



U.S. Department of Justice

Office of Justice Programs

*Office for Civil Rights*

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Washington, D.C. 20531

VIA CERTIFIED U.S. MAIL

December 21, 2018

Colonel Kriste Kibbey Etue, Director  
Michigan State Police  
333 S. Grand Avenue2  
Lansing, Michigan 48909-0634

Re: Compliance Review of the Mich. State Police (Docket No. 15-OCR-316)  
*Compliance Review Report*

Dear Colonel Etue:

I am writing to report the findings of the Compliance Review that the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) conducted of the Michigan State Police (MSP), which focused on employment practices related to female troopers.

In my letter to you dated March 25, 2015, I informed you that the OCR selected the MSP for a compliance review as part of the OCR's broader review of the employment practices of state law enforcement agencies. The OCR conducted the review in accordance with the nondiscrimination provisions in the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) and its implementing regulations.<sup>1</sup>

The OCR has completed the Compliance Review of the MSP and has concluded that the MSP's policies and practices regarding the recruitment, selection, and retention of female troopers are consistent with the requirements of the Safe Streets Act and its implementing regulations. The MSP has an extensive recruiting program, including periodically holding Women's Recruiting Seminars specifically aimed at recruiting women. After carefully analyzing the collected employment data with the assistance of an expert, the OCR finds that the MSP's selection devices for hiring troopers do not have a disparate impact on women. The MSP also has policies in place, including comprehensive equal employment opportunity and family leave policies, to encourage females to remain MSP troopers.

According to 2015 data published by the Federal Bureau of Investigation (FBI), which depicts the total number of sworn law enforcement officers employed by an agency as of October 1, 2015, the MSP's percentage of female troopers ranked sixth out of thirty-six reporting states.<sup>2</sup> As of October 1, 2015, females held 9.94% of MSP trooper positions. As of February 21, 2018, females hold 10.15% of the

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<sup>1</sup> 34 U.S.C. § 10228(c) (2018); 28 C.F.R. §§ 42.201-.308 (2018).

<sup>2</sup> FBI, UNIFORM CRIME REPORT PROGRAM, CRIME IN THE UNITED STATES, 2015, tbl.76 (Full-time State Law Enforcement Employees by State, 2015), <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-76>.

MSP trooper positions, which represents a slight increase from 2015.<sup>3</sup> This Compliance Review Report (Report) contains recommendations to help the MSP further increase its percentage of female troopers and to strengthen its Safe Streets Act-mandated equal employment opportunity program (EEOP).

The OCR's Compliance Review of the MSP evaluated its recruitment activities from June 2012 through the present, along with its policies and practices related to the selection and retention of MSP troopers from April 2015, through August 2017.<sup>4</sup> In preparing this Report, the OCR relied on information that the MSP provided in response to the OCR's data requests, which included relevant MSP written policies and procedures, along with information available on the MSP's public website.<sup>5</sup> During our September 2015 and September 2016 onsite visits and in subsequent telephone calls, the OCR interviewed six female recruits, twenty-eight female troopers, six district captains, six trooper recruiters, and a cross section of MSP command staff, including staff from the Recruiting and Selection Section and the Office of the Director.

On November 13, 2018, the OCR issued a draft Report to the MSP. This final Report incorporates the minor feedback that the MSP provided to the OCR about that draft.

The OCR's findings and recommendations are set forth below for your review.

## **I. OCR's Women In Law Enforcement Compliance Review Initiative**

This Compliance Review is part of a broader OCR compliance review initiative to evaluate the efforts of DOJ-funded law enforcement agencies to employ women as sworn officers. The OCR selected state law enforcement agencies as the focus of its initial women-in-policing compliance reviews based on research from the Bureau of Justice Statistics (BJS) showing that, from 1987 to 2007, state law enforcement agencies had the lowest percentage of female sworn officers in comparison to local police departments and sheriffs' offices.<sup>6</sup> The BJS report also found that the percentage of female officers grew within state law enforcement agencies at a much slower rate than in local jurisdictions.<sup>7</sup> Because this information suggests that state agencies might face challenges in hiring and retaining female

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<sup>3</sup> MSP, EEOP Utilization Report 5 (Feb. 21, 2018) (on file with the OCR).

<sup>4</sup> On April 1, 2015, the MSP began using the electronic applicant tracking system NEOGOV to receive and process trooper applications. The implementation of NEOGOV allowed the MSP to track each applicant's progress at each step in the selection process in an easily-searchable electronic database; prior to this time, data pertaining to an applicant's progress was contained in several different locations, was incomplete, and required a manual review of hardcopy files. Accordingly, to ensure that the OCR was evaluating the most accurate and reliable applicant flow data, we focused our review on applications submitted to the MSP on or after April 1, 2015 via NEOGOV. Specifically, the OCR examined the applicant flow data pertaining to the MSP's selection of recruits for the following four Trooper Recruit Schools (TRS): the 129th TRS (March 27 to August 26, 2016), the 130th TRS (June 5 to November 4, 2016), the 131st TRS (July 17 to December 22, 2016) and the 132nd TRS (August 28, 2016 to February 10, 2017). For those applicants who were ultimately appointed to one of the four training academies, the MSP provided the OCR with data on how they performed during the academy and during the Field Training Officer (FTO) program, which is the last step in the trooper selection process. The FTO program for the 132nd TRS concluded in August 2017. Accordingly, the OCR's review of the MSP's selection and retention of troopers covered the period of April 2015 to August 2017. The OCR obtained and reviewed information on the MSP's recruitment activities from 2012 through the date of this Report.

<sup>5</sup> The MSP's website is at <http://www.michigan.gov/msp>.

<sup>6</sup> LYNN LANGTON, BJS, WOMEN IN LAW ENFORCEMENT, 1987- 2008 (June 2010), <http://go.usa.gov/x9P83>.

<sup>7</sup> *Id.*

officers, the OCR prioritized compliance reviews of state police agencies.<sup>8</sup>

As a recipient of financial assistance from the OJP, the MSP must abide by the nondiscrimination provisions in the Safe Streets Act, which, among other things, prohibit sex discrimination in employment.<sup>9</sup> The OCR selected the MSP for a compliance review based on several factors, including the substantial amount of DOJ funding it has received.<sup>10</sup> At the time the OCR initiated this Compliance Review, the MSP was receiving over fifty-nine million dollars in financial assistance from the DOJ.<sup>11</sup>

## II. Relevant Legal Obligations

### A. Safe Streets Act EEOP Requirements

As a condition for receiving DOJ financial assistance covered by the Safe Streets Act, recipients agree to comply with the Safe Streets Act's regulations governing the development of a written EEOP.<sup>12</sup> In accordance with these regulations, when developing and implementing an EEOP, a recipient must identify and analyze "any problem areas inherent in the utilization or participation of minorities and women in all of the recipient's employment phases (e.g., recruitment, selection, and promotion)."<sup>13</sup>

An EEOP must include a variety of analyses, including a comparison between the recipient's workforce demographics classified by race, sex, and national origin in major job categories and the comparable demographics of qualified individuals in the relevant labor market.<sup>14</sup> The EEOP must also include the recipient's narrative statement analyzing its existing employment policies, procedures, and practices as they relate to employment of minorities and women.<sup>15</sup> When this analysis identifies underutilization of women or minorities in any job category, the recipient's EEOP must set forth the specific steps the recipient will take to achieve full and equal employment opportunity.<sup>16</sup> The regulations require recipients to analyze all elements of their hiring process, including the administration of tests and other selection devices, to ensure that they are equitable.<sup>17</sup> The regulations also require recipients to develop a recruitment plan to attract minority candidates.<sup>18</sup> Additionally, recipients must assess their efforts to retain employees, including an annual analysis of their promotion process and training programs, to determine whether they treat women equitably.<sup>19</sup> Pursuant to the EEOP regulations, recipients "are

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<sup>8</sup> From 1987 to 2007, the percentage of female sworn officers increased from approximately 8% to nearly 12% in local police departments and from approximately 4% to approximately 7% in state police agencies; in the same time period, the percentage of female sworn officers declined slightly from less than 13% to roughly 11% in sheriffs' offices. *Id.* at 3 fig. 4.

<sup>9</sup> 34 U.S.C. § 10228(c)(1).

<sup>10</sup> 28 C.F.R. § 42.206(c)(1)-(5).

<sup>11</sup> This DOJ financial assistance includes multiple open grant awards that are subject to the nondiscrimination provisions of the Safe Streets Act. *See, e.g.*, MSP, FY 2015 Justice Assistance Grant Program, Bureau of Justice Assistance Project No. 2015-UM-BX-0969 (Oct. 1, 2014 to Sept. 30, 2018) (award for \$5,466,651.00) and MSP, FY 2014 Justice Assistance Grant Program, Bureau of Justice Assistance Project No. 2014-UM-BX-1022 (Oct. 1, 2013 to Sept. 30, 2018) (award for \$6,250,670.00).

<sup>12</sup> 28 C.F.R. pt. 42, subpt. E.

<sup>13</sup> *Id.* § 42.303(a).

<sup>14</sup> *Id.* § 42.304.

<sup>15</sup> *Id.* § 42.304(g)(1).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* §§ 42.303.

<sup>18</sup> *Id.* § 42.304(g)(2).

<sup>19</sup> *Id.* §§ 42.303(a), (c)(3); .304.

expected to conduct a continuing program of self-evaluation” to guarantee that their employment practices do not have a discriminatory effect.<sup>20</sup>

Major recipients, like the MSP, which are public entities that receive a grant of \$500,000 or more and have fifty or more full-time employees, must submit a utilization report to the OCR for review as part of their EEOP.<sup>21</sup> Each utilization report provides a snapshot of the number of the recipient’s employees within specific job categories, cross-classified by race, national origin, and sex, and identifies whether a recipient has an “underutilization rate.” This rate compares the percentage of employees of a protected class in a particular job category to the percentage of qualified workers of the same protected class in the relevant labor market.

## B. Prohibition of Employment Discrimination Based on Sex

The Safe Streets Act prohibits discrimination based on sex, including any discrimination against female applicants or employees.<sup>22</sup> Accordingly, a recipient that receives funding under the Safe Streets Act must ensure that it is not using discriminatory selection devices in the hiring of female law enforcement officers. In determining whether a recipient is engaging in prohibited employment discrimination under the Safe Streets Act, the OCR relies on the standards of Title VII of the Civil Rights Act of 1964 (Title VII), as amended.<sup>23</sup>

Under Title VII, the OCR may prove discrimination in multiple ways, including by demonstrating that a certain policy has a disparate impact on the employment of a protected class of individuals.<sup>24</sup> To that end, Title VII prohibits a recipient from using employment practices that are “fair in form, but discriminatory in operation.”<sup>25</sup> To establish a prima facie case of disparate-impact discrimination, one must identify a facially neutral policy or practice and then provide evidence, usually through statistical data,<sup>26</sup> that the challenged policy or practice has a disproportionately negative effect on a protected class.<sup>27</sup> The employer may rebut the prima facie case by proving that the challenged employment practice did not cause the disparate impact<sup>28</sup> or by presenting evidence that the challenged practice or policy is “job related for the position in question and consistent with business necessity.”<sup>29</sup> Even if the employer can show that business necessity, or public interest for a public entity, justifies the contested policy or practice, the employer may still be in violation of the law if the employer could have achieved its legitimate purpose by other reasonable means that have a less disparate impact on the protected

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<sup>20</sup> *Id.* § 42.306(a).

<sup>21</sup> *Id.* §§ 42.204(b), .302(d); *see also* EEOP Frequently Asked Questions, OCR [https://ojp.gov/about/ocr/faq\\_eeop.htm](https://ojp.gov/about/ocr/faq_eeop.htm) (last visited Aug. 29, 2018).

