



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Oversight of Sex Offenders Subject to Strict and Intensive Supervision and Treatment

Department of Corrections and Community Supervision



Report 2014-S-50

December 2015

Executive Summary

Purpose

To determine whether the Department of Corrections and Community Supervision (Department) is adequately monitoring and enforcing conditions of Strict and Intensive Supervision and Treatment for sex offenders placed in the community. Our audit covered the period April 1, 2012 through June 16, 2015.

Background

The Sex Offender Management and Treatment Act (Act) was enacted by the New York State Legislature in 2007 to deal with the civil management, including confinement and post-release supervision, for certain sex offenders who are at or near their anticipated release from parole or confinement. The Act applies to offenders who have been legally determined to suffer from a mental abnormality that predisposes them to committing a sex offense and that results in their difficulty in controlling this behavior. The goals of civil management are to protect the public, help reduce recidivism, and provide access to treatment. The most dangerous of these sex offenders are denied release and are confined to a secure treatment facility operated by the Office of Mental Health. Others who are judged less dangerous as a result of a jury trial or subsequent hearing can be released to the community, but remain subject to the Department's Strict and Intensive Supervision and Treatment (SIST) supervision regimen, and are referred to as respondents. Under SIST, Parole Officers closely monitor respondents' compliance with court-ordered conditions of their release. The Act requires Parole Officers to have a minimum number of face-to-face contacts with respondents in their caseload, as well as contacts with others involved in respondents' treatment and oversight. Additional requirements are established by the Department and often include electronic monitoring using ankle bracelets equipped with GPS technology. There were 156 respondents subject to SIST between April 1, 2012 and September 10, 2014.

Key Findings

- We examined supervision records for 99 respondents overseen by staff at eight Area Offices located in five regions of the State. In general, while our tests showed the Department is monitoring and enforcing SIST conditions for respondents placed in the community, we also identified areas needing improvement. For example, in certain instances, Parole Officers did not complete all the required monthly activities, and compliance varied significantly among the locations.
- Parole Officers made virtually all of the two required home visits each month for the respondents we tested. However, more than 20 percent of the time, they did not make the minimum total of six monthly face-to-face contacts. Exception rates at two Offices exceeded 50 percent.
- Photographic records of SIST offenders are supposed to be updated at least every 90 days, but only 38 percent were done on time while 15 percent were more than a month late. At the time of our test, one respondent's photo had not been updated in almost a year.
- The Department also lacked some records related to respondents' interviews at initial entry to SIST, and its record of responses to certain electronic alerts of potentially high-risk respondent behavior was at times overly general and vague.

Key Recommendation

- Determine the reasons for variances in meeting certain requirements of the Act and other requirements and improve the oversight and documenting of supervision in these areas.

Other Related Audit/Report of Interest

[Office of Mental Health: Sex Offender Management and Treatment Act Program \(2013-S-21\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

December 17, 2015

Mr. Anthony J. Annucci
Acting Commissioner
Department of Corrections and Community Supervision
The Harriman State Campus
1220 Washington Ave., Building 2
Albany, NY 12226-2050

Dear Acting Commissioner Annucci:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Department of Corrections and Community Supervision entitled *Oversight of Sex Offenders Subject to Strict and Intensive Supervision and Treatment*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
State Government Accountability

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Background

The Sex Offender Management and Treatment Act (Act) became effective in April 2007 and authorized methods of civil management for certain offenders. The Act applies to persons who have been convicted of a sex offense or a designated felony, are near anticipated release from parole or confinement, and have been legally determined to suffer from a mental abnormality. For the purposes of the Act, mental abnormality is defined as a condition, disease, or disorder that predisposes a person to committing a sex offense and that results in his or her difficulty in controlling this behavior. The goals of civil management are to protect the public, help reduce recidivism, and provide access to treatment. Prior to the Act, a detained sex offender who met the mental abnormality criteria would often be released to the community under standard parole conditions or with no supervision at all.

The most dangerous of these sex offenders are confined in a secure treatment facility operated by the Office of Mental Health (OMH). Offenders assessed as less dangerous are released to the community, subject to Strict and Intensive Supervision and Treatment (SIST) by Department personnel, and are referred to as respondents. SIST respondents are expected to demonstrate acceptance of responsibility for their behavior and to develop appropriate strategies to prevent reoffending. SIST respondents are supervised at a reduced ratio of ten respondents to each Parole Officer (Officer). Department policy requires Officers to maintain records of their daily activities and to record all relevant supervision contact, including contacts with respondents and electronic monitoring alerts, in its Case Management System (CMS).

The respondents must agree to abide by court-ordered conditions, some of which are mandated for all respondents and some of which are discretionary. For example, mandatory conditions include participating in approved sex offender treatment and allowing an Officer to visit their residence and place of employment. Discretionary conditions are typically based on the recommendations of the Department in consultation with OMH and the designated community-based treatment provider. Discretionary conditions may include respondents being subject to electronic monitoring of their physical movement by wearing an ankle bracelet with GPS technology and being prohibited from possessing sexually explicit materials. The Department contracts with a vendor for electronic monitoring services, including the related equipment, software, and custom reporting.

The Department is responsible for implementing the supervision plan and ensuring respondents' compliance with the court-ordered conditions of their release. Supervision requirements are established by the Act as well as by Department policies and directives. The Act requires a minimum of six face-to-face supervision contacts per month in which Officers personally observe the respondent and six collateral contacts per month. Collateral contacts are those between an Officer and another party that provide relevant information about the respondent, such as a meeting with a respondent's mental health treatment provider.

