

CHAPTER 121

AN ACT concerning the codification of certain recommendations of the Governor's Advisory Committee on Police Standards and supplementing Title 52 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.52:17B-222 Short title.

1. This act shall be known and may be cited as the "Law Enforcement Professional Standards Act of 2009."

C.52:17B-223 Findings, declarations relative to law enforcement professional standards.

2. The Legislature finds and declares:

a. The citizens of the State of New Jersey are entitled to be protected and served by law enforcement professionals who conduct themselves in accordance with the highest standards of integrity, proficiency, and accountability.

b. In December 1999, the State of New Jersey entered into a consent decree with the Civil Rights Division of the United States Department of Justice, No. 99-5970 (MLC).

c. The Governor's Advisory Committee on Police Standards, established pursuant to Executive Order No. 29, issued by Governor Corzine on August 23, 2006, conducted a thorough examination of the policies and practices of the State Police and its compliance with the terms of the consent decree and of the Attorney General's Office's oversight and direction. The Advisory Committee on Police Standards concluded that the State Police, the Office of State Police Affairs, and the Attorney General had worked cooperatively to rebuild public trust through significant revisions of State Police standing operating procedures, by changing the relationship between the Attorney General's Office and the State Police, and through the development of innovative management techniques. Based upon these findings, the Advisory Committee recommended that the State join in a motion with the United States Department of Justice to terminate the consent decree, subject to the condition that the significant reforms accomplished during the term of the consent decree would be institutionalized, and, as appropriate, codified by statute.

d. The objective monitoring and independent oversight functions performed by the independent monitoring team appointed by the United States District Court pursuant to the consent decree have helped to promote and support the vigorous, lawful, and non-discriminatory implementation of law enforcement practices and procedures. In recognition of the strong public interest in perpetuating the quality and standards established under the consent decree, it is necessary and appropriate to maintain an office to assume the functions that had been performed by the independent monitoring team under the consent decree and to perform other duties in support of county and municipal law enforcement agencies.

e. Many of the reforms accomplished under the consent decree have been codified in rules, regulations, standing operating procedures or operations instructions promulgated by the superintendent and approved by the independent monitoring team appointed by the United States District Court. However, the need for flexibility to account for developments in constitutional law, the advent of new technologies, and the development of new best practices in policing, makes it impracticable and inappropriate to codify all consent decree-related rules, regulations, standing operating procedures and operations instructions in statutory law. Rather, the reforms achieved under the consent decree can best be institutionalized by mandating that any future changes to State Police rules, regulations, standing operating procedures and operations instructions relating to the consent decree are approved in writing by the Attorney General prior to issuance or adoption by the superintendent, and by ensuring the issuance or modification of any rule, regulation, standing

operating procedure or operations instruction deemed necessary to maintain or enhance the practices of the Division of State Police on matters pertaining to any applicable non-discrimination policy established by the Attorney General; the law of arrest, search and seizure; and the documentation of motor vehicle stops and law enforcement activities occurring during the course of motor vehicle stops.

C.52:17B-224 Definitions relative to law enforcement professional standards.

3. As used in this act:

“Consent decree” means the consent decree the State of New Jersey entered into with the United States Department of Justice, Civil Rights Division, in December 1999.

“Director” means the Director of the Office of Law Enforcement Professional Standards.

“Mobile video recording system” means any device or system installed or used in a police vehicle that electronically records visual images depicting activities that take place during a motor vehicle stop or other law enforcement action.

“Office” means the Office of Law Enforcement Professional Standards established pursuant to section 4 of P.L.2009, c.121 (C.52:17B-225).

“Personnel performance information system” means a computerized system that collects, uses and analyzes information relating to motor vehicle stops and law enforcement actions taken during the course of those stops; allegations of misconduct and investigations of those allegations; and any other information that is used to assist supervisors to evaluate the performance of State Police members and their compliance with applicable laws, rules, regulations and standing operating procedures. This term shall include, but is not limited to, the State Police Management Awareness and Personnel Performance System in operation on the effective date of this act and any successor system.

C.52:17B-225 Office of Law Enforcement Professional Standards.

