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February 17, 2015

James W. Wallace Jr., County Administrator
Christopher P. Farber, County Sheriff
Members of the County Legislature
Herkimer County
109 Mary Street
Herkimer, NY 13350

Report Number: S9-14-52

Dear Mr. Wallace, Sheriff Farber 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 fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and County 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 10 municipalities (two counties, four cities, three towns and one village) throughout New York State. The objective of our audit was to determine if municipalities accounted for all property room inventory. We included the County of Herkimer (County) in this audit. Within the scope of this audit, we examined the procedures of the County and various property records for the period January 1, 2012 through November 22, 2013. Following is a report of our audit of the County. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This report of examination letter contains our findings and recommendations specific to the County. We discussed the findings and recommendations with County officials and considered their comments, which appear in Appendix A, in preparing this report. Appendix B includes our comments on issues raised in the County's response. At the completion of our audit of the 10 municipalities, we prepared a global report that summarizes the significant issues we identified at all the municipalities audited.

Summary of Findings

We found that the Office of the Herkimer County Sheriff (Office) did not account for property room inventory adequately due to inaccurate records. Of the 307 high-risk property items we tested that were listed as held by the Office in the property room, 55 (18 percent) were not found in the correct property room location. However, we were able to either locate the items or view adequate documentation supporting the whereabouts of all items with the exception of one firearm.

In addition, the Office inappropriately allowed firearms held for safekeeping to be transferred to County and Office employees. We also reviewed a total of 133 weapons or permits returned to their owners in 2012 and 2013. Eleven did not have corresponding documentation supporting the return.

The Office also could improve control procedures to safeguard seized, found and safeguarded property. The Office provides vault access to five individuals, and despite establishing a sign-in sheet procedure for anyone entering or exiting the vault, we noted that only the clerk signs in and out.

Background and Methodology

The County has a population of approximately 64,000 residents and is governed by a 17-member Board of Legislators and a County Administrator. The County provides services to residents through municipal operations, including the Office. The Office's 2013 budgeted operating appropriations were approximately \$1 million of the County's \$88.5 million general fund budget.

The County Sheriff¹ is responsible for overseeing the general management of the Office, which includes overseeing non-Office property room inventory, including items for safekeeping. This inventory generally is kept in a secure area. In November 2013, the Office held 307 items for safekeeping.

The Office does not have a patrol unit and therefore does not typically seize items such as cash, jewelry, firearms, weapons, controlled substances, vehicles and other items that are considered property or evidence. However, on occasion, the Office will seize items from the County Office Building or the County Correctional facility. Property inventory can include criminal case evidence, found property, property for safekeeping from a decedent or prisoner, property no longer needed as evidence for investigation, contraband, property pending release and property confiscated for forfeiture proceedings. The Office should secure and maintain the integrity of police evidence and confiscated property until disposition. Internal controls help safeguard property from loss, waste or misuse.

We interviewed Office staff and officials, examined physical inventory and disposal records and reviewed monitoring procedures to determine whether Office staff accounted for all property. We also traced Office inventory and disposal reports to source documents and physical inventory, as appropriate, to ensure the accuracy of current inventory and disposals.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). Such standards require that we plan and conduct our audit to adequately assess those

¹ The current Herkimer County Sheriff was elected to office in 2004.

operations within our audit scope. Further, those standards require that we understand the management controls and those laws, rules and regulations that are relevant to the operations included in our scope. We believe that our audit provides a reasonable basis for the findings, conclusions and recommendations contained in this report. More information on such standards and the methodology used in performing this audit is included in Appendix C of this report.

Audit Results

Police departments should ensure that all property room inventory is properly accounted for by establishing internal controls to safeguard all non-departmental² items in the property room. Good internal controls include written policies and detailed procedures that task designated personnel with executing specific actions consistently. Good property room management practices require documentation of when property came in, who checked it in, where it was located, when it was moved, where it was stored and by whom, when it was signed out, when it came back and how it was disposed of. Additional security measures in the property room may include the use of a safe, the use of a chain to secure firearms and the installation of a floor-to-ceiling chain link fence. Lastly, police departments should conduct routine and unannounced inspections of the property room ensuring adherence to appropriate policies and procedures along with annual audits of the property room to compare physical inventory counts to the records of items maintained.

We found that, while the Office has established procedures, they are not working as intended, resulting in inaccurate and missing or unaccounted-for inventory. For example, the Office does not have a formal written property and evidence policy governing seized or disposed property. In addition, the Office uses a manual property tracking system (log) for recording safekeeping and inventory items; however, we found they were not accurate or up-to-date.

Property Evidence

The Office can hold property in the property room for an extended time period. Officials should accurately track and record the movement of property items to safeguard them and preserve the chain of custody. Typically, an item is received in the property room; stored in location; moved to and from the laboratory, the court and for investigative review; and moved to disposal. Policy guidance should be established and implemented to protect items from the loss of evidentiary value by outlining methods of documenting³ and packaging items based on the needs and storage requirements of the laboratory used. Officials should also establish physical inventory procedures to identify missing or misplaced items.

The Office mainly seizes firearms or weapons that come to the Office through a Temporary Order of Protection (TOP) or for safekeeping. The established Office process for firearms, weapons or other property that enters the Office is for the pistol permit clerk (clerk) to first record and tag the items. The clerk tags each item with identifying information, such as the name of the individual whom the property belongs to, the date and reason for the seizure, a brief description of the item (which can include make, model, description and serial number) and places the item into the Office

² Non-departmental items are those items that the Office receives or seizes which are considered property or evidence. This can include property such as criminal case evidence, found property, property for safekeeping from a decedent or prisoner, property no longer needed as evidence for investigation, contraband, property pending release and property confiscated for forfeiture proceedings.

