

THE GOVERNOR

Title 4—ADMINISTRATION

PART I. GOVERNOR'S OFFICE

[4 PA. CODE CHS. 6 AND 7]

[EXECUTIVE ORDER NO. 2023-21]

Pennsylvania Citizen Law Enforcement Advisory and Review (CLEAR) Commission

November 2, 2023

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:



Governor

Fiscal Note: GOV-2023-21. No fiscal impact; recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 6. ADDITIONAL COUNCILS AND COMMITTEES

Subchapter XXX. PENNSYLVANIA CITIZEN LAW ENFORCEMENT ADVISORY AND REVIEW (CLEAR) COMMISSION

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§ 6.941. 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 Commonwealth citizens focused on promoting transparency, fairness and accountability among the Commonwealth's State law enforcement agencies by reviewing events, policies, practices and procedures.

§ 6.942. Applicability.

This subchapter applies to law enforcement agencies under the Governor's jurisdiction, including, but not limited to, all of the following:

- (1) The Pennsylvania State Police.
- (2) The Department of General Service's Capitol Police.
- (3) The Department of Corrections' Law Enforcement sub-units.
- (4) The Department of Conservation and Natural Resources' park rangers.
- (5) OSIG's Bureau of Fraud Prevention and Prosecution.
- (6) The Department of Agriculture's Bureau of Dog Law Enforcement.

§ 6.943. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Administrative adjudication—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.

Bias-based policing—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.

CHRIA—Chapter 91 of 18 Pa.C.S. (relating to criminal history record information), referred to as the Criminal History Record Information Act.

CHRIA information—Information that cannot be disclosed to non-criminal justice agencies under CHRIA, including but not limited to criminal history record information, intelligence information and investigative information as defined under CHRIA.

CJIS—Criminal justice information services.

CJIS information—Information that is obtained or derived from a CJIS system, including, but not limited to, information from the Interstate Identification Index System, the National Crime Information Center, and the International Justice and Public Safety Information Sharing Network.

Commission—Pennsylvania Citizen Law Enforcement Advisory and Review (CLEAR) Commission.

Completed internal investigative findings—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 previously defined, 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, the review shall cease until the litigation has concluded.

Criminal adjudication—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.

Covered agency—As provided under § 6.942 (relating to applicability).

Injury—As it relates to § 6.954(b) (relating to Pennsylvania Citizen Law Enforcement Advisory and Review (CLEAR) Commission), those injuries which require advanced medical treatment beyond basic first aid.

LES information—Law enforcement sensitive information—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.

Non-public information—Information that is exempt from public disclosure under section 708(b) of the Right-to-Know Law (65 P.S. § 67.708(b)), including, but not limited to, records that would threaten a public safety activity or related to a criminal or internal investigation.

OSIG—Office of State Inspector General.

PII—Personal identifiable information—Information that, when used alone or with other relevant data, can identify an individual. PII may contain direct identifiers, for example, passport information, that can identify a person uniquely or quasi-identifiers, such as race, that can be combined with other quasi-identifiers, such as date of birth, to successfully identify an individual.

Random sampling—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.

§ 6.944. Pennsylvania Citizen Law Enforcement Advisory and Review (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 any of the following categories:

(i) Investigations of police-involved shootings resulting in injury or death of civilians conducted by covered agencies.

(ii) 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.

(iii) 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 paragraph (1) to determine all of the following:

(i) Whether the investigations were prompt, fair, impartial, complete and performed in a manner consistent with applicable policies and regulations.

(ii) 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.

(iii) 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.*

(i) 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 Federal or State law.

(ii) 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 Federal or State 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 chairperson. 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; 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 chairperson.

(2) Other than as described in paragraph (3), the chairperson may authorize the use or disclosure of certain information utilized by the Commission under limited circumstances, as the chairperson deems appropriate.

(3) Commission members shall not disclose any confidential or protected information as defined in § 6.943 (relating to definitions) for any purpose.

§ 6.945. Composition.

The Commission shall consist of all of the following:

(1) *Voting members.* Eleven members appointed by the Governor who have either lived experience or professional experience, as listed in subparagraphs (i)—(xi), chosen at large, and who shall serve at the pleasure of the Governor:

(i) A member of the general public who has been significantly impacted by an encounter with law enforcement.

