



# Report of the Vermont State Auditor

July 14, 2014

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## SEX OFFENDER REGISTRY

### Questionable Reliability Warrants Additional Improvements

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**Douglas R. Hoffer**  
**Vermont State Auditor**  
**Rpt. No. 14-03**

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**Douglas R. Hoffer**  
**STATE AUDITOR**



**STATE OF VERMONT**  
**OFFICE OF THE STATE AUDITOR**

July 14, 2014

Addressees (see next page)

Dear Colleagues,

Act 58 (2009) made the posting of addresses of sex offenders on the Internet Sex Offender Registry (SOR) contingent on a favorable audit. Our 2010 SOR audit found a sizeable number of errors as well as control weaknesses. We did not opine in the 2010 report (and will not in this report) as to whether the audit was favorable because that is a policy decision. Nevertheless, thus far addresses have not been posted. The objectives of this audit were to 1) assess the extent to which the data in the State's SOR is reliable and current, and 2) determine the extent to which the recommendations from the 2010 SOR audit were implemented. We determined that we could not assess the extent to which data in the SOR was kept current because of errors in certain date fields.

The audit found a considerable number of errors in offender records, which calls into question the reliability of the State's SOR. Although as of mid-May 2014, the Vermont Criminal Information Center (VCIC) had fixed almost all errors found during the audit, some of the underlying causes of the errors found in this audit were similar to those found in the prior audit.

As for the 2010 recommendations, both VCIC and DOC have taken actions to improve their SOR processes since our last audit. A major improvement by VCIC was the implementation of the new information technology system, called OffenderWatch<sup>®</sup>. However, one important recommendation that was not fully implemented is tracking the treatment status of sex offenders. Specifically, 13 V.S.A. §5411a(a)(5)(B) requires unsupervised sex offenders who have not completed treatment to submit proof to VCIC of continuing treatment every three months. VCIC has not established a process to track the treatment progress of offenders who are no longer under DOC supervision. Accordingly, VCIC is not in a position to know whether offenders are following the statutory requirements.

In summary, three recommendations were fully implemented; six were partially implemented; and three others were not implemented.

In 2010, we called upon the Departments of Public Safety and Corrections, and the Court Administrator's Office to form a working group to address the issues raised in the audit. We recommend that the parties reconvene the working group to resolve the remaining problems.

I would like to thank the management and staff at the Department of Public Safety, especially those at the Vermont Criminal Information Center, the Department of Corrections, and the Office of the Court Administrator for their cooperation and professionalism during the course of the audit.

Sincerely,

A handwritten signature in black ink that reads "DOUG HOFFER". The letters are in all caps and have a slightly cursive, informal style.

Doug Hoffer  
Vermont State Auditor

## **ADDRESSEES**

The Honorable Shap Smith  
Speaker of the House of Representatives

The Honorable John Campbell  
President Pro Tempore of the Senate

The Honorable Richard Sears  
Chair  
Committee on Judiciary  
Vermont Senate

The Honorable William Lippert  
Chair  
Committee on Judiciary  
Vermont House of Representatives

The Honorable Alice Emmons  
Chair  
Committee on Corrections and Institutions  
Vermont House of Representatives  
and Chair  
Joint Committee on Corrections Oversight

The Honorable Peter Shumlin  
Governor

Mr. Douglas Racine  
Secretary  
Agency of Human Services

Mr. Keith Flynn  
Commissioner  
Department of Public Safety

Mr. Andrew Pallito  
Commissioner  
Department of Corrections

Ms. Patricia Gabel  
Court Administrator  
Office of the Court Administrator

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## Introduction

Offenders who commit sex crimes evoke concern and fear in communities. Highly publicized crimes committed by individuals with prior sex crime convictions led to an expansion of federal and state laws to establish and/or enhance sex offender registries. These registries were originally designed to help law enforcement investigate new crimes, but have evolved to include public websites at the national level and all 50 states. These public registries are a resource families can use to identify sex offenders in their communities.

Vermont's Sex Offender Registry (SOR) is managed by the Department of Public Safety's (DPS) Vermont Criminal Information Center (VCIC). While managed by VCIC, the sources of information in the SOR are largely from the Department of Corrections (DOC), the Courts, and the offenders.

Information on offenders who meet specific statutory criteria is posted on a website (the Internet SOR). Act 58 (2009) added a requirement to include addresses of certain sex offenders to the Internet SOR, contingent on a favorable audit conducted by the State Auditor's Office.<sup>1</sup> In June 2010, we issued an audit report<sup>2</sup> that identified a sizeable number of errors and control weaknesses related to the SOR and questioned its reliability. Thus far, addresses have not been posted.

Since VCIC implemented a new system (OffenderWatch<sup>®</sup>) in February 2013, we concluded that the time was suitable to relook at the reliability of the SOR. The objectives of our current audit were to 1) assess the extent to which the data in the State's SOR is reliable and current, and 2) determine the extent to which the recommendations from the 2010 SOR audit were implemented. With respect to our first objective, errors in certain date fields in the system led us to determine that we could not assess the extent to which data in the SOR was kept current. In addition, during the course of the audit certain process matters came to our attention and we are reporting on them in the section titled "Other Process Matters."

Appendix I contains detail on our scope and methodology. Appendix II contains a list of abbreviations used in this report. Appendix III explains our decision not to assess the currency of the data in the SOR.

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<sup>1</sup> Our role is to conduct the audit and report on its results, but policy decisions, such as what constitutes a favorable audit in the context of Act 58, is the role of the Legislature and the Administration.

<sup>2</sup> *Sex Offender Registry: Reliability Could Be Significantly Improved* (Rpt. #10-05, June 25, 2010).



# Highlights: Report of the Vermont State Auditor

## Sex Offender Registry: Questionable Reliability

### Warrants Additional Improvements

(July 14, 2014, Rpt. No. 14-03)

<b>Why We Did This Audit</b>	Act 58 (2009) made the posting of addresses of sex offenders on the Internet SOR contingent on a favorable audit. Our 2010 SOR audit found a sizeable number of errors as well as control weaknesses. The objectives of this audit were to 1) assess the extent to which the data in the State's SOR is reliable and current, and 2) determine the extent to which the recommendations from the 2010 SOR audit were implemented. We determined that we could not assess the extent to which data in the SOR was kept current because of errors in certain date fields.
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<b>Objective 1 Finding</b>	We found 253 offender records in the SOR with critical errors (11 percent of the total number of records as of December 31, 2013). Although there are no national reliability standards for sex offender registries, these results call into question the reliability of the State's SOR. We defined critical errors as those that have resulted, or would have resulted if not corrected, in a sex offender 1) being incorrectly omitted, added, retained or deleted from the SOR or 2) being incorrectly omitted, added, retained or deleted from the Internet SOR (same definition as used in the 2010 report). See Table 1 for the number and types of critical errors, which were based on a comparison of offenders' SOR records against statutory requirements and source materials (as of mid-May 2014, VCIC had fixed almost all errors).
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**Table 1: Summary of Critical Errors as of December 31, 2013**

Category of Critical Error	Explanation	Total <sup>a</sup>
Registration error	In pending (not registered) status, but located in a community	8
	Did not meet criteria for registration	2
	Offender deceased	1
Length of registration error	Flagged as lifetime registrant, but did not meet criteria	20
	Met criteria for lifetime registration, but not flagged as lifetime	14
	End-of-registration date beyond 10 years of end-of-sentence date	21
	End-of-registration date shorter than statutorily required	120
	Other	4
Internet SOR posting error	Posted to the Internet SOR, but did not meet criteria for posting	18
	Not posted to Internet SOR, but met criteria for posting	53

<sup>a</sup> This column does not add to 253 because eight offender records had errors in multiple categories.

Twelve of these critical errors were found as part of our analysis of a statistically valid random sample of 58 community-based offenders, in which we traced certain data elements to supporting material. Some data elements, such as offender identification data, had few or no errors. However, data elements that can affect the length of time a registrant could be on the registry and what data that was posted or could be posted to the Internet SOR had a much higher error rate.

Both VCIC and DOC have taken actions to improve their SOR processes since our last audit. Nevertheless, some of the underlying causes of the errors found in this audit were similar to those found in the prior audit, namely, 1) processes that remain largely manual, 2) VCIC procedures that were incomplete or lacked detail, and 3) data provided by DOC that was inaccurate or untimely.

# Highlights (continued)

<p><b>Objective 2 Finding</b></p>	<p>VCIC, DOC, and the Courts have taken actions to implement the recommendations of the first SOR audit, but as Table 2 demonstrates, progress has been mixed.</p> <p><b>Table 2: Summary of the Implementation of the Prior Audit's Recommendations</b></p> <table border="1" data-bbox="480 506 1464 835"> <thead> <tr> <th data-bbox="480 506 691 569">Status</th> <th data-bbox="691 506 1239 569">Definition</th> <th data-bbox="1239 506 1464 569">Number of Recommendations</th> </tr> </thead> <tbody> <tr> <td data-bbox="480 569 691 636">Fully implemented</td> <td data-bbox="691 569 1239 636">The recommendation had been adopted substantially or in its entirety</td> <td data-bbox="1239 569 1464 636">3</td> </tr> <tr> <td data-bbox="480 636 691 732">Partially implemented</td> <td data-bbox="691 636 1239 732">Part of the recommendation had been implemented, but the intent of the recommendation had not been fully satisfied</td> <td data-bbox="1239 636 1464 732">6</td> </tr> <tr> <td data-bbox="480 732 691 768">Not implemented</td> <td data-bbox="691 732 1239 768">No part of the recommendation was implemented</td> <td data-bbox="1239 732 1464 768">3</td> </tr> <tr> <td data-bbox="480 768 691 835">Not yet applicable</td> <td data-bbox="691 768 1239 835">Implementation of the recommendation contingent upon circumstances not yet applicable</td> <td data-bbox="1239 768 1464 835">1</td> </tr> </tbody> </table> <p>A major improvement undertaken by VCIC was the implementation of the new information technology system, called OffenderWatch<sup>®</sup>, which provided additional features, such as edits, drop down menus, and an audit trail. One recommendation that was not implemented that remains important is tracking of the treatment status of sex offenders. Specifically, 13 V.S.A. §541 1a(a)(5)(B) requires unsupervised sex offenders who have not completed treatment to submit proof to VCIC of continuing treatment every three months. VCIC has not established a process to track the treatment progress of offenders who are no longer under DOC supervision. Accordingly, VCIC is not in a position to know whether these offenders are compliant or noncompliant with sex offender treatment.</p>	Status	Definition	Number of Recommendations	Fully implemented	The recommendation had been adopted substantially or in its entirety	3	Partially implemented	Part of the recommendation had been implemented, but the intent of the recommendation had not been fully satisfied	6	Not implemented	No part of the recommendation was implemented	3	Not yet applicable	Implementation of the recommendation contingent upon circumstances not yet applicable	1
Status	Definition	Number of Recommendations														
Fully implemented	The recommendation had been adopted substantially or in its entirety	3														
Partially implemented	Part of the recommendation had been implemented, but the intent of the recommendation had not been fully satisfied	6														
Not implemented	No part of the recommendation was implemented	3														
Not yet applicable	Implementation of the recommendation contingent upon circumstances not yet applicable	1														
<p><b>Other Process Matters</b></p>	<p>Several process matters came to our attention during the course of the audit, in particular, a process concerning verification of offenders' addresses. 13 V.S.A. §5407(g) requires VCIC to verify offenders' residential addresses annually by mailing a nonforwardable address verification form, which offenders are required to sign and return. Further, in instances when a confirmation letter is not returned, VCIC is to follow up with an affidavit to the applicable state's attorney attesting to the offender's noncompliance. Offenders' returns of the address verification forms are recorded in OffenderWatch<sup>®</sup>. We found that the annual address verification process was flawed in 2013 because 1) VCIC did not fully understand how the OffenderWatch<sup>®</sup> annual address verification function worked and 2) there was a system anomaly, which VCIC reported was subsequently fixed. As a result, not all offenders underwent and/or completed the 2013 annual address verification process. In addition, there were at least 49 cases when VCIC did not file affidavits with the applicable state's attorney regarding offenders that did not complete the annual address verification process. VCIC officials attributed this, in part, to not having had the time to perform this function.</p>															
<p><b>What We Recommend</b></p>	<p>We make a variety of recommendations, including that VCIC and DOC fully implement our prior recommendations and that VCIC develop a process to identify and track the treatment progress of offenders no longer under DOC supervision.</p>															

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## Background

The statute that governs the SOR (13 V.S.A., Chapter 167, Sub-Chapter 3) lays out criteria under which offenders are required to register and the parameters of that registration, such as the length of the registration and whether or not an offender's record should be posted to the Internet SOR (see Appendix IV). The statute also specifies the information to be included on the Internet SOR. At this time, the statute prohibits offender addresses from being posted to the SOR website (although the town and county of residence are included).

VCIC uses an automated system to implement these statutory requirements. Subsequent to our last audit, VCIC implemented a new system, OffenderWatch<sup>®</sup>, which is a commercial, off-the-shelf application operated by WATCH Systems, LLC. OffenderWatch<sup>®</sup> is used statewide by 14 other states.