³ Each item should have an identifier (tracking number), which corresponds to item descriptions, the individuals involved in the case and the location/movement information necessary to track the chain of custody.

safe. The corresponding information is recorded manually on a paper log maintained by the clerk. The clerk tracks each item's disposition, but does not maintain chain-of-custody information indicating the movement of these items.

In addition, the Office provides vault access to five individuals, and, despite establishing a sign-in sheet procedure for anyone entering or exiting the vault, we noted that only the clerk signs in and out.

The Office also maintains a separate safe for the storage of items confiscated from individuals at the County Office Building or the County Correctional facility. This safe has restricted access. An Office investigator maintains a written log of items kept in the safe.

We reviewed the list of currently stored property inventory items and selected all items for review. To identify any inaccurate records or unaccounted-for property, we examined the manual records to ensure that the property was described adequately, intact and stored in the designated location.

We concluded that the Office's records are not accurate and up-to-date. Of the 307 items tested, 55 (18 percent) were not accurately recorded. However, we were able to either locate the items in another location or view documentation supporting the whereabouts of all of the items, with the exception of one firearm. Specifically:

- Of the 280 firearms and permits tested, 39 items (14 percent) were not stored in the location indicated by inventory records. The Office was able to locate 38 of the 39 items in other locations. For the remaining item, the Sheriff provided documentation indicating it was destroyed in 2003. However, the destruction records indicated a different caliber, make and model for the item. Specifically, the firearm recorded in inventory listed a Smith and Wesson .22 caliber firearm with "N/A" marked for a serial number. Paperwork from the initial complaint log when the firearm was taken in indicates that a caller found a .32 caliber Smith and Wesson, but when turned in an officer identified the firearm as an H & R Firearms .32 caliber revolver with no serial number. Office officials provided destruction records that indicate an H & R Firearms .32 caliber model firearm was destroyed in July 2003. However, the New York State background check paperwork done prior to the firearm being destroyed indicated checks were done on both a Smith and Wesson .22 caliber model and an H & R Firearms .32 caliber model with a serial number. Therefore, due to the multiple discrepancies, we are unable to say with certainty that it is the same firearm.
- Thirteen of the 39 firearms not found in the locations indicated in the property inventory records were kept in a separate property locker. These firearms were part of an estate for which the Sheriff was named executor in 2011.
- Additionally, 16 firearms were found in the vault during our testing that were not listed in the Office's inventory log. However, the clerk was able to provide supporting documentation regarding the intake of these firearms.
- Eleven items found in the Office safe, including items confiscated from individuals at the County Office Building or County Correctional facility, were stored in the correct location and no discrepancies were noted.

Office officials attributed the inaccurate records to lack of oversight, clerical errors and poor record keeping. In all of the cases, the clerk did not remember to update the log in regards to the status or movement of the evidence. Office officials told us that no physical inspection had been conducted prior to our audit; however, the Office was in the process of completing a physical inventory of the vault and preparing an electronic database. This was completed subsequent to the end of fieldwork.

Inaccurate records and missing non-Office inventory can be a result of weak or lacking controls over property room inventory. If control weaknesses exist, there is a potential risk that property could go missing or be misplaced without timely detection.

Further, upon reviewing the inventory items held by the Office for safekeeping, we noted several instances in which firearms were transferred to County personnel during our scope period. The transfer paperwork for these firearms did not indicate any evidence of financial or monetary consideration. We questioned both the Sheriff and Undersheriff regarding these practices and what, if any, policies and procedures are in place regarding these types of transactions. Both the Sheriff and Undersheriff indicated that the Office does not allow Office personnel to acquire or purchase items that come in for safekeeping, but no written policy exists to this effect. We reviewed paperwork dating back to 2008 to determine if this practice was commonplace and found that:

- In 2013, a Colt model firearm in safekeeping was transferred to a Sheriff's Deputy. Paperwork on file was incomplete; however, a sale affidavit signed by the owner was found in the file.
- In 2012, an H & R Firearms model revolver held for safekeeping was transferred from an estate to a Sheriff's Deputy.
- In 2011, an H & R Firearms model revolver that was an amnesty weapon was transferred to the Sheriff. The Sheriff has indicated that this firearm was owned within his family and was transferred to him; however, we were provided no documentation supporting this. In addition, Office inventory records list the firearm as a Forehand and Wadsworth .32 caliber model, while the transfer paperwork completed by the Office lists an H & R Firearms .32 caliber model revolver. A further review of the State of New York firearms license paperwork indicates a Forehand and Wadsworth .32 caliber model firearm with the same serial number. Therefore, it appears that a series of clerical errors were made when recording this firearm.
- In 2011, five firearms, including three Colt model revolvers, a Ruger model and a Smith and Wesson model revolver, that were in safekeeping or had licenses revoked were transferred to a County Corrections officer or Sheriff's Deputies, one of whom was the brother of the Sheriff.
- In 2008, three firearms, including two Colt models and a Herters model held for safekeeping, were transferred to a County Corrections officer.