(ii) A member from academia.

(iii) A member of a municipal law enforcement citizen or community oversight board.

(iv) A mental health expert.

(v) A member of the Municipal Police Officers' Education and Training Commission or employee of an accredited Act 120 police academy with experience in use of force and internal investigations.

(vi) A current or former Chief of Police.

(vii) A current or former Public Defender.

(viii) A current or former District Attorney.

(ix) A current or former member of a police officer labor association.

(x) A member of the general public who is not current or former law enforcement.

(xi) A member of the general public who is current or former law enforcement.

(2) *Ex-officio members.* Seven non-voting members including all of the following:

(i) An appointee from the Office of the Governor.

(ii) The General Counsel or designee.

(iii) The Commissioner of Pennsylvania State Police or the Commissioner's designee.

(iv) The Chief of the Capitol Police or the Chief's designee.

(v) The Secretary of Corrections or the Secretary's designee.

(vi) The Secretary of Conservation and Natural Resources or the Secretary's designee.

(vii) The Executive Director of Pennsylvania Commission on Crime and Delinquency or the Executive Director's designee.

(3) *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 chairperson thereof, and execute an abstention related thereto.

(4) *Chairperson and vice-chairperson.* The Governor shall appoint a chairperson and a vice-chairperson from among the voting members of the Commission, who shall serve at the pleasure of the Governor.

(5) *Executive director.* The executive director of the Commission shall be an employee of OSIG, who is so assigned by the Inspector General.

§ 6.946. Terms of membership.

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

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

(2) 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 additional terms.

§ 6.947. Duties and responsibilities of the chairperson and executive director.

(a) The chairperson shall be responsible for convening the meetings, establishing committees to conduct the review functions identified in § 6.944 (relating to Pennsylvania Citizen Law Enforcement Advisory and Review (CLEAR) Commission), and other duties as needed. In the absence of the chairperson, the vice-chairperson shall act in the chairperson's place.

(b) In conjunction with the chairperson, the executive director shall be responsible for producing the annual report described in § 6.951 (relating to reports), as well as providing support for any other administrative responsibilities of the Commission.

§ 6.948. Procedures.

(a) The Commission may establish subcommittees, rules and procedures necessary to effectively implement its authority and responsibilities included in this subchapter. Subcommittees may only include voting and ex-officio members of the Commission. 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 times a year, unless otherwise determined by the chairperson.

(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.

§ 6.949. 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.

§ 6.950. Responsibilities of the Pennsylvania Commission on Crime and Delinquency.

The Pennsylvania Commission on Crime and Delinquency shall assist OSIG, as requested.

§ 6.951. 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 OSIG's web site. Publicly accessible reports may not include 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 PII, non-public information, CHRIA information, CJIS information, LES information or other information restricted by Federal or State laws or deemed by the affected covered agency to be law enforcement sensitive.

§ 6.952. Implementation.

(a) Covered agencies shall cooperate and provide assistance to the Commission as needed to perform its functions. Notwithstanding document retention periods, 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) Commonwealth agencies under the Governor's jurisdiction are directed to take all steps necessary to implement this subchapter.

§ 6.953. General provisions.

Nothing in this subchapter shall be construed to impair or otherwise affect the authority granted by law to an executive department, agency or the head thereof. This subchapter 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, its departments, agencies or entities, its officers, employees or agents, or any other person.

§ 6.954. Effective date.

This subchapter shall take effect immediately and shall remain in effect until amended or rescinded by the Governor.

§ 6.955. Rescission.

Effective immediately, Executive Order 2020-04, as amended, dated April 30, 2021, is hereby rescinded.

(Editor's Note: 4 Pa. Code Chapter 7, Subchapter BBB, §§ 7.861—7.877, which is the codification of Executive Order 2020-04, is reserved as a result of the rescission of Executive Order 2020-04 under § 6.955.)

CHAPTER 7. MISCELLANEOUS PROVISIONS**Subchapter BBB. [Reserved]****§§ 7.861—7.877. [Reserved].**

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