

FINAL REPORT OF THE COMMISSION

Name of Review Committee	USE OF FORCE REVIEW COMMITTEE
Chairperson(s) of Review Committee	DAVID A. SONENSHEIN, ESQ.
Members of Review Committee	JOSHUA S. MAINES, ESQ., and ELIZABETH C. PITTINGER
Non-Member Advisors	SHA BROWN, CHRISTOPHER KROKOS, and TIFFANY WELCOME
Ex-officio Member	JALILA PARKER*
Date Review Started	07/15/2021
Report Number	21-0005-P
Date of 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 BOARD OF PROBATION AND PAROLE [WITHIN THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS]
Nature of Completed Internal Investigative Findings Under Review (i.e., Police-Involved Shooting, Lower-Level Use of Force, Bias-based Policing)	LOWER-LEVEL USE OF FORCE – (TASER DEPLOYMENT)

BACKGROUND

Incident Date	July 21, 2016
Troop Jurisdiction of Incident	PSP Troop K (PA Board of Probation and Parole - Philadelphia, PA)
Criminal Disposition	Not Applicable
Agency Administrative Disposition	Ruled Justified – Chief Counsel (PA Board of Probation and Parole)

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 lower-level uses of force during interactions with law enforcement personnel and 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 must 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 Use of Force 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. Collective Bargaining Agreement between the Commonwealth of Pennsylvania and Council 13 American Federation of State, County, and Municipal Employees AFL-CIO (effective dates of July 1, 2016 through June 30, 2019);
2. United States Department of Justice's (US DOJ) Standards for Internal Affairs (2005);
3. PBPP Policy No. 4.03.08 – Arrest Procedures Resistance and Control (effective March 1, 2016);
4. PBPP Policy No. 4.03.08 (Appendix A) – Resistance and Control Continuum (effective June 5, 2016);
5. PBPP Policy No 4.03.08 (Appendix B) – Federal Law Enforcement Officers Safety Act of 2004 (effective July 22, 2004);
6. PBPP Policy No. 4.03.08 (Appendix C) – Response to Resistance and Control Report (effective March 1, 2016); and
7. PBPP Policy No. 12.02.07.01 – Care Custody and Control of Commonwealth Property (effective October 29, 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 Board of Probation and Parole's (PBPP) completed internal investigation concerning **Internal Case No. 21-0005-P**, the Commission adopts such findings and conclusions and determined the following:

The Commission finds that PBPP's completed internal investigation was prompt, fair, and impartial which was corroborated by examining PBPP's investigative reports, relevant interviews, and information provided by PBPP during its Oral Presentation. Regarding promptness, fairness, and impartiality, the Commission also finds that PBPP's completed internal investigation was consistent with 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 PBPP's internal investigation was complete and whether adjudicatory findings were reasonable based on the totality of circumstances. Concerning TASER deployments, PBPP Policy No. 12.02.07.01 (Care Custody and Control of Commonwealth Property) requires supervisory personnel, after the discharge and use of a TASER, to secure and remove the TASER from service until a data download, known as a TASER Deployment Data Report (Report), is generated. As required by PBPP's policy, this Report provides relevant data regarding dates, times, the number of TASER cartridges deployed, and the duration of each deployed energy cycle (the energy cycle is the incapacitating effect delivered through electric current) specific to that TASER. Additionally, PBPP's policy also requires Agents to provide an opportunity for a citizen to comply with verbal commands prior to the use of additional energy cycle deployments and limits the number of deployments during a single incident to the number sufficient to achieve a lawful objective.

