



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

March 31, 2020

Michael Schirling, Commissioner
Vermont Department of Public Safety
45 State Drive
Waterbury, Vermont 05671

Colonel Matthew Birmingham, Director
Vermont State Police
45 State Drive
Waterbury, Vermont 05671

RE: Compliance Review of the Vermont State Police, Dep't of Pub. Safety (16-OCR-1551), Compliance Review Report

Dear Commissioner Schirling and Colonel Birmingham:

I write to report the findings of the Compliance Review of the Vermont State Police (VSP), Vermont Department of Public Safety (DPS), conducted by the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ), which focused on the employment practices related to recruitment, selection and retention of female troopers.

In my letter dated January 30, 2017, I informed Commissioner Thomas Anderson that the OCR selected the DPS, VSP for a Review as part of OCR's broader review of the employment practices of state law enforcement agencies. The OCR conducted the review in accordance with the nondiscrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) and its implementing regulations.¹

The OCR has completed its Review and finds that the VSP and DPS 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 VSP has a robust recruiting program, with a focus on recruiting a diverse pool of applicants. The DPS has department-wide policies addressing equal employment opportunity, sexual harassment, and family and parental leave. Statistical analysis of the employment data by an expert hired to assist the OCR found that while some selection devices had a disparate impact on women in some years, the VSP selection process does not consistently have an adverse impact on the selection

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

and hiring of women to the position of trooper. You will find a detailed discussion of this is in Section V.C. of this Compliance Review Report.

The OCR's Review evaluated the VSP's recruitment, selection and retention of troopers from 2014 through 2017. In preparing this Report, the OCR relied on information provided by the DPS and the VSP in response to the OCR's data requests, including relevant written policies and procedures and applicant flow data pertaining to applicants and hires for the position of trooper during the requested time period, in addition to information publicly available on the DPS and the VSP websites. The OCR conducted an on-site visit to the VSP from September 12, 2018 through September 14, 2018. During that time, OCR interviewed both male and female troopers, and a cross section of the VSP Command Staff.

Compliance Review Report

I. OCR's Women in Law Enforcement Compliance Review Initiative

This Review is part of a broader compliance review initiative by the OCR to evaluate the efforts of law enforcement agencies to employ women as sworn officers. The OCR selected state law enforcement agencies as a focus of its initial women-in-policing compliance reviews based on research from the Bureau of Justice Statistics (BJS) that demonstrated, from 1987 to 2007, state law enforcement agencies had the lowest percentage of female sworn officers when compared to local police departments and sheriff's offices.² The BJS report also found that the percentage of female officers grew within state law enforcement agencies at a much slower rate when compared to local jurisdictions.³ Because this information suggested state law enforcement agencies may face challenges in hiring and retaining female officers, the OCR prioritized reviews of state law enforcement agencies.⁴

The DPS, as a recipient of financial assistance from OJP, must comply with the nondiscrimination provisions of the Safe Streets Act, which, among other protections, prohibit discrimination in employment based on sex.⁵ Because the OCR has jurisdiction to conduct compliance reviews of funded state law enforcement agencies, the OCR selected the DPS, which includes the VSP, for a review based on several factors including the DPS' receipt of a substantial amount of DOJ funding.⁶ The DPS was awarded over \$2.1 million in financial

² LYNN LANGSTON, BJS, WOMEN IN LAW ENFORCEMENT, 1987 – 2008 (June 2010), <https://www.bjs.gov/content/pub/pdf/wle8708.pdf>.

³ *Id.*

⁴ From 1987 to 2007, the percentage of female sworn officers increased from 8% to nearly 12% in local police departments and from 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.

⁵ 34 U.S.C. 10228(c)(1).

⁶ 28 C.F.R. 42.206(c)(1)-(5).

assistance from DOJ during the 2017 fiscal year funding cycle, the year that OCR initiated this review.⁷

II. Relevant Legal Obligation

A. Safe Streets Act EEOP Requirements

As a condition of receiving DOJ financial assistance subject to the Safe Streets Act, recipients must comply with the Safe Streets Act's regulations governing the development of a written Equal Employment Opportunity Program (EEOP).⁸ 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, promotion)."⁹

An EEOP must include a variety of analyses, including a comparison between the demographics of a recipient's workforce, cross-classified by race, sex, and national origin in major job categories, and the demographics of qualified individuals in the same job categories, cross-classified by race, sex, and national origin, in the relevant labor market.¹⁰ The EEOP must also include the recipient's written narrative analyzing its existing employment policies, procedures, and practices as they relate to the employment of minorities and women.¹¹ When the analysis identifies underutilization of women or minorities in any job category, the recipient's EEOP must include the specific steps the recipient will take to achieve full and equal employment opportunity.¹² The regulations also require recipients to analyze all elements of their hiring process, including the administration of tests and other selection devices to ensure they are equitable.¹³ Recipients must also develop a recruitment plan to attract minority candidates,¹⁴ and assess their efforts to retain employees, including conducting annual analysis of promotion processes and training programs to determine whether they treat women equitably.¹⁵ Pursuant to

⁷ DOJ financial assistance includes multiple grant awards that are subject to the nondiscrimination provisions of the Safe Streets Act. *See e.g.*, FY 2017 Vermont Edward Byrne Memorial Justice Assistance Grant, Award No. 2017-DJ-BX-0063 (October 1, 2016 to September 30, 2020) (award for \$476,496); FY 2017 Vermont Coverdell Formula Award, Award No. 2017-CD-BX-0035 (January 1, 2018 to December 31, 2019) (award for \$108,332); FY 2017 DNA Award, Award No. 2017-DN-BX-0015 (January 1, 2018 to December 31, 2019) (award for \$231,595); FY 2017 Anti-Heroin Task Force, Award No. 2017-HP-WX-0007 (November 1, 2017 to October 31, 2020) (award for \$1,326,496.) This list of DOJ awards is not comprehensive as it does not list awards to the DPS following the initiation of the Review which are currently open, and any new awards that are pending to the DPS, of which there are several.

⁸ 28 C.F.R. pt 42, subpt. E.

⁹ *Id.* § 42.303(a).

¹⁰ *Id.* § 42.304.

¹¹ *Id.* § 42.304(g)(1).

¹² *Id.*

¹³ *Id.* § 42.303(c).

¹⁴ *Id.* § 42.304(g)(2).

¹⁵ *Id.* § 42.303(a), (c)(3); .304.

the EEO regulations, recipients “are expected to conduct a continuing program of self-evaluation” to determine whether their employment practices have a discriminatory effect.¹⁶

Major recipients, like the VSP, 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 EEO.¹⁷ 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.”¹⁸ This rate results from the comparison of 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.¹⁹ Accordingly, a recipient that receives funding under the Safe Streets Act must ensure it is not utilizing 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 standards of Title VII of the Civil Rights Act of 1964 (Title VII), as amended.²⁰

Under Title VII, the OCR may prove discrimination in multiple ways, including demonstrating that a certain policy has a disparate impact on the employment of a protected class of individuals.²¹ To that end, Title VII prohibits a recipient from using employment practices that are “fair in form, but discriminatory in operation.”²² 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,²³ that the challenged policy or practice has a disproportionately negative effect on a protected class.²⁴ The employer may rebut the prima facie case by proving that the challenged employment practice did not cause the disparate impact²⁵ or by presenting evidence that the challenged practice or policy is “job related for the

¹⁶ *Id.* § 42.306(a).

¹⁷ *Id.* §§ 42.204(b), .302(d); *see also* *EEO Frequently Asked Questions*, OCR https://ojp.gov/about/ocr/faq_eoop.htm#4.

¹⁸ *Id.* *EEO Frequently Asked Questions*.

¹⁹ 34 U.S.C. § 10228(c)(1).

²⁰ 28 C.F.R. § 42.203(c); 42 U.S.C. § 2000e-e-17 (2018).

²¹ 42 U.S.C. § 2000e-2(k).

²² *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).

²³ *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).

²⁴ 42 U.S.C. § 2000e-2(k)(1)(A)(i).

