

ATTACHMENT FIVE (5)
November 14, 2012 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

ATTACHMENT FIVE (5)
November 14, 2012 Minutes

Agenda Item 6



February, 2011¹

SORNA Implementation Review State of Nevada

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 Nevada (Nevada) 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 Nevada's SORNA substantial implementation packet and has found that Nevada has substantially implemented SORNA.

On February 12, 2009, the Nevada Department of Public Safety submitted a substantial implementation package that included code provisions, descriptions of electronic systems, and other relevant information. In addition, email and phone correspondence with the Nevada Attorney General's Office and Department of Public Safety filled in gaps in information and procedure, which informed our review.

Nevada is in a unique position in that its original law designed to implement SORNA (AB 579) was enjoined from becoming operational by a Federal District Court in June of 2008.² The information contained in this report reflects the provisions of that enjoined law, combined with changes which Nevada indicates it will address in a manner consistent with SORNA's standards via administrative changes once the injunction is lifted and the implementing legislation is permitted to become fully operational.

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 Nevada 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 Nevada 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.

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

² *ACLU v. Masto*, Case 2:08-cv-00822-JCM-PAL (D. Nev. October 7, 2008) (Plaintiffs' Revised Order Granting Permanent Injunction).

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.

Nevada 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.

Nevada specifically lists offenses under the Nevada Code which require registration, and also requires registration for any other offense that has an element involving a sexual act or sexual conduct with another.³ Because of this broad definition of included offenses along with its detailed list of included offenses, Nevada properly captures all of its criminal offenses which require registration, except for:

- Conspiracy to Commit False Imprisonment of a Child⁴

Nevada requires that persons convicted of federal, foreign, military, tribal, or jurisdiction-level offenses register if their underlying offense would require registration if it had been committed in Nevada. In addition, a person is also required to register in Nevada if they reside or have resided or are or have been a student or worker in any jurisdiction in which the person is or has been required by the laws of that jurisdiction to register as a sex offender because of the offense.

A. Federal Offenses. The following offenses are ones which do not have an equivalent offense in Nevada which requires registration. These offenses are required to be registered under SORNA.

1. 18 U.S.C. §1801 (Video Voyeurism of a Minor)
2. 18 U.S.C. §2252B (Misleading domain names on the internet)
3. 18 U.S.C. §2252C (Misleading words or digital images on the internet)

³ See 42 U.S.C. §16911(5)(A)(i).

⁴ False Imprisonment of a Child (§200.460) is listed as a "Crime Against a Child" in N.R.S. §197D.0357, which does not include conspiracies in the definition of "Crime Against a Child". N.R.S. §197D.117 does not include False Imprisonment of a Child in its specific list of offenses (which by definition include a conspiracy to commit the offense, §197D.117(7)).

4. 18 U.S.C. §2423 (Travel with the Intent to Engage in Illicit Sexual Conduct with a Minor)
5. 18 U