

EXECUTIVE ORDER NO. 8-93

(Conformed Copy After Amendment No. 3)

WHEREAS, issues relating to public safety are of primary concern to all citizens of the City of Philadelphia;

WHEREAS, it is incumbent upon the government of the City of Philadelphia to ensure that agencies directly responsible for public safety, particularly the Police Department, have the proper support from the government and its various agencies; and it is important that falsely accused police officers be exonerated by a credible, independent review commission as it is those that are properly accused be reviewed by a credible review commission;

WHEREAS, it is similarly incumbent upon the government of the City of Philadelphia to instill confidence in its citizenry to redress grievances against the government and its employees;

WHEREAS, annual civil judgments and settlements by the City of Philadelphia have exceeded \$10 million for the past five years in cases involving alleged incidents of misconduct or abuse of civil rights, including more than \$3 million in settlements of such cases in 1992 alone;

WHEREAS, the establishment of a civilian advisory commission in the City of Philadelphia will help to prevent future incidents of police misconduct and abuses of civil rights, reduce the amount of money needed to satisfy judgments and settlements based upon allegations of police misconduct, promote public confidence in law enforcement, and lessen the possibility that future incidents of urban unrest will occur.

NOW, THEREFORE, by the power vested in me in accordance with Section 3-100(h) of the Philadelphia Home Rule Charter, it is hereby ordered as follows:

SECTION 1. ESTABLISHMENT OF COMMISSION.

The Mayor's Police Advisory Commission is hereby established in the Managing Director's Office, which Office shall pay, from appropriations made to it, all the expenses of such Commission. The Commission shall consist of fifteen (15) members who shall be appointed by the Mayor. Eight (8) of the original members shall be appointed to four (4) year terms, and seven (7) shall be appointed to two (2) year terms, and all shall serve until the appointment of their successors. Persons appointed to fill vacancies shall serve for the balance of the terms for which their predecessors were appointed. All other appointments shall be for terms of four (4) years. All members shall serve, as prescribed by

Section 3-404 of the Philadelphia Home Rule Charter, at the pleasure of the Mayor. All appointees shall be residents of the City of Philadelphia. The Mayor shall make the appointments in the following manner:

a. Seven (7) initial appointments, of which four (4) shall be for four (4) year terms and three (3) for initial two (2) year terms, shall be made from a list of eighteen (18) nominations submitted to the Mayor by the City Council. Council shall forward such nominations to the Mayor by resolution after public hearing held by the Committee of the Whole.

b. In addition to the appointments above, the Mayor shall solely make eight (8) initial appointments, four (4) of which shall be for initial four (4) year terms and four (4) of which shall be for initial two (2) year terms, taking into consideration three (3) nominations made by the Police Commissioner.

c. Four (4) alternate members shall be appointed, two (2) of whom shall be designated as "Council Alternates" and shall be selected from Council's nominations, and two (2) of whom shall be designated as "Mayor Alternates." The alternates shall automatically move into the first available vacancies from either the Council list or the Mayor list and shall serve for the remainder of the original member's term, unless the vacancy consists of one of the law enforcement positions on the Commission, in which event the appointment mechanism set forth in Section 1(d) of this Executive Order shall apply.

All alternates shall go through all training programs designed for Commission Members, shall be permitted to attend all meetings of the Commission, and shall be subject to all confidentiality and other provisions prescribed in this Executive Order for Commission Members.

d. Within seven (7) days of the date the Mayor learns of a vacancy in any Commission position subject to the Council nomination process set forth in Section 1(a) or the Mayoral appointment process set forth in Section 1(b) occurring for any reason other than expiration of term and for which no alternate is available for appointment, and no later than thirty (30) days prior to the expiration of the term of a Commission member subject to the Council nomination process set forth in Section 1(a) or the Mayoral appointment process set forth in Section 1(b), the Mayor shall notify Council of such event. Successors to persons designated and appointed pursuant to Sections 1(a) and 1(b) shall be selected pursuant to Section 1(c).