²⁵ *Id.* § 2000e-2(k)(1)(B)(ii).

position in question and consistent with business necessity.”²⁶ 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 violate the law if the employer could have achieved its legitimate purpose by other reasonable means that have a less disparate impact on the protected class.²⁷

III. Agency Overview

A. Vermont Department of Public Safety

The DPS was created by state statute “for the purpose of consolidating certain existing police and investigating agencies, to promote detection and prevention of crime generally, and to participate in searches for lost or missing persons, and to assist in case of state-wide or local disasters or emergencies.”²⁸ DPS is organized into seven divisions: the Vermont State Police, Vermont Emergency Management, Vermont Crime Information Center, Radio Technology Services, Vermont Forensics Lab, the Vermont Homeland Security Unit, and the Division of Fire Safety. DPS is headed by a Commissioner, who is appointed by the Governor.²⁹

B. Vermont State Police

The VSP is a full service law enforcement agency, and is unique among state police departments in that it provides primary law enforcement services to a large portion of the state. The VSP provides primary police service to ninety percent of the Vermont land mass and fifty percent of its population.³⁰ The VSP is organized into three divisions, the Field Force Division, the Criminal Division, and the Support Services Division.

The VSP Field Division, also known as the Uniform Division, is the largest of the three divisions and provides law enforcement functions throughout the state. The Field Division operates out of ten state police barracks and employs over 170 uniformed troopers, who provide law enforcement to approximately 200 towns and patrol 320 miles of interstate highways.³¹ It also manages the twelve VSP Special Teams,³² the Traffic Safety Team, and the Recreational Enforcement Unit. The Criminal Division investigates major crimes, and is made up of the Major Crime Unit, the Bureau of Criminal Investigations, and Special Investigations. The Support Services Division provides the support, planning and infrastructure for the VSP, and is

²⁶ *Id.* § 2000e-2(k)(1)(A)(i).

²⁷ *Id.* § 2000e-2(k)(1)(A)(ii).

²⁸ 20 V.S.A. § 1811.

²⁹ 20 V.S.A. § 1871(b).

³⁰ See Vermont State Police, *About Us* <https://vsp.vermont.gov/about> (last visited January 21, 2020).

³¹ See Vermont State Police, *Field Force Division* <https://vsp.vermont.gov/divisions/fieldforce> (last visited January 21, 2020).

³² The VSP Special Teams include the bomb squad, the canine teams, the clandestine laboratory enforcement team, the crash reconstruction team, the crime scene search team, the crisis negotiation unit, the critical incident dispatch team, the honor guard, the member’s assistance team, the SCUBA team, the search and rescue team, and the tactical services unit.

comprised of the Office of Fair and Impartial Policing and Community Affairs, Technology Management, Public Information, Emergency Communication Centers, and Fleet Services. Critical to OCR's review, the Support Services Division also operates the Staff Operations Section, which encompasses recruitment, training, internal affairs, and professional standards.

In May, 2016, the VSP created a new Captain position to be Director of Fair and Impartial Policing and Community Affairs (FIPCA).³³ The Captain of FIPCA is charged with developing and implementing comprehensive programs to ensure fair and impartial policing practices at all levels of the state police, building relationships of trust with minority communities, diversifying the workforce, and improving cultural awareness. While much of the work of the Director of FIPCA concerns the VSP's relationship to the broader community, this position works closely with the Office of Professional Development, discussed in Section IV.B., to target recruitment activities to groups currently underrepresented in the VSP workforce.

C. Vermont Criminal Justice Training Council

The Vermont Criminal Justice Training Council (VCJTC) was created by state statute³⁴ and develops the training and certification standards for Vermont law enforcement officers. Most significantly, it operates the Vermont Police Academy [Police Academy], developed the written examination that the VSP requires of all trooper applicants, and certifies all Vermont law enforcement officers. The Council is made up of the DPS Commissioner, the Attorney General, a member of the Vermont Troopers' Association, a member of the Vermont Police Association, and five additional members appointed by the Governor.³⁵

The DOJ does not provide federal financial assistance to the VCJTC, so it is not subject to OCR's enforcement authority. Nevertheless, the VCJTC granted OCR's request to interview its command staff in order to understand the role it plays in the selection of VSP troopers.

³³ The VSP established a Fair and Impartial Policing (FIP) Committee in 2009, which meets four times a year and serves as an advisory committee to the VSP. The FIP committee examines bias in policing and advises the VSP on

anti-Semitism, hate motivated crime and incidents that affect LGBTQIA+ individuals and groups; building stronger relationships between law enforcement and the public; building trust within communities of color, marginalized communities and any group that has concerns about access to safety services; examination of VSP policies and procedures; training; recruitment and retention of diverse membership within VSP; [and] collection and analysis of traffic stop and other data.

See Fair and Impartial Policing and Community Affairs, <https://vsp.vermont.gov/communityaffairs> (last visited January 20, 2020). Following the creation of the FIP committee, the VSP contracted with the Northeastern University Institute on Race and Justice to analyze five years of traffic enforcement data to determine if there were racial or ethnic disparities in the ways that VSP troopers policed Vermont roadways (Northeastern Report). *Vermont State Police: An Examination of Traffic Stop Data July 1, 2010 – December 31, 2015* (May 24, 2016), <https://vsp.vermont.gov/sites/vsp/files/documents/VSPPresentation05242016.pdf>. The VSP released the Northeastern Report to the public and the community feedback prompted the VSP to create the position of Director of FIPCA.

³⁴ 20 V.S.A. § 2351.

³⁵ 20 V.S.A. § 2352.

IV. Recruitment for the Position of Trooper

A. DPS's EEOP

As discussed in Section II.A. of this Report, the DPS must develop an EEOP that analyzes the impact of its employment practices on women and minorities, and submit the EEOP utilization report and accompanying analysis to the OCR for review.³⁶ The DPS most recently submitted an EEOP on May 23, 2017 (2017 EEOP). The 2017 EEOP reported 343 total sworn positions among all ranks, of which 307 (89.5%) were male and 36 (10.5%) were female. After analyzing the workforce in comparison to the relevant labor market, the DPS' EEOP identified underutilization rates for females in the job category of Protective Services, which includes data for the subcategories of Sworn Officials and Sworn Patrol Officers. The table below list the underutilization rates in the 2016 EEOP.

Underutilization Rates for Female Sworn Officers in 2017³⁷

2017 DPS Utilization Report	White		Hispanic or Latino		Black or African American		American Indian of Alaska Native		Asian		Native Hawaiian or Pacific Islander		Two or More Races		Other	
	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official
Underutilization %	-24%	-6%	-1%	0%	0%	0%	0%	0%	-1%	0%	0%	0%	-1%	0%	0%	0%

In its 2017 EEOP, the DPS discussed the workforce data in the utilization report, setting forth objectives and steps to address the identified underutilization. The DPS stated that it would “provide equal employment opportunities to all in all areas of underutilization when the Dept. actively recruits for vacancies.”³⁸ The DPS identified the following steps that it would take to achieve this objective: (1) utilize an interviewing scoring sheet for civilian recruitments to ensure that all applicants are provided equal employment opportunity; (2) include diverse employees of hiring panels whenever possible; (3) continue with efforts to recruit and retain diverse employees into the State police; (4) continue to advertise State Police positions on websites of interest to diverse populations in policing; (5) review and consider any recommendations from the State Police Advisory Commission on Women; (6) work toward a plan to provide diversity training to employees; (7) develop a database of referral sources to more effectively target recruitment efforts for law enforcement positions; (8) continue DPS' law enforcement presence on Facebook, Twitter, and LinkedIn; (9) implement a referral reward program for troopers who successfully recruit a new law enforcement employee; and (10) ensure equal employment opportunity in all recruitment processes, including testing, background checks, and review of applicant data.³⁹

³⁶ 28 C.F.R. pt. 42, subpt. E.

³⁷ The negative percentages in the table represent the percentage of underutilization of sworn females in the DPS workforce as compared to the relevant labor market.

³⁸ Vermont Dep't of Pub. Safety, *EEOP Utilization Report*, at 3 (May 23, 2017) (on file with OCR).

³⁹ *Id.*

B. VSP Office of Professional Development

The VSP's Office of Professional Development (OPD) is a part of the Support Services Division, and is responsible for recruitment, hiring, and training new VSP members. OPD consists of a male commander who holds the rank of Lieutenant, who oversees three full-time staff – a male recruiter who holds the rank of Corporal, a female recruiter who holds the rank of Sergeant, and a male recruiter who holds the rank of Sergeant. In addition to these staff members with primary responsibility for recruitment, other staff provide supplemental support to the OPD.

