

## FINAL REPORT OF THE COMMISSION

<b>Name of Review Committee</b>	BIAS-BASED POLICING REVIEW COMMITTEE
<b>Chairperson(s) of Review Committee</b>	MARVIN BOYER
<b>Members of Review Committee</b>	DENISE ASHE; DR. A. SURESH CANAGARAJAH, Ph.D; KEIR BRADFORD-GREY, ESQ.; BRENDA TATE; and DR. MARILYN M. BROWN, Ed.D
<b>Non-Member Advisors</b>	SHA S. BROWN, ELIZABETH C. PITTINGER, TIFFANY WELCOME and CHRISTOPHER KROKOS
<b>Ex-officio Member</b>	JALILA PARKER*
<b>Date Review Started</b>	08/09/2021
<b>Report Number</b>	21-0007-P
<b>Date of Report</b>	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

<b>Name of Covered Agency</b>	PENNSYLVANIA STATE POLICE
<b>Nature of Completed Internal Investigative Findings Under Review (i.e., Police-Involved Shooting, Lower-Level Use of Force, Bias-based Policing)</b>	BIAS-BASED POLICING COMPLAINT

### BACKGROUND

<b>Incident Date</b>	November 26, 2016
<b>Troop Jurisdiction of Incident</b>	Troop M (covering Lehigh, Northampton, and Bucks counties)
<b>Criminal Disposition</b>	Not Applicable
<b>Agency Administrative Disposition</b>	Information Only (Not Investigated) – Internal Affairs Division Decision – November 30, 2016

## 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 racial or ethnic discrimination and other bias-based policing or external complaints of bias-based policing resulting from 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 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, to determine the nature of the bias-based policing complaint; and to the extent the review identified potential policy and training deficiencies, made recommendations to correct any perceived policy or training deficiencies.
2. Examined PSP's policies related to the complaint of bias or discrimination to identify any perceived policy or training deficiency. Where perceived deficiencies were identified, made recommendations to PSP consistent with best practices to correct the perceived deficiencies.

## RELEVANT POLICIES AND CRITERIA EXAMINED

1. PSP Policy No. FR 1-1 (General Requirements);
2. PSP Policy No. FR 1-2 (Duty Requirements) (effective April 10, 2014);
3. PSP Policy No. AR 4-6 (Rules of Conduct for Employees);
4. PSP Policy No. AR 4-26 (Discrimination, Discriminatory Harassment, Sexual Impropriety, and Retaliation);
5. PSP Policy No. AR 4-37 (Bias-Based Profiling Review);
6. PSP Policy No. FR 6-12 (MVR Equipment Regulation);
7. PSP Policy No. AR 4-36 (Early Intervention Program); and
8. Executive Order 2020-04, as amended (dated April 30, 2021).

Best Practices Document titled Final Report of the "*President's Task Force on 21<sup>st</sup> 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 concerning **Internal Case No. 21-0007-P**, the Commission adopts such Findings and Conclusions and determined the following:

Like its Findings and Conclusions for **Internal Case No. 21-0006-P [issued on November 16, 2021 and ratified by the Commission on December 10, 2021]** which are incorporated by reference herein, the Commission was unable to reach determinations of whether PSP's completed internal investigation was prompt, fair, impartial, complete, performed in a manner consistent with applicable policies, and/or whether the adjudicatory findings and discipline, if any, were reasonable under standard law enforcement protocol, as required, because of previously identified deficiencies.

However, 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 found the following:

### **Finding No. 1 –**

#### **Mobile Video Recording Retention Storage Capacity, Accessibility, and Retention**

During its review, the Commission requested copies of the Mobile Video Recordings (MVR) or other videos or audio recordings of the incidents involving the citizen. However, PSP reported that MVRs of the initial encounter with the citizen in late Fall of 2015 and of the November 26, 2016 traffic stop, were both unavailable.

