

May 27, 2022

Chief Richard V. Tantalo
Monroe County Department of Public Safety
50 W. Main Street
Rochester, New York 14614

Dear Chief Tantalo:

Please find attached to this correspondence the review of Monroe County Probation & Community Corrections as requested.

Findings and recommendations appear in section I. Executive Summary, the remaining report is support material to that summary. This report was narrowly focused and as a result other concerns may exist that have not been identified here.

I would like to thank the Office of Probation & Community Corrections for their cooperation during the review process. This review would not have been completed as promptly as it has without the statistical review conducted by the Office of Public Integrity. Their professional assistance was greatly appreciated.

Please let me know if you have any questions regarding the information contained in the report. I am available to discuss the results of the review.

Respectfully,



George E Markert

Empire Risk Resolutions Inc.

I. Executive Summary

This review has been conducted at the request of Monroe County Executive Adam Bello. The request follows the arrest of a probationer who is a registered sex offender for the rape of a minor female. During the initial public scrutiny of the incident, it was revealed that the alleged rape occurred at the probationer's place of employment, which was located across the street from a public school.

County Executive Bello requested a review of the instant incident and a systemic policy review of the Monroe County Office of Probation and Community Corrections. Monroe County's Office of Public Integrity was tasked with doing a general risk assessment and assisting with the statistical analysis of the probationer's files.

My review occurred over a period of several weeks. As a result of the file review and the interviews that are detailed below, the following observations are offered:

- In the instant review, the probationer's file contained enough technical violations and concerning behavior to warrant greater attention from the probation officer responsible for supervising him. That these violations did not raise greater concern from the assigned probation officer, and later other probation officers, indicates a high probability of future events with other probationers. The administration should take immediate steps to limit the probability of recurrence.
- The Monroe County Office of Probation and Community Corrections lacks the appropriate and current operating procedures necessary to guide the activities of their employees in the performance of their duties. Immediate steps should be taken to establish detailed operating procedures, as required by law.
- Probationers who have been assessed as high-risk or greatest-risk should always have a specific supervising probation officer assigned. Supervisors should review the work product of probation officers on a regular basis and the review should be documented within the case file.
- Each probationer's residence and location of employment should be physically verified, their proximity to locations of concern or restriction noted in the file, and their addresses remediated where required. These checks as well as other mandated activities must occur within the timelines required by the State of New York ("State").
- The aging policy, where it exists, makes it apparent that the issues facing Probation have been years in the making. Any comprehensive approach at corrections will require a structured, prioritized approach.
- This report is narrowly focused on the objectives as documented below. Because of the purposeful limitation, other liabilities may exist. Additional review, as was performed by Monroe County's Office of Public Integrity, may assist in identifying those other areas.

II. Background

The State regulates those municipalities that provide probation services.¹ Oversight of these regulations is the responsibility of the New York State Office of Probation and Correctional Alternatives ("OPCA"). Other pertinent regulations appear in this review and are cited within.

¹ New York Comprehensive Codes, Rules, and Regulations. Title 9 Subtitle H § 345 - §369 ("NYCRR")

The County of Monroe supervises individuals who are subject to probation pursuant to a judicial order.

This service is provided through the Monroe County Office of Probation and Community Corrections (“PCC”). PCC is responsible for ensuring compliance with the conditions of probation for each individual and reporting on the compliance or non-compliance to OPCA, the Court or law enforcement authorities.

PCC utilizes probation officers to supervise these individuals. The Court lists all the conditions of probation for supervised individuals. Sex offenders under probation supervision have conditions that exceed that of other probationers. Current active cases for which PCC is responsible average about 5,000. Of those, approximately 1600 are sex offenders.

PCC is divided into different specialized groups of probation officers. Generally, offenders are assigned to be supervised by the specialty group that most closely matches their conviction or identified needs.

