

**State of New Jersey
Office of the State Comptroller**



***FIFTH PERIODIC REPORT ON LAW
ENFORCEMENT PROFESSIONAL
STANDARDS:
Review of Internal Affairs and Discipline
Processes
at the
Division of New Jersey State Police
and its monitoring by the
Office of Law Enforcement Professional
Standards***

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I. Introduction

Concerns regarding the disparate treatment of certain groups and individuals by law enforcement have persisted throughout the history of this state and country. It is axiomatic that the mere perception of discrimination by law enforcement officers creates an atmosphere of mistrust between law enforcement and the communities they are sworn to protect. This mistrust undermines the goals of the criminal justice system. In December 1999, to address claims of racial profiling, the United States Department of Justice (DOJ) and the State of New Jersey entered into a Consent Decree, transforming the policies and practices of the New Jersey State Police (NJSP) in an effort to eliminate prohibited law enforcement conduct on our roadways.

This report is the fifth statutorily required review of NJSP and the Office of Law Enforcement Professional Standards (OLEPS) by the Office of the State Comptroller (OSC). OSC's reviews are designed to determine if NJSP is maintaining its commitment to non-discrimination, professionalism, and accountability while fulfilling its mission to serve and protect New Jersey and its residents. In its first report, OSC evaluated the state's transition from the Consent Decree and assessed NJSP's Training Bureau. Later reports reviewed NJSP's internal affairs and disciplinary processes, policies and procedures for documenting and reviewing motor vehicle stops and post-stop enforcement activity. This fifth report returns to an examination of NJSP's internal affairs and disciplinary processes, both of which play a critical role in NJSP's efforts to maintain non-discriminatory practices.

In particular, this report examines the policies and practices of OLEPS and NJSP's Office of Professional Standards (OPS). OPS is the internal investigative office of NJSP

responsible for investigating allegations of trooper misconduct and making recommendations to the NJSP Superintendent for the imposition of trooper discipline. OLEPS is responsible for reviewing, monitoring, and reporting on NJSP's progress in these areas. This review assesses the performance of both of these offices from January 2015 through December 2017.

II. Background

On December 30, 1999, the state and NJSP entered into a Consent Decree with DOJ, ending a lawsuit brought by DOJ and reforming NJSP policies and procedures with the intent to eliminate racial profiling and to prevent discriminatory law enforcement practices. The Consent Decree further mandated the appointment of an independent monitoring team to evaluate NJSP's compliance with the Consent Decree's reforms. The independent monitoring team issued 16 reports between October 2000 and August 2007. A final report by the New Jersey Office of the Attorney General, under the guidance of the independent monitoring team, concluded that NJSP had become compliant with the Consent Decree's requirements. In September 2009, the United States District Court dissolved the Consent Decree.

After the Consent Decree was dissolved, but to ensure NJSP's continued compliance with reforms initiated under the Consent Decree, the state Legislature enacted the Law Enforcement Professional Standards Act of 2009, *N.J.S.A. 52:17B-222 et seq.* (Act). To fulfill the role of the independent monitoring team, the Act mandated the creation of OLEPS to, among other things, prepare and issue bi-annual reports of NJSP's performance and semiannual reports of aggregate statistics concerning NJSP's

enforcement activities. The Act also directed OSC to conduct certain performance audits and reviews of NJSP and OLEPS.

OLEPS published its Eleventh and Twelfth Oversight Reports, dated October 2016 and March 2017, respectively. As noted, this is OSC's fifth report of findings and recommendations to the Governor, Legislature, and public pursuant to the Act.

III. Scope of Review and Methodology

The Act provides that OSC shall conduct audits and reviews of NJSP and OLEPS to examine “stops, post-stop enforcement activities, internal affairs and discipline, decisions not to refer a trooper to internal affairs notwithstanding the existence of a complaint, and training.” For this review, OSC evaluated NJSP and OLEPS with regard to their responsibilities concerning trooper misconduct investigations and the imposition of trooper discipline. Specifically, OSC focused on matters relating to the requirements that NJSP complete misconduct investigations within 120 days and consider the “nature and scope” of the misconduct as well as the trooper’s prior performance when imposing discipline upon a trooper.¹

OSC’s methodology included the following:

- Reviewed relevant NJSP rules, regulations, operating procedures, and OPS’ Internal Affairs Investigation Manual (Investigation Manual).
- Interviewed OPS and OLEPS personnel.
- Observed the process by which a complaint of trooper misconduct is handled from intake through investigation and adjudication.

¹ These two requirements come from the 1999 Consent Decree and are referred to as Tasks 87 and 90 respectively. Both Tasks 87 and 90 were incorporated into NJSP Standing Operating Procedures.

- Reviewed OPS' internal complaint classification guide and listened to a sample of complaints made on NJSP's Complaint Hotline.
- Reviewed a random sample of 130 investigative files closed during the review period, January 2015 through December 2016.² This sample included 41 cases classified as misconduct complaints, 5 classified as less severe misconduct (*i.e.*, "Short Form Misconduct Complaints"), 8 cases classified as performance complaints, and 76 cases classified as administratively closed.
- Judgmentally sampled 13 of the 130 closed investigative case files for a more thorough review. In doing so, OSC reviewed all relevant documentation and evidence contained in each of those files, including audiotaped statements of the complainant(s), the trooper that was the subject of the complaint, and any witnesses; Motor Vehicle Recorder (MVR) videotapes of the incident; any prior disciplinary history of the trooper; and any references to discipline imposed in similar cases.
- Reviewed relevant OLEPS operating procedures and internal memoranda directed to OPS.
- Reviewed audit reports issued by OLEPS in May 2015, March 2016, May 2016, August 2016, and September 2017 and examined supporting documents concerning various aspects of those reports.

² OSC began its review in March 2017 and as such, files for that year were not yet available for review.

- Reviewed with OLEPS and OPS personnel the status of recommendations made in OSC's *Second Periodic Report on Law Enforcement Professional Standards (2012)*.