<sup>22</sup> 34 U.S.C. § 10228(c)(1).

<sup>23</sup> 28 C.F.R. § 42.203(c); 42 U.S.C. § 2000e-e-17 (2018).

<sup>24</sup> 42 U.S.C. § 2000e-2(k).

<sup>25</sup> *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971) (holding that Title VII prohibited employer from requiring employees to have a high school education when the requirement had a disparate impact on African Americans and the employer could not demonstrate that the requirement was related to job performance); *Scales v. J.C. Bradford and Co.*, 925 F.2d 901, 907-909 (6th Cir. 1991) (applying a sex-based disparate impact theory of discrimination).

<sup>26</sup> *Dothard v. Rawlinson*, 433 U.S. 321, 330-31 (1977) (holding statistics related to height and weight of applicants showed discriminatory impact on women); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-08 (1977) (finding statistical disparities showed a pattern of discrimination).

<sup>27</sup> 42 U.S.C. § 2000e-2(k)(1)(A)(i).

<sup>28</sup> *Id.* § 2000e-2(k)(1)(B)(ii).

<sup>29</sup> *Id.* § 2000e-2(k)(1)(A)(i).

class.<sup>30</sup>

### III. Organizational Structure of the MSP

The MSP is responsible for providing primary law enforcement services throughout the State of Michigan, along with support services to local, county, and state law enforcement agencies. With the confirmation of the Michigan State Senate, the governor of the State of Michigan appoints the director of the MSP; the director, with the rank of colonel, serves as the executive head of the agency.<sup>31</sup> The MSP is organized into the Office of the Director and four bureaus: the Administrative Services Bureau, the Field Services Bureau, the Specialized Services Bureau, and the State Services Bureau.<sup>32</sup> The Office of the Director and the Administrative Services Bureau, the Specialized Services Bureau, and the State Services Bureau are comprised of different sections or divisions, and the Field Services Bureau contains seven patrol districts.

The MSP carries out its law enforcement duties through sworn troopers, along with motor carrier officers<sup>33</sup> and state properties security officers.<sup>34</sup> A trooper performs a full range of law enforcement duties, and the Michigan Commission on Law Enforcement Standards (MCOLES) certifies the trooper as a police officer. A trooper typically works out of a MSP post and patrols the roads of an assigned geographical area to prevent or respond to traffic law violations, conduct investigations of criminal law violations, and provide a variety of other related services to the public. Troopers may also serve in a range of specialty assignments throughout the MSP's bureaus, including the Canine Unit, the Dive Team, the Bomb Squad, the Marine Services Team, or the Forensic Science Division. A trooper must serve in a trooper position for a minimum of two years before being eligible to apply for a specialty position.

In the Field Services Bureau, a captain leads each of the seven patrol districts, and each district has a number of geographic subdivisions called posts.

MCOLES is responsible for promulgating rules and licensing requirements for law enforcement officers throughout the State of Michigan, including MSP troopers.<sup>35</sup> These rules include requirements pertaining to minimum qualifications, pre-employment testing and proficiency requirements, and law enforcement training academy requirements.<sup>36</sup> MCOLES has nineteen commission members, including the director of the MSP, the attorney general of the State of Michigan, the chief of a police department of a city that has a population of more than 600,000, and a number of individuals appointed by the governor.<sup>37</sup> The MCOLES is listed on the organizational chart of the MSP, under the State Services

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<sup>30</sup> *Id.* § 2000e-2(k)(1)(A)(ii).

<sup>31</sup> MSP, Department Structure, Administrative Rules, Policies, and Procedures, MSP Official Orders, Order No. 2 (Jan. 4, 2016).

<sup>32</sup> MSP Organizational Chart, available at [https://www.michigan.gov/documents/msp/MSP\\_Organization\\_609161\\_7.pdf](https://www.michigan.gov/documents/msp/MSP_Organization_609161_7.pdf) (last visited Aug. 29, 2018).

<sup>33</sup> A motor carrier officer is an armed uniformed member of the Commercial Vehicle Enforcement Division, Special Services Bureau, who specializes in commercial vehicle enforcement.

<sup>34</sup> A state properties securities officer is a specialized member of the Special Operations Division who provides general law enforcement and security services in state owned and leased facilities in the Lansing area.

<sup>35</sup> MICH. COMP. LAWS ANN. § 28.609 (2018).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* § 28.603.

Bureau. The MSP explained to the OCR that MCOLES is autonomous from the MSP and does not report to the director of the MSP.

#### IV. Officer Recruitment

##### A. MSP's EEOP

As discussed in Section II of this Compliance Review Report, the MSP must develop an EEOP that analyzes the impact of its employment practices on women and minority individuals and submit its utilization report and accompanying analysis to the OCR for review.<sup>38</sup> The MSP is in compliance with this obligation. On November 26, 2013, January 5, 2016, and February 21, 2018, the MSP filed with the OCR its utilization reports covering the period under review. As of February 21, 2018, of the MSP's 1981 sworn positions, men held 1780 (89.85%), and women held 201 (10.15%).

The MSP's utilization reports identified underutilization rates for most females in the Protective Services job category, which includes data for Sworn Officials and Sworn Patrol Officers. The following chart lists the underutilization rates that the MSP identified.

Underutilization Rates for Female Sworn Officers<sup>39</sup>

Date of MSP Utilization Report	White		Hispanic or Latino		Black or African American		American Indian or Alaska Native		Asian	
	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official
Nov. 26, 2013	-21%	-0%	-2%	-0%	-8%	-6%	-0%	-0%	-1%	-0%
Jan. 5, 2016	-20%	-1%	-2%	-0%	-8%	-6%	-0%	-0%	-0%	-0%
Feb. 21, 2018	-20%	-1%	-2%	-0%	-7%	-6%	-0%	-0%	-0%	-0%

These underutilization rates demonstrate that the MSP has experienced some challenges in hiring a sworn officer workforce that resembles the community it serves.

The MSP addressed these underutilization rates in its utilization reports. In its 2013 utilization report, the MSP stated that it intended to target females in recruitment campaigns, such as by using brochures specifically aimed at female athletes and by conducting outreach to civic and educational leagues with high numbers of females. In its 2016 and 2018 utilization reports, the MSP indicated that it held a number of specific recruiting events for women during the last rating period, which are discussed below. The MSP stated that it has restructured its recruiting section and has greatly increased the number of recruiters. The MSP noted that it has been engaging in youth outreach efforts to attract potential applicants earlier in life. In its 2016 utilization report, the MSP also noted that it now makes an effort to assign new hires to posts within a reasonable commuting distance from their home so that they do not have to relocate their families.

<sup>38</sup> 28 C.F.R. pt. 42, subpt. E.

<sup>39</sup> This chart only contains those racial and national origin categories that include at least one MSP officer. The negative percentages that appear in the chart indicate the categories in which the MSP's workforce underutilizes female troopers as compared to the relevant labor market.

The MSP has also addressed the underutilization rates of female troopers in its 2013 Comprehensive Recruiting Plan, as discussed in Section IV.B of this Compliance Review Report.

## B. The MSP's Comprehensive Recruiting Plan

In June 2012, after a period of inactivity, the MSP resumed hiring and began foundational recruiting efforts with the creation of a Recruitment Coordinator position within the Recruiting and Selection Unit. The MSP formed a Comprehensive Recruiting Plan (CRP) committee, comprised of sworn and civilian MSP members, to develop a long-term plan to actively recruit a qualified and diverse workforce for all positions within the MSP, including the trooper position. The CRP committee met from January to July, 2013, and issued a written CRP setting forth a number of strategies for the MSP to implement. The CRP included the following strategies: increase the number of trooper recruiters statewide; have sworn and civilian recruiters attend career fairs that attract diverse populations; continuously update upcoming recruiting events and recruiter information on the MSP's website; advertise vacancies online, through social media, on billboards, and through Public Service Announcements; conduct off-site physical fitness testing in urban areas; develop recruitment materials aimed at military personnel; target female hunting license holders; collect demographic information on applicants; advertise and conduct recruiting seminars and special testing for Michigan State University students; develop a mechanism to track how applicants heard about an MSP vacancy; develop mentoring programs; enhance the MSP's internship program; and obtain a commitment from all members of the MSP to recruit qualified applicants who represent the state's diversity.

The CRP noted that the underrepresentation of female employees at the MSP and recommended that the MSP increase its recruiting efforts in diverse areas of the state, warning that “[p]otential candidates with a degree may be discouraged from applying because they do not see many diverse individuals or females that hold a command position, whether enlisted or civilian.” The CRP also discussed the importance of the MSP evaluating its recruiting efforts, such as by collecting demographic information on applicants and evaluating whether it attracted females to apply for a job vacancy. The CRP recommended that the MSP evaluate whether there are particular steps in the hiring process that are more of a challenge for female and minority applicants and what steps recruiters can take to overcome those hurdles.

As discussed below, the MSP has implemented many of the recruiting strategies discussed in the CRP, and has engaged in various recruitment activities aimed specifically at recruiting more women for the trooper position.

## C. The MSP's Recruitment Process

### 1. Advertisement of Vacancies

The MSP continuously accepts applications for trooper positions and provides extensive information on the hiring process on its website.<sup>40</sup> The posted information informs potential applicants about the recruiting and hiring process, noting the examination requirements, and provides a link to the NEOGOV

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<sup>40</sup> See <http://www.michigan.gov/msp> (last visited Aug. 29, 2018).

Entry-Level Law Enforcement Examination and the NEOGOV State Police Trooper Application.<sup>41</sup> The Entry Level Law Enforcement Examination is also contained on the Michigan Civil Service Commission's (MCSC) website;<sup>42</sup> the MCSC administers the Entry-Level Law Enforcement Examination, which trooper applicants must successfully pass to proceed with the trooper selection process.<sup>43</sup> Additionally, the MSP posts the trooper position vacancy on the MCOLES website<sup>44</sup>, and has previously advertised the trooper position on several other websites advertising job vacancies.<sup>45</sup>

Once the MSP receives a NEOGOV State Police Trooper Application, it processes the application according to the steps in the hiring process, as described in Section V.A of this Compliance Review Report. The MSP invites the highest-scoring applicants who successfully complete the selection process to the next scheduled recruit school. Since January 2013, the MSP has held twelve recruit schools; the number of recruits in each school varies depending on operational needs and budgetary constraints.

## 2. Trooper Recruiters

Building on the recruiting efforts it began in June 2012, the MSP further intensified its recruiting efforts in 2014 and created a new Recruiting and Selection Section (RSS), which serves as an independent section within the State Services Bureau. The purpose of the RSS is to research best practices in recruiting, bring them to the MSP, streamline the recruiting and selection process, expand the diversity of the applicant pool, and increase the use of technology during recruiting and selection activities.<sup>46</sup> The RSS is headed by a first lieutenant and includes several sworn and civilian staff at MSP headquarters who oversee the MSP's recruitment activities and trooper selection process. Additionally, the RSS includes a significant number of trooper recruiters who work in every post throughout the state. The MSP assigns one to two trooper recruiters to every post, depending on the size of the post, and most trooper recruiters engage in recruiting activities on a part-time basis in addition to regular trooper duties.

If a trooper has an interest in becoming a recruiter, the trooper will initially discuss this interest with his or her post commander; if the post commander supports the trooper's becoming a recruiter, the post commander will recommend the trooper to RSS command staff. The RSS command staff will then speak with the interested trooper to explain the recruiting duties and to determine whether the trooper will be a good fit. RSS command staff members told the OCR that they are looking for troopers who have a good work ethic and do not need a lot of supervision.

