

**REPORT ON LEGISLATION BY THE
CRIMINAL JUSTICE OPERATIONS COMMITTEE AND
SEX OFFENDER REGISTRATION ACT WORKING GROUP¹**

A.4404

M. of A. Weprin

AN ACT to amend the correction law, in relation to the sex offender registration act and prohibiting the release of level one sex offender information over the internet to the general public (2019/20 Legis. Session).²

THIS BILL IS APPROVED

INTRODUCTION

Under New York law, a person convicted of a sex-related offense, whether level one (adjudicated as a low risk for reoffending), level two or level three (adjudicated as a high risk for reoffending), must give certain information, e.g., name, photograph, zip code, to his or her local law enforcement agency (LLEA). The agency then provides that information to the State Division of Criminal Justice Services (DCJS), which includes the information in a statewide registry. By law, DCJS is permitted to publish the registry information to the internet only for levels two and three. However, DCJS can reveal information about a person listed as level one by telephone. This distinction is grounded in the belief that once a person is characterized by a judge as the lowest risk for reoffending, s/he should receive some degree of privacy protection. However, due to an ambiguity in the law, a similar distinction is not drawn when it comes to LLEA's. Rather, once the LLEA's give the information to DCJS for the statewide registry, the law is ambiguous as to what and how the LLEA's can publish information about the level one offenders.

This differential has resulted in some LLEA's releasing information about *all people on the registry* – including for people listed as level one – to third party organizations that publish the

¹ This report is respectfully submitted by the Criminal Justice Operations Committee and the Sex Offender Registration Act Working Group (the "Committees") of the New York City Bar Association. The City Bar is an organization of 25,000 members dedicated to improving the administration of justice. The Committees include members from a broad spectrum within the criminal justice field. The report was prepared by members of the Sex Offender Registration Act Working Group. The Working Group studies the effects of laws regulating individuals convicted of sex-related offenses.

² To date, this bill has not been reintroduced in the current legislative session.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

information online. Not only does this wholesale online publication of registry information violate the spirit of the state law that governs the exact same information when in the hands of DCJS, but also, it results in inaccuracies because information on these third party websites is not necessarily updated when the state registry makes changes. For these reasons, the City Bar supports this proposed legislation because it will require LLEA's to treat information obtained from people convicted of sex offenses in the same way that DCJS treats it, thus honoring the balance struck by the Legislature as between public safety and personal privacy.

BACKGROUND AND THE PROPOSED LEGISLATION

This legislation would amend the New York State Sex Offender Registry Act (SORA), Corr. L. § 168-a *et seq.*, to prohibit LLEA's from releasing certain New York State sex offender registry information to the public over the internet. Specifically, the bill would amend Corr. L. § 168-b to prohibit police and other LLEA's and, by extension, third party organizations with whom they contract, from publishing information concerning individuals adjudicated under SORA to be at risk level one – the lowest risk level. The bill was introduced at the request of the Chief Administrative Judge, after it had been recommended by the NYS Office of Court Administration Advisory Committee on Criminal Law and Procedure.

Under SORA, people convicted of sex offenses are required to provide LLEA's with their current address and other information on a periodic basis. Corr. L. § 168 -f. These agencies in turn are responsible for reporting the information to DCJS, which maintains the official New York State internet sex offender registry³. The internet registry includes searchable information concerning individuals adjudicated at risk levels two and three. Corr. L. §168-q. Information about individuals adjudicated at risk level one is available by telephone from DCJS, as well as from LLEA's, but is not published on the DCJS registry. Corr. L. §168-l(6)(a).

