

OFFICE OF THE STATE AUDITOR

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**DIANA DIZOGLIO**

Official Audit Report – Issued October 25, 2023

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**Sex Offender Registry Board**  
For the period July 1, 2019 through June 30, 2021



OFFICE OF THE STATE AUDITOR  
**DIANA DIZOGLIO**

October 25, 2023

Megan McLaughlin, Chair  
Sex Offender Registry Board  
PO Box 392  
North Billerica, MA 01862

Dear Ms. McLaughlin:

I am pleased to provide to you the results of the enclosed performance audit of the Sex Offender Registry Board. As is typically the case, this report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2019 through June 30, 2021. As you know, my audit team discussed the contents of this report with agency managers. This report reflects those comments.

I appreciate you and all your efforts at the Sex Offender Registry Board. The cooperation and assistance provided to my staff during the audit went a long way toward a smooth process. Thank you for encouraging and making available your team. I am available to discuss this audit if you or your team have any questions.

Best regards,



Diana DiZoglio  
Auditor of the Commonwealth

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## LIST OF ABBREVIATIONS

|        |  |
|--------|--|
| CJIS   | Criminal Justice Information System                  |
| DTA    | Department of Transitional Assistance                |
| EOTSS  | Executive Office of Technology Services and Security |
| SORB   | Sex Offender Registry Board                          |
| SORIS2 | Sex Offender Registry Information System             |

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## EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has performed an audit of the Sex Offender Registry Board (SORB) for the period July 1, 2019 through June 30, 2021.

The objective of our audit was to follow up on the issues identified in our prior audit report (No. 2016-1408-3S) to determine what measures, if any, SORB had taken to address those issues, as well as the adequacy of those measures. In addition, we determined whether SORB established a business continuity plan and a disaster recovery plan in accordance with the Executive Office of Technology Services and Security's Business Continuity and Disaster Recovery Standard IS.005.

Below is a summary of our findings and recommendations, with links to each page listed.

|  |   |
|--|---|
| <b>Finding 1</b><br><b>Page <a href="#">10</a></b>       | SORB did not assign final classifications to all sex offenders before they were released from incarceration.  |
| <b>Recommendations</b><br><b>Page <a href="#">11</a></b> | <ol style="list-style-type: none"><li>1. SORB should collaborate with correctional facilities to establish more reliable procedures for providing anticipated release dates.</li><li>2. SORB should track the progress of each sex offender's classification process, including identifying any delays or issues that may arise and taking appropriate actions to address them, to ensure that all sex offenders are assigned final classifications at least 10 days before their earliest release dates.</li></ol> |
| <b>Finding 2</b><br><b>Page <a href="#">14</a></b>       | SORB did not always conduct address verification data matching or update the Sex Offender Registry Information System (SORIS2).   |
| <b>Recommendations</b><br><b>Page <a href="#">15</a></b> | <ol style="list-style-type: none"><li>1. SORB should use all the interdepartmental service agreements it has with executive branch agencies to conduct address verification data matching to obtain accurate addresses for sex offenders considered in violation.</li><li>2. SORB should update SORIS2 to reflect all updated address information it receives as part of its address verification data matching with executive branch agencies.</li></ol>   |
| <b>Finding 3</b><br><b>Page <a href="#">18</a></b>       | SORB does not have a documented and tested business continuity plan and disaster recovery plan.   |
| <b>Recommendations</b><br><b>Page <a href="#">19</a></b> | <ol style="list-style-type: none"><li>1. SORB should develop, document, and test a business continuity plan and disaster recovery plan.</li><li>2. SORB should select an offsite location to recover SORIS2 data. Once the site has been selected, SORB should update and test its disaster recovery plan and incorporate any test results into the plan.</li></ol>   |

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## OVERVIEW OF AUDITED ENTITY

The Sex Offender Registry Board (SORB) was established by Chapter 239 of the Acts of 1996. The act and its amendments were codified as Sections 178C through 178Q of Chapter 6 of the Massachusetts General Laws. This legislation was enacted to comply with the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, which required states to create a registry of people convicted of sexual offenses.

SORB is overseen by the Executive Office of Public Safety and Security and has seven full-time board members appointed by the Governor. A chairperson, who serves as the executive and administrative head of the agency, oversees SORB's operations. Throughout our audit period, SORB had a total of 72 employees, of whom two were part-time. The major units of SORB are Registration, Classification, Hearings, Victim Assistance, Legal, and Administrative. In fiscal year 2021, SORB had state appropriations totaling \$5,900,833 and expenditures totaling \$5,679,469. According to its website,

*The Sex Offender Registry Board promotes public safety by educating and informing the public to prevent further victimization. We register and classify convicted sex offenders according to their risk of re-offense and the degree of danger they pose.*

SORB works with local, state, and federal law enforcement agencies to ensure the proper registration of sex offenders in Massachusetts. SORB is responsible for the classification of each registered sex offender.

