Ninth Review on Law Enforcement Professional Standards: New Jersey State Police, Office of Law Enforcement Professional Standards Failed to Comply with Key Reforms

POLICE ACCOUNTABILITY
PROJECT

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I.   Executive Summary

The Legislature has mandated that the New Jersey Office of the State Comptroller (OSC) conduct an annual audit or performance review of the New Jersey State Police (NJSP) and the Office of Law Enforcement Professional Standards (OLEPS) to assess whether they comply with the Law Enforcement Professional Standards Act of 2009 (the Act). The Act codified the reforms initiated under a federal Consent Decree to ensure nondiscriminatory policing by NJSP. The Act created OLEPS within the Department of Law and Public Safety to monitor NJSP and to perform administrative, investigative, policy, and training oversight, as directed by the Attorney General, and to assure and maintain the integrity of NJSP's law enforcement activities.

Beginning in March 2023, OSC attempted to conduct its statutorily mandated ninth annual performance review of NJSP and OLEPS. OSC sought to accomplish two goals in this review: (1) to evaluate NJSP's progress in eliminating discriminatory policing during motor vehicle stops and (2) to review whether NJSP and OLEPS have implemented OSC's previous recommendations. In particular, OSC sought to understand whether NJSP and OLEPS had addressed issues uncovered in its 2020 sixth annual performance review. In that review, OSC found weaknesses with NJSP's Risk Analysis Core Group (RACG). A group of civilian analysts supervised by enlisted NJSP personnel, the RACG is charged with reviewing motor vehicle stops and post-stop enforcement activity to assess risks and identify potential issues. The RACG reports to a high-level Risk Management Advisory Panel (the Panel) within NJSP. The Panel's role is to examine the data and proactively address risks of discriminatory policing by developing plans to intervene early where risks exist on both the organizational and individual member level, and then following up to ensure successful implementation of any actions.

A few months into OSC's 2023 review, on July 11, 2023, the Attorney General released a report by Dr. Matthew B. Ross (Ross Report), which considered NJSP motor vehicle data that was collected from 2009-2021 and found "strong empirical evidence that [NJSP] is engaged in enforcement practices that result in adverse treatment towards minority motorists."[1] After a review of these publicly reported findings, OSC determined that an even more detailed, historical look at NJSP's RACG process and OLEPS's oversight of it in the past several years was warranted as part of OSC's already ongoing performance review.

But OSC has been unable to complete a comprehensive review because NJSP and OLEPS have prevented OSC from obtaining all of the information OSC requested. While NJSP and OLEPS have provided many of the documents requested by OSC, they have not produced *all* requested documents, and have redacted or asserted without sufficient explanation that certain documents and information are privileged. Their positions are inconsistent with the Legislature's mandate

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[1] The Ross Report indicates that the Office of Public Integrity and Accountability engaged Dr. Ross to perform an independent analysis of traffic stops made by the New Jersey State Police. <u>See</u> Matthew B. Ross, *New Jersey State Police Traffic Stops Analysis, 2009-21* (July 7, 2023), available at https://www.nj.gov/oag/newsreleases23/2023-0711_NJSP_Traffic_Stop_Analysis.pdf. In response to OSC's findings, NJSP indicated that it did not supply any data to Dr. Ross and was not consulted on the Ross Report.

that the State Comptroller independently review NJSP and OLEPS and have undermined OSC's ability to complete a comprehensive review in the timeframe envisioned by the Legislature.

Despite this, OSC's limited performance review determined that NJSP and OLEPS are not in compliance with the Act in numerous ways. OSC found fundamental weaknesses in NJSP's RACG process and a significant breakdown in OLEPS's oversight of NJSP. The processes and policies that were put in place to address and prevent potentially discriminatory policing have been largely performative for years. OSC's findings include:

- Since the Consent Decree, NJSP leaders involved in the RACG process have not taken a single vote or recommended a single initiative to address unexplained trends in the motor vehicle stop data showing a disparate impact on certain racial and ethnic groups, despite having the authority to do so.
- An 85-page internal OLEPS memorandum from 2021 identified five unexplained law enforcement activity patterns—similar to those subsequently flagged by the Ross Report— reflecting disparities across racial and ethnic groups related to stop and post-stop enforcement activity that it had noted in the motor vehicle stop data over an approximately ten-year period.
- NJSP has refused for years and continues to refuse to consider implicit bias as a potential explanation for those data trends, while it has also failed to identify anything else that would meaningfully explain many of the trends or taken any steps to address them.
- In response to a draft of this report, OLEPS told OSC that it had repeatedly raised implicit bias as a possible explanation for these trends in multiple Panel meetings, but, if so, this discussion was not reflected in five years' worth of Panel meeting minutes reviewed by OSC, and no action ever resulted from those discussions.
- At times, over the years, OLEPS has been blocked from obtaining information from NJSP officials and, in at least one case, OLEPS asked the same question about a disparity across racial and ethnic groups that appeared in the data with no substantive response by NJSP, until finally OLEPS stopped asking the question.
- NJSP disregarded OLEPS's and OSC's repeated warnings that its current approach to analyzing the aggregate motor vehicle data was flawed because the "peer grouping" method it employs to identify divergent trooper behavior assumes that the rest of the group is acting in a non-discriminatory manner.
- While NJSP told OSC that it provides training on implicit bias and cultural diversity and addresses any allegations of racial profiling against individual troopers through the disciplinary process, it denied OSC access to the investigative files related to those complaints and so OSC was unable to evaluate the effectiveness of this process. NJSP also reported that, since the Consent Decree, of the approximately 60 race-based complaints a year made against troopers, there have been zero substantiated instances of racial profiling.
- In mid-2021, the computer aided dispatch and records management system (CAD/RMS) used to collect motor vehicle stop data for NJSP was replaced and the new system failed to collect accurate, usable data for over two years. This failure caused significant, harmful downstream effects and non-compliance in multiple areas.

In view of the issues uncovered thus far and the Ross Report's finding of strong empirical evidence that NJSP has been engaged in enforcement practices that result in adverse treatment towards minority motorists, OSC determined that it is in the public interest to publish its findings based on the interviews conducted and documents analyzed to date. These findings are based on a retrospective lookback; they do not include an analysis of OLEPS's or NJSP's actions since the Ross Report was released. OSC has required NJSP and OLEPS to provide a corrective action plan to address the findings in this report within 90 days.

II.   Background

A. The Consent Decree

In 1999, the United States Department of Justice (DOJ) sued the New Jersey State Police (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." 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 prohibited NJSP troopers from "[relying] 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." The Consent Decree also mandated reforms in the following areas aimed at eliminating the racially or ethnically motivated vehicle stops carried out by NJSP: policy requirements and limitations on the use of race or ethnicity 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. The Consent Decree identified around 100 tasks that must be performed to ensure compliance with these reforms.

The independent federal monitors assessed NJSP's progress in these areas and issued a series of reports documenting their findings. Over those nine years, NJSP made significant changes to its practices to meet the requirements of the Consent Decree and to go beyond them. Among these changes was NJSP's implementation of a "motor vehicle stop criteria monitoring process, designated 'MAPPS' for Management Awareness and Personnel Performance System." Using MAPPS, NJSP was able to collect and analyze motor vehicle data required by "Task 50" of the Consent Decree.[2] During the thirteenth site visit, however, the monitors learned that NJSP was now also including as part of its Task 50 compliance "high-level analysis and decision making regarding issues identified by the analysis by the Risk Management Core Group (RACG)." Through the RACG, "key command staff" were now "review[ing] and discuss[ing] MAPPS data reports and

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[2] The Consent Decree mandated that the State Police use MAPPS to develop reports on trends in NJSP motor vehicle stops. These were known as "Task 50 Reports." It also required that the NJSP review the reports in order to identify emerging trends and develop policies to respond to those trends.

tak[ing] key decisions to move the organization forward regarding motor vehicle stop (and other) critical issues."

