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September 17, 2014

Anthony Picente, Jr., County Executive
Oneida County
Oneida County Office Building
800 Park Avenue
Utica, New York 13501

Report Number: S9-14-22

Dear Mr. Picente, 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 Oneida County (County) – specifically, the Oneida 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 December 2, 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 will 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, Department personnel do not consistently follow the Policy. In addition, the Policy does not address all of the Department's SORA responsibilities.

However, we found the Department does take follow-up action when the State's Division of Criminal Justice Services (DCJS) notifies it that an offender needs to report to the Department to have a photograph taken and when an offender failed to comply with SORA's photograph provision.

In addition, SORA and the Department's Policy require the Department personnel to process a change-of-address form when they incarcerate a sex offender and to update the address prior to the offender's release. In three of 31 incarcerations we reviewed, Department personnel did not update the offender's address, as required.

Background and Methodology

Oneida County (County) is governed by a 23-member County Legislature and has a population of approximately 234,000, including 603¹ sex offenders of which 310² report to the Department. The County's fiscal year 2013 budgeted appropriations totaled \$372 million, including \$36 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 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

¹ 244 Level 2 sex offenders, 359 Level 3 sex offenders

² 79 level 2 sex offenders, 231 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.

⁷ See definitions in Appendix B.

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 clerk and detective who, as a part of their 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 C 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 and maintain records for each sex offender. The Policy requires Department personnel to provide a change-of-address form when a sex offender is incarcerated and change the address prior to release. The Policy also requires Department personnel to forward a photograph to DCJS, when required.

The Department does not consistently follow the Policy regarding sex offender management. For example, Department personnel do not always process a change-of-address form when they incarcerate an offender and when they release the offender from jail. We also found the Department’s Policy does not require Department personnel to respond to DCJS notifications that

an offender failed to verify their address or that an offender is required to report to the Department and have an updated photograph taken.

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.

The Department does use the DCJS notification and the DCJS list of non-compliant offenders to ensure each offender complies with SORA's photograph provision. We found that the Department was conducting investigations on the two Level 2 sex offenders whose photographs were not updated 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. Our examination of 11 notifications found that the Department verified the addresses or performed other follow-up action. Department personnel confirmed that eight offenders continue to live at their registered address. One offender was found at a new address and a change of address was submitted. Department personnel found that two other offenders had confirmed their address on their own after the Department received notification.

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 requires corrections officers to provide a change-of-address form to a sex offender when admitted into the facility and to change the sex offender's address prior to releasing the offender from the facility.

We tested 31 incarcerations to determine if Department personnel process a change-of-address form, as required. We found in three of 31 incarcerations Department personnel did not follow Department's Policy or comply with SORA. We found the Department incarcerated and later released three offenders. However, the required change-of-address forms were not processed. These reporting omissions could potentially place the public at an increased risk of harm.

Recommendations

Department officials should:

1. Update the Policy to address all SORA requirements, such as annual address verification requirements and photograph requirements.
2. Comply with the Department's Policy and DCJS requirements; specifically, provisions that require the correctional facility to provide a change-of-address form to offenders when admitted to the facility and submit a change-of-address prior to releasing the offender.

3. Continue to 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 Oneida County Sheriff's Office for the courtesies and cooperation extended to our auditors during this audit.

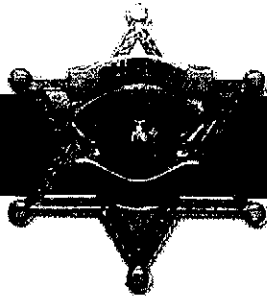
Sincerely,

Gabriel F. Deyo

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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



Undersheriff Robert Swenszkowski
Chief Deputy Jonathan G. Owens

Chief Deputy Gabrielle O. Liddy
Chief Deputy Dean Obernesser

Sheriff Robert M. Maciol

July 9, 2014

Ann C. Singer, Chief Examiner
State Office Bldg. / Suite 1702
44 Hawley Street
Binghamton, NY 13901-4417

Dear Chief Examiner Singer:

I would first like to take this opportunity to thank you and your staff for the work in conducting an audit of the Oneida County Sheriff's Office Sex Offender Registration management. As I am sure you will agree, this is a very important function of our operation in both our Law Enforcement Division and Jail Division and requires a lot of work to maintain - always with our goals of keeping our people safe & effectively managing our resources in mind.

In summary, I do agree with your findings and we will take your recommendations in to strong consideration as we develop our corrective action plans to those findings. As you know, we were able to provide information to correct the findings regarding one of the individuals noted in the report that didn't initially show that there was a change of address form for.

In closing, I again thank you for your assistance and cooperation with this matter and I look forward to working with you as our corrective action plan is prepared. As always, I am available at any time should you have any questions.

Sincerely,

Robert M. Maciol
Oneida County Sheriff

Administrative Office

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Fax (315) 765-2205

Law Enforcement Division

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Fax (315) 736-7946

Correction Division

6075 Judd Road Oriskany, NY 13424
7 Voice (315) 768-7804
Fax (315) 765-2327

Civil Division

200 Elizabeth Street Utica, NY 13501
Voice (315) 798-5862
Fax (315) 798-6495

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 notifies it of an offender's non-compliance with SORA, in regards to address verification, examiners used the Registry to obtain a sample of offenders. Examiners had the Department use eJusticeNY⁸ to determine if a selected offender had a address failure notification between 2008 and 2013 and whether or not the Department responded to the notification.

To determine if the Department responded to DCJS notifications regarding photographs, examiners had the Sheriff's Office provide a DCJS generated list of offenders who had expired photographs and met with Department staff to determine why each photograph was out of date. Examiners also worked with the Department to learn if an updated photo of the offender was on file.

To determine if the Department process a change-of-address form when they incarcerate and later release an offender from their facility examiners sampled offenders residing in the jurisdiction during the audit scope and met with Department officials to review the offender records to identify change-of-address forms the Department processed.

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.