### Sex Offender Registry Information System

The Sex Offender Registry Information System (SORIS2) is a web-based sex offender registry overseen by the Executive Office of Public Safety and Security for use by SORB, as well as by state and local police departments and federal law enforcement, to keep track of registered sex offenders and to identify possible suspects when a sexual offense has been committed. SORIS2 is an application within the Criminal Justice Information System (CJIS). At the time of our audit, SORIS2 contained records on 20,257 active<sup>1</sup> convicted sex offenders.

To access SORIS2, a user must first be approved for access to the web-based CJIS portal. Access is gained through a certification process, which includes a background check, the signing of a Department of

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1. An active sex offender has a duty to register with SORB. The death of a sex offender, the termination (by a law) of their duty to register, and SORB reclassification are examples of how a sex offender can become inactive.

Criminal Justice Information Services confidentiality agreement to protect personal data and records, and the signing of a Federal Bureau of Investigation security document agreeing to follow the security policy when accessing CJIS.

## **Sex Offender Registration and Classification Process**

SORB or law enforcement agencies enter sex offenders' information in SORIS2. The information comes from a number of sources, including the courts, another state's sex offender registry, or a correctional facility during a sex offender's release from a sentence. Sex offenders must register with SORB and thereafter make sure that their registration information is current. A sex offender who does not keep their information current is considered in violation and could face possible fines of up to \$1,000 or jail time of between six months and two-and-a-half years.

SORB provides each sex offender with their initial classification (based on their risk of reoffense and the degree of danger they pose to the public). It also informs them of their right to request a full classification hearing to challenge SORB's initial classification. The sex offender is informed of their right to have counsel at the classification hearing, and if they cannot afford one, an attorney is appointed to them upon request. A sex offender must request a classification hearing within 20 calendar days of receiving notice of SORB's initial classification, during which time the sex offender is designated as level 0. The initial classification becomes the sex offender's final classification after the 20-day period has elapsed, if they do not request a classification hearing.

If a sex offender requests a classification hearing, they remain designated as level 0, and any information about them is not available to the public until SORB holds a classification hearing and makes the final classification. For an incarcerated sex offender, SORB must make its final classification at least 10 days before the sex offender's earliest possible release date.

A hearing examiner or SORB member conducts classification hearings in accordance with the Standard Rules of Adjudicatory Procedure outlined in Sections 9 through 12 of Chapter 30A of the General Laws. Hearings and administrative records are closed to the public. A hearing's scope is limited to reviewing evidence and determining the sex offender's classification and duty to register. According to Sections 1.14(1) and 1.20(1) of Title 803 of the Code of Massachusetts Regulations, SORB bears the burden of proof, must provide "clear and convincing evidence" at all classification hearings, and must issue a final written decision supporting its findings and its final classification of a sex offender.

The sex offender can appeal SORB’s decision to the Massachusetts Superior Court and then, if not satisfied, to an appellate court. During this appeal process, the sex offender retains the final classification assigned by SORB, and their information is public according to that classification, provided a judge does not issue a preliminary ruling preventing the dissemination of this information.

The table below shows the reported status of each active sex offender recorded in SORIS2.

| Sex Offender Status | Number of Sex Offenders |
|---------------------|-------------------------|
| Registered          | 9,896                   |
| In Violation        | 1,129                   |
| Moved Out of State  | 6,531                   |
| Incarcerated*       | 1,741                   |
| Deported            | 958                     |
| Other**             | 2                       |
| Total               | <u>20,257</u>           |

\* Incarcerated includes sex offenders who were convicted in Massachusetts and reside in either in-state or out-of-state correctional facilities, but does not include sex offenders who were held before their trial.

\*\* Other includes sex offenders who did not have a classification—for example, sex offenders who were challenging their registration requirement in court or have not been convicted yet—reflective of data received on February 4, 2022.

SORB’s classification of a sex offender determines whether and how the sex offender’s information may be released to the public. Currently, SORB has the following four levels for sex offenders:

- **Level 0:** a designation for sex offenders known to SORB who have registered but have not yet been classified,
- **Level 1:** a classification for sex offenders with low risk of reoffense and danger to the public,
- **Level 2:** a classification for sex offenders with moderate risk of reoffense and danger to the public, and
- **Level 3:** a classification for sex offenders with high risk of reoffense and danger to the public.

Sex offenders who are required to register with SORB must either annually verify their registration information, or update their registration information (such as changes to their home addresses, work addresses, secondary addresses, or attendance at institutions of higher education) with SORB 10 days before any changes go into effect. Sex offenders who do not comply annually with this requirement are considered in violation and are subject to arrest, fines, and/or imprisonment. Sex offenders are also considered in violation when they do not register or verify registration information, give false information,



or move without notifying SORB. SORB can use interdepartmental service agreements with other executive branch agencies<sup>2</sup> to try to find addresses for sex offenders considered in violation. SORB can send weekly or monthly lists of these sex offenders to these agencies to ascertain whether these agencies have more recent addresses than what SORIS2 contains for these sex offenders. SORB can then update SORIS2 to reflect the more recent addresses of sex offenders considered in violation.

