

Agenda Item 4



WWW.OJP.USDOJ.GOV



Search

GO

HOME | FAQs | CONTACT US

Jurisdictions that have substantially implemented SORNA

89 jurisdictions (17 states, three territories, and 69 tribes) have substantially implemented SORNA's requirements.

States

Alabama
Colorado
Delaware
Florida
Kansas
Louisiana
Maryland
Michigan
Mississippi
Missouri
Nevada
Ohio
Pennsylvania
South Carolina
South Dakota
Tennessee
Wyoming

Territories

Guam
Commonwealth of the Northern Mariana Islands
U.S. Virgin Islands

Tribal Jurisdictions

Absentee-Shawnee Tribe of Oklahoma
Bay Mills Indian Community
Bois Forte Band of Chippewa
Cherokee Nation
Chickasaw Nation
Chippewa Cree Tribe of the Rocky Boy's Indian Reservation
Chitimacha Tribe of Louisiana
Citizen Potawatomi Nation
Colorado River Indian Tribe
Comanche Nation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs
Confederated Tribes and Bands of the Yakama Nation
Eastern Shoshone Tribe of the Wind River Reservation
Fort McDowell Yavapai Tribal Council
Fort Mojave Indian Tribe
Gila River Indian Community
Grand Traverse Band of Ottawa and Chippewa Indians
Hannahville Indian Community
Hopi Tribe
Hualapai Tribe
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jicarilla Apache Nation
Kalispel Tribe of Indians
Kaw Nation
Keweenaw Bay Indian Community
Kickapoo Tribe of Oklahoma
Kootenai Tribe of Idaho
Little Traverse Bay Bands of Odawa Indians
Lower Elwha Klallam Tribe
Match-e-be-nash-she-wish Band of Pottawatomi Indians (Gun Lake Tribe)
Menominee Indian Tribe of Wisconsin
Mescalero Apache Tribe
Miami Tribe of Oklahoma
Mississippi Band of Choctaw Indians
Modoc Tribe of Oklahoma
Muscogee (Creek) Nation
Northern Arapaho Tribe of the Wind River Reservation
Nottawaseppi Huron Band of the Potawatomi
Ohkay Owingeh
Omaha Tribe of Nebraska
Osage Nation
Pascua Yaqui Tribe
Poarch Band of Creek Indians

Prairie Band Potawatomi Nation
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Santa Ana
Quinault Indian Nation
Sac & Fox of the Mississippi in Iowa (Meskwaki)
Salt River Pima-Maricopa Indian Community
Santee Sioux Nation
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Seminole Nation of Oklahoma
Shoshone-Bannock Tribes
Shoshone-Paiute Tribes of the Duck Valley Indian Reservation
Sisseton Wahpeton Oyate of the Lake Traverse Reservation
Skokomish Indian Tribe
Southern Ute Indian Tribe
Spokane Tribe
Standing Rock Sioux Tribe
Tohono O'odham Nation
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Skagit Indian Tribe
Washoe Tribe of Nevada and California
Winnebago Tribe of Nebraska
Wyandotte Nation
Yavapai-Apache Nation

Agenda Item 4

* Mandatory lifetime registration, may petition for removal after successful completion of sentence and probation, no website posting (Colorado)

* Mandatory registration until the end of juvenile court jurisdiction, may be extended in limited circumstances, no website posting (Maryland)

* Mandatory lifetime registration, may petition for removal at age 25, no website posting (Tennessee)

* Mandatory lifetime registration, may petition for removal after 10 years, no website posting (Wyoming)

Agenda Item 4



November 5, 2013

SORNA Substantial Implementation Review State of Colorado – Revised

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the State of Colorado for the extensive work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of Colorado's revised and updated SORNA substantial implementation packet, and has found the State of Colorado has substantially implemented SORNA.

In August 2011, the SMART Office determined that Colorado did not substantially implement SORNA. On July 24, 2013, Colorado submitted updated information about its policy regarding the public disclosure of employer address information. Based upon this updated information and subsequent email correspondence, the SMART Office has reconsidered its earlier determination.

The following review updates the August 2011 report issued to Colorado. Our review of the submitted materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, and contains 15 sections addressing the SORNA requirements. Under each section, we indicate whether Colorado meets SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify that the departure(s) from a particular requirement does not substantially dissuade the purpose of that requirement. In other words, Colorado is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, but this is not necessary for substantial implementation purposes.

This is an exhaustive review and meant to detail every area in which the state has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the state, and get back in touch with us to develop a strategy to address these remaining issues.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers or updates his information in a jurisdiction, that that registration information be immediately sent to other jurisdictions where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website.

Colorado meets the SORNA requirements of this section

II. Offenses that Must Be Included in the Registry

SORNA requires that certain federal, military, and foreign offenses are included in a jurisdiction's registration scheme. In addition, SORNA requires that the jurisdiction capture certain sex offenses, both offenses from its jurisdiction and from other SORNA registration jurisdictions, in its registration scheme. SORNA also requires that certain adjudications of delinquency are included in a jurisdiction's registration scheme.

Colorado appropriately includes all completed, attempted, and conspired sex offenses. Colorado also appropriately includes all comparable state, territory, foreign, federal, military and tribal convictions. In addition, there is a procedure by which a person not convicted of a listed sexual offense requiring registration may be required to register if the underlying factual basis of the offense involves unlawful sexual behavior. Colorado also requires registration for any person that would be required to register in their jurisdiction of conviction.

Colorado requires registration for all juveniles who are adjudicated delinquent of SORNA-eligible sex offenses. In addition, all juveniles adjudicated delinquent of any sex offense for which an adult would be required to register are likewise required to register.

However, there are a handful of SORNA-required offenses that Colorado does not register, which should be included in its registration scheme in order to meet SORNA's requirements, including:

- § 18-3-301 First Degree Kidnapping (victim under 18)
- § 18-3-302(2) Second Degree Kidnapping
- § 18-3-303 False Imprisonment (victim under 18)
- § 18-7-801 Criminal Invasion of Privacy

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction. The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Colorado's placement of these statutes within the SORNA three tier levels.

Colorado classifies its offenders into two broad categories. The less-stringent tier requires registration to occur annually for life (Annual Registrants), and the more-stringent tier requires registration to occur quarterly for life (Quarterly Registrants).

Colorado classifies its categories of registration based on the offense of conviction. There is a process by which an offender can petition to be removed from Colorado's registry after a period of time for certain offenses, which is further discussed in section IX, below.

Colorado correctly places its statutes within at least the minimum appropriate SORNA tiers, as described below (see the Appendix, "Colorado State Statutes" for detailed information about Colorado's classification of its offenders and associated registration requirements).

A. Annual Registrants

Colorado requires all of its Annual Registrants to register for life, appear in-person annually, and subjects such offenders to an additional law enforcement check during the year as described in Section IX(A), below.

Colorado properly tiers all of its Annual Registrants in accordance with SORNA's standards.

B. Quarterly Registrants

Colorado requires its Quarterly Registrants to register for life, and appear in-person on a quarterly basis.

Colorado properly places all SORNA-required Tier III offenses in this category.

Colorado meets the SORNA requirements of this section.

IV. Required Registration Information

SORNA requires that the jurisdiction collect certain pieces of information from and for each offender that it registers, and requires that the jurisdiction keep that registration information, in a digitized form, in its registry.

The categories of information which SORNA requires to be registered and that Colorado either does not capture, or only partially captures at the present time, are listed below. For more guidance on specific items of required registration information, see 42 U.S.C. § 16914, Section VI (pages 26-33) of the Final Guidelines, and Section II of the Proposed Supplemental Guidelines.

1. Internet Identifiers. Colorado does register internet identifiers for individuals convicted of a "child sex crime" as defined in 16-22-108(2.5)(c). SORNA requires that all registered sex offenders provide their internet identifiers to registration authorities.
2. Professional Licensing Information. Colorado does not currently register this information. However, Colorado officials have indicated that they will collect this

information once the current training manual is revised.

3. Notice of Registration Duties: Colorado does not make its notice form electronically available in such a way that it can be transmitted to other jurisdictions (e.g., scanning the signed form in to the registry database).
4. School Address: Colorado does not register secondary school information.
5. Temporary Lodging Information. Colorado does not currently register this information.
6. Text of the Registration Offense. Colorado does not currently register this information. However, Colorado is in the process of upgrading its software systems. A module of this new system should be on-line by February 2014 and will be able to capture the text of the registration offense. All new registrants from that point forward will have the text of their registration offense listed on the public website. In addition, as registrants come in for their regularly scheduled registration update, the text of the offense will be uploaded into the system and displayed on the public website.

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

V. Where Registration is Required

SORNA requires that the jurisdiction register an offender if the jurisdiction is the one in which he is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

Colorado meets the SORNA requirements of this section.

VI. Initial Registration: Generally

SORNA requires that when an offender is incarcerated within the jurisdiction, registration must occur before release from imprisonment for the registration offense. Similarly, when an offender is sentenced within the jurisdiction, but not incarcerated, SORNA requires that registration occur within three business days of sentencing. Finally, when an offender has been convicted, sentenced, or incarcerated in another jurisdiction (including federal or military court), the jurisdiction must register the offender within three business days of the offender establishing residence, employment, or school attendance within the jurisdiction. SORNA also requires that, during the initial registration process, the jurisdiction inform the offender of his registration duties and require the offender to acknowledge in writing that he understands those duties.

For incarcerated offenders, the timing of Colorado's initial registration scheme meets SORNA's standards. However, Colorado allows five business days for a person to register when they are not incarcerated.

The SMART Office has considered the above deviation from SORNA's requirement, and has determined that it does not substantially disserve the purposes of this requirement.

VII. Initial Registration: Retroactive Classes of Offenders

SORNA requires that each registration jurisdiction have a procedure in place to recapture three categories of sex offenders: those who are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime; those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; and those who reenter the jurisdiction's criminal justice system because of a conviction for some other felony crime (whether or not it is a sex offense).

Colorado has captured in its registration system all persons released from the Department of Corrections after July 1, 1994 who have been previously convicted of a sex offense (which occurred after July 1, 1991). It also includes any person convicted of a comparable sex offense outside of the state after July 1, 1991. *See* COLO. REV. STAT. §16-22-103(3).

