

Seventh Periodic Report on Law Enforcement Professional Standards

INVESTIGATIVE REVIEW

***Review of the internal affairs and discipline processes at the
New Jersey State Police and its monitoring by the Office of
Law Enforcement Professional Standards***

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I. Introduction

The Office of the State Comptroller (OSC) completed its seventh performance review of the New Jersey State Police (NJSP), a division within the Department of Law and Public Safety, and the oversight provided by the Office of Law Enforcement Professional Standards (OLEPS), as mandated by statute. OSC is statutorily obligated 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 Office of Professional Standards (OPS), and its policies, procedures, and processes for documenting, classifying, and investigating complaints made against troopers, and any discipline imposed. OSC also examined OLEPS's oversight of NJSP on these matters.

In 1999, the United States Department of Justice (DOJ) sued NJSP and the State of New Jersey for "intentional 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."¹ 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 states that "state troopers may not rely to any degree on the race or national or ethnic origin of motorists in selecting vehicles for traffic stops and in deciding upon the scope and substance of post-stop actions, except where state troopers are on the look-out for a specific suspect who has been identified in part by his or her race or national or ethnic origin."²

The Consent Decree required reforms in the following areas that were aimed at eliminating the racially-motivated vehicle stops carried out by NJSP: 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; investigations of misconduct allegations; training; auditing; and public reports. Pursuant to 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.³

In 2009, the court dissolved the Consent Decree on a joint motion by the State and DOJ. To ensure NJSP continued to comply with reforms initiated under the Consent Decree, the Legislature passed 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 OLEPS to "assume the functions that had been performed by the independent monitoring team." *N.J.S.A. 52:17B-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. 52:17B-225.* OLEPS is required to issue bi-annual reports that evaluate NJSP's "compliance with relevant performance standards and

1. Complaint, *United States v. State of New Jersey*, No. 99-cv-5970 (D.N.J. Dec. 22, 1999).

2. Joint Application for Entry of Consent Decree, *United States v. State of New Jersey*, No. 99-cv-5970 (D.N.J. Dec. 30, 1999) (hereinafter "Consent Decree").

3. Consent Decree, at 1; see also, e.g., Independent Monitors' Sixteenth Report, Long Term Compliance Audit (Aug. 2007), <https://www.nj.gov/oag/monitors-report-16.pdf>.

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.*⁴ OLEPS issued its Fourteenth and Fifteenth Oversight Reports in February 2019 and May 2020, respectively.⁵ OLEPS issued its Eighth Public Aggregate Misconduct Report in May 2020.⁶

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.

OSC, for its part, is required to 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.” *N.J.S.A. 52:17B-236(a).* For this review, OSC focused on internal affairs and trooper discipline. An effective internal affairs and discipline process is critical to eradicating and preventing the conduct that led to the Consent Order. In order to eliminate instances of racial profiling by a state police force, there must be clear and effective consequences for troopers who engage in such conduct. Accordingly, it is imperative for NJSP to have an effective and efficient internal affairs and disciplinary system to investigate allegations of police misconduct—including allegations of racial profiling—and impose appropriate discipline. Without effective internal review and disciplinary systems in place, misconduct by NJSP troopers would remain unchecked.

Through this review, OSC identified weaknesses in the implementation of NJSP’s and OLEPS’s policies and procedures while finding that those entities generally complied with the Act. Among other findings, OSC determined that OPS departed from governing NJSP policy by administratively closing five cases that should have been classified as performance issues. OLEPS was aware of this deviation from policy but did not take affirmative steps to correct it. Similarly, a process OPS used to administratively close some racial profiling and disparate treatments complaints ran counter to governing policy. OSC also determined that OLEPS is not using existing data to analyze race, gender, or rank and their influence, if any, on the imposition of discipline. With the goal of ensuring adherence to the mandates of the Act and the reforms achieved under the Consent Decree, OSC has made recommendations for improvement to address these and other findings discussed herein.

4. The Act also authorizes OLEPS to conduct audits of operations that impact misconduct investigations. *N.J.S.A. 52:17B-228(b).* To fulfill this mandate OLEPS conducts bi-annual audits of OPS which are discussed as part of this report.

5. Office of Law Enforcement Professional Standards, Fourteenth Oversight Report (Feb. 2019), <https://www.nj.gov/oag/oleps/pdfs/OLEPS-2019-Fourteenth-Oversight-Report.pdf>; Office of Law Enforcement Professional Standards, Fifteenth Oversight Report (May 2020), <https://www.nj.gov/oag/oleps/pdfs/OLEPS-2020-Fifteenth-Oversight-Report.pdf>.

6. Office of Law Enforcement Professional Standards, Eighth Public Aggregate Misconduct Report (May 2020), <https://www.nj.gov/oag/oleps/pdfs/OLEPS-Eighth-Public-Aggregate-Misconduct-Report-May-2020.pdf>.

II. Background Information

A. NJSP Office of Professional Standards (OPS)

For this review, OSC examined the operations of OPS's two internal affairs bureaus, the Intake & Adjudication Bureau (IAB) and the Internal Affairs Investigation Bureau (IAIB), and the relevant sub-departments contained within those bureaus. Specifically, OSC included in its review the Intake Unit and the Administrative Internal Proceedings Unit (AIPU), both within the IAB, and the three IAIB investigative units responsible for investigating misconduct complainants made against troopers.

These bureaus and units, and their respective responsibilities in the handling of a complaint regarding a trooper's conduct or performance, are discussed in greater detail herein. The below figures depict the process that a complaint regarding trooper performance or misconduct will generally follow.

