



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

Byron W. Brown, Mayor
City of Buffalo
201 City Hall
Buffalo, New York 14202

Report Number: S9-14-19

Dear Mayor Brown and Members of the Common Council:

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 the City of Buffalo – specifically, the Buffalo Police Department (Department) – in this audit. Within the scope of this audit, we examined the Department's policies and procedures and reviewed the record of actions taken to enforce SORA for the period January 1, 2008 through December 11, 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 plan to take 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, the Policy is not followed. We 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, 30 of the City's moderate- to high-risk offenders had outdated Sex Offender Registry (Registry) photographs.

Further, although the Department investigated 26 cases of offenders who did not return their annual address verification form, in seven cases the Department did not inform DCJS of the investigation results.

Background and Methodology

The City of Buffalo (City), located in Erie County, is governed by a nine-member Common Council and has a population of approximately 259,400, including 570¹ sex offenders. The City's fiscal year 2013-14 budgeted appropriations totaled \$377.5 million, including \$79.6 million for the Department's budgeted appropriations.

Megan's Law,² 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.³

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"⁴ 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.⁵ 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.⁶ 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).

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

² 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.

³ SORA; Article 6-C of the Correction Law, effective January 21, 1996

⁴ 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).

⁵ General requirements are detailed in Appendix B. Specific requirements are set forth in Correction Law Article 6-C.

⁶ See definitions in Appendix B.

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 lieutenant who, as a part of his regular duties, supervises the monitoring of 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.

Audit Results

Policies and Procedures – Although the Department has a Policy for the management of sex offenders, the Policy, dated February 15, 2000, does not reflect the Department’s current practices. Department personnel informed us the Policy is not used.

Well written policies and procedures allow employees to understand their roles and responsibilities. They allow management to guide operations without constant management intervention and help ensure management’s expectations are clearly conveyed to personnel charged with carrying out the day-to-day operations. When policies and procedures are well thought out and, most importantly, implemented, they provide common understanding and agreement on how things should be done. Procedures provide clear instructions and guidelines on what should/must be done in a particular set of circumstances. Policies and procedures should also be regularly reviewed to ensure that they continue to meet management’s expectations. Accordingly, due to the absence of clearly defined and monitored policies and procedures, we found that the Department was not consistently taking action to help enforce SORA.

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 12 of the jurisdiction’s Level 3 offenders and 18 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 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. However, with respect to 26 offenders identified for audit testing, we found that the Department took action to verify the offender’s address but in seven instances did not communicate the investigation results to DCJS. Up-to-date Registry addresses for all offenders help ensure that law enforcement and the public can locate sex offenders.

Recommendations

1. The Department should adopt, implement and monitor comprehensive policies and procedures delineating staff responsibilities and actions required in the performance of their responsibilities in accordance with SORA.
2. Department officials should use all DCJS notifications and resources to manage the sex offender population under its jurisdiction.

The Common Council 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 Council to make this plan available for public review in the Clerk of the Council’s office.

We thank the officials and staff of the Buffalo 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 page.



BYRON W. BROWN
MAYOR

CITY OF BUFFALO
DEPARTMENT OF POLICE



DANIEL DERENDA
COMMISSIONER

August 1, 2014

In response to the recommendations of the Office of the State Comptroller's Audit Report, the Buffalo Police Department is taking the following actions:

- 1.) The Buffalo Police Department will update the policies and procedures delineating staff responsibilities and actions currently required in the performance of their responsibilities in accordance with the Sex Offender Registration Act, and will monitor compliance with said policies and procedures.
- 2.) The Department now uses the DCJS notifications and the DCJS list of non-compliant offenders as the basis for tracking compliance by registered offenders, and has implemented other procedures recommended by OSC staff to track compliance by offenders and completion of tasks related to registration assigned to staff.

Sincerely,

David F. Mann, Jr.
Lieutenant
Buffalo Police Department/SOS

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 notified it of an offender's non-compliance with the SORA, we generated a random, nonjudgmental audit sample of 50 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 26 offenders who did not return their annual address verification forms in accordance with SORA. We interviewed Department officials 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 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.