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September 17, 2014

Spencer Hellwig, County Administrator
County of Saratoga
40 McMaster Street
Ballston Spa, New York 12020

Report Number: S9-14-26

Dear Mr. Hellwig, Sheriff and Members of the County Board of Supervisors:

The Office of the State Comptroller works to help local government officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals we conducted an audit of six cities and nine counties throughout New York State. The objective of our audit was to determine if local law enforcement entities are taking action to help enforce the State's Sex Offender Registration Act (SORA). We included Saratoga County (County) – specifically, the Saratoga County Sheriff's Office (Department) – in this audit. Within the scope of this audit, we examined the Department's policies and procedures and reviewed the record of actions taken to enforce SORA for the period January 1, 2008 through December 10, 2013.

This report of examination letter contains our findings and recommendations specific to the Department. We discussed the findings and recommendations with Department officials and considered their comments, which appear in Appendix A, in preparing this report. Except as indicated in Appendix A, Department officials generally agreed with our recommendations and indicated they have taken corrective action. Appendix B includes our comments on issues raised in the Department's response. At the completion of our audit of the 15 cities and counties, we prepared a global report that summarizes the significant issues we identified at all of the jurisdictions audited.

Summary of Findings

Although the Department has adopted policies and procedures (Policy) for managing sex offenders, Department personnel do not consistently follow the Policy. In addition, the Policy does not address all the Department's SORA responsibilities.

We found the Department did take follow-up action when the State's Division of Criminal Justice Services (DCJS) notified it that an offender did not return their address verification form. However, the Department does not always take action when DCJS notifies it that a sex offender needs to report to the Department to have a photograph taken or when an offender failed to comply with SORA's photograph provision. As a result, six of the County's moderate- to high-risk offenders had outdated Sex Offender Registry (Registry) photographs.

Further, although SORA requires the Department to process a change-of-address form when it incarcerates a sex offender and to update the address prior to the offender's release, the Department's Policy contains no provisions for this responsibility.

Background and Methodology

Saratoga County (County) is governed by a 23-member Board of Supervisors and has a population of approximately 220,000, including 162¹ moderate- to high-risk sex offenders of which 146² report to the Department. The County's fiscal year 2013 budgeted appropriations totaled \$234 million, including \$27 million for the Department's budgeted appropriations.

Megan's Law,³ a federal law enacted May 17, 1996, is intended to protect the public from sexually violent offenders. It requires states to release relevant information necessary to protect the public concerning registered, convicted sex offenders. To comply with this law, assist local law enforcement agencies and protect the public, the State enacted SORA.⁴

SORA requires DCJS to establish and maintain the Registry and a Subdirectory. The Subdirectory, which is available on the DCJS website, provides the public with information about moderate- and high-risk "sex offenders"⁵ residing in their communities. SORA provides that the Subdirectory include, among other things, the sex offender's name, age, exact address, employment address, photograph, physical description and distinctive markings.

When an individual is convicted of a sex offense and certified by the court as a sex offender, the individual is required to register with DCJS and abide by the specific registration requirements.⁶ Prior to sentencing, the State Board of Examiners of Sex Offenders makes a risk-level recommendation to the sentencing court based on the degree of risk of repeat offense for each sex offender and a recommendation as to whether the offender warrants designation as a sexual predator, sexually violent offender or predicate sex offender.⁷ The assigned risk levels, determined

¹ 114 Level 2 sex offenders, 48 Level 3 sex offenders

² 106 Level 2 sex offenders, 40 Level 3 sex offenders

³ Megan's Law (PL 104-145) is named for Megan Nicole Kanka, a seven-year-old murdered in 1994 near her New Jersey home by a neighbor who was a convicted sex offender. Megan's Law amended the 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, which had the effect of requiring states to implement and maintain registries of certain sex offenders and offenders convicted of certain crimes against minors.

⁴ SORA; Article 6-C of the Correction Law, effective January 21, 1996

⁵ Under SORA, a "sex offender" is defined as any person who is convicted of any of the offenses set forth in Correction Law §168-a(2) or (3).

⁶ General requirements are detailed in Appendix C. Specific requirements are set forth in Correction Law Article 6-C.

⁷ See definitions in Appendix C.

by examining certain risk factors associated with the sex offender, are Level 1 (low risk of repeat offense), Level 2 (moderate risk of repeat offense) or Level 3 (high risk of repeat offense and threat to public safety).

SORA assigns a “local law enforcement agency having jurisdiction” (i.e., chief law enforcement officer of a town, village or city; or if none, the chief law enforcement officer of the county) to each convicted offender based on their residence. The Department has two full-time officers who, as a part of their regular duties, primarily monitor the jurisdiction’s sex offender population and provide sex offender information to DCJS. However, other Department personnel help monitor the Department’s offender population.