Figure 1

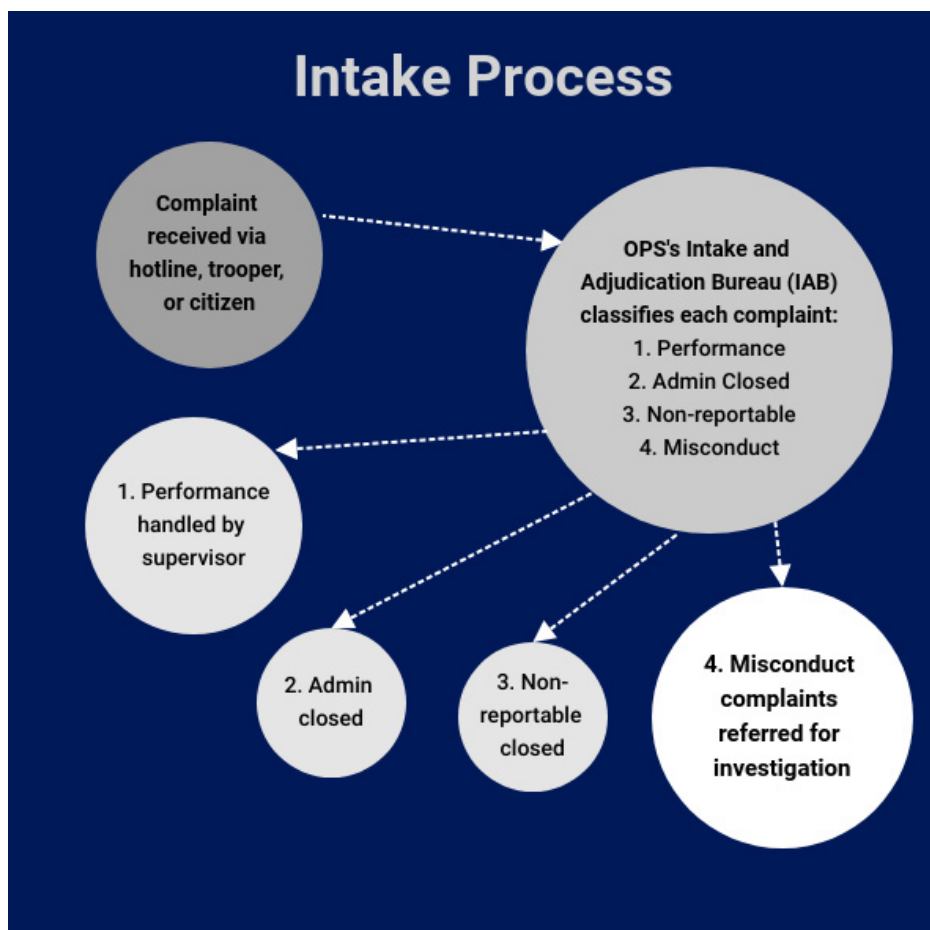
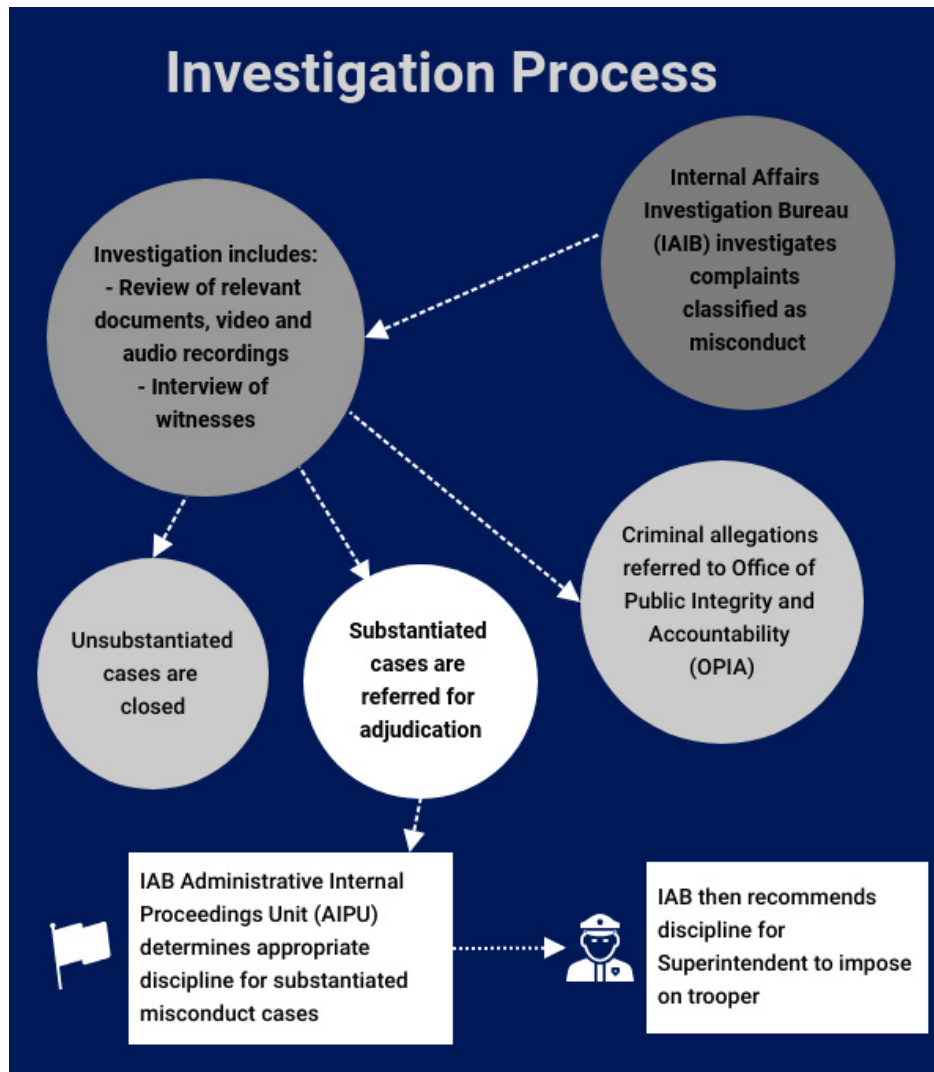


Figure 2



1. Intake and Adjudication Bureau

OPS's website provides instructions to the public on how to submit a complaint regarding NJSP trooper misconduct. A complaint may be made in person, physically mailed, emailed to an OPS inbox, or submitted via a hotline maintained by OPS.

The Intake Unit, within the IAB, is responsible for the receipt of all complaints against troopers and for the classification of those complaints. 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, via email, or through the NJSP Complaint Hotline (Hotline). The manner in which the Intake Unit handles each of these complaints is governed by Standing Operating Procedure (SOP) B10, which details the internal investigative and disciplinary

procedures, classification, processing, and adjudication of internal affairs matters.⁷

The operative version of SOP B10, which was approved by the Attorney General, has been in effect since July 2008. According to both NJSP and OLEPS, SOP B10 has been under review for a number of years. Proposed amendments have not yet been approved by the Attorney General.⁸

According to SOP B10, OPS must first determine if a particular complaint is a reportable⁹ or non-reportable incident.¹⁰ Non-reportable incidents are given a tracking number and closed out. Once OPS designates the complaint as a reportable incident, OPS forwards it to the subject trooper's supervisors (Troop Command) for a recommendation on how the complaint should be classified. Pursuant to SOP B10, 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: (1) misconduct; (2) performance; or (3) administratively closed.

Misconduct classifications include, but are not limited to, allegations of racial profiling; disparate treatment; false arrest; excessive use of force; illegal or improper searches; or domestic violence. The Intake Unit forwards all misconduct complaints, except those handled as a misconduct short form,¹¹ to IAIB for assignment to an investigator and commencement of an investigation. Any allegation of racial profiling or disparate treatment is also sent to the Office of Public Integrity and Accountability (OPIA) within the Attorney General's Office for review of potential criminal conduct.