The table below shows the sex offender levels and reported statuses of sex offenders living in the Commonwealth, reflective of data received on February 4, 2022.

| Sex Offender Level | In Violation | Registered   | Incarcerated | Total Number of Offenders |
|--------------------|--------------|--------------|--------------|---------------------------|
| 0                  | 31           | 181          | 385          | <u>597</u>                |
| 1                  | 119          | 2,688        | 37           | <u>2,844</u>              |
| 2                  | 277          | 4,745        | 197          | <u>5,219</u>              |
| 3                  | 170          | 2,212        | 454          | <u>2,836</u>              |
| Other*             | 1            | 2            | 7            | <u>10</u>                 |
| Total              | <u>598</u>   | <u>9,828</u> | <u>1,080</u> | <u>11,506</u>             |

\* Other includes sex offenders who did not have a classification—for example, sex offenders who were challenging their registration requirement in court or have not been convicted yet—reflective of data received on February 4, 2022.

SORB or law enforcement agencies add information on level 1, 2, and 3 sex offenders to the sex offender registry, but only level 2 sex offenders classified after July 12, 2013<sup>3</sup> and level 3 sex offenders have their information (name; home, work, secondary, and institution of higher education addresses; sexual offenses; physical description; photograph; and registration status) posted to the state’s online sex offender database, which is available to the public. Police departments are notified of sex offenders who live, work, and/or attend institutions of higher education in the departments’ jurisdictions and must release information regarding all level 2 and level 3 sex offenders to the public upon request in accordance with Section 178J of Chapter 6 of the General Laws.

2. SORB entered into interdepartmental service agreements with various executive branch agencies for the purpose of verifying the addresses of sex offenders considered in violation. Some of these agencies include the Department of Transitional Assistance, the Department of Children and Families, and the Department of Revenue.

3. In *Michael Moe & Others v. Sex Offender Registry Board*, 467 Mass. 598 (2014), the Supreme Judicial Court held that SORB could not retroactively apply amendments to the Sex Offender Registry Law requiring online publication of level 2 sex offenders’ information because it violated the Commonwealth’s constitutional due process. As a result, SORB cannot publicly disseminate on the internet any information regarding level 2 sex offenders finally classified on or before July 12, 2013.

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## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Sex Offender Registry Board (SORB) for the period July 1, 2019 through June 30, 2021.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

| Objective  | Conclusion               |
|--|--------------------------|
| 1a. Did SORB assign final classifications of sex offenders at least 10 days before their earliest possible release dates, as required by Section 178E(a) of Chapter 6 of the General Laws?   | No; see Finding <u>1</u> |
| 1b. Did SORB give priority scheduling for classification hearings to determine risk levels of sex offenders involved in crimes against children or persons with disabilities and youthful sex offenders, <sup>4</sup> as required by Section 178K(3) of Chapter 6 of the General Laws? | Yes                      |
| 2. Did SORB use Department of Revenue and other executive branch agency information available to it under Section 178F of Chapter 6 of the General Laws to identify sex offenders who may be in violation?   | No; see Finding <u>2</u> |
| 3. Did SORB establish a business continuity plan and a disaster recovery plan in accordance with the Executive Office of Technology Services and Security's (EOTSS's) Business Continuity and Disaster Recovery Standard IS.005?   | No; see Finding <u>3</u> |

To achieve our audit objectives, we gained an understanding of the internal control environment by reviewing SORB's internal control plans that were in effect during the audit period. To understand SORB's

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4. Section 52 of Chapter 119 of the General Laws defines a youthful offender as someone aged 14 to 18 who committed a crime that would be punishable by imprisonment if the person were an adult. Additionally, this person must have previously been ordered into Department of Youth Services' custody by a court order after they were convicted, convicted of a crime that inflicted serious bodily harm, or convicted of certain firearms charges. Our audit focused specifically on youthful offenders who were convicted of sex offenses.

classification and registration process, we reviewed SORB's policies and procedures as well as related sections of the General Laws. We interviewed SORB employees and conducted walkthroughs to observe how SORB uses the Sex Offender Registry Information System (SORIS2) for the classification and registration processes. To gain a better understanding of how SORB works to find current addresses for sex offenders who may be in violation, we reviewed SORB's interdepartmental service agreements, interviewed SORB employees, and interviewed Department of Transitional Assistance (DTA) employees. In addition, we performed the following procedures.

To determine whether SORB issued final classifications of sex offenders at least 10 days before their earliest possible release dates as required by Section 178E(a) of Chapter 6 of the General Laws, we obtained data from SORIS2 for all 319 sex offenders released during the audit period. We then compared each sex offender's release date / initial registration date with SORB to their final classification date to determine whether SORB classified them at least 10 days before their release.