A draft of this report was sent to OLEPS and NJSP to provide them with an opportunity to comment on the issues identified during the course of our review. The written responses received were considered in preparing this final report and were incorporated herein where appropriate.

IV. Summary of Findings

Overall, OSC found that NJSP and OLEPS are effectively performing their respective duties with regard to the internal affairs and disciplinary processes. Moreover, significant progress has been made on recommendations in OSC's 2012 Report on these same topics. However, OSC has found several issues that should be addressed to further improve these processes. These issues include:

- OPS has expanded the role of Troop Command in the classification of complaints made against troopers to include investigative activity.
- OLEPS and OPS have not conducted weekly reviews of calls to the Intake Unit Complaint Hotline in accordance with established protocols.
- The investigative activity conducted by Troop Command unduly delays the assignment of misconduct cases to investigators.
- The date a misconduct case is assigned to an investigator is not being accurately recorded in NJSP's IA-Pro database.
- The date the investigator submits the case for supervisory review is not recorded in NJSP's IA-Pro database.

- The date of approved requests for an extension of the 120-day time period to complete an investigation are not always entered into NJSP's IA-Pro database.
- The "Request for Extension of Internal Affairs Investigation Form" (Extension Form) has not been revised to reflect the 120-day rule for completing misconduct investigations.
- NJSP does not consistently provide a written explanation when it does not implement recommendations made by OLEPS for changes to its Standing Operating Procedures (SOPs), manuals or databases.

V. Review of Internal Affairs Process

As part of its fifth review, OSC examined the operations of OPS' two internal affairs bureaus, the Intake & Adjudication Bureau and the Internal Affairs Investigation Bureau (IAIB), including each of the sub-departments contained therein. Specifically, OSC included in its review the Intake Unit and the Administrative Internal Proceedings Unit (AIPU) within the Intake & Adjudication Bureau and the three Investigations Units responsible for investigating misconduct complainants made against troopers.

A. The Complaint Intake Process

The Intake & Adjudication Bureau's Intake Unit is responsible for the receipt of all complaints against troopers and for the classification of those complaints into one of three categories. That classification determines the manner in which each complaint is handled. As set forth below, complaints are classified into one of three categories. The Intake Unit receives complaints either in writing or through the NJSP Complaint Hotline. The manner in which the Intake Unit handles each of these complaints is governed by

NJSP's SOP B.10, which details the internal investigative and disciplinary procedures, classification, processing, and adjudication of internal affairs matters.

SOP B.10 specifies how the Intake Unit is to process and classify complaints against a trooper. Upon receipt of a complaint, either in writing or over the telephone, the Intake Unit forwards the information to the subject trooper's supervisors (Troop Command) for a recommendation on how the complaint should be classified. Pursuant to SOP B.10, Troop Command is to make its recommendation within three business days of the receipt of the complaint from the Intake Unit and must include any available relevant documents utilized in its recommendation to the Intake Unit. Once the Intake Unit receives Troop Command's recommendation and completes its own review, a complaint is classified as either: (1) misconduct;³ (2) performance; or (3) administratively closed.

"Misconduct" classifications include, but are not limited to, allegations of: racial profiling; other unlawful disparate treatment; false arrest; excessive use of force; illegal or improper searches; or domestic violence. The Intake Unit forwards all misconduct complaints, except "Misconduct Short Form," to OPS' IAIB for assignment to an investigator and commencement of an investigation.

³ The "Misconduct" category contains a sub-classification called "Misconduct Short Form" investigations, which are generally minor misconduct issues where the trooper acknowledges the conduct and agrees to accept the discipline. Because the trooper acknowledges the conduct and accepts discipline, these cases are not forwarded for further investigation. Examples of "Misconduct Short Form" cases include conduct that involves lost NJSP identification, lost equipment (*e.g.* handcuffs, flashlight, radios, but not weapons), or a lack of prosecution in municipal court.

“Performance” classifications allege less serious inappropriate conduct. The Intake Unit will classify a complaint as a performance complaint for behavior that is non-disciplinary. Examples include allegations of leaving a post or a trooper’s uniform not meeting NJSP standards. Once the Intake Unit classifies a complaint as performance-related it forwards the case to the trooper’s supervisor for resolution.

Finally, the Intake Unit will “administratively close” a case if the initial evidence does not substantiate a violation by the trooper. Hypothetically, the Intake Unit could use this classification for allegations that a trooper engaged in improper conduct at a specific time and place, but the evidence conclusively demonstrates that the trooper was elsewhere at that time.

The table below sets forth the number of complaints received and classified by the Intake Unit during the period of January 2015 through December 2016:

Classification	2015	2016
Misconduct	182	179
Short Form Misconduct	30	24
Performance	54	34
Administratively Closed	424	397
Total	690	634

OSC’s case review found that, in general, the Intake Unit is in compliance with SOP B.10. As part of its review, for example, OSC examined 130 randomly selected, closed cases and found that the Intake Unit had properly processed and documented those written complaints.

Additionally, OSC observed operations at the Complaint Hotline call center and listened to recorded conversations between complainants and Intake Unit personnel.

OSC's review found that callers were dealt with in a professional and courteous manner and all pertinent information was obtained. SOP B.10, however, requires supervisors in OPS and the Office of the Attorney General (OLEPS) to conduct a weekly review of a representative number of recorded hotline calls. The purpose of these reviews is to ensure: (1) callers are being advised the telephone line is recorded; (2) callers are being treated with appropriate courtesy and respect; (3) complainants are not being discouraged from making complaints; and (4) all necessary information about each complaint is being obtained. While the hotline calls are being handled properly, both OPS and OLEPS personnel told OSC investigators during the fieldwork stage of this review that the required weekly reviews of calls to the Complaint Hotline are not being conducted. Instead, OLEPS advised that as part of its bi-annual audits of OPS, a review of 10 percent of calls received is conducted for the audit period.