Performance classifications allege less serious inappropriate conduct. The Intake Unit classifies a complaint as performance-related for behavior that is non-disciplinary. Examples include allegations of attitude and demeanor, leaving a post, or failure to follow Mobile Video/Audio Recording (MVR) procedures. Once the Intake Unit classifies a complaint as performance-related, it forwards the case to the trooper's supervisor for resolution. Per SOP B10, the supervisor must complete a Performance Incident Disposition Report (PIDR) on the allegations detailing any corrective actions, if needed, to resolve the minor infraction(s). A copy of the PIDR must be sent to OPS in order to close out the case.

Finally, the Intake Unit administratively closes a case if the initial evidence does not support a violation by the trooper.

7. Standing Operating Procedure B10, Internal Investigative and Disciplinary Procedures: Classifications, Processing and Adjudications (July 16, 2008).

8. For this report, OSC's evaluation was based on the operative and approved SOP B10, and offers no comments on any proposed amendments to SOP B10.

9. A reportable incident is defined as "[a]ny behavior, performance, or non-performance that may violate Division rules, regulations, procedures, applicable criminal and civil laws, and the United States or New Jersey constitutions."

10. A non-reportable incident is defined as "[a]ny behavior, performance, non-performance, or incident that does not violate any Division rules, regulations, procedures, applicable criminal and civil laws, and the United States or New Jersey constitutions, which shall be documented and recorded for administrative purposes."

11. The misconduct category contains a sub-classification called misconduct short form investigations, which are generally minor misconduct issues in which the trooper acknowledges the conduct and agrees to accept the discipline. Because the trooper acknowledges the misconduct 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.

The table below sets forth the number of complaints received and classified by the Intake Unit during the period of January 2018 through December 2020:

Classification	2018	2019	2020
Administratively Closed	438	455	382
Non-Reportable	53	72	38
Misconduct Short Form	24	28	25
Misconduct	181	201	220
Performance	6	2	0
Total	702	758	665

SOP B10 also requires Intake Unit personnel handling Hotline complaints to (1) advise callers that the telephone line is recorded; (2) ensure callers are being treated with appropriate courtesy and respect; (3) not discourage callers from making complaints; and (4) obtain all necessary information about each complaint.

2. Internal Affairs Investigation Bureau

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 IAIB. IAIB then assigns the case to one of the three IAIB investigative unit heads who, in turn, assigns the case to an IAIB investigator. SOP B10 and the Operational Guide and Manual for Conducting Internal Investigations (Investigation Manual) provide that the assignment of a misconduct case to an investigator starts the 120-working day default deadline within which an investigator should complete an investigation.¹² A misconduct case is considered completed when the investigator submits it for supervisory review.

According to SOP B10 and the Investigation Manual, if an investigation will not be completed within 120 days, an extension must be applied for through the investigator's chain of command. IAIB investigative unit supervisors track the 120-day time period for each investigation in their unit by providing a case accounting to the IAIB Bureau Chief. An investigator may request an extension of the 120-day rule for reasons such as a pending criminal prosecution or for a legal review by OPIA. The investigator is required to submit an extension form to the investigator's supervisor, which must include a justification for the request. Extension requests are 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, an internal NJSP computer program and database containing, among other things, data on internal affairs investigations and discipline of troopers.

12. In its 2018 report, OSC recommended that the 120-day timeframe for completing an investigation should begin at the time a complaint is classified as misconduct and forwarded to IAIB for assignment. See OSC, Fifth Periodic Report on Law Enforcement Professional Standards, at 34 (June 14, 2018), https://www.nj.gov/comptroller/news/docs/njsp_5th_report.pdf. NJSP disagrees with and has not implemented this recommendation.

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, and external reports and records, but leaves the sequence of these steps to the discretion of each investigator. Investigators are also required to 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 must send a letter to the complainant advising that an investigation has begun and requesting that the complainant 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 OLEPS and OPIA.

If, at any time during the course of the investigation, a question of criminality arises, OPS supervisory personnel contacts OLEPS and OPIA. 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 B10 and the Investigation Manual, the investigator must make one of the following conclusions with regard to the allegation(s) in the complaint:

- **Substantiated:** a preponderance of the evidence shows that the trooper violated federal or state law, NJSP rules, regulations, SOPs, directives, or training.
- **Unfounded:** a preponderance of the evidence shows that the alleged misconduct did not occur.
- **Exonerated:** a preponderance of the evidence shows that the alleged conduct did occur, but it did not violate federal or state law, NJSP rules, regulations, SOPs, directives, or training.
- **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's AIPU for a recommendation concerning discipline, as discussed further below.

3. Disciplinary Process and Adjudication

Upon completion of an investigation, IAIB forwards the file on a substantiated allegation in a misconduct case to AIPU for further action. AIPU is responsible for recommending discipline to the NJSP Superintendent in cases in which an allegation has been substantiated. The SOP B10 requires OPS to consider the nature and scope of the misconduct and the information in the Management Awareness and Personnel Performance System (MAPPS)¹³ 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 the preponderance of the evidence standard, as would be required 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 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 IA-Pro.

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 ultimately sent to the NJSP Superintendent who, under SOP B10, is authorized to take disciplinary action against a trooper. The Superintendent considers the AIPU report in making a final disciplinary determination.

B. Office of Law Enforcement Professional Standards and its Oversight Role

OLEPS's oversight of NJSP includes, but is not limited to, the production of the semi-annual Aggregate Misconduct Reports, bi-annual Oversight Reports, and bi-annual audits of OPS.

The Act requires OLEPS to compile statistical data on complaints of misconduct on the part of NJSP troopers. This data and analysis are compiled and published in OLEPS's Aggregate Misconduct Reports and Oversight Reports. In its Aggregate Misconduct Reports, OLEPS provides information concerning the number and types of complaints made against troopers in a given time period. The reports also address various trends in complaints against troopers, as well as the outcomes of those complaints. OLEPS's Oversight Reports provide a summary of OLEPS's audits of OPS for the time period covered.

OLEPS also conducts bi-annual audits of OPS that are, in part, intended to ensure that OPS is properly and thoroughly investigating misconduct allegations. The audits are also intended to assess the accuracy and consistency of information between IA-Pro and investigative case files, and to determine whether OPS is meeting the 120-day requirement for completing investigations.

13. MAPPS is an NJSP database containing a comprehensive employment history of every trooper. It contains information pertaining to a trooper's performance, promotions, training, and some specific disciplinary information from IA-Pro. IA-Pro is a separate database, some of which feeds into the MAPPS misconduct module, which is used to track individual disciplinary cases.

As part of its audits, OLEPS reviews all cases closed by OPS in a six-month period involving the following categories: domestic violence, excessive force, racial profiling and disparate treatment, illegal/improper search, and false arrest. OLEPS also reviews a sample of the remaining misconduct, administratively closed, and performance cases closed by OPS. In conducting its review of these cases, OLEPS investigators review the OPS hardcopy case file, data from IA-Pro and, if needed, any video and audio recordings associated with the case.

OLEPS reviews each case to ensure the complaint was properly classified and all the required documentation is in the case file. For misconduct cases, OLEPS also examines whether OPS's conclusions concerning each allegation are supported by a preponderance of the evidence.

