

## FINAL REPORT OF THE COMMISSION

<b>Name of Review Committee</b>	CRITICAL INCIDENT REVIEW COMMITTEE
<b>Chairperson(s) of Review Committee</b>	KELLEY B. HODGE, ESQ.
<b>Members of Review Committee</b>	BISHOP CURTIS L. JONES, SR.; DR. SPERO T. LAPPAS, ESQ., Ph.D; CHARIMA C. YOUNG; and ANDREA A. LAWFUL-SANDERS
<b>Non-Member Advisors</b>	SHA BROWN; ELIZABETH PITTINGER; CHRISTOPHER KROKOS; and TIFFANY WELCOME
<b>Ex-officio Member</b>	JALILA PARKER*
<b>Date Review Started</b>	08/09/2021
<b>Report Number</b>	21-0012-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>	POLICE-INVOLVED SHOOTING (NON-FATAL)

### BACKGROUND

<b>Incident Date</b>	February 19, 2019
<b>Troop Jurisdiction of Incident</b>	TROOP J – Lancaster County
<b>Criminal Disposition</b>	USE OF FORCE JUSTIFIED UNDER TITLE 18 (LANCASTER COUNTY DISTRICT ATTORNEY)
<b>Agency Administrative Disposition</b>	RULED JUSTIFIED BY THE PENNSYLVANIA STATE POLICE'S BUREAU OF INTEGRITY AND PROFESSIONAL STANDARDS-INTERNAL AFFAIRS

## 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 police-involved shootings resulting in injury or death 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, 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 Critical Incident 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 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 21<sup>st</sup> 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 (US DOJ) 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 1-5 (Officer Involved Shootings and Serious Police Incidents);
6. PSP Policy No. AR 7-1 (Warrant Service);
7. PSP Policy No. AR 5-7 (First Aid, Emergency Medical Response, CPR, and AED Programs);
8. Police Executive Research Forum's publication titled "*Guiding Principles on Use of Force*" (March 2016);
9. International Association of Chiefs of Police's publication titled "*National Consensus Policy Discussion Paper on Use of Force*" (Revised July 2020);
10. Force Science Institute's publication titled "*Reasons for Delaying Interviews with OIS Survivors*" (May 2014);
11. US DOJ's publication titled "*Officer Involved Shootings Guide for Law Enforcement*" (2016);
12. Pennsylvania District Attorneys Association's publication titled "*Officer Involved Shooting Investigations – Best Practices*" (2016); and
13. Title 234 of the Pennsylvania Code, Rule 203 (Requirements for Issuance [of search warrants]).

## 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. 21-0012-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:

During this review, the Commission sought to determine if the adjudicator's decision was reasonably based on the totality of the circumstances. The Commission requested and reviewed PSP Policy No. FR 9-1 (Use of Force), Section 1.06 (Deadly Force-Special Considerations, Restrictions and Warnings), Subsection (D) (Shooting at or From Moving Motor Vehicles or Machinery). Upon review, the Commission notes that this policy generally prohibits Troopers from discharging firearms at or from a moving vehicle except under specific circumstances and after certain factors are considered. Specifically, Section 1.06(D)(1)(a) of PSP's Use of Force policy states, in part, that Troopers may discharge a firearm at a moving vehicle "as a last resort measure when the actor, by using the vehicle, machinery, or other means, poses an **imminent** danger of death or serious bodily injury to the member or enforcement officer, another law enforcement officer, or another person" [emphasis added].

In this incident, three Troopers discharged their firearms at a vehicle and its occupants when the subject tried to flee from Troopers as they attempted to serve an arrest warrant. PSP’s adjudicator determined that the Troopers were justified in their actions because: (1) Troopers were in uniform and marked patrol units which should have compelled the subject to exit the vehicle and submit to arrest; (2) the subject chose to start the vehicle and drive in the direction of a Trooper on foot; (3) the Trooper on foot was objectively in danger of being struck by the vehicle; and (4) Troopers who opened fire clearly perceived the threat to the Trooper on foot.

