

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	21-0004-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	DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
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 – Deployment of OC Spray

BACKGROUND

Incident Date	June 16, 2018
Troop Jurisdiction of Incident	Pennsylvania State Park – Allegheny County (TROOP B)
Criminal Disposition	Not Applicable
Agency Administrative Disposition	RULED JUSTIFIED – DCNR REVIEW BOARD (DIRECTOR OF STATE PARKS)

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 allegations of 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 Rangers Association (effective dates July 1, 2015 through June 30, 2019);
2. United States Department of Justice's (US DOJ) Standards for Internal Affairs (2005);
3. DCNR Directive 6050-#P-0-18-11 – Clarification of Enforcement Actions;
4. DCNR Directive 6050-#P-0-18-09 – Authority to Carry Baton and/or Handcuffs;
5. DCNR Directive 6050-#P-0-18-03 – Authority to Carry Oleoresin Capsicum Aerosol Projectors; and
6. DCNR Directive 6050-#P-0-18-07 – Use of Force.

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 Department of Conservation and Natural Resources' (DCNR) completed internal investigation concerning **Internal Case No. 21-0004-P**, the Commission adopts such Findings and Conclusions and determined the following:

The Commission found that DCNR's completed internal investigation was prompt, fair, impartial, and complete, which was corroborated by examining DCNR's investigative and adjudication reports, relevant interviews, and information provided by DCNR during its Oral Presentation. Regarding promptness, fairness, impartiality, and completeness, the Commission also found that DCNR'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. Additionally, the Commission found that the Covered Agency's adjudicatory findings were reasonable, all relevant facts were considered, and the conclusions were consistent with standard law enforcement protocols. Lastly, the Commission confirmed that DCNR'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 any policy or training deficiency exists, DCNR provided the Commission with sufficient documentation to form an understanding of the underlying facts concerning the incident under review and to identify any potential policy or training deficiencies as required. Based on that review, the Commission determined the following:

Finding No. 1 – Use of Force Policy Enhancements

During its review, the Commission conducted a thorough examination of DCNR's Use of Force policy along with its policy authorizing Park Rangers to carry and deploy Oleoresin Capsicum (OC) Aerosol spray. Specifically, the Commission focused on evaluating internal controls and guidance provided by these policies to ensure that reasonable force determinations can be made by DCNR adjudicators consistent with both United States Supreme Court precedent (see Graham v. Connor, 490 U.S. 386, 394 (1989)(an officer's application of force must be objectively reasonable given the totality of circumstances the officer faces at the time)) and Pennsylvania Law (see 18 Pa.C.S. § 508 (Use of Force in Law Enforcement)). Concerning the matter currently under consideration, the use of force involved the deployment of OC Spray that successfully overcame the citizen's resistance without the risk of serious injury to either the citizen or Park Ranger.

The authority for use of force is provided by Section 508 of Pennsylvania's Crimes Code which states, in pertinent part, that a Park Ranger is "justified in the use of any force which he believes to be necessary to effect [an] arrest and of any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest." Further, the Commission found that DCNR's Use of Force policy expands upon this notion by providing additional prohibitions regarding the use of unnecessary force and requires that the minimum amount of force is used during citizen encounters.

Specifically, DCNR’s policy defines the “minimum amount of force” as “the least amount of force that will permit state park officers to subdue or arrest an individual, while still maintaining a high level of safety for themselves and the public” and specifically prohibits Park Rangers from using unnecessary or excessive force. Here, the Commission found that DCNR’s completed internal investigation regarding the Park Ranger’s actions, including repeatedly asking for identification, informing the citizen of what action(s) would follow for failing to comply, calling for county police assistance, issuing several warnings before deployment of OC spray, and calling for immediate medical assistance following use of force, complies with both legal standards and DCNR policies, and that DCNR’s administrative review panel confirmed the Park Ranger’s use of force was appropriate under the totality of circumstances.

However, the Commission also found that DCNR’s Use of Force policy could be strengthened by including: (1) specific definitions for “reasonable force” consistent with Graham, which requires that a use of force incident must be “judged from the perspective of a reasonable officer on the scene” versus use of a subjective assessment based on “any force *he* believes to be necessary” [emphasis added]; and (2) guidance for administrators responsible for making judgements on the reasonableness of such force. Additionally, the Commission found that DCNR should include (within their Use of Force policy) a requirement for its Park Rangers to use de-escalation tactics and tools consistent with DCNR’s training, which DCNR currently provides in collaboration with the Pennsylvania State Police.

Of note, and after receiving comments from DCNR following presentation of its preliminary findings, conclusions, and related recommendations in accordance with Section 8.3 of the Commission’s Bylaws, the Commission recognizes that DCNR independently formed a Ranger Task Force (whose members include both management staff and Park and/or Forestry Rangers) charged with regularly reviewing internal policies, policy formulation and law enforcement best practices to ensure continuous improvement of departmental policies and practices that best serve both citizens and law enforcement personnel. The Commission also notes that participatory management within a law enforcement agency is beneficial and should be replicated across all state law enforcement entities under the Governor’s jurisdiction, where feasible.

Finding No. 2 – Body Worn Cameras

During its review, the Commission researched best practices and identified that the United States Department of Justice’s Office of Justice Programs provides both guidance and funding for law enforcement agencies interested in planning and implementing a body worn camera program. The Office of Justice Programs’ website states, in part, “[l]aw enforcement agencies across the United States and throughout the world are using body-worn cameras (BWCs) as a promising tool to improve evidentiary outcomes, and enhance the safety of, and improve interactions between, officers and the public. BWCs also are proving to be an important tool to assist broader law enforcement, problem-solving, and community engagement strategies within jurisdictions. BWCs can be highly effective resources, providing an unalterable audio and visual record of interactions that capture empirical evidence in the event of a crime, police-citizen interaction, or use-of-force incident.”

