

FINAL REPORT OF THE COMMISSION

Name of Review Committee	USE OF FORCE REVIEW COMMITTEE
Chairperson(s) of Review Committee	DAVID A. SONENSHEIN, ESQUIRE
Members of Review Committee	JOSHUA S. MAINES, ESQUIRE, KRISTA SOMMERS, and ELIZABETH C. PITTINGER
Ex-officio Member	Jalila Parker*
Non-Member Advisors	SHA BROWN and CHRISTOPHER KROKOS
Date Review Began	07/15/2021
Report Number	21-0001-P
Date of Commission Report	12/10/2021

* NOTE: Appointment of an Ex-officio (or non-voting) member to all Review Committees is required by Article 8 (Review Process), Section 8.2 (Commission Sub-committees and Review Committees) of the Commission's Bylaws; however, the Ex-officio Member does not vote on any of the content contained in this report.

TYPE OF COMMITTEE REVIEW

Name of Covered Agency	PENNSYLVANIA STATE POLICE
Nature of Completed Internal Investigative Findings Under Review (i.e., Police-Involved Shooting, Lower-Level Use of Force, Bias-based Policing)	LOWER-LEVEL USE OF FORCE

BACKGROUND

Incident Date	June 6, 2018
Troop Jurisdiction of Incident	Troop G (covering Centre, Blair, Mifflin, Juniata, Huntingdon, Bedford, and Fulton counties)
Criminal Disposition	Ruled Justified – County District Attorney (September 7, 2018)
Agency Administrative Disposition	Ruled Justified – Commanding Officer Troop G (November 19, 2018)

SCOPE AND METHODOLOGY OF REVIEW

Under Executive Order 2020-04, as amended, the Pennsylvania State Law Enforcement Citizen Advisory Commission (Commission) is required to review a Covered Agency's completed internal investigations involving lower level uses of force to determine the following:

1. Whether the completed internal investigation was:
 - Prompt;
 - Fair;
 - Impartial;
 - Complete; and
 - Performed in a manner consistent with applicable policies.
2. Whether the adjudicatory findings and discipline were reasonable under standard law enforcement protocols; and
3. Whether there is a perceived policy or training deficiency.

Under the methodology contemplated by Executive Order 2020-04, as amended, a Covered Agency is required to provide a Comprehensive Written Summary and an Oral Presentation of the completed internal investigation that shall include a description of all investigative activities, relevant dates, a summary of the facts as determined by the investigation, and criminal and administrative adjudications.

In performing this review, the Commission's Use of Force Review Committee (Review Committee) used the following methodology:

1. Reviewed and corroborated information contained in records provided by the Pennsylvania State Police (PSP) and statements made by PSP during its Oral Presentation to preliminarily determine if the completed internal investigation was prompt, fair, impartial, and complete.
2. Compared PSP's completed internal investigation with guidelines established by the United States Department of Justice (US DOJ) for Internal Affairs Investigations, PSP department policy, and relevant collective bargaining agreements. Where deficiencies were identified, the Review Committee made preliminary recommendations for corrective action(s).
3. Determined if adjudicatory findings were reasonable under standard law enforcement protocols.
4. Compared discipline (if any) issued in past disciplinary proceedings to confirm that discipline was reasonable and consistent with PSP's just cause standard, rules and regulations, collective bargaining agreements, and/or grievance and arbitration decisions.
5. Reviewed and analyzed policies relevant to PSP's completed internal investigation under review to identify any perceived policy or training deficiency. Where perceived deficiencies were identified, the Review Committee researched best practices and made preliminary recommendations consistent with best practices to address the perceived deficiency.

RELEVANT POLICIES AND CRITERIA EXAMINED

1. Collective Bargaining Agreement between the Commonwealth of Pennsylvania and the Pennsylvania State Troopers Association (effective July 1, 2017 through June 30, 2020);
2. Policy No. AR 4-25 (Internal Investigations) (effective March 12, 2014);
3. Policy No. FR 1-2 (Duty Requirements) (effective May 16, 2017);
4. Policy No. FR 9-1 (Use of Force) (effective August 23, 2017);
5. Policy No. FR 7-7 (Juveniles) (effective March 17, 2014);
6. Policy No. FR 7-2 (Prisoner Security and Transportation) (effective August 21, 2014);
7. U.S. Department of Justice (US DOJ), Office of Community Oriented Policing Services, *“Standards and Guidelines for Internal Affairs: Recommendations for a Community of Practice”* (2005); and
8. US DOJ Final Report titled *“President’s Commission on Law Enforcement and the Administration of Justice”* (December 2020).

