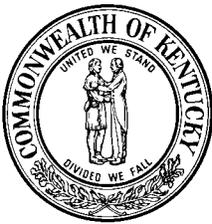


**ASSESSMENT OF KENTUCKY'S SEX
OFFENDER REGISTRY**

September 2004 - PERFORMANCE AUDIT



**CRIT LUALLEN
AUDITOR OF PUBLIC
ACCOUNTS**

The Auditor Of Public Accounts Ensures That Public Resources Are Adequately Protected, Accurately Valued, Properly Accounted For, And Effectively Employed In Order To Raise The Quality Of Life For All Kentuckians Across the Commonwealth.



CRIT LUALLEN
AUDITOR OF PUBLIC ACCOUNTS

September 30, 2004

The Honorable Stephen B. Pence, Lieutenant Governor
Governors Office
700 Capitol Ave. Room 142
Frankfort, Kentucky 40601

Re: Performance Audit of Kentucky's Sex Offender Registry

Lieutenant Governor Pence:

We present our report on Kentucky's Sex Offender Registry. This year marks the tenth anniversary of the Registry, which is a valuable program that has not been independently evaluated. It is our hope that this review will benefit the program so that it will continue to operate effectively. We will be distributing the final version of this report in accordance with the mandates of Kentucky Revised Statute 43.090. Additionally, we also distribute copies to members of the General Assembly committees with oversight authority for the Sex Offender Registry, as well as other interested parties.

In accordance with Kentucky Revised Statute 43.090(1), the Justice Cabinet must notify the Legislative Research Commission and the Auditor of the audit recommendations it has implemented and of the recommendations it has not implemented, and reasons therefore, within sixty (60) days of the completion of the final audit

Our Division of Performance Audit evaluates the effectiveness and efficiency of government programs as well as completing risk assessments and benchmarking of state operations. We will be happy to discuss with you at any time this audit or the services offered by our office. If you have any questions, please call Marcia Morgan, Director of the Division of Performance Audit, or myself.

We greatly appreciate the courtesies and cooperation extended to our staff during the audit.

Respectfully submitted,

Crit Luallen,
Auditor of Public Accounts

cc: Major Alecia Webb-Edgington, Chief Information Officer, Kentucky State Police
Randy Focken, Deputy Commissioner, Department of Corrections, Community Services



Executive Summary

Background

Kentucky's Sex Offender Registration program (Registry) began in 1994 in response to a federal mandate that required the states to adopt registration systems for sex offenders or risk losing federal funds. The federal laws in question were the ultimate result of an unrelated string of brutal child murders perpetrated by repeat sex offenders that occurred in the late 1980s and early 1990s. Over the past decade, Kentucky's Registry has changed to meet evolving federal standards and adapt to new technologies. Today, the centerpiece of the system is an online Registry administered by the Kentucky State Police (KSP) and maintained by the Commonwealth Office of Technology. This website allows anyone with computer access to obtain information about registered sex offenders in Kentucky. Citizens may also proactively monitor registrants by utilizing the Sex Offender Alert Line. To register for notification, callers are required to enter their telephone number and at least one Kentucky zip code. Callers will be allowed to register up to three (3) zip codes per telephone call and can register additional zip codes through operator assistance.

Kentucky Sex Offender Registry

Sex offenders are required to register with their local probation and parole office within forty-eight (48) hours of release from state custody. Depending upon the nature of their offenses, offenders are registered for either a ten (10) year period or for the rest of their lives. Currently, there are 4,311 sex offenders registered in Kentucky. There are 2,464 classified as 10-Year registrants and 1,847 are Lifetime registrants. As noted above, registrant information is posted on the Internet where it is available for public viewing.

The online Registry does not indicate whether a registrant victimized a minor. Sex crimes committed against children was the initial impetus for registration requirements so this information should be provided to the public. APA is recommending that this information be added to the online Registry.

Issues with Noncompliance Procedures

An individual's failure to comply with registration requirements has been a Class D felony in Kentucky since 2000. Once a registrant becomes noncompliant, KSP attempts to ascertain his or her whereabouts. If they are unsuccessful, the registrant's name is forwarded to the Department of Corrections for assignment to local probation and parole offices.

KRS 17.510 (13)(b)(2) requires that noncompliant registrants be forwarded to the appropriate county attorney, even though county attorneys cannot prosecute felonies to conclusion in Kentucky. In recognition of this omission, KSP has recently adopted the practice of forwarding noncompliant information to the appropriate Commonwealth Attorney. APA recommends amending the statute to add the Commonwealth Attorney to ensure that the referral process for prosecution is more complete.

KSP has never tracked how many noncompliant registrants they have forwarded to the Department of Corrections. Likewise, the Department of Corrections has never tracked how many noncompliant registrants are forwarded for prosecution. This means there is no way to gauge how many noncompliant cases are resolved prior to prosecution or how many cases are ultimately prosecuted in court. This is an area that needs a formal process so that noncompliant registrants can be tracked from initial noncompliance to the resolution of any court proceedings.

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Abbreviations

AOC	Administrative Office of the Courts of Kentucky
APA	Auditor of Public Accounts
AVF	Address Verification Form
Cabinet	Justice Cabinet
COT	Commonwealth Office of Technology
CPP	Corrections Policies and Procedures
KAR	Kentucky Administrative Regulation
KRS	Kentucky Revised Statute
KSP	Kentucky State Police
SOR	Sex Offender Registry

Introduction

Sex Offender Registries Nationwide

During the late 1980s, Washington State experienced a series of horrific and highly publicized attacks against children that were perpetrated by offenders who had been released from state custody. Booth Gardner (then Governor of Washington) formed a task force to investigate this disturbing trend. After studying the issue at length and holding public hearings around the state, the task force submitted recommendations to the state legislature. In 1990 the Washington State Legislature responded by passing the nation's first sex offender registration and community notification law.

Around the same time the Washington task force was studying the issue, a young Minnesota boy named Jacob Wetterling was abducted at gunpoint in 1989 and never seen again. His parents formed a foundation in Jacob's name to bring attention to the plight of missing children and their families. Their advocacy work soon made it apparent that law enforcement simply did not have access to information about convicted sex offenders that could aid the early phases of an investigation. Minnesota enacted a sex offender registration act in response to the Wetterling Foundation's work in 1991.