PSP's Policy No. FR 6-12 Mobile Video/Audio Recording Equipment, Section 12.06 (D) establishes that all recordings uploaded to MVR servers will be automatically deleted 60 days after the date the recording is uploaded. Consequently, recordings required to be duplicated or retained in accordance with this regulation must be duplicated within 60 days of the incident.

The Commission notes that PSP's policy follows Pennsylvania Consolidated Statutes, Title 42 (Judiciary and Judicial Procedure), Chapter 67A03 (Request for Law Enforcement Audio Recordings or Video Recordings), which states:

“An individual who requests an audio recording or video recording made by a law enforcement agency shall, within 60 days of the date when the audio recording was made, serve a written request to the individual who is designated as the open records officer for the law enforcement agency.”

The Commission found that the statutory 60-day retention period explains the unavailability of the video evidence of the late Fall 2015 traffic stop of the citizen. However, video evidence of the November 26, 2016 traffic stop should be available since the complainant filed his complaint three days later (November 29, 2016). PSP's Policy No. FR 6-12, Section 12.06 (A) states, in part, “[r]ecordings made from MVR equipment of incidents... involving verbal or written complaints against the Department shall be duplicated, retained, and processed as evidence.” Initial complaints filed with PSP are recorded in a report known as a “Blue Team” Incident Report. Here, the Commission notes that the Blue Team Incident Report does not include any documentation or notation confirming a request for duplication or retention of the MVR for the November 26, 2016 traffic stop following receipt of the citizen's complaint in possible violation of PSP's policy.

After the Review Committee presented its preliminary Findings and Conclusions to PSP in accordance with Section 8.3 of the Commission's Bylaws, PSP indicated that it does not currently list or otherwise advertise the limited availability and retention of MVRs on its website or through any other publicly accessible medium. Because there is no time limit to file bias-based policing complaints with PSP, the Commission found that proper advertisement and publication is vital to informing citizens of the limited availability and retention of MVR evidence that may support allegations of bias-based policing.

During its December 10, 2021 Regular Meeting, the Commission ratified a recommendation of the Commission's Use of Force Review Committee that PSP continue efforts to procure a fully integrated patrol vehicle MVR system that includes cloud storage and options for Interview Room Recorder (IRR) and Body Worn Camera (BWC) systems. The Commission reaffirms this recommendation since it will increase PSP's capacity to allow MVRs and other similar evidence to be retained for longer periods of time and allow for video and audio recordings to be more accessible to both members of the public and this Commission.

In further support of this recommendation, Executive Order 2020-04 (as amended) also states, in part, "[n]otwithstanding any document retention periods, all [C]overed [A]gencies must take affirmative steps to preserve any and all records and information relating to [C]overed [A]gency's completed internal investigations that fall within the Commission's purview for the time period necessary for the Commission to complete its review." Since April 30, 2021 (effective date of Executive Order 2020-04 (as amended)), the Commission found that PSP's policy was not amended and does not (as written) specifically mandate that MVR or Alternate MVR Custodial Officers retain all MVRs (involving complaints of racial or ethnic discrimination and other bias-based policing or uses of force resulting in injury or death of a civilian) which will allow the Commission to complete its reviews as required.

**Finding No. 2 –  
Citizen Engagement and Communication**

During its review, the Commission sought to identify the root cause of the complaint, what factors led to the complainant's perception of bias during the enforcement activity, and what process(es) will increase communication and minimize misunderstandings that make it difficult for a Covered Agency to identify officers who intentionally engage in explicit or implicit bias from those officers who are inappropriately accused of bias during legitimate enforcement activity.

