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September 17, 2014

Ernest Davis, Mayor  
City of Mount Vernon  
Mount Vernon City Hall, 1<sup>st</sup> Floor  
One Roosevelt Square  
Mount Vernon, New York 10550

Report Number: S9-14-20

Dear Mayor Davis, Commissioner and Members of the City 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 Mount Vernon (City) – specifically, the Mount Vernon 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 January 7, 2014.

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**

The Department has adopted a policy (Policy) for managing sex offenders. However, the Policy does not address all of the SORA requirements or convey management's expectations for addressing DCJS notifications regarding an offender's failure to verify their address each year or to provide updated photographs. The Policy does not describe how Unit personnel should monitor

offenders or when an officer should confirm an offender's Sex Offender Registry (Registry) information. In addition, it does not address monitoring high-risk offenders to ensure they report every 90 days to confirm they continue to live at their registered address, as required.

We found the Department does not always take action when the State's Division of Criminal Justice Services (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. We found the Department does not use these communications to ensure offender compliance. As a result, 23 of the City's moderate- to high-risk offenders had outdated Registry photographs.

The Department also did not take follow-up action when DCJS notified it that an offender did not return their address verification form for three consecutive years. In addition, while they tried to confirm two other offenders were residing at their registered address, officers could not locate them. Unit personnel did not notify the DCJS of the investigations results and no enforcement actions were taken. In each case the Department thinks the offenders may have moved to another state.

## **Background and Methodology**

The City of Mount Vernon, located in Westchester County, is governed by a five-member City Council and has a population of approximately 68,000, including 66<sup>1</sup> moderate- and high-risk sex offenders who report to the Department. The City's fiscal year 2013 budgeted appropriations totaled \$93 million, including \$20.3 million for the Department's budgeted appropriations.

Megan's Law,<sup>2</sup> 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.<sup>3</sup>

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"<sup>4</sup> 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.<sup>5</sup>

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<sup>1</sup> 30 Level 3 Sex Offenders and 36 Level 2 Sex Offenders

<sup>2</sup> 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.

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

<sup>4</sup> 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).

<sup>5</sup> General requirements are detailed in Appendix A. Specific requirements are set forth in Correction Law Article 6-C.

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.<sup>6</sup> 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 two full-time personnel who, as a part of their regular duties, primarily monitor the jurisdiction’s sex offender population and provide sex offender information to DCJS.

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.

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<sup>6</sup> See definitions in Appendix A.

## **Audit Results**

Policies and Procedures – The Department’s Policy for the management of sex offenders is limited to the following provisions:

- The Criminal Identification Unit (Unit) is responsible for the proper registry, tracking and records maintenance of sex offenders
- The Unit should obtain an arrest warrant if an offender violates their court-ordered registration and
- Public notification or access to sex offender Registry information should be made through the Department’s web site.

The Policy does not address all requirements of SORA. It does not convey management’s expectations for addressing DCJS notifications regarding an offender’s failure to verify their address each year or the offender’s failure to provide updated photographs. It also does not describe how Unit personnel should monitor offenders or when an officer should confirm an offender’s Registry information. In addition, it does not address monitoring high-risk offenders to ensure they report every 90 days to confirm they continue to live at their registered address, as required.

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 to a DCJS report that identified 15 of the jurisdiction’s Level 3 offenders and five 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. Department officials explained that the personnel newly assigned to perform SORA related duties only recently received access to eJusticeNY.<sup>7</sup>

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 28 notifications found that the Department verified the addresses or performed other follow-up action for 23 notifications. The Unit did not investigate why a Level 3 offender failed to verify their address for three consecutive years. The Unit conducted investigations to determine if the remaining two offenders who failed to verify their address still resided at their registered address; however, the Unit did not notify DCJS of the investigation results nor did Unit personnel take enforcement actions when the offenders could not be located. Officers said they believe the offenders moved to another state.

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<sup>7</sup> 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.

## Recommendations

Department officials should:

1. Update the Policy to address all of the SORA requirements and to convey management's expectations as to when and how offenders should be monitored and their Registry information confirmed.
2. Use all DCJS notifications and resources for address verifications and photographs to manage the sex offender population under its jurisdiction.

The City 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 Mount Vernon Police Department 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](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.

To determine if the Department takes action when DCJS notifies it of an offender's non-compliance with SORA in regards to address verification, 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 Mount Vernon Police Department's zip code and jurisdiction. Examiners had the Department utilize eJusticeNY to determine if a selected offender had been notified of failing to annually verify their address 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 Department provide a DCJS-provided 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 determine why each photograph was out of date and to see if they had a more up-to-date photograph in their City computer system.