When applying the limited exceptions contained in PSP’s policy, the Commission found that PSP’s adjudicatory determination is generally consistent with one of the circumstances under which Troopers are permitted to discharge a firearm at a moving vehicle, i.e., moving vehicle posed “threat” to Trooper on foot who fell to ground. Specifically, PSP’s records indicate that the involved Troopers (when interviewed) stated they fired to “stop the threat” posed by the vehicle being driven in the direction of the Trooper on foot. However, the Commission notes that (when reviewing the Mobile Video Recording of the incident) it is not clear that the Trooper on foot was still on the ground, and therefore was in “**imminent**” danger of being struck by the vehicle when Troopers began to discharge their firearms. Additionally, while the incident unfolded in mere seconds, the Commission also notes that if the Trooper was still on the ground and in “**imminent**” danger of being struck as required by PSP policy, the Trooper was also possibly in the line of gunfire. The Commission notes further that PSP’s adjudication report did not include an analysis of the reasonableness of continuing to fire at the subject’s vehicle after it already passed the Trooper who fell and therefore no longer presented an “**imminent**” threat to his or her safety.

The Commission observes that even while a limited exception to PSP’s general prohibition exists, PSP’s policy also requires that such an exception must be considered in conjunction with certain factors to determine whether the discharge of a firearm at a moving vehicle is permissible. These factors include: (a) the difficulty of hitting a moving target and/or hitting a target while shooting from a moving vehicle; (b) ricocheting bullets striking unintended targets; (c) population density; and (d) the inability to stop a vehicle’s momentum even after the driver is hit, and the damage or injury which might result from causing a vehicle or machinery to lose control. Although PSP’s policy requires that these factors be considered, the Commission found that PSP’s adjudication report did not include written documentation that these factors were properly considered by all Troopers who discharged their firearms.

Considering the above, and based on the information provided, the Commission found that PSP’s adjudicator did not document consideration of all relevant factors, as required by PSP policy, and thus, considers PSP’s adjudicatory findings not reasonable based on the totality of circumstances.

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 its review of all relevant PSP policies and best practice guidelines, the Commission identified the following:

**Finding No. 1 – Use of Force Policy Enhancement (Discharge of Firearm at or from Moving Vehicle)**

During its review, the Commission found that PSP’s adjudicatory findings were not reasonable, in part, because PSP did not document whether, when discharging their firearms, Troopers properly considered the possibility of ricocheting bullets striking unintended targets (including innocent bystanders) or their inability to stop a vehicle’s momentum (if the driver were struck and lost control of the vehicle).

The Commission notes that PSP’s records show the subject was hit with gunfire, causing the driver to lose control of the vehicle, which struck a tree. Additionally, the Commission also notes that, after Troopers discharged their weapons, striking both the vehicle and its driver, Troopers found the vehicle also contained a female occupant (an innocent bystander). As previously noted, PSP’s policy requires that Troopers be “cognizant” of innocent bystanders that may be present in or near the line of fire before discharging their firearm at a moving vehicle. Although Troopers were not initially aware of the female occupant’s presence inside the vehicle, the Commission also notes that it is not clear how an adjudicator can *quantify* and/or *confirm* steps Troopers take to be “cognizant” of a bystander’s presence. Furthermore,

when discharging their weapons, the Trooper (who was in the path of the vehicle) was also in the path of gunfire, and any possible ricocheting bullets exposed him or her to possible unintended injury or death.

Upon review of law enforcement industry best practices, the Commission found that PSP's policy is generally consistent with guidance concerning recommendations to prohibit the practice of discharging a firearm at or from a moving vehicle. However, the Commission notes that PSP's policy does not, in fact, explicitly prohibit this type of force because it includes qualifiers (like requirements for Troopers to "consider" and be "cognizant" of certain factors), which are generally not quantifiable or enforceable (particularly when the policy also lacks guidance on how an adjudicator can properly document and/or determine that a Trooper actually considered and was cognizant of such factors before discharging his or her weapon at or from a moving vehicle).

Contrary to PSP's current policy, for example, the Police Executive Research Forum (PERF)<sup>1</sup> recommends among its guiding principles (Principle 8) for use of force that, "[s]hooting at vehicles must be prohibited." Furthermore, PERF recommends, "agencies should adopt a prohibition against shooting at or from a moving vehicle unless someone in the vehicle is using or threatening deadly force by means other than the vehicle itself." In support of its guidance, PERF identified numerous law enforcement agencies that adopted this recommended prohibition including, the New York City Police Department (enacted in 1972), Boston Police Department, Chicago Police Department, Cincinnati Police Department, Denver Police Department, Philadelphia Police Department, and Washington, D.C. Metropolitan Police Department.

Similarly, the International Association of Chiefs of Police<sup>2</sup> published its recommendation in the "*National Consensus Policy Discussion Paper on Use of Force*" (Revised July 2020)), which provides that a firearm shall not be discharged at a moving vehicle unless:

- 1) a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or
- 2) the vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical) which includes moving out of the path of the vehicle.

