

FINAL REPORT OF THE COMMISSION

Name of Review Committee	CRITICAL INCIDENT REVIEW COMMITTEE
Chairperson(s) of Review Committee	KELLEY B. HODGE, ESQUIRE
Members of Review Committee	BISHOP CURTIS JONES, SR.; DR. SPERO LAPPAS, ESQUIRE, PH.D; CHARIMA YOUNG and ANDREA LAWFUL-SANDERS
Non-Member Advisors	SHA S. BROWN, ELIZABETH C. PITTINGER, and CHRISTOPHER KROKOS
Ex-officio Member	JALILA PARKER*
Date Review Began	08/09/2021
Report Number	21-0011-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)	POLICE-INVOLVED SHOOTING / USE OF FORCE – LETHAL

BACKGROUND

Incident Date	March 17, 2016
Troop Jurisdiction of Incident	TROOP D - OHIOSVILLE, PA
Criminal Disposition	NO CRIMINAL CHARGES FILED; USE OF FORCE JUSTIFIED UNDER TITLE 18 BY BEAVER COUNTY DISTRICT ATTORNEY
Agency Administrative Disposition	RULED JUSTIFIED BY PA STATE POLICE BUREAU OF INTEGRITY AND PROFESSIONAL STANDARDS-INTERNAL AFFAIRS

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 police-involved shootings to determine the following:

1. Whether the completed internal investigation was:
 - ✓ Prompt;
 - ✓ Fair;
 - ✓ Impartial;
 - ✓ Complete; and
 - ✓ Performed in a manner consistent with applicable policies.
2. Whether the adjudicatory findings and discipline were reasonable under standard law enforcement 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 this review, the Commission's Critical Incident Review Committee (Review Committee) used the following methodology:

1. Reviewed how the Covered Agency's completed internal investigation was conducted compared to department policy and relevant collective bargaining agreements to confirm whether the investigation was conducted in a prompt and fair manner.
2. Reviewed department policy designed to ensure fairness and impartiality to ensure that the Covered Agency's completed internal investigation was conducted in accordance with those 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 all relevant facts that were reasonably obtainable were collected, and all relevant interviews were conducted by investigators.
4. Reviewed the Covered Agency's adjudication report to ensure all relevant facts were considered, including all known actions by law enforcement officers, and determine whether adjudicatory findings were reasonable based on a totality of the circumstances.
5. Compared facts and circumstances described in the Covered Agency's completed internal investigation with relevant department policies, department training, and 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 were identified, made 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 July 1, 2012 through June 30, 2017);
2. PSP Policy No. AR 4-25 (Internal Investigations) (effective March 12, 2014);
3. PSP Policy No. FR 7-3 (Use of Force) (effective October 31, 2011);
4. PSP Policy No. FR 9-1 (Use of Force) (effective August 2, 2021);
5. PSP Policy No. FR 1-5 (Officer Involved Shootings/Serious Police Incidents) (effective November 25, 2015);
6. PSP Policy No. FR 7-6 (Domestic Violence and Protection Orders) (effective November 15, 2018);
7. Best Practices – U.S. Department of Justice (US DOJ), Office of Community Oriented Policing Services, “Standards and Guidelines for Internal Affairs: Recommendations for a Community of Practice” (2005);
8. Best Practices – US DOJ Final Report titled “President’s Task Force on 21st Century Policing” (2015); and
9. Best Practices – US DOJ Final Report titled “President’s Commission on Law Enforcement and the Administration of Justice” (December 2020)

THE COMMISSION’S FINAL FINDINGS AND CONCLUSIONS

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

The Commission finds that PSP’s completed internal investigation was prompt, fair, and complete, all of which was corroborated by the Review Committee’s examination of PSP’s investigative and adjudication reports, relevant interviews, and information provided by PSP during its Oral Presentation pursuant to Section 8.2 of the Commission’s Bylaws. Regarding promptness, fairness, and completeness, the Commission also finds that the investigation was consistent with guidelines established by the US DOJ’s published standards and guidelines concerning internal affairs investigations, with PSP’s departmental policies, and with the relevant collective bargaining agreement. Additionally, the Commission finds that PSP’s adjudicatory findings were reasonable, all relevant facts were considered, and the conclusions were consistent with standard law enforcement protocols.