To determine whether SORB gave priority scheduling for classification hearings to sex offenders involved in crimes against children or persons with disabilities and youthful sex offenders as required by Section 178K(3) of Chapter 6 of the General Laws, we obtained data from SORIS2 for 979 sex offenders to whom SORB assigned classifications during the audit period. We identified sex offenders who had committed crimes against children or persons with disabilities by searching the sex offense data from SORIS2 for keywords such as child, minor, and disability. We identified youthful offenders by calculating sex offenders' ages as of the dates of their convictions. There were 682 total sex offenders who committed crimes against children or persons with disabilities and youthful offenders. We then calculated the average number of days between the dates these sex offenders were assigned to a SORB employee to be classified and the dates SORB assigned its initial classifications for these offenders. We compared this calculated average number of days for the 682 sex offenders to the calculated average number of days for the remaining 297 sex offenders who did not commit crimes against children or persons with disabilities and were not youthful offenders.

To determine whether SORB used information from executive branch agencies to identify the current addresses of sex offenders considered in violation, we interviewed officials from DTA and reviewed the interdepartmental service agreement between SORB and DTA, which allowed SORB to receive addresses of sex offenders considered in violation from DTA. We also performed the following procedures:

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- We obtained the list of sex offenders considered in violation that SORB provided to DTA. We selected a nonstatistical, random sample of 25 weeks of data from a population of 104 weeks of data that SORB sent to DTA for the audit period. We inspected SORIS2 to determine whether SORB had sent to DTA all sex offenders considered in violation within the 25 weeks of data in our sample, as required by Section 178F of Chapter 6 of the General Laws.
  - We selected a nonstatistical, random sample of 24 weeks of data from the population of 104 weeks of data sent by DTA to SORB for the audit period. We inspected SORIS2 to determine whether SORB updated sex offenders' addresses to reflect information from DTA, as required by Section 178F of Chapter 6 of the General Laws.
  - We interviewed SORB's employees to determine to what extent SORB sent information, such as the last known addresses of sex offenders considered in violation or whose addresses could not be verified, to other executive branch agencies, as required by Section 178F of Chapter 6 of the General Laws. These agencies include the Department of Children and Families, the Department of Revenue, the Division of Occupational Licensure, and the Department of Housing and Community Development. We verified that SORB received monthly data on sex offenders considered in violation or whose addresses could not be verified from the Department of Children and Families for the 24 months of the audit period. We interviewed SORB officials to determine whether SORB performed address verification data matching with the Department of Revenue, the Division of Occupational Licensure, and the Department of Housing and Community Development during the audit period.

To determine whether SORB established a business continuity plan and a disaster recovery plan, we interviewed SORB's employees and reviewed EOTSS's Business Continuity and Disaster Recovery Standard IS.005, dated October 15, 2018.

We used nonstatistical sampling methods for our testing and therefore did not project the results of our testing to any population.

### **Data Reliability Assessment**

To determine the reliability of the data within SORIS2, we interviewed SORB's information technology personnel and reviewed information security policies and procedures from SORB and the Department of Criminal Justice Information Services. Specifically, we reviewed policies and procedures for security management, configuration management, contingency planning, and segregation of duties. We also tested whether (1) SORIS2 users completed cybersecurity awareness training, (2) SORB conducted background checks of users before they were given access, and (3) SORB removed users from the system when their access was no longer required. We assessed the reliability of data from SORIS2 related to classifications, registrations, and violations by performing electronic testing for duplicates, missing data,

and data outside the audit period and by interviewing SORB officials who were knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of this audit.

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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### 1. The Sex Offender Registry Board did not assign final classifications to all sex offenders before they were released from incarceration.

In our prior audit (No. 2016-1408-3S) of the Sex Offender Registry Board (SORB), we found that SORB did not assign final classifications for 63 incarcerated first-time sex offenders at least 10 days before their earliest possible release dates. In our current audit, we again found that SORB did not ensure that all sex offenders were assigned their final classifications at least 10 days before their earliest possible release dates.

Specifically, for the 319 sex offenders<sup>5</sup> released from incarceration during our audit period who had registered with SORB, 103 did not have final classifications at least 10 days before their earliest possible release dates. Of these 103 sex offenders, SORB issued final classifications to only 10 before their actual release dates, and it issued final classifications to another 77 after their release dates. These 77 sex offenders were assigned final classifications an average of 170 days after they were supposed to be classified. The longest time to assign a final classification was 739 days after the sex offender's release date. For the remaining 16 sex offenders who did not have final classifications and were released during the audit period, 2 were still awaiting classification as of the end of our audit work and 14 moved out of state before they could receive a final classification from SORB.

As a result, the sex offenders' names, addresses, offenses, and registration statuses were not posted to SORB's website for level 2 and 3 sex offenders and were not otherwise available to the public. This could endanger children, people with disabilities, and the general public.

