

STATE OF NEW JERSEY

OFFICE OF THE STATE COMPTROLLER

A. Matthew Boxer, Comptroller

***SECOND PERIODIC REPORT ON LAW ENFORCEMENT
PROFESSIONAL STANDARDS:***

Review of Internal Affairs and Discipline Processes

at the

Division of New Jersey State Police

and its monitoring by the

Office of Law Enforcement Professional Standards

April 17, 2012

TABLE OF CONTENTS

I. Introduction	1
II. Background	2
III. Scope of Review and Methodology	4
IV. Summary of Findings.....	6
V. Review of Internal Affairs Process	8
A. The Complaint Intake Process	8
B. The Investigation Process	9
VI. Review of Disciplinary Process	17
A. NJSP Adjudication Process	17
B. Role of OLEPS	19
VII. Conclusions and Recommendations.....	23

I. Introduction

Law enforcement activity that is influenced by race has been a continuing issue of national concern over the last two decades. The perception of unequal treatment based on race creates distrust and tension between law enforcement offices and the community, undermining the goals of the criminal justice system and affecting the safety and security of all residents. In New Jersey, racial profiling events that occurred in the 1990s led the State to enter into a Consent Decree with the United States Department of Justice and led to a transformation of New Jersey State Police (“NJSP”) policies and procedures, aimed at eliminating discrimination and bias from law enforcement practices on our roadways.

This report is the second in a series of statutorily required reviews of NJSP and the State’s 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. OSC’s first such report, issued in November 2010, reviewed NJSP’s Training Bureau and evaluated the State’s transition from the dissolution of the Consent Decree. For this second review, OSC evaluated the policies and practices of NJSP’s Office of Professional Standards (“OPS”). OPS is the internal investigative unit of the NJSP responsible for investigating allegations of trooper misconduct and making recommendations with regard to the imposition of trooper discipline. We also evaluated OLEPS with regard to its obligation to review and monitor NJSP misconduct investigations and the imposition of trooper discipline. This review assesses the performance of both of these offices from January 2009 to November 2011.

II. Background

Under the Law Enforcement Professional Standards Act of 2009, N.J.S.A. 52:17B-222 et seq. (the “Act”), the OSC is directed 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. This statute was designed to ensure NJSP’s continued compliance with the reforms initiated under the Consent Decree entered on December 30, 1999, which ended a lawsuit brought by the United States Department of Justice against the State of New Jersey. The lawsuit had alleged racial profiling in the practices and policies of the NJSP. The Consent Decree mandated a number of reforms designed to achieve non-discrimination in NJSP procedures and performance in connection with motor vehicle stops.

To promote compliance with the terms of the Consent Decree, the United States District Court appointed an independent monitoring team. The monitoring team collected and evaluated data on NJSP vehicle stops, post-stop enforcement activities, misconduct investigations, internal discipline, and training, among other compliance measures.

The independent monitoring team filed 16 reports from October 2000 through August 2007, which measured NJSP’s compliance with criteria set forth in the Consent Decree. In the 16th and final report, the independent monitors declared that NJSP had achieved compliance with the Consent Decree. The report noted that NJSP had become “self-monitoring” in its capacity to identify, analyze and remediate problematic law enforcement procedures.

Under the guidance and final approval of the independent monitors, the Attorney General’s Office of State Police Affairs prepared a 17th report, issued in April 2009. This report similarly concluded NJSP was continuing to comply with all requirements established by the Consent Decree. On September 21, 2009, the United States District Court dissolved the Consent Decree.

In 2007, a gubernatorially appointed Advisory Committee on Police Standards recommended, among other things, the creation of a new office to continue the monitoring of NJSP. The Act codified the recommendations of this advisory committee. Specifically, the Act mandated the creation of OLEPS within the State's Department of Law and Public Safety to perform, among other functions, those functions previously performed by the independent monitors. This includes preparing and issuing bi-annual reports on NJSP performance and semi-annual reports of aggregate statistics concerning NJSP enforcement activities. To that end, OLEPS issued reports in April 2010 and August 2011 evaluating NJSP's continued compliance with the Consent Decree. OLEPS also issued the required aggregate data reports in April 2010, December 2010, July 2011 and August 2011.