After this Minnesota accomplishment, the Wetterling Foundation successfully focused its attention on the federal level. In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sex Offender Registration Act. The Act mandated that each individual state had to create a sex offender registration program to enable law enforcement to keep track of sex offenders in their communities. Law enforcement was also authorized (not required) to notify community residents about offenders on a discretionary basis.

The very same year that Congress passed the Jacob Wetterling Act, a New Jersey tragedy captured national media attention. Seven-year-old Megan Kanka was raped and murdered by a neighbor who lured her into his house on the pretense of seeing a new puppy. The perpetrator was a twice-convicted sex offender who was sharing a home on Megan's street with two other convicted sex offenders. The Kanka family and their community insisted that they had a right to be notified when a sex offender moves into the neighborhood, and they started to lobby their state legislature to legally acknowledge this right. In 1995, New Jersey passed community notification legislation that was referred to as "Megan's Law."

In 1996, Congress amended the Jacob Wetterling Act to include the mandatory community notification provisions of New Jersey's Megan's Law. Community notification was now a requirement, not a discretionary decision left to local law enforcement agencies. Since this time, any state legislation that deals with community notification issues has commonly been referred to as "Megan's Law."

The states were given until 1997 to comply with the Wetterling Act mandates and create sex offender registration and community notification systems of their own. States that did not comply lost 10% of their Byrne Grant funds. (Byrne Grants are a federal formula grant program administered by the Bureau of Justice Assistance. The monies are awarded to improve the functioning of state criminal justice systems, with special emphasis on violent crimes and serious offenders). Non-complying states also had to accept a federally imposed registration and notification system.

Introduction

Kentucky's Sex Offender Registry

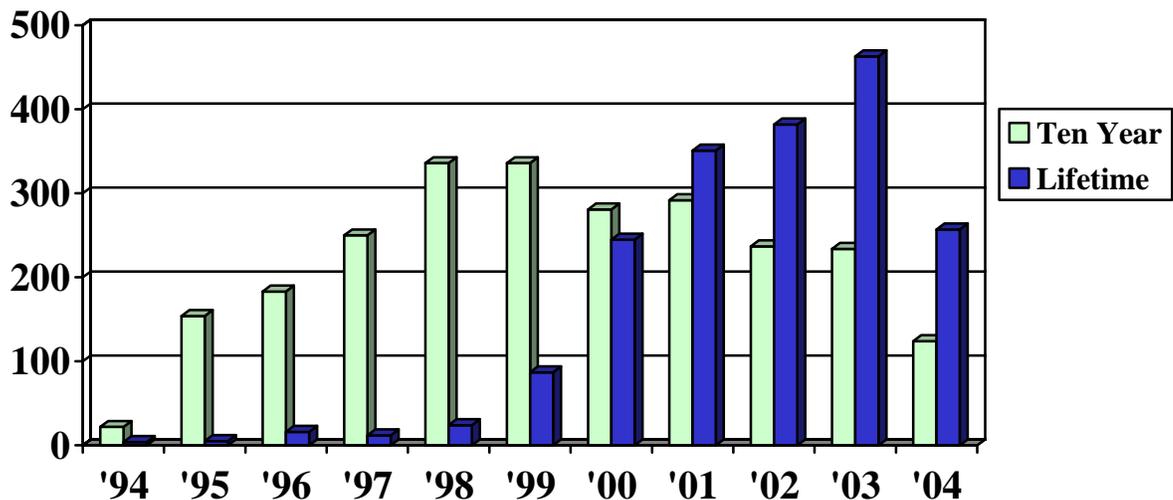
In 1994 Kentucky passed the Sex Offender Registration Act, its first version of a statewide sex offender registration system. This first version of the Act did not provide for any type of community notification, nor was any public access to registry data allowed. Additionally, there were no provisions to test the accuracy of the addresses offenders supplied. Offenders were simply taken at their word and assumed to be living at the addresses they supplied. Also, all registrants were to remain registered for a period of ten (10) years, regardless of the nature of their offenses. Noncompliance with registration requirements was classified as a Class A misdemeanor.

Kentucky's Sex Offender Registration Act was next amended in 1998. A Sex Offender Risk Assessment Advisory Board was created and charged with the job of classifying sex offenders as "high", "moderate", or "low risk" offenders. Those deemed to be low or moderate risk offenders were to remain registered for the standard ten (10) year registration period. However, offenders who were classified as high risk were now to remain registered for their lifetime.

During its 2000 Regular Session, the Kentucky General Assembly passed significant amendments to the Sex Offender Registration Act that brought Kentucky in line with federal mandates. First, a Sex Offender Registry website would be available online for public access. The general public would now be able to find out on their own whether registered offenders lived nearby. Next, an address verification system was created and implemented. The 10-Year registrants would be required to verify their addresses annually, and Lifetime registrants would be required to verify their addresses four (4) times a year. In addition, noncompliance with Registry requirements was raised to a Class D felony.

The following chart illustrates the number of sex offenders that have registered since 1994. Appendix II contains a map of Kentucky to illustrate the number of registrants per county as of July 20, 2004.

Chart 1: Sex Offender Registrants by Year Based on Registration Date



Source: Auditor of Public Accounts using information provided by the Kentucky State Police as of July 20, 2004.

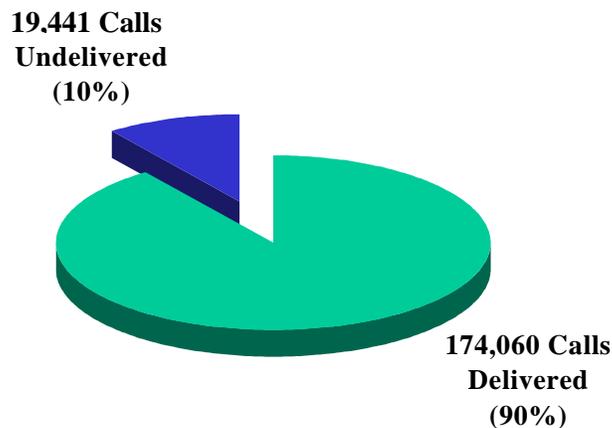
Introduction

Sex Offender Alert Line (866) 564-5652

In 2001, the Kentucky State Police (KSP) contracted with Appriss, a nationally known Kentucky company, to provide a Sex Offender Alert Line that would enhance Kentucky's efforts to meet the community notification requirements of the Wetterling Act. This tool provides timely information to the public regarding the release of registered sex offenders into local communities.

