



THOMAS P. DiNAPOLI
COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

GABRIEL F. DEYO
DEPUTY COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY
Tel: (518) 474-4037 Fax: (518) 486-6479

September 17, 2014

Debra Preston, County Executive
Broome County Office Building, 6th Floor
PO Box 1766
60 Hawley Street
Binghamton, New York 13902

Report Number: S9-14-18

Dear Ms. Preston 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 Broome County – specifically, the Broome 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 August 14, 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. 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. In addition, the Policy does not address all the Department's SORA responsibilities.

We also found the Department does not always take action when the State's Division of Criminal Justice Services (DCJS) notifies it of a sex offender's non-compliance with SORA. For example, DCJS notifies the Department when an offender should have a new photograph taken, and provides the Department with a list of offenders who failed to have the photograph taken. However, the Department does not use these communications to ensure offender compliance. As a result, 16 of the County's moderate- to high-risk offenders had outdated Sex Offender Registry (Registry) photographs.

In addition, the Department's Policy requires the retention of all offender records, inquiries, responses and correspondence, the Department does not retain all sex offender notifications received from DCJS. Accordingly, we were unable to test the Department's response to annual Address Verification notifications received from DCJS.

While SORA requires the Department to process a change-of-address form when it incarcerates a sex offender and later when the offender is released, the Department's Policy contains no provisions for this responsibility. However, we found the Department's practice is to process the forms.

Background and Methodology

Broome County (County) is governed by a 15-member County Legislature and has a population of approximately 198,000, including 335¹ sex offenders of which 123² report to the Department. The County's fiscal year 2013 budgeted appropriations totaled \$235 million, including \$32.5 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.

¹ Includes only moderate- (Level 2) and high-risk (Level 3) sex offenders

² Includes only moderate- (Level 2) and high-risk (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 (Correction Law §168 *et seq.*), 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).

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 a full-time detective who, as a part of his regular duties, primarily monitors the jurisdiction’s sex offender population and provides sex offender information to DCJS. However, when necessary, 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 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.

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.

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 a permanent file for each sex offender and ensure that addresses given by resident sex offenders are accurate. The file should include all records, inquiries, responses and correspondence concerning sex offenders registered with the Department. 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, annual verification of a sex offender's address and photograph update requirements.

The Department does not consistently follow the Policy regarding sex offender management. For example, the Department does not personally verify the address of an offender as the Policy requires. The Policy also does not address all the Department's SORA responsibilities, such as the requirement that change-of-address forms be processed for offenders when they are both incarcerated and released.

DCJS Notifications – DCJS notifies sex offenders when they must report to the Department to update their Registry photograph, and notifies the Department of 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.

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. Officials informed us they were not aware DCJS made the list of non-compliant offenders available to them. As a result, the Department did not respond in a timely manner to a DCJS report that identified eight of the jurisdiction's Level 3 offenders and eight Level 2 offenders who did not update their photograph in accordance with the law. A sex offender is subject to arrest for failing to provide a photograph, a felony offense. Up-to-date photographs help ensure that law enforcement and the public can recognize sex offenders.

However, we found three of the sex offenders DCJS reported as non-compliant with the SORA photograph provision did report to the Department and had an updated photograph taken. While the Department's records support the transfer of the photographs to DCJS, the Department did not confirm the photographs were uploaded to the Registry and Subdirectory.

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. DCJS also maintains lists of offenders who did not verify their address as required, and makes this list available to the Department through an online system. We found, however, that although the Department's policy requires the retention of all offender records, inquiries, responses and correspondence, the Department does not retain all DCJS notifications. Accordingly, we were unable to test the Department's response to annual Address Verification notifications received from DCJS.

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.

We found that, although the Department processed a change-of-address form when it incarcerated the 25 sex offenders tested and updated the offender addresses prior to their release, the Policy contains no provisions for this requirement to help ensure that this practice continues.

Recommendations

Department officials should:

1. Use all DCJS notifications and resources to manage the sex offender population under the Department’s jurisdiction.
2. Comply with the Department’s Policy and ensure it contains provisions for all of the Department’s SORA responsibilities, including but not limited to:
 - Processing a change-of address form when sex offender is incarcerated, and changing the address of the offender prior to the offender’s release from the correctional facility.
 - Retaining all sex offender records, inquiries, responses and correspondence.
 - Taking enforcement action when warranted.

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 Broome County Sheriff’s Office 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.

The response letter refers to the Department's policy as an attachment. Because the policy provisions are adequately described in the letter, we have not included that document here.

