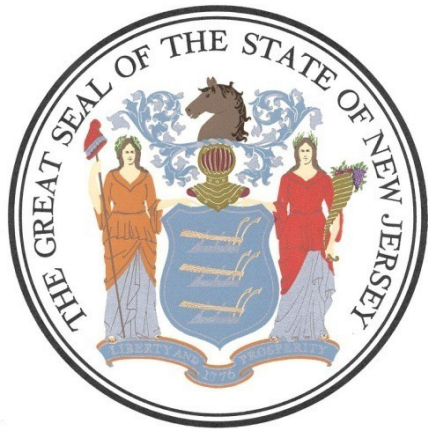


**State of New Jersey
Office of the State Comptroller**



***SIXTH PERIODIC REPORT ON
LAW ENFORCEMENT PROFESSIONAL
STANDARDS***

***Review of Motor Vehicle
Stops and Post-Stop Enforcement Activities
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

In 1999, the United States Department of Justice (DOJ) sued the State of New Jersey and the Division of New Jersey State Police of the New Jersey Department of Law and Public Safety (NJSP) for “intentional racial discrimination . . . in performing vehicle stops and post-stop enforcement actions and procedures, including searches, of African American motorists traveling on New Jersey highways, including the New Jersey Turnpike.” On December 30, 1999, the United States District Court for the District of New Jersey approved a Consent Decree that settled the litigation and committed the state to a series of reforms involving the management and operations of NJSP.

The Consent Decree required reforms in the following areas: policy requirements and limitations on the use of race in law enforcement activities; traffic stop documentation; supervisory review of individual stops; supervisory review of patterns of conduct; misconduct allegations; training; auditing; and public reports. Under the Consent Decree, from 2000 to 2009, independent federal monitors issued bi-annual reports documenting NJSP’s progress in these areas, ultimately concluding that NJSP was fully compliant with the mandates of the agreement.

The Consent Decree was dissolved in 2009. To ensure NJSP’s continued compliance with reforms initiated under the Consent Decree, the state enacted the Law Enforcement Professional Standards Act of 2009 (the Act). N.J.S.A. 52:17B-222 et seq. In view of the “strong public interest in perpetuating the quality and standards established under the consent decree,” the Act created the Office of Law Enforcement Professional Standards (OLEPS) in the Department of Law and Public Safety to “assume the functions that had been performed by the independent monitoring team.” N.J.S.A. 52:15B-223. OLEPS, which operates under the direct supervision of the Attorney General,

performs such “administrative, investigative, policy and training oversight, and monitoring functions, as the Attorney General shall direct.” N.J.S.A. 52:15B-225. OLEPS is required to issue bi-annual reports that evaluate NJSP’s “compliance with relevant performance standards and procedures,” referred to as “Oversight Reports,” as well as semi-annual reports that include aggregate statistics on motor vehicle stops and misconduct investigations, referred to as “Aggregate Reports.” N.J.S.A. 52:17B-229, -235.

OLEPS issued its Thirteenth and Fourteenth Oversight Reports in June 2018 and February 2019, respectively. OLEPS issued its Fifteenth Aggregate Report of Traffic Enforcement Activities of New Jersey State Police (Fifteenth Aggregate Report) in August 2018.

OSC is mandated by the Act to conduct performance reviews 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. For this review, OSC examined NJSP’s policies and procedures for documenting and reviewing motor vehicle stops and post-stop enforcement activities. OSC also examined OLEPS’s oversight of the NJSP on those matters. This report is OSC’s sixth statutorily required review of NJSP and OLEPS.

OSC concludes in this report that both NJSP’s and OLEPS’s policies and procedures comply with the Act by ensuring appropriate documentation and review of motor vehicle stops and post-stop enforcement activity. OSC also through this report identifies weaknesses in the implementation of those policies and procedures. With the goal of ensuring adherence to the mandates of the Act and the reforms achieved under the Consent Decree, OSC makes several recommendations to improve processes. OSC’s recommendations include:

- In order to ensure transparency and quality assurance in supervisory reviews of trooper performance, NJSP should formalize its recently created motor vehicle stop review;
- NJSP should provide written responses to OLEPS regarding anomalies OLEPS observes in motor vehicle stop data. OLEPS frequently asks questions regarding data that may indicate racial profiling is occurring, such as data revealing disproportionate stops or post-enforcement activities involving Black or Hispanic drivers. Written responses will better assist all parties in understanding the underlying causes for such anomalies;
- NJSP should ensure consistency in documenting errors made by troopers during motor vehicle stops; and
- OLEPS should update its Motor Vehicle Stop Assessment Form to reflect the facts a trooper relied on to establish a legal basis for a frisk of the person.

OSC also notes two concerns that should be addressed because they undermine the processes established to ensure that NJSP or individual troopers do not practice racial profiling. First, OSC’s review revealed that NJSP has not complied with N.J.S.A. 52:17B-234(a), which requires troop commanders to certify to the Superintendent, and for the Superintendent to certify to the Attorney General, that NJSP has complied with the Act. These sworn statements ensure accountability and transparency and are required to be executed twice a year. Second, OLEPS’s Oversight Reports should be issued in a more timely manner. The time between the end of the reporting period and the issuance of a report has stretched to more than three years and is increasing. Timely access to OLEPS’s analyses advance the purposes of the Act and increases accountability.

II. METHODOLOGY

OSC is required by the Act to conduct audits and performance reviews of NJSP and OLEPS. The Act directs OSC to audit and review “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.” N.J.S.A. 52:17B-36(a). For

this report, OSC examined policies and procedures for documenting and reviewing motor vehicle stops and post-stop enforcement activities.

