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September 17, 2014

Suzanne Sinclair, County Administrator
Cayuga County Office Building, 6th Floor
160 Genesee Street
Auburn, New York 13021

Report Number: S9-14-17

Dear Ms. Sinclair, Sheriff 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 Cayuga County (County) – specifically, the Cayuga 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 through September 19, 2013.

This report of examination letter contains our findings and recommendations specific to the Department, which we discussed with Department officials. Department officials were given an opportunity to respond to our findings and recommendations within 30 days of the exit conference, but they did not respond. 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, nine of the County's moderate- to high-risk offenders had outdated Sex Offender Registry (Registry) photographs.

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, one of the four offenders the Department released from its facility during the audit period had incorrect Registry information: the Registry reported the offender as incarcerated at the County's facility, when in fact he was not.

Background and Methodology

Cayuga County (County) is governed by a 15-member County Legislature and has a population of approximately 80,000, including 227 sex offenders¹ of which 118² report to the Department. The County's fiscal year 2013 budgeted appropriations totaled \$125 million, including \$14.5 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 the SORA.⁴

SORA requires DCJS to establish and maintain the Sex Offender Registry (Registry) and a Subdirectory. The Subdirectory, which is available on the DCJS website, provides the public with information about moderate- and high-risk "sex offenders"⁵ residing in their communities. SORA provides that the Subdirectory include, among other things, the sex offender's name, age, exact address, employment address, photograph, physical description and distinctive markings.

When an individual is convicted of a sex offense and certified by the court as a sex offender, the individual is required to register with DCJS and abide by the specific registration requirements.⁶ Prior to sentencing, the State Board of Examiners of Sex Offenders makes a risk-level recommendation to the sentencing court based on the degree of risk of repeat offense for each sex

¹ Including Level 1, 2 and 3 offenders, of which 147 are moderate-risk (Level 2) and high-risk (Level 3)

² Including Level 1, 2 and 3 offenders, of which 86 are moderate-risk (Level 2) and high-risk (Level 3)

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 A. Specific requirements are set forth in Correction Law Article 6-C.

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 B of this report.

Audit Results

Policies and Procedures – The Department has a Policy for the management of sex offenders. It requires designated personnel to 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

⁷ See definitions in Appendix A.

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 Policy requires Department personnel to maintain, on a permanent basis, all records, inquiries, responses and correspondence concerning sex offenders registered with the Department. However, officials destroyed most of their historical sex offender file records and do not maintain all records for offenders currently residing in the County.

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 seven of the jurisdiction's Level 3 offenders and two 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. Although the Department should have maintained the DCJS communications, it did not; therefore, our test was limited to the six offenders who had an open notification at the time of our visit.

Our examination of the six available notifications found that the Department followed up on the addresses of two offenders. One offender was in the Sheriff's jail during our onsite work. In addition, the Department did not complete a change of address for two offenders, who had also had been incarcerated in the jail but were now released. Therefore, the Registry still reported them at the County's jail facility. Officials could not locate the sixth offender. During our onsite work, a Department official informed us that they began the process to obtain an arrest warrant.

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. Despite this significant duty to help maintain the integrity of the Registry and Subdirectory, the Department's Policy does not require officers to complete a change-of-address form when a sex offender enters or leaves jail.

Although the Department could not provide a list of sex offenders whom they incarcerated during the audit period, we identified four such sex offenders. One individual registered as a sex offender for the first time, prior to his release, and another offender was still incarcerated at the County's facility. Department personnel also processed a change-of-address form when they incarcerated

the remaining two sex offenders, but did not process a change-of-address form when they released one of the offenders from the facility. As a result, the Registry continued to report that the County had the offender incarcerated at its facility, when he was not. This reporting omission, in combination with the lack of verified offender addresses, could potentially place the public at an increased risk of harm.

Recommendations

Department officials should:

1. Update the Policy to require processing a change-of-address form when a sex offender is incarcerated and when the offender is released.
2. Comply with the Department's Policy, including provisions that require the maintenance of permanent sex offender files and taking enforcement actions when an offender does not report to have their photograph updated or does not verify their address.
3. Use all DCJS notifications and resources to manage the sex offender population under its jurisdiction.

The County Legislature has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Legislature to make this plan available for public review in the Clerk of the Legislature's office.

We thank the officials and staff of the Cayuga County Sheriff's Office for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo

APPENDIX A

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 B

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, no longer keep individual files on offenders. The Department recently destroyed all individual files and any records relating to those offenders and keeps change-of-address or 90-day verifications only for the current year. As such, the scope of some of our testing was limited.

To determine if the Department takes action when DCJS notifies it of an offender's non-compliance with SORA address verification requirements, we asked the Department for the list of offenders who failed to verify their address. This list was pulled from eJusticeNY⁸, provided by DCJS due to the lack of existing records. Our examiners asked why each offender was on the list and documented the responses.

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 Department provide a DCJS-generated list of offenders who had expired photographs. Examiners utilized information from the Sex Offender Registry to document information on offenders indicated by the list. Examiners met with Department staff to document whether the Department took action to investigate and see if they had a more up-to-date photograph in their County computer system.

To determine if the Department is changing the address of an offender when admitted into the correctional facility and before release from the facility, we used the local booking software to print a list of inmates incarcerated from 2008 through 2013 who were also sex offenders. There was a coding error which pulled the wrong booking information for a majority of the offenders. However, some incarceration periods for offenders were correct and our examiners searched for change-of-address forms for those offenders.

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.