Broome County Office of the Sheriff



David E. Harder
Sheriff

Alex J. Minor
Undersheriff

155 Lt. VanWinkle Drive
Binghamton, New York 13905

May 21, 2014

Ann C. Singer, Chief Examiner
State Of New York Office of the Comptroller
State Office Building, Suite 1702
44 Hawley Street
Binghamton, NY 13901-4417

Dear Ms. Singer:

This letter is in response to your preliminary draft findings from the audit conducted on the Broome County Sheriff's Office's sex offender management program. Members of the Broome County Sheriff's Office continuously strive for excellence in any program or task that is undertaken by this agency. In doing such, we are able to maintain the highest level of professionalism. This same commitment is put forth in the management of our sex offender program.

I would first like to note that, at the time of the Comptrollers audit, this agency was working to update its policy concerning the sub-directory of high risk sex offenders. In an effort to ensure that the most efficient policy was put forth dealing with all current issues, technologies and trends, the decision was made to delay its distribution until the audit was complete and we received feedback from the audit process.

Regarding the issues documented in the audit result, I make the following written response concerning the three issues brought to our attention.

1) Policies and Procedures:

Two specific policy changes have been made that address the issues of personally verifying the address of **all** offenders and clearly delineating SORA responsibilities within the agency.

- a) In section D-3 (a) on page 74B of the attached policy, the change has been made that requires members to, within one week, conduct an independent physical verification of the Level III offenders address by conducting a personal home visit. The previous policy required this verification completed for all level offenders.

With the increase in the amount of supervised offenders, the lack of manpower specifically dedicated to address verification and the loss of specific funding to accomplish such, this change was made to enable the proper management of Level III offenders.

- b) In section I of page 74C of the attached policy, changes were made that clearly delineate the responsibilities of the following divisions or units as it pertains to their responsibilities regarding sex offender management: Identification Division, Jail Classification Unit and the Detective Division supervisor.

2) DCJS Notifications:

The basis of this audit result was the failure to utilize the DCJS list of offenders who were non-compliant in submitting updated photographs. This agency was utilizing the notification that came via the Portal, to address all offenders who were delinquent in updating their photos. Due to the lack of communication and guidance by DCJS concerning the list (photos) of non-compliant offenders, this agency was unaware that such a list existed.

- a) In section J of page 74C of the attached policy, a new section has been added entitled "Offender Photo Updating". This section of the policy clearly delineates responsibility, as well as procedures, that are to be followed in obtaining up-to-date photos and enforcement for non-compliance.

I would add that the audit process found that three (3) of the updated photographs were, in fact, captured and sent to the appropriate recipient, however, DCJS failed to properly upload those photographs into the system.

3) Correctional Facilities Change of Address:

This issue deals with members of the Corrections Division ensuring that the addresses of offenders are changed when the offender was both received and released from the Broome County Sheriff's Correctional

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Facility. The results of the audit were very favorable for this agency. Out of 25 offenders tested, 25 were in compliance. The current policy was deficient in that it didn't clearly delineate who was responsible for conducting the change of address of inmates. The policy has since been changed.

- a) In section I-1 subsection 3 of the attached policy, the Jail Classification unit is clearly responsible for this duty.

I find it appropriate to make a final point following my written response concerning the matters disclosed in the audit. As I stated in my opening remarks, this agency strives for excellence and the highest level of professionalism. Never once did the audit results suggest or imply that this agency was deficient or fell short of the established regulations set forth by the State of New York.

Due to constant changes in technology and trends, our written policy had not been made current to coincide with the manner in which we were managing our sex offender registry. Those changes have since been made and we can now continue to successfully manage our sex offender program. The recommendations made by your agency have been taken into consideration and implemented where warranted.

Sincerely,

David E. Harder
Sheriff

DEH/bmo

enc.

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.

Department officials, contrary to their Policy, do retain DCJS Address Verification notifications pertaining to offenders. Accordingly, the scope of our testing with respect to whether the Department takes action in response to these notifications was limited to sex offenders identified on the DCJS list of sex offenders who had failed to verify their address.

To determine if the Department responds to DCJS notifications regarding offender's with photographs to be due soon, and if the Department uses DCJS-provided resources that identify offenders with expired photographs, we obtained the DCJS list of offenders that owe a photo and met with Department officials to learn why a photo was not taken and what actions they took to bring the offender into compliance.

To determine whether the Department obtained DCJS change-of-address forms relating to sex offender address changes upon being admitted to and released from the county correctional facility, we requested the Department provide us with a listing of sex offenders who had been incarcerated in the facility during our scope period. The Department identified 111 offenders that were incarcerated. We selected a non-biased judgmental audit sample of 25 offenders from this list for testing. The Department provided the offender's jail admission and release dates, relative to our audit sample offenders, and we searched correctional facility files for DCJS Address Change forms corresponding to these dates. We interviewed the Department's Corrections supervisor and examined DCJS records to determine if the jail obtained the required address change forms and whether the information had been transmitted to DCJS.