### Authoritative Guidance

Section 178E of Chapter 6 of the Massachusetts General Laws requires SORB to "classify . . . a sex offender at least 10 days before the offender's earliest possible release date."

### Reasons for Noncompliance

SORB officials stated that they rely on correctional facilities to provide sex offenders' anticipated release dates, and that these dates often are subject to change. SORB claims that this makes it difficult to

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5. The 319 sex offenders released from incarceration included 21 level 0 offenders, 40 level 1 offenders, 130 level 2 offenders, 127 level 3 offenders, and 1 who did not have a classification.

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determine when final classifications need to be assigned and to schedule timely hearings in accordance with the General Laws.

## Recommendations

1. SORB should collaborate with correctional facilities to establish more reliable procedures for providing anticipated release dates.
2. SORB should track the progress of each sex offender's classification process, including identifying any delays or issues that may arise and taking appropriate actions to address them, to ensure that all sex offenders are assigned final classifications at least 10 days before their earliest release dates.

## Auditee's Response

*[The Office of the State Auditor (OSA)] determined that 319 sex offenders were released from incarceration during the audit period and 103 of them did not have final classifications at least 10 days before their earliest possible release date. SORB contends that this is technically true for 86 of those 103 individuals. . . .*

*SORB contends that OSA misidentified 17 of the 103 sex offenders as not finally classified at least 10 days prior to their earliest possible release date. One individual was given a final classification at least 10 days prior to release but was released directly to the [United States] Marshals. One individual was a juvenile offender who was never incarcerated while the juvenile court took a motion for relief from registration under advisement during the audit period. One individual was classified at least 10 days prior to release. Six individuals were released from incarceration to another state. Another eight individuals were marked as incarcerated even though they were incarcerated out-of-state. These individuals were never in Massachusetts and their status was updated to "moved out of state" in 2020 following a change in policy. As of 2020, it is no longer SORB's policy to mark individuals as incarcerated when they are serving a sentence in another jurisdiction. . . .*

*Of these 86, though, 11 individuals were issued final classifications prior to their actual release into the community and due to operational reasons discussed below, it was impossible for SORB to finally classify the remaining 75 individuals.*

*. . . One individual was finally classified eight days prior to their release. One individual was finally classified four days prior to release. Four individuals were finally classified three days prior to their release. Two individuals were finally classified two days before their release. One individual was finally classified the day before their release and two individuals were finally classified on the day of their release. . . .*

*First, 45 of the 75 individuals were sentenced to Houses of Correction with sentences that were simply too short to allow SORB to conduct final classification hearings and issue a decision prior to their release. To put this into perspective, the process to finally classify an offender takes approximately 10 to 12 months to complete. It includes procedural time to gather all relevant information to allow the Board to determine an offender's preliminary classification, to give an offender an opportunity to challenge such recommendation, to determine whether the offender is*

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*indigent and for the case to be forwarded to the Committee for Public Counsel Service ("CPCS") for assignment of counsel, if necessary. Once a case is assigned public counsel, additional time is needed for scheduling and to comply with discovery deadlines. After the hearing is conducted, appropriate time is needed for the examiner to issue a detailed written decision. Further, this 10–12-month timeframe does not account for any unexpected delays, which might include new counsel having to be assigned, a second day of hearing, valid continuances and scheduling conflicts. Given the above timeframe, SORB could not have possibly classified these offenders with such short sentences. For example, some of the offenders the audit team indicated were not properly classified had sentences that were less than one year. One offender was sentenced to 90 days, another was sentenced to 10 days, and another was released from court. This timeframe, which we suggest was not considered by the audit team, is what the courts have found necessary and appropriate to satisfy due process.*

*In addition to SORB's enabling statute and regulations, SORB's fulfillment of its mandate and mission is also bound by evolving case law. In Doe 7083 v. SORB, 472 Mass. 475 (2015), the [Supreme Judicial Court] held that SORB must classify incarcerated offenders in reasonable proximity to their anticipated release dates. If an incarcerated offender is classified too early, the decision remains preliminary and the offender can seek a continuation of his/her hearing at a reasonable time prior to his/her actual release date. Id. at 489. Doe 7546 v. SORB, 487 Mass. 568 (2021) further required SORB to issue final classifications that are based on an evaluation of the offender's risk of re-offense at a time reasonably close to the actual date of discharge regardless of whether an incarcerated offender accepted their earlier classification.*

*Court decisions have had a significant impact on the Agency's ability to comply with classification before release that is not addressed in the Audit Report.*

