

FINAL REPORT OF THE COMMISSION

Name of Review Committee	BIAS-BASED POLICING REVIEW COMMITTEE
Chairperson(s) of Review Committee	MARVIN BOYER
Members of Review Committee	DENISE ASHE; DR. A. SURESH CANAGARAJAH, Ph.D; KEIR BRADFORD-GREY, ESQ.; BRENDA TATE; and DR. MARILYN M. BROWN, Ed.D
Non-Member Advisors	SHA S. BROWN, ELIZABETH C. PITTINGER, TIFFANY WELCOME and CHRISTOPHER KROKOS
Ex-officio Member	JALILA PARKER*
Date Review Started	08/09/2021
Report Number	21-0008-P
Date of Commission Report	05/13/2022

* NOTE: Appointment of an Ex-officio (or non-voting) Member to all Review Committees is required by Article 8 (Review Process), Section 8.2 (Commission Sub-committees and Review Committees) of the Commission's Bylaws; however, the Ex-officio Member does not vote on any of the content contained in this report.

TYPE OF COMMITTEE REVIEW

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

BACKGROUND

Incident Date	February 23, 2018
Troop Jurisdiction of Incident	Troop H (covering Perry, Dauphin, Cumberland, Franklin, and Adams counties)
Criminal Disposition	Not Applicable
Agency Administrative Disposition	Unfounded by Troop Commander (Troop H) issued on June 22, 2018

SCOPE AND METHODOLOGY OF REVIEW

Pursuant to Executive Order 2020-04, as amended, the Pennsylvania State Law Enforcement Citizen Advisory Commission (Commission) shall review a Covered Agency's completed internal investigations concerning allegations of racial or ethnic discrimination and other bias-based policing or external complaints of bias-based policing during interactions with law enforcement personnel to determine the following:

1. Whether the completed internal investigation was:
 - prompt;
 - fair;
 - impartial;
 - complete; and
 - performed in a manner consistent with applicable policies.
2. Whether the internal adjudicatory findings and discipline (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 how the Covered Agency's completed internal investigation was conducted when compared to internal policy and relevant collective bargaining agreements to determine whether the investigation was conducted in a prompt and fair manner.
2. Reviewed internal relevant policies designed to safeguard fairness and impartiality to ensure that the Covered Agency's completed internal investigation was conducted in accordance with said policies and determine whether any conflict of interest exists based on all known information.
3. Reviewed the Covered Agency's completed internal investigation to ensure investigators collected all relevant facts reasonably obtainable and conducted all relevant interviews.
4. Reviewed the Covered Agency's adjudication report to ensure all relevant facts were considered, including all known actions by the law enforcement officer(s), to determine whether the adjudicator's decision was reasonable and based on a totality of the circumstances.
5. Compared the discipline issued (if any) with past disciplinary precedent to confirm that the discipline (if any) was reasonable and consistent with the Covered Agency's just cause standard, rules and regulations, collective bargaining agreements, and/or grievance and arbitration decisions.
6. Compared facts and circumstances described in the Covered Agency's completed internal investigation with relevant internal policies and training along with best practice guidelines (i.e., Final Report of *"The President's Task Force on 21st Century Policing"*) to determine if any policy or training deficiencies exist. Where deficiencies are identified, make recommendations for corrective action(s).

RELEVANT POLICIES AND CRITERIA EXAMINED

1. PSP Policy No. FR 6-7 (Uniform Traffic Law Enforcement);
2. PSP Policy No. FR 6-8 (Traffic Law Violation Stops);
3. PSP Policy No. FR 6-12 (Mobile Video/Audio Recording);
4. PSP Policy No. FR 6-18 (Contact Data Reporting); and
5. PSP OM Section 7-2, Chapter 25 (Police Warning Notices).

Best Practices Document titled *“The President’s Task Force on 21st Century Policing”* [(May 2015) published by the United States Department of Justice (US DOJ)]; and

Best Practices Document titled *“Project on Policing”* [(2022) published by the American Law Institute].

