

FINAL REPORT OF THE COMMISSION

Name of Review Committee	USE OF FORCE REVIEW COMMITTEE
Chairperson(s) of Review Committee	DAVID A. SONENSHEIN, ESQ.
Members of Review Committee	JOSHUA S. MAINES, ESQ., and ELIZABETH C. PITTINGER
Non-Member Advisors	SHA BROWN, CHRISTOPHER KROKOS, and TIFFANY WELCOME
Ex-officio Member	JALILA PARKER*
Date Review Began	07/15/2021
Report Number	21-0002-P
Date of Report	2/28/2022

* 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 (Compliance Strikes and Physical Restraints)	

BACKGROUND

Incident Date
January 16, 2019
Troop Jurisdiction of Incident
TROOP B (covering ALLEGHENY, WASHINGTON, GREENE, and FAYETTE counties)
Criminal Disposition
Not Applicable
Agency Administrative Disposition
RULED JUSTIFIED BY COMMANDING OFFICER TROOP B (June 26, 2019)

SCOPE AND METHODOLOGY OF REVIEW

Pursuant to 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 concerning lower level uses of force during interactions with law enforcement personnel 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 internal adjudicatory findings and discipline (if any) were reasonable under standard law enforcement protocol; 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 its completed internal investigation that includes a description of all investigative activities and relevant dates along with a summary of all facts as determined by the investigation, and criminal and administrative adjudications.

Specifically, in performing the review of the matter currently under consideration, the Commission's Use of Force Review Committee (Review Committee) used the following methodology:

1. Reviewed how the Covered Agency's completed internal investigation was conducted when compared to internal policy and relevant collective bargaining agreements to determine whether the investigation was conducted in a prompt and fair manner.
2. Reviewed internal relevant policies designed to safeguard fairness and impartiality to ensure that the Covered Agency's completed internal investigation was conducted in accordance with said policies and determine whether any conflict of interest exists based on all known information.
3. Reviewed the Covered Agency's completed internal investigation to ensure investigators collected all relevant facts reasonably obtainable and conducted all relevant interviews.
4. Reviewed the Covered Agency's adjudication report to ensure all relevant facts were considered, including all known actions by the law enforcement officer(s), to determine whether the adjudicator's decision was reasonable and based on a totality of the circumstances.
5. Compared the discipline issued (if any) with past disciplinary precedent to confirm that the discipline (if any) was reasonable and consistent with the Covered Agency's just cause standard, rules and regulations, collective bargaining agreements, and/or grievance and arbitration decisions.
6. Compared facts and circumstances described in the Covered Agency's completed internal investigation with relevant internal policies and training along with best practice guidelines (i.e., Final Report of the "President's Task Force on 21st Century Policing") to determine if any policy or training deficiencies exist. Where deficiencies are identified, make recommendations for corrective action(s).

RELEVANT POLICIES AND CRITERIA EXAMINED

1. Collective Bargaining Agreement between the Commonwealth of Pennsylvania and the Pennsylvania State Troopers Association (effective dates of July 1, 2017 through June 30, 2020);
2. United States Department of Justice Standards for Internal Affairs (2005);
3. PSP Policy No. AR 4-25 (Internal Investigations);
4. PSP Policy No. FR 9-1 (Use of Force);
5. PSP Policy No. FR 7-2 (Prisoner Security and Transportation);
6. PSP Policy No. AR 4-6 (Rules of Conduct for Employees);
7. PSP Policy No. FR 1-1 (General Requirements);
8. PSP Policy No. AR 7-3 (Incidents Involving Persons with Mental Illness/Mental Health Emergencies);
9. United States Department of Justice publication titled "*The President's Commission on Law Enforcement and the Fair Administration of Justice*" (2020);
10. United States Department of Justice, Office of Justice Programs, publication titled "*Police Discretion and Mentally Ill Persons*"; and
11. United States Department of Justice publication titled "*The President's Task Force on 21st Century Policing*" (2015).

