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September 17, 2014

Steven Bellone, County Executive
Suffolk County
Riverhead County Center
County Road 51
Riverhead, New York 11901

Report Number: S9-14-28

Dear Mr. Bellone, Commissioner and Members of the County Legislature:

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 Suffolk County (County) – specifically, the Suffolk County Police (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 January 22, 2014.

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. Department officials generally agreed with our recommendations and indicated they have taken corrective action. 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 always follow the Policy. For example, we found the Department did not always take action when DCJS notified them that an offender did not return their annual address verification form. As a result, the Department did not respond to two of 49 address verification notifications we examined.

We also found the Department took action when the State’s Division of Criminal Justice Services (DCJS) notifies it of a sex offender’s non-compliance with SORA’s photograph provision.

Background and Methodology

Suffolk County (County) is governed by an 18-member County Legislature and has a population of approximately 1.5 million, including 464¹ moderate- and high-risk sex offenders of which 413² report to the Department. The County’s fiscal year 2013 budgeted appropriations totaled \$930 million, including \$429 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 a Sex Offender Registry (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 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 15 full-time detectives

¹ 305 Level 2 sex offenders, 159 Level 3 sex offenders

² 274 Level 2 sex offenders, 139 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 B. Specific requirements are set forth in Correction Law Article 6-C.

⁷ See definitions in Appendix B.

who, as a part of their regular duties, primarily monitor the jurisdiction's sex offender population and provide sex offender information to DCJS.

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 follow-up 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 C of this report.

Audit Results

Policies and Procedures – The Department has a Policy for the management of sex offenders. It requires designated personnel monitor and track offenders, maintain offender data and ensure that offenders are in compliance with SORA. The Policy requires personnel to complete 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 take appropriate enforcement action for non-compliance with SORA's registration requirements, change of address requirements, annual verification of a sex offender's address and photograph update requirements.

The Department generally followed the Policy regarding sex offender management. For example, the Policy requires Department personnel to take appropriate enforcement actions for non-compliance with SORA's annual address verification requirements. However, we found the Department did not do so for every notification.

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.

We found the Department used both the DCJS notification and the DCJS list of non-compliant offenders to ensure each offender complies with SORA's photograph provision. As a result, the Department had either active investigations or pending investigations for nine of the jurisdiction's Level 3 offenders and five Level 2 offenders that the DCJS report identified. A sex offender is subject to arrest for failing to provide a photograph, a felony offense. Up-to-date Registry photographs help 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 49 notifications found that the Department verified the addresses or performed other follow-up action for a majority of notifications. For 47 of those 49 notifications tested, the Department appropriately responded to the notifications from DCJS. For two notifications, the Department had no documentation to support any followup action taken.

Recommendations

1. Department officials should ensure Department personnel comply with the Policy.
2. Department officials should use all DCJS notifications and resources to manage the sex offender population under its 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 Suffolk County Police Department for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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

COUNTY OF SUFFOLK



STEVEN BELLONE
COUNTY EXECUTIVE

EDWARD WEBBER
POLICE COMMISSIONER

POLICE DEPARTMENT

July 1, 2014

Gabriel F. Deyo, Deputy Comptroller
Office of the State Comptroller
110 State Street
Albany, NY 12236

I would like to take this opportunity to thank the Office of the State Comptroller for its efforts assisting the Suffolk County Police Department (SCPD) in enhancing the sex offender registration investigative and enforcement services provided to the people of Suffolk County. By affirming the efforts of the SCPD in enforcing the State's Sex Offender Registration Act (SORA), the audit by the Comptroller's Office should reassure the people of Suffolk County that their police department has a comprehensive and most effective sex offender management program in place. Please note that this Audit Response is also serving as the Corrective Action Plan.

The audit conducted by the Office of the State Comptroller focused on the Suffolk County Police Department's investigative and enforcement efforts in response to notifications from the Division of Criminal Justice Services (DCJS) regarding offenders who have failed to provide updated photographs, and in response to DCJS notifications of offenders who have failed to return mandated annual address verification forms to DCJS. As outlined in the draft exit letter and reiterated during the exit interview on June 10, 2014, the SCPD was found to be in 100% compliance regarding follow-up measures taken pursuant to DCJS SORA photograph notifications. Moreover, the audit determined the SCPD to be in 96% compliance regarding follow-up measures taken concerning DCJS annual address verification notifications, as auditors found that two out of forty-nine address verification notifications audited lacked follow-up investigation by the SCPD. While a 96% compliance rate may appear to be sufficient or acceptable, the SCPD diligently strives to ensure that follow-up measures are taken pursuant to *all* notifications. However, a review of pertinent records revealed that the SCPD did not receive notifications for the two address verifications at issue.



ACCREDITED LAW ENFORCEMENT AGENCY

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Non-Emergencies Requiring Police Response, Dial (631) 852-COPS

30 Yaphank Avenue, Yaphank, New York 11980 – (631) 852-6000



In an endeavor to ascertain the cause of the apparent lapses concerning the two address verification (AV) notifications at issue, the SCPD reviewed records maintained by this agency as well as inquired about pertinent records maintained by the DCJS. The DCJS reported sending one of the two notifications at issue by U.S. mail, and the other notification electronically through the DCJS portal. The AV notification said to have been sent via US mail was not received by the SCPD – and, the mailing could not be tracked, nor could delivery be confirmed. The second AV notification at issue cited by the audit was reportedly sent via the DCJS portal – although DCJS records indicate that the notification was received, the SCPD detective responsible for accessing notifications from the portal reported that she did not receive the notification. Unfortunately, the SCPD was unable to resolve how the apparent lapses occurred. Nonetheless, it should be noted that a review of records maintained by the SCPD indicates that follow-up investigatory action was taken by the SCPD concerning the two sex offenders who were the subject of the two notifications at issue. The offender whose notification was sent by mail has been the subject of address verifications by the SCPD on ten separate occasions since 2007, including four occasions after a failure to return AV notification by DCJS. The offender whose notification was sent electronically has been the subject of four address verifications since 2010.

Corrective Action Plan

To ensure receipt of DCJS notifications and prevent such lapses from recurring, the SCPD has respectfully recommended that the DCJS require acknowledgements of notifications from recipient agencies and / or provide a periodic report detailing all notifications so recipient agencies can confirm receipt of same. Additionally, internal DCJS notification procedures within the SCPD have been augmented by the creation of a notification log which enables a quick reference for all DCJS notifications, and ensures that prompt follow-up investigative measures are taken pursuant to each notification.

Sincerely,

Edward Webber,
Commissioner

EW/jq

APPENDIX B

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 C

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 address verification requirements, we asked the Unit for the list of offenders who failed to verify their address. This list was pulled from eJusticeNY,⁸ and we had Department officials use their internal records system and hard copy files to determine whether they were currently investigating or had resolved any cases involving sex offenders from the list. Further, examiners utilized the Sex Offender Registry to gather a non-biased judgmental sample by taking the first and last offender on the registry for each alphabetical letter based on last name. Department officials then utilized their internal records system and accessed their hard copy files to determine if the Department responded to the notifications from DCJS.

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 Police Department provide a DCJS generated list of offenders who had expired photographs. Examiners utilized information from the Sex Offender Registry gathered previously on offenders indicated by the list. Examiners met with Department staff to determine why the photograph was out of day and when the Department took action.

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.