As of October 16, 2018, the MSP employed fifty-four trooper recruiters at posts throughout the state, eleven of whom are female.<sup>47</sup> During the OCR's September 2015 onsite visit, the OCR spoke with six recruiters (four males and two females) at several different posts. The recruiters with whom the OCR

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<sup>41</sup> As explained in footnote 4 of this Compliance Review Report, NEOGOV is an electronic applicant tracking system that the MSP uses to receive and process trooper applications.

<sup>42</sup> See <http://www.michigan.gov/mdcs> (last visited Aug. 29, 2018).

<sup>43</sup> As discussed in Section V.A.2.a of this Compliance Review Report, individuals must successfully complete the Entry-Level Law Enforcement Exam in order to apply to be a MSP trooper, a MSP motor carrier officer, a MSP state properties security officer, or a Department of Natural Resources state conservation officer.

<sup>44</sup> See <http://www.mi.gov/mcoles> (last visited Aug. 29, 2018).

<sup>45</sup> See <http://www.MiTalent.org>, <http://www.H2H.jobs>, <http://HiredMyway.com>, and <http://www.DiscoverPolicing.org>.

<sup>46</sup> MSP, EEOP Utilization Report 15 (Jan. 5, 2016).

<sup>47</sup> A list of all trooper recruiters and their contact information is contained on the MSP's website at [https://www.michigan.gov/msp/0,4643,7-123-62526\\_67962---,00.html](https://www.michigan.gov/msp/0,4643,7-123-62526_67962---,00.html) (last visited Oct. 16, 2018).

spoke indicated that they routinely speak with individuals interested in becoming a trooper, either over the telephone, via email, or in person. The recruiters said that they provide information on the daily duties and responsibilities of a trooper, the overall selection process, and how to prepare for the selection tests and the duties of a trooper. Recruiters also maintain contact with applicants throughout the selection process, guide them through the process, and keep them informed of their selection status.

In addition to speaking with prospective applicants who reach out to them, recruiters attend job fairs and local community events to promote the trooper position and to share information on becoming a trooper. The RSS has developed partnerships with numerous colleges, universities, and local community organizations to enable recruiters to reach out to student athletes, criminal justice majors, and other individuals who may be interested in a career in law enforcement. The MSP posts its recruiting calendar online,<sup>48</sup> which lists the statewide events that recruiters have attended or are scheduled to attend. According to the calendar, trooper recruiters have attended 712 recruiting events during the period of August 1, 2012, to October 16, 2018. These recruiting events occurred at a variety of forums, including community job fairs; local high schools, colleges and universities; churches; sporting events; military bases; veteran's organizations; MSP facilities; and other community events. According to the RSS command staff with whom the OCR spoke, while the majority of recruiting events occur within the State of Michigan, recruiters on occasion will attend recruiting events in neighboring states such as Illinois and Ohio, and the MSP will send informational materials on the MSP and the selection process to recruiting events held in states located farther away.

The trooper recruiters with whom the OCR spoke said that the RSS has instructed them to place an emphasis on recruiting women and minorities, and several reported going out of their way to speak with women who they see at recruiting events. Several recruiters mentioned that it was helpful to have female recruiters to assist with attracting female applicants, and one female recruiter noted that, “[w]omen want to see women” and women have told her that it is empowering and motivating to see female troopers. When attending recruiting events or interacting with prospective or current trooper applicants, the recruiters reported disseminating written cards, pamphlets, and brochures on the MSP and the trooper-selection process, including information on how to prepare for the physical fitness exams and other selection tests. Many of the written materials that recruiters provided to the OCR contained a picture of at least one female trooper. Several recruiters also indicated that they disseminate contact cards to attendees at recruiting events where attendees can voluntarily complete the cards and document their sex, and the recruiter will provide the completed cards to RSS command staff for tracking purposes. Additionally, several recruiters reported documenting all of their recruiting activities on a daily log and providing it to the RSS command staff upon request.

In addition to the MSP's designated recruiters, many female MSP troopers take action on their own to recruit women. During the OCR's interviews of female troopers, a number of female troopers told the OCR that they make an effort to try to recruit women to become troopers, such as by participating in the Women's Recruiting Seminars, encouraging young women with whom they come into contact to apply to be a trooper, and recommending that women who express an interest in law enforcement participate in a ride-along with a MSP trooper. Female troopers also said that they provide advice to interested women on how to become physically and mentally prepared to become a trooper. One female trooper recalled an instance when she conducted a traffic stop of a young woman who was a criminal justice

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<sup>48</sup> See [http://www.michigan.gov/msp/0,4643,7-123-62526\\_62529---,00.html](http://www.michigan.gov/msp/0,4643,7-123-62526_62529---,00.html) (last visited Oct. 16, 2018).

major in college, and the trooper provided her with a pamphlet on becoming a MSP trooper. Another trooper, who is a member of command staff, indicated that she reaches out to female interns at her post to talk to them about becoming a trooper.

When asked what concerns, if any, female prospective applicants typically express about becoming a trooper, and how troopers try to allay those concerns, the trooper recruiters and female troopers mentioned concerns about attending recruit school and being away from children, not having enough physical strength, and balancing responsibilities as a trooper with family obligations. One male recruiter with whom the OCR spoke said he tells prospective or current female applicants that one of his greatest patrol partners was a petite female trooper, and several male recruiters reported referring females to female recruiters or troopers to hear their perspectives and personal experiences. Many of the female recruiters and troopers said that they tell prospective female applicants who are concerned about their size or strength that size is irrelevant and that the MSP provides recruits with a significant amount of training on how to fight and how to handle a variety of situations. Female recruiters and troopers who have children also reported speaking to prospective applicants about their own experiences and how they balance being a mother and a trooper.

### 3. Women's Recruiting Seminars

The most notable component of the MSP's recruiting activities to attract women are Women's Recruiting Seminars. From July 2014 to August 2018 the MSP has held ten Women's Recruiting Seminars at the MSP training academy or at colleges and universities. At the Women's Recruiting Seminars, a number of female troopers and command staff discuss the variety of career opportunities available within the MSP and provide insight on recruit training, the selection and hiring process, the duties and responsibilities of a trooper, balancing work and family life, how to prepare for the selection tests and the academy, and opportunities for women in law enforcement. The MSP also offers participants the opportunity to tour the MSP Training Academy and to have a one-on-one conversation with an enlisted female. The OCR attended the June 20, 2015, Women's Recruiting Seminar held at the MSP Training Academy in Lansing, Michigan, which was widely attended and featured presentations by several MSP female troopers and command staff, including Colonel Etue. Overall, as of August 24, 2018, the MSP has had 940 women attend the Women's Recruiting Seminars, which were held on the following dates and locations:

July 19, 2014:	Macomb Immediate School District, Clinton Township, Michigan
April 25, 2015:	Troy Community Center, Troy, Michigan
June 20, 2015:	MSP Training Academy, Lansing, Michigan
October 17, 2015:	Kalamazoo Community College, Kalamazoo, Michigan
March 19, 2016:	Schoolcraft College, Livonia, Michigan
October 8, 2016:	Schoolcraft College, Livonia, Michigan
March 25, 2017:	Schoolcraft College, Livonia, Michigan
October 21, 2017:	Schoolcraft College, Livonia, Michigan
March 10, 2018:	Wayne Community College, Detroit, Michigan
April 7, 2018:	Lake Superior State University, Sault Ste. Marie, Michigan

Beginning on June 26, 2015, the MSP added a question to the trooper application in NEOGOV asking how the applicant heard about the trooper vacancy and came to apply for the position, and on November

28, 2016, the MSP explicitly added an option to indicate “Women’s Recruiting Seminar.” According to the MSP, from June 26, 2015 to August 24, 2018, forty-two female applicants have indicated on their applications that they heard about the trooper vacancy by attending a Women’s Recruiting Seminar.

In addition to the MSP’s Women’s Recruiting Seminars, on January 27-28, 2017, MSP female recruiters attended the “The Ultimate Women’s Event” in Novi, Michigan, sponsored by local businesses and designed to connect women with female professionals and business owners to discuss career strategies and opportunities. At this event, the MSP female recruiters discussed opportunities for a career with the MSP.

#### 4. Other Recruitment Activities

In 2012, the MSP began working with advertising firm Daniel Brother and Associates to develop a campaign to advertise the opportunity to become a trooper throughout the state using billboards, web images for online advertising, and a public service announcement. The MSP displayed the billboards at several locations throughout the state from 2012 to 2014, which contained the message “Serve Our Citizens, Apply Online Today, MI.GOV/MSP.JOBS.” In January 2014, coinciding with the beginning of the MSP’s 126th Trooper Recruit School, the MSP launched its new web images on the MSP’s website and on the MSP’s Facebook page; the new recruiting image, entitled “ENFORCE, INVESTIGATE, and SERVE,” contained an image of a female trooper. Currently, the MSP’s website contains a number of pictures of female troopers in advertisements for the MSP.

The MSP makes extensive use of social media, including Facebook, Instagram, Twitter, and LinkedIn to advertise trooper employment opportunities and to inform the public about recruitment events such as the Women’s Recruiting Seminars. The MSP has conducted digital marketing campaigns with CBS Media in the Detroit, Kalamazoo, and Flint/Saginaw market areas to include behavioral targeting, geo-fencing, and retargeting to direct interested candidates to the MSP’s recruiting website. The MSP also issues news releases to over 1000 publications in the state regarding the Women’s Recruiting Seminars and other recruiting events, and has advertised for trooper vacancies on a Detroit area hip-hop radio station. Additionally, on several occasions over the past few years, the MSP has sent email notifications to all State of Michigan employees describing the trooper position and how to apply.

In an effort to reach more diverse applicants and to make the trooper-selection process more accessible, in 2013 and 2014, the RSS coordinated several off-site tests in urban areas, where individuals could complete several steps of the selection process at once, such as the entry-level law enforcement examination and the physical fitness test. The MSP advertised the special testing opportunities through social media, press releases, television public service announcements, and posters.

Also as part of its recruiting efforts, in order to reach potential applicants earlier in life, the MSP operates several youth outreach programs. For the past forty-three years, the MSP has been operating a week-long student trooper program during the summer for male and female high school students who are sponsored by the American Legion or the Michigan District of Kiwanis. The MSP patterns the program after a trooper recruit school, and gives students who are interested in a career in law enforcement exposure to the training and skills necessary to become a trooper, including training in criminal law, defensive tactics, firearms, first aid, water safety, and patrol tactics. Additionally, two to three times a year, the MSP runs a Youth Leadership Academy, which is a week-long gender-specific

leadership and mentoring program for youth from distressed communities. At this academy, participants receive instruction from MSP troopers and from officers from other law enforcement departments on topics such as physical activity, water safety, interview skills, alcohol and drug awareness, gang awareness, leadership skills, and public speaking. The MSP also teaches law enforcement-related curricula in middle schools and high schools, such as T.E.A.M (Teaching, Educating, and Mentoring), G.R.E.A.T. (Gang Resistance Education and Training), and S.T.E.P. (Student Tools for Emergency Planning) courses.

The MSP also operates a Cadet Program, where individuals who are nineteen years of age or older and are interested in becoming a trooper perform a variety of law enforcement-related tasks to assist troopers in their daily activities; the MSP offers a limited number of paid cadet positions. Additionally, the MSP offers a limited number of unpaid internships at various MSP locations for students interested in a career in law enforcement.

