



Executive Order

Commonwealth of Pennsylvania

Governor's Office

Executive Order 2023-21 – Pennsylvania Citizen Law Enforcement Advisory and Review (CLEAR) Commission

Date: November 2, 2023

A handwritten signature in blue ink, appearing to read "Josh Shapiro".

By Direction of:
Josh Shapiro, Governor

- WHEREAS, the Commonwealth is committed to bipartisan criminal justice reforms that are fair and inclusive and support public safety; and
- WHEREAS, in order to move forward successfully as a Commonwealth, systemic failings that have created inequities must be addressed; and
- WHEREAS, the Commonwealth must take action to improve law enforcement relations with the community and to strengthen accountability of law enforcement personnel; and
- WHEREAS, improved law enforcement requires supporting the mental health and training needs of law enforcement personnel; and
- WHEREAS, the Commonwealth is committed to identifying necessary system-level reforms to promote transparency, fairness, and accountability among the Commonwealth's state law enforcement agencies; and
- WHEREAS, citizen engagement and participation are essential to assist the Commonwealth in fulfilling these commitments; and
- WHEREAS, with input from the Pennsylvania Citizen Law Enforcement Advisory and Review Commission, the Commonwealth's law enforcement agencies can serve as a model of excellence for law enforcement throughout Pennsylvania and the country.

NOW, THEREFORE, I, Josh Shapiro, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby reestablish, within the Office of State Inspector General (OSIG), and rename it as the Pennsylvania Citizen Law Enforcement Advisory and Review (CLEAR) Commission (hereafter referred to as the "Commission") and, further, order and direct as follows:

1. Purpose.

The purpose of the Commission is to assist law enforcement agencies under the Governor's jurisdiction with improving their policing practices. The Commission is comprised of Pennsylvania citizens focused on promoting transparency, fairness, and accountability among the Commonwealth's state law enforcement agencies by reviewing events, policies, practices, and procedures.

2. Covered Agencies.

All law enforcement agencies under the Governor's jurisdiction, including, but not limited to, the Pennsylvania State Police (PSP), the Department of General Services (DGS) Capitol Police, the Department of Corrections (DOC) Law Enforcement Sub-units, the Department of Conservation & Natural Resources (DCNR) Park Rangers, OSIG's Bureau of Fraud Prevention and Prosecution, and the Department of Agriculture (PDA) Bureau of Dog Law Enforcement.

3. Terms and Definitions.

- a. Administrative Adjudication** is the completion of any internal investigation, with an administrative finding of "sustained", "not-sustained", or "unfounded" or the agency equivalent thereof, where all disciplinary penalties have been imposed and all contractual remedies, including grievance and arbitration proceedings, have been exhausted.
- b. Bias-Based Policing** is the unreasonable use of race, ethnicity, national origin, gender, or religion by a law enforcement officer in deciding to initiate an enforcement action. It is not racial or other biased-based policing when race, ethnicity, national origin, gender, or religion is used in combination with other identifying factors as part of a specific individual description to initiate an enforcement action.
- c. Criminal Adjudication** is either a determination by the applicable prosecutor to decline prosecution or all judicial procedures up to and including sentencing and applicable appeal periods have occurred.
- d. Injury** as it relates to Section 4.b of this Executive Order shall be those injuries which require advanced medical treatment beyond basic first aid.
- e. Completed Internal Investigative Findings** is the final administrative determination by the covered agency that the Commission is authorized to review after a case has been fully investigated and criminally adjudicated and administratively adjudicated, as defined above, and where no civil litigation has commenced, and where all applicable statutes of limitation have elapsed or all civil or civil rights litigation has concluded. Where civil action commences during the pendency of a review, such review shall cease until the litigation has concluded.
- f. Random Sampling** is a sampling of completed internal investigative findings for lower-level use of force cases chosen by way of random selection of a predetermined number of cases without specific knowledge of the persons involved or incident details.

- g. Law Enforcement Sensitive (LES) Information** is information that if disclosed could harm, jeopardize, or threaten the investigations, operations, or other law enforcement or public safety activities of a law enforcement agency as determined by that agency.
- h. Personal Identifiable Information (PII)** is information that, when used alone or with other relevant data, can identify an individual. PII may contain direct identifiers (e.g., passport information) that can identify a person uniquely, or quasi-identifiers (e.g., race) that can be combined with other quasi-identifiers (e.g., date of birth) to successfully identify an individual.
- i. Non-Public Information** is any information that is exempt from public disclosure pursuant to Section 708(b) of the Right-to-Know Law (RTKL), Act of February 14, 2008, P.L. 6, as amended, 65 P.S. §§ 67.101–67.3104, including, but not limited to, records that would threaten a public safety activity or related to a criminal or internal investigation.
- j. Criminal History Record Information Act (CHRIA), 18 Pa. C.S. Chapter 91, Information** is all information that cannot be disclosed to non-criminal justice agencies pursuant to CHRIA, including but not limited to criminal history information, intelligence information, investigative information as defined by CHRIA.
- k. Criminal Justice Information Services (CJIS) Information** is any information that is obtained or derived from a CJIS system, including, but not limited to, information from the Interstate Identification Index System (III System), the National Crime Information Center (NCIC), and the International Justice and Public Safety Information Sharing Network (Nlets).

