

STATE OF NEW JERSEY

OFFICE OF THE STATE COMPTROLLER

Marc Larkins, Acting State Comptroller

***THIRD 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

June 10, 2014

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I. Introduction

The influence of race in motor vehicle stops and other law enforcement activities has been a continuing issue of concern over the last two decades. The perception of racial discrimination by law enforcement officers creates an environment of distrust and undermines the goals of the criminal justice system. In New Jersey, racial profiling events occurring in the 1990s led to a Consent Decree with the United States Department of Justice that resulted in new policies and procedures within the New Jersey State Police (NJSP). These policies and procedures were designed to eliminate and prevent discriminatory law enforcement practices on our roadways.

This is the third in a series of statutorily required reviews of NJSP and the New Jersey Office of Law Enforcement Professional Standards (OLEPS) by the Office of the State Comptroller (OSC). The intention of these reviews is to determine if NJSP is maintaining its commitment to non-discrimination, professionalism and accountability while fulfilling its mission to serve and protect New Jersey's residents. In the first report, issued November 9, 2010, OSC reviewed NJSP's Training Bureau and evaluated the State's transition from the dissolution of the Consent Decree. In OSC's second review, dated April 17, 2012, we reviewed NJSP's internal affairs and discipline process. In this review, we are examining NJSP's policies and procedures for documenting and reviewing motor vehicle stops and post-stop enforcement activity. We also reviewed OLEPS's oversight in these areas. OSC reviewed select NJSP motor vehicle stops occurring between January 2009 and June 2012 and OLEPS's oversight responsibilities as reflected in its reports issued in 2013 and 2014.

II. Background

A lawsuit brought by the United States Department of Justice alleging racial profiling in connection with certain practices of NJSP resulted in a Consent Decree entered into on December 30, 1999. A number of reforms designed to eliminate discrimination in NJSP policies and procedures were mandated by the Consent Decree. An independent monitoring team was appointed to evaluate NJSP's compliance with these reforms. The independent monitoring team filed 16 reports concerning NJSP's compliance with the Consent Decree between October 2000 and August 2007. A final report by the New Jersey Office of the Attorney General, under the guidance of the independent monitoring team, concluded that NJSP was compliant with all applicable requirements. Ultimately, the Consent Decree was dissolved by the United States District Court in September 2009.

The Law Enforcement Professional Standards Act of 2009, N.J.S.A. 52:17B-222 et seq. (the "Act"), was designed to ensure NJSP's continued compliance with reforms initiated under the Consent Decree. The Act mandated the creation of OLEPS to, among other things, prepare and issue biannual reports of NJSP performance and semiannual reports of aggregate statistics concerning NJSP enforcement activities. Additionally, OSC is directed by the Act to: (1) review the performance of NJSP concerning non-discrimination in its policies, practices and procedures; and (2) review OLEPS's monitoring of various aspects of NJSP's law enforcement activities.

OLEPS has most recently issued its Sixth and Seventh Oversight reports, dated, respectively July 2013 and March 2014. As noted, this is the third report of OSC's findings and recommendations to the Legislature, the Governor and the public.

III. Scope of Review and Methodology

N.J.S.A. 52:17B-236 states that OSC's NJSP audits and reviews may include examination of the following areas: "stops, post-stop enforcement activities, internal affairs and discipline, decisions not to refer a trooper to internal affairs notwithstanding the existence of a complaint, and training." For this third performance review, OSC evaluated NJSP and OLEPS with regard to NJSP's policies and procedures for documenting and reviewing motor vehicle stops and post-stop enforcement activities.

For this report, OSC:

- Reviewed relevant NJSP policies, procedures and practices.
- Reviewed the NJSP computer system designed to maintain and retrieve information necessary for the supervision and management of the State Police.
- Interviewed 16 State Police enlisted members.¹
- Reviewed a sample of over 80 reports and documentation, including immediate supervisors' initial reviews, for specific motor vehicle stops for the years 2009, 2010 and 2011.
- Reviewed a sample of 12 motor vehicle recording or digital recording tapes of motor vehicle stops for the years 2009, 2010 and 2011.
- Reviewed a sample of 31 motor vehicle stops or 10 percent of cases reviewed by OLEPS in their Sixth Oversight Report.
- Examined the process used by NJSP to document information and to take appropriate action when deficiencies are noted by supervisors.
- Met with OLEPS personnel to discuss their oversight responsibilities regarding motor vehicle stops and post-stop enforcement activity.