COMMISSION’S FINDINGS AND CONCLUSIONS

Pursuant to Executive Order 2020-04, as amended, and based on the Review Committee’s comprehensive review of the Pennsylvania State Police’s (PSP) completed internal investigation concerning **Internal Case No. 21-0008-P** in accordance with Article 8 (Review Process) of the Commission’s Bylaws, the Commission adopts such findings and conclusions and determined the following:

The Commission finds that PSP’s completed internal investigation was prompt, fair, impartial, and complete. This 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 finds 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.

The Commission is also required to determine whether PSP’s internal adjudicatory findings and discipline (if any) were reasonable under standard law enforcement protocol. In this case, the Commission finds that the adjudicator failed to address other apparent performance issues uncovered through PSP’s investigation, as required by PSP policy. For example, PSP Policy No. AR 4-25 (Internal Affairs) requires adjudicators to address any apparent policy violations while reviewing a bias-based policing incident. Specifically, the policy (i.e., Adjudication of Internal Affairs Investigations Adjudicating Officer’s Responsibilities) states, the adjudicator will: (1) “[a]ddress other performance issues uncovered through [an] investigation, in separate Department Correspondence by counseling and/or training which should be made part of the supervisory file;” and (2) “[i]nstitute a Blue Team entry when a separate and distinct allegation of misconduct is discovered during the adjudication review.” During this review, the Review Committee confirmed that the adjudicator properly cited the Trooper’s failure to appropriately document his or her law enforcement activity by not broadcasting pertinent information about the traffic stop over the police radio.

However, PSP confirmed that applicable policy also requires Troopers to promptly identify themselves and respectfully provide their name, rank, and other appropriate identification to involved citizens whenever initiating any police action. In this case, the Commission finds, in part, that the Trooper’s initial verbal communication with the complainant was the probable root cause of this complaint. Specifically, and based on the Review Committee’s assessment of the video evidence, the Commission finds that while making verbal contact with the complainant, the Trooper did not initially identify himself or herself by name or as a member of PSP. Additionally, the Trooper did not initially inform the complainant about the reason(s) for the traffic stop, which potentially escalated the complainant’s mistrust of the legitimacy of the Troopers’ observations. This lack of communication potentially led the complainant to believe that the traffic stop was for a purpose other than the alleged turn signal violation. Nonetheless, the Commission finds that PSP’s

adjudicatory findings and supervisory intervention were generally reasonable and consistent with standard law enforcement protocol.

Regarding its determination of whether any policy or training deficiency exists, PSP provided the Review Committee 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 the Review Committee's evaluation, the Commission adopts and ratifies the following:

**Finding No. 1 –
Citizen Engagement and Communication**

During this review, the Review Committee sought to identify the root cause(s) of the complaint, what factor(s) led to the complainant's perception of racial 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 versus those officers who are incorrectly accused of bias during legitimate enforcement activity.

To this end, the Commission finds that PSP maintains two policies that address a Trooper's communication responsibilities when initiating police action, namely:

1. General Requirements (PSP Policy No. FR 1-1) *requires* Troopers, whenever initiating any police action, to identify themselves promptly and respectfully by giving their name, rank, and other appropriate identification to persons involved; and
2. Traffic Law Violations Stops (PSP Policy No. FR 6-8) *recommends* that Troopers both identify themselves and provide a reason for the police action but does not *require* that this information is communicated to citizens.

Regarding providing prompt identification to a citizen, the Commission finds that PSP's Policy No. FR 1-1 and Policy No. FR 6-8 conflict with one another since the former *requires* Troopers to identify themselves while the latter only *recommends* this action. Regarding providing a reason for the traffic stop, PSP Policy No. FR 6-8 only *recommends* that Troopers provide a reason(s) for initiation of the police activity to citizens while PSP Policy No. FR 1-1 is silent on this issue.

In this case, the Trooper did not initially identify himself by name or as a member of PSP, in possible violation of PSP Policy No. FR 1-1. Additionally, the Trooper did not provide the reason for the enforcement activity, as recommended by PSP Policy No. FR 6-8. While the latter is not a technical violation since this action is only *recommended*, the Commission finds that this lack of communication was the probable root cause(s) for the filing of this complaint.

