

New York State Sex Offender Registry Annual Report 2013

This report is submitted to the Governor and the Legislature pursuant to Correction Law §168-s.

OVERVIEW

SEX OFFENDER REGISTRATION ACT

On July 25, 1995, Gov. George E. Pataki signed into law Chapter 192 of the Laws of 1995, the Sex Offender Registration Act (SORA), also known as Megan's Law. This law is set forth in Correction Law Article 6-C and provides for the registration of sex offenders in New York State and notification to the public about certain sex offenders living in the community. SORA took effect on Jan. 21, 1996.

While modeled upon the provisions of the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, (Wetterling), SORA recognizes concerns unique to New York State. SORA envisions a multi-agency, multi-disciplinary registration and community notification process for sex offenders.

SORA provides for three forms of sex offender information dissemination.

- The local law enforcement agency where an offender currently resides may, if it chooses, release information on sex offenders residing in the community to entities with vulnerable populations (Correction Law §168-1). While the exact address of Level 2 and 3 offenders can be provided by local law enforcement, the law provides that only an approximate address based upon the offender's zip code can be disclosed for Level 1 offenders. Notably, a federal court injunction currently prohibits the release of information by police agencies on sex offenders who committed their crime prior to Jan. 21, 1996, and who were assigned a risk level prior to Jan. 1, 2000.
- A person can call 800-262-3257 to determine if a named individual is on the Registry. In order to obtain information, a caller must have the name of the offender and one of the following: an exact address, a complete date of birth, a driver's license number or a Social Security number.
- Access to the *Subdirectory of Level 2 and 3 Sex Offenders* is available online at: <http://www.criminaljustice.ny.gov/nsor>.

SEX OFFENDER MANAGEMENT and TREATMENT ACT

In April 2007, New York State enacted the Sex Offender Management and Treatment Act (SOMTA), creating a new Office of Sex Offender Management (OSOM) within the New York State Division of Criminal Justice Services (DCJS). OSOM has a broad mandate, including: leading interagency initiatives to improve sex offender management; advising the Governor and Legislature on sex offender issues; training professionals on the best ways to supervise, treat and manage sex offenders; conducting community outreach and education; and leading public awareness campaigns to prevent sex crimes. In addition, OSOM oversees the Sex Offender Registry.

IMPLEMENTATION OF SORA

DCJS is responsible for maintaining a file of individuals required to register pursuant to SORA. To that end, DCJS collects and maintains information on sex offenders for the purpose of notifying law enforcement agencies and the public of the whereabouts of certain sex offenders. Pursuant to Correction Law §168-b, DCJS is required to:

- Develop and maintain a file of individuals required to register pursuant to the provisions of SORA.
- Provide notification to law enforcement agencies regarding sex offender information, such as name, address, risk level, physical description, crime and release information, and address changes.
- Maintain the *Subdirectory of Level 2 and 3 Sex Offenders* on the DCJS website: www.criminaljustice.ny.gov.
- Operate a toll-free telephone number that the public can call to inquire whether a certain person is on the Registry.
- Establish a public awareness campaign.
- Upon the request of any authorized Internet entity, release Internet identifiers that would enable the Internet entity to prescreen or remove sex offenders from its services.

Develop and Maintain a Registry

DCJS maintains its Registry on a secure website server. The specific information collected includes the offender's name, address, photograph, physical characteristics, conviction/sentence information, crime description, Internet account and screen name information and motor vehicle data. When SORA became law, DCJS convened a committee of criminal justice representatives to design the forms necessary for implementation of the Act. The registration form and continuation/supplemental forms, accompanied by a photograph of the sex offender, are used by the state Department of Corrections and Community Supervision (DOCCS), courts and local jails to register sex offenders. The change of address form is used by the sex offender, law enforcement agencies, probation and community supervision to document an address change.