During this review, the Review Committee requested, received, and reviewed a copy of the applicable Report along with copies of relevant witness interviews and other records concerning PBPP's completed internal investigation. First, and based on the Review Committee's analysis of these documents, the Commission finds that the investigative file contained witness statements verifying that at least two separate energy cycles were deployed by the Agent during this incident. In accordance with PBPP's policy, the Agent's TASER was secured and removed from service, and a Report was generated the following day. Based on clarification offered by PBPP to the Review Committee in accordance with Section 8.3 (Covered Agency's Opportunity to Respond to Preliminary Report) of the Commission's Bylaws, the Commission finds that the Report included all information required by PBPP's policy. PBPP also confirmed that the Agent was trained and maintained current certification regarding TASER use on the day of the incident. The Commission also finds that specific data and related information concerning use of the TASER on the citizen was reasonably obtainable by internal investigators and considered by PBPP supervisors in their assessment of the reasonableness of force used by the Agent. PBPP supervisors also

considered whether the Agent complied with PBPP policy regarding the need for, and number of energy cycles deployed. Accordingly, and based on the Review Committee’s review of the internal affairs investigation and adjudication documents, the Commission finds that PBPP’s internal investigation was complete, and its adjudicatory findings were reasonable as required.

Regarding its determination of whether any policy or training deficiency exists, PBPP 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 assessment, the Commission adopts and ratifies the following:

Finding No. 1 – Use of Force Policy Enhancements

During this review, the Review Committee conducted a thorough examination of PBPP’s Arrest Procedures Resistance and Control Policy, which serves as PBPP’s use of force policy, along with PBPP’s Resistance and Control Continuum (Continuum), which provides detailed guidance on such use of force. First, the Review Committee evaluated the internal controls and guidance embedded within these policies to ensure that reasonable force determinations can be made by PBPP adjudicators consistent with both United States Supreme Court precedent (see Graham v. Connor, 490 U.S. 386, 394 (1989)(an officer’s application of force must be objectively reasonable given the totality of circumstances the officer faces at the time)) and Pennsylvania Law (see 18 Pa. C.S. § 508 (Use of Force in Law Enforcement)).

Based on that review, the Commission finds that PBPP’s Arrest Procedures Resistance and Control Policy can be strengthened further by including a specific definition for “objectively reasonable” consistent with Graham v. Connor (i.e., the use of force incident must be “judged from the perspective of a reasonable officer on the scene”). This enhancement would ensure that proper guidance is provided for adjudicators who are responsible for making judgements on the reasonableness of PBPP’s use of force incidents. The Commission notes that, during prior reviews in 2021 and early in 2022, the Review Committee proposed, and the Commission adopted, this same recommendation to both the Pennsylvania State Police (PSP) and the Pennsylvania Department of Conservation and Natural Resources (DCNR).

Generally, PBPP agents are justified in the use of force under the following circumstances: (1) protection of self; (2) protection of others; (3) prevention of a subject’s escape; and (4) to arrest or detain a subject as authorized by law. Concerning the matter currently under consideration, PBPP’s internal investigation and related adjudication, which includes a multi-layered approval process, determined that the Agents’ use of force was justified. Here, the use of force involved a TASER deployment while lawfully taking a citizen into custody for a parole violation and the force successfully overcame the citizen’s resistance (i.e., pushing, striking, and active aggression) against the Agents involved.

Overall, the Commission finds that PBPP’s Arrest Procedures Resistance and Control Policy is clear and provides adequate guidance regarding the use of various resistance and control techniques available to Agents, particularly when combined with PBPP’s Continuum. In line with best practices, this Continuum provides detailed guidance regarding uses of force, along with guardrails to ensure that such force is not excessive depending on circumstances faced by Agents. During its Oral Presentation before the Review Committee in accordance with Article 8 (Review Process) of the Commission’s Bylaws, PBPP also confirmed that it continuously reviews its use of force policy for potential modifications and improvements to increase the policy’s effectiveness and that its current policy does not impede law enforcement activities or jeopardize Agent safety. Furthermore, PBPP reiterated that its use of force policy adheres to United States Supreme Court standards which require that any force deployed is subject to review under a reasonable person standard, and the Commission agrees.