4. a. There is created in the Department of Law and Public Safety an Office of Law Enforcement Professional Standards which shall perform such administrative, investigative, policy and training oversight, and monitoring functions, as the Attorney General shall direct, to assure and maintain the integrity of law enforcement activities performed by Division of State Police personnel, and to assist and provide guidance to other law enforcement entities Statewide.

b. In carrying out its duties and responsibilities, the office, and its constituent organizational units, shall exercise the Attorney General’s constitutional, statutory and common law authority to act in the public interest, and shall have the authority to attend generally to legal matters in which the State or any of its officers or instrumentalities have an interest, and to execute the Attorney General’s powers under the “Department of Law and Public Safety Act of 1948,” P.L.1948, c.439 (C.52:17B-1 et seq.).

c. Nothing in this section shall be construed to limit the authority of the superintendent under Title 53 of the Revised Statutes or the authority of the Attorney General.

C.52:17B-226 Appointment of director.

5. The Attorney General shall appoint an individual qualified by education, experience, or professional background in the fields of law, investigation, criminal practice, and administration to serve as Director of the Office of Law Enforcement Professional Standards. The director shall operate under the authority and direct supervision of the Attorney General, and shall serve at the pleasure of the Attorney General.

C.52:17B-227 Organization of office.

6. Subject to the provisions of P.L.2009, c.121 (C.52:17B-222 et seq.), the director may, with the approval of the Attorney General, organize the work of the office into such bureaus and other organizational units as may be necessary for its efficient and effective operation. The director may delegate to employees in the office, and its constituent organizational units, such powers as are authorized under this act that the director deems appropriate, to be exercised subject to the supervision and control of the director. The Attorney General may assign to the office such employees of the Department of Law and Public Safety as may be necessary to assist the director in the performance of his duties. The office shall be authorized to call upon the expertise and assistance of every division, agency, office, bureau and unit within the Department of Law and Public Safety in order to carry out its mission. Each division, agency, office, bureau and unit within the Department of Law and Public Safety is hereby required, to the extent not inconsistent with any other law, to cooperate with the office and to provide such assistance the office may require to accomplish the purposes of P.L.2009, c.121 (C.52:17B-222 et seq.). It shall be the duty of all law enforcement agencies operating under the authority of the law of the State of New Jersey to cooperate with and aid the office in the performance of its duties.

C.52:17B-228 Duties, functions of office.

7. a. The office shall be authorized to perform the duties and functions previously performed under the consent decree by the independent monitors and the Office of State Police Affairs, which general and specific duties and functions are codified in this act, and such other duties and functions as may otherwise be established or assigned by the Attorney General.

b. The office shall be authorized to conduct operations audits and independent analyses of data, as necessary and appropriate, to identify any potential disparity in enforcement and systemic problems that may exist that affect the integrity of motor vehicle stops and post-stop enforcement actions, supervision of patrol activities, training provided to Division of State Police members assigned to patrol duties, investigations of alleged misconduct, and any other matters that may affect the integrity of the Division of State Police, and shall make recommendations for appropriate actions by the superintendent or the Attorney General to remedy any identified problems.

c. The office shall have timely access to all data stored in the personnel performance information system maintained by the Division of State Police and any other records or data that are deemed necessary by the director to conduct independent analyses and to perform the functions authorized by P.L.2009, c.121 (C.52:17B-222 et seq.). Nothing herein shall be deemed to require the disclosure of records or data in violation of any constitutional or statutory privacy protections or any collectively bargained rights.

d. The office shall have specific authority to perform the following functions:

(1) review the substance, procedures and implementation related to Division of State Police policies concerning motor vehicle stops and post-stop enforcement actions, supervision of patrol activities, training provided to State Police members assigned to patrol duties, and the conduct of investigations of alleged misconduct and other internal affairs matters by the Division of State Police;

(2) monitor, review and evaluate the quality and timeliness of the Division of State Police's conduct of investigations of alleged misconduct, disciplinary actions and

interventions, supervisory actions, personnel performance information system data and reports, consent search forms and reports, non-consensual search and drug detection canine reports, motor vehicle stop reports and logs, mobile video recording system tapes, and supervisory reviews;