In this case, the Commission notes that the Troopers' discharge of their firearms did not stop the vehicle's momentum, even after the driver was struck by gunfire, but did contribute to the vehicle losing control (i.e., crashing into a tree) and causing additional injury to the driver. Likewise, although the Troopers were unaware of her presence, the rapid gunfire did expose an innocent bystander (the unknown female occupant) and a Trooper (who fell to the ground) to unintentional risk of injury or death. Furthermore, PSP records indicate that it was the vehicle itself that posed a threat and there is no other mention of the subject's actual or threatened use of deadly or any other force when attempting to flee. Combined with an inability to quantify or confirm PSP's factors, the Commission found these facts further strengthen support for PSP to unequivocally prohibit the discharge of a firearm at or from moving vehicles as recommended by nationally recognized best practices.

### **Finding No. 2 – Use of Force Post-Incident Interview Procedures**

During its review, Commission members expressed general concerns regarding PSP's various internal policies designed to ensure proper recovery from and accurate Trooper recall of use of force incidents along with the importance of maintaining the integrity of post-incident interviews, i.e., ensuring interviews are free from collusion, influence, or corruption from internal or external sources. To address these concerns, the Commission researched best practices promulgated by the Force Science Institute, the US DOJ, and the Pennsylvania District Attorneys Association (PDAA) regarding the necessity of

<sup>1</sup> According to its website, PERF (founded in 1976 as a nonprofit organization) "is a police research and policy organization and a provider of management services, technical assistance, and executive-level education to support law enforcement agencies. PERF helps to improve the delivery of police services through the exercise of strong national leadership; public debate of police and criminal justice issues; and research and policy development." For more information, please use the following link: <https://www.policeforum.org>.

<sup>2</sup> The International Association of Chiefs of Police is considered among "the world's largest and most influential professional association for police leaders" with more than 31,000 members in over 165 countries and a recognized leader in global policing and advancing safer communities through thoughtful, progressive police leadership. For more information about this organization, kindly use the following link: <https://theiacp.org>.

post-incident psychological services for officers, optimizing post-incident memory recall, and post-incident interview protocols.

For example, the Commission identified a report by the Force Science Institute<sup>3</sup> titled, “*Reasons for Delaying Interviews with Officer Involved Shooting (OIS) Survivors*” (published May 3, 2014). The report’s authors focused on key factors that affect memory difference and/or recall, including adrenaline, sleep, and emotional decompression. Regarding the delay of post-incident interviews of law enforcement personnel involved in OIS incidents, the report states, “the overall benefit of waiting while he or she rests and emotionally decompresses far outweighs any potential loss of memory. A day or two between the event and the interview will have no significant effect on reducing recall. In fact, the opposite is true. Delay enhances an officer’s ability to more accurately and completely respond to questions.”

Similarly, a US DOJ report titled, “*Officer Involved Shootings Guide for Law Enforcement*” published in collaboration with the International Association of Chiefs of Police (2016) recommends, “delaying personnel interviews from **48 to 72** hours to provide the officer with sufficient recovery time to help enhance recall. This interval is particularly recommended for officers who were directly involved in the shooting, but it may also be necessary for officers who witnessed the incident but did not discharge their firearms.” Likewise, a report published by the PDAA<sup>4</sup> titled, “*Officer Involved Shooting Investigations – Best Practices*” (2016) states, in part, “the initial interview of any officer who discharged his or her weapon during the officer-involved shooting and any officer who witnessed the shooting shall take place as soon as reasonably possible, taking into consideration potential issues of shock and trauma to the officer, as well as any applicable procedures established in a governing collective bargaining agreement.” Concerning further post-incident interview protocols, the Commission also notes that PDAA’s best practices document states, in part, that “[u]nder normal circumstances, there will be an initial general interview for purposes of public safety and orientation of the scene. There will [also] be a later, more detailed interview after the officers have had an opportunity to decompress and the evidence at the scene has been reviewed. The timing of the interviews will depend on the circumstances of the shooting.”