The Act requires OSC to perform risk-based performance audits and reviews of NJSP and of OLEPS's oversight of NJSP. Reports of OSC's findings and recommendations are to be made to the Legislature, the Governor and the public.

III. Scope of Review and Methodology

Section 15A of the Act 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 second performance review, OSC examined OPS and OLEPS with regard to internal misconduct investigations and the imposition of trooper discipline. We focused our review on matters relating to Tasks 87 and 90 of the Consent Decree. Task 87 required NJSP to “continue to attempt to complete misconduct investigations” within 120 days. Task 90 required NJSP to consider the “nature and scope of the misconduct” as well as the trooper’s prior performance when imposing discipline upon a trooper.

OSC conducted its assessment of OPS and OLEPS for the period covering January 2009 to November 2011. OSC’s methodology included the following:

- Reviewed relevant NJSP rules and regulations, NJSP standard operating procedures (“SOPs”), and OPS’s Internal Investigations Manual.
- Interviewed OPS and OLEPS personnel, a Deputy Director of the State’s Division of Criminal Justice, and the two former members of the independent monitoring team.
- Observed the process by which a complaint of trooper misconduct is handled from intake through investigation and adjudication.
- Reviewed OPS’s internal complaint classification guide and listened to complaints made on the NJSP Complaint Hotline.
- Reviewed a sample of 48 closed misconduct cases from a total of 377 completed investigations classified as misconduct, and reviewed 134 closed cases not classified as misconduct. We judgmentally sampled 16 of the 48 misconduct cases for a more thorough review. We reviewed

all relevant documentation and evidence contained in each of those files, including the audiotaped statements of the complainant, the trooper that was the subject of the complaint, and any witnesses; Motor Vehicle Recorder (“MVR”) videotapes of the incident; prior disciplinary history of the trooper; and the discipline imposed in similar cases.

- Reviewed the monitoring reports issued by OLEPS in April 2010 and August 2011, and examined supporting documents concerning various aspects of those reports.

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

IV. Summary of Findings

Overall, we found that both NJSP and OLEPS are effectively performing their respective duties with regard to the internal affairs process and the disciplinary process. However, we found several issues that both offices should promptly address to improve those processes. These issues include:

- OPS investigators failed to obtain written supervisory approval as required for investigations that OPS was unable to complete in 120 days.
- The Division of Criminal Justice has not allocated sufficient legal resources to review NJSP misconduct cases in a timely manner.
- OLEPS does not document responsive communications from NJSP regarding OLEPS's audit findings and recommendations, which resulted in miscommunication.
- OLEPS's staff was mistaken regarding applicable time limits for completing misconduct investigations and failed to document the reason(s) for delays.
- NJSP supervisory staff frequently do not provide feedback to OPS investigators about deficiencies in or changes made to findings and conclusions in draft investigation reports.
- NJSP has not adopted disciplinary guidelines to help ensure that discipline being imposed is fair, consistent and transparent.
- OPS has not set standards or guidelines for the entry of information into its internal investigation tracking software, limiting the utility of the software.
- Although NJSP staff disciplinary recommendations are monitored, OLEPS does not similarly monitor the final discipline imposed by NJSP to ensure that it is "appropriate and proportionate."

- OLEPS attorneys are prosecuting trooper misconduct cases while OLEPS simultaneously acts as the impartial monitor of final discipline imposed, potentially affecting the perception of its independence.

V. Review of Internal Affairs Process

A. The Complaint Intake Process

We began our review with OPS's Intake Unit. The Intake Unit receives complaints of trooper misconduct either in writing or through the NJSP Complaint Hotline. Pursuant to NJSP SOP B.10, the Intake Unit classifies complaints it receives into one of the following categories: (1) misconduct; (2) performance; or (3) administratively closed. A unit supervisor approves all classifications.