The Sex Offender Registration form also advises the sex offender of additional requirements of the law including:

- The obligation to annually verify his or her address by returning the non-forwardable address verification letter to DCJS within 10 days of receipt,
- The obligation to provide DCJS with notification within 10 days of any change in address, change in internet accounts, internet identifiers, or change in status of enrollment, attendance, employment or residence at any institution of higher education, and
- The obligation of Level 3 offenders or offenders of any risk level designated as sexual predators to personally verify their addresses every 90 days with the local law enforcement agency having jurisdiction over those residences. Law enforcement may take a new photograph of the offender if it appears that the offender's appearance has changed since the most recent photograph was submitted to DCJS.

Provide Notification to Law Enforcement Agencies

The Registry also is required to notify law enforcement agencies of offenders living in their jurisdictions.

Information for Law Enforcement

The complete Sex Offender Registry is a resource available through the eJustice NY Integrated Justice Portal (IJ Portal), a secure website for law enforcement use. This database includes a complete sex offender address history including last reported address, a history of the offender's compliance with annual verification requirements and current status information. The complete Registry is available to all law enforcement agencies, district attorney's offices, local parole offices, county probation departments, and criminal and family courts, ensuring that all agencies that monitor and supervise sex offenders have the most up-to-date information available. In 2009, legislation was enacted that required family courts to conduct a check of the Registry whenever orders of custody or visitation are issued or modified.

Submitting Updated Sex Offender Photos

Legislation that became effective in April 2006, requires Level 3 sex offender registrants to submit an updated photo once a year, and Level 1 and 2 offenders to submit a photo every third year from the date of registration. Offenders must report to their local police departments to have the photos taken. In November 2006, a report was made available via eJusticeNY to assist the local departments with monitoring offenders who owe delinquent photos. Having updated photos as part of the Sex Offender Registry helps ensure that sex offenders can be recognized by both law enforcement and the public. Additionally, since November 7, 2013, the Registry can now post multiple photos of an offender to both the full Registry accessible only to law enforcement and the subdirectory of the Registry on the DCJS website www.criminaljustice.ny.gov. Registry staff compares and updates offender photos received electronically via LiveScan, the IJ Portal and e-mail. Hard copy photos are

received from NYS DOCCS, out of state agencies and offenders. These photos are scanned, compared and uploaded to the Registry. A sex offender is subject to arrest for failure to provide a photo as required by law.

Community Notification

In accordance with Correction Law §168-d(3) and 168-1, each offender is assigned a particular risk level: Level 1 (low risk of repeat offense), Level 2 (moderate risk of repeat offense) or Level 3 (high risk of repeat offense and there exists a threat to public safety). The amount and type of information that is released about an offender is depends upon the risk level of that offender.

The first type of community notification is referred to as "local law enforcement notification" (Correction Law §168-1(6)). After registration, a local law enforcement agency is notified by DCJS whenever a sex offender moves into or out of its community. In accordance with SORA, the local law enforcement agency may engage in community notification at its discretion regarding sex offenders, providing certain information to any "entity with a vulnerable population" (Correction Law §168-1). An approximate address based on zip code may be provided for a Level 1 offender and an exact address can be provided for Level 2 and 3 offenders. For all offenders, background information, including the offender's crime of conviction, modus of operation, type of victim targeted, the name and address of any institution of higher education at which the offender is enrolled, attending, employed by or resides at, and the description of special conditions imposed on the offender to any entity with a vulnerable population related to the nature of the offense committed by such sex offender may be disclosed or further disseminated at a law enforcement agency's discretion. The address of the place of employment of Level 2 and 3 offenders only may be provided. (See, however, discussion on Page 6 regarding the impact of the most recent federal court injunction).

Information about certain offenders is also provided through the *Subdirectory of Level 2 and 3 Sex Offenders* which is posted to the DCJS website: www.criminaljustice.ny.gov/nsor

Maintain a Subdirectory of Level 2 and 3 Sex Offenders on the Internet

DCJS publishes the *Subdirectory of Level 2 and 3 Sex Offenders* on its agency website: www.criminaljustice.ny.gov/nsor. Information on the website includes the name, address, and a photograph(s) of the offender along with the offender's age, distinctive markings, crime of conviction, modus of operation, type of victim targeted and special conditions, if available. The sex offenders are searchable by last name, county or zip code.

