

FINAL REPORT OF THE COMMISSION

Name of Review Committee	CRITICAL INCIDENT REVIEW COMMITTEE
Chairperson(s) of Review Committee	DR. SPERO LAPPAS, ESQUIRE, PH.D
Members of Review Committee	BISHOP CURTIS JONES, SR.; VICE-CHAIRPERSON ELIZABETH PITTINGER; CHARIMA YOUNG and ANDREA LAWFUL-SANDERS
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	21-0017-P
Date of Report	10/28/2022

* 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

Name of Covered Agency	PENNSYLVANIA STATE POLICE
Nature of Completed Internal Investigative Findings Under Review (i.e., Police-Involved Shooting, Lower-Level Use of Force, Bias-based Policing)	POLICE-INVOLVED SHOOTING WITH PURSUIT INVOLVED MOTOR VEHICLE CRASH (FATAL)

BACKGROUND

Incident Date	July 1, 2016
Troop Jurisdiction of Incident	Unknown
Criminal Disposition	Ruled Justified – County District Attorney (September 29, 2016)
Agency Administrative Disposition	Ruled Justified – Commanding Officer(s)(Captain – January 24, 2017) (Major – February 1, 2017)

SCOPE AND METHODOLOGY OF REVIEW

Under Executive Order 2020-04, as amended, the Pennsylvania State Law Enforcement Citizen Advisory Commission (Commission) is required to review a Covered Agency's completed internal investigations concerning police-involved shootings 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 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 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 comprehensive investigation summary to ensure investigators collected all relevant facts reasonably obtainable and conducted all relevant interviews.
4. Reviewed the Covered Agency's comprehensive investigation summary 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 comprehensive investigation summary 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 Commonwealth of Pennsylvania and the Pennsylvania State Troopers' Association (effective dates July 1, 2012 through June 30, 2017);
2. United States Department of Justice (US DOJ) Standards and Guidelines for Internal Affairs (2005);
3. PSP Policy No. FR 1 – 1 (General Requirements);
4. PSP Policy No. FR 1 – 2 (Duty Requirements);
5. PSP Policy No. FR 6-10 (Police Pursuits, Legal Intervention, Roadblocks, Pennsylvania Police Pursuit Reporting System, and Pursuit Analysis);
6. PSP Policy No. FR 1 – 5 (Officer Involved Shootings and Serious Police Incidents);
7. PSP Policy No. FR 6 – 8 (Traffic Law Violation Stops);
8. PSP Policy No. FR 9 – 1 (Use of Force / FR 7-3 Use of Force (Published 10/31/11); and
9. PSP Policy No. AR 4-25 (Internal Affairs).

COMMISSION'S FINAL DETERMINATIONS, FINDINGS, AND CONCLUSIONS

Pursuant to Executive Order 2020-04, as amended, the Commission completed a comprehensive review of **Internal Case No. 21-0017-P** in accordance with Article 8 (Review Process) of the Commission's Bylaws and determines the following:

Determination of Whether the Covered Agency's Completed Internal Investigation was Prompt and Fair

The Commission determines that the Pennsylvania State Police's (PSP) completed internal investigation of the underlying incident was both prompt and fair. The Commission's determinations were made after reviewing the summary of PSP's completed internal investigation, PSP's written responses to the Commission's written questions, and information received from PSP during its Oral Presentation. Regarding promptness and fairness, the Commission determines 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.

Determination of Whether the Covered Agency's Completed Internal Investigation was Impartial

The Commission determines that PSP's policies and practices (at the time of the underlying incident) did not function as an effective tool to ensure internal investigations were free from bias and affirmatively safeguarded against potential conflicts of interest. Specifically, PSP did not require signed disclosures from investigators and other parties involved with conducting and approving an internal investigation to affirmatively document the absence of any known or potential conflicts of interest. Throughout the Commission's previous reviews, various Commissioners questioned why PSP lacked such documentation. In the Fall of 2021, PSP adopted the practice and now requires investigators and other parties involved with its internal investigations to sign a written waiver requiring written documentation of any conflict of interest or the absence thereof.

Additionally, as identified in the Commission's **Final Report for Internal Case No. 21-0011-P (ratified on December 10, 2021)**, the Commission continues to preliminarily identify significant best practice guidance supporting independent criminal investigations of use of force incidents. For example, guidance published by the US DOJ [titled "Standards and Guidelines for Internal Affairs"], provides "a criminal investigation of an agency employee, ...is so serious that an agency should consider extraordinary measures to ensure that the investigation is as thorough and independent of conflicts of interest as possible." Here, the Commission determines that PSP did not take any such extraordinary measures to ensure independence of the investigation, nor did PSP take any necessary measures at the time to overcome the inherent conflict of interest when an agency criminally investigates its own personnel.

The Commission recognizes the steps taken by PSP in 2021 and supports them. However, the Commission determines that the measures in place at the time of the underlying incident and known to the Commission, were insufficient to ensure impartiality.

Determination of Whether the Covered Agency's Completed Internal Investigation was Complete

As previously stated, Executive Order 2020-04 (as amended), requires PSP to provide a Comprehensive Written Summary that includes a description of all investigative activities and an Oral Presentation of its internal investigative findings. This base line documentation, supported by supplemental requests for information, when appropriate, provided insufficient information for the Commission to render an assessment. The US DOJ's "Standards and Guidelines for Internal Affairs," defines a complete investigation as, "one which includes all relevant information required to achieve the purpose of the inquiry."