The data in OffenderWatch<sup>®</sup> is generally submitted to VCIC by the Courts, DOC, and the offenders themselves. Appendix V graphically summarizes the source and type of data provided to the SOR. Conviction and sentencing data by the Courts is electronically transmitted to VCIC's criminal history system every week. The records of sex offenders are later electronically transferred from this system to OffenderWatch<sup>®</sup> upon manual acceptance of the record by the SOR Coordinator. DOC and offenders submit various required forms and updates (e.g., registration forms, address changes), which are manually entered into OffenderWatch<sup>®</sup> by the SOR Coordinator or another VCIC staff member that provides part-time data entry assistance.

As of December 31, 2013 sex offender records in the SOR were listed in one of five categories, all but one of which indicated that an offender was registered. The following table defines each status category and summarizes the number of offenders contained in each category as of December 31, 2013.

**Table 3: Number of Offenders in Each SOR Status Category, as of December 31, 2013<sup>a</sup>**

Status	Definition	Total
<b>Offenders Considered to be Registered</b>		
Active	Sex offenders (i.e., those for whom a signed Registration Form was submitted to VCIC) who are located in a Vermont community. This status does not include offenders who have met their length of registration requirement or whose convictions have been expunged.	1,416
Inactive, Out-Of-State	Sex offenders, with either a Vermont or out of state conviction, who have been previously registered in VT, currently reside outside of the state and have no ties to Vermont (i.e., school or employment).	391
Incarcerated	Sex offenders who are incarcerated (whether on a sex offense or non-sex offense conviction).	247
Expired Registration	This is a transitional status. Once OffenderWatch <sup>®</sup> issues a prompt that the registration period of an offender has ended, the SOR Coordinator reviews the record and if applicable, changes the status to “expired registration” and then deletes it from the SOR.	1 <sup>b</sup>
<b>Number of registered sex offenders</b>		<b>2,055</b>
<b>Offenders That Are Not Registered</b>		
Pending	Convicted sex offenders for whom VCIC has received conviction and/or sentencing information from the court, but for whom a signed Registration Form generally has not been submitted to VCIC. <sup>c</sup>	285
<b>Total number of records in SOR system</b>		<b>2,340</b>

<sup>a</sup> In 2014, VCIC added a “deported” status.

<sup>b</sup> This record had been flagged as being eligible to be expired, but had not yet been deleted.

<sup>c</sup> In some cases DOC submits a registration form to VCIC for an offender that has just started his or her period of incarceration. In such cases, VCIC keeps the offender in pending status until release from confinement.

## Objective 1: SOR Reliability Is Questionable

We found that 253 offender records (11 percent of the total number of records in the SOR) contained critical errors. Even though we did not find any national standards for the reliability of the sex offender registries, these results call into question the reliability of the Vermont SOR. Critical errors are those with the most serious consequences, which we defined as those that have resulted, or would have resulted if not corrected, in a sex offender 1) being incorrectly omitted, added, retained or deleted from the SOR or 2) being incorrectly omitted, added, retained or deleted from the Internet SOR.<sup>3</sup> There were other errors that we categorized as significant, which we defined

<sup>3</sup> This is the same definition of critical errors that we used in our 2010 audit report.

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as errors related to 1) sex offender identification; 2) sex offender location information related to his/her residence, employment or school; 3) other data that is on the Internet or provided to law enforcement agencies; 4) incorrect coding in the system that would have caused an offender's address to be incorrectly added or excluded from the Internet SOR if not corrected; or 5) data that affects SOR reporting processes (e.g., address changes and verification processes).<sup>4</sup> Less serious errors were included in an "other" category.<sup>5</sup> This qualitative analysis of the errors took into account that errors of a similar nature may be categorized differently depending on the circumstances of an individual sex offender record.<sup>6</sup>

Almost all of the critical errors were found by using automated data analysis software to identify inconsistencies within the OffenderWatch<sup>®</sup> records of individual offenders and by comparing this data electronically to DOC or Courts data.<sup>7</sup> About 70 percent of critical errors related to the length of time an offender was required to be registered. In some cases the SOR listed the offender as required to register for too long a period and in others for too short a period. We also selected a statistically valid random sample of 58 community-based offenders and traced 32 data elements to source documentation. This analysis found few errors pertaining to offender identification, such as the offender's name or physical description, but a much higher number in fields that affected the registration period or the data to be posted to the Internet SOR. VCIC and DOC have made improvements to their SOR processes since our last audit. Nevertheless, some of the underlying causes related to the errors we found were raised in the prior audit report. In particular, many errors could be attributed to largely manual SOR processes, incomplete VCIC SOR procedures, and incorrect or late information received from DOC. In addition, a significant number of critical errors were introduced during the transition to OffenderWatch<sup>®</sup>.

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<sup>4</sup> This is the same definition of significant errors that we used in our 2010 audit report except that we added the fifth criterion.

<sup>5</sup> The "other" category was defined as information that is omitted or incorrect in the registry, but that did not directly affect (1) whether an offender is on the Registry or Internet Registry, (2) data that is provided to the public or law enforcement agencies, or (3) SOR reporting processes.

<sup>6</sup> To illustrate, errors in the end-of-sentence field would be categorized differently depending on whether the offender was required to register for 10 years after the end of supervision or for life. If the offender was in the 10-year category, we generally considered errors in the end-of-sentence date field to be critical because the offender could be on the SOR for a longer or shorter period of time than required. However, if the offender was required to register for his or her lifetime, an end-of-sentence date error would be categorized as "other" because it would not affect how long the offender was on the registry. We also considered end-of-sentence dates that were incorrect by less than 30 days to be in the "other" category.

<sup>7</sup> Twelve were found during a test of a random sample of community-based offenders.

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## Critical Errors

Critical errors in the SOR related to whether the offender was properly registered in the SOR, to the length of the registration, and to whether the offender was appropriately posted to the Internet SOR. There were 253 records with such errors (11 percent of the 2,340 records in OffenderWatch<sup>®</sup> as of December 31, 2013). As shown in Table 4, the largest number of errors (about 70 percent) pertained to the length of registration. Vermont statute requires an offender to be registered for 10 years after his or her supervision for the sex crime has ended (the end of supervision is called the end-of-sentence date in OffenderWatch<sup>®</sup>) or, in certain circumstances, for life.<sup>8</sup> Largely by using our data analysis software to perform comparisons of different data elements within SOR files, or to other sources, such as DOC and the Courts, we discovered 1) offenders required to be registered for life who were not so designated in the system, 2) offenders designated as lifetime registrants who did not meet the statutory requirement for this designation, and 3) 10-year registrants with incorrect end-of-registration dates.<sup>9</sup>

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<sup>8</sup> See Appendix IV for the lifetime registration criteria.

<sup>9</sup> The 12 critical errors found during our analysis of a statistical sample of 58 community-based offenders are also included in this table.

**Table 4. Summary of Records with Critical Errors as of December 31, 2013**

Category of critical error	Explanation	Total <sup>a</sup>	Examples
Registration error	In pending (not registered) status, but located in a community	8	An offender convicted of possession of child pornography was released on probation in October of 2012 and DOC submitted the registration form to VCIC; however, the offender was not registered or posted to the Internet SOR as required.
	Did not meet criteria for registration	2	An offender's conviction was vacated in July 2013, which ended the requirement to register, but the offender remained registered.
	Offender deceased	1	The Department of Health informed VCIC of an offender's death in August 2013, but he remained on the SOR.
Length of registration error	Flagged as lifetime registrant, but did not meet criteria	20	One offender with a single conviction for lewd and lascivious conduct with child was listed as a lifetime registrant but was statutorily required to register only until 2017.
	Met criteria for lifetime registration, but not flagged as lifetime	14	An offender with multiple convictions was listed as a 10-year registrant with the end registration date in 2016. However, multiple convictions for sex crimes is a criterion to be registered for life.
	End-of-registration date beyond 10 years of the end-of-sentence date	21	Four 10-year registrants had correct end-of-sentence dates listed in the SOR but had end-of-registration dates calculated incorrectly and remained in the SOR longer than required—in one case, seven years longer.
	End-of-registration date shorter than statutorily required	120	An offender's end registration date was calculated as July 2014 but he was still on furlough, so the end registration date was as yet unknown but would be no earlier than 2024.
	Other	4	An offender had an end registration date calculated as August 2041 but was still under supervision, so it is unknown whether the registration length would have been shorter or longer.
Internet SOR posting error	Posted to the Internet SOR, but did not meet criteria for posting	9	Five offenders' records were posted to the Internet SOR even though they had a single conviction for lewd and lascivious conduct, which does not meet the statutory criteria for posting to the Internet SOR.
	Not posted to the Internet SOR, but had qualifying offense	30	An offender located in Vermont was convicted of aggravated felonious sexual assault in another state but was not published on the Internet SOR.
	Not posted to the Internet SOR, but had outstanding warrant	16	Offenders with outstanding warrants for noncompliance with the SOR, a criterion for being posted to the Internet SOR, were listed in Inactive – Out-of-State status and were not posted to the Internet.
	Not posted to the Internet SOR, but were high-risk, noncompliant with treatment, or had multiple convictions	4	An offender was designated as high-risk, which is one of the criteria for being posted to the Internet SOR, but was not flagged as high risk in the system and was not posted to the Internet.
	Not posted to the Internet SOR due to incorrect status	3	An offender was listed as incarcerated in the SOR but had been released from incarceration and met the criteria for being posted to the Internet SOR, as he was not compliant with sex offender treatment.
	Incorrectly posted to the Internet SOR due to incorrect status	9	An offender who had been incarcerated since September 2011 was listed in active status and posted to the Internet SOR.

<sup>a</sup> This column does not add to 253 because eight offender records had errors in multiple categories.

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We brought these errors to the attention of VCIC as we found them and as of mid-May 2014 the SOR Coordinator had corrected almost all of the offenders' records in the system (we verified the corrections).

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## Sample Results

In order to check the extent to which individual data elements contained in the SOR were consistent with the supporting documentation and statutory requirements, we selected a statistically valid random sample of community-based offenders (those listed in active status) as of December 31, 2013 using our data analysis software. Community-based offenders are those who 1) reside in Vermont or 2) reside in another state but are employed or go to school in Vermont. The statistical sample of community-based offenders was based upon an attribute sampling plan that used a 95 percent confidence level (five percent risk of over-reliance), a five percent tolerable deviation rate, and an expected error rate of zero. Using these parameters to determine how many of the 1,416 registered sex offenders in "active" status should be tested yielded a sample size of 58.

For each of the 58 sex offender records in our sample,<sup>10</sup> we compared the data in the SOR as of December 31, 2013 to source material to determine whether the SOR contained inaccurate, incomplete, or omitted data.<sup>11</sup> For example, we compared offender conviction dates in the SOR for the 58 records to dates in the VCIC criminal history database or documentation provided by other jurisdictions and found instances in which they did not match.

Table 5 shows the results of our sample testing by data element, demonstrating that some data elements had few or no errors, while others had a much higher rate of errors. The table also shows the upper and lower limits for the projection of our sample results to the universe of the community-based offenders. These limits indicate that if this population were sampled over and over again, the sample would produce an error rate between the lower limit and upper limit 95 percent of the time. As an example, there were 27 records that contained errors in the victim age data element. Accordingly, we can be 95 percent confident that the true population error rate for the victim age data element is between 33.62 percent and 59.82 percent<sup>12</sup> for the

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<sup>10</sup> Appendix VI contains a profile of the offenders selected for this test.

<sup>11</sup> In the few instances where source documentation was not available, we did not consider the field to be in error for that offender's record.

<sup>12</sup> These percentages were calculated by the function in our automated data analysis software that evaluates the results of attribute samples.



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entire group of 1,416 community-based offenders. By multiplying these percentages by the population of 1,416, we are 95 percent confident that between 476 and 847 records would contain errors related to victim age if the same sampling procedures were repeated again and again.

**Table 5: Summary of the Statistical Sample Results (58 Community-Based Offenders) as of December 31, 2013**

Data Element	Number of Errors	Percentage of Errors	Projection of Sample Results to the Population of Community-Based Offenders	
			Lower Limit	Upper Limit
Name	4	7%	29	234
Alias	4	7%	29	234
Date of birth	0	0%	-	69 <sup>a</sup>
Sex	0	0%	-	69 <sup>a</sup>
Race	0	0%	-	69 <sup>a</sup>
Eye color	1	2%	1	128
Height	0	0%	-	69 <sup>a</sup>
Social security number	2	3%	7	166
Conviction charge code	5	9%	42	265
Conviction literal	4	7%	29	234
Conviction date	11	19%	142	441
Victim age	27	47%	476	847
End-of-sentence date	18	31%	280	627
Registration start date	50	86%	1,060	1,327
Registration end date	23	40%	387	751
Lifetime registrant	5	9%	42	265
Annual address verification date	10	17%	124	413
Residential address	3	5%	17	201
County of residence	2	3%	7	166
Employer	5	9%	42	265
Employer address	5	9%	42	265
School name	1	2%	1	128
School address	1	2%	1	128
Risk classification	5	9%	42	265
Sex offender treatment compliance	3	5%	17	201
Noncompliant high-risk status	0	0%	-	69 <sup>a</sup>
Other noncompliant reasons	9	16%	107	384
Supervision field office	7	12%	73	326
SOR status	2	3%	7	166
SOR registration type	1	2%	1	128
Publish on website	0	0%	-	69 <sup>a</sup>
Reason for being on the internet	3	5%	17	201

<sup>a</sup> Although there were no errors in our sample of 58 community-based sex offenders for this data element, every sampling methodology includes the possibility of sampling error. The calculation of an upper limit for the data elements in which there were no observed errors takes this into account (and recognizes that a zero percent population error rate could arise only from a test of all items in the population).