Regarding TASER deployment specifically, PBPP’s Care, Custody, and Control of Commonwealth Property Policy (effective October 29, 2020) states, in part, that “[e]mployees authorized to use the TASER may use it to restrain a subject consistent with the agency resistance and control continuum. On that continuum, the TASER falls into the pain compliance category.” However, the Commission finds that PBPP’s Arrest Procedures Resistance and Control Policy (effective March 1, 2016) was not updated to include the use of TASERs on PBPP’s Continuum. Accordingly, the Commission finds that PBPP’s Arrest Procedures Resistance and Control Policy, which serves as the agency’s use of force policy, should be strengthened by

updating and specifically including TASER deployments within PBPP's Continuum to ensure that Agents are aware of where such force fits within this spectrum.

Next, and concerning an Agent's duty to render aid, PBPP's policy provides, in part: "anytime an employee causes injury by striking a subject or the subject complains of injury, the employee shall: (1) [i]mmediately call emergency medical personnel or transport the subject to the nearest emergency medical facility for medical attention; and (2) [c]ontact the employees' supervisor and advise the supervisor of the nature of the injury as soon as possible. Here, and as required by PBPP policy, Agents immediately contacted emergency medical personnel to secure treatment for the involved citizen along with a supervisor, who was present immediately on the scene after the encounter began.

After calling for emergency medical services for the injured citizen, Agents also simultaneously contacted the Philadelphia Police Department to jurisdictionally transfer and take the citizen into custody for processing of the alleged parole violation. Consequently, medical treatment was interrupted by the custody transfer and Philadelphia Police Officers, not the emergency medical personnel, transported the citizen to the hospital after he complained of chest pains. Although these actions were consistent with PBPP policy, this practice interrupted the citizen's continuum of medical care and potentially exposed the citizen to enhanced risk of complications from untreated injuries resulting from the TASER deployment.

Additionally, PBPP's policy requires Agents to render aid when an Agent causes an injury "by striking a subject." However, PBPP's definition of "striking" is limited, and does not necessarily include potential injury resulting from TASER and pepper spray deployments, or other uses of force. Accordingly, the Commission finds PBPP's policy should be strengthened by requiring that medical aid be rendered and/or secured whenever force is used that may cause an injury or when a citizen complains of an injury, and by requiring periodic wellbeing checks following a use of force incident.

Finding No. 2 – Body Worn Cameras

The Review Committee researched best practices and identified that the US DOJ's Office of Justice Programs provides both guidance and funding for law enforcement agencies interested in planning and implementing a body worn camera program. The Office of Justice Programs' webpage states, in part, "[l]aw enforcement agencies across the United States and throughout the world are using body-worn cameras (BWCs) as a promising tool to improve evidentiary outcomes, and enhance the safety of, and improve interactions between, officers and the public. BWCs also are proving to be an important tool to assist broader law enforcement, problem-solving, and community engagement strategies within jurisdictions. BWCs can be highly effective resources, providing an unalterable audio and visual record of interactions that capture empirical evidence in the event of a crime, police-citizen interaction, or use-of-force incident."

The Commission finds that audio and/or video footage of the use of force incident currently under review was not available to either PBPP adjudicators or the Review Committee because PBPP does not have a body worn camera program or possess interview or assessment room surveillance equipment. The Commission notes that video footage of this use of force incident could have provided a visual record of the encounter between the Agents and the citizen to further assist PBPP's adjudicatory assessment of the Agents' conduct under a totality of the circumstance's standard. The Commission also notes that, during previous reviews, the Review Committee proposed, and the Commission adopted, this same recommendation to both PSP and DCNR.