THE COMMISSION’S FINAL FINDINGS AND CONCLUSIONS

Pursuant to Executive Order 2020-04, as amended, and based on the Review Committee’s preliminary findings and conclusions made in accordance with Article 8 (Review Process) of the Commission’s Bylaws regarding its’ comprehensive review of the Pennsylvania State Police (PSP’s) completed internal investigation, the Commission adopts such findings and conclusions and determined the following:

After its review, the Commission finds that PSP’s completed internal investigation was prompt, fair, and impartial. These findings are corroborated by the Review Committee’s reading of PSP’s investigative and adjudication reports, and relevant interviews, and information provided by PSP during its Oral Presentation pursuant to Section 8.2 of the Commission’s Bylaws. Regarding promptness, fairness, and impartiality, the Commission also concludes that PSP’s completed internal investigation was consistent with guidelines established by the US DOJ’s published standards and guidelines concerning internal affairs investigations, departmental policy, and the relevant collective bargaining agreement. Additionally, the Commission concludes that PSP’s internal investigation conducted by its Internal Affairs Division (IAD) was complete and included securing (and/or making persistent efforts to obtain) all material witness statements and corroborating information that was reasonably available.

The Review Committee’s and the Commission’s role is not to relitigate the facts of an incident. Rather, the mandated purpose of this review includes determining whether adjudicatory findings are reasonable under standard law enforcement protocol and identifying any policy or training deficiencies that may enhance PSP’s supervision of its members. Based on the Review Committee’s review of the IAD investigation and adjudication (which included an amateur witness video), the Commission finds that the adjudicatory findings were incomplete concerning the lack of attention to the involved Trooper’s behavior which occurred BEFORE the adjudicated use of force was applied.

Collectively, the Review Committee, PSP and Commission agree that the Fourth Amendment legal standard against which a Trooper's use of force is to be measured is that set forth by a unanimous United States Supreme Court in *Graham v. Conner*, 490 U.S. 386, 394 (1989) (i.e., an officer's application of force must be objectively reasonable given the totality of circumstances the officer faces at the time (see below for further discussion and see Additional Factors / Notes section). The Commission notes, however, that the United States Court of Appeals for the Third Circuit in *Abraham v. Raso*, 183 F.3d 279 (1999), has further interpreted *Graham* to require that the totality of the circumstances review MUST include scrutiny of the officer's actions prior to the actual application of force. Here, the involved Trooper, after being verbally insulted by the runaway juvenile both grabbed the runaway juvenile's shirt, spun him around and then repeatedly shouted "what did you say?" three times prior to the involved Trooper's use of force (i.e., a strike to the upper body/head of the runaway juvenile). As a matter of chronology, it was this apparent escalation that preceded the juvenile's head movement toward the involved Trooper which ultimately justified the involved Trooper's use of force. The Commission finds the involved Trooper's actions (verbal challenge to, and grabbing of, runaway juvenile) in response to the runaway juvenile's use of profanity may have escalated an otherwise controlled situation and could be viewed as a potential root cause(s) of the use of force incident that followed.

During its Oral Presentation to the Review Committee pursuant to Section 8.2 of the Commission's Bylaws, PSP explained the involved Trooper's action (grabbing the upper chest area of the runaway juvenile's sweatshirt while handcuffed) was justified to complete a search and that confronting the runaway juvenile about his or her foul language was a "control technique" (i.e., to manage the situation). Adjudicators found no violation of either the law or PSP's Use of Force policies concerning: (1) the grabbing and spinning of the runaway juvenile around to face the involved Trooper; or (2) regarding the involved Trooper's seeming escalation of the encounter (i.e., both shouting at, and challenging, the runaway juvenile).

After the Review Committee presented its preliminary findings and conclusions to PSP in accordance with Section 8.3 of the Commission's Bylaws, PSP informed the Review Committee that the involved Trooper's conduct was "considered" by PSP's adjudicators when reaching its findings and conclusions. The Commission acknowledges that the involved Trooper's apparent escalation did not violate PSP's Use of Force policy in effect at the time of this incident because the policy contained no de-escalation provisions. This incident occurred in 2018 (years before PSP incorporated de-escalation provisions which are part of PSP's current Use of Force policy).