New York State Penal Law (Penal Law) requires sheriffs to hold weapons delivered to them for a period of one year. In the case of an estate, a sheriff is required to hold the weapons and deliver them, upon written request of the executor, administrator or other lawful possessor to a named person, so long as the named person is licensed or otherwise permitted to possess the weapon. If

no such request is received within one year of delivery to the sheriff, the sheriff must dispose of the weapon. For weapons or firearms not part of an estate which are voluntarily surrendered to a sheriff (such as for safekeeping or because the owner lawfully cannot possess the weapon), the sheriff may retain the weapons for a period not to exceed one year. Prior to the expiration of the one-year period, a person who surrenders a firearm has the right to arrange for the sale or transfer of the firearm to a licensed dealer in firearms, or for the transfer of the firearm to him/herself, if a license has been issued. If no lawful disposition of the firearm or weapon is made within the one-year period, the weapon is declared a nuisance and is to be disposed of. We did not find any provisions in the Penal Law that permit transfers of weapons, as were done, to the Sheriff, Deputies or Corrections officers, either for public use or private use.

Property Disposal

The disposition of seized property should be documented in written policies and procedures to guide the operation of item handling. High profile items, such as drugs, firearms and money, require extra internal controls. The disposal of items should be documented with a clear trail in Office records. Good business practice indicates that items should be removed from the property room after being held for the required length of time. If the owner has been identified or the item has no evidentiary value, then the item can be disposed of. It is in the Office's best interest to remove items from the property room as quickly as possible to free up space and remove the risk of theft or misuse. Items returned to the owner, transferred for Office use, transferred to a laboratory or court and destroyed are all considered property room disposals. Recycling, burning or any other method to make the item unusable could be used potentially to destroy an item properly. Records should indicate the details about the case, individuals involved, authorization for disposal, who destroyed the item (if it was destroyed), who witnessed the item being destroyed and other details required by the Office.

The Office has not established written policies and procedures for the disposing of property. Office officials indicated that the process includes the clerk sending a list of items to be destroyed to the Sheriff at which time the Office seeks approval from the New York State Police to destroy the firearms. Once approval from the New York State Police is received, a destruction order is prepared by the Office. Once an order is obtained, the Sheriff (or a designee) and Undersheriff will take the weapons to a vendor's site to be melted. Both members of the Office will witness the melt, and, once it is completed, an order is sent back to the Court. A similar process occurs for controlled substances. However, the actual destruction consists of burning that occurs in-house at the Office range and is witnessed by three individuals including the Sheriff or Undersheriff, an Investigator and another officer.

The Office did not destroy any firearms or controlled substances during our scope period. The last firearm destruction was conducted in 2010 when 15 items were destroyed. We traced these items back to the request sent to the judge asking for permission to destroy them. We also traced the items to the inventory log and found that 14 of the 15 were marked as destroyed on the log. The one exception was missed and marked with the incorrect owner name but was indeed destroyed. In addition, we reviewed a total of 133 weapons or permits returned to their owners in 2012 and 2013. Eleven did not have corresponding documentation supporting the return.

A well-developed property room procedural system with a monitoring feature could reduce the temptation of theft, provide an efficient use of space for easier access and keep handling to a minimum. Inaccurate records for the inventory stored in a property room increase the risk that

property could potentially be unavailable for a legal proceeding, or that guns, drugs and highly valuable items could be lost, stolen, misused or pose a danger to the public's safety.

Recommendations

1. Office officials should:
 - Develop property and evidence policy and procedures;
 - Monitor the activity in the vault, including assigning physical inventory tests to an individual who does not retain item custody;
 - Establish physical inventory testing procedures to include tracing items to the vault from the property inventory logs as well as from the property inventory logs to the vault;
 - Improve and maintain accurate inventory logs and records;
 - Develop a written policy preventing the transfer of firearms or weapons to County or Office officials;
 - Limit access to the vault and follow the sign-in process in place; and
 - Develop a disposal policy outlining how firearms, controlled substances and other items are to be disposed of and documented.

2. To avoid even the appearance of impropriety, if the Sheriff is acting as executor of an estate, Office officials should consider transferring any weapons or firearms in the estate to the New York State Police.

The County Board of Legislators 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. The County Board of Legislators should make the CAP available for public review in the Clerk's office.

We thank the officials and staff of Herkimer County 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 to this audit can be found on the following pages.

Please note that the County officials' response letter refers to page numbers that appeared in the draft report. The page numbers may have been changed during the formatting of this final report. In addition, the response letter contains references to attachments (Appendix A, B and C). Because the response letter sufficiently explains the relevance of these documents, they are not included here.



OFFICE OF

The Herkimer County Sheriff

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CHRISTOPHER P. FARBER, SHERIFF
GEORGE TREEN, JR., UNDERSHERIFF

August 29, 2014

Office of the State Comptroller
Division of Local Government and School Accountability
110 State Street
Albany, New York 12236

Attention: Ann C. Singer, Chief Examiner

RE: Reply to Report Number S9014-52

Dear Ms. Singer:

This is regarding Herkimer County's response to the Draft Audit of the property room inventory of the Herkimer County Sheriff. The stated objective of this audit conducted by representatives of the New York State Comptroller was to determine if ten municipalities accounted for all property room inventory. Two counties were chosen for audit.

This has been a cordial and collegial process. Although the Comptroller offered some helpful recommendations, the Herkimer County Sheriff has been in the process of adding staff and improving policies and procedures to improve property management, inventory and policies prior to the inception of the above audit. Subsequent to adoption of the SAFE Act, during 2013, the workload of the Herkimer County Sheriff's staff has increased dramatically. Pistol permits applied for and issued increased by 94% from 2012.