The Department requires that the six face-to-face contacts include two positive home visits and two curfew checks. A positive home visit occurs when an Officer visits the respondent at his or her residence, while a curfew check can be an Officer's unannounced visit or phone call to

verify a respondent's compliance with a curfew. Of the two required curfew checks, at least one must be done by a home visit, which can also count as one of the two required positive home visits. Beginning March 2014, the Department also requires Officers to obtain an updated digital photo of each SIST respondent every 90 days and any time a respondent has a notable change of appearance, such as change of hairstyle or weight gain or loss.

The Act also allows the Department to use electronic monitoring as a case management tool. Respondents wear an ankle bracelet which interacts with equipment at their residence to collect data about their movements and location. The system allows Officers to restrict respondents' movements to specific geographical areas selected by the Department. The Department establishes exclusion zones in the system on a case-specific basis to designate areas that respondents are prohibited from entering, such as schools or a victim's residence. Similarly, inclusion zones designate an area in which a respondent must remain, often during specific hours of the day.

Officers receive information from the electronic monitoring system at least once daily via emails (alerts) on Department-provided smart phones. The alerts report a wide range of information about their respondents and the equipment, including specific location and duration of time spent at the location. Officers are responsible for checking the alerts for their assigned respondents. Some alerts require a response. For example, an alert that the residential monitoring equipment is recharging is routine and does not require follow-up. However, some alerts are more serious. These include exclusion or inclusion zone violations, which indicate a respondent is inside or outside a prohibited area, and tamper alerts, which may indicate an attempt to remove the bracelet or that the bracelet's function is compromised.

Department policy requires Officers to respond immediately to tamper, exclusion zone, and inclusion zone alerts during normal business hours. After normal business hours, an immediate case conference with their supervisor is required to determine the appropriate response. Sometimes exclusion zone alerts may be handled per pre-determined, case-specific response plans. Department management interprets "immediate" to mean as soon as practicable.

A respondent who violates SIST conditions and is found to be dangerous may be placed in an OMH facility. Respondents are only discharged from SIST by Court order. Respondents may petition the court after two years in the community under SIST, and every two years thereafter, for modification or termination of the conditions. The special conditions continue until a court determines a respondent no longer requires civil management. However, discharge from SIST does not affect whether a respondent is subject to the requirements of the New York State Sex Offender Registry.

Nineteen respondents were released from custody to community supervision under SIST orders in 2013. There were 156 respondents subject to SIST during the period April 1, 2012 through September 10, 2014. Seventeen of these individuals were either civilly confined or in other custody and were not in a community setting during that period. As of March 31, 2014, 24 individuals have been released from SIST conditions since the program's inception.

Audit Findings and Recommendations

We examined supervision records for 99 respondents overseen by staff at eight Area Offices located in five regions of the State. In general, while our tests showed the Department is monitoring and enforcing SIST conditions for respondents placed in the community, some Parole Officers still did not complete all the required monthly activities. Compliance varied significantly among the locations for items such as recording key activities that should take place when respondents initially enter SIST, ensuring that the required number of contacts with respondents take place, and sufficiently documenting some supervision activities. We also found the Department needs to improve its timeliness in updating respondent photos. Because of the varied compliance among the Area Offices we tested, there may also be opportunities to identify best practices in place in some offices that could help improve performance in others.

Compliance With Selected SIST Requirements

Initial Intake

Department procedures detail several important steps required to be immediately taken when a respondent is first admitted to the SIST program. We reviewed files for 94 of the 99 respondents we sampled and determined that the Department did not always comply with key requirements. Files were unavailable for the other five respondents, who had been either discharged from the program or reconfined. Compliance among the eight offices varied significantly for some requirements, as shown in Exhibit A. For example:

- Documentation to substantiate that the arrival report was completed and signed was not available in 29 cases (31 percent) at six of the eight offices. The exception rates across the eight offices ranged from none to a high of 62 percent. The arrival report is important because, among other things, it documents the respondent's signed acknowledgment of the SIST conditions. Completing the arrival report also includes taking photos and fingerprints and setting up electronic monitoring when applicable.
- The initial interview was not done within the 14-day required time frame in 71 cases (76 percent). The exception rates of the eight offices ranged from 50 percent to 100 percent. During the initial interview, Officers review personal information with the respondent, such as medical and employment concerns.
- The first positive home visit was not done within the required 24 hours in 12 of 54 applicable cases (22 percent). (The remaining 40 cases entered SIST prior to our audit scope period.) The exception rates of the offices ranged from none to 67 percent. The greatest delay between a respondent's release to SIST and the first positive home visit was 12 days.

Face-to-Face Contacts

Department procedures require at least six face-to-face contacts each month between the Parole Officer and the respondent, at least two of which must be home visits. Our tests of the face-to-

face contact requirement included 92 of the 99 sampled respondents and covered a collective total of 1,422 whole months under SIST supervision. The other seven individuals either had not yet been subject to supervision for a full month or had been reconfined. Although our tests showed generally good results overall, some offices performed relatively poorly compared to the others. For example:

- Two positive home visits were done as required in 97 percent of the months we tested and only one office (Peekskill) had an exception rate above ten percent;
- In contrast, fewer than the six required contacts were done in 23 percent of the months tested. Three offices (Brooklyn 5, Rochester, and Syracuse) missed required contacts less than 5 percent of the time, while two others (Northeast and Peekskill) had exception rates above 50 percent; and
- Two curfew checks were not done in 24 percent of the months we tested. One office (Rochester) made all the required checks every month, while another (Northeast) missed the requirement 78 percent of the time.

Specific results for all offices are shown in Exhibit B.

Photograph Updates

Parole Officers must update each respondent's photograph at least every 90 days and more frequently if the subject's appearance is significantly changed. Of the 99 respondents we sampled, 58 were in SIST for long enough to require them to have had a 90-day update. However, no photo update had yet been done for two of these respondents; at the time of our testing, their photo updates were overdue by 249 days and 41 days, respectively.