As a recruiting incentive, the MSP pays for a trooper's recruit training; the MSP noted that most law enforcement agencies that use regional training academies require their officer applicants to pay the costs of their recruit training. The MSP also pays for all of a trooper's equipment, such as firearms and vests. One female trooper with whom the OCR spoke indicated that the MSP paid for her to attend college while she was in the cadet program. When speaking to the OCR, several female troopers referenced the MSP's previous practice of assigning new troopers to posts located over 100 miles from their home; the MSP changed this practice in 2014, telling the OCR that this change greatly enhances the MSP's ability to recruit female troopers, especially those troopers who have a family.

When interviewing female troopers, the OCR inquired whether there are any particular benefits offered by the MSP that factored into the troopers' decision to seek employment with the MSP. Troopers referenced the fact that the MSP pays for a trooper's recruit training; provides better compensation and benefits than local law enforcement agencies; has a large number of opportunities for specialty assignments and promotions; provides opportunities to transfer to different posts throughout the state; has a challenging and well-respected training academy; and has a reputation for being the best and most-respected law enforcement agency in the state. Several troopers stated that they had attended a Women's Recruiting Seminar and hearing the female troopers speak about their careers with the MSP and their personal experiences of balancing work and family life greatly impacted them. The troopers also noted that the seminars provide an open environment to discuss female-specific issues, such as breastfeeding, and how to manage these issues on the job. One trooper said that the MSP has a reputation for being "a big family." Another trooper recalled that before applying to the MSP, a MSP district commander invited her to meet with him and other potential applicants to discuss the benefits of working for the MSP.

The MSP has taken action to evaluate its recruitment activities and to determine which methods are most effective in recruiting troopers, including female troopers. The Entry-Level Law Enforcement Examination application contains a question where applicants can indicate among the following choices where they heard about a career in law enforcement: the [www.michigan.gov](http://www.michigan.gov) website; a MSP recruiter/employee; a Michigan Natural Resources Recruiter/Employee; social media/radio/TV/billboard; career fair; or other. Additionally, as discussed above, the NEOGOV State Police Trooper Application contains a question inquiring how the applicant first heard about the trooper posting; one option is the Women's Recruiting Seminar. The MSP also provides recruits with a

“Michigan State Police Recruiting Survey” during the fourth or fifth week of the recruit school, where recruits can indicate where they heard about the trooper vacancy, provide feedback on any interactions they have had with a trooper recruiter, and discuss what specifically attracted them to the MSP. The RSS command staff told the OCR that it analyzes the responses to this survey to determine the best recruitment strategies. One district commander with whom the OCR spoke indicated that in 2016 he met with all of the post commanders within his district to discuss recruiting more female applicants. He said they identified strategies to recruit more females including adding more female recruiters and focusing more on female athletes at nearby colleges. One trooper from another district also reported that female troopers in her district recently met to discuss ways to recruit more women. Additionally, on several occasions, representatives from the RSS have met with other state agencies to discuss best practices for recruiting diverse individuals.

When asked to identify ways in which the MSP could recruit more women to become troopers, the MSP recruiters and female troopers with whom the OCR spoke recommended continuing with, and increasing the frequency of, the Women’s Recruiting Seminars; reaching out to younger girls in junior high or high school; developing and disseminating more advertising and informational materials featuring women; increasing the number of female recruiters; engaging in more recruitment activities involving female athletes; and exploring alternative work schedules such as job sharing and part-time trooper positions.

#### D. Recommendations

The MSP’s recruitment program substantially complies with the requirements of the Safe Streets Act regulations. The OCR commends the MSP for taking specific action to recruit female candidates, such as through its Women’s Recruiting Seminars. The MSP should continue to implement the recruiting activities that it currently has in place,<sup>49</sup> and periodically evaluate its recruitment program to ensure that it is effective in encouraging women to apply for the trooper position. Based on the OCR’s calculation, women should comprise approximately 15.4% to 19.4% of trooper applicants.<sup>50</sup> According to employment data provided by the MSP, women accounted for 14.87% of trooper applicants during the period under review.

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<sup>49</sup> Recently, the DOJ and the Equal Employment Opportunity Commission (EEOC) conducted an interagency research initiative to help law enforcement agencies recruit, hire, retain, and promote a diverse set of officers. The resulting report, *Advancing Diversity in Law Enforcement*, identified many of the recruiting practices the MSP uses as “promising practices” for increasing diversity in law enforcement, including engaging in outreach efforts targeted at women, building partnerships with educational institutions, providing opportunities for youth to interact with the MSP, and using technology and social media to communicate with potential applicants. DOJ and EEOC, *ADVANCING DIVERSITY IN LAW ENFORCEMENT*, iv, 26-30 (October 2016), <https://www.justice.gov/crt/case-document/file/900761/download> [hereinafter *Advancing Diversity in Law Enforcement*].

<sup>50</sup> The OCR arrived at this figure by having our statistical expert analyze demographic information on the proportion of women employed in certain protective-service-related occupations in the State of Michigan. According to Equal Employment Opportunity Tabulation data from the U.S. Census Bureau’s American Community Survey, during the period of 2006 to 2010, women accounted for 15.4% of individuals employed as detectives and criminal investigators or as police officers. If the OCR adds the occupations of bailiffs, correctional officers, jailers, and private detectives and investigators, women account for 19.4% of these occupations. *See* <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>.

To assist the MSP in strengthening its recruitment efforts, the OCR makes the following recruitment-related recommendations:

- Increase the frequency of the Women’s Recruiting Seminars, and ensure that they are held at more diverse locations throughout the state. This type of targeted outreach has shown to be effective in encouraging women to apply for state police officer positions.<sup>51</sup>
- Increase the number of female recruiters that interact with both male and female prospective applicants. Seeing female troopers and hearing them speak about their experiences in being a MSP trooper can help dispel myths and stereotypes associated with law enforcement.<sup>52</sup>
- Develop and publish more advertising and informational materials featuring female troopers, including troopers from diverse populations.
- Increase the number of cadet and intern positions available at the MSP that can give young females a firsthand look at the challenges and rewards of being a MSP trooper. Such programs allow those interested in law enforcement to build relationships with the MSP and create a pipeline of potential applicants.<sup>53</sup>
- Hold periodic meetings with current female troopers to discuss what particular aspects of their employment at the MSP may appeal to women so that the MSP can highlight these factors when speaking with potential applicants.

## V. Selection of Officers

The OCR examined the MSP’s selection of entry-level troopers from 2015 through 2017. During this period, the MSP administered and graduated four academy classes and subsequent field training officer programs. In total, these academy classes graduated 150 male and 23 female troopers, and the MSP extended permanent offers of employment to 144 male and 22 female troopers. Overall, women accounted for 13.3% of troopers hired during this time period.

### A. Trooper Hiring Process

#### 1. Minimum Qualifications

As discussed in Section III of this Report, MCOLES is responsible for establishing the minimum qualifications of entry-level law enforcement officers. The MSP, however, may require additional qualifications. Pursuant to the MCOLES rules on Law Enforcement Standards and Training<sup>54</sup> and MSP

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<sup>51</sup> Advancing Diversity in Law Enforcement, *supra* note 49, at 26-28.

<sup>52</sup> *Id.* at 27.

<sup>53</sup> *Id.* at 28.

<sup>54</sup> MICH. ADMIN. CODE r. 28.14101 *et seq.* (2018).

policy,<sup>55</sup> an applicant who wishes to serve as a MSP trooper must satisfy the following minimum requirements: (1) be at least eighteen years of age to take the Entry-Level Law Enforcement Examination, (2) be at least twenty-one years of age by recruit school graduation, (3) be a United States citizen, (4) be a Michigan resident by the time of recruit school graduation, (5) have a valid Michigan driver's license by the time of recruit school graduation, (6) have a high school diploma or its equivalency,<sup>56</sup> (7) have no felony convictions or be a suspect in a case with the reasonable belief the applicant committed a felony, (8) meet the MCOLES minimum hearing requirements and visual acuity standards,<sup>57</sup> (9) demonstrate a pattern of fiscal responsibility, (10) possess good moral character,<sup>58</sup> and (11) have a good driving record.<sup>59</sup>

## 2. MSP Selection Process

The selection process for hiring entry-level troopers is governed by MCOLES rules and procedures,<sup>60</sup> MSP written orders,<sup>61</sup> and MSP policy. The MSP's RSS is responsible for administering the selection process for troopers. The following section sets forth a brief description of each of the steps in the MSP's selection process for hiring an entry-level trooper.<sup>62</sup>

### a. Entry-Level Law Enforcement Examination

The first step in the MSP trooper-selection process is for an interested candidate to take the written Entry-Level Law Enforcement Examination, which MCOLES requires.<sup>63</sup> As discussed in Section IV.C.1 of this Compliance Review Report, the MCSC schedules and administers the Entry-Level Law Enforcement Examination, and information on applying for and taking the examination is available on the MSP's and the MCSC's websites.<sup>64</sup> The Entry-Level Law Enforcement Examination evaluates the

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<sup>55</sup> MSP, Law Enforcement and Civilian Applicants, MSP Official Orders, Order No. 58 (Apr. 20, 2015) [hereinafter Law Enforcement Applicant Policy].

<sup>56</sup> The MSP recommends that applicants have a college education, although it is not required.

<sup>57</sup> The specific minimum hearing requirements and visual acuity standards are set forth in the MCOLES rules and MSP policy. MICH. ADMIN. CODE r. 28.14204; Law Enforcement Applicant Policy, *supra* note 55, at § 58.5.2.

<sup>58</sup> Whether an applicant possesses good moral character is based on an assessment of the applicant's school and employment records, home environment, traffic and criminal violations, and personal traits and integrity. MICH. ADMIN. CODE r. 28.14203(e).

<sup>59</sup> In the two years prior to applying, applicants cannot have an assessment of eight or more points, three or more moving violations, or two or more traffic crashes resulting in moving violations or civil infractions; in the four years prior to applying, applicants cannot have a conviction of driving with a suspended or revoked license, a conviction of driving while under the influence of alcohol or drugs, or two or more convictions of reckless driving. *See* [https://www.michigan.gov/msp/0,4643,7-123-62526\\_62528-285286--,00.html](https://www.michigan.gov/msp/0,4643,7-123-62526_62528-285286--,00.html) (last visited Aug. 29, 2018).

<sup>60</sup> MICH. ADMIN. CODE r. 28.14101 *et seq.*; MCOLES, Policies and Procedures Manual of the Michigan Commission on Law Enforcement Standards (rev. Dec. 2017) [hereinafter MCOLES Policies and Procedures Manual]; MCOLES, Michigan Commission on Law Enforcement Standards Physical Fitness Test Proctor Manual (2010) [hereinafter MCOLES Proctor Manual].

<sup>61</sup> Law Enforcement Applicant Policy, *supra* note 55; MSP, Field Training Officer Program and Probationary Training Guidelines, MSP Official Orders, Order No. 125 (Mar. 15, 2013) [hereinafter FTO Program and Probation Policy].

<sup>62</sup> The MSP does not have a lateral-transfer program for existing sworn officers; all incoming troopers are hired through the entry-level trooper selection process.

<sup>63</sup> MICH. ADMIN. CODE r. 28.14203(g).