"Misconduct" classifications involve allegations of, for example: (1) racial profiling; (2) other unlawful disparate treatment; (3) false arrest; or (4) excessive use of force. The Intake Unit immediately forwards all complaints that include allegations of misconduct to OPS's Investigation Unit for prompt commencement of an investigation. OPS also notifies the subject trooper's immediate supervisor about the complaint to permit early intervention, if necessary.

"Performance" complaints allege less serious inappropriate conduct. Often a trooper's superior officer, as opposed to a member of the public, initiates a performance complaint. The Intake Unit classifies a complaint as a performance complaint when the preliminary evidence indicates that a trooper may have violated an internal NJSP rule or regulation. Examples include allegations of a lost NJSP badge, or a trooper's uniform not meeting NJSP standards. An Intake Unit supervisor approves each performance classification and forwards the complaint to the involved trooper's supervisor for resolution.

If the initial evidence dispositively reveals that a trooper did not commit a violation, the Intake Unit classifies the matter as "administratively closed." For example, the unit will use this classification for allegations that a trooper engaged in improper conduct at a specific time and place, but the evidence conclusively demonstrates that the trooper was elsewhere at that time.

The table below sets forth the number of complaints received and classified by the Intake Unit during the period of January 2009 to June 2011:

<u>Classification</u>	<u>2009</u>	<u>2010</u>	<u>2011 (through June)</u>
Misconduct	295	290	117
Performance	183	164	46
Administratively Closed	373	376	186
Total	851	830	349

We observed the operation of OPS’s intake process and found it to be appropriately designed and administered. We also reviewed a randomly selected sample of completed OPS cases. Specifically, we reviewed 94 cases that OPS had classified as administratively closed, 40 cases that had been classified as performance complaints and 48 cases that had been classified as misconduct complaints. All of the cases appeared to have been classified appropriately and contained all required documentation. Overall, we found that members of the Intake Unit discharged their duties in accordance with SOP B.10 and the relevant sections of OPS’s Internal Investigations Manual.

B. The Investigation Process

We also observed and reviewed OPS’s process for investigating misconduct complaints. An investigation begins when an investigator receives a Reportable Incident Form along with a copy of the allegation(s), a report of relevant police radio transmissions, and the patrol log maintained by the subject trooper, if applicable. The investigator also receives any relevant MVR videotapes of the incident and any other relevant documents and reports.

If a complaint involves an allegation of racial profiling, the assigned investigator is to request additional information in the form of a Management Awareness and Personal Performance System (“MAPPS”) review for the subject trooper. The MAPPS review is a detailed analysis of a trooper’s motor vehicle stop activities, which is used to identify patterns with regard to the race

of individuals the trooper has stopped over time. This review becomes part of the evidence the investigator is to consider when developing findings and conclusions.

The investigator informs the complainant of the investigation and asks the complainant to provide a statement about the circumstances surrounding the complaint. If the complainant cannot be reached or initially declines to be interviewed, the investigator will send a letter to the complainant advising that an investigation has begun and requesting that he or she contact the investigator within ten days to schedule an interview. An investigation will continue to its conclusion even if the complainant declines to provide a statement. After reviewing all relevant documentary evidence, the investigator is to conduct in-person interviews of any fact witnesses. The interviews are recorded to preserve the statements made and to aid in any later review of the matter by members of OLEPS and the Division of Criminal Justice.

After the investigator has collected all relevant evidence, he or she completes an investigation report appending all pertinent documentation and forwards it to the Division of Criminal Justice for review for potential criminal charges. If criminal charges are warranted, the administrative investigation is suspended pending the outcome of the criminal proceedings. If criminal charges are not warranted, the case is returned to OPS to continue with the administrative investigation.