The Commission found, in part, that a likely misunderstanding regarding aggressive traffic enforcement in a specific area and mistrust regarding the legitimacy of the Troopers' observations were potential root cause(s) of this complaint. Also, PSP's response to the complainant (i.e., its notification letter which lacked details about PSP's limitations of conducting a thorough investigation of the citizen's allegations during the pendency of his underlying court case and which inappropriately directed the complainant to the judiciary to address his grievances as found in **Internal Case No. 21-0006-P**) may have also contributed to misunderstandings and mistrust of PSP's investigative process. Combined with the limited MVR retention period as discussed above, these potential misunderstandings (i.e., publicly unknown targeted traffic enforcement in specific areas and PSP's practice of closing internal investigations of bias-based policing complaints with pending criminal or traffic charges without notifying citizens of his or her ability to refile such complaints after their disposition), make it difficult for citizens to corroborate and pursue their complaints.

The Commission researched other jurisdictions and best practices regarding how Covered Agencies can better communicate information concerning what to expect during an encounter with their officers and other basic information such as expected conduct of both officers and citizens, a citizen's legal rights, and summaries of departmental policies applicable during common enforcement activities. For example, Pittsburgh's Independent Citizen Police Review Board (CPRB), in collaboration with its Bureau of Police and multiple civic and community organizations, created and produced a brochure entitled "You and the Police." The brochure's purpose was threefold: (1) to outline certain legal rights when interacting and communicating with police; (2) to inform residents of their responsibilities and obligations when they (or a family member or friend) have contact or involvement with police officers; and (3) to promote improved relations and understanding between members of the community and the police.

Additionally, the Final Report of the "*President's Task Force on 21<sup>st</sup> Century Policing*" [May 2015, United States Department of Justice (US DOJ)] states, in part, "[l]aw [e]nforcement agencies should adopt model policies and best practices for technology-based community engagement [i.e., agency webpage, Facebook, Twitter, and Instagram accounts] that increases community trust and access." Combined, the Commission found that these best practices provide a means for law enforcement to better communicate with citizens and reduce misunderstandings regarding a Covered Agency's internal practices and policies, including those of PSP.

After the Review Committee presented its preliminary Findings and Conclusions to PSP in accordance with Section 8.3 of the Commission's Bylaws, PSP indicated that it has several initiatives designed to increase community trust and access, including a partnership with Commonwealth Media Services to produce a video regarding traffic stops (awaiting final approval), designing a similar video covering common police encounters, exploring a partnership with Alliance for Virtual Traffic Stops, and planning a partnership with Allegheny County to produce a brochure similar to the one published by the CPRB. The Commission applauds these efforts and supports PSP in these endeavors but adds that such information should be made publicly available for little to no cost, i.e., at Pennsylvania public schools, highway and public rest stops and areas, and bus and train terminals.

**Finding No. 3 –  
Enhancements to PSP's Early Intervention Program**

During its review, the Commission tried to determine if PSP can monitor its members who exhibit a pattern of racial or ethnic discrimination and other bias-based policing. Through its Oral Presentation, PSP indicated it established an Early Intervention Program (Program) to identify members who exhibit a pattern of behavior that may present a concern. After reviewing PSP Policy No. AR 4-36 (which outlines the duties and responsibilities of PSP personnel and aspects of the Program), the Commission found that the policy contained elements that are effective in identifying patterns of bias-based policing and mitigating related behavior. These elements include, for example, maintaining an internal affairs case management database, making bi-monthly database queries, monitoring complaints and related investigations, and supervising corrective action plans designed to address identified problematic behavior.

However, the Commission also found that PSP's policy does not specifically mandate bi-monthly queries and/or monitoring complaints and related investigations concerning racial or ethnic discrimination, bias-based policing, or racial insensitivity. Additionally, the Commission found that PSP's corrective action plan(s) generally do not incorporate training in the areas of bias-based policing, racial insensitivity, or implicit bias after problematic behavior is identified.

After the Review Committee presented its preliminary Findings and Conclusions to PSP in accordance with Section 8.3 of the Commission's Bylaws, PSP indicated that bias-based policing and other similar complaints of possibly problematic behavior are captured under a "catch all" category of "harassment." However, the Commission notes that "harassment" and discrimination against protected classes are very different and have different connotations. In addition, while it appreciates that this data may be captured and possibly monitored, the Commission remains concerned that the language of PSP's policy (as written) and related Program is passive and more reactive rather than affirmative and more precautionary.