Each of the ten police barracks designates a trooper to be a "local recruiter" in the trooper's geographic area, and that trooper serves as a liaison to OPD. This local recruiter might be identified in a number of ways – the barracks Commander might identify a person who seems particularly excited about recruiting; troopers might nominate troopers whom they have mentored; or troopers might self-identify as having an interest in recruiting. These positions are not posted or subject to a formal application and selection process, and carry no additional compensation. Being a local recruiter would, however, be considered in a trooper's evaluation and would subject a trooper to overtime. Once troopers are selected to be local recruiters, they undergo an hour-long orientation, and must be familiar with all of the trooper job responsibilities, benefits, and VSP career opportunities. Local recruiters are initially paired with a more experienced recruiter when staffing recruiting events, who would provide some mentorship and informal instruction.

The VSP reported that it does not have a specific recruiting budget, but estimated that it spent \$29,138 in Fiscal Year 2016 and \$17,007 in Fiscal Year 2017 on recruiting activities. These figures do not accurately reflect the VSP's recruiting expenses, as they do not include the personnel costs of the staff devoted exclusively to recruiting or the personnel who assist with recruiting through their normal duties or during overtime.

C. Outreach

OPD engages in extensive outreach to notify the public about, and seek applicants for, the position of trooper by advertising on various online and social media platforms; participating in career fairs and job expos; visiting colleges and universities; and attending community events. These outreach efforts extend beyond Vermont and into New Hampshire, Maine, New York, Massachusetts and Connecticut.

The VSP advertises on its own internet platforms, including Facebook, Instagram, Twitter, and its website, as well as the internet platforms of allied state-level departments, such as the Vermont Department of Labor (DOL). The VSP also advertises on local television stations and a variety of online job search sites. As fewer applicants have been recruited through newspaper and print advertising over time, the VSP has scaled back its spending on print advertisements.

The VSP partners with the Vermont DOL to identify job fairs and career expos throughout the northeast region at which to recruit applicants. It recruits at colleges and universities in

Vermont, including Champlain College, the University of Vermont, Vermont State College, and Norwich University; the VSP also recruits at colleges and universities in neighboring states, such as the State University of New York and John Jay College of Criminal Justice in New York, the University of New Haven in Connecticut, Westfield State University in Massachusetts, and Lincoln College in Pennsylvania. When recruiting at colleges, the VSP targets a variety of disciplines and the athletic programs, including women's athletic programs. The VSP recruits at the Eastern States Exposition and multiple sporting events throughout the summer months.

The OPD, in collaboration with the Director of FIPCA, affirmatively tries to recruit a diverse pool of applicants. The VSP has recruited at women-centered events, such as a Kolman Breast Cancer run, Emerge-Vermont, and a women's empowerment event sponsored by Senator Patrick Leahy. It is also partnered with Step Up to Law Enforcement, a coalition of Vermont agencies seeking to improve the representation of women in law enforcement. The VSP has targeted women's colleges, such as Smith and Mount Holyoke, but found those efforts unproductive. Overall, the VSP relayed that its efforts on recruiting women into law enforcement has focused developing personal relationships with prospective applicants and nurturing their interest through individualized attention.

Recruiters encourage and assist prospective applicants to complete the application online while at the recruiting event. Otherwise, the VSP collects contact information, and assigns a recruiter to each person who indicated an interest in applying for a trooper position. A recruiter follows up with each prospective applicant and provides instruction on how to complete the application online. Each Friday, the OPD receives those applications that were completed online during the previous week, and also assigns a recruiter to personally follow up with each applicant. That recruiter helps the applicant remediate any deficiencies in the application and submit required documentation. The OPD sends up to three reminder letters about incomplete applications; if applicants still fail to submit all required documentation, the fourth letter informs applicants that their application will be closed out.

The VSP suggested several barriers to recruiting women into careers in law enforcement with the VSP. The primary barrier may be the VSP schedule and territory, particularly as compared to local law enforcement agencies. As mentioned in Section III.B. of this report, the VSP provides primary law enforcement for 90% of the land mass in Vermont, and those areas that are policed by municipal law enforcement agencies tend to be the more densely populated regions of the state. Consequently, VSP troopers are often patrolling remote and isolated regions, which may present safety concerns for female applicants. Additionally, many municipal law enforcement agencies in Vermont only operate during daytime hours, leaving the VSP to provide services during the overnight and off-peak hours. VSP troopers generally work four or five consecutive days followed by two days off, and often work for three months without having a weekend off. During the days that they are assigned to work, VSP troopers are "on-call" when not patrolling or in the barracks, often being dispatched from their homes during the night. The VSP, unlike municipal law enforcement agencies, requires its Troopers to remain on duty until they finish what they are working on, even if that means staying past the end of their shift. All of these

characteristics of the job may be less appealing to women, particularly those with primary child-care responsibilities.⁴⁰

D. Recruitment Analysis

The VSP conducts an analysis of its recruitment activities [Recruiting Analysis] every year to determine the recruiting methods that are most likely to yield applicants and the phase of the hiring process in which applicants are most likely to fail or withdraw. In 2017, the VSP received 769 applications for the position of Trooper, which was a five-year low;⁴¹ 97 (12.6%) of those applicants were female. In 2016, the VSP received 1008 applications, 92 (9.1%) of which were from women. This represented an increase in the proportion applications from women during a time period of declining applications overall. The VSP reports that law enforcement numbers are dropping nationally, and the VSP application numbers are part of that trend. The VSP, however, began a policy in mid-2016 to prohibit acceptance of applicants with visible tattoos, and suspects that its decline in applications may be related to that policy. New applicants were most likely to list the internet as their referral source, followed by career fairs and other troopers.

Of the 769 individuals who submitted an application in 2017, 290 (37.7%) attended the written test, which is one of the first steps in the selection process. Although overall application numbers have decreased, the percentage of applicants who proceeded to the written test in 2017 was a five-year high and the raw number of applicants who proceeded to the written test was at a four-year high.⁴² This may indicate that, while the overall application numbers have dropped, the VSP is recruiting individuals who are more serious about the profession, or that the drop in applications over time allows the VSP to devote more attention to nurturing applicants through the application process.

E. Recommendations

The OCR commends the VSP and OPD for its robust outreach efforts. In addition to the steps outlined in the DPS's 2017 EEOP, the OCR makes the following recommendations to assist the VSP in its efforts to recruit females for the trooper position:⁴³

⁴⁰ While these are plausible hypotheses for the relatively low number of applications from women, the VSP has not systematically studied these explanations.

⁴¹ The VSP received 1008 applications in 2016, 1169 in 2015, 1242 in 2014, and 1196 in 2013.

⁴² In 2016, 253 out of 1008 applicants (25.1%) took the written test; in 2015, 283 out of 1169 applicants (24.2%) took the written test; in 2014, 233 out of 1242 applicants (18.8%) took the written test; in 2013, 349 out of 1196 applicants (29.2%) took the written test.

⁴³ The DOJ and 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*, identifies promising practices for increasing diversity in law enforcement. See DOJ and EEOC, *ADVANCING DIVERSITY IN LAW ENFORCEMENT*, iv-v (October 2016), <https://www.justice.gov/crt/case-document/file/900761/download> [hereinafter *Diversity in Law Enforcement*].

- Track the barracks-based local recruiters by sex, and make an effort to increase the number of female recruiters that interact with prospective male and female applicants. Observing female troopers and hearing them speak about their experiences as VSP troopers can help dispel myths and stereotypes associated with law enforcement.⁴⁴
- Enhance the investigation of sex differences in the recruiting and selection of troopers in the annual Recruiting Analysis. While the Recruiting Analysis provides very granular data on racial differences at each phase of the recruitment and selection process, it provides less detail on sex differences at each stage of the recruiting process. Similarly, while the most recent Recruiting Analysis that OCR reviewed included measurable goals for increasing the number of applicants and employees from racial minorities, it did not contain a similar goal for women. The VSP should replicate the detail with which it analyzes racial differences when analyzing sex-based differences.
- Consider adding information to the OPD's webpage about women in law enforcement. The webpage may include links to connect interested female applicants to information on women in law enforcement. The linked information may include first-hand accounts from current female troopers and command staff about their experiences at the VSP, highlighting female promotions and various jobs that women hold. The links may also lead to resources on work-life balance and women law enforcement associations.
- Consider developing a program where female troopers may serve as mentors to female applicants awaiting entry into the Police Academy. Mentoring early on in the recruitment process could aid in demystifying any concerns that female applicants may have about becoming a trooper and provide valuable information from female predecessors on how best to manage the challenges the job of a trooper may present.⁴⁵

V. Selection of Troopers

A. VSP's Recent Hiring of Probationary Troopers and Troopers

The OCR examined the VSP's selection of Probationary Troopers and Troopers from 2014 through 2017. The applicant data by sex for 2014-2017 is summarized below.⁴⁶

⁴⁴ *Id.* at 27.