The increased demands upon the Herkimer County Sheriff's staff in 2013 resulted in the Sheriff making a request to the Herkimer County Legislature for additional funding for staff. As detailed below, to alleviate workload, the Sheriff has assigned another part time officer to the property department of the Sheriff's Office one day a week. Also, the Sheriff has split some other duties of the permit clerk to other clerks within the Office of the Herkimer County Sheriff. During the 2013 budgeting process, the Sheriff sought funding for another part time clerk position from the Herkimer County Legislature. Based upon the Sheriff's recommendation, the Herkimer County Legislature authorized funding for an additional part time clerk for the Sheriff's Office.

The Herkimer County Sheriff's Office is a small agency, but prides itself on being professional and ethical. The Herkimer County Sheriff does not have a road patrol, but does oversee various civil responsibilities. The Comptroller's suggestions will be incorporated as the Sheriff seeks to upgrade and further improve policies and procedures in relation to property

management with the assistance of additional staffing. The suggestions of your office to improve records and inventory management as well as other written policies were appreciated and have been considered by the Herkimer County Sheriff as part of his quality assurance process in relation to the above.

This letter will reply to or comment upon statements and findings set forth in the Draft Report dated July 18, 2014. For the ease of review, this response will proceed in the order that each item was reviewed in Report Number S9-14-52. The scope of this audit was for years 2012 and 2013. [In relation to the specific issue of any transfers to County employees, the field auditors reviewed records going back to 2008].

As you will see, we disagree with some of the findings and recommendations of your staff. At the same time, some of the recommendations of your staff were already in the process of being implemented. Thus, the Sheriff did not disagree with certain findings as he was already in the process of implementing measures to improve in these areas during 2013. Finally, it should be noted that improvements being made by the Herkimer County Sheriff are also in response to the post-SAFE Act increased volume of activity presented to the staff of the Herkimer County Sheriff due to a near doubling in the number of requests for pistol permits and increased amendments to pistol permits set forth above.

Summary of Findings:

Vault and Storage Cabinet in Sheriff's Property Room: The Comptroller's field auditors found that all "high-risk property" items tested were located or adequate documentation supporting the property location was presented by staff of the Herkimer County Sheriff during the above audit. At the outset, it should be noted that Herkimer County has a "property room" that contains a built in wall vault and an adjacent secure metal cabinet. The secure metal cabinet is located approximately one foot from the vault within the property room. The Summary of Audit Findings fails to state that property items tested not found in the wall vault were stored several inches away in a secured metal cabinet. Both the vault and the secure cabinet are located within the one property room. Since the completion of the Draft Audit, the secure cabinet is no longer used to store weapons and firearms.

See
Note 1
Page 19

Appropriate transfers: For reasons set forth in greater detail below, the Sheriff respectfully disagrees with the findings related to a very limited number of transfers over a period of five years to County employees. The very limited number of transfers to County employees are described in further detail below. Upon review of permit clerk records, it was found that all but two of the transfers were transfers from estates to County employees, some of whom were relatives of decedent firearms owners. The Sheriff is in the process of developing an appropriate written policy concerning post-SAFE Act transfers from both estates as well as transfers of surrendered firearms. Also, additional personnel will be invaluable in improving record keeping and documentation standards.

See
Note 2
Page 19

Vault access: Only the permit clerk has reason to enter and exit the property room vault. However, although they do not have a need to access the vault on a routine basis, five other individuals are authorized to access the vault to for ingress and egress for storage and retrieval of

See
Note 3
Page 19

weapons and firearms. Thus, records accurately reflect that only the clerk has signed in and out for ingress and egress. Additionally, the Undersheriff had periodically entered the vault to retrieve County owned ammunition. County owned ammunition has since been removed from the vault to another secure County location.

Background and Methodology

The Herkimer County Sheriff would like to correct the terminology used in the Draft Audit Report. Herkimer County does not have a County Police Department. Rather, the Sheriff is an elected official and as such is responsible for the Office of the Herkimer County Sheriff. As stated in the Draft Audit Report, the County Sheriff is responsible for management of Sheriff's Offices.

See
Note 4
Page 19

Since the Office of the Herkimer County Sheriff does not have a road patrol, it does not typically seize items that are to be used for evidence. The seizure of evidence such as controlled substances, vehicles, firearms, jewelry or other items for use as "evidence" is more typical of a municipal police department. Although the Sheriff agrees with the Draft Audit comment that any police evidence should be secured to maintain its integrity, it should be noted that instances of the Sheriff maintaining items as evidence for investigations conducted by police departments are relatively infrequent. Nonetheless, the Sheriff has issued a Policy and Procedure called "Handling of Evidence" on August 11, 2014. As set forth in the copy of this policy attached hereto as Appendix A, the Sheriff distributed this "Handling of Evidence" policy to all sworn staff to be effective on August 11, 2014. This policy specifies in writing how contraband or other evidence is to be organized and controlled from point of discovery to return or destruction.

Audit Results:

As set forth above, Herkimer County does not have a "police department." Rather, the Sheriff is an elected official who oversees property room inventory, among other duties of the Sheriff. As set forth above, the Herkimer County Sheriff has issued a written Policy and Procedure called "Handling of Evidence" to all sworn personnel effective August 11, 2014. [attached hereto as Appendix A]. The Sheriff is in agreement with the Draft Audit in reference to need to maintenance of high standards of inventory and evidence maintenance. The Sheriff has sent three staff members to complete special training concerning evidence preservation and inventory maintenance.

See
Note 5
Page 19

The Draft Audit's conclusion that there is any "missing inventory" conflicts with the statement in the Draft Audit's Summary stating that "we were either able to locate or view adequate documentation supporting the whereabouts of all the items." Additional funding for more staff as approved by the Herkimer County Legislature will be of assistance in increasing accuracy of recordkeeping.