**Finding No. 2 –
Documenting Citizen Encounters**

During this review, the Review Committee confirmed that the Trooper did not appropriately document his or her law enforcement activity by failing to broadcast pertinent information about the traffic stop over the police radio. This failure was properly cited by the adjudicator and addressed with supervisory intervention. Additionally, the Trooper did not issue a written warning or citation for the alleged traffic violation. Consequently, the citizen was left with no written documentation regarding the Troopers who stopped the citizen or the official reason for the traffic stop.

The Commission is aware of several PSP practices that address documentation of traffic enforcement activity, for example:

1. pertinent information is transmitted and recorded via radio broadcast or the Mobile Data Terminal (required by PSP policy);
2. the encounter is recorded via the patrol vehicle's Motor Video Recorder (MVR) (required by PSP policy in all vehicles equipped with MVRs);
3. pertinent contact information is documented by a Trooper within a Contact Data Report (required by PSP policy and implemented in January 2021); and/or
4. a Trooper issues a written warning or traffic citation (currently optional in PSP policy).

The Commission finds that among the various methods designed to capture traffic enforcement activity, only issuing a written warning or traffic citation provides a citizen with documentation concerning the reason for the traffic stop, the Trooper's name, and other pertinent information. The Commission finds that providing citizens with the option to receive either a verbal or written warning or other basic written information regarding their encounter with PSP would greatly reduce miscommunications between citizens and Troopers.

**Finding No. 3 –
Traffic Enforcement Activity Using Criminal Indicators**

During its review, the Review Committee confirmed that the citizen's vehicle was initially targeted to make a criminal arrest based on indicators of possible criminal activity. For example, Troopers followed the citizen's vehicle for some time while checking the vehicle's tags based on three criminal indicators. Troopers then gained probable cause justification for the traffic stop after the citizen stopped to park at the curb in front of her residence without signaling pursuant to Section 3334(a) of the Vehicle Code (*see* 75 Pa. C.S. § 3334(a) (Turning Movements and Required Signals)).

Based on PSP's records, the indicators of possible criminal activity used to follow and initiate a check of the citizen's vehicle registration included:

1. driving through a "high crime area" (a term not defined by PSP);
2. the time of day (i.e., night); and
3. operating a rental vehicle.

Criminal indicators are behaviors or observations made by law enforcement and used as a means of both identifying and preventing potential criminal activity. Though it recognizes that this method of observation-based predictive profiling could be effective, the Commission finds that enhanced and specialized interdiction training, knowledge, and experience is essential to aid officers in identifying *potential* criminal behavior and articulating reasonable suspicion and/or probable cause.

The Commission notes that the United States Supreme Court in Whren, et al. v. United States, 517 U.S. 806, (1996), permits officer discretion when engaged in traffic enforcement for relatively minor traffic violations. Additionally, the Commission notes that, at the time this traffic stop occurred (February 23, 2018), Troopers were lawfully permitted to stop the complainant's vehicle based on all the aforementioned factors. However, recent decisions by the Pennsylvania Superior Court do not legally support Troopers making a similar traffic stop today, using these same justifications. Specifically, the Commission offers the following:

1. in Commonwealth v. Tillery, 2021 Pa. Super. 249 (opinion dated March 26, 2021) – Police officers pulled the defendant over for violating Section § 3334(a) of the Vehicle Code, which requires motorists to use turn signals when changing lanes. The prosecuting agency alleged that the defendant violated this provision by *pulling into a parking spot* without using a turn signal. However, the Pennsylvania Superior Court held that while Section 3334(a) requires a turn signal when changing lanes or *entering traffic from a parking spot*, it does not support a traffic violation when pulling into a parking spot from moving traffic (as was the case in the matter currently under review).
2. in Commonwealth v. Singletary, 2021 Pa. Super. 251 (opinion dated December 17, 2021) – The Pennsylvania Superior Court found that while being in a "high crime area" remains one factor police may consider when engaged in enforcement activity, police cannot stop and seize an individual merely because the person was in an area that had a documented, on-going, open-air, drug-dealing problem *without evidence* that the person is engaged in *actual* criminal activity.