When a case is returned to OPS, the investigator will interview the trooper who is the subject of the complaint and will prepare a final investigation report. The report is to include detailed findings and conclusions. Pursuant to SOP B.10, the investigator must conclude one of the following with regard to the allegation(s) in the complaint:

- (1) Substantiated: a preponderance of the evidence shows that the trooper violated federal or state law, or NJSP rules, regulations, SOPs, directives or training.

- (2) Unfounded: a preponderance of the evidence shows that the alleged misconduct did not occur.
- (3) Exonerated: a preponderance of the evidence shows that the alleged conduct did occur, but it did not violate federal or state law, or NJSP rules, regulations, SOPs, directives or training.
- (4) Insufficient Evidence: there is insufficient evidence to determine whether or not the alleged conduct occurred.

The investigator's final report is subject to three levels of supervisory review. At each level, the reviewer can either agree or disagree with some or all of the findings and conclusions, appending his or her comments to the original report. Following the finalization of the investigation report, the matter proceeds to OPS's Adjudication Unit for a recommendation concerning discipline. That adjudication process will be discussed in the next section of this report.

Our review found that in general, members of OPS's Investigative Unit are appropriately performing their duties. We conducted a thorough review of 16 completed misconduct investigations and found that the evidence supported the findings and conclusions in each of the cases. We did, however, identify several issues of concern with regard to the investigation process, which are set forth below:

1. The Timeliness of Misconduct Investigations is Affected by an Insufficient Allocation of Resources at the Division of Criminal Justice

Task 87 of the Consent Decree originally required NJSP to "continue to attempt to complete misconduct investigations within forty-five (45) days after assignment to an investigator." By the third report of the independent monitors, that 45-day time period was changed to 120 days with an agreed upon goal of greater than 94% compliance. NJSP SOP B.10 now reflects that 120-day guideline. The SOP also requires an investigator to obtain written supervisory approval when an investigation exceeds 120 days.

We reviewed our sample of 48 completed misconduct investigations to determine whether OPS has complied with Task 87 as revised. We found that only 10 of the 48 investigations had been completed within 120 days. In addition, for the remaining 38 investigations, the investigators had failed to obtain the required written supervisory approval to exceed 120 days. OPS personnel advised us that as a matter of practice they actually obtain only verbal approval to exceed that time limit and had received that approval for these 38 cases. OPS should cease the practice of obtaining only verbal approval and should follow the requirements of SOP B.10. Such a process would ensure that reason(s) for any delay are documented.

We examined each of the 38 case files in their entirety and found that in each there was documentation demonstrating a reasonable justification for the OPS delay. The most common reasons for delay were that a case was particularly complex or there had been prolonged legal review in the Division of Criminal Justice. We found the latter reason more prevalent. In fact, during our interviews, OPS staff expressed frustration with the lengthy review time at the Division of Criminal Justice. For example, OPS submitted one case to the Division of Criminal Justice on February 16, 2011 and another on April 13, 2011. As of November 2, 2011, both cases were still awaiting further review with the review times having reached 270 days and 210 days respectively.

We thus interviewed the Deputy Director of the Division of Criminal Justice who is responsible for reviewing the misconduct cases. He recognized that the review time had been lengthy in some instances but explained that he is the only attorney reviewing the cases and his other responsibilities affect the amount of time he can devote to the cases.

Timely resolution of complaints enables prompt intervention designed to avoid the recurrence of any misconduct. Equally important, troopers who are the subject of misconduct investigations have an interest in the timely resolution of complaints against them. OPS staff noted in this regard that trooper promotions may be delayed until a complaint has been resolved. The Division of Criminal

Justice should allocate resources to review trooper misconduct cases such that OPS can conclude its investigations in a timely manner as called for by the Consent Decree and NJSP SOPs.

In its response to a draft of this report, OLEPS noted that the Division of Criminal Justice is now implementing new procedures to more efficiently review its trooper misconduct cases.