During its audits, OLEPS evaluates whether investigations were performed within timeframes established by OLEPS. The goal in tracking these timeframes is to identify areas in which misconduct cases may be delayed in the investigative process. The timeframes include:

- Time between OPS's receipt of complaint to assignment to an investigator – 25 working days;
- Time between investigation completion and completion of supervisory reviews – 40 working days;
- Time between completion of supervisory reviews and submission for legal sufficiency review – 30 working days.

Additionally, under SOP B10, OLEPS is required to conduct a weekly review of a representative number of recorded Hotline calls. The purpose of the Hotline reviews is to ensure OPS is (1) advising callers the telephone line is recorded; (2) treating callers with appropriate courtesy and respect; (3) not discouraging complainants from making complaints; and (4) obtaining all necessary information about each complaint. OSC found that OLEPS conducted these weekly reviews until March 9, 2020, when it was unable to continue such reviews due to the logistical challenges posed by the COVID-19 pandemic. OLEPS plans to reinstate the reviews once restrictions due to the pandemic are lifted.

III. Methodology

For this report, OSC evaluated NJSP and OLEPS with regard to their responsibilities concerning trooper misconduct investigations and the imposition of trooper discipline as the result of such investigations. OSC reviewed OPS's classification of complaints; the completeness and proper documentation in OPS's case files; NJSP's compliance with the requirement that misconduct investigations be completed within 120 days or if required extensions were obtained¹⁴; the accuracy of dates entered into IA-Pro as compared to dates included in the hard copy file; the thoroughness of OPS's investigation of misconduct complaints; and whether NJSP considered the nature and scope of the misconduct as well as the trooper's prior performance when imposing discipline upon a trooper. OSC also examined OLEPS's oversight role to ensure OPS is meeting these and other performance standards.

To conduct its review, OSC studied the following:

- relevant NJSP rules, regulations, SOPs (including SOP B10), and OPS's Investigation Manual;
- OPS's internal complaint classification guide and a sample of complaints made on NJSP's Hotline;
- a random and judgmental sample of 82 OPS investigative files closed during the review period, January 2018 through June 2020¹⁵;
- a random sample of 16 OLEPS reviews of OPS investigative files from January 2018 through June 2019¹⁶;
- relevant OLEPS's operating procedures and internal memoranda directed to OPS;
- OLEPS audit reports issued in December 2018, June 2019, and December 2019, along with supporting documents; and
- OPS's annual reports, including draft reports that have not yet been released to the public.

OSC also interviewed various personnel within OPS, including but not limited to the IAB Chief, the IAIB Chief, and the AIPU Head. OSC investigators also observed the process by which a complaint of trooper misconduct is handled from intake through investigation and adjudication. OSC spoke with OLEPS personnel to discuss its oversight responsibilities regarding OPS's handling of trooper performance complaints and the imposition of discipline. OSC discussed with OPS and OLEPS the status of selected recommendations made in OSC's Fifth and Sixth Periodic Reports.¹⁷ Finally, OSC interviewed police organizations and advocacy groups including civil rights groups, police unions, and others for additional perspective and information regarding the matters addressed in this report.

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.

14. The 120-day time frame is significant because, among other reasons, trooper transfers and promotions are on hold during the review period.

15. The testing universe included all cases closed by OPS during the above time period. OSC's sample included a random selection from this universe, and included cases from all classification types. OSC's judgmental sample was selected from cases that lacked a summary of allegations, and included all cases with racial profiling or disparate treatment allegations that were administratively closed.

16. OSC drew its OLEPS case sample from cases OLEPS had already reviewed. At the time OSC started this review, OLEPS had not yet completed its review of OPS cases for the second half of 2019.

17. See generally OSC, Fifth Periodic Report on Law Enforcement Professional Standards (Jun. 14, 2018), https://www.nj.gov/comptroller/news/docs/njsp_5th_report.pdf; OSC, Sixth Periodic Report on Law Enforcement Professional Standards (May 14, 2020), https://www.nj.gov/comptroller/news/docs/njsp_6th_report.pdf.

IV. Findings

A. OSC's Findings Related to the Performance of OPS's Intake Unit and IAIB

To determine if OPS's Intake Unit was properly classifying complaints against troopers, OSC sampled and reviewed 82 OPS cases closed during the review period. This sample included 37 cases that the Intake Unit had classified as administratively closed, 39 that had been classified as misconduct, two that had been classified as misconduct short form, and four classified as non-reportable. Of the sampled files reviewed, OSC found that, with the exception of five cases discussed in Section IV(A)(1) below, the Intake Unit had properly processed and documented those complaints. OSC also observed operations at the Hotline call center and listened to recorded conversations between complainants and Intake Unit personnel. OSC's review found that the Intake Unit dealt with callers in a professional and courteous manner and obtained pertinent information from them.

To establish whether IAIB is conducting thorough misconduct investigations, OSC reviewed the 39 misconduct cases to ensure they contained all the required investigative documents and evidentiary material. OSC also examined whether IAIB's determinations that allegations were either substantiated, unfounded, exonerated, or had insufficient evidence were supported. 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; MVR and body worn camera videos of the incident; any prior disciplinary history of the trooper; and any references to discipline imposed in similar cases.

OSC's review of the 39 completed misconduct investigations found that the evidence supported the findings and conclusions in each of the cases. Based upon available documents, it also appeared to OSC that discipline imposed was consistently meted out. OSC, however, was not able to review details of the prior offenses captured in the disciplinary lookback for the charged offenses.¹⁸

Notwithstanding OSC's determination that the Intake Bureau and IAIB were generally compliant with governing procedures for classification and discipline, OSC identified deviations from established policy. Specifically, OSC found that OPS failed to follow SOP B10 in three ways, each of which is separately discussed below. OSC also found that the NJSP website instructions for filing a complaint with OPS required certain improvements.

18. OSC's review was limited to the case files themselves and did not entail any re-interviews. OSC did not engage in any other reinvestigation activity.

1. OPS Unilaterally Instituted a Change in the Process for Classifying Complaints by Eliminating the Performance Classification

OSC's review of OPS's Intake Unit included an examination of 37 cases that the Intake Unit had classified as administratively closed. OSC determined that five of these cases should have been classified as performance cases instead of administratively closed according to the criteria noted in SOP B10. When OSC asked OPS personnel why the cases were closed administratively, OSC was told that OPS had ceased using the performance classification several years earlier. As discussed above, the performance classification is used for complaints involving less serious inappropriate conduct or behavior that is non-disciplinary in nature. It could also include instances when the trooper's demeanor is unprofessional or rude during a motor vehicle stop.

