

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

STANDING COMMITTEE ON PUBLIC ACCOUNTS

ONTARIO SEX OFFENDER REGISTRY
(Section 3.11, 2007 Annual Report of the Auditor General of Ontario)

1st Session, 39th Parliament
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The Honourable Steve Peters, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Public Accounts has the honour to present its Report and commends it to the House.

A handwritten signature in black ink, appearing to read "Norm. Sterling".

Norman W. Sterling, MPP
Chair

Queen's Park
November 2008

STANDING COMMITTEE ON PUBLIC ACCOUNTS

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LIST OF SELECTED ABBREVIATIONS

CSC	Correctional Service of Canada
MCSCS	Ministry of Community Safety and Correctional Services
NSOR	National Sex Offender Registry
OPP	Ontario Provincial Police
OSOR	Ontario Sex Offender Registry
OTIS	Offender Tracking Information System
PKI	Public Key Infrastructure
RCMP	Royal Canadian Mounted Police
SOIRA	<i>Sex Offender Information Registration Act (Canada)</i>

PREAMBLE

The Standing Committee on Public Accounts held public hearings on the Auditor General's 2007 audit of the Ontario Sex Offender Registry (Sec. 3.11 of his *2007 Annual Report*) on March 20, 2008. The Committee has endorsed the Auditor's findings and recommendations.

This report constitutes the Committee's findings and recommendations. Background information on sections of the original audit report is followed by an overview of the hearings' main findings and, as appropriate, new recommendations. *Hansard*, the verbatim record of the hearings, should be consulted for the complete proceedings.

Acknowledgements

The Committee extends its appreciation to officials from the Ministry of Community Safety and Correctional Services (Ministry), the commissioner, deputy commissioner and officials of the Ontario Provincial Police (OPP) as well as Jim and Anna Stephenson, the parents of Christopher Stephenson, in whose memory Christopher's Law (Sex Offender Registry), 2000 was enacted. The Committee is especially grateful to the Auditor General and his team for conducting an audit on the Ontario Sex Offender Registry, and drawing particular attention to the administration and policy issues that need to be addressed by the Ministry and the OPP.

The Committee also acknowledges the assistance provided during the hearings and report writing deliberations by the Office of the Auditor-General, the Clerk of the Committee, and staff of the Legislative Library's Research and Information Services.

The Ministry expressed its appreciation to the Auditor General for the constructive observations and recommendations. Ministry officials noted that the audit has helped the Ministry improve the Ontario Sex Offender Registry program, making it stronger and better in its efforts to protect vulnerable people. The recommendations contained in Sec. 3.11 of the Auditor's *2007 Annual Report* prompted the Ministry to address these shortcomings through the recent legislative amendments contained in Bill 16, *Christopher's Law (Sex Offender Registry) Amendment Act, 2008*.

1. AUDIT OBJECTIVES

The audit objective was to assess whether the Ministry and the OPP have adequate systems, policies, and procedures in place to ensure that the Ontario Sex Offender Registry satisfies legislative requirements, and efficiently and effectively supports police investigations of sexual crimes.¹

The audit included the following:

- the examination of documentation; the analysis of information, including the use of a number of computer-assisted audit techniques for analyzing Registry data; interviews with Ministry and OPP staff; and visits to five local police services;
- a survey of 100 local police services across Ontario, soliciting their views on the Registry and how to improve it. (The survey yielded a respectable 76% response rate.)

Auditor General staff did not rely on the Ministry's internal auditors to reduce the extent of audit procedures, as the latter had not conducted any recent audit work involving the Registry.²

1.1 Main Findings

The Auditor noted that a team of Ontario Provincial Police (OPP) officers and support personnel from the Ministry of Community Safety and Correctional Services (Ministry) created a working registry in April 2001 that helps the police investigate sexual crimes and monitor sex offenders in their local communities. Since that time they have continued to make a number of additional improvements to the Registry.

While the audit team noted that the Registry had been created and developed cost-effectively, they did identify a number of shortcomings which the Ministry and the OPP will need to address to ensure that all offenders who should be in the Registry are registered. Furthermore, the Registry needs additional enhancements to be a more useful tool for police investigations. The audit team's most significant observations included the following:³

- **Gaps in Registration:** While *Christopher's Law (Sex Offender Registry), 2000* (the Act) requires police services to register offenders when they have completed their custodial sentences, the Act does not refer to a number of other offenders living in the community (i.e., those on day parole or in intermittent sentence programs, those awaiting appeal decisions, and in some cases, those found not criminally responsible because of mental illness).
- **Additional Registration Gaps:** The audit identified 365 offenders who should have been registered/recorded in the Registry, but:
 - 175 were not registered owing to incomplete data files from the Ministry's Offender Tracking Information System (OTIS);
 - a further 190 offender records from the provincial courts had not been included; and
 - there was no process for ensuring that young offenders who receive adult sentences were registered.

-
- **Including Federal Offenders in Registry:** The Ministry has never obtained a list of the estimated 1,060 sex offenders in federal custody at the time of the Ontario Registry's inception. Moreover, there has been no other reliable reporting mechanism established with the Correctional Service of Canada (CSC) to inform the OPP or local police services when these serious offenders are released. Therefore, the Ministry has little assurance that all offenders in the federal corrections system who live in Ontario are being systematically included in the Registry.
 - **Incomplete "Footprint" Records:** The temporary detention of federal offenders in provincial institutions before their transfer to a federal facility is recorded in the Registry as a "footprint" record and unfortunately these records were incomplete. The audit identified 360 offenders who appeared to have been subsequently released from federal custody into Ontario communities, but were not registered in the Ontario Registry owing to an incomplete "footprint" record.
 - **Inappropriate Offender Record Deletions:** The audit team found that the process for deleting offender records from the Registry needed improvement, as over 730 deletions had not been properly logged with adequate documentation. Moreover, there was no process for re-registering an offender with the Registry where a pardon had been revoked.
 - **Local Police Follow-up Procedures:** Though the overall registered offender compliance rate of 95% is considered high, it varied widely across local police services. There were 384 non-compliant offenders who did not register or re-register annually, as required, thereby being in breach of the Act. Local police follow-up procedures on those 384 varied widely. Moreover, almost 70 (18% of the 384) unregistered offenders had been in breach of the Act for more than two years. As the Ministry did not track what follow-up had been done, the audit team tested a sample of these offenders (at two of the five police services) noting that arrest warrants had been issued for only about half.
 - **Scope of Ministry Inspections:** The Ministry's Public Safety Division conducts frequent inspections of local police services to ensure compliance with government regulations. Yet at the time of the audit, the scope of these inspections did not include Registry activities.
 - **Timely Searches of Offender Attributes:** Time is critical when investigating possible sexual crimes such as child abduction. Investigators searching the Registry database are limited by the inability to search or filter the data based on the following attributes among the 7,400 registered offenders:
 - sex/age of the victim;
 - relationship (if any) between the victim and the offender; and
 - location of the crime.
 - **Enhancing the Registry as Investigative Tool:** The ability to filter Registry data based on the above-noted attributes would help investigators to more quickly identify/locate offenders of interest during investigations.

- **Registry Records Incomplete:** Registry records did not always capture critical offender information required under the Act that would be useful to investigators. For example, 140 offenders lacked photographs, only 560 records contained the offender's workplace or educational institution addresses, and more than 1,200 offender records lacked detailed case information. Nearly 650 offenders had residential addresses unverified by police thereby potentially inhibiting their ability to find offenders quickly in an investigation.
- **Registry Effectiveness:** The effectiveness of registries in reducing sexual crimes or helping investigators to solve them is not well-supported by evidence; moreover, the Ministry has yet to establish Registry performance measures.
- **Re-directed Registry Funds:** The audit team learned that since the Registry was established in 2001, nearly \$9 million in funding approved for Registry operations was spent instead on other needed OPP operational areas. Furthermore, the team learned that the Sex Offender Registry Unit (SOR Unit) lacked the resources to complete a number of planned system corrections and enhancements.

