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September 17, 2014

John E. Garvey, County Administrator  
Ontario County  
20 Ontario Street  
Canandaigua, New York 14424

Report Number: S9-14-23

Dear Mr. Garvey and Members of the Board of Supervisors:

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 Ontario County – specifically, the Ontario 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 19, 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. Except as indicated in Appendix A, Department officials generally agreed with our recommendations and indicated they have taken corrective action. Appendix B includes our comment on an issue 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**

While the Department adopted policies and procedures (Policy) for managing sex offenders, the Policy was not always followed. For example, the Policy requires Department personnel to transfer an offender's photograph to the State's Division of Criminal Justice Services (DCJS); however,

we found two photographs were not successfully transferred. As a result, the DCJS Sex Offender Registry (Registry) was not updated and DCJS included the offenders in a report that identifies offenders who violated the SORA photograph provision.

We also found the Department does not use the DCJS photograph notifications to ensure offenders comply with the SORA photograph provision. As a result, the Department was not aware that a Level 2 offender failed to report to the Department and his Registry photograph was not updated. As a result, the Department took no enforcement action.

However, the Department took action when DCJS notified it of a sex offender's failure to verify their address. We also found the Department processed change-of-address forms when it incarcerated and later released the offender, as required.

## **Background and Methodology**

Ontario County is governed by a 21-member Board of Supervisors and has a population of approximately 108,500, including 155<sup>1</sup> sex offenders of which 129<sup>2</sup> report to the Department. The County's calendar year 2013 budgeted appropriations totaled \$182.3 million, including \$11.4 million for the Department's budgeted appropriations.

Megan's Law,<sup>3</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>4</sup>

SORA requires DCJS to establish and maintain the Registry and a Subdirectory. The Subdirectory, available on the DCJS website, provides the public with information about moderate- and high-risk sex offenders<sup>5</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>6</sup> 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

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<sup>1</sup> Includes only moderate-risk (Level 2) and high-risk (Level 3) sex offenders

<sup>2</sup> Includes only moderate-risk (Level 2) and high-risk (Level 3) sex offenders

<sup>3</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>4</sup> SORA; Article 6-C of the Correction Law, effective January 21, 1996

<sup>5</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>6</sup> 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.<sup>7</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 a full-time designee who, as a part of her 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 monitor and track offenders and maintain a permanent file for each sex offender. 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.

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<sup>7</sup> See definitions in Appendix C.

The Department does not always follow the Policy regarding sex offender management. For example, although the Policy requires offender photographs to be transferred to DCJS, this was not always done.

DCJS Notifications – DCJS notifies sex offenders when they must report to the Department to update their Registry photograph, and notifies the Department of 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 not always use 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. However, two of the offenders did report to the Department and had a new photograph taken. The Department had not successfully transferred the photos to DCJS so the Registry and Subdirectory were not updated. The third offender did not report to the Department to have his photograph taken and no enforcement action was taken.<sup>8</sup> 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 13 notifications found that the Department followed up on each notification. The Department verified the addresses of seven offenders; had three offenders process a change-of-address form; confirmed two offenders verified their address with DCJS; and issued an arrest warrant for one offender whom the Department could not locate.

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. While the Policy does not require personnel to process a change-of-address form when the Department incarcerates and when it later releases the offender from incarceration, the Department has informally established a practice to do so.

Although the Department could not provide us with a list of sex offenders they incarcerated during the audit period, we identified 13 such sex offenders. We found the Department processed a change-of-address form each time they incarcerated and released the offenders tested.

## **Recommendations**

Department officials should:

1. Use all DCJS notifications and resources to manage the sex offender population under the Department's jurisdiction.

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<sup>8</sup> Department officials indicated that they have subsequently taken corrective action to upload the appropriate photos.

2. Ensure all offender photographs are successfully transferred and updated in the Registry.

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 Ontario 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 can be found on the following pages.



