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September 17, 2014

Mark R. Alger, County Manager
Steuben County
3 East Pulteney Square
Bath, New York 14810

Report Number: S9-14-27

Dear Mr. Alger and Members of the Steuben 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 Steuben County – specifically, the Steuben 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 February 3, 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. 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, the Department was unaware 17 of the County's moderate- to high-risk offenders had outdated Sex Offender Registry (Registry) photographs and 11 moderate- to high-risk offenders failed to verify their address.

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. As a result, the Department did not process one or more change-of-address forms for nine of 21 offender incarcerations we examined. In addition, the Department had no record that two change-of-address forms it obtained were reported to DCJS.

Background and Methodology

Steuben County is governed by a 17-member County Legislature and has a population of approximately 99,000, including 239¹ sex offenders of which 145² report to the Department. The County's calendar year 2013 budgeted appropriations totaled \$142.3 million, including \$12.1 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

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 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](#).

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 designee 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 predators⁸ 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 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 a permanent file for each sex

⁷ See definitions in Appendix B.

⁸ A sexual predator is an offender who has been convicted of a sexually violent offense as defined in section 168-a of the Correction Law and who suffers from a mental abnormality or personality disorder that makes him or her likely to engage in predatory sexually violent offenses.

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 Level 3 offenders to make personal contact with the Department every 90 days. 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, when an offender fails to comply with their SORA duties, the Department does not always take enforcement actions. In addition, the Policy does not establish procedures to be followed regarding processing a change-of-address form when incarcerating a sex offender and updating the address prior to the offender's release.

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 their Registry photograph updated. DCJS also maintains lists 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 to a DCJS report that identified 15 offenders (14 of the jurisdiction's Level 3 offenders and one Level 2 offender) 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 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. 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. However, the Department does not use this list. We tested 19 fail notifications the Department received and found no action was taken on one notification. Of the remaining 18 notifications, nine were confirmed by other means, seven change-of-address forms were processed, and two offenders returned their verification form late. In addition, we noted the Department's eJustice list⁹ identified an additional 18 offenders¹⁰ who did not return their verification form. Although the Department investigated eight of these instances, it failed to notify DCJS of the resolutions.

In relation to our work, officials said they were not aware DCJS provided online access to reports that identify offenders who failed to comply with SORA.

⁹ 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.

¹⁰ The eJustice list had 19 offenders; however, one was part of our address verification test, so there were an additional 18 offenders on the list.

Sex offenders who fail to satisfy their SORA obligation to verify their address on an annual basis can, potentially, be residing in communities and among vulnerable populations that are unaware of their presence. A sex offender is subject to arrest for a felony offense if they fail to verify their address each year.

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. The Department’s Policy does not require officers to complete a change-of-address form when offenders enter or leave jail. However, Department officials stated it was their practice to obtain the required change-of-address forms.

Although the Department could not provide a list of sex offenders it incarcerated during the audit period, it was able to identify 52 offender incarcerations between March 10, 2011 and February 3, 2014. We examined 21 offender incarcerations that occurred between March 10, 2011 and February 3, 2014 and found officials did not obtain one or more change-of-address forms for nine offender incarcerations. We found:

- Three change-of-address forms were not obtained when the Department incarcerated or released the offenders.
- Five change-of-address forms were not obtained when the Department incarcerated the offenders.
- One change-of-address form was not obtained when the Department released the offender.

In addition, officials did obtain a change-of-address form for two offenders when they released them from jail. However, the Department had no record the information was transferred to DCJS so the Registry could be updated. These reporting omissions, in combination with the lack of verified offender addresses, could potentially place the public at an increased risk of harm.

Recommendations

1. Department officials should use all DCJS notifications and resources to manage the sex offender population under their jurisdiction.
2. Department officials should comply with the Department policy pertaining to sex offender management and ensure the Policy includes provisions for all of the Department’s SORA responsibilities. This would include but not be limited to:
 - Processing a change-of-address form when a sex offender is incarcerated and when a sex offender is released from a facility.
 - 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 Steuben County Sheriff's Office for the courtesies and cooperation extended to our auditors during this audit.

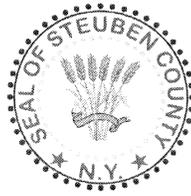
Sincerely,

Gabriel F. Deyo

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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



STEUBEN COUNTY
OFFICE OF THE COUNTY MANAGER
3 EAST PULTENEY SQUARE
BATH, NY 14810
PHONE: (607) 664-2245
FAX: (607) 664-2282

MARK R. ALGER
COUNTY MANAGER

JACK K. WHEELER, MPA
DEPUTY COUNTY MANAGER

June 19, 2014

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

Dear Ms. Singer:

This is Steuben County's Audit Response and CAP from the recent Sex Offender Management Examination that was conducted by your office in February, 2014.

For each recommendation included in the audit report, the following is our corrective action taken.

1. A policy has been put into effect which states upon incarceration, all known sex offenders will fill out a change-of-address form and again upon release.
2. A policy has been put into effect which states upon notification; all known sex offenders will have their photo updated, when required per DCJS.
3. We were unaware that DCJS provided online access to reports that identify offenders who fail to comply with SORA. These reports are now being utilized.
4. We will send in a copy of the Warrant to DCJS after it is received. We were unaware of this provision for them to take Sex Offenders off our domicile list.

If you have any further inquiries or need further information, please contact us.

Sincerely,

MARK R. ALGER
COUNTY MANAGER

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.

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 notified it of an offenders non-compliance with SORA address verification requirements, we asked Department officials for the list of offenders who failed to verify their address. This list was pulled from eJusticeNY, provided by DCJS. We also generated a random, nonjudgmental audit sample of 43 sex offenders and reviewed DCJS Offender Details reports to determine if the sample sex offenders failed to verify their address. As a result, we identified a total of 35 offenders who did not return their annual address verification forms in accordance with SORA. We interviewed the Designee and examined related supporting documentation to determine what actions were taken to verify the offender's address.

To determine if the Department responds to DCJS notifications regarding offenders 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. Due to the implementation of new computer software at the facility, the Department could not readily identify sex offenders incarcerated prior to March 2011. However, the Department identified 52 offenders who were incarcerated between March 10, 2011 and February 3, 2014 from which we reviewed 21 offender incarcerations. We selected a non-biased judgmental audit sample of 21 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 the related offender's hard copy files for DCJS Address Change forms corresponding to these dates. We interviewed the Department's Corrections supervisor and examined DCJS Offender Detail reports to determine if the jail obtained the required address change forms and whether the information had been transmitted to DCJS.