In order to fully implement SORNA, Colorado will need to ensure there is a procedure in place whereby newly-convicted felony offenders with prior out-of-state sex offense convictions are properly integrated in to Colorado's registration scheme.

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

VIII. Keeping the Registration Current

SORNA requires that when an offender resides in a jurisdiction, that sex offender must immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. When an offender works in a jurisdiction, but does not reside or attend school there, SORNA requires that the offender immediately appear in-person to update employment-related information. When an offender attends school in a jurisdiction, but does not reside or work there, SORNA requires that the offender immediately appear in-person to update school-related information.

SORNA also requires that when an offender resides in a jurisdiction, that sex offender must immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

SORNA also requires that when an offender resides in a jurisdiction but indicates to the state that he/she intends to travel outside the United States, that the offender notifies the residence jurisdiction at least 21 days in advance of such travel.

In addition, SORNA requires that when an offender notifies the jurisdiction of his intent to relocate to another country to live, work or attend school, or of his intent to travel to another country, the jurisdiction must do three things: immediately notify any other jurisdiction where

the offender is either registered, or is required to register, of that updated information; immediately notify the United States Marshals Service, and immediately update NCIC/NSOR.

A. In-Person Updates.

Colorado requires in-person updating of a sex offender's name, residence, termination of residence and school attendance within five business days of a change. Colorado does not require employment information be updated immediately and in-person.

B. Updated Information, Generally.

Colorado requires updates be made to internet identifiers within five business days. Colorado does not currently require the immediate updating of vehicle information.

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

IX. Verification/Appearance Requirements

SORNA requires that offenders register for a duration of time, and make in-person appearances at the registering agency, based on the tier of the offense of conviction.

A. Frequency of Registration

SORNA requires that offenders make in-person appearances at the registering agency based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA Tier I offenders appear once a year, that SORNA Tier II offenders appear every six months, and that SORNA Tier III offenders appear every three months.

All SORNA tier III offenders in Colorado are required to register on a quarterly basis, in conformity with SORNA's standards. All other offenders are required to appear at the registration office on an annual basis, and are visited at least one other time during the year by law enforcement to conduct an address verification.

B. Duration of Registration

SORNA requires that offenders register for a duration of time based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA Tier I offenders register for 15 years, that SORNA Tier II offenders register for 25 years, and that SORNA Tier III offenders register for life.

Colorado requires all of its adult offenders to register for life. All SORNA-registerable juveniles must register for life, as well.

C. Reduction of Registration Periods

Colorado has a procedure via COLO. REV. STAT. §16-22-113 by which any sex offender (except for those not eligible for reduction) may petition for discontinuation of their registration requirement or internet posting, or both, after the time periods described below.¹

Colorado allows a petition for relief from registration requirements using the time frames required by SORNA, except as described below.

1. Annual Registration, Removable after Five Years

The following Colorado offenses require registration for life, with annual appearances, and an opportunity to petition for removal from the registry after five years. Pursuant to SORNA's standards, however, the following offense should only be eligible for a reduction of registration period to 25 years.

- § 18-7-406 Patronizing a Prostituted Child

2. Annual Registration, Removable after Ten Years

The following Colorado offenses require registration for life, with annual appearances, and an opportunity to petition for removal from the registry after ten years. Pursuant to SORNA's standards, however, these offenses should only be eligible for a reduction of registration period to 25 years:

- § 18-3-305 Enticement of a Child
- § 18-3-306(3) Internet Luring of a Child (Class 4 Felony)
- § 18-3-404 Unlawful Sexual Contact (Victim under 15)
- § 18-3-405.4 Internet Sexual Exploitation of Children
- § 18-6-402 Trafficking in Children
- § 18-6-403 Sexual Exploitation of Children

3. Annual Registration, Removable after Twenty Years

The following Colorado offenses require registration for life, with annual appearances, and an opportunity to petition for removal from the registry after twenty years. Pursuant to SORNA's standards, however, these offenses should only be eligible for a reduction of registration period to 25 years:

¹ Colorado requires a certain period of time following termination of supervision before a person can petition for relief from their registration requirements. This period of supervision (which can include probation and/or parole) may often push an offender closer to the SORNA mandated duration of registration, in spite of the statutory limitation listed below.

For example, if an offender was convicted of a violation of §18-3-305 (Enticement of a Child) and remained on probation for a period of 8 years, that offender would not be eligible to petition for relief from their registration requirements until 10 years *from the date of termination of supervision, i.e.,* 18 years from the date of sentencing or release from incarceration on the underlying conviction.

- § 18-3-305(F-3) Enticement of a Child
- § 18-6-404 Procurement of a Child for Sexual Exploitation
- § 18-7-402 Soliciting for Child Prostitution
- § 18-7-403 Pandering of a Child
- § 18-7-403.5 Procurement of a Child
- § 18-7-404 Keeping a Place of Child Prostitution
- § 18-7-405 Pimping of a Child
- § 18-7-405.5 Inducement of Child Prostitution

D. Clean Record

As described above, certain annual registrants may petition for discontinuation of their registration requirement or internet posting, or both, after the time periods described above. Offenders are permitted to be released from their registration requirements so long as they have successfully completed treatment, not been convicted of a new sex offense or a new offense which had a sex offense as its underlying factual basis. This is not in conformance with SORNA's requirement that a clean record also involve no new general criminal convictions or probation/parole violations.

E. Conclusion

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

X. **Registry Website Requirements**

SORNA requires that each jurisdiction maintain a public sex offender registry website and publish certain registration information on that website. SORNA also requires that certain information not be displayed on a jurisdiction's public registry website.

Colorado currently displays nearly all SORNA-required offenders on their public sex offender registry website. Colorado has chosen to exercise the discretion permitted by SORNA and omit juveniles adjudicated delinquent from their website. However, Colorado does not display adult offenders convicted of misdemeanor sex offenses. There are a handful of misdemeanor offenses where a victim could be a minor and, in such cases, SORNA would require those offenders be posted on the public website.

Colorado's website currently has all the functionality required by SORNA, except that the mapping function is not fully operational. Colorado is in the process of upgrading its systems to enable offender mapping and expects it to be operational by February 2014.

Colorado does not display the following items of information, which are required to fully implement this portion of SORNA, in addition to the information already displayed:

1. Full sex offense conviction history. As discussed in section IV, above, Colorado will be listing the text of the registration offense on the public

registry website for new registrants beginning in February 2014, and on a rolling basis for existing registrants at their next in-person verification from that point forward.

2. Employer Address. Colorado has developed an alternate method of disclosing an offender's employer address to the public. Colorado has developed a database which enables law enforcement and state registry officials to enter in and search employer information for all registered sex offenders in Colorado. Any member of the public may request employer address information in a particular locality from the local law enforcement agency or state registration office. A notice to that effect and containing additional instructions on how to access this information will be placed on the Colorado public sex offender registry website at its next upgrade in the Fall of 2013.
3. School Address. Colorado does not display this information on its public registry website. However, Colorado's statutes, policies and procedures provide for an interactive database accessible to all criminal justice agencies in whose jurisdictions an institution of postsecondary education is located, which identifies all of the registered sex offenders who indicate that they volunteer, are employed, or enrolled at an institution of postsecondary education, along with the name of the institution. The database is available to campus law enforcement, as well. All campus law enforcement can query this database to determine which registered sex offenders are present on their campus. In addition, each secondary school has an established contact person who receives information about any petition filed in juvenile court, and such person also provides a safety plan for the student body (and the victim, where appropriate) when a juvenile who has committed a sex offense is enrolled at the school.
4. Vehicle Information. Colorado does not display this information on its public registry website.

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

XI. Community Notification

SORNA requires that each jurisdiction disseminate certain initial and updated registration information to particular agencies within the jurisdiction. In addition, SORNA requires that each jurisdiction also disseminate certain initial and updated registration information to the community.

Colorado meets the law enforcement portions of the community notification requirements of SORNA. Colorado has recently enhanced the capacity of its administrative sex offender database, which is known as SOTAR. Fifty-nine law enforcement agencies now utilize the

SOTAR program and additional law enforcement agencies will continue to be added as requested. The increased number of agencies utilizing SOTAR has strengthened the ability for law enforcement agencies to be notified of information by other agencies and share digitized registrant records within the state.

The SOTAR system is also available to the public in a limited format (<https://www.sotar.us/apps/sotar>), and individuals may subscribe to be notified by email when an offender moves within a certain geographic radius of an address anywhere within the jurisdiction of the 59 participating agencies. For example, most of the large cities in Colorado (such as Denver, Boulder, and Pueblo) are located within counties which participate in the SOTAR system. In addition, the law enforcement agencies for two other large cities, Colorado Springs and Grand Junction, also have an e-mail notification system, but those systems are operated separately from SOTAR.

As discussed in section X above, registration information (including name, address, date of birth, photograph, sex offense conviction history, and employer address information) is available to any member of the public at any time via a request made to the local law enforcement agency, the Colorado Bureau of Investigation, and all information is updated in accordance with SORNA's standards on the Colorado public sex offender registry website.

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

XII. Failure to Register as a Sex Offender: State Penalty

SORNA requires that each jurisdiction, other than a federally recognized Indian tribe, provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure of a sex offender to comply with their registration requirements.

Colorado meets all of the SORNA requirements in this section.

XIII. When a Sex Offender Fails to Appear for Registration

SORNA requires that when a jurisdiction is notified that a sex offender intends to reside, be employed, or attend school in its jurisdiction, and that offender fails to appear for registration as required, that the jurisdiction receiving that notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

Colorado meets all of the SORNA requirements in this section.

XIV. When a Jurisdiction has Information that a Sex Offender may have Absconded

SORNA requires that when a jurisdiction has information that a sex offender may have absconded, that the jurisdiction take certain actions in terms of investigating the absconder and notifying various law enforcement agencies.

In Colorado, when an offender either fails to appear for their initial registration or fails to return for an in-person verification of information, that failure is investigated by the local law enforcement agency and the investigation is then turned over to the local District Attorney's office for a determination on whether to proceed with a warrant. If an offender is determined to be an absconder, that is reflected on the public website and through NSOR.