To conduct its review, OSC reviewed the following:

- relevant NJSP policies, procedures, and practices;
- records contained in NJSP's computer system designed to maintain and retrieve information necessary for the supervision and management of NJSP;
- video recordings and available documents for 20 motor vehicle stops designated as critical incidents in 2017;
- video recordings and available documents for 31 motor vehicle stops reviewed by OLEPS in its Fourteenth Oversight Report;¹
- OLEPS's reports concerning NJSP motor vehicle stops and post-stop enforcement activities; and
- NJSP's Risk Analysis Core Group meeting minutes and materials prepared by NJSP and OLEPS from March 2016 through September 2018.

OSC interviewed 14 NJSP troopers regarding supervisory reviews of individual motor vehicle stops and analysis of motor vehicle stop data for patterns and trends. OSC met with OLEPS personnel to discuss its oversight responsibilities regarding motor vehicle stops and post-stop enforcement activities. Additionally, OSC examined the processes used by NJSP to document information and take appropriate action when deficiencies are noted by supervisors.

¹ OLEPS reviewed two separate samples of NJSP motor vehicle stops for its Fourteenth Oversight Report. One sample was drawn from critical incident motor vehicle stops for the period January 1, 2016 through June 30, 2016. The second sample was drawn from motor vehicle stops where a non-consensual search based on probable cause was conducted during the same period. OSC reviewed motor vehicle stops from both samples.

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

III. REVIEW OF NJSP MOTOR VEHICLE STOPS AND POST-STOP ENFORCEMENT ACTIVITIES

With regard to motor vehicle stops and post-stop enforcement activities, the Act² and NJSP Standing Operating Procedures (SOP)³ require NJSP to:

- Document motor vehicle stops and post-stop enforcement activities;
- Conduct reviews of individual motor vehicle stops involving critical incidents;
- Review motor vehicle stops to identify and modify problematic behavior; and
- Implement appropriate remedial measures when necessary.

OSC reviewed whether NJSP, through its policies and procedures, is adhering to these general conditions, each of which is addressed below.

A. OSC's Review of NJSP's Management Awareness and Personnel Performance System

To satisfy the documentation requirement, NJSP created a computerized system known as the Management Awareness and Personnel Performance System (MAPPS).

² The reforms achieved by the Consent Decree are institutionalized into NJSP policies and procedures and incorporated into the Act. Specifically, N.J.S.A. 52:17B-223(e) states that “reforms accomplished under the consent decree have been codified in rules, regulations, standing operating procedures.” Accordingly, as used herein, references to the Act include these reforms in addition to express statutory requirements.

³ An SOP is a written document detailing various procedures and policies NJSP personnel must follow. NJSP has numerous SOPs covering a wide variety of topics.

MAPPS is an integrated system for maintaining, retrieving, and analyzing information regarding the performance of troopers. It assists NJSP managers in identifying and addressing potentially problematic conduct. NJSP uses MAPPS to record information required by the Act and NJSP SOPs, including the basis for each motor vehicle stop, details surrounding any post-stop interaction, and the race and ethnicity of the driver involved in each stop.

As part of its review, OSC examined several SOPs pertaining to MAPPS and various records that were created in MAPPS to document individual motor vehicle stops and post-stop enforcement activities. OSC compared information contained in MAPPS records, including the race and ethnicity of drivers, against the video and audio records of the 51 individual motor vehicle stops reviewed for this report. OSC also examined information in MAPPS pertaining to post-stop activities, examining, for instance, whether a trooper and the trooper's supervisor followed NJSP protocol when making a request for a consent search or when reading an individual Miranda⁴ warnings.

OSC found that the information contained in MAPPS accurately reflects the information captured in the audio and video recordings reviewed by OSC.

B. OSC's Review of Individual Motor Vehicle Stops and Post-Stop Enforcement Activities

In order to test whether NJSP is adhering to its policies and procedures designed to satisfy the supervisory review requirements outlined in the Act, OSC reviewed a sample of critical incident motor vehicle stops from 2017. A critical incident stop occurs when (1) a trooper conducts a consensual search of a motor vehicle based on "reasonable

⁴ Miranda v. Arizona, 384 U.S. 436 (1966).

articulable suspicion,”⁵ (2) deploys a narcotic detection canine, or (3) uses force on a vehicle’s occupant. The sample reviewed consisted of 20 motor vehicle stops, or 14 percent of the critical incident stops that occurred in 2017. All critical incident stops are subject to three levels of NJSP supervisory review to ensure that they are properly documented and conducted in accordance with NJSP SOP and the law. These levels of review are summarized below.

1. *Levels of NJSP Review of Critical Incident Motor Vehicle Stops*

The first level, known as a Standard Review, is conducted by NJSP Mobile Video Review sergeants assigned to each Troop.⁶ During a Standard Review, the reviewer will examine all video recordings associated with a critical incident motor vehicle stop. The reviewer will also consider all reports and documentation generated regarding the stop. If the reviewer finds a trooper deviated from legal requirements or policy, the reviewer is required to document the deviation in the MAPPS Intervention Module. See Section III (D) of this report for further discussion on deviations.