Notwithstanding this fact, under PSP's more general Duty Requirements policy (Policy No. FR 1-2), the Commission notes that the Trooper's behavior BEFORE the use of force incident appears to be inappropriate (then in 2018 and now). Specifically, Section 2.12 provides, in part, "...[c]ourtesy toward the public shall be strictly observed. The conduct and deportment of members shall always be civil, orderly, and courteous. Members shall be diplomatic and tactful in the performance of their duties, controlling their temper, and exercising the utmost patience and discretion. Members shall not engage in argumentative discussions even in the face of extreme provocation." Though not as robust as PSP's current de-escalation provisions within PSP's current Use of Force policy, the adjudicators did not address the involved Trooper's verbal challenge and subsequent physical contact under PSP's Duty Requirements policy. Nonetheless, the Commission also acknowledges that while the involved Trooper must "act with firmness and sufficient energy to properly

perform their duties,” (per PSP’s Duty Requirements policy), it also opines that the involved Trooper’s response (challenging the runaway juvenile verbally and grabbing him) warranted (at a minimum) merited inquiry and should have involved corrective action of the involved Trooper’s behavior by adjudicators. For these reasons, the Commission finds PSP’s adjudicatory findings appear “incomplete.”

PSP’s Internal Affairs (IA) policy requires the adjudicating officer (Troop Commander) to thoroughly review the entire IA investigative file and render an adjudication of the involved Trooper’s conduct, address other performance issues uncovered through the investigation, and begin a subsequent investigation (Blue Team Entry) if, and when, a separate and distinct incident of misconduct is discovered during an adjudication. Furthermore, the reviewing officer (Area Commander) is required to thoroughly review the entire IA investigative file and consult with the adjudicating officer to reach a consensus. Based on the apparent performance issues and/or possible misconduct regarding the involved Trooper’s conduct under PSP’s Duty Requirements policy as noted above, this Commission finds the adjudicatory findings appear incomplete, not consistent with IA policy, and thus unreasonable. Finally, the Commission notes that video from a Body Worn Camera of the involved Trooper would have greatly assisted its review of the underlying use of force incident (along with investigative and adjudicatory records). According to PSP, such equipment is not standard issue, and no official video of the incident was available to either adjudicators, or Review Committee and Commission members.

Concerning PSP’s Use of Force policy, the Commission concludes the policy does not permit troopers to use force unless: (1) making an arrest; (2) protecting themselves or another from bodily injury; (3) preventing an escape; (4) preventing suicide; or (5) preventing the commission of a crime. The Commission concludes, as a matter of chronology, at the time when the involved Trooper grabbed the runaway juvenile’s sweatshirt, the runaway juvenile was not engaging in any of the requisite activities enumerated in PSP Use of Force policy. After the Review Committee presented its preliminary findings and conclusions to PSP pursuant to Section 8.3 of the Commission’s Bylaws, PSP explained that (under juvenile law) “status offenders” taken into “custody” are treated the same as juveniles who are “arrested” so PSP’s policies do not differentiate between the two (i.e., when authorized to take into “custody” for civil enforcement purposes such “custody” is equivalent to an “arrest”). The Commission acknowledges PSP’s authority to take “status offenders” (individuals that have not committed a crime) into “custody” and believes adding a use of force criteria for taking such individuals into custody for “legitimate law or civil enforcement purposes” would enhance PSP’s existing Use of Force policy.

Additionally, after considering PSP’s response to its preliminary findings and conclusions, the Review Committee (and as adopted by the Commission) clarifies that PSP’s Use of Force policy, as written, does appropriately incorporate the “objective reasonableness standard” mandated by the United States Supreme Court more than 30 years ago in *Graham* (i.e., a member may use reasonable force, when necessary, in the performance of their duties; and a “reasonable belief” that such use of force is necessary is defined as “an objective belief based on the totality of the known circumstances”). Similarly, the Review Committee (and as adopted by the Commission) clarifies that PSP’s use of force training complies with, and incorporates legal standards mandated by the United States Supreme Court in both written materials and physical instruction. Notwithstanding the above, the Commission identified provisions within PSP’s Use of Force policy (as written) whose language, on its face, may be confusing to Troopers attempting to legally comply with the