To determine if the Intake Unit was properly classifying complaints against troopers, OSC randomly sampled and reviewed 10 percent of OPS cases closed during the review period. This sample included 76 cases that the Intake Unit had classified as administratively closed, 8 cases that had been classified as performance complaints, 41 that had been classified as misconduct, and 5 that had been classified as "Misconduct Short Form." From this sample of 130 cases, OSC judgmentally selected 13 cases for an in-depth examination. Based on OSC's case review, the Intake Unit appropriately classified these complaints.

With the exception of the two deviations discussed below, OSC concludes that the Intake Unit is in compliance with SOP B.10.

Recommendations for the Complaint Intake Process

1. Pursuant to its statutory authority, the Office of the Attorney General should review the expanded role of Troop Command in classifying complaints to ensure it comports with the goals of the Act.

SOP B.10 provides Troop Command with a limited role in the classification process of a complaint. According to SOP B.10, Troop Command has three days to make its classification recommendation to the Intake Unit based on its review of certain documentation and a limited amount of gathered evidence. Given the specific time limits it affords Troop Command to make a recommendation, it is clear that SOP B.10 does not contemplate Troop Command conducting extensive investigative activity such as interviewing a complainant or trooper. This more in-depth investigative activity falls under the purview of IAIB investigators.

Despite this, beginning in August 2017, OPS expanded Troop Command's role in classifying complaints. Troop Command's role now includes reviewing all evidentiary material, meeting with the involved trooper, and, in some instances, interviewing the complainant. After a review of all the available evidentiary material and interviews, Troop Command completes and submits to the Intake Unit a report as to its recommendation for classification, suggestions for corrective measures and other findings. It is the position of OPS that this increased role of Troop Command in the classification process will assist in ensuring that only true misconduct cases are moved forward for investigation by IAIB.

All of the 130 cases sampled for the current OSC review were classified and closed prior to OPS' expansion of Troop Command's role in the classification process. To that end, OSC was unable to analyze the effect of Troop Command's expanded role as it relates

to each of these cases. Notwithstanding, OSC notes below several general areas of concern implicated by this change in policy. Most notably, the concern that allowing Troop Command to interview a complainant or an involved trooper could adversely affect later disciplinary actions or litigation.

First, allowing Troop Command to conduct an interview of the complainant may bypass safeguards built into the intake and investigative process that were designed to protect the complainant. For instance, there is no indication that any conversations between Troop Command and a complainant are recorded or that any guidance has been given to Troop Command for recording or otherwise memorializing these conversations. By comparison, SOP B.10 requires that when a complainant calls the Complaint Hotline, the call must be recorded to ensure complainants are treated with appropriate courtesy and are not discouraged from making a complaint. Similarly, pursuant to NJSP's Investigation Manual,⁴ when an IAIB investigator interviews a complainant, the interview must be recorded unless the complainant refuses. The IAIB investigator also advises the complainant that intentionally giving false information could result in criminal or civil liability. The investigator later gives the complainant the opportunity to listen to the recorded statement and document any requested changes. No such safeguards appear to be applicable to Troop Command's interviews. The safeguards contained in SOP B.10 and in the Investigation Manual also allow outside entities such as OLEPS to fully and accurately review how the complainant and their complaint were treated and ensure the legal and contractual rights of the trooper are respected.

⁴ NJSP's Investigation Manual sets forth the procedures for conducting internal affairs investigations.

Furthermore, Troop Command's direct contact with a complainant or a trooper during the classification process contradicts SOP B.10.⁵ Specifically, SOP B.10 states that supervisors shall not interview either accused troopers or complainants, reserving such interviews for IAIB investigators only after a case is classified as misconduct. Having Troop Command interview a complainant or trooper during the classification process contradicts the restriction on conducting such interviews until after a complaint has been classified as misconduct.

Troop Command's new investigative role also creates a potential conflict with the Investigation Manual. The Investigation Manual requires that when an involved trooper is interviewed by an IAIB investigator, the trooper must be advised that failure to provide full and complete information about a complaint can result in serious discipline, including termination. The trooper is also advised of their legal right to have a union representative present during questioning,⁶ of protections against giving a coerced statement⁷ and, if applicable, given *Miranda*⁸ warnings. IAIB investigators must give the trooper the

⁵ SOP B.10 requires the supervisor of a trooper who is the subject of a misconduct allegation to conduct a non-disciplinary intervention with the trooper. The goal is to identify any performance issues that need to be addressed in a timely manner while not interfering with the trooper's rights or NJSP's duty to conduct a misconduct investigation.

⁶ Pursuant to *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975), an employee who may be the subject of discipline has the right to have a representative present when interviewed by an employer.

⁷ *Garrity v. N.J.*, 385 U.S. 493, 500 (1967) holds that, "the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office. . . ."

⁸ *Miranda v. Ariz.*, 384 U.S. 436 (1966), addresses the Fifth Amendment right against self-incrimination during a custodial interrogation.

opportunity to listen to his or her statement and add anything else they believe necessary to include. It is unclear whether similar warnings are provided during Troop Command's interviews.

Adding to the list of potential problems raised by conducting multiple interviews in different settings is the possibility that having complainants and troopers submit to interviews by both Troop Command and IAIB investigators could lead to conflicting statements, posing issues of credibility in subsequent administrative, civil, and criminal litigation. Because there is no evidence that Troop Command is recording its interviews and preserving them for later potential trials or hearings, serious ramifications could result should discrepancies exist between Troop Command's and IAIB's interviews. Prosecutors in a criminal matter may violate their *Brady*⁹ obligations, defense attorneys may lose an opportunity to cross-examine witnesses on credibility, and any number of other evidentiary issues may arise.