DCJS mails a non-forwarding annual Address Verification Form to each sex offender’s last reported address. The sex offender must sign and return the form to DCJS within 10 days of receipt. If an offender fails to do so, DCJS notifies the offender’s jurisdiction that the offender failed to comply with the annual verification requirement and asks the jurisdiction to follow up. DCJS also notifies the sex offender and the jurisdiction when the offender is required to have the Registry photo updated.

In addition to verifying that they still reside at their last reported address each year, sex offenders must register with DCJS within 10 days of any change of address. Level 1 and Level 2 offenders also must have their Registry photo updated every three years at the local law enforcement agency having jurisdiction. Level 3 offenders must have their Registry photo updated each year. Additionally, Level 3 offenders and sex offenders designated as sexual predators must personally report to the local law enforcement agency having jurisdiction every 90 days to verify their address. Level 2 and Level 3 offenders are also required to annually state that they are still employed at the last reported address.

To complete our audit objective, we conducted interviews with designated law enforcement personnel and reviewed adopted policies and procedures. We also reviewed offender information maintained in the Registry, and information that the Department maintained for the offender records we sampled. We examined DCJS communications to ensure appropriate followup actions were taken and tested local policies to confirm compliance. We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix D of this report.

Audit Results

Policies and Procedures – The Department has a Policy for the management of sex offenders. It requires designated personnel to monitor and track offenders, maintain a record for each sex offender and ensure that addresses given by resident sex offenders are accurate. The Policy requires personnel to assist the offender with completing a 90-day verification form when a Level 3 offender reports to personally verify his or her address. The Policy also requires Department personnel to assist in securing an updated photograph of a sex offender and to forward the updated photographs to DCJS.

The Department does not always follow the Policy regarding sex offender management. For example, Department personnel do not always assist in obtaining an updated photograph of a sex

offender, as required. Further, the Department Policy does not address all SORA requirements, such as responding to the annual address verification notification from DCJS, facilitating a change-of-address form when an offender is incarcerated and changing the address prior to releasing the offender.

DCJS Notifications – DCJS notifies sex offenders when they must report to the Department to update their Registry photograph, and notifies the Department when to expect each sex offender who needs the Registry photograph updated. DCJS also maintains a list of offenders who did not update their photograph as required and makes this list available to the Department through an online system.

However, the Department does not always act on the DCJS notification or the DCJS list of non-compliant offenders to ensure each offender complies with SORA's photograph provision. As a result, the Department did not respond in a timely manner when the DCJS report identified one of the jurisdiction's Level 3 offenders and five Level 2 offenders who did not update their photograph in accordance with the law. We also found the Department was aware that an additional Level 2 offender residing in the Department's jurisdiction never provided a photograph. While the Department was aware the offender's Registry profile lacked a photograph, it took no enforcement action. A Department officer said they planned to obtain the photograph when the offender reports on his third year anniversary, as he is required to verify his address, in person, at that time. A sex offender is subject to arrest for failing to provide a photograph, a felony offense. Up-to-date Registry photographs help to ensure that law enforcement and the public can recognize sex offenders.

DCJS also notifies the Department when an offender who lives in its jurisdiction fails to return the annual address verification form. In such cases, DCJS asks the Department to determine if the offender still resides at the reported address. Our examination of 21 notifications found that the Department verified the addresses or performed other follow-up action. Department personnel confirmed 16 offenders continue to live at their registered address. Department personnel issued an arrest warrant for one offender, two offenders were found at other addresses and change-of-address forms were submitted, and Department personnel found that two other offenders confirmed their address with DCJS after the Department was notified the offender failed to return the form within the required timeframe.

Correctional Facilities: Change of Address – SORA also requires local correctional facilities to facilitate processing a change-of-address form when they incarcerate a sex offender and to change the address of the offender prior to the offender's release from the correctional facility. Despite this significant duty to help maintain the integrity of the Registry and Subdirectory, the Department's Policy does not require officers to complete a change-of-address form when a sex offender enters or leaves jail.

We identified five incarcerations that could be used to determine whether Department personnel process a change-of-address form, as required. We found Department personnel processed a change-of-address form when the offender was released from the Department's facility.

Recommendations

Department officials should:

1. Update the Policy to include all of the Department's SORA responsibilities, such as processing change-of-address forms when it incarcerates and later releases an offender from the Department's facility.
2. Comply with the Department's Policy; specifically, to assist in securing an updated photograph of an offender.
3. Use all DCJS notifications and resources to manage the sex offender population under their jurisdiction.