In the Fourteenth Report in June 2006, the monitors reported that "the State has achieved 100 percent compliance with all tasks outlined in the consent decree—well beyond the requirements established by the monitors and the parties for effective compliance with the requirements of the decree." Recognizing the importance of continuing the progress NJSP had made "implementing systemic reforms [and] crediting the State Police supervisory and management review process," Governor Corzine issued an executive order requiring NJSP to "continue to collect data and operate the Management Awareness Personnel Performance System as it presently exists" and mandating "no changes shall be made to data collection procedures or to the Management Awareness Personnel Performance System except as may be expressly authorized by the Governor based upon the recommendations of the Attorney General."

Then, in the Fifteenth and Sixteenth Reports in 2007, the monitors again highlighted that NJSP's use of the MAPPS data system had evolved into "a *proactive problem identification and problem solving system*" that went "*beyond* the requirements of the consent decree, using it for more than a tracking and control device for motor vehicle stops, use of force, and complaints, and instead using it to identify systemic organizational issues and to craft solutions to those issues before they negatively impact the organization in any significant way." An example of this evolution was noted in the Sixteenth Report in which the monitors found that using MAPPS-based tools, NJSP leadership had identified two issues of concern, and within six months "planned, developed and executed two separate data-centric and data-analytic problem solving actions designed to identify the nature and scope of the problems, assess their impact on the organization, and develop recommendations to deal with the issues in a real-time manner." Then, in the seventeenth and final reporting in April 2009, the monitor noted that the MAPPS and RACG processes had expanded their capabilities even further. Today, as discussed below, the RACG has the continuing responsibility to perform the functions that were formerly known as "Task 50."

The Court dissolved the Consent Decree in 2009 following submission of a joint motion by the State and DOJ.

B. Post Consent Decree – The Law Enforcement Professional Standards Act

To ensure NJSP continued to comply with reforms initiated under the Consent Decree and to continue to go beyond them by implementing best practices, the Legislature passed The Law Enforcement Professional Standards Act (the Act). Among other things, the Act created the Office of Law Enforcement Professional Standards (OLEPS) in view of the "strong public interest in perpetuating the quality and standards established under the consent decree." OLEPS operates under the direct supervision of the Attorney General and performs such "administrative, investigative, policy and training oversight, and monitoring functions, as the Attorney General shall direct."

OLEPS is required to issue biannual reports that evaluate NJSP's "compliance with relevant performance standards and procedures," referred to as "Oversight Reports," as well as semi-annual reports that include aggregate statistics on motor vehicle stops and misconduct investigations, referred to as "Aggregate Reports." While these reports are intended to provide transparency to the public, they "are not intended to evaluate compliance by the Division of State Police and the office with the provisions of [the Act]. That evaluative function shall be performed by the State Comptroller in conducting the audits and performance reviews required under the provisions of section 15 of [the Act]."[3]

NJSP, like OLEPS, was statutorily obligated to continue the Consent Decree's important work of eliminating discriminatory policing during motor vehicle stops. As part of this, the Legislature mandated that NJSP ensure documentation of information pertaining to motor vehicle stops and post-stop enforcement activity. To satisfy the documentation requirement, NJSP continues to use the MAPPS system, recording the reason for motor vehicle stops, post-stop interaction, and outcomes, and number of stops by race or ethnicity and 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. The MAPPS unit is charged both with performing "investigative and analytical functions," as well as with "explor[ing] ideas, strategies, and initiatives to benefit the Division, its members, and citizenry."

In addition to conducting reviews of individual motor vehicle stops and post-stop enforcement activities, NJSP has continued to use the RACG to comprehensively review issues concerning motor vehicle stops and post-stop enforcement activity.[4] Specifically, under current NJSP policy, the RACG analysts are charged with assessing risks, identifying potential issues, proactively developing plans to intervene early where risks exist on both the organizational and individual member level, and following up to ensure successful implementation of any actions.[5] As detailed in NJSP's Standing Operating Procedures (SOPs), the RACG is further required to collect and track all implementation and follow-up reports and related information.

Under the same SOP, the Risk Management Advisory Panel (the Panel) also continues to be tasked with "[p]erform[ing] a 'High Level Review' of the RACG's report and mak[ing] recommendations for policy reform, training initiatives, and other remedies to address organizational risks and concerns." The Panel consists of NJSP command officers, a representative of OLEPS, and the Quality Assurance Officer. At times, staff from the Attorney General's Office of Public Integrity and Accountability (OPIA) have attended the Panel's quarterly meetings. Meeting minutes reflect that time at the start of each meeting is often dedicated to sharing with participants a brief history of the Analysis of Motor Vehicle Stop Data report which arose out of Task 50 of the Consent Decree. Each meeting focuses on a particular State Police road troop (e.g., Troop A) and reviews, among other things, the data captured in MAPPS. Although

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[3] N.J.S.A. 52:17B-229; N.J.S.A. 52:17B-235(d).

[4] Individual motor vehicle stops and post-stop enforcement activity are subject to several types and levels of NJSP supervisory review.

[5] Standing Operating Procedure A8 (SOPA8), which became effective in its current form in June 2019, "establish[es] the policy that will govern and support the creation and functions of the Risk Analysis Core Group (RACG) and the risk management process." SOPA8 defines "Risk" as "[a]nything that threatens, impedes, or prevents the Division's ability to carry out its stated mission and related goals, objectives, and directives."

there are non-voting members who regularly attend the Panel meetings, it is the voting members of the Panel who provide the Superintendent of NJSP with the "information needed to effectively manage all resources at the Division's disposal," as well as recommended action.

The OLEPS Director is included on this advisory Panel as "a permanent, non-voting member." OLEPS reviews the motor vehicle stop data provided by NJSP to the Panel and drafts its own memoranda prior to the Panel meetings that discuss and pose questions about data trends. OLEPS also has the opportunity to ask questions about the data during the Panel's quarterly meetings. According to both NJSP and OLEPS, responses to OLEPS's questions would be memorialized in the minutes from the Panel meetings. The staff of the two entities regularly communicate about the data outside of the Panel meetings, however, these communications are generally not memorialized in writing. While the format of this process is not specified under the Act, NJSP is statutorily mandated to comply with its own SOPs that relate to the Consent Decree.[6]

In addition, NJSP has committed through its own policy to taking a "proactive stance towards risk management," which is intended to "increase the Division's ability to 'self-correct' through early intervention" and to "promote 'best practices.'" The risk management process is intended to "provide the [NJSP] Superintendent with information needed to effectively manage all resources at the Division's disposal," and any decisions "should be implemented as soon as possible to accomplish the goals of risk management and early intervention." The NJSP Superintendent can even "designate an internal or external entity to perform a follow-up of any implemented action," as follow-up is "the most critical part of the process." NJSP "maintains the authority to accept, reject, or alter any recommended action proposed through the risk management process and may direct any executive action deemed necessary."

Complying with the Act, however, is not optional. Under N.J.S.A 52:17B-234, "[e]ach troop commander" is required to "certify to the superintendent that the troop has complied with the requirements of [the Act]." And the NJSP Superintendent is similarly required to "certify to the Attorney General that the Division of State Police has complied with the requirements of [the Act]."