The Commission found that audio and/or video footage of this use of force incident was not available to either DCNR adjudicators or this Commission because DCNR does not have a body worn camera program. The Commission notes that audio and/or video footage of this use of force incident could have provided a visual record of the encounter between the Park Ranger and the citizen to further assist DCNR’s adjudicatory assessment of the Park Ranger’s conduct under a totality of the circumstance’s standard. Here, the Park Ranger was also on patrol alone and audio and/or video footage of the incident could have produced vital evidence in support of the Park Ranger’s actions and DCNR’s adjudication of the incident.

After receiving comments from DCNR following presentation of its preliminary Findings, Conclusions, and related Recommendations, the Commission notes that DCNR recognized the benefits of BWCs, and their recent prevalence as standard law enforcement issued equipment. DCNR indicated that it began discussions to initiate and begin to advocate for funding to implement a body worn camera program and the Commission supports these efforts.

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.**
- ✓ **Included Adjudicatory Findings and Discipline (if any) that were Reasonable and Based on Applicable Law Enforcement Standards and Protocols.**

ADDITIONAL FACTORS / NOTES

Not Applicable

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

Recommendation No. 1 – Use of Force Policy Enhancements

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Department of Conservation and Natural Resources enhance its Use of Force policy to include:

- a) a definition of “reasonable force” consistent with United States Supreme Court precedent (Graham v Connor); and
- b) de-escalation protocols, when feasible (i.e., use of verbal and non-verbal communications to reduce, stabilize, eliminate, or defuse threats and gain voluntary compliance with the minimum amount of force necessary) consistent with its training.

Recommendation No. 2 - Body Worn Cameras

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Department of Conservation and Natural Resources implement a body worn camera program as recommended by best practices offered by the United States Department of Justice and supports DCNR's efforts.

ORIGINALLY ADOPTED AND PRESENTED BY RESOLUTION NO. UOF-2 OF THE USE OF FORCE REVIEW COMMITTEE (DATED FEBRUARY 14, 2022)

AS ORIGINALLY ADOPTED AND RATIFIED BY RESOLUTION NO. 4 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:



(Electronic Signature Authorized)

PRINT: Sha S. Brown

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

Jaimie L. Hicks

(Electronic Signature Authorized)

PRINT: Jaimie L. Hicks

**RESPONSE BY
COVERED AGENCY
TO
FINAL REPORT OF THE
COMMISSION
INTERNAL CASE NO. 21-0004-P**



June 29, 2022

Mr. Sha S. Brown
Pennsylvania State Law Enforcement Citizen Advisory Committee
Forum Place
555 Walnut Street, 8th Floor
Harrisburg, PA 17101

Dear Mr. Brown,

On behalf of Secretary Cindy Adams Dunn, I would like to thank the OIG and the PSELCAC for your in-depth review and recommendations of **Internal Case # 21-0004-P (Use of Force Review Committee)**. DCNR is constantly striving to improve our public service and the administrative processes that govern our actions. The recommendations from the citizen advisory commission adds another layer to that healthy process and is welcomed.

Recommendation No. 1 – Use of Force Policy Enhancements The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Department of Conservation and Natural Resources enhance its Use of Force policy to include: a) a definition of “reasonable force” consistent with United States Supreme Court precedent (Graham v Connor); and b) de-escalation protocols, when feasible (i.e., use of verbal and non-verbal communications to reduce, stabilize, eliminate, or defuse threats and gain voluntary compliance with the minimum amount of force necessary) consistent with its training.

Response to Recommendation No.1- Beginning in February of 2018, DCNR began performing an extensive and comprehensive review and revision process of all its law enforcement related policies, practices, training and equipment. The major objectives are to ensure that our enforcement program exceeds standards and provides clear communications to our Rangers as to their professional conduct and safety for all. The group performing the work is the DCNR Ranger Task Force. The Task Force is comprised of management staff from the Bureau of Forestry and the Bureau of State Parks, the Policy Office, Office of Chief Counsel, Office of Administration, the FOP Rangers Union, and the Office of the Secretary. The work of PSLECAC, through your recommendations is a welcomed addition to that process.



- Recommendation 1-a) DCNR has included the recommendation in full into a revised Use of Force Policy. The policy is now in final review with the DCNR Chief Counsels Office. Once approved for legal form and sufficiency it will be forwarded to the Governor's Office of General Counsel for review, approval and subsequent implementation.
- Recommendation No.1b) At the time of the reviewed incident DCNR did not have de-escalation protocols in the Use of Force Policy even though all DCNR Rangers were being trained in such. Between the time of the reviewed incident and the review conducted by PSLECAC, DCNR did incorporate de-escalation protocols within the policy. The current policy is in complete accord with the recommendation.

Recommendation No. 2 - Body Worn Cameras The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Department of Conservation and Natural Resources implement a body worn camera program as recommended by best practices offered by the United States Department of Justice and supports DCNR's efforts.

Response to Recommendation No. 2- DCNR Secretary Dunn has approved and directed the departments Task Force to develop specifications and policies for Body Worn Cameras for all DCNR Rangers in accordance with the United States Department of Justice recommendations. The directive also includes Mobile Vehicle Recorders (MVR) for all patrol vehicles. As part of the process DCNR will simultaneously endeavor to develop a funding mechanism to implement the recommendation in full.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Norbeck", written in a cursive style.

John W. Norbeck
Department of Conservation and Natural Resources
Deputy Secretary for Parks and Forestry