Colorado does not regularly notify the USMS when an offender absconds.

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

XV. Indian Tribes in Colorado

There are two federally-recognized Indian Tribes located in Colorado that are currently operating as SORNA registration jurisdictions:

1. Southern Ute Tribe
2. Ute Mountain Ute Tribe

The contact person at the State of Colorado for sex offender registry information is:

Chris Lobanov-Rostovsky
Program Manager
Sex Offender Management Board
Colorado Division of Criminal Justice
700 Kipling Street, Suite 3000
Denver, CO 80215
chris.lobanov-rostovsky@state.co.us

Representatives of the State of Colorado have met in person with representatives of the Southern Ute and Ute Mountain Ute tribes on multiple occasions and have had several additional phone contacts. Discussions centered on tribal implementation of the Adam Walsh Act, and collaboration between the State and tribes. At this time, both tribes have informed the state of their intent to manage their own sex offender registry and coordinate registration jurisdictional issues with the State.

An MOU regarding coordination of registration functions across state, local and tribal jurisdictions has been discussed. Such an MOU will be implemented as needed for information sharing and registration enforcement issues among others.

Conclusion

Colorado has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. We encourage Colorado to continue to work towards meeting all the provisions of SORNA, and to work with SMART office personnel

to maintain Colorado's status as having substantially implemented SORNA. Colorado is expected to keep the SMART Office informed of its progress towards the continuing implementation of SORNA and the SMART Office will continue to provide any necessary technical assistance towards that end.

We encourage you to contact the SMART Office with any questions or concerns once you have had the opportunity to review and discuss our findings.

Appendix: Colorado State Statutes

The SMART Office has reviewed all Colorado statutes identified in its substantial implementation submission package and has identified Colorado's placement of these statutes within the tiering structure created in Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA).

In reviewing the Colorado Code and as described in section III, above, the SMART Office understands that Colorado has two broad categories of offenders (Annual Registrants and Quarterly Registrants) for purposes of determining the frequency of registration requirements. These two broad categories are broken down in to four smaller categories of offenders, as described below, in determining the period of time after which an offender is eligible to petition for relief from their registration responsibilities.

All Colorado registrants are required to register for life, and are then classified by the offense of conviction into categories which determine how frequently they must register, and after what period of time, if any (following termination of any community supervision) they may petition to be relieved of their responsibility to register.

1. "Five-year" Offenses require the updating of registration information annually and provide an opportunity to petition for removal from the registry after five years.
2. "Ten-year" Offenses require the updating of registration information annually and provide an opportunity to petition for removal from the registry after five years.
3. "Twenty-year" Offenses require the updating of registration information annually and provide an opportunity to petition for removal from the registry after five years.
4. "Lifetime" Offenses require the updating of registration information quarterly and provide no opportunity to petition for removal from the registry.

Tier I Offenses

SORNA requires that Tier I offenders register for a minimum of 15 years and annually verify registration information. The following offenses listed in Colorado Code require, at a minimum, Tier I registration requirements under SORNA:

- §18-3-404(1.7) Unlawful Sexual Contact

This is a "Ten-year" offense in Colorado.

- § 18-3-405.5 Sexual Assault on a Client by a Psychotherapist (Misdemeanor)

This is a "Lifetime" offense in Colorado, which exceeds SORNA's requirements.

- §18-7-701 Sexual Conduct in a Penal Institution

This is a “Twenty-year” offense in Colorado, which exceeds SORNA’s requirements.

Tier II Offenses

SORNA requires that Tier II offenders register for a minimum of 25 years and semi-annually verify registration information. The following offenses listed in Colorado Statutes require, at a minimum, Tier II registration requirements under SORNA:

- § 18-3-305 Enticement of a Child

This is a “Ten-year” offense in Colorado.

- § 18-3-305(F-3) Enticement of a Child

This is a “Twenty-year” offense in Colorado.

- § 18-3-306(3) Internet Luring of a Child (Class 4 Felony)

This is a “Ten-year” offense in Colorado.

- §18-3-402(e) Sexual Assault (Victim 16 or 17)

This is a “Lifetime” offense in Colorado.

- § 18-3-404 Unlawful Sexual Contact (Victim under 15)

This is a “Ten-year” offense in Colorado. Because this offense is eligible for more than 12 months of incarceration, it is eligible for enhanced tiering under SORNA

- § 18-3-405 Sexual Assault on a Child (Victim 13-17)

This is a “Lifetime” offense in Colorado, which exceeds SORNA’s requirements.

- § 18-3-405.3 Sexual Assault on a Child—Position of Trust (Victim 13-17)

This is a “Lifetime” offense in Colorado, which exceeds SORNA’s requirements.

- § 18-3-405.4 Internet Sexual Exploitation of Children

This is a “Ten-year” offense in Colorado.

- § 18-6-402 Trafficking in Children

This is a “Ten-year” offense in Colorado.

- § 18-6-403 Sexual Exploitation of Children

This is a “Ten-year” offense in Colorado.

- § 18-6-404 Procurement of a Child for Sexual Exploitation

This is a “Twenty-year” offense in Colorado.

- § 18-7-402 Soliciting for Child Prostitution

This is a “Twenty-year” offense in Colorado.

- § 18-7-403 Pandering of a Child

This is a “Twenty-year” offense in Colorado.

- § 18-7-403.5 Procurement of a Child

This is a “Twenty-year” offense in Colorado.

- § 18-7-404 Keeping a Place of Child Prostitution

This is a “Twenty-year” offense in Colorado.

- § 18-7-405 Pimping of a Child

This is a “Twenty-year” offense in Colorado.

- § 18-7-405.5 Inducement of Child Prostitution

This is a “Twenty-year” offense in Colorado.

- § 18-7-406 Patronizing a Prostituted Child

This is a “Five-year” offense in Colorado.

Tier III Offenses

SORNA requires that Tier III offenders register for life and quarterly verify registration information. Colorado properly classifies the following as “lifetime” offenses:

- § 18-3-402 Sexual Assault (all subsections except (e))
- § 18-3-405 Sexual Assault on a Child (Victim under 13)
- § 18-3-405.3 Sexual Assault on a Child—Position of Trust (Victim under 13)
- § 18-3-405.5(1) Felony Sexual Assault on a Client by a Psychotherapist (using deception, or victim under 16)
- § 18-6-301 Incest
- § 18-6-302 Aggravated Incest

Additional Offenses

Colorado requires registration for the following sex offenses and classifies them in the following tiers, although they are not required to be registered by SORNA:

- § 18-3-405.5 Sexual Assault on a Client by a Psychotherapist (victim 18 or over and not accomplished by deception)

This is a “Lifetime” offense in Colorado, which exceeds SORNA’s requirements.

- §18-7-102(1.5) Wholesale Promotion of Obscenity to a Minor

This is a “Twenty-year” offense in Colorado, which exceeds SORNA’s requirements.

- §18-7-102(2.5) Promotion of Obscenity to a Minor

This is a “Ten-year” offense in Colorado, which exceeds SORNA’s requirements.

- §18-7-302 Indecent Exposure (Misdemeanor)

This is a “Five-year” offense in Colorado, which exceeds SORNA’s requirements.



July 19, 2011

SORNA Substantial Implementation Review State of Maryland - Revised

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the State of Maryland for the extensive work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of Maryland's revised and updated SORNA substantial implementation packet, and has found the State of Maryland to have substantially implemented SORNA.

In February 2011, the SMART Office determined that the Maryland Department of Public Safety and Correctional Services' (DPSCS) earlier submission did not meet substantial implementation of SORNA. On July 13, 2011, DPSCS submitted supplemental information about Maryland's registration scheme for juveniles adjudicated delinquent for sex offenses. Based upon this supplemental information, the SMART Office reconsidered its earlier determination.

The following review updates the February 2011 report issued to Maryland. Our review of the submitted materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, and contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether Maryland meets SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify that the departure(s) from a particular requirement does not substantially disserve the purpose of that requirement. In other words, Maryland is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, but this is not necessary for substantial implementation purposes.

This is an exhaustive review and meant to detail every area in which the state has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the state, and get back in touch with us to develop a strategy to address these remaining issues.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers and/or updates his information in a jurisdiction, that that initial registration information/updated information be immediately sent to other jurisdictions where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website.

In the February 2011 SMART Office report to Maryland, it was noted that Maryland's definition of "Jurisdiction" included only States and Native American tribes and that in order to meet SORNA requirements "jurisdiction" must also include the five principal U.S. territories and the District of Columbia. However, upon subsequent review of the Code of Maryland Regulations 12.06.01.00, it is evident that Maryland's definition of "Jurisdiction" includes the following as determined under 42 U.S.C. §16911(10):

- (i) A state;
- (ii) The District of Columbia;
- (iii) The Commonwealth of Puerto Rico;
- (iv) Guam;
- (v) American Samoa;
- (vi) The Northern Mariana Islands;
- (vii) The United States Virgin Islands; and
- (viii) A federally recognized Indian Tribe

Maryland meets all of the SORNA requirements in this section.

II. Offenses that Must Be Included in the Registry

SORNA requires that certain federal, military, and foreign offenses are included in a jurisdiction's registration scheme. In addition, SORNA requires that the jurisdiction capture certain sex offenses, both offenses from its jurisdiction and from other SORNA registration jurisdictions, in its registration scheme. SORNA also requires that certain adjudications of delinquency are included in a jurisdiction's registration scheme.

While Maryland meets most of the requirements of this section, Maryland's term "convicted" includes the provision "probation before judgment," which allows the court, upon fulfillment of the conditions of probation, to discharge the defendant from probation. Discharge in this instance means that the defendant shall be without judgment of conviction. A number of Maryland's registerable offenses qualify for this provision and, thus, would be excused from the registration requirements upon discharge. This allowance deviates from the SORNA requirement. To meet this SORNA requirement, Maryland will need to include all registerable sex offenses in Criminal Procedure Article §6-220(d)(3).

This deviation does not substantially dissuade the purposes of this requirement in this section.