In addition to the potential litigation pitfalls, the new Troop Command duties conflict with time requirements mandated by NJSP policy. Under SOP B.10 and previously under the Consent Decree, the investigation of an allegation of misconduct is to be completed within 120 days of assignment to an IAIB investigator. This newly expanded role of Troop Command during the classification period, in essence, allows for additional investigation outside of the 120-day timeframe, converting Troop Command's role from a part of the classification process into a part of the investigative process. This

⁹ In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

increased investigative activity prior to assignment to an IAIB investigator, at a minimum, gives the appearance that NJSP is expanding the 120-day standard for completing misconduct investigations.¹⁰

OSC discussed these concerns with OLEPS and was advised that it shared similar concerns about the increased role of Troop Command in the classification process. It is OLEPS' view that interviewing a trooper who is the subject of a misconduct allegation is a critical step in the misconduct investigation and that conducting such an interview before a matter is assigned to an IAIB investigator could implicate or violate certain contractual or legal protections owed to the trooper. Specifically, OLEPS advised that Troop Command's interview of a trooper may trigger the trooper's right to have union representation during the interview¹¹ or the trooper's legal protections from providing coerced statements.¹² Proceeding with interviews in the absence of these protections could negatively impact potential criminal and administrative investigations. Should Troop Command violate these rights during an initial interview of a trooper, the investigation may result in the exclusion of relevant evidence or statements made by the trooper from future criminal or administrative proceedings.

Given the significant changes OPS has made to the complaint classification process, OSC recommends that the Office of the Attorney General review this process to ensure that it comports with the goals of the Act. If Troop Command's expanded role is, indeed approved, the Office of the Attorney General should then take steps to ensure that

¹⁰ The 120-day timeframe is discussed further below.

¹¹ *Weingarten, supra.*

¹² *Garrity, supra.*

any techniques being used by Troop Command honor the complainant's and accused trooper's legal rights, and do not endanger the introduction of relevant evidence from future legal or administrative proceedings.

In response to a discussion draft of this report, both the Office of the Attorney General and OPS agreed with OSC's recommendation that Troop Command's expanded role in the classification of complaints against troopers must be reviewed and approved by the Office of the Attorney General. OPS further advised that it is in the process of revising SOP B.10 to reflect the new classification process and that in doing so, it would take OSC's concerns under advisement.

2. The current practice of review of the Intake Unit Complaint Hotline should be reevaluated by OLEPS and OPS to ensure such reviews comport with the requirements of SOP B.10.

As noted above, SOP B.10 requires that supervisory personnel from OPS and OLEPS conduct weekly reviews of selected Complaint Hotline calls and document those reviews. During our fieldwork, OLEPS advised that these weekly reviews are not being conducted. Rather, OLEPS advised that it reviews a 10 percent random sample of calls for the audit period as part of its bi-annual audits. As a result, the calls sampled during the audit period are never contemporaneous. For example, in the most recent audit period, OLEPS reviewed calls that were made three to nine months prior.

OPS personnel also initially told OSC investigators that they were not conducting the required weekly review of calls. In its written response to the draft report, however, OPS changed its position and advised that such weekly reviews are occurring but that they are not being consistently documented.

While taking a reflective view of the calls during an audit is important, it does not allow for OLEPS and OPS to address potential problems with how calls are being handled in real time or ensure the goals of SOP B.10 are being met. Monitoring calls contemporaneously, as SOP B.10 requires, gives OLEPS and OPS the opportunity to reinvestigate matters that were not handled properly during the initial complaint call. It also avoids the potential improper classification of misconduct events.

The current practice of review of the Intake Unit Complaint Hotline is deficient and in violation of SOP B.10's requirements. The process for reviewing the Complaint Hotline should be revisited by OLEPS and OPS and the weekly review of calls should be reinstated and properly documented.

Indeed, in its response to the discussion draft of this report, OLEPS agrees with OSC's recommendation. In fact, as of May 7, 2018, OLEPS reinstated the weekly review of a sample of calls to the Complaint Hotline. Similarly, OPS' response stated that it has developed a new form to document weekly reviews of the Complaint Hotline calls.

B. The Investigative Process

OSC reviewed IAIB's process for investigating misconduct complaints for compliance with NJSP's policy that investigations be completed within 120 days. Additionally, OSC examined the manner in which OLEPS monitors compliance with the policies and procedures attendant to these investigations. As part of this review, OSC examined the Investigation Manual and SOP B.10 and interviewed IAIB staff. OSC also conducted a case review of 41 randomly selected misconduct cases completed by IAIB investigators. OSC then judgmentally selected 10 misconduct cases for an in-depth examination. In general, OSC noted compliance with most of the relevant policies and

procedures and has made four specific recommendations for improvements going forward.

With respect to the process itself, once the Intake Unit has classified a complaint as misconduct, it sends an investigative file, which contains all documentation and evidence compiled during the classification process, to the IAIB Chief. The IAIB Chief then assigns the case to one of the three IAIB investigative unit heads, who in turn assigns the case to an IAIB investigator. SOP B.10 and the Investigation Manual provide that the assignment of a misconduct case to an investigator starts the 120 working days within which an investigator must complete an investigation. OLEPS and OPS advised OSC that, by these standards, a case is considered complete when the investigator submits it for supervisory review.

During the pendency of an investigation, the investigator may request an extension of the 120-day rule for certain reasons such as a pending criminal prosecution or for a legal review. The investigator must submit an Extension Form to their supervisor, which shall include a justification for the request. Extension requests must be approved by the IAIB Chief and, when granted, toll the 120-day requirement. An OPS supervisor is then required to enter the extension request into IA-Pro.¹³

As part of its oversight duties, OLEPS monitors compliance with the 120-day standard. To perform its calculation of the 120-day period, OLEPS uses the date the case was assigned to an investigator, as entered into IA-Pro, as the start date for its calculation. Ideally, this date should match the date entered by the investigator in the hardcopy case

¹³ IA-Pro is an internal NJSP computer program and database containing, among other things, data on internal affairs investigations and discipline of troopers.

file, which OLEPS considers the most accurate. There is sometimes a significant difference, however, between the two dates.