*Lastly, the remaining 30 cases on the audit team's list faced other challenges. Three individuals were unexpectedly paroled, two were granted medical parole, one was found to be no longer a sexually dangerous person pursuant to [Section 1 of Chapter 123A of the General Laws] and was released from commitment, one was transferred from federal imprisonment to a federal Residential Re-Entry Center and because it was not a locked facility, SORB registered this offender at that address even though the offender was still serving his federal sentence, and two were scheduled for hearings while the offenders were still incarcerated but the hearings were continued due to COVID-19 outbreaks at the facilities and the offenders were released shortly after the continued hearings. Aside from three offenders, the remainder of the cases cited by OSA were all offenders who were given a preliminary recommendation while they were incarcerated, who requested a de novo hearing [an appellate hearing where a different judge reviews the evidence], and then were released before a final classification decision could be issued.*

*With regards to the audit team's recommendations in Detailed Audit Finding 1, SORB responds as follows:*

- 1. SORB will continue to pursue a system upgrade with [the Department of Correction (DOC)] where parole and release dates will automatically transfer/populate in [the Sex Offender Registry Information System (SORIS2)] as they are updated by DOC.*



2. *SORB will continue to track the progress of each sex offender's classification process closely and minimize any delays while continuing to ensure each offender is afforded due process as required by law.*

## **Auditor's Reply**

In its response, SORB acknowledges that 86 of the 103 sex offenders identified by the audit did not receive a final classification at least 10 days before their earliest possible release dates. SORB states that 11 of the 103 sex offenders were issued final classifications before their release; however, this classification occurred outside the timeframe specified by Section 178E of Chapter 6 of the General Laws, which mandates that sex offenders be classified at least 10 days before their earliest possible release dates.

SORB states that the length of the classification process and court decisions caused its inability to issue final classifications to 45 of the 103 sex offenders. While we understand the rationale regarding the length of the classification process and the time to receive court decisions, we emphasize the importance of ensuring that these challenges do not compromise public safety or violate regulatory requirements. It is SORB's responsibility to raise these concerns with the administration and the Legislature, because ambiguity in these matters does not serve public safety.

SORB alleges multiple reasons as to why it did not issue final classifications for 30 of the 103 sex offenders at least 10 days before their earliest possible release dates. While we recognize the potential complexities involved in the classification process, we strongly reiterate that timely and accurate classifications are essential to protect the residents of the Commonwealth.

SORB states that we misidentified the remaining 17 of the 103 sex offenders as not receiving a final classification at least 10 days before their earliest possible release dates. We object to SORB's statement that 17 of the 103 sex offenders were misidentified. Our audit fieldwork was based on data contained within the Sex Offender Registry Information System (SORIS2). Our audit finding was based on this comprehensive dataset, which we cross-referenced with the classification and registration process information that was provided to us through documented interviews and our review of SORB's policies and procedures.

Further, SORB claims that 8 of the 17 individuals were incarcerated out-of-state. SORB also states that, as of 2020, it will no longer indicate in SORIS2 whether sex offenders are incarcerated in an out-of-state facility. In doing so, SORB relies on these states to notify Massachusetts when a sex offender is released

from incarceration. This potentially exposes our residents to unnecessary risks should the sex offender return to Massachusetts and the other state does not send prior notification. We stress the critical need for SORIS2 to contain accurate and up-to-date information on classification dates, release dates, incarceration statuses, and registration statuses.

We believe SORB could address the issues raised in this finding if SORB enacts the changes proposed in its response to our recommendations. We will be conducting a post-audit review to ensure that SORB has implemented these changes.

## **2. The Sex Offender Registry Board did not always conduct address verification data matching or update the Sex Offender Registry Information System.**

In our prior audit (No. 2016-1408-3S) of SORB, we found that SORB did not ensure that it had current addresses for sex offenders considered in violation. Although SORB had entered into interdepartmental service agreements with the Department of Transitional Assistance (DTA) and the Department of Revenue to conduct address verification data matching, it did not perform these verifications. In addition, SORB had not entered into any other interdepartmental service agreements with executive branch agencies to verify sex offenders' addresses.

In our current audit, we found that SORB had taken measures to improve its address verification data matching process. Specifically, SORB entered into new interdepartmental service agreements with three other state agencies—the Department of Children and Families, the Division of Occupational Licensure, and the Department of Housing and Community Development—to share address data. However, SORB still did not ensure that it had current addresses for all sex offenders considered in violation.

Although SORB conducted monthly address verification data matching with the Department of Children and Families, it did not conduct address verification data matching with the Department of Occupational Licensure and the Department of Housing and Community Development during our audit period. Further, SORB management stated that they had only conducted address verification data matching with the Department of Revenue three times during our entire two-year audit period.

Finally, although SORB conducted weekly address verification data matching with DTA, we found that SORB did not always update SORIS2 to reflect any updated sex offender address information it obtained from these verifications. Specifically, we selected and reviewed a sample of 24 of the 104 weekly address

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verification data matches that occurred between SORB and DTA during the audit period. These address verification data matches included data for 602 sex offenders. We found that SORB did not update SORIS2 with updated address information provided by DTA for 138 of the 678 residential address changes<sup>6</sup> during the audit period. SORB did not update address information in SORIS2 for 130 sex offenders.