See
Note 6
Page 19

Property Evidence : As set forth in the Summary of Findings of the Draft Audit report, all high risk items tested were located or had sufficient documentation to be located. Despite a far heavier workload in 2013, the Permit Clerk of the Sheriff's property room has worked professionally to document incoming property, property location, storage, sign out and disposal.

Increased staffing following the post-SAFE Act workload will help with maintenance of high documentation standards. Also, prior to inception of this Audit, the Sheriff had taken steps to assign a part time deputy to develop an electronic data base for inventory.

As set forth in the Policy and Procedure Number 08-01-01 attached as Appendix A, the Sheriff has ordered all staff to follow detailed rules for property seized at working posts in the County Office Building and the Jail. Additionally, the policy sets forth requirements on routing, chain of custody techniques and logging in of evidence and non-evidence property. An evidence tracking form will ensure property logging in and future identification of any items of evidence and non-evidence property held by the Sheriff. Policy and Procedure Number 08-01-01 also provides evidence storage requirements as well as evidence/property disposition policies.

Vault access: The Sheriff's property room contains a built in wall vault. A secured and locked metal cabinet is located less than one foot away from the vault within the property room that contains the vault and metal cabinet. Given the property room configuration, it would be costly to construct another vault within the room. The secure metal cabinet has provided a cost-effective and adjacent storage facility next to the vault. With both located within one property room, property storage has made best use of existing County resources while maintaining safety and integrity of property storage. As noted above, the Sheriff has emptied all weapons and firearms from the locked metal cabinet and only the vault is now utilized to store weapons and firearms. Additionally, the Sheriff will explore the possibility of installation of an additional layer of security to the property room, including the specific suggestions of the Draft Audit.

Increased inspections: Prior to the inception of the Audit, the Herkimer County Sheriff had already assigned a part time deputy knowledgeable in weapons and firearms. This deputy was charged with completion of a physical inventory of all weapons and firearms held by the Sheriff and development of an electronic data base. Also, the deputy was charged with making recommendations as to firearms and weapons that should be destroyed.

Written procedures: As set forth above, the Herkimer County Sheriff has issued a written Policy and Procedure called "Handling of Evidence" to all sworn personnel effective August 11, 2014. [see Appendix A]. The request made by the Sheriff for additional funding for clerk staffing in light of the near doubling of pistol permit paperwork that followed SAFE Act adoption should enable the Sheriff's staff to improve tracking for safekeeping and inventory and implementation of this written Policy and Procedure Number 08-01-01.

The Herkimer County Sheriff works to ensure accurate tracking and recording of movement of property items. As acknowledged by the Draft Audit, the Office of the Sheriff "...mainly seizes firearms or weapons that come to the Office through a Temporary Order of Protection (TOP) or for safekeeping." [Draft Audit at page 4]. It should also be noted that the role of the Herkimer County Sheriff is primarily "civil" rather than "criminal" because the Herkimer County Sheriff does not maintain a road patrol. Thus, few items are maintained by the Herkimer County Sheriff for "chain of custody" purposes as would be the norm for a police department with a road patrol. To ensure continued quality standards in the handling of

property, the Herkimer County Sheriff has issued a Policy and Procedure called "Handling of Evidence" to all sworn staff effective August 11, 2014.

The clerk tags each item with appropriate identifying information, property description as a matter of course at intake. The information is maintained within a paper log maintained by the clerk. The Sheriff respectfully disagrees with the finding that a chain-of-custody is not maintained indicating movement of items because it is the responsibility of the clerk to maintain such information.

See
Note 7
Page 19

As set forth above, although the vault is available for ingress and egress of five office personnel, it is primarily the permit clerk who enters and exits the vault. Therefore, the sign-in sheet accurately reflected that it is the permit clerk who enters and exists the vault for ingress and egress in relation to weapons and firearms. Additionally, to ensure professional understanding of the need for property room security, the Herkimer County Sheriff has sent three of its personnel, including the permit clerk to complete a three day training on evidence storage policies and procedures.

See
Note 3
Page 19

Sheriff's Office Records:

As noted by the Draft Audit, documentation and record keeping of the Herkimer County Sheriff's Office was sufficient to locate all of the 307 items tested. Additionally, as to the 280 firearms and permits tested, 38 of 39 that did not appear to have detailed data indicating storage in the vault or in the secure cabinet within the property room were located within the locked property room. The single weapon that could not be positively identified was destroyed, but written records indicate the presence of a clerical error. Also, for the 13 of 39 firearms not found within the vault in the property room, the firearms were stored one foot away from the vault in the secure metal cabinet. Thus, the Sheriff disagrees with use of the term "missing" because as the Draft Audit report also states, all items were "found." As stated above, additional staff budgeted by the County Legislators will help to ensure that the permit clerk properly designates items as stored within the vault or within the locked metal cabinet within the property room.

See
Note 8
Page 20

See
Note 9
Page 20

See
Note 10
Page 20

Additional comments concerning Draft Audit report notations at Page 5 are as follows:

- a. As set forth above, the property room contains a built-in wall vault, as well as a separate, secured and locked metal cabinet less than one foot from the vault. Depending on capacity of the vault, certain firearms and weapons were on occasion stored in the separate metal cabinet. However, since the Draft Audit, all weapons and firearms have been removed from the locked metal cabinet and are now stored exclusively within the vault in the property room.
- b. Supporting documentation was appropriately maintained for 16 firearms found in the vault, but were not properly entered into the written inventory log.
- c. It is noted by the Draft Audit 11 firearms found in the department's vault were correctly stored and no discrepancies whatsoever were found.