⁴⁵ *Id.* at iv, 28-29.

⁴⁶ This table represents those individuals who submitted an application to the VSP and who were included in the OCR's statistical analysis of the VSP selection process. After the VSP gave OCR its applicant flow data, the statistician retained by OCR performed data cleaning procedures to allow for analysis. This included deleting duplicate applications or applicant files that were missing data in a way that compromised the analysis.

Year	2014		2015		2016		2017	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Female	60	9.7%	109	10.8%	100	11.2%	106	15.1%
Male	558	90.3%	903	89.2%	793	88.8%	595	84.9%
TOTAL	618		1012		893		701	

B. Screening and Training Process for Probationary Troopers and Troopers

In this subsection of the report, the OCR describes each step in Vermont’s process for screening and training Probationary Troopers and Troopers. The application process can be lengthy, and applicants must reapply after January 1 of any given year in order to maintain an open application.

1. Vermont Department of Human Resources’ Review of Applications

Individuals who want to become a Probationary Trooper or a Trooper must submit an online application for either position to the Vermont Department of Human Resources (DHR). The VSP’s Probationary Trooper position is designed for individuals who have not already been certified as law enforcement officers.⁴⁷ The Trooper position is limited to individuals who are certified law enforcement officers in Vermont or another jurisdiction and who have at least three years of uninterrupted service in law enforcement.⁴⁸ During the online application process, the DHR conducts a two-level review of applications. First, it uses its online application system to conduct a “basic eligibility screening” of the information that applicants provide to determine whether they (1) are at least twenty years old,⁴⁹ (2) have not been convicted of a felony,⁵⁰ (3) are authorized to work in the United States,⁵¹ and (4) have, or can obtain, a driver’s license.⁵² If applicants do not satisfy these requirements, then the DHR’s online application system automatically notifies them that they are ineligible for a trooper position. If applicants do satisfy these requirements, then the DHR conducts a “preliminary screening” of their applications, which involves reviewing information that applicants provide to determine whether they have a

⁴⁷ See *Job Specifications, Trooper – Probationary*, VDHR, <https://web.archive.org/web/20170403165611/http://humanresources.vermont.gov/staffing/classification/job-specifications?code=675300> (last visited January 28, 2020) [hereinafter *Probationary Trooper Job Description*].

⁴⁸ See *Job Specifications, Trooper*, VDHR, <https://web.archive.org/web/20170403170054/http://humanresources.vermont.gov/staffing/classification/job-specifications?code=673303> (last visited January 28, 2020) [hereinafter *Trooper Job Description*].

⁴⁹ The Vermont Criminal Justice Training Council establishes the minimum standards for becoming a law enforcement officer in Vermont. See 80-070-001 VT. CODE R. § 17 (2017). One of these minimum standards is that an applicant for a law enforcement officer position must be at least eighteen years old to enter a Basic Academy training program. *Id.* § 17(a). The VSP establishes a higher minimum age requirement for trooper recruits. *Probationary Trooper Job Description*, *supra* note 45; *Trooper Job Description*, *supra* note 46.

⁵⁰ See 80-070-001 VT. CODE R. § 17(f).

⁵¹ *Eligibility and Basic Requirements*, VSP, <https://web.archive.org/web/20170330183543/http://vsp.vermont.gov/employment/requirements> (last visited January 28, 2020).

⁵² *Probationary Trooper Job Description*, *supra* note 45; *Trooper Job Description*, *supra* note 46.

high school diploma or its equivalent.⁵³ The DHR forwards applications that satisfy these threshold screening requirements to the VSP for review.

2. VSP's Compilation of Documents

Once the VSP receives applications from the DHR, it asks applicants to provide their contact information; confirmation of any military service; and copies of their birth certificate or comparable proof of citizenship, high school diploma or its equivalent, and driver's license. To advance in the screening process, applicants must submit these documents to the VSP within one year of its receipt of their applications.

3. VCJTC's Administration of Written Test

Once applicants submit the above documents, they must pass a written test that the Vermont Criminal Justice Training Council (VCJTC) administers.⁵⁴ To pass the test, which includes 100 multiple-choice questions, applicants must receive a score of at least seventy percent.⁵⁵ The VCJTC administers this test approximately once per month at the Police Academy, in Pittsford, Vermont,⁵⁶ and notifies applicants on the day of the test whether they passed it. Passing test scores are valid for five years. The VCJTC will, upon request, notify applicants of their actual test scores. Applicants who fail the test can retake it one month later.⁵⁷ If they fail the test a second time, they can retake it four months later.⁵⁸ If they fail the second retake as well, then they cannot take it again.⁵⁹ To assist applicants who fail the test, the VCJTC gives them tips on how to improve their performance on it.

4. VSP's Administration of Physical Fitness Test

Applicants who pass the VCJTC's written test next take a physical fitness test at the Police Academy.⁶⁰ This test measures applicants' ability to complete the following sequence of activities: (1) a sit-and-reach flexibility assessment, (2) a bench-press repetition, (3) sit-ups, (4) push-ups, and (5) a 1.5-mile run. In general, applicants must pass each component of the test before taking the next one.⁶¹ The test is gender- and age-normed,⁶² which means that it makes

⁵³ See 80-070-001 VT. CODE R. § 17(b).

⁵⁴ See 80-070-001 VT. CODE R. § 17(d).

⁵⁵ See *id.*

⁵⁶ See *Entrance Standards and Testing Dates*, VCJTC, <https://web.archive.org/web/20170403171450/http://vcjtc.vermont.gov/training/three/entrance-standards> (last visited January 28, 2020).

⁵⁷ *Applicant Testing*, VSP, <https://web.archive.org/web/20170403191136/http://vsp.vermont.gov/employment/testing> (last visited January 28, 2020).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See 80-070-001 VT. CODE R. § 17(e).

⁶¹ While the VSP identified cut-off scores for the sit-and-reach element of the test, in practice, if applicants merely participated in this part of the test, then the VSP allowed them to proceed to the bench-press part of the test.

⁶² See VSP, MALE PHYSICAL FITNESS STANDARDS, <https://web.archive.org/web/20170330205141/http://vsp.vermont>

adjustments to the cutoff scores for applicants to take into account their biologic differences and age. In setting the test's cut-off scores, the VSP relied on research conducted by The Cooper Institute, which is a nonprofit organization that provides information for such tests.⁶³

Males	Sit & Reach	Bench Press	Sit-Ups	Push-Ups	1.5 Mile Run
20-29	17.5	1.06	40	33	12:18
30-39	16.5	.93	36	27	12:51
40-49	15.3	.84	31	21	13:53
50-55	14.5	.75	26	15	14:55
Females	Sit & Reach	Bench Press	Sit-Ups	Push-Ups	1.5 Mile Run
20-29	20	.65	35	20	14:55
30-39	19	.57	27	14	15:26
40-49	18	.52	22	13	16:27
50-55	17.9	.46	17	9	17:24

To assist applicants training for the test, the VSP provides videos on its website on how to complete each test component.⁶⁴ Applicants who fail the test can retake it as often as they want during the five-year window in which their passing scores on the VCJTC's written test are valid.

5. Administration of Psychological Personality Test

If applicants pass the physical fitness test, they then take a psychological personality test at the Police Academy.⁶⁵ For this assessment, the VSP utilizes the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), which asks applicants to answer questions whose answers are "True" or "False."⁶⁶ A psychologist reviews and scores each test, and then prepares a written evaluation of each applicant. If the psychologist awards low scores to applicants, then the VSP refers those individuals to a clinician for further assessment. The VSP does not eliminate applicants from consideration at this point in the screening process. Instead, the VSP's Majors and Colonel consider any information provided by the psychologist and any clinician in weighing applicants' overall emotional suitability for a trooper position.⁶⁷ The OCR discusses this comprehensive review in step ten, below, of the screening process.

[.gov/sites/vsp/files/documents/PTstandardsmale.pdf](https://web.archive.org/web/20170330205219/http://vsp.vermont.gov/sites/vsp/files/documents/PTstandardsfemale.pdf); VSP, FEMALE PHYSICAL FITNESS STANDARDS, <https://web.archive.org/web/20170330205219/http://vsp.vermont.gov/sites/vsp/files/documents/PTstandardsfemale.pdf>.

