

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	Commission Chairperson SHA BROWN, and OSIG Senior Special Investigator TIFFANY WELCOME
Ex-officio Member	ANGELA FITTERER*
Date Review Started	07/15/2021
Report Number	21-0003-P
Date of Report	8/5/2022

* 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)	Lower-Level Use of Force (Physical Restraint)

BACKGROUND

Incident Date	February 23, 2019
Troop Jurisdiction of Incident	Troop B (covering Allegheny, Washington, Greene, Fayette Counties)
Criminal Disposition	Not Applicable
Agency Administrative Disposition	Ruled Justified – Commanding Officer Troop B (June 17, 2019)

SCOPE AND METHODOLOGY OF REVIEW

Under Executive Order 2020-04, as amended, the Pennsylvania State Law Enforcement Citizen Advisory Commission (Commission) reviews a Covered Agency's completed internal investigations concerning lower-level uses of force 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 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 conducted its completed internal investigation when compared to internal policy and relevant collective bargaining agreements to determine whether the investigation was prompt and fair.
2. Reviewed internal relevant policies designed to safeguard fairness and impartiality to ensure that the Covered Agency conducted its completed internal investigation 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 it considered all relevant facts, 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 the Pennsylvania State Troopers Association (effective dates of July 1, 2017 through June 30, 2020);
2. United States Department of Justice's (US DOJ) Standards for Internal Affairs (2005);
3. PSP Policy No. FR 1-1 (General Requirements);
4. PSP Policy No. FR 7-2 (Prisoner Security and Transportation);
5. PSP Policy No. FR 9-1 (Use of Force);
6. PSP Policy No. AR 1-4 (Arrest, Interrogation, and Warrantless Searches and Seizures);
7. PSP Policy No. AR 4-06 (Rules of Conduct for Employees); and
8. PSP Policy No. AR 4-25 (Internal Investigations).

COMMISSION'S FINAL DETERMINATIONS, 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. 21-0003-P** in accordance with Article 8 (Review Process) of the Commission's Bylaws, the Commission adopts such findings and conclusions and determines the following:

The Commission finds that PSP's completed internal investigation was prompt, fair, impartial, complete, and that its internal adjudicatory findings were reasonable under standard law enforcement protocol. The Commission corroborated these determinations by examining PSP's investigative and adjudication reports, relevant interviews, and information provided by PSP during its Oral Presentation. The Commission also finds that PSP's completed internal investigation was consistent with guidelines established by the US DOJ's published standards and principles concerning internal affairs investigations along with PSP's internal policies and the relevant collective bargaining agreement.

PSP also 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 by Executive Order 2020-04 (as amended). Based on its review, the Commission notes the following:

Police-Citizen Encounters (Fourth Amendment Considerations)

Both the United States Third Circuit Court of Appeals and the Supreme Court of Pennsylvania acknowledge that the Fourth Amendment of the United States Constitution recognizes three broad categories of warrantless interactions between private citizens and law enforcement, namely "mere encounters," "investigative detentions," and "custodial detentions." *See e.g., United States v. Brown*, 765 F.3d 278, 288 (3d Cir. 2014) (referring to the categories as either non-coercive/non-detention exchanges, investigatory detentions or brief seizures, or "full scale" arrests); *See also Commonwealth v. Hicks*, 208 A.3d 916, 927 (Pa. 2019); *Commonwealth v. Adams*, 205 A.3d 1195, 1199 (Pa. 2019) (noting mere encounters are sometimes referred to as "consensual encounters," investigative detentions are temporary, and custodial detentions are the functional equivalent of arrests); and *Commonwealth v. Chase*, 960 A.2d 108, 117 (Pa. 2008).

The Commission also notes that "mere encounters" are not Fourth Amendment events and do not constitute seizures. *See e.g., Brown*, 765 F.3d at 288; and *see Hicks*, 208 A.3d at 927. However, "investigative detentions" and "custodial detentions" do constitute seizures for Fourth Amendment purposes. *See Adams*, 205 A.3d at 1199. The courts describe each category in more detail as follows:

- a) a "mere encounter" need not be supported by any level of suspicion, and does not require a citizen to stop or respond;
- b) an "investigative detention," or *Terry* stop, must be supported by reasonable suspicion, and does not compel a citizen to stop and be subject to a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest; and

c) an arrest or a “custodial detention” must be supported by probable cause.