¹ It should be noted that during our interviews with State Police personnel, a Deputy Attorney General was present for the interviews. In OSC's two prior reviews of the State Police, only OSC personnel and the interviewee were present at interviews.

- Reviewed OLEPS's reports concerning NJSP motor vehicle stops and post-stop enforcement activity.
- Reviewed NJSP's Risk Assessment Core Group meeting minutes and materials prepared in conjunction with the December 12, 2012 meeting.

We sent a draft of this report to NJSP and OLEPS to provide them an opportunity to comment on the issues identified in this report. The responses we received were considered in preparing this final report and were incorporated herein where appropriate.

IV. Summary of Findings

Generally, we found that both NJSP and OLEPS have the policies and procedures in place to perform their respective duties with regard to documenting and reviewing motor vehicle stops and post-stop enforcement activity. Our review of a sample of motor vehicle stops and post-stop enforcement activity indicated that, generally, NJSP is consistently implementing those policies and procedures. Additionally, a review of a smaller sample of motor vehicle stops that were already independently reviewed and reported upon in OLEPS's Sixth Oversight Report indicated that OLEPS is appropriately and effectively reviewing the performance of NJSP. There are, however, some issues that must be addressed by NJSP, many of which have been aptly pointed out in OLEPS's Sixth and Seventh Oversight reports. The deficiencies we noted generally fall within the following categories:

- Supervisory reviews have failed to identify a significant percentage of errors associated with motor vehicle stops and post-stop enforcement activity.
- Remedial counseling and training are not always provided when appropriate.
- Technical issues have been noted with regard to audio and video recording and storage.

At the conclusion of this report, OSC makes recommendations to address the deficiencies that were identified.

V. Review of Motor Vehicle Stops and Post-Stop Enforcement Activity

A. NJSP Policies and Procedures

With regard to motor vehicle stops and post-stop enforcement activity, the Consent Decree required NJSP to ensure the following:

- Documentation of information pertaining to motor vehicle stops and post-stop enforcement activity.
- Supervisory review of individual motor vehicle stops.
- Supervisory review of patterns of conduct in order to identify and modify problematic behavior.
- Implementation of appropriate remedial measures.

OSC reviewed whether NJSP policies and procedures addressed these general conditions.

To satisfy the documentation requirement, NJSP created a computerized system known as the Management Awareness and Personnel Performance System (MAPPS). NJSP uses MAPPS to record information required by the Consent Decree, including the reason for motor vehicle stops, post-stop interaction and number of stops by race or gender of the driver. The accuracy and completeness of the information entered into MAPPS is reviewed in conjunction with NJSP supervisory reviews of motor vehicle stops.

Individual motor vehicle stops and post-stop enforcement activity are subject to several types and levels of NJSP supervisory review. For example, NJSP procedures require that all motor vehicle stops involving a “critical incident” be reviewed by different levels of NJSP management. Critical incidents include the consensual search of a motor vehicle based on

reasonable articulable suspicion (RAS),² deployment of a K-9 dog, and incidents involving the use of force by troopers. Non-critical incidents, which can be categorized as all other types of motor vehicle stops, are subject to reviews based primarily on random sampling.

Below is a summary of the different NJSP reviews categorized by type of motor vehicle stop and purpose of review:

Review of Motor Vehicle Stops Involving Critical Incidents

The purpose of the critical incident review is to ensure that motor vehicle stops are properly documented and consistent with NJSP policies and procedures. A trooper's immediate supervisor ordinarily completes the first level of approval by reviewing all reports made in connection to motor vehicle stops involving critical incidents. Motor Vehicle Report (MVR) review teams, which typically consist of two or three individuals selected by NJSP upper management, perform the second level of review.³ In addition to reviewing reports, this level of review includes viewing the video recordings of the motor vehicle stop.

The Office of Quality Assurance (OQA), which is a unit within the NJSP Superintendent's office, then assesses those reviews. The OQA provides any corresponding recommendations to Station Commanders, who are essentially the equivalent of a Chief of Police for each of the approximately 24 NJSP station areas. Station Commanders conduct a final level of review of all critical incidents in their station area.

² In early 2009, the New Jersey Supreme Court issued a decision in *State v. Pena-Flores* 198 N.J. 6 (2009), which held that warrantless searches are only justified when there are, among other conditions, true emergent circumstances. Since that decision, it has been NJSP protocol for troopers to ask motorists to sign a "consent to search" form where RAS has been established prior to searching a vehicle, unless a search warrant has been obtained.

³ Prior to an October 2, 2012 memorandum issued by the State Police Deputy Superintendent of Operations, station commanders or assistant station commanders were responsible for review and second-level approval and for approving RAS searches.

