

FINAL REPORT OF THE COMMISSION

Name of Review Committee	BIAS-BASED POLICING REVIEW COMMITTEE
Chairperson(s) of Review Committee	MARVIN BOYER
Members of Review Committee	DENISE ASHE; DR. A. SURESH CANAGARAJAH, Ph.D; and MARISA C. WILLIAMS
Non-Member Advisors	SHA S. BROWN, ELIZABETH C. PITTINGER, and CHRISTOPHER KROKOS
Ex-officio Member	JALILA PARKER*
Date Review Began	07/15/2021
Report Number	21-0006-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)	BIAS-BASED POLICING COMPLAINT

BACKGROUND

Incident Date	February 4, 2016
Troop Jurisdiction of Incident	Troop G (covering Centre, Blair, Mifflin, Juanita, Huntingdon, Bedford, and Fulton counties)
Criminal Disposition	N/A
Agency Administrative Disposition	Information Only (Not Investigated) – Internal Affairs Division Decision – May 16, 2016

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 concerning allegations of racial or ethnic discrimination and other bias-based policing or external complaints of bias-based policing 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 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 the completed internal investigation that shall include a description of all investigative activities, relevant dates, and a summary of the facts as determined by the investigation, and criminal and administrative adjudications.

In performing its review of the matter currently under consideration, the Commission's Bias-Based Policing Review Committee (Review Committee) used the following methodology:

1. Reviewed information and records provided by the Pennsylvania State Police (PSP) as well as information provided during PSP's Oral Presentation made pursuant to Section 8.2 of the Commission's Bylaws, to determine the nature of the bias-based policing complaint; and to the extent the review identified potential policy and training deficiencies, make recommendations to correct any perceived policy or training deficiencies.
2. Examined PSP's policies relevant to the complaint of bias or discrimination to identify any perceived policy or training deficiency. Where perceived deficiencies were identified, make recommendations to PSP consistent with best practices to correct the perceived deficiencies.

RELEVANT POLICIES AND CRITERIA EXAMINED

1. PSP Policy No. FR 1-2 (Duty Requirements) (Effective April 10, 2014);
2. PSP Policy No. FR 1-1 (General Requirements);
3. PSP Policy No. FR 1-2 (Duty Requirements);
4. PSP Policy No. AR 4-6 (Rules of Conduct for Employees);
5. PSP Policy No. AR 4-26 (Discrimination, Discriminatory Harassment, Sexual Impropriety, and Retaliation);
6. PSP Policy No. AR 4-37 (Bias-Based Profiling Review);

State Law – 42 Pa.C.S. § 5803 [Asset Forfeiture], Subsection (E) [Receipt]; and

Best Practices Document titled Final Report of the “*President’s Task Force on 21st Century Policing*” [May 2015, United States Department of Justice (US DOJ)]

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:

PSP provided the Review Committee (and as adopted by the Commission) with documentation to form a sufficient understanding of the underlying facts concerning the incident under review to identify potential policy or training deficiencies as required.

Finding No. 1

The Review Committee (and as adopted by the Commission) was not able to reach determinations of whether PSP’s completed internal investigation was prompt, fair, impartial, complete, performed in a manner consistent with applicable policies, and whether the adjudicatory findings and discipline, if any, were reasonable under standard law enforcement protocol, as required.

During its Oral Presentation pursuant to Section 8.2 of the Commission’s Bylaws, PSP informed the Review committee that its practice is to initially screen complaints (i.e., review Motor Video Recording (MVR), incident report, etc.) filed by citizens with underlying pending court cases. PSP also informed the Review Committee that it preserves all records related to complaints but defers such investigations to avoid impacting underlying court proceedings. However, PSP noted that it will initiate a concurrent administrative investigation of the complaint in circumstances where (upon preliminary review) the conduct is considered “egregious.” In circumstances with underlying court proceedings and where PSP determines (upon preliminary review) there is no “egregious” conduct, PSP advises complainants that the appropriate remedy for resolving complaints of bias against a Trooper is through the court system. PSP informed the Review Committee that because charges were pending against the complainant at the time this complaint was filed, its investigation was closed.

