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September 17, 2014

Robert Palmieri, Mayor
City of Utica
1 Kennedy Plaza
Utica, New York 13502

Report Number: S9-14-16

Dear Mayor Palmieri and Members of the Common Council:

A top priority of the Office of the State Comptroller is to help 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 Utica – specifically, its 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 August 8, 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 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

The Utica City Police Department is taking action to help enforce SORA. The Department has adopted a sex offender management policy that requires designated personnel to perform specific actions to monitor and track offenders, including periodically verifying an offender's place of residence and updating all Level 3 offenders' photos every 90 days.

Although the Department follows up on notifications of an offender's failure to verify their registered primary address, it did not use information that the State's Division of Criminal Justice Services (DCJS) provides which identifies sex offenders who failed to comply with the SORA photograph provision. As a result, the Department was unaware that two of its 205 moderate- to high- risk offenders failed to update their photos in accordance with the law.

Prior to the completion of our audit fieldwork in August 2013, the Department has removed a pop-up blocker that prevented the viewing of DCJS information detailing which offenders failed to update their photographs in accordance with SORA.

Background and Methodology

The City of Utica (City) is located in Oneida County and has a population of approximately 62,000, including 316¹ sex offenders. The City is governed by a 10-member Common Council. The Mayor, along with other administrative staff, is responsible for the City's day-to-day operations. The Department established a Sex Offender Unit (Unit) in 2008, which is currently staffed by a full-time investigator. The Unit monitors the jurisdiction's sex offender population and provides certain sex offender information to DCJS. The City's fiscal year 2013-14 budgeted appropriations totaled \$64 million including the Department's budgeted appropriations of \$21 million.

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 federal law, assist local law enforcement agencies and protect the public, the State enacted SORA.³

SORA requires the DCJS to establish and maintain a Sex Offender Registry (Registry) and a Subdirectory. The Subdirectory, available on the DCJS website, provides the public with information about moderate- and high-risk sex offenders⁴ 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 offense⁵ and the court certifies them as a sex offender they are required to register with DCJS and abide by the specific registration requirements.⁶ 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 risk level is determined by examining certain risk factors associated

¹ Including Level 1, 2 and 3 offenders

² Megan's Law (PL 104-145) is named for Megan Nicole Kanka, a 7 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 See Appendix B for a list of registerable sex crimes as of March 22, 2012.

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

with the sex offender. The risk levels assigned 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” (chief law enforcement officer of a town, village or city, or if none, the chief law enforcement officer of the county), based on the offender’s residence. DCJS mails a non-forwardable 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 a jurisdiction maintained for offenders 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

Registering and Tracking Sex Offenders – The Utica Police Department’s sex offender management policy (Policy) pertaining to registering and tracking sex offenders was made effective on June 5, 2009.⁸ The Policy requires designated personnel to perform specific actions to monitor and track offenders, including periodically verifying an offender’s place of residence and updating all Level 3 offenders’ photos every 90 days.

We found the Unit periodically verifies an offender’s primary residence and updates Level 3 offender photos every 90 days. For example, when a Level 3 offender personally verifies their address they must provide a piece of mail or document that indicates they are residing at the reported address. The Department also performs door-to-door verifications.

DCJS Communications – DCJS notifies the Unit when an offender who resides in their jurisdiction fails to return their annual Address Verification Form and requests that follow-up action be taken to determine if the offender still resides at the reported address. In addition, the Department and the sex offender receive a notice indicating when an offender must report to the Department office

⁸ Updated November 2, 2012

to update the Registry photo. DCJS also makes a list of offenders who have violated the SORA photo provisions available to the jurisdiction through an online system.

We found the Unit is responsive to the annual Address Verification Form failure notices; however, the Unit was not using the information DCJS makes available regarding offenders who failed to provide updated photos because the Department computer system's pop-up blocker was preventing access to the information. As a result, the Unit did not respond in a timely manner regarding two of the jurisdiction's 205 Level 2 offenders who did not comply with the SORA provisions. Nevertheless, the Department's practice to obtain an updated photograph of each offender when they personally appear at the Department ensured that nearly all of the jurisdiction's sex offenders complied with the SORA photo provisions.

Once the Unit's investigator learned of these exceptions, he contacted the non-compliant offenders and had them report to the unit to have their photo updated. Shortly after our visit, we confirmed the sex offenders' photos were updated in the Registry. The Department also removed the pop-up blocker so the exception list can be viewed.

Recommendation

1. Officials should continue to take appropriate action when DCJS notifies the Department that a sex offender has not complied with SORA provisions.

The 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 City of Utica 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 UTICA

DEPARTMENT OF PUBLIC SAFETY

413 ORISKANY STREET WEST, UTICA, NEW YORK 13502

ROBERT PALMIERI
Mayor

MARK WILLIAMS
Chief of Police

Unit Name: Utica Police Department / Sex Offender Unit

Audit Report Title: Sex Offender Registry Audit

Audit Report Number: SR-14-16

For each recommendation in the audit report, the following is our corrective action(s) taken or proposed.

Audit Recommendation:

Officials should continue to take appropriate action when DCJS notifies the department that a Sex Offender has not complied with SORA provisions.

Implementation Plan of Action:

The Sex Offender Unit has continued to take immediate and appropriate action when DCJS notifies this department a Sex Offender has not complied with SORA provisions. These actions include home visits, investigations and arrest/warrants when warranted.

The Sex Offender Unit continues to follow policies implemented in the Utica Police Department's Policy and Procedure manual.

Implementation Date:

These Actions have been in place since the inception of the Sex Offender Unit in August of 2008.

Person(s) Responsible for Implementation:

Chief Mark Williams, Captain Michael Zdanowicz and Investigator Anthony Salerno

Signed:

Mark Williams

Chief of Police

Name (title)

4/30/14

Date

APPENDIX B

Definitions, Registration Requirements, Conviction 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 State)
 - *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 them of an offenders non-compliance with SORA, we reviewed 31 email notifications regarding failures of offenders to annually verify their address from DCJS to the City for the period of January 1, 2013 to August 14, 2013. We also interviewed local officials, reviewed the Sex Offender Units operating procedures and reviewed select files the Department maintains on its sex offenders.