4. Pennsylvania CLEAR Commission.

- a.** The Commission is established within OSIG, which shall provide administrative support and assistance to the Commission.
- b. Authority and Responsibilities.**
 - (1) Review Completed Internal Investigative Findings:** The Commission is authorized to review covered agencies' completed internal investigative findings related to allegations and incidents of use of force and bias-based policing in the following categories:
 - (a)** All investigations of police-involved shootings resulting in injury or death of civilians conducted by covered agencies;
 - (b)** A representative, random sampling of investigations of lower-level uses of force resulting in injury or death, including arrest and control techniques, baton strikes, and conducted energy weapon deployments; and
 - (c)** All investigations related to allegations of racial or ethnic discrimination and other bias-based policing or external complaints of bias or discrimination during interactions with covered agencies' law enforcement officers.

- (2) **Scope of Review:** The Commission shall review the completed internal investigative findings set forth in Section 4.b.(1), above, to determine:
- (a) Whether the investigations were prompt, fair, impartial, complete, and performed in a manner consistent with applicable policies and regulations.
 - (b) Whether the findings and discipline were reasonable under applicable law enforcement protocol, including, but not limited to, the covered agency's just cause standard, rules and regulations, collective bargaining agreements, past disciplinary precedent, or grievance and arbitration decisions.
 - (c) To the extent the review identifies a perceived policy or training deficiency, the Commission shall provide a recommendation to correct the perceived deficiency for consideration by the covered agency.
- (3) **Methodology of Review:**
- (a) The covered agencies will provide the Commission with a comprehensive written summary and oral presentation of the completed internal investigative findings. The summary shall include a description of all investigative activities, relevant dates, a summary of the facts as determined by the investigation, and criminal and administrative adjudications, excluding all PII, CHRIA information, CJIS information, LES information, non-public information, and other information restricted by State or Federal law.
 - (b) The Commission's requests for additional supporting documents shall be limited to information directly related to the investigative findings under review by the Commission and shall be redacted of all PII, CHRIA information, CJIS information, LES information, non-public information, and other information restricted by State or Federal law.
- (4) **Review Results and Recommendations:** The voting members of the Commission, with administrative assistance from OSIG, shall prepare a report of each review and include recommendations based upon its review, if warranted. Recommendations must be approved by a majority of the voting members of the Commission. The covered agency will review the recommendations and, within 60 days of receiving the report, provide the Commission with a written response including what, if any, recommendations it may implement. Nothing shall prevent the covered agency from requesting more time in which to respond to the report, which request may be granted by the Chair. If recommendations cannot or will not be implemented, the covered agency will provide an explanation.

- c. Prerequisite Training for Members.** Prior to performing any functions as a member of the Commission, each voting member shall complete the following training, including, but not limited to: use of force; stop, search and arrest; traffic enforcement; bias-based policing; internal affairs processes; all covered agencies' discipline procedures (including the disciplinary provisions of collective bargaining agreements and administrative processes, administrative proceedings, and burdens of proof); covered agencies' rules and regulations for its law enforcement officers; Governor's Code of Conduct; and constitutional law. A voting Commission member who fails to complete the prerequisite training is prohibited from attending covered agencies' presentations, as well as from reviewing and voting on completed internal investigative findings.
- d. Inappropriate Use of Information.** Commission members shall not use any information obtained from or through the fulfillment of Commission responsibilities for any non-Commission related purpose.

 - (1)** No member of the Commission shall make any individual public statements regarding any deliberations, discussions, debate, or review of any of the completed internal investigative findings of the covered agencies or recommendations of the Commission, unless so authorized by the Chair.
 - (2)** Other than as described in Section 4.d.(3), the Chair may authorize the use or disclosure of certain information utilized by the Commission under limited circumstances, as the Chair deems appropriate.
 - (3)** Commission members shall not disclose any confidential or protected information as defined in Sections 3.g.-k. for any purpose.