OPS personnel could not provide OSC any documentation on how and why this change to the classification process was implemented. OPS personnel provided OSC with a blank copy of what they referred to as an "unofficial" NJSP OPS Incident Classification form, which is currently being used. This Incident Classification form did not list performance as one of the classification options for a complaint. Instead, in addition to the misconduct and administratively closed classifications, the form listed a new classification, "Administratively Closed With Other Action Taken." This new classification is not authorized by, or mentioned in, SOP B10. In addition, OPS personnel advised there is no SOP or Operations Instruction governing the elimination of the performance classification or the newly created administratively closed classification.

OPS should not have implemented this change to the classification process before the necessary amendments were made to the governing SOP and approved by the Attorney General. Written policies and procedures are designed to ensure consistency, accountability, and transparency. In fact, the Act specifically mandates that any changes to NJSP rules, regulations, standing operating procedures, and operations instructions relating to the consent decree be approved in writing by the Attorney General prior to issuance or adoption by the superintendent. *N.J.S.A. 52:17B-223(e)*. OPS failed to secure the necessary approvals before unilaterally eliminating the performance classification, in clear violation of the Act.

By not following the clear mandate of the Act, NJSP has created a weakness in the very system designed to ensure professional conduct on the part of troopers. By eliminating the performance classification and administratively closing a complaint, it is possible that some issues regarding a trooper's performance may not be addressed and documented as thoroughly. Although the effect of this decision may have only reached minor performance issues, leaving even those unaddressed can lead troopers to develop poor work habits that can lead to more serious issues. Under SOP B10, the classification of a complaint as performance-related required both OPS and the trooper's supervisors to take some action and to document it in a PIDR.

Accordingly, OSC recommends that NJSP immediately reinstate the use of the performance classification, and further assess whether discontinuing its use is appropriate. Should a change in policy occur regarding the use of the performance classification, NJSP should receive approval of that change from both OLEPS and the Attorney General. Careful consideration should be given to whether the elimination or modification of this category would undermine effective supervision and documentation of trooper conduct.

In its written response to a discussion draft of this report, NJSP disagreed with this recommendation, and stated that it "declines to discontinue its changes to the performance classification process." NJSP

explained that the performance classification process “was changed in an effort to more quickly resolve non-disciplinary complaints,” and that the changed process “operates to better allocate investigative resources towards disciplinary complaints so that investigators are assigned those complaints rather than minor, non-disciplinary matters.” NJSP also described that new process as “a pilot program” and explained that the process has “been recognized, and continually analyzed and reviewed by OLEPS in each of its audits since 2018 with positive results.”

OSC nonetheless maintains its recommendation, which is aimed at remedying NJSP’s process failure to follow both the mandates of the Act and its own policies. Regardless of the ultimate merits of changing the performance classification process, NJSP is required to comply with the Act to change the processes in question, and should have done so in order to ensure consistency, accountability, and transparency in its written policies and procedures. In its response to the draft report, NJSP acknowledged that moving forward it “will evaluate its process for the development and implementation of new pilot programs and work with OLEPS and OPIA to implement a more documented approval process as OPS continues to work to increase its operational efficiencies.” NJSP also stated that “revisions to SOP B10 are under review and are expected to be finalized in the near future.”

2. OPS Established a New Process to Administratively Close Some Racial Profiling and Disparate Treatment Complaints Without Investigation by IAIB Investigators and Without Review by the Attorney General’s Office

According to SOP B10 and the Investigation Manual, allegations of racial profiling and disparate treatment by troopers are classified as misconduct and sent to IAIB for investigation. As part of IAIB’s investigation, these complaints are sent to OPIA for review to determine if criminal prosecution is warranted. This review is referred to by OPS as a legal review. If OPIA declines to prosecute, it will notify IAIB to continue with the administrative investigation.

OSC’s review revealed, however, that OPS, with the concurrence of OLEPS and OPIA, instituted a new process in October 2019 on a trial basis for administratively closing certain racial profiling and disparate treatment complaints. Specifically, OPIA, OLEPS, and OPS agreed that OPS could close some racial profiling and disparate treatment cases if certain agreed upon criteria were met.¹⁹ Under this new process, OPS may close the complaint if:

- There is a complete video and audio recording of the incident that gave rise to the allegation of racial profiling or disparate treatment;
- The Intake Unit reviews the recordings and any other available documentation and ensures the video and audio is free from any indication of race-based statements, actions, or any other discriminatory practice/behavior;
- The trooper does not have any current or past allegations of discrimination made against them;
- If the incident involved a motor vehicle stop, the Intake Unit has conducted an analysis of the trooper’s motor vehicle stop history, which demonstrated that there were no statistical disparities relevant to the driver/occupant’s race and/or gender; and
- The Intake Unit has contacted the complainant.

Under the new process, all the information regarding the incident and evidence gathered by the Intake Unit are documented on an intake review form that is sent to OPIA, along with a list of all

¹⁹ OSC was told that, notwithstanding if the criteria is met, OPS has the discretion to classify a complaint as misconduct and forward it to IAIB for investigation.

documentation, for review.²⁰ Importantly, if a complaint is administratively closed under this new procedure, there is neither an investigation by IAIB nor a legal review by OPIA. This new process seemingly deviates from the requirements of SOP B10 and was never approved in writing by the Attorney General as required by *N.J.S.A. 52:17B-223(e)*.

OSC was told by OLEPS, OPS, and OPIA that the justification for implementing this new process was to streamline the review of some racial profiling and disparate treatment cases that did not warrant a full investigation. OLEPS also advised OSC that any racial profiling or disparate treatment cases administratively closed by OPS would be reviewed as part of OLEPS's bi-annual audits.

OPS and OPIA advised OSC that, although this new process for closing cases is still available to OPS, it is no longer being used.²¹ At present, according to OPS, all racial profiling and disparate treatment complaints are being sent to IAIB for investigation and legal review by OPIA. Should this process resume, OSC is concerned that the closing of racial profiling and disparate treatments complaints without further investigation may lead to valid complaints being overlooked.

OSC recommends that NJSP, in consultation with the Attorney General, continue to refrain from its practice of administratively closing racial profiling and disparate treatment complaints without further investigation when certain criteria are satisfied, and further assess whether such a practice is appropriate. Any changes to the current practices concerning the treatment of racial profiling and disparate treatment complaints should be formalized in SOP B10 after approval by the Attorney General. Careful consideration should be given to whether this proposed practice of administratively closing certain racial profiling complaints would undermine the Attorney General's oversight of NJSP in the area of racial profiling. In its written response to a discussion draft of this report, NJSP stated that it "agrees that if the pilot project is to continue, it will be included in the revised SOP B10, and any matters evaluated using the procedure described in the pilot project will still be subject to review by both OLEPS and OPIA."

3. Investigators Do Not Always Make or Memorialize Requests for an Extension of the 120-Day Requirement

To determine if OPS is complying with the requirement that misconduct investigations be completed within 120 days,²² OSC reviewed 39 completed misconduct investigations. OSC calculated the length of an investigation using the date the case was assigned to an investigator and the date the investigation was completed as recorded in the hardcopy case file.²³

20. As part of this review, OSC examined the three cases with allegations of racial profiling or disparate treatment that were administratively closed by OPS during the sampled time frame. OSC concluded that the determination to administrative close these matters was in accordance with the criteria that was established among OPS, OLEPS, and OPIA.