There were 113 updates done for the remaining 56 respondents, but only 38 percent of these (43) were done within the 90-day requirement. Although 29 percent were less than two weeks late, another 18 percent were between two and four weeks late and 15 percent ranged from four weeks to more than four months late. The office with the best performance only completed four out of seven (57 percent) of its updates on time. The results by office are shown in Exhibit C.

Collateral Contacts

Parole Officers must also perform six collateral contacts each month for each respondent. These generally consist of contacts with third parties, such as a mental health treatment provider, who provide relevant information about the respondent or his or her activities. The electronic monitoring data and notifications that Officers receive each day for most of their respondents are also considered collateral contacts. Our review showed that all offices complied with this requirement for each of the respondents in our sample.

Electronic Monitoring Alerts

All of the respondents in our sample were subject to electronic monitoring for some amount

of time during our audit scope period. We reviewed the Department's response to electronic monitoring alerts received during the year ended September 10, 2014, and assessed how well it documented its actions. Our tests included alerts for three types of potentially high-risk events for sampled respondents at the various offices, as summarized in the following table.

Area Office	Tamper Alerts	Exclusion Zone Alerts	Inclusion Zone Alerts	Total
Bronx 2	8	1	718	727
Brooklyn 5	6	-	771	777
Elmira	5	-	1,220	1,225
New Rochelle	3	3	320	326
Northeast	11	33	255	299
Peekskill	2	179	266	447
Rochester Belt	7	105	245	357
Syracuse Belt	9	28	-	37
Totals	51	349	3,795	4,195

For some of the alerts we reviewed, only overly general and vague documentation existed describing the Officers' response. For example, for eight of the 51 tamper alerts (16 percent), either no CMS record had been posted or it was insufficient for us to ascertain the circumstances of the alert and the nature of the Department's response. For three of these eight alerts, the respective Officers were unable to recall the nature of the alert or their response to it. These three alerts remained open between 6 and 74 days. For the other five, the Officers were able to recall and explain the nature of the alert and their responses. For example, in one instance the Officer said the respondent had called to explain that he had damaged the electronic monitoring device while at work. The Officer concluded the incident was not an intentional attempt to tamper with the device, and subsequently replaced it.

For 278 of the 349 exclusion zone alerts (80 percent), Department personnel did not document their responses in CMS. In response to our inquiries, Officers told us these violations are often the result of respondents' routine travel past an exclusion zone for work or treatment programs or an outdated exclusion zone. They further explained that knowledge of their respondents' habits enables them to evaluate whether they need to follow up on such recurring alerts. For example, one Officer explained that a respondent who generated 85 exclusion zone alerts routinely attended meetings in the same area as a victim's prior residence, but that the exclusion zone hadn't been updated to reflect the victim's move to a new area.

In response to our follow-up on the 3,795 inclusion zone alerts, Officers also generally provided reasonable explanations of the nature of the alerts and why certain respondents had so many. For example, one Officer told us that a respondent had 245 alerts because he routinely fed animals outdoors earlier in the morning than the time assigned to his inclusion zone.

Although the Officers' explanations for both the exclusion and inclusion zone alerts seemed reasonable, no documentation existed to support their decisions not to pursue these alerts. The incomplete records describing the responses to the alerts and the Officers' basis for their

actions reduces assurance that personnel are appropriately and timely addressing issues that may have a direct impact on victims and public safety, and may render the records less useful for decision making. Incomplete records also raise questions about whether personnel addressed and resolved the alerts but simply did not document their actions, or whether they may not have addressed the alerts at all. The lack of documentation could potentially hinder the Department's ability to demonstrate the actions it took and whether they were reasonable in the event an offender with past alerts subsequently reoffends.

Department officials indicated that the fact that a vendor archive of electronic monitoring data is readily available may be reducing the commitment of staff to actively record all relevant supervision events, including alert responses, thereby diminishing the overall record of supervision. They told us they plan to update policies to clearly establish the types of alerts that must be recorded in CMS and to reinforce the message through training. They also said the policy could be clarified to more precisely define the expectations for timing of the follow-up on these alerts.

Variations among the Area Offices in complying with the oversight requirements we tested may indicate that some offices with relatively high performance have developed best practices. By further investigating office practices, the Department may be able to identify ways to improve overall performance. In areas where performance was consistently low, there may be barriers to compliance or other causes that, if investigated and resolved, may also lead to improved performance.

Recommendations

1. Evaluate the reasons for Area Offices' variations in compliance with Act and Department requirements in order to identify potential best practices.
2. Based on the results of the evaluation, identify and implement strategies to improve Area Offices' compliance rates.
3. Monitor compliance rates among the Area Offices and assess the effectiveness of steps taken to improve compliance.
4. Take steps to improve documentation of supervision activities, among them reminders to staff about the importance of maintaining complete and accurate records, including the nature and extent of their responses to electronic monitoring alerts. Periodically assess the effectiveness of the steps taken.

SIST Parole Officer Training

In general, we found that most Officers who supervise SIST respondents attended training relevant to their caseload, but the Department needs to develop written training requirements and improve its tracking of SIST training attendance. The Department does not have a policy on SIST training requirements for Officers. Its practice is to provide one-on-one training on SIST, referred

to as Article 10 training, to all Officers assigned to SIST cases. However, there is no requirement on frequency and no method for tracking which Officers attended the training. The Department does have a policy requiring Officers who use special supervision methods, such as electronic monitoring and transdermal alcohol concentration testing, to be trained in their use.

We reviewed training records for the 24 Officers who supervised SIST respondents during the period April 1, 2012 through September 10, 2014, and for four of them found no record of their ever having attended any Article 10 training. However, all 24 Officers had attended training on electronic monitoring, and 17 Officers attended training on alcohol testing, including the 10 who used alcohol monitoring in their supervision.