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The SOR database contained few errors in data elements that pertained to offender identification, such as the offender's name or physical description, which can be attributed to the electronic exchange of offender identification information between VCIC's criminal history database and OffenderWatch<sup>®</sup>. The data element with the highest error rate was the registration start date. These errors were introduced during the transfer of data from the previous SOR system to OffenderWatch<sup>®</sup>. Specifically, under certain circumstances the end-of-sentence date<sup>13</sup> was transferred to the registration start date field in OffenderWatch<sup>®</sup>. This is explained in greater detail in the next section. VCIC plans to fix the registration start date errors by transferring the correct dates from the old system to OffenderWatch<sup>®</sup> sometime after the vendor completes a related software modification (expected to occur in July 2014). Error rates were much higher in data elements that can affect 1) the length of time a registrant could be on the registry (e.g., end-of-sentence and end-of-registration dates) and 2) data that was posted or could be posted to the Internet SOR (e.g., conviction information and victim age<sup>14</sup>).

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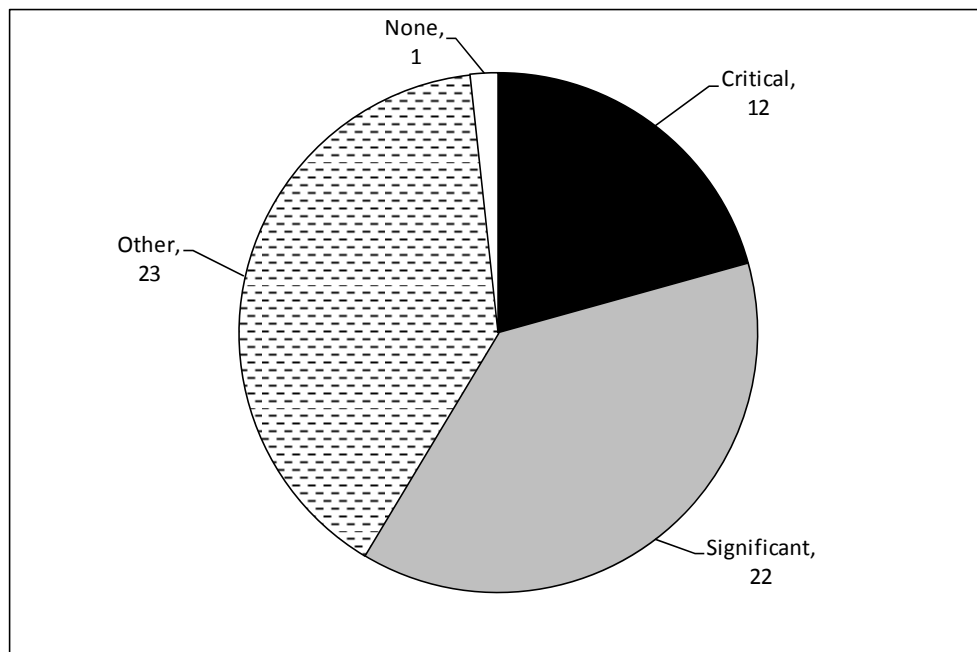
<sup>13</sup> The end-of-sentence date field was called the discharge date in the prior SOR system.

<sup>14</sup> Victim age is one of the criterion in the contingent statute that allows an offender's address to be posted to the Internet SOR.

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Figure 1 shows the distribution of errors in the community-based sample by level of seriousness.

**Figure 1: Level of Seriousness of the Errors in the Community-Based Sample (58 records)**



Nearly 60 percent of the 58 community-based offender records in our sample contained critical or significant errors. The seriousness of critical errors was discussed in the prior section of the report. Significant errors are also important because of their effect on offenders and/or public information.<sup>15</sup> For example:

- Seven Internet SOR records listed incorrect information regarding an offender's compliance with sex offender treatment, address verification, or annual photo requirements. Some were listed as compliant but were not, while others were listed as noncompliant but were compliant.
- Four SOR records omitted victims' ages that would have resulted in the sex offenders' addresses not being posted to the Internet SOR, even though they met the criteria for posting had the requirement to

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<sup>15</sup> We also found an additional 39 significant errors in analyses using our data analysis software.

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post addresses to the Internet SOR been in effect.<sup>16</sup> Three records had incorrect victims' ages in which the offender's address would have been incorrectly posted to the Internet SOR had the statutory requirement contingent upon a favorable audit been in effect.

- One SOR record did not include the offender's correct residential address because the DOC Probation Officer forgot to submit a change of address form to VCIC. This is significant because law enforcement relies on accurate and up-to-date offender location information. Also, if addresses are added to the Internet SOR, this offender's residential information would have been incorrect.
- Two SOR records that were posted to the Internet SOR contained the incorrect county of residence. County of residence is a category for searching the Internet SOR.

Our 2010 SOR audit also included a statistical sample of community-based offenders. In general, our current results showed improvement, both in terms of the number and seriousness of the errors. In particular, the number of records with critical errors was reduced from 28 percent in 2010 to 21 percent in 2013. See Appendix VII for the detailed comparison of our 2010 and 2013 results.

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## Underlying Causes

Since the last SOR audit, VCIC implemented OffenderWatch<sup>®</sup>, which includes new features, such as data entry analytics for preventing duplicate entries, automated calculation of certain date fields, and drop down menus. Nevertheless, there were still a substantial number of errors. We attribute these errors to four underlying causes. First, data entry remained largely manual. Second, VCIC did not develop a complete set of procedures to guide the implementation of a multitude of statutory requirements. Third, information provided by DOC contained errors. Fourth, errors were introduced while switching to the new system.

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<sup>16</sup> Implementation of the Act 58 (2009) requirement to include addresses of certain sex offenders on the Internet SOR is contingent on a favorable audit, and addresses have not yet been added. Under this act, a criterion for having an offender's address posted to the Internet SOR is that the victim is less than 13 years old.

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## Manual Process

As we reported in 2010 and as acknowledged by VCIC in its grant application to the federal Department of Justice for the new system, greater automation of VCIC data entry processes and minimization of manual workload were needed. According to VCIC, such automation was vital because of limited VCIC/SOR resources and importance of maintaining timely and accurate public safety services to Vermonters. However, except for offender identification data and Vermont conviction data, which are electronically transferred to the SOR, the process of obtaining and entering data into the SOR remains largely manual, which can lead to data entry errors or omissions. For example, on February 6, 2013, VCIC received a form from DOC showing the date that an offender had been discharged from probation (i.e., end of sentence), but VCIC did not record the end-of-sentence date or the resulting end-of-registration date in OffenderWatch<sup>®</sup>.

In addition, the SOR Coordinator makes decisions in applying statutory criteria for certain critical data elements in the SOR because OffenderWatch<sup>®</sup> does not have system logic to automate the decision. For example, the SOR Coordinator determines whether an offender meets the criteria for being a lifetime registrant or whether an offender should be posted on the Internet SOR. These decisions are neither automatically checked by the system nor generally reviewed by a supervisor or another staff member for consistency and accuracy. We found numerous records in which offenders were either listed or not listed as lifetime registrants in error, or were posted or not posted on the Internet SOR in error.

In a largely manual process, compensating controls can be implemented to ensure data accuracy and consistency of decisions. VCIC implemented a process for quality control reviews of the data entry from the submitted forms, but we found cases in our statistical sample of community-based offenders in which there was no evidence of the quality control review. In other cases, there was evidence of a quality control review, but the records still contained errors.

### Lack of Detailed and Complete VCIC Procedures

VCIC SOR procedures address where and how data is recorded in OffenderWatch<sup>®</sup>. For example, they describe data entry procedures when new information is received, including the source of the information and the location in OffenderWatch<sup>®</sup> in which specific data should be entered. However, the VCIC SOR procedures do not address criteria associated with critical decisions, process steps, or time frames of certain important actions. We made a similar observation about VCIC's SOR procedures in our 2010 report.

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To illustrate, VCIC's SOR procedures do not include instructions on how to apply exceptions that are based on offenders' and/or victims' ages. For example, according to 13 V.S.A. §5411a, an offender's record is posted to the Internet SOR if he or she meets certain criteria, unless the conduct that is the basis for the offense is criminal only because of the age of the victim and the perpetrator is within 38 months of age of the victim. VCIC's procedures do not address 1) what documentation should be reviewed to obtain the ages of the offender and victim at the time of offense or 2) the criteria it will apply to determine whether the basis for an offense was criminal only because of the age of the victim.

In other instances, VCIC procedures are incomplete in their description of how to implement certain critical SOR processes, such as determining when an offender's registration period has ended. In this case, the VCIC SOR procedures state that sex offender records can be removed from the SOR when the registration period has expired, and they outline the steps to take to delete an offender in OffenderWatch<sup>®</sup>. However, the procedures do not address the criteria for determining an offender's registration period, which is based on when an offender completes his or her sentence (unless the offender meets the requirement for lifetime registration). In particular, VCIC procedures do not address obtaining end-of-sentence information from other jurisdictions. Instead, VCIC's unwritten practice was to utilize the start registration date in lieu of an end-of-sentence date. However, both the SOR statute and VCIC's SOR Rule require the 10-year registration period be based on the date an offender was released from prison or discharged from community supervision, whichever is later. There were several cases in which VCIC was able to obtain offenders' end-of-sentence dates from other jurisdictions at our request or this information was contained in documents already provided to VCIC. With this end-of-sentence information, these offenders' end-of-registration dates were sometimes changed by years.

Without complete and detailed procedures VCIC is left to rely on the institutional memory of staff members, increasing the likelihood of inconsistent or untimely actions. For example, VCIC procedures did not address how to apply statutory criteria for lifetime registration to offenders with out-of-state convictions. During the 2010 SOR audit, former VCIC officials interpreted the lifetime requirement for offenders with a single sex offense as applicable only to offenders convicted in Vermont courts, specifically under 13 V.S.A. §§3252 and 3253. During this audit, we found that current VCIC officials were not aware of the prior practice and were interpreting this requirement differently, applying it to both offenders convicted in Vermont or in other jurisdictions. Because of this change in approach, we asked VCIC to explain its current rationale. The VCIC Director responded that the applicable statute (13 V.S.A. §5407(f)(2)) requires an

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offender to register for life if he has been convicted of a sexual assault *as defined*<sup>17</sup> in 13 V.S.A. §3252 or aggravated sexual assault *as defined* in 13 V.S.A. §3253 and that this statute can be applied to offenders convicted in other jurisdictions. VCIC added that it plans to relook at the records of each of the offenders affected by the change in practice and determine whether this criterion was applied correctly.

#### Incorrect or Late Information to VCIC

Once offenders are convicted of a sexual offense and start serving their sentences, DOC becomes a main information source for VCIC regarding many aspects of offenders' management, including supervision status; changes in residence, employment and school; sex offender treatment compliance; and high risk designation. At the end of our last audit, which found that DOC had submitted incorrect or unclear information to VCIC, DOC enacted a more complete directive on SOR requirements. This directive outlined specific actions and timeframes for submitting information to VCIC by DOC staff.

Nevertheless, DOC did not always provide accurate or timely information to VCIC. In some instances, this occurred in cases in which DOC's supervision had ended years ago. However, for the 32 sex offenders in our sample of community-based offenders who were supervised by DOC after June 14, 2010 (the date of enactment of the most recent DOC SOR directive), DOC omitted or provided incorrect or untimely information to VCIC in nine cases (28 percent) subsequent to this date. Errors included omitted or incorrect end-of-sentence dates and victims' ages. For example, one offender's sentence ended in January 2012, but there was no evidence that DOC submitted the required Change of Treatment \* Supervision Status form to VCIC, which would have contained this information. Accordingly, OffenderWatch<sup>®</sup> contained no end-of-sentence date, which resulted in an incorrect end-of-registration date.

In addition, using our data analysis software to compare offender status information in the SOR as of December 31, 2013 to offenders listed as incarcerated in the DOC system at that time, we found 10 cases in which DOC did not notify VCIC in a timely manner<sup>18</sup> of offenders' releases from

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<sup>17</sup> Emphasis added by SAO.

<sup>18</sup> According to the SOR Rule, DOC is required to report that an offender has been released from incarceration within 24 hours.