C. OSC's Performance Reviews Pursuant to the Act

OSC also has a critical role under the Act. Pursuant to N.J.S.A. 52:17B-236, OSC is required to annually conduct an audit or performance review of NJSP and OLEPS and examine motor vehicle "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." OSC's responsibility to conduct this annual assessment arose out of a legislative mandate with a very clear purpose: "to evaluate compliance" by OLEPS and NJSP with the Act and ensure the "vigorous, lawful, and nondiscriminatory implementation of law enforcement practices and procedures."

The Legislature's decision to place the responsibility of post-Consent Decree oversight with OSC was informed by the recommendation of the New Jersey Advisory Committee on Police

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[6] See N.J.S.A. 52:17B-223(e) (recognizing that reforms accomplished under the Act have been codified in SOPs and maintaining that future changes to any SOPs related to the Consent Decree be approved in writing by the Attorney General prior to taking effect).

Standards to Governor Jon S. Corzine (Committee). The Committee recognized that the "auditor approach" would best "sustain[] the progress toward bias-free law enforcement" and recommended placing this responsibility with OSC, an independent agency outside the Department of Law and Public Safety, "as a check on the performance of both the Attorney General and the State Police." In making this recommendation, the Committee found "[c]oncerns that the Attorney General has an institutional conflict of interest are well-grounded," since "[i]n addition to overseeing the State Police, the Attorney General relies on Troopers for investigations and defends them in civil litigation." So while the Act places certain reporting requirements on NJSP and OLEPS, the Act very explicitly places on OSC the "evaluative function" of whether NJSP and OLEPS are complying with all the provisions of the Act.

To evaluate compliance with the Act, OSC's periodic mandated review necessarily includes evaluating whether OLEPS fulfilled its statutory mandate to "take appropriate steps to . . . ensure compliance with the general policy that all law enforcement officers not rely to any degree on the race or national or ethnic origin of motorists in selecting vehicles for traffic stops, or in deciding upon the scope and substance of post-stop actions." To assist OSC in its oversight role, the Legislature mandated that all of the Department of Law and Public Safety, including but not limited to NJSP and OLEPS, must "cooperate . . . and provide to [OSC] such information, resources, and other assistance deemed necessary by the State Comptroller to conduct the audits and performance reviews required by [N.J.S.A. 52:17B-236(d)]."

OSC has examined the RACG process in previous periodic performance reviews, most recently in OSC's Sixth Periodic Review on Law Enforcement Professional Standards (Sixth Periodic Review). In that 2020 review, OSC found weaknesses in the implementation of NJSP's and OLEPS's policies and procedures that were intended to ensure appropriate documentation and review of motor vehicle stops and post-stop enforcement activity. With regard to the RACG, OSC found that:

> The lack of written, or at times, any, response from NJSP to [OLEPS's] RACG memoranda is a serious weakness and interferes with OSC's oversight efforts. Going forward, as a matter of basic accountability, [NJSP] should respond in writing to every RACG [memorandum] prior to the RACG meeting occurring. Obvious opportunities to improve accountability, avoid miscommunication, and learn from the past should not be missed.

Accordingly, OSC recommended in the Sixth Periodic Review that NJSP provide OLEPS with written responses to its questions, as "[a] written response will document the underlying causes of anomalies in motor vehicle stop data that NJSP and OLEPS observe and will encourage NJSP to identify and eliminate racial profiling that may be revealed in the data." OSC also found that OLEPS continued to be delinquent in its statutory reporting obligations, and again urged it to come into compliance.

OSC also recommended in its Sixth Periodic Review that NJSP should immediately take whatever steps are necessary to identify and develop an appropriate external benchmarking method—something OLEPS had repeatedly recommended to NJSP—to ensure that unlawful discrimination is not taking place. OSC had identified that the "danger involved in using an internal benchmark

is that it could permit discriminatory conduct to go undetected system-wide as long as that conduct occurs consistently within NJSP."

As discussed below, OSC found that these recommendations were not adopted by NJSP.

D. The Ross Report

On July 11, 2023, the Attorney General publicly released a report by Dr. Matthew B. Ross (Ross Report), which considered NJSP motor vehicle data collected from 2009-2021 and found "strong empirical evidence that [NJSP] is engaged in enforcement practices that result in adverse treatment towards minority motorists." The Ross Report noted that OPIA had engaged Dr. Ross in November 2021 "for the purpose of conducting independent analysis of traffic stops made by the New Jersey State Police" and "requested that the analysis focus on the central question of whether there was disparate treatment on the part of [NJSP] towards racial and ethnic minorities."

As highlighted by the Attorney General, the Ross Report's initial findings revealed disparities for Black and Hispanic motorists relative to White motorists stopped by NJSP troopers, including:

- Black motorists were 89.8%, and Hispanic motorists were 46.4%, more likely to be searched once stopped than White motorists.
- Black motorists were 9.7%, and Hispanic motorists were 26.6%, less likely to have evidence found when searched after a stop than White motorists.
- Black motorists were 14.65%, and Hispanic motorists were 9.6%, more likely to be asked to exit their vehicle once stopped by NJSP than White motorists.
- Black motorists were 87.5%, and Hispanic motorists were 56.8%, more likely to be arrested once stopped by NJSP than White motorists.
- Black motorists were 130%, and Hispanic motorists were 27.5%, more likely to experience force once stopped by NJSP.

With the public release of the Ross Report, the Attorney General simultaneously announced a pilot program to reduce racial and ethnic disparities in motor vehicle enforcement actions by NJSP and fatal motor vehicle crashes. [7] In announcing the program, the Attorney General stated that "[w]hether the result of implicit bias, systemic faults in policies, or something more intentional, whatever the root cause of these disparities, I am committed to righting these wrongs."

III. Methodology

In this performance review, OSC initially sought to (1) evaluate the progress NJSP has made in accomplishing the goals of the Consent Decree since its dissolution and (2) review the adoption of OSC's previous recommendations, including those set forth in its Sixth Periodic Review related to the RACG process. After the release of the Ross Report, OSC modified these objectives to include a more detailed, historical assessment of the RACG process and OLEPS's oversight of it.

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[7] OSC first became aware of the independent analysis conducted by Dr. Ross upon the public release of the Ross Report.

To achieve these goals, OSC sought documents and information from NJSP and OLEPS, including communications between NJSP and OLEPS exchanged in preparation for or following the quarterly Panel meetings. OSC also interviewed the then-Director of OLEPS, the then-Panel Chair, and other individuals who have performed analysis of the same motor vehicle stop data encompassed by the Ross Report. NJSP and OLEPS provided some, but not all, of the requested information, and made available some, but not all, of the witnesses that OSC requested to interview.

Ultimately, OSC was unable to complete the comprehensive review it deemed necessary to make detailed findings about whether NJSP and OLEPS have complied with the Act. This was due in part to the significant delays by NJSP and OLEPS in producing documents requested by OSC, in which many months passed without any documents being produced, and due to assertions of privilege over substantial categories of documents without producing a log or identifying how many documents were being withheld. However, due to the fundamental weaknesses uncovered by OSC in the RACG process and a significant breakdown in OLEPS's oversight of NJSP, OSC determined it was necessary to (1) publish its limited findings based on the interviews and a review of documents to date and (2) require NJSP and OLEPS to provide a corrective action plan within 90 days.

OSC sent discussion drafts of this Report to NJSP and OLEPS to provide them with an opportunity to comment on the facts and issues identified during this review. In preparing this Report, OSC considered the responses received and incorporated them where appropriate.