Applying these best practices to this review, the Commission found that PSP maintains a Member Assistance Program (MAP) which provides confidential assistance to law enforcement personnel and their immediate family members who experience personal, emotional, psychological, and/or related medical or health problems (including treatment for warning signs and the effects of critical incident stress and post-traumatic stress disorder). The Commission notes that PSP incorporated MAP into its policy regarding officer-involved shootings, i.e., PSP Policy No. FR 1-5 (Officer Involved Shootings and Serious Police Incidents, ensuring Troopers have access to appropriate critical incident stress management and post-traumatic support and treatment, as needed. Additionally, PSP policy prohibits criminal and administrative post-incident interviews of an involved member during the first 72 hours following a critical incident unless circumstances warrant and as authorized by the Deputy Commissioner of Administration and Professional Responsibility; or at the discretion of the involved member. Consistent with PSP’s Officer Involved Shootings and Serious Police Incidents policy, this waiting period allows time for a Trooper to: (1) meet with MAP representatives and participate in procedures as outlined in PSP’s Policy No. AR 4-28 (Critical Incident Stress Management); (2) meet with counsel, as applicable; and (3) perform other required administrative tasks related to the incident. Accordingly, the Commission found that PSP’s MAP and related post-incident waiting period prior to criminal and administrative interviews aligns and is consistent with national and state best practices.

However, PSP’s records also indicate that some initial interviews were conducted on the day of the incident (at a Trooper’s discretion) while others were conducted six days later (two times the waiting period required by PSP’s policy and applicable collective bargaining agreement).

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 the timeliness of post-incident criminal and administrative investigative

<sup>3</sup> The stated mission of the Force Science Institute is “dedicated to promoting the value of knowledge through empirical research in behavioral science and human dynamics. We develop and disseminate high-quality scientifically grounded education, training, and consultation to support fact-based investigations, inform decision processes, enhance public safety, and improve peace officer performance in critical situations.” (see <https://forcescience.com>).

<sup>4</sup> See <https://www.pdaa.org> (“the mission of the [PDAA] is to: [(1)] assist the membership in the pursuit of justice and in all matters relating to the execution of their duties[;] [(2)] advocate the position of the Association to the government and citizens of Pennsylvania; [(3)] coordinate with other agencies on matters of mutual concern[;] and [(4)] communicate the Association’s position to its membership and the public on criminal justice matters.”).

interviews is dependent on several factors, including, for example: (1) an involved Trooper's Fifth Amendment (constitutional right against self-incrimination) and Garrity rights (statements made during administrative interviews cannot be used in criminal proceedings), as determined in collaboration with a County District Attorney (when applicable); (2) availability of legal counsel and/or union representative; and (3) other scheduling, i.e., 72-hour period ends on a weekend and interview conducted following week. While it recognizes the importance of ensuring an involved members' legal rights, and the availability of parties and scheduling, the Commission found that PSP's relevant policies do not *require* that all use of force post-incident interviews be conducted as soon as practical following the conclusion of the 72-hour waiting period, unless exigent circumstances exist. In addition, PSP should impose some time limit similar to constraints placed on completion of administrative investigations, i.e., 120 days, unless exigent circumstances are documented and waived to guard against unnecessary delays or potential abuse.

Regarding efforts to protect and maintain the integrity of post-incident interviews, the Commission notes that the US DOJ's publication states, "[i]t is important to obtain individual statements as opposed to group interviews." Furthermore, PDAA's best practices document states, in part, "[i]f multiple officers were involved in the shooting, those officers shall avoid discussing the details of the shooting together both before and after the officers are interviewed" and "to the extent practicable, after the scene has been secured, the involved officers should be kept separate at the scene, on the ride back to the station, and at the station prior to their respective interviews." The Commission found that, contrary to best practices, PSP's relevant policies do not specifically bar Troopers from discussing (with each other or with other witnesses) details of use of force incidents generally, or police-involved shootings specifically, before or after post-incident interviews. This lack of a specific prohibition can potentially negatively impact the integrity of such interviews and their related investigations.

Additionally, Commission members engaged in significant deliberations regarding whether involved law enforcement personnel should be generally permitted to view Mobile Video Recordings (MVRs), Body Worn Camera (BWC), or other external video footage prior to their post-incident interview. On this issue, the Commission found that the US DOJ's publication (as mentioned above) is not clear. However, the Commission found that the US DOJ's publication does include considerations both in support of and against permitting involved law enforcement personnel to view videotape of police-involved shooting incidents in relation to post-incident interviews, as follows:

- a) the viewing process enhances an officer's memory and allows the officer to better recall actions or events that took place; however, allowing an officer to view a video recording **before** making a witness statement may allow him or her to also adjust the statement to conform to the video;
- b) allowing video recordings to be available for viewing **following** a witness statement or incident report may avoid the perception that the officer adjusted his or her statement to fit the video; and
- c) an officer who has already given a witness statement or filed an incident report can use video recordings to clarify discrepancies and elaborate on actions taken and recorded, where necessary.