The County Legislature has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Legislature to make this plan available for public review in the Clerk of the Legislature's office.

We thank the officials and staff of the Saratoga County Sheriff's Office for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo

APPENDIX A

RESPONSE FROM COUNTY OFFICIALS

The County officials' response to this audit can be found on the following pages.



SARATOGA COUNTY SHERIFF'S OFFICE

Sheriff@SaratogaCountyNY.gov

6-9-14
59-14-26
MICHAEL H. ZURLO
SHERIFF

Kevin P. Mullahey
Undersheriff

Richard L. Castle
Chief

30 May 2014

Saratoga County Sheriff's Office
SORA Audit Response Letter and Corrective Action Report
Audit Report # S9-14-26

Part one of this document shall serve as the official response to the Office of the State Comptroller Report Number S9-14-26 detailing the findings of an audit of Saratoga County Sheriff's Office Sex Offender Registry Act policies, procedures and records which was conducted in December 2013. Part two shall serve as the Corrective Action Plan filed pursuant to Section 35 of the General Municipal Law.

PART ONE – Audit Letter Response

As a whole, the Sheriff's Office is pleased with the results of the audit. The audit was conducted in a fair and impartial manner and sufficient opportunity was given for members of the Sheriff's Office to actively participate in the process and provide guidance and explanations as necessary.

The following direct responses are being provided to each of the specific areas of concern addressed in the report:

1. Policies and Procedures

As outlined in the report. The Sheriff's Office has policies and procedures in place specific to management and enforcement of the Sex Offender Registry Act. The opinion of the auditors was that although the policies exist, they are lacking in certain areas. Specifically, the policy does not address responding to annual address verification notices and facilitating address changes for offenders entering and leaving the correctional facility. Currently there are procedures in place to address both of these concerns but they are not memorialized in the actual policy. The agency Sex Offender Registry Act policy will be reviewed for necessary modifications to ensure that the policy is consistent with current procedures and vice-versa. It should be noted that the audit found a total of six offenders with outdated photos and one instance where an inmate was released from the facility without updating the offenders address. The agency was aware of the outdated photos and planned to obtain new photos upon next contact with the offender. The error in changing the address of an offender released from the correctional facility was an oversight on the part of the officer releasing the inmate. Although not knowing the location of any registered sex offender is unacceptable, the actual audit demonstrated that the instances of this occurring with offenders registered with the Saratoga County Sheriff's Office was less than one-third of

See
Note 1
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See
Note 2
Page 11

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MICHAEL H. ZURLO
SHERIFF

Kevin P. Mullahey
Undersheriff

Richard L. Castle
Chief

one percent.

2. DCJS Notifications

The Sheriff's Office routinely receives DCJS Notifications via the eJusticeNY system when an offender changes any of their registry information, when they are either returned or not returned their annual verification notice and when they are due for a photo update. The draft report incorrectly stated that the Sheriff's Office was unaware that six registered offenders were delinquent in having their photos updated and one additional offender had no photo on file. The Sheriff's Office was in receipt of the delinquent photo notifications and also utilized the delinquent photo list provided by DCJS on the eJusticeNY Portal. These notices and the active list were maintained on hand for reference anytime contact was made with an offender for any reason and photos were routinely updated upon the next contact with the offender. The report is accurate with regard to the lack of a pro-active approach to obtaining updated photos. This issue has since been resolved. The Sheriff's Office as of January 2014 has a Deputy Sheriff dedicated full-time to Sex Offender Registry Enforcement. As of this writing there is no longer a backlog of delinquent photos and 12 offenders have been arrested since February on Registry violations. It should be noted that of the 21 notifications by DCJS for offenders who failed to return their annual address verification during the audit time period, all 19 were pro-actively addressed by the Sheriff's Office and all but one was located resulting in a warrant being issued for his arrest. The remaining 2 submitted their verifications directly to DCJS which is permissible.

See
Note 1
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3. Correctional Facility Change of Address

The Sex Offender Registry Act requires local correctional facilities to facilitate processing a change-of-address form when they incarcerate a sex offender and to change the address of the offender prior to the offender's release from the correctional facility. The draft letter of this audit incorrectly states that the agency does not have a policy requiring that a change of address be processed for inmates. The corrections division does in fact have a written policy, CD-04-07-05, which specifically requires that a change of address form be completed and forwarded to the Sex Offender Registry Enforcement officer for the Patrol Division when a registered sex offender enters or leaves the facility. During the course of the audit they found one instance in which the change of address was not processed for an inmate leaving the facility. It could not be determined if this was an oversight in completion of the form or if the form was somehow misplaced.