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's (PSP) completed internal investigation concerning **Internal Case No. 21-0002-P**, the Commission adopts such findings and conclusions and determined the following:

The Commission found that PSP's completed internal investigation was prompt, fair, impartial, and complete which was corroborated by examining PSP's investigative and adjudication reports, relevant interviews, and information provided by PSP during its Oral Presentation. Regarding promptness, fairness, impartiality, and completeness, the Commission also found that PSP's completed internal investigation was consistent with departmental policy, the relevant collective bargaining agreement, and guidelines established by the United States Department of Justice's (US DOJ) published standards and principles concerning internal affairs investigations. Lastly, the Commission confirmed that PSP's completed internal investigation and subsequent adjudication did not result in documented disciplinary action which rendered this determination inapplicable to this review.

Regarding its determination of whether the adjudicator's findings were reasonable under standard law enforcement protocols, the Commission determined that the adjudicator failed to review and/or address (aside from the use of force) any other actual or potential policy violations (including those relating to professionalism or general conduct) as required by or consistent with PSP Policy No. AR 4-25 (Internal Affairs) based on the following:

The Commission confirmed that two Troopers involved in this incident (specifically the Troopers who restrained the citizen in the rear of the patrol vehicle) were required to attend remedial training in "Arrest and Control Techniques." The Commission notes that remedial training is a valid option when addressing apparent policy violations in lieu of progressive discipline.

However, during its assessment of the potential root cause(s) of this use of force incident, the Commission identified other apparent violations of PSP policy, including PSP Policy No. AR 4-6 (Rules of Conduct for Employees) and PSP Policy No. FR 1-1 (General Requirements) which require Troopers to:

1. always conduct themselves to reflect most favorably on both PSP and the Commonwealth (see Section 603.A (Department));

2. refrain from using indecent or profane language or gestures (see Section 604.B.1.1. (Conduct));
3. exercise the utmost patience and discretion and not engage in argumentative discussions, even in the face of extreme provocation (see Section 605.G.1.1. (Conduct and Demeanor)); and
4. avoid conducting themselves in a manner which is unbecoming to a police officer, which is defined as conduct that could reasonably be expected to destroy public respect for PSP (see Section 1.02 (Unbecoming Conduct)).

Immediately preceding the use of force incident between the citizen and the first Trooper, the Commission specifically notes a verbal exchange that possibly escalated the encounter. As noted in the adjudicator's report, a Trooper raised his voice slightly and stated, "[a]lright just shut your fucking mouth," in response to the citizen's racial slurs and foul language toward Troopers. Following the Trooper's verbal escalation, the citizen replied ("fuck you,") and rose from the bench in an aggressive stance. The Trooper further escalated the encounter by continuing to engage the citizen in an argumentative fashion stating, "[s]hut your fucking mouth, I will put you through a wall." After the verbal escalation, although the citizen's movements were restricted (handcuffs and legs were secured to the floor with leg irons), the Trooper physically grabbed the citizen by both shoulders and forced him back down to the bench and backwards into the wall.

The Commission also notes that PSP Policy No. AR 4-25 (Internal Affairs) requires adjudicators to address any apparent policy violations while reviewing a use of force incident. Specifically, the policy (under Adjudication of Internal Affairs Investigations, Adjudicating Officer's Responsibilities) states, the adjudicator will: (1) "[a]ddress other performance issues uncovered through [an] investigation, in separate Department Correspondence by counseling and/or training which should be made part of the supervisory file;" and (2) "[i]nstitute a Blue Team entry when a separate and distinct allegation of misconduct is discovered during the adjudication review." The Commission requested additional information and confirmed with PSP that the adjudicator did not address any other performance issues (including the apparent violation of PSP's rules pertaining to employee conduct). While the Commission found the citizen's conduct was abhorrent, i.e., use of racial slurs, inflammatory language, spitting on floor, kicking, biting, etc., such conduct should not excuse or dismiss any potential collateral misconduct by members. Accordingly, the Commission determined, in part, that the verbal confrontation between the first Trooper and the citizen (inclusive of the apparent policy violation) was a potential root cause(s) for the use of force which followed. Based on that assessment, the Commission determined that by failing to consider and/or address the apparent policy violation as required by PSP policy, the adjudicator's findings were not reasonable.