<sup>64</sup> *See* [https://www.michigan.gov/msp/0,4643,7-123-62526\\_62528\\_71890---,00.html](https://www.michigan.gov/msp/0,4643,7-123-62526_62528_71890---,00.html); [http://agency.governmentjobs.com/examinations/default.cfm?action=viewJob&jobID=710654&hit\\_count=yes&headerFooter=1&promo=0&transfer=0&WDDXJobSearchParams=%3CwddxPacket%20version%3D%271%2E0%27%3E%3Cheader%2](http://agency.governmentjobs.com/examinations/default.cfm?action=viewJob&jobID=710654&hit_count=yes&headerFooter=1&promo=0&transfer=0&WDDXJobSearchParams=%3CwddxPacket%20version%3D%271%2E0%27%3E%3Cheader%2)



applicant possesses a high school diploma or equivalent, whether the applicant has taken and passed the Entry-Level Law Enforcement Examination within the last five years, and whether the applicant is a United States citizen. As long as the applicant demonstrates that he or she meets the educational, citizenship, criminal history, and Entry-Level Law Enforcement Examination requirements, the MSP passes the applicant along to the next step. If an applicant cannot meet these basic requirements, the MSP disqualifies the applicant.

c. Supplemental Application

The MSP sends an email to the applicants who successfully complete the NEOGOV State Police Trooper application. The email notifies them that they are continuing in the selection process and requests the submission of a supplemental application, which includes completing an online Personal History Questionnaire. The supplemental application requires the applicant's name and address, employment history, educational background, credit information, and list of references. If an applicant fails to provide any requested information, the MSP will email the applicant to request the missing information. The MSP disqualifies applicants at this step if they fail to provide any requested information. The Personal History Questionnaire collects information relating to the applicant's education, employment history, military and law enforcement experience, driving record, financial and legal history, and substance use. The MSP uses the collected information during the background investigation phase of the selection process.

If an applicant fully completes the supplemental application, the MSP invites the applicant to take the MCOLES Physical Agility Test.

d. MCOLES Physical Agility Test

The next step in the trooper hiring process is for an applicant to take the MCOLES Physical Agility Test, which MCOLES developed and which MCOLES requires an applicant to pass within 180 days of the start of a trooper recruit school.<sup>67</sup> According to the MSP, the MCOLES Physical Agility Test is designed to ensure that applicants have a level of fitness that will allow them to perform the job of a trooper. The MCOLES Physical Agility Test consists of four elements: a vertical jump, sit-ups, push-ups, and a ½ mile shuttle run. The tests for each element are age- and gender-normed. The charts below depict the scores that an applicant must achieve to pass each test, based on the applicant's gender and age.

**Male Applicants**

<b>Age Group</b>	<b>Vertical Jump</b>	<b>Sit-Ups (in one minute)</b>	<b>Push-Ups (in one minute)</b>	<b>Half Mile Shuttle Run</b>
18-29	17.5 inches	32	30	4:29.6 minutes
30-39	16.0 inches	30	30	4:38.2 minutes
40+	15.0 inches	30	28	4:54.7 minutes

<sup>67</sup> MICH. ADMIN. CODE r. 28.14312(7).

### Female Applicants

Age Group	Vertical Jump	Sit-Ups (in one minute)	Push-Ups (in one minute)	Half Mile Shuttle Run
18-29	11.0 inches	28	7	5:35.4 minutes
30-39	9.0 inches	19	7	5:59.1 minutes
40+	8.0 inches	18	7	6:13.3 minutes

The MSP administers this test up to several times a month at the MSP's training academy in Lansing. If the applicant fails one or more of the four events, the applicant can re-take the failed event after a short rest period of approximately ten minutes. If the applicant fails the event(s) a second time, the applicant must re-take the entire Physical Agility Test the next time the MSP administers the test. The MSP does not limit the number of times an applicant can re-take the test. The MSP provides links to the required scores for the MCOLES Physical Agility Test along with a video on how to perform the exercises properly on its website.<sup>68</sup> Information on the components of the MCOLES Physical Agility Test along with guidance on how to prepare for the test is also available on MCOLES' website.<sup>69</sup>

On the same day in which it administers the Physical Agility Test, the MSP fingerprints all successful applicants. The MSP uses the results of the fingerprints for the subsequent pre-screening interview and background investigation. Also on that same day, the MSP provides those who passed the Physical Agility Test with an orientation on the trooper position, which describes in detail the duties of the trooper position, recruit school training, and the remaining steps and timeline of the trooper hiring process.

#### e. Pre-Screening Interview

If an applicant successfully passes the MCOLES Physical Agility Test, the next step in the hiring process is a pre-screening interview conducted by members of the MSP's RSS. In this interview, the MSP asks the applicant questions designed to assess whether the applicant has good moral character and meets the minimum qualifications of a trooper, as established by MCOLES or MSP. The MSP compares the applicant's answers to information that the applicant previously provided on the State Police Trooper application, the supplemental application, and the Personal History Questionnaire. Based on the pre-screening interview, the MSP makes three possible determinations: (1) the applicant does not meet the minimum requirements of the trooper position and is permanently disqualified from the selection process;<sup>70</sup> (2) the applicant does not meet the minimum requirements at this time, but may reapply for the trooper position within a minimum of two years;<sup>71</sup> or (3) the applicant passes and can continue with the selection process. Providing false, misleading, or incomplete information during the pre-screening interview is grounds for disqualification from the selection process. The MSP notifies the applicant of its determination within ten business days of the interview.

<sup>68</sup> See [http://www.michigan.gov/msp/0,4643,7-123-62526\\_62528\\_71890---,00.html](http://www.michigan.gov/msp/0,4643,7-123-62526_62528_71890---,00.html) (last visited Aug. 29, 2018).

<sup>69</sup> See <http://www.michigan.gov/mcoles/0,4607,7-229-41624-147713--,00.html> (last visited Aug. 29, 2018).

<sup>70</sup> The MSP said that an example of an applicant not meeting the minimum requirements would be if the applicant had a felony conviction.

<sup>71</sup> According to the MSP, examples of this determination would be if the applicant had a conviction of driving under the influence of alcohol within the past four years of applying for a trooper position, or if the applicant has some credit issues that the applicant needs to resolve.

f. Background Investigation

Once an applicant passes the pre-screening interview, an enlisted MSP member or a contract vendor conducts a thorough and comprehensive background investigation, including a review of the applicant's past actions and experiences, to help determine the applicant's suitability for employment. The investigating officer reviews all of the information provided by the applicant to date, as well as the results from the pre-screening interview; the criminal history, credit, and reference checks; and interviews with the applicant and the applicant's friends, employers, neighbors, and others. The MSP does not pass or fail an applicant at the investigation stage. Rather, once the investigation is complete, the investigator prepares a report with a recommendation of whether the applicant should proceed in the selection process, and submits it to the RSS for review.

g. Background Investigation Review

Once the RSS receives the background investigation report, the RSS thoroughly reviews the report and the investigator's recommendation to determine if an applicant may continue with the selection process. Along with an overall recommendation, the RSS scores the applicant on each of the following twelve elements: (1) criminal and traffic history, (2) financial history, (3) education, (4) activities, (5) employment, (6) marital and family circumstances, (7) military service, (8) references, (9) places of residence, (10) illegal drug use, (11) welfare fraud, and (12) other. The possible scores range from "1" to "5," along with a not applicable (N/A): "1" means the applicant is much less than acceptable and is permanently disqualified for not meeting a minimum entry requirement; "2" means the applicant is less than acceptable and generally does not meet the criteria for successful job performance and must wait two years to reapply; "3" means the applicant is acceptable and meets the criteria for successful job performance; "4" means the applicant is more than acceptable and exceeds the criteria for successful performance of the trooper position; and "5" means the applicant is exceptional and significantly exceeds the hiring criteria. If the applicant receives an overall score of 3 or better, the applicant proceeds to the next step in the selection process. If the upcoming academy class is already filled, the MSP suspends the applicant process for the applicant until the next round of hiring interviews.

h. Hiring Interview

Three members of MSP command staff conduct the hiring interview,<sup>72</sup> which assesses whether the applicant possesses the competencies necessary to perform the duties of the trooper position, based on a trooper position job assessment previously validated by the MCSC. The hiring interview panel asks each applicant a series of questions in one or more of the following categories: building trust, adaptability, decision making, work standards, initiating action, stress tolerance, continuous learning, customer focus, communication, and job fit. The MSP asks the applicant to discuss his or her experience(s) in the above areas, including describing a particular situation or task, the action taken, and the results of that action. In addition, the hiring interview panel may ask questions arising from the applicant's background investigation, submitted applications, driving record, credit history, references, criminal history, resume, or other relevant information. Similar to how the MSP scores the background investigation, the hiring interview panel scores the applicant's overall performance during the hiring

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<sup>72</sup> The hiring panel consists of one member of the RSS, one senior-level trooper, and one senior-level civilian employee.

interview on a range of 1 to 5, as described above.<sup>73</sup> Additionally, the hiring interview panel may give an applicant a rating of “3D,” meaning the applicant is acceptable but on hold; the panel may recall the applicant for a second interview within one year should the MSP exhaust the list of candidates receiving higher scores.<sup>74</sup> The MSP extends conditional offers of employment based on the number of available positions, first extending offers to applicants who received a score of 5 and then to applicants who received a score of 4. Those applicants who received a score of 3 may receive a conditional offer of employment if additional available positions remain, or they may eventually receive a conditional offer of employment at a later date when the MSP hires again.

To help applicants prepare for the hiring interview, the MSP posts information on its website, referring applicants to a book on interviewing entitled Landing the Job You Want: How to Have the Best Interview of Your Life, by William C. Byham, and providing a link to a training video on the behavior-based method of interviewing.<sup>75</sup>

#### i. Conditional Offer of Employment

When the MSP extends an applicant a conditional offer of employment, it notifies the applicant that if the applicant passes the remaining pre-employment steps, the MSP will appoint the applicant to the next Trooper Recruit School (TRS). The MSP advises the applicant that the applicant must continue to meet the minimum requirements of a trooper position, and that negative information that comes to the attention of the MSP may result in revocation of the conditional offer of employment.

Pursuant to MCOLES rules, the applicant must undergo a psychological screening administered by the MSP’s Office of Behavioral Sciences (OBS) within 180 days of the start of the TRS.<sup>76</sup> To pass the psychological examination, an OBS-certified psychiatrist or licensed psychologist must determine that the applicant is free from any mental or emotional instabilities that may impair the applicant’s performance of the essential job functions of a law enforcement officer or that may endanger the life of the applicant or others.<sup>77</sup> If an applicant fails the OBS’ examination, the MSP will arrange to have the applicant examined by an outside psychologist for a second examination. Applicants must also pass a medical examination,<sup>78</sup> along with a drug screening examination,<sup>79</sup> within 180 days of the commencement of the academy.

#### j. Appointment to Trooper Recruit School

Once the applicant successfully completes the psychological screening, medical examination, and drug examination, the applicant receives an invitation to the next scheduled TRS. The MSP sends the

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<sup>73</sup> The MSP said that it is rare for an applicant to receive a score of 1 at this point, but an example may be if an applicant demonstrates racism or sexism. The MSP also indicated that an example of an applicant who receives a score of 2 is one who does not have the necessary experience to fulfill the duties of a trooper.

<sup>74</sup> According to the MSP, an applicant may receive a score if 3D if the applicant has a financial issue that the applicant needs to resolve, or if the applicant is not mature enough at this point to handle the responsibilities of the trooper position.

<sup>75</sup> See <http://www.michigan.gov/mdcs/0,4614,7-147-6875-163241--,00.html> (last visited Aug. 29, 2018).

<sup>76</sup> MICH. ADMIN. CODE r. 28.14204(d).

<sup>77</sup> *Id.*

<sup>78</sup> Applicants must meet visual and auditory acuity standards established by MCOLES rules. *Id.* r.28.14204(a), .14204(b).