IV. Findings

The document review and interviews conducted by OSC as part of its annual performance review revealed more dysfunction in the RACG process—and OLEPS's oversight of that process—than was previously understood. This review has identified a decade-long systemic failure by both NJSP and OLEPS to go beyond merely identifying data patterns reflecting disparate treatment toward racial and ethnic minority motorists. NJSP has consistently failed to adequately analyze the aggregate motor vehicle stop data and recognize when action may be needed to address apparent problems. OLEPS, during this time, has allowed its oversight to be limited by the agency it is overseeing. OSC's review also revealed a major software system failure that impacted motor vehicle data collection for over two years and caused harmful downstream effects—none of which was adequately communicated to the public.

A. NJSP's RACG Process is Ineffective at Identifying and Proactively Addressing the Risks of Adverse Treatment of Racial and Ethnic Minorities in Motor Vehicle Stops

This review finds that, over the past decade, the RACG process has failed over and over again to identify and proactively address potential adverse treatment of racial and ethnic minorities in motor vehicle stops. Until the data was corrupted in 2021, NJSP had largely fulfilled its obligation to report motor vehicle data and identify any data trends. But NJSP has not taken steps to

adequately understand or address data trends that indicated adverse treatment of racial and ethnic minority motorists, and has not collected accurate data to conduct this analysis after 2021.

1. **NJSP still lacks an objective metric to assess whether data trends in motor vehicle stops indicate potential discriminatory policing.**

Despite multiple recommendations from OSC and OLEPS, NJSP still does not use an objective metric to determine whether data trends in motor vehicle stops could indicate potentially discriminatory policing. As a result, even when there are disparities detected in the data over many years that may be caused by discriminatory policing, NJSP has no effective method to identify the underlying issue and no requirement that any action be taken to remedy it.

OLEPS recently informed OSC that the external benchmark originally contemplated by the Consent Decree may not be a feasible system for NJSP. In response to OSC's findings, NJSP also stated that "no external benchmark was available" and based its position on "[e]xtensive research [that] has been conducted . . . demonstrating the ineffectiveness and impracticality of benchmarking methods."[8] But the Act did not mandate that specific methods must be used to identify discrimination, and the Legislature specifically recognized NJSP needed "flexibility to account for developments in constitutional law, the advent of new technologies, and the development of new best practices in policing." In other words, if the external benchmark first envisioned by the Consent Decree is unworkable, then NJSP must employ another method to accomplish analyzing the aggregate data in an objective way.

The Ross Report proves this is possible, demonstrating that other objective methods, beyond an external benchmark, can be used to identify when unlawful discrimination appears to be occurring. Ross accomplished this by applying "an ensemble of the most reliable statistical tests available in the scientific literature" to evaluate NJSP's motor vehicle data. What is more, this kind of objective, scientific approach can be used in conjunction with NJSP's current "internal benchmark" practice of "peer grouping . . . to identify troopers divergent from others in their traffic enforcement actions" — a method "established by the Federal Monitoring team in the early stages of the consent decree," which NJSP "hesitates to abandon."

No one approach needs to be taken to the exclusion of all others. And as previously explained by OSC, the weakness in NJSP's current approach that only considers "peer grouping" is that it assumes the rest of the group is acting in a non-discriminatory way. If there is a division-wide issue that is resulting in disparate impact on a racial or ethnic group, it is unlikely that any one problematic troop or group of troopers will stand out. In turn, further investigation is likely to be deemed unnecessary and the problem will continue unabated. This is not an acceptable outcome.

In short, NJSP can and should do more to identify discriminatory policing, so it can address it. As long as the agency resists using some objective metric for evaluating the aggregate data, naming that which it considers to be problematic, NJSP will be unlikely to ever detect systemic discrimination or take steps to remedy it.

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[8] As part of this review, OSC requested information from both NJSP and OLEPS regarding the development of both the internal racial/ethnic benchmark currently used by NJSP and any communications regarding proposals for the creation of an external benchmark. Neither OLEPS nor NJSP produced any documents in response to OSC's requests on these subjects.

2. **Evidence suggests that NJSP has never considered implicit bias or racially influenced policing as a potential explanation for data trends showing disparate treatment of racial or ethnic groups.**

OSC finds that NJSP, in some cases, has seemingly turned a blind eye to potential implicit bias or racially influenced policing as a possible explanation for troubling trends in the motor stop data.[9] In over five years' worth of Panel meeting minutes, there is no indication that anyone ever suggested that discrimination or implicit bias could potentially be the cause of the many otherwise unexplained, persistent disparities observed in the aggregate data. When OSC asked directly about whether the Panel would consider implicit bias or racially influenced policing as a cause for identified trends, the Panel Chair explained that NJSP had not and would not consider it because NJSP cannot measure it with statistics.

In its written response to OSC's findings, NJSP's maintained its position that implicit bias is not considered in the analysis it conducts because of the "inability to qualify or quantify it," likening it to other social influences that "NJSP data cannot account for." This is surprising given that Panel meeting minutes reflected that the Panel has routinely considered and accepted anecdotal and other non-precise information, such as the seasonal influx of migrant workers and the impact of the COVID-19 pandemic, as reasonable explanations for otherwise unexplained data trends.

In stark contrast to NJSP's response, OLEPS just recently advised OSC that it has "raised with NJSP implicit bias as a possible explanation for unexplained disparities" at multiple Panel meetings in the past and is committed in the future to "further probing" disparities to understand the underlying causes. However, as evidenced by NJSP's written response to OSC's findings and the lack of written reference to this discussion in the meeting minutes of multiple Panel meetings, without intervention from the Attorney General, NJSP appears unlikely to change course at this time.

This weakness in the RACG process is especially surprising in light of the post-Consent Decree guidance provided by the Attorney General's Office in 2005 on prohibited racial profiling, which explained that:

> A police officer need <u>not</u> be a racist to engage in "Racially Influenced Policing." Any officer can unwittingly or subconsciously fall prey to racial or ethnic stereotypes about who is more likely to be involved in criminal activity. One need not be prejudiced to unwittingly "pre judge" a person based on a broad-brushed stereotype of what a typical criminal looks like.[10]

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[9] NJSP broadly defines "bias based policing" as "a member's reliance on a person's race, ethnicity, gender, sexual orientation, religion, economic status, age, culture, or any other immutable characteristic of a group or class of persons, in determining whether to provide services, enforce the law, or take any other discretionary police actions authorized or mandated by law. Bias based policing includes the prohibited practice of racially-influenced policing as defined in AG Directive 2005-1." However, noticeably absent from NJSP's definition of "bias based policing" is an explicit mention of implicit or unconscious bias, which could be helpful for NJSP members.

[10] <u>See</u> Overview of New Jersey's Racial Profiling Policy available at www.nj.gov/lps/dcj/agguide/directives/racial-profiling/pdfs/overview-racial-policy.pdf; <u>see also</u> Attorney Law Enforcement Directive No. 2005-1.

Since then, all three branches of New Jersey's state government have continued to recognize that prohibited discrimination is not limited to intentional, targeted discrimination against a particular minority group, but rather it includes implicit bias, and must be proactively addressed. In 2020, the Legislature required all law enforcement officers to receive training that, among other things, will provide them with the tools to "understand[] implicit bias and employ[] strategies to eliminate unconscious biases that shape behavior and produce disparate treatment of individuals based on their race, ethnicity, religious belief, gender, gender identity, sexual orientation, socioeconomic status, or other characteristics."[11] In signing the bill into law, Governor Murphy highlighted the importance of implicit bias training for law enforcement and explained: "To build upon on our progress to reshape policing, we must address the systemic and implicit biases that too often negatively impact relations between law enforcement and the communities they serve." The following year, the New Jersey Supreme Court "recognize[d] that implicit bias is no less real and no less problematic than intentional bias."[12] And just last year, the Appellate Division declared, "[t]he problem of implicit bias in the context of policing is both real and intolerable."[13]

Nothing in any NJSP policy limits its ability to consider implicit or unconscious biases as a possible explanation for data disparities simply because it is hard to quantify. And an analysis of the motor vehicle stop data that does not include an understanding of implicit bias cannot effectively address all potential forms of prohibited discrimination in policing.