Review of All Types of Individual Motor Vehicle Stops

NJSP procedures further provide for regular reviews of motor vehicle stops by supervisors. The purpose of these reviews is to ensure that all 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, which have been amended periodically, but generally provide for a supervisor to review three motor vehicle stops per quarter for each trooper under their command.

Similar to critical incident reviews, supervisors review all reports and video and audio recordings for the particular motor vehicle stop under review. Regular reviews, however, include motor vehicle stops involving both critical and non-critical incidents. If during the quarterly review period a consensual search based upon probable cause occurs, then that would be specifically chosen for review by the supervisor. Second in priority for review are instances where the trooper asks the driver to exit the vehicle. If neither of these situations are present, the motor vehicle stops are randomly chosen for review.

Additional Review of All Types of Individual Motor Vehicle Stops

Pursuant to a NJSP pilot program called Section Patrol Practice Assessment Reviews (SPPARs), MVR review teams are also charged with conducting random reviews of motor vehicle stops. The SPPAR process was modeled upon reviews previously generated by the federal monitors as required by the Consent Decree. SPPARs are conducted to determine if proper policy and procedures were followed and to identify best practices and any specific training needs.

The SPPARs are conducted quarterly and consist of reviews of motor vehicle stops involving both critical and non-critical incidents. SPPARs include the review of all relevant information, including the information contained in MAPPS and the video and audio recordings of motor vehicle stops. The review must be completed and documented in MAPPS within two weeks of being assigned.

Comprehensive Review of Motor Vehicle Stops to Identify Patterns of Conduct

In addition to reviews of individual motor vehicle stops, NJSP has established a Risk Assessment Core Group (RACG) to comprehensively review issues concerning motor vehicle stops and post-stop enforcement activity. Specifically, RACG is charged with assessing risks, identifying potential issues and developing plans to minimize future risks. The RACG consists of lieutenant colonels and members of the State Police's Office of Quality Assurance, OLEPS and the Office of the Attorney General.

The RACG meets quarterly and reviews, among other things, the data captured in MAPPS and focuses on a particular state police road troop (e.g., Troop A) at each meeting. The RACG implements an important process because it has the capacity to proactively identify aberrations from division-wide patterns, changes from previous reporting periods for the troop in question, and any statistics that might warrant a change in protocol for a particular troop or individual trooper.

Overall, our review determined that NJSP has in place the policies and procedures needed to document troopers' performance, review troopers' conduct, and to assess division-wide issues which could affect troopers' interactions with motorists. Our review of a sample of motor vehicle stops and post-stop enforcement activities indicated that, generally, these procedures are

being adhered to by NJSP. However, as will be discussed later in this report, there are some deficiencies related to the supervisory reviews and corresponding remedial measures, as well as other issues, which must be addressed by NJSP.

B. Review of Individual Motor Vehicle Stops and Post-Stop Enforcement Activity

As part of our obligation under the Act, we reviewed a sample of motor vehicle stops and post-stop enforcement activity to test whether NJSP is adhering to the policies and procedures designed to satisfy the requirements outlined in the Consent Decree. Initially, we reviewed ten percent of motor vehicle stops involving critical incidents occurring between 2009 and 2011.

In selecting our sample we grouped the motor vehicle stops into two categories, namely those involving: 1) consensual searches of motor vehicles based on RAS, the deployment of a K-9 dog or the use of force by troopers (critical incidents), and 2) cases relating to probable cause based stops (incidents where the trooper has probable cause to conduct a search). A total of 50 RAS and 33 probable cause based motor vehicle stops were randomly selected for review. A further in-depth review, which included viewing the video recordings of the motor vehicle stop interactions, was also conducted of 12 of those RAS and probable cause based motor vehicle stops. These 12 motor vehicle stops were judgmentally selected based on the complexity of the incident and various other factors such as contradictory documents.

For the most part, our review of motor vehicle stops involving both critical and non-critical incidents indicated that the appropriate policies and procedures were consistently implemented by NJSP. We noted, however, a few incidents where NJSP policy and procedure were not followed in some respects. Many of the types of issues we identified were also identified by OLEPS.

In our review, for example, we noted the absence of required NJSP forms in motor vehicle stop files. Specifically, we noted the absence of consent to search forms in several of the motor vehicle stop files we reviewed. While it was clear from either the motor vehicle stop report or the video of the motor vehicle stop that the consent to search form was completed by the driver, the forms were not included in the file.