<sup>79</sup> Applicants must test negative for the illicit use of controlled substances by a laboratory approved by MCOLES. *Id.* r. 28.14203(h).

applicant an appointment letter describing the details of the recruit school orientation and the specific equipment necessary to begin academy training.

k. Trooper Recruit School

Applicants must successfully complete a twenty-six week TRS, where they live at the academy during the week until Friday evenings. The MSP administers its own training academy located in Lansing, which MCOLES has approved.<sup>80</sup> Two primary instructors, a MSP commander and a MSP assistant commander, administer the MSP's training academy. Additionally, the MSP temporarily assigns MSP troopers from across the state to provide instruction. MSP recruits are considered full-time employees from the first day of recruit school and receive a salary, including overtime.

MCOLES establishes the basic law enforcement training curriculum, which agencies may expand upon, as does the MSP. The MSP's curriculum includes the mandatory MCOLES courses on subject control, firearms, emergency vehicle operations, physical fitness, health and wellness, first aid, and criminal law and procedure,<sup>81</sup> along with topics such as ethics in policing, constitutional law, cultural awareness and diversity, interpersonal skills, report writing, water safety, interacting with juveniles, civil rights law, interacting with individuals with disabilities, domestic violence, interviewing techniques, child abuse investigations, sexual assault investigations, and employee benefits. Recruits take weekly written examinations in the above-listed subject areas, which they must pass with a score of 70% or more; the MSP allows one written re-test in each skill area, and if a recruit fails the re-test, the MSP discharges the recruit from the academy.<sup>82</sup> Recruits must also pass a first aid practical exam, firearms qualifications testing, and drive-track qualifications testing.

Pursuant to MCOLES requirements, the MSP also administers the MCOLES Physical Agility test, as described in Section V.A.2.d of this Report, during the first and last two weeks of the TRS.<sup>83</sup> The first test is a diagnostic test, which the MSP does not score on a pass/fail basis; rather, the MSP uses the test to evaluate whether a recruit is progressing. The MSP administers the test in the same manner as during the pre-employment phase, including gender- and age-normed cut-off scores, and applicants have the opportunity to immediately re-test any event in which they do not achieve the cut-off score for their age or gender.<sup>84</sup> The second test, an exit skills test, is pass/fail and the MSP scores the test in the same manner as the pre-employment test. If an applicant fails any of the four events, the applicant has the opportunity to re-test the failed event(s) on the same day after a sufficient period of recovery.<sup>85</sup> Should the recruit fail an event during the second attempt, the recruit may re-take the entire test again after a recommended seventy-two hour recovery period.<sup>86</sup> If the recruit again fails one or more events, the recruit may re-test the failed event(s) that same day; if the recruit fails an event again, the recruit will have failed the MCOLES Physical Agility Test and the MSP discharges the recruit from the TRS.<sup>87</sup> The

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<sup>80</sup> An agency is required to obtain MCOLES authorization before establishing a law enforcement training academy. *Id.* 28.14302.

<sup>81</sup> MCOLES Policies and Procedures Manual, *supra* note 60, at ch. 3, unit 1.

<sup>82</sup> *Id.*

<sup>83</sup> MCOLES Proctor Manual, *supra* note 60, at 28-29.

<sup>84</sup> *Id.* at 28.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

MSP told the OCR that it cannot recall a recruit failing the MCOLES Physical Agility Test in the academy, other than situations where a recruit because of injury was unable to take the test.

While at the TRS, each recruit is assigned to an instructor who serves as a mentor. A recruit meets with the recruit's mentor every week, and the mentor completes performance appraisals on all assigned recruits throughout the term of the academy. According to the MSP, the average attrition rate for recruits failing to complete the academy training is approximately 17%. The most common reasons for not completing the program are voluntary departure, failure of the legal or driving examination, or departure due to an injury. All of the recruits and troopers with whom the OCR spoke indicated that they felt that the MSP treats female recruits the same as male recruits during the academy training.

To be sworn in as a law enforcement officer, MCOLES requires that recruits take and pass a MCOLES licensing examination within one year of completing the academy.<sup>88</sup> MSP has its recruits take this licensing examination within the last two weeks of the TRS; if a recruit fails the first time, the recruit can re-take the examination. The MSP could not recall a situation where a recruit did not pass the licensing examination on the first or second time.

#### 1. Field Training Officer Program

On graduating from the TRS, recruits become probationary troopers assigned to posts throughout the state. Recruits submit five preferred post locations upon graduation, and the MSP assigns a recruit to a post based on the needs of the MSP, taking into consideration the recruit's academic ranking during the TRS, the recruit's background and experience, and the recruit's residence. The MSP initially assigns each new trooper to a senior Field Training Officer (FTO) at the post, who accompanies the new trooper on all of the trooper's assignments and shifts. During the FTO Program, the FTO trains the trooper on how to fulfill the duties of a MSP trooper. The FTO assesses the trooper's performance on a daily basis and identifies and addresses any deficiencies in performance, and completes a monthly evaluation report to chart the trooper's progress. The FTO Program lasts twenty weeks, divided into two nine-week periods followed by a two-week evaluation period. Upon the completion of the FTO program, the MSP certifies new troopers to work alone.

Following the completion of the FTO program, a new trooper remains on probation for another six months, and the MSP evaluates the trooper's performance every thirty days during the period of probation. In total, a trooper is on probation for a period of eighteen months from the trooper's date of hire, unless extended,<sup>89</sup> including the time spent in the TRS and in the FTO program. The MSP may dismiss a probationary trooper from employment if the trooper fails to achieve an acceptable performance level in any essential job function or critical skill area. The MSP reported that there are generally one or two new troopers from each recruit class that fail to successfully complete the FTO program or the overall probationary period, with deficiencies in report writing the most common reason, followed by a failure to demonstrate reasonable decision-making.

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<sup>88</sup> MICH. ADMIN. CODE r. 28.14320(b).

<sup>89</sup> The MSP may extend a trooper's probationary period in order to provide the trooper with special training to address serious or repetitive problems relating to unacceptable performance. FTO Program and Probation Policy, *supra* note 61, at § 1(C)(8)(b).

## B. Impact of Selection Process on Female Candidates

As discussed in Section II.B of this Report, a recipient's selection and hiring policies and practices, although neutral on their face, may have a disparate impact on female applicants.<sup>90</sup> Disparate impact is generally demonstrated through statistical data.<sup>91</sup> The OCR reviewed the selection devices the MSP used and considered their effects on actual applicants. We refer to this information as applicant flow data. In evaluating these data, the OCR applies (1) the Uniform Guidelines on Employee Selection Procedures (Uniform Guidelines)<sup>92</sup> and, in particular, the Uniform Guidelines' Four-Fifths, or 80%, Test, and (2) the Fisher's Exact Test.<sup>93</sup> Under the Four-Fifths Test, if, for a particular job, a respondent uses a selection device that selects applicants of one sex at a rate that is less than four-fifths (or 80%) of the selection rate for applicants of the other sex, the OCR views that as some evidence that the selection process adversely impacts the sex with the lower passage rate.<sup>94</sup>

The Uniform Guidelines recognize that differences in selection rates less than four-fifths (or 80%) may nonetheless constitute adverse impact where they are significant in both statistical and practical terms.<sup>95</sup> The OCR uses the Fisher's Exact Test to determine whether an employment practice has a disparate impact on women that is statistically significant, or, stated differently, unlikely to occur by chance.<sup>96</sup> A Fisher's Exact Test result is statistically significant if it has a "p-value," or probability that something occurred by chance, of less than five percent.<sup>97</sup> In evaluating whether disparate impact is present, the OCR will evaluate the sum of the statistical evidence.<sup>98</sup>

To analyze whether the MSP's selection and hiring processes had a disparate impact on female applicants, the OCR obtained applicant flow data from the MSP for the 129th TRS, the 130th TRS, the 131st TRS, and the 132nd TRS. The OCR retained the statistical consulting services of an expert to analyze this data for the OCR. The expert analyzed disparities based on sex for each step in the MSP's trooper selection process for all classes in aggregate, and specifically for each recruit class for the TRS and FTO program. In doing so, the expert analyzed the passing rates of male and female applicants at each step in the selection process for compliance with the Four-Fifths Test, and also applied the Fisher's Exact Test. After conducting this analysis, the expert found that the data provided by the MSP do not demonstrate that any of the MSP's selection devices for the trooper position had a disparate impact on female applicants.

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<sup>90</sup> 42 U.S.C. § 2000e-2(k); *see also* Griggs, 401 U.S. at 432.

<sup>91</sup> Dothard, 433 U.S. at 330-31; Hazelwood Sch. Dist., 433 U.S. at 307-08.

<sup>92</sup> *See* 28 C.F.R. § 42.203(b)(10); 28 C.F.R. § 50.14(4)(C) (2018).

<sup>93</sup> *Id.* § 50.14(4)(D).

<sup>94</sup> *Id.* § 50.14(4)(C), (D). For example, if 100 males took an employment test and ninety of those males passed it, then the selection rate for male applicants would be 90/100 (or 90%). If seventy females took the same test and thirty-five females passed it, then the female selection rate would be 35/70 (or 50%). When comparing the female selection rate (50%) with the male selection rate (90%), the female selection rate is 50/90 (or 55.55%) of the male selection rate. Because the female selection rate is less than 80% of the male selection rate, the OCR could conclude that the employment test adversely impacted female applicants, if the adverse impact is confirmed by further statistical analysis.

<sup>95</sup> *Id.* § 50.14(4)(D).

<sup>96</sup> *See* Barnes v. GenCorp Inc., 896 F.2d 1457, 1466 (6th Cir. 1991).

<sup>97</sup> Jones v. City of Boston, 752 F.3d 38, 43 (1st Cir. 2014); Bazile, 858 F. Supp. 2d at 738.

<sup>98</sup> *See* Isabel v. City of Memphis, 404 F.3d 404, 413 (6th Cir. 2005) (noting that "... we prefer to look to the sum of statistical evidence to make a decision in these kinds of cases.").

The OCR's review of MSP policies and interviews with MSP troopers found no evidence of sex-based discrimination, intentional or otherwise, in the MSP's application and hiring process. All of the female troopers and recruits with whom the OCR spoke indicated that they believed that male and female applicants had the same opportunities to succeed during the application and selection process.

However, the OCR is concerned that the MSP is not fully complying with the Safe Streets Act's regulatory requirements in regard to the analysis of its hiring process. The MSP indicated in its data response that it routinely analyzes its selection and hiring process. However, during the OCR's onsite visits, MSP command staff said that the MSP has not conducted any specific assessment of its selection devices to determine whether any device has a disparate impact on female applicants. Accordingly, the MSP is not currently in compliance with the Safe Street's Act's regulatory requirement to conduct a yearly evaluation of all of its employment selection devices to ensure that it is affording equal employment opportunities to women.<sup>99</sup>

### C. Recommendations

To further strengthen its trooper selection process, the OCR recommends that the MSP evaluate whether its employment criteria, standards, and selection devices correspond with the skills and abilities needed to be a MSP trooper, and do not serve as an unnecessary barrier to prospective female troopers.<sup>100</sup> As part of this evaluation, the MSP should do the following:

- Review on at least an annual basis each of the selection devices in the trooper hiring process to ensure that they are nondiscriminatory and have no disparate impact on female applicants or recruits.<sup>101</sup>
- Review the nature and structure of the TRS to ensure that the current structure and training objectives of the training academy meet the MSP's needs.<sup>102</sup>

## VI. Retention

In accordance with the Safe Streets Act regulations, the MSP must assess its efforts to retain employees.<sup>103</sup> Training opportunities, equal employment and family leave policies, and promotional opportunities contribute to an organization's ability to retain its female employees.

### A. In-Service Training Opportunities

The Safe Streets Act regulations require a recipient to conduct an annual self-assessment of its training programs to determine whether these programs treat women equitably.<sup>104</sup> If this analysis indicates that

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<sup>99</sup> 28 C.F.R. § 42.303(a), (c)(2).