# Office of Sheriff County of Ontario

www.co.ontario.ny.us  
74 Ontario Street  
Canandaigua, New York 14424-1898

Philip C. Povero  
Sheriff

David C. Tillman  
Undersheriff

## Response to audit and Corrective Action Plan (CAP) combined

Ontario County Sheriff's Office  
Sex Offender Registry Audit  
Audit number: S9-14-23

The following is the Ontario County Sheriff's Office response to various areas of an audit conducted by the New York State Comptrollers Office during the months of December 2013 and January 2014.

Page 4, 2<sup>nd</sup> paragraph states "The Department does not use the DCJS list of non-compliant offenders..." The Sheriff's Office response is that during the audit it was discovered that the list was not being utilized. The Sheriff's Office did utilize the list up and until approximately January 2013. At that point in time the Ontario County Sheriff's Office had two retirements, both individuals having some responsibility for sex offender management. One retiree was responsible for the clerical side of the Sex Offender program, the other the overall supervisor. When these retirements took place this list was overlooked in the assigning of responsibilities. This issue has been corrected.

Same page and paragraph states "The Department never successfully transferred the photos to DCJS..." and "...no enforcement action was taken." The Sheriff's Office notes that the use of the words "never" and "no enforcement action was taken" tends to indicate that this issue has not been addressed even to this date. In dealing with the two photos mentioned in this paragraph, we would note that both had been taken and it was discovered that human error was to blame for them not being uploaded. Regarding the third photo, it was found that the individual had moved several times between this and a neighboring County and the photo notice was sent to the neighboring County. These were not discovered because of the issue noted in the above paragraph. The Sheriff's Office would point out that the two photos that did not upload were immediately uploaded once discovered. The third photo was taken and uploaded within three days of discovery. The Sheriff's Office notes that upon the completion of the on site portion of the audit, all photos were in compliance, with the only exceptions being violators that have absconded and currently have arrest warrants issued.

See  
Note 1  
Page 9

The following will be the Corrective Action Plan (CAP).

Recommendation 1: Department officials should use all DCJS notifications and resources to manage the sex offender population under its jurisdiction.

Implementation plan of action: The only area that was not being used was the non-compliant offender list on DCJS. As noted above this was overlooked as a result of retirements. The Sheriff's Office has now given DCJS access to specific clerical staff. We have also ensured that the clerical staff member and the Investigator responsible for the sex offender management are both reviewing this list. With two persons responsible to check the list there is now redundant backup. Should one or the other leave employment there would still be a person in place that would be knowledgeable in reviewing the non compliant, so this critical resource would not be overlooked again.

Recommendation 2: Department officials should ensure all offender photographs are successfully transferred and updated in the Registry.

Implementation plan of action: The Sheriff's Office has already brought the delinquent photos (3 total) up to date. It is noted that this issue was human error in the transfer and upload. This has been corrected through training. With the implementation of the action plan above, any photo that does not upload properly in the future will be discovered on the non compliant list and addressed.

Both of the above plans were implemented as of January 3, 2014 by Lt. Brad Falkey.

May 28, 2014  
ONTARIO COUNTY

By John Garvey, County Administrator

ONTARIO COUNTY SHERIFF'S OFFICE

By Phil Povero, Sheriff



## **APPENDIX B**

### **OSC COMMENT ON THE COUNTY'S RESPONSE**

#### Note 1

We modified the report to delete the word “never” and inserted a footnote indicating that the Department has taken corrective action.

## 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](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, 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. 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 reviewed DCJS's list of offenders that owe a photo and met with Department officials to learn how they use the list to ensure offender compliance.

To determine if the Department processed change-of-address forms when they incarcerated and later released a sex offender, we identified offenders living in the Department's jurisdiction and from this list we generated a random, nonjudgmental sample of 50 sex offenders. We reviewed DCJS Offender Details reports to determine if the Department incarcerated each offender. We found they incarcerated 13 offenders. We then interviewed the Department's SORA investigator and examined related supporting documentation to determine if the Department had processed the required change-of-address forms.