III. Tiering of Offenses

The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Maryland's placement of these statutes within the SORNA three tier levels. Maryland correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions:

CL § 3-307(A)(4) Sex Offense 3rd Degree: engaging in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old.

CL § 3-307(A)(5) Sex Offense 3rd Degree: engaging in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

Maryland classifies these offenses as Tier II (25 year registration). These offenses involve sexual acts with minors under the age of 16, thereby requiring Tier III registration (lifetime) under SORNA.

These deviations do not substantially disserve the purposes of these requirements in this section.

IV. Required Registration Information

SORNA requires that the jurisdiction collect certain pieces of information from and for each offender that it registers, and requires that the jurisdiction keep that registration information, in a digitized form, in its registry.

Maryland meets all of the SORNA requirements in this section.

V. Where Registration is Required

SORNA requires that the jurisdiction register an offender if the jurisdiction is the one in which he is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

Maryland meets all of the SORNA requirements in this section.

VI. Initial Registration: Generally

SORNA requires that when an offender is incarcerated within the jurisdiction, registration must occur before release from imprisonment for the registration offense. Similarly, when an offender is sentenced within the jurisdiction, but not incarcerated, SORNA requires that registration occur within three business days of sentencing. Finally, when an offender has been convicted, sentenced, or incarcerated in another jurisdiction (including federal or military court), the jurisdiction must register the offender within three business days of the offender establishing residence, employment, or school attendance within the jurisdiction. SORNA also requires that, during the initial registration process, the jurisdiction inform the offender of his registration duties and require the offender to acknowledge in writing that he understands those duties.

Maryland meets all of the SORNA requirements in this section.

VII. Initial Registration: Retroactive Classes of Offenders

SORNA requires that each registration jurisdiction have a procedure in place to recapture three categories of sex offenders: those who are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime; those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; and those who reenter the jurisdiction's criminal justice system because of a conviction for some other felony crime (whether or not it is a sex offense).

Maryland meets all of the SORNA requirements in this section.

VIII. Keeping the Registration Current

SORNA requires that when an offender resides in a jurisdiction, that sex offender must immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. SORNA also requires that when an offender resides in a jurisdiction, that sex offender must immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

When an offender works in a jurisdiction, but does not reside or attend school there, SORNA requires that the offender immediately appear in-person to update employment-related information. When an offender attends school in a jurisdiction, but does not reside or work there, SORNA requires that the offender immediately appear in-person to update school-related information.

SORNA also requires that when an offender resides in a jurisdiction but indicates to the state that he/she intends to travel outside the United States, that the offender notify the residence jurisdiction at least 21 days in advance of such travel.

In addition, SORNA requires that when an offender notifies the jurisdiction of his intent to relocate to another country to live, work or attend school, or of his intent to travel to another country, the jurisdiction must do three things: immediately notify any other jurisdiction where the offender is either registered, or is required to register, of that updated information; immediately notify the United States Marshals Service, and immediately update NCIC/NSOR.

Maryland meets all of the SORNA requirements in this section.

IX. Verification/Appearance Requirements

SORNA requires that offenders register for a duration of time, and make in-person appearances at the registering agency, based on the tier of the offense of conviction. Maryland meets most of the requirements of this section, with notable exceptions. Adult sex offenders in Maryland are required to register based upon Tier designation in accordance to SORNA requirements: Tier I offenders are required to register annually for 15 years; Tier II offenders are required to register twice-annually for 25 years; and Tier III offenders are required to register quarterly for life. However, Maryland's registration scheme for juveniles, 14 years of age or older, adjudicated delinquent for "aggravated" sex offenses deviates from SORNA requirements.

Based on information submitted to the SMART Office, in Maryland, juveniles adjudicated delinquent for "aggravated" sex offenses are required to report in-person for registration every three months.¹ This meets SORNA requirements. However, Maryland deviates from SORNA requirements in that juveniles are not required to register for life, but rather for the term of their juvenile probation. State Juvenile Courts may extend the duration of registration beyond a juvenile's probation term. The Court may, under a clear and convincing standard, find that a juvenile is at "significant risk for committing a sexually violent offense" and require a juvenile to continue registration and have their registration information posted on the State's public sex offender website for 5 years beyond the age of 21.

Maryland's procedure for updating offenders' photographs also deviates from SORNA requirements. SORNA requires that an updated photograph be collected unless appearance has not significantly changed once per year for Tier I offenders, once every six months for Tier II offenders, and once every 90 days for Tier III offenders. Maryland provides for an updated photograph at six month intervals only (regardless of offenders' Tier designation).

These deviations do not substantially disserve the purposes of these requirements in this section.

X. Registry Website Requirements

SORNA requires that each jurisdiction maintain a public sex offender registry website and publish certain registration information on that website. SORNA also requires that certain information not be displayed on a jurisdiction's public registry website.

Maryland meets all of the SORNA requirements in this section.

¹ Juveniles adjudicated delinquent for "aggravated" sex offenses are required to submit DNA to the Maryland Crime Laboratory, fingerprints to the Criminal Justice Information System. Juvenile's DNA and fingerprints are shared with the National Criminal Justice Information System for incorporation into the national databases (meeting the requirements of section IV). These juveniles are also required to update all of their registration information within the same timeframes as Maryland's adult registrants (meeting the requirements of section VIII). Juvenile registration information is included in Maryland's CJIS database and is therefore subject to the automatic notifications to agencies responsible for employment related, and fingerprint supported, background investigations. Additionally, all law enforcement agencies and the Maryland Department of Juvenile Services have access to the non-public juvenile registration database for law enforcement purposes (meeting the requirements of section XI).

XI. Community Notification

SORNA requires that each jurisdiction disseminate certain initial and updated registration information to particular agencies within the jurisdiction. In addition, SORNA requires that each jurisdiction also disseminate certain initial and updated registration information to the community.

In the February 2011 SMART Office report to Maryland, it was noted that Maryland did not provide notification to any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a). Upon subsequent review, it is evident that these entities can request the information from the Maryland Criminal Justice Information System Central Repository (administered by DPSCS) for the purposes of employment-related background checks.

Maryland meets all of the SORNA requirements in this section.

XII. Failure to Register as a Sex Offender: State Penalty

SORNA requires that each jurisdiction, other than a federally recognized Indian tribe, provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure of a sex offender to comply with their registration requirements.

Maryland meets all of the SORNA requirements in this section.

XIII. When a Sex Offender Fails to Appear for Registration

SORNA requires that when a jurisdiction is notified that a sex offender intends to reside, be employed, or attend school in its jurisdiction, and that offender fails to appear for registration as required, that the jurisdiction receiving that notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

Maryland meets all of the SORNA requirements in this section.

XIV. When a Jurisdiction has Information that a Sex Offender may have Absconded

SORNA requires that when a jurisdiction has information that a sex offender may have absconded, that the jurisdiction take certain actions in terms of investigating the absconder and notifying various law enforcement agencies.

Maryland meets all of the SORNA requirements in this section.

Conclusion

Maryland has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. However, there are several provisions identified in this report that should be addressed in order for Maryland to fully implement SORNA. Namely, the allowance of offenders who receive probation before judgment to be excused from the registration requirements and the short duration of registration requirements for juveniles adjudicated for aggravated sex offenses.

We encourage you to contact the SMART Office once you have had the opportunity to review and discuss our findings and have developed a strategy for addressing and fully adopting the remaining provisions of SORNA.



September 2011

SORNA Substantial Implementation Review State of Tennessee

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the State of Tennessee for the extensive work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of Tennessee's SORNA substantial implementation packet and has found that the State of Tennessee has substantially implemented SORNA.

On July 6, 2011 the Tennessee Bureau of Investigation (TBI) submitted a substantial implementation package that included a filled-in copy of the Substantial Implementation Checklist, relevant state statutes, and relevant state policies and procedures. In addition, email and phone correspondence with the Tennessee Bureau of Investigation filled in gaps in information and procedure, which informed our review.¹

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, and contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether Tennessee meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify where the departure(s) from a particular requirement does not substantially disserve the purposes of that requirement.

While Tennessee is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, this is not required for substantial implementation purposes. This report is an exhaustive review and is intended to detail every area in which the state has not met SORNA standards.

We encourage you to review the information below, share it with relevant stakeholders in the state, and get back in touch with us to develop a strategy to address these remaining issues.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers and/or updates his information in a jurisdiction, that that initial registration information/updated information be immediately

¹The SMART Office had email and phone correspondence with Pam Beck, Legal Advisor to the Tennessee Bureau of Investigation (TBI), and Jason Locke, Assistant Special Agent in Charge of TBI's Criminal Intelligence Unit, in July, August and September 2011.

sent to other jurisdictions where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website.

Tennessee meets all of the SORNA requirements in this section.

II. Offenses that Must Be Included in the Registry

SORNA requires that certain federal, military, and foreign offenses be included in a jurisdiction's registration scheme. In addition, SORNA requires that the jurisdiction capture certain sex offenses, both offenses from its jurisdiction and from other SORNA registration jurisdictions, in its registration scheme. SORNA also requires that certain adjudications of delinquency be included in a jurisdiction's registration scheme.

Tennessee captures all of the juvenile offenses that SORNA requires Tennessee to capture, with one exception: Tennessee does not require offenders to register on the basis of being adjudicated delinquent for a conspiracy to commit an offense. In addition, by default, offenders who are required to register on the basis of a delinquency adjudication are required to register for life; however, once such an offender reaches the age of 25, the offender can petition the registry for removal, and if the offender has not been adjudicated delinquent for or convicted of any new sex offense, he will be removed from the registry.

This deviation does not substantially disserve SORNA's requirements.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction, established through a baseline three-tier classification system.² Tennessee utilizes a two-tier classification system, in which all of its offenders are categorized as "sexual offenders" or "violent sexual offenders." Both sexual offenders and violent sexual offenders are initially required to register for life. Violent sexual offenders cannot petition for removal from the registry. Sexual offenders are permitted to petition for removal, but not until they register for at least ten years after the termination of any active supervision on probation, parole or any other alternative to incarceration, or for ten years after the termination of any incarceration (if the sentence is incarceration without supervision). See Section IX of this report for more information about duration of registration and petition for removal from registry requirements.