The legislature intended that level one registrants have some level of privacy concerning the information they are mandated to provide to law enforcement. Correction Law §168-b(2)(e) states that “[DCJS] shall require that no information included in the [SORA] registry shall be made available except in the furtherance of the provisions of this article.” But many LLEA's continue to publish information concerning level one registrants on their websites, registries, and related electronic media. They maintain that SORA permits them to do so. Corr. L. §168-l(6)(a) states that:

[i]f the risk of repeat offense is low, a level one designation shall be given to such sex offender. In such case the law enforcement agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified *and may disseminate* relevant information which may include a photograph and description of the offender and which may include the name of the sex offender, approximate address based on sex offender's zip code, background information including the offender's crime of conviction, modus of operation, type of victim

³ See <https://www.criminaljustice.ny.gov/nsor/>. (All sites last visited April 22, 2021.)

targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and the description of special conditions imposed on the offender to *any entity with vulnerable populations related to the nature of the offense committed by such sex offender*. Any entity receiving information on a sex offender may disclose or further disseminate such information at its discretion.

[emphasis added]

The proposed legislation is designed to make it clear that LLEA's are not permitted to publish information about people adjudicated as level one– or cause it to be published – and that doing so violates SORA. The text of the bill is reproduced below.

AN ACT to amend the correction law, in relation to the sex offender registration act and prohibiting the release of level one sex offender information over the internet to the general public

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph e of subdivision 2 of section 168-b of the correction law, as amended by chapter 645 of the laws of 2005, is amended to read as follows: e. The division shall require that no information included in the registry shall be made available except in the furtherance of the provisions of this article, **including, but not limited to, prohibiting law enforcement agencies from releasing information about level one sex offenders to the general public over the internet, as provided by paragraph (a) of subdivision six of section one hundred sixty-eight-l of this article.**

§ 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

As a matter of deterrence and remedy, the City Bar would also support the creation of a civil cause of action for injunctive relief, penalties and damages against public officials who disregard the limits on publicizing personal information about people on the registry.

COMMERCIAL CONTEXT AND EFFECTS

Several for-profit companies provide internet-based information about individuals convicted of sex offenses, including OffenderWatch, Family Watchdog, and HomeFacts. These sites allow users to search by geographic area and combine registry information with GIS mapping. However, information on individuals adjudicated as level one can only be included on these commercial databases if released by LLEA's. Once published, internet release of details regarding individuals with a level one SORA designation can cause specific harms; harms that a court already

adjudicated, on balance, should not include widespread internet publication of personal information. The Working Group is personally aware of a case in which a New York resident registered as level one was met at his home, along with his family, by a harassing group of people with placards who had viewed his registration information online. It is not uncommon for people to use internet-published information to harass a neighbor listed on the sex offender registry.⁴ Some research suggests that community notification actually increases recidivism by individuals listed on public registries, because it makes reentry into society more difficult.⁵

LOCAL LAW ENFORCEMENT DISSEMINATION OF REGISTRY INFORMATION: UNRELIABLE AND IN VIOLATION OF THE BALANCE STRUCK IN STATE LAW

The Working Group investigated the scope of the problem that A04404/SXXX seeks to redress. A Working Group member, assisted by a law student intern, conducted an internet search in December 2020 through January 2021. Searches were conducted for each New York State county. Each search included searches on the county's main website, the sheriff's department or police website, and the district attorney's website. Links to external sites were documented.

Thirty-two of the 57 county sheriffs' departments outside New York City, along with two district attorney's offices⁶ and 13 local police departments, contract with OffenderWatch, a for-profit company, to provide local registries. Some registries include information about level one registrants, as shown in Tables 1 and 2. All 32 county sheriff's departments and all 13 local police departments include information about at least one individual that is not included in the DCJS public subdirectory.⁷

The Working Group has undertaken a comprehensive study of information made available on local law enforcement registries, as discussed above. The tables which follow show that the quality of information available on these local registries is quite poor. Basic information is not consistently included: for example, many local registries do not contain the conviction or date of conviction for each individual listed. As depicted in Tables 1 and 2, most local registries lack risk level information for at least some individuals listed.