The Auditor acknowledges the challenges that the Ministry and the Ontario Provincial Police face in addressing the Registry shortcomings and in getting it to function adequately to serve its intended purpose. However, further work is needed to ensure that the Registry effectively supports police efforts to investigate and mitigate the risk of sexual crimes. The Auditor-General commended the dedicated staff who cost-effectively created a registry that helps the police investigate sexual crimes and monitor sex offenders in their local communities.

2. COMMITTEE REQUEST FOR MINISTRY RESPONSE

The Committee requests that the Ministry of Community Safety and Correctional Services provide the Committee Clerk with a written response to the following recommendations within 120 calendar days of the tabling of this report with the Speaker of the Legislative Assembly.

2.1 Committee Recommendations

- 1. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the progress it has made in implementing all of the legislative provisions of Bill 16 that were drafted in response to recommendations contained in Sec. 3.11 of the Auditor-General's 2007 Annual Report.**
- 2. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the progress it has made in developing an electronic interface between the Ontario Sex Offender Registry (OSOR) and the Correctional Service**

of Canada (CSC) to facilitate receiving a regular data feed from the CSC on sex offenders in federal prisons in Ontario to ensure that the release or parole dates of these offenders are “footprinted” in the OSOR and therefore monitored by Registry staff.

3. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the progress it has made in re-establishing an electronic interface between the Ontario Sex Offender Registry and the National Sex Offender Registry (NSOR) to enable data to be transferred between the two registries.
4. The Ministry of Community Safety and Correctional Services shall provide a status report to the Committee describing the outcome of its efforts over the past year to communicate its concerns with the Canadian Association of Chiefs of Police, and federal Ministers at Public Safety, Justice and Attorney General with the aim of seeking a much more robust, appropriate, and effective National Sex Offender Registry. Specifically, the Committee is concerned that there are two different sex offender registry systems in Canada. Whereas under *Christopher’s Law* the OSOR automatically registers sex offenders upon conviction, under the federal *Sex Offender Information Registration Act*, registration is not mandatory. Crowns must apply for offender registration and judges can exercise discretion as to whether to order a sex offender onto the National Sex Offender Registry.
5. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the progress it has made in establishing a process to verify that all offenders who report that they have moved out of the province have actually done so.
6. The Ministry of Community Safety and Correctional Services shall provide the Standing Committee with an update of its discussions with the National Parole Board in developing a protocol for parole revocations.
7. The Ministry of Community Safety and Correctional Services shall provide the Standing Committee with an update of its evaluation of the policy to no longer allow offenders to opt out of the annual reminder notifications. The Ministry should also provide an update of its initiative to standardize procedures among local police for managing an offender notification or reminder letter returned as undeliverable.
8. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee on the outcome of its review and evaluation of current guidelines and procedures for all police services relating to non-compliant offenders. The report should

also include steps for initiating investigations and apprehension of non-compliant offenders.

9. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee on the outcome of its efforts to include Registry-related activities within the inspection scope of the Ministry's Public Safety Division.
10. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating how the recent changes to the OSOR database to allow searches by victim gender, age, relationship to the offenders, and location of past offences, have strengthened the investigative work of police services.
11. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the outcome of its efforts seeking to amend regulations under *Christopher's Law* to require the offender to provide additional information (such as vehicle information and family-contact data).
12. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee on the implementation of the OSOR component of its information technology disaster recovery plan.
13. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the results of recent Public Key Infrastructure (PKI) security reviews or assessments to highlight any system vulnerabilities. The report should also indicate whether any system vulnerabilities were found, and if so, what action was taken. Finally, the report should point out the frequency of the PKI security and system access rights reviews.
14. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the progress made in developing performance measures to help evaluate OSOR effectiveness in assisting Police to investigate and solve sexual crimes and deter potential offenders.

3. OVERVIEW – ONTARIO’S SEX OFFENDER REGISTRY

The Ministry of Community Safety and Correctional Services works to ensure the safety of Ontario’s communities by providing secure, effective, efficient, and accountable law enforcement and correctional services. Ministry responsibilities include the following:

- establishment of policing standards;
- provision of front-line policing services in accordance with those standards; and
- supervision of offenders in provincial correctional institutions and in the community.

The Ministry and more specifically, the Ontario Provincial Police, are responsible for the Ontario Sex Offender Registry.

Statistics Canada recently reported that

- 27,000 sexual offences were reported to the police across Canada in 2002;
- of these, 7,300 went to court, resulting in about 3,000 convictions; and
- 61% of the victims in these 27,000 cases were under the age of 18.

Following a 1992 inquest into the brutal murder of 11-year-old Christopher Stephenson in 1988 by a convicted pedophile, Joseph Fredericks, a coroner’s jury recommended that government create a mechanism to register convicted and dangerous sex offenders with the local police.⁴

The Ontario government accepted the recommendation and introduced a bill called *Christopher’s Law* in April 2000. Proclaimed a year later, the Act established the Registry to track the whereabouts of persons living in Ontario but convicted anywhere in Canada of one or more designated sexual offences under the *Criminal Code of Canada*. Examples of such offences are sexual assault, sexual interference, and possession of child pornography. The Act also applies to every offender still serving a sentence for these offences at the time the law came into force.⁵

Ontario was the first jurisdiction in Canada to create a sex offender registry. In the United States, they have existed since the 1940s. Ontario remains the only province to have its own Registry. Ontario’s Registry is managed and maintained by the Ministry’s Sex Offender Registry Unit (SOR Unit) within the OPP.⁶

More than 140 municipal police and local OPP services in Ontario are responsible for registering and monitoring offenders living in their jurisdictions. At the time of the audit, there were over 7,400 registered offenders.⁷

The Ontario Sex Offender Registry (OSOR) is administered by the Ontario Provincial Police. It is currently staffed by 11 police officers and seven civilian personnel and continues to be supported by a Ministry working group. When Christopher's Law was proclaimed on April 23, 2001, the Registry was housed under the umbrella of the Behavioural Sciences section of the OPP, a well-established section with the infrastructure and trained, experienced personnel to deal primarily with violent crime and deviant behaviour.⁸

All police forces in Ontario including all municipal, First Nations and OPP have access to the information and investigative tools of the OSOR to enhance community safety and crime prevention and to prevent and solve crimes of a sexual nature. Police also use the Registry as a management tool, to ensure that they know where the registered sex offenders live, work and volunteer in their jurisdictions.⁹

On an average day, the Registry is accessed 400 times. As of March 4, 2008—a snapshot—8,115 offenders were entered on the OSOR with their “tombstone data” or “footprint” information. Of these offenders, about 5% do not comply with the legislative requirements to register or re-register annually, or, notify the Registry of an address change.¹⁰

3.1 Bill 16 (Sex Offender Registry) Amendment Act, 2008

In response to recommendations made by the Auditor-General's *2007 Annual Report*, in December 2007 the government introduced Bill 16, *Christopher's Law (Sex Offender Registry) Amendment Act 2007*, seeking to make the Ontario Sex Offender Registry more effective.