Department officials said the four Officers had actually attended Article 10 training, but the records were missing, which they attributed to the merger of the former Division of Parole and the Department of Correctional Services. Department officials told us they are in the process of developing a method for SIST training record keeping and an Article 10 course catalog that includes the required courses and their frequency.

Recommendation

5. Improve SIST training procedures by developing written Article 10 training requirements and retaining documentation of training attendance.

Audit Scope and Methodology

We audited the Department's oversight of sex offenders released to Strict and Intensive Supervision and Treatment. Our audit covered the period April 1, 2012 through June 16, 2015. To accomplish our objective, we reviewed relevant laws, regulations, and Department directives and policies related to its oversight of SIST respondents and the role of other agencies in this oversight. We also became familiar with and assessed the Department's internal controls as they related to this oversight. We reviewed case supervision records for a sample of 99 respondents who were subject to SIST supervision for all or a portion of the period April 1, 2012 through September 14, 2014. The 99 respondents were associated with eight offices in five of the Department's seven geographic regions, as follows:

Region	Area Office(s)	Sample Size
Central	Syracuse Belt Area; Northeast Area	27
Bronx	Bronx 2 Area	16
Brooklyn	Brooklyn 5 Area	15
Hudson Valley	New Rochelle Area; Peekskill Area	13
Western	Elmira Area; Rochester Belt Area	28
Total		99

To test compliance with requirements at the time of a respondent's initial entry to SIST, we reviewed the files for 94 of the 99 respondents in our sample. Files for five respondents were

not available because the respondents had been either discharged from SIST or ordered to civil confinement during our scope period. To test compliance with face-to-face and collateral contact requirements, we reviewed records for 92 of the 99 respondents. We did not review the files for seven respondents: five had not been subject to SIST supervision for at least an entire month during our test period; one had been admitted to a psychiatric center; and one was in custody.

We also reviewed entries in CMS, the Department's electronic supervision system. To assess electronic monitoring-related supervision, we obtained and analyzed the related data from the Department's vendor and assessed records of personnel responses to certain types of alerts. For the period September 11, 2013 through September 10, 2014, 65,623 alerts were reported for 74 of the 99 respondents in our sample. We reviewed CMS information and contacted Officers, where necessary, to assess the Department's responses to higher-risk alerts. These included all 51 tamper alerts and all 349 exclusion zone alerts, which are higher risk because they suggest a respondent may be attempting a prohibited action. We also assessed the 3,795 inclusion zone alerts by making inquiries of the Officers for the 13 respondents who each had more than 200 of these alerts. In total, we reviewed 4,195 alerts reported for 44 SIST respondents. We met with Department officials to gain an understanding of their supervision practices, and also met with Officers and Senior Officers. Finally, we reviewed training records for Officers who supervised SIST respondents during our scope period.

We conducted our performance audit in accordance with generally accepted government auditing standards. 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to Department officials for their review and comment. We considered their comments in preparing this final report and have included them in their entirety at the end of the report. We modified our report to incorporate some of the Department's suggested edits. Department officials agreed with our recommendations and are taking steps to implement them.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Corrections and Community Supervision shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit A

Non-Compliance With Key Initial Program Intake Activities

Area Office	Number and Percent of Initial Intake Activities			Number and Percent of First Positive Home Visits		
	Number of Respondents Tested	Arrival Reports Not Completed and Signed	Initial Interviews Not Conducted	Consent Forms Not Signed	Number of Respondents Tested	Not Done Within 24 Hours
Bronx 2	16	10	14	8	7	-
		62%	87%	50%		-
Brooklyn 5	12	7	11	1	7	-
		58%	92%	8%		-
Elmira	15	2	8	5	10	2
		13%	53%	33%		20%
New Rochelle	8	4	7	1	2	-
		50%	88%	12%		-
Northeast	10	-	10	2	8	2
		-	100%	20%		25%
Peekskill	4	2	2	-	3	1
		50%	50%	-		33%
Rochester	13	-	11	3	9	6
		-	85%	23%		67%
Syracuse	16	4	8	3	8	1
		25%	50%	19%		12%
Totals	94	29	71	23	54	12
		31%	76%	24%		22%

Exhibit B

Non-Compliance With Monthly Face-to-Face Contact Requirements

Area Office	Number of Respondents Tested	Number of Months Supervised	Months Without:		
			Six Face-to-Face Contacts	Two Positive Home Visits	Two Curfew Checks
Bronx 2	16	278	119	13	92
			43%	5%	33%
Brooklyn 5	15	232	3	3	6
			1%	1%	3%
Elmira	12	152	19	10	37
			13%	7%	24%
New Rochelle	9	191	65	2	80
			34%	1%	42%
Northeast	9	117	73	4	91
			62%	3%	78%
Peekskill	4	69	37	11	22
			54%	16%	32%
Rochester	12	223	4	-	-
			2%	-	-
Syracuse	15	160	6	1	19
			4%	1%	12%
Totals	92	1,422	326	44	347
			23%	3%	24%

Exhibit C

Timeliness of SIST Offender Photo Updates

Area Office	Respondents Tested	Photo Updates Required	Updates Done on Time	Updates Done Late by:		
				Less than Two Weeks	Two to Four Weeks	More Than Four Weeks
Bronx 2	11	20	6	5	5	4
Brooklyn 5	9	17	7	-	7	3
Elmira	3	12	5	2	1	4
New Rochelle	7	16	6	6	2	2
Northeast	8	9	1	3	4	1
Peekskill	3	7	4	2	1	-
Rochester	11	28	13	15	-	-
Syracuse	4	4	1	-	-	3
Totals	56	113	43	33	20	17
			38%	29%	18%	15%

Agency Comments



Corrections and Community Supervision

ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

November 5, 2015

Mr. John Buyce
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

RE: Report 2014-S-50 "Oversight of Sex Offenders Subject to
Strict and Intensive Supervision and Treatment"

Dear Audit Director Buyce:

In accordance with Section 170 of the Executive Law and in response to your correspondence dated September 29, 2015, attached is the Department's reply to the Draft Audit Report 2014-S-50 "Oversight of Sex Offenders Subject to Strict and Intensive Supervision and Treatment."