Beyond the prescribed time constraints, OSC also reviewed the Investigation Manual to determine how it directs the investigative process. The Investigation Manual requires that certain investigative steps be taken in each investigation, including the collection of all relevant physical evidence, documents, NJSP video, external surveillance video, police radio calls, photographs, internal NJSP reports, external reports and records, but leaves the sequence of these steps to the discretion of each investigator. Investigators should also conduct interviews of the complainant, all fact witnesses, and the trooper against whom the complaint was made.

The investigator must inform the complainant of the existence of the investigation and give the complainant the opportunity to provide a statement. If the complainant cannot be reached by telephone or initially declines to be interviewed, the investigator should send a letter to the complainant advising that an investigation has begun and requesting that they contact the investigator within ten days to schedule an interview. An investigation continues to its conclusion even if the complainant declines to provide a statement. The investigator also conducts interviews of any fact witnesses. All interviews are recorded to preserve the statements made and to aid in any later review of the matter by members of OLEPS and the Division of Criminal Justice, if appropriate.

If at any time during the course of the investigation a question of criminality arises, OPS supervisory personnel contacts OLEPS and the Division of Criminal Justice. If criminal charges are warranted, the administrative investigation is suspended pending

the outcome of the criminal proceedings. If criminal charges are not warranted, the case is returned to OPS to continue with the administrative investigation.

When a case is returned to OPS, the investigator completes the investigation and prepares a final report, which includes detailed findings and conclusions. Pursuant to SOP B.10 and the Investigation Manual, the investigator must make one of the following conclusions with regard to the allegation(s) in the complaint:

1. **Substantiated:** a preponderance of the evidence shows that the trooper violated federal or state law, or NJSP rules, regulations, SOPs, directives or training.
2. **Unfounded:** a preponderance of the evidence shows that the alleged misconduct did not occur.
3. **Exonerated:** a preponderance of the evidence shows that the alleged conduct did occur, but it did not violate federal or state law, or NJSP rules, regulations, SOPs, directives, or training.
4. **Insufficient Evidence:** there is insufficient evidence to determine whether or not the alleged conduct occurred.

The Investigation Manual requires the final report to be subjected to three levels of supervisory review. At each level, the reviewer can either agree or disagree with some or all of the findings and conclusions and append any comments to the original report. Following the finalization of the investigation report, any substantiated allegations are

forwarded to OPS' Administrative Internal Proceedings Unit (AIPU) for a recommendation concerning discipline.¹⁴

To determine if OPS is meeting the requirement of completing misconduct investigations within 120 days, OSC reviewed 41 completed misconduct investigations. OSC calculated the length of an investigation using the date the case was assigned to an investigator as recorded in IA-Pro and the date the investigation was completed as shown in the hardcopy case file.¹⁵ This review found that 14 of the 41 investigations had not been completed within 120 days, representing 34 percent of the cases. OLEPS' most recent bi-annual audit calculated that it took 188 working days on average, not taking into account delays in assignment to an investigator, for OPS to complete a misconduct investigation. During the course of OSC's review, OPS cited limited manpower, personnel issues, and complexity of investigations as primary reasons it had not met the 120-day standard.

To ascertain if IAIB is conducting thorough misconduct investigations, OSC reviewed the 41 misconduct cases to ensure they contained all the required investigative documents and evidentiary material. OSC then judgmentally chose 10 of those cases for a comprehensive review. OSC's review of these 10 completed misconduct investigations found that the evidence supported the findings and conclusions in each of the cases.

¹⁴ The adjudication process will be discussed in the next section of this report.

¹⁵ This is the same methodology OLEPS uses in its bi-annual audits of OPS to calculate whether misconduct cases are completed within 120 days. OLEPS uses the date the case was assigned to an investigator as entered in IA-Pro as the start of the investigation and uses the date the IAIB investigator submits the case for supervisory review as the completion date.

Overall, OSC's review found members of OPS' IAIB are conducting thorough misconduct investigations.

Recommendations for the Investigative Process

1. The 120-day timeframe for completing an investigation should begin and be counted at the time a complaint is classified as misconduct and forwarded to IAIB for assignment.

For purposes of the 120-day calculation, OLEPS begins to count those working days only after the file is assigned to an IAIB investigator. OSC's review revealed, however, that once IAIB receives a misconduct case, it may not be assigned to an investigator for up to 30 days. The time that elapses between IAIB receiving a case and assignment to an investigator is not considered to be part of the 120-day calculation for completing an investigation. OPS acknowledged there are delays in assigning a case to an investigator once IAIB has received it from the Intake Unit, primarily due to personnel issues, such as the lack of additional investigators.

Accordingly, OSC recommends that once a complaint is classified as misconduct and is received by IAIB, the 120-day timeframe for completing the investigation should begin. This more accurately reflects the intent and purpose of the time restriction. Excluding the delay in assignment artificially reduces the amount of recorded time spent on an investigation. IAIB should assign misconduct cases to investigators immediately upon receipt of the case from the Intake Unit. If the investigator's work cannot begin or is delayed because of a heavy case load or any other reason that has traditionally delayed assignment, an extension request should be submitted to document the reasons the investigation cannot be completed in 120 days. Proper use of an extension request during

a misconduct case whenever it cannot be completed within 120 days allows for a more transparent investigative process and will allow administrative issues to be addressed.

Furthermore, including the time that elapses between classification and assignment to an investigator is a better measurement of the actual amount of elapsed time for each investigation. Timely resolution of misconduct investigations enables prompt intervention designed to avoid the recurrence of any misconduct. Equally important, troopers who are the subject of misconduct investigations have an interest in the timely resolution of complaints against them. OPS staff noted that trooper promotions or transfers may be delayed until a misconduct investigation has been resolved. Additionally, complainants and the public will have greater confidence in the investigative process if the 120-day rule accurately reflects how long misconduct investigations take.