The US DOJ's publication states further that, "[t]he department should apply any legal analysis or assessment of an officer's actions under the "reasonableness" standard enunciated by the U.S. Supreme Court in *Graham v. Connor*, in which the court made it clear that judgment of the reasonableness of a particular use of force must rely on the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight."

Here, PSP's records indicate that Troopers involved in the incident were permitted to view video evidence prior to their post-incident interviews. However, the Commission notes that that such a practice is not required by either PSP's related policies or the relevant collective bargaining agreement.

After the Review Committee presented its preliminary Findings and Conclusions to PSP in accordance with Section 8.3. of the Commission's Bylaws, PSP stated that the decision to allow an involved Trooper the ability to view video footage of a use of force incident before post-incident interviews is generally made on a case by case basis. For example, the ability to view video before a post-incident criminal investigative interview is generally left to the discretion of the Major Case Team Commander (made in collaboration with the County District Attorney, when applicable, or at the request of an involved member's legal counsel) while such discretion is similarly exercised by an Internal Affairs Division (IAD) supervisor with

respect to post-incident administrative interviews. When asked if PSP possessed any regulation or guidance which requires consideration of any factors when exercising such discretion, PSP indicated that additional research was required. Although it recognizes the benefits of video footage in capturing law enforcement activity generally, and its value as recognized by national best practices, the Commission cautions that such evidence of use of force incidents should not be used as a tool that can possibly taint or influence recollection and/or recall. The Commission also notes that the ability to view video footage of a use of force incident is generally not afforded to other citizen witnesses or victims of a crime before a post-incident interview. Accordingly, and pending the receipt of any additional information offered by PSP for further consideration, the Commission found that PSP's relevant policies fail to prohibit, or at least limit with appropriate guidance when exercising discretion, the viewing of MVRs, BWCs, or other video evidence which can improperly influence a Trooper's memory recall with information gained from perspectives other than his or her own independent recollection prior to post-incident interviews.

### **Finding No. 3 – Arrest Warrant Service Procedures**

During its review, the Commission requested information concerning PSP's specific policies and procedures, which address the service of arrest warrants including operational planning, execution, and approval of such warrants. In this regard, PSP Policy No. AR 7-1 (Warrant Service), Section 1.03 (Due Diligence Warrant Service Report) requires the completion of certain documentation for all warrants received by PSP. The report requires, for example, specific information regarding execution of an arrest warrant, including: (1) relevant information about the defendant or service of the warrant; (2) remarks concerning each attempt to locate the defendant or serve the warrant; (3) any additional information pertinent to service of the warrant; and (4) a space for confirmation of supervisory approval *following* (or after-the-fact) service of the warrant.

Following its review, the Commission found that PSP's policy does not contain specific requirements for operational or other pre-planning for warrant execution or pre-supervisory approval prior to any attempt to serve an arrest warrant. For example, the Commission notes that PSP's records do not indicate that Troopers conducted a pre-planning meeting, under their own initiative, to serve the arrest warrant at a private residence. The Commission also notes that the time (at or about 2:00 a.m.) chosen by Troopers to serve the arrest warrant (for non-violent felonies, thereby negating the presence of any urgency or an imminent threat to public safety, despite the subject's previous flight from apprehension) was a time of day that inherently involves potential reduced visibility conditions.

Further, the Commission opines that attempting service of an arrest warrant at a private residence at night increases the risk of violence and potential injury to both citizens and law enforcement personnel given the prevalence of legal and illegal gun ownership and the rights of citizens recognized by the "Castle Doctrine"<sup>5</sup> (which is akin to a "Stand Your Ground" defense). These risks are generally mitigated when law enforcement personnel arrive at a private residence in marked patrol vehicles, in uniform, during daylight hours for all to see. However, during reduced visibility conditions (i.e., at night), law enforcement personnel become subject to the perceptions of not only the individual pursued for arrest, but also individual homeowners. By way of example, a homeowner could reasonably believe a criminal threat is present on their property, thereby escalating the risk of injury or death to both citizens and law enforcement personnel based on this mistaken identity or belief. A citizen's ability to identify and/or distinguish between law enforcement personnel and potential criminal threats may be significantly influenced by the time of day and/or insufficient lighting. Under these conditions, Troopers may also have considerable difficulty being "cognizant" (as required by PSP's policy) of any innocent third parties or bystanders that may be present in, or near, the line of fire. Here, the Commission notes that the time of day and insufficient lighting may have contributed to the Troopers' failure and inability to properly identify the female occupant hiding in the subject's vehicle. Likewise, it would be difficult to identify the possible presence of other innocent bystanders in a private residence (where all occupants may be generally unknown), thereby unnecessarily risking injury to such innocent third parties.