The Department of Corrections and Community Supervision would like to acknowledge the time and effort of the OSC auditors and employees that were involved with this audit and their desire to improve the Department's operation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony J. Annucci".

Anthony J. Annucci
Acting Commissioner

Attachment



Corrections and Community Supervision

ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

November 5, 2015

John Buyce
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Re: Report 2014-S-50 "Oversight of Sex Offenders Subject to Strict
and Intensive Supervision and Treatment"

Dear Mr. Buyce:

Please consider this to be the Department of Corrections and Community Supervision's (DOCCS or the Department) response to the Office of the State Comptroller's (OSC) Final Audit Report, entitled "Oversight of Sex Offenders Subject to Strict and Intensive Supervision and Treatment" dated September 2015.

Strict and Intensive Supervision and Treatment (SIST) is part of a process in New York designed to civilly manage a small percentage of sex offenders upon completion of their prison terms. These offenders suffer from a mental abnormality that predisposes them to sexual recidivism. Accordingly, they have been placed on a court ordered regimen of SIST, supervised by DOCCS.

With the establishment of SIST, the Department has continued to build on its strategies for the management of sex offenders consistent with nationally recognized best practices designed for the safety and protection of sexual assault victims. DOCCS uses a specialized supervision strategy, known as the "Containment Model," that is based on the development of supports that assist in offender monitoring and accountability for behaviors. The strategy relies on interdisciplinary collaboration and teamwork to ensure that criminal sexual behavior of offenders is managed and treated. Specialized training of supervising Parole Officers and a coordinated approach with treatment providers assists staff in early detection of offender offense cycles, patterns and risk factors. Verification of offender compliance with supervision conditions is conducted through face to face contact with offenders in their living and work environments, communication with community members, and the use of specialized tools such as: polygraph examination, surveillance, electronic monitoring, and computer and internet restrictions.

Through October 31, 2014, 185 individuals have been ordered to SIST supervision. Of this group, 46% were also serving a period of parole or post-release supervision at the time of release. These offenders are supervised at an intensive level and are required to participate in sex offender and other treatment programming while in the community.

Of the 185 cases, 112 (60.5%) individuals have been charged with violating their conditions of parole or SIST. The vast majority of the violations in these cases involved technical violations of the conditions of supervision and demonstrated DOCCS' swift and certain response to manage problematic behaviors and to protect the community. Notably, 48 of the individuals with SIST violations were later determined by a court to be dangerous and ultimately civilly confined; 4 others were returned to DOCCS facilities with new convictions.

The Department has reviewed Report 2014-S-50 and acknowledges the auditors key findings. As evidenced by this response, we believe the outcome measures from this audit will assist the Department's continuous improvement to supervision efforts with regard to the subject population. DOCCS respectfully submit for your consideration – and in the interest of clarity – the following suggested edits in the draft audit report: *

Executive Summary

Page 1 - Background - line 11: Replace "program" with "*supervision regimen*"

Page 1 - Key Findings - line 4: Replace "For example, Parole Officers did not..." with "For example, *in certain instances*, Parole Officers did not..."

Page 1 - Key Findings - lines 12-14: Replace, "The Department also lacked some records related to respondents' initial entry to SIST, and its record of responses to certain alerts of potentially high-risk respondent behavior was at times overly general and vague" with, "The Department also lacked some records related to respondents' *interview at* initial entry to SIST, and its record of responses to certain *electronic* alerts of potentially high-risk respondent behavior was at times overly general and vague *but were reasonable and appropriate.*"

Page 2 - Key Recommendation - line 1: Replace "Determine the reasons for lapses in meeting requirements of the Act and other requirements" with, "Determine the reasons for *variances* in meeting *certain* requirements of the Act and other requirements..."

Background

Page 6 - lines 28-29: Replace "There are three ways to be discharged from SIST..." with, "Respondents are only discharged from SIST by Court order."

Page 6 - lines 32-33: Replace "However, discharge from SIST generally does not affect whether ..." with, "However, discharge from SIST does not affect whether..."

Audit Findings and Recommendations

*We modified our report to address certain of the suggested edits proposed in the Department's response.

Page 7 - line 3: Replace “enforcing SIST conditions for respondents placed in the community, Parole Officers still did not ...” with, “enforcing SIST conditions for respondents placed in the community, *some* Parole Officers still did not ...”

Page 7 - Line 17: Replace “The arrival report was not completed and signed...” with, “*Documentation to substantiate the completion of the arrival report was not available....*” (Note: *DOCCS acknowledges that documentation to substantiate completion of the arrival report was not available for several of the instant cases; however, DOCCS has no evidence suggesting that the arrival reports are not completed for the majority of cases. These reports are a vital tool in the transfer of the offender to SIST supervision and, essentially, begin the supervision regimen.*)

DOCCS agrees with the findings as noted in the report and appreciates the opportunity to comment accordingly. Below are DOCCS’ responses to OSC’s five recommendations:

1. *Evaluate the reasons for Area Offices’ variations in compliance with Act and Department requirements in order to identify potential best practices.*

DOCCS agrees with this recommendation. The supervision and management of respondents subject to SIST in the community is the responsibility of community supervision Parole Officers under the direct guidance of Senior Parole Officers, Bureau Chiefs, and Regional Directors. All staff is required to be in compliance with both the provisions of the Sex Offender Management and Treatment Act and agency policy and procedure. DOCCS believes that we can learn from those Bureaus that have achieved positive performance outcomes, thereby strengthening our understanding of best practices and enhancing effective supervision strategies of sex offenders in the community.