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DOC incarceration.<sup>19</sup> This is particularly important because some of these offenders were residing in a community for months without notification to VCIC and without notification to the public via the Internet SOR. There were also cases in which offenders were listed in the SOR as residing in a community while they were actually incarcerated, and there was no evidence that DOC had notified VCIC of this change.

To improve accuracy and timeliness of its reporting to VCIC, DOC established monthly audits of sex offenders' files (recently changed to quarterly) and is piloting some new forms. However, in 2013 not every probation and parole office performed the audits on a regular basis.

Errors related to the untimely notification of the incarceration or release of sex offenders from incarceration might be addressed by planned improvements. Specifically, VCIC added the Booking Alert module to OffenderWatch<sup>®</sup>, which is intended to provide VCIC with automatic notifications when offenders are incarcerated or released from incarceration. As of late April, Booking Alert was providing this information to VCIC for non-Vermont jurisdictions. As of mid-May 2014, data from Vermont's DOC was not yet available in Booking Alert. According to a DOC information technology manager, DOC is working on reaching usage and security agreements with the Booking Alert vendor so it can provide such data.

### Transition to the New SOR System

In early 2013, VCIC transitioned to OffenderWatch<sup>®</sup>. As part of the transfer, VCIC decided to use OffenderWatch<sup>®</sup> to calculate the end registration date. However, OffenderWatch<sup>®</sup> calculates the end registration date based on the registration start date, not the end-of-sentence date, as required by Vermont statute. To attempt to work around this difference, the end-of-sentence dates<sup>20</sup> contained in the old system were transferred to the registration start date field in the new system, which resulted in a substantial number of records with an incorrect start date. In the case of offenders whose records did not contain an end-of-sentence date because they were still under supervision, the registration start date was correctly transferred to the same field in OffenderWatch<sup>®</sup>. However, in about 100 of these cases this caused OffenderWatch<sup>®</sup> to use the registration start date to calculate the end-of-

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<sup>19</sup> There were other cases in which the SOR incorrectly listed an offender as incarcerated in a DOC facility. In these cases, either there was evidence that DOC had provided this information to VCIC or it was unclear whether the information had or had not been submitted.

<sup>20</sup> The end-of-sentence data field was called the discharge date in the prior SOR system.

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registration date, which resulted in incorrectly calculated end-of-registration dates for these offenders.

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## Objective 2: Implementation of the Prior Audit’s Recommendations Was Mixed

All three organizations to whom we directed recommendations in our 2010 audit report took corrective actions but overall progress has been mixed (see Table 6).

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**Table 6: Summary of the Implementation of the Prior Audit’s Recommendations**

Status	Definition	Number of Recommendations
Fully implemented	The recommendation had been adopted substantially or in its entirety	3
Partially implemented	Part of the recommendation had been implemented, but the intent of the recommendation had not been fully satisfied	6
Not implemented	No part of the recommendation was implemented	3
Not yet applicable	Implementation of the recommendation contingent upon circumstances not yet applicable	1

### **Recommendation # 1**

DPS, DOC, and the Court Administrator's Office should form a working group to reassess and possibly redesign the processes related to the SOR to include possible system solutions to more effectively and efficiently submit information to the SOR.

#### **Current Status: Partially Implemented**

The working group of DPS, DOC, and Office of the Court Administrator representatives convened on at least two occasions (once in late 2010 and another time in the spring of 2011) to discuss technical and operational issues relating to the SOR and VCIC/DOC interface. No agendas or minutes of the meetings were kept. In addition, DOC provided records of other conference calls and meetings with VCIC officials regarding SOR processes, updates, and legal issues. Such discussions are particularly important now when DOC is in the process of implementing a new information technology system. According to VCIC’s grant proposal to the U.S. Department of Justice in support of a new SOR system, an electronic exchange of data with DOC would be extremely beneficial for ensuring that information was accurate and up-to-date between the two organizations. Without close cooperation of DPS,

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DOC, and the Court Administrator regarding changes in existing processes and the addition of more automation to the process, the SOR will likely remain prone to errors.

Vermont Criminal Information Center

**Recommendation # 2**

VCIC should review all discharge dates, end registration dates, internet status, and risk assessment and lifetime registrant flags to confirm that the SOR accurately reflects supporting documentation and applies the statutory standard.

**Current Status: Partially Implemented**

DPS performed system-wide data reviews of the SOR at least twice after our 2010 audit. According to the VCIC Director, after the last audit VCIC reviewed discharge dates (now called end-of-sentence dates), end registration dates, lifetime registration status, Internet status and risk assessment for over 2,200 records. More recently, as part of the transition to OffenderWatch<sup>®</sup>, VCIC staff reviewed the accuracy of the data transfer and checked for data consistency with VCIC's Computerized Criminal History System.

We categorized this recommendation as “partially implemented” because while the reviews were performed, our current audit found numerous errors in the fields reviewed.

**Recommendation # 3**

VCIC should work with the SOR [prior] system vendor to identify and correct the records of offenders that are shown on the Internet SOR as erroneously having been convicted of more counts than is factual.

**Current Status: Fully Implemented**

Our recommendation was applicable to the prior SOR system and it was addressed by the implementation of OffenderWatch<sup>®</sup>.

**Recommendation # 4**

VCIC should perform a requirements analysis for the acquisition or development of a new SOR system or redesign that includes, at a minimum: 1) improved electronic communication with DOC and the Courts, 2) a more robust set of edits, 3) an audit trail, 4) features in which the system automatically performs or prompts the user to take actions that are currently

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performed manually, such as the calculation of the end-of-registration date, and 5) improved security features.

### **Current Status: Partially Implemented**

VCIC launched OffenderWatch<sup>®</sup> on February 1, 2013. Per VCIC, features of the new system include data edits, a researchable audit trail, and improved user management and security.

We agree that the current automated system is a major improvement over the prior system. For example, the new system allows the data to be searched and summarized easily. In addition, there are new features, such as Geocoding. Geocoding is the OffenderWatch<sup>®</sup> function that searches for offender's reported address against a database of valid addresses, locates the address on a map, and notifies VCIC if the address may be invalid. Nonetheless, there are still key processes that are performed manually and then recorded in the system, such as the calculation of 10-year registration periods or the decision to publish an offender's information on the Internet SOR. Without greater automation of the key SOR processes, the system remains susceptible to errors.

### **Recommendation # 5**

VCIC should develop performance standards for the timely entry of data into the SOR and periodically assess whether these standards are being met.

### **Current Status: Not Implemented**

Neither the VCIC SOR Rule nor its procedures include performance standards for the timely entry of data into the SOR once received by VCIC. For example, while the rule contains time requirements for others to submit data to the SOR (e.g., DOC), it does not include a timeframe for how long it should take for this data to be entered into OffenderWatch<sup>®</sup>. Instead, for some types of entries (e.g., removal of an offender from the SOR or Internet SOR), the rule requires VCIC to make changes "as soon as practicable." This is not a standard that can be used to measure the timeliness of VCIC's data entry.

### **Recommendation # 6**

VCIC should modify the SOR procedures to include all SOR functions and documentation retention standards, including requirements to retain the results of the "sweeps" conducted by law enforcement when they physically check the residencies of sex offenders.

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### **Current Status: Partially Implemented**

Current VCIC procedures do not address documentation retention or other key processes, such as determining whether the offender should be a lifetime registrant. However, VCIC has worked with its system contractor to develop a report to record the results of law enforcement checks of offenders' residences. The report was implemented for the first quarter of 2014. In addition, per the SOR Coordinator, VCIC plans to review and expand its procedures regarding SOR functions, including sweeps.

### **Recommendation # 7**

VCIC should develop a process to identify and track the treatment progress of offenders that are no longer under DOC supervision.

### **Current Status: Not Implemented**

VCIC has not established a process to track the treatment progress of offenders who are no longer under DOC supervision. 13 V.S.A. §5411a(a)(5)(B) requires unsupervised sex offenders who have not completed treatment to submit proof to VCIC of continuing treatment every three months. According to the statute, failure to provide proof shall result in the offender being posted to the Internet SOR. For example, as DOC reported to VCIC, one offender maxed out his sentence in February, 2013, but was still required to continue sex offender treatment. As of December 31, 2013, this offender had not submitted the required "Certification of Compliance with Treatment" forms. As VCIC was not monitoring the offender's treatment compliance, he was listed as compliant in the SOR and on the Internet SOR. After we brought the case to the attention of the SOR Coordinator, the treatment compliance status was changed to non-compliant.

By not establishing a tracking process, VCIC is not in a position to know whether offenders are following the statutory requirements and, if not, ensure that the offender is timely flagged as non-compliant with sex offender treatment and is posted to the Internet SOR. As a result, the SOR might be failing to provide the public and law enforcement with complete, accurate, and timely information about offenders' treatment status.

### **Recommendation # 8**

VCIC should add the date the offender's photograph was last updated to the Internet SOR records.

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**Current Status: Fully Implemented**

The Internet SOR includes the dates of offenders' photographs.

**Recommendation # 9**

VCIC should add the date last verified to the residential addresses posted to the Internet SOR.

**Current Status: Not Yet Applicable**

Per the VCIC Director, as addresses are not yet being posted on the Internet SOR, the functionality to display the last date the address was verified has not been engaged. He asserted that OffenderWatch<sup>®</sup> contains the ability to track and display the date the address was last verified on the public internet site.

Department of Corrections

**Recommendation # 10**

DOC should explore, in conjunction with VCIC, system solutions to submit SOR forms electronically.

**Current Status: Partially Implemented**

A DOC system solution to submit SOR forms electronically has not been designed. The data from the SOR forms continues to be manually entered into OffenderWatch<sup>®</sup>, thereby increasing the risk of errors. However, DOC improved its processes for sending the SOR paperwork to VCIC by requiring forms to be sent by email with read-receipts. In addition, DOC is in the process of developing a new Offender Management System that is expected to allow electronic information sharing between DOC and VCIC, as well as assisting staff with filling out the SOR forms. DOC is also piloting new electronic forms that would allow the department to streamline information submission processes to VCIC.

**Recommendation # 11**

DOC should develop a mechanism to identify and flag in its system sex offenders in DOC custody who are registered, or required to register, with the SOR and which prompts DOC personnel to submit required information to VCIC as necessary.

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### **Current Status: Not Implemented**

DOC is planning to implement a new Offender Management System. The expected go-live date is in early 2015. Until that time, the process to identify these offenders is handled by reviewing sex offender lists and manually updating the forms as necessary.

### **Recommendation # 12**

DOC should monitor the effectiveness of the department's new SOR directive, particularly whether it results in more accurate and timely data submissions to VCIC and, if not, implement additional mechanisms to achieve this end, such as specialized training in areas of noncompliance.

### **Current Status: Partially Implemented**

DOC has implemented various reviews to assess whether actions required by the SOR directive have been taken. For example, a monthly audit process<sup>21</sup> was established at the district probation and parole offices to assess whether the SOR paperwork was current. However, the monthly audits were not performed at each of the offices every month. Per a DOC official, DOC central office staff meets with the sex offender supervisors to review processes and directives. The last meeting took place in December, 2013; the next one was scheduled for June, 2014.

### **Recommendation # 13**

DOC should develop a process to perform a risk assessment for women sex offenders that would meet the requirements of 13 V.S.A. §5411b.

### **Current Status: Fully Implemented**

Per DOC, the Department created a process to refer female offenders to the High Risk Review Committee. Specifically, there is a section on the "Sex Offender Review Committee Form High Risk Checklist" for the consideration of female offenders. As of mid-May 2014, one female sex offender was submitted for review but was not designated high-risk.

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<sup>21</sup> As of mid-May 2014, such audits are now conducted quarterly.

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## Other Process Matters

During the course of the audit, we found process deficiencies related to the annual verification of offenders' addresses and implementation of the statutory provisions related to noncompliant high-risk offenders. In addition, processes are still to be developed for determining which offenders would have their addresses posted to the Internet SOR once this becomes a requirement.

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### Annual Verification of Offenders' Addresses

13 V.S.A. §5407(g) requires VCIC to verify offenders' residential addresses annually via a nonforwardable address verification form, which offenders are required to sign and return to VCIC within 10 days of receipt.<sup>22</sup> Consistent with 13 V.S.A. §5408, VCIC's sex offender registry rule states that upon determination that an offender's address cannot be verified, that VCIC will forward an affidavit to the applicable state's attorney attesting to the fact that the registrant's address could not be verified. The state's attorney may, in turn, request a court to issue a warrant for the offender's arrest. Offenders that are charged and convicted for failure to comply with registry requirements can be subject to fines and imprisonment.

To fulfill the annual address verification statutory requirement, VCIC 1) uses OffenderWatch<sup>®</sup> to identify offenders eligible for annual address verification (offenders in active status are selected based on their dates of birth) and 2) mails an annual address verification letter and, if necessary, follows up with second and subsequent notices and phone reminders. When sex offenders return signed letters to VCIC, VCIC puts an offender's record in "verified – ok" status and OffenderWatch<sup>®</sup> automatically calculates the next annual verification date.

