

**BEFORE A MEMBER OF THE POLICE BOARD  
OF THE CITY OF CHICAGO**

<b>IN THE MATTER OF THE</b>	)	
<b>RECOMMENDATION FOR DISCIPLINE OF</b>	)	<b>No. 24 RR 06</b>
<b>POLICE OFFICER JONATHON ZARATE,</b>	)	
<b>STAR No. 10508, DEPARTMENT OF POLICE,</b>	)	<b>(CR No. 2021-3504)</b>
<b>CITY OF CHICAGO.</b>	)	

**REQUEST FOR REVIEW**

On July 29, 2024, the Executive Director of the Police Board of the City of Chicago received from the Chief Administrator of the Civilian Office of Police Accountability (COPA) a request for review of the Chief Administrator’s recommendation for discipline of Police Officer Jonathon Zarate, Star No. 10508, arising out of the investigation of Complaint Register No. 2021-3504 (“Request for Review”).

The investigation stems from an incident on September 5, 2021, in the 25<sup>th</sup> Police District. According to COPA’s Final Summary Report, Officer Zarate and Police Officer Zachery McClanahan were on patrol when they responded to a 911 call reporting a disturbance in an apartment building. After speaking with the residents who called 911, the officers went to the apartment of [A.R.]. The officers entered the apartment and a struggle ensued between [A.R.] and Officer McClanahan. [A.R.]’s wife also became involved in the struggle. Officer Zarate called for backup on his radio, warned [A.R.] that he would use his Taser, and then did so. Approximately two hours later, COPA received from a Chicago Police Department (CPD) lieutenant a report stating that during his review of body-worn camera (BWC) video from an arrest that had occurred, he observed Officer Zarate discharging his Taser an excessive number of times at [A.R.], including using the drive-stun Taser technique in violation of CPD policy. Following the conclusion of COPA’s investigation, the Chief Administrator issued a

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recommendation for discipline of Officer Zarate. The Interim Superintendent of Police<sup>1</sup> did not agree with the Chief Administrator's recommendation and proposed no discipline for Officer Zarate.

The Chief Administrator recommended that the following allegation against Officer Zarate be *Sustained*:

On or about September 5, 2021, at approximately 12:12 a.m., at or near [address redacted] in Chicago, Officer Zarate excessively utilized his Taser on [A.R.] in violation of CPD General Order G03-02-04.

The Chief Administrator recommended that Officer Zarate be suspended without pay for forty-five (45) days and receive retraining on CPD's Taser-use policy.

The Interim Superintendent disagreed with the Chief Administrator's recommendation for discipline of Officer Zarate. The Interim Superintendent proposed a finding of *Not Sustained* and no discipline for Officer Zarate.

According to the Certificate submitted by the Chief Administrator: (1) the Chief Administrator issued the recommendation for discipline on July 10, 2023; (2) the Chief Administrator received the Interim Superintendent's written response on September 6, 2023; (3) the Chief Administrator's designees met with the Superintendent's designees and concluded their discussion of this matter on July 26, 2024; and (4) the Request for Review was sent via email to the Executive Director of the Police Board on July 29, 2024.

The Executive Director of the Police Board prepared and forwarded the Request for Review file to Kathryn Liss, the member of the Police Board who was selected on a random basis ("Reviewing Member"). The Reviewing Member reviewed the Request for Review

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<sup>1</sup>Interim Superintendent of Police Fred L. Waller responded to the Chief Administrator's recommendation for discipline on September 6, 2023.

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pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago and Article VI of the Police Board's Rules of Procedure. Following her initial review of this matter on August 1, 2024, the Reviewing Member requested, received, and reviewed BWC videos from the investigative file.

### **OPINION**

Following a thorough review of the Request for Review material, including the BWC videos, it is my opinion that, while the Interim Superintendent's arguments with respect to Officer Zarate's first and second drive stun as well as his Taser probes to [A.R.] are convincing, the Interim Superintendent did not meet his burden to overcome the Chief Administrator's recommendation for discipline with respect to Officer Zarate's third drive stun to [A.R.].

According to CPD General Order G03-02-04, "[d]epartment 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." Even though the length of Taser exposure here was more than allotted pursuant to CPD General Order G03-02-04 III.B.7, it can be reasonably justified to be necessary to ensure the safety of Officer McClanahan as [A.R.] continued to actively resist being restrained prior to each Taser probe. Officer McClanahan can be heard on the BWC stating "let me go...stop fighting" (minute 21:10) and "quit scratching me" (minute 22:02). Given the totality of the circumstances (*i.e.* the threat of [A.R.] to Officer McClanahan, the distraction of [A.R.'s wife], and the highly cluttered area of the incident), the Interim Superintendent's arguments with respect to Officer Zarate's Taser probes during this incident are convincing.

With regard to the drive stuns, "[d]rive stunning is prohibited unless the subjected is defined as an assailant and other force options are not readily available or would otherwise be

ineffective.” G03-02-04 II.D.5. COPA acknowledges the first drive stun to [A.R.]’s right side was justifiable as [A.R.] qualified as an assailant as he entered into a hand-to-hand fight with Officer McClanahan and there were seemingly no other viable force options available within the cluttered room where this incident took place.

COPA argues that the second and third drive stuns were unwarranted because [A.R.] was an active resister rather than an assailant, he had already received more Taser discharges than was normally permitted by policy, and other officers had been called to the scene. Between Officer McClanahan asking if [A.R.] was done fighting (minute 20:14) and the second drive stun (minute 20:35), [A.R.] appears to continue fighting Officer McClanahan given the BWC video and therefore was an assailant at this time. The Interim Superintendent’s arguments with respect to Officer Zarate’s second drive stun during this incident are also convincing.

However, following the second drive stun, [A.R.] ceased to be an assailant. Five seconds after the second drive stun ended, [A.R.] can be seen in the BWC as laying down, looking disoriented, and breathing heavily (minute 20:42). Officer Zarate then issued a third drive stun (minute 20:51) to [A.R.]. The Interim Superintendent failed to meet his burden to overcome the Chief Administrator’s recommendation for discipline with respect to Officer Zarate’s third drive stun during this incident.

Therefore, pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago, the Chief Administrator’s recommendation for discipline of Police Officer Jonathon Zarate, Star No. 10508, shall be deemed accepted by the Superintendent.

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DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 07<sup>th</sup> DAY  
OF AUGUST 2024.

/s/ KATHRYN C. LISS  
Member  
Police Board

Attested by:

/s/ MAX A. CAPRONI  
Executive Director  
Police Board