

THE NEW JERSEY SENATE JUDICIARY COMMITTEE'S INVESTIGATION OF RACIAL PROFILING AND THE NEW JERSEY STATE POLICE: OVERVIEW AND RECOMMENDATIONS

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OVERVIEW

In October 2000, Senator William L. Gormley, Chairman of the Committee, announced that the Committee would conduct a review of racial profiling, the New Jersey State Police ("NJSP"), and the timing of the indictments in the Hogan and Kenna criminal matters.* In total, approximately 100,000 pages of documentation were reviewed in connection with the Committee's investigation. Joint interviews and depositions were conducted of 35 witnesses and yielded over 4,000 pages of transcript.

The Committee held public hearings on March 19, 20, 27, and 28, and April 2, 3, 9, 10 and 18, 2001 (the "Hearings"). The Committee heard testimony from witnesses identified during the document review, depositions and interviews, and from members of the public and other interested parties.

The Committee's investigation examined many issues, including, but not limited to: organizational and cultural issues in the Department of Law and Public Safety ("LPS") and the NJSP that may have developed, ignored, concealed or fostered racial profiling; actions concerning racial profiling taken by the NJSP and the LPS following the ruling in State v. Soto, 324 NJ Super. 66 (Law Div. 1996), and the State's actions following the Soto ruling; activities within LPS and the NJSP concerning the investigation into racial profiling that was started in late 1996 by the United States Department of Justice Civil Rights Division ("DOJ"); activities within LPS and the NJSP concerning the State Police Review Team and the development of the Interim Report, dated April 20, 1999 and the Final Report, dated July 2, 1999; the circumstances surrounding the Consent Decree entered into with the DOJ on December 30, 1999, the content of the Consent Decree, and the status of those and other reforms.

* Troopers Hogan and Kenna were indicted on April 19, 1999 for falsification of documents pertaining to motor vehicle stops. A second indictment for the April 23, 1998 shooting of minority motorists on the New Jersey Turnpike was returned on September 7, 1999.

RECOMMENDED REFORMS

As a result of its investigation, the Committee believes that the Consent Decree is critical to the eradication of racial profiling. Additional steps are needed, however, to compliment the provisions of the Consent Decree and to ensure that reforms continue after the Consent Decree expires. A full report of the Committee's investigation and its recommendations will be released shortly and what follows below is a synopsis of the Committee's recommendations.

Suggested Reform No. 1: Consent Searches

Attorney General Farmer testified that in 2000, minority motorists continued to be subjected to a disproportionately high number of consent searches, and those searches were far less likely to be based on probable cause and far less likely to result in seizures of contraband than searches of white motorists. Attorney General Farmer acknowledged that consent searches in general yield little in the way of contraband, thus essentially supporting the argument that they are of little utility, but present significant risks. Therefore, the Committee recommends the immediate prohibition of consent searches by Executive Order for motor vehicle stops made in connection with N.J.S.A. Title 39 violations on all highways on which a 65 miles per hour speed limit has been imposed, to wit: NJ Route 18, NJ Route 55, Interstate 78, Interstate 80, Interstate 195, Interstate 287, Interstate 295, Atlantic City Expressway, Garden State Parkway, and the NJ Turnpike. The Executive Order should also provide that if the Office of Attorney General ("OAG") or NJSP seek to reinstate the use of consent searches they must demonstrate to the Committee that sufficient safeguards exist to monitor the use and prevent the abuse of consent searches. The Committee shall then make a recommendation to the Governor on whether the use of consent searches should be reinstated; and, if so, whether additional safeguards are necessary.

Part of this suggested reform is driven by the fact that the Computer Aided Dispatch System ("CAD"), the Records Management System ("RMS") and the Management Awareness Personnel Performance System ("MAPPS"), each of which was required by the Consent Decree, have not yet been fully implemented. See Appendix A. These systems, when fully operable, will provide the NJSP and the Office of State Police Affairs ("OSPA") with, among other things, the ability to comprehensively monitor all stops and all activity that occurs subsequent to stops. The Committee expresses its concern that the CAD/RMS is still not fully

implemented after almost three years since it was an integral part of the plan to eliminate racial profiling.

Suggested Reform No. 2: Independent Oversight Of LPS

The Committee recommends adopting a permanent and independent review system to handle citizen complaints of misconduct and constitutional and statutory violations, by law enforcement personnel within LPS. The Committee recommends the creation of an Office of Professional Responsibility ("OPR") and the creation of a three-member Independent Review Board (the "Board").

