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September 17, 2014

Paul Dusek, County Administrator
Warren County
1340 State Route 9
Lake George, New York 12845

Report Number: S9-14-30

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

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 Warren County (County) – specifically, the Warren 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 November 4, 2013.

This draft report of examination letter contains our findings and recommendations specific to the County. 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 disagreed with our findings and recommendations. 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

The Department has adopted policies and procedures (Policy) for managing sex offenders and Department personnel generally, with a few exceptions, follow the Policy.

While we found the Department took 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, 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, three of the Department's moderate-risk sex offenders had outdated Sex Offender Registry (Registry) photographs.

In addition, 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. We found that in one of 18 incarcerations we reviewed, the Department did not update the offender's address prior to releasing the offender from its facility, as required. As a result, the Registry would have continued to report this offender as incarcerated at the County's facility, when in fact he was not.

Background and Methodology

Warren County (County) is governed by a 20-member County Board of Supervisors and has a population of approximately 65,500, including 122¹ moderate- and high-risk sex offenders of which 99² report to the Department. The County's fiscal year 2013 budgeted appropriations totaled \$125 million, including \$20.7 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

¹ 84 Level 2 sex offenders, 38 Level 3 sex offenders

² 66 Level 2 sex offenders, 33 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.

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 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 meet the obligations of SORA by maintaining the Sex Offender Registry and facilitating change-of-addresses. The Policy requires Department personnel to investigate and issue arrest warrants for offenders who violate SORA provisions or cannot be located. As of October 2013, the Policy also requires Corrections officers to change the address of an offender when admitted to the correctional facility and change the address of the offender prior to releasing them from the facility.

⁷ See definitions in Appendix C.

Except for three instances, the Department followed the Policy regarding sex offender management. For example, the Policy requires Department personnel to take action when an offender violates SORA provisions, which includes the offender failing to return their annual address verification form to DCJS and the offender not having an updated photograph submitted to DCJS. Although Department personnel were taking action when notified by DCJS that an offender failed to return the address verification form, it did not always take action when an offender's photograph was out of date.

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 to a DCJS report that identified three of the jurisdiction's 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 Registry photographs help to ensure that law enforcement and the public can recognize sex offenders.

In addition, the Department had photographs in compliance with SORA for two of the three offenders in its local computer system; however, the Registry photographs were not updated. While Department officials assert they did submit the photographs to DCJS, they were not able to provide documentation to support the transmissions.

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 15 notifications found that the Department verified the addresses or performed other follow-up action. Department personnel confirmed seven offenders continue to live at their registered address. Six notifications corresponded to one offender who has had a warrant out for his arrest for the duration of all notifications. The final two sex offenders submitted change-of-address forms.

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 updated its Policy in October 2013 to incorporate this SORA responsibility.

We tested 18 incarcerations to determine if Department personnel processed a change-of-address form, as required. We found in one of 18 incarcerations Department personnel did not process the change-of-address form when they released the offender from the Department's facility. As a result, the Registry would have continued to report that the County has the offender incarcerated at its facility, until such time as the offender registered or reported a new address.

Recommendations

1. Department officials should ensure they consistently follow their Policy.
2. Department officials should use all DCJS notifications and resources to manage the sex offender population under its jurisdiction.
3. Department officials should ensure they forward all photographs of offenders to DCJS.

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 Warren 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.

Warren County Sheriff's Office

1400 State Route 9
Lake George, New York 12845
(518) 743-2500

Nathan H. York
Warren County Sheriff

Undersheriff C. Shawn Lamouree
Division Commander
Law Enforcement Division



Major James A. LaFarr
Office of Professional Standards
Administration

Captain Michael T. Gates
Division Commander
Correction Division

June 13, 2014
Gabriel F. Deyo, Deputy Comptroller
Office of the State Comptroller
110 State St.
Albany, NY 12236

Mr. Deyo:

In response to the exit interview and draft findings of your recent Sex Offender Management examination, I provide the following response to report number S9-14-30.

It is my understanding that the audit was done on a five year span from 2008-2013, including 122 sex offenders. Our office took action on all return of address verification forms that were sent to us by DCJS.