However, the Commission finds PSP’s “Duty Requirements” policy (under “Requests for Assistance”), requires, in part, that it obtain all pertinent information regarding a complaint in an official manner and that the complaint be judiciously acted upon consistent with existing rules, regulations, and policies. Additionally, the Commission finds that the same PSP policy does not permit matters necessitating investigative action to be disposed of by another entity. The Commission also submits that there is no adequate procedural means either in the Pennsylvania Rules of Criminal Procedure or relevant case law through which a complainant may address an allegation of bias-based policing collateral to a pending criminal case. While PSP advises complainants that no action would be taken “at this time” in its notification letter, PSP also does not advise complainants of what action(s) to take following disposition of underlying court cases or at what juncture to reinstate the complaint. Accordingly, the Commission finds that allegations made by the complainant, if determined to be true, could have criminal and/or administrative consequences for the involved Trooper and thus merits a full and complete investigation.

After the Review Committee presented its preliminary finding (relating to PSP’s notification letter and recommendation that complaints be automatically reinstated following disposition of underlying court proceedings) pursuant to Section

8.3 of the Commission's Bylaws, PSP acknowledged that its notification letter does not adequately provide complainants with guidance on how and when the citizen can reinstate a complaint for a full and complete investigation in accordance with PSP's policies. However, PSP explained that it was operationally unable to suspend investigations, and automatically reinstate all such complaints independently following disposition of underlying criminal cases given the high volume of complaints received and the need to track criminal cases throughout all 67 Pennsylvania counties. The Commission acknowledges that automatic suspension and reinstatement may be logistically improbable and agreed to amend its recommendation to require that complainants initiate reinstatement of the citizen's bias-based policing complaint following disposition of underlying criminal cases.

Finding No. 2

During its review, the Review Committee requested and received copies of policies regarding bias-based policing and confirmed PSP developed, adopted and/or operates under multiple policies designed to mitigate the risk of bias-based policing. These policies include PSP's General and Duty Requirements, Rules of Conduct for Employees, Bias-based Profiling Review policies along with federal and state mandated policies prohibiting discrimination, discriminatory harassment, sexual impropriety, and retaliation. Collectively, these policies provide guidance for PSP Troopers, supervisors, and leadership on this subject and outline prohibitions designed to mitigate acts of bias-based policing.

However, based on its review, the Review Committee identified several deficiencies within these collective policies and initially recommended that PSP develop and publish a standalone Bias-Based Policing Policy to address a number of these deficiencies. After the Review Committee presented its preliminary finding and recommendation pursuant to Section 8.3 of the Commission's Bylaws, PSP informed the Review Committee that there were several reasons it separated policies concerning a member's on- and off-duty conduct (i.e., use of social media and organizational memberships) from operational policies (like those pertaining to enforcement activity by members). Following consideration of PSP's comments, the Commission recommends that PSP:

1. Update its Bias-Based Profiling Review Policy (last updated 2008/2009) and all relevant employee code of conduct and enforcement-related policies to include, cover, and better define, prohibitions of conduct against *all* protected classes, and (where feasible) provide examples and descriptions of acts that constitute or may be indicative of bias-based policing to provide more specific guidance.
2. Update its policy concerning organizational memberships and/or affiliations to include restriction of memberships and/or affiliations in any group that may interfere with PSP operations, limit PSP's ability to function as a law enforcement agency and/or bring PSP into disrepute.
3. Update its policy regarding members' personal use of social or other publicly accessible media to restrict (either directly or indirectly) engaging in bias-based or other discriminatory or offensive behavior against *all* protected classes.
4. Update all relevant policies and mandate a duty to report acts of bias-based policing and/or other discriminatory or offensive conduct by fellow members.
5. Specifically require that all investigations of bias-based policing complaints (either initially or upon reinstatement) be completed in compliance with internal affairs policies and procedures and that investigators receive specific annual training on how to properly identify and investigate bias-based policing complaints.
6. Mandate in-service annual bias-based policing or implicit bias training for all members.