A review of the annual address verification status data for offenders with month of birth between March and November 2013<sup>23</sup> found cases in which offenders were listed in "verified – ok" status even though the annual address confirmation letters were not sent or were sent but not returned by the offender. For example, out of 15 offenders we judgmentally selected that had a value of "verified – ok" in the status field, there was no annual address verification letters sent for six of those offenders. Moreover, there were six

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<sup>22</sup> The statute requires that offenders that are designated as sexually violent predators have their addresses verified every 90 days.

<sup>23</sup> OffenderWatch<sup>®</sup> was introduced in February 2013, so we allowed for one month of transition to the new annual address verification process.



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cases of offenders listed in “verified – ok” status that had outstanding warrants for failure to comply with registry requirements.

VCIC attributed these discrepancies to not fully understanding how the OffenderWatch<sup>®</sup> annual address verification function works and to a system anomaly. VCIC reported that the vendor has since fixed the anomaly. In addition, VCIC’s written procedures regarding the process of offender address verification do not address specific steps or timeframes of the actions to be taken when a confirmation letter is not received back by VCIC and when the SOR Coordinator should issue an affidavit.

Because of the inconsistencies in the verification history of records listed in the “verified – ok” status, not all offenders underwent and/or completed the 2013 annual address verification process. Moreover, because of discrepancies in the address verification status field in OffenderWatch<sup>®</sup>, we concluded that we could not rely on the data in the system to determine the number of offenders for whom such verification was or was not performed.

Also, VCIC was not in compliance with the VCIC SOR Rule requiring an affidavit to be filed with the applicable state’s attorney attesting to the fact that the registrant’s address could not be verified. We found that at least in 49 cases, VCIC did not file affidavits following an offenders’ noncompliance.<sup>24</sup> VCIC officials attributed the failure to file affidavits to a lack of time and not knowing that annual address verifications were not sent. As a result, state attorneys were not notified of offenders who failed to comply with annual address verification requirements.

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## Noncompliant High-Risk Designation

The sex offender registry statute imposes additional requirements on certain offenders designated by DOC as noncompliant high-risk offenders.<sup>25</sup> For example, the noncompliant high-risk designation requires that an offender register for life, report to DPS in person every 30 days after the release from incarceration, and provide vehicle description information. This designation also requires DPS to conduct unannounced periodic registry compliance checks.

VCIC has no procedures related to noncompliant high-risk offenders and lacks documentation that they track noncompliant high-risk offenders. For example, per VCIC, the unannounced periodic registry compliance checks

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<sup>24</sup> The SOR Coordinator reported that she planned to issue affidavits for these offenders.

<sup>25</sup> See Appendix IV for statutory requirements pertaining to noncompliant high-risk designations.

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are fulfilled by local law enforcement agencies and the State Police.<sup>26</sup> Such compliance checks are performed as part of law enforcement address verification checks but their results were not always provided to VCIC and until recently VCIC did not have a mechanism to follow up on their results. Accordingly, it was not always known whether the locations of noncompliant high-risk offenders were checked by this process. In early 2014, VCIC implemented a new process of issuing quarterly reports to local law enforcement agencies and the State Police based on OffenderWatch<sup>®</sup> records. According to the SOR Coordinator, these organizations are to report their results to VCIC, which plans to record them in OffenderWatch<sup>®</sup> as time permits. In addition, VCIC does not track vehicle information on noncompliant high-risk offenders as required by statute and cited a lack of time as a cause.

As DOC is responsible for designating offenders as noncompliant high-risk, DOC's SOR directive outlines the process of applying this designation to applicable offenders. However, the directive does not clearly address how the information should be provided to VCIC. There was no evidence that VCIC received notification for three of 11 offenders designated noncompliant high-risk and they were not so flagged in OffenderWatch<sup>®</sup>. Also, DOC had not designated five offenders who met the noncompliant high-risk criteria. These omissions appear to have been an oversight. According to a chief of the Vermont treatment program for sexual abusers, DOC plans to designate these five offenders as noncompliant high-risk and is working on how to notify them of the designation.

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## Address Posting Processes To Be Developed

According to the statute to be enacted contingent upon a favorable audit, only certain offenders that are posted to the Internet SOR would have their addresses posted to this website: offenders who 1) are high risk, 2) are noncompliant with sex offender treatment, 3) have an outstanding warrant for arrest, 4) were convicted of a sex offense against a child under 13 years of age, or 5) were required to have their name and address posted in another jurisdiction.

Since VCIC has not yet been authorized to post addresses to the Internet SOR, it has not established a process for determining which offenders will be required to have their addresses posted to the Internet SOR. At this time, the

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<sup>26</sup> For example, DPS reported to the legislature that in 2013 the State Police had checked the residences of 950 registered sex offenders in 11 of the 13 Vermont counties (according to the report, checks of registrants were performed by other law enforcement agencies in the other two counties). *Vermont Sex Offender Registry Compliance Checks* (Department of Public Safety report to the Senate and House of Representative Committees on Judiciary, Year 2013).

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OffenderWatch<sup>®</sup> system is designed to post the addresses of all or none of the offenders published on the Internet SOR. Accordingly, the system cannot as yet restrict posting of addresses to only those offenders who meet certain criteria. According to the VCIC Deputy Director, the OffenderWatch<sup>®</sup> vendor has assured him that the system can be modified to post addresses in compliance with the statutory requirements.

Another process that will need to be established pertaining to the posting of addresses relates to the exception outlined in 13 V.S.A. §5411a(1), which prohibits VCIC from posting the addresses of offenders that have a developmental disability and receive funding from the Department of Disabilities, Aging, and Independent Living for 24-hour supervision and treatment and reside in a residence that is equipped with alarms. According to the Department, it has not yet established a process or procedure for notifying VCIC of the names of offenders who meet this requirement since addresses are not yet posted to the Internet SOR. The Department added that it will be reviewing its current reporting protocols in light of the requirements set forth in 13 V.S.A. §5411a(1).

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## Conclusion

Although there is no quantitative standard for judging the reliability of sex offender registries, the more than 250 sex offender records with critical errors in the Vermont SOR call into question its reliability. Both VCIC and DOC improved their SOR processes since our last audit—VCIC by implementing a new system with more features and DOC by issuing a more complete directive on SOR requirements and reviewing its implementation. However, we found that VCIC and DOC improvements did not manifest in substantial enhancement of SOR reliability. In part, this can be attributed to our prior audit recommendations not being fully implemented. For example, we previously recommended that VCIC modify its procedures to include all SOR functions. Nevertheless, VCIC's procedures remained incomplete and did not cover critical functions, such as registration eligibility, determination of lifetime registration, and eligibility for the Internet SOR. We could not review VCIC's process for identifying offenders whose addresses would be posted to the Internet SOR under the statute contingent upon a favorable audit because it was not yet developed. Should a decision be made that offenders' addresses be posted to the Internet SOR, VCIC should develop controls to ensure that the resulting process only post the addresses of offenders that meet the statutory requirements.

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## Matters for Legislative Consideration

We recommend that the Legislature require that the Commissioner of the Department of Public Safety, the Commissioner of the Department of Corrections, and the Court Administrator periodically report on the progress of corrective actions being taken to improve the reliability of the SOR.

We recommend that the Legislature require that the Commissioner of the Department of Public Safety, before posting addresses to the Internet SOR, certify that the process that is established to support this function will ensure that addresses of only those offenders that meet the statutory requirements will be posted.

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## Recommendations

We recommend that the Commissioner of the Department of Public Safety, Commissioner of the Department of Corrections, and the Court Administrator reconvene the working group to reassess and possibly redesign the processes related to the SOR to include possible system solutions to more effectively and efficiently transmit information to the SOR and to periodically report on their progress to the applicable legislative committees.

We recommend that the Commissioner of the Department of Public Safety direct the Director of the Vermont Criminal Information Center to:

- Fully implement recommendations in our prior audit report that address 1) performance standards for the timely entry of data into the SOR, 2) developing procedures related to all SOR functions and document retention standards, and 3) developing a process to identify and track the treatment progress of offenders no longer under DOC supervision, and
- Establish mechanisms to track noncompliant high-risk offenders as defined by 13 V.S.A. 5411d and ensure all statutorily required information regarding such offenders is collected and all verification processes are timely performed.

We recommend that the Commissioner of the Department of Corrections

- Fully implement recommendations in our prior audit report that address 1) system solutions to submit SOR forms electronically to VCIC, and 2) developing a mechanism in its system to identify and flag offenders in DOC custody who are registered, or are required to

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register, with the SOR and which prompts DOC personnel to submit required information to VCIC; and

- Review, and if necessary design, a process to identify and report to VCIC offenders meeting criteria for being designated as noncompliant high-risk offenders as defined by 13 V.S.A. §5411d.

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## Managements' Comments

On July 9, 2014, the Commissioner of the Department of Public Safety provided a letter commenting on a draft of this report, a facsimile of which is contained in Appendix VIII. The Commissioner of the Department of Corrections also provided a letter commenting on the draft report dated June 17, 2014, which is reprinted in Appendix IX.

The Office of the Court Administrator was offered the opportunity to provide written comments on the draft report and responded in an email that it agreed with the report's comments and recommendations with regard to the courts and found no need to provide additional formal written comments.

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In accordance with 32 V.S.A. §163, we are also providing copies of this report to the commissioner of the Department of Finance and Management and the Department of Libraries. In addition, the report will be made available at no charge on the state auditor's website, <http://auditor.vermont.gov/>.

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## Appendix I

### Scope and Methodology

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We utilized guidance from the U.S. Government Accountability Office<sup>27</sup> in developing a three-pronged approach for evaluating the SOR's reliability in planning for our first objective. First, we gained an understanding of sex offender registry criteria, as well as the manual and automated processes used to ensure the reliability of data in the SOR. Second, we performed automated tests of an extract of the SOR database as of December 31, 2013. Third, we traced a statistically valid random sample of 58 data records to supporting documentation to determine whether the data in the SOR system (OffenderWatch<sup>®</sup>) accurately and completely reflected these documents. Within the context of this audit, we defined reliability as 1) all offenders who fulfill the statutory requirements for being on the SOR are on it and those that do not are not, 2) each record has a full set of information, and 3) data in each record is accurate.

With respect to the first part of our approach, we reviewed the applicable statute (13 V.S.A. Chapter 167, Sub-Chapter 3) and related laws,<sup>28</sup> VCIC's sex offender registry rule,<sup>29</sup> and DOC's sex offender registry directive.<sup>30</sup> As part of reviewing the manual and automated controls, we 1) performed walkthroughs and interviews with the VCIC Deputy Director and SOR Coordinator, DOC field service and treatment officials, and a Court official; and 2) reviewed OffenderWatch<sup>®</sup> and VCIC documentation. Based on the above information, we flowcharted the various manual and automated processes used to initiate, maintain, and remove a sex offender's SOR record. We validated this flowchart with applicable officials from VCIC, DOC, and the Courts.

We limited our review of OffenderWatch<sup>®</sup> information technology controls to 1) reviewing descriptions of those controls in the WATCH Systems, LLC response to the DPS SOR request for proposal and 2) requesting and reviewing information from VCIC's Deputy Director on user access controls and the process used to ensure the reliability of the data from the old system to the new system.

Regarding the second part of our approach—automated tests of the SOR data—we downloaded OffenderWatch<sup>®</sup> files received from VCIC on

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<sup>27</sup> *Assessing the Reliability of Computer-Processed Data* (U.S. Government Accountability Office, GAO-09-680G, July 2009).

<sup>28</sup> For example, Act 58 (2009), Act 66 (2010), and Act 157 (2010).

<sup>29</sup> *Sex Offender Registry*, CVR 28-050-002 (effective date December 31, 2004). A revised rule was approved by the legislative Committee on Administrative Rules on March 27, 2014.

<sup>30</sup> *Sex Offender Registry and Internet Registry Determinations* (#255.01, June 14, 2010).

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December 31, 2013 into our automated data analysis tool, IDEA<sup>®</sup>. Using this tool, we performed a variety of tests, including:

- *Assessing completeness and logic.* We tested for anomalies, such as garbled or missing values, dates that appeared to be erroneous, and duplicate records. We also tested for logical inconsistencies, such as 1) records that had end-of-registration dates but did not have end-of-sentence dates and were also not listed as lifetime registrants, and 2) records that were posted to the Internet SOR but which the offender had only a single, nonqualifying conviction and was not listed as high-risk or noncompliant with treatment.
- *Matching court automated records.* We compared the SOR data file to sex offense conviction and sentencing data from the Court's automated system for the period January 1, 2010 through December 31, 2013.<sup>31</sup> We checked whether the SOR 1) had records for each convicted offender and 2) listed the correct number and charge codes of offenders' Vermont convictions.
- *Matching DOC automated records.* We compared the SOR data file to 1) an incarceration file provided by DOC from its offender management system<sup>32</sup> as of January 2, 2014, 2) an MS Excel<sup>®</sup> spreadsheet of offenders that were designated as high-risk, and 3) an MS Excel<sup>®</sup> file of sex offenders who maxed out their sentences as noncompliant with treatment requirements.
- *Evaluating expired registrations.* We compared our current SOR data file to the data file used in the first audit (as of February 18, 2010) to identify records that had been expired. First, we compared these records to a file from the Department of Health's vital records system<sup>33</sup> to confirm whether the offenders removed from the registry were deceased. We next analyzed the remaining records to substantiate the decision to expire the offender's record from the registry.