The second level of review for each critical incident motor vehicle stop, referred to as Quality Assurance Review (QAR), is conducted by the Office of Quality Assurance (OQA), a bureau within NJSP. The OQA reviews the completed Standard Review and all video, reports, and documentation associated with the motor vehicle stop. OQA issues findings to Station Commanders regarding whether a trooper involved in a critical

⁵ Reasonable articulable suspicion will be found to exist if the police officer is “able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” Terry v. Ohio, 392 U.S. 1, 21 (1968).

⁶ The vast majority of all motor vehicle stops conducted by NJSP are performed by troopers in the Operations Branch. The Operations Branch includes four Troops designated A, B, C, and D.

incident motor vehicle stop deviated from NJSP policy or the law. OQA recommends steps that a Station Commander should take to document a deviation by a trooper, which NJSP terms an “intervention.” Unlike the Standard Review and the Management Review, however, the QAR is not documented in MAPPS. Instead, upon completion of its review, OQA sends an email to the Station Commander with its findings and recommendations. NJSP personnel advised that there is no SOP addressing how a QAR should be conducted or documented.

The third and final level of review, known as the Management Review, is conducted by the Station Commander or Assistant Station Commander. At this level, the reviewer considers the Standard and QAR reviewers’ narratives and recommendations. The Station Commander or Assistant Station Commander may also examine video from a police vehicle’s camera and associated reports and documentation. The Station Commander or Assistant Station Commander makes the final determination of whether a deviation from policy occurred and whether an intervention with the trooper is warranted.⁷

2. OSC’s Review of Sampled Motor Vehicle Stops

OSC concludes, based upon the sample of 20 motor vehicle stops reviewed by its investigative staff, that NJSP’s supervisory reviews were conducted in accordance with the Act and NJSP SOPs. The QAR process, however, would be more reliable and transparent if it were formalized, which would allow for a more meaningful review within

⁷ NJSP policy and procedure further provide for regular reviews of all types of motor vehicle stops by supervisors. The purpose of these reviews is to ensure that all relevant information was appropriately documented and all policies and procedures were effectively implemented. The reviews are conducted pursuant to schedules instituted by the NJSP Superintendent’s Office, and generally provide for a supervisor to review three motor vehicle stops per quarter for each trooper under the supervisor’s command.

NJSP and subsequently by OLEPS and OSC. OSC's recommendations in this regard are discussed in Section VI (1) of this report.

C. Comprehensive Review of Motor Vehicle Stops to Identify Patterns of Conduct

In addition to the multi-level supervisory reviews, the Act and NJSP policy require the use of benchmarks to analyze motor vehicle stop data to identify patterns suggesting that unlawful discrimination is occurring. In order to conduct this analysis, NJSP created the Risk Analysis Core Group (RACG).

1. Risk Analysis Core Group

The RACG identifies aberrations from division-wide patterns, changes from previous reporting periods for the troop in question, and any statistics that may warrant a change in protocol for a particular troop or individual trooper. The RACG identifies these patterns or trends by comparing the racial/ethnic percentages of motor vehicle stop activities within individual units to an internal benchmark based on the percentages from all motor vehicle stops made by NJSP for a given time period.

To assist the RACG in performing its functions, OQA compiles and analyzes motor vehicle stop data to identify risks and trends noted in organizational units and among individual troopers conducting motor vehicle stops. OQA focuses quarterly on a one-year period of a troop's motor vehicle stops. The analysis includes a breakdown of the troop's motor vehicle stops for that reporting period by race/ethnicity. OQA also analyzes the racial/ethnic makeup of motor vehicle stops involving post-stop activities such as summonses issued, arrests, uses of force, and searches conducted.

OQA then prepares a presentation on the troop for the quarterly meetings held by the Risk Management Advisory Panel (the Panel) of the RACG. The Panel includes NJSP

command level officers and the Director of OLEPS. The Panel has five voting members selected from NJSP command level personnel. The Director of OLEPS is a non-voting member of the Panel.

As part of OLEPS's participation in the RACG, OLEPS prepares a detailed memorandum for the Panel based on the data and presentation prepared by OQA. The memo identifies and inquires about anomalies in the data and suggests analyses the RACG should consider. OSC was advised by both OLEPS and NJSP that NJSP does not provide written responses to OLEPS regarding the RACG memoranda. OLEPS advised that NJSP is not required by the Consent Decree to provide a formal response to these memoranda and thus does not do so.

Both OLEPS and NJSP stated that discussions concerning the memoranda are captured in the minutes of the RACG meetings. The RACG minutes reviewed by OSC demonstrate, however, that this is frequently not the case. OLEPS also advised that discussions regarding various points made in its memoranda continue after the quarterly meetings have concluded. OLEPS acknowledged that it does not always receive a substantive response from NJSP to the inquiries contained in the RACG memoranda and, in fact, has noted this in its public reports.⁸

In response to a discussion draft of this report, OLEPS reiterated its preference that NJSP provide written responses to its memoranda, stating that "most communication should be confirmed in writing." OLEPS stated the Consent Decree does

⁸ See, e.g., OLEPS's Fifteenth Aggregate Report (August 2018), p. 16 ("OLEPS has requested from State Police explanations for these differential rates of change in stop volumes for each racial/ethnic group. OLEPS has yet to receive an explanation for these different rates of change."), and p. 51 ("To date, OLEPS has not received a response from State Police to inquiries regarding [t]his divergent pattern for Black drivers.").

not factor into its position on this matter. NJSP, in its response to OSC's draft report, claimed that "written communication has significantly improved," leading to "clarification of issues and a reduction in miscommunication and misunderstandings."