It was the government's intent that the bill would require:

- sex offenders serving an intermittent sentence to register within 15 days of sentencing (previously, they were not required to report until they had completed their sentences);¹¹ [Bill, s. 2(2)]
- all those who are released on bail pending an appeal to register;¹² [Bill s. 2(2)]
- police services to notify the Ontario Sex offender Registry immediately if they receive a notification from a mental health facility that a person who has been found not criminally responsible for a sex offence on account of a mental disorder is being released from the facility unsupervised;¹³ [Bill s. 3(2)]
- provincial correctional facilities to notify the Ontario Sex Offender Registry of any sex offender who is being released from a correctional facility on an unescorted temporary absence pass 24 hours prior to the offender's release;¹⁴ [Bill s. 4]
- police forces to attempt to verify an offender's address at least once every year;¹⁵ [Bill s. 3(1)]
- that persons charged with a sex offence and sex offenders be given notice of the obligation to report under the Act.¹⁶ [Bill s. 2(5)]

Bill 16 was considered in public hearings before the Standing Committee on Justice Policy, and was the subject of several amendments before being passed unanimously at Third Reading.¹⁷ It received Royal Assent on April 27, 2008. Officials from the Ministry of Community Safety and Correctional Services indicated during the hearings on Sec. 3.11 of the Auditor General's Annual Report that once Bill 16 comes into force, the Ministry will need about six months' lead time to implement all of its provisions.¹⁸

In light of the successful creation of the provincial Registry in 2001, the Ontario government and police agencies identified the need to establish a national sex offender registry.¹⁹

The Committee heard that the OSOR system was offered to the federal government to use as a basis for the NSOR, but the software was declined.²⁰ According to OPP officials, with only minor modification, the OSOR would be capable of capturing any address in Canada and would be accessible to all police officers in Canada to respond to crimes of a sexual nature.²¹

A National Sex Offender Registry (NSOR) was created by federal legislation in 2004.²² There have been efforts to coordinate the activities of the two registries to minimize duplication. A comparison of the two registries is provided below.

	Ontario Sex Offender Registry	National Sex Offender Registry
legislation	<i>Christopher's Law</i>	<i>Sex Offender Information Registration Act</i>
starting date	April 23, 2001	December 15, 2004
who must register?	all Ontario residents convicted of a designated sexual offence anywhere in Canada	any Canadian resident convicted of a designated sexual offence and ordered by a court to register
access to the registry	directly accessible by all Ontario police services 24 hours a day, 7 days a week.	local police contact a provincial NSOR centre and request information.
# of registered offenders (as at January 2007)	7,400	9,400

Prepared by the Office of the Auditor General of Ontario, 2007 Annual Report, p. 258.

AUDIT OBSERVATIONS AND RECOMMENDATIONS

The audit team highlighted several features of the Ontario Registry, acknowledging the work done by the Ontario Provincial Police on their six-year initiative that has created a working Registry that now contains useful information to assist police in monitoring sex offenders in their local communities and investigating sex crimes.

The Registry has been developed at a moderate cost with an annual budget of approximately \$4 million of which \$1 million is dedicated to system development, improvements and maintenance.²³

4. COMPLETENESS OF THE REGISTRY

The more complete the Registry, the more useful a tool it is to police investigators of sexual crimes. A complete Registry contains the names of all sex offenders who should be registered along with comprehensive and up-to-date information about them.²⁴

4.1 Notice of Duty to Register

The Act requires the following sex offenders to register within 15 days of release (or conviction):

- those who have completed a custodial sentence;
- those released on parole; and
- those not sentenced to jail but placed on probation or given a conditional discharge.

Once registered, all offenders must re-register annually for a minimum of 10 years. Repeat offenders and offenders sentenced for a period of more than 10 years must register for life.

While not a requirement under the Act, it is Ministry policy to have police issue notices of duty to register to offenders. While the audit team's analysis indicated that most offenders were served with these notices, some 400 offenders had never been issued notices by local police services. Of these, nearly 17% had failed to register, a rate more than three times higher than the overall non-compliance rate of 5%. This rate differential underscores the value of the notices in maintaining high compliance levels.²⁵

4.2 Limitations on Registration Requirements

The Act requires every offender living in Ontario to register with the local police "within 15 days after he or she is released from custody after serving the custodial portion of a sentence in respect of a sexual offence." The demarcation point between "in custody" and being "released" is often unclear, however, for purposes of registering with local police, e.g., offenders on day parole or serving an intermittent sentence do not have to register because they are not deemed to have completed a custodial sentence as cited in the Act.²⁶

For purposes of determining the requirement to register, another less "clear-cut" offender category is those who appeal their conviction. Prior to 2005, those offenders not serving time in a correctional facility who had launched appeals were not required to register while their cases went through the appeal process. The offender would have to register only if the courts subsequently upheld the

conviction. However, the audit team found that only one of the five local police services visited followed up on the outcome of these appeal cases. The audit team found no other mechanism in place to ensure that such offenders register. In September 2005, the OPP began requiring appellants to register while awaiting the outcome of their appeals, but the Auditor noted that a policy reversal occurred toward the end of the audit, made on the advice of the Ministry's legal counsel.²⁷

Another issue relates to offenders found not criminally responsible because of mental illness. The Act requires all such offenders who receive an absolute or conditional discharge to register, and the audit team's tests of Ontario Review Board records found that such individuals were recorded in the Registry.²⁸ However, the Auditor pointed out that many of these offenders (not yet discharged) were exercising their "community privilege" to live in the community before their actual discharge date, and these individuals are not required to register until they are formally discharged.²⁹

4.3 Offenders in Provincial Custody

The audit team's comparison of offender data in the Registry with an extract from the Ministry's Offender Tracking Information system (OTIS) of all sex offenders who should have been registered/recorded, yielded 175 offenders with records in OTIS who either had never had a footprint record created in the Registry or had never been registered on completion of their sentence.

Offenders tracked by OTIS include the following:

- offenders incarcerated in a provincial correctional institution;
- offenders on probation; and
- offenders serving conditional sentences.

OTIS does not track all convicted offenders. Accordingly, the Auditor obtained a listing from the provincial court system of all sex offenders who should have either been registered or had a footprint record created. This data was compared with the Registry and yielded another 190 offenders not in the Registry. This is a worrisome finding, as offenders not in the Registry are not monitored by local police or identified when police search the Registry in connection with an investigation.³⁰

The audit team noted that while young offenders convicted of sexual crimes and given adult sentences are required to register, there were no procedures for ensuring that these offenders were registered in the Registry upon their release from incarceration. The majority of these offenders serve their sentence in youth detention centres in Ontario rather than adult institutions, and records for these offenders are not stored in OTIS.³¹

4.4 Offenders in Federal Custody

The Ministry does not have a data feed from the federal system to ensure that the estimated 700 sex offenders who were in federal prisons and the additional 360 federal offenders under community supervision in 2001 (when the Registry started) are “footprinted” in the provincial Registry to ensure that their release date is monitored. Although the Ministry has had several discussions with its federal counterparts about this request, no data feed has ever been established to date. Thus, there is no assurance that the Registry contains information on all offenders in federal custody since 2001 or in federal community-supervision programs. The Auditor noted the following concerns:³²

- The absence of a data feed from federal authorities (or other reliable methods of obtaining footprint data) means that offenders who complete their custodial sentences and are released from federal institutions may not get registered.
- The audit team noted there is no formal process for the Correctional Service of Canada (CSC) to inform the Ministry that it is releasing a sexual offender. The Ministry currently relies on a more informal communication process among federal correctional institutions, federal parole offices and local police services.
- Local police services do register offenders when they are made aware of them, but the police services who met with the audit team expressed little confidence that the current process ensures that they are made aware of all of them.
- High risk offenders usually have a release plan and local police services are notified. Yet this practice varied across the province and local sexual crime units responsible for entering the data into the Registry were not always informed of such cases.
- When federal offenders are temporarily detained in provincial institutions before transfer to a federal institution, a footprint record is created in the Registry. The SOR unit reviews these footprint records for the purpose of notifying offenders (before their release from the federal institution) of their obligation to register, and activates these records once offenders are actually released. The audit team observed that the Ministry did not always have information about the release date for such offenders to ensure that this process had been followed. The team’s analysis identified 360 offenders with records indicating that they had been released from a federal institution but had never subsequently registered.
- Serious sexual offences are usually heard before the Superior Court of Justice which will send convicted offenders directly to federal institutions, bypassing temporary placement in a provincial institution and the Ministry’s only opportunity to create a footprint record in the Registry. There have been over 3,400 offence referrals of this type since 2001 according to data from the Ministry of the Attorney General. The Ministry of Community Safety and Correctional Services does not receive information on these cases and has no mechanism to ensure that these more serious offenders register when they are released.³³

4.5 Offenders from Other Canadian Provinces

The Ontario Ministry of Finance estimates that about 64,000 people move into Ontario every year from the other provinces. Under the Act, convicted sex offenders from anywhere in Canada must register with the local police within 15 days of moving to Ontario. There is no mechanism, however, to ensure that they register with the local police within 15 days of moving to Ontario because

- there are no internal procedures to help identify offenders moving into Ontario; and
- there is no process whereby other jurisdictions inform the Ministry of such movements when they are aware of them.³⁴

The National Sex Offender Registry (NSOR) is of little use with respect to this concern because

- under federal legislation, registration is not mandatory for all convicted sex offenders (registration must be ordered by a court); and
- access to NSOR records is restricted, making it difficult to conduct general searches of its contents.