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<sup>31</sup> We did not review the Court system's information technology controls because it was beyond the scope of this audit and we did not solely rely on this system to draw our conclusions.

<sup>32</sup> We did not review the DOC system's information technology controls because it was beyond the scope of this audit and we did not solely rely on this system to draw our conclusions.

<sup>33</sup> We did not review the Department of Health's vital records system's information technology controls because it was beyond the scope of this audit and we did not solely rely on this system to draw our conclusions.

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## Appendix I

### Scope and Methodology

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- *Matching nonexpired offenders to Vermont death records.* We compared the SOR data file to a file from the Department of Health’s vital records system to determine whether any current records were for offenders who were deceased.

Based on the preliminary results of these tests, we performed follow-up work, including obtaining supporting documentation and discussions with appropriate staff at VCIC, DOC, and the Courts, as applicable, to draw final conclusions for each case.

We also used the SOR data file as of December 31, 2013 to perform the third piece of our methodology for Objective One. Specifically, using IDEA<sup>®</sup>, we extracted a statistically valid random sample of 58 community-based offenders. Community-based offenders are those who: 1) reside in Vermont; or 2) who reside elsewhere but are employed or go to school in Vermont.

We based the statistical sample of community-based offenders upon an attribute sampling plan that used a 95 percent confidence level (five percent risk of over-reliance), five percent tolerable deviation rate, and an expected error rate of zero. The population size was 1,416 registered sex offenders in “active” status.

For each record in the community-based sample, we traced information in the SOR data file—offenders’ identification, conviction information, victim age, end-of-sentence dates, sex offender registry registration dates, location information, risk classification, treatment compliance, and supervision information—to substantiating documentation from VCIC, DOC, or the Courts. This included reviewing: 1) the offender’s criminal record in VCIC’s Computerized Criminal History system; 2) the offender’s movement history report, risk assessment history, and other case notes in the DOC system; 3) completed SOR forms, such as the SOR registration form, change of address form, and treatment compliance/noncompliance forms; 4) court docket and disposition reports; and 5) affidavits or other information.

We also evaluated VCIC’s decisions related to whether the offenders: 1) should have been on the sex offender registry, 2) should have been posted on the Internet SOR, 3) were required to be a 10-year or a lifetime registrant, 4) were listed in the correct county, and 5) were compliant with specific registry rules.

As part of evaluating the results of the community-based offender sample, we defined an error as encompassing 1) records that were incorrectly omitted, added, retained or deleted from the registry, 2) data in the SOR that differs from the source documentation, 3) omission of data in a field, when



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applicable, and 4) inaccurate VCIC calculations or determinations (e.g., registration end date). For the few instances in which we could not make a comparison to the source documentation due to its unavailability (e.g., specific court documents for out-of-state convictions were not always available), we did not determine that data element for that specific record to be in error.

We did not expand our sample after the audit found that the actual error rate was materially above the tolerable error rate. Instead, we chose to accept the error rate; seek and report on identifiable causes of specific material errors; and report on the errors, which included calculating and reporting on the upper and lower error limits for each data field tested in the sample.

Lastly, with respect to our community-based sample, we compared the results of this audit to the results of the prior audit. We only compared those attributes whose characteristics were materially the same in both audits, as circumstances warranted.

Our statistical sampling plan, process, and results were reviewed by a statistician that we retained as a consultant on this audit.

For both the automated data analysis and community-based sample, we evaluated errors from a qualitative perspective. Namely, we used the following categories to characterize the effect of the errors on an offender's SOR record.<sup>34</sup>

- *Critical.* Errors that have resulted, or would have resulted if not corrected, in a sex offender 1) being incorrectly omitted, added, retained, or deleted from the Registry or 2) being incorrectly omitted, added, retained, or deleted from the Internet Registry.
- *Significant.* Errors related to 1) sex offender identification (e.g., name and Social Security Number); 2) sex offender location information related to his or her residence, employment, or school; 3) other data that is on the Internet or provided to law enforcement agencies; 4)

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<sup>34</sup> This qualitative analysis took into account that errors of a similar nature may be categorized differently depending on the circumstances of an individual sex offender record. To illustrate, errors in the end-of-sentence field would be categorized differently depending on whether the offender was required to register for 10 years after discharge from supervision or for life. If the offender was in the 10-year category, we generally considered errors in the end-of-sentence date field to be critical because the offender could be on the SOR for a longer or shorter period of time than required. However, if the offender was required to register for his or her lifetime, an end-of-sentence date error would be categorized as "other" because it would not affect how long the offender was on the registry.

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incorrect coding in the system that would have caused an offender's address to be incorrectly added or excluded from the Internet Registry if not corrected; or 5) data that affects SOR reporting processes (e.g., address changes and verification processes).

- *Other.* Information that is omitted or incorrect in the registry but does not directly affect 1) whether an offender is on the Registry or Internet Registry, 2) data that is provided to the public or law enforcement agencies, or 3) SOR reporting processes.

To perform our second objective, we requested that VCIC and DOC provide a self-evaluation of their implementation of the prior audit's recommendations along with supporting documentation. In assessing whether the departments had fully implemented, partially implemented, or not implemented the recommendations, we took into account their self-evaluations, the supporting documentation provided, and other documentation and analyses gathered and performed during the course of the audit. We used the following definitions to guide our analysis.

- *Fully implemented.* The recommendation had been adopted substantially or in its entirety.
- *Partially implemented.* Part of the recommendation had been implemented, but the intent of the recommendation had not been fully satisfied.
- *Not implemented.* No part of the recommendation was implemented.
- *Not yet applicable.* Implementation of the recommendation contingent upon circumstances not yet applicable.

We performed our work between October 2013 and May 2014 primarily at the offices of VCIC and DOC in Waterbury and Williston, respectively. We conducted this performance audit in accordance with generally accepted government auditing standards, which require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## **Appendix II**

### **Abbreviations**

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DOC	Department of Corrections
DPS	Department of Public Safety
SOR	Sex Offender Registry
U.S.C.	United States Code
VCIC	Vermont Criminal Information Center
V.S.A.	Vermont Statutes Annotated

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## **Appendix III**

### **Decision Not To Assess The Currency of the Data in the SOR**

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Certain SOR processes are required to be performed within specific timeframes contained in the sex offender statute and VCIC rules. For example, 13 V.S.A. §5404 requires DOC to notify DPS within 24 hours of the time a sex offender changes his or her address, place of employment, or enrolls in or separates from a postsecondary educational institution. VCIC's sex offender rule also requires DOC to forward a completed registration form 10 days prior to an offenders' release from confinement or supervision and to notify VCIC within 24 hours of an offender's discharge from supervision (completion of his or her sentence). For offenders who have been discharged (directly from a correctional facility or after community supervision), the VCIC rule requires offenders to inform VCIC of changes in address, employment, or college enrollment within three days of the change. 13 V.S.A. §5407(g) also requires VCIC to annually verify a registered offender's address by sending a nonforwardable address verification form that the registrant is required to sign and return to VCIC within 10 days of receipt.

We determined that we could not evaluate whether the SOR was being updated in a timely manner and in accordance with requirements, largely because our statistical sample showed a high rate of errors in certain date fields, including the start registration date, end-of-sentence date, and annual address verification date (86 percent, 31 percent, and 17 percent, respectively). These results eroded our confidence that accurate conclusions could be drawn based on the dates in the system.

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## Appendix IV

### Selected Statutory References

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Vermont's sex offender statute (13 V.S.A. Chapter 167, Sub-Chapter 3) sets forth requirements related to the registration of sex offenders. This appendix sets out excerpts of the statute that are particularly relevant to our audit—the definition of a sex offender, the registration life of an offender, the criteria for posting certain offenders on the Internet SOR, and the definition and processes associated with noncompliant high-risk offenders.<sup>35</sup>

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### Definition of a Sex Offender

13 V.S.A. §5401(10) defines a sex offender as the following:

“(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

- (i) sexual assault as defined in 13 V.S.A. §3252.
- (ii) aggravated sexual assault as defined in 13 V.S.A. §3253.
- (iii) lewd and lascivious conduct as defined in 13 V.S.A. §2601.
- (iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A. §1379.
- (v) second or subsequent conviction for voyeurism as defined in 13 V.S.A. §2605(b) or (c).
- (vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. §2405(a)(1)(D).
- (vii) aggravated sexual assault of a child in violation of section 3253a of this title; and
- (viii) human trafficking in violation of subdivisions 2652(a)(1)-(4) of this title;
- (ix) aggravated human trafficking in violation of subdivision 2653(a)(4) of this title; and
- (x) a federal conviction in federal court for any of the following offenses:
  - (I) Sex trafficking of children as defined in 18 U.S.C. §1591.
  - (II) Aggravated sexual abuse as defined in 18 U.S.C. §2241.
  - (III) Sexual abuse as defined in 18 U.S.C. §2242.
  - (IV) Sexual abuse of a minor or ward as defined in 18 U.S.C. §2243.
  - (V) Abusive sexual contact as defined in 18 U.S.C. §2244.
  - (VI) Offenses resulting in death as defined in 18 U.S.C. §2245.
  - (VII) Sexual exploitation of children as defined in 18 U.S.C. §2251.

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<sup>35</sup> These statutory references are as of December 31, 2013 (the date of the scope of our audit).

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- (VIII) Selling or buying of children as defined in 18 U.S.C. §2251A.
  - (IX) Material involving the sexual exploitation of minors as defined in 18 U.S.C. §2252.
  - (X) Material containing child pornography as defined in 18 U.S.C. §2252A.
  - (XI) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. §2260.
  - (XII) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. §2421.
  - (XIII) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. §2422.
  - (XIV) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. §2423.
  - (XV) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. §2425.
  - (XVI) Trafficking in persons as defined in 18 U.S.C. sections 2251-2252(a), 2260, or 2421-2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse.
- (xi) an attempt to commit any offense listed in this subdivision (A).
- (B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the Registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:
- (i) any offense listed in subdivision (A) of this subdivision (10).
  - (ii) kidnapping as defined in 13 V.S.A. §2405(a)(1)(D).
  - (iii) lewd and lascivious conduct with a child as defined in 13 V.S.A. §2602.
  - (iv) slave traffic as defined in 13 V.S.A. §2635.
  - (v) sexual exploitation of children as defined in 13 V.S.A. chapter 64.
  - (vi) procurement or solicitation as defined in 13 V.S.A. §2632(a)(6).
  - (vii) aggravated sexual assault of a child as defined in 13 V.S.A. §3253a.
  - (viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in 13 V.S.A. §2635a.
  - (ix) sexual exploitation of a minor as defined in 13 V.S.A. §3258.
  - (x) an attempt to commit any offense listed in this subdivision (B).

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- (C) A person who takes up residence within this State, other than within a correctional facility, and who has been convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, for a sex crime the elements of which would constitute a crime under subdivision (A) or (B) of this subdivision (10) if committed in this State.
- (D) A person 18 years of age or older who resides in this State, other than in a correctional facility, and who is currently or, prior to taking up residence within this State, was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.
- (E) A nonresident sex offender who crosses into Vermont and who is employed, carries on a vocation, or is a student.”

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## Length of Registration

13 V.S.A. §5407 sets out the following provisions regarding the length of time that an offender is to be registered.

- “(e) Except as provided for in subsection (f) of this section, a person required to register as a sex offender under this subchapter shall continue to comply with this section, except during periods of incarceration, until 10 years have elapsed since the person was released from prison or discharged from parole, supervised release, or probation, whichever is later. The 10-year period shall not be affected or reduced in any way by the actual duration of the offender's sentence as imposed by the court, nor shall it be reduced by the sex offender's release on parole or ending of probation or other early release.
- (f) A person required to register as a sex offender under this subchapter shall continue to comply with this section for the life of that person, except during periods of incarceration, if that person:
  - (1) has at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter or a comparable offense in another jurisdiction of the United States;

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- (2) has been convicted of a sexual assault as defined in section 3252 of this title or aggravated sexual assault as defined in section 3253 of this title; however, if a person convicted under section 3252 is not more than six years older than the victim of the assault and if the victim is 14 years or older, then the offender shall not be required to register for life if the age of the victim was the basis for the conviction;
- (3) has been determined to be a sexually violent predator pursuant to section 5405 of this title; or
- (4) has been designated as a noncompliant high-risk sex offender pursuant to section 5411d of this title.”