In its response to OSC, OPS disagreed with OSC's recommendation that the 120-day time period to complete a misconduct investigation should begin when IAIB receives the case from the Intake Unit. OPS' position is that the 120-day time period should begin when the case is assigned to an IAIB investigator to allow time for gathering documents and other records.

OSC contends, however, that gathering evidentiary material, including paper records, audio and video recordings, is an essential part of the investigative process. As such, time spent gathering this evidence should be included in any calculation of the 120-day time requirement. Excluding the work of gathering evidence that will be used in an investigation from the 120-day calculation artificially reduces the reported amount of time spent on that matter.

In addition to any delays in assigning an investigation to an IAIB investigator, there is investigative activity now being conducted by Troop Command which is not included in OLEPS' 120-day calculation. Because Troop Command's expanded role in the classification process is relatively new, the amount of time it adds to an investigation is unclear. What is clear, however, is that new investigative activities undertaken by Troop Command cannot be completed within the prescribed three-day time period as required by SOP B.10. If as a part of these new expanded duties Troop Command is performing investigative activities, those activities should be included when counting time against the 120-day requirement.

2. NJSP should ensure that the date a misconduct case is initiated and the date the investigator submits the case for supervisory review are both accurately recorded in the IA-Pro database.

OLEPS' ability to accurately calculate how long it takes OPS to complete misconduct investigations is a vital part of its oversight function. To calculate the start of the 120-day period, OLEPS uses the date a misconduct case was assigned to an investigator as entered into IA-Pro. In contrast, however, to determine the completion date of an investigation, and to verify the adherence to the 120-day requirement, OLEPS uses the date the investigator reports to have submitted the file for supervisory review as reflected in the investigator's hardcopy case file. OSC's review uncovered inconsistencies in OPS' records of these important case dates.

As part of its bi-annual audits, OLEPS compares the date shown in IA-Pro to the date shown in the hardcopy case file. OPS advised that only supervisors have access to IA-Pro for the purpose of recording the assignment date of a file; investigators cannot enter the date themselves. OLEPS' most recent audit revealed that, of the 103 misconduct

cases audited, 60 files reflected a difference in the dates shown in IA-Pro and the hardcopy case files. The disparities ranged between 1 and 50 days and averaged 3.7 days. OPS supervisors must ensure that assignment dates are entered accurately. In the alternative, OPS could grant investigators limited access to their cases in IA-Pro to allow them to enter this information directly. Furthermore, the IA-Pro system should be reconfigured to allow OPS supervisors or investigators to enter the date a case is submitted for supervisory review, rather than record the submission date in their hardcopy case file. OLEPS finds the process of confirming this date to be onerous, and has requested the date be recorded in IA-Pro, similar to the date of an investigation's commencement. These changes will allow OLEPS to more accurately track compliance with the 120-day requirement.

In its response to the draft report, OPS agrees with OSC's recommendation that this information should be accurately recorded in IA-Pro. OPS has scheduled a training course for supervisors to address this issue and ensure the timely and accurate use of IA-Pro.

3. NJSP should ensure appropriate information concerning requests to extend the 120-day time period to complete an investigation is entered into NJSP's IA-Pro.

OLEPS' ability to accurately calculate the duration of OPS misconduct investigations is further inhibited by inaccurate records pertaining to extension requests. Approved extension requests toll the 120-day requirement to complete a misconduct investigation. These extension requests are entered into IA-Pro by OPS supervisors once the request is granted so that the 120-day clock can be properly counted. OLEPS advised OSC, however, that these entries are not always inputted into IA-Pro, causing inaccurate

120-day calculations. OPS personnel should work to ensure this information is entered into IA-Pro every time such a request is granted.

OPS agrees with OSC's recommendation and is in the process of modifying IA-Pro to allow investigators the ability to enter these important dates.

4. NJSP should update its "Request for Extension of Internal Affairs Investigation Form" to reflect the 120-day rule for completing misconduct investigations and any extensions thereto.

A review of NJSP's Investigation Manual disclosed that the Extension Form incorrectly reflects the time to complete a misconduct investigation as 45 days,¹⁶ rather than the current requirement of 120 days that has been incorporated into SOP B.10 and the Investigation Manual.

OLEPS is aware of this discrepancy and had previously made a written recommendation to OPS to update the form to properly reflect the 120-day rule for completion of misconduct investigations. At the time of our fieldwork, OPS had not updated the form, nor had it responded to OLEPS' recommendation.

In its response to OSC's draft report, OPS agreed that the form should have been updated to reflect the 120-day rule and has represented to OSC that the update has now been made.

VI. Review of Disciplinary Process

OSC reviewed the process by which NJSP imposes discipline upon a trooper found to have violated NJSP rules, regulations, SOPs, or directives. This review included an examination of both the NJSP adjudication process and OLEPS' role in the disciplinary

¹⁶ The 45-day requirement was contained in the original federal Consent Decree.

process. As part of its review, OSC interviewed the Chief of the Intake and Adjudication Bureau and the AIPU Unit Head to determine whether and how the above standard is applied. OSC also reviewed SOP B.10 and a selective sample of cases where misconduct allegations were substantiated to determine if the discipline imposed was “appropriate and proportionate.”

A. NJSP Adjudication Process

Upon completion of an investigation, IAIB forwards the file on a substantiated misconduct complaint to AIPU for further action. AIPU is responsible for recommending discipline to the NJSP Superintendent in cases where a complaint has been substantiated. Both the Act and SOP B.10 require NJSP to consider the “nature and scope” of the misconduct and the information in the Management Awareness and Personnel Performance System (MAPPS)¹⁷ when imposing discipline upon a trooper.

In practice, AIPU reviews the IAIB case file to ensure that there is sufficient evidence to support a finding of misconduct by a preponderance of the evidence standard, to the degree that it would be sufficient to prosecute a case at an administrative hearing. AIPU then examines a number of factors to determine the appropriate level of discipline including: the nature of the misconduct, the trooper’s past disciplinary history, the trooper’s work performance, and comparable discipline imposed on other troopers for similar conduct. Additionally, AIPU reviews the trooper’s concise disciplinary history in IA-Pro and performance information on the trooper in MAPPS. To obtain comparable discipline cases for other troopers who committed similar misconduct, AIPU uses data in

¹⁷ MAPPS is an NJSP database containing a comprehensive employment history of every trooper.