Citizens wishing to utilize the Alert Line may call the following toll-free telephone number: (866) 564-5652. They are directed to enter their telephone number and at least one Kentucky zip code to register for notification. Callers will be allowed to register up to three (3) zip codes per telephone call and can register additional zip codes with operator assistance. Then, whenever KSP receives notice that a registered sex offender is moving into a registered zip code, notification calls are automatically made to all the phone numbers that have signed up to monitor that particular zip code. The call can be left on an answering machine if a person is not available to pick up the call. The Alert Line will attempt to call a number every two (2) hours for a period of twenty-four (24) hours. If a valid connection has not been made after that twenty-four (24) hour period, then the notification call is considered nondeliverable. The following chart details deliverable and nondeliverable rates for notification calls.

**Chart 2: Sex Offender Alert Line Statistics
May 2002 through June 2004
Delivered v. Nondelivered**



Source: Auditor of Public Accounts using data provided by Appriss on July 8, 2004.

The Alert Line notification is a recorded message. It simply states that an offender has moved into a specified zip code, and the online Sex Offender Registry should be consulted for further details. Those without home computers are directed to access public library computers. A nationally known company based in Kentucky company, Appriss, contracts with the state to provide the active notification telephone system. The annual cost for the last two (2) fiscal years has been \$30,000 per year.

During the course of this audit, APA consulted eight (8) other southeastern states for comparative background data. We learned that none of them have anything similar to Kentucky's Sex Offender Alert Line at this time. KSP is complimented for exploring an innovative approach to achieving the community

Introduction

notification required by federal law. APA did not undertake a comprehensive survey and comparison of all the different notification methods that are used by other states, so we are unable to judge the Alert Line's effectiveness in comparison to other community notification methods. However, the Alert Line does provide an easy way for parents, school personnel, and daycare workers to keep track of new offenders moving into the vicinity, and many Kentucky citizens have been making use of it.

2004 marked the tenth anniversary of Kentucky's Sex Offender Registry. Despite a relatively high public profile due to continued national coverage of sex offender registration issues, the move to post registries online for easier access, and the 2002 rollout of Kentucky's Sex Offender Alert Line, the program has never had the benefit of an independent evaluation.

This audit has supplied that evaluation by reviewing the history and current status of Kentucky's Sex Offender Registry, testing how well the Department of Corrections and the KSP are administering the program, identifying potential issues that might ultimately detract from the program's mission, and recommending ways to address these concerns while improving the overall effectiveness of the Registry.

Kentucky's Sex Offender Registration Process

Kentucky's Sex Offender Registration Procedures

A sex offender leaves state custody in one of three ways. Either they have been sentenced to probation, been granted parole, or completely served out their sentence. Additionally, registered sex offenders from other states are always free to move into Kentucky if they have been released from custody. Offenders leaving Kentucky custody are advised of their duty to register by the prison official in charge of the release. Offenders moving into the state are advised of their duty to register by the Kentucky Interstate Compact Officer. The Compact Officer is aware that an offender is planning to move in, because the Compact Officer in the former jurisdiction has notified Kentucky officials that a registered sex offender has stated their intent to move to Kentucky. Each state is initially dependent on the other state's notification when it comes to offenders who move between jurisdictions.

Released offenders are classified as either 10-Year or Lifetime registrants based on criteria mapped out in KRS 17.520. Lifetime registration is required for anyone convicted of kidnapping or unlawful confinement of a victim under the age of 18, any person convicted of a sex crime who has one or more prior sex crime convictions or one or more prior convictions for a criminal offense against a minor, anyone convicted of first degree rape or sodomy, any person who has been convicted of two (2) or more criminal offenses against a minor victim, or any sexually violent predator. Everyone else is classified as a 10-Year registrant. KRS 17.520(5) states that offenders who move into Kentucky must be subject to registration classification based on the offense they committed in their home jurisdiction. However, in reality, out-of-state offenders are automatically classified as Lifetime registrants, but they do have a right to appeal this designation, if they believe their offense(s) only merits a ten (10) year registration period.

Both released and out-of-state offenders are required to register with the appropriate local probation and parole office *and* report to a local detention facility for photographing and fingerprinting within forty-eight (48) hours. This information is then sent to the Kentucky State Police Information Services Center, where it is posted on the Internet for the online Registry. See Appendix V for a sample registration form required for a new offender and Appendix VI for the registration form required of an out-of-state offender.

If a registrant decides to move, either within the state or out-of-state, he or she must report the address change to the local probation and parole office on an address change form prior to actually moving. This form is then forwarded to KSP for updating the registrant's records, including the website. If the registrant moves to a different county, he or she must notify the probation and parole office in the old county on or before the date of the move and register with the probation and parole office in the new county within five (5) days after the move. If the registrant is moving out-of-state and is still under supervision, the local probation and parole office should notify the new state's Interstate Compact Officer to ensure that he or she registers as required.

Kentucky's Sex Offender Registration Process

Addresses are verified by KSP's SOR Section staff on a regular basis according to the registrant's classification. An Address Verification Form (AVF) is sent annually to 10-Year offenders, and AVFs are sent quarterly to Lifetime registrants. Once the registrant receives the AVF, they must return it within ten (10) days in order to verify that they are still living at the address shown on the Registry. See Appendix VII for a blank Address Verification Form.

Noncompliance Procedures

If an AVF is not returned within ten (10) days *or* if it is returned undeliverable with no forwarding address by the post office, the SOR Section staff completes a checklist of steps in an attempt to locate the registrant. The appropriate local Probation and Parole office is consulted to see if there has been a recent address modification filed. Corrections records are searched to see if the registrant has been jailed. The VINE (Victim Notification and Information Everyday) system is also checked for incarceration status. The National Crime Information Center (a national computerized index of criminal justice information) is searched to see if the registrant has been incarcerated in another state or federal facility. Drivers license and vehicle registration data is accessed to see if there has been an unrecorded address change. Finally, if there is a lead in the file (such as a family member's contact information), KSP's Intelligence Unit may try to follow up on it to see if they can get any information.