As cited in PSP's adjudicatory report, the purpose of this traffic stop was to "make a criminal arrest based on the indicators of possible criminal activity." As noted by the adjudicator, based on the training and experience of both Troopers, "... it was known that rental vehicles are used at times to transport illegal guns and drugs." Here, the Commission finds that PSP used criminal indicators to establish reasonable suspicion to search for illegal guns, drugs, or other contraband.

However, the Pennsylvania Supreme Court recently affirmed in Commonwealth v. Alexander, 243 A.3d 177 (Pa. 2020), that the Pennsylvania State Constitution requires a valid warrant prior to searching a motor vehicle's interior contents during an otherwise ordinary traffic stop unless exigent circumstances exist, thus limiting law enforcement's general use of indicators to justify lengthy detentions and/or nonconsensual vehicle searches.

Since Commonwealth v. Alexander limits the general use of criminal indicators to justify nonconsensual searches, the requirement to obtain a search warrant can result in unreasonably lengthy investigative detentions. While the involved Trooper used his or her discretion to release the complainant without a lengthy detention, the Review Committee recognized the potential perils faced by citizens when subject to these types of law enforcement practices along with the potential safety risks such encounters pose to Troopers.

Further, the Commission finds that while the practice of using criminal indicators is legally justifiable under certain limited circumstances, criminal indicators themselves are ambiguous, can be subjective, and often wastefully divert law enforcement resources on citizens engaged in lawful behavior. Even when based on case law and observations made by specially trained law enforcement officers, over reliance on criminal indicators while engaged in minor traffic enforcement can be problematic. Regarding the need to address this enforcement strategy, the American Law Institute's "*Project on Policing*" (2022) states, in part:

"Given the breadth of misdemeanor and municipal codes, particularly around the regulation of automobiles, police officers have enormous discretion to stop individuals and to engage in other activities such as removing them from cars, conducting questioning, conducting limited or full searches of people and their effects, and even arresting them. Although such intrusions are constitutionally permissible, they raise a number of serious concerns. The requirements of reasonable suspicion or probable cause are designed precisely to justify intrusions on individual liberty, thereby ensuring that a significant percentage of intrusions will yield some evidence of criminal activity. When officers act pretextually, they typically act on hunches that fall short of these [constitutional] thresholds. Evidence suggests that pretextual traffic stops and searches are much less likely to uncover evidence of criminal activity. In addition, adhering to constitutional standards helps guard against discriminatory policing by requiring that officers have some articulable, factual basis for singling a person out. There is all-too-plentiful evidence that pretextual enforcement efforts can lead to substantial racial disparities, which can in turn degrade trust between communities and police. Much is gained and little lost by prohibiting pretextual policing in most circumstances."

Recent state and national legislation seek to address this very serious concern by preventing police officers from using minor traffic violations as a pretext for conducting motor vehicle searches.

Based on more recent case law, the risk of exposing citizens to unreasonable and lengthy investigative detention, best practices and recent legislation, the Commission finds that PSP should consider whether its practice of using criminal indicators should continue in its current form and consider regularly analyzing how effective this practice is at identifying actual criminal activity.

BASED ON ITS REVIEW, THE COMMISSION FINDS THAT THE COVERED AGENCY'S COMPLETED INTERNAL AGENCY INVESTIGATION WAS –

- ✓ **Prompt;**
- ✓ **Fair;**
- ✓ **Impartial;**
- ✓ **Complete; and**
- ✓ **Performed in Manner Consistent with Applicable Policies.**

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

ADDITIONAL FACTORS / NOTES

Not Applicable

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

Recommendation No. 1 – Citizen Engagement and Communication

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police modify its applicable policies to specifically require (unless exigent circumstances exist) that all members identify themselves during traffic stops and provide the reason(s) for a traffic stop when engaged in enforcement activity.