In response to OSC's findings, both NJSP and OLEPS reiterated that, as of 2019, troopers are required to receive training on the topic of implicit bias. Troopers also receive periodic training on other related topics including cultural diversity. However, the existence of that training and the need for NJSP to consider implicit or unconscious bias as an explanation for trends observed in their aggregate data, are not mutually exclusive.[14]

3. Evidence suggests, in many instances, NJSP never adequately analyzed the reasons for data trends showing adverse treatment of minority motorists.

OSC found multiple examples where the Panel acknowledged potentially problematic motor vehicle stop data trends reflecting a disproportionate impact on minority motorists, but there is no evidence that the Panel attempted to understand why that particular data trend existed. In one example, a former OLEPS special investigator explained to OSC how NJSP attempted to justify an increase in motor vehicle stops of Hispanic drivers in a particular area. The Panel suggested

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[11] N.J.S.A. 52:17B-77.13.
[12] State v. Andujar, 247 N.J. 275, 303 (2021).
[13] State v. Scott, 474 N.J. Super. 388, 399 (App. Div. 2023).
[14] Notably, in 2022, OSC's Eighth Periodic Review examined NJSP's Training Bureau. In that review, OSC found that "courses that were taught by temporarily assigned, or detached, instructors on Consent Decree topics, and found troubling behaviors and omissions. One detached instructor described content from the recruit course, 'Culture and Diversity,' in seemingly pejorative terms and instructed recruits by reading from a PowerPoint without elaboration. Another detached instructor presenting the course 'Prejudice and Discrimination' reduced the course time by 25 minutes and omitted a video segment on hate crimes from the instruction. This instructor asked the recruits to participate by reading the PowerPoint slides and did not encourage additional discussion on course-related topics following breakout sessions." After that review, OLEPS had agreed to "review training materials and perform in-person audits" for those courses and to "coordinate with NJSP to determine if instructors should be retrained or removed."

that a construction project was diverting drivers onto roadways they did not usually traverse, in an area with a large Hispanic population. But when OLEPS confronted the Panel with information showing that, in fact, construction work did not occur on that roadway during the relevant time frame, the Panel did not provide an alternate explanation.[15] It appears that, to date, this trend remains unexplained and unaddressed by NJSP.

Another example involves a trend that persisted over many years—racial and ethnic distribution indicating the greater likelihood of warnings or no enforcement for White drivers. That is, data show that White drivers are more likely to get warnings or "no enforcement" stops than non-White drivers. NJSP initially addressed this trend by stating that it was consistent across troops and reporting periods. But that is a "comment" on the trend and does not explain the underlying reason it exists.

After several years, according to minutes from a 2020 Panel meeting, NJSP posited a theory that Hispanic motorists are more likely to commit violations related to ID and Documentation (such as Suspended Driver, Unlicensed Driver, Unregistered Vehicle, or Uninsured Vehicle) that allow for little or no discretion by the enforcing trooper to explain why White drivers are more likely to get warnings or "no enforcement." OLEPS advised NJSP that this theory could explain why Hispanic drivers might be over-represented among those who received at least one summons, but it did not explain why White drivers are over-represented among all warnings or no enforcement. Still, NJSP did not take further actions to gain a better understanding of what was driving the over-representation of White motorists in the warning and no-enforcement categories. When OSC asked the Panel Chair if anything else could have been done to test the theory, such as reviewing body-worn camera footage, he implied that further explanation was not needed. To date, NJSP maintains its position that additional review of body-worn camera footage is not needed and that the Panel meeting minutes "speak for themselves" as to "potential factors contributing to recent trends in enforcement against Hispanic motorists." OSC, like OLEPS, finds this response insufficient.

OSC also found that, rather than drilling down for the potential causes of problematic trends in the motor vehicle stop data on a troop, station, or Division level, like those identified in the Ross Report, or attempting to remedy their impact, NJSP chooses to rely on other methods to address concerns of discriminatory policing. The Panel Chair emphasized that troopers receive implicit bias training periodically and issues with individual troopers are addressed in other ways, such as through individual disciplinary actions.

In terms of disciplinary actions, the Panel Chair informed OSC that of the approximately 60 race-based complaints a year made against troopers, there have been no substantiated instances of racial profiling since the Consent Decree. OSC was unable to assess the internal affairs process for those race-based complaints that required administrative review because NJSP and OLEPS denied OSC access to the requested files, citing an Attorney General Directive.[16] This refusal to grant OSC access to these files as part of its statutorily mandated review of NJSP and OLEPS

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[15] When asked in the interview whether OLEPS ever received an adequate explanation to this question at a later date, the former special investigator indicated that she could not recall.

[16] See N.J.S.A. 52:17B-236 (explicitly including "internal affairs and discipline" and "decisions not to refer a trooper to internal affairs notwithstanding the existence of a complaint" as areas where the State Comptroller "shall conduct risk-based audits and performance reviews").

under the Act is unprecedented. In its second, fifth, and seventh periodic reviews under the Act, OSC was granted access to internal affairs files upon request to assess the efficacy of NJSP's internal affairs and discipline processes, and OLEPS's oversight of the same.

Regardless of whether other mechanisms are in place to effectively identify and address concerns with individual troopers, which OSC was not able to assess, OSC continues to recommend that NJSP be held accountable by requiring NJSP to adequately analyze and address questions posed by OLEPS about trends reflected in the aggregate data, and to *document* those responses and any affirmative steps taken to eliminate or minimize any identified risks. The Panel Chair confirmed to OSC that NJSP has not implemented this recommendation. NJSP's continued failure in this regard undermines transparency and accountability.

4. **The Panel failed to fulfill its responsibility to take a proactive approach to mitigate the risk of discriminatory policing.**

NJSP policies require both the RACG analysts and the Panel to assess risks, identify potential issues, proactively develop plans to intervene early when risks exist on both the organizational and individual member level, and follow up to ensure successful implementation of any action. However, both clearly misunderstand the "proactive" role they are intended to take as part of the risk management process.

Indeed, the Panel Chair suggested to OSC that, under the Act, NJSP was only required to collect and report motor vehicle stop data, not conduct "voluntary" Panel meetings. Moreover, the Panel Chair could not recall any instance when the Panel's discussions had impacted NJSP's policies or procedures in any way, despite his having been involved in various aspects of this process since 2016. OSC was not provided with any documentation of the voting Panel members actually voting on any issues, substantive or otherwise. Nor was OSC presented with any evidence that any of these trends were formally raised through a vote to the Superintendent's attention for his further action.

The current risk management policy specifically contemplates that the Panel will comprehensively examine the collected data and proactively work to mitigate risks, rather than wait and only act when a problem is fully formed and its root cause is clearly identifiable. But because the Panel will apparently only recommend action if it has concrete data-driven evidence of intentional racial and ethnic profiling, the Panel has never elevated the issues or voted to take any proactive measures to address these disparities.