**BASED ON ITS REVIEW, THE COMMISSION WAS UNABLE TO DETERMINE WHETHER THE COVERED AGENCY'S COMPLETED INTERNAL AGENCY INVESTIGATION WAS –**

- Prompt;**
- Fair;**
- Impartial;**
- Complete; and**
- Performed in Manner Consistent with Applicable Policies.**
- Or Whether its Adjudicatory Findings and Discipline (if any) were Reasonable and Based on Applicable Policies and Standards.**

## ADDITIONAL FACTORS / NOTES

Not Applicable

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

### **Recommendation No. 1(a) – Mobile Video Recording Storage Capacity and Accessibility**

The Pennsylvania State Law Enforcement Citizen Advisory Commission reaffirms its previous recommendation that the Pennsylvania State Police continue efforts to procure a fully integrated audio/video monitoring systems that includes cloud storage and increased storage capacity and retention capabilities.

### **Recommendation No. 1(b) – Mobile Video Recording Retention**

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police amend its Mobile Video/Audio Recording Equipment policy to specifically mandate the retention of MVRs (involving complaints of racial or ethnic discrimination and other bias-based policing or uses of force involving injury or the death of a citizen following generation of Blue Team Incident Reports) necessary for this body to complete its reviews, as required by Executive Order 2020-04 (as amended).

### **Recommendation No. 2 – Citizen Engagement and Communication**

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police develop a citizen engagement brochure and adopt a policy to distribute information [in English, Spanish, and any other language (where feasible and applicable) including online translation] *via* the Covered Agency's webpage, Facebook, Twitter, and Instagram accounts concerning the following topics:

- a. what to expect during an encounter with a Trooper;
- b. a citizen's rights when interacting or communicating with a Trooper;
- c. responsibilities and obligations of both Troopers and citizens during law enforcement activities;
- d. how to file a complaint;
- e. a citizen's right to re-file a bias-based policing complaint after disposition of court cases;
- f. notice of the 60-day retention period for MVR evidence that may support a citizen's complaint regarding Trooper conduct;
- g. a citizen's legal rights concerning body and vehicle search and seizure;
- h. a citizen's legal rights regarding asset forfeiture and information on how a citizen can reclaim their property; and
- i. what a citizen should expect if arrested or taken into custody.

### **Recommendation No. 3 – Enhancements PSP's Early Intervention Program**

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police update their Early Intervention Program (EIP) policy to include:

- a. requirements to conduct bi-monthly queries to identify EIP candidates engaging in racial or ethnic discrimination, bias-based policing, and/or racial insensitivity; and
- b. mandate remedial corrective actions that include bias-based policing, racial insensitivity, or implicit bias training following administrative investigations and adjudicatory findings of bias-based policing.

**ORIGINALLY ADOPTED AND PRESENTED BY RESOLUTION NO. BBP-1 OF THE BIAS-BASED  
POLICING REVIEW COMMITTEE (DATED FEBRUARY 14, 2022)**

**AS ORIGINALLY ADOPTED AND RATIFIED BY RESOLUTION NO. 5 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:**



\_\_\_\_\_  
(Electronic Signature Authorized)

**PRINT: Jaimie L. Hicks**

**RESPONSE BY  
COVERED AGENCY  
TO  
FINAL REPORT OF THE  
COMMISSION  
INTERNAL CASE NO. 21-0007-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

Re: Response to Final Report of the Commission for Report #21-0007-P

Dear Chairman Brown:

This correspondence is the response of the Pennsylvania State Police (PSP) to the Pennsylvania State Law Enforcement Citizen Advisory Commission's (Commission) final report and recommendations for Internal Case No. # 21-0007-P. After a thorough review of the final report, the PSP finds there are some recommendations which have been previously implemented. Additionally, there are some recommendations which will not be implemented due to the reasons stated below.