We also noted some instances where there were problems with the video and audio recordings of motor vehicle stops. Additionally, we noted an instance where a deficiency was appropriately documented by NJSP management, but no corresponding remedial action accompanied the finding. These issues as well as other OLEPS findings and NJSP's response to these issues are addressed in the next section of this report.

VI. Review of OLEPS's Monitoring Performance

OLEPS conducts operations audits and independent analysis of NJSP data to identify any potential disparity in enforcement that may affect the integrity of motor vehicle stops and post-stop enforcement actions, among other areas. For example, OLEPS's statistician reviews NJSP data to spot any potential problems pertaining to compliance with NJSP policies and procedures. OLEPS also is tasked with making recommendations for appropriate actions to be taken by the Superintendent of NJSP or the Attorney General to remedy any identified problems.

OLEPS's current director has been in place for more than three years and this leadership stability has helped OLEPS perform its functions effectively. Since OLEPS was created by statute in 2009, it has come to be a repository for institutional knowledge of NJSP issues and its staff has gained expertise in overseeing the NJSP process regarding motor vehicle stops and post-stop enforcement activity. OLEPS' investigators and statistician have proactively questioned NJSP and called for changes to NJSP practices. It is important to note that these

improvements to OLEPS's leadership and independence are consistent with the recommendations made in OSC's first and second NJSP reports.

Regarding the review of individual motor vehicle stops, OLEPS has created a detailed reporting form. OLEPS investigators input information for up to 150 categories on the form in order to ensure that NJSP is complying with substantive requirements as well as properly completing all reports and records. OLEPS is also checking to see if NJSP supervisors properly noted issues during the supervisory review process.

OLEPS published its Sixth Oversight Report in July 2013. The report was based on detailed reviews of a sample of 315 individual motor vehicle stops from the first half of 2012. The report illustrates that OLEPS is appropriately identifying and reporting on issues affecting motor vehicle stops and post-stop enforcement activity.

Significantly, OLEPS reported that the total number of instances of deviations from NJSP policy and procedure, which OLEPS refers to as errors, was high and supervisors were failing to identify a significant percentage of such errors. Specifically, OLEPS found that approximately 30 percent of cases that NJSP reviewed pursuant to its policies and procedures contained an error that was not noted by the supervisory review. Many of these errors related to, for example, the failure to file all the appropriate information in reports concerning motor vehicle stops and consent to search requests.

We reviewed 31 randomly selected motor vehicle stops that OLEPS had independently reviewed in connection with its Sixth Oversight Report. This represents 10 percent of the motor vehicle stops reviewed by OLEPS between January 1, 2012 and June 30, 2012. Although some of these motor vehicle stops involved critical incidents, the majority were categorized as non-critical.

As noted previously and discussed further below, our review confirmed certain deficiencies identified by OLEPS in its Sixth Oversight Report. For example, we noted an instance where remedial action was not taken despite a deficiency being noted during the supervisory review of a particular motor vehicle stop. Such remedial action is called an “intervention” and may include counseling or training of a trooper involved in a deficient motor vehicle stop or post-stop enforcement activity. Along the same lines, OLEPS noted that NJSP was not making sufficient use of interventions when such deficiencies were identified by supervisors and recommended that they be used more frequently.

In addition to the deficiencies OLEPS found regarding interventions, OLEPS found deficiencies that were not identified by NJSP supervisors. For example, OLEPS noted deficiencies associated with the Digital In-Vehicle Recording (DIVR) of motor vehicle stops. OLEPS advised that the DIVR recording process is being reviewed by the NJSP for volume and video issues and improvements are being made periodically.

OLEPS also found and reported on additional deficiencies related to arrests. For example, OLEPS found that at times motorists are not read their Miranda rights, as required by NJSP policy. OLEPS advised that there are ongoing discussions regarding NJSP policies and procedures concerning Miranda warnings and that NJSP has increased its interventions in this area since OLEPS brought the issue to their attention.

OLEPS also reviewed and analyzed issues that are not necessarily the result of deficient policies, procedure or conduct, but nonetheless appear to disparately impact individual motorists of a particular race or ethnicity. For instance, the Sixth Oversight Report indicated that black motorists are more likely to have the perimeter of their vehicles searched by drug-sniffing dogs than other motorists. OLEPS concluded, however, that “[a]ll of these deployments were

appropriate and documented per [NJSP] policy” and they “cannot conclude that this is the result of any biased based practices.”