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: (1) it has a duty to act; (2) the subject previously evaded capture; (3)

<sup>5</sup> See generally, 18 Pa.C.S. § 507.

execution of nighttime arrest warrants presents an element of surprise; and (4) a subject's underlying charge(s) does not generally dictate whether service of an arrest warrant is executed during the day or at night. However, the Commission notes that PSP's duty to act, previous failed attempts to apprehend a subject, and the element of surprise should not (either individually or collectively) generally outweigh potential risks to public or officer safety. In addition, the Commission also notes that a subject's underlying criminal charge(s) should be considered and weighed when determining whether exigent circumstances exist which necessitate a need to act immediately.

Regarding the execution of *search* warrants at private residences, the Commission found that Pennsylvania law<sup>6</sup> prohibits execution of a nighttime search warrant unless the accompanying affidavits show reasonable cause for such a search and "highlights the traditional doctrine that nighttime intrusion into a citizen's privacy requires greater justification than an intrusion during normal business hours." Although the law does not provide similar guidance for the service and execution of *arrest* warrants at private residences, the Commission notes that many of the same identified risk factors are present. Here, the Commission found that the time of day and poor lighting may have contributed to the rapid escalation of events resulting in the use of force. Accordingly, the Commission recommends that PSP (as a matter of policy) should prohibit Troopers from serving nighttime arrest warrants at private residences without (at a minimum) the documented presence of reasonable cause and pre-supervisory approval.

#### **Finding No. 4 – Duty to Render Aid (Tactical Medical and First Aid Kits)**

During this incident, PSP's records show that Troopers immediately rendered medical aid by treating the subject for a gunshot wound resulting from the use of force incident. However, PSP records also indicate that Troopers' first aid kits did not include enough supplies (i.e., gauze and compress dressings) to treat the wound. Notwithstanding the limited PSP-issued supplies, a Trooper successfully treated the subject with supplies from a personal first aid kit. Consequently, the Commission sought information concerning whether or how PSP ensures medical kits contain sufficient supplies to render basic first aid (including the treatment of gunshot wounds), PSP's specific policies regarding the inspection and maintenance of supplies maintained within such medical kits, and corresponding training of Troopers to render aid following a police-involved shooting or other uses of force. Among other records, PSP provided the Commission with a copy of PSP Policy No. AR 5-7 (First Aid, Emergency Medical Response, CPR, and AED Programs) which guides members concerning required certifications and corresponding training. However, the Commission found that this policy does not include or direct what type of supplies should be in medical kits or procedures for inspection of such supplies.

The Commission also conducted research regarding the use of Tactical First Aid Kits or Trauma Kits. Based on this research, the Commission found that increasing numbers of jurisdictions outfit law enforcement personnel with these types of first aid kits. Benefits of these types of kits include:

- a) small and portable design;
- b) can be used in a "hot zone" to treat wounded officers and citizens alike until assistance arrives; and
- c) contents contain a tourniquet, Celox Rapid (a quick blood clotting agent), gauze, bandages, scissors, a nasopharyngeal tube (used to treat an obstructed airway), a chest seal (used for any kind of gunshot wound or wound to the torso), and other lifesaving supplies.

#### **Proposed Finding No. 5 – Vehicle Extraction Tools**

During this incident, PSP's records indicate that after visually identifying the driver as the subject of the arrest warrant, Troopers attempted to execute the warrant and take custody of the subject. As they attempted their initial apprehension, Troopers could not access the vehicle and a Trooper intentionally broke the vehicle's window by using his or her PSP-issued firearm as a blunt instrument. After the Review Committee presented its preliminary Findings and Conclusions to PSP pursuant to Section 8.3 of the Commission's Bylaws, PSP confirmed its Troopers are not trained to use their weapons (agency-issued firearm as blunt instrument) to breach a window. Instead, Troopers are trained to use their agency-issued ASP Baton (extendable metal baton which is an item on their duty belt) for this purpose. The Commission found that the

<sup>6</sup> See 234 Pa. Code § 203.

delay in accessing the vehicle occupant allowed the subject to start the vehicle and attempt to flee the scene, which was a contributing factor in the resulting use of force. A vehicle extraction tool could have prevented this delay and reduced the inherent danger, i.e., unintentional discharge of firearm, associated with using other objects not intended for vehicle extraction.

