of the circumstances."<sup>4</sup>

Although using a Taser for the purpose of gaining control of and restraining a subject is permitted for both Active Resisters and Assailants, officers must balance the risks and benefits of Taser discharge based on the "(a) threat presented by the subject to the officer or the public, (b), threat presented by the subject to himself or herself, (c) availability of other force options, (d) likely outcome of Taser use, (e) risk of injury, (f) subject's apparent age, size, physical and mental condition, disability, and impairment, and (g) the seriousness of the offense and whether Taser discharge is immediately necessary."<sup>5</sup>

### 2. Authorized Manner of Use

"When it is safe and feasible to do so, a member who is discharging a Taser device will: (1) give verbal commands and warnings prior to, during, and after the discharge of the Taser, including informing other Department members on the scene of the discharge of the Taser," and "(2) allow a subject a reasonable amount of time to comply with a warning prior to using or continuing the use of a Taser, unless doing so would compromise the safety of a Department member or another person. . . ."<sup>6</sup>

### 3. Restriction on Drive Stuns

"Drive stunning is prohibited unless the subjected is defined as an **assailant** and other force options are not readily available or would otherwise be ineffective."<sup>7</sup>

### 4. Length of Taser Exposure

"If the subject has been exposed to three, five-second energy cycles (or has been exposed to a cumulative 15 total seconds of energy) and the member has not gained control of the subject, switch to other force options unless the member can reasonably justify that continued Taser use was necessary to ensure the safety of the member or another person."<sup>8</sup>

### 5. Duty to Restrain

"If the subject is incapacitated, [a member who is discharging a Taser device will] immediately attempt to restrain the subject while he or she is incapacitated."<sup>9</sup>

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<sup>4</sup> G03-02-04 II.C.

<sup>5</sup> G03-02-04 II.C.2.

<sup>6</sup> G03-02-04 III.B.

<sup>7</sup> G03-02-04 II.D.5 (emphasis added)

<sup>8</sup> G03-02-04 III.B.7.

<sup>9</sup> G03-02-04 III.B.6.

## II. ARGUMENT

### A. The Superintendent has not shown Officer Zarate's second and third drive stuns were reasonable.

The evidence shows that ██████ was not an assailant at the time Officer Zarate delivered the second and third drive stuns.<sup>10</sup> The Superintendent claims that ██████ was still an assailant when Officer Zarate used the drive stun mode of his taser the second and third time. Rather, the evidence shows that ██████ was on the ground in the hallway, barely moving. Nevertheless, Officer Zarate drive stunned him two more times instead of helping his partner handcuff ██████

For a person to be an assailant they must be using force or threatening the use of force likely to cause physical injury. At the time Officer Zarate delivered the two additional drive stuns, ██████ was noncompliant but was not aggressive, threatening, or using force likely to cause injury.<sup>11</sup> Even if ██████ could have been defined as an assailant, drive stuns are only permitted on an assailant when other force options are not readily available or would otherwise be ineffective.<sup>12</sup> Here, Officer Zarate had opportunities to assist Officer McClanahan in apprehending ██████ without additional drive stuns from his Taser. The confined area of the room did not preclude Officer Zarate from assisting in physically restraining ██████ without further discharging the Taser. In fact, the additional drive stuns from Officer Zarate appeared to further disorient ██████ and unnecessarily led to further struggle.<sup>13</sup> The Superintendent fails to show otherwise.