Regarding its determination of whether any policy or training deficiency exists, PSP provided the Commission with documentation to form a sufficient understanding of the underlying facts concerning the incident under review and to identify potential policy or training deficiencies as required. Based on that review, the Commission identified the following:

Finding No. 1 – Mental Health and Substance Abuse Crisis Response by Law Enforcement

After responding to the service call and encountering the citizen, Troopers described the citizen's condition as "manifestly under the influence of alcohol." Throughout the encounter, the Commission notes that the citizen continued to exhibit possible characteristics of a substance related addictive disorder, or other mental health concern. Though Troopers rightfully determined the citizen had an active arrest warrant and took custody of the citizen in preparation for extradition, PSP records do not indicate whether Troopers considered the citizen's potential substance abuse or mental health crisis as the possible cause of the citizen's behavior.

For example, the Commission notes that while in custody, the citizen continuously exhibited signs of possible crisis that remained unmanaged. As the citizen's conduct became more erratic, PSP records do not indicate that Troopers considered or recognized whether the citizen's behavior may have been influenced by his intoxicated condition or utilized appropriate tactics to de-escalate. Instead, as previously noted, the Commission found that Troopers potentially escalated the situation by engaging in an argumentative discussion with the citizen in possible violation of PSP policy. This verbal altercation led to a further escalation when the Trooper physically grabbed the citizen and initiated the use of force incident that followed which included compliance strikes.

PSP Policy No. AR 7-3 (Incidents Involving Persons with Mental Illness/Mental Health Emergencies) requires Troopers to continually evaluate individuals they encounter to assess whether characteristics of mental illness are present and may be contributing to an individual's presenting behavior (including that of substance related addictive disorder under Section 3.05A). Under Section 3.06 of the policy, "Guidelines/Procedures for Incidents Involving Persons with Mental/ Illness Health Emergencies," Troopers "shall endeavor" to take steps to calm the situation when feasible.

In recent years, PSP enhanced its Use of Force policy (PSP Policy No. FR 9-1) and significantly upgraded its training regarding de-escalation including: (1) a requirement for Troopers to attempt to de-escalate when they reasonably believe it is safe or practical to do so; and (2) a duty to intervene when Troopers reasonably believe it's necessary to prevent or stop the apparent use of unreasonable force. However, the Commission found that PSP's "Incidents Involving Persons with Mental Illness/Mental Health Emergencies" policy does not specifically require the use of de-escalation tactics when handling a person in a recognized mental health or substance abuse crisis and should be updated to mirror the requirements of PSP's current Use of Force policy.

In addition, the Commission notes that PSP's "Incidents Involving Persons with Mental Illness/Mental Health Emergencies" policy does not suggest or require its members to seek the assistance of a mental health or substance abuse crisis specialist when encountering, transporting, or detaining a citizen in mental health or substance abuse crisis, in accordance with best practices. For example, "*The President's Commission on Law Enforcement and the Fair Administration of Justice*" (published by the US DOJ (2020)), recommends that, "[I]aw [e]nforcement should have processes and procedures specifying officer response protocols for calls for service that involve individuals with a mental health disorder or substance abuse disorder or those who are homeless **including the integration of behavioral health professionals and other community service providers**" [emphasis added].

Similarly, the US DOJ's Office of Justice Programs' publication titled "*Police Discretion and Mentally Ill Persons*" provides three options when encountering individuals in crisis: (1) hospitalization; (2) arrest; or (3) handle informally. The authors of the publication describe the benefits and risks of each approach, and their recommendations include, among others that:

1. the public mental health system and the **criminal justice system must collaborate so that police officers have several alternatives**, not just arrest or hospitalization, when handling mentally ill persons in the community; and
2. **police officers must receive adequate training in recognizing and handling mentally ill citizens** so that individuals who are more disordered (rather than disorderly) are referred to the appropriate system. The police also must have a clear set of procedures to handle such persons, including negotiated "no-decline" agreements with hospitals. Such agreements would give police a designated place to take apparently mentally ill citizens. These agreements also are vital for establishing a successful liaison between the police department and the mental health system and ending the refusal of hospitals to treat certain individuals.