**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 – Use of Force Policy Enhancement (Discharge of Firearm at or from Moving Vehicle)**

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police adopt best practices policy language offered by the International Association of Chiefs of Police which mandates firearms shall not be discharged at, or from, a moving vehicle unless:

- a) a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle itself; or
- b) the vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle; **and**

[also adopt supplemental policy language regarding innocent bystanders inserted herein to read:]

- c) take all reasonable steps to avoid inadvertent injury to innocent bystanders.

**Recommendation No. 2 – Use of Force Post-Incident Interview Procedures**

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police enhance its related policies to:

- a) prohibit members in officer-involved shootings or other use of force incidents from discussing any details of the incident both before and after the officers are interviewed in accordance with best practices offered by the Pennsylvania District Attorneys Association;
- b) prohibit members from viewing Mobile Video Recordings, Body Worn Cameras, or other video evidence prior to any criminal or administrative post-incident interview regarding an officer-involved shooting or other use of force incident until a comprehensive record is obtained and the lead investigator(s) determines his or her investigation is complete; unless:

- (i) the County District Attorney or prosecuting attorney from the Office of Attorney General approves the viewing; and
- (ii) when viewing is permitted, require that appropriate factors be considered when exercising discretion to view video evidence and that such consideration is documented.
- c) ensure post-incident interviews are conducted as soon as practical following the conclusion of the 72-hour waiting period unless exigent circumstances exist.

**Recommendation No. 3 – Arrest Warrant Service Procedures**

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police enhance its policy to:

- a) prohibit the service of nighttime arrest warrants at private residences without documented evidence of reasonable cause and supervisory approval while also considering a totality of the circumstances, the nature of the crime, and the immediate need to apprehend the suspect [NOTE: Documentation may occur in the Due Diligence Warrant Service Report or similar document]; and
- b) require independent and documented operational, recognizance, and other pre-planning and supervisory approval **prior** to any attempt to serve a nighttime warrant at a private residence.

**Recommendation No. 4 – Duty to Render Aid (Tactical Medical and First Aid Kits)**

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police consider the purchase and deployment of full tactical medical kits (along with corresponding training) to its members and/or ensure, by frequent supervisory inspection, that each member has a basic first aid kit that includes, at a minimum: personal protective equipment (i.e., gloves, mask, and eye protection); a small pocket mask; trauma scissors; tourniquets; chest decompression kit; trauma dressings; hemostatic dressings; open chest seal; roller gauze; compression bandages; and heavy duty tape.

**Recommendation No. 5 – Vehicle Extraction Tools**

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police consider the purchase and deployment of vehicle extraction tools for members that include a window punch and seatbelt cutting options.

**ORIGINALLY ADOPTED AND PRESENTED BY RESOLUTION NO. CI-1 OF THE CRITICAL INCIDENT REVIEW COMMITTEE (DATED FEBRUARY 16, 2022)**

**AS ORIGINALLY ADOPTED AND RATIFIED BY RESOLUTION NO. 2 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. 21-0012-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 # 21-0012-P.

Dear Chairman Brown:

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. # 21-0012-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- Use of Force Policy Enhancement (Discharge of Firearm at or from Moving Vehicle)

Regarding Recommendation No. 1, the PSP has recently implemented a number of revisions to FR 9- 1, Use of Force, including revisions regarding shooting at or from moving motor vehicles. These revisions were under consideration prior to the recommendations made by the Commission, and we are pleased to report this update.

Recommendation No. 2- Use of Force Post-Incident Interview Procedures. This recommendation was delineated into several subcategories which we address as follows:

Regarding Recommendation No. 2 (a), The PSP will consider revising its regulations pertaining to limiting those involved in officer-involved shootings or other use of force incidents from discussing any details of the incident both before and after they are interviewed with other involved members of the same incident.