1. The OPR

The OPR would be housed in but not of the OAG (to ensure its independence), and would be headed by a Director who would report directly to the Board (see below), the Attorney General, and semi-annually to the Senate and Assembly Judiciary Committees. The Governor, with the advice and consent of the Senate would appoint the Director.

The OPR would assume the functions of the existing OSPA after the expiration of the Consent Decree, as well as some of the functions of the existing Office of Professional Standards within the NJSP. Like OSPA, OPR would be authorized to investigate trooper misconduct complaints, but would also be authorized to investigate complaints filed against all law enforcement personnel within the LPS.

The OPR would determine whether it intends to investigate the complaint itself or refer it to the respective Division of LPS for internal handling. It is anticipated that less serious complaints, or complaints involving administrative violations, would be referred to each respective Division for internal review, leaving OPR the review of the more serious misconduct complaints involving allegations of constitutional violations, such as illegal searches, and statutory violations that rise to a serious level.

It is anticipated that the OPR would be allotted a staff of investigators but would have the ability to use investigators from the Division of Criminal Justice ("DCJ") and the NJSP to conduct investigations in more complex cases. In this case, the Committee recommends that a Division's investigators not investigate members of their own Division. All personnel subject to

complaint would be afforded a hearing before an Administrative Law Judge, in order to ensure that the individual receives adequate due process. All potential criminal violations would be referred to DCJ for possible criminal prosecution.

2. The Board

The Board would oversee the OPR. The Board would have the authority to reopen any misconduct investigation as it deems appropriate. It would consist of three members: a former judge, a former law enforcement officer, and a citizen with knowledge of and experience with civil rights issues. These members would be appointed by the Governor, with the advice and consent of the Senate, and would serve seven-year terms. The initial appointments would be for staggered terms of five years, three years and one year.

Suggested Reform No. 3: Establish Deprivation Of Civil Rights As A Criminal Offense

The Committee recommends establishing a third degree crime of official deprivation of civil rights, which would prohibit a public servant from engaging in knowing and willful discriminatory actions against an individual or group of individuals on the basis of race, religious principles, age, national origin, ancestry, marital status, affectational or sexual orientation, familial status, handicap, or sex. If the knowing and willful discriminatory actions resulted in bodily injury it would constitute a second degree crime and if the individual committed murder, manslaughter, kidnapping, or aggravated sexual assault in the course of the incident, it would be a crime of the first degree.

4. Additional Suggested Reforms

Numerous proposed bills are currently pending in the Legislature, almost all of which were proposed by members of the Black and Latino Caucus, concerning various aspects of racial profiling. Much of the proposed legislation contains provisions similar to mandates in the Consent Decree.

1. Annual Reports With Respect To Trooper Misconduct Complaints

The Committee recommends that the Superintendent of the NJSP compile and submit to the Governor and the Legislature an annual report regarding complaints made by members of the public alleging misconduct by NJSP officers. See Consent Decree, ¶ 43. This reform would make those terms of the Consent Decree permanent by codifying them into statutory law. A bill implementing this reform passed the Senate (38-0) on December 14, 2000, but has not been considered by the Assembly.

2. Maintain Certain NJSP Records For At Least 10 Years

The Committee recommends requiring the NJSP to maintain for 10 years all logs concerning activity of patrol units, all tape recordings of radio communications between dispatchers and patrol units, and all videotapes recorded by cameras mounted in patrol vehicles. This reform would expand current NJSP procedures, which requires that all videotapes recorded by patrol cameras must be held intact for not less than 28 months. It would not impact the maintenance of all tape recordings of communications between dispatchers and patrol units that presently are maintained indefinitely. This reform incorporates the substance of S. 851 (James/Turner).

3. Establish “Public Confidence Police Integrity” Telephone Hotline

The Committee recommends establishing the "Public Confidence-Police Integrity" telephone hotline to receive and respond to calls concerning allegations or complaints of police misconduct from the public and from police officers who, for reasons of confidentiality or anonymity, are unable to report such allegations or complaints openly or in person to the appropriate law enforcement officials or agencies. The hotline would be operated by the OPS and would require the OPS to notify the newly created OPR of the filing of all misconduct complaints. This reform would make a similar provision in the Consent Decree permanent by codifying it into statutory law. This reform also incorporates the substance of S. 852 (James/Bryant).