5. Composition of the Commission. The Commission shall consist of the following:

- a. Voting members.** Eleven (11) members appointed by the Governor who have lived experience and/or professional experience, as listed below, chosen at large, and who shall serve at the pleasure of the Governor:

 - (1)** Member of the general public who has been significantly impacted by an encounter with law enforcement,
 - (2)** Member from academia,
 - (3)** Member of a municipal law enforcement citizen or community oversight board,
 - (4)** Mental health expert,
 - (5)** Member of the Municipal Police Officers' Education & Training Commission (MPOETC) or employee of an accredited Act 120 police academy with experience in use of force and internal investigations,
 - (6)** Current or former Chief of Police,
 - (7)** Current or former Public Defender,
 - (8)** Current or former District Attorney,

- (9) Current or former member of a police officer labor association,
- (10) Member of the general public who is not current or former law enforcement, and
- (11) Member of the general public who is current or former law enforcement.

b. Ex-officio members. Seven (7) non-voting members:

- (1) Appointee from the Office of the Governor,
- (2) The General Counsel or designee,
- (3) Commissioner of PSP or designee,
- (4) Chief of the Capitol Police or designee,
- (5) Secretary of DOC or designee,
- (6) Secretary of DCNR or designee, and
- (7) Executive Director of the Pennsylvania Commission on Crime and Delinquency (PCCD) or designee.

c. Conflicts. No voting Commission member may be, or have been, a party to or representative of any party as named counsel of record in litigation involving any of the covered agencies. Commission members are required to identify any potential conflict, inform the Chair thereof, and execute an abstention related thereto.

d. Chair and Vice-Chair. The Governor shall appoint a Chair and a Vice-Chair from among the voting members of the Commission, who shall serve at the pleasure of the Governor.

e. Executive Director. The Executive Director of the Commission shall be an employee of OSIG, who is so assigned by the Inspector General.

6. Terms of Membership. Voting members shall serve the terms of their appointment and may serve until a successor is appointed.

a. Initially, five (5) voting members shall be appointed for a term of two (2) years, and six (6) voting members shall be appointed for a term of three (3) years, the initial terms to be served beginning from the effective date of this Executive Order. Thereafter, all terms shall be three (3) years. A member shall serve no more than three (3) terms.

b. Should a vacancy of a voting member occur on the Commission, the Governor shall appoint a successor, and the successor shall fulfill the remainder of the term. A successor so appointed may, thereafter, be reappointed for no more than two (2) additional terms.

7. Duties and Responsibilities of the Chair and Executive Director.

- a.** The Chair shall be responsible for convening the meetings, establishing committees to conduct the review functions identified in Section 4., and other duties as needed. In the absence of the Chair, the Vice-Chair shall act in the Chair's place.
- b.** In conjunction with the Chair, the Executive Director shall be responsible for producing the annual report described in Section 11, as well as providing support for any other administrative responsibilities of the Commission.

8. Procedures.

- a.** The Commission may establish subcommittees, rules, and procedures necessary to effectively implement its authority and responsibilities included in this Executive Order. Subcommittees may only include voting and ex-officio members of the Commission. All committees shall be chaired by a voting member of the Commission.
- b.** A majority of voting members currently appointed and serving on the Commission shall constitute a quorum.
- c.** The Commission shall meet four (4) times a year, unless otherwise determined by the Chair.
- d.** Commission members may attend meetings in person or remotely by electronic or telephonic means. In-person and remote participation shall be considered attendance for purposes of constituting a quorum.

9. Compensation. Members of the Commission shall receive no compensation for their service on the Commission, except that members may be reimbursed for reasonable travel and related expenses in accordance with Commonwealth policy.

10. Responsibilities of PCCD. PCCD shall assist OSIG, as requested.

11. Reports. The Commission shall prepare and submit an annual report to the Governor or the Governor's designee, and other reports as may be requested by the Governor. The annual report shall be published on the website of OSIG. Publicly accessible reports may not include any information that is personal or sensitive in nature or is confidential, privileged, protected, or otherwise prohibited or exempt from public disclosure by law, regulation, or judicial order, including but not limited to any PII, non-public information, CHRIA information, CJIS information, LES information, or other information restricted by State or Federal laws or deemed by the affected covered agency to be law enforcement sensitive.

12. Implementation.

- a.** All covered agencies shall cooperate and provide assistance to the Commission as needed to perform its functions. Notwithstanding any document retention periods, all covered agencies must take affirmative steps to preserve any and all records and information relating to covered agencies' completed internal investigations that fall within the Commission's purview for the time period necessary for the Commission to complete its review.

- b.** All Commonwealth agencies under the Governor’s jurisdiction are directed to take all steps necessary to implement this Executive Order.
- 13. General Provisions.** Nothing in this Executive Order shall be construed to impair or otherwise affect the authority granted by law to an executive department, agency, or the head thereof. This Executive Order is not intended to, and does not, create any right or benefit, substantive, or procedural, enforceable at law or in equity by any party against the Commonwealth of Pennsylvania, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
- 14. Effective Date.** This Executive Order shall take effect immediately and shall remain in effect until amended or rescinded by the Governor.
- 15. Rescission.** Effective immediately, *Executive Order 2020-04 As Amended*, dated April 30, 2021, is hereby rescinded.