At this point, if KSP's attempts to track down the registrant have all failed, a Notification of Noncompliance form is filled out and sent to the Department of Corrections' Frankfort office. The noncompliance form notes the registrant's violation and contains identifying information such as name, date of birth, last known address, etc. The noncompliance form is also sent to the Parole Board, the county sheriff, and the Commonwealth's Attorney. There is a line on the bottom of the form where Probation and Parole is supposed to indicate the date on which the noncompliance form was forwarded to the county attorney. Appendix VIII contains a blank Notification of Noncompliance Form.

As of July 20, 2004, Kentucky had 137 noncompliant registrants out of 4,311 on the Sex Offender Registry. Appendix III contains a map of the Commonwealth that illustrates the number of noncompliant registrants in each county.

Online Sex Offender Registry Website

KRS 17.580 directs KSP to maintain an online version of the Sex Offender Registry. This statute was passed in order to comply with a federal directive in the Wetterling Act. To facilitate access, the KSP homepage contains a direct link to the online Sex Offender Registry. Visitors who click on the link are taken to six (6) pages of detailed background information on the SOR and instructions on how to sign up for the Sex Offender Alert Line option.

Visitors can search the Registry by last name, city, county, or zip code. Once a specific offender record is brought up, viewers see the following information: a photograph of the registrant, the registrant's assigned SOR number, name, address, date of birth, sex, any aliases, height, weight, hair color, eye color, race, the date the offender first became registered, and the date that the online record was last updated. Three (3) standard pieces of information are given about the registrant's offense. Specifically, viewers see the registration classification (Lifetime or 10-Year), whether an offender is compliant or noncompliant, and the offense that led to his or her placement on the Registry. Appendix IX contains a mock view of the offender's profile available on the Registry.

Kentucky's Sex Offender Registration Process

Results of APA's Testing

During August of 2004, APA tested eighty-six (86) randomly sampled SOR files at the KSP Records Branch in Frankfort for compliance with statutory requirements. Each file was tested for the following attributes:

- Was the offender correctly classified as compliant, noncompliant, or incarcerated?
- Was the registrant correctly classified as either a Lifetime or a 10-Year registrant according to the requirements of KRS 17.520?
- Were the Address Verification Forms mailed out in accordance with KRS 17.510(13)(a)?
- Did the database address we received match the latest address in the file?
- Were warning letters sent to noncompliant offenders whenever possible?
- Was a Notification of Noncompliance Form on file for noncompliant offenders?
- Did KSP properly notify other states when Kentucky registrants relocated?

Our testing revealed that KSP is complying with the statutory directives noted above. The files were kept in an orderly fashion, and the information trail contained in each one was almost always easy to follow. Additionally, APA noted that KSP did an excellent job of communicating with other states whenever a Kentucky registrant moved out of our state. In every single instance that this situation occurred in APA's sample, KSP contacted the other state's officials via telephone, e-mail, or U.S. mail and later followed up to make sure the registrant had registered as required in the new state.

Findings and Recommendations

The Online Registry Does Not Inform Users If Offenders Have Victimized Children

The initial impetus behind the concept of registering sexual offenders was a spate of particularly brutal sex crimes committed against children during the late 1980s and early 1990s. Media accounts of these horrific offenses, coupled with the activism of the bereaved parents, led to state and then federal legislation that first required registration of sexual offenders and then, somewhat later, public access to this registration data.

No jurisdiction limits sex offender registration solely to offenders who victimized a minor. However, some other states do have somewhat more descriptive statutes on the books, such as prohibitions against “touching a child for lustful purposes” or “indecent liberty with a minor.” Although crimes like this may sound somewhat archaic to modern ears, they do put the researcher on notice that the offender in question victimized a child. In contrast, Kentucky’s penal code consists of sexual offenses labeled in a relatively straightforward manner. For example, KRS Chapter 510 lists offenses such as rape in the first, second, and third degrees, and sodomy in the first, second, third, and fourth degrees. There is absolutely no way to discern if the victim of these crimes was a minor simply by reading the title of these statutes. And statute titles are exactly what the online Registry gives the reader for the “Offense” data field.

The offense field shows the viewer the legal charge. This means it consists of the charge name (for example, Rape 1st Degree) and the accompanying KRS number (for example, KRS 510.040 in the case of Rape 1st Degree). Citizens are directed to access the Legislative Research Commission’s Legislative Searching Service to obtain a legal definition of the charge. To follow through with our example of Rape 1st Degree, citizens who access the legal definition would read that:

- (1) *A person is guilty of rape in the first degree when:*
 - (a) *He engages in sexual intercourse with another person by forcible compulsion; or*
 - (b) *He engages in sexual intercourse with another person who is incapable of consent because he:*
 - 1. *Is physically helpless; or*
 - 2. *Is less than twelve (12) years old.*
- (2) *Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.*

Thus, even after pulling and reading the statute, the reader would still remain unaware of whether the offender victimized a minor.

KSP has posted introductory information on the SOR website that instructs readers how they can look up the text of any statutes that are noted in the Registry’s offender information. A link to the Legislative Research Commission’s Legislative Searching Service is even added to facilitate the statutory research. However, even after viewing the full text of the statutes, it is not always apparent that the victim was or was not a minor. For example, Rape in the 1st Degree is a Class A felony if the victim was under twelve years old *or* if the victim (irrespective of age) was seriously injured by the attack. The introductory information does note that unsealed court records of an adult can usually be viewed by the public and directs users to the appropriate county courthouse if they desire further information. However, going to the courthouse

Findings and Recommendations

to look up and view court documents every single time a citizen researches an offender would certainly prove time and cost prohibitive in short order.

There is a legal and simple way that the public could be informed of an offender's victimization of a minor. A data field could be added to the Registry that would state whether an offender's victim was under eighteen (18). Some other states like Alabama and Florida already do this. The statutes on point here are KRS 17.500 and KRS 17.580. According to KRS 17.500, the definition of "registrant information" can always be changed to include information later deemed to be useful. This statute is subject to KRS 17.580, which clearly states information that could serve to identify a victim cannot be publicly released.