reasonableness standard as required. For example, one section in PSP's Use of Force policy (as written) explicitly suggests a member's use of force may be judged based on the involved member's subjective belief (i.e., "reasonable force" is defined as the amount of force reasonably believed **by the member** ...to be necessary) and others that (when read in isolation) appear to also imply use of a subjective standard when evaluating a use of force incident. Likewise, the Commission finds that PSP's Use of Force policy (as written) only uses the word "objective" when defining "reasonable belief" and the term(s) ("objective" and "reasonable") is/are absent in all other definitions and policy sections when describing the types of force and conduct required of Troopers. The Commission notes that terms like "reasonableness" and "objectively reasonable" are not self-defining and require more context to help guide and direct conduct. This lack of clarity can also mislead or confuse conscientious members as to the standard by which conduct will be judged.

By way of further example, the adjudicator cited the following two sections of PSP's policy when determining whether use of force was justified in this instance:

1. FR 9-1 which generally authorizes a member to use Reasonable Force (again defined as the amount of force reasonably believed **by the member** to be necessary under the totality of circumstances); and
2. FR 9-1, Section 1.09, which provides that members may use less lethal force which **the member reasonably believes** to be necessary to make an arrest and defend themselves or another from bodily harm while making an arrest.

The adjudicator confirmed these sections both guided the involved Trooper's actions and the adjudicator's assessment of the reasonableness of the force used in this instance. The assessment included a review of the IAD Personnel Investigation and the involved Trooper's statement confirming he/she believed the force applied was necessary under a totality of the circumstances.

Nonetheless, the Commission also finds the adjudicator's decision regarding reasonableness is consistent with Pennsylvania Consolidated Statutes, Title 18, Chapter 5, Section 508 which states, in part, the member is justified in the use of any force which **he believes** to be necessary to defend himself or another from bodily harm while making the arrest. However, PSP's written policy (and as supported by Section 508 of Title 18) may not (on its face) necessarily support a Use of Force policy violation without a member's voluntary admission because, as written, the reasonableness of the force can only be determined within the mind of the member applying such force. Accordingly, the Commission believes that PSP's Use of Force policy (as written) should be strengthened by:

- Enhancing the definitions for "use of force," "reasonable belief," "reasonable force," and de-escalation;
- Mandating supplemental use of force training after a use of force incident involving injury or death;
- Bolstering requirements for members to use de-escalation techniques when circumstances clearly warrant prior to any force deployment;
- Requiring that the reporting of use of force incidents include threatening the use of force and/or displaying of a weapon; and
- Adding language mandating the use of proportional force (given the totality of circumstances) to carry out a legitimate law enforcement function (i.e., circumstances where an individual must be "taken into custody" but is not "under arrest," and specific guidelines detailing a use of force spectrum).

Concerning the handcuffing of juveniles (who are considered “status offenders”), and the handcuffing of persons under arrest for transportation purposes, the Review Committee (and as adopted by the Commission) also took note of another instance where the language contained in PSP’s policies may prove confusing to both Troopers (in the performance of their duties) and supervisors and adjudicators (in the performance of their reviews of a Trooper’s conduct). First, as found by the adjudicator in this instance, the involved Trooper handcuffed the runaway juvenile to transport the runaway juvenile. The Commission finds no fault with the adjudicator’s findings of the involved Trooper’s action since the involved Trooper properly followed PSP’s Prisoner Transportation and Security policy (which permits Troopers to search and handcuff anyone in custody for purposes of transportation in the interest of member safety). The problem identified by the Review Committee (and as adopted by the Commission) is that the language of PSP’s transportation policy conflicts with PSP’s Juveniles policy (as written). For example, PSP’s Juveniles policy ONLY permits the handcuffing of a juvenile status offender (like the runaway juvenile in this incident) when the juvenile is “violent, combative, or cannot be subdued” (none of these circumstances were applicable here).