Because the structure of Tennessee's sexual offender category does not substantially disserve the requirements identified in SORNA, the inclusion of offenses in that category that are SORNA Tier I offenses does not substantially disserve SORNA's requirements. However, there are several offenses in Tennessee's sexual offender category for which SORNA requires placement in a higher SORNA Tier. They are the following:

² See the Appendix "Tennessee State Statutes" for information about Tennessee's classification of its offenders and associated registration requirements.

- § 39-13-303 Kidnapping (where the victim is a minor) (where the offense involves the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
 - o This offense involves kidnapping of a minor, which is a Tier III offense under SORNA.
- § 39-13-505 Sexual Battery (where the victim is 13-17)
 - o This offense involves sexual contact with a victim 13-17, which is a Tier II offense under SORNA.
- § 39-13-506(a) Mitigated Statutory Rape (second conviction under this statute)
 - o This offense involves a sexual act with a victim who is 15, which is a Tier III offense under SORNA, and/or a second conviction for a non-forcible sexual act with a victim who is 16-17, which because of SORNA's recidivism requirements is a Tier III offense under SORNA.
- § 39-13-506(b) Statutory Rape (second conviction under this statute)
 - o This offense involves a sexual act with a victim who is 13-15, which is a Tier III offense under SORNA, and/or a second conviction for a non-forcible sexual act with a victim who is 16-17, which because of SORNA's recidivism requirements is a Tier III offense under SORNA.
- § 39-13-506(c) Aggravated Statutory Rape (victim is 16 or 17)
 - o This offense involves a non-forcible sexual act with a victim who is 16-17, which is a Tier II offense under SORNA.
- § 39-13-506(c) Aggravated Statutory Rape (victim is 13-15)
 - o This offense involves a sexual act with a victim who is 13-15, which is a Tier III offense under SORNA.
- § 39-13-529 Soliciting Sexual Exploitation of a Minor
 - o This offense involves enticing a criminal sexual act, which is a Tier II offense under SORNA.

These deviations do not substantially disserve the purposes of the requirements in this section.³

IV. Required Registration Information

SORNA requires that the jurisdiction collect certain pieces of information from and for each offender that it registers, and requires that the jurisdiction keep that registration information, in a digitized form, in its registry.

³ Tennessee will tier offenses from other jurisdictions (including foreign and military offenses) to the appropriate comparable Tennessee offense. If no comparable Tennessee offense exists, then Tennessee will register the offense and will classify the offender in its sexual offender category.

Tennessee does not collect information about the location where vehicles are kept.

This deviation does not substantially disserve the purposes of the requirements in this section.

V. Where Registration is Required

SORNA requires that the jurisdiction register an offender if the jurisdiction is the one in which he is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

Tennessee meets all of the SORNA requirements in this section.

VI. Initial Registration: Timing and Notice

SORNA requires that when an offender is incarcerated within the jurisdiction, registration must occur before release from imprisonment for the registration offense. Similarly, when an offender is sentenced within the jurisdiction, but not incarcerated, SORNA requires that registration occur within three business days of sentencing. Finally, when an offender has been convicted, sentenced, or incarcerated in another jurisdiction (including federal or military court), the jurisdiction must register the offender within three business days of the offender establishing residence, employment, or school attendance within the jurisdiction. SORNA also requires that, during the initial registration process, the jurisdiction inform the offender of his registration duties and require the offender to acknowledge in writing that he understands those duties.

Tennessee meets all of the SORNA requirements in this section.

VII. Initial Registration: Retroactive Classes of Offenders

SORNA requires that each registration jurisdiction have a procedure in place to recapture three categories of sex offenders: those who are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime; those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; and those who reenter the jurisdiction's criminal justice system because of a conviction for some other felony crime (whether or not it is a sex offense).

In its current statutory scheme, Tennessee does not correctly classify many of its former offenses in the appropriate categories for purposes of length of registration and frequency of appearances. Therefore, to the extent that Tennessee is recapturing any offenders who commit these offenses, Tennessee is not necessarily subjecting these offenders to the minimum registration requirements, in terms of length of registration and frequency of appearances, that SORNA requires.

This deviation does not substantially disserve SORNA's requirements.

VIII. Keeping the Registration Current

SORNA requires that when an offender resides in a jurisdiction, that the sex offender immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. When an offender works in a jurisdiction, but does not reside or attend school there, SORNA requires that the offender immediately appear in-person to update employment-related information. When an offender attends school in a jurisdiction, but does not reside or work there, SORNA requires that the offender immediately appear in-person to update school-related information.

SORNA also requires that when an offender resides in a jurisdiction, that the offender immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

SORNA also requires that when an offender resides in a jurisdiction but indicates to the state that he/she intends to travel outside the United States, the offender notify the residence jurisdiction at least 21 days in advance of such travel.

In addition, SORNA requires that when an offender notifies the jurisdiction of his intent to relocate to another country to live, work or attend school, or of his intent to travel to another country, that the jurisdiction do three things: immediately notify any other jurisdiction where the offender is either registered, or is required to register, of that updated information; immediately notify the United States Marshals Service, and immediately update NCIC/NSOR.

Strictly speaking, the Tennessee Code does not require an offender who lives in Tennessee to appear in-person to update name, school, and/or employment information. The Tennessee Code also does not require an offender who only works and/or attends school in Tennessee to appear in-person to update name information. However, in practice, all offenders are expected to appear in person to update all information, because they are expected to sign an Information Update form (an "update form," which is generated any time that any registration information is updated).⁴ Specifically, the Tennessee Bureau of Investigation (TBI) trains all registry officials to request that offenders appear in person to sign the update form upon any change in information. TBI will not accept an unsigned update form: if a police department or sheriff's office submits to TBI an update form that has not been signed by the offender, TBI returns the form to the respective office, and requests that the form be signed.

This deviation does not substantially disserve the purposes of the requirements in this section.

⁴ According to the Tennessee Bureau of Investigation, most of the local registering agencies send in signed Information Updates showing that the offender has come in and signed the form acknowledging the change in information.

IX. Verification/Appearance Requirements

SORNA requires that offenders register for a duration of time, and make in-person appearances at the registering agency, based on the tier of the offense of conviction.

A. Duration of Registration

SORNA requires that offenders register for a duration of time based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA Tier I offenders register for 15 years, that SORNA Tier II offenders register for 25 years, and that SORNA Tier III offenders register for life.

As described in Section III of this report, Tennessee maintains two tiers of offenders: “sexual offenders” and “violent sexual offenders.” Violent sexual offenders are lifetime registrants who cannot petition for removal from the registry. Sexual offenders can petition for removal from the registry, but they can do so no earlier than ten years after the expiration of any sentence; therefore, sexual offenders must register for at least ten years plus the length of any active supervision on probation, parole or any other alternative to incarceration, or for ten years plus the length of any incarceration (if the sentence is incarceration without supervision). If a sexual offender does petition for removal, and if the offender has, in the judgment of TBI, substantially complied with his registration requirements and has not committed any new sex offenses⁵, he will be removed from the registry. If TBI determines that the offender has not met both of these criteria, the offender will remain on the registry, and cannot petition again for five years. If the offender never petitions for removal, he will remain on the registry for life. In addition, per Tennessee Code § 40-39-207(f), any failure of an offender to substantially comply with his registration requirements tolls the running of a sexual offender’s registration period, regardless of whether a warrant or indictment has been sought for the offender for his violations.

Based on all of these factors, the structure of Tennessee’s sexual offender category does not substantially disserve the purposes of this requirement.

B. Frequency of Registration

SORNA requires that offenders make in-person appearances at the registering agency based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA Tier I offenders appear once a year, that SORNA Tier II offenders appear every six months, and that SORNA Tier III offenders appear every three months.

Tennessee uses a two-tier system in which offenders in its sexual offender category are required to appear once a year while offenders in its violent sexual offender category are required to appear every three months. This deviation does not substantially disserve the purposes of this requirement.

⁵ Per Tennessee Code § 40-39-207(b), TBI will conduct a fingerprint-based state and federal criminal history check to determine whether the offender has committed any new sex offenses.

C. Reduction of Registration Periods

SORNA creates certain requirements under which a jurisdiction can allow an offender to have a reduced registration period.

The process by which offenders in the sexual offender category can petition for removal is described above. Tennessee does not require offenders to avoid conviction for any offense for which imprisonment for more than one year may be imposed, nor does Tennessee require the successful (without revocation) completion of any periods of supervised release, probation, and parole, nor the successful completion of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General. However, as mentioned above, any failure of an offender to substantially comply with his registration requirements tolls the running of the offender's ten-year's registration period. In addition, as described above, an offender is not eligible to petition for removal until ten years after the expiration of his sentence.

As described earlier in this report, offenders who are required to register on the basis of a delinquency adjudication are required to register for life; however, once such an offender reaches the age of 25, the offender can petition the registry for removal, and if the offender has not been adjudicated delinquent for or convicted of any new sex offense, he will be removed from the registry. This process does not occur 25 years after the offender's placement on the registry, as SORNA requires, nor does it require the lack of conviction for any offense for which imprisonment for more than one year may be imposed; the successful (without revocation) completion of any periods of supervised release, probation, and parole; or the successful completion of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

These deviations do not substantially disserve the purposes of this requirement.

X. Public Registry Website Requirements

SORNA requires that each jurisdiction maintain a public sex offender registry website and publish certain registration information on that website. SORNA also requires that certain information not be displayed on a jurisdiction's public registry website.

Tennessee does not publish the name or address of any secondary school on its public registry website; however, per Tennessee Code § 49-6-3051, parents, guardians and/or legal custodians are required to notify their child's school when that child is adjudicated delinquent for any of the offenses for which SORNA requires juveniles to register.

In addition, Tennessee's only link to any safety or education resources is a link to NSOPW, and that link is not labeled as a safety or education resource. We encourage Tennessee to indicate that the link to NSOPW is a link to a safety and education resource and to provide additional links to such resources.

These deviations do not substantially disserve the purposes of the requirements in this section.