See
Note 11
Page 20

While documentation and record keeping were sufficient to locate all firearms, the Sheriff has taken measures to improve record keeping standards and is confident that additional personnel requested in 2013 will ensure better quality control.

See
Note 8
Page 20

The Draft Audit on page five does not provide information concerning which employees of the Office of the Sheriff were spoken to by auditors concerning oversight and recordkeeping. Therefore, it is difficult to know what statements were made, if any, by Sheriff's staff. This lack of Draft Audit disclosure concerning specific statements makes any response to the Draft Audit allegations impossible.

See
Note 12
Page 20

The Draft Audit does however, correctly note that "...a physical inventory ... and preparing an electronic database..." was in the process of completion at the time of the Audit. In fact, even prior to the inception of the audit, the Sheriff had assigned a part time deputy tasked with completion of a physical inventory and creation of an electronic database. The deputy selected for this task is an expert on weapons and firearms. Thus, the Draft Audit does not accurately portray that the Sheriff had already implemented inventory and recordkeeping prior to the arrival of the Comptroller's audit staff.

See
Note 13
Page 20

Prior to the Comptroller's field staff arriving in Herkimer County, the Herkimer County Sheriff was fully aware of the need for accurate inventory keeping and controls. As set forth above, the Herkimer County Sheriff had taken measures to implement and improve inventory controls.

Transfer of weapons to County personnel:

As indicated by the Draft Audit, the period set for scope of review was for the years 2012 and 2013. However, the scope of review was expanded to five years to review any instances in which firearms or weapons were transferred to any employees of Herkimer County. For the five year period, the Draft Audit found five instances in which weapons or firearms were transferred to County employees. The Sheriff has reviewed documentation for each of these past transfers and further information is provided below.

It must be emphasized that the Sheriff knows of no legal prohibition of the transfer of a firearm from a private estate to a County employee when the transferee is a properly licensed individual. As acknowledged by the Draft Audit, the Penal Law allows an executor, administrator or other lawful possessor to transfer firearms to a named person who is licensed or otherwise permitted to possess the weapons or firearms.

See
Note 2
Page 19

It has been long-standing County policy that department personnel may not act while on duty to acquire or purchase any items that come in for safe keeping. The Sheriff's Office is in the process of developing a written policy and procedure to prevent any County employees from purchasing or acquiring any firearms while on duty and to ensure that any and all transfers are in full compliance with laws governing firearms transfers.

In reference to specific firearms transfers to County employees mentioned in the Draft Audit at page 5, the Sheriff wishes to provide the following information:

During 2012, a revolver held by an estate was transferred to a Deputy. As set forth above, there is no law preventing property held by an estate to be transferred to a properly licensed individual, including an individual employed by the County.

See
Note 2
Page 19

On September 30, 2011, an H & R model revolver was transferred from the Estate of the Sheriff's cousin to the Sheriff. (The records contain a clerical error calling this an "amnesty" weapon, rather than an estate weapon). As noted by the Draft Audit, clerical errors were acknowledged by Comptroller's field audit staff. This is once again, a lawful transfer by an estate to a licensed individual.

See
Note 2
Page 19

In reference to the 2011 transfers of five firearms, the Draft Audit labelled these firearms as held for safekeeping or for license revocation. Further investigation by the Sheriff reveals that all of the firearms referenced in the Draft Audit comments for 2011 (except one) were actually transferred from estates to a Corrections Officers or Sheriffs Deputies. The one 2011 transfer of firearms that was not from an estate may have been a result of a misunderstanding as the files reflect that then County Court Judge advised in a letter to an individual whose pistol permit had been suspended that he could "...contact someone in the Sheriff's Department to effect the transfer."

See
Note 14
Page 20

The firearms referenced in the Draft Audit for 2008 (two Colt models and a Herters model) were received from an estate for safekeeping. The estate executor transferred the firearms to a county employee. However, the documentation did not properly indicate the firearms were from an estate.

See
Note 2
Page 19

Upon review of documentation, the Sheriff found that in 2013, as stated by the Draft Audit, a Colt model firearm was transferred to a Sheriff's Deputy. This transfer was documented by a sale affidavit, but was not part of an estate. The Sheriff is in the process of developing a written policy to address transfers of any weapons or firearms held in the Sheriff's Office to any individuals, including County employees.

Since the documentation for all of the above transfers involve personal property and private information, we are not including copies of documentation in the response herein due to privacy concerns. We request that Comptroller's Office contact the Herkimer County Sheriff to discuss the proper method to provide this documentation to the Comptroller without violating privacy laws and SAFE Act requirements. The Sheriff is concerned about publication of confidential information identifying any individuals who possess firearms.

Length of time for Sheriff holding weapons:

While the Sheriff has held Estate property for a period of longer than one year as a courtesy to taxpayers, the Sheriff will provide Estate fiduciaries who submit weapons and firearms for safekeeping with a receipt advising that a request for transfer must be made within one year. Additionally, in the event that an Estate executor or administrator wishes to transfer weapons or firearms to a County employee, it will be the continuing policy of the Sheriff that transactions concerning estate weapons or firearms may not be done while the County employee

is on duty. In any instance that the Will of a decedent directs transfer of a weapon or firearm to a person who is a properly licensed County employee, the Sheriff will honor the dictates of a Last Will and Testament admitted to probate and/or lawful order of a Surrogate Court Judge. And, in the event that a Surrogate Court Judge orders that weapons or firearms be stored by the Sheriff for more than one year, the Sheriff will obey such Court Order. This could occur in the case of estates that are not settled, will contests, requests for judicial accounting, etc. However, the Sheriff is in the process of developing a written policy for the length of time that weapons and firearms currently held for estates will be held as well as the appropriate means of disposition.