B. OLEPS Has Failed to Exercise Proper Oversight of NJSP's Risk Management Process

Under the Act, OLEPS is required to "perform such administrative, investigative, policy and training oversight, and monitoring functions, as the Attorney General shall direct," and it must "assure and maintain the integrity of law enforcement activities performed by [NJSP] personnel." OLEPS is also specifically charged with "ensur[ing] compliance with the general policy that all law enforcement officers not rely to any degree on the race or national or ethnic origin of motorists in selecting vehicles for traffic stops." While OLEPS is involved in the RACG process as a non-voting member of the Panel, this does not limit its ability to conduct its own analysis, make

recommendations, and report to the Attorney General if and when NJSP is at risk of falling into non-compliance with the Act. To the contrary, to carry out its "duties and responsibilities," OLEPS has the authority to "exercise the Attorney General's constitutional, statutory and common law authority to act in the public interest."[17]

OLEPS's independent analysis of motor vehicle stop data appears to have been remarkably in-depth and highly effective in identifying data trends that require examination and explanation from NJSP. However, OLEPS has failed to raise the alarm to the Attorney General when problematic data trends have been identified and NJSP has failed to respond. OLEPS has approached its role as a collaborator with NJSP rather than as an objective oversight entity with significant authority.

1. **OLEPS applies a "reasonable, probable and plausible" standard for NJSP that is inconsistent with its statutory obligations.**

The former OLEPS Director advised OSC that explanations of apparent data trends from NJSP need only be "reasonable, probable and plausible" in order to be considered responsive or acceptable.[18] In other words, as long as NJSP can offer a "reasonable, probable, and plausible" non-discriminatory reason for a particular data trend, OLEPS will be satisfied. It is not clear to OSC from documents reviewed or interviews with witnesses how the "reasonable, probable and plausible" standard is applied by OLEPS or from where this standard originated. It is clear though that this standard is inconsistent with OLEPS's statutory obligation to both "promote" and "ensure" NJSP's compliance with the general policy that all law enforcement officers not rely to any degree on the race or national or ethnic origin of motorists in selecting vehicles for traffic stops.

New OLEPS leadership has maintained the position that the RACG was intended to be a "fluid conversation about trends" and "an arbitrary standard for determining when a question is deemed answered hinders the deliberative communications the RACG process requires, and may actually curtail meaningful ongoing discussions." OSC findings are not meant to suggest that an "arbitrary" deadline should be adopted. However, as discussed below, there is compelling evidence that many questions about data trends that resulted in adverse treatment towards racial and ethnic minority motorists went unanswered for a decade. Allowing problematic trends to continue for such a prolonged period, unaddressed by anything more than ongoing fluid conversation, is untenable.

Notably, Dr. Ross considered many of the same data trends (e.g., in a variety of post-stop enforcement activities such as exits and arrests) that had been repeatedly identified by OLEPS as reflecting disparities. Ross, however, found them to be strong evidence that NJSP had engaged in enforcement practices that resulted in adverse treatment towards racial and ethnic minority

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[17] The Attorney General should consider whether it would be beneficial to provide OLEPS with the ability to call for a Panel vote, and to participate in the Panel as a voting member, to ensure affirmative steps will be taken to identify and proactively mitigate risks.

[18] The former OLEPS director was unable to identify where the "reasonable, probable and plausible" standard came from; other witnesses indicated that a different standard might apply; and meeting minutes from a Panel meeting reviewed by OSC revealed a debate among Panel members about whether or not explanations for data disparities provided by NJSP need to be supported by data at all.

motorists. Yet, OLEPS did nothing to ensure that NJSP addressed them when it was presented with the same data years earlier.[19]

2. OLEPS has been persistently unable to obtain explanations from NJSP about data trends and fails to understand its role in remedying those trends.

In December 2021, OLEPS issued an 85-page memorandum identifying five unexplained law enforcement activity patterns reflecting disparities across racial and ethnic groups in the motor vehicle stop data over an approximately ten-year period. The data appeared to show disparate treatment of Black and Hispanic drivers in discretionary (i.e., no warrant) post-stop activity, in stops involving arrests with no charge, in stops resulting in a summons, in stops in which drivers-only are asked to exit the vehicle, and stops resulting in no enforcement. According to the memorandum, OLEPS had repeatedly requested any "organizational, environmental, or contextual" information to explain these problematic trends and, yet, the memorandum plainly states that, "[m]ost times," NJSP "provides little or limited responses to [OLEPS] concerning our questions." In other words, the internal OLEPS memorandum demonstrated that the issue was not just that NJSP failed to document its responses to OLEPS's questions in writing, it is that NJSP consistently failed to respond at all. Some of the issues raised in the memorandum were similar to the issues later raised in the Ross Report.

Additionally, a former special investigator for OLEPS who oversaw the Analytic Unit told OSC that during her time with OLEPS (2012 to 2021), the Panel never reached the "remedy stage" of addressing the disparities reflected in the data, and she was unclear what OLEPS's role would have been if they had. Similarly, she suggested that her role as part of the RACG process was limited to identifying patterns in the data and asking questions about it—not to evaluate whether there was "racial profiling," which she understood to be a legal conclusion and outside of her purview as a special investigator. The former OLEPS Director echoed this view and did not recall any changes in NJSP's policies resulting from the dozens of Panel discussions during her 12-year tenure as director (2011 to 2023). This view is surprising because, as discussed above, OLEPS has the ability to "exercise the Attorney General's constitutional, statutory and common law authority to act in the public interest."

In its written response to OSC's findings, NJSP stated its Motor Vehicle Stop Data reports have grown in length from "less than 200 pages" to "nearly 700 pages" as a "direct result of questions posed by OLEPS and the continued learning and analysis of the information." While the reports are certainly longer, there is compelling evidence that NJSP failed to provide satisfactory answers to OLEPS regarding ongoing problematic trends and the December 2021 OLEPS memorandum makes clear that any additional information included in the reports provided to OLEPS by NJSP was insufficient.

NJSP also emphasized that, throughout years, it has received many positive comments by Panel meeting attendees who filled out feedback forms after the meetings had concluded. The feedback forms requested ratings in certain areas and included open-ended questions such as

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[19] The Attorney General's recently announced pilot program to Reduce Racial and Ethnic Disparities in Motor Vehicle Enforcement Actions Taken by New Jersey State Police is an example of a proactive response.

"What section(s) of the Task 50 Report do you find most useful and/or informative? Why?" and "How can our next meeting be more productive?"[20] The feedback forms reflected a range of ratings from excellent to poor and included positive, neutral, and negative comments. Some of feedback highlighted by NJSP as significant was provided by the former OLEPS director in 2021, who wrote, "This was one of the most productive and informative RACGs that I have attended. The additional analysis presented (for the first time) provides valuable insight of the trends and data. I look forward to continued conversation." In another example, an OPIA representative commented in 2020 that "New sections were very helpful." There were also comments in 2020 from the OPIA representative expressing that, to make the Panel meeting more productive, NJSP should "drill down in areas that show racial differences to see if the data explains the numbers," and one from an OLEPS representative expressing that an "organization risk-related topic" they would like to see addressed by a future risk Panel was "Trend-discussion – why do patterns persist, what ways have patterns been examined."

It appears that NJSP may have heavily relied on certain comments that it received on these Panel meeting feedback forms as strong evidence that it had been fully responsive to OLEPS's questions. But as noted above, when the more positive comments are considered in conjunction with a substantive review of the underlying Panel meeting minutes and the information gleaned from witness interviews and OLEPS's internal documents, NJSP should not have been left with that impression. In light of this clear disconnect, NJSP and OLEPS should consider the purpose of the feedback forms and whether they are an appropriate mechanism to evaluate the efficacy of the Panel meetings.

3. OLEPS's oversight of the RACG and NJSP has been ineffective and has not provided the day-to-day objective check that it was intended to provide.

The persistent inability of OLEPS to push for adequate explanations from NJSP about data disparities appears to stem, at least in part, from a relationship that compromised OLEPS's ability to be as effective as it should be.