It is clear that NJSP's RACG is conducting the type of analyses of motor vehicle stops envisioned by both the Consent Decree and the Act to identify patterns of behavior by organizational units and individual troopers that may indicate whether unlawful discrimination is occurring. The lack of written, or at times, any, response from NJSP to the RACG memoranda is a serious weakness and interferes with OSC's oversight efforts. Going forward, as a matter of basic accountability, the NJSP should respond in writing to every RACG memo prior to the RACG meeting occurring. Obvious opportunities to improve accountability, avoid miscommunication, and learn from the past should not be missed.⁹ Indeed, the Act clearly contemplates that NJSP and OLEPS would adapt their

⁹ OSC has previously raised concerns regarding the interactions between OLEPS and NJSP not being memorialized in writing. *See, e.g.,* OSC's Second Periodic Report on Law Enforcement Professional Standards (April 17, 2012), pp. 14-15 ("Although 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's Fifth Period Report on Law Enforcement Standards (June 14, 2018), p. 30 ("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 . . . 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's 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

policies and procedure over time.¹⁰ During the involvement of the federal monitor, prior to the dissolution of the Consent Decree, NJSP was lauded for becoming “self-aware” and “self-monitoring” because it recognized a serious problem and addressed it. Such laudable conduct is less likely in the absence of a willingness by NJSP to answer legitimate and important questions posed by OLEPS in writing for a subsequent review by OSC and any other appropriate oversight entity.

It is anomalous that a process that begins with documentation and video of motor vehicle stops, includes multiple layers of documented review of data by NJSP and OLEPS, and results in extensive, written RACG memoranda would conclude with, at best, little more than a verbal response from NJSP and, at worst, silence. The entire process required by the Act is built on recorded and documented interactions and evaluations. The NJSP should be required to provide a written response to the RACG memoranda.

2. *NJSP Does Not Use an External Benchmark*

As discussed, RACG is charged with analyzing motor vehicle stop data for trends. NJSP currently utilizes a “rough internal benchmark” based on the racial/ethnic

evaluating whether the recommendation is warranted based on NJSP's input, help to avoid miscommunication between OLEPS and NJSP, and make OLEPS's oversight process more transparent.”).

In its response, OLEPS contends this footnote does not accurately reflect the current state of written communications between NJSP and OLEPS. OSC notes that these statements are provided as examples of past instances of a lack of formal communication between these agencies that demonstrate that the problems identified by OSC have not been fully addressed.

¹⁰ The Act acknowledges “the need for flexibility to account for developments in constitutional law, the advent of new technologies, and the development of new best practices in policing, makes it impracticable and inappropriate to codify all consent decree-related rules, regulations, standing operating procedures and operations instructions in statutory law.” N.J.S.A. 52:17B-223(e).

percentages derived from the total number of motor vehicle stops made by NJSP for a given time period. This internal benchmark establishes the baseline against which the motor vehicle stop activities of individual NJSP commands are compared for purposes of determining if a particular command falls above or below the baseline. The goal of the comparison is to identify problematic practices by individual commands or troopers. OLEPS uses this same benchmark in preparing its public Oversight Reports.

An external benchmark would better enable NJSP to effectively review data for trends, as was expressly recognized by the Consent Decree:

To assist in evaluating data reported from the MAP concerning State Police law enforcement on the New Jersey Turnpike, the State shall develop (for purposes of implementing this Decree) a protocol for conducting a survey of a sample of persons and vehicles traveling on the New Jersey Turnpike to determine the racial/ethnic percentage of drivers on the Turnpike. As appropriate, the survey may identify different benchmark figures for different portions of the Turnpike. Prior to implementation, the protocol shall be approved by the Independent Monitor and the United States. The protocol shall be developed and implemented using a consultant jointly selected by the parties. The survey shall be completed within one hundred fifty (150) days of the entry of this Decree. Both the United States and the State agree that the utility and fairness of the MAP described in this Consent Decree will depend to some degree on the development of accurate and reliable benchmarks that account for all appropriate variables and factors.

The driver survey required by the Consent Decree was designed to provide an external benchmark against which the racial/ethnic percentages of motor vehicle stops and post-stop enforcement activities made on the Turnpike could be compared. Such an external benchmark established an acceptable baseline for the race/ethnicity percentages expected if motor vehicle stops and post-stop activities were conducted in a race-neutral manner. The only driver survey ever conducted was completed in 2000. Because the

driver survey was never updated it became stale after several years and is thus no longer used.

Since at least 2012, OLEPS has recommended to NJSP no less than 10 times that a more precise internal or external benchmark be developed.¹¹ NJSP acknowledges that it would be preferable to use an external racial/ethnic benchmark, but has taken no steps to do so. The danger involved in using an internal benchmark is that it could permit discriminatory conduct to go undetected system-wide as long as that conduct occurs consistently within NJSP. That is clearly what the external benchmark required by the Consent Decree was designed to prevent. The absence of an external benchmark may undermine the integrity and reliability of the entire enterprise.

In view of the requirements included in the Consent Decree, which are incorporated in the Act, OLEPS's consistent position on the issue, and the obvious benefits of a current benchmark for the purpose of ensuring unlawful discrimination is not occurring, NJSP should immediately take whatever steps are needed to identify and develop an appropriate external benchmarking method.¹²

¹¹ See, e.g., OLEPS Fourteenth Oversight Report (February 2019), p. 28 (“OLEPS typically compares the racial/ethnic distribution of each enforcement activity with the overall racial/ethnic distribution for all stops reviewed. Generally, this benchmark represents the best currently available. However, if the racial/ethnic distribution of all stops reviewed is skewed, it would be an inappropriate benchmark, and could mask bias in enforcement activities. In the current reporting period, this distribution does not appear skewed, and as such, OLEPS uses it as a benchmark for comparison. **OLEPS continues to recommend the development of a more precise internal or external benchmark to compare these enforcement activities.**”) (emphasis added).