IA-Pro. AIPU personnel stated they also use IA-Pro to track both the recommended discipline and the final discipline issued by the NJSP Superintendent.

AIPU staff prepares a report for each substantiated case, which includes a statement of the allegations and conclusions, a concise disciplinary history of the subject trooper, detailed information about the trooper from MAPPs, the discipline imposed upon other troopers for similar misconduct, and AIPU's recommended discipline. The report is then sent to the NJSP Superintendent who, under SOP B.10, is authorized to take disciplinary action against a trooper. The Superintendent considers the AIPU report in making a final disciplinary determination.

As previously noted, OSC judgmentally selected 13 cases for an in-depth review. Ten of these cases were classified as misconduct. In six of these cases, the IAIB investigator substantiated some or all of the allegations of misconduct against the trooper. Based on OSC's interviews of OPS personnel and a thorough review of the misconduct files in OSC's sample, AIPU is appropriately considering the "nature and scope" of the misconduct and the information in MAPPs when proposing discipline as required by SOP B.10. OSC also found the discipline imposed in these cases was "appropriate and proportionate" to the charged offense(s).

B. Role of OLEPS

In examining OLEPS' role in the oversight of the disciplinary process, OSC reviewed applicable operating procedures, memoranda, public reports, audits, and supporting audit documentation. OSC also interviewed the OLEPS Director and OLEPS staff members. OSC found that OLEPS has made significant changes to its bi-annual audits of OPS since OSC's *Second Periodic Report on Law Enforcement Professional*

Standards (2012). Indeed, in 2014 OLEPS began to observe delays, outside of the investigative process, which impacted the timeliness of misconduct investigations.¹⁸ As a result in 2015, OLEPS began tracking the following timeframes and commenting on them in its audits of OPS:

1. Time between OPS receipt of complaint to assignment to an investigator – 25 Working days
2. Time between investigation completion and completion of supervisory reviews – 40 working days
3. Time between completion of supervisory reviews and submission for legal sufficiency review – 30 working days.

Unfortunately, OPS is not consistently meeting these standards. As an example, OLEPS reviewed 103 misconduct cases during its most recent audit and found that 85 (82.5%) had been assigned to an investigator more than 25 days after the complaint was received.

Additionally, OSC's review disclosed two issues within OLEPS' Operating Procedures 2017-002 (OP 2017-002) that require revision. First, OSC observed that OP 2017-002 should be updated to reflect the 40-day timeframe used by OLEPS to track OPS' supervisory reviews and the 30-day timeframe it uses to track the time for OPS to submit a substantiated misconduct case for legal sufficiency review. Second, OSC noted that OP 2017-002 does not list "false arrest" as a one of the allegations requiring mandatory

¹⁸ These delays exist outside of the prescribed 120-day investigative timeframe as discussed earlier in this report.

review by OLEPS. The OLEPS Director advised, however, that all complaints involving an allegation of false arrest are, in fact, reviewed by OLEPS as part of its audits. As such, the Director stated it was an oversight that false arrests had not been listed in OP 2017-002 and that it would be corrected.¹⁹

OSC also reviewed OLEPS' involvement in the trooper disciplinary process. As part of its responsibilities under the Act, OLEPS is authorized to review the administrative discipline imposed upon troopers to determine whether the discipline was "appropriate and proportionate." At the time of OSC's 2012 Report, OLEPS' attorneys were responsible for conducting legal sufficiency reviews of discipline cases and prosecuting discipline cases while also having oversight of the discipline process.

In its 2012 Report, OSC found that OLEPS' dual role of litigating discipline cases on behalf of NJSP while having oversight of the process could give the appearance of a conflict of interest. To avoid the appearance of a conflict of interest, OSC recommended that the role of litigating discipline cases be transferred to the Department of Law and Public Safety, Division of Law. OSC's current review determined that, effective September 2017, the Division of Law began conducting both legal sufficiency reviews and the prosecution of NJSP discipline cases. OLEPS confirmed that the process of implementing this change began when OSC's current review started. With the transfer of these legal functions to the Division of Law, OLEPS' role in the adjudication process is now primarily that of oversight.

¹⁹ On October 31, 2017, OLEPS provided OSC a copy of the revised OP 2017-002. This revised OP 2017-002 includes the 40 and 30-day working standards and lists false arrest as one of the allegations requiring mandatory OLEPS review. The effective date of this revised procedure was November 1, 2017.

VII. Update on Selected Recommendations from OSC's 2012 Report

In its 2012 Report, OSC made several recommendations to OLEPS and NJSP, including: that NJSP provide written responses to OLEPS' audit findings and recommendations; that NJSP consider adoption of disciplinary guidelines; and that OLEPS monitor the final discipline imposed by NJSP. In the course of our current review, OSC discussed the status of these selected recommendations with OLEPS and NJSP and incorporated their respective positions below.

A. NJSP should provide a written response to OLEPS explaining its reasoning for not implementing OLEPS' recommendations for changes to NJSP's SOPs, manuals or databases.

In its 2012 Report, OSC found that OLEPS did not document or maintain responses from OPS to its bi-annual audits. OSC reported that “[a]lthough OLEPS records and forwards its recommendations to OPS, it typically does not document or maintain any response from OPS. Instead, typically the OLEPS Director verbally discusses the recommendations with NJSP staff. This practice increases the likelihood of miscommunication between OLEPS and OPS and hinders transparency in connection with the audit process.” OSC recently found that NJSP now provides OLEPS with written responses to the bi-annual audits and that OLEPS properly maintains a record of those responses.