Given the fact that there were 993,841 Kentucky citizens under the age of 18 during the latest US Census, a notation of a victim's minor status on the online Registry would hardly seem to pinpoint one particular victim's identity. However, by withholding a crucial piece of data from the public, Kentucky is denying its citizens the ability to make completely informed decisions based on information retrieved from the Registry. Designating a victim's minor's status would enhance both local law enforcement and caretakers' ability to use the Registry as a protective aid.

KRS 17.510 Does Not Include Commonwealth Attorneys in the Prosecution Referral Requirements

KRS 17.510 (13)(b)(2) directs that the names of noncompliant registrants must be forwarded to the appropriate county attorney for prosecution. Noncompliance with Sex Offender Registry requirements was initially a Class A misdemeanor. In 2000, noncompliance was reclassified as a Class D felony by the General Assembly. KRS 17.510 (13)(b)(2) was *not* amended during this session, and it has not been amended to date. This has created some unnecessary confusion in the process. County attorneys can only prosecute misdemeanors in Kentucky; their jurisdiction is limited to District Court. Felonies are within the jurisdiction of Circuit Court and the Commonwealth Attorney. Therefore, forwarding noncompliant registrants to county attorneys does not ensure full prosecution for noncompliance.

SOR Section staff told us they were instructed several months ago to start forwarding the names of all noncompliant registrants to the appropriate Commonwealth Attorneys. While KSP has taken informal steps to clarify this issue on its own, the process will remain unclear until the law is formally amended.

APA does not propose to eliminate county attorneys from the statute. County attorneys have a close working relationships with local law enforcement and they have the power to issue arrest warrants. However, we do think the language in the statute should be amended to include prosecution by commonwealth attorneys or county attorneys, as appropriate.

APA encountered a great deal of confusion from the Department of Corrections' local and central offices, the KSP, and the County Attorney Association on this issue. Adding the Commonwealth Attorney to the language of the statute would serve to clarify the process of referring noncompliant registrants for prosecution.

Findings and Recommendations

Noncompliant Referral Procedures Are Not Standardized

KSP has never tracked how many noncompliant registrants they have forwarded to Probation and Parole over the years. Likewise, Probation and Parole could not tell us how many noncompliant registrants they have forwarded for prosecution. This means there is no way to gauge how many noncompliant cases are resolved prior to prosecution or how many cases are ultimately prosecuted in court. Ideally, one should be able to track noncompliant numbers all the way through the process, from KSP to Probation and Parole and from Probation and Parole to the court, and from court proceedings to conviction data. Until this data trail can be followed, it will be impossible to judge how well Kentucky handles noncompliant registrants.

From January 1, 1998 through June 30, 2004, 237 individuals have been convicted in Kentucky for noncompliance with sex offender registration requirements. The map in Appendix IV details the conviction numbers in the various counties. Discussions with the Prosecutors Advisory Council and the Kentucky County Attorneys Association revealed that prosecution procedures vary between counties.

We requested that the Department of Corrections query each local probation and parole district on how they handle noncompliant offenders. Twelve (12) of the thirteen (13) local districts responded. Only three (3) of the twelve handle noncompliant cases in the same manner. The remaining nine (9) all have different methods for processing these cases. This is clearly an area that needs a formal process to ensure that noncompliant registrants can be tracked from initial noncompliance to the ultimate resolution of any court proceedings.

Usage of the Online Registry Has Never Been Tracked to Determine Utilization by the Public

In conversations with COT staff, APA learned that usage of the SOR website is not tracked in any fashion. Since a certain amount of federal funding is contingent upon the state operating an online registry, it is not entirely inconceivable that the federal government might ask for these kinds of statistics sometime in the future. Additionally, it would be to the KSP's advantage to know how many citizens the online Registry serves, since the legislature entrusted them with the mission of administering it. Finally, the lack of a number makes it impossible to gauge the success of KSP's educational and promotional efforts. Reliable numbers could be used for anything from public relations purposes to budget submissions and would require nothing more elaborate than installation of a web counter.

KSP Has Developed a Letter to Inform Out-of-State Registrants of Their Right to Appeal Automatic Lifetime Status

KSP developed a policy that requires a letter, detailing their appeal rights, be sent to an out-of-state offender within seven (7) days of their placement on the Registry. This letter was developed to ensure that out-of-state registrants are informed of their right to appeal their automatic Lifetime status. The effective date of this policy was August 3, 2004.

Sex offender registration procedures need to be clear and straightforward in order to achieve its objectives. This policy will assist in providing out-of-state registrants with necessary information. This letter, Notification of Administrative Appeal Policy, should be maintained in the registrant's file with proper documentation to support that the registrant was notified of appeal rights.

Findings and Recommendations

Recommendations

- Recommendation 1:** We recommend that the Kentucky State Police promulgate a regulation to add a victim’s minor status to the definition of “registrant information”. This will enable the online Registry to specify whether the registrant victimized a minor(s).
- Recommendation 2:** We recommend that the Justice Cabinet formalize a process for tracking noncompliant registrants from initial noncompliance to the resolution of any court proceedings. Additionally, we recommend that the process of dealing with noncompliant registrants be standardized throughout the state.
- Recommendation 3:** We recommend that the Justice Cabinet request legislation that adds the Commonwealth Attorney to the language of KRS 17.510(13)(b)(2).
- Recommendation 4:** We recommend that the Commonwealth Office of Technology track the number of visitors to the Sex Offender Registry website.
- Recommendation 5:** We recommend that the Kentucky State Police ensure that the Notification of Administrative Appeal Policy letter be maintained in the registrant’s file with proper documentation to support that the registrant was notified of appeal rights.

Scope

We conducted our audit in accordance with *Government Auditing Standards* promulgated by the Comptroller General of the United States. The audit's purpose was to address the following objective:

To determine whether Kentucky's Sex Offender Registry and its related processes have resulted in accurate information that is effectively utilized to protect the public.

Our testing population and statistics related to the Sex Offender Registry include all registrants since the inception of the sex offender registration system until July 20, 2004, which is when the data was provided to the APA.

Methodology

We reviewed the federal legislation on sex offender registration and community notification in order to compare Kentucky's system to federal requirements. We also reviewed applicable Kentucky statutes, regulations, case law, and selected agency policies and procedures regarding the Kentucky Sex Offender Registry.