To properly address these identified deficiencies, the Commission attaches a "Recommended Guidelines" document that includes all suggested mandates and modifications as an addendum to this *Final Report of the Commission*.

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

- Prompt**
- Fair**
- Impartial**
- Complete**
- Performed in Manner Consistent with Applicable Policies**
- Reasonable Based on Standard Law Enforcement Protocol (Regarding Findings and Discipline)**

ADDITIONAL FACTORS / NOTES

Not Applicable

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 specifically mandate that all bias-based policing complaints are fully and properly investigated and judiciously acted upon if, and when, a complainant reinstates his or her complaint following disposition of underlying court proceedings. To avoid a prosecutorial conflict of interest during the pendency of underlying court cases, the Commission recommends that the Pennsylvania State Police revise its notification letter to more adequately inform complainants of the agency’s need to suspend the investigation until final disposition of any underlying law enforcement action(s) involving the citizen. In addition, and upon conclusion of the underlying court proceedings, the Commission recommends that the Pennsylvania State Police revise its notification letter to inform citizens of their right more adequately to re-file their complaint (with directions on how to do so) so that such matters can be resolved administratively and appropriately adjudicated.

Recommendation No. 2

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police amend and/or modify certain on- and off-duty code of conduct policies and/or mandate certain action in accordance with its “Recommended Guidelines” document. [See Addendum to Final Report of the Commission for **Internal Case No. 21-0006-P** titled “*Recommended Guidelines*”].

ORIGINALLY ADOPTED AND PRESENTED BY RESOLUTION NO. BBP-1 OF THE BIAS-BASED POLICING REVIEW COMMITTEE (DATED NOVEMBER 16, 2021)



AS ORIGINALLY ADOPTED AND RATIFIED BY RESOLUTION NO. 3 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:

A handwritten signature in black ink, appearing to read 'Sha S. Brown', written over a horizontal line.

(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', written over a horizontal line.

(Electronic Signature Authorized)

PRINT: Jaimie L. Hicks

Addendum to Final Report of the Commission for Internal Case No. 21-0006-P

Recommended Guidelines

To more effectively safeguard against bias-based policing, ensure proper investigation of bias-based policing complaints, and strengthen community relationships, the Bias-Based Policing Review Committee (as adopted by the Pennsylvania State Law Enforcement Citizen Advisory Commission (Commission) recommends that the Pennsylvania State Police (PSP) implement the following:

1. Update its Bias-Based Profiling Review Policy (last updated 2008/2009) and all relevant employee code of conduct and enforcement-related policies to include, cover and better define, prohibitions of conduct against *all* protected classes, and (where feasible) provide examples and descriptions of acts that constitute or may be indicative of bias-based policing to provide more specific guidance.
2. Update its policy concerning organizational memberships and/or affiliations to include restriction of memberships and/or affiliations in any group that may interfere with PSP operations, limit PSP's ability to function as a law enforcement agency and/or bring PSP into disrepute.
3. Update its policy regarding members' personal use of social or other publicly accessible media to restrict (either directly or indirectly) from engaging in bias-based or other discriminatory or offensive behavior against *all* protected classes.
4. Update all relevant policies and mandate a duty to report acts of bias-based policing and/or other discriminatory or offensive conduct by fellow members.
5. Specifically require that all investigations of bias-based policing complaints (either initially or upon reinstatement) be completed in compliance with internal affairs policies and procedures and that investigators receive specific annual training on how to properly identify and investigate bias-based policing complaints.
6. Mandate in-service annual bias-based policing or implicit bias training for all members.
7. Reaffirm and mandate that all bias-based policing complaints are fully and properly investigated and judiciously acted upon. In those circumstances where underlying court cases are pending against complainants, written notification should include information indicating the temporary suspension of the investigation of the complainant's bias-based policing complaint until final disposition of the underlying court matter and adequately inform complainants of their right, and how, to re-file their complaint so that such matters can be resolved administratively and appropriately adjudicated.