Regarding impartiality, the Commission finds that PSP’s completed internal investigation was conducted in compliance with department policy designed to ensure fairness and impartiality and the Commission did not identify any actual conflict of interest based on all known facts. However, the Commission finds that it would have been preferable if the criminal investigation of this incident (completed by PSP) was conducted by an external criminal investigative agency (i.e., the Pennsylvania Office of Attorney General) based on national best

practices. Criminal investigations by an external agency ensure that any use of force incident (particularly those of police-involved shootings resulting in injury or death) are independent and devoid of any appearance of impropriety and free from any potential or inherent conflict of interests consistent with published reports of the US DOJ (*“Standards and Guidelines for Internal Affairs: Recommendations for a Community of Practice”* (2005) and the Final Report of the *“President’s Task Force on 21st Century Policing”* (Action Item 2.2.2 2015) (2015)).

Regarding the involvement of the County District Attorney, the Commission also finds a potential conflict of interest concerning the prosecutorial review of this incident based on the County District Attorney’s: (1) participation in the development of the decision to authorize use of deadly force; and (2) conducting the subsequent review of this incident to determine if the use of deadly force was ultimately justified under the law.

Support of the Commission’s findings is found in the US DOJ’s Final Report, entitled *“President’s Commission on Law Enforcement and the Administration of Justice”* (Part 1, The Rule of Law), which provides, in part, “[s]tates should enact legislation that requires law enforcement to have an independent, external agency that has met minimum training and accreditation standards, conduct the criminal investigation of use of force incidents that result in death or serious bodily injury,” (i.e., Pennsylvania Office of Attorney General). Likewise, similar support of independent prosecutorial reviews can be found in the US DOJ’s Final Report, entitled *“President’s Task Force on 21st Century Policing,”* which states, in part, “[t]he Task Force encourages policies that mandate the use of external and independent prosecutors in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death and in-custody deaths.”

By way of further example, the US DOJ’s Final Report, entitled [“Standards and Guidelines for Internal Affairs”](#) (Section 3.3 – Special Needs of Criminal Investigations) (when discussing the importance of conducting internal criminal investigations), noted that “a criminal investigation of an agency employee, ...is so serious that an agency should consider extraordinary measures to ensure that the investigation is as thorough and independent of conflicts of interest as possible” and “the degree to which the public and the agency respect the conclusion of the case depends greatly on the agency’s choice of investigative process and personnel.” The Commission finds that following these and other best practices not only ensures the integrity of such criminal investigations and builds trust within communities, but also protects PSP (and its members) from any unwarranted criticism and any appearance of impropriety or favoritism towards members.

During its Oral Presentation to the Review Committee pursuant to Section 8.2 of the Commission’s Bylaws, PSP confirmed the criminal investigation of the use of deadly force incident under review was handled by Troopers outside the involved member’s troop jurisdiction. However, the Commission notes that the apparent conflict lies in the fact that all investigatory decision-making is handled within (verses external to) PSP’s chain of command. When asked about the inherent conflicts and appearance of impropriety concerning its handling of criminal investigations of its own members, PSP advised the Review Committee that the agency has several layers of internal review within its investigative processes to ensure independent criminal investigations. In addition, PSP noted that it only conducts parallel criminal investigations of members’ use of force incidents and works collaboratively with county District Attorney Offices (but, acknowledged it acts as the lead criminal

investigatory agency, if asked). PSP explained further that, as Pennsylvania’s largest law enforcement agency, it has resources and expertise for conducting these types of sensitive law enforcement investigations that are not readily available to other law enforcement agencies. PSP acknowledged that criminal investigations of use of force incidents involving its members by the Pennsylvania Office of the Attorney General is a viable option; but this option is rarely used. Lastly, PSP did not address the perceived bias or conflict of interest concerning the involvement of the County District Attorney’s Office, noting that PSP could not speak for that office.