Operate a toll-free telephone number

SORA obligates DCJS to establish and operate a toll-free telephone number

(800-262-3257) that the public can call to inquire whether a named individual is listed on the Registry. (See 2013 Call Report on page 8). SORA requires that callers provide their name, address and telephone number. In order to request a search of the Registry, callers must provide the first and last name of the person to be searched and one of the following identifiers: an exact address, date of birth, Social Security number or driver's license number.

If an offender is listed, the operator will tell the caller that it appears that the identified individual is on the Registry, and will release appropriate information based on the offender's risk level. Callers inquiring about level 2 or level 3 offenders also will be directed to the Registry subdirectory on the DCJS website for more information. For offenders with a pending risk level, the caller will be advised that the offender is registered. No additional information will be released. For Level 1, 2 and 3 offenders, the caller will receive background information including the offender's crime of conviction, modus of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides, and the description of special conditions imposed on the offender by the court or parole or probation authorities. See, however Page 6 regarding the impact of the most recent Federal Court injunction. For offenders determined to pose a low risk (Level 1), the caller will only receive an approximate address based on zip code. For offenders designated as Level 2 or Level 3, the offender's exact address is provided.

Legislation enacted in 2005 requires children's camps to conduct searches on all prospective employees and volunteers. Since 2008, the Registry has accepted computerized files for comparison against the Registry. In addition to increasing efficiency, the acceptance of electronic files contributed to a dramatic increase in the number of searches conducted.

Public Awareness Campaign

Information about SORA, frequently asked questions about the law and access to information about Level 2 and Level 3 offenders is available 24 hours a day on the DCJS website: www.criminaljustice.ny.gov/nsor. The public may also access the public Sex Offender Registry via Facebook at www.facebook.com/NYSPublicSafety.

Electronic Security and Targeting of Online Predators – eSTOP

The Electronic Security and Targeting of Online Predators Act (eStop), effective since April 28, 2008, requires sex offenders to provide DCJS with all of their Internet accounts, Internet service providers and any e-mail addresses and screen names used for chat, instant messaging, social networking, etc., on sites that permit access by children under 18 years old. Any change in Internet accounts, e-mail addresses or screen names must be reported to DCJS no later than 10 days after such change.

RISK ASSESSMENT GUIDELINES AND BOARD OF EXAMINERS OF SEX OFFENDERS

Every registered sex offender is required to have a risk level. Correction Law §168-1 created the Board of Examiners of Sex Offenders (Board), consisting of five members appointed

by the Governor. SORA requires the Board to develop guidelines and procedures to assess the risk of a repeat offense by sex offenders and the threat they pose to public safety.

The guidelines were developed with the assistance of a consultant with expertise in the field of sex offender research and risk assessment and with assistance from a group of experts with diverse experience in dealing with sex offenders. With their aid, the Board sought to establish guidelines that would bring academic knowledge and practical acumen to the difficult task of predicting whether a person convicted of a sex crime is likely to reoffend. (*Risk Assessment Guideline and Commentary*, November 1997, p. 1-Commentary).

Applying the guidelines, the Board is responsible for making risk assessment recommendations to the sentencing court for offenders who were sentenced to state incarceration or definite local jail terms. The Board also makes registration determinations and risk assessment recommendations for individuals who were convicted in other jurisdictions and live in or move to New York State. Other jurisdictions include other states or countries and federal and military courts. Additionally, the Board provides a sentencing court with an updated report on a sex offender who files a petition for relief or modification pursuant to Correction Law §168-o. Risk level is ultimately assigned, after a hearing, by a judge.

SEX OFFENDER REGISTRY TRAINING

The Office of Sex Offender Management (OSOM) staff provides training to criminal justice professionals. Trainings provide valuable information for those monitoring, supervising or working with sex offenders within the criminal justice system. Recent training topics include an overview of the Sex Offender Registration Act (SORA) highlighting offenders' obligations under SORA, how to charge an offense under SORA, what to do when encountering out of state sex offenders new to New York State.

FEDERAL COURT INJUNCTION

SORA took effect on Jan. 21, 1996, and applied to all individuals who were convicted of qualifying offenses and who had not completed serving their sentence on SORA's effective date. As a consequence, New York State has been subject to litigation on the retroactive application of SORA.