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SARATOGA COUNTY SHERIFF'S OFFICE

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Chief

PART TWO – Corrective Action Plan

The following responses shall serve as the Corrective Action Plan based on the three recommendations detailed in the Audit draft letter dated May 9, 2014.

Audit Recommendation #1:

Department officials should update the Policy to include all of the Departments SORA responsibilities, such as, processing change-of-address forms when it incarcerates and later releases an offender from the Department's facility.

Implementation Plan of Action(s):

Since this audit the agency has reviewed the existing policies and procedures relative to our responsibilities under the Sex Offender Registry Act and we are now in full compliance with the applicable provisions of the Act. Within the next 90 Days we will be transitioning our Sex Offender management process to a commercial application called Offender Watch. This will require a re-write of our policy and procedure to incorporate the new features and different procedures necessary to incorporate Offender Watch into our current workflow for Offender management. At this time we will incorporate the Audit recommendation that the policy specifically address DCJS notifications for offender photo updates and annual address verifications. The recommendation that the policy be updated to include processing of address changes for incarcerated and released offenders is not applicable as there is already a written policy in place in the Corrections Division Policy and Procedure manual which addresses this concern but apparently was missed during the audit process.

See
Note 3
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Implementation Date:

Updated Policy and Procedure for SORA requirements will be released within the next 120 days following training and implementation of the new system.

Person Responsible for Implementation:

Lt. R. Daniel Jones with final approval by Sheriff Michael H. Zurlo

Audit Recommendation #2:

Department officials should comply with the Department's Policy, specifically, to assist in securing an updated photograph of an offender.

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MICHAEL H. ZURLO
SHERIFF

Kevin P. Mullahey
Undersheriff

Richard L. Castle
Chief

Implementation Plan of Action(s):

The Sheriff's Office, as of February 2014, has assigned a Deputy Sheriff dedicated full-time to Sex Offender Registry Enforcement. His primary responsibility is the management of our registered sex offenders which includes follow through on DCJS SORA notifications. Since his appointment he has made multiple arrests for violations and cleared any outstanding backlog.

Implementation Date:

Implemented February 2014

Person Responsible for Implementation:

Lt. R. Daniel Jones and Deputy Austin Brooks

Audit Recommendation #3:

Department officials should use all DCJS notifications and resources to manage the sex offender population under its jurisdiction.

Implementation Plan of Action(s):

With the Policy and Procedure update outlined in the CAP for Audit Recommendation #1 above, we will incorporate the Audit recommendation that the policy specifically address DCJS notifications for offender photo updates and annual address verifications. Additionally, the new SORA enforcement officer has been fully briefing on his responsibility to utilize the all available resources to accomplish the goals of the SORA.

Implementation Date:

Policy to be updated within 120 days. Immediate corrective action was taken as a result of the exit interview conducted in December 2013 whereas all members directly involved in SORA activities were fully briefed on the outcome of the audit and their responsibilities to use the resources provided by DCJS through the eJusticeNY Portal and notices received via mail.

Person Responsible for Implementation:

Lt. R. Daniel Jones

Sheriff Michael H. Zurlo

6-2-14
Date

Chariman, Saratoga Co. Board of Supervisors
Paul Sausville

6-6-14
Date

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APPENDIX B

OSC COMMENTS ON THE COUNTY'S RESPONSE

Note 1

We modified the report to indicate that the Department did not take action for a Level 3 offender and six Level 2 offenders who did not provide photographs in a timely manner, sometimes for up to three years.

Note 2

We disagree with the Department's conclusion that our audit showed the Department did not know where a registered sex offender resided in only one-third of 1 percent of instances tested. To calculate such a percentage properly, the Department would need a statistical sampling methodology. Neither the audit team nor the Department could use statistical sampling since some required records were not available from the Department of Criminal Justice Services. However, of 146 moderate- and high-level offenders in our test, the Department did not know the whereabouts of six offenders.

Note 3

During the course of the audit, Department officials did not indicate this policy existed nor provide a copy for our examination or consideration.

APPENDIX C

Definitions, Registration Requirements, Convictions in Other Jurisdictions and the SORA Website

Definitions (from Correction Law §168-a)

Sex Offender: Includes any person who is convicted of any of the offenses set forth in subdivision two (2) or three (3) of Article 6-c, Section 168-a of the NYS Correction Law.

Sexual Predator: A sex offender who has been convicted of a sexually violent offense as defined in subdivision three (3) of Section 168-a of the NYS Correction Law and who suffers from a mental abnormality that makes such person likely to engage in predatory sexually violent offenses.