After the Review Committee presented its preliminary findings and conclusions pursuant to Section 8.3. of the Commission’s Bylaws, PSP acknowledged that its Juveniles policy can be made clearer (to include when a juvenile is taken into “custody” for civil enforcement purposes) that the juvenile will be handcuffed for both officer and citizen safety when transporting. The Commission acknowledges that the inconsistency identified during the Review Committee’s work can be easily remedied by amending either PSP’s Juveniles policy to permit handcuffing a juvenile status offender when he or she presents (as in this case) a flight risk and/or for transportation purposes, for example, or clarifying PSP’s Prisoner Transportation and Security policy to include discretion to handcuff a person in custody who is transported for a civil enforcement purpose.

BASED ON ITS REVIEW, THE COMMISSION FOUND THE COVERED AGENCY’S COMPLETED INTERNAL INVESTIGATION WAS –

- ✓ **Prompt**
- ✓ **Impartial**
- ✓ **Fair**
- Complete**
- Performed in Manner Consistent with Applicable Policies**
- Included Findings and Discipline that were Reasonable**

ADDITIONAL FACTORS / NOTES

- I. Pennsylvania Consolidated Statutes, Title 18, Chapter 5, Section 508 – Use of force in law enforcement states, in part, that while making an arrest a peace officer, or any person whom he has summoned or directed to assist him, need not retreat, or desist from efforts to make a lawful arrest. He is justified in the use of any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest.

Note: The Commission acknowledges that 18 Pa.C.S. § 501 defines “belief” as “reasonable belief,” thus incorporating an objective reasonableness standard consonant with the United States Supreme Court’s decision in *Graham* (as explained in more detail below). Certain sections of PSP’s written Use of Force policy also incorporate the same language. Notwithstanding the above, the Commission respectfully submits that, because Section 508 does not use the precise formulation of the *Graham* justification test (namely, “‘objectively reasonable’ in light of the facts and circumstances confronting [the officer]”) there is a potential ambiguity with respect to *application* of the test in internal administrative investigations. That is, certain portions of PSP’s Use of Force policy (as written) appear to allow for a subjective reasonable standard as determined by the officer deploying such force.

- II. The United States Supreme Court in *Graham v. Connor* opined the Fourth Amendment to the United States Constitution provides, in part, that the “reasonableness” inquiry is determined by whether an officer’s actions are “objectively reasonable” given the facts and circumstances confronting them without regard to their underlying intent or motivation. Accordingly, the “reasonableness” of a particular use of force incident must be judged from the perspective of a reasonable officer on the scene and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

Note: Under the *Graham* standard, the burden to prove or disprove “reasonableness” and thus “justified” can be determined by how **a reasonable officer** with comparable training and experience would react. This standard is “objectively reasonable” and permits judgmental determinations of reasonable force to be made regarding the officers’ actions during a use of force incident by supervisors, internal affairs investigators, law enforcement adjudicators, and other reasonable officers based on an examination of the facts and circumstances of a particular incident.

- III. Unlike PSP’s Use of Force policy (as written), the Review Committee (and as adopted by the Commission) identified several law enforcement entities’ use of force policies (including those of five Pennsylvania municipalities and/or townships – Philadelphia, Pittsburgh, Lancaster, City of Bethlehem, and Cheltenham Township) that more clearly demonstrate utilization and application of an “objectively reasonable” standard when evaluating the actions of law enforcement personnel to be, for example, that of a “**reasonable or rational officer**” [Philadelphia – updated January 2017]; “**an ordinary and prudent person**” [Pittsburgh – reissued January 2021]; “**objectively reasonable, proportional, and necessary**” [Lancaster – reviewed November 2020]; “**an officer on the scene**” [City of Bethlehem – evaluated June 2020]; and “**reasonable police officer**” [Cheltenham Township – revised March 2020].

THE COMMISSION’S FINAL RECOMMENDATION(S) FOR CORRECTIVE ACTION(S)

Recommendation No. 1

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police adopt suggested language to comply with United States Supreme Court precedent and amend its

(written) Use of Force policy to correct the deficiencies identified during this review (see **Addendum 1** to Final Report of the Commission for Internal Case No. 21-0001-P titled “*Policy Enhancement Recommendations*”).