As far as the failure to update photographs, the audit found just three subjects. Out of the three subjects, two of them were in fact updated in the Warren County Sheriff's Office computer system and sent to DCJS. It is the normal procedure to download the Sex Offender photo to both the Warren County Sex Offender Computer and send the updated photograph to DCJS via e-justice portal. When sending an updated photo through the portal, we receive a confirmation from DCJS that the photo has been received. This confirmation is not printable; therefore, DCJS provides no avenue for us to confirm that we were in compliance, even though we were. The third photo update the audit letter is referring to was an ongoing case that the SORO was working on. All three photos were updated on e-justice at the time of the audit and accepted by DCJS as witnessed by your examiner. The audit also stated that the SORO does not use either the DCJS notification or the DCJS list of non-compliant offenders to ensure each offender complies with SORA's photograph provision. That is not a true statement as the SORO checks this on a regular basis. It seems to me that DCJS needs to work with the local Counties more closely and to make sure the photo confirmation is printable because it seems that our word is not acceptable for audit purposes.

See
Note 1
Page 9

Additionally, the audit indicated that in five of 18 incarcerations reviewed, the Department did not update the offender's address prior to releasing the offender from its facility.

Our Office disputes these findings. In three of the five instances, the inmate was transferred to the custody of the New York State Department of Corrections and Community Services. A review of the applicable law has been conducted and found not to apply in these cases. The law infers the inmate as being sentenced to our facility, as notification is required 10 days prior to release or discharge. The law also infers the inmate is being released to the community based upon the items to be reported. In those three cases the inmate was being held on a New York State Parole Violation (un-sentenced) and the facility only receives less than 24 hours notices in regards to the transfer. Section 168-c does not specifically address a transfer from one facility to another.

See
Note 2
Page 9

In the fourth case the inmate was released by a local court during a court appearance and was not sentenced to our facility. In this specific case, a change of address form was completed at the time of release.

In the remaining single instance, a change of address for a sentenced inmate was provided the day after release, not ten days prior as provided in the section of law. Nonetheless, the reporting was in substantial compliance with §168-c, and certainly within the time parameters of §168-f.

See Note 3 Page 9

Ultimately, it is the responsibility of the Registered Sex Offender to register and verify according to Correction Law 168-f. Your audit report acknowledges it is the responsibility of the inmate to complete changes of address forms as indicated in APPENDIX B, which states in part under registration requirements / offender's basic obligations "Notify DCJS in writing of a new address no later than 10 days after moving."

Our agency is very proactive in regards to the safety of our residents, area visitors and communities. As such, in the fall of 2013, prior to the audit, the Warren County Sheriff's Office updated our Correction Division Operation Manual to include that all Registered Sex Offenders will be provided a change of address form upon admission and release from the Correctional Facility, regardless of the length of time incarcerated, sentence type, release type or transfer. These change of address forms are then forwarded to the SORA officer to be mailed to DCJS.

We feel our office is consistently following our policy and using all DCJS notifications and resources to manage the sex offender population under our jurisdiction. We also believe we are forwarding all photographs of sex offenders to DCJS as required.

Sincerely,

Nathan H. York

Warren County Sheriff



APPENDIX B

OSC COMMENTS ON THE COUNTY'S RESPONSE

Note 1

The two offenders who reported to the Department and had a new photograph taken did so in May and in June of 2013. The third offender reported to the Department in September 2012, when he moved into the County, but did not have a new photograph taken. However, as of November 2013, all three offenders would have remained on the list of offenders who violated SORA by not reporting to have a new photograph taken. Had Department officials reviewed the DCJS list of non-compliant offenders, as the Sheriff indicates, they could have retransmitted the current photographs on file for the two offenders and brought the third offender into compliance.

Note 2

We updated our report to reflect that the law may not apply to transfers between correctional facilities and that the Department completed the change form in a timely manner for the inmate released by a court during an appearance. Accordingly, our report now states that, in one of the 18 incarcerations tested, the County did not process a change-of-address form when the Department released an offender from incarceration.

Note 3

Our audit found no record at the Department (i.e., a copy of the required change-of-address form filled out by the offender) to indicate that the Department had processed this offender's change of address.

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, our 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 Warren County Sheriff's Office's jurisdiction. Our examiners had the Department utilize eJusticeNY⁸ to determine if a selected offender had address verification 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 using DCJS-provided resources that identified offenders with expired photographs. Our examiners had the Sheriff's Office provide a DCJS provided list of offenders who had expired photographs. Our examiners utilized information from the Sex Offender Registry to document information on offenders indicated by the list. Our 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, our 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 Warren County Sheriff's Office's jurisdiction. Our 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. Our examiners then determined whether the offenders were registered at the time of incarceration and then determined whether the Department facilitated a change of address when admitted to the facility and processed a change of address when released from 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.