⁶³ See *About*, COOPER INST., <https://web.archive.org/save/http://www.cooperinstitute.org/about/> (last visited January 28, 2020).

⁶⁴ See *Minimum Fitness Standards for Recruits*, VSP, <https://web.archive.org/web/20170329193252/http://vsp.vermont.gov/employment/fitness> (last visited January 28, 2020).

⁶⁵ See 80-070-001 VT. CODE R. § 17(g).

⁶⁶ *Applicant Process*, VSP, <https://web.archive.org/web/20170330214639/http://vsp.vermont.gov/employment/process> (last visited January 28, 2020) [hereinafter *Applicant Process*].

⁶⁷ See 80-070-001 VT. CODE R. § 17(g).

6. Hiring Panel Interview

Applicants next participate in an interview before a hiring panel composed of three VSP commanders who are of Lieutenant rank or higher.⁶⁸ The commanders ask applicants a pre-determined list of questions. Based on the applicants' responses to those questions, the commanders evaluate whether the applicants are qualified for the trooper position. To make this assessment, the commanders consider various skills, including the applicants' ability to solve problems, to exercise good judgment, to communicate effectively, and to interact well with others.⁶⁹ During interviews, the panel members document, in writing, their impressions of the applicant. After the interviews, the panel assigns one of four ratings – “excellent,” “good,” “fair,” or “poor” – to applicants. The panel members reach consensus on these ratings and submit them to the VSP's Staff Operations Commander, who is a Captain, for review.

The Captain evaluates the assigned ratings and the panel members' written comments about the applicants to decide whether applicants should advance to the next step of the screening process. Generally, the Captain concludes that applicants who receive ratings of “excellent” or “good” pass the hiring panel interview, and that applicants who receive rating of “poor” fail it. While the Captain will allow most applicants who receive a “fair” rating to progress to the next step of the screening process, he or she may eliminate those applicants from consideration based on his or her view of their qualifications for the trooper position. The Captain may also defer action on an application if, for instance, he or she believes that the applicant would be a stronger candidate after gaining additional experience. The VSP extends conditional employment offers to applicants whom the Captain determines pass the hiring panel interview.

7. Polygraph Test

The VSP's Bureau of Criminal Investigations (BCI) administers a polygraph test to applicants who pass the hiring panel interview and accept the VSP's conditional employment offer.⁷⁰ This screening device seeks to measure applicants' honesty and suitability for a trooper position.⁷¹ The VSP's Majors and Colonel consider the results of the polygraph test as part of their overall review of the merits of trooper applications; the OCR discusses this holistic review in step ten, below, of the screening process.

The polygraph test typically involves two stages. First, the polygraph examiner asks applicants preliminary questions to establish a measurement baseline for applicants. Second, the examiner conducts a substantive interview, comparing applicants' responses to their baseline responses to determine whether the applicants are being truthful. The examiner might administer a polygraph test more than once, if the results of an initial test are inconclusive. The examiner might also be

⁶⁸ *Applicant Process*, *supra* note 66. Each hiring panel typically interviews between three and five applicants.

⁶⁹ *Id.*

⁷⁰ *Id.*; *Bureau of Criminal Investigations*, VSP, <https://web.archive.org/web/20170331153331/http://vsp.vermont.gov/criminal/bci> (last visited January 28, 2020).

⁷¹ *Applicant Process*, *supra* note 65.

unable to establish a baseline, given applicants' responses to certain questions. For instance, applicants might have provided false or misleading information on their trooper application, or they might seem to be using countermeasures to undermine the polygraph test. If the examiner cannot establish a baseline, he or she might recommend to the VSP's Majors and Colonel that the examiner defer the applicant's substantive interview. These commanders usually adopt the examiner's deferral recommendation. After applicants participate in the polygraph test process, the VSP confirms with them that they remain interested in a trooper position.

8. Background Investigation

Next, the VSP's BCI conducts background investigations of applicants who participate in the polygraph test process.⁷² Using a standardized approach, Detective Sergeants in the BCI examine applicants' motor vehicle and criminal records, financial records, school records, and work history.⁷³ They also interview various persons, including friends, family members, and co-workers.⁷⁴ The VSP automatically removes from consideration applicants who were convicted of a felony.⁷⁵ For all other applicants, Detective Sergeants prepare background investigation reports, which they submit to a designated Lieutenant for review. The Lieutenant, in turn, reviews and comments on the reports and submits them to the BCI's Captain.

Next, the VSP vets the background investigation reports through what it describes as a chain-review process, through which the reports are reviewed by the BCI's Major, the Staff Operations Commander, and the Commander of the Office of Professional Development (OPD). These command staff members rely on the reports, along with the other information in applicants' files, to make a recommendation to the VSP's Majors and Colonel about whether particular applicants are qualified for a trooper position. Below, in discussing step ten of the screening process, the OCR explains how the Majors and the Colonel consider this information in evaluating applicants for a trooper position. If applicants participate in the background investigation process, then the VSP usually confirms with them that they remain interested in a trooper position.

9. Medical Examination

After the VSP finishes the background investigation process, applicants undergo a medical examination to identify any physical conditions that might adversely impact their performance as troopers.⁷⁶ While the VSP typically administers this part of the screening process immediately after the background investigation, the VSP's Colonel might decide to hire an applicant for a trooper position before he or she participates in a medical examination.⁷⁷ At the latest, an applicant must pass this examination before beginning the Pre-Basic Academy training program discussed below.

⁷² See 80-070-001 VT. CODE R. § 17(f).

⁷³ *Applicant Process*, *supra* note 65.

⁷⁴ *Id.*

⁷⁵ See 80-070-001 VT. CODE R. § 17(f).

⁷⁶ See *id.* § 17(c).

⁷⁷ The Colonel can rescind an offer if an applicant fails a subsequent medical examination.

The VSP refers applicants to one of two hospitals for this assessment, where medical personnel examine them and report their conclusions to the OPD. If a doctor concludes that applicants are medically fit for employment, which occurs in most instances, then applicants pass the medical examination and continue to the next step of the screening process. If a doctor identifies a potential health problem, then the VSP permits applicants to submit an opinion from their personal physician on the accuracy of that initial medical assessment. If the OPD has questions about the medical fitness of an applicant, then the VSP's Colonel decides, with input from a Major, when possible, whether to allow the applicant to remain in the screening process. If applicants participate in the medical examination process before receiving a permanent job offer, then the VSP usually confirms with them that they remain interested in a trooper position.

10. Command Staff Roundtable Review

Next, members of the VSP's command staff convene a roundtable to discuss applicants' qualifications to serve in a trooper position. The OPD's Commander coordinates these meetings, which occur over two or three days and include the VSP's Majors and Colonel. In selecting applicants for trooper positions, the VSP views applicants holistically and makes decisions based on the most complete package possible for each applicant. In light of that screening philosophy, the meeting participants review and discuss all the information in each applicant's file, including the results of the VSP's psychological personality test, polygraph test, and background investigation.⁷⁸ While the Colonel seeks consensus about which applicants he should interview, he makes the final decision about whom to interview.

At the outset of this process, the VSP knows how many Probationary Troopers and Troopers they can hire for each recruit class; typically, a recruit class has between fifteen and twenty members. This information helps the roundtable participants to decide whether the VSP should include a particular applicant in the next recruit class or in a later recruit class. For instance, there may be more viable applicants than there are trooper positions available to fill. In that case, the VSP may keep certain individuals in the applicant pool and consider hiring them for a later recruit class. In making these decisions, the roundtable participants consider various factors, including applicant preferences, the relative strength of applications, and the length of time a person's application has been pending.

11. Colonel's Applicant Interviews

After the command staff roundtable meetings, the Colonel interviews the applicants that he is especially interested in including in the next trooper recruit class.⁷⁹ Based on those interviews,

⁷⁸ At one point, the VSP provided preferred qualification points to trooper applicants who served in the military or were Vermont residents, and command staff took those points into account in weighing the merits of individual applications. In 2015, the VSP halted its practice of providing such preferred qualification points to applicants.

⁷⁹ *Applicant Process*, *supra* note 65. In most instances, the Colonel interviews applicants before the VSP extends permanent employment offers to them for a trooper position. On occasion, however, the VSP may need to move

which the VSP describes as a formality, the Colonel decides whether the VDHR should extend permanent employment offers to particular applicants. Almost every applicant whom the Colonel interviews receives a permanent employment offer for a trooper position.