We conducted a scan of general media sources to ascertain current issues and trends pertaining to sex offender registries nationwide.

After completion of this background research, we interviewed staff from the following agencies to determine their respective Sex Offender Registry duties and responsibilities:

- Kentucky State Police (KSP)
- Department of Corrections, Division of Probation and Parole
- Commonwealth Office of Technology
- Appriss (the company that operates the Sex Offender Alert Line)

To aid in identifying potential issues with how noncompliant registrants are prosecuted, we interviewed staff from the two (2) following associations:

- Prosecutors Advisory Council
- Kentucky County Attorneys Association

We also contacted the two (2) following county attorney's offices for feedback:

- Hardin County
- Montgomery County

We contacted the eight (8) southeastern states of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee to determine the size and spending levels of their own registries for comparison purposes.

The Administrative Office of the Courts supplied a record of all convictions for Registry noncompliance that occurred from 1/1/98 to 6/30/04. APA sorted these conviction numbers in Excel and analyzed them for trends according to dates and counties.

APA obtained the entire Kentucky Sex Offender Registry database from the Commonwealth Office of Technology with the permission of the Kentucky State

Police. This database was sorted according to registration type (Lifetime or 10-Year registrants). Each of the two registration categories were then in turn broken down into eight (8) groups based on county codes assigned by COT. Audit Command Language software was used to select a random sample from each of these eight (8) groups within the two (2) categories. Forty-three (43) Lifetime registrants and forty-three (43) 10-Year registrants were sampled. Each subset of forty-three (43) was proportionately spread over the eight (8) groups for a final testing pool of 86 registrants representative of the entire state.

The files for each of the 86 registrants were pulled by KSP. File review took place onsite at KSP Post 12 in Frankfort on 8/11/04 and 8/12/04. Each file was tested for the following attributes:

- Was the offender correctly properly classified as compliant, noncompliant, or incarcerated based on the evidence in the file?
- Was the registrant correctly classified as either a Lifetime or a 10-Year registrant according to the language of KRS 17.520?
- Were the Address Verification Forms mailed out as required by KRS 17.510(13)(a)?
- Did the database address we received match the latest address in the file?
- Were warning letters sent to noncompliant offenders whenever possible?
- Was a Notification of Noncompliance Form on file for noncompliant offenders?
- Did KSP properly notify other states when Kentucky registrants relocated?

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Sample Registration Form (New & Modification)

Appendix V

New
 Modification

**KENTUCKY CRIMINAL OFFENDER
REGISTRY FORM**

SON: _____
 SID: _____
 FBI: _____
 Photo: _____ Prints: _____ DNA: _____ SVP: _____ C/MC: _____

NAME

Last Name (JR, SR, III, etc.) _____ First Name _____ Middle Name _____

ALIAS NAME

Alias Last Name (JR, SR, III, etc.) _____ Alias First Name _____ Alias Middle Name _____

Social Security Number _____ Date of Birth _____ Sex _____ Race _____

Height _____ Weight _____ Hair Color _____ Eye Color _____ Scars, Marks & Tattoos _____

ADDRESS

Street No. _____ Street Name _____ Apt./Unit No. _____

City _____ State _____ Zip Code _____ County _____

PREVIOUS ADDRESS (Modification Form Only)

Street No. _____ Street Name _____ Apt./Unit No. _____

City _____ State _____ Zip Code _____ County _____

RELEASE AND EXPIRATION DATE INFORMATION

Conviction Date _____ Date Released _____ Maximum Date Released _____ Registry Expiration Date _____
110 Years or Lifetime

Remarks/Description of Crime: (Must include Offense Title and KRS Number, see Page 15, 110100)

Relationship of Victim to Offender: Relative Acquaintance Stranger Victim Sex Male Female
 Victim's Age: _____ (Check all that apply) (Check all that apply)

SPECIAL CONDITIONS IMPOSED BY THE HEARING AUTHORITY

- 1.) _____
- 2.) _____
- 3.) _____
- 4.) _____

I have been notified that the above information is being sent to the Kentucky State Police in order to place me on the Offender Register. I also understand that prior to any change of address, I am required to notify the local Probation and Parole office. I understand that I must register in any state in which I relocate, have employment, am a student or carry on a vocation until the expiration of my registration period. I further understand that I will be required to verify my address periodically with the Kentucky State Police in whatever form they deem appropriate and that my failure to comply with any portion of this law is a Class D felony.

 Registrant's Signature Date Signed _____

 Authorizing Official Name (Please Print) Date Signed _____

 Title Phone Number _____

Copy: Kentucky State Police (Attn: SOR) 1250 Louisville Road, Frankfort, KY 40601
 Copy: File
 Copy: Offender

P: 225
 Revised 1/2002

Sample Registration Form (Move-In & Stranger)

Appendix VI

- Move-In
 Stranger

KENTUCKY CRIMINAL OFFENDER REGISTRY FORM

SON: _____
 SID: _____
 FBI: _____
 Photo: _____ Prints: _____ DNA: _____ SVP _____ C/MC: _____

NAME

Last Name (JR, SR, III, etc.) First Name Middle Name

ALIAS NAME

Alias Last Name (JR, SR, III, etc.) Alias First Name Alias Middle Name

Social Security Number Date of Birth Sex Race

Height Weight Hair Color Eye Color Scars, Marks & Tattoos

ADDRESS

Street No. Street Name Apt./Unit No.

City State Zip Code County

PREVIOUS ADDRESS (Or Non-Kentucky Address)

Street No. Street Name Apt./Unit No.

City State Zip Code County

Purpose in Kentucky: _____
 1 = Student 2 = Vocation 3 = KY Employment

Remarks

RELEASE AND EXPIRATION DATE INFORMATION

+10 Years
 or Lifetime

Conviction Date Date Released Maximum Date Released Registry Expiration Date

Remarks/Description of Crime: (Must include Offense Title)

Relationship of Victim to Offender: Relative Acquaintance Stranger
 Victim's Age: _____ (Check all that apply)

Victim: Sex Male Female
 (Check all that apply)

State/Territory Requiring Registration Military Court Federal Court
 Registry Expiration Date K=KY Applied, O=Original State

Basis for LIFETIME REGISTRATION

I have been notified that the above information is being sent to the Kentucky State Police in order to place me on the Offender Register. I also understand that prior to any change of address, I am required to notify the local Probation and Parole office. I understand that I must register in any state in which I relocate, have employment, am a student or carry on a vocation until the expiration of my registration period. I further understand that I will be required to verify my address periodically with the Kentucky State Police in whatever form they deem appropriate and that my failure to comply with any portion of this law is a Class D felony.