<sup>100</sup> Advancing Diversity in Law Enforcement, *supra* note 49, at 31-32.

<sup>101</sup> 28 C.F.R. § 42.303(a), (c)(2).

<sup>102</sup> There is some evidence that a more collegial, supportive training environment increases the graduation rate of female recruits. BRIAN REAVES, BJS, STATE AND LOCAL LAW ENFORCEMENT ACADEMIES, 2006 (2009), 11, <https://www.bjs.gov/content/pub/pdf/slleta06.pdf>.

<sup>103</sup> 28 C.F.R. §§ 42.303(a), (c), .304.

<sup>104</sup> *Id.* § 42.303(c)(3).

female employees do not receive the same type and amount of training opportunities as male employees, the recipient should describe in its written EEO what timely steps it will take to correct the deficiency.<sup>105</sup> The MSP did not provide the OCR with any information indicating that it has a system for annually monitoring whether its training programs are equitable for female troopers.

MCOLES establishes minimum in-service training requirements for all licensed law enforcement officers in the State of Michigan, including MSP troopers.<sup>106</sup> This includes minimum standards for in-service firearms training, which are set forth in the MCOLES Rules and Procedures Manual.<sup>107</sup> On an annual basis, the MSP requires all troopers to participate in three firearms trainings, a first aid training, a defensive tactics training, a hazardous materials training, and a driving training. Additionally, most specialty units have additional annual training requirements for members of their units. According to the MSP, the MSP encourages troopers to seek out and attend pertinent discretionary trainings, and it supports requests for training if the training is job-related and not cost-prohibited. The MSP vets all training requests through the appropriate chain of command.

Most female troopers interviewed by the OCR did not raise any concerns about their training opportunities, but a few troopers opined that the availability of training opportunities depends on the trooper's posting location within the state or the trooper's supervisor.

## B. EEO Policies, Practices, and Related Training

### 1. EEO Policies on Discrimination and Harassment

Under the Safe Streets Act's nondiscrimination provisions and its implementing regulations, the MSP has an obligation to protect its employees from employment discrimination, including harassment and retaliation.<sup>108</sup> The MSP has several policies relating to the prevention of discrimination and harassment along with several avenues by which troopers can lodge a complaint. The MSP has also designated an equal employment opportunity officer (EEO Officer) to implement and monitor its EEO, as required by the Safe Streets Act regulations.<sup>109</sup>

MSP Order No. 001 sets forth the MSP's policy on prohibiting any form of discriminatory harassment by MSP employees, and it states that all employees have a legal right to work in an environment free from harassment and discrimination.<sup>110</sup> "Discriminatory Harassment" is defined as unwelcome advances, requests for favors, and other verbal or physical conduct or communication based on religion, race, color, national origin, age, sex, height, weight, marital status, partisan consideration, disability, or genetic information, including all forms of harassment covered by Title VII of the Civil Rights Act of

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<sup>105</sup> *Id.* § 42.304(g)(1).

<sup>106</sup> MICH. ADMIN. CODE r. 28.14210.

<sup>107</sup> MCOLES Policies and Procedures Manual, *supra* note 60, at ch. 6, unit 2.

<sup>108</sup> 34 U.S.C. § 10228(c)(1); 28 C.F.R. § 42.203(b)(9).

<sup>109</sup> 28 C.F.R. § 42.304(i).

<sup>110</sup> MSP, Harassment Policy, MSP Official Orders, Order No. 001 (Oct. 6, 2003) [hereinafter Harassment Policy].

1964 and Michigan law.<sup>111</sup> The Harassment Policy indicates that managers and supervisors are responsible for recognizing and preventing harassment and discrimination in the workplace; the policy also requires managers to conduct an investigation when appropriate. Additionally, the Harassment Policy notes that employees have a corresponding obligation to make a reasonable effort to avoid harm by reporting harassment or discrimination.

According to the Harassment Policy, all complaints of harassment shall be investigated thoroughly and in a timely manner in accordance with the procedures set forth in MSP Order No. 12.<sup>112</sup> These Complaint Procedures reiterate the prohibitions against discrimination and harassment discussed in the Harassment Policy, and they indicate that all complaints alleging harassment or discrimination shall be properly documented, investigated, and resolved. According to the Complaint Procedures, if an employee believes that discrimination or harassment has occurred, the employee shall report it in writing through the employee's normal chain of command, or, if the alleged discrimination or harassment involves the employee's supervisor, the employee can contact the MSP's EEO Officer directly.<sup>113</sup> The Complaint Procedures direct supervisors to notify the EEO Officer of the complaint and to assist reporting employees by providing information and resources, exploring possible strategies for resolving the problem when appropriate, or starting the formal complaint process. To initiate the formal complaint process, an employee must complete a Complaint Against Member Form (Form UD-93) and submit it to the Internal Affairs Unit, which must provide a copy of the complaint to the EEO Officer.

The Complaint Procedures state that because of the serious nature and impact of harassment and discrimination, there are certain allegations that must be formally investigated, including, but not limited to, the following situations: touching of a sexual nature; allegations between supervisors and subordinates; harassment in which submission to, or the rejection of, sexually harassing conduct is used as the basis for an employment decision; conduct which is so severe, frequent, or egregious that a hostile work environment exists; and allegations of discriminatory harassment based on race, color, sex, religion, national origin, height, weight, marital status, genetic information, or partisan considerations that results in an adverse employment action with regard to a term, condition, or privilege of employment. The Director of the MSP, or the Director's designee, may assign the complaint investigation to any of the following: the Internal Affairs Unit; the EEO Officer; or an impartial investigator.<sup>114</sup> The MSP investigates the complaint in accordance with Internal Affairs Unit procedures and Michigan Department of Civil Service Guidelines, and once fully investigated the Internal Affairs

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<sup>111</sup> Harassment may occur under any of the following conditions: (1) submission to the conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment; (2) submission to or rejection of the conduct or communication is considered in making decisions affecting a person's employment; or (3) the conduct or communication has the purpose or effect of substantially interfering with a person's employment or creating an intimidating, hostile, or offensive employment environment. *Id.* at § 1(A).

<sup>112</sup> MSP, Recognizing and Reporting Discriminatory Harassment and Civil Rights Violations Involving Department Members, MSP Official Orders, Order No. 12 (July 10, 2008) [hereinafter Complaint Procedures].

<sup>113</sup> The Complaint Procedures state that an employee may contact the EEO Officer at any time by telephone, in writing, or in person, and that the EEO Officer will assist employees in determining whether particular behavior constitutes harassment or discrimination. *Id.* at § 2(D)(5)(a). The Complaint Procedures further note that employees may also consult with other resources such as the MSP's Office of Behavioral Science, the commander of the MSP's Human Resources Division, the MSP's Employee Services Program, or the MCSC. *Id.*

<sup>114</sup> The Director shall select the investigator based on the nature of the incident, an individual's sensitivity to the nature of the incident, an individual's investigative skills, and an individual's objectivity with regard to the involved parties. *Id.* at § 2(D)(9)(b).

Unit issues a determination on the complaint.<sup>115, 116</sup>

The MSP's designated EEO Officer is responsible for implementing and ensuring adherence to the MSP's EEO program. These duties include the following: overseeing the discrimination and harassment complaint process; ensuring that the MSP properly investigates all complaints; overseeing the administration of employee discipline; providing to recruits, new civilian employees, and supervisors training on preventing harassment and discrimination in the workplace; serving as the liaison to external agencies investigating discrimination and harassment allegations against the MSP; and preparing and submitting the MSP's EEOP.

## 2. Notification and Training on EEOP

According to the MSP, to notify employees of its written EEOP, the MSP posts its current EEOP utilization report on the MSP intranet site and sends an email notification to employees alerting them of this posting and indicating that hard copies of the EEOP utilization report are available at all MSP worksites. As referenced above, the MSP discusses its EEO policies and procedures in several official orders, which all employees are required to review.<sup>117</sup> The MSP ensures that its EEOP utilization report is accessible to the public by posting it on the MSP's public website<sup>118</sup> and by making it available at every MSP facility upon request. Additionally, the MSP indicated on its most recent EEOP utilization report that it will include the utilization report when disseminating information during recruiting events.<sup>119</sup>

The MSP trains all new recruits on its Harassment Policy and Complaint Procedures in the academy during courses on ethics and cultural diversity and when staff from the Human Resources Division provide an overview of employee benefits. Recruits are then tested on these policies during the academy. Additionally, the MSP discusses its EEO policies during annual leadership trainings for supervisory employees. Other than these trainings for new recruits and supervisors, however, it does not appear that the MSP regularly trains troopers on its EEO policies. During the OCR's onsite interviews of troopers and post commanders, one captain said that she recently sent an email to the troopers under her command reminding them that they should contact the MSP's EEO Officer with any concerns. The troopers with whom the OCR spoke generally recalled being trained on the MSP's EEO policies and procedures during the TRS and were aware that MSP orders address these policies.

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<sup>115</sup> If the complaint is sustained, the MSP's labor relations specialists determine the appropriate discipline for the offending employee. *Id.* at § 2(D)(9)(d)(i).

<sup>116</sup> The Complaint Procedures indicate that in addition to, or in lieu of, filing a formal complaint of discrimination or harassment via a Complaint Against Member form, employees may complain of discrimination or harassment through the employee grievance process or by filling a complaint with the Michigan Department of Civil Rights or the federal Equal Employment Opportunity Commission. *Id.* at § 2(D)(9)(f).

<sup>117</sup> MSP, Department Rules and Regulations, MSP Official Orders, Order No. 1 (Dec. 17, 2003). Pursuant to this order, MSP employees are responsible for knowing, understanding, and complying with department rules and regulations set forth in MSP Official Orders.

<sup>118</sup> The MSP's current EEOP utilization report is not posted on its public website at this time; the MSP indicated that the OCR has not yet provided official approval of its current EEOP utilization report, but that the MSP will post it on its website once it receives this approval.

<sup>119</sup> MSP, EEOP Utilization Report, *supra* note 3, at 4.

According to information provided by the MSP, from January 2013 to September 2016, three MSP employees (one male trooper, one female trooper, and one female civilian employee) filed complaints of sex discrimination with the Michigan Department of Civil Rights (MDCR) and two employees (one male trooper and one female trooper) filed a sex discrimination complaint internally with the MSP. Based on the documentation provided to the OCR, it appears that the MSP Internal Affairs Unit conducted investigations into the internal complaints and into one of the complaints filed with the MDCR. The MSP's EEO Officer conducted an investigation into and provided a position statement to the MDCR in connection with the other two complaints. Two of the Internal Affairs Unit investigations determined that the allegations were unfounded, and the third investigation sustained the allegations. The MSP's EEO Officer rejected the allegations of sex discrimination in the other two cases. In all three complaints filed with the MDCR, the MDCR found insufficient evidence to proceed and dismissed the complaints.