12. VSP's Pre-Basic Academy Training

If applicants accept a permanent employment offer for a trooper position, they must attend the VSP's Pre-Basic Academy training at the Police Academy.⁸⁰ This three-week training program introduces recruits to a paramilitary training environment and covers topics that are unique to the VSP's trooper positions. To complete the training, recruits must satisfy its attendance and code of conduct standards.

13. VCJTC's Basic Academy Training

After completing the Pre-Basic Academy training, Probationary Troopers attend Basic Academy training at the Police Academy.⁸¹ The VCJTC administers this sixteen-week training program. Probationary Trooper recruits participate in the Basic Academy with recruits from other law enforcement agencies in Vermont. Troopers, who have already been certified as law enforcement officers, do not attend this training, provided that the VCJTC gives them a waiver based on their completion of substantially similar training.⁸² To complete the Basic Academy, recruits must satisfy standards covering the following performance areas: (1) attendance, (2) academics, (3) athletics and physical training, (4) firearms, and (5) the VSP's code of conduct.⁸³ The VSP can remove recruits who do not adhere to its code of conduct; otherwise, the VCJTC determines whether particular recruits graduate from the Academy.

14. VSP's Post-Basic Academy Training

Recruits who complete the Basic Academy training attend a seven-week Post-Basic Academy training at the Police Academy.⁸⁴ Like the Pre-Basic Academy training, this program covers topics that are tailored for trooper recruits. To complete this training, recruits must satisfy applicable standards regarding attendance, academic performance, and the VSP's code of

quickly to hire recruits or may have a special interest in hiring a particular applicant. In those instances, the VSP extends permanent offers to certain applicants before their interview with the Colonel.

⁸⁰ *Frequently Asked Questions*, VSP, <https://web.archive.org/save/http://vsp.vermont.gov/employment/faq> (last visited January 28, 2020) [hereinafter *FAQs*].

⁸¹ See 80-070-001 VT. CODE R. § 8; *FAQs*, *supra* note 80.

⁸² See 80-070-001 VT. CODE R. § 19; *Waiver Guidelines for Vermont Level III Certification*, VCJTC, <https://web.archive.org/web/20170403190501/http://vcjtc.vermont.gov/training/three/waiver-guidelines> (last visited January 28, 2020).

⁸³ See 80-070-001 VT. CODE R. § 11; *Level III Basic Training*, VCJTC, <https://web.archive.org/web/20170328155111/http://vcjtc.vermont.gov/training/three> (last visited January 28, 2020); *Curriculum Summary*, VCJTC, <https://web.archive.org/web/20170328155354/http://vcjtc.vermont.gov/training/three/curriculum-summary> (last visited January 28, 2020).

⁸⁴ *FAQs*, *supra* note 80.

conduct. While Probationary Troopers must attend the entire Post-Basic Academy training program, Troopers do not need to attend sessions on topics about which they already received training as law enforcement officers.

15. Field Training Officer (FTO) Program

Once Probationary Trooper recruits complete their training, they are assigned to a barracks and begin to fulfill their job responsibilities.⁸⁵ To help them acclimate to their jobs, the VSP assigns each Probationary Trooper to a field training officer (FTO). Probationary Troopers work with FTOs for thirty-six work shifts.⁸⁶ During this time, FTOs evaluate Probationary Troopers' performance and document any problems. At the end of that period, the Sergeant responsible for the FTO program reviews the Probationary Troopers' performance and decides whether to classify them as permanent troopers, which allows them to handle responsibilities without FTO supervision. For Probationary Troopers who have documented performance problems, the assigned Sergeant either terminates their employment or extends their participation in the FTO program for, at most, eighteen more shifts. At the end of any extended FTO program period, the Sergeant decides whether Probationary Troopers should become permanent troopers or be terminated from employment.

C. Impact of Selection Process on Female Candidates

As discussed in Section II.B. of this Report, a recipient's hiring policies and practices, although neutral on their face, may result in disparate impact on female applicants.⁸⁷ Disparate impact is generally demonstrated through statistical data.⁸⁸ Thus, the OCR reviewed the VSP's selection devices to determine their effect on applicants. The OCR refers to this information as applicant flow data. In evaluating the data, the OCR applied the following: (1) the Uniform Guidelines on Employee Selection Procedures (Uniform Guidelines),⁸⁹ including its Four-Fifths Test or 80% Rule, and (2) the Fisher's Exact Test.⁹⁰ According to the 80% Rule, if a respondent, or employer, uses a selection device for a particular job that selects applicants of one sex at a rate that is less than eighty percent of the selection rate for applicants of the other sex, the OCR considers that result as some evidence that the selection process adversely impacts applicants of the sex with the lower passage rate.⁹¹

⁸⁵ *Id.*

⁸⁶ Troopers work with FTOs for up to thirty-six work shifts, depending on their professional development needs.

⁸⁷ 42 U.S.C. § 2000e-2(k); *see also* *Griggs*, 401 U.S. at 432.

⁸⁸ *Dothard*, 433 U.S. at 330-31; *Hazelwood Sch. Dist.*, 433 U.S. at 307-08.

⁸⁹ *See* 28 C.F.R. §§ 42.203(b)(10), § 50.14(4)(C).

⁹⁰ *Id.* § 50.14(4)(D).

⁹¹ *Id.* § 50.14(4)(C), (D). For example, if 100 males take an employment test and ninety of those males pass, the selection rate for male applicants is 90/100, or 90%. If seventy females take the same test and thirty-five females pass, then the female selection rate is 35/70, or 50%. When comparing the female selection rate of 50% with the male selection rate of 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 further statistical analysis confirms adverse impact.

The Uniform Guidelines recognize that differences in selection rates less than eighty percent may nonetheless constitute adverse impact where they are significant in both statistical and practical terms.⁹² In this scenario, the OCR relies upon the Fisher's Exact Test, which analyzes whether an employment practice has a disparate impact on a protected class, such as women, that is statistically significant, meaning it is unlikely to occur by chance.⁹³ 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.⁹⁴ In assessing whether disparate impact is present, the OCR evaluates the totality of the statistical evidence.⁹⁵

To analyze whether the VSP's selection and hiring processes had a disparate impact on female applicants, the OCR obtained from the VSP applicant flow data for all applicants who applied for the position of trooper from 2014 through 2017. The OCR retained, and relied upon, the statistical consulting services of an expert to analyze the VSP's applicant flow data for disparities based on sex for each step in the trooper selection process for all applicants in the aggregate and then for each year covered under this Review. Additionally, for each year and in the aggregate, the expert analyzed each subcomponent of the physical fitness test separately.

Statistical analysis of the four year aggregated applicant flow data showed that the VSP selection process did not have an adverse impact on female applicants overall. The pre-employment physical fitness test did not have a disparate impact on women overall, although the subcomponent of push-ups did have a disparate impact on women. Analyzing the applicant flow data year by year yields the following observations. In 2017 only, the written test had a disparate impact on women. In 2016, the push-up and sit-up subcomponents of the physical fitness test had a disparate impact on women (although the physical fitness test did not have a disparate impact on women overall). In 2015, no selection device had a disparate impact on women. In 2014, the sit-and-reach subcomponent of the physical fitness test had a disparate impact on women were, although the physical fitness test overall did not have a disparate impact on women.

The OCR finds that the pre-employment physical fitness test does not discriminate against women. In reaching this conclusion, the OCR assessed the evidence in its totality, weighing multiple factors. First, although there were years when a sub-component of the test had a disparate impact on women, the overall test did not have a disparate impact on women in the aggregate or in any single year. Second, there was no year-to-year consistency in which subcomponent – if any – had a disparate impact on women. Third, the test is gender- and age-normed, making adjustments to the cutoff scores to take into account applicants' biologic differences and age. Fourth, the VSP provides videos on its website on how to complete each test component. Fifth, applicants who fail the test can retake it as often as they want during the five-

⁹² *Id.* § 50.14(4)(D).

⁹³ *See Barnes v. GenCorp, Inc.*, 896 F.2d 1457, 1466 (6th Cir. 1991).

⁹⁴ *Jones v. City of Boston*, 752 F.3d 38, 43 (1st Cir. 2014); *Bazile*, 858 F. Supp. 2d at 738.

⁹⁵ *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.")

year window when their passing scores on the VCJTC's written test are valid; the VSP gives them advice on how to train for the part of the test they failed.