### B. Contrary to the Superintendent's claim, Officer Zarate's total Taser usage was unwarranted and excessive.

The Superintendent fails to acknowledge that Officer Zarate's Taser activations far exceeded CPD's limit of three five-second energy cycles.<sup>14</sup> The evidence shows that Officer Zarate used his Taser 18 times, for a total of 28 seconds of electrical discharge.<sup>15</sup> Because of the risk associated with prolonged Taser exposure, officers are required to switch to other force options after having exposed a person to 15 total seconds of energy, unless the Taser use was necessary to ensure the safety of the officer or another person.<sup>16</sup> Here, Officer Zarate failed to switch to other force options, despite reaching the maximum limit allowed under CPD policy. Although Officer Zarate may have been attempting to help his partner with ██████ it was not objectively reasonable for him to continue tasing ██████ who was at times immobile, when Officer Zarate could have helped ensure his partner's safety by helping him handcuff ██████ instead.<sup>17</sup> Although COPA recognizes that the scene was chaotic and Officer Zarate admitted that ██████ was a distraction,<sup>18</sup> such a distraction does not absolve Officer Zarate of the duty to follow CPD policy.

### C. The Superintendent's claim that Officer Zarate gave verbal warnings and assessed the effects of the Taser use after each activation, is contradicted by video evidence.

Video footage contradicts the Superintendent's claim that Officer Zarate gave verbal warnings and assessed the effects of the Taser after each activation. CPD requires its members to give verbal commands and warnings prior to, during, and after a Taser activation. Verbal warnings are essential during Taser use because they give the person an opportunity to comply after a Taser discharge. The Superintendent claims

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<sup>10</sup> Att. 22 BWC at 20:34 and 20:51.

<sup>11</sup> G03-02-01 IV.C.

<sup>12</sup> G03-02-04 II.D.5.

<sup>13</sup> Att. 22 BWC at 20:34 and 20:51.

<sup>14</sup> G03-02-04 III.B.7.

<sup>15</sup> Att. 26, pgs. 1 to 2.

<sup>16</sup> G03-02-04 III.B.7.

<sup>17</sup> Att. 22 BWC at 20:34 to 21:57.

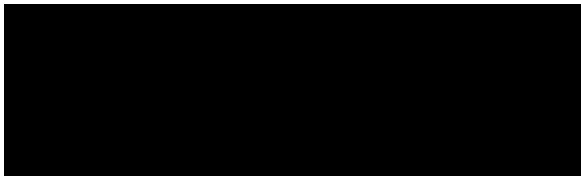
<sup>18</sup> Att. 65, pg. 27 lns. 8 to 16.

that “during the entire video, after using the Taser each time, Officer Zarate then immediately gave verbal warnings to the offender.”<sup>19</sup> The BWC footage contradicts this claim. The footage instead shows that Officer Zarate failed to give verbal commands to ██████████ prior to, during, and following numerous Taser activations.<sup>20</sup> Rather, Officer Zarate repeatedly threatened to “tase the shit out of”<sup>21</sup> ██████████ gave several warnings and commands to ██████████ and continued to discharge the Taser in rapid succession against ██████████<sup>22</sup> For instance, after ordering ██████████ to put his hands behind his back and warning him that he would tase him otherwise, Officer Zarate briefly struggled with ██████████ then used two drive stuns and three additional Taser discharges against ██████████ while issuing no commands whatsoever.<sup>23</sup> Officer Zarate’s excessive Taser use violated CPD policy. The Superintendent fails to show otherwise.

### III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet his affirmative burden of showing COPA’s recommendations in this case are unreasonable. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent’s non-concurrence in this matter and accept COPA’s findings and recommendations.

Respectfully,



Andrea Kersten  
Chief Administrator  
Civilian Office of Police Accountability

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<sup>19</sup> Superintendent’s Letter of Non-Concurrence, p.2 (September 6, 2023)

<sup>20</sup> Att. 22 BWC at 19:00 – 19:15 and 20:20 – 22:00.

<sup>21</sup> Att. 22 BWC at 19:00 – 19:30 and 20:50 – 21:57.

<sup>22</sup> Att. 22 BWC at 19:42-20:10 and 20:35

<sup>23</sup> Att. 22 BWC at 20:20 (command); 20:36 (drive stun); 20:50 (Officer Zarate states words to the effect of “I’m gonna tase the shit out of you,” then uses the drive stun.); 21:30 (taser discharge); 21:51 (taser discharge); 21:57 (taser discharge).