After the Review Committee presented its preliminary findings and conclusions to PSP pursuant to Section 8.3 of the Commission’s Bylaws, PSP explained further that (in addition to requiring criminal investigators are from a different troop jurisdiction from the involved member) it generally tries to involve county District Attorney investigators in PSP criminal investigations. In addition, PSP also made note of resource and timeliness issues concerning criminal investigations by another entity (other than PSP) given the size of the Commonwealth. However, the Commission recognizes the natural co-dependent nature of the working relationship between county District Attorneys and PSP. To this end, independent investigations, and prosecutorial reviews of use of force incidents resulting in serious injury or death and police-involved shootings would (at a minimum) ensure distance and removal from these day-to-day working relationships. The Commission also notes that while it appreciates independent criminal investigations and prosecutorial reviews of police-involved shootings resulting in serious injury and/or death will require committed resources to be successful, it is equally important to ensure that such investigations and reviews are shielded from such inherent conflicts of interests.

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 Polices and Included Findings and Discipline that were reasonable under standard law enforcement protocols**

ADDITIONAL FACTORS / NOTES

In support of recommendations for independent criminal investigations and prosecutorial reviews of use of force incidents resulting in death or serious bodily injury, member-involved shootings resulting in death or serious bodily injury, and in-custody deaths, the Review Committee conducted research (and as adopted by the Commission) to determine best practices and/or recent statutory amendments of laws on this subject.

As of January 2021, the [National Conference of State Legislators](#) reported that 21 states and the District of Columbia passed laws relating to the investigation or prosecution of use of force by law enforcement and the

following surrounding states enacted legislation mandating independent investigations of use of force incidents by law enforcement:

Delaware – Delaware law now requires the Division of Civil Rights and Public Trust to investigate all use of deadly force incidents by law enforcement under [Delaware Code Title 29 Chapter 25 Subchapter 5 Civil Rights and Public Trust](#).

Maryland – The state legislature, under [House Bill 670](#) (known as the Maryland Police Accountability Act of 2021 - Police Discipline and Law Enforcement Programs and Procedures) established an independent criminal investigation unit within the Maryland Attorney General’s Office to investigate all use of force by law enforcement involving death or life threatening injury.

New York – [New York Exec Law § 70-b](#) established within the New York Office of the Attorney General, an Office of Special Investigation, to investigate and, if warranted, prosecute any alleged criminal offense (including use of force) committed by a police officer.

New Jersey – The Attorney General established mandates requiring independent investigation of all criminal cases involving police use of force or in custody deaths pursuant to [Directive 2019-4](#).

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

Recommendation No. 1 (Independent Criminal Investigations and Prosecutorial Reviews)

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police require all criminal investigations of use of force incidents resulting in death or serious bodily injury, member-involved shootings resulting in death or serious bodily injury, and in-custody deaths involving its members be referred for investigation to an external agency that meets minimum accreditation standards for handling such investigations as recognized and recommended by the United States Department of Justice as best practices and as similarly mandated in other jurisdictions.

Other Notes:

1. The Pennsylvania State Law Enforcement Citizen Advisory Commission recommendation is not intended to change the role of the Pennsylvania State Police’s Bureau of Integrity and Professional Standards Internal Affairs Division in conducting Administrative Investigations of use of force incidents involving members of PSP. This Recommendation is intended to ensure that the Criminal Investigation of these incidents is independently investigated outside of PSP’s chain of command.
2. The Pennsylvania State Law Enforcement Citizen Advisory Commission notes legislative changes are necessary to mandate the use of an independent external agency to conduct the criminal investigation of use of force incidents involving law enforcement and mandate independent prosecutorial reviews of

these incidents by an independent prosecutor (i.e. the Pennsylvania Office of the Attorney General), or, at a minimum, by a county District Attorney's Office outside of the jurisdiction of the incident's location.