¹² OLEPS recently informed OSC that it is in the process of transitioning to a different and more modernized method of storing NJSP motor vehicle stop data. According to OLEPS, this will allow it, among other things, to develop a more precise benchmark than

OSC further urges the Office of the Attorney General (OAG), which has supervisory responsibilities over both OLEPS and NJSP,¹³ to ensure OLEPS's recommendations are followed. In the event those recommendations are not followed, the OAG should explain why it has rejected the recommendations.

D. Appropriate and Consistent Use of Interventions is Required

NJSP is required by SOPs to implement appropriate remediation measures when a trooper deviates from SOP or other legal requirements. NJSP responds to deviations by troopers through an "intervention" and through the documentation of the intervention in the MAPPS Intervention Module.¹⁴ An intervention notifies a trooper and a trooper's supervisor that the trooper did not comply with an SOP or other legal requirement. An intervention may include verbal counseling or training. An intervention can also be used to document commendable conduct by the trooper.

the internal benchmark currently being used. Since it is not yet operational, OSC makes no findings with regard to the usefulness of this proposed benchmarking method.

¹³ N.J.S.A. 52:17B-223(e) provides that "the reforms achieved under the consent decree can best be institutionalized by mandating that any future changes to State Police rules, regulations, standing operating procedures and operations instructions relating to the consent decree are approved in writing by the Attorney General prior to issuance or adoption by the superintendent, and by ensuring the issuance or modification of any rule, regulation, standing operating procedure or operations instruction deemed necessary to maintain or enhance the practices of the Division of State Police on matters pertaining to any applicable non-discrimination policy established by the Attorney General; the law of arrest, search and seizure; and the documentation of motor vehicle stops and law enforcement activities occurring during the course of motor vehicle stops."

¹⁴ The Intervention Module is specifically designed to allow a trooper's current and future managers to see a history of interventions on a trooper, analyze past conduct, and provide guidance and training to assist the trooper in avoiding problematic behavior.

NJSP advised OSC that it only uses interventions for major deviations from SOP or other legal requirements, such as when a trooper fails to issue Miranda warnings to an arrestee, exceeds the scope of a consent search, or fails to seatbelt a prisoner during transport. NJSP also advised that repeated minor deviations from policy warrant the issuance of an intervention. NJSP stated that minor deviations from policy, such as a trooper's failure to wear a hat during a vehicle stop, are addressed with the trooper but not always entered into the Intervention Module in MAPPS. When that occurs, the trooper's next supervisor is unlikely to become aware of the deviation and the intervention.¹⁵

OSC's review revealed that NJSP is inconsistent in its use of interventions. In some instances, a trooper was issued an intervention for a major deviation from policy while in similar circumstances another trooper was not issued an intervention. This is inconsistent with NJSP's policy of ensuring the fair and consistent application of interventions.

In its public reports and interviews with OSC, OLEPS has recommended that NJSP make greater use of interventions, including documenting all trooper "errors" in MAPPS. Unlike NJSP, OLEPS contends that any deviation from NJSP policy during a motor vehicle stop is an error warranting an intervention. NJSP, on the other hand, holds the view that not all "deviations from policy" (NJSP does not refer to such instances as "errors") require the issuance of an intervention. In the absence of clarity regarding when

¹⁵ NJSP SOP requires a trooper's current supervisor to review the trooper's intervention history before issuing a trooper an intervention and on a quarterly basis as part of the trooper's performance reviews. NJSP SOP also requires that a trooper's new supervisor review the intervention history upon taking command.

interventions are required, there is a danger that inappropriate, possibly arbitrary, factors will guide when interventions are issued. The divergent positions by two entities under the supervision of the OAG should be addressed by that office.

NJSP, in its response to the draft report, agreed that consistency in the issuance of interventions assists in effectively communicating NJSP's expectations to all troopers. NJSP advised that it is replacing existing MAPPS software and expects the new software, supplemented by additional supervisory training, to result in a more consistent use of interventions. Once the new software is in use, NJSP stated it will evaluate whether clarification of its SOP on interventions is required.

OLEPS, in its response, disagreed with OSC's determination that there was an absence of clarity as to when a deviation must be entered into the Intervention Module, stating that NJSP SOP C11 defines when and how an intervention should be issued. OLEPS's response, however, did not address the problem identified by OSC in its review. The SOP clearly requires an NJSP supervisor to enter deviations into the Intervention Module. The problem OSC identified, which remains to be addressed, is the divergent positions regarding the nature of the conduct by a trooper that justifies an intervention.

E. NJSP Has Not Submitted Certifications of Compliance as Required by the Act

The Act requires NJSP troop commanders to certify semi-annually to the NJSP Superintendent that the troop has complied with the requirements of the Act and requires the NJSP Superintendent semi-annually to certify to the Attorney General that NJSP has complied with the requirements of the Act. N.J.S.A. 52:17B-234(a). Requiring each troop commander to certify to the Superintendent that the officers under the commander's supervision have met the requirements of the Act ensures an additional layer of

accountability within NJSP. The Superintendent's certification of compliance to the Attorney General, in turn, ensures the public that both the spirit and letter of the law inherent in the Act are met.