The Ministry must rely on the offenders themselves to come forward.

There are no estimates available of how many offenders convicted in other jurisdictions are living unregistered in Ontario.³⁵

4.6 Offenders Moving Out of Ontario

Sex offenders who move out of Ontario must first inform local police. They are subsequently no longer required to re-register annually. The audit team's analysis noted that some 400 offenders had reported moving out of Ontario since the Registry's inception, but there was no policy requiring police to confirm that such moves actually took place. The audit team noted that in only 30 out of these 400 cases did police actually verify that the offender had left Ontario.³⁶

The Auditor recommended that the Ministry of Community Safety and Correctional Services:

- work with correctional and police services to ensure that the notice of duty to register is served to all convicted sex offenders at the appropriate times;
- consider revising existing legislative requirements to ensure that all offenders released from institutions and living in the community must register;
- work closely with provincial justice and correctional systems to obtain all offender records on an ongoing basis;
- work with the Correctional Service of Canada to obtain data on all offenders in federal custody in Ontario since the Registry's inception; and

- consider establishing procedures to identify offenders moving into Ontario, and confirming that those who report moving out of the province have actually done so.³⁷

In its initial response, the Ministry indicated that it would review the Auditor General's suggestion to seek legislative amendments.³⁸ (See previous information in this report on Bill 16 [pp. 6-7].

The Ministry further indicated that it is working with the RCMP, the Correctional Service of Canada, and the National Parole Board of Canada to explore areas for facilitating greater co-operation and information sharing for offender record accuracy and monitoring offender movement across provincial and territorial borders. Better utilization of other data sources—such as the Correctional Service of Canada for federal offenders; the Ministry of Health and Long-Term Care for offenders who are not found criminally responsible; and the provincial court system and Ministry of Transportation licensing programs—will be considered, in conjunction with the ministry research efforts already being made to ensure quality control.³⁹

Committee Hearings

Addressing registration gaps

The committee heard that the practice of serving offenders with a notification of their obligation to register if they are convicted of a criteria sex offence was not part of the original legislation (*Christopher's Law*) in 2000. It was subsequently developed as a best practice to help ensure program success. In response to concerns highlighted in the Auditor's *2007 Annual Report*, as of March 2008, all offenders who can get mail will receive an annual letter reminding them to register.

Ministry officials indicated that they were also embarking upon legislative amendments [see earlier references to Bill 16 on pp. 6-7] to ensure that efforts are made to serve the notice of duty to register to all convicted sex offenders at the appropriate time.⁴⁰

Incomplete offender records

In response to the Auditor's concerns about the need for better data sources on offenders, the Committee heard that the Ministry is developing a process with provincial corrections and the provincial courts to ensure that all offender records are obtained. Initial meetings have been held with Registry and corrections officials.⁴¹

Including federal offenders in Registry

The Committee heard that the OSOR cannot obtain the tombstone or footprint record for offenders who are incarcerated with the (federal) Correctional Service of Canada (CSC), and this has been identified as a key weakness within the system. Reluctance by CSC to share this information with OSOR officials means

that the latter has no access to key information that would enable police to monitor these offenders. Obtaining this footprint information would enable OSOR officials to inform those offenders who are released into Ontario of their obligation to register, and then continue monitoring them through the OSOR.⁴²

The Committee was told that the OSOR receives a “data dump” of information once a month from the CSC that has to be processed manually. OPP officials are hopeful that CSC officials will become willing to share this information electronically by the end of 2008. Once that goal has been achieved, the OSOR will know the release dates and other important data about sex offenders incarcerated with CSC, making it easier to monitor the compliance of these offenders in Ontario.⁴³

The Committee also heard that the Ministry has been working with the CSC to address electronic data transfer issues concerning these offenders. Specifically, the Ministry has been trying to develop an electronic interface with the CSC. The initial phase of that work was completed in December 2007 and the Ministry continues to work with its federal counterparts to ensure that the necessary electronic interface is robust.⁴⁴ The OPP anticipates that the interface should be in place by the end of 2008.⁴⁵

The Committee learned that it has taken a considerable amount of working together and relationship-building between OSOR officials and those from the Correctional Service of Canada to resolve issues related to electronic data transfer concerning release and parole dates of these federal offenders. Once that matter is resolved and the critical CSC offender footprint data is automatically flowing into the OSOR, the gaps and shortcomings of the National Sex Offender Registry will be easier to accept.⁴⁶

Offenders moving into and out of Ontario

The Committee heard that when a registered sex offender leaves Ontario for another province, the offender’s name remains on the Registry (unless the offender has been pardoned). Once it is verified that the offender has actually left for another province, Ontario police share that information with police services in the jurisdiction where the offender is headed as a matter of professional cooperation. OSOR officials are not able to track convicted sex offenders in neighbouring provincial jurisdictions who may be moving into Ontario unless a judge has ordered their name to appear on the National Sex Offender Registry.⁴⁷ With this NSOR “loophole” and with the absence of sex offender registries in other provinces, the informal phone calls and contacts among police services in provincial jurisdictions about offender whereabouts, takes on a larger importance.⁴⁸

Establishing the NSOR and OSOR Interface

The Committee heard that following the establishment of the NSOR, its limitations as a proactive investigative tool vis-à-vis the OSOR became apparent as the two registries began the process of aligning the information contained within their systems.

The most striking contrast between the two systems is that in Ontario, when a person is convicted of a criteria sex offence, that person's name is automatically included in the Ontario Sex Offender Registry;⁴⁹ whereas, under the federal *Sex Offender Information Registration Act* (SOIRA), the Crown must apply to have an offender registered and a judge at the time of conviction exercises discretion as to whether to order an offender onto the registry. The Committee was told that there is potential for plea bargaining at this stage, notably where an offender pleads guilty under the condition that his or her name doesn't go on the registry. Moreover, in terms of the discretion exercised by the judge, officials from the Ministry pointed out that the court's test for not placing an offender's name on the national registry can be found in the SOIRA, namely, that it is satisfied that if the order were made, the impact on the sex offender, including their privacy or liberty, would be grossly disproportionate to the public interest in protecting society.⁵⁰ The Committee was informed that the NSOR is only 50% as effective as the OSOR.

Since the inception of the national registry in December 2004, there have been 3,679 people convicted in Ontario for a criteria sex offence, but of those, only 1,853 were ordered onto the national registry. That's only a 50% rate of potential offenders being added to the national registry. Ontario captured all of those offenders into the Ontario Sex Offender Registry.⁵¹

OPP officials informed the Committee that the interface between the NSOR and the Ontario Sex Offender Registry was necessarily disconnected at the national level because the volume of information that the OSOR manages was not within the capacity of the NSOR to handle. The OPP is taking the lead on a steering committee and working group with the RCMP to address the establishment of an interface between the two registries to correct the data transfer issues. This will provide for a direct and immediate link between the two registries that will make it possible for offenders who are on the OSOR and have been served their notice to register to automatically be uploaded onto the National Sex Offender Registry.⁵²

In view of the Ministry's statement that the NSOR is only 50% as effective as the OSOR, the OPP indicated that they would be bringing forward recommendations to the Canadian Association of Chiefs of Police with a view to forwarding them to the federal Ministers of Public Safety and Justice. The OPP would like to see "a much more robust, appropriate and effective National Sex Offender Registry."⁵³

Committee Recommendations

The Standing Committee on Public Accounts recommends that:

- 1. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the**

progress it has made in implementing all of the legislative provisions of Bill 16 that were drafted in response to recommendations contained in Sec. 3.11 of the Auditor-General's 2007 Annual Report.

2. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the progress it has made in developing an electronic interface between the Ontario Sex Offender Registry (OSOR) and the Correctional Service of Canada (CSC) to facilitate receiving an electronic data feed from CSC on sex offenders in federal prisons in Ontario to ensure that the release or parole dates of these offenders are "footprinted" in the OSOR and therefore monitored by Registry staff;
3. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the progress it has made in re-establishing an electronic interface between the Ontario Sex Offender Registry and the National Sex Offender Registry (NSOR) to enable data to be transferred between the two registries.
4. The Ministry of Community Safety and Correctional Services shall provide a status report to the Committee describing the outcome of its efforts over the past year to communicate its concerns with the Canadian Association of Chiefs of Police, and federal Ministers at Public Safety, Justice and Attorney General with the aim of seeking a much more robust, appropriate and effective National Sex Offender Registry. Specifically, the Committee is concerned that there are two different sex offender registry systems in Canada. Whereas under *Christopher's Law* the OSOR automatically registers sex offenders upon conviction, under the federal *Sex Offender Information Registration Act*, registration is not mandatory. Crowns must apply for offender registration and judges can exercise discretion as to whether to order a sex offender onto the National Sex Offender Registry.
5. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the progress it has made in establishing a process to verify that all offenders who report that they have moved out of the province have actually done so.

4.7 Deletion of Offender Records

A sex offender who receives a pardon from the National Parole Board can apply to have his or her record removed from the Registry. However, pardons are revocable for various violations and in such cases the offender must re-register with the Ministry. At the time of the audit, the Ministry was not being notified of pardon revocations and had no compensating procedures to ensure that such offenders were registered.

Deletions of records from the Registry require proper audit trails and the Auditor noted that there was no support or tracking of more than 730 deletions from the Registry since its inception.

The audit review also found that conditional discharge records (mistakenly created in the Registry) were deleted without proper documentation, as were duplicate records. As well, the audit team noted that the Ministry deleted about 100 fictitious records created in the Registry for training purposes rather than using the existing training database.⁵⁴

The Auditor recommended that the Ontario Provincial Police work with the National Parole Board to obtain updates on pardon revocations and ensure that such offenders re-register on a timely basis; and track and maintain supporting documentation for all deletion requests.⁵⁵

In its initial response the Ministry indicated support for these recommendations. The Registry immediately requested lists from the RCMP records section and the National Parole Board of Canada of any offenders who might receive a pardon revocation. During the Registry audit, an immediate enhancement to the standardized quality-assurance process of capturing legitimate record deletions was made.⁵⁶

Committee Hearings

The Committee was told that the Ministry is going beyond the recommendation of the Auditor General regarding the deletion of offender records by reviewing all prior deletion records to ensure that each and every deletion has supporting documentation. The Ministry has also had discussions with the federal parole board on developing a protocol for the provision of parole revocations to the OSOR.⁵⁷

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

- 6. The Ministry of Community Safety and Correctional Services shall provide the Standing Committee with an update of its discussions with the National Parole Board in developing a protocol for parole revocations.**

4.8 Offender Annual Re-registration

All registered offenders are required to re-register annually with local police. The audit team's data analysis indicated that more than 6.3% of the 1,700 offenders who exercised their right to "opt out" of receiving the annual reminders became non-compliant. This was approximately 50% more than the 4.4% rate for those who received the reminders.

Local police are supposed to follow up when a reminder notice to re-register is returned as undeliverable, yet there was no Ministry policy regarding this follow-up process. The audit team's data analysis indicated that police followed up on only about half of these undeliverable reminders.⁵⁸

The Auditor recommended that the Ministry of Community Safety and Correctional Services consider eliminating the right of non-compliant offenders to opt out of the annual mail reminder; and establish procedures for police services to ensure that reminders returned as undeliverable are followed up on a timely basis.⁵⁹

In its initial response the Ministry indicated that it would examine the impact of removing the ability of offenders to opt out of receiving annual reminder notifications and would recommend that police services standardize their procedures for managing a letter that is returned to the Ministry. The Registry application alerts police services immediately of any returned correspondence to an offender that may indicate that the offender is not residing at the registered address.⁶⁰

Subsequently, the Ministry tabled information with the Committee that indicated a September 2008 timetable to address these two issues. Both will involve technical changes to the OSOR application.⁶¹

Committee Recommendation

The Public Accounts Committee recommends that:

- 7. The Ministry of Community Safety and Correctional Services shall provide the Standing Committee with an update of its evaluation of the policy to no longer allow offenders to opt out of the annual reminder notifications. The Ministry should also provide an update of its initiative to standardize procedures among local police for managing an offender notification or reminder letter returned as undeliverable.**

5. OFFENDER MONITORING AND COMPLIANCE

Offenders who either fail to register with local police services within 15 days following release from custody, or do not re-register annually, are flagged in the Registry as non-compliant and can be charged with an offence leading to a fine or imprisonment. The audit analysis indicated 384 non-compliant offenders at the time of the audit, with almost 70 being non-compliant for more than two years while some had been non-compliant since the Registry's inception.⁶²

Ministry policy requires police services to take "reasonable steps" to follow up on non-compliant offenders. Yet the Ministry has not defined what reasonable steps it expects police to follow when dealing with such offenders. The Ministry also

lacks a tracking mechanism to record what follow-up actions were taken by police services in such cases. The audit found that follow-up procedures, including the issuing of warrants, varied widely among police jurisdictions. For the almost 70 offenders who had been non-compliant for more than two years, the audit team found that

- two of the five police services visited issued warrants for only half of them;
- two others issued warrants for all offenders; and
- the fifth had no offenders in non-compliance.⁶³

While the overall provincial compliance rate for registered offenders was 95%, the spread of compliance rates among local police services ranged from zero to 100%.

The audit team observed that the SOR unit had little authority to compel local police to deal with Registry issues, including follow-ups on non-compliant offenders. Frequent inspections of local police services by the Ministry's Public Safety Division had at the time of the audit not included any review of the procedures for following up on non-compliant sex offenders.⁶⁴

The Auditor recommended that the Ministry develop guidelines and procedures for police services regarding follow-ups on offenders in non-compliance, including policies on the issuing of warrants. The Ministry was asked to work with those local police services having a high rate of offender registration non-compliance in their community and consider expanding the inspection scope of the Public Safety Division to include Registry-related activities.⁶⁵

In its initial response, the Ministry indicated that in consultation with police stakeholders, the Registry, and the Public Safety Division, it would review and evaluate current guidelines and procedures for all police services regarding non-compliant offenders, including steps for initiating investigations and apprehension of such offenders. The review will include evaluating current guidelines contained in the *Policing Standards Manual* and the Public Safety Division inspection process.⁶⁶

Committee Hearings

The Committee heard that when an offender fails to re-register, he or she is in contravention of the Act and charges may be laid for non-compliance.⁶⁷

The Committee asked if a profile existed for the typical non-compliant offender and was told that it usually involves offenders who move without notifying the Registry. Officials have learned that the more reminder letters they send out, the more offenders are inclined to fulfill their requirement of re-registering on an annual basis. The Ministry has reversed its earlier practice of allowing offenders to waive the annual reminder letter and now believes that all offenders should receive the letter.⁶⁸

The OPP intends to take a much more assertive leadership role in future with the heads of police agencies where there is not 100% compliance.⁶⁹

Committee Recommendations

The Standing Committee on Public Accounts recommends that:

- 8. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee on the outcome of its review and evaluation of current guidelines and procedures for all police services relating to non-compliant offenders. The report should include steps for initiating investigations and apprehension of non-compliant offenders.**
- 9. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee on the outcome of its efforts to include Registry-related activities within the inspection scope of the Ministry's Public Safety Division.**