In order to identify best practices, DOCCS will evaluate critical SIST performance measures by updating its recently re-introduced “ParoleStat” effort to include specific SIST-related data items. “ParoleStat” is a data driven management and accountability system that measures each Region’s compliance with identified measures. On-going monthly reports highlighting outcomes provides Executive staff with opportunities to identify and respond to emerging issues, correct any shortcomings in meeting obligations, and adopt new practices where needed. It is anticipated that the introduction of SIST specific variables into “ParoleStat” will occur by December 31, 2015.

Additionally, the Acting Commissioner will discuss SIST performance measures during ongoing conferences with Hub Superintendents and Regional Directors as a means of continuous, proactive assessment by the Department.

2. *Based on the results of the evaluation, identify and implement strategies to improve Area Offices’ compliance rates.*

DOCCS agrees with this recommendation. Best practice findings and recommendations identified through “ParoleStat” and approved for implementation by the Deputy

Commissioner for Community Supervision will be documented, introduced as policy if warranted, or communicated to staff with instructions for implementation as applicable.

3. *Monitor compliance rates among the Area Offices and assess the effectiveness of steps taken to improve compliance.*

DOCCS agrees with this recommendation. DOCCS has already created a "ParoleStat" monthly report of compliance outcomes with regard to case conference activity for each Bureau on a statewide basis, whereby each Bureau's compliance rate is compared to other Bureaus and a report of standards met is generated (see *Attachment A*). Each Bureau's performance is evaluated by agency managers on a monthly basis in order to improve compliance.

With the creation and implementation of the aforementioned "ParoleStat" for SIST cases, key data indicators for SIST cases will be tracked and evaluated. Regional Directors will be required to review the monthly SIST "ParoleStat" data indicators with staff to take action to improve performance where required.

4. *Take steps to improve documentation of supervision activities, among them reminders to staff about the importance of maintaining complete and accurate records, including the nature and extent of their responses to electronic monitoring alerts. Periodically assess the effectiveness of the steps taken.*

DOCCS agrees with this recommendation. The Sex Offender Management Unit's SIST training curriculum has been updated to specifically outline required documentation with regard to SIST activities and stress the importance of maintaining complete and accurate records (see *Attachment B*).

With regard to electronic monitoring (em) of SIST cases, DOCCS has entered into a new contract with an electronic monitoring vendor. DOCCS is awaiting a response from the vendor as to whether all em alerts can be pushed to DOCCS data systems for recording. An agency workgroup is developing an updated em policy that will be reflective of staff requirements to fully record in the DOCCS Case Management System (CMS) their responses to alerts received.

Of note, DOCCS plans to add SIST cases on active GPS to a 24 hour a day, 7 day a week monitoring unit operated through its Bureau of Special Services by December 31, 2015. This unit will monitor cut strap/master tamper alerts, jamming/shielding alerts, and dead battery alerts. Additionally, all monitoring contacts and responses will be entered into DOCCS CMS. DOCCS is also contracting with the current GPS vendor for 24 hour monitoring services provided by the vendor.

5. *Improve SIST training procedures by developing written Article 10 training requirements and retaining documentation of training attendance.*

DOCCS agrees with this recommendation. The Sex Offender Management Unit has worked with the DOCCS Training Academy to draft a Frequency Training Chart for staff, to include an Article 10 Overview, SIST Supervision Training, Transdermal Alcohol Testing, and Electronic Monitoring. Upon approval, this will be included in the DOCCS "Training Manual: 0.100, Frequency Training Chart." Additionally, standardized Report of Training Forms for each offering with the official course number and name has been created for these offerings (*see Attachment C*).

If there are any questions, please contact Paul Guenette, Director of Internal Controls at (518) 436-7886, Extension #5030.

Sincerely,



Steven A. Claudio
Assistant Commissioner,
Community Supervision

Attachments

cc: Anthony J. Annucci, Acting Commissioner
Osbourne A. McKay Deputy Commissioner, Correctional Industries, Compliance Standards & Diversity
Kevin P. Bruen, Deputy Commissioner and Counsel
Daniel F. Martuscello III, Deputy Commissioner Administrative Services
Robert J. Kennedy, Associate Commissioner
Adam W. Silverman, Special Counsel to the Commissioner for Ethics, Risk and Compliance
Andrea D. Evans, Assistant Commissioner
Michael L. Graziano, Assistant Commissioner
Paul Guenette, Director, Bureau of Internal Controls
Jeff Nesich, Director, Internal Audit Unit
Mary Osborne, Director, Sex Offender Management Unit and Re-entry Operations
Andrew A. SanFilippo, Executive Deputy Comptroller
Tina Kim, Deputy Comptroller
Brian Mason, Assistant Comptroller

Agency Attachments

ATTACHMENT A

ParoleSTAT
Western Region
Field Operations
Case Conferences
 September 2015

Area Office	Case Conferences Due	Conferences Meeting Standard	Percent Meeting Standard
Buffalo Metro	xxx	xxx	xxx%
Niagara Frontier	xxx	xxx	xxx%
Elmira	xxx	xxx	xxx%
Rochester Metro	xxx	xxx	xxx%
Rochester Belt	xxx	xxx	xxx%
Western Region Total	xxxx	xxxx	xxx%
Remainder of State	xxxxx	xxxxx	xxx%
Statewide Total	xxxxx	xxxxx	xxx%

Attachment B

10/22/2015

 **Corrections and
Community Supervision**

SIST Officer Training

**Mental Hygiene Law, Article 10,
SOMTA**

October 22, 2015

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Sex Offender Management and Treatment Act (SOMTA)

- Legislation became effective in April 2007.
- Legislative findings included that recidivistic sex offenders pose a danger to society that can be addressed through comprehensive programs of treatment and management.
- That some sex offenders have a mental abnormality that predisposes them to repeat sex offenses.
- That in extreme cases, confinement of the most dangerous offenders needs to be extended through a civil process in order to provide them with required treatment and to protect the public.