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 *Reasonable* and Based on Applicable Standards.**

ADDITIONAL FACTORS / NOTES

Not Applicable

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

Recommendation No. 1 – Use of Force Policy Enhancements

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania Board of Probation and Parole [within the Pennsylvania Department of Corrections] enhance its Arrest Procedures Resistance and Control Policy (a/k/a use of force policy) by:

- 1) including a definition of “objectively reasonable” consistent with United States Supreme Court precedent mandated by Graham v. Connor;
- 2) specifically listing TASER deployments in its accompanying Resistance and Control Continuum; and
- 3) revising language to indicate when force is used, and an injury is apparent or possible, or a citizen complains of an injury, a requirement that:
 - a. aid is rendered and/or secured;
 - b. the citizen is continually monitored while in custody for potential medical interventions after the use of force; and
 - c. agents must inform the respective agency of the citizen’s apparent or possible injury, or complaint of an injury, prior to releasing the citizen to the care and custody of another law enforcement or criminal justice agency.

Proposed Recommendation No. 2 – Body Worn Cameras

The Pennsylvania State Law Enforcement Citizen Advisory Commission recommends that the Pennsylvania Board of Probation and Parole [within the Pennsylvania Department of Corrections] implement a body worn camera program as recommended by best practices offered by the United States Department of Justice along with interview and/or assessment room surveillance in support of its enforcement efforts.

ORIGINALLY ADOPTED AND PRESENTED BY RESOLUTION OF THE USE OF FORCE REVIEW COMMITTEE (DATED APRIL 1, 2022)

AS ORIGINALLY ADOPTED AND RATIFIED BY RESOLUTION NO. 3 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. 21-0005-P**



PENNSYLVANIA DEPARTMENT OF CORRECTIONS
GOVERNOR'S OFFICE OF GENERAL COUNSEL
1920 TECHNOLOGY PARKWAY
MECHANICSBURG, PENNSYLVANIA 17050
(717) 728-7763

June 28, 2022

Sha S. Brown Chairman, PSLECAC
555 Walnut Street
8th Floor, Forum Place
Harrisburg, PA 17101

Re: Pennsylvania State Law Enforcement Citizen Advisory Commission
Notification of Final Review Results and Recommendations

Dear Chairman Brown:

The Pennsylvania State Law Enforcement Citizen Advisory Commission's (Commission) completed its review of Case # 21-0005-P. The Commission provided its review of this case to the Department of Corrections and asked to be provided with a written response to the review.

The Department of Corrections thanks the Commission for its review and applauds the Commission's purpose and efforts in reviewing Uses of Force by Law Enforcement. The Department welcomes the review and appreciates any constructive criticism or insight provided by the Commission with the review.

For the current review, the Commission found that the Department's internal investigation was complete and its adjudicatory findings were reasonable as required. In addition to the review, the Commission recommended enhancements to the Department's Use of Force Policy and that the Parole staff implement a body worn camera program.

Concerning the Use of Force Policy, the Commission recommended:

- 1) including a definition of “objectively reasonable” consistent with United States Supreme Court precedent mandated by Graham v. Connor;
- 2) specifically listing TASER deployments in its accompanying Resistance and Control Continuum; and
- 3) revising language to indicate when force is used, and an injury is apparent or possible, or a citizen complains of an injury, a requirement that:
 - a. aid is rendered and/or secured;
 - b. the citizen is continually monitored while in custody for potential medical interventions after the use of force; and
 - c. agents must inform the respective agency of the citizen’s apparent or possible injury, or complaint of an injury, prior to releasing the citizen to the care and custody of another law enforcement or criminal justice agency.

In response to these suggestions, the Department of Corrections is implementing the Commission’s recommendations. Department staff have begun to re-write our policies to incorporate these recommendations and hope to have them completed soon.

Concerning the Body Cameras, the Commission recommended that the Department implement a body worn camera program for its parole staff. This is a recommendation with which the Department agrees. To effectuate this recommendation, the Department has proposed language to amend the Wiretap Act.

Sincerely,



Timothy A. Holmes
Chief Counsel

cc: George M. Little, Acting Secretary, Department of Corrections
Christian Stephens, Deputy Secretary, Department of Corrections
John Manning, Deputy Chief Counsel, Department of Corrections