III. Objectives of Review

1. What are the circumstances that permitted the probationer to work or work undetected at a business less than 1000 feet from a school, contrary to the Court’s Order?
2. Are other probationers similarly situated?
3. Was there a violation of probation office policy or procedures when the probationer was permitted to work at a location within 1000 feet of a school?
4. Do sufficient procedures currently exist to reasonably ensure sex offenders working or residing in violation of proximity restrictions are discovered and appropriately addressed?

IV. Methodology

The methodology to conduct this review included interviews with involved persons and subject matter experts within PCC, review of case documents, administrative materials, policies, procedures, and pertinent State statutes.

State law safeguards specific portions of a probationer’s file from release or general scrutiny except under very specific conditions.² Exceptions are listed within the statute. As a result, a portion of the probation record for the involved probationer was not viewed. However, this did not impair the review as the facts for the instant case existed in the portion of the file that was available.

V. Discussion of Review

Probationer

On or around 05/12/21, PCC accepted a probation case stemming from a criminal conviction in Ontario County involving Monroe County resident Shadad Alghaithy (“Alghaithy”). Alghaithy was convicted upon a plea of guilty to a class D felony, disseminating indecent material to minors in the first degree.³

This is a designated sex offense and anyone convicted of this offense is deemed a sex offender. Sex offenders on parole or probation have an obligation to register with the State⁴ and to report all changes

² 9NYCRR §348.7

³ New York State Penal Law §235.22 (“NYSPL”)

⁴ New York State Correction Law §168-f(1) (“NYSCL”)

of address within 10 days.⁵ Alghaithy, like many sex offenders, was proscribed from being present within 1000 feet of a school.⁶

Additional conditions, restrictions, or requirements are placed upon a probationer by the Court and the supervising agency. These are listed in the Order and Conditions of Probation and are set forth below as they pertain to this review. Among other requirements, Alghaithy was required to regularly attend a specialized sex offender treatment program, prohibited from engaging in unsupervised contact with individuals under the age of 17—including working in a business providing services to those same individuals—and prohibited from living with any persons under the age of 17. These probation conditions also included a curfew for the hours of 9:00 PM to 5:00 AM.

These requirements and restrictions were discussed with Alghaithy on 6/7/21, during his probation office visit with his assigned probation officer. Prior to this, PCC completed a risk assessment on the probationer and deemed him to be at high-risk for recidivism.

The probation officer originally assigned to this case left PCC's employment on 2/4/22 and was not interviewed for this report.

The probation officer documented the 6/7/21 meeting in PCC's Caseload Explorer system. Caseload Explorer is a digital reporting platform that allows documentation of the probationer's activities as a direct digital entry into the probationer's file. The physical file contains paper back-up of the digital entries. Caseload Explorer is an expedient way to document activity and make that documentation available to others immediately.

Probation officers use codes and acronyms as an informal shorthand in their Caseload Explorer entries. This approach further shortens entries that seldom extend past a few sentences. From the entries in Caseload Explorer, it appears that the probationer was on a weekly schedule to meet with his probation officer at the Probation Office ("Office"). The system is not intuitive in that it cannot produce reports on specific activity.

PCC also utilizes Eagleview Connect, a commercially available program, as a mapping tool to measure the proximity of a probationer's reported residence to locations of concern.

Home Visits

7/14/21 at 9:04 PM - The first home visit following commencement of supervision for the sex offense was attempted by the probation officer. This visit occurred after the probation officer observed Alghaithy standing on the sidewalk at N. Clinton Ave and Borchard St (1340 N. Clinton Ave.) talking to another individual. During the home visit, the probationer was told not to hang out on N. Clinton Ave. The probation officer also spoke with the probationer's father and [REDACTED].

9/2/21 at 9:30 PM -The next recorded attempt to make a home visit indicates that while the lights of the house were on, no one answered the door. The entry heading is titled, "Curfew Violation."

⁵ NYSCL §168-f(4)

⁶ NYSPL § 65.10 (4-a) (a); New York State Executive Law §259-c (14)

9/09/21 at 9:15 PM – The third home visit attempt is the next entry into Caseload Explorer after 9/2/21. The probation officer observed a woman and [REDACTED] inside watching TV. No one came to the door.