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Legislative Findings

- For some sex offenders, it can be effective to provide treatment within a regimen of strict and intensive outpatient supervision.
- The goal is to create a system that protects the public, reduces recidivism and ensures that sex offenders have access to proper treatment.
- For some sex offenders, appropriate criminal sentences, including periods of Post-Release Supervision (PRS), may be the most appropriate way to achieve these goals.



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Who Qualifies for Review Under Article 10

- Sex Offenders in the custody of DOCCS, OMH or OPWDD (i.e. persons charged with a sex offense, but determined incapacitated with regard to that offense and committed pursuant to CPL 330.20's and 730's) and sex offenders under the supervision of DOCCS (120 days prior to reaching his or her maximum expiration date).
- The individual must be serving a sentence for a qualifying sex offense, or a designated sexually motivated felony under SOMTA.



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Procedure for Case Review

- The offender's case is referred to the OMH Risk Assessment and Record Review (RARR) for screening by OMH MDR. Case records reviewed include, but are not limited to parole, probation, police, DA and treatment reports.
- "High Risk" cases are referred to CRT for further evaluation.
- CRT considers whether the offender is in need of consideration for Civil Management.
- Cases considered for Civil Management are referred to the Attorney General's Office for review.



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Role of the Attorney General

- OAG, upon case review, makes a decision as to whether to file a petition with the court for Civil Management.
- Once a petition is filed, the OAG is required to make the sex offender's record available to his or her attorney.
- Respondents exhibiting "need", will be represented by a Court appointed attorney.



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Establishment of Probable Cause

- Once a petition is filed, the Court will hold a hearing (without the presence of a jury), to determine if there is probable cause to believe that the individual in question requires Civil Management.
- If probable cause is found, the Respondent is held in custody pending trial.



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What Happens at Trial?

- Unless waived by the Respondent, the offender is entitled to a jury trial.
- The jury consists of 12 jurors.
- OAG is responsible for proving that the Respondent suffers from a Mental Abnormality.
- A Mental Abnormality (MA) is defined as a congenital, or acquired condition, disease, or disorder that affects a person's emotional, cognitive or volitional capacity in a manner that predisposes the individual to the commission of conduct constituting a sex offense and that results in that person having serious difficulty in controlling such conduct.
- The jury must find by unanimous decision that the Respondent suffer from a Mental Abnormality.



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Results of the Trial

- If the verdict is not unanimous, the Court must conduct a second trial.
- At the second trial, if no unanimous decision can be reached by the jury, the case is dismissed.
- If MA is found, the Judge must decide whether the Respondent is so dangerous as to require confinement, or whether release to Strict and Intensive Supervision and Treatment under the jurisdiction of DOCCS is warranted.



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Dangerous Sex Offender Requiring Confinement (DSORC)

- A DSORC will be confined in one of three secure treatment facilities operated by OMH.
- The identified treatment facilities are noted as Central New York Psychiatric Center (CNYPCC), St. Lawrence Psychiatric Center (SLPC) and Manhattan Psychiatric Center (MPC).
- Pursuant to Article 10, all Respondents confined in a secure treatment facility are entitled to an Annual Review of their case. This review is used to determine whether the individual in question continues to be a sex offender requiring confinement.
- At the conclusion of the evaluation if the Respondent is no longer considered to be a DSORC, then OMH can file a petition in the Court for the Respondent's discharge from the secure treatment facility or release to SIST.
- In addition, the Respondent can file a petition with the Court to be released from the secure treatment facility at any time during the course of his or her confinement.



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Strict and Intensive Supervision and Treatment (SIST)

- A New York State County or Supreme Court order can place a Respondent under the supervision of the Department to be monitored on SIST.
- Individuals ordered to SIST may be serving a term of parole, conditional release, or post-release supervision in addition to SIST.
- All Respondents ordered to SIST are subject to the policy, procedures and guidelines which govern parole supervision.



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Releases and Transfers to SIST

- The Parole Officer of record will coordinate with the Sex Offender Management Unit (SOMU) to develop an acceptable residence and transportation plan which will ensure the timely release of a Respondent ordered to SIST.
- The Parole Officer will ensure that the conditions of SIST and approved treatment plan are reviewed and filed within the Respondent's case folder.
- The Parole Officer, unless expressly prohibited in the Court's Order may modify and impose additional conditions of SIST.
- The Parole Officer will conduct the Arrival Report, Initial Interview and review all the conditions of SIST with the Respondent and obtain the Respondent's signature or a re-signed copy of the SIST conditions for filing in the case folder. This must be done on the date of release unless ordered otherwise.



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Releases and Transfers (Continued)

- The Respondent will submit to three photographs or digital images and if required, three sets of fingerprints during his or her arrival report.
- The Parole Officer will review with the Respondent their financial situation and resources, including the obligation to pay supervision fees, if these are not subject to waiver or are not applicable.
- The Parole Officer will administer active GPS monitoring during the initial interview with the Respondent if ordered by the Court.
- The Parole Officer will review with the Respondent the program to which they were released and ascertain any changes in program status.
- The Parole Officer will review the "SIST Community Service Plan" prepared by OMH with the Respondent.
- The Parole Officer will inform the Respondent of the date, time and location of the next scheduled office report and the name and contact information for the assigned PO/SPO or other PO who will take the report.