Regarding Recommendation No. 2 (b), The Commission notes there are varying opinions amongst experts regarding the viewing of associated video footage by a police officer. Currently, it is the opinion of the PSP that discretion to allow a police officer to review associated video footage prior to a criminal interview lies with the chief prosecuting attorney for the jurisdiction where the incident occurred. There is also considerable risk that a policy, explicitly prohibiting an involved member from viewing associated video evidence prior to the voluntary criminal interview would result in the member's legal counsel recommending that an involved member not participate in the criminal interview. With regards to the compelled administrative interview, presently the decision to allow an involved member to view an associated video is left up to the lead investigator and/or supervisor based on the circumstances of the particular case. The PSP is mindful that the President's Executive Order to Advance Effective, Accountable Policing and Strengthen Public Safety, mandated that the Attorney General, in coordination with the Secretary of HHS and the Director of the Office of Science and Technology Policy (OSTP), conduct a study that assesses the advantages and disadvantages of officer review of BWC footage prior to the completion of initial reports or interviews concerning an incident involving use of force, including an assessment of current scientific research regarding the effects of such review. After which, the Attorney General will publish a report detailing the findings of that study and identifying best practices regarding law enforcement officer review of BWC footage. The PSP believes that this study is long overdue given the debate that exists on this topic and will await the guidance before making any final policy decision on this issue.

Regarding Recommendation No. 2 (c), the PSP makes it a priority to interview the involved Trooper/Enforcement Officer as soon as practical following the conclusion of the 72-hour waiting period. However, the Trooper/Enforcement Officer is still entitled to 5<sup>th</sup> Amendment protections and has no obligation to consent to an interview. If the Department were to order the Trooper/Enforcement Officer to submit to an interview for the criminal investigation, then the statement and/or the fruits of the investigation derived therefrom cannot be used in the criminal prosecution. Thus, while the PSP strives to ensure the interview of the involved officers is conducted as close in time as possible, the timing of the interview is subject to other factors outside of PSP's control, including the schedule of the involved officer, their counsel, and the availability the personnel from the local District Attorney's office.

Recommendation No. 3- Arrest Warrant Service Procedures. This recommendation was delineated into several subcategories which we address as follows:

Regarding Recommendation No. 3 (a), the Pennsylvania Rules of Criminal Procedure and AR 7-1 (Warrant Service) already provide guidance on search warrant procedures, as well as guidance on the service of arrest warrants. This guidance is reinforced through PSP cadet training and in-service training. There is no optimal time to serve an arrest warrant as demonstrated by the subject in the matter reviewed by the Commission, who had previously fled from law enforcement during other times of the day. In order to ensure that PSP members have the flexibility necessary to ensure that they can apprehend criminal suspects, the PSP will not adopt this recommendation at this time; however, the PSP remains committed to exploring ways to improve the safety of our police-citizen contacts.

Correspondence to the Honorable Sha S. Brown

June 24, 2022

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Regarding Recommendation No. 3 (b), the PSP frequently functions in a manner similar to a rural police department and does not always have assets within close proximity. To require independent and documented operational, recognition, and other pre-planning and supervisory approval prior to any attempt to serve a nighttime warrant at a private residence is not feasible. The PSP does utilize its Special Emergency and Special Operations Team (SERT) and the United States Marshal's Fugitive Apprehension Task Force for high-risk warrant services. As previously indicated, the PSP is guided by the Pennsylvania Rules of Criminal Procedure, as well as AR 7-1 (Warrant Service) and other internal policies in determining the risk factors which in turn determine the level of planning and personnel required to execute a warrant service. These factors are in turn evaluated by supervisory personnel as was done in this particular case. The PSP will not adopt this recommendation at this time.

#### Recommendation No. 4 – Duty to Render Aid (Tactical Medical and First Aid Kits)

Regarding Recommendation No. 4, as previously provided to the Commission, the PSP has already procured most of the recommended items, and there are policies in place to ensure they are inspected on a regularly scheduled basis. In addition, the PSP routinely evaluates first responder trauma equipment/gear and will continue to do so to ensure that Troopers/Enforcement Officer are properly equipped. PSP recently updated FR 9-1 with enhancements to the duty to render aid.

#### Recommendation No. 5 – Vehicle Extraction Tools

Regarding Recommendation No. 5, the PSP agrees that any equipment such as a punch out tool to break a window or cut a seatbelt would be extremely helpful in certain situations such as extracting an individual from a car crash and can explore the feasibility of procuring them. Because this incident evolved rapidly, such a tool in this instance would not have likely been on the Trooper's person at the time.

Sincerely,



Robert Evanchick  
Commissioner  
Pennsylvania State Police