6. SUPPORTING INVESTIGATIONS

6.1 Searching the Registry

A primary purpose of the Registry is to assist police when they investigate a possible sexual offence such as the abduction of a child. Rapid response is critical because research indicates that 44% of victims who are subsequently killed by their captors are killed within an hour of being abducted, and 91% within 24 hours. To facilitate a rapid and effective response, investigators need to quickly search the Registry and identify and track down the most likely suspects in a particular case.⁷⁰

A useful feature of the Registry, in addition to its primary purpose of registering all known offenders, is its ability to link offender addresses to a geographical mapping application, enabling investigators to quickly generate and print maps highlighting the addresses of all offenders living within a specified radius of a crime scene. Research indicates that in child abduction cases, about 80% of such abductions occur within a quarter-mile of the victim's last known location, usually by offenders who live or work in the area.⁷¹

The usefulness of the Registry with its 7,400 offender records could be enhanced by providing additional search tools and improving the functionality of existing ones. For example,

- it would be useful to identify potential suspects based on the gender or age of their past victims, without having to scan all records in the database or all records from a particular geographic area;

- the ability to immediately screen out those offenders who have assaulted members of their immediate families or other relatives would be of assistance; and
- when investigating an assault at a particular location, it would be useful to create a list of offenders whose past offences have occurred close to that location (in addition to the current practice of generating lists of offenders who live closest to that location).⁷²

To make the above-noted searches possible, the Ministry would have to create and fill four additional searchable fields with the following information (some of this information is already in the Registry, but not in a searchable format):

- the victim's gender;
- the victim's age;
- whether the victim was related to the offender; and
- the location of the crime.

The more detailed and searchable the data, the more effective the Registry will be for investigators. It would be useful to add more new fields in future, including victim characteristics such as hair colour or skin tone.⁷³

6.2 Offender Records

When registering, offenders must provide police with personal information, including their name, date of birth, home or any secondary residence address and telephone number as well as a photograph. If applicable, employment or educational institution addresses must also be provided. Yet, the audit team's review of Registry records and its survey results indicated that incomplete information was being obtained from offenders. For example,

- about 140 offenders in the Registry lacked photographs; and
- only 560 had an employment or educational institution address included in their record.

The Act's regulations specify many more types of information that police may include in offender records, including physical features (scars or tattoos), but the audit team found that this information was not always being collected and recorded. Other offender information, such as vehicle information and contact information for other family members could be useful. (See Figure 3 on p. 268 of the Auditor General's 2007 Annual Report comparing the range of information collected by sex offender registries in 10 selected jurisdictions.)

The "case narrative" box of the SOR contains useful, detailed information about the offence, the offender, and the victim, yet it cannot be searched or filtered by

investigators in the same manner as a data field. The audit team noted almost 1,200 offenders lacked case narrative data.

The audit team's analysis of Registry records indicated that only home addresses of offenders were verified. Furthermore, there was no evidence that verification had been completed for about 650 offenders. The audit team noted that the police have an opportunity to obtain and verify proof of identity and address during

- the initial registration of an offender;
- again at re-registration; and
- when updating information in the Registry.

Without reliable address information, police are less likely to find offenders quickly during an investigation, yet the audit team noted that police sometimes accepted and entered post office boxes as an offender's residence instead of requiring a street address.⁷⁴

The Auditor recommended that the Ontario Provincial Police:

- create the ability to search or filter data by victim gender, victim age, relationship (if any) to the offender, and the location of past offences;
- consider expanding the collection of other useful offender information, such as vehicle information and family-contact data;
- ensure that police verify offender information in a timely manner; and
- reinforce the requirement for all offenders to provide a residential street address when registering.⁷⁵

The Ministry subsequently tabled information with the Committee indicating that an enhancement to the OSOR application (implemented in December 2007) now has the ability to search and filter data by victim gender, age, relationship to the offender and the location of past offences. With respect to other useful offender information, the Ministry is examining the feasibility of amending the regulation to require the offender to provide such information.⁷⁶

To ensure that police verify offender information in a timely manner, the Ministry is examining the feasibility of introducing further legislative amendments to *Christopher's Law* or other options. To reinforce the requirement for all offenders to provide a residential street address when registering, the OSOR application no longer accepts post office box numbers as a residential address. The application also allows for the entry of other geographic information and indicators where no fixed address is available.⁷⁷

Committee Hearings

In addition to the OSOR application enhancements noted above, the Committee was told that the unit is now looking at further enhancements of those criteria to improve the Registry's value as an investigative tool.⁷⁸

The OPP is hopeful that the automated capabilities of the Registry and the enhancements that it is continually working on will enable the Registry unit to realize significant efficiencies and savings in terms of dollars required to manage and support the Registry.⁷⁹

Committee Recommendations

The Standing Committee on Public Accounts recommends that:

- 10. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating how the recent changes to the OSOR database to allow searches by victim gender, age, relationship to the offenders, and location of past offences, have strengthened the investigative work of police services.**
- 11. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the outcome of its efforts seeking to amend regulations under *Christopher's Law* to require the offender to provide additional information (such as vehicle information and family-contact data).**

7. REGISTRY TRAINING AND SUPPORT

The Ministry's approved budget for centrally operating and maintaining the Registry is \$4 million annually.⁸⁰ Almost \$1 million of that is used for the development and maintenance of the Registry application system itself. The Auditor's review of the other \$3 million indicated that the OPP was not using these funds entirely for Registry purposes. While \$16.1 million of the total \$24.8 million in Registry funding provided between April 1, 2000, and March 31, 2006, was used directly on Registry operations, the remaining \$8.7 million was used in other areas. Some of these funds were used to offset the cost of positions within the Behavioural Sciences Unit, whose work partly supports the Registry. The remaining funds were used for public safety priorities. (See Figure 4, p. 269 of the Auditor General's *2007 Annual Report* which summarizes these expenditures and re-allocations).

With a significant portion of its approved budget re-allocated to other areas, the SOR Unit has been unable to complete a number of its planned activities, such as meeting its target of conducting at least one site visit to each of the 140 local police services annually for purposes of local training and support.

As the number of site visits has fallen, concerns about training have risen. Among police service respondents to an audit survey, one in four indicated that more Registry training was needed. Less than 25% of the approved training budget had been used each year. It was further noted that although a 2004 training and information exchange conference with police service representatives from across Ontario received positive feedback from attendees, it was never repeated.⁸¹

In late 2006 the OSOR Unit's workload increased when an electronic link to the National Sex Offender Registry was severed, resulting in staff having to manually enter federal offender records into the NSOR.⁸²

Resource issues have hindered efforts to enhance the OSOR's functionality, even though users have identified many potential improvements. The audit team noted about 50 outstanding requests for system changes or corrections, some dating back to 2003.⁸³

The audit team generated a number of system reports as part of its review and these were found to contain errors. Such reports included:

- listings of non-compliant offenders;
- expected offender releases from provincial/federal institutions by date; and
- the distribution of offenders in the community.

