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September 17, 2014

Lovely Warren, Mayor
City of Rochester
City Hall, Room 307
30 Church Street
Rochester, New York 14614

Report Number: S9-14-24

Dear Mayor Warren, Chief 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 City of Rochester (City) – specifically, the Rochester 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 September 10, 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 have taken, or 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, Department personnel do not always follow the Policy. Specifically, Department personnel did not consistently investigate cases of non-compliance after annual address verification notification and did not forward all offender photographs to DCJS.

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, 42 of the City's moderate- to high-risk offenders had outdated Sex Offender Registry (Registry) photographs. Additionally, after the Department investigated why an offender did not return his annual address verification form, they determined the offender was not living at his registered address but did not notify DCJS of their findings.

Background and Methodology

The City of Rochester (City), located in Monroe County, is governed by a nine-member City Council and has a population of approximately 210,000, including 540¹ moderate- to high-risk sex offenders who report to the Department. The City's fiscal year 2012-13 budgeted appropriations totaled \$488.5 million, including \$85.4 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

¹ 209 Level 3 sex offenders, 331 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.

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 four investigators who, as a part of their regular duties, primarily monitor the jurisdiction’s sex offender population and provide 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, update Registry information and take enforcement action against offenders when they violate SORA requirements. 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 Department personnel to take appropriate enforcement action for non-compliance with SORA, such as when a sex offender fails to return their annual address verification form to DCJS, and taking and forwarding updated photographs of sex offenders to DCJS.

The Department does not always follow the Policy regarding sex offender management. For example, the Policy requires Department personnel to take action when DCJS notifies the

Department an offender who failed to mail the annual address verification and to facilitate photograph updates to DCJS. We found the Department did not respond to all of the annual address verification notifications and failed to forward several photographs to DCJS for sex offenders whose photographs had expired.

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 18 of the jurisdiction's Level 3 offenders and 23 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 to ensure that law enforcement and the public can recognize sex offenders.

In addition, the Department had photographs in compliance with SORA for seven of the 42 offenders with out-of-date photographs on its internal system that were not forwarded to DCJS. We had the Department upload the photographs and the offenders' profiles were subsequently updated in the Registry. During our testing, Department officials informed us that they were developing a process to keep track of offender photograph notifications to ensure that offenders are updating their photographs as required.

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. We found that the Department responded to 21 out of 22 annual address verification notifications that were tested. In the one case, DCJS notified the Department in 2011 and 2012 that an offender did not return their annual address verification form. While the Department conducted an investigation and could not locate the offender, it did not share the results of the investigation with DCJS. In 2013, the Department learned the offender moved to another state.

Recommendations

1. Department officials should comply with the Department's Policy, specifically provisions for annual address notifications and facilitating photographs.
2. Department officials should use all DCJS notifications and resources to ensure sex offender compliance with both annual address verification and photograph requirements.

The City 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 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 Rochester 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.



City of Rochester Police Department
New York State Sex Offender Registration Act Audit
Report #S9-14-24

****This audit response is also serving as the CAP****

OSC Audit Findings

Audit Finding #1 – Although the Rochester Police Department (RPD) has adopted policies and procedures for managing sex offenders, Department personnel do not consistently follows the policy. Specifically, personnel did not investigate annual address verification notification and forward all offender photographs to DCJS. Additionally after the department investigated why an offender did not return their annual address verification form, they determined the offender was not living at their registered address but did not notify DCJS of their findings. The audit found that the Department responded to 21 out of 22 annual address verifications that were tested. In the one case, DCJS notified the department in 2011 and 2012 than an offender did not return their annual address verification form. While the Department conducted an investigation and could not locate the offender, they did not share the results of the investigation with DCJS. In 2013, the Department learned the offender moved to another state.

OSC Recommendation #1 – Department officials should comply with the Departments policy; specifically, provisions for annual address notifications and facilitating photographs.

Audit Finding #2 – The RPD 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. The Department does not use these communications to ensure offender compliance when they owe a photograph. As a result, 42 of the City’s moderate to high risk offenders had outdated Sex Offender Registry (SOR) photographs. Out of the 42 of the outdated SOR photographs, the Department actually had 7 of those photographs but they failed to forward them to DCJS.

OSC Recommendation #2 – Department officials should use all DCJS notifications and resources to ensure sex offender compliance with both annual address verification and photograph requirements.

Police Department Position on Audit Findings

The Rochester Police Department accepts the audit findings. Without knowing specifics on the one failure to respond to annual address verification form and the 42 outdated sexual offender photographs, no explanations can be provided.

Implementation of OSC Recommendations

As of June 23, 2014 the Rochester Police Department is responsible for 1,013 registered sex offenders. In 2009 the number we were responsible for were 733. Prior to October of 2013 there was not one person solely responsible for all aspects of maintaining the Sex Offender Registry. In addition, sex offender cases were also assigned to Homicide Unit Investigators who were responsible to try and to work on sex offender cases, in addition to their murder investigations.

Even before the audit results were released, in October 2013 the Major Crimes Unit re-assigned an Investigator in the Major Crimes Unit (MCU) to work solely on all aspects of dealing with sex offender cases and the Sex Offender Registry. With the high number of sex offenders in the City of Rochester, it was determined at least one investigator was needed to work on this full-time, and serve as the Department coordinator for all aspects of the registry. This was necessary in order to ensure we are in compliance with New York State requirements, but more importantly, to efficiently and effectively monitor the sex offenders within our jurisdiction.

In addition to the full-time assignment of an Investigator, we are implementing our own internal monthly audit of outstanding SO photographs, and outstanding SO non-compliance. An RPD clerk will provide a list of the SO’s who need photograph updates, and of those in non-compliance. The assigned Investigator will review both lists, and provide explanations as to why they are outstanding, and secure any additional resources needed to bring violations into compliance (or arrest). An MCU Sergeant will review the lists, and forward the plan of action to the MCU Commanding Officer, who will have ultimate reasonability to ensure compliance.

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 was taking action when DCJS notifies it of an offender's non-compliance with verifying their address annually, our examiners picked a judgmentally non-biased sample from each zip code of seven offenders within the jurisdiction (or less for zip codes with less than seven offenders) to form the basis of testing. Our examiners pulled hard copy files for each offender identified by the sample to document any notifications from DCJS for an offender failing to verify their address. Our examiners then met with Department staff to discuss certain offenders.

To determine if the Department was responding to DCJS notifications regarding offenders with photographs to be due soon and if the Department was utilizing DCJS provided resources that identified offenders with expired photographs, our examiners had the Rochester Police Department provide a DCJS generated list of offenders who had expired photographs. Examiners utilized information from the Sex Offender Registry to gather information on offenders indicated by the list. Our 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.