During the course of OSC's review, NJSP acknowledged that it has never complied with the certification requirements. NJSP assured OSC that it will submit the statutorily mandated certifications on a semi-annual basis going forward.

IV. REVIEW OF OLEPS's OVERSIGHT PERFORMANCE

To review OLEPS's oversight of NJSP motor vehicle stops and post-stop activities, OSC reviewed the following documents:

- OLEPS's Thirteenth Oversight Report, dated June 2018, which reviewed motor vehicle stops performed during the time period July 1, 2015 to December 31, 2015;
- OLEPS's Fourteenth Oversight Report, dated February 2019, which reviewed motor vehicle stops performed during the time period January 1, 2016 to June 30, 2016;
- OLEPS's Fifteenth Aggregate Report dated August 2018, which analyzed motor vehicle stop data for the time period January 1, 2016 to June 30, 2016; and
- Various OLEPS's internal memoranda and operating procedures.

OSC also reviewed a sample of 31 motor vehicle stops that were reviewed by OLEPS for its Fourteenth Oversight Report.

In carrying out its duties under the Act, OLEPS conducts operations audits and independent analyses of NJSP data to identify potential disparities in enforcement. In its Fourteenth Oversight Report, OLEPS reviewed and analyzed documentation from all critical incident motor vehicle stops. OLEPS also examined a secondary sample of motor

vehicle stops drawn from a random selection of stops in which a non-consensual, probable cause-based search occurred, for a total of 291 motor vehicle stops sampled.

To review the sampled stops, OLEPS used a detailed Motor Vehicle Stop Assessment Form (Assessment Form) that its investigators completed as they reviewed all video, audio, and documentation pertaining to a motor vehicle stop. The Assessment Form contains 136 questions designed to capture information about the stop. OLEPS used this information to determine if NJSP followed the law and its own policies and procedures in conducting the motor vehicle stop. The Assessment Form includes questions such as whether there was a reasonable and articulable suspicion of criminal wrongdoing justifying a consent search of a vehicle¹⁶ or a frisk¹⁷ of a vehicle's occupant.

A trooper must have reasonable and articulable suspicion to perform either a consent search of a vehicle or to frisk an individual. The Assessment Form, however, differs with respect to the amount of information the investigator is required to include to support a finding of reasonable and articulable suspicion. For instance, when the OLEPS investigator is reviewing a motor vehicle stop involving a frisk of a person, the Assessment Form requires the investigator to indicate summarily whether a reasonable

¹⁶ “[F]or a consent to search a motor vehicle and its occupants to be valid, law enforcement personnel must have a reasonable and articulable suspicion of criminal wrongdoing prior to seeking consent to search a lawfully stopped motor vehicle.” State v. Carty, 170 N.J. 632, 635 (2002).

¹⁷ A stop and frisk can be made by police without a warrant “where a police officer observes unusual conduct which leads [the officer] reasonably to conclude in light of [the officer’s] experience that criminal activity may be afoot and that the persons with whom [the officer] is dealing may be armed and presently dangerous....” Terry, 392 U.S. at 30-31. See also State v. Privott, 203 N.J. 16, 26 (2014) (citing State v. Roach, 172 N.J. 19, 27 (2002)) (a stop and frisk can be made by police without a search warrant when a police officer has a “specific and particularized basis for an objectively reasonable suspicion that defendant was armed and dangerous [.]”)

and articulable suspicion was present or whether the frisk was conducted because the person was being transported. The investigator is not required to identify the specific facts supporting the trooper's conclusion that there was an adequate basis to justify the frisk. On the other hand, when the investigator is reviewing a motor vehicle stop involving a consent search of the vehicle, which also requires a reasonable and articulable suspicion, the investigator must identify the specific facts supporting the trooper's basis for requesting consent. Requiring the investigator to list facts supporting the legal justification for a consent search of a vehicle, but not for a frisk of an individual, is counterintuitive because the search of an individual is more intrusive and thus more deserving of scrutiny. In its response to a draft of this report, OLEPS agreed that it would update its Assessment Form to require the same level of detail for a frisk as is currently required for a consent search of a vehicle.

To ensure the quality of its motor vehicle stop reviews, OLEPS instituted a "double blind review." According to OLEPS personnel, a double blind review is conducted by having two investigators review the same motor vehicle stop separately. When both reviews are complete, the investigators compare answers and, if differences exist, the investigative team will meet and attempt to reach a consensus.

At the time of OSC's review, OLEPS did not have a written policy governing how investigators performed the double blind review. Following OSC's inquiries, however, OLEPS changed the procedures for conducting this review, now referred to as a "matched review," and documented the new procedures in an interoffice memorandum.

OLEPS's Fourteenth Oversight Report identified instances in which frisks and consent searches were conducted in the absence of a reasonable and articulable suspicion. The Oversight Report analyzed the data collected from these motor vehicle stop reviews

by racial/ethnic percentages. The Report shows, for example, the total racial/ethnic percentages for all 291 motor vehicle stops reviewed. It also identified the various types of post-stop enforcement activities, such as use of force and arrests by racial/ethnic group.

OSC's review of the 31 motor vehicle stops revealed that the reviews conducted by OLEPS were appropriate and complete. OSC confirmed certain issues identified by OLEPS in its Fourteenth Oversight Report. For example, both OLEPS's and OSC's reviews noted similar instances in which an NJSP supervisory review found a deviation from NJSP policy but no intervention was issued to the trooper.