Note: The Pennsylvania State Law Enforcement Citizen Advisory Commission notes legislative changes to Title 18, Chapter 5, Section 508 (Use of force in law enforcement) are necessary to better ensure compliance with United States Supreme Court precedent. Specifically, amending language permitting the determination of reasonable force to be judged as “any force which he believes to be necessary” to the “objectively reasonable” standard mandated by *Graham v. Connor* being the use of force determined “from the perspective of a reasonable officer on the scene” may be necessary. The Pennsylvania State Law Enforcement Citizen Advisory Commission attaches a summary of five use of force policies utilized by Pennsylvania law enforcement agencies as reference material (see **Addendum 2** to the Final Report of the Commission for No. 21-0001-P titled “*Use of Force Policy Research and Reference Materials*”).

Recommendation No. 2

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police consider enhancements to PSP’s de-escalation policies (FR 9-1 (Use of Force) and FR 9-1.09 (De-Escalation)) consistent with recommendations contained in **Addendum 1** attached hereto and with PSP’s updated de-escalation training in collaboration with PSP’s use of force training experts.

Recommendation No. 3

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police continue efforts to procure fully integrated patrol vehicle Mobile Video Recorder (MVR) systems that include cloud storage and options for Interview Room Recorder (IRR) and Body Worn Camera (BWC) systems.

Recommendation No. 4

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police consider enhancements to PSP’s Juveniles policy (FR 7-7 (Juveniles)) that specifies procedures for transporting status offenders and/or PSP’s Prisoner Transportation and Security policy to include discretion to handcuff a person in custody who is transported for a civil enforcement purpose.

Recommendation No.5

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police consider (when and where feasible) the purchase of adequate quantities of permanently installed security shields or “cage cars” that allow transportation without the need to handcuff, as circumstances permit.

AS ADOPTED AND PRESENTED BY RESOLUTION NO. UOF-1 OF THE USE OF FORCE REVIEW COMMITTEE (DATED NOVEMBER 19, 2021)

AS ORIGINALLY ADOPTED AND RATIFIED BY RESOLUTION NO. 2 OF THE PENNSYLVANIA STATE LAW ENFORCEMENT CITIZEN ADVISORY COMMISSION (DATED DECEMBER 10, 2021)

SIGNATURE OF THE CHAIRPERSON OF THE PENNSYLVANIA STATE LAW ENFORCEMENT CITIZEN ADVISORY COMMISSION:



(Electronic Signature Authorized)

PRINT: Sha S. Brown

SIGNATURE OF THE SECRETARY OF THE PENNSYLVANIA STATE LAW ENFORCEMENT CITIZEN ADVISORY COMMISSION:



(Electronic Signature Authorized)

PRINT: Jaimie L. Hicks

Use of Force Policy Enhancement Recommendations

FR 9-1 Use of Force published 8/2/2021

The Use of Force Review Committee (as adopted by the Pennsylvania State Law Enforcement Citizen Advisory Commission (Commission)) found that PSP's use of force training program complies with, and training instructors were aware of, and understood, legal standards mandated by the United States Supreme Court. However, the Use of Force Review Committee (as adopted by the Commission) identified several areas in PSP's (written) Use of Force policy that should be strengthened, including:

- Redefining the terms “Reasonable Belief” [1.02 (M)] and “Reasonable Force” [1.02 (N)] to include such belief *as a reasonably prudent member or officer would hold* and such force *as a reasonably prudent member or officer would believe* is necessary.
- Redefining the term “De-escalation” [1.02 (C)] to include verbal and non-verbal communications to reduce, stabilize, eliminate, or defuse threats to gain voluntary compliance with the use of necessary proportional force.
- Mandating supplemental use of force training after a use of force incident involving injury or death under Section 1.03 (Duties and Responsibilities), Subsection (A.4).
- Mandating reporting of all use of force incidents whether such force results in injury or death including all threatened use or display of a weapon (i.e., pointing a firearm or a taser) under Section 1.03 (Duties and Responsibilities), Subsection (B.2).
- Redefining use of de-escalation techniques prior to any force deployment to reflect the objective reasonableness standard of *“a reasonably prudent member or officer would believe to be necessary under the totality of the circumstances”* under Section 1.07 (Less-Lethal Force – General), Subsections (A1 through A5).
- Adding language mandating the use of proportional force (given the totality of circumstances) to carry out a legitimate law enforcement function and force avoidance by employing de-escalation techniques as circumstances permit under Section 1.07 (Less-Lethal Force – General), Subsections (C) and (D).