21. OSC asked OLEPS why OPS was not using this new process. OLEPS advised that it was not aware that OPS had chosen to stop using the procedure for administratively closing some racial profiling cases. OLEPS advised it was within OPS's discretion to use or not use this new process. The OLEPS Director, however, told OSC that she intended to have a discussion with OPS about the usefulness of the procedure.

22. The 120-day time frame to complete a misconduct investigation was instituted by the federal monitors under the Consent Decree and is incorporated into SOP B10.

23. This is the same methodology OLEPS uses in its bi-annual audits of OPS to calculate whether misconduct cases are completed within 120 days.

OSC's review found that 12 of the 39 misconduct investigations were not completed within 120 days, representing 30.8 percent of the cases. On average, it took 101.9 working days from assignment to completion of the investigation. OLEPS's most recent bi-annual audit calculated that 25.76 percent of the cases it reviewed took longer than 120 days to complete. OLEPS found that, on average, it took 105.5 working days for an IAIB investigator to complete a misconduct investigation. Both OSC's review and OLEPS's audit show that while there is room for improvement, OPS has made improvements in reducing the number of cases exceeding the 120-day requirement.

OSC also compared dates in IA-Pro to dates entered in hardcopy case files pertaining to various investigative activities. For example, OSC compared the date a case was assigned to an investigator as shown in IA-Pro to the date reflected in the hardcopy case file. OSC's review found only seven instances in which the dates did not match and most were only one or two days off. OLEPS also examines the differences between dates entered into IA-Pro versus the dates in case files to see if they match. OLEPS, in its most recent audit of OPS, found three instances in which there was a difference between the dates a misconduct case was assigned to an investigator in IA-Pro and the date recorded in the hardcopy case file. OSC's review concludes that while there is opportunity for improvement, OPS has improved its performance in ensuring the data in IA-Pro matches that reflected in the hardcopy case file.

If a case cannot be completed within 120 days, the investigator must make a request for extension beyond the 120-day requirement. OSC's case review of 39 files found that of 12 misconduct cases that exceeded the 120-day requirement, three lacked the required request for an extension.

In completing the extension request, an investigator must provide an explanation regarding why the 120-day requirement cannot be met. The explanation contained in the extension request is a valuable tool for OPS in identifying possible systemic issues that may be causing delays in completing investigations. Furthermore, the extension requests hold the investigators accountable for completing their caseload in a timely manner. The request also assists OLEPS and OSC in understanding why delays occurred when conducting their audits and reviews of OPS. Reasons for not meeting the 120-day deadline can include caseload, witness unavailability, and changing investigators. OSC was also told that, due to the COVID-19 pandemic and the need to shift investigators to non-IAIB matters, one investigative unit experienced a backlog of investigations.

The timely resolution of misconduct investigations enables prompt intervention designed to avoid the recurrence of any misconduct and satisfy the public that transgressions by police officers are addressed appropriately. 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 is adhered to unless extensions are requested. The consistent use of extension requests when appropriate strengthens that public trust by providing a reasonable basis for delays in the investigative process.

OSC recommends that IAIB investigative unit heads ensure IAIB investigators request an extension of the 120-day requirement to complete an investigation when an investigation will exceed such time frame. In its written response to a discussion draft of this report, NJSP agreed with this recommendation and advised that "OPS will continue to work to further improve in this area in accordance with SOP B10 and the Internal Affairs Policy and Procedures Manual (IAPP)."

4. The NJSP Website's Online Complaint Submission Instructions Require Improvements

NJSP's website provides information to the public on how to file a complaint against a trooper.²⁴ OSC has identified two problematic issues with the website instructions that should be improved: the lack of an email address for complaint submissions and the inclusion of a website disclaimer that threatens prosecution and civil action against those who submit frivolous complaints.

a. Email Address for Complaints

Until recently, the only means to file such a complaint was either calling the toll-free Hotline, mailing a letter, or making an in-person complaint. During the COVID-19 pandemic, in-person complaints were no longer being accepted, so the only manner in which complaints could be submitted by the public was via the Hotline or mail. The absence of an email address on the website appears to be a missed opportunity to receive complaints given how much communication is done by email both within and outside of government.

During a February 16, 2021 interview with OPS Intake Unit personnel, OSC learned that an email address did, in fact, exist to which complaints regarding trooper misconduct could be emailed, but that the email address had not yet been made available to the public on the NJSP website.

OSC recommends that NJSP provide an email address for OPS so members of the public can file online complaints, and confirms that OPS has now complied with this recommendation. On February 22, 2021, just over a week after OSC raised the issue with OPS personnel, OSC was informed that NJSP had updated the website to include the email address for filing complaints. OSC was further advised by the Intake and Adjudication Bureau Chief that, as a result of publishing the email address on the website, there has been an increase in complaints. In its response to a discussion draft of this report, NJSP stated that it agreed with OSC's recommendation and confirmed that after OSC brought this issue to OPS's attention, the email address was added to NJSP's website.

b. Website Disclaimer

Although the NJSP website properly provided a description of the complaint submission process and the corrective action that may result from a complaint, it also contained the following caveat in bolded, italicized text: "We take your complaint seriously. However, if a complaint is found to be fabricated and maliciously pursued, the complainant may be subject to criminal prosecution and/or civil proceedings."²⁵

This warning and the threat of prosecution it provides may have had an improper chilling effect on complaints submitted to OPS. And it is unusual to include such a warning in instructions for a law enforcement misconduct tip hotline.²⁶

24. N.J. State Police, *Compliments/Complaints*, <https://www.njsp.org/information/complaint.shtml>.

25. New Jersey State Police, *How to file a complaint*, <https://www.njsp.org/information/complaint.shtml> (May 19, 2021).

26. See, e.g., U.S. Dep't of Justice, Office of the Inspector Gen., *Hotline*, <https://oig.justice.gov/hotline> (June 28, 2021); N.Y. State Police, *Compliments or Complaints*, <https://troopers.ny.gov/contact-us> (June 28, 2021); Penn. State Police, *Complaint Procedures*, <https://www.psp.pa.gov/contact/Pages/Compliment-Complaint-Procedures.aspx> (June 28, 2021); Del. State Police, *Compliments & Complaints*, <https://dsp.delaware.gov/contact> (June 28, 2021).

OSC accordingly recommends that NJSP remove disclaimers from its complaint submission instructions that threaten criminal prosecution and/or civil proceedings against complainants. In its written response to the discussion draft of this report, NJSP agreed with OSC's recommendation and advised that "[a]fter a review of internal affairs best practices, OPS removed the disclaimer from the website effective June 3, 2021."²⁷

B. OSC's Findings Related to the Performance of OLEPS

To examine OLEPS's performance in its oversight of the disciplinary process, OSC reviewed applicable operating procedures, memoranda, public reports, audits, and supporting audit documentation. OSC interviewed the OLEPS Director and OLEPS staff members. OSC also examined OLEPS's oversight regarding changes NJSP makes to its rules, regulations, and SOPs pertaining to OPS operations.