OLEPS also conducts in-depth analyses of NJSP motor vehicle stops in its Aggregate Reports. These reports analyze data collected by NJSP for the stops made by troopers in a six month period. For the Fifteenth Aggregate Report, OLEPS analyzed data on 299,596 motor vehicle stops made from January 1, 2016 to June 30, 2016. As with the Oversight Reports, OLEPS provides an analysis of the motor vehicle stops by racial/ethnic percentages. OLEPS scrutinizes the motor vehicle stop data to identify patterns potentially revealing systemic issues or problematic conduct by an individual that NJSP should address.

OSC finds OLEPS's oversight of NJSP motor vehicle stops and post-stop enforcement activities is conducted in an appropriate and comprehensive manner. OLEPS's reviews of individual motor vehicle stops and its data analysis satisfy its statutory obligations under the Act.

Although OLEPS is performing its duties in accordance with the Act, it is not doing so in a sufficiently timely manner. The Act requires OLEPS to issue semi-annual public reports showing aggregate statistics on NJSP traffic enforcement as well as aggregate data

on the race and ethnicity of the civilians involved (Aggregate Reports).¹⁸ OLEPS is also required to issue bi-annual public reports that evaluate NJSP's compliance with relevant performance standards and procedures (Oversight Reports).¹⁹ OSC's review revealed that there is a significant delay in the end date of the data being analyzed and the date the report regarding that time period is made public. For instance, OLEPS's Fourteenth Oversight Report, which was issued in February 2019, analyzed motor vehicle stop data for the time period January 1, 2016 through June 30, 2016. Similarly, OLEPS's Fifteenth Aggregate Report of Traffic Enforcement Activities was issued in August 2018, but reviewed and analyzed data for the period January 2016 to June 2016. The delays are worsening. As of the issuance of this report in May 2020, OLEPS has not issued its Fifteenth Oversight Report addressing motor vehicle stops during the second half of 2016.

OLEPS provided OSC with several reasons for these delays. OLEPS stated that the delay is attributable, in part, to staffing issues and other projects assigned to OLEPS by the OAG. OLEPS also advised that reviews of draft reports by NJSP and the OAG cause further delays. OLEPS explained that the fieldwork and analysis for the Fifteenth through Nineteenth Oversight Reports, which would cover motor vehicle enforcement activity through the end of 2018, are complete. The reports, however, are still in various stages of review and not yet ready for publication.

OLEPS further advised that it is creating an interactive online version of the Aggregate Report, expected to be complete by the end of 2020. This new and improved report platform is intended to give the public access to motor vehicle stop data from 2009

¹⁸ N.J.S.A. 52:17B-235.

¹⁹ N.J.S.A. 52:17B-229.

through 2019 and to allow searches of the data. According to OLEPS, this new format is expected to better enable OLEPS to complete all of its reports in a timelier manner.

V. UPDATE ON SELECTED RECOMMENDATIONS FROM OSC'S 2014 REPORT

In its 2014 Report, OSC recommended that NJSP should (1) ensure motor vehicle stop supervisory reviews are conducted in an appropriate manner; (2) monitor the use of narcotics detection dogs at motor vehicle stops; and (3) ensure motor vehicle stops are properly recorded. In the course of our current review, OSC discussed the status of these recommendations with OLEPS and NJSP and incorporates their positions below.

1. NJSP, through its organizational structures, should ensure that supervisory reviews are conducted in a thorough and appropriate manner.

In the 2014 Report, OSC recommended that NJSP use its organizational structure to ensure that supervisory reviews of motor vehicle stops are conducted effectively. Since 2014, NJSP has made changes to its organizational structure in an effort to ensure it is meeting the goals of the Act and the Consent Decree. As an example, in 2017, NJSP's OQA was reorganized, and the QAR was created. The OQA currently conducts reviews of critical incident stops. It also audits Field Operations to assess the efficiency of first line supervisors in noting deviations of policy in their motor vehicle stop reviews. Based on OSC's current review, NJSP has implemented this recommendation.

2. NJSP and OLEPS should continue to closely monitor motor vehicle stops resulting in the deployment of narcotic detection canines.

In order for a trooper to request the deployment of a narcotics detection canine to a motor vehicle stop, NJSP policy requires the trooper to have a reasonable and articulable suspicion that the vehicle contains illegal drugs. OSC recommended that

OLEPS and NJSP monitor the use of canines for narcotics searches during motor vehicle stops. OSC recommended this based on OLEPS's Sixth Oversight Report. That report noted an anomaly in the data concerning the use of canines during motor vehicle stops. The data indicated black motorists were more likely to have the perimeter of their vehicles searched by drug-sniffing dogs than other motorists. OLEPS concluded, however, that all the motor vehicle stops where a canine was deployed were justified.

Since 2014, both OLEPS and NJSP have closely monitored the use of canines during motor vehicle stops. OLEPS noted in its Fourteenth Oversight Report that “[a]nalyzes in the current reporting period indicate that there were no statistically significant differences in the racial/ethnic distributions in the number of stops, including those involving consent to search requests, drug detection canine deployments, uses of force, or arrests.” In addition, the number of canine deployments during motor vehicle stops has generally decreased since 2012, according to OLEPS.

OSC concludes that NJSP and OLEPS are actively monitoring the use of canines to ensure their use is appropriate and in compliance with NJSP policies and procedures.

3. NJSP should evaluate its Digital In-Vehicle Recording system to ensure that both video and audio of motor vehicle stops are appropriately recorded.