Use of Force Policy Research And Reference Materials

During its review, the Use of Force Review Committee (and as adopted by the Pennsylvania State Law Enforcement Citizen Advisory Commission (Commission)) researched policies of various Pennsylvania municipal law enforcement agencies. Below are the most recent pertinent updates to use of force policies regarding utilization of “reasonable belief” incorporating the **objectively reasonable** standard mandated by *Graham v. Connor* (“judged from the perspective of a reasonable officer on the scene”) versus the **subjectively reasonable** standard (as written) within the Pennsylvania State Police’s (PSP) Use of Force policy and 18 Pa.C.S. § 504 (“any force which he believes to be necessary”).

PSP FR 9-1 (distributed 08/02/2021), 1.02 Definitions, Subsection (M) – “Reasonable Belief”: an objective belief based on the totality of the circumstances; **Subsection (N) – “Reasonable Force”:** The amount of force **reasonably believed by the member or enforcement officer to be necessary** under the totality of the circumstances.

Pennsylvania Law Enforcement Agency Policies Supporting “Objectively Reasonable” Determinations –

1. Philadelphia Police Department – Directive 10.1

- Updated January 30, 2017
- Two Definitions: “Objectively Reasonable” – is a fourth amendment standard whereby an officer’s belief that they must protect themselves or others from death or serious bodily injury is compared and weighed against what **a reasonable or rational officer would have believed under similar circumstances.**

2. Pittsburgh Bureau of Police – Use of Force 12-06

- Re-issued January 5, 2021
- Under Subsection - Definitions 2.9: “Reasonable Belief” – The facts and circumstances the officer knows, or should know, that are such to cause **an ordinary and prudent person** to act or think in a similar way under similar circumstances.

3. Lancaster Bureau of Police – Use of Force 499.05

- Reviewed November 2020

Addendum 2 to Final Report of the Commission for Internal Case No. 21-0001-P

- Policy states, in part: “it is the policy of the Lancaster Bureau of Police that officers may only use force when it is **objectively reasonable, proportional, and necessary**”.
- Definitions: “Objectively Reasonable” – is the legal standard to determine the lawfulness of the force used. Using **Graham v. Conner** and from articulated facts it is the determination that the need to use force and the level of force used was objectively reasonable in light of the totality of the circumstances known to the officer at the time.

4. City of Bethlehem Bureau of Police – Use of Force

- Evaluated June 15, 2020
- Section 1 C (2) – “in determining if the level of force used was “objectively reasonable,” the decision is based upon what level of force **an officer on the scene** would have used under a totality of the circumstances.”

5. Cheltenham Township Police – Directive 3 Deadly Force and the Discharge of Firearms Policy

- Revised March 18, 2020
- Section III Definitions: “Reasonable Belief” – a legal concept which evaluates the officer’s actions under the following criteria: Would a reasonable police officer in the same circumstances and experiencing the same informational input feel the same level of danger? Would this reasonable police officer employ the same level of force employed by the officer under scrutiny? The evaluation must not be made under the bright light of “20-20” hindsight, but through the eyes of the officer under the conditions of the actual incident.

**RESPONSE BY COVERED AGENCY
TO
FINAL REPORT OF THE COMMISSION
INTERNAL CASE NO. 21-0001-P**



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
1800 ELMERTON AVENUE
HARRISBURG, PA 17110

COLONEL ROBERT EVANCHICK
COMMISSIONER

February 11, 2022

Chairman Sha S. Brown
Office of State Inspector General
Bureau of Law Enforcement Oversight
Law Enforcement Citizen Advisory Commission
555 Walnut Street
Harrisburg, PA 17101

Re: Response to Final Report of the Commission for Report # 21-0001-P.

Dear Chairman Brown:

This correspondence is the response of the Pennsylvania State Police (PSP) to Pennsylvania State Law Enforcement Citizen Advisory Commission (PSLECAC)'s final report and recommendations for Internal Case No. # 21-0001-P.

Pursuant to Executive Order 2020-04, as amended, the PSP has reviewed the recommendations contained in the PSLECAC's final report. This written response identifies the recommendations that will be implemented, and addresses recommendations that cannot be implemented or require further study.