The female troopers with whom the OCR spoke were all generally aware of the MSP orders setting forth the procedures for filing complaints of discrimination, and they recalled receiving relevant training during the TRS or during supervisory training. When speaking with female troopers, the OCR inquired about the troopers' experiences with undergoing or witnessing harassment or discrimination of female troopers. Several troopers told the OCR that the culture at the MSP has significantly changed over the past few decades, and while harassment and negative attitudes toward female troopers used to exist, for the most part the MSP treats female troopers the same as male troopers. For example, female troopers recalled situations at the beginnings of their careers ten to twenty years ago where male troopers made disparaging remarks to female troopers, such as telling a female trooper that she would not be able to fight anyone, that a trooper had gained weight, and that women in general did not belong in law enforcement. Another trooper recalled a former male trooper saying that he and another male trooper would "take turns with" a female colleague; the trooper said that the comments upset her at the time. The trooper spoke with male trooper, and he changed his behavior. Additionally, a few troopers recalled a situation that occurred approximately two years ago, where a male trooper appeared only partially clothed in an area where female troopers were present; this appears to be the incident that was the subject of the above-referenced complaint that a female trooper filed with the Internal Affairs Unit. One trooper told the OCR that she did not feel that the discipline that the male trooper allegedly received, a counseling memorandum to the file, was sufficient. However, most of the female troopers with whom the OCR spoke did not report experiencing or being aware of harassing behavior. One trooper stated that troopers consider themselves to be "one MSP" and do not separate each other on gender lines, and that there is a culture of mutual respect across the agency.

### 3. Family Leave Policies

Adopting and maintaining adequate family leave policies is an important component of retaining female employees.<sup>120</sup> The MSP's family leave policies are governed by the terms of the MSP's collective bargaining agreement with the Michigan State Police Troopers Association (MSPTA)<sup>121, 122</sup> According

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<sup>120</sup> See THE WHITE HOUSE, PRESIDENTIAL MEMORANDUM—MODERNIZING FEDERAL LEAVE POLICIES FOR CHILDBIRTH, ADOPTION AND FOSTER CARE TO RECRUIT AND RETAIN TALENT AND IMPROVE PRODUCTIVITY (2015), <http://go.usa.gov/x9P8U>.

<sup>121</sup> The MSPTA serves as the exclusive labor representative of MSP troopers and sergeants and negotiates collective bargaining agreements on their behalf. See <http://www.mspta.net/about-us> (last visited Aug. 29, 2018).

<sup>122</sup> MSPTA, Agreement Between the Michigan Department of State Police and the Michigan State Police Troopers Association, Inc. (Oct. 1 2014 - Sept. 30, 2017) [hereinafter Collective Bargaining Agreement, or CBA].

to the CBA that was in place during the OCR's review, the MSP shall treat disabilities or complications resulting from pregnancy and childbirth the same as any other medical condition or physical disability.<sup>123</sup> Employees who have a non-duty medical or physical disability may use paid sick leave followed by annual leave, and, once an employee exhausts paid leave, the MSP will place the employee on an unpaid medical leave of absence for up to one year from the exhaustion of annual leave.<sup>124</sup> The CBA also provides for parental leave, which, upon written request, allows a trooper to receive parental leave for up to six months for the birth or adoption of a child, with the possibility of an extension of an additional six months.<sup>125</sup> The CBA also states that employees are covered by the protections under the Family and Medical Leave Act (FMLA) of 1993,<sup>126</sup> which provides twelve weeks of unpaid, job-protected leave to eligible employees for certain circumstances including the care of a child following birth, adoption, or foster care and the care of a spouse, child, or parent with a serious health condition.<sup>127</sup>

The CBA recognizes that there are times when an employee has experienced an injury or illness but is physically able to perform limited duties while recuperating, and authorizes MSP supervisors to use employees in limited duty assignments.<sup>128</sup> The CBA indicates that the provisions pertaining to limited duty apply only to job-related injuries or disabilities, but the CBA does not preclude the assignment of employees who have non-job-related injuries or disabilities to limited duty under certain circumstances.<sup>129</sup> Accordingly, female troopers may be eligible under the CBA for limited duty assignments during or subsequent to pregnancy.

During the TRS, representatives from the MSP's Human Resources Division instruct recruits on employee benefits, including FMLA, sick leave, and long- and short-term disability leave; they also meet individually with recruits to discuss these matters. MSPTA staff speak to recruits toward the end of academy training to discuss the collective bargaining agreement.

During the OCR's onsite interviews, one female trooper told the OCR that the MSP treated her well when she was pregnant with her two children and gave her light duty assignments both times. However, another female trooper indicated that when she was pregnant her supervisor denied her request for a light duty assignment and as a result, she had to take leave when her uniform belt became too tight. Similarly, one female trooper opined that the MSP needs to be more consistent with granting modified or light duty assignments to pregnant troopers, noting that some supervisors will not grant such requests. None of the other female officers interviewed by the OCR expressed problems with obtaining maternity leave or requesting limited duty related to pregnancy.

When asked if they had any recommendations for how the MSP could retain female troopers, several troopers with whom the OCR spoke recommended that the MSP consider job-sharing arrangements or other alternative work schedules to better allow troopers to manage their family responsibilities. Several

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<sup>123</sup> *Id.* at art. 28, pt. B, § 1.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at art. 28, pt. B, § 2.

<sup>126</sup> Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (2018).

<sup>127</sup> CBA, *supra* note 122, at art. 28, pt. B, §§ 3, 4.

<sup>128</sup> *Id.* at art. 26, pt. A, § 3. In deciding whether to place an employee on limited duty, the CBA indicates that a supervisor's considerations should include the MSP's needs, the availability of limited duty assignments, the costs to the MSP, and the employee's physical limitations. Employees may qualify for limited duty by providing the MSP with a note from a physician indicating the ability to perform limited duty, or as a result of a medical examination by a MSP-designated physician.

<sup>129</sup> *Id.*

troopers suggested that the MSP provide or facilitate daycare near MSP facilities.

### C. Process for Promotions, Transfers, and Special Assignments

To be considered for a specialized position, such as a position with a Canine Unit, the Dive Team, or the Bomb Squad, a trooper must have served in a trooper position for a minimum of two years. Employees wishing to obtain the next rank must take and pass an examination, such as a trooper being promoted to a sergeant or a sergeant being promoted to a lieutenant. The MSP provides internal postings of all vacancies, and considers an applicant's seniority, training, and experience when filling a position. Pursuant to the CBA, employees wishing to be considered for a voluntary transfer or promotion to another position must respond in writing within twenty-one days of a vacancy posting, specifying the employee's present post, rank, time in service, location(s) sought, and any qualification for the desired position.<sup>130</sup> The CBA provides that in filling a trooper vacancy, such as a position at a particular post or an assignment with a specialty unit, the MSP fills the position based on seniority and qualifications.<sup>131</sup> Under the terms of the CBA, when filling a sergeant-level vacancy, the MSP may fill the vacancy by a reassignment; however, if the MSP does not do so, it must first attempt to fill the vacancy with a sergeant-level transfer (based on seniority and qualifications) rather than a trooper promotion.<sup>132</sup>

At the time of the MSP's most recent February 21, 2018, EEOP utilization report, females filled 11.72% of the MSP's sworn management positions.<sup>133</sup> This is a slight increase from the percentage reported in the MSP's January 5, 2016, EEOP utilization report, where females accounted for 11.30 % of the MSP's sworn management positions.<sup>134</sup>

Overall, there were few complaints from female MSP troopers about the MSP's promotional or transfer process and related opportunities. One trooper indicated that, when she was previously stationed at a different post, her supervisor there did not like women and would not give her a positive recommendation when she applied for a promotion. The trooper said she complained to the MSPTA and the MSP investigated her allegations, but nothing came of it. This trooper also said that the same supervisor allowed a male trooper who was a fellow firearms instructor to operate all of the training sessions, although she had more seniority. Another trooper revealed that earlier in her career she did not receive a transfer assignment while a male counterpart did, and several troopers believed it was because the captain responsible for the transfer did not like women.

When asked whether there are any particular MSP policies or practices that make them especially likely to remain at the MSP, a large number of troopers cited the considerable number of opportunities for specialty positions and for promotions into leadership positions. One trooper expressed her belief that the MSP treats everyone equally while recognizing and highlighting the unique skills that women bring to law enforcement. Several troopers commented that there are a lot of women in leadership positions at the MSP, and that this circumstance, along with the fact that the Director of the MSP is a woman, is very inspiring for female troopers.

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<sup>130</sup> *Id.* at art. 13, § 4(c).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> MSP, EEOP Utilization Report, *supra* note 3, at 5.

<sup>134</sup> MSP, EEOP Utilization Report, *supra* note 46, at 17.

Currently, the MSP does not have a formal process for conducting exit interviews with troopers who either voluntarily or involuntarily leave the MSP. Any MSP employee may request a personal interview with the MSP Director, a deputy director, or the employee's commander at any time.<sup>135</sup>

#### D. Recommendations

The OCR makes the following retention-related recommendations to assist the MSP's efforts to retain female troopers:

- The MSP should design a system for annually monitoring the effectiveness of its training programs, and determine whether these programs are equitable for female officers.<sup>136</sup> This assessment should collect information on each training opportunity for officers; the officers who apply for the training, classified by sex; the officers selected to participate in the training, classified by sex; and the reasons for selecting or rejecting each applicant. The MSP should also examine whether it sufficiently notifies troopers of available training opportunities, supplies adequate information to officers about the selection process for training programs, and provides equitable training opportunities to male and female troopers.
- The MSP should consider developing a formal mentorship program for officers, along with a leadership training program.<sup>137</sup> A lack of mentoring opportunities and leadership development can present a barrier to advancement and promotion for women.
- The MSP should train its supervisors on the relevant policies related to limited duty assignments to ensure that supervisors are granting these assignments in an equitable manner and consistent with the terms of the CBA. To assist in the accommodation and retention of pregnant employees, the MSP should encourage supervisors to grant limited duty assignments whenever possible.
- The MSP should explore the possibility of offering part-time employment, job-sharing arrangements, or alternative work schedules, when feasible, to better allow troopers to manage their family responsibilities.

## VII. Conclusion

Based on the foregoing, the OCR finds that the MSP is in substantial compliance with the requirements of the Safe Streets Act and its regulations governing employment practices affecting the recruitment, selection, and retention of female entry-level troopers. This Report contains several recommendations

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<sup>135</sup> MSP, Department Structure, Administrative Rules, Policies, and Procedures, MSP Official Orders, Order No. 2, § 2.2. The Director or deputy director will grant a request for an interview when it is in the best interest of the MSP, and a commander will grant a personal interview upon determining that sufficient reasons exist to grant the request.

<sup>136</sup> 28 C.F.R. § 42.303(c)(3).

<sup>137</sup> The Advancing Diversity in Law Enforcement initiative identified these programs as essential to providing underrepresented officers with the "support, guidance, and resources they need to succeed on the job, enjoy their careers, and earn promotions." Advancing Diversity in Law Enforcement, *supra* note 49, at 33–34, 44.

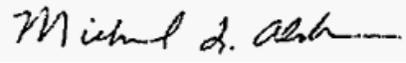
Colonel Kriste Kibbey Etue  
Director, Michigan State Police  
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to assist the MSP in further strengthening its recruitment, hiring, and retention of female troopers. The OCR is always available to offer technical assistance to assist the MSP in implementing these recommendations.

The OCR is administratively closing our Compliance Review of the MSP at this time. The OCR would like to thank MSP staff, especially Captain Greg Zarotney, for assisting OCR attorneys [REDACTED] during this Compliance Review and their September 2015 and September 2016 onsite visits. Please be advised that the closure of this Compliance Review is limited to the specific facts of the matter and does not preclude the DOJ from taking additional appropriate action to evaluate a recipient's compliance with any of the laws the DOJ enforces. Additionally, closing this Compliance Review does not affect the MSP's requirement to comply with all applicable federal laws and regulations.

The MSP should note that federal law protects persons who participated in the OCR's Compliance Review from retaliation for having provided information to the OCR. Any individual alleging harassment, intimidation, or retaliation may file a complaint with the OCR, and we would investigate such a complaint if the situation warranted.

Sincerely,

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Michael L. Alston  
Director  
Signed by: MICHAEL ALSTON