(3) approve the curricula, prescribe trainer qualifications, and review the training of State Police troopers and trooper candidates on cultural awareness, law enforcement ethics and leadership, constitutional law pertaining to arrest, search and seizure, equal protection, and other relevant law enforcement issues the director deems necessary or appropriate to effectuate the purposes of this act;

(4) monitor, evaluate, require, and provide assistance or direction in effectuating any modifications to the design, implementation or use of the personnel performance information system, any mobile video recording system, any computer-aided dispatch system, or other system that records data concerning traffic stops and post-stop enforcement actions, used or proposed for use by the Division of State Police; and

(5) review all Division of State Police internal affairs investigations and dispositions, including any decision by the Division of State Police not to refer a complaint, from a citizen or any other source, to the office, or its successor, to ascertain whether the Division of State Police has complied with applicable standing operating procedures, whether the outcomes of those investigations are supported by the evidence, whether any discipline imposed was appropriate and proportionate, and make recommendations to the superintendent and the Attorney General for appropriate remedial action.

C.52:17B-229 Preparation of reports by office.

8. On the first day of the sixth month after the issuance of the final report by the independent monitoring team appointed by the United States District Court pursuant to the consent decree, the office shall prepare a report that evaluates the Division of State Police's compliance with relevant performance standards and procedures and that is comparable substantively to the independent monitoring team's report. The initial report prepared by the office pursuant to this section shall evaluate the division's compliance during the period beginning on the day immediately following the last day of the period covered by the independent monitoring team's final report. The office shall thereafter prepare and issue such reports on a biannual basis. The reports required pursuant to this section shall be made available to the public.

The reports required by this section are not intended to evaluate compliance by the Division of State Police and the office with the provisions of P.L.2009, c.121 (C.52:17B-222 et seq.). 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 P.L.2009, c.121 (C.52:17B-236).

C.52:17B-230 Specific authority of office relative to certain best practices.

9. The office shall have specific authority to provide advice and technical assistance to county and municipal law enforcement agencies concerning best practices for: the use of mobile video recording systems; supervisor reviews of mobile video recordings; data collection and documentation of investigative detentions, including but not limited to traffic stops and post-stop enforcement actions; in-service training on any applicable non-discrimination policy established by the Attorney General; the law of arrest, search and

seizure, and equal protection; and the development and use of personnel performance information systems.

C.52:17B-231 Promoting, ensuring compliance with general policy.

10. The office shall take appropriate steps to promote and 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, except in those instances where law enforcement officers are on the lookout for a specific suspect who has been identified in part by their race or their national or ethnic origin.

C.52:17B-232 Personnel performance information system.

11. The Division of State Police shall maintain a personnel performance information system that meets or exceeds the specifications of the system in place upon termination of the consent decree. Funding for the purposes of maintaining, upgrading or modifying such systems shall be requested in the annual appropriations of the Department of Law and Public Safety independent of and in addition to any other requested funding.

C.52:17B-233 Participants in, material offered in training course, program.

12. The Superintendent of State Police shall ensure that no member of the State Police attends or participates in any training course or program relating to any applicable non-discrimination policy established by the Attorney General, the law of arrest, search and seizure or equal protection, or the manner for conducting motor vehicle stops or post-stop enforcement actions, unless the superintendent, or his designee, determines that attendance or participation in the training course or program is appropriate, considering the member's experience and present or pending duty assignment. This requirement shall apply to training provided by the Division of State Police, by any other law enforcement agency, by an association representing law enforcement offices or agencies, or by a private vendor. A member of the State Police attending a training course or program shall promptly report to the superintendent, through the chain of command, if the member knows or reasonably should know that the instruction provided during the course contradicts any Division of State Police rule, regulation, standing operating procedure, or operations instruction relating to any applicable non-discrimination policy established by the Attorney General; the law of arrest, search, seizure or equal protection; or the manner for lawfully conducting motor vehicle stops or post-stop enforcement actions. Nothing in this section shall be construed to limit the authority of the office under paragraph (2) of subsection d. of section 7 of P.L.2009, c.121 (C.52:17B-228). Nothing in this section shall be construed to abrogate any applicable constitutional or collectively bargained rights.

C.52:17B-234 Certification of compliance.