Lastly, the Final Report of the "*President's Task Force on 21st Century Policing*" (published by the US DOJ (2015)) states, "[p]eace officers standards and training should make crisis intervention training (CIT) a part of both basic recruit and in-service training."

During its Oral Presentation, and when offering comments following presentation of the Review Committee's preliminary findings, conclusions, and recommendations in accordance with Section 8.3 of the Commission's Bylaws, PSP indicated that crisis intervention specialists are not always readily available to assist (particularly in Pennsylvania's more rural and/or less populated counties) which may hinder PSP's ability to issue a statewide policy. However, the Commission notes that while some areas may lack resources, other areas where mental and behavioral health and substance abuse providers are more readily available should be engaged whenever feasible. In response, PSP noted that (where available) it has taken concrete steps to forge these relationships and partnerships in recent years throughout Pennsylvania and will continue to do so. In addition, the Commission notes that PSP is neither the cause nor sole solution to this deficiency, and appropriate state agencies should take more systemic steps to ensure that

Pennsylvania counties are adequately funding and complying with state law mandates, i.e., Community Mental Health/Intellectual Disabilities Act and Mental Health Procedures Act, which require the availability of such county services.

During the Commission's deliberations, special guests from Blueprints for Addiction Recovery (Blueprints) offered their expertise regarding how law enforcement can engage and collaborate with behavioral health, substance abuse, and other service providers when encountering a person suffering from a mental health or substance abuse crisis. For example, Blueprints piloted and operates an addiction crisis intervention co-responder program in Lancaster County which works with the county's municipal law enforcement agencies (including its Office of District Attorney) and is expanding into other counties. Blueprint's Chief Executive Officer (Christopher Dreisbach) and Executive Vice-President (Benjamin McCoy) discussed how a substance abuse co-responder program works and offered recommendations concerning how such a program can aid law enforcement's response that benefits citizens while also supporting enforcement activity when engaging persons in a substance abuse crisis. Additionally, Edward M. Cunningham, Chief of the Elizabethtown Borough Police Department, offered a law enforcement perspective about the benefits of substance abuse co-responder programs and best practices. Accordingly, the Commission recognizes that mental health and substance abuse crisis co-responder programs require sustained efforts and involvement by both county and state law enforcement agencies and dedicated funding along with finessed law enforcement training so that (when encountering citizens suffering from a mental health or substance abuse crisis) such citizens are first seen as human beings in need and accompanying conduct is not perceived as defiance, but rather symptoms of the condition itself.

Finding No. 2 – Reasonable Force Determinations During Use of Force Incidents

Regarding the matter currently under consideration, the Commission sought to determine if PSP has any policy or related training regarding when and where on the body compliance strikes may or may not be appropriate, i.e., when the citizen is handcuffed or otherwise restrained, and strikes to the head, neck, groin, or joint area which present elevated risks of potential injury, compared with the reasonableness of the use of force based on the totality of the circumstance. The Commission could not identify any specific restriction or prohibition preventing Troopers from striking citizens while handcuffed or otherwise restrained and/or striking citizens in the head, neck, groin, joint, or other area with an elevated risk for serious injury. Ultimately, the justification of "compliance strikes" delivered to a citizen is determined by whether the strikes were deemed reasonable by the adjudicator.

As noted in the Commission's Final Report for **Internal Case No. 21-0001-P**, PSP's Use of Force policy defines reasonable force, in part, as "[t]he amount of force reasonably believed by the member or enforcement officer to be necessary under the totality of the circumstances to effect an arrest; defend oneself or another from bodily harm; or to prevent escape, suicide or the commission of a crime" [emphasis added].

In this instance, the adjudicator's decision of reasonableness was made using an objective belief based on a totality of the circumstances as required by United States Supreme Court precedent in Graham v. Connor, 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). Here, the adjudicator objectively decided that the Troopers' use of force was justified since Troopers were permitted under policy to "defend oneself or another from bodily harm" by noting the citizen's actions during the struggle that included attempts to spit on, bite, grab, and kick Troopers.