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## Posting to the Internet SOR

13 V.S.A. §5411a sets forth the following requirements regarding which offenders are to be posted to the Internet SOR.

“(a) Notwithstanding 20 V.S.A. §§2056a-2056e, the Department<sup>36</sup> shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

- (1) Sex offenders who have been convicted of:
  - (A) Aggravated sexual assault of a child (13 V.S.A. §3253a).
  - (B) Aggravated sexual assault (13 V.S.A. §3253).
  - (C) Sexual assault (13 V.S.A. §3252).
  - (D) Kidnapping with intent to commit sexual assault (13 V.S.A. §2405(a)(1)(D)).
  - (E) Lewd or lascivious conduct with child (13 V.S.A. §2602).
  - (F) A second or subsequent conviction for voyeurism (13 V.S.A. §2605(b) or (c)).
  - (G) Slave traffic if a registrable offense under subdivision 5401(10)(B)(iv) of this title (13 V.S.A. §2635).
  - (H) Sex trafficking of children or sex trafficking by force, fraud, or coercion (13 V.S.A. § 2635a).
  - (I) A felony violation of sexual exploitation of a minor (13 V.S.A. §3258(c)).
  - (J) Any offense regarding the sexual exploitation of children (chapter 64 of this title).

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<sup>36</sup> 13 V.S.A. §5401(2) defines department as the Department of Public Safety for the sex offender registry subchapter.



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- (K) Sexual abuse of a vulnerable adult (13 V.S.A. §1379).
- (L) Human trafficking as defined in subdivisions 2652(a)(1)-(4) of this title.
- (M) Aggravated human trafficking as defined in subdivision 2653(a)(4) of this title.
- (N) A federal conviction in federal court for any of the following offenses:
  - (i) Sex trafficking of children as defined in 18 U.S.C. §1591.
  - (ii) Aggravated sexual abuse as defined in 18 U.S.C. §2241.
  - (iii) Sexual abuse as defined in 18 U.S.C. § 2242.
  - (iv) Sexual abuse of a minor or ward as defined in 18 U.S.C. §2243.
  - (v) Abusive sexual contact as defined in 18 U.S.C. §2244.
  - (vi) Offenses resulting in death as defined in 18 U.S.C. §2245.
  - (vii) Sexual exploitation of children as defined in 18 U.S.C. §2251.
  - (viii) Selling or buying of children as defined in 18 U.S.C. §2251A.
  - (ix) Material involving the sexual exploitation of minors as defined in 18 U.S.C. §2252.
  - (x) Material containing child pornography as defined in 18 U.S.C. §2252A.
  - (xi) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. §2260.
  - (xii) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. §2421.
  - (xiii) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. §2422.
  - (xiv) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. §2423.
  - (xv) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. §2425.
  - (xvi) Trafficking in persons as defined in 18 U.S.C. sections 2251-2252(a), 2260, or 2421-2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse.
- (O) An attempt to commit any offense listed in this subdivision (a)(1).

- (2) Sex offenders who have at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter.

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- (3) Sex offenders who have failed to comply with sex offender registration requirements and for whose arrest there is an outstanding warrant for such noncompliance. Information on offenders shall remain on the Internet only while the warrant is outstanding.
- (4) Sex offenders who have been designated as sexual predators pursuant to section 5405 of this title.
- (5) (A) Sex offenders who have not complied with sex offender treatment recommended by the Department of Corrections or who are ineligible for sex offender treatment. The Department of Corrections shall establish rules for the administration of this subdivision and shall specify what circumstances constitute noncompliance with treatment and criteria for ineligibility to participate in treatment. Offenders subject to this provision shall have the right to appeal the Department of Corrections' determination in Superior Court in accordance with Rule 75 of the Vermont Rules of Civil Procedure. This subdivision shall apply prospectively and shall not apply to those sex offenders who did not comply with treatment or were ineligible for treatment prior to March 1, 2005.  
  
(B) The Department of Corrections shall notify the Department if a sex offender who is compliant with sex offender treatment completes his or her sentence but has not completed sex offender treatment. As long as the offender complies with treatment, the offender shall not be considered noncompliant under this subdivision and shall not be placed on the Internet Registry in accordance with this subdivision alone. However, the offender shall submit to the Department proof of continuing treatment compliance every three months. Proof of compliance shall be a form provided by the Department that the offender's treatment provider shall sign, attesting to the offender's continuing compliance with recommended treatment. Failure to submit such proof as required under this subdivision (B) shall result in the offender's placement on the Internet Registry in accordance with subdivision (A) of this subdivision (5).
- (6) Sex offenders who have been designated by the Department of Corrections, pursuant to section 5411b of this title, as high-risk.
- (7) A person 18 years of age or older who resides in this State, other than in a correctional facility, and who is currently or, prior to taking up residence within this State was required to register as a sex offender

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in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; except that, for purposes of this subdivision:

- (A) conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the Registry if the perpetrator is under the age of 18 and the victim is at least 12 years old; and
  - (B) information shall be posted electronically only if the offense for which the person was required to register in the other jurisdiction was:
    - (i) a felony; or
    - (ii) a misdemeanor punishable by more than six months of imprisonment. . . .
- (e) Information regarding a sex offender shall not be posted electronically if the conduct that is the basis for the offense is criminal only because of the age of the victim and the perpetrator is within 38 months of age of the victim.
- (f) Information regarding a sex offender shall not be posted electronically prior to the offender reaching the age of 18, but such information shall be otherwise available pursuant to section 5411 of this title.”

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## Noncompliant High-Risk Offenders

13 V.S.A. §5411d sets forth the following requirements regarding DOC’s designation of noncompliant high-risk offenders and the responsibilities of DPS and these offenders.

- “(a) Prior to releasing a person from total confinement, the Department of Corrections shall designate the person as a noncompliant high-risk sex offender if the person meets all of the following criteria:
- (1) Is incarcerated on or after the effective date of this act for lewd and lascivious conduct with a child as defined in section 2602 of this title, sexual assault as defined in section 3252 of this title, aggravated sexual assault as defined in section 3253 of this title, or any attempt to commit a crime listed herein, or a comparable offense in another jurisdiction of the United States.
  - (2) Is not subject to indeterminate life sentences under section 3271 of this title.

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## Appendix IV

### Selected Statutory References

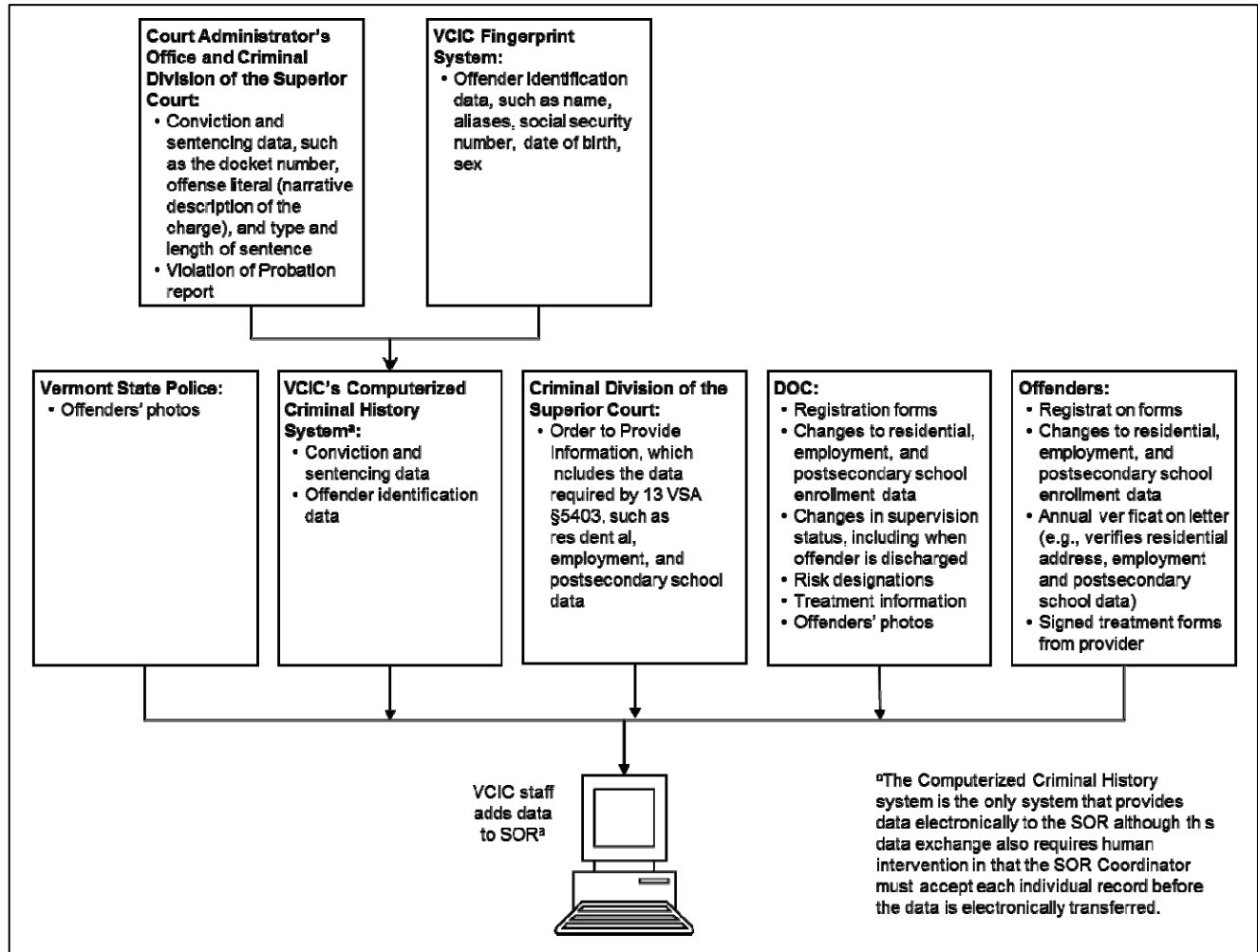
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- (3) Is designated as a high-risk sex offender pursuant to section 5411b of this title.
  - (4) Is noncompliant with sex offender treatment as defined by Department of Corrections' directives.
- (b) Noncompliant high-risk sex offenders shall report to the Department as follows:
- (1) In person, within 15 days from the date of release from Department of Corrections' supervision, and within every 30 days thereafter.
  - (2) Prior to any change of address. However, if the change of address is unanticipated, the offender shall report within one day of the change of address.
  - (3) Prior to enrollment in or separation from any postsecondary educational institution. However, if the change in school status is unanticipated, the offender shall report within one day of the change.
  - (4) Within one day of any change in a place of employment.
- (c) In addition to the Registry information required in section 5403 of this title, a noncompliant high-risk sex offender shall provide the Department with the make, model, color, registration, and license plate number of any vehicle the person operates prior to operation. An offender found in operation of a vehicle not on the list provided to the Department shall be considered to be in violation of this subsection.
- (d) The Department shall arrange for the noncompliant high-risk sex offender to have his or her digital photograph updated annually for purposes of the electronic Registry as provided in section 5411a of this title. An offender who is requested by the Department to report to the department or a local law enforcement agency for the purpose of being photographed for the Internet Registry shall comply with the request within 30 days.
- (e) The Department shall conduct periodic unannounced Registry compliance checks on noncompliant high-risk sex offenders to verify the accuracy of Registry information. The Department may enter into an agreement with a local law enforcement agency to perform duties under this subsection and under subdivision (b)(1) of this section, but shall maintain responsibility for compliance with this subsection.”

# Appendix V

## Sources of Data Used By the SOR

Figure 2: Simplified Diagram of the Sources and Types of Data Sent to the SOR



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## Appendix VI

### Profile of Sample of Community-Based Offenders

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Because of concerns over confidentiality, we are not providing the names or characteristics of individual offenders in our community-based sample. However, the following provides summary-level information on the offenders in this sample. These numbers were updated from the information in the December 31, 2013 SOR file we used to extract the statistical sample to reflect changes that were made by VCIC to correct errors found during the audit.