When the term of a Commission member has elapsed, or in the event of any vacancy occurring among the law enforcement positions on the Commission, the appointment/nomination process described in Sections 1(a) and (b) shall be replicated. In the case

of renominations made by City Council, the Mayor shall make appointments from a list comprised of three times as many nominations as there are vacancies. City Council shall forward such nominations to the Mayor by resolution after public hearing held by the Committee of the Whole. The Mayor shall also make reappointments that reflect as many vacancies as exist among his initial appointments, taking into consideration nominations made by the Police Commissioner. In addition, alternate members shall be reappointed to complete the complement of four (4), pursuant to Section 1(c) hereof.

e. All initial appointments shall be made by the Mayor within thirty (30) days of the date Council forwards its nominees to the Mayor in accordance with Section 1 (a) of this Order, and all of the subsequent appointments shall be made within sixty (60) days of any of the following:

- (1) the date the Mayor gives notice to Council of a vacancy to be filled under Section 1 (a) above; or
- (2) the occurrence of any other vacancy.

SECTION 2. COMPOSITION OF COMMISSION.

In making nominations and appointments, Council and the Mayor shall use their best efforts to create and maintain a Commission reflecting the diversity in the population of the City and to include as Commission members three (3) persons who are experienced as law enforcement professionals, but not sworn, currently employed, Police Department officers.

a. For the purposes of this section, experience as a law enforcement professional shall include experience as a police officer, criminal investigator, special agent, or a managerial or supervisory employee who exercised substantial policy discretion on law enforcement matters, in a federal, state, or local law enforcement agency, other than experience as an attorney in a prosecutorial agency.

b. Others selected shall have skills and experience in areas relevant to the work of the Commission. Areas that should be represented are: civil rights work and litigation; community and business leadership; and relevant academic expertise.

c. No member of the Commission shall hold any other public office or employment.

d. The chair of the Commission will be elected by the Commission from among its members. At the first meeting of the Commission it shall, by majority vote of all of its members, adopt rules governing the conduct of its meetings, proceedings, and other procedural matters.

e. To enable the Commission to conduct its work, the Commission is hereby authorized to hire its own Executive Director and appropriate investigative and clerical staff. Additional staff support to the Commission shall be provided by the Office of the Managing Director, the Inspector General, the District Attorney, and the Police Department, upon the request of the Commission.

SECTION 3. COMPENSATION OF COMMISSION MEMBERS.

No compensation shall be paid to Commission members, except reimbursement for expenses actually incurred pursuant to performance of Commission business.

SECTION 4. POWERS AND DUTIES OF THE COMMISSION.

a. The Commission shall advise the Managing Director and the Police Commissioner on policies and actions of the Police Department with the purpose of improving the ability of police personnel to carry out their duties, and to improve the relationship between the Police Department and the community.

b. The Commission shall have full discretion to select appropriate individual incidents to review and broader issues to study which may be of concern to the community, the Police Department, or the Police Commissioner; provided, however, that the Commission shall, to the best extent possible, minimize duplication of effort between the Commission and any other existing agencies which have jurisdiction over the same matter. The Commission, the Managing Director, the Police Commissioner, and other responsible officials shall ensure that all such agencies cooperate to the greatest extent possible in the performance of their respective activities, studies, and operations.

c. The Commission may initiate studies upon request to the Commission by any member of the public or the Police Department, or at the Commission's own discretion. The Commission may review specific complaints or incidents of misconduct against individual police officers; provided, however, that the Commission shall not study specific complaints of verbal abuse, except those involving language related to race, ethnicity, religion, gender, sexual orientation or disability, or failure to provide the public safety service.

d. In order to accomplish its goals as set forth above, the Commission shall, as a unit of the Managing Director's Office, have full access to relevant Police Department personnel for interview and to relevant documents, including, but not limited to, the following:

(1) Internal Affairs Division files, citizen complaints, and determinations made pursuant thereto; Management Review Board files; Ethics and Accountability

files, and the files of any other internal investigative agency charged with investigating police misconduct incidents;

(2) Police paperwork (e. g., police 75-49s, police 75-48s, and other paperwork produced by the Police Department for the purpose of investigating suspects or to aid in their prosecution);

(3) Information related to past assignments and disciplinary action;

(4) Police Directives, training manuals, and other police documents that the Police Commissioner deems relevant; and

(5) All general summaries, statistical compilations, and other internal reports on shootings, injuries, complaints of abuse, training, and any other issues related to the work of the Commission.

e. The Commission, at its discretion, may make specific recommendations at any time, and shall issue a public report summarizing its activities and recommendations not less than once a year to the Mayor and members of City Council, and shall make copies of the report available to the public at the Free Library and other locations.