9/23/21 at 9:05 PM – The fourth home visit was attempted. No contact was made with the probationer, but officers spoke with the probationer's [REDACTED] who did not know where the probationer was.

10/8/21 at 10:18 PM – At this home visit, the probationer was just returning home. He stated that he was at work and disclosed he had received a Uniform Traffic Summons for no seatbelt earlier in the day.

2/10/22 at 9:58 PM – At the first documented attempt at a home visit since 10/8/21, a different probation officer observed an adult woman entering the house. [REDACTED] came to door and began speaking with officers but left when asked about the probationer. The adult female returned, indicating that the probationer was on his way and at 10:22 PM the probationer pulled into the driveway.

The State requires for the High-Risk population that:

“...the probation department shall conduct a minimum of one in person contact per week, six collateral contacts per quarter, and one home contact per month. One positive home contact is required during the first month from case assignment. Thereafter, three home contacts are required each quarter, one completed each month during the quarter, two of which must be positive home contacts. A positive home contact constitutes a required in-person contact. After the stabilization period of 3 months for juveniles and 3-6 months for adults has been completed, and if the probationer has complied with the conditions of probation and the case plan, he/she may be considered for merit credit. Up to one in-person contact per month may be credited.”⁷

The data derived from Caseload Explorer entries shows that the home visits conducted by PCC did not meet the threshold required by regulation.

Probation did not conduct a home visit in the first month of supervision of the sex offender and they failed to perform a home visit each month of the quarter (8/21, 11/21,12/21, 1/22). The calendar quarter of 10/21 through 12/21 did not contain the appropriate number of positive home visits.

[REDACTED]
[REDACTED] There is no indication that the identity of this minor was verified even though the probationer's sex offense involved a minor. Further, the probationer's Conditions of Probation prohibit the probationer from “living with persons under the age of 17 until a risk assessment has been completed by an approved treatment provider...”

There is no entry in Caseload Explorer indicating that this risk assessment ever occurred.

⁷ 9NYCRR Subtitle H, § 351.69(2) OPCA General Rules and Regulations

Most of the home visits conducted (negative and positive) had issues noted in Caseload Explorer. These problems ranged from curfew violations to unknown minors present at location. How, or if, these were addressed is not clear due to the minimal narrative of entries in Caseload Explorer.

Office Visits

A review of entries in the Caseload Explorer indicates a frequency of regular office visits with the probationer to meet the spirit of the OPCA requirements. Again, entries with limited narrative make it challenging to understand the complete discussion at the meeting.

During several of these meetings, the probationer brings up a location at 1340 N Clinton Ave.:

6/14/21 – The probationer says he may be moving to that location with family soon.

9/13/21 – The probationer states he now works at his father's store at N. Clinton Ave and Borchard St.

9/20/21 at 2:27PM – The probationer states he works at his father's friend's store at 1340 N Clinton Ave.

On 9/20/21 at 12:27PM- The probation officer made an administrative entry into Caseload Explorer that included Department of Motor Vehicle information for Alghaithy's car registration and driver's license. The address for both documents was listed as 1340 N. Clinton Ave. This represents either a violation of the traffic law⁸ or illustrates that the probationer failed to notify PCC of a residence change. There is no evidence that the probationer was ever questioned about this issue.

Throughout the office visits, the probationer's required attendance at treatment meetings is discussed.⁹ The probationer claims to be attending, yet there are several communications from Endeavor staff that indicate that the probationer is not attending on a regular basis as required by his Court order. PCC only performed a total count of the probationer's minimal attendance after his recent arrest.

Sex Offender Registration Act Registration Issues

The probationer informed his probation officer that he had changed his telephone number. From the record, it does not appear that he provided the number. Instead, the probationer said he would call the probation officer from the phone later. On 9/23/21, a Sex Offender Registration Act ("SORA") review conducted by a probation officer indicates that the telephone number contained on the SORA registration, and in the State database, does not match the one contained in Caseload Explorer.

Also of note, the review still shows the probationer's first employer. The probationer advised his probation officer that he changed employers during an office visit on 9/13/21.