OSC’s sample of motor vehicle stops included several that resulted in the deployment of a K-9 dog. OSC did not note any deviation from NJSP policy or procedure in the seven motor vehicle stops reviewed by OSC that involved the deployment of a K-9 dog. Nonetheless, OLEPS stated that they will continue to examine this issue and recommends, as does OSC, that NJSP continue to monitor the issue as well.

OLEPS reported to OSC that there is a regular and productive dialogue between the NJSP and OLEPS regarding all issues identified. OLEPS stated that the NJSP takes OLEPS’s reports seriously and makes changes in policies accordingly. OLEPS has indicated that it will continue to monitor these issues and will continue with ongoing discussions with NJSP to improve many of the areas noted. We interviewed the NJSP lieutenant in charge of the Office of Quality Assurance and the lieutenant in charge of the Risk Management Office regarding NJSP’s response to OLEPS’s Sixth Oversight Report. These lieutenants both stated that there is ongoing communication between the NJSP and OLEPS with regard to improving some of the issues OLEPS noted in the sixth report. For example, the NJSP is increasing its use of interventions for major infractions or repeated errors and looking into contracting with a new vendor for its DIVR system. The lieutenants further suggested that some of the Miranda violations noted by OLEPS were not actually Standard Operating Procedure (SOP) violations, but instead resulted from a different interpretation of an NJSP SOP. OLEPS and the NJSP are now in agreement regarding the proper interpretation of the SOP. The NJSP views continued training of supervisors and road troopers on the proper documentation of motor vehicle stops as a key to improving the statistics

for future OLEPS reports. The NJSP also hopes to address staffing issues in key areas, now that new troopers are being sworn into NJSP.

During the writing of this report, OLEPS published its Seventh Oversight Report in March 2014. Of particular note, this report again reviewed the number of instances of deviations from NJSP policy and procedure. This most recent report found that the rate of NJSP failing to note errors improved considerably, dropping from 30 percent to 16 percent.

VII. Conclusion and Recommendations

Based on our review, we have concluded that NJSP has instituted and implemented policies and procedures to appropriately record and review motor vehicle stops and post-stop enforcement activities. However, certain issues remain that must be addressed by NJSP. First, as OLEPS has noted, some supervisory reviews do not identify errors which had been made in the course of motor vehicle stops or post-stop enforcement activity. Second, as also noted by OLEPS, interventions are not being given in some cases where they should. Finally, ongoing technical issues have been noted with regard to audio and video DIVR recording and storage, which is crucial to the ability of NJSP and OLEPS to review motor vehicle stops.

Additionally, we determined that OLEPS is effectively monitoring NJSP's motor vehicle stops and post-stop enforcement activity. OLEPS has been particularly effective in noting issues in its oversight reports and making recommendations for improvement.

To ensure that NJSP policies and procedures are consistently and effectively implemented, supervisors must carefully conduct any required reviews and provide appropriate counseling and training to their subordinates. Upper-level management must stress the importance of these reviews and corresponding remedial measures. Specific recommendations include the following:

- 1) NJSP, through appropriate organizational structures, which may include the Office of Quality Assurance, should ensure that supervisory reviews are conducted in a thorough and appropriate manner and that all policies and procedures are resulting in the effective performance of the tasks required by law and the former Consent Decree.
- 2) NJSP should make greater use of interventions to provide appropriate training and counseling and to effectively communicate expectations to troopers.
- 3) NJSP should continue to utilize the Risk Assessment Core Group to ensure that troopers and supervisors are following appropriate guidelines and that NJSP-wide issues are dealt with at the earliest opportunity so they do not lead to discriminatory practices.
- 4) NJSP should continue to work closely with OLEPS to make appropriate improvements, particularly those noted in OLEPS's Sixth and Seventh Oversight reports.
- 5) OLEPS should continue to independently monitor NJSP performance and submit its periodic reports on issues involving motor vehicle stops and post-stop enforcement activities. OLEPS should continue to recommend changes in procedures where appropriate.
- 6) NJSP should evaluate its Digital In-Vehicle Recording system to ensure that both video and audio of motor vehicle stops are appropriately recorded.
- 7) NJSP and OLEPS should continue to closely monitor motor vehicle stops resulting in the deployment of K-9 dogs.

In response to the draft report, OLEPS stated that it had no comments concerning the report's findings. Additionally, NJSP agreed with all of OSC's recommendations. Consistent with OSC's recommendations NJSP noted that it has recently taken additional steps to reinforce the importance of timely and thorough supervisory reviews and training. NJSP also indicated that a successful pilot program has recently been instituted to ensure that both video and audio of motor vehicle stops are appropriately recorded.