By not ensuring that it has the current addresses of sex offenders considered in violation, SORB is not able to communicate information about sex offenders' whereabouts, their offenses, and their classifications to local law enforcement agencies and the general public. This could create a risk to public safety.

### **Authoritative Guidance**

According to Section 1.26(5) of Title 803 of the Code of Massachusetts Regulations, "[SORB] is required to keep the [sex offender] registry up-to-date and accurate."

Section 178F of Chapter 6 of the General Laws also requires SORB to obtain sex offenders' addresses from executive branch agencies, such as the Department of Revenue and DTA, "when there is reason to believe a sex offender required to register has not so registered."

### **Reasons for Noncompliance**

SORB did not give a reason why it does not use all of its interdepartmental service agreements to conduct address verification data matching. SORB management stated that they cannot update SORIS2 with a sex offender's updated address that SORB receives from DTA until the police complete an investigation to verify the accuracy of the address.

### **Recommendations**

1. SORB should use all the interdepartmental service agreements it has with executive branch agencies to conduct address verification data matching to obtain accurate addresses for sex offenders considered in violation.
2. SORB should update SORIS2 to reflect all updated address information it receives as part of its address verification data matching with executive branch agencies.

### **Auditee's Response**

*Section 178F of Chapter 6 of the General Laws which OSA cites as authoritative guidance states that SORB shall examine information on file with the commissioner of revenue or any other entity within the executive branch when there is reason to believe a sex offender has not so registered*

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6. During the audit period, SORB received multiple residential address changes for some of the 602 sex offenders.

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*or where the address of such sex offender cannot be verified through other means. SORB maintains that it does examine information available to it. SORB pursues an investigation based on information received from other agencies. Once these addresses are verified, the offender is brought into compliance and the Registry is updated with verified information. A generalized statement that SORB did not perform these verifications is inaccurate. SORB depends on many agencies to investigate offenders in violation and offenders who may be out of compliance and overdue for registering. SORB regularly pulls data from [multiple federal and state agencies]. [Several of these agencies'] reports contain new and historical data. SORB staff shares new information with law enforcement partners at least monthly.*

*Additionally, SORB relies on law enforcement agencies in the Commonwealth to locate offenders in violation and verify addresses for offenders on the Registry. Police and other law enforcement agencies continually verify addresses of sex offenders in their cities and towns. The local, state, and federal authorities have access to SORIS2 and utilize the electronic system to place sex offenders in violation, or comment on the validity of an address of a sex offender. Our law enforcement partners regularly conduct these audits to protect the citizens in their communities. In 2017, SORB began an Address Verification Program (AVP) where offenders in violation are identified, investigated, and brought into compliance by local law enforcement partners. This program was in effect during the audit period though the AVP was put on hold in 2020 due to the impact of the COVID-19 pandemic. This program restarted in the Spring of 2021 and continues today.*

*The Board itself has no lawful power to arrest or detain a sex offender. Pursuant to [Section 178D of Chapter 6 of the General Laws], SORB shall maintain and update the Registry with accurate sex offender information. Thus, SORB may only update an offender's address if it receives a registration form that is signed by the offender under the pains and penalties of perjury pursuant to [Sections 178E, 178F, 178F1/2 of Chapter 6 of the General Laws]. Further, updating the database with a non-verified address does not advance public safety and would frustrate the ability to prosecute future failure to register cases since the offender did not provide the address we added from data matching.*

*Regarding OSA's finding specific to SORB's weekly address verification data matching with DTA and its finding that SORB did not update SORIS2 with updated address information for 138 of the 678 residential address changes during the audit period, SORB states that it did verify and update addresses for 38 of those address changes. The remainder of the 100 addresses that were not updated were entries for offenders who were later found at different addresses indicating the data received was ultimately not accurate.*

*With regards to the audit team's recommendations in Detailed Audit Finding 2, SORB responds as follows:*

- 1. SORB will continue to utilize established [interdepartmental service agreements] with various executive branch agencies to ensure that it regularly obtains sex offender address information for offenders who are considered in violation.*

2. *SORB, in conjunction with its law enforcement partners, will continue to pursue investigations into offenders considered in violation when new address information is received from its address verification data matching with executive branch agencies.*

### **Auditor's Reply**

Section 1.26(5) of Title 803 of the Code of Massachusetts Regulations states, “[SORB] is required to keep the [sex offender] registry up-to-date and accurate.” Both this regulation and the above-cited section of the General Laws require SORB to update SORIS2 to include the most up-to-date address SORB has, which it can obtain through address verification data matching with executive branch agencies. We did not make a generalized statement that SORB was not performing address verification data matching. To the contrary, we acknowledge that SORB performed some address verification data matching with executive branch agencies, but SORB did not perform these verifications with all of the agencies it had access to through interdepartmental service agreements during the audit period.