Narrative contained within Caseload Explorer shows that the probationer met and discussed moving to Greece from Rochester with his probation officer several times throughout November 2021. The move was the topic of a case conference between the probation officer and the probation officer's supervisor. On 11/22/21, during an office visit, the probationer stated that he was moving into a new location that day. A case review and multiple office visits occurred between that day and the SORA review conducted

⁸ New York State Vehicle and Traffic Law §401.1.a. and §509.8.

⁹ PCC contracts with Endeavor Health Services as a treatment provider.

by a probation officer on 2/10/22 at 12:37 PM. At that time, PCC realized that the probationer was again not compliant with his reporting requirements.

A home visit is conducted on 2/14/22 at 9:58 PM. The probationer does not arrive until 10:22 PM. Caseload Explorer does not indicate the SORA registration issue was discussed.

The probationer reported for an office visit on 2/14/22 at 9:52 AM. The probation officer conducting the interview did not mention anything to the probationer about the registration issue. They discussed the fact that the probationer's phone was disconnected. Later that morning, at 10:16 AM, that probation officer became aware of the registration issue. PCC was unable to reach the probationer because of the disconnected phone.

On 2/16/22 PCC sent two probation officers to the probationer's place of employment, Los Primos Deli, located at 95 Central Park. This location is directly across the street from Rochester Central School District School 25. The probation officers spoke with the probationer and provided him a telephone number with instructions to contact a Senior Probation Officer ("SPO") and update the SORA record.

A probation officer spoke with the probationer on 2/18/22. The probationer stated that he tried to call the SPO that day. A probation officer emailed the SPO with the probationer's new telephone number.

PCC conducted a home visit on 2/22/22. The probationer indicated that he left a voicemail for the SPO. The registration was not updated at that time.

During an office visit on 2/28/22, a probation officer supervisor interceded and completed the SORA registration update.

A sex offender must register no later than 10 calendar days after any change of address, failure to do so is a Class E felony.¹⁰ The above listed facts indicate that the probationer failed to register in a timely fashion as required by law.

Administrative Issues

At the onset of this review, PCC indicated that they rely primarily on OPCA rules and regulations to govern their supervision of probationers. Further discussion revealed that PCC had operating memorandums ("OM") produced internally that were also used to govern their activities.

It is apparent from a review of OPCA regulations that the State requires each municipality that opts to provide probation services to promulgate their own policies governing their activities. OPCA regulations state, "Written statements of probation policies and procedures shall be developed and maintained with the involvement of all appropriate levels of employees."¹¹

Even in those instances where the State policy sets forth specific requirements they were intended as a requirement of what is to be done, local policy is intended to establish how to do it. In some instances, a specific policy is required. Examples of the State's requirement to have and maintain policies include but are not limited to:

¹⁰ NYS Correction Law §168-f(4)

¹¹ 9NYCRR Title H §347.4(h) Rules. Subdivision (h)

Section 351.5(d). Assessment and Case Planning, "Develop and implement the case plan in accordance with department policy."

Section 351.6(d)(2). Periodic Reassessments/Case Reviews, "...conducted by the assigned probation officer, reviewed, and approved according to department policies."

Section 351.7(d)(8)(i). Modifying conditions of probation, "In accordance with departmental policies..."

Section 351.7(e). Technology, "...existing probation department written policies shall reflect..."

The OM's provided by PCC for this review indicate that the policies do not sufficiently meet the requirements provided by State regulations.

There are approximately 154 OMs that were made available for this review from the County intranet. Contained within those OMs provided was a record titled, "OM – Table of Contents." There are more OMs on the Table of Contents than were provided for this review. PCC indicated that only the active OMs appear on the intranet. The table of contents references older OMs no longer in use.

For those OMs provided:

- (1) there have been no new or revised OMs in 2022,
- (2) the four oldest OMs are dated from 1987, and
- (3) of the sum of OMs 114 (74%) are older than 10 years.