OLEPS reviewed 66 misconduct cases for its most recent audit. OLEPS found that 26 of those cases, or 39.39 percent, had been assigned to an investigator more than 25 days after the complaint was received. In addition, OLEPS found that, on average, it took 27.44 working days to assign a case to an IAIB investigator. OLEPS noted in its audit that OPS has made substantial improvements in the length of time to assign a case to an investigator.

OSC's random sample of 16 cases that were reviewed by OLEPS included 11 misconduct cases. OSC analyzed the data it collected for the timeframes OLEPS monitors. The analysis conducted by OSC found similar findings to those found in OLEPS's most recent audit. As an example, OSC found that for the 11 misconduct cases it reviewed, OSC determined that it took OPS, on average, 28 working days to assign a misconduct case to an IAIB investigator. Accordingly, OSC's review found that the OLEPS audit process generally captured OPS statistical data with accuracy.

OSC, however, has also identified two areas for improvement at OLEPS. OLEPS has allowed OPS to work under a 2008 SOP despite knowing significant operating changes had been made in contradiction of written standards. Additionally, OLEPS has not made use of available data pertinent to the question of race and NJSP discipline. These two observations are discussed in further detail below.

27. As of the publication of this report, the disclaimer was no longer displayed on the OPS website. New Jersey State Police, *How to file a complaint*, <https://www.njsp.org/information/complaint.shtml> (June 28, 2021).

1. OLEPS Allowed OPS to Make Changes to the Complaint Classification Process Without Revising the Appropriate Sections of SOP B10 and Without Prior Approval From the Attorney General

As noted above, OSC's review found that OPS had made changes to the classification process as specified in SOP B10 by discontinuing the use of the performance classification and replacing it with the new classification, "Administratively Closed With Other Action Taken."

It appears that OLEPS was aware that OPS had discontinued the use of the performance classification. In fact, OLEPS noted this in its most recent Aggregate Misconduct Report, stating "[w]hile performance cases still exist in State Police policies and procedures, OPS no longer uses this label for allegations of misconduct."²⁸ In the report, OLEPS provided no explanation for why this change was implemented, or if OLEPS and the Attorney General's Office approved it. According to interviews with both OLEPS and OPS personnel, there are no SOPs, operations instructions, or written policies explaining why the change was made or how the classification of "Administratively Closed With Other Action Taken" is to be used or tracked. Further, OLEPS commented in its Aggregate Misconduct Report that there has been a decrease in the number of performance cases over the past several years and that OPS prefers not to use this classification.²⁹

Despite its awareness that OPS had discontinued the use of the performance classification, OLEPS continued to identify cases that were classified administratively closed but should have been classified as performance. When OSC questioned OLEPS as to why OPS preferred to not use the performance classification, OLEPS said they did not know and would need to have a discussion with OPS about the issue.

As previously noted, the Act requires that any changes to NJSP rules, regulations, standing operating procedures, and operations instructions be approved in writing by the Attorney General prior to issuance or adoption by NJSP. *N.J.S.A. 52:17B-223(e)*. Based on OSC's review, it is clear OLEPS was aware OPS was making a change to the classification process without the required authorization to do so. In accordance with its oversight responsibilities, OLEPS had an obligation to direct OPS to wait for the appropriate approval prior to implementing the change.

OSC recommends that OLEPS ensure that NJSP does not implement changes to SOPs without prior approval in accordance with the mandates of the Act. In its response to the discussion draft of this report, OLEPS stated that it "maintains that OPS must follow its policies and procedures in addressing misconduct complaints, unless OLEPS approves a modification to such policy or procedure" and that "any deviation from those policies and procedures that OLEPS has not approved are detailed in the OLEPS internal misconduct reports." OLEPS further stated that "[t]his is true as it relates to OPS improperly administratively closing matters that should have been classified and processed as a performance incident disposition report (PIDR)."

28. Office of Law Enforcement Professional Standards, Eighth Public Aggregate Misconduct Report, at 3 n.2 (May 2020), <https://www.nj.gov/oag/oleps/pdfs/OLEPS-Eighth-Public-Aggregate-Misconduct-Report-May-2020.pdf>.

29. Office of Law Enforcement Professional Standards, Eighth Public Aggregate Misconduct Report, at 7, <https://www.nj.gov/oag/oleps/pdfs/OLEPS-Eighth-Public-Aggregate-Misconduct-Report-May-2020.pdf>.

2. OLEPS Does Not Use Existing Data to Assess Whether Race, Gender, or Rank Impacts Discipline

In the course of its investigation, through interviews with persons who approach the issues addressed in this report from different perspectives, OSC became aware of a common sentiment regarding there being disparate treatment in the imposition and degree of discipline as it relates to race, gender, and rank.

NJSP maintains data that would allow OLEPS to analyze whether gender, race, or rank impacts discipline. OLEPS told OSC that, although such a review and analysis could be performed, it has never conducted such a review. OSC accordingly recommends that OLEPS analyze existing data to assess any patterns regarding the influence of race, gender, or rank on the imposition and severity of discipline imposed by NJSP.

In its response to a discussion draft of this report, OLEPS did not directly comment on this recommendation.³⁰ OLEPS stated, however, that “[w]hile OLEPS will review other means of auditing final trooper discipline, OLEPS maintains that trooper discipline is currently appropriately reviewed.” Among other points, OLEPS explained that “[n]owhere in its enabling statute is there a requirement that [it] review the Superintendent’s final imposition of discipline”; that a “legal review is performed of all substantiated disciplinary investigations”; and that OLEPS no longer litigates disciplinary cases on behalf of NJSP. OLEPS also stated that troopers have viable legal remedies available to them if they believe they were disciplined unfairly.

OSC maintains its recommendation. A thorough analysis of data available to OLEPS, and its subsequent publication, would assure all parties involved, and the public, of the fairness of the NJSP disciplinary process. Such an analysis is fully consistent with the powers provided to OLEPS through the Act. OLEPS is authorized “to conduct operations audits and independent analyses of data, as necessary and appropriate, to identify any potential disparity in enforcement and systemic problems that may exist that affect the integrity of . . . investigations of alleged misconduct, and any other matters that may affect the integrity of the Division of State Police.” *N.J.S.A. 52:17B-228(b)*. OLEPS is further authorized to “review all Division of State Police internal affairs investigations and dispositions . . . to ascertain . . . whether any discipline imposed was appropriate and proportionate, and [to] make recommendations to the superintendent and the Attorney General for appropriate remedial action.” *N.J.S.A. 52:17B-228(d)(5)*.

30. OPS, in its written response to the draft report, did not comment on either of OSC’s recommendations directed towards OLEPS.