Documents reflect that for certain observed data trends, OLEPS stopped inquiring about them at the Panel meetings due to the "unavailability of information regarding [these trends] in previous [Panel] meetings." When asked about this in an interview, the then-special investigator for OLEPS stated that she "got tired of being told 'I don't know'" so she stopped asking certain questions for which NJSP never had answers. When OSC asked the former OLEPS Director about this, the former Director noted that it was the then-special investigator's decision not to pursue these questions at the meeting. Regardless of who should have pursued these questions, OLEPS leadership failed to demand and obtain from NJSP satisfactory responses for over a decade.

Statements made to OSC by the then-OLEPS Director, as well as numerous documents, suggest that OLEPS's role has evolved from one of oversight over NJSP to collaborator with NJSP. In the Panel meeting minutes from September 2021, the Director touted that OLEPS and NJSP are "accomplishing the same goal of uncovering any trends in the data and looking to see if there are any factors that help to explain those trends." OSC was advised that the collaborative relationship with NJSP was key to its ability to obtain even basic information from NJSP. Multiple individuals

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[20] Some of the phrasing of the questions posed on the feedback forms changed over the years, but the general content remained the same.

explained that, at times, OLEPS's ability to obtain relevant information was dependent on NJSP leadership. Reportedly, sometimes the major in charge of the MAPPS Unit, could say, "I will not provide [you] anything" or would ignore concerns from OLEPS when additional information was needed. It was similarly explained that the productivity of a RACG meeting was dependent on the cooperation of the commander of the troop being reviewed for the specific reporting period.[21]

In an interview, the former OLEPS Director sought to justify NJSP's persistent inability to answer questions posed about data trends, some of which had been raised over ten times in a similar form over a five-year period, by insisting repeatedly that NJSP's lack of answers to questions raised by OLEPS is partly due to data being "fluid" and the RACG process being "ongoing." The minutes from the Panel meeting for October 2020 reflect that the then-Director advised that the RACG analysts "should not feel compelled to answer every question" because "the questions posed in the memos are ongoing."[22]

Given the circumstances, the Attorney General should adopt a policy that makes clear to NJSP that it is unacceptable to decline to provide information to OLEPS given its statutory role and responsibility, and equally unacceptable for OLEPS to abdicate its responsibility to provide robust oversight by accommodating the whims of NJSP leadership to accomplish partial goals.

In its written response to OSC's findings, OLEPS indicated that the Attorney General agrees that "it is not acceptable for NJSP to decline to provide information to OLEPS" and will take steps to ensure that there is adequate cooperation. OLEPS further stated that it has had a change in leadership and that OLEPS's new leadership "has recently and independently identified, and intends to address, several of the same items OSC identified" in this annual performance review and is "committed to understanding more fully the underlying basis for these [data] trends." That being said, OLEPS maintains that it has "fulfilled its statutory mandate" to date.

OLEPS also noted in its written response that the information OSC has relied upon in this review is "out of date." Notably, OSC requested more recent information about any changes to OLEPS's processes due to the publication of the Ross Report, but OSC was denied that information. OLEPS's new leadership has recently indicated a willingness for greater cooperation going forward, but there is much work to be done in this regard.

C. System-Wide Failures of the Flex System Caused Years of Inaccurate Data, Compounding Problems

During this review, OSC separately learned that NJSP had been experiencing significant system-wide data collection issues with its new software records management system (CAD/RMS), Motorola Solutions' Spillman Flex Software Suite (Flex), for over two years. The issues with the Flex system were so serious that they hindered NJSP's ability to capture motor vehicle stop data

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[21] In response to OSC's findings, which are based on documentary evidence and witness interviews, NJSP stated that "NJSP and the panel chair have never blocked or discouraged OLEPS from viewing any material."

[22] The former Director suggested in the interview that the meeting minutes from the Panel's meetings might not be entirely accurate which, again, underscores that better documentation of this process is necessary to allow for oversight.

as required under the Act in several ways and, in turn, further frustrated the RACG process from mid-2021 through the present. None of this was adequately reported to the public.

1. **Flex impacted NJSP's ability to collect accurate motor vehicle stop data and, in turn, the aggregate data utilized by the RACG.**

On June 8, 2021, NJSP made a Division-wide transition from its previous CAD/RMS software system used for computer aided dispatching and records management and officially launched the Flex system, which Motorola characterized as a "fully integrated . . . public safety software solution" for CAD, mobile, and records management.[23] Flex system users immediately began reporting an array of problems accessing and operating the new system. NJSP's MAPPS Unit also began noticing irregularities in the data collected from motor vehicle stops immediately after the switch to Flex. However, NJSP did not disclose the serious and ongoing data issues to OSC until early 2023, by which time NJSP was already proceeding with plans to revert to its prior software system. OSC was advised that the transition back to the CAD/RMS system was expected to be complete by the end of 2023, but was not provided a specific date for completion.

OSC uncovered in this review that Flex, at times, failed to capture accurate data on a drivers' race or ethnicity and gender, leading to an increased number of stops with drivers' race or gender listed as "unknown" and significantly elevated data error rates that persisted for months. Other times, Flex failed to record the reason for a stop, another mandatory data category under the Act. The system also produced a number of "orphaned" motor vehicle summonses that were not associated with a corresponding stop and its demographics data. Flex further incorrectly assigned data collected during a trooper's overtime shifts to their primary unit assignment, which affected the accuracy of each troop's demographics totals. The increased error rate for various data categories had a cascading impact on several policies and procedures codified under the Act, including resulting in a period for which data could not be used to generate accurate reviews for individual trooper misconduct complaint investigations.

The impact was so profound that, for example, in reviewing data from just a one-month period in 2022, OLEPS found that, of the more than 70,000 unique stops conducted by NJSP, over 5,000 were blank for "Reason for Stop." The data for "Perceived Race" and "Perceived Gender" contained many atypical responses with over 3,000 incidents in each category listed as simply "blank." The date of birth captured in many instances could not have been correct with over 100 incidents listing a date of birth of January 1, 1900. In addition, among other issues identified by OLEPS, Flex system "test" cases could not be separated from the actual motor vehicle stop data and this impacted the aggregate data. Extrapolating these estimates over a two-year period, the aggregate data regarding hundreds of thousands of motor vehicle stops was severely impacted by the Flex systems failures. And the RACG will likely continue to encounter difficulties this year in performing its important analysis of data from 2023 that may not be "clean" or "usable," as it was collected before NJSP finally reverted back to the prior system.

These Flex system issues also further impacted OLEPS's reporting obligations under the Act. OSC previously recommended in its Sixth Periodic Review in 2020 that OLEPS reduce the delay between the date of period reviewed and the publication of its relevant reports to allow for any

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[23] Among other uses, CAD/RMS software provides road troopers with real-time access to pertinent information during motor vehicle stops.

"problems identified in the reports" to be remedied "without the passage of several years during which the problem could worsen." Since then, OLEPS did publish the New Jersey State Police - Traffic Stop Data Dashboard, which replaced the aggregate data reports. However, the dashboard is only current through May 2021, so it does not report on data collected during the Flex system's failure. To be clear, OLEPS's more recent reporting deficiencies are not solely a result of the Flex system's failure. OLEPS's most recent oversight report analyzed data from 2017 and its most recent aggregate misconduct report covered 2019. This means that there are multiple years for which OLEPS has been unable to provide the required transparency.

2. The RACG continued to analyze Flex data while simultaneously recognizing it to be inaccurate, and OLEPS shifted its efforts to documenting the full extent of the Flex problems.