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Releases and Transfers (Continued)

- The Parole Officer will file any required change of address form with the Sex Offender Registry with the Respondent's signature.
- The Parole Officer will ensure that any required notice of person likely to present themselves as homeless has been filed with the local Department of Social Services.
- The Parole Officer will complete and file Form CMS4C27, "Arrival/Assignment Report", available on F15 print menu of CMS.



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Contract Standards

- Persons ordered into a regimen of SIST are subject to a minimum of six fact-to-face supervision contacts and six collateral contacts a month. The minimum number of contact requirements always must be met, even where the office reporting requirements is modified by DOCCS. It is expected that staff make as many contacts as necessary in addition to the minimum number of contacts to successfully manage the case, both in regard to supervision and treatment issues. Such requirements will continue unless otherwise ordered by the Court or subsequently modified by the Court or DOCCS.
- The minimum of six fact-to-face per month include the following:
 - (1) One office report each week of supervision, unless modified for good cause after a case conference with the SPO and approved by the Bureau Chief (EC). The modification must be documented in CMS. Good cause may include circumstances such as: the Respondent resides in a remote geographic location; travel would cause an undue hardship on the Respondent; the Respondent has a serious medical or physical impairment; or the Respondent currently resides in a residential facility, etc.



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Contract Standards (Continued)

- (2) Two positive home visits.
- (3) Two curfew checks, one of which must be done by home visit. A curfew home visit may also count as a mandated monthly home visit.
- There will be a minimum of six collateral contacts per month to include, but not limited to the following:
 - (1) A case conference with supervisor on a monthly basis.
 - (2) Law enforcement contact (s).
 - (3) Face-to-face contact(s) with the sex offender treatment provider.
 - (4) Employment, vocational, educational program contact (if applicable).
 - (5) Victim contact (if applicable).
 - (6) Face-to-face contact with other service provider(s), (as applicable).
- Substance abuse testing will be conducted as warranted after a case review by the Parole Officer and the Senior Parole Officer.
- Surveillance will occur as per direction of the Senior Parole Officer.
- The Parole Officer will monitor and ensure that the Respondent's is compliant with all Sex Offender Registry Act requirements, if applicable.
- The Parole Officer will be in close, on-going contact with Court ordered and other treatment providers in the case to ensure a coordinated approach to the treatment and management of the case. Staff will employ the use of video-conference technology, where possible, to facilitate this contact.



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Record Keeping

- It is imperative that all Parole Officers comply with supervision standards and detail all case management requirements in CMS. This level of supervision will foster both public safety and assist the Respondent in his or her successful completion of parole.
- For cases all cases on GPS, the Parole Officer must fully record in CMS the responses taken to any alerts received.



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Team Approach to SIST

- SIST utilizes a team approach to the management of the offender in the community.
- Staff rely on a comprehensive containment model that allows for exchange of information between all involved parties to ensure that the Respondent is not manipulating staff or operating in secrecy.
- Parole Officers work closely with the treatment provider (s), OMH SIST liaison and polygraph examiner.
- On occasion, the Court has directed Respondents appear in person, in order to update progress, or to address adverse behavior demonstrated by the subject.



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SIST Violations

- SIST can be revoked by the Court if the Respondent violates a condition of the regimen of SIST and there is a determination that the individual is currently identified as a dangerous sex offender.
- If a SIST only case is taken into custody, OMH will conduct a psychiatric examination of the Respondent. If the Respondent is deemed to be dangerous, CAG will normally file a petition for the subject's confinement.
- All reports, examinations and affidavits must be completed and a petition filed within five calendar days.
- Once a petition is filed, the Court proceeds with a hearing.
- The Court will hear evidence, results of the psychiatric examination by OMH and any independent sources.
- Staff may need to testify at this Court proceeding.



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Court Determination

- The Court may determine that the Respondent should be confined or returned to SIST.
- Respondents may admit to a level of dangerousness and subsequently agree to placement within the confines of a secure treatment facility.



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SIST and Parole Violations

- SIST and Parole cases will generally go through the parole violation process if the behavior is deemed to be a violation in an important respect.
- The OAG will file a petition for civil confinement once the Respondent is taken into custody on a parole warrant.
- Once the Violation of Parole process has concluded, and the Respondent is ready to be released to the community, a psychiatric evaluation of the subject is conducted by OMH. If the Respondent is found to be dangerous, then the case is forwarded to the Court for further consideration.
- A SIST violation can result in civil confinement with no clear release date.
- A Violation of Parole may result in a revoke and restore, revocation with a time assessment, or dismissal of the charges. Regardless of the outcome of the VOP, a violation of SIST can still be entertained.



ATTACHMENT C

Subject: 0.100 Frequency Training Chart	Topic: Training Requirements	Date: 07-26-12	Page: - of 31
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SPECIALIZED TRAINING

Strict and Intensive Supervision and Treatment (SIST) Training

Once a Career for: Community Supervision Peace Officers, Reentry Staff, Counsel, Administrative Law Judges, Parole Revocation Specialists, Deputy Superintendent of Programs, Senior Offender Rehabilitation Coordinators, Offender Rehabilitation Coordinators,
All other staff (optional)

<u>TOPIC</u>	<u>RECOMMENDED LENGTH</u>
Article 10 Overview	1.0 hours

Before, or within three (3) business days of, a Parole Officer assumes a SIST case load and as changes occur;
or, upon becoming a manager of Parole Officers with SIST case loads

<u>TOPIC</u>	<u>RECOMMENDED LENGTH</u>
Transdermal Alcohol Testing	3.0 hours

Upon, or within three (3) business days of, assumption of a SIST case load by a Parole Officer and as changes occur; or, upon becoming a manager of Parole Officers with SIST case loads

<u>TOPIC</u>	<u>RECOMMENDED LENGTH</u>
SIST Supervision	2.5 hours
Electronic Monitoring	7.5 hours