Regarding its determination of whether PSP's completed internal investigation of this underlying incident was complete, the Commission determines that its review was limited because PSP was unable to provide sufficient information or detail about whether investigators collected and presented all relevant facts for adjudication, and to achieve the purpose of the inquiry. For example, and as established by relevant facts, Troopers involved in the underlying incident currently under review were primarily guided by PSP's pursuit policy [Policy No. FR 6-10]. Here, PSP investigators were required to collect sufficient information to confirm, during the entirety of the vehicle pursuit, whether Troopers drove with due regard for the safety of all citizens and within guidelines established by its pursuit policy.

During its meeting with PSP pursuant to Section 8.3 of the Commission's Bylaws, PSP stated it is barred by Pennsylvania statute from providing a copy of its pursuit policy to the Review Committee for examination. Pursuant to 75 Pa.C.S § 6341 *et seq.*, a police department's pursuit policy "shall be confidential and shall not be made available to the general public." Nonetheless, Section 6342(a) requires that all police departments "shall develop and implement a written emergency vehicle response policy governing the procedures under which a police officer should *initiate, continue* and *terminate* a motor vehicle pursuit." Also, the policy may be modeled after any policy endorsed by a national or state organization or association of police chiefs or police officers. Furthermore, the statute requires that each policy contain, for example: (a) decision making criteria or principles for initiation of a pursuit which may include, but is not limited to: (i) the potential for harm or immediate or potential danger to others if the fleeing individual or individuals escape; (ii) the seriousness of the offense committed or believed to have been committed by the individual or individuals attempting to flee; and (iii) safety factors that pose a risk to police officers, other motorists, pedestrians, and other persons; (b) responsibilities of pursuing officers, the communications center and field supervisor; (c) pursuit tactics and roadblock usage; and (d) decision making criteria or principles for termination of pursuit that may include, but is not limited to, safety factors that pose a risk to police officers, other motorists, pedestrians and other persons.

Without the ability to examine PSP's pursuit policy to verify the standard applied by internal investigators when collecting investigative information and to ensure its investigation achieved the purpose of their inquiry, the Commission is unable to establish whether PSP's internal investigation was complete.

Determination of Whether the Covered Agency's Adjudication was Reasonable

Concerning its determination of whether adjudicatory findings were reasonable under standard law enforcement protocols, PSP similarly provided the Commission with insufficient information to complete its assessment of PSP's completed investigation. Ultimately, the Commission is unable to determine whether adjudicatory findings and related conclusions were reasonable without knowing what standards of conduct both adjudicators and reviewers applied during their individual assessments of the totality of involved Troopers' conduct and whether use of force was justified. Similar to its assessment of the completeness of PSP's internal investigation of the underlying incident, and without the ability to examine relevant policies, the Commission is unable to establish whether PSP adjudicator's and reviewer's assessments of the Troopers' use of force were reasonable and based on the totality of the circumstances, as required.

Determination of Whether Policy and/or Training Deficiencies Exist

Pursuant to Executive Order 2020-04, as amended, if the Commission identifies any policy or training deficiencies during a review, it shall make recommendations to correct the perceived deficiency for consideration by a Covered Agency. Because PSP took the position that the agency is barred by statute from providing it with sufficient information or documentation during its review, the Commission is limited in its ability to fully assess whether deficiencies exist within PSP's pursuit policy and or related training protocols concerning vehicle pursuits. For example, the Commission is unable to assess whether PSP's pursuit policy achieves and or incorporates best practice guidance as recommended by the International Association of Chiefs of Police. Accordingly, the Commission determines that it is unable to conduct and complete a comprehensive review of PSP's completed internal investigation without a general examination of PSP's pursuit policy [which is statutorily protected from public disclosure as previously stated].

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

- ✓ **Prompt;**
- ✓ **Fair;**
- X **Impartial;**
- X **Complete;**
- X **Performed in Manner Consistent with Applicable Policies; and**
- X **Included Adjudicatory Findings and Discipline (if any) that were *Not Reasonable* under standard law enforcement protocols.**

ADDITIONAL FACTORS / NOTES

None

FINAL RECOMMENDATION(S) FOR CORRECTIVE ACTION(S)

The Pennsylvania State Law Enforcement Citizen Advisory Commission proposes no new recommendations at this time. Pursuant to Executive Order 2020-04, as amended, the Pennsylvania State Police is not required to respond.

AS ADOPTED AND PRESENTED BY RESOLUTION NO. CI-1 OF THE CRITICAL INCIDENT REVIEW COMMITTEE (DATED OCTOBER 19, 2022)

AS ORIGINALLY ADOPTED AND RATIFIED BY RESOLUTION NO. 2 OF THE PENNSYLVANIA STATE LAW ENFORCEMENT CITIZEN ADVISORY COMMISSION (DATED OCTOBER 28, 2022)

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



Sha S. Brown

(Electronic Signature Authorized)

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



Jaimie L. Hicks

(Electronic Signature Authorized)