However, the Commission notes 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 application of force. Here, the involved Trooper engaged in an argumentative exchange with the citizen, approached the bench where the citizen was secured by handcuffs and to the floor by leg irons, and initiated the use of force by grabbing the citizen and forcing him down to the bench and backwards into the wall.

It was this apparent escalation that preceded the struggle that included attempts by the citizen to spit on, bite, grab, and kick Troopers. The Commission found the involved Trooper's actions (argumentative exchange with, and

approaching, grabbing, and forcing the citizen down to the bench and backward into the wall) in response to the citizen's use of racial slurs and 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. Thus, the Trooper's actions leading up to the use of force incident should have been directly scrutinized and documented by the adjudicator in his or her assessment.

Finding No. 3 – Duty to Render Medical Assistance

During its review of PSP's completed internal investigation of the use of force incident currently under consideration, the Commission found that the citizen sustained apparent injury. For example, video footage of the incident clearly shows potential signs of injury (including visible blood). Consequently, the Commission requested and received information regarding PSP's policies concerning any duty to render medical assistance.

Under PSP's Use of Force policy, the Commission notes that there is a requirement for Troopers to transport a sick or injured prisoner to a medical facility for treatment by ambulance "if deemed appropriate" regardless of when the sickness or injury occurred. However, the Commission found that PSP's policy does not explicitly require a duty to render medical assistance because of its use of an undefined qualifier, i.e., "if deemed appropriate," which can be subjective. PSP's webpage also provides FAQ's regarding use of force that ask, for example, "[a]re troopers trained to perform and seek necessary medical attention after using force?" with a response which reads, "[y]es, Troopers are trained to render aid and call for assistance after a use of force. Like PSP's policy, the Commission found that the question and answer provided on PSP's webpage does not provide clarity on the urgency of providing or seeking medical attention (i.e., immediately or promptly). Here, PSP records indicate that the injured citizen was not immediately provided medical assistance after the use of force (which included "compliance strikes to the head, face, and torso" from several different Troopers). Instead of being immediately transported for medical attention given the visible blood, PSP records indicate that the citizen was first taken to the County Booking Center for arraignment and only after arraignment, was the citizen treated for facial contusions received during the use of force incident.

To aid its review, the Commission conducted research on best practices from other jurisdictions and found that the State of New Jersey, for example, established a *duty* to render medical assistance as a core principal within their policy providing, "[a]fter any use of force, and when the environment is safe, officers shall promptly render medical assistance to any injured person consistent with the officer's training and shall promptly request emergency medical assistance for that person, if needed or requested. Officers [also] have a duty to monitor individuals for potential medical intervention after any officer uses force" [emphasis added].

The Commission also found that an average citizen has a responsibility and duty to render aid under Pennsylvania's Vehicle Code (see 75 Pa.C.S § 3744) when a driver of any vehicle is involved in an accident resulting in injury or death. For example, Pennsylvania law requires that a driver "render to any person injured in the accident reasonable assistance, including the making of arrangements for the carrying of the injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if requested by the injured person."

However, the Commission could not identify similar legal or other policy requiring law enforcement to render medical assistance after a use of force incident when necessary or specifically requested by the injured person. Here, the Commission found that PSP's policy only requires the assistance to be rendered if being transported, and only if "deemed appropriate" by an involved member.

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

- ✓ **Prompt;**
- ✓ **Fair;**
- ✓ **Impartial;**

- ✓ Complete; and
- ✓ Performed in Manner Consistent with Applicable Policies.
- X Included Adjudicatory Findings that were deemed *Not Reasonable* under standard law enforcement protocols; and
- ✓ Determined that the reasonableness of discipline (if any) was not applicable.