XI. Community Notification

SORNA requires that each jurisdiction disseminate certain initial and updated registration information to particular agencies within the jurisdiction. In addition, SORNA requires that each jurisdiction also disseminate certain initial and updated registration information to the community.

Tennessee's email notification system does not provide notifications for changes to secondary school information.

This deviation does not substantially disserve the purposes of the requirements in this section.

XII. Failure to Register as a Sex Offender: State Penalty

SORNA requires that each jurisdiction, other than a federally recognized Indian tribe, provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure of a sex offender to comply with their registration requirements.

Tennessee meets all of the SORNA requirements in this section.

XIII. When a Sex Offender Fails to Appear for Registration

SORNA requires that when a jurisdiction is notified that a sex offender intends to reside, be employed, or attend school in its jurisdiction, and that offender fails to appear for registration as required, that the jurisdiction receiving that notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

Tennessee meets all of the SORNA requirements in this section.

XIV. When a Jurisdiction has Information that a Sex Offender may have Absconded

SORNA requires that when a jurisdiction has information that a sex offender may have absconded, that the jurisdiction take certain actions in terms of investigating the abscondence and notifying various law enforcement agencies.

While Tennessee may notify the United States Marshals Service as to a particular case, in general Tennessee only notifies the United States Marshals Service of absconded offenders monthly.

This deviation does not substantially disserve the purposes of the requirements in this section.

Conclusion

Tennessee has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. However, there are provisions identified in this report that should be addressed in order for Tennessee to fully implement SORNA.

We encourage you to contact the SMART Office once you have had the opportunity to review and discuss our findings and have developed a strategy for addressing and adopting the remaining provisions of SORNA.

Appendix: Tennessee State Statutes

The SMART Office has reviewed all Tennessee statutes identified in its substantial implementation submission package and has identified Tennessee's placement of these statutes within the tiering structure created in Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA). Unless indicated in the notes herein, the SMART office has not reviewed any statutes (or subsections) that were not included in the legislation provided by Tennessee.

In reviewing Tennessee Code, the SMART Office understands that Tennessee has two categories of registrants for purposes of its duration of registration and frequency of registration requirements:

Sexual offenders, who are eligible to petition for removal after ten years plus the length of their sentence, and who are required appear annually to verify registration information (hereinafter called the "sexual offender" category).

Violent sexual offenders, who are required to register for life and appear quarterly to verify registration information (hereinafter called the "violent sexual offender" category).

SORNA Tier I Offenses

SORNA requires that Tier I offenders register for a minimum of 15 years and annually verify registration information. The following offenses listed in Tennessee Code would require, at a minimum, Tier I registration requirements under SORNA.

- § 39-2-608(b) Assault with Intent to Commit Sexual Battery (if the offender was convicted before 1989) (where the victim is an adult)
- § 39-13-302 False Imprisonment (where the victim is a minor) (where the offense does not involve the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-303 Kidnapping (where the victim is a minor) (where the offense does not involve the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-505 Sexual Battery (where the victim is an adult)
- § 39-13-527(1) Sexual Battery by an Authority Figure (where the victim is an adult)
- § 39-13-528 Solicitation of a Minor (where the offense solicited is a Class E felony)
- § 39-17-1003 Sexual Exploitation of a Minor
- § 39-3704(A)(3)-(5) Criminal Sexual Conduct – Second Degree (if the offender was convicted before 1989) (where the victim is an adult)
- § 18 U.S.C. 1801 Video Voyeurism of a Minor
- § 18 U.S.C. 2252 Receipt or Possession of Child Pornography
- § 18 U.S.C. 2252A Receipt or Possession of Child Pornography
- § 18 U.S.C. 2252B Misleading Domain Name
- § 18 U.S.C. 2252C Misleading Words or Digital Images
- § 18 U.S.C. 2422(a) Coercion to Engage in Prostitution
- § 18 U.S.C. 2423(B) Travel with the Intent to Engage in Illicit Conduct

- § 18 U.S.C. 2423(C) Engaging in Illicit Conduct in Foreign Places
- § 18 U.S.C. 2424 Filing Factual Statement About Alien Individual
- § 18 U.S.C. 2425 Transmitting Information About a Minor to Further Criminal Sexual Conduct

SORNA Tier II Offenses

SORNA requires that Tier II offenders register for a minimum of 25 years and semi-annually verify registration information. The following offenses listed in Tennessee Code would require, at a minimum, Tier II registration requirements under SORNA.

- § 39-2-605 Statutory Rape (if the offender was convicted before 1989) (where the victim is 16-17 and the offender is more than four years older than the victim)
- § 39-2-607 Sexual Battery (if the offender was convicted before 1989) (where the victim is 13-17)
- § 39-2-608(b) Assault with Intent to Commit Sexual Battery (if the offender was convicted before 1989) (where the victim is 13-17)
- § 39-6-1137 Use of Minors for Obscene Purposes (if the offender was convicted before 1989)
- § 39-6-1138 Promotion of Performances Including Sexual Conduct by Children (if the offender was convicted before 1989)
- § 39-13-309 Trafficking for Sexual Servitude
- § 39-13-504 Aggravated Sexual Battery (where the victim is 13-17)
- § 39-13-505 Sexual Battery (where the victim is 13-17)
- § 39-13-506(c) Aggravated Statutory Rape (where the victim is 16 or 17)
- § 39-13-527(1) Sexual Battery by an Authority Figure (where the victim is 13-17)
- § 39-13-528 Solicitation of a Minor (where the offense solicited is not a Class E felony)
- § 39-13-529 Soliciting Sexual Exploitation of a Minor
- § 39-17-1004 Aggravated Sexual Exploitation of a Minor
- § 39-17-1005 Especially Aggravated Sexual Exploitation of a Minor
- § 39-3704(A)(2) Criminal Sexual Conduct – Second Degree (if the offender was convicted before 1989)
- § 39-3704(A)(3)-(5) Criminal Sexual Conduct – Second Degree (if the offender was convicted before 1989) (where the victim is 13-17)
- § 18 U.S.C. 1591 Sex Trafficking by Force, Fraud or Coercion
- § 18 U.S.C. 2243 Sexual Abuse of a Minor
- § 18 U.S.C. 2244 Abusive Sexual Contact (where the victim is 13-17)
- § 18 U.S.C. 2251 Sexual Exploitation of Children
- § 18 U.S.C. 2251A Selling or Buying of Children
- § 18 U.S.C. 2252A Certain Activities Relating to Material Constituting or Containing Child Pornography (not possession or receipt of child pornography)
- § 18 U.S.C. 2260 Production of Sexually Explicit Depictions of a Minor for Importation into the United States
- § 18 U.S.C. 2421 Transportation of a Minor for Illegal Sexual Activity

- § 18 U.S.C. 2422 Coercion and Enticement of a Minor for Illegal Sexual Activity
- § 18 U.S.C. 2423(A) Transportation of Minors for Illegal Sexual Activity

SORNA Tier III Offenses

SORNA requires that Tier III offenders register for life and quarterly verify registration information. The following offenses listed in Tennessee Code would require, at a minimum, Tier III registration requirements under SORNA.

- § 39-2-603 Aggravated Rape (repealed)
- § 39-2-604 Rape (repealed)
- § 39-2-605 Statutory Rape (if the offender was convicted before 1989) (where the victim is 13-15 and the offender is more than four years older than the victim)
- § 39-2-606 Aggravated Sexual Battery (repealed)
- § 39-2-607 Sexual Battery (if the offender was convicted before 1989) (where the victim is under 13)
- § 39-2-608(a) Assault with Intent to Commit Rape (if the offender was convicted before 1989)
- § 39-2-608 Attempt to Commit Rape (if the offender was convicted before 1989)
- § 39-2-608(b) Assault with Intent to Commit Sexual Battery (if the offender was convicted before 1989) (where the victim is under 13)
- § 39-13-302 False Imprisonment (where the victim is a minor) (where the offense involves the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-303 Kidnapping (where the victim is a minor) (where the offense involves the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-304 Aggravated Kidnapping (where the victim is a minor) (where the offense involves the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-305 Especially Aggravated Kidnapping (where the victim is a minor) (where the offense involves the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-4-306 Incest (if the offender was convicted before 1989)
- § 39-13-502 Aggravated Rape
- § 39-13-503 Rape
- § 39-13-504 Aggravated Sexual Battery (where the victim is under 13)
- § 39-13-506(a) Mitigated Statutory Rape (second conviction under this statute)
- § 39-13-506(b) Statutory Rape (second conviction under this statute)
- § 39-13-506(c) Aggravated Statutory Rape (where the victim is 13-15)
- § 39-13-507(b)(1) Spousal Rape (repealed)
- § 39-13-507(c)(1) Aggravated Spousal Rape (repealed)
- § 39-13-522 Rape of a Child
- § 39-13-531 Aggravated Rape of a Child
- § 39-13-532 Statutory Rape by an Authority Figure
- § 39-15-302 Incest
- § 39-3703 Criminal Sexual Conduct – First Degree (if the offender was convicted before 1989)

- § 39-3704(A)(1) Criminal Sexual Conduct – Second Degree (if the offender was convicted before 1989)
- § 39-3705(A)(1) Criminal Sexual Conduct – Third Degree (if the offender was convicted before 1989) (where the offender is more than four years older than the victim)
- § 39-3705(A)(2)-(4) Criminal Sexual Conduct – Third Degree (if the offender was convicted before 1989)
- § 18 U.S.C. 2241 Aggravated Sexual Abuse
- § 18 U.S.C. 2242 Sexual Abuse
- § 18 U.S.C. 2243 Sexual Abuse of a Minor or Ward
- § 18 U.S.C. 2244 Abusive Sexual Contact (where the victim is under 13)

Further Review

In reviewing the statutes that Tennessee cited as those that are registerable offenses under Tennessee’s registration scheme, the SMART office did notice that there are several offenses missing from those statutes for which SORNA requires registration. Those offenses include:

- § 39-13-506(a) Mitigated Statutory Rape (first conviction)⁶
- § 39-13-506(b) Statutory Rape (first conviction)

In addition, Tennessee registers the following offenses; however, those offenses, without the commission of (or the attempt or conspiracy to commit) a sexual offense, do not require registration under SORNA:

- § 39-13-511 Indecent Exposure
- § 39-13-109 Criminal Exposure to HIV
- § 39-13-516 Aggravated Prostitution (both if brought Currently and as constituted before 7/1/10)
- § 39-3705(A)(1) Criminal Sexual Conduct – Third Degree (if the offender was convicted before 1989) (where the offender is between three and four years older than the victim)

Finally, while Tennessee places the following current offenses in its lifetime registration scheme, SORNA only requires placement in a lower SORNA Tier for each:

- § 39-13-304 Aggravated Kidnapping (where the offense does not involve the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-305 Aggravated Kidnapping (where the offense does not involve the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-309 Trafficking for Sexual Servitude

⁶ According to Pam Beck, Legal Advisor to the Tennessee Bureau of Investigation, judges may and often do exercise their discretion to place an individual who is convicted of Mitigated Statutory Rape or Statutory Rape on the registry, even if the conviction is the offender’s first conviction.