V. Update on Selected Recommendations from OSC's 2018 and 2020 Reports

For this review, OSC also followed up on the status of certain recommendations that were made in its Fifth and Sixth periodic reports.³¹ OSC selected these recommendations for follow-up because they were deemed relevant to issues reviewed or identified by OSC in its current review.

Fifth Periodic Report, Recommendation No. 1: OSC recommended that the Office of the Attorney General, pursuant to its statutory authority, review the expanded role of Troop Command in classifying complaints to ensure it comports with the goals of the Act.

In 2017, OPS submitted a memorandum to OLEPS requesting that OLEPS increase the time OPS had to classify a misconduct complaint and assign it to an IAIB investigator from 25 days to 60 days. In the memorandum, OPS noted that Troop Command's role in classifying complaints was expanded. This expanded role included, among other things, meeting with the involved trooper, and, in some instances, interviewing the complainant. It was the position of OPS that this increased role of Troop Command in the classification process would assist in ensuring that only true misconduct cases are moved forward for investigation by IAIB.

OSC's recommendation was based, in part, on a concern that Troop Command might now contact a complainant directly before the Intake Unit had even classified the complaint. OSC noted that 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. In its response to this recommendation NJSP agreed with OSC's concern and acknowledged that any expanded role by Troop Command must be reviewed and approved by the Office of the Attorney General. OPS further advised that it was in the process of revising SOP B10 to reflect the new classification process and that in doing so, it would take OSC's concerns under advisement.

As part of OSC's current review, the OLEPS Director informed OSC that NJSP withdrew its request to OLEPS to expand the role of Troop Command in the classification of complaints. Accordingly, OSC's recommendation is now moot.

Fifth Periodic Report, Recommendation No. 3: OSC recommended that 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.

In its response to OSC's 2018 report, 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. It is the position of OPS 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.

31. See OSC, Fifth Periodic Report on Law Enforcement Professional Standards, at 34 (Jun. 14, 2018), https://www.nj.gov/comptroller/news/docs/njsp_5th_report.pdf; OSC, Sixth Periodic Report on Law Enforcement Professional Standards, at 25 (May 14, 2020), https://www.nj.gov/comptroller/news/docs/njsp_6th_report.pdf.

Based on OSC's review, OPS has not implemented this recommendation. OLEPS, however, tracks the length of time from the date a misconduct complaint is received until it is assigned to an investigator. OLEPS allows 25 days for the classification of a complaint and assignment for investigation. In OLEPS most recent audit it reviewed 66 misconduct cases. OLEPS's found that on average it took 27.44 working days to assign a case to an OPS IAIB investigator. OLEPS noted in its audit that OPS has made substantial improvements in the length of time to assign a case to an investigator.

OSC's random sample of cases reviewed by OLEPS contained 11 misconduct cases. OSC analyzed the data it collected for the 25 day timeframe OLEPS monitors in those cases. OSC found similar findings to those found in OLEPS's most recent audit. As an example in the 11 misconduct cases reviewed by OSC it was determined that it took OPS on average 28 working days to assign a misconduct case to an OPS IAIB investigator. Additionally, OLEPS tracks any investigative activity that is conducted prior to a misconduct case being assigned to an IAIB investigator. OLEPS advised OSC that its audits have not revealed any investigative activity beyond that needed to classify a complaint. In addition, OSC's case review found no evidence of investigative activity being conducted beyond that required to classify a complaint.

Fifth Periodic Report, Recommendation No. 4: OSC recommended that NJSP 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.

Although OSC's review found some inconsistencies between the dates in IA-Pro and the case file, these differences were minimal. Based on OSC's current review, OPS has shown a significant improvement in ensuring that the dates in IA-Pro accurately correspond to the dates recorded in the hardcopy case files. This improvement may have resulted from IAIB investigators now being allowed to enter certain dates into IA-Pro themselves rather than waiting for a supervisor to enter them.

Fifth Periodic Report, Recommendation No. 6: OSC recommended NJSP update its "Request for Extension of Internal Affairs Investigation Form" to reflect the 120-day rule for completing misconduct investigations and any extensions thereto. The Consent Decree required NJSP to attempt to complete misconduct investigations in 45 days. As a result, the form for requesting an extension to complete the investigation reflected this 45-day requirement. The Federal Monitors in their first report³² changed the 45-day requirement for completing misconduct investigations to 120 days. The form used by NJSP was never revised to reflect the new 120-day requirement. The 120-day requirement was subsequently incorporated into the SOP B10, but the extension form continued show the 45 day requirement.

OSC's review found that OPS has implemented this recommendation. Specifically, OPS amended the Request for Extension form so that it is consistent with SOP B10 and the 120-day requirement for completing investigations.

Sixth Periodic Report, Recommendation No. 5: OSC recommended that NJSP ensure compliance with the Act's mandate to provide certifications of compliance to the Attorney General and the NJSP Superintendent on a semi-annual basis.

OSC's review found that NJSP implemented this recommendation, having submitted the most recent certifications in January 2021.

32. Independent Monitors' First Report, Long Term Compliance Audit (Oct. 2000), https://www.nj.gov/oag/monitors_report_1.pdf.

VI. Conclusions and Recommendations

NJSP and OLEPS should maintain overall compliance with the terms of the Consent Decree with regard to their internal affairs and disciplinary processes. Statewide compliance efforts should be further improved by implementing the following recommendations discussed in this report:

1. NJSP should immediately reinstate the use of the performance classification, and further assess whether discontinuing its use is appropriate. Should a change in policy occur regarding the use of the performance classification, NJSP should receive approval of that change from both OLEPS and the Attorney General. Careful consideration should be given to whether the elimination or modification of this category would undermine effective supervision and documentation of trooper conduct.
2. NJSP, in consultation with the Attorney General, should continue to refrain from its practice of administratively closing racial profiling and disparate treatment complaints without further investigation when certain criteria are satisfied, and further assess whether such a practice is appropriate. Any changes to the current practices concerning the treatment of racial profiling and disparate treatment complaints should be formalized in SOP B10 after approval by the Attorney General. Careful consideration should be given to whether this proposed practice of administratively closing certain racial profiling complaints would undermine the Attorney General's oversight of NJSP in the area of racial profiling.
3. IAIB investigative unit heads should ensure IAIB investigators request an extension of the 120-day requirement to complete an investigation when an investigation will exceed such time frame.
4. NJSP should provide an email address for OPS so members of the public can file online complaints.
5. To avoid deterring the public from submitting complaints to OPS, NJSP should remove disclaimers from its complaint submission instructions that threaten criminal prosecution and/or civil proceedings against complainants.
6. OLEPS should ensure that NJSP does not implement changes to SOPs without prior approval in accordance with the mandates of the Act.
7. OLEPS should analyze existing data to assess any patterns regarding the influence of race, gender, or rank on the imposition and severity of discipline imposed by NJSP.