From time to time, OLEPS also makes formal written recommendations to NJSP for improvements or changes to SOPs, manuals or databases. When OLEPS makes formal recommendations outside the bi-annual audit process, NJSP does not always provide a written response explaining the decision to implement or not implement the

recommendations. OLEPS has made several recommendations to NJSP, including proposed changes to its SOP B.10, Investigation Manual and IA-Pro database, which NJSP did not follow. In those instances, NJSP failed to provide an explanation as to why it was not implementing the changes recommended by OLEPS.

While NJSP is not required to follow OLEPS' recommendations, it would be beneficial to both organizations for NJSP to provide a written response explaining why the recommendations were not implemented. A written response from NJSP as to its reasoning for not implementing a particular recommendation would assist OLEPS in evaluating whether the recommendation is warranted based on NJSP's input, help to avoid miscommunication between OLEPS and NJSP, and make OLEPS' oversight process more transparent.

In its response to OSC's discussion draft report, OPS advised that it will take this recommendation under advisement.

B. NJSP should consider adopting disciplinary guidelines.

OSC recommended in its 2012 Report that NJSP consider adopting disciplinary guidelines to aid in crafting consistent, proportionate punishment in cases where discipline is found to be appropriate. In response, NJSP's position was that disciplinary guidelines are not the best framework for NJSP, a position that remains unchanged. NJSP's position on discipline is progressive in nature and each case is fact specific. NJSP's preferred approach to discipline cases is to look at the facts specific to each case, examining a number of factors including the nature of the offense, a trooper's work and disciplinary history, and what discipline was imposed in similar cases. Based on OSC's recommendation, OLEPS researched at least one other law enforcement entity that used

such guidelines. OLEPS also discussed the issue with Deputy Attorneys General in the Division of Law who litigate discipline cases. Based on this research, it is OLEPS' position that a case-by-case approach to discipline makes the most sense for NJSP. OSC will continue to review NJSP's disciplinary processes and suggest models and guidelines, if necessary, which will ensure the process is fair and efficient.

C. OLEPS should monitor the final discipline imposed by the NJSP Superintendent to ensure that it is “appropriate and proportionate.”

The 2012 Report found that OLEPS does not review the NJSP Superintendent's final decision on trooper discipline. OSC's position is that to completely fulfill its oversight responsibilities, OLEPS should do so. OLEPS stated in response to the 2012 Report that it does not have the specific statutory authority to review the Superintendent's final decision.

The OLEPS Director expressed the position that it is not necessary to review the final discipline issued by the NJSP Superintendent because that decision is subject to a legal review process. The Director noted that as part of the litigation process there are plea agreements negotiated between the parties; hearings may be held by an administrative law judge who can make a recommendation as to whether and to what extent discipline is appropriate; and that discipline cases may be reviewed by the appellate court. Given this process, the OLEPS Director does not believe there is a role for OLEPS to review final disciplinary decisions.

While the OLEPS Director is correct that legal processes provide a level of oversight to final disciplinary decisions, this is not a failsafe. Plea agreements can be accepted by courts without extensive vetting, and a judge may never review certain administrative agreements. Furthermore, cases that do not result in discipline often do

not reach any formal court proceeding. Because judicial proceedings cannot provide universal oversight, it is OSC's position that OLEPS should seek opportunities to fulfill its statutorily mandated oversight to evaluate and comment on final disciplinary decisions.

In response to a discussion draft of this report, OLEPS stated that nowhere in its enabling statute is there a requirement that OLEPS review the NJSP Superintendent's final imposition of discipline. OLEPS' position remains that the review and litigation process of discipline cases formerly conducted by it and now being conducted by the Division of Law ensures the discipline imposed on troopers is "appropriate and proportionate."

As described above, the AIPU is responsible for reviewing, among other things, the investigative file, the allegations, and the individual trooper's disciplinary history in crafting a recommendation to the NJSP Superintendent concerning the appropriate discipline to be imposed. The Superintendent makes the final decision on discipline and has the authority to increase or decrease the recommended discipline imposed. Notwithstanding this process, OSC continues to assert that it is after the Superintendent's decision where OLEPS' oversight role and ability to comment on final discipline decisions is crucial. The language of OLEPS's enabling statute states OLEPS has the specific authority to "review all Division of State Police internal affairs investigations and dispositions . . . whether any discipline imposed was "appropriate and proportionate," and make recommendations to the superintendent and the Attorney General for appropriate remedial action."²⁰ By forgoing the opportunity to review and critique final

²⁰ *N.J.S.A. 52:17B-228(d)(5)*.

discipline decisions of the Superintendent, OLEPS misses an opportunity to improve the discipline process that is clearly contemplated in its statutory authority.

VIII. Conclusions and Recommendations

NJSP and OLEPS continue to maintain compliance with the terms of the Consent Decree with regard to their internal affairs and disciplinary processes. Statewide compliance efforts can be further improved by implementing the following recommendations:

- Pursuant to its statutory authority, the Office of the Attorney General should review the expanded role of Troop Command in classifying complaints to ensure it comports with the goals of the Act.
- The current practice of review of the Intake Unit Complaint Hotline should be reevaluated by OLEPS and OPS to ensure such reviews comport with the requirements of SOP B.10.
- The 120-day timeframe for completing an investigation should begin and be counted at the time a complaint is classified as misconduct and forwarded to IAIB for assignment.
- NJSP should ensure that the date a misconduct investigation is initiated and the date the investigator submits the case for supervisory review are both accurately recorded in IA-Pro.
- NJSP should ensure appropriate information concerning requests to extend the 120-day time period to complete an investigation is entered into NJSP's IA-Pro.

- NJSP should update its “Request for Extension of Internal Affairs Investigation Form” to reflect the 120-day rule for completing misconduct investigations and any extensions thereto.
- NJSP should provide a written response to OLEPS explaining its reasoning for not implementing OLEPS’ recommendations for changes to NJSP’s Standing Operating Procedures, manuals and databases.