We have not argued that SORB is responsible for locating sex offenders considered in violation or that SORB has the power to arrest or detain a sex offender. These assertions by SORB distract from the actual findings of our audit. The above finding is that SORB has the responsibility to perform address verification data matching with executive branch agencies to ensure that SORIS2 has updated addresses to assist law enforcement in locating offenders considered in violation. While law enforcement may have the ability to enter updated address information in SORIS2, the ultimate responsibility to ensure that the SORIS2 registry is up-to-date and accurate lies with SORB, according to Section 1.26(5) of Title 803 of the Code of Massachusetts Regulations, and thus, SORB should not solely rely on law enforcement agencies for this. SORB should verify the results it receives through address verification data matching before entering it in SORIS2, which should be updated with this information once it has been verified. This was not always the case during the audit period.

During the end of our audit fieldwork, while examining records in SORIS2, we saw that SORB was actively updating the address information for some of the sex offenders included in our finding. If the 38 addresses for sex offenders that SORB claims it verified and updated are represented by those changes, we credit SORB for updating SORIS2 with the verified addresses. By SORB claiming that the 100 sex offenders were ultimately found at other locations, SORB is acknowledging that it did not update SORIS2 with address information for these sex offenders. Because SORB did not always update SORIS2 with address verification data it received from data matching with DTA, SORB cannot determine with accuracy that those addresses

were incorrect at the time they were provided to SORB. Therefore, SORB is unable to claim that the remaining 100 addresses were “ultimately not accurate.” Law enforcement officials may have been able to locate sex offenders considered in violation more promptly if SORB had updated SORIS2 with verified addresses.

We believe SORB could address the issues raised in this finding if it enacts the changes proposed in its response to our recommendations. We strongly encourage these matters be addressed immediately.

### **3. The Sex Offender Registry Board does not have a documented and tested business continuity plan and disaster recovery plan.**

SORB does not have a documented and tested business continuity plan and disaster recovery plan to restore mission-critical and essential business functions in the event of an emergency. Without a business continuity plan and disaster recovery plan, employees may not be sufficiently trained in performing recovery efforts, including those related to SORB's mission-critical applications.

Although the Executive Office of Technology Services and Security (EOTSS) provides offsite storage of SORIS2 in the form of electronic backup copies and magnetic media copies, SORB does not have offsite storage to restore SORIS2 in the event of an unforeseen interruption in its business operations.

As a result, SORB may be vulnerable to a disruption of services that could negatively affect its mission if its information technology systems are inoperable for an extended period.

### **Authoritative Guidance**

Section 6 of EOTSS's Business Continuity and Disaster Recovery Standard IS.005, effective October 15, 2018 states,

*Commonwealth Executive Offices and Agencies must establish a Business Continuity Program. . . .*

*6.1.1.4 Develop business continuity plans (BCP): Each agency shall develop BCPs for critical business processes based on prioritization of likely disruptive events in light of their probability, severity and consequences for information security identified through the [business impact analysis] and risk assessment processes.*

*6.1.1.4.1 BCPs shall address both manual and automated processes used by the agency and document minimum operating requirements to resume critical functions/applications in an appropriate period of time. . . .*

6.2.1 *Commonwealth Executive Offices and Agencies must develop and maintain processes for disaster recovery plans at both onsite primary Commonwealth locations and at alternate offsite locations. . . .*

6.2.2 *Commonwealth Executive Offices and Agencies must ensure that [disaster recovery] plans shall be tested annually.*

## Reasons for Noncompliance

SORB management stated that they rely on EOTSS for business continuity planning and disaster recovery of SORIS2 data.

## Recommendations

1. SORB should develop, document, and test a business continuity plan and disaster recovery plan.
2. SORB should select an offsite location to recover SORIS2 data. Once the site has been selected, SORB should update and test its disaster recovery plan and incorporate any test results into the plan.

## Auditee's Response

*SORB did not have an updated business continuity plan and disaster recovery plan to restore mission-critical and essential business functions during the audit period due to its office move in 2019. SORB did provide OSA with a continuity plan for its electronic databases provided by the Executive Office of Technology Services and Security (EOTSS). SORB has since finalized a Business Continuity and Disaster Recovery Plan and will test its plan later this summer. All SORB data migrated to OneDrive and SharePoint [digital document management/storage platforms] in the spring of 2022 and is available on the Commonwealth's cloud-based network managed by the EOTSS. SORIS2 data is managed by [the Department of Criminal Justice Information Services (DCJIS)] and is housed within the Commonwealth's Data Center, and as such, SORB is not responsible for restoring SORIS2 in the event of an unforeseen interruption. SORB is in constant contact with DCJIS and EOTSS and reports outages and issues when needed.*

## Auditor's Reply

The regulations from EOTSS are clear in assigning each agency the responsibility of creating a business continuity plan and disaster recovery plan and stating that each agency should include the minimum operating requirements to restore business functions, applications, and services in a timely manner in these plans.

Based on SORB's response, it is taking measures to address the concerns raised regarding this matter.