Even though the Flex data was corrupted, the Panel continued to review quarterly reports analyzing motor vehicle stop data by troop. The RACG issued these reports during the period however with a disclaimer that, due to ongoing issues with the system, "the motor vehicle stop values for the current reporting period are an approximation. It is impossible to quantify exactly how many stops are missing from the motor vehicle stop data."[24] These RACG reports document apparent trends in motor vehicle stops by driver race/ethnicity but concede "the true increase or decrease in the race/ethnicity of the driver is unknown because FLEX problems have affected the Race/Ethnicity data."

Meanwhile, OLEPS's focus shifted to documenting the nature and extent of the Flex system's data collection issues. OLEPS's memoranda from this period note that, although NJSP was working with Motorola to address Flex issues, "as State Police recognizes, continuing data issues and faulty functionality of the system results in the inability to accurately conduct necessary oversight of trooper activity on the roadway." OLEPS concurred with NJSP's conclusion "that given the issues involving its driver race/ethnicity data, in addition to issues with stop volume overall, analyses of differences by race/ethnicity will not be accurate."

According to the Panel Chair, NJSP has now transitioned back to the previous CAD/RMS software system. However, the issue with this platform becoming obsolete was not resolved and it is unclear what system will take its place in the future. OSC strongly recommends greater transparency regarding these transitions going forward considering the serious impact that the Flex system had on NJSP's ability to collect data required under the Act for several years and OLEPS's ability to directly access the data, as required by the Act, in addition to the many other concerns it created from the individual trooper to Division level.[25]

OSC also strongly recommends greater transparency with the public about the full scope and impact of all Flex system failures. The available public information about the "transition[] to a new records retention system, from CAD and RMS to FLEX," was that it "resulted in program issues

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[24] Since RACG reports typically analyze one year's worth of data, the RACG reporting on data collected from October 1, 2020 to September 30, 2021 included approximately three months of data collected post-Flex, and the first disclaimer.

[25] In response to OSC's findings, OLEPS advised that it is in the process of "engaging a subject matter expert to assist in procuring for NJSP an effectively functioning CAD/RMS system which will greatly improve NJSP operations and OLEPS oversight capabilities."

that required modification," but those issues were being "remediat[ed]" and "the next update" would be forthcoming "but may appear different."[26] This information can be found on the State Police Traffic Stop Dashboard, undated and buried in the "notes" to the "Definitions and Data Explanations" tab. There are many stakeholders who rely on this information. NJSP should provide as much information to the public about this as possible.

V.   Corrective Action Plan

To ensure that compliance efforts are improved, in accordance with N.J.S.A. 52:15C-11 and N.J.S.A. 52:17B-236, OSC directs NJSP and OLEPS to submit a corrective action plan to OSC within the next 90 days.[27] In view of the findings in this report, that plan should address the following elements:

A. The adoption of a publicly available policy, approved by the Attorney General, which provides an operational definition of unacceptable discrimination in policing that includes implicit bias. This definition should then be used by NJSP and OLEPS in the proactive risk management process contemplated by current policies.

B. The adoption of one or more SOPs, approved by the Attorney General, that:

1. provides processes for identifying and responding to data disparities in encounters in which racial and ethnic minority motorists may be, and historically have been, disproportionally impacted;

2. provides a minimum standard or threshold that data must meet or exceed before being accepted by NJSP or OLEPS as being not discriminatory or otherwise problematic;

3. requires that any and all race- and ethnicity-neutral and otherwise non-discriminatory explanations for data disparities reflecting disparate impact on minority motorists be formally memorialized by both NJSP and OLEPS, and periodically assessed/audited through body-worn camera footage whenever possible. For example, NJSP should review body-worn camera footage to confirm

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[26] NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, State Police Traffic Stop Dashboard, https://sva.lps.nj.gov/SASVisualAnalytics/?reportUri=%2Freports%2Freports%2F58b9e54a-9d9d-4d05-b247-9f368411e32e&sectionIndex=0&sso_guest=true&sas-welcome=false%20 (last visited Mar. 7, 2024) (To access the notes, select the "Definitions and Data and Explanations" tab and scroll down to the last paragraph of the "Notes" section located at the bottom of the webpage).

[27] In its written response to OSC's Corrective Action Plan, NJSP solely stated that the "[NJSP] Superintendent can accept, reject, or alter any recommended action proposed through the risk management process and may direct any necessary executive action." OLEPS responded to the Corrective Action Plan that it "objects to some of the contents" and will "take under advisement certain of the suggestions therein." In particular, OLEPS took issue with Section E of the plan. While OLEPS does not have a statutory obligation to inform OSC of its day-to-day oversight activities, the Legislature has required both OLEPS and NJSP to cooperate with OSC in its performance reviews and audits and that cooperation reasonably includes alerting OSC in a timely manner to any serious systemic failures or breakdowns in oversight, extending over long periods of time, as found in this periodic review.

if Hispanic drivers are, in fact, more likely to commit low or no-discretion violations such as driver's license, registration, and insurance-related violations, and NJSP should review the footage of no enforcement stops to confirm that White drivers are, in fact, not committing similar low or no-discretion violations. (To the extent necessary to accomplish this, NJSP should extend the retention period for body-worn camera footage so it is available for each troop's quarterly review); and

4. requires that, when no acceptable race- or ethnicity-neutral, or otherwise non-discriminatory, explanations for data patterns reflecting adverse treatment of minority motorists are provided by NJSP, implicit bias be considered as possible explanation and remedial measures be taken.

C. The adoption of a policy, approved by the Attorney General, that defines roles and responsibilities of NJSP and OLEPS, both within and outside of the RACG process, to ensure an appropriate arms-length relationship between NJSP and OLEPS which maintains the integrity of OLEPS's oversight.

D. The adoption of a policy, approved by the Attorney General, that OLEPS:

1. memorialize in writing whether it receives explanations from NJSP to its requests for information as part of the RACG process and the content of those explanations; and

2. immediately report in writing to the Attorney General when NJSP fails to cooperate with mandatory directives or requests for information made by OLEPS, or is otherwise uncooperative with OLEPS's oversight efforts.

E. The adoption of a policy, approved by the Attorney General, requiring NJSP and OLEPS to alert OSC of any systemic failures or breakdowns in oversight as soon as practicable.

F. The implementation of formal mechanisms and appropriate staffing to ensure full cooperation by NJSP and OLEPS with OSC's annual performance reviews as contemplated by the plain language of the Act. This includes providing OSC with the same level of access to documents and information that was afforded to the federal monitor under section 118 of the Consent Decree. In other words, in accordance with OSC's statutory authority, when it is deemed necessary by OSC as part of its performance review or audit, OSC should be given:

1. "[F]ull and unrestricted access to all State staff, facilities, and non-privileged documents (including databases) necessary to carry out the duties assigned to the Monitor by this Decree." This includes: "(1) all State Police documents (or portions thereof) concerning compliance with the provisions of this Decree, other than a request for legal advice; and (2) all documents (or portions thereof) prepared by the Office of the Attorney General which contain factual records, factual compilations, or factual analysis concerning compliance with the provisions of this Decree."

2. "In any instance in which the State asserts that a document is privileged, it must provide the United States and the Monitor a log describing the document and the privilege asserted."

The corrective action plan should ensure compliance with these requirements retrospectively, including through a review of OSC's requests for information submitted in 2023 to NJSP and OLEPS.

G. A schedule for OLEPS to meet its statutory bi-annual and semi-annual public reporting obligations and provide transparency regarding its failure to do so to date.

Additionally, NJSP and OLEPS should continue to act with deliberate haste to identify and implement an appropriate data collection system that can meet all NJSP's operational needs and reporting requirements.