ADDITIONAL FACTORS / NOTES

Not Applicable

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

Recommendation No. 1 – Mental Health and Substance Abuse Crisis Response by Law Enforcement

In accordance with best practices, the Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police enhance certain policies and training regarding encounters with citizens in Mental Health and/or Substance Abuse Crisis, including:

- a) requiring its members to utilize de-escalation tactics and tools (whenever feasible) when encountering a citizen who may be suffering from, or presents a potential mental or behavioral health or substance abuse crisis;
- b) implementing a policy to require (whenever feasible) that its members seek the assistance of a mental or behavioral health or substance abuse crisis specialist or equivalent health professional when encountering, transporting, or detaining a citizen exhibiting potential signs of suffering from a mental or behavioral health or substance abuse crisis;
- c) pursuing service agreements with hospitals, behavioral health professionals, community mental health and substance abuse treatment providers, and crisis intervention program specialists to collaboratively respond (whenever feasible) when a member encounters citizens who may be experiencing a mental or behavioral health or substance abuse crisis; and
- d) continuing to ensure that all members receive basic recruit and/or annual in-service training in crisis intervention, including training in recognizing and handling citizens experiencing mental health and substance abuse crisis.

Recommendation No. 2 – Reasonable Force Determinations During Use of Force Incidents

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police require (by appropriate guidance) that disciplinary adjudicators document scrutiny of a member's actions prior to the application of force to ensure compliance with legal precedent and confirm all conduct is considered during reasonable force adjudicatory decisions.

Recommendation No. 3 – Duty to Render Medical Assistance

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police update its Use of Force policy to **require** members to **promptly** render medical assistance following a use of force incident, when the environment is safe, including:

- a) when injuries are apparent to, or at the request of, the citizen after a use of force incident;
- b) securing transportation by ambulance when feasible or practical;
- c) providing medical attention consistent with the member's training until emergency medical treatment can be provided by a licensed medical professional;
- d) requiring a duty to continually monitor the citizen while in custody for potential medical interventions after the use of force; and



- e) if a citizen refuses treatment, obtain a signed refusal form from the medical facility or licensed service provider.

ORIGINALLY ADOPTED AND PRESENTED BY RESOLUTION NO. UOF-1 OF THE USE OF FORCE REVIEW COMMITTEE (DATED FEBRUARY 14, 2022)

AS ORIGINALLY ADOPTED AND RATIFIED BY RESOLUTION NO. 3 OF THE PENNSYLVANIA STATE LAW ENFORCEMENT CITIZEN ADVISORY COMMISSION (DATED FEBRUARY 28, 2022)

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

A handwritten signature in black ink, appearing to read "Sha S. Brown".

(Electronic Signature Authorized)

PRINT: Sha S. Brown

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

A handwritten signature in black ink, appearing to read "Jaimie L. Hicks".

(Electronic Signature Authorized)

PRINT: Jaimie L. Hicks

**RESPONSE BY
COVERED AGENCY
TO
FINAL REPORT OF THE
COMMISSION
INTERNAL CASE NO. 21-0002-P**



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

COLONEL ROBERT EVANCHICK
COMMISSIONER

June 24, 2022

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

Dear Chairman Brown:

Re: Response to Final Report of the Commission for Report # 21-0002-P

This correspondence represents the response of the Pennsylvania State Police (PSP) to Pennsylvania State Law Enforcement Citizen Advisory Commission's (Commission) final report and recommendations for Internal Case No. # 21-0002-P. After a thorough review of the final report, we find there are some recommendations which we have previously implemented. Additionally, there are some recommendations which we will not pursue implementation for the reasons stated below.

Recommendation No. 1- Mental Health and Substance Abuse Crisis Response by Law Enforcement. This recommendation was delineated into several subcategories which we address as follows:

Regarding Recommendation No. 1, (a) the PSP has already embraced the spirit of this recommendation by requiring its members to utilize de-escalation tactics, whenever feasible, when interacting with all members of the public not just citizens who maybe suffering from mental health or substance abuse issues. PSP has trained its members in de-escalation for over 20 years. The Department's de-escalation policy was enhanced in 2021. We remain committed to de-escalation where appropriate.