13. a. The superintendent shall, on a semi-annual basis, certify to the Attorney General that the Division of State Police has complied with the requirements of P.L.2009, c.121 (C.52:17B-222 et seq.). Each troop commander shall, on a semi-annual basis, certify to the superintendent that the troop has complied with the requirements of P.L.2009, c.121 (C.52:17B-222 et seq.).

b. The Attorney General and the superintendent shall be responsible for ensuring the issuance or modification of any rule, regulation, standing operation procedure or operations

instructions, training program or bulletin, interoffice communication or any other document or communication deemed necessary to effectuate the purposes of P.L.2009, c.121 (C.52:17B-222 et seq.). Nothing in this section shall be construed to limit the existing powers or authority of the Attorney General, including the authority to issue directives to any or all law enforcement and prosecuting agencies in the State, or the authority of the superintendent under Title 53 of the Revised Statutes.

C.52:17B-235 Semi-annual public reports.

14. a. The office shall prepare semi-annual public reports that include aggregate statistics on State Police traffic enforcement activities and procedures, segregated by State Police station and providing aggregate data on the race and ethnicity of the civilians involved. These reports shall include aggregate statistics on the number of motor vehicle stops, reason for the motor vehicle stop, enforcement actions, including, but not limited to, summonses, warnings, and arrests, requests for consent to search, consent searches conducted, non-consensual searches, and the use of force. The reports shall also include aggregate statistics of the number of criminal charges filed, contraband seizures and wanted persons taken into custody related to motor vehicle stops, and such additional data as may be jointly directed by the superintendent and Attorney General.

b. The office shall prepare semi-annual public reports providing aggregate data regarding misconduct investigations, and the number of external, internal, and total complaints received and the disposition of those complaints.

c. The Attorney General shall, on an annual basis, report to the Governor, the Legislature and the public on the implementation of P.L.2009, c.121 (C.52:17B-222 et seq.). The Attorney General shall annually provide the State Treasurer and the Office of Management and Budget with an estimate of the funds needed to be appropriated to implement the provisions of this act, including but not limited to, estimates of funds needed to maintain adequate information technology and data analysis staffing and to provide adequate training.

d. The reports required by this section are not intended to evaluate compliance by the Division of State Police and the office with the provisions of P.L.2009, c.121 (C.52:17B-222 et seq.). 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 P.L.2009, c.121 (C.52:27B-236).

C.52:17B-236 Risk-based audits, performance reviews conducted by State Comptroller.

15. a. The State Comptroller, established pursuant to P.L.2007, c.52 (C.52:15C-1 et seq.), shall conduct risk-based audits and performance reviews of the Division of State Police and the office to examine stops, post-stop enforcement activities, internal affairs and discipline, decisions not to refer a trooper to internal affairs notwithstanding the existence of a complaint, and training. The State Comptroller may also make recommendations on the funding and staffing levels of the office and the State Police.

b. The State Comptroller shall report to the Governor, the Legislature and the public on the results of the audits and performance reviews. The State Comptroller shall conduct an audit and performance review on a semi-annual basis during the first 18 months following the enactment of P.L.2009, c.121 (C.52:17B-222 et seq.), and thereafter shall conduct an audit and performance review on an annual basis.

c. Within the limits of funds appropriated for such purposes, the State Comptroller may obtain the services of consultants and other professionals necessary to conduct the risk-based audits and performance reviews required by this section.

d. The Division of State Police, the office, and the Department of Law and Public Safety shall cooperate with the State Comptroller and provide to the State Comptroller such information, resources, and other assistance deemed necessary by the State Comptroller to conduct the audits and performance reviews required by this section.

16. On the first day of the 37th month following the effective date of P.L.2009, c.121 (C.52:17B-222 et seq.), the Attorney General shall submit to the Governor, the Legislature pursuant to the provisions of section 2 of P.L.1991, c.164 (C.52:14-19.1), and the public a comprehensive report on the steps taken to comply with the provisions of this act, the institutionalization of the reforms achieved during the consent decree, and the efforts to maintain and enhance law enforcement professionalism and a commitment to non-discriminatory policing.

17. This act shall take effect on the first day of the second month following enactment.

Approved August 27, 2009.