Additionally, in relation to weapons and firearms not part of an Estate, the Sheriff will adhere to the requirement that the weapons or firearms be transferred back to the lawful and properly licensed owner. Or, the owner will be required to designate a licensed dealer in firearms who can facilitate transfer to a properly licensed third party. As to disposition of non-Estate firearms and weapons, as set forth above, prior to the inception of the Audit, the Sheriff had charged a part time officer to inventory and designate firearms and weapons that should be slated for destruction.

Property disposal:

The Sheriff agrees with the recitation of the draft audit concerning documentation in relation to disposition of seized property. In 2014, the Herkimer County Sheriff developed a Policy and Procedure that addresses storage of property including firearms and weapons, chain of custody, documentation/logging as well as return and destruction of property. See Policy and Procedure Recovered Property or Evidence, effective July 23, 2014 attached as Appendix B]. The Office of the Herkimer County Sheriff has developed a destroy order form for the Clerk to forward to the Sheriff indicating any model and serial number of items to be destroyed. [See destroy order attached as Appendix C.]

Prior to the inception of the Audit, the Sheriff recognized the importance of a physical inventory of weapons and firearms and tasked a deputy with completion of such a physical inventory as well as creation of an electronic data base. This will ensure and facilitate that any weapons and firearms are properly disposed of. This coupled with the implementation of the Policy and Procedure effective July 23, 2014 will insure proper handling, documentation, chain of custody and disposition of all property, including firearms and weapons. In reference to destruction, the Policy and Procedure will require that weapons not returned, after proper record checks, will be deemed abandoned and destroyed. A minimum of two Sheriff's staff will be present during the weapons' destruction, with the appropriate report to be filed with the State of New York.

Also, any firearms being returned to any individual will require a criminal history record inquiry through the e-JusticeNY system.

Recommendations:

- a. As set forth above, a number of the Draft Audit recommendations were already in the process of being implemented prior to or during this scope. A copy of the written Evidence Handling Policy Number 08-01-01 is attached hereto as Appendix A. Also see Policy and Procedure for Recovered Property and Evidence effective July 23, 2014 attached as Appendix B, together with Model Destruct Order attached as Appendix C].
- b. Access to the storage vault is currently monitored with very limited access to the built-in vault and secured locked cabinet located within the property room. Also, as set forth above, the locked storage cabinet has been emptied of any weapons and firearms, with all now stored within the vault. Additionally, the part time deputy was previously assigned to inventory weapons and firearms and determine which should be slated for destruction.
- c. Given the Sheriff's recognition the importance of property inventory maintenance and recordkeeping, coupled with increased level of post SAFE act requests for permits and permit amendments, the Sheriff has sought and obtained funding for an additional part-time clerk to assist in record keeping. This will improve the amount of clerical time necessary to improve and maintain accurate inventory logs and records.
- d. The improvement and maintenance of accurate inventory logs and records was a goal of the Sheriff prior to the Audit. However, as set forth above, with additional funding provided by the Legislature upon the Sheriff's recommendations, inventory logs and records will continue to show improved quality standards.
- e. The Sheriff is in the process of developing a written policy concerning transfer of firearms or weapons to County and/or Office employees. The Sheriff knows of no prohibition of the transfer of Estate weapons to a County employee in the event that an Estate fiduciary chooses to transfer same to a properly licensed County employee. Nonetheless, it has been long standing policy and practice that such transfers are not to be effectuated during County employee work hours. The Sheriff will further obey any Court Order directing transfer or retention of any Estate weapon or firearms. As to weapons or firearms voluntarily surrendered, the Sheriff will incorporate SAFE Act requirements and any other lawful requirements into a written policy that is being developed in consultation with Counsel.
- f. Access to the vault is currently limited to five individuals. Only the permit clerk has a need to access the vault and as such the sign in log accurately reflects that the permit clerk entered and exited the vault. Additionally, County ammunition previously stored in the vault has been moved to another secure location on Herkimer County premises. This will limit the access of the Undersheriff who will not have to retrieve ammunition from the vault in the future.

See
Note 3
Page 19

See
Note 15
Page 21

See
Note 3
Page 19

- g. The Policy and Procedure for Recovered Property and Evidence effective July 23, 2014 attached as Appendix B, together with Model Destruct Order attached as Appendix C provide policy and procedure detailing how firearms and property will be disposed of and documented, effective July 23, 2014.

Finally, as set forth above, the Herkimer County Sheriff acted as the Executor for an elderly friend for whom he had provided many years of care. In that instance, firearms were determined to be part of the Estate. At that time, the Sheriff had no involvement in retrieving the firearm, other than unlocking the decedent's residence to allow access to the Undersheriff who retrieved the firearm in the presence of another officer from an outside police agency. The Sheriff acted in a manner and followed procedures which if accurately noted by the Audit, reflects his attempts to avoid any appearance of impropriety.