⁴ Russell, K. and Pollack, D., Sex Offender Registries Can Cause Families and Partners to Become Collateral Damage, *New York Law Journal*, March 11, 2021, <https://www.law.com/newyorklawjournal/2021/03/11/sex-offender-registries-can-cause-families-and-partners-to-become-collateral-damage/>; Bailey, D. J. S., & Klein, J. L. (2018), Ashamed and Alone: Comparing Offender and Family Member Experiences with the Sex Offender Registry, *Criminal Justice Review*, 43(4), 440–457, <https://doi.org/10.1177/0734016818756486>; Cubellis, M.A., Evans, D.N. & Fera, A.G. (2019), Sex Offender Stigma: An Exploration of Vigilantism against Sex Offenders, *Deviant Behavior*, 40(2), 225-239, DOI: [10.1080/01639625.2017.1420459](https://doi.org/10.1080/01639625.2017.1420459).

⁵ Prescott, J. J. & Rockoff, J.E. (2011). Do Sex Offender Registration and Notification Laws Affect Criminal Behavior? *J. L. & Econ.* 54(1), 161-206, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1100663.

⁶ The Albany County and Saratoga County district attorney's offices have OffenderWatch registries. The Albany County District Attorney's OffenderWatch registry is not currently functioning. The Saratoga County District Attorney's OffenderWatch registry contains information provided by law enforcement agencies in Saratoga County.

⁷ Since many local registries failed to include the risk level for each individual listed on the registry, it was not possible to determine for each individual listed in local registries but not on the DCJS public registry whether the individual had a level one risk level, was deceased, had moved to another state, or was not listed on the DCJS public registry for another reason.

Although LLEA's provide DCJS with information concerning registrants required to report to those agencies, there is no such requirement for providing updated information to for-profit groups maintaining local registries, and these groups do not appear to cross-check their postings with those on DCJS's public registry. As a result, local registries may contain entries for individuals who have relocated to another county or state; address information and photographs are also out of date. And many local registries list dead people—ranging from two to six years after death—even though information about these individuals has been removed from the DCJS public registry.

Equally concerning is the fact that rather than provide links to the DCJS public registry, some counties provide links only to commercial sites such as OffenderWatch and Family Watchdog. Detailed information about local practices is set forth in Table 3.

CONCLUSION

The Legislature chose to give individuals with level one risk designation more privacy than those with level two or three designation. The bill is intended to enforce the original text and legislative intent of SORA. In addition, the inaccurate and obsolete data provided to the public in local registries, and the pervasive disregard of the intent of the overall SORA scheme for releasing information on individuals, undermines the effectiveness of the registry in protecting public safety, and improperly prejudices individuals with level one risk designation. Passage of this bill will restore the original scheme for the public registry and ensure that the information available to the public over the internet is accurate and up-to-date.

Criminal Justice Operations Committee
Tess Cohen, Chair

Sex Offender Registration Act Working Group
Zachary Margulis-Ohnuma, Chair

April 2021

Contact

Maria Cilenti, Senior Policy Counsel | 212.382.6655 | mcilenti@nycbar.org
Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | ekocienda@nycbar.org

Table 1. County Sheriff’s Department OffenderWatch Inclusion of Risk Levels and Individuals Not in State Public Subdirectory

| County | Lists Individuals with Level 1 Status? | Missing Risk Levels? | Lists Individuals not in (on?) DCJS Public Registry? |
|---------------------|---|-----------------------------|---|
| Albany County | yes | yes | yes |
| Allegany County | uncertain | yes | yes |
| Broome County | yes | no | yes |
| Chautauqua County | uncertain | yes | yes |
| Chemung County | yes | yes | yes |
| Delaware County | yes | yes | yes |
| Erie County | yes | yes | yes |
| Genesee County | uncertain | yes | yes |
| Livingston County | yes | no | yes |
| Monroe County | yes | yes | yes |
| Niagara County | yes | no | yes |
| Onondaga County | yes | yes | yes |
| Ontario County | yes | yes | yes |
| Orleans County | yes | no | yes |
| Otsego County | yes | yes | yes |
| Rockland County | yes | yes | yes |
| St. Lawrence County | yes | no | yes |
| Saratoga County | no ⁸ | yes | yes |
| Steuben County | yes | yes | yes |
| Tioga County | yes | yes | yes |
| Tompkins County | yes | yes | yes |
| Warren County | yes | yes | yes |
| Wayne County | yes | no | yes |
| Yates County | yes | yes | yes |

⁸Level one offenses are included in Saratoga Police Department OffenderWatch registry.