Response to Recommendation No. 1:

The PSP appreciates the PSLECAC recognizes "...that PSP's Use of Force policy, as written, does appropriately incorporate the 'objective reasonableness standard' mandated by the United States Supreme Court..." and "that PSP's use of force training complies with, and incorporates legal standards mandated by the United States Supreme Court in both written materials and physical instruction." The PSLECAC identified provisions within the PSP's Use of Force policy (as written) that it concluded "...may be confusing to troopers trying to legally comply with the reasonableness standard as required." For clarity, and as part of its commitment to improvement, the PSP will begin the process of refining the definition and language of the term "reasonable belief" in Field Regulation (FR) 9-1, Use of Force (distributed 08/02/2021).

Regarding the recommendation in Addendum 1, the PSP mandates supplemental training after all use of force incidents involving injury or death, as noted in FR 9-1, 1.03 (A)(4), the PSP also mandates such training when a member has been adjudicated with an improper use of force. The PSP mandates Supplemental Use of Force Training, for members who are involved in incidents resulting in death or serious bodily injury. Also, on a case-by-case basis, adjudicators can recommend additional use of force training.

A use of force, even when it results in injury or death, may be appropriate, legally justified, and necessary. When a use of force is found to be lawful and in accordance with established procedures, mandating generic use of force training, without identifying a particular deficiency, would substantially increase the training burden on the Use of Force Unit, and be of little utility. The PSP requires training when a deficiency or inappropriate use of force is identified through Internal Affairs Division investigations and analysis by the Risk Management Officer, who administers the Early Intervention Program. The PSP endeavors to continuously improve its use of force training and to provide incident driven responsive training in appropriate circumstances.

With respect to the recommendation in Addendum 1, that the PSP mandate use of force reporting for all threatened use or display of weapons, the PSP is currently exploring appropriate ways to expand its data capture with respect to use of force incidents, specifically to meet the Federal Bureau of Investigation, use of force reporting requirements and through the latest update to internal tracking systems. The PSP is examining how to tailor reporting tools to capture enhanced data for use of force incidents. The PSP will take this recommendation under advisement, as it develops additional use of force reporting.

Finally, as for the recommendation in Addendum 1, that the PSP mandates proportional force to carry out a legitimate law enforcement functions and force avoidance by employing de-escalation techniques, the PSP's current regulation already incorporates force avoidance de-escalation techniques, which is reinforced through training. In addition, as noted above, FR 9.1, 1.07 already meets the legal standard under State and Federal law. FR 9.1, 1.07 (A) (1-5) clearly states that members may use less-lethal force when, "they reasonably believe that such force is necessary [or immediately necessary] ..." Accordingly, the PSP believes FR 9.1, as written, currently meets the precepts articulated in this recommendation. In addition, as noted above, the PSP will consider the language modifications and definition suggestions made by the PSLECAC, as the PSP is continuously evaluating best practices and ways to improve interactions with the public.

Response to Recommendation No. 2:

The PSP previously updated the de-escalation policy to meet the spirit of the recommended language in Addendum 2 with the August 2, 2021 revision. These concepts are re-enforced through a robust training program.

Response to Recommendation No. 3:

The PSP has been actively engaged in the Commonwealth procurement process to obtain and deploy Body-Worn Cameras. This has been a priority for the current command staff for several years. The PSP will continue its efforts to procure a fully integrated patrol vehicle Mobile Video/Audio Recording system with Cloud Storage and options for Interview Room Recorder and Body-Worn Camera systems.

Response to Recommendation No. 4:

The PSP currently adheres to guidelines established by the Pennsylvania Commission on Crime and Delinquency regarding juveniles held in custody. The PSP does recognize the relevant regulations regarding the transportation of status offenders and discretion in handcuffing a juvenile in custody for a civil enforcement purpose can be improved for clarity. As such, applicable regulations will be updated, accordingly.

Response to Recommendation No. 5:

The PSP agrees protective barriers in PSP vehicles provide an added layer of officer safety. The PSP continually reevaluates upgrading additional vehicles with security shields but upgrades to PSP current fleet of service vehicles is subject to budgetary constraints. It is important to note, the installation of a security shield would not eliminate the need for a prisoner to be secured with handcuffs. During all phases of transport, a prisoner could still pose a danger to themselves and the member.

The PSP thanks the members of the PSLECAC for their time and dedication to this process and look forward to continuing to work together.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Evanchick".

Robert Evanchick
Commissioner
Pennsylvania State Police