See
Note 16
Page 21

Corrective Action Plan:

As set forth above, several measures including the appropriation of funds by the Herkimer County Legislature as well as adoption of policies and procedures by the Sheriff have been implemented to improve issues noted by the Draft Audit. A written corrective action plan (CAP) will be prepared within 90 days of the Draft Audit pursuant to General Municipal Law Section 35. The corrective action plan will be forwarded to the Office of the Comptroller as required and also made available for public review in the Clerk's Office. As an elected official, the Herkimer County Sheriff has the ultimate responsibility for implementation of any corrective action. As the governing body of Herkimer County, the Herkimer County Legislature has taken steps to appropriate additional funding to the Office of the Sheriff to provide increased staffing necessary to implement corrective actions as well as policies and procedures set forth above.

In conclusion, the Sheriff would like to thank the field staff of the New York State Comptroller for their professionalism in conducting this audit and review. If for any reason this response needs to be reviewed, kindly contact the Herkimer County Sheriff at (315) 867-1167. We would welcome any comments or assistance from you that you feel would be appropriate to help our office operate in a more proficient and professional manner.

~~Sincerely,~~

Christopher P. Farber
Herkimer County Sheriff
320 North Main Street
Herkimer, New York 13350
(315) 867-1167

APPENDIX B

OSC COMMENTS ON THE COUNTY'S RESPONSE

Note 1

The audit report specifies that we were able to locate or view adequate documentation supporting the whereabouts of all items that were not found in the correct property room location with the exception of one firearm. In addition, the audit report further specifies that firearms were found in a separate property locker, which we agree was several inches away and secured.

Note 2

The transfers discussed in the audit report were not done in accordance with statute. Penal Law requires sheriffs to hold weapons delivered to them for a period of one year. In the case of an estate, a sheriff is required to hold the weapons and deliver them, upon request of the executor, administrator or other lawful possessor to a named person, so long as the named person is licensed or otherwise permitted to possess the weapon.

Note 3

The County's response letter acknowledges that five other individuals are authorized to access the vault. Therefore, it is imperative that any individual entering or exiting the vault sign in and out.

Note 4

The final audit report has been amended to identify the Office as the Office of the Herkimer County Sheriff.

Note 5

The term "police department" in this section of the audit report is used to identify that establishing adequate internal controls is important for all municipal law enforcement agencies.

Note 6

The final audit report has been amended to clarify that we were able to locate items or view adequate documentation supporting the whereabouts of all items with the exception of one firearm.

Note 7

The clerk's log tracks the date the item was received, reason, name, weapon/caliber, serial number, disposition/remarks and the date returned. However, the clerk's log does not maintain information indicating the movement of these items (i.e., chain of custody).

Note 8

The documentation and record keeping of the Department was not sufficient to locate all the items tested. We found numerous discrepancies in the records. For example, 55 items (18 percent) were found in a location that differed from the property room location indicated by the manual records. In addition, we did not find all 307 items tested. One item, a firearm, was not found and adequate documentation supporting its whereabouts was not provided.

Note 9

Although we were able to either locate or view adequate documentation supporting the whereabouts of 279 of the 280 firearms and permits tested, 38 of these of the items were not found within the locked property room. Specifically, 20 firearms were returned to their owner, 13 firearms were found in a separate property locker the day after our testing when the Sheriff notified the clerk that the firearms were stored there, four firearms had paperwork that they were transferred to a licensed dealer and one firearm was destroyed.

Note 10

The audit report identified the items as missing because they were not found in the location indicated in the inventory records.

Note 11

The County's response letter referencing "11 firearms found in the department's vault that were correctly stored with no discrepancies found whatsoever" is not correct. The audit report refers to 11 items (none were firearms) found in the Office safe that were confiscated from individuals at the County Office building or County Correctional facility. These items were stored in the correct location and no discrepancies were noted.

Note 12

Members of the audit team interviewed the Sheriff, Undersheriff and clerk during the audit. In addition, the audit team held an entrance conference with the Sheriff and Undersheriff prior to commencing fieldwork and then held an exit conference to discuss the audits findings and recommendations with the Sheriff and other County officials.

Note 13

The audit report indicates that the Office was in the process of completing a physical inventory of the vault and preparing an electronic database during fieldwork and notes that this was completed subsequent to the end of fieldwork.

Note 14

The audit report classifies these firearms for safekeeping or for license revocation because they were labeled as such by the clerk on the manual paper log under the 'reason' column.

Note 15

As discussed in the audit report, we did not find any provisions in Penal Law that permit transfers of weapons, as were done, to the Sheriff, Deputies or Corrections officers, either for public use or private use.

Note 16

A total of 13 firearms, not one as cited in the County's response letter, were retrieved from this estate. To avoid even the appearance of impropriety, if the Sheriff is acting as an executor of an estate, Office officials could consider transferring any weapons or firearms in the estate to the New York State Police.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

We interviewed Office personnel to determine if processes existed to account for all seized, found and safeguarded property, if seized property inventory records were up-to-date and accurate, and if internal controls were in place to safeguard all items in the property room (vault).

We reviewed the Office's physical inventory records and disposal records as well as monitoring procedures. We also traced Office inventory and disposal reports to source documents and physical inventory, as appropriate, to ensure the accuracy of records related to current inventory and disposals. Our audit included the following steps:

- We conducted a walk-through of the Office's facilities to determine what controls were in place over inventory.
- We used the Office's inventory log to select all items in the vault, consisting of firearms and weapons. With the assistance of the clerk, we tested physical inventory.
- We traced all items in the Office vault back to the Office's inventory log to determine the accuracy and completeness of the log.
- We traced all items in the Office safe back to inventory log records maintained.
- We reviewed all firearm transfers from 2008 to 2013 to determine the adequacy of these transfers.
- We reviewed destruction records for the Office's last gun destruction to determine if adequate documentation was available.

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.