Recommendation No. 1 (a) – Mobile Video Recording Storage Capacity and Accessibility

As previously indicated in the response to recommendations made by the Commission for Report Number 2021-0001, 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.

Recommendation No. 1(b) – Mobile Video Recording Retention

A goal of the PSP's use of Mobile Video Recording (MVR) equipment is to enhance public trust by preserving documentation of member-citizen interactions. It is the policy of the PSP to retain available MVR for incidents involving the use of force incidents described in this recommendation. It is also a matter of practice that complaints of bias-based policing and racial or ethnic discrimination are preserved by the Internal Affairs Division if the complaint was made within the 60-day retention period under our current regulations and practices. In its continued goal to

enhance public trust, the PSP will update its regulation to ensure the preservation of available MVR recordings for complaints of racial or ethnic discrimination and other bias-based policing when they are received by the Internal Affairs Division.

## Recommendation No. 2 – Citizen Engagement and Communication

As previously explained to the Commission, the PSP is currently developing a citizen's engagement brochure. The PSP will explore the feasibility of distributing the brochure through various online social media platforms and public websites. The PSP will also consider including the topics (Recommendation No. 2(a) through 2(i)) outlined by the Commission in the brochure currently under development. It should be noted that some components of this recommendation have been in place for several years. For instance, "how to file a complaint" (Recommendation No. 2(d)) has been on the PSP public webpage for many years. Forms detailing how to file a complaint against a Trooper are also located in the lobby of every PSP station. Furthermore, with respect to Recommendation No. 2(f), notice of the 60-day retention period for MVR evidence is posted on the PSP public website located at:

<https://www.psp.pa.gov/contact/Pages/REQUESTING-AUDIO-AND-VIDEO-RECORDINGS-FROM-THE-PENNSYLVANIA-STATE-POLICE.aspx>.

## Recommendation No. 3- Enhancement of PSP's Early Intervention Program

As previously presented and explained to the Commission's Bias-Based Policing Review Committee, Administrative Regulation (AR) AR 4-36, Early Intervention Program (EIP) requires the Risk Management Officer to conduct bimonthly queries to compare data for members and enforcement officers. The query is conducted to identify potential EIP candidates. There are several categories outlined in AR 4-36 to include harassment which encompasses racial or ethnic discrimination, bias-based policing, and racial insensitivity. The PSP recognizes clarification in the policy is warranted to expand upon the definition of harassment to include "racial or ethnic discrimination, bias-based policing, and racial insensitivity. It is important to note every complaint received for racial/ethnic discrimination, bias-based policing, and racial insensitivity automatically trigger an Internal Affairs Division (IAD) investigation. Furthermore, AR 4-36 requires any member or enforcement officer accepted into the EIP to follow a Plan of Action, which would include remedial training in cultural diversity, policies and procedures governing bias-based policing, racial insensitivity, and implicit bias, if appropriate given the reason for the EIP nomination. Finally, any complaints of racial/ethnic discrimination, bias-based policing, or racial insensitivity which are adjudicated as sustained may result in both appropriate remedial training and an appropriate level of discipline. The PSP evaluates facts and circumstances, including mitigating and aggravating factors, of each sustained allegation of misconduct prior to taking corrective action, which may include disciplinary action and whether training would also be appropriate. It is important to note that training can be ordered at any time and can occur apart from the disciplinary process; beneficial training can occur even before an adjudication. Current regulations require coordinated efforts to ensure timely, impartial adjudication of confirmed occurrences of prohibited conduct (including racial or ethnic discriminatory behavior) and swift, effective remedial action (including remedial training) to discourage repetition of prohibited conduct. We are currently reviewing several PSP policies related to discrimination and will explore how to further clarify ways in which

Correspondence to the Honorable Sha S. Brown  
June 24, 2022  
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we can prevent a repetition of discriminatory behavior through training, such as those recommended by the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Evanchick". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

Robert Evanchick  
Commissioner  
Pennsylvania State Police