Table 2. Local Police Departments' OffenderWatch Inclusion of Risk Levels and Individuals Not in State Public Subdirectory

| Local Police Department | County | Lists Individuals with Level 1 status? | Missing Risk Levels? | Lists Individuals not on? DCJS Public Registry? |
|--|---------------|---|-----------------------------|--|
| Albany Police Department | Albany | yes | yes | yes |
| Bethlehem Police Department | Albany | yes | yes | yes |
| Newburgh Police Department | Orange | uncertain | yes | yes |
| Coeymans Police Department | Albany | uncertain | yes | yes |
| Cohoes Police Department | Albany | yes | yes | yes |
| Colonie Police Department | Albany | uncertain | yes | yes |
| Guilderland Police Department | Albany | yes | no | yes |
| Lockport Police Department | Niagara | yes | no | yes |
| Massena Police Department | St Lawrence | yes | yes | yes |
| Plattsburgh Police Department | Plattsburgh | yes | yes | yes |
| Saint Regis Mohawk Tribe Police Department | Franklin | yes | yes | yes |
| Saratoga Springs Police Department | Saratoga | yes | yes | yes |
| Watervliet Police Department | Albany | yes | yes | yes |

Table 3. Links to DCJS Subdirectory and Commercial Sites on County Websites

| County | Registry Link Available from Search on Main County Website? | Registry link on Sheriff's or Police Dept. Website? | Registry link on District Attorney's Website? |
|--------------------|--|---|--|
| Albany County | link to DCJS subdirectory | link to OffenderWatch | nonworking link to OffenderWatch |
| Allegany County | no | link to DCJS subdirectory and OffenderWatch | no |
| Bronx County | link to DCJS subdirectory on 311 | link to DCJS subdirectory on NYPD website | no |
| Broome County | no | link to OffenderWatch (Watch Systems) | no |
| Cattaraugus County | no | link to DCJS subdirectory | no |
| Cayuga County | no | link to DCJS subdirectory | no |
| Chautauqua County | no | link to DCJS subdirectory | no |
| Chemung County | no | link to OffenderWatch, DCJS subdirectory and Federal registry | no |
| Chenango County | no | link to OffenderWatch | no |
| Clinton County | link to OffenderWatch | link to OffenderWatch | no |
| Columbia County | no | link to DCJS subdirectory and Family Watchdog | no |
| Cortland County | no | link to DCJS subdirectory and Federal registry | no |
| Delaware County | no | link to DCJS subdirectory and Family Watchdog | no |
| Dutchess County | link to DCJS subdirectory on Jail site | link to DCJS subdirectory and broken link to OffenderWatch | broken link to OffenderWatch |
| Erie County | no | link to OffenderWatch | no |
| Essex County | no | link to OffenderWatch | no |
| Franklin County | no | no | no |
| Fulton County | link to Homefacts | link to Homefacts | no |
| Genesee County | link to OffenderWatch, phone number | link to OffenderWatch, phone number for DCJS subdirectory, | no |