2. NJSP Supervisory Staff Should Provide Feedback to OPS Investigators

As noted above, three supervisors review each report completed by an OPS investigator. However, NJSP does not have a policy requiring that the supervisors provide feedback to the investigators concerning the report or any changes made by the supervisors to the ultimate conclusions reached in the report. In fact, several OPS investigators advised us that they generally do not receive any such supervisor feedback and that it would be helpful to know whether the reviewers found any deficiencies in the report or made significant changes. Although any such changes are documented in the report itself, from an organizational perspective the supervisors should apprise investigators of deficiencies and talk to them about changes being made to report findings and conclusions.

3. OLEPS's Monitoring of the Internal Affairs Process Requires Additional Documentation

Pursuant to the Act, OLEPS is charged with monitoring the quality and timeliness of NJSP trooper misconduct investigations. OLEPS has documented its findings in its two publicly issued monitoring reports. Overall, we found that OLEPS's reviews have been appropriately thorough. However, as discussed below, we found several shortcomings in the review process, including a failure to document NJSP responses to audit findings and recommendations, and inconsistencies and errors in audit workpapers.

As part of its ongoing monitoring process, OLEPS conducts semi-annual audits of NJSP misconduct investigations. OLEPS reviews approximately 100 completed OPS investigations per audit cycle, including but not limited to all cases involving allegations of racial profiling, disparate treatment, false arrest, excessive use of force, and domestic violence. For each selected investigation, investigators conduct what OLEPS refers to as a “Level I” review to ensure that OPS conducted a “fair and thorough” investigation. If an OLEPS investigator identifies any problematic issues, he or she is to refer the file for a more thorough “Level II” review. In a Level II review, the audit team examines the entire file, including interview statements and MVR tapes. OLEPS reports any problematic issues to OPS as audit findings, which include written recommendations for remedial action.

Although OLEPS records and forwards its recommendations to OPS, it typically does not document or maintain any response from OPS. Instead, typically the OLEPS Director verbally discusses the recommendations with NJSP staff. This practice increases the likelihood of miscommunication between OLEPS and OPS and hinders transparency in connection with the audit process.

We noted, for example, miscommunication regarding an OLEPS recommendation that NJSP should not interview an incarcerated individual about a trooper’s alleged misconduct without obtaining the consent of the individual’s attorney. NJSP showed us its written response to the recommendation, stating that the law does not require NJSP to obtain consent in such situations. However, the response was not part of OLEPS’s file and OLEPS staff was unaware of the response. During our interviews, OLEPS officials informed us they believed NJSP had implemented a policy to obtain such consent, but we found that NJSP has not implemented any such policy. In response to our inquiries, the OLEPS Director advised us that OLEPS will establish a policy to follow-up on and document recommendations made to NJSP.

OLEPS's response to our draft report added to our concerns regarding the potential of miscommunication resulting from a lack of proper documentation. Regarding the consent issue described above, OLEPS contends it never received a written response from NJSP concerning the matter and that NJSP has since followed its recommendation to obtain consent of an incarcerated individual's counsel before interviewing that individual. In contrast, members of NJSP maintain that a written response was sent to OLEPS and that they continue the prior practice as set forth in that response.

We also identified issues concerning OLEPS's review of the timeliness of misconduct investigations. As noted previously, OPS is required to attempt to complete misconduct investigations within 120 days. In our initial interview with OLEPS staff, however, staff provided varying answers as to the time limit they believed applied to misconduct investigations. Specifically, answers included "no time limit" and "45 days," but did not include the 120-day guideline. Because there appeared to be confusion among OLEPS staff, we reviewed the sections of OLEPS's two monitoring reports that evaluated OPS's compliance with the 120-day guideline. In both reports, OLEPS correctly noted the 120-day time period, but stated only in a conclusory manner that OPS had complied with the time limitation for the investigations they reviewed.