No Commission finding or recommendation shall be based solely upon an unsworn complaint for statement, nor shall prior unsubstantiated, unfounded, or withdrawn complaints be the sole basis for any such finding or recommendation.

The Commission shall respond to all complaints filed by individuals alleging police misconduct within seven (7) days of receiving any such complaint. Such response shall indicate whether, in the exercise of its discretion, the Commission shall study the allegations made, not study them, or request additional information to enable it to make a decision on its options. In addition, the Commission shall establish a mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation.

The Commission shall have the responsibility of informing the public about the Commission and its duties, and shall develop and administer an ongoing program for the education of the public regarding the provisions of this Executive Order. In addition, the Police Commissioner shall meet with the Commission periodically.

f. To aid its fact-gathering function and pursuant to the provisions of the Philadelphia Home Rule Charter, the Commission shall have the power to conduct investigations and public hearings.

All employees within the Executive and Administrative branch of City government as contained in Article III of the Philadelphia Home Rule Charter are hereby directed to fully cooperate with the Commission by promptly producing documents, records, files, and any other information that the Commission may request. In addition, as provided for in this Executive Order, these employees, on request of the Commission, shall be available to meet with and be interviewed by, the Commission or its representatives, and to testify before the Commission.

The Commission shall have the authority vested in the Executive and Administrative branch of City government under Section 8-409 of the Philadelphia Home Rule Charter to compel the attendance, interview, and/or testimony of any witness and the production of documents and other evidence relating to any and all matters properly before it and, for that purpose, it may issue subpoenas requiring the attendance, interview, and/or testimony of persons and the production of documents and other evidence and cause them to be served in any part of the City.

Police personnel who are designated the subject of a related criminal investigation by a local law enforcement agency may elect not to appear until the conclusion of that investigation.

(1) Hearings shall be informal and strict rules of evidence shall not be applied. Testimony under oath shall be received from all persons who appear and purport to have information which is material to the complaint. A stenographic record shall be kept and shall be made available, upon payment of costs, to any person requesting same. All hearings shall be open to the public, except when, in the opinion of the Commission, executive sessions are required.

(2) The Commission shall have the power to recommend that the Managing Director and Police Commissioner take certain actions. The Commission may recommend general reforms (such as changes in training, changes in the preservation of records, changes in counseling available to officers, changes in shift assignments) or specific actions directed at individual officers (including, but not limited to, hiring, firing, promotion, demotion, punishment, or commendation); provided, however, that the Managing Director and the Police Commissioner shall retain full and ultimate authority, power, discretion, management prerogatives, and responsibility to set disciplinary policies or take other lawful actions they deem appropriate relative to the Police Department under the provisions of the Philadelphia Home Rule Charter; provided, further, that nothing in this section shall be construed to limit the rights of members of the Police Department with respect to disciplinary action, including but not limited to the right to notice and a hearing, which may be established by any provision of law or otherwise. The provisions of this

section shall not be construed to prevent or hinder the investigation or prosecution of members of the department for violations of law by any court of competent jurisdiction, a federal or state grand jury, the United States Attorney for the Eastern District of Pennsylvania, the Philadelphia County District Attorney, or other authorized officer, agency, or body.

(3) Within thirty (30) days of the submission of a recommendation for action by the Commission to the Police Commissioner, the Police Commissioner shall respond in writing regarding which recommendations are accepted, rejected, or will be implemented with modifications.

SECTION 5. FINDING OF NECESSITY.

a. It shall be the duty of the Police Department to provide such assistance as the Commission may reasonably request, to cooperate fully with studies by the Commission, and to provide to the Commission upon request records, personnel, and other materials which are necessary for the work of the Commission. No document or information obtained through this process, or created by the Commission or any member of its staff, shall be released to the public unless such document is deemed by the Commission (following consultation with the City Solicitor) to be a public record under the Pennsylvania Right to Know Act, 65 P. S. 66.1, et seq.

b. The Commission and its members shall not make public any confidential police document, or information derived from any such confidential police document. The findings of the Commission as they may relate to conclusions drawn from interviews, study, and review of documents, etc., shall remain confidential until the Commission officially releases such findings; provided, however, that the Commission shall not publicly release any of its findings until such findings have been provided to the Mayor, the Managing Director, and the Police Commissioner, and a period of three (3) working days has elapsed.

SECTION 6. This order shall be effective immediately.

December 21, 1994
Date

Edward G. Rendell
Edward G. Rendell
Mayor