| County | Registry Link Available from Search on Main County Website? | Registry link on Sheriff's or Police Dept. Website? | Registry link on District Attorney's Website? |
|-------------------|--|--|--|
| | for DCJS subdirectory, | | |
| Greene County | no | link to DCJS subdirectory | no |
| Hamilton County | no | no | no |
| Herkimer County | link to DCJS subdirectory | link to DCJS subdirectory | no |
| Jefferson County | link to DCJS subdirectory | link to DCJS subdirectory | no |
| Kings County | link to DCJS subdirectory on 311 | link to DCJS subdirectory on NYPD website | no |
| Lewis County | no | no | no |
| Livingston County | link to OffenderWatch and DCJS subdirectory | link to OffenderWatch and DCJS subdirectory | no |
| Madison County | link to DCJS subdirectory and Family Watchdog | link to Family Watchdog | no |
| Monroe County | link to DCJS subdirectory on homepage | link to OffenderWatch and DCJS subdirectory | link to DCJS subdirectory |
| Montgomery County | link to DCJS subdirectory | link to DCJS subdirectory | link to DCJS subdirectory |
| Nassau County | broken link to DCJS subdirectory | no | no |
| New York County | link to DCJS subdirectory on 311 | link to DCJS subdirectory on NYPD website | no |
| Niagara County | link to OffenderWatch | link to OffenderWatch | no |
| Oneida County | link to DCJS subdirectory | link to OffenderWatch | no |
| Onondaga County | link to OffenderWatch and DCJS subdirectory | link to OffenderWatch and DCJS subdirectory | no |

| County | Registry Link Available from Search on Main County Website? | Registry link on Sheriff's or Police Dept. Website? | Registry link on District Attorney's Website? |
|---------------------|--|--|--|
| Ontario County | link to OffenderWatch | link to OffenderWatch | no |
| Orange County | no | link to DCJS subdirectory | no |
| Orleans County | broken link to OffenderWatch | Broken link to OffenderWatch | link to OffenderWatch |
| Oswego County | link to DCJS subdirectory and National registry | link to DCJS subdirectory | no |
| Otsego County | no | link to OffenderWatch | no |
| Putnam County | link to DCJS subdirectory | link to DCJS subdirectory | no |
| Queens County | link to DCJS subdirectory on 311 | link to DCJS subdirectory on NYPD website | no |
| Rensselaer County | no | link to OffenderWatch | no |
| Richmond County | link to DCJS subdirectory on 311 | link to DCJS subdirectory on NYPD website | no |
| Rockland County | no | link to OffenderWatch | no |
| St. Lawrence County | link to OffenderWatch | link to OffenderWatch | no |
| Saratoga County | no | link to DCJS subdirectory, Family Watchdog, and OffenderWatch | link to OffenderWatch and DCJS subdirectory |
| Schenectady County | no | no | no |
| Schoharie County | no | no | no |
| Schuyler County | link to DCJS subdirectory | link to DCJS subdirectory | no |
| Seneca County | no | link to DCJS subdirectory | no |
| Steuben County | link to DCJS subdirectory | link to DCJS subdirectory, Family Watchdog, and OffenderWatch | no |
| Suffolk County | link to DCJS subdirectory | Suffolk County Police Department--link to DCJS subdirectory and Parents for Megan's Law and Crime Victims Center website | no |
| Sullivan County | no | no | no |

| County | Registry Link Available from Search on Main County Website? | Registry link on Sheriff's or Police Dept. Website? | Registry link on District Attorney's Website? |
|--------------------|--|--|---|
| Tioga County | no | link to DCJS subdirectory and OffenderWatch | no |
| Tompkins County | link to OffenderWatch | link to OffenderWatch | no |
| Ulster County | no | link to DCJS subdirectory, and Family Watchdog | no |
| Warren County | no | link to OffenderWatch | no |
| Washington County | no | link to "OffenderWatch" icon but directs to DCJS subdirectory, additional direct link to OffenderWatch | no |
| Wayne County | no | link to OffenderWatch | no |
| Westchester County | link to DCJS subdirectory | no | link to DCJS subdirectory |
| Wyoming County | link to DCJS subdirectory | link to DCJS subdirectory, broken link to NYS alerts, broken link to another website for own registry | no |
| Yates County | link to OffenderWatch | link to OffenderWatch | link to Federal registry only although link describes DCJS subdirectory |