- § 39-13-527(1) Sexual Battery by an Authority Figure (where the victim is an adult)
- § 39-13-504 Aggravated Sexual Battery (where the victim is 13-17)
- § 39-13-527(1) Sexual Battery by an Authority Figure (where the victim is 13-17)
- § 39-13-528 Solicitation of a Minor (where the offense solicited is not a Class E felony)
- § 39-17-1004 Aggravated Sexual Exploitation of a Minor
- § 39-17-1005 Especially Aggravated Sexual Exploitation of a Minor
- § 18 U.S.C. 1591 Sex Trafficking by Force, Fraud or Coercion
- § 18 U.S.C. 2243 Sexual Abuse of a Minor
- § 18 U.S.C. 2244 Abusive Sexual Contact (victim 13-17)
- § 18 U.S.C. 2251 Sexual Exploitation of Children
- § 18 U.S.C. 2251A Selling or Buying of Children
- § 18 U.S.C. 2252A Certain Activities Relating to Material Constituting or Containing Child Pornography (not possession or receipt of child pornography)
- § 18 U.S.C. 2260 Production of Sexually Explicit Depictions of a Minor for Importation into the United States
- § 18 U.S.C. 2421 Transportation of a Minor for Illegal Sexual Activity
- § 18 U.S.C. 2422 Coercion and Enticement of a Minor for Illegal Sexual Activity
- § 18 U.S.C. 2423(A) Transportation of Minors for Illegal Sexual Activity



April 2011¹

SORNA Substantial Implementation Review (Revised) State of Wyoming

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the State of Wyoming (Wyoming) for the extensive work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of Wyoming's SORNA substantial implementation packet and has found that Wyoming has substantially implemented SORNA.

On April 13, 2009, the Wyoming Attorney General's Office, Division of Criminal Investigation, Sex Offender Registry, submitted a substantial implementation package that included legislation, the SORNA Checklist, a description of registration procedures, and other documents. In addition, email and phone correspondence with the Wyoming Attorney General's Office, Division of Criminal Investigation, Sex Offender Registry filled in gaps in information and procedure, which informed our review.

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, which contains 15 sections addressing the SORNA requirements. Under each section, we indicate whether Wyoming meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify where the departure(s) from a particular requirement does not substantially disserve the purposes of that requirement.

While Wyoming is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, this is not required for substantial implementation purposes. This report is an exhaustive review and is intended to detail every area in which the state has not met SORNA standards.

We encourage you to review the information below, share it with relevant stakeholders in the state, and get back in touch with us to develop a strategy to address these remaining issues.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers or updates his information in a jurisdiction, that that registration information be immediately sent to other jurisdictions where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website.

¹ This report has been revised to reflect the status of Wyoming's SORNA Implementation efforts as of April, 2011, the period when Wyoming was initially notified of the SMART Office's determination of substantial implementation.

Wyoming meets all of the SORNA requirements in this section.

II. Offenses the Must Be Included in the Registry

SORNA requires that certain federal, military, and foreign offenses are included in a jurisdiction's registration scheme. In addition, SORNA requires that the jurisdiction capture certain sex offenses, both offenses from its jurisdiction and from other SORNA registration jurisdictions, in its registration scheme. SORNA also requires that certain adjudications of delinquency are included in a jurisdiction's registration scheme.

A. Definition of 'Conviction'

Regarding the definition of what qualifies as a 'conviction', Wyoming has a procedure in Wyo. Stat. § 7-13-301 via which a person either pleads guilty or no contest and can petition to have their case continued on certain terms and conditions. They are also placed on probation. Upon successful completion of those terms and the period of probation, the person can have their case dismissed. This is a procedure that can be used on most felony and misdemeanor offenses subject to registration, and persons subject to this procedure, because they have not been "convicted" under Wyoming law, are not subject to registration—even though they are subjected to "penal consequences" as contemplated by the Guidelines.

B. Juvenile Adjudications

Any juvenile adjudicated delinquent of a tier III offense and sentenced after July 1, 2011 is required to register as a sex offender.

C. Included Offenses

Wyoming's statute requires registration for any offender convicted of a qualifying sex offense in Wyoming's courts or "any other jurisdiction [where the offense contains] the same or similar elements, or arising out of the same or similar facts or circumstances." This will capture comparable offenses in the courts of other States, territories, foreign nations, the federal government, the U.S. Military, federally-recognized Tribes and the District of Columbia.

There are some offenses required to be registered under SORNA which Wyoming does not register.

1. Wyoming Convictions. There are two Wyoming criminal offenses for which SORNA requires registration in addition to those already captured:
 - a. Wyo. Stat. § 6-2-313 Sexual Battery; is a Tier I offense under SORNA.
 - b. Wyo. Stat. § 6-4-201(a)(iii) Public Indecency; is a Tier I offense under SORNA (when the victim is an adult).

2. Military Convictions. SORNA requires that sex offenders convicted of certain military offenses be subject to registration. While Wyoming did include military court convictions in many of its provisions, the language used is insufficient to capture all of the required military offenses.

Wyoming has included military convictions by way of cross-references found in §§ 7-19-301(a)(viii). The language in this code section, however, only embraces offenses containing the “same or similar elements, or arising out of the same or similar facts or circumstances, as criminal offenses requiring registration under Wyoming’s laws.” There are some Military offenses which do not have equivalent counterparts under Wyoming’s code, and offenders convicted of those crimes would not be included in Wyoming’s registration scheme.

The SMART Office has considered these deviations from SORNA’s requirement, and has determined that they do not substantially disserve the purposes of this requirement.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction. The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Wyoming’s placement of these statutes within the SORNA three tier levels.

Wyoming classifies its sex offenders into three tiers. All adult offenders in Wyoming are initially required to register for life. A person convicted of an offense listed in § 7-19-302(g) is subject to annual in-person verifications and may petition for removal from the registry after ten years. A person convicted of an offense listed in § 7-19-302(h) is subject to semi-annual in-person verifications and may petition for removal from the registry after 25 years. A person convicted of an offense listed in § 7-19-302(j) is subject to quarterly in-person verifications and is not eligible for any reduction in the duration of their registration obligation.

For ease of reference in this report, the SMART Office will refer to § 7-19-302(g) offenses as “Tier I”, § 7-19-302(h) offenses as “Tier II”, and § 7-19-302(j) as “Tier III”.

Wyoming correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions (see the Appendix, “Wyoming State Statutes” for information about Wyoming’s classification of its offenders and associated registration requirements):

- **§6-2-314(a)(ii-iii) Sexual Abuse of a Minor in the First Degree (victim 13-15)**

Wyoming classifies this offense as a tier II offense, and it requires a tier III classification under SORNA because it will involve a “sexual act” with a victim between 13 and 15 years of age.

- **§6-2-315(a)(i) Sexual Abuse of a Minor in the Second Degree (victim<16)**

Wyoming classifies this offense as a tier II offense, and it requires a tier III classification under SORNA because it will involve a “sexual act” with a victim under 16 years of age.

- **§6-2-316(a)(i) Sexual Abuse of a Minor in the Third Degree (victim 13-15)**

Wyoming classifies this offense as a tier I offense, and it requires a tier II classification under SORNA because it will involve “sexual contact” with a victim between 13 and 15 years of age.

The SMART Office has considered these deviations from SORNA’s requirement, and has determined that they do not substantially disserve the purposes of this requirement.

IV. Required Registration Information

SORNA requires that the jurisdiction collect certain pieces of information from and for each offender that it registers, and requires that the jurisdiction keep that registration information, in a digitized form, in its registry.² Wyoming collects all of the required information except for:

- **Text of the Registration Offense:** Wyoming does link to the text of all Wyoming offenses. They will still need to develop the capacity to list the text of non-Wyoming offenses.

The SMART Office has considered these deviations from SORNA’s requirement, and has determined that they do not substantially disserve the purposes of this requirement.

V. Where Registration is Required

SORNA requires that the jurisdiction register an offender if the jurisdiction is the one in which he is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

Wyoming meets all of the SORNA requirements in this section.

VI. Initial Registration: Generally

SORNA requires that when an offender is incarcerated within the jurisdiction, registration must occur before release from imprisonment for the registration offense. Similarly, when an offender is sentenced within the jurisdiction, but not incarcerated, SORNA requires that registration occur within three business days of sentencing. Finally, when an offender has been

² Although this report is based in part on legislation passed in January of 2011, Wyoming does properly require twenty-one days’ notice of international travel as required by the SORNA Supplemental Guidelines (issued in January 2011).

convicted, sentenced, or incarcerated in another jurisdiction (including federal or military court), the jurisdiction must register the offender within three business days of the offender establishing residence, employment, or school attendance within the jurisdiction. SORNA also requires that, during the initial registration process, the jurisdiction inform the offender of his registration duties and require the offender to acknowledge in writing that he understands those duties.

Wyoming meets all of the SORNA requirements in this section.

VII. Initial Registration: Retroactive Classes of Offenders

SORNA requires that each registration jurisdiction have a procedure in place to recapture three categories of sex offenders: those who are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime; those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; and those who reenter the jurisdiction's criminal justice system because of a conviction for some other felony crime (whether or not it is a sex offense).