Sexually Violent Offender: A sex offender who has been convicted of a sexually violent offense defined in Subdivision three (3) of Section 168-A of the NYS Correction Law.

Predicate Sex Offender: A sex offender who has been convicted of an offense set forth in subdivision two (2) or three (3) of Section 168-a of the NYS Correction Law, when the offender has been previously convicted of an offense set forth in subdivision two (2) or three (3) of section 168-a of the NYS Correction Law.

Registration Requirements

An offender's basic obligations are as follows. Sexual predators, sexually violent offenders and predicate sex offenders all must register for life and:

- Report annually where they live by signing and returning an annual verification form to DCJS within 10 days after receiving it.
- Notify DCJS in writing of a new address no later than 10 days after moving.
- Report in person to a local police agency to have a current photograph taken every three years (Level 1 and 2 offenders) or every year (Level 3 offenders and offenders labeled as a sexual predator).
- Notify DCJS in writing of any institution of higher education they are attending and enrolled in, confirming they are living and indicating whether they are employed. Any change in status must be reported to DCJS no later than 10 days after the change.
- Provide in writing Internet service providers, Internet screen names and email accounts.

Level 3 offenders and offenders with a sexual predator designation must personally verify their addresses every 90 days with law enforcement. Law enforcement may at that time photograph a Level 3 offender if that offender's appearance has changed.

Note: The preceding is a basic list of responsibilities; please refer to Correction Law Article 6-C for more information.

Convictions in Other Jurisdictions

(Source: DCJS website: <http://www.criminaljustice.ny.gov/nsor/sortab1.htm>)

Individuals convicted in another jurisdiction (federal, military, or another state or country) who reside in New York State are required to register if:

- (1) the individual is convicted of an offense equivalent to a New York State registerable sex offense; or
- (2) the individual is convicted of a felony requiring registration in the conviction jurisdiction; or
- (3) the individual is convicted of:
 - *18 U.S.C.A. 2251* (sexual exploitation of children)
 - *18 U.S.C.A. 2251A* (selling or buying of children)
 - *18 U.S.C.A. 2252* (certain activities relating to material involving the sexual exploitation of minors)
 - *18 U.S.C.A. 2252A* (certain activities relating to material constituting or containing child pornography)
 - *18 U.S.C.A. 2260* (production of sexually explicit depictions of a minor for importation into the United States)
 - *18 U.S.C.A. 2422(b)* (coercion and enticement)
 - *18 U.S.C.A. 2423* (transportation of minors) or
 - *18 U.S.C.A. 2425* (use of interstate facilities to transmit information about a minor).

SORA Website

The public may obtain information about sex offenders from the New York State Division of Criminal Justice Services' Sex Offender Subdirectory at:

http://www.criminaljustice.ny.gov/SomsSUBDirectory/search_index.jsp

APPENDIX D

AUDIT METHODOLOGY AND STANDARDS

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To determine if the Department takes action when DCJS notifies it of an offender's non-compliance with SORA in regards to address verification, examiners utilized the Sex Offender Registry to obtain a sample of offenders based on the first and last offender for each alphabetical letter in the Saratoga County Sheriff's Office's jurisdiction. Examiners had the Department utilize eJusticeNY⁸ to determine if a selected offender had been notified of failing to annually verify their address between 2008 and 2013 while the offender was in the jurisdiction and whether or not the Department responded to the notification.

To determine if the Department was responding to DCJS notifications regarding offenders with photographs to be due soon and if the Department was utilizing DCJS provided resources that identified offenders with expired photographs, examiners had the Sheriff's Office provide a DCJS provided list of offenders who had expired photographs. Examiners utilized information from the Sex Offender Registry to gather information on offenders indicated by the list. Examiners met with Department staff to determine why each photograph was out of date and to see if they had a more up to date photograph in their County computer system.

To determine if the Department is facilitating a change of address of an offender into the correctional facility and changing the address of an offender out of the facility before release, examiners utilized the Sex Offender Registry to obtain a sample of offenders based on the first and last offender for each alphabetical letter in the Saratoga County Sheriff's Office's jurisdiction. Examiners had the Department utilize their booking software to bring up any incarceration dates from 2008 to 2013 in the local correctional facility for the offenders. Examiners then determined whether the offenders were registered at the time of incarceration and whether the Department facilitated a change of address into the facility and filed a change of address out of the facility, where appropriate. Incarceration periods under 10 days were not tested due to the short-term nature of the incarceration.

⁸ eJusticeNY is a browser-based application designed to give users from qualified agencies a single point of access to computerized information within and beyond New York State.