 Registrant's Signature Date Signed

 Authorizing Official Name (Please Print) Date Signed

 Title Phone Number

Copy: Kentucky State Police (Attn: SOB) 1250 Louisville Road, Frankfort, KY 40601
 Copy: File
 Copy: Offender

P: 226
 Revised 1/2002

Sample Address Verification Form

Appendix VII



SOR-1T
Rev 03/03

(Date)
**SEX/CRIMINAL OFFENDER REGISTRY
ADDRESS VERIFICATION FORM**

To:

According to KRS Chapter 17.510 and being classified as a "Ten Year" registrant, you are required to verify your address annually. Failure to comply with any part of the registration law is now a **CLASS D FELONY**.

You must complete the bottom portion of this letter and return in the enclosed self-addressed, postage paid envelope within **10 days**. Completing this form does not relieve you of the duty to **immediately** report any change of address to your local Probation and Parole Office.

If you have any questions, contact your local Probation & Parole Office or me at (502) 227-8781.

Sincerely,

Sgt. Jonathan Tapp
Criminal Identification & Records Branch
Sex Offender Unit

Legibly complete the following required information and return in the enclosed, self-addressed, stamped envelope within 10 days. All information must be provided. (PLEASE PRINT)

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SOCIAL SECURITY NUMBER: _____

DATE OF BIRTH: _____ PHONE NUMBER: _____
(M) (D) (Y) Include Area Code

SIGNATURE (Required)

Date

FAILURE TO RETURN THIS FORM AS INSTRUCTED MAY RESULT IN PROSECUTION FOR A CLASS "D" FELONY UNDER KRS CHAPTER 17.510



SOR-2
03/03

SEX/CRIMINAL OFFENDER REGISTRY NOTIFICATION OF NON-COMPLIANCE

Please be advised that the below registered **Lifetime** offender is non-compliant. The following is a list of violations as required by KRS Chapter 17.510:

_____ **Did not complete the address verification form (SOR-1L/SOR-IT) and returned as required.**

_____ **Changed address without notifying the Division of Probation and Parole and did not complete an address modification form.**

_____ **Possibly moved into an area from out-of-state without registering as required. (See attached documents)**

Other: _____

Offender Name: _____ DOB: _____
Last Reported Address: _____ SSN: _____
SON: _____

Other: Offenders description and Non-Compliance status is indicated on the website.

Non-compliant with any of the above listed conditions is classified as a **Class D Felony**. As required by KRS Chapter 17.510, and in the interest of public safety this serves as notification of a possible violation. An official investigation may be necessary to determine if a violation has actually occurred.

If you have any questions concerning this matter or need assistance, feel free to contact me at (502) 227-8781.

Sincerely,

Sgt. Jonathan Tapp
Criminal Identification & Records Branch
Sex Offender Unit

TO: County Circuit Court
Parole Board
County Sheriff
County Commonwealth's Attorney
Probation & Parole _____ Forward To: _____ County Attorney



Offender Identification

SOR Number 0000
Name DOE, JOHN
Address 0000 MAVERICK TRL
FRANKFORT, KY 40601-
FRANKLIN COUNTY
Date of Birth 04/10/1946
Sex MALE
Aliases (None)
Physical Description
Height 6'0"
Weight 180
Hair Color BROWN
Eye Color BROWN
Race W - CAUCASIAN
Offense(s) Requiring Registration
Date Registered 03/01/2002
Offender Type COMPLIANT
Registration Type LIFETIME
Offenses 510.110 - SEXUAL ABUSE 1ST DEGREE
Remarks
Last Updated 03/18/2002

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Kentucky State Police
Headquarters
919 Versailles Road
Frankfort, KY 40601
Phone (502) 227-8700

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URL:
<http://www.state.ky.us/agencies/ksp/ksp/home.htm>

Revised: 04/11/2001.



ERNIE FLETCHER
GOVERNOR

KENTUCKY STATE POLICE
919 VERSAILLES ROAD
FRANKFORT, KY 40601
www.kentucky.gov

MARK L. MILLER
COMMISSIONER

MEMORANDUM

TO: Crit Luallen, Auditor of Public Accounts

THROUGH: Justice and Public Safety Cabinet

FROM: Commissioner, Kentucky State Police

DATE: September 24, 2004

SUBJECT: Audit of Kentucky's Sex Offender Registry

This documentation is in response to the recent performance Audit of Kentucky's Sex Offender Registry. The overall evaluation was satisfactory and highlighted areas that were efficient and effective. Among those successes, was the Kentucky Sex Offender Registry Alert line, which is an automated community notification process. The Auditor's office complimented Kentucky on these endeavors, and found nothing comparable in their consultation with 8 Southern States.

Consequently, the audit also produced five (5) recommendations to enhance the overall effectiveness and efficiency of the Sex Offender Registry.

Recommendation 1: We recommend that the Kentucky State Police promulgate a regulation to add a victim's minor status to the definition of "registrant information". This will enable the online Registry to specify whether the registrant victimized a minor(s).

The Kentucky State Police has contacted the Commonwealth Office of Technology and developed an amended web-page format to include the specific Kentucky Revised Statute and the age category that parallels this statute (i.e. 510.040 less than 12, less than 14, less than 16)

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Auditor of Public Accounts
Page 2
September 24, 2004

Recommendation 2: We recommend that the Justice Cabinet formalize a process for tracking noncompliant registrants from initial noncompliance to the resolution of any court proceedings. Additionally, we recommend that the process of dealing with noncompliant registrants be standardized throughout the state.

The solutions to address this recommendation are the development of a database that would be designed to incorporate statutory requirements of both Corrections and Justice and a re-design of the registration process that would transition from paper registration to electronic data capturing. This electronic data collection would enhance the tracking of all registrants.