Prior to the passage of its 2007 law, Wyoming sent letters to the last known addresses for the 2500+ registrants maintained in its current and legacy records. This notification included the new statute and the direction for the offender to check on their (possible) new duty to register.

Wyoming currently registers offenders convicted as an adult on or after January 1, 1985. Persons will be required to register based on a juvenile adjudication (or any offense newly listed as requiring registration in the 2011 legislation) if they were sentenced after July 1, 2011.

The SMART Office has considered these deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

VIII. Keeping the Registration Current

SORNA requires that when a sex offender resides in a jurisdiction, that the offender immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. When an offender works in a jurisdiction, but does not reside or attend school there, SORNA requires that the offender immediately appear in-person to update employment-related information. When an offender attends school in a jurisdiction, but does not reside or work there, SORNA requires that the offender immediately appear in-person to update school-related information.

SORNA also requires that when an offender resides in a jurisdiction, that the sex offender immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

In addition, SORNA requires that when an offender notifies the jurisdiction of his intent to relocate to another country to live, work or attend school, or of his intent to travel to another country, that the jurisdiction do three things: immediately notify any other jurisdiction where the

offender is either registered, or is required to register, of that updated information; immediately notify the United States Marshals Service, and immediately update NCIC/NSOR.

Wyoming meets all of the SORNA requirements in this section.

IX. Verification/Appearance Requirements

SORNA requires that offenders register for a duration of time, and make in-person appearances at the registering agency, based on the tier of the offense of conviction.

A. Frequency of Registration

SORNA requires that offenders make in-person appearances at the registering agency based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA Tier I offenders appear once a year, that SORNA Tier II offenders appear every six months, and that SORNA Tier III offenders appear every three months.

Wyoming meets all of the SORNA requirements in this section.

B. Duration of Registration

SORNA requires that offenders register for a duration of time based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA Tier I offenders register for 15 years, SORNA Tier II offenders register for 25 years, and that SORNA Tier III offenders register for life.

All adult offenders in Wyoming are required to register for life, subject to the reduction periods described below. Persons required to register based on a juvenile adjudication must appear in-person every three months and may petition for termination of registration after ten years.

Wyoming meets all of the SORNA requirements in this section.

C. Reduction of Registration Periods

Wyoming permits tier I and tier II offenders to petition for termination of their duty to register if they maintain a clean record for a certain period of time. Tier I offenders may petition after ten years from release from incarceration, and tier II offenders may petition after 25 years from their release from incarceration. In addition, persons required to register based on an adjudication of delinquency may petition for removal ten years from their release from incarceration.

Wyoming's definition of clean record mirrors SORNA's requirements.

The SMART Office has considered this deviation from SORNA's requirement, and has determined that it does not substantially disserve the purposes of this requirement.

X. Registry Website Requirements

SORNA requires that each jurisdiction maintain a public sex offender registry website and publish certain registration information on that website. SORNA also requires that certain information not be displayed on a jurisdiction's public registry website.

Wyoming does not display links to sex offender safety and information resources on its public registry website.

The SMART Office has considered this deviation from SORNA's requirement, and has determined that it does not substantially disserve the purposes of this requirement.

XI. Community Notification

SORNA requires that each jurisdiction disseminate certain initial and updated registration information to particular agencies within the jurisdiction. In addition, SORNA requires that each jurisdiction also disseminate certain initial and updated registration information to the community.

Wyoming has established an email notification system which persons can subscribe to and receive a notification whenever an offender changes their residence to or from a particular zip code, or to track an individual offender.

Wyoming meets all of the SORNA requirements in this section.

XII. Failure to Register as a Sex Offender: State Penalty

SORNA requires that each jurisdiction, other than a federally recognized Indian tribe, provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure of a sex offender to comply with their registration requirements.

Wyoming meets all of the SORNA requirements in this section.

XIII. When a Sex Offender Fails to Appear for Registration

SORNA requires that when a jurisdiction is notified that a sex offender intends to reside, be employed, or attend school in its jurisdiction, and that offender fails to appear for registration as required, that the jurisdiction receiving that notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

Wyoming meets all of the SORNA requirements in this section.

XIV. When a Jurisdiction has Information that a Sex Offender may have Absconded

SORNA requires that when a jurisdiction has information that a sex offender may have absconded, that the jurisdiction take certain actions in terms of investigating the absconder and notifying various law enforcement agencies.

Wyoming implements many of the required pieces of SORNA with regards to absconded sex offenders. Where Wyoming's procedures fall short of SORNA's full implementation standards is noted, below:

1. Warrant: Wyoming vests the final discretion for securing a warrant with the local prosecutor's office, rather than mandating its pursuit; and
2. U.S. Marshals' Notice: Wyoming advises that it regularly notifies the USMS of absconders, but that such notice is not required to be made within three business days.

The SMART Office has considered these deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

XV. Tribal Considerations

Wyoming has two federally-recognized tribes which have opted to become SORNA registration jurisdictions: the Northern Arapahoe Tribe and the Eastern Shoshone Tribe, both of the Wind River Reservation. The SMART Office is working closely with both tribes and the State to navigate this portion of SORNA implementation (and any possible MOU's or MOA's) through the existing primary State contact, Diana Fisher, who is the Program Manager of the Wyoming Sex Offender Registry.

The contact office for these tribes regarding SORNA implementation is the Wyoming Office of the Attorney General, Division of Criminal Investigation, Sex Offender Registry. That office's contact information is:

316 W 22nd Street
Cheyenne, WY 82002
307 777-7809
WYSORS@dcj.wyo.gov

Conclusion

Wyoming put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system.

Appendix: Wyoming Statutes

The SMART Office has reviewed all of Wyoming's statutes identified in its substantial implementation submission package and has identified Wyoming's placement of these statutes within the tiering structure created in Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA). Unless indicated in the notes herein, the SMART office has not reviewed any statutes (or subsections) that were not included in the legislation provided by Wyoming.

In reviewing Wyoming's statutes, the SMART Office understands that Wyoming has three categories of registrants for purposes of its duration of registration and frequency of registration requirements:

- A person convicted of an offense listed in § 7-19-302(g) is subject to annual in-person verifications and may petition for removal from the registry after ten years;
- A person convicted of an offense listed in § 7-19-302(h) is subject to semi-annual in-person verifications and may petition for removal from the registry after 25 years; and
- A person convicted of an offense listed in § 7-19-302(j) is subject to quarterly in-person verifications and is not eligible for any reduction in the duration of their registration obligation.

In addition, persons required to register based on a juvenile adjudication must appear in-person every three months and may petition for termination of registration after ten years.

SORNA Tier I Offenses

SORNA requires that Tier I offenders register for a minimum of 15 years and annually verify registration information. The following offenses listed in Wyoming's statutes would require, at a minimum, Tier I registration requirements under SORNA.

§ 6-2-202	Felonious Restraint (minor victim)
§ 6-2-203	False Imprisonment (minor victim)
§ 6-2-303(b)	Sexual Assault in the Second Degree (adult victim)
§ 6-2-313	Sexual Battery
§ 6-4-201(a)(3)	Public Indecency
§ 6-4-303(iv)	Possession of Child Pornography
§ 6-4-304(b)	Voyeurism

SORNA Tier II Offenses

SORNA requires that Tier II offenders register for a minimum of 25 years and semi-annually verify registration information. The following offenses listed in Wyoming's statutes would require, at a minimum, Tier II registration requirements under SORNA.

- § 6-2-303(a)(vii) Sexual Assault in the Second Degree (victim 16 or 17)
- § 6-2-303(b) Sexual Assault in the Second Degree (victim 13-18)
- § 6-2-304(a)(iii) Sexual Assault in the Third Degree (victim 13-18)
- § 6-2-314(a)(ii) Sexual Abuse of a Minor in the First Degree (victim 16 or 17)
- § 6-2-315(a)(iii) Sexual Abuse of a Minor in the Second Degree (victim 13-18)
- § 6-2-315(a)(iv) Sexual Abuse of a Minor in the Second Degree (victim 13-16)
- § 6-2-316(a)(i-ii, iv) Sexual Abuse of a Minor in the Third Degree
- § 6-2-317(a)(ii) Sexual Abuse of a Minor in the Fourth Degree
- § 6-2-318 Soliciting to Engage in Illicit Sexual Relations
- § 6-4-102 Soliciting an Act of Prostitution, where the person solicited is a minor
- § 6-4-103 Promoting Prostitution, if the person enticed or compelled was a minor
- § 6-4-302(a)(i) Promoting Obscenity, if the offense involves the use of a minor in a sexual performance
- § 6-4-303(b)(i-iii) Sexual Exploitation of Children
- § 6-4-402 Incest (sexual act, victim 16 or 17; or sexual contact, victim 13-18)

SORNA Tier III Offenses

SORNA requires that Tier III offenders register for life and quarterly verify registration information. The following offenses listed in Wyoming's statutes would require, at a minimum, Tier III registration requirements under SORNA.

- § 6-2-201 Kidnapping (minor victim)
- § 6-2-302 Sexual Assault in the First Degree

§ 6-2-303	Sexual Assault in the Second Degree (except as noted above)
§ 6-2-304(a)(iii)	Sexual Assault in the Third Degree (victim under 13)
§ 6-2-314(a)(i)	Sexual Abuse of a Minor in the First Degree
§ 6-2-314(a)(ii)	Sexual Abuse of a Minor in the First Degree (victim under 16)
§ 6-2-314(a)(iii)	Sexual Abuse of a Minor in the First Degree
§ 6-2-315(a)(i-ii)	Sexual Abuse of a Minor in the Second Degree
§ 6-2-315(a)(iii-iv)	Sexual Abuse of a Minor in the Second Degree (victim under 13)
§ 6-2-316(a)(iii)	Sexual Abuse of a Minor in the Third Degree
§ 6-4-402	Incest (sexual act, victim under 16; or sexual contact, victim under 13)

Further Review

The SMART Office notes that Wyoming also registers the following offenses; however, those offenses, without the commission of (or the attempt or conspiracy to commit) a sexual offense, do not require registration under SORNA:

§6-2-317(a)(1)	Sexual Abuse of a Minor in the Fourth Degree
----------------	----------------------------------------------