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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 20, 2011

Mr. Sean M. Byrne
Acting Commissioner
NYS Division of Criminal Justice Services
4 Tower Place
Albany, NY 12203

Re: Report 2011-F-3

Dear Commissioner Byrne:

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, we have followed up on the actions taken by officials of the Division of Criminal Justice Services to implement the recommendations contained in our audit report, *Sex Offender Registry Program* (Report 2006-S-21).

Background, Scope and Objective

The purpose of the Sex Offender Registration Act (Act), which became effective January 21, 1996, is to protect citizens through an early warning system while protecting convicted sex offenders from vigilantism. The Act established the Sex Offender Registry (SOR) and the public disclosure requirements regarding sex offenders. The Act also established certain requirements and responsibilities that must be fulfilled by the Division of Criminal Justice Services (Division).

The Act requires any person who is convicted of sex offenses to register as a sex offender upon release from incarceration or when sentenced to other than incarceration, such as probation or payment of a fine. Registered offenders are classified by the court based on the risk of re-offense. There are three levels: Level 1 (low risk), Level 2 (moderate risk), and Level 3 (high risk). Until a court assigns a risk level, an offender has a risk level of "pending." Offenders are to remain on the SOR from 20 years to life, depending on their risk level. The court also determines whether an offender should be given the designation of sexual predator, sexually violent offender, or predicate sex offender.

The SOR is an electronic database listing all registered sex offenders. As of January 3, 2011, the SOR contained 31,661 offenders. The SOR information is available to the public through a website and toll-free phone number. The Division responds to requests about individuals on the SOR via mail, fax, telephone, email, and compact discs. In addition, citizens can receive alerts via email, text message, fax, or telephone whenever a moderate or high risk offender listed on the SOR moves to, or from, a community of interest to them. The Division also maintains required documents pertaining to sex offenders such as signed annual verification

forms. For fiscal year 2010-11, 14.5 Division full-time equivalent employees worked on the sex offender program.

Our initial audit report, which was issued on December 28, 2007, examined the Division's administration of its responsibilities under the Act. The objective of our follow-up was to assess the extent of implementation as of July 18, 2011, of the 11 recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that Division officials have made some progress in correcting some of the problems we identified. However, additional improvements are needed. Of the 11 recommendations, 4 were implemented, 4 were partially implemented, and 3 were not implemented.

Follow-up Observations

Recommendation 1

Implement procedures to maintain accuracy of driver's license information on the SOR. Use information available in DMV records for this purpose.

Status - Not Implemented

Agency Action - In August 2007, the Division obtained driver license numbers from the Department of Motor Vehicles (DMV) for individuals on the SOR and updated the SOR with this data. According to Division officials, they have not verified new driver license numbers with DMV because they do not have access to the DMV database and have no legal basis for access. However, they did not contact DMV to obtain access. They also stated that continued focus was not warranted after the programming was fixed, and the inaccurate numbers were corrected. In addition, SOR collects out-of-state driver license data that cannot be matched through DMV. We reviewed 52 sex offender files, of which 36 offenders reported they did not have a driver license. We looked up the 36 offenders in DMV's database and found that 11 did have driver licenses; 1 had had a license at the time of registration, but it had subsequently expired; and 2 had surrendered their New York licenses to another state. Because the driver license number is one of the four approved identifiers used for a search requested through the SOR's 800 phone number, it is important that it be complete and accurate. Because the Division provides SOR information to law enforcement agencies and the public, it needs to obtain access to information in DMV's database to ensure the SOR driver license data is accurate. At the closing conference, Division officials told us they will submit a written request to DMV that they be given access to driver license data.

Recommendation 2

Ensure that all information required by the Act is included in each offender's record.

Status - Implemented

Agency Action - The Division considers the following fields as “must enter” for new registrations: offender name, date of birth, sex, race, hair color, eye color, social security number, arrest date, conviction date, residence address, notifying agency, last name of notifying officer, and release date. If a required field is not complete, SOR staff attempt to obtain the missing information from other sources such as prison or probation personnel, court documents, or relevant computer systems. We reviewed 52 sex offender files and found that all the required fields were complete. Some fields such as driver license number, internet access, internet provider, internet identifiers, and aliases can be left blank. The Division assumes that such fields, when left blank, do not apply to the offender. However, as previously stated, DMV records show that 12 of 36 offenders who reported not having a driver license did, in fact, have one.

Recommendation 3

Perform periodic electronic file matches between offenders released from incarceration and the SOR to ensure that all offenders are registered.

Status - Implemented

Agency Action - The Division receives weekly electronic reports from the Department of Corrections and Community Supervision (DOCCS) identifying the offenders that have been or will soon be released. DOCCS ensures that incarcerated offenders meet parole conditions that require them to be registered with the SOR prior to their release. We verified that the 25 offenders being released, according to the DOCCS report received on February 9, 2011, were listed on the SOR. Division officials told us local probation departments routinely verify that their probationers are registered with the SOR as required under the law. Local jails submit the registrations for offenders being released, but do not report on releases to the Division similar to DOCCS. In addition, the Division periodically matches its computerized criminal history data and the SOR to determine if persons convicted of applicable sex offenses have registered as required. The most recent searches were done in January and October of 2010. The Division reported they referred to United States Marshalls for investigation 151 offenders who had not registered properly. Division officials told us another match was underway as of July 18, 2011.