AS ADOPTED AND PRESENTED BY RESOLUTION NO. CI-1 OF THE CRITICAL INCIDENT REVIEW COMMITTEE (DATED DECEMBER 3, 2021)

AS ORIGINALLY ADOPTED AND RATIFIED BY RESOLUTION NO. 1 OF THE PENNSYLVANIA STATE LAW ENFORCEMENT CITIZEN ADVISORY COMMISSION (DATED DECEMBER 10, 2021)

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



(Electronic Signature Authorized)

PRINT: Sha S. Brown

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



(Electronic Signature Authorized)

PRINT: Jaimie L. Hicks

**RESPONSE BY COVERED AGENCY
TO
FINAL REPORT OF THE COMMISSION
INTERNAL CASE NO. 21-0011-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 # 21-0011-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 recommendation for Internal Case No. # 21-0011-P.

Pursuant to Executive Order 2020-04, as amended, the PSP has reviewed the recommendation contained in the PSLECAC's final report. This written response addresses the recommendation, and why it cannot be implemented.

The PSLECAC recommended the PSP should "require that all criminal investigations of use of force incidents resulting in death or serious bodily injury, member-involved shootings resulting in death or serious bodily injury, and in-custody deaths involving its members be referred for investigations to an external agency that meets minimum accreditation standards for handling such investigations." Such a change, as noted in PSLECAC's final report, requires legislative action. As such, the PSP cannot implement the recommendation at this time.

The PSP's current investigative process is designed to ensure that every officer involved shooting or other serious police incident, involving a member is thoroughly investigated, both criminally and administratively. The PSP's regulations require a comprehensive, accurate, and complete criminal and administrative investigation. To avoid a perceived conflict of interest in the criminal investigation, the PSP uses a major case team concept to investigate officer involved shootings, wherein members from outside of the involved station assume the investigative responsibilities. When applicable, the PSP incorporates resources from other agencies into the major case team, such as the Pennsylvania Office of Attorney General, the local District Attorney's Office and other federal, state, and local law enforcement agencies. The decision as to whether criminal charges are applicable is within the

discretion of the District Attorney of the relevant county, or the Pennsylvania Office of Attorney General, when applicable. In addition, the PSP Internal Affairs Division, Bureau of Integrity and Professional Standards, conducts an independent internal administrative investigation.

Additionally, the PSP agrees that proper accreditation is a necessary element of legitimacy with respect to investigations of use of force incidents by law enforcement. The PSP is committed to accreditation. It strengthens the PSP's accountability to the community, through a continuum of standards, which clearly define the PSP's authority, performance, and responsibilities. Accreditation also facilitates the creation, verification, and maintenance of high-quality policies and procedures through voluntary compliance with a body of performance standards. The PSP has received its ninth consecutive accreditation by the Commission on Accreditation for Law Enforcement Agencies (CALEA). Additionally, the PSP is one of eight agencies which is compliant with CALEA's Advanced Law Enforcement Accreditation Program. CALEA is a nonprofit, non-governmental organization which ensures public safety agencies are abiding by current best practices by continually self-evaluating policies and procedures. Maintaining CALEA certification requires yearly reviews and on-site inspections.

In addition to CALEA accreditation, the PSP is also accredited by the Pennsylvania Law Enforcement Accreditation Commission (PLEAC). The program was developed by the Pennsylvania Chiefs of Police Association and is designed to provide best practices to law enforcement agencies within the Commonwealth.

The PSP is one of only six agencies accredited by both CALEA and PLEAC. Additionally, the PSP is the only accredited law enforcement agency with statewide jurisdiction associated with criminal and traffic investigations. Furthermore, the PSP investigates the majority of officer involved shootings within the Commonwealth, due to the PSP's recognized expertise in these complex investigations.

The PSP is committed to improvement, through self-identification, adoption, and implementation of best practices in law enforcement. The PSP will continue to evaluate its investigative processes to ensure best practices are consistent with existing laws and accreditation standards.

Sincerely,



Robert Evanchick
Commissioner
Pennsylvania State Police