4. Create The Offense Of Tampering With Electronic Devices Installed In Police Patrol Cars

The Committee recommends making it a crime of the fourth degree for a law enforcement officer to alter, destroy, conceal, remove or disable a camera or other monitoring device installed in a patrol vehicle, including any videotape or film used in such a device. This reform passed the Senate (40-0) on December 18, 2000, but has not been considered by the Assembly. This reform incorporates the substance of S. 853 (James/Bryant).

5. Require NJSP Applicants To Undergo Psychological Testing For Racial Bias

The Committee recommends requiring the Superintendent of the NJSP to require applicants for NJSP membership to complete a psychological evaluation designed to reveal racial bias or insensitivity. The reform would require that the evaluation be developed and administered by an individual or entity independent of the NJSP. The current selection process consists of a written examination, physical fitness test, background investigation, and an oral interview. Applicants chosen for conditional employment are then required to undergo a medical and psychological examination and are subject to four psychological tests of mental fitness. This reform incorporates the substance of S. 854 (James/Bryant).

6. Require NJSP To File Reports On Motor Vehicle Stops

The Committee recommends requiring the NJSP to prepare and file reports on every motor vehicle stop they initiate, and to publicly report those aggregate statistics semi-annually. The reform would require the reports to contain detailed information about the stop, including among other things, the grounds for the stop, the characteristics of the individuals stopped (utilizing at least the following categories: sex, race or ethnicity, and age), whether a search was undertaken and if so, the grounds for the search and the results of the search; and whether, as a result of the stop, a warning or summons was given. If anyone was taken into custody or arrested, the report must include the grounds for those actions. This reform would include any and all data collecting requirements set forth in the Consent Decree.

The Consent Decree already requires the NJSP to capture and report stop data. This reform would make those terms of the Consent Decree permanent by codifying them into statutory law. This reform incorporates the substance of S. 857 (Turner/Bryant).

7. Establish Trooper Performance Databases And Early Warning System

The Committee recommends requiring the NJSP to establish a database of information on the performance of individual officers and troopers. The database would include information of motor vehicle stops, pursuits, searches, arrests, the use of force, citizen complaints, disciplinary actions and witnesses. The information would be used to develop a computerized “early warning system” to determine whether a pattern of unacceptable performance or behavior exists for individual officers and troopers. The reform also would require NJSP supervisors, at least quarterly, to conduct reviews and analyses of computerized data and other information, including data on traffic stops and post-stop actions by race and ethnicity.

This reform duplicates some of the provisions of the Consent Decree that establishes MAPPS. This reform would make those terms of the Consent Decree permanent by codifying them into statutory law. This reform incorporates the substance of S. 863 (Bryant/Turner).

8. Require Members Of The NJSP To Undergo Annual Performance Evaluations

The Committee recommends that the Superintendent of the NJSP or his designee annually evaluate each NJSP member's performance. Pursuant to ¶47 of the Consent Decree, the NJSP is required to develop a protocol specifying the manner in which supervisory and management reviews of individual state troopers are to be conducted and the frequency of such reviews. This reform would make that Consent Decree requirement permanent by codifying it into law. This reform incorporates the substance of S. 864 (Bryant/Turner).

9. Speedy Trial Act

The Committee is concerned by the length of time that has passed since the indictment of Troopers Hogan and Kenna. Three years have passed since the Turnpike Shooting and two years have passed since the release of the first indictment.

The ability of the State to convene grand juries began in 1970, however, no procedure was put in place to provide for the speedy resolution of criminal matters. The Committee recommends that the Legislature pass a Speedy Trial Act requiring that criminal cases indicted by State grand juries be tried within 6 months of the indictment, unless good cause is shown. This Act will help promote swift justice.

10. Justification Defense Jury Instruction

The Committee recommends the adoption of a justification defense jury instruction for police officers that use deadly force to effect an arrest or prevent an escape. Such an instruction is used effectively in New York. The New York instruction provides a good example of a reasonable and fair instruction and a similar instruction should be read to grand and petit juries in New Jersey when appropriate. The Honorable Andrew J. Smithson, J.S.C. highlighted the need for such an instruction in his October 31, 2000 decision in State v. Hogan and Kenna, at 23 – 29.

11. Funding

Many of the Committee's recommendations require the provision of funding. If the State is committed to ending racial profiling, resources will be needed to not only support current reforms but also to implement the Committee's proposed new reforms. The Committee recommends that the Legislature provide funding necessary to establish and maintain the OPR and the OSPA, as well as funding for the enhancement of NJSP's training facilities at Sea Girt.