OSC's current review found that NJSP continues to have periodic problems with its video and audio recording systems, but it has been diligent in identifying problems due to hardware malfunctions and software issues. NJSP policy requires troopers to conduct a series of checks prior to operating a patrol vehicle to ensure the video and audio components are working. NJSP works closely with its current vendor to identify issues with the recording systems and to correct them. Based on OSC's current review, it

concludes NJSP is being diligent in working to ensure that both video and audio of motor vehicle stops are appropriately recorded.

VI. CONCLUSIONS AND RECOMMENDATIONS

NJSP and OLEPS continue to comply with the Act by documenting and monitoring motor vehicle stops and post-stop enforcement activities. Statewide compliance efforts can be further improved by implementing the following recommendations:

- 1. NJSP should incorporate the procedures used to conduct the QAR of critical motor vehicle stop incidents into appropriate SOPs to ensure consistency and transparency in how the reviews are conducted.**

As discussed, OQA conducts a review of all critical incident motor vehicle stops. This review is in addition to the Standard Review and Management Review. This review is not referenced in any NJSP SOP. For purposes of quality assurance and transparency, OSC recommends the review of critical incident motor vehicle stops be incorporated into the appropriate SOPs and entered into MAPPS.

In its response to a draft of this report, NJSP advised it is replacing the MAPPS software program and agreed to take OSC's recommendation under advisement in developing this new program.

- 2. NJSP should provide written responses to OLEPS's RACG memoranda.**

The Act anticipates that, over time, OLEPS and NJSP would need to make adjustments to ensure both entities are able to fulfill their statutorily required duties. The creation of the RACG memoranda is just such an adaptation the Act recognized may be required. OSC recommends that NJSP, for both clarity and transparency, provide OLEPS with a written response to issues raised in OLEPS's RACG memoranda. A written response will document the underlying causes of anomalies in motor vehicle stop data

that NJSP and OLEPS observe and will encourage NJSP to identify and eliminate racial profiling that may be revealed in the data.

3. NJSP should create an external benchmark to use as a baseline for racial/ethnic percentages of drivers using New Jersey roadways.

At present, neither NJSP nor OLEPS uses an external racial/ethnic benchmark to compare motor vehicle stops and post-stop activities. Under the Consent Decree, both DOJ and New Jersey agreed that the utility and fairness of the information captured in MAPPS will depend, in part, on the development of accurate and reliable benchmarks. OSC strongly recommends that NJSP and OLEPS, with the oversight of the OAG, obtain an external benchmark, as was previously mandated by the Consent Decree. Using an objective external benchmark will assist both agencies in conducting the analyses of motor vehicle stop data required by the Act.

4. NJSP should be more consistent in its issuance of interventions to effectively communicate expectations to troopers and to provide appropriate training and counseling where needed.

NJSP issues interventions for major deviations from NJSP policy, but does not issue interventions for minor deviations. OLEPS has recommended that interventions be issued for all deviations. OSC recommends that NJSP and OLEPS, with the oversight of the OAG, determine what type of trooper conduct warrants an intervention.

NJSP should also be consistent in its issuance of interventions to ensure troopers committing the same type of errors are treated similarly. NJSP agreed with OSC that consistency is important and stated that the new MAPPS software, along with supervisory training, is expected to result in more consistent application of trooper interventions.

OLEPS noted a five percent decrease in NJSP's use of interventions over the course of its last two oversight reports. OSC recommends NJSP and OLEPS examine whether the decline in the use of interventions is related to the inconsistency noted above.

- 5. NJSP should ensure that it meets the Act's mandates to provide the Attorney General and the NJSP Superintendent with the required semi-annual certifications of compliance with the law.**

The sworn certifications required by the Act should be executed semi-annually, as required by the Act.

In its response to the draft report, NJSP agrees with OSC's recommendation and, as discussed above, assured OSC that it will submit the statutorily mandated certifications on a semi-annual basis going forward.

- 6. OLEPS should document on its Assessment Form the facts used to support a trooper had a reasonable and articulable suspicion to conduct a frisk of the vehicle's occupant.**

Given the importance of the constitutional right of a person to be free from an unreasonable search, OSC recommends OLEPS amend its Assessment Form to reflect the facts on which a trooper relied to establish the reasonable and articulable suspicion necessary to conduct a frisk of a person. OLEPS's Assessment Form already requires this information for a consent search of a vehicle. It is even more important that such information be provided for the more intrusive search of a person.

In its response to the draft report, OLEPS agrees with OSC's recommendation and advised that it is modifying the Assessment Form to reflect the facts on which the trooper relied to establish reasonable articulable suspicion.

- 7. OLEPS should create a written operating policy governing the procedure for conducting double blind reviews of motor vehicle stops for its Oversight Reports.**

OLEPS's double blind reviews are a positive addition to its process for evaluating the appropriateness of trooper conduct during stops. OSC recommends OLEPS formalize the procedures used for this review in written operating procedures.²⁰

- 8. OLEPS should reduce the delay between the end date of the period reviewed in its Oversight Reports and the publication of the reports.**

Timely access to OLEPS's reports is important to achieve the goals of the Act. OSC recommends OLEPS issue reports as close in time as possible to when the data was collected. By doing so, problems identified in the reports can be identified and remedied without the passage of several years during which the problems could worsen.

²⁰ It should be noted that after the completion of OSC interviews of OLEPS personnel on March 28, 2019, OLEPS provided OSC a copy of an OLEPS Memorandum dated April 24, 2019, which explains how and when OLEPS investigators are to conduct what it now refers to as "matched reviews."