Many of the older available OMs are no longer pertinent due to changes in law, technology, and records management. Other OMs have a high probability of being outdated and therefore incorrect or inconsistent with statute, case law, or best practices.

Especially pertinent to this review are the four OMs that speak specifically to the supervision of sex offenders, with the oldest from 1996 with the most recent from 2017. These policies mostly restate requirements of the SORA that were updated at the time the OM was issued. In this instance, even with the existence of an applicable OM it was not followed. The OM states that a probation officer supervising a sex offender must notify the New York State Department of Criminal Justice Services ("DCJS") of an address change within 48 hours of becoming aware of it.¹²

As discussed above, PCC was aware of the probationers address change on 11/29/21 but failed to notify DCJS until 2/28/22.

Probationer Employment Near School

As previously discussed, probation officers visited the probationer at his place of employment at 95 Central Park. This visit occurred on 2/16/22 at 10:32 AM. The probationer was present and the officers did speak with him at that location while he was working.

A review of the environmental conditions for that day in Rochester, NY indicates that the day was partly sunny, and the temperature was approximately 45 degrees. The school is clearly visible from 95 Central Park. The school curtilage is approximately 50 feet from the front door of the store.

¹² Operating Manual Memorandum #17-96 "Sex Offender Policies", section, A.6.

This location, within 1000 feet of a public school, is prohibited for a sex offender to reside or work at.¹³

There is no record of anyone from PCC discussing with the probationer that his proximity to the school was a violation of law. Throughout the case notes, locations of employment for the probationer are discussed but there is no record of any physical visits to these locations until the visit set forth above.

Probation stresses that employment is one of the biggest hurdles probationers face in successfully completing their probation term. As a result, PCC is reluctant to violate a probationer for “minor infractions”.¹⁴

Effects of Staffing

Probationers are assigned to one specific officer for supervision of their case. This is done to provide consistency, which builds a relationship that is important to developing familiarity with the case, the habits of the probationer, and forming a level of trust and understanding.

As is the practice, the probationer was assigned to be supervised by one probation officer. This probation officer was the person that was primarily responsible for meeting and communicating with the probationer. The probation officer was part of the Special Operations (“Nightwatch”) group. This group of probation officers works several shifts a week after the standard 9 AM to 5 PM so that they may better supervise probationers that have curfews and other restrictions.

The probationer, following a risk assessment, was deemed a high-risk offender. PCC felt that his case would be better supervised by someone assigned to Nightwatch.

On 1/24/22, the assigned probation officer provided notice to PCC administration that he would be leaving County employment. The probation officer’s last day was 2/4/22. Upon receiving notice that the probation officer was leaving, the PCC supervisor discussed securing a replacement with his supervisor, the Deputy Chief Probation Officer. PCC internally advertised the opening on the Nightwatch team to the other probation officers but failed to secure a replacement before 2/4/22.

In the absence of a permanently assigned probation officer, PCC management made the decision to have other probation officers in Nightwatch share covering the cases that had been assigned to the probation officer who had left. This was in addition to their normal caseload and duties. This resulted in eight different probation employees having contact with the probationer between 2/4/22 and 3/19/22, when PCC was notified of the most recent arrest of the probationer.

It must be noted that the vacated position remained vacant at the time of this review. PCC staff indicated that they are permitted to only hire in one cycle each year. The County Administration indicates that this is not their policy. County Administration indicates that anytime a “Request to Fill” is received from PCC, it has been approved. This disconnect with staff should be addressed.

VI. Results of Review

In the instant case, the assigned probation officer and others were aware of or should have been aware of conduct and conditions that were contrary to the law, regulation, and the probationer’s Conditions of

¹³ Penal Law § 65.10 (4-a) (a); Executive Law § 259-c (14)

¹⁴ PCC Staff Interview 4/6/22

Probation. They in fact made notations in Caseload Explorer that acknowledged many of those violations. In each case it does not appear that timely corrective action was taken.

What actions should have been taken? What reports should have been filed? Who should have been notified? Should an employment visit have been conducted by the assigned probation officer? These and many other questions would likely be addressed with the existence of Standard Operating Procedures ("SOPs"). Without standard operating procedures, we do not know who is responsible for what.