Recommendation 4

Update the disaster recovery plan and document test results.

Status - Partially Implemented

Agency Action - The Division is in the midst of a project that will allow the Sex Offender Management System to be switched over to a replicated system at an alternate site in the event the primary system goes down. This phase of the project should be completed in fall 2011. The Division has backup tapes and can take steps for system recovery, but it does not have a formal disaster recovery plan or an alternate site to use in the event of a

regional disaster. They told us they do not have the funds for a disaster recovery plan and await guidance from the Office for Technology on their strategic approach for disaster recovery.

Recommendation 5

Develop and implement a strategy to work with local law enforcement agencies to determine the address of offenders who do not submit annual verification forms.

Status - Implemented

Agency Action - When offenders do not return their annual verification forms, the Division notifies local law enforcement agencies through the e-Justice system for the county where they last registered. E-Justice is a secure website for law enforcement agencies to access computerized information, including the SOR. Local law enforcement officials periodically check e-Justice and determine what action to take when offenders have not returned their annual verification forms. They may learn that the address was confirmed by alternative means, the offender is located at a new address, or the offender's whereabouts is unknown. When a law enforcement agency with jurisdiction cannot locate an offender, it contacts the appropriate District Attorney's Office to obtain an arrest warrant. Division reports show convictions for failure to return the annual verification form increased 15 percent from 474 in 2006 to 546 in 2009.

Recommendation 6

Disclose on the SOR and on the website cases where offenders' addresses have not been verified so that users are not misled. Such disclosure should indicate the time period for which the verification has not been obtained.

Status - Partially Implemented

Agency Action - Between late 2006 and June 2010, the SOR showed the dates an offender's address was verified. In June 2010, the Division completed several enhancements to the SOR, but the ability to show the verification dates on the SOR was lost and not available during our follow-up. After the Sex Offender Management System phase II project is completed, the Division expects to schedule a change to add this information back into the system.

Recommendation 7

Evaluate the use of taping calls as a quality assurance measure.

Status - Partially Implemented

Agency Action - Division officials stated they evaluated the use of taping calls, and found it was too expensive. The Division did not document and maintain its analyses. We noted that a Division internal audit also made this recommendation. Division officials told us they are awaiting the results of a State study of the potential for a single call center system

with capabilities that include call taping.

Recommendation 8

Document training activities for telephone operators.

Status - Partially Implemented

Agency Action - The on-the-job training curriculum for telephone operators consists of one hour with a supervisor, a half-day listening to a mentor answer calls, and two hours answering calls with a mentor. However, the Division did not document the training received by each operator until March 2011 during our follow-up review. At that time, the Division recorded, in each operator's personnel record, the month and year he or she received on-the-job training. In addition, operators process search requests for about one month before they start answering calls.

Recommendation 9

Expand efforts to increase public awareness about the provisions of the Act.

Status - Implemented

Agency Action - From June 2008 through December 2010, the Office of Sex Offender Management reported that it hosted more than 30 sex offender management training sessions that targeted law enforcement, treatment professionals, and community and school leaders throughout the State. We reviewed training documents such as announcements, curriculum content, and sign-in sheets for several sessions. The Division also produced two public education videos about sex offenders. One video, aired on public television statewide, included information about sex offenders and the SOR. Another video instructed parents in how to protect their children from sexual predators; it is being distributed to public libraries across the State. The Division also enhanced its website to educate the public and raise awareness of the Act.

Recommendation 10

Disclose the offender's responsibility to pay the \$10 fee for each change of address on the change of address form.

Status - Not Implemented

Agency Action - The Act requires that a \$10 fee be submitted by the offender when registering an address change. The Act also states that the change of address must be accepted whether the fee is paid or not. In response to our initial final report, Division officials stated their concern that disclosing the fee on the form deters certain offenders from updating their addresses or causes them to delay sending the form to the Division. They also responded that they would propose legislation to eliminate the fee. Division officials told us that, in November 2007, they submitted a recommendation that the fee be discontinued but it was never submitted as a bill. At the time of our follow-up, Division

officials told us their main concern is that offenders notify them of address changes so that the accuracy of the SOR can be maintained. Therefore, the Division decided not to disclose the \$10 fee on the form. During the year ended March 31, 2011, one \$10 fee was collected. Division officials told us they plan to re-submit a proposal to delete the fee requirement from the Act.

Recommendation 11

Document and monitor camp operator inquiries and results.

Status - Not Implemented

Agency Action - The Division does not document and monitor the camp operator inquiries separately from other inquiries. The same procedure is followed for all inquiries. The Division has kept all telephone and CD requests since the SOR's inception. All faxed requests are destroyed after approximately one week. However, the Division could not identify camp operator inquiries and the results as a group. Division officials stated that they can determine whether a search was done by using an employee name and the camp operator name.

Major contributors to this report were Steve Goss, Brandon Ogden, and Bruce Brimmer.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Division for the courtesies and cooperation extended to our auditors during this follow-up review.

Very truly yours,

(original signed)

Carmen Maldonado
Audit Director

cc. T. Lukacs, Division of the Budget