To reconcile the discrepancy between OLEPS staff's answers and the language in the monitoring reports, we examined the supporting documentation for the reports. We found that the audit worksheets OLEPS used to track the length of investigations incorrectly stated a 45-day time limit. We further noted that the supporting documents did not include an analysis of the investigation time for each case, which made it difficult to determine what time standard OLEPS staff actually applied and how they reached their conclusions. We asked the OLEPS Director about the seeming discrepancy, and she stated that OLEPS reviewed the investigations according to the 120-day standard. However, we were unable to confirm this from the supporting documents.

In light of the above, we reviewed the audit workpapers and calculated the investigation time for each case to determine how many satisfied the 120-day guideline. We found that OPS completed 70% of the investigations included in the April 2010 report and 55% included in the August 2011 report within 120 days, both well short of the 94% goal. As previously noted, we recognize that there may be reasonable justification for an investigation to exceed 120 days, thereby maintaining compliance with timing requirements. However, OLEPS's audit workpapers did not set forth any justifications for the delays, bringing into question the audit process in this regard.

In its response to our draft report, OLEPS stated that it analyzes the timeliness of misconduct investigations in the same manner as the former independent monitors. We agree that the methodology as stated by OLEPS in its response is appropriate and is consistent with that of the independent monitors, both of whom we interviewed as part of this review. Our concern arises in light of the lack of evidence that, in practice, the appropriate methodology actually was used.

The OLEPS Director should ensure that OLEPS staff is aware that the correct time standard is 120 days, and OLEPS should amend its audit worksheet to reflect this. OLEPS also should add to its worksheet a section in which OLEPS staff may document the reason(s) why an investigation has exceeded 120 days and note whether the delay was justified. In its response to the draft report, OLEPS stated that it will amend its audit worksheet accordingly.

VI. Review of Disciplinary Process

We also reviewed the process by which NJSP imposes discipline upon a trooper who is found to have violated NJSP rules, regulations, SOPs or directives. In addition, we reviewed OLEPS's role in the disciplinary process.

A. NJSP Adjudication Process

Task 90 of the Consent Decree required NJSP to consider the “nature and scope of the misconduct and the information in the [MAPPS system]” when imposing discipline upon a trooper. OPS's Adjudication Unit is responsible for recommending such discipline. We interviewed Adjudication Unit staff to determine whether and how they continue to apply the above standard.

Adjudication Unit staff is instructed to conduct a comprehensive review of the investigative file to determine whether a trooper has committed a violation and whether a preponderance of the evidence can establish the violation in a disciplinary proceeding. Deputy Attorneys General (“DAGs”) from the Department of Law and Public Safety are assigned to OLEPS and represent NJSP in these disciplinary matters. The members of the Adjudication Unit work closely with the assigned DAGs.

Adjudication Unit staff prepares a report for each substantiated case, which includes a statement of the allegations and conclusions, a concise disciplinary history of the subject trooper, detailed information about the trooper from MAPPS, and the discipline imposed upon other troopers for similar misconduct. Unit members use this information to formulate recommended discipline. Under NJSP rules and regulations, only the NJSP Superintendent, as the head of the NJSP, is ultimately authorized to take disciplinary action against a trooper. The Superintendent uses the Adjudication Unit's report in making final disciplinary determinations.

Based on the sample of misconduct files we reviewed, the Adjudication Unit is appropriately considering the “nature and scope of the misconduct and the information in the [MAPPS system]” when proposing discipline. While we found that members of the Adjudication Unit are continuing to discharge their duties consistent with the Consent Decree, we believe that the process to determine appropriate discipline can be improved, as set forth below:

1. NJSP Should Consider Adopting Disciplinary Guidelines

NJSP should consider adopting disciplinary guidelines similar to the approach used by the federal criminal sentencing guidelines. The federal guidelines yield an advisory sentence based upon the specific facts and circumstances of the criminal conduct committed and the defendant’s prior criminal history. Courts factor in mitigating and aggravating circumstances unique to each case and may adjust the baseline punishment upward or downward.