D. Recommendations

The VSP must continue to evaluate whether its employment criteria, standards, and selection devices correspond with the skills and abilities required of a trooper, taking care that its hiring practices are not a barrier to qualified prospective female troopers.⁹⁶ In conducting this evaluation, the VSP should do the following:

- Review, on at least an annual basis, each of the selection devices used in the trooper hiring process to ensure the devices are nondiscriminatory and have no disparate impact on females.⁹⁷
- When reviewing the selection devices used in the trooper selection process, the VSP should pay close attention to the pre-employment physical fitness assessment, particularly the push-ups, sit-ups, and sit-and-reach in light of the impact findings of the OCR's expert. Should the VSP observe in the future additional disparate impact in the passage rates of female applicants, it should take prompt action to identify the cause, modify the test as warranted, and develop a remedy, such as improving pre-test training or instruction.
- The VSP should further enhance its notification about the pre-employment physical fitness assessment, with a particular emphasis on the push-ups, sit-ups, and sit-and-reach. In addition to the current notification the VSP provides to applicants at the time of application, some examples of enhanced notification could include the following: promoting a training regimen focused on the development of upper body strength that may aid female applicants; and advising of "best practices" with regard to physical fitness training in preparation for the pre-employment physical fitness test, particularly the push-ups test. The VSP should also consider offering in-person, unscored practice tests prior to taking the actual physical fitness assessment. Alternately, the VSP could consider offering "boot camp" style training sessions to applicants in preparation for the pre-employment physical fitness test. A recent example of this type of program was used by the recruitment office of a large metropolitan police department that offered a "boot camp" to assist prospective female recruits in preparing for the physical fitness exam.⁹⁸

VI. Retention

As discussed in Section II.A. of this Report, the Safe Streets Act regulations require the DPS to

⁹⁶ Advancing Diversity in Law Enforcement, *supra* note 42, at 31-32.

⁹⁷ 28 C.F.R. § 42.303(a), (c)(2).

⁹⁸ See C. Moon Reed, *With hopes of diversity, Metro hosts boot camp for women*, LAS VEGAS SUN, September 6, 2018, <https://lasvegassun.com/news/2018/sep/06/with-an-aim-at-increasing-diversity-metro-hosts-a/>.

assess its efforts to retain employees.⁹⁹ Training opportunities, equal employment, and family leave policies contribute to an organization's ability to retain employees.

A. Training and Professional Development

The Safe Streets Act regulations require a recipient to conduct an annual self-assessment of its training programs to determine whether the programs treat women equitably.¹⁰⁰ If the assessment indicates that female employees, as compared to their male counterparts, do not receive equitable training opportunities, the recipient should provide a written narrative in its EEOC describing what timely steps it will take to correct this deficiency.¹⁰¹ The VSP indicated that it does not analyze its training programs to determine whether they treat women equitably when compared to men.

All sworn staff must complete a variety of training and re-certifications annually or semi-annually, as required by Commission on Accreditation for Law Enforcement Agencies (CALEA), Vermont State Statute, or VCJTC. Topics include first aid, bias based policing, use of force, temporary detention procedures, domestic violence, and firearms qualifications, among others. The VSP uses an online system through Justice Planning and Management Associates to deliver some standardized training.

In addition to the required annual training, there are several professional development opportunities that VSP Troopers may request. For example, the International Association of Chiefs of Police hosts a course on Leadership in Police Organizations (LPO), and VSP sends six groups of six Troopers each year to LPO. The VSP does not track its LPO attendees by sex, but makes an effort to select a diverse group of officers. Troopers are generally eligible to attend LPO after approximately three to five years of service, and are notified of the opportunity to apply through the VSP intranet and departmental announcements. Other training opportunities are similarly announced, and Troopers request training through the chain of command.

Twice per year, the VSP has an open window for Troopers to request a lateral transfer, which is generally coordinated with the assignments of the new Troopers graduating from the Police Academy. The VSP notifies staff through email when there is an opportunity for a lateral transfer outside of this window. Troopers may request a transfer through the chain of command.

B. EEO Policies, Practices, and Related Training

The VSP provided the OCR with one policy governing the improper conduct of VSP employees and one policy governing the receipt, reporting and investigation of allegations of improper conduct. Additionally, the State of Vermont has a policy regarding sexual harassment in the workplace that governs state employees including VSP employees.

⁹⁹ 28 C.F.R. §§ 42.203(a), (c)(3), .304.

¹⁰⁰ *Id.* § 42.303(c)(3).

¹⁰¹ *Id.* § 42.304(g)(1).

The VSP policy on improper conduct requires officers to “conduct themselves with propriety and dignity at all times,” and governs such areas as criminal conduct, biased expression, false statements, gifts and rewards, interference in cases, membership in outside organizations, political activity, residence, soliciting personal advancement, special privileges, use and maintenance of department property, and violation of VSP rules.¹⁰² The VSP policy on receipt, reporting and investigation of allegations of improper conduct requires all employees to report “all acts or substantial evidence of acts of misconduct and improper conduct” that the employee discovers to the immediate Commanding Officer, and the Internal Affairs Unit shall generally conduct an investigation.¹⁰³

The Vermont Department of Human Resources (DHR) issues several relevant policies in its Personnel Policy and Procedures Manual [Personnel Manual], including policies on Equal Employment Opportunity/Affirmative Action [EEO Policy], Sexual Harassment, Discrimination Complaints, and Family and Parental Leave.¹⁰⁴

The EEO Policy prohibits discrimination in employment based on race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, or physical or mental conditions. The policy delegates responsibility for enforcing the policy to the heads of the individual state agencies and departments.¹⁰⁵

The Sexual Harassment policy defines sexual harassment as a form of sex-discrimination and in the following way:

Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
 - b) Submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual;
- or

¹⁰² Vermont State Police, *VSP-GEN-203 – Code of Conduct – Part B – Improper Conduct* at 1 (April 3, 2017) (on file with OCR).

¹⁰³ Vermont State Police, *VSP-GEN-205 – Receipt, Reporting, and Investigation of Allegations* at 1 (April 3, 2017) (on file with OCR)

¹⁰⁴ Vermont Department of Human Resources, *Personnel Policy and Procedures Manual*, available at <https://humanresources.vermont.gov/labor-relations/manual>.

¹⁰⁵ Vermont Department of Human Resources, *Equal Employment Opportunity No. 3.0* (September 13, 2015) available at https://humanresources.vermont.gov/sites/humanresources/files/documents/Labor_Relations_Policy_EEO/Policy_Procedure_Manual/Number_3.0_EQUAL_EMPLOYMENT_OPPORTUNITY_AFFIRMATIVE_ACTION.pdf.

- c) The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive work environment.¹⁰⁶

The Sexual Harassment Policy describes prohibited conduct, and provides a process for the reporting and resolution of complaints. Employees are directed to file complaints with an immediate supervisor, any agency management staff, or any member of the DHR. Complaints against the VSP will be referred to the DHR personnel assigned to support VSP, and the DHR and the VSP will coordinate a timely and complete review of the complaint. The Sexual Harassment Policy also prohibits retaliating against someone who opposes sexual harassment.

The Discrimination Complaints Policy describes the process for filing a complaint of impermissible discrimination based on the protected classifications listed in the EEO Policy and some additional bases, including race, color, religion, creed, ancestry, sex, marital status, age, national origin, disability, sexual orientation, gender identity, workers' compensation, nursing mothers (breastfeeding), credit history, flexible work arrangements, parental and family leave, and membership or non-membership in a Union.¹⁰⁷ This policy specifically exempts sexual harassment complaints from its coverage, as those complaints are processed in accordance with the Sexual Harassment Policy. This policy also directs a complainant to report allegations to an immediate supervisor, any agency management staff, or any member of the DHR. The policy establishes protocols for investigating the complaint and notifying concerned parties of the process and outcome.

The Family and Parental Leave Policy provides for "reasonable time off to care for dependent children in instances such as illness, birth, or adoption, and in the case of serious illness of a family member of an employee's immediate family."¹⁰⁸ An employee must have been employed for twelve months and have provided at least 1,250 hours of service during the preceding twelve months in order to be eligible for family or parental leave. Employees may take up to six months of administrative leave without pay when adopting a child. Employees may use sick leave for a period of disability that results from pregnancy, miscarriage, abortion, or illness. When employees are no longer disabled from childbirth, they may use accumulated leave accruals

¹⁰⁶ Vermont Department of Human Resources, *Sexual Harassment No. 3.1*, at 2 (September 13, 2015) available at https://humanresources.vermont.gov/sites/humanresources/files/documents/Labor_Relations_Policy_EEO/Policy_Procedure_Manual/Number_3.1_SEXUAL_HARASSMENT.pdf.