Kentucky State Police recommends that the Justice Cabinet pursue funding sources (i.e. Byrne, NCHIP, etc.) to finance this endeavor.

Recommendation 3: We recommend that the Kentucky State Police pre-file legislation that adds the Commonwealth Attorney to the language of KRS 17.510(13)(b)(2).

The Kentucky State Police suggests that the Justice Cabinet draft legislation to address KRS.17.510. (13)(b)(2) to include notifications to Commonwealths Attorney's.

Recommendation 4: We recommend that the Kentucky State Police add language to their "Move in or Stranger Registration Form" that indicates the incoming registrant has been advised of his or her right to appeal his automatic Lifetime classification.

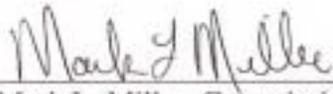
The Kentucky State Police deployed policy 8/03/04 that notifies "Move-In" Registrants. (See Attachment A)

Recommendation 5: We recommend that the Commonwealth Office of Technology track the number of visitors to the Sex Offender Registry website.

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Kentucky State Police contacted the Commonwealth Office of Technology to add web counters to the Sex Offender Registry website.

Finally, we would like to thank the Auditor of Public Accounts for this opportunity. The audit revealed areas in which our agency was very successful, and provided recommendations to enhance our system to move forward.



Mark L. Miller, Commissioner
*By ITC Dec 14/04
A.C. Connor.*

MLM/AWE/llm

Attachment

	CRIMINAL IDENTIFICATION & RECORDS BRANCH SEX OFFENDER REGISTRY SECTION	
	<i>TITLE/SUBJECT</i> Notice to Move-in Offenders of Right to Appeal Lifetime Registrant Status	<i>Identifier</i>
<i>Effective date</i> 8/03/04	<i>Reference</i>	

PURPOSE

To establish a policy regarding notification of the administrative appeal authorized by Department of Corrections Policy CPP 27-30-01 to offenders who have relocated to Kentucky from other states.

POLICY AND PROCEDURE

The SOR section will review all Kentucky Criminal Offender Registry Forms (P226) received. The P226 indicates all "move-in" offenders. All offenders who are required to register in another state shall be placed on the registry (even if the offender would not have had to register at all if the offense had been committed in Kentucky). Pursuant to Department of Corrections Policy CPP 27-30-01, all "move-in" offenders are to be classified as lifetime registrants. Once the offenders have been added to the Sex Offender Registry Database, the Kentucky Sex Offender Registry Notification of Administrative Appeal Policy (SOR-4) will be mailed to the move-in offender within 7 days of their placement on the registry.

This policy is not retroactive, and does not apply to move-in offenders already on the registry at the time the policy becomes effective.



JOHN D. REES
COMMISSIONER

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF CORRECTIONS
COMMUNITY SERVICES AND LOCAL FACILITIES
PO Box 2400
FRANKFORT, KENTUCKY 40602-2400

RANDY S. FOCKEN
DEPUTY COMMISSIONER

TELEPHONE: 502/564-7023 FAX: 502/564-5783

September 27, 2004

Marcia R. Morgan, Director
Performance Audit Division
Auditor of Public Accounts

Re: Performance Audit of Kentucky's Sex Offender Registry
Department of Corrections' Response to Recommendation 2

Dear Ms. Morgan:

The Department of Corrections agrees that a process for tracking noncompliant registrants from initial noncompliance to resolution of court proceedings is a necessary component to gauge the effectiveness of the Registry. However, it seems that the Administrative Office of the Courts and/or the Commonwealth Office of Technology would be the best entities for such tracking at this time. It should be noted that according to KRS 17.510(13)(b) 2 the Department's obligation to the Registry ends upon notification being forwarded to the appropriate county attorney for prosecution. This department simply does not have the resources or available staff for designing and implementing a tracking system.

While the need for standardization is recognized, it is important to note that Probation and Parole Officers serve all 120 counties of the Commonwealth. Probation and Parole field staff must operate within the framework of their local jurisdictions. The Department does have a plan to formalize a tracking process for the number of noncompliant registrations that have been referred for prosecution. This will be done via a simple accounting from each District of those numbers on a monthly basis. This will begin within the next quarter. This is viewed as an intermediate solution. Ideally, software would be developed that will interface with the KSP database affording field staff the ability to advise KSP of those cases referred for prosecution in a timely fashion. Discussions with KSP's Records Branch Commander about a solution for this problem have already begun. A long-term solution involving technology could be subject to budgetary allocations and/or Grant Proposals.

The Registry represents the excellent working relationship between two agencies within the Justice Cabinet. The Department of Corrections will continue to work with KSP to improve this system.

Please advise if you need further information.

Sincerely,

A handwritten signature in black ink that reads "Randy S. Focken".

Randy S. Focken
Deputy Commissioner

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Contributors To This Report

Crit Luallen, Auditor of Public Accounts

Marcia R. Morgan, Director, Division of Performance Audit

Jettie Sparks, CPA, Performance Audit Manager

Deborah Crocker, JD, MPA, Performance Auditor

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Report Request
Auditor of Public Accounts
105 Sea Hero Rd. Ste. 2
Frankfort, Kentucky 40601

visit : 8 AM to 4:30 PM weekdays

email: crit.luallen@auditor.ky.gov

browse web site: <http://www.auditor.ky.gov>

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The staff of the APA office performs a host of services for governmental entities across the state. Our primary concern is the protection of taxpayer funds and furtherance of good government by elected officials and their staffs. Our services include:

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Investigations: Our fraud hotline, 1-800-KY-ALERT (592-5378), and referrals from various agencies and citizens produce numerous cases of suspected fraud and misuse of public funds. Staff conduct investigations in order to determine whether referral of a case to prosecutorial offices is warranted.

Performance Audits: The Division of Performance Audit conducts performance audits, performance measurement reviews, benchmarking studies, and risk assessments of government entities and programs at the state and local level in order to identify opportunities for increased efficiency and effectiveness.

Training and Consultation: We annually conduct training sessions and offer consultation for government officials across the state. These events are designed to assist officials in the accounting and compliance aspects of their positions.

General Questions

General questions should be directed to Jeff Derouen, at (502) 573-0050 or the address above.