During our interviews with OPS personnel, we asked why NJSP has not adopted such disciplinary guidelines or schedules. OPS responded that each disciplinary matter has its own unique set of facts and circumstances, including each individual trooper’s prior disciplinary history. OPS believes that these fact-specific issues would make it difficult to implement disciplinary guidelines. In its response to our draft report, NJSP similarly expressed concern that implementing disciplinary guidelines would limit the NJSP Superintendent’s statutory discretion in imposing discipline. However, a number of police agencies across the country, including those in Denver, Tucson, and Washington, D.C., have implemented internal disciplinary systems that utilize such guidelines. The federal Department of Defense similarly has adopted such a system for its internal disciplinary process. The different systems used by these agencies allow for the use of discretion and for consideration of a police officer’s prior disciplinary history and other extenuating circumstances when formulating discipline. While we acknowledge that implementing such a system could be challenging, NJSP should consider implementing such guidelines to help ensure that discipline being imposed is fair, consistent,

objective and transparent. We further note that the use of such guidelines would be consistent with the Division of Criminal Justice's recently revised (September 2011) "Internal Affairs Policy and Procedures," which provides that police agencies should include in their rules and regulations "a schedule of possible penalties an officer might receive when discipline is imposed."

2. OPS Should Standardize the Entry of Information into Its Internal Case Tracking Software System

OPS uses proprietary software known as the "IA Pro" software to track the progress of its internal investigations and the discipline imposed upon troopers who commit acts of misconduct. We observed the OPS processes of inputting information into that software and executing searches to retrieve information from the system. OPS typically executes those searches when researching discipline that has been imposed in previous cases for acts of misconduct comparable to the misconduct under review. Through our observations and interviews with OPS personnel, we found that these searches are limited in their effectiveness due to different OPS personnel characterizing similar acts of misconduct in different ways. For example, information concerning a trooper's failure to turn on an MVR in a timely manner could be described in the software system as a "Failure to follow MVR procedures" or as "Questionable conduct on duty." As such, someone conducting a search of the system might overlook comparable misconduct cases depending on how the search is phrased. In order to maximize the utility of the IA Pro software, OPS should consider developing standards and guides for the inputting of case information into the system.

B. Role of OLEPS

We also reviewed OLEPS's involvement in the trooper disciplinary process. As part of its responsibilities under the Act, OLEPS is authorized to review the administrative discipline imposed upon troopers to determine whether the discipline was "appropriate and proportionate." During the course of our review, we found two areas of concern with regard to OLEPS's monitoring of trooper discipline:

1. OLEPS Should Monitor the Final Discipline Imposed by the NJSP Superintendent

Trooper disciplinary proceedings are adversarial in nature and ultimately are prosecuted through a disciplinary hearing. The NJSP Superintendent, as the head of NJSP, may personally preside over the hearing or may designate an officer of higher rank than the trooper being charged to preside. Alternatively, disciplinary matters can be transferred to the Office of Administrative Law (“OAL”) for such a hearing. Although the Superintendent’s designee or the OAL judge are authorized to make recommendations with regard to discipline to be imposed upon a trooper, pursuant to NJSP rules and regulations only the Superintendent is authorized to render a final decision imposing discipline. The Superintendent is required to render the final disciplinary decision within 45 days of the conclusion of the disciplinary hearing.

We interviewed the OLEPS Director and other members of OLEPS with regard to how they monitor the imposition of trooper discipline. As referenced earlier, the Department of Law and Public Safety has assigned two DAGs to OLEPS to provide legal representation to NJSP in administrative disciplinary proceedings involving charges brought against troopers. According to the OLEPS Director, those DAGs ensure that the facts of a particular matter demonstrate that discipline is warranted and that the discipline being sought is appropriate. We found that these DAGs are appropriately reviewing the proposed discipline at this stage of the proceedings to ensure that it is “appropriate and proportionate.”