The team found errors made by the Registry application that generates the reports. Some of these errors had earlier been identified by users for correction, but many such requests have been outstanding since 2003.⁸⁴

The Auditor recommended that the Ontario Provincial Police:

- ensure that sufficient training and support are provided to local police services;
- prioritize outstanding system-change requests and devote sufficient resources to address them in a timely manner;
- correct all known system-report errors to ensure that police have access to accurate information when accessing the Registry database for investigative purposes; and
- ensure that all funds approved for Registry purposes are actually spent on Registry activities.⁸⁵

In its initial response, the Ministry agreed that sufficient training and support to police services is important. The Ministry will review training options to ensure that continued support is available to meet its stakeholders' requirements. In a subsequent tabled response, the Ministry noted that an updated training manual is being provided to each police service annually, and web-based training is currently being developed.⁸⁶ The Ministry will continue to enhance the training

materials that are available for police services to ensure that offender registrations are undertaken in an appropriate manner.⁸⁷

The Ministry will work with its information-technology service provider to examine funding requirements for enhanced service delivery.⁸⁸ The Ministry indicated that it is in the process of reviewing the Registry program, and once completed, it will assess Registry funding needs in context with other public-safety priorities within the ministry funding envelope.⁸⁹

Committee Hearings

The Committee heard about steps that the Ministry is taking to improve the usefulness and accountability of the Registry as recommended in the Auditor's *2007 Annual Report*. The Ministry is providing dedicated training and support to local police services which it will continue to enhance. In addition, Registry personnel are working with the Ministry's technology partners to enhance the system's application.⁹⁰

As well, the Ministry indicated that the money allocated to the maintenance and improvement of the Registry is now being fully spent on the Registry.⁹¹ OPP officials indicated that the audit was helpful in correcting the funding issue. The Committee also heard that the Ministry has implemented very stringent safeguards for all of its MB20 funding allocations (Management Board request for funding). A process is in place today that ensures all approved funds are used exclusively for that approved initiative.⁹²

Under questioning by the Committee, OPP and Ministry officials explained that the reallocation of a portion of funding intended for the Registry reflected decision-making at the level of OPP commissioner or deputy commissioner at that time. Those monies were reallocated due to other pressing issues within the OPP including areas within the OPP that support the Sex Offender Registry. Now, however, any movement of Registry funds will trigger a process requiring official sign-offs before these funds can be moved. In terms of establishing more transparent accountability mechanisms around funds, the Committee heard that the audit has been a great help to the Ministry and the OPP.⁹³

8. AVAILABILITY OF THE REGISTRY

During an investigation of a sexual crime, police response time is critical and Registry data should be accessible and available to all police services at any time. The audit team noted, however, that the Ministry has yet to finalize a disaster recovery plan to recover Registry data in the event of a major disaster (or hardware failure). In addition, though backed up daily, the Ministry has never tested the Registry backup tapes to ensure that all application and data files could be fully restored when needed.⁹⁴

The Auditor recommended that the Ministry complete the Registry's disaster recovery plan and test its effectiveness as soon as possible.⁹⁵

The Ministry indicated support for this recommendation in its initial response, noting that it is currently making enhancements to its technological-disaster recovery plan.⁹⁶ The OSOR component of the disaster recovery plan is expected to be implemented in September 2008.⁹⁷

Committee Recommendations

The Standing Committee on Public Accounts recommends that:

- 12. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee on the implementation of the OSOR component of its information technology disaster recovery plan.**

9. SECURE ACCESS TO THE REGISTRY

While some other North American sex offender registries can be accessed by the public, access to Ontario's Sex Offender Registry is, under the Act, restricted to law enforcement officials. Thus, the Registry needs strong access controls. Registry data are physically well-protected at secure Ministry or local police sites and Registry data is further protected through a system of user accounts and access rights, including another layer of protection known as Public Key Infrastructure (or PKI technology). While OPP policy recommends that PKI infrastructures be reviewed annually, the last review was conducted in 2005, and the action plan developed to address system vulnerabilities had yet to be fully implemented.⁹⁸

The audit review looked at the Registry's user accounts and the system access levels assigned to the police services visited. It identified areas requiring improvement as follows:

- About 11% of user accounts reviewed should have been removed or had their system access revised to a lower category with fewer access privileges.
- The Ministry did not properly maintain all documentation related to access requests. Thus the audit team was unable to determine if all existing access rights were appropriate given the users' job responsibilities, or whether access rights had been properly approved.
- Contrary to industry best practices, the Ministry permitted one group of application-development and support personnel full access to the Registry, allowing them to create, edit, or even delete offender records, without the creation of an audit trail, thus raising data-integrity risks.⁹⁹

The Auditor recommended that the Ministry:

- ensure that the OPP's security reviews are performed regularly in accordance with policy and that recommendations arising from these reviews are implemented on a timely basis; and
- regularly review system-access rights to ensure that information in the Registry is available to users strictly on a need-to-know basis and that authorization to make database changes is strictly controlled.¹⁰⁰

In response, the Ministry indicated that it supports these recommendations and acknowledges the continued need to secure and protect its information against unauthorized access or data tampering. The OPP are currently conducting a PKI security review that will ensure that any system vulnerabilities are identified and promptly addressed. Regular PKI security reviews will continue according to OPP policy.¹⁰¹

Committee Recommendations

The Standing Committee on Public Accounts recommends that:

- 13. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the results of recent Public Key Infrastructure (PKI) security reviews or assessments to highlight any system vulnerabilities. The report should also indicate whether any system vulnerabilities were found, and if so, what action was taken. Finally, the report should point out the frequency of the PKI security and system access rights reviews.**

10. EFFECTIVENESS OF THE REGISTRY

Although Ontario's Registry was the first in Canada, sex offender registries exist throughout the world, with the first North American registry having been established in 1944 by the state of California. Most United States jurisdictions now have sex offender registration laws, and registries generally receive considerable public support.¹⁰²

Comparison of Sex Offender Registries among Selected Jurisdictions¹

Prepared by Office of the Auditor General of Ontario

	ON	CAN	CAL	FL	MA	MI	NJ	NY	TX	UK
registration starting year	2001	2004	1944	1993	1996	1994	1994	1995	1991	1997
public access	-	-	√	√	√ ²	-	√ ³	√ ²	√	-
first registration (days after release)	15	15	5	2	2	0 ⁴	0 ⁴	10	7	3
minimum reporting period (years)	10	10	life	life	20	25	15	10	10	5
annual registration	√	√	√	-	-	-	-	√	-	-
physical features	optional	√	√	√	√	√	√	√	-	-
victim information	optional	√	-	-	-	-	-	-	-	-
vehicle information	-	-	√	-	-	-	-	-	√	-
educational/employment address	√	√	√	√	√	√	√	-	√	-

¹ON-Ontario; CAN-Canada; CAL-California; FL-Florida; MA-Massachusetts; MI-Michigan; NJ-New Jersey; NY-New York; TX-Texas; UK-United Kingdom.

²moderate- and high-risk offenders only.

³high-risk offenders only.

⁴ immediate.

Despite the existence of sex offender registries over many years, the Auditor found little evidence that demonstrates their effectiveness in actually reducing sexual crimes or helping investigators to solve them, and few attempts to demonstrate such effectiveness.¹⁰³

The sparse volume of evidence demonstrating effectiveness of sex offender registries has not gone unnoticed by critics, some of whom argue that public funds would be better spent on offender treatment and support programs where there has been some documented proof of effectiveness in reducing recidivism.¹⁰⁴ The John Howard Society argued in its July 2001 Fact Sheet, *Sex Offender Registries: A Costly Illusion*, that public acceptance of registries rests on several myths, namely, that the rate of sexual offences is on the rise, that such offences are committed by predatory strangers, and that most sex offenders will re-offend. [For examples of arguments made against sex offender registries, see the July 2001 Fact Sheet by the John Howard Society, summarized on page 272 of the Auditor's *2007 Annual Report*].

The Auditor highlighted a 2004 research paper issued by Public Safety and Emergency Preparedness Canada which reviewed and analyzed 95 different recidivism studies between 1943 and 2003 involving sex offenders. The paper concluded that given the identifiable differences in sex offenders' recidivism risk, the application of policies equally to all sex offenders would waste resources on low risk offenders while failing to direct sufficient attention to high-risk offenders.¹⁰⁵

Ontario's Sex Offender Registry is relatively new and the Ministry has yet to establish performance measures. The Auditor believes, nevertheless, that it would be useful to start collecting data on the degree to which the Registry has proven useful in helping the police solve sexual crimes or deter such crimes.¹⁰⁶

The Auditor recommended that the Ministry's Public Safety Division should work to develop appropriate performance measures for the Registry, including evidence that it is proving helpful to police in the resolution of sexual-crime investigations.¹⁰⁷

The Ministry indicated in its initial response that it will examine steps that may lead to improved data integrity and related performance measures. The Ministry will continue working to enhance the Registry application and develop performance measures that will optimize data integrity and measure user volume and program effectiveness.¹⁰⁸ In addition, the Ministry's Public Safety Division is currently working with corporate areas of the Ministry to establish performance measures and measure user volume and program effectiveness.¹⁰⁹