Chase, 960 A.2d at 117. See e.g., *U.S. v. Mendenhall*, 446 U.S. 544, 554 (1980). The *Mendenhall* court noted:

Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or *the use of language or tone of voice indicating that compliance with the officer’s request might be compelled* [emphasis added].

Id.; See also *Commonwealth v. Guess*, 53 A.3d 895, 900 (Pa. Super. Ct. 2012) (laying out the framework for when a mere encounter may ripen into a seizure for Fourth Amendment purposes).

The Review Committee initially expressed unease about whether the citizen felt compelled to stop and respond when the PSP Trooper stated “[s]o, I’m going to need to get an interview from you.” At that point during the “mere encounter,” the PSP Trooper only observed a woman walking away from the alleged victim’s home which may or may not have amounted to the reasonable suspicion necessary to justify an “investigative detention.” Here, the citizen arguably had no legal obligation to stop and respond to the PSP Trooper’s further request for information. The Review Committee also initially expressed concerns about the nuances between “mere encounters,” “investigative detentions” and “custodial arrests,” the legal significance and implications of even casual words by law enforcement, and related guidance and training which must be clear to reduce the risk of jeopardizing otherwise lawful arrests. Consequently, the Review Committee initially recommended that PSP ensure all Troopers receive annual in-service training including Fourth Amendment case law updates that specifically includes instruction addressing the distinctions between “mere encounters,” “investigative detentions,” and “custodial arrest.”

Pursuant to Section 8.3 (Covered Agency’s Opportunity to Respond to Preliminary Report) of the Commission’s Bylaws, the Review Committee extended PSP an invitation to attend and opportunity to respond to the Review Committee’s preliminary findings and recommendations during its Special Meeting held on July 25, 2022. Although PSP opted not to attend the Review Committee’s meeting, PSP informed the Commission (via letter dated July 25, 2022 received after the meeting) that all Troopers receive annual, mandatory in-service training which includes Fourth Amendment case law updates and instruction detailing police/citizen interactions along with addressing the distinctions between "mere encounters," "investigative detentions," and "custodial arrests." PSP further informed the Commission that any case law having an immediate impact on PSP operations or law enforcement, in general, are published via email to all PSP personnel and/or made a topic during roll calls. Further, PSP indicated case law updates and reminders are also published in PSP Chief Counsel's Column of the PSP Communicator, which is an internal publication for PSP personnel.

Based on this new information, the Review Committee’s Chairperson proposed an amendment to the draft of the **Preliminary Investigative Review Report for Internal Case No. 21-0003-P** removing the initial finding and subsequent recommendation concerning PSP’s training on this subject. The Commission voted in favor of the proposed amendment and the **Final Report of the Commission for Internal Case No. 21-0003-P**, as amended, was ratified on August 5, 2022.

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

- ✓ **Prompt**
- ✓ **Fair**
- ✓ **Impartial**
- ✓ **Complete**
- ✓ **Performed in Manner Consistent with Applicable Policies**
- ✓ **Included Adjudicatory Findings and Discipline (if any) that were Not Reasonable and Based on Applicable Standards.**

ADDITIONAL FACTORS / NOTES

Not Applicable

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

The Pennsylvania State Law Enforcement Citizen Advisory Commission does not offer any new recommendations for consideration by the Pennsylvania State Police. Pursuant to Executive Order 2020-04, as amended, the Pennsylvania State Police is not required to respond to this Final Report.

ORIGINALLY ADOPTED AND PRESENTED BY RESOLUTION OF THE USE OF FORCE REVIEW COMMITTEE (Dated July 25, 2022)

AS ORIGINALLY ADOPTED AND RATIFIED BY RESOLUTION NO. 2 OF THE PENNSYLVANIA STATE LAW ENFORCEMENT CITIZEN ADVISORY COMMISSION (Dated August 5, 2022)

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



Sha S. Brown
(Electronic Signature Authorized)

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



Jaimie L. Hicks
(Electronic Signature Authorized)