Shortly after the law went into effect, it was challenged on the ground that it violated the Ex Post Facto Clause of the United States Constitution since it applied to offenders who had committed their crime prior to the effective date of SORA and, on due process and statutory grounds with regard to the method by which offenders received a risk level determination. The United States District Court for the Southern District of New York held that the notification provisions of SORA violated the Ex Post Facto Clause and enjoined community notification for any offenders who had committed their crime prior to the Jan. 21, 1996, effective date. Doe v. Pataki, 940 F.Supp. 603 (S.D.N.Y. 1996). The Second Circuit reversed the District Court decision regarding notification and held that since SORA did not constitute punishment, it did not violate the Ex Post Facto Clause. Doe v. Pataki, 120 F.3d 1263 (2d Cir. 1997). On remand, the District Court granted plaintiffs' motion to add an additional class of plaintiffs and held that the

method by which offenders were assigned a risk level violated due process. Doe v. Pataki, 3 F.Supp.2d 456 (S.D.N.Y. 1998). The District Court granted a permanent injunction prohibiting community notification for offenders who were on parole or probation on Jan.21, 1996, and who received a risk level determination from the Division of Parole or the Division of Probation and Correctional Alternatives. In addition, the District Court also granted a preliminary injunction prohibiting community notification for offenders who committed their crime prior to Jan. 21, 1996, and who had their risk level determination made by the sentencing court. Since that time, SORA has been amended, effective Jan. 1, 2000, to provide for the requisite due process hearing. Therefore, at the present time there can be no community notification for offenders who committed their crime prior to Jan. 21, 1996, who were risk-leveled prior to Jan. 1, 2000, including the offenders who were risk-leveled by the State Division of Parole or the State Division of Probation and Correctional Alternatives.

The *Subdirectory*, which was first published in December 1996, includes only those individuals not covered by the injunction. Further, law enforcement agencies are only authorized to provide information to their communities on sex offenders not covered by the injunction.

NATIONAL SEX OFFENDER REGISTRY PARTICIPATION

In August 1996, the Federal Bureau of Investigation (FBI) was directed to establish a National Sex Offender Registry (NSOR). “The achievement of this goal was dependant on a coordinated effort involving the FBI, the National Law Enforcement Telecommunications System, and the States.” *National Sex Offender Registry Assistance Program, FY 1998 Program Announcement*, US DOJ, BJS, p.1. NSOR includes detailed registration information and a photograph and fingerprint image of all sex offenders registered throughout the nation. The information from NSOR is available to law enforcement agencies nationwide and assists them in tracking sex offenders who are registered in other states or traveling throughout the nation.

When New York State implemented its Sex Offender Registry system on January 21, 1996, it met the requirements and time constraints of New York State legislation. NSOR required information from New York State’s Registry to be transmitted to the FBI. Initially, the New York State system did not provide the capability for transmission of New York State Sex Offender Registry data and photographs to the national system.

In 1998, DCJS was awarded a \$1.3 million grant from the federal Department of Justice to enable the New York State Registry to participate in the National Sex Offender Registry Program. The funding was used to redesign the Registry to allow for interface with the National Sex Offender Registry. This goal was accomplished in November 2002. Currently, information on all sex offenders registered in New York State is transmitted to NSOR.

2013 LEGISLATIVE AMENDMENTS TO SORA (Correction Law § 168)

There were no legislative amendments in 2013.

2013 CALL REPORT

In addition to the information available on the public website, citizens, organizations and employers can call the 24-hour, toll-free number to inquire whether a specific person (or list of persons) is listed on the Registry. These phone inquiries require SOR staff to conduct a manual search of the SOR database. The Registry also provides a dedicated line to assist law enforcement from New York State and out of state agencies with inquiries related to the Registry. Additionally, a main office telephone line provides access to the Registry to assist the general public and offenders with Registry questions.

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| Total SOR calls | 46,811 |
| 800 line | 38,703 |
| Law enforcement line | 2,886 |
| Main line | 5,222 |