Committee Hearings

The Ministry and the OPP provided the Committee with anecdotal information illustrating the OSOR's value as a tool in investigating sex crimes. In one example, a search of the Registry for a suspect with a particular method of operating helped York Regional Police find a suspect in a case involving a sexual assault on a store clerk. Further police investigation yielded a photo lineup, a criminal charge, and ultimately a conviction. Without the OSOR, the police would not even have known that the offender was in their community.¹¹⁰ Extensive use was also made of the Registry during the investigations into the brutal murders of Cecilia Zhang and Holly Jones.¹¹¹

The Committee heard that the OSOR team, with support from the Ministry's strategic planning and research branch, is working to develop program outcome measures. These performance measures will also give the Registry a way to track how often the OSOR is used by police to help them investigate a crime, and whether its usage contributes to the successful resolution of a sex offence investigation.¹¹²

Additional developments underway by the Ministry include performance measures related to data integrity, support provided to services during investigations, as well as training and database improvements. This information seeks to support evidence-based decision-making, thus enhancing the effectiveness of the Registry even further.¹¹³

Lastly, some Members asked Ministry and OPP officials during the hearings whether the Ontario's Sex Offender Registry might face a *Charter* challenge. They outlined a scenario in which a judge registers a criminal conviction against a sex offender from Ontario, but exercises discretion under the federal legislation and does not issue an order to place the offender's name on the national SOR. At

the same time, the Ontario authorities would, upon conviction, notify the offender of their duty to register with the Ontario SOR within 15 days of conviction or release from custody.¹¹⁴

A constitutional challenge of the Ontario Sex Offender Registry is currently making its way through the court system. On June 30, 2004 the Ontario Court of Justice found the Ontario Registry to be in contravention of the *Canadian Charter of Rights and Freedoms*.¹¹⁵ On appeal, in a decision released on December 8, 2005, the Ontario Superior Court of Justice overturned the initial judgement and found that the Ontario Registry did not violate the *Charter*.¹¹⁶ On further appeal, in a judgement released on April 25, 2008, the Ontario Court of Appeal confirmed that the Ontario Sex Offender Registry did not violate the *Charter*.¹¹⁷

Committee Recommendations

The Public Accounts Committee recommends that:

- 14. The Ministry of Community Safety and Correctional Services shall provide a status report to the Standing Committee indicating the progress made in developing performance measures to help evaluate OSOR effectiveness in assisting Police to investigate and solve sexual crimes and deter potential offenders.**

NOTES

¹ Ontario, Office of the Auditor General, *2007 Annual Report* (Toronto: The Office, 2007), p. 258.

² Ibid.

³ Ibid, pp. 258-260.

⁴ Ibid, p. 257.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ontario, Legislative Assembly, Standing Committee on Public Accounts, *Hansard: Official Report of Debates*, 39th Parliament, 1st Session (20 March 2008): P-56.

⁹ Ibid., p. P-58.

¹⁰ Ibid, p. P-55.

¹¹ Ontario, Ministry of Community Safety and Correctional Services (MCSCS), Office of the Deputy Minister, Summary Status Table, S. 3.11 Ontario Sex Offender Registry (5 March 2008), pp. 1-2.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ *Bill 16, Christopher's Law (Sex Offender Registry) Amendment Act, 2008*, 1st Session, 35th Legislature, Ontario, 2008, Explanatory Note, pp. i-ii (assented to 27 April, 2008, S.O., c.3).

¹⁶ Ibid.

¹⁷ Bill 16 was given First Reading on December 11, 2007, and Second Reading on April 2, 2008. It was sent to the Standing Committee on Justice Policy for one day of public hearings on April 16, 2008. The Bill was reported to the House for Third Reading on April 23 and received Royal Assent on April 27, 2008.

¹⁸ Standing Committee on Public Accounts, *Hansard* (20 March 2008): P-68.

¹⁹ Ibid., p. P-56.

²⁰ Michael Friscolanti, "Canada's Sex Offender Registry a National Embarrassment." *Maclean's* (14 January 2008) Internet site at

<http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=M1ARTM0013190> (accessed on March 7, 2008).

²¹ Standing Committee on Public Accounts, *Hansard* (20 March 2008): P-59.

²² *Sex Offender Information Registration Act*, S.C. 2004, c.10.

²³ Auditor General, *2007 Annual Report*, p. 260.

²⁴ Ibid, p. 261.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ The Ontario Review Board of the Ministry of Health and Long-Term Care monitors offenders found not criminally responsible because of mental illness, and reassesses their cases annually.

²⁹ Auditor General, *2007 Annual Report*, p. 262.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid, pp. 262-3.

³⁴ Ibid, p. 263.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid, p. 264.

³⁸ Ibid, p. 273.

³⁹ Ibid.

⁴⁰ Standing Committee on Public Accounts, *Hansard* (20 March 2008): P-57.

⁴¹ Ibid.

⁴² Ibid, p. P-66.

⁴³ Ibid.

⁴⁴ Ibid, p. P-57.

⁴⁵ Ibid, p. P-66.

⁴⁶ Ibid, p. P-66. Ministry and OPP officials noted various shortcomings of the NSOR. For example, it does not record an offender's next reporting date, nor does it provide an indication of whether the offender is compliant or non-compliant. The national registry does not have a readily identifiable location to confirm that an offender's home address has been verified. Moreover, the system also does not include all sex offenders convicted of a criteria offence. In order to be placed on the national sex offender registry, there has to be a judge's order. See *ibid.*, p. P-59.

⁴⁷ Ibid, p. P-69.

⁴⁸ Ibid, p. P-60.

⁴⁹ For the purposes of the Ontario Sex Offender Registry (OSOR), "criteria" offences include convictions anywhere in Canada of one or more of the following *Criminal Code* offences: sexual interference; invitation to sexual touching; sexual exploitation; incest; bestiality; child pornography (making, possession, distribution); parent or guardian procuring sexual activity; exposure; sexual assault; sexual assault with a weapon, threats to a third party or causing bodily harm; and aggravated sexual assault. See Ministry of Community Safety and Correctional Services, *Ontario Sex Offender Registry, "Criteria" Offences*, Internet site at http://www.mcscs.jus.gov.on.ca/English/police_serv/sor/criteria.html (accessed on May 26, 2008).

⁵⁰ Standing Committee on Public Accounts, *Hansard* (20 March 2008): P-62.

⁵¹ Ibid, p. P-57.

⁵² Ibid, p. P-59.

⁵³ Ibid.

⁵⁴ Auditor General, *2007 Annual Report*, p. 264.

⁵⁵ Ibid, p. 265.

⁵⁶ Ibid, p. 271.

⁵⁷ Standing Committee on Public Accounts, *Hansard* (20 March 2008): P-57.

⁵⁸ Auditor General, *2007 Annual Report*, p. 265.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ MCSCS, Office of the Deputy Minister, Summary Status Table, S. 3.11 Ontario Sex Offender Registry, 5 March 2008, p. 4.

⁶² Auditor General, *2007 Annual Report*, pp. 265-6.

⁶³ Ibid, p. 266.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Standing Committee on Public Accounts, *Hansard* (20 March 2008): P-60-61.

⁶⁸ Ibid, p. P-63.

⁶⁹ Ibid.

⁷⁰ Auditor General, *2007 Annual Report*, p. 266.

⁷¹ Ibid, p. 267.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid, p. 268.

⁷⁵ Ibid.

⁷⁶ MCSCS, Office of the Deputy Minister, Summary Status Table, S. 3.11 Ontario Sex Offender Registry, 5 March 2008, p. 7.

⁷⁷ Ibid.

⁷⁸ Standing Committee on Public Accounts, *Hansard* (20 March 2008): P-66.

⁷⁹ Ibid, p. P-59.

⁸⁰ The \$4 million excludes related expenditures incurred by local police services. See Auditor General of Ontario, *2007 Annual Report*, p. 269.

⁸¹ Ibid.

⁸² Ibid, p. 270.

⁸³ Ibid.