#### **Sex**

57 males

1 female

#### **Internet Status**

47 on Internet SOR

11 not on Internet SOR

#### **Supervision Status**

19 under supervision by DOC or the Federal Government

39 not under supervision

#### **Place of Conviction**

49 were convicted in Vermont

8 were convicted in another jurisdiction

1 was convicted in both Vermont and another jurisdiction

**Vermont Statute Convicted Under** (does not include convictions from other jurisdictions and some offenders were convicted under multiple statutes)

19 were convicted of sexual assault - victim < 16 yrs

14 were convicted of lewd-lascivious conduct with child

11 were convicted of lewd-lascivious conduct

3 were convicted of sexual assault - no consent/attempt

2 were convicted of sexual assault

2 were convicted of aggravated sexual assault - victim < 10 yrs

2 were convicted of sexual assault on a minor

1 was convicted of prohibited act

1 was convicted of sexual assault - no consent

1 was convicted of sexual assault - parental role

1 was convicted of attempted sexual assault- victim < 16 Yrs

1 was convicted of sexual assault - victim < 18 Yrs – victim in the entrusted care of offender

1 was convicted of sexual exploitation - use of electronic communications to lure a child

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## **Appendix VI**

### **Profile of Sample of Community-Based Offenders**

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#### **County of Residence as of December 31, 2013**

Addison— 2 offenders  
Bennington— 5 offenders  
Caledonia— 3 offenders  
Chittenden— 13 offenders  
Essex— 1 offenders  
Franklin— 10 offenders  
Grand Isle— 0 offenders  
Lamoille— 4 offenders  
Orange— 2 offenders  
Orleans— 0 offenders  
Rutland— 7 offenders  
Washington— 4 offenders  
Windham— 3 offenders  
Windsor— 3 offenders  
Not in Vermont— 1 offender

## Appendix VII

### Comparison of Results of 2010 and 2013 Statistical Samples

Table 7 contains a comparison by data element of the results of our statistical sample of community-based offenders based on files as of February 18, 2010 and December 31, 2013. It also includes an evaluation of whether the changes in error rates between the 2010 and 2013 for each data element results are statistically significant.<sup>37</sup>

**Table 7: Comparison of Results of Statistical Samples Taken as of February 18, 2010 and December 31, 2013, by Data Element<sup>a</sup>**

Data Element <sup>b</sup>	February 18, 2010 (sample size of 57)		December 31, 2013 (sample size of 58)		Increase/ (Decrease) in Error Percentage <sup>c</sup>	2010-2013 Change is Statistically Significant <sup>d</sup>
	Number of Errors	Percent of Errors	Number of Errors	Percent of Errors		
Name	32	56%	4	7%	(49%)	Yes
Alias	5	9%	4	7%	(2%)	
Date of birth	0	0%	0	0%	--	
Sex	0	0%	0	0%	--	
Race	1	2%	0	0%	(2%)	
Eye color	1	2%	1	2%	--	
Height	1	2%	0	0%	(2%)	
Social security number	4	7%	2	3%	(4%)	
Conviction charge code	N/A	N/A	5	9%	N/A	
Conviction literal	26	46%	4	7%	(39%)	Yes
Conviction date	26	46%	11	19%	(27%)	Yes
Victim age	21	37%	27	47%	10%	
End-of-sentence date (previously called discharge date)	16	28%	18	31%	3%	
Registration start date	14	25%	50	86%	61%	Yes
Registration end date	16	28%	23	40%	12%	
Lifetime registrant	1	2%	5	9%	7%	Yes
Annual address verification date	4	7%	10	17%	10%	Yes
Residential address	3	5%	3	5%	--	
County	3	5%	2	3%	(2%)	
Employer	5	9%	5	9%	--	
Employer address	7	12%	5	9%	(3%)	
School name	0	0%	1	2%	2%	
School address	0	0%	1	2%	2%	
Risk/classification	20	35%	5	9%	(26%)	Yes

<sup>37</sup> Statistical significance is used to demonstrate whether there is sufficient evidence to infer that an observed difference is true.



# Appendix VII

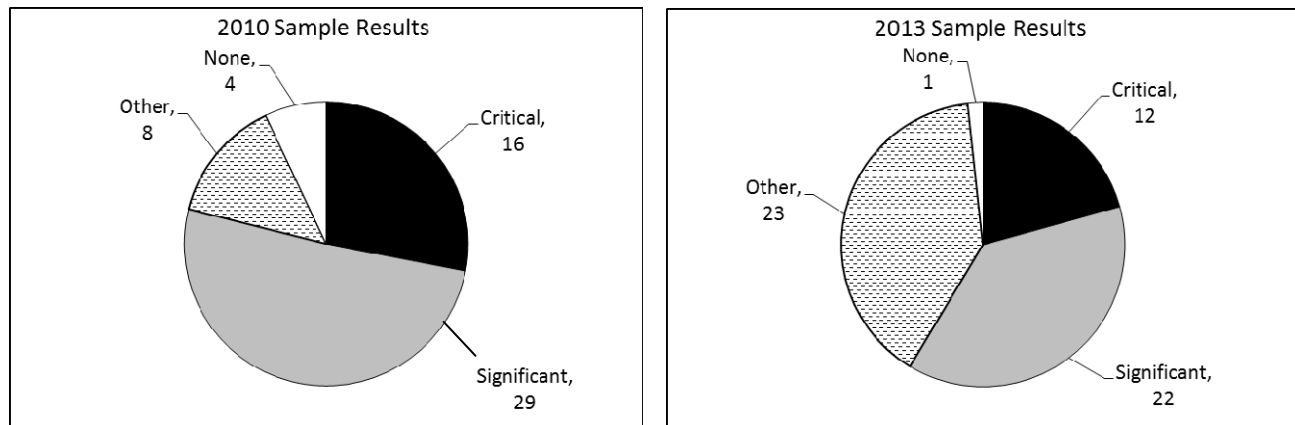
## Comparison of Results of 2010 and 2013 Statistical Samples

Data Element <sup>b</sup>	February 18, 2010 (sample size of 57)		December 31, 2013 (sample size of 58)		Increase/ (Decrease) in Error Percentage <sup>c</sup>	2010-2013 Change is Statistically Significant <sup>d</sup>
	Number of Errors	Percent of Errors	Number of Errors	Percent of Errors		
Sex offender treatment compliance	5	9%	3	5%	(4%)	
Noncompliant high-risk status	0	0%	0	0%	--	
Other noncompliant reasons	N/A	N/A	9	16%	N/A	
Supervision field office	2	4%	7	12%	9%	Yes
SOR status	5	9%	2	3%	(6%)	
SOR registration type	N/A	N/A	1	2%	N/A	
Publish on Website	N/A	N/A	0	0%	N/A	
Reason for Being on the Internet	N/A	N/A	3	5%	N/A	

- <sup>a</sup> N/A means "not applicable" and is used in those cases in which the data element was not reviewed in the prior audit, generally because it was not included in the prior system.
- <sup>b</sup> This list does not include the data elements reviewed in the prior audit that were not reviewed in the current audit.
- <sup>c</sup> All numbers in the table are rounded, which may cause small discrepancies.
- <sup>d</sup> Statistical significance is derived from a calculation of the "p-value" or calculated probability value, which is the probability of seeing the given difference between the 2010 and 2013 error rates, if it is assumed that the error rates are the same. In our analysis, a "p-value" of less than or equal to .05 for a particular data element was deemed statistically significant. Said another way, in these cases, there is a less than five percent chance that the difference in error rates between our 2010 and 2013 sample is not true.

Figure 3 provides a similar comparison, but considers the seriousness of the errors.

**Figure 3: Comparison of Results of Statistical Samples Taken as of February 18, 2010 (57 records) and December 31, 2013 (58 records), by Seriousness of Error**



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# Appendix VIII

## Reprint of the Commissioner of the Department of Public Safety's Management Response

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State of Vermont  
Department of Public Safety  
103 South Main Street  
Waterbury, Vermont 05671-2101  
[www.dps.state.vt.us](http://www.dps.state.vt.us)

July 9, 2014

Douglas R. Hoffer  
Vermont State Auditor  
Office of the State Auditor  
132 State Street  
Montpelier, VT 05671-2101

The Department of Public Safety (DPS) has reviewed the Vermont State Auditor's Office (SAO) draft report relating to the Sex Offender Registry (SOR) provided June, 2014 and we concur with the principle that additional improvements are warranted within the SOR. However, it is also important to document that previous efforts have updated data which is collected, maintained, and made available through the SOR. These improvements go hand-in-hand with technical improvements that are still being leveraged to enhance daily functions of the SOR.

In reviewing the data analysis completed by the SAO for each audit (2010 and 2013) it was noted that eight data elements changed in a statistically significant manner (Appendix VII). Of these elements, four showed significant improvement, each directly impacting the nature of data available to the public (Name, Conviction Literal, Conviction Date, and Risk/Classification). Of the data elements that showed a regression from the previous review, one (Registration start date) is substantially relatable to the mentioned *Transition to the New SOR System* (Underlying Causes). This transitional issue was known to the Vermont Crime Information Center (VCIC) at the time of the audit and under active problem resolution with the system vendor (OffenderWatch).

The above mentioned technical transition represents a significant step forward in the ability of the SOR to move away from manual processes to a more automated environment. OffenderWatch (procured through a grant provided via the federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking) continues to work with Vermont on system implementation and development issues. One such initiative is the ability for the SOR to directly import select correctional housing data from a nationally



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## Appendix VIII

# Reprint of the Commissioner of the Department of Public Safety's Management Response

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utilized corrections database (funding procured through a grant provided by the federal Office of Justice Programs). As this system continues to mature further automation options become available and the Department stands ready to interface with critical data providers (including the Department of Corrections and Court Administrator) to provide needed data through more reliable electronic submission and review.

After completion of the 2010 Audit multiple internal reviews were completed, focusing on data contained within the SOR database. Included in these reviews was a thorough comparison of data contained within the previously utilized database, the new offender management system, and the VCIC Criminal History Database (CCH). This review involved seven VCIC staff and the quality review of over 1,300 offender files comprising multiple fields, including (but not limited to) name, date of birth, risk status, registration dates, address information, probation information, and offense information.

As noted in the draft report the VCIC continued to proactively update data contained within the SOR database as the most recent audit progressed. With regards to the additional recommendations provided in the draft report, each is addressed below:

**We recommend that the Commissioner of the Department of Public Safety, Commissioner of the Department of Corrections, and the Court Administrator reconvene the working group to reassess and possibly redesign the processes related to the SOR to include possible system solutions to more effectively and efficiently transmit information to the SOR and to periodically report on their process to the applicable legislative committees.**

Per the State Auditor's Office recommendation the Department of Public Safety will be urging the Department of Corrections and Court Administrator to commit to reconstituting the previously recommended working group, including clearly defined membership and operational goals.

**We recommend that the Commissioner of the Department of Public Safety direct the Director of the Vermont Crime Information Center to:**

- Fully implement recommendations in our prior audit report that address 1) performance standards for the timely entry of data into the SOR, 2) developing procedures related to all SOR functions and documentation retention standards, and 3) developing a process to identify and track the treatment process of offenders no longer under DOC supervision, and
- Establish mechanisms to track noncompliant high-risk offender as defined by 13 V.S.A. 5411d and ensure all statutorily required information regarding such offenders is collected and all verification process are timely performed.



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## Appendix VIII

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Per the recommendations listed above I have directed the Director of the VCIC, in collaboration with other DPS staff, to begin developing performance standards and procedures related to all SOR functions, including timeliness of data entry, document retention, and treatment information for offenders no longer under DOC supervision but are otherwise required to attend treatment (as mandated by DOC). Due to the nature of statutory interpretations required (especially in the case of offenders convicted out-of-state) certain procedures may be leading rather than proscriptive. This reflects not only the significant individual analysis required in certain cases but the fact that out-of-state criminal codes and definitions may change due to legislative or other action.

Additionally, I am directing the Director of the VCIC to establish mechanisms to track noncompliant high-risk offenders identified by the Department of Corrections to the VCIC (per 13 V.S.A. § 5411d). This is to include all statutorily mandated information and timelines.

In summary it is the position of the Department of Public Safety that while improvements to the SOR continue to be necessary at no time was public safety substantially at risk. This position is due to the underlying fact that applicable offenders who were identified to DPS were listed within the SOR and available for law enforcement review. Finally, we appreciate the work of the State Auditor's Office in reviewing the complexities relating to administration of the Vermont Sex Offender Registry and the attention generated for the demands of an extremely complex program utilizing very limited resources.

Sincerely,



Keith W. Flynn  
Commissioner



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# Appendix IX

## Reprint of the Commissioner of the Department of Corrections' Management Response

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State of Vermont  
Department of Corrections  
103 South Main Street  
Waterbury, VT 05671-1001  
[www.doc.state.vt.us](http://www.doc.state.vt.us)

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*Agency of Human Services*

June 17, 2014

Mr. Doug Hoffer  
Vermont State Auditor  
132 State Street  
Montpelier, VT 05633-5101

Dear Mr. Hoffer,

The Department of Corrections has reviewed the Vermont State Auditor's draft performance report. We agree with your findings, conclusions and recommendations and thank you for the opportunity to respond.

The DOC is committed to working with the Vermont Criminal Information Center and Court Administrator on addressing the issues in this audit as it relates to the DOC. Only by working together can we achieve the common goal of ensuring information is delivered efficiently and accurately in the interest of public safety. We are committed to continuing to design and implement policies and technology to meet that need.

The newly designed Offender Management System is expected to be implemented in early 2015. The contract has system requirements that are directly associated with the Sex Offender Registry (SOR) process. We believe this new system will satisfy the recommendations with respect to identifying offenders who are required to register, along with additional flags to identify those offenders who are designated high risk and/or non-compliant with treatment requirements. In addition, this system is designed to prompt DOC personnel to electronically submit the applicable information to VCIC within the designated timeframes.

In the interim, we will implement internal controls, process changes, and additional audit procedures to help reduce human errors that are attributed to a largely complex manual process. Effective immediately, during the booking/intake process, staff will be required to ask the offender if he/she is required to register as a sex offender in Vermont or any other state. This will result in timelier reporting from the DOC to VCIC. Each facility and field office will have one or two staff members who will be the conduit between DOC and VCIC. This will reduce the number of staff involved in the reporting process along with verifying the information is accurate. The department's SOR directive will be reviewed and revised as needed for clarity of responsibilities followed by specialized training for staff.

Thanks to you and your audit team for the arduous work and high level of professionalism displayed throughout this process.

Sincerely,

Andrew A. Pallito  
Commissioner

VERMONT