Pennsylvania State Law Enforcement Citizen Advisory Commission

**RESPONSE BY COVERED AGENCY
TO
FINAL REPORT OF THE COMMISSION
INTERNAL CASE NO. 21-0006-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 # 21-0006-P.

Dear Chairman Brown:

This correspondence is the response of the Pennsylvania State Police (PSP) to the Pennsylvania State Law Enforcement Citizen Advisory Commission (PSLECAC)'s final report and recommendations for Internal Case No. # 21-0006-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 will address recommendations that cannot be implemented or require further study.

Response to Recommendation No. 1:

The PSP will update the notification correspondence provided to citizens, who have filed a complaint. In an effort to avoid a prosecutorial conflict of interest for the citizen, when a criminal investigation/prosecution pending against them, in those circumstances where underlying criminal court cases are pending against complainants, the PSP will update its notification letter to include an advisement to the citizen that the Internal Affairs Division investigation into the allegations of racial bias will be temporarily suspended until final disposition of the underlying criminal court matter. The revised notification letter will also include instructions on how the citizen may reinstate contact with the Internal Affairs Division, upon the conclusion of the court proceedings to pursue the complaint, so that their complaint can be fully investigated.

Response to Recommendation No. 2:

With regard to the recommended guidelines in the Addendum, the PSP provides the following information:

1. The PSP will update its specific Bias Based Profiling Review Regulation, and other regulations, to better define prohibitions of conduct against all protected classes. These prohibitions are already captured in several internal regulations and prohibit any discrimination or harassment against any protected class. Furthermore, the overarching guideline governing PSP member's conduct is the regulation on conduct that is unbecoming. Make no mistake, PSP members are currently prohibited from engaging in conduct that could reasonably be expected to destroy public respect for PSP members or confidence in the Department, which would include any bias-based activity against any member of a protected class. While individual regulations may be targeted to prohibit specific types of discrimination, as an agency under the Governor's jurisdiction, PSP members are bound by management directives and policies, which make it clear that discrimination against all protected classes is prohibited.
- 2-3. The PSP will work to improve its internal regulations related to organizational membership and/or affiliations, and social media. The PSP currently has general and specific regulations that address both of these subjects, and currently address the worthy goals of this recommendation in a functional manner, including but not limited to regulations pertaining to Conduct Unbecoming, Discrimination, Discriminatory Harassment, Biased-Based Policing, and Social Media Use, which have been thoroughly vetted to comply with existing constitutional protections. PSP is cognizant of the fact that membership and/or affiliations with groups and organizations and personal use of social media involve constitutionally protected rights for government employees, including PSP members. Thus, any change will require extensive review of the current Commonwealth, Third Circuit and Supreme Court case law to determine what, if any, additional limitations are legally permissible.
4. The PSP's current regulations require members to report acts of discrimination, discriminatory harassment, or conduct which would be prohibited by other regulations, including Conduct Unbecoming. Nevertheless, the PSP will update its Bias-Based Profiling Review regulation to emphasize a duty to report.
5. All of PSP's Internal Affairs Division regulations and procedures currently apply to investigations of complaints of bias-based policing. The Heritage Affairs Section also reviews all Internal Affairs Division investigations alleging racial bias or cultural insensitivity and provides an opinion to the adjudicator as to whether the investigation has established evidentiary support of the allegations of bias. The PSP Heritage Affairs Section ensures all members of the PSP receive anti-bias and implicit bias training. The PSP will evaluate the

current training Internal Affairs Division investigators receive to determine what, if any, additional training may be beneficial to ensure the investigation of bias-based policing complaints are consistent with best practices.

6. The PSP currently mandates all members receive anti-bias and implicit bias training, starting with Cadets at the Academy. While the PSP is confident all members have been adequately trained in the area of implicit bias, the PSP will review the feasibility of making this a mandatory, annual in-service requirement.
7. As indicated in the response to Recommendation #1, the PSP will revise the correspondence sent to citizens, who have filed a complainant to include notification of the suspension of investigation until final disposition of the underlying court matter and instructions on how they may reinitiate the investigation into their complaint.

Sincerely,

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

Robert Evanchick
Commissioner
Pennsylvania State Police