¹⁰⁷ Vermont Department of Human Resources, *Discrimination Complaints No. 3.3*, at 1 (September 13, 2015) available at https://humanresources.vermont.gov/sites/humanresources/files/documents/Labor_Relations_Policy_EEO/Policy_Procedure_Manual/Number_3.3_DISCRIMINATION.pdf.

¹⁰⁸ Vermont Department of Human Resources, *Family and Parental Leave No. 14.2*, at 1 (March 1, 1996) available at https://humanresources.vermont.gov/sites/humanresources/files/documents/Labor_Relations_Policy_EEO/Policy_Procedure_Manual/Number_14.2_FAMILY_AND_PARENTAL_LEAVE.pdf.

before taking administrative leave without pay.¹⁰⁹ The policy provides additional details, including how to request family or parental leave, and how such leave affects benefits.¹¹⁰

The State of Vermont and the VSP train employees on these policies in several ways. Each trooper receives a copy of the policies, and all state employees receive a two-hour training on the Sexual Harassment Policy. Troopers who the OCR interviewed confirmed having participated in this. The VSP uses an online program called Power DMS to make a variety of VSP materials accessible to staff, and the VSP posts all policies, forms, and training on this system. Additionally, the Commander of each barracks reviews policies during daily roll-calls, and the Sexual Harassment Policy is a policy that would be reviewed from time to time during roll-call. The VSP also provides supervisory training to its command staff, which includes training about the Sexual Harassment Policy, including how to receive and process complaints. The VSP also has signs posted in its headquarters and barracks notifying viewers that the state of Vermont and the VSP prohibit sexual harassment in employment.

Although not specifically related to these policies, the VSP, through its Fair and Impartial Policing initiative discussed in Section III.B., has provided training to management on implicit bias. For these trainings, the VSP invited specialists in the field of law enforcement interactions with diverse populations, trainers from community organizations, and an expert researcher.

C. Family-Related Policies and Practices

The VSP hosts a Family Orientation Day for the families of new recruits. At this half-day orientation, the VSP informs recruits and their families about employee assistance and peer support, VSP benefits including family and medical leave, and what to expect during the Police Academy.

While some of the DHR policies described in Section VI.B. of this report address parental leave in connection with a birth and discrimination based upon being a nursing parent, the VSP has a Pregnancy Policy that applies to its own staff.¹¹¹ Under the VSP Pregnancy Policy, the VSP will temporarily reassign a pregnant Trooper upon the Trooper's request. The Trooper does not need to provide medical documentation that the reassignment is medically necessary. Absent a request from a pregnant Trooper, a supervisor may reassign a pregnant Trooper if the supervisor believes that the Trooper is not fit for duty. In such cases, the VSP will require the pregnant Trooper to undergo a fitness for exam duty, the results of which will determine whether or not a reassignment is made. Reassignments may include civilian, technical and administrative assignments.

The VSP generally does not provide lactation rooms for nursing mothers, but the buildings have private bathrooms that lock. In the VSP headquarters building, there is a private room that is

¹⁰⁹ *Id.* At 2.

¹¹⁰ *Id.* At 3-4.

¹¹¹ Vermont State Police, *Pregnancy Policy VSP-DIR-110* (April 17, 2006) (on file with OCR).

reserved for nursing, and the VSP recently purchased a portable nursing pod that can be moved to whichever VSP facility may need it.

D. Mentoring and Related Retention Efforts

Based on the VSP's 2017 EEO and attached Law Enforcement Category Rank Chart, women occupied 10.5% or thirty-six of all sworn staff and 9.3% or twelve of sworn management positions. The twelve women in management included one Captain, three Lieutenants, eight Sergeants. Of note, since this was reported on the 2017 EEO, the VSP promoted one woman to the rank of Major. The fact that roughly the same proportion of women are represented in management as in the sworn workforce may demonstrate the VSP's commitment to equal opportunities for advancement on the force.

The VSP offers a formal mentoring program to new recruits, which begins in the Police Academy and extends through the end of the field training program. A Sergeant meets weekly with recruits during the Police Academy to discuss concerns as they arise, including family pressures and training adaptation. Upon graduation, the VSP assigns each new Trooper a mentor in their new barracks. This mentor would help the mentee acclimate to their new community, including finding housing or day care. The VSP attempts to match new recruits with a mentor that would be a good fit, based on a totality of circumstances, and mentors are not necessarily assigned with gender in mind.

Of particular note, in 2015 members of the VSP established Vermont Women in Law Enforcement (VWLE), a non-profit organization that seeks to support women in policing throughout the state. The VWLE sponsors events that promote physical fitness among women and girls, including the Most Physically Fit Recruit award at the Police Academy and Girls on the Run, a fitness group for third through eighth grade girls. VWLE is working to establish a mentoring program for girls and women in high school and college who are interested in careers in law enforcement. The first and current president of VWLE are VSP employees, and VSP staff have always had a strong leadership role in the organization.

The VSP also actively supports the Women in Law Enforcement Leadership Conference, sponsored by the New England State Police Administrators Conference (NESPAC). The VSP sends multiple sworn staff to the semi-regular leadership conference, and several VSP officers have had active roles in the planning process of the conference.

E. Exit Interviews

The VSP attempts to conduct exit interviews with departing staff. It offers an electronic survey, supplemented by an in-person interview with the staff member's commander. Retiring staff members are encouraged to meet with the Colonel, although none of these exit surveys or meetings are mandatory. The VSP reported to OCR that nine female troopers left the VSP between January 1, 2014, and April 1, 2017, and five of those troopers either completed an exit survey or participated in an exit interview.

F. Recommendations

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

- To comply with the Safe Streets Act, the VSP must design a system for annually monitoring its training programs and the opportunities for training, to determine whether they are equitable for female troopers.¹¹² The assessment would involve the following: list each training opportunity for troopers, identify the sex of the troopers who applied for the training program and the sex of the troopers selected for the training program, and provide the rationale for selecting or rejecting each applicant. The VSP should also examine whether it sufficiently notifies troopers of available training opportunities, supplies adequate information to troopers about the selection process for training programs, and provides equitable training opportunities to male and female troopers.
- To further examine the retention of women from the force, the OCR encourages the VSP to conduct a retention study of troopers as they progress through their careers as troopers. This could include an examination of the rates at which women and men request and attend training, apply for and receive promotions, request and receive transfers, and exit the VSP.
- The VSP should consider expanding its mentorship program beyond the field-training phase.¹¹³ A lack of mentoring opportunities and leadership development can present a barrier to advancement and promotion for women.
- The VSP should continue to ensure supervisors receive training on the relevant policies related to equal employment opportunity, sexual harassment, and implicit bias.
- The VSP should explore the possibility of offering childcare benefits, part-time employment, job-sharing arrangements, and alternative work schedules, when feasible, to allow troopers to better manage family responsibilities.

VII. Conclusion

Based on the foregoing, the OCR concludes that the DPS's and the VSP's policies and practices are consistent 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 recommendations to assist the VSP in strengthening its

¹¹² 28 C.F.R. § 42.303(c)(3).

¹¹³ 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, *see supra* note 42, at 33–34, 44.

recruitment, hiring, and retention of female troopers. The OCR is available to offer technical assistance to assist the DPS and the VSP in implementing these recommendations.

At this time, the OCR is administratively closing this Compliance Review. The closure of this Review is limited to the specific facts of the matter that the OCR investigated, and does not preclude the DOJ from taking additional appropriate action to evaluate the compliance of the DPS or the VSP with any of the laws that the DOJ enforces. Closing this Review also does not affect the obligation that the DPS or the VSP may have to comply with all applicable federal laws and regulations during which time they remain subject to such laws and regulations.

The DPS and the VSP should be mindful that federal laws protect from retaliation persons who participated in the OCR's Review. Any person alleging harassment, intimidation, or retaliation may file a complaint with the OCR, and if warranted, the OCR would investigate the complaint.

Records from this compliance review are subject to the Freedom of Information Act, and members of the public may request records from this matter. Additionally, this compliance review report is a public document, and the OCR may post it on its webpage.

The OCR wishes to thank VSP staff, especially Major Ingrid Jonas and Lieutenant Barbara Kessler for assisting OCR staff throughout the course of this Review.

Sincerely,

X 

Michael L. Alston
Director
Signed by: MICHAEL ALSTON