OLEPS does not, however, similarly review the Superintendent’s final decision on discipline. In order to completely fulfill its oversight responsibilities, OLEPS should do so. OLEPS stated in response to our draft report that it does not have the specific statutory authority to review the Superintendent’s final decision. OLEPS’s enabling statute does, however, provide that OLEPS has the authority to “review all Division of State Police internal affairs investigations and dispositions, including . . . whether any discipline imposed was appropriate and proportionate, and make recommendations to the superintendent and the

Attorney General for appropriate remedial action.” N.J.S.A. 52:17B-228d(5). During the course of our review period, the Superintendent had increased the severity of discipline recommended by an OAL judge on at least two occasions. Although we found those adjustments appropriate, because OLEPS does not review the Superintendent’s final decisions it is not able to ensure that the discipline ultimately being imposed is “appropriate and proportionate.” For these reasons, OLEPS should monitor the final discipline imposed by the Superintendent.

2. The Prosecution of Trooper Disciplinary Cases Should Be Transferred to the Division of Law

OLEPS’s statutory duties primarily focus on auditing, reviewing, evaluating, and making recommendations with regard to NJSP policies and practices to ensure continued compliance with matters covered by the Consent Decree. For example, as noted above, under the Act OLEPS is responsible for reviewing trooper discipline to ensure that it is “appropriate and proportionate.” However, OLEPS DAGs also represent NJSP as its counsel in these disciplinary matters and are intimately involved in the process of proposing specific disciplinary measures. This results in OLEPS reviewing NJSP conduct that its own DAGs have been personally involved in shaping.

In response to our questions about this issue, the OLEPS Director stated that the OLEPS DAGs do not discuss their disciplinary matters with members of the OLEPS audit team. At the time of our interview, OLEPS did not have a formal written policy concerning this issue. However, shortly after the interview, the OLEPS Director forwarded to us a draft written policy addressing this matter.

Based on our review, we do not believe that OLEPS’s practices in this regard are sufficient. OLEPS’s significant statutory role requires a level of independence that is unassailable both in fact and from a perception standpoint. We question whether OLEPS can maintain its dual role of litigation advocate in disciplinary matters and impartial monitor of discipline imposed without adversely affecting, at minimum, the perception of its independence. We

recognize that the Attorney General has the statutory authority to assign OLEPS to perform other duties not expressly set forth in the Act, such as the prosecution of trooper disciplinary cases. For the reasons set forth above, however, we recommend that the Attorney General reconsider having OLEPS DAGs prosecute these cases.

DAGs from the Division of Law, which is a separate division within the Department of Law and Public Safety, routinely represent state agencies in administrative hearings. In order to ensure OLEPS's independence and objectivity in its critical monitoring role, we recommend that attorneys from the Division of Law handle the task of litigating trooper disciplinary matters on behalf of NJSP.

VII. Conclusions and Recommendations

NJSP and OLEPS continue to achieve compliance with the terms of the Consent Decree with regard to their internal affairs and disciplinary processes. Both entities can further improve their compliance efforts by implementing the following recommendations:

- OPS should adhere to SOP B.10 and obtain written supervisory approval for investigations exceeding 120 days.
- The Division of Criminal Justice should consider devoting resources to improve its review time concerning NJSP misconduct cases.
- OLEPS should document its follow-up communications with NJSP regarding OLEPS's audit findings and recommendations.
- OLEPS should amend its audit worksheet to reference the 120-day time period for the completion of an NJSP misconduct investigation, and to include a section to document and assess any reasons why an investigation has exceeded 120 days.
- NJSP supervisory staff should provide feedback to OPS investigators about any deficiencies in or changes made to investigation reports.
- NJSP should consider adopting disciplinary guidelines.
- OPS personnel should standardize and set forth guidelines concerning the entry of information into the "IA Pro" software system.
- OLEPS should monitor the final discipline imposed by the NJSP Superintendent to ensure that it is "appropriate and proportionate."
- The Department of Law and Public Safety should transfer the function of prosecuting trooper misconduct cases to the Division of Law.