Recommendation No. 2 – Documenting Citizen Encounters

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police require its members to provide citizens with the option to receive written documentation (e.g., business card, brochure, written warning, and or traffic citation) for every traffic stop (unless exigent circumstances exist) to ensure proper recording of all traffic enforcement activity and ensure all citizens receive basic information regarding the encounter.

Recommendation No. 3 – Traffic Enforcement Activity Using Criminal Indicators

Given national trends and initiatives, recent Pennsylvania case law, and recent legislation, the Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania State Police adopt a formal policy requiring either quarterly or annual analysis of traffic enforcement data to be made publicly available. Data should include associated demographic information, duration of traffic stops, and other relevant information to determine the effectiveness of its use of criminal indicators in developing reasonable suspicion for initiating traffic stops and/or probable cause for subsequent vehicle searches. Further, the Commission recommends that the Pennsylvania State Police should also use this data to evaluate whether the use of criminal indicators should continue in its current form.

ORIGINALLY ADOPTED AND PRESENTED BY RESOLUTION OF THE BIAS-BASED POLICING REVIEW COMMITTEE (DATED MAY 2, 2022)

AS ORIGINALLY ADOPTED AND RATIFIED BY RESOLUTION NO. 2 OF THE PENNSYLVANIA STATE LAW ENFORCEMENT CITIZEN ADVISORY COMMISSION (DATED MAY 13, 2022)

**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. 21-0008-P**



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
1800 ELMERTON AVENUE
HARRISBURG, PA 17110

COLONEL ROBERT EVANCHICK
COMMISSIONER

July 25, 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 # 21-0008-P [PSP Case # 2018-0218]

Dear Chairman Brown:

This correspondence represents 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. # 21-0008-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– Citizen Engagement and Communication

As noted by the Commission, Field Regulation (FR) 1-1, General Requirements, mandates members to promptly identify themselves whenever they take any police action, while FR 6-8, Traffic Law Violation Stops, recommends advising the violator of the reason for the stop. The PSP will consider adding verbiage to FR 6-8, Traffic Law Violation Stops, to ensure it aligns with language in FR 1-1, as well as require (unless exigent circumstances exist) Troopers/Enforcement Officers to provide the reason(s) for a traffic stop when engaged in enforcement activity.

Recommendation No. 2 – Documenting Citizen Encounters

As previously reported to the Commission, the PSP simultaneously utilizes a number of different methods to systematically document/record a traffic stop. They include the requirement that the Trooper/Enforcement Officer initiate the Mobile Video Recording (MVR) device (if equipped) in their vehicle, notify the station via radio of the traffic stop which is audio recorded, enter the traffic stop into the Computer-Aided Dispatch (CAD) system, and prepare the Contact Data Report (CDR), regardless of whether the traffic stop resulted in a criminal arrest, traffic citation, or written/verbal warning. Additionally, the issuance of a criminal complaint, traffic citation or written warning serves as another means of the documentation of the traffic stop. The PSP will consider the feasibility of the Commission's recommendation to provide a citizen the option to receive a written warning in an effort to reduce miscommunication.

Recommendation No. 3 – Traffic Enforcement Activity Using Criminal Indicators

From 2002 until 2011 PSP collected traffic stop data. In 2021, the PSP recommenced the Contact Data Reporting program. Among the information being collected is the reason for the stop, if a search was initiated, and results from the stops. The data collected in 2021 is considered a "Pilot Phase" since the report underwent a number of changes throughout the year with the addition of several data fields. The data will be analyzed on a quarterly and annual basis by the University of Cincinnati Research Institute which in turn will report their findings to PSP. The PSP will continue to evaluate the effectiveness of criminal indicators through various means to include data from the CDR. In addition, the PSP is currently exploring how CDR data will be made available to the public. Criminal indicators observed by Troopers prior to or during the traffic stop are evaluated to determine whether additional investigation into possible criminal activity is warranted; however, as previously stated to the Commission, the probable cause to initiate a traffic stop is based on actual observance of violations of law.

Sincerely,

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

Robert Evanchick
Commissioner
Pennsylvania State Police