SOPs provide written guidelines to help workers carry out routine operations. They create efficiency, quality output, and uniformity of performance while reducing miscommunication and failure to comply with applicable regulations. They provide an overall quality control system.

Absent a comprehensive system, decisions appear to be left to each probation officer's discretion. While some level of discretion is necessary in the decision-making process, total discretion is fraught with issues. An individual's judgement is influenced by experience, personal values, and propensity for risk, among other factors. Without appropriate guidelines to ensure the consistent application or interpretation of duties, management is unable to ensure equitable treatment of probationers or general safety of the public.

Specific, detailed operating procedures should be developed, trained, and disseminated to the department. Once established these procedures should be reviewed and updated on a regular basis. PCC should look for assistance in developing procedures from other probation offices that are considered best in class or through professional organizations. The American Correctional Association offers agency accreditation for probation and community correction agencies. Accreditation may assist in addressing the lack of procedures as described above. PCC indicated that they were intending to purchase an application called Power DMS. This application provides the structure for operating procedures in a digital format. Such an application is highly recommended to aide PCC in the development of sound procedures.

Probation's role generally is to supervise individuals who have been convicted of a crime. They assess these individuals and assign them a risk level. In this case the probationer was deemed at a high-risk to re-offend. The number of violations, discrepancies, and warning signs recorded in Caseload Explorer for the probationer make it difficult to understand what significance the high-risk assessment has on the level of supervision for an individual.

Clearly, this dichotomy is an issue. With the narrow focus of this review, we cannot ascertain if the issue is with this singular case or if this level of supervision is acceptable for a probationer deemed high-risk.

No matter if it is the singular case or a systemic approach, the absence of clear procedures for both the immediate supervision, as well as the supervisory review of that supervision, directly contributed to the probationer being permitted to work within 1000 feet of a public school. This was in violation of the Statute and the probationer's Conditions of Probation as ordered by the Court.

Additionally, the shared coverage of the probationer ensured that his supervision was no one person's responsibility. If no one is assigned as being responsible, then no one feels responsible.

To answer the question of whether other probationers are similarly situated, the statistical review of PCC's records conducted by OPI was utilized. OPI was able to review the files of all sex offenders' residences. OPI reports that they did not discover any violations of the 1000-foot rule as it pertains to the residence of a sex offender.

Given the limited support material regarding employment and employment locations found within the applicable sex offender records, we cannot determine if other probationers are similarly situated with any degree of certainty.

To properly assess this question, in person physical visits would be required of each applicable probationer's place of employment or the utilization of an employment verification service used. This has not occurred. At minimum, physical evidence of employment, such as a pay stub, should be utilized to conduct an address check in Eagleview Connect or another, more advanced mapping program.

PCC should take immediate steps to address this deficiency.

VII. Departmental Response

The response of the Monroe County Department of Public Safety follows.

The Monroe County Probation and Community Corrections (MPCC) Department will develop enhanced policies and procedures associated with the documentation and actions to be taken when technical violations and other Probationer issues are noted. This will include Cross Training modules on various conditions of probation that are issued by the Court.

The MPCC Department will review and revise all policies and Operations Memorandums associated with the Department. Once these updates are completed each member of the Department will be trained on these changes, updates, and modifications. During this revision process the Department will consult with the New York State Division of Criminal Justice Services to confirm "best practices" associated with this organization.

The Monroe County Probation Dept. will conduct an assessment of case load assignments and how we can maximize resources while maintaining a high level of consistency with our staff. Probation personnel assigned to high-risk probationers will meet frequently with Supervisors to review case assignments and identify the resources needed for continued collaboration.

The Monroe County Probation Dept. will conduct residence/employment site visits on regular basis and ensure that these meet or exceed OPCA Regulations.

The County of Monroe will review and assess the Probation Department "organizational structure" and what changes, enhancement and modifications are recommended by a consulting service with extensive background in Probation and Community Corrections.