Regarding Recommendation No. 1, (b) although the isolated behaviors exhibited by the subject in this case could be indicative of someone under the influence of alcohol or someone exhibiting mental health issues, the Troopers involved described the individual manifestly under the influence of alcohol. One of the priorities of the PSP is improving highway safety by proactively removing impaired drivers from the highways. Our members save lives on a daily basis by arresting drivers under the influence of drugs and alcohol. When these defendants are in need of medical care,

Correspondence to the Honorable Sha S. Brown

June 24, 2022

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Troopers promptly obtain it for them. We have also found that some drivers benefit from court ordered substance abuse counseling which can be the result of DUI arrests made by our members. Troopers have a great deal of experience in dealing with members of the public under the influence of alcohol and in this case did not see the "possible crisis" the members of the Commission attributed to the subject. Nevertheless, PSP wishes to reassure the Commission that it does have policies in place directing how we respond to persons exhibiting signs of mental or behavior health or substance abuse issues. PSP members are required to utilize outside mental health services when appropriate. Additionally appropriate medical care is also required to be provided for all persons in custody. Finally, we noted the President's Executive Order to Advance Effective, Accountable Policing and Strengthen Public Safety, mandates the Attorney General to assess and issue guidance to State, Tribal, local, and territorial officials on best practices for responding to calls and interacting with persons in behavioral or mental health crisis or persons who have disabilities. PSP looks forward to that guidance and will consider it, along with the Commission's recommendations, in future policy revisions regarding responding to calls and interacting with persons in behavioral or mental health crisis or persons who have disabilities. In the Commission's findings, there is some discussion about various options when encountering individuals in crisis including hospitalization, arrest, and handling informally. While the PSP is open to these discussions, it is important to note that the subject of this particular case was taken into custody on a valid arrest warrant.

Regarding Recommendation No. 1 (c), the PSP relies on county and Commonwealth resources to implement the provisions of the Mental Health Procedures Act. It would be impractical to have service agreements with various hospitals across the 67 counties within the Commonwealth. Troopers already work closely with county and county contracted resources when encountering persons who appear to need immediate mental health care.

Regarding Recommendation No. 1 (d), Members receive annual in-service training with regard to recognizing and interacting with individuals who are experiencing mental health and substance abuse crisis. In addition, in 2021 we provided additional training to all first line patrol supervisors in this area, and we have held crisis intervention trainings across the state. We appreciate the Commission's recognition of this training and its recommendation that it continue. The PSP will continue to provide this critical training, subject to operational limitations.

Recommendation No. 2- Reasonable Force Determinations During Use of Force Incidents

Regarding Recommendation No. 2, the Adjudicator and Reviewing Officer make their determination on the appropriateness of the use of force incidents taking into consideration the totality of the circumstances. Although not explicitly stated, the events before, during, and after the use of force were considered, as part of the totality of circumstances, by the Adjudicator and Reviewing Officer, consistent with Graham v. Connor and Abraham v. Raso. The PSP Departmental Disciplinary Office has recently issued guidance to all adjudicators, which addresses the Commission's recommendation.

Correspondence to the Honorable Sha S. Brown

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Recommendation No. 3- Duty to Render Medical Assistance

Regarding Recommendation No. 3, after employing use of force, members are required to look for evidence of injury, render appropriate medical aid, and request further medical assistance, when necessary, for the subject and any injured individual, as soon as it is safe to do so. The recommendation from the Commission seeks to require that members promptly render medical assistance following a use of force incident when the environment is safe. There is no distinction between the words used by the Commission in its recommendation, "promptly render medical assistance following a use of force incident when the environment is safe" and the PSP regulation which requires medical assistance when necessary "as soon as it is safe to do so". These revisions were under consideration prior to the recommendations made by the Commission, and we are pleased to report this update. We have updated FR 9-1 to require members render appropriate medical aid, and request further medical assistance, including ambulance or other emergency medical transportation service in certain situations including when medical aid is requested. We have also updated our policy to clarify a requirement exists to continually monitor a subject in custody for evidence of injury and to provide medical aid, when necessary. Although the wording in the revised PSP regulations is slightly different than that of Recommendation No 3, we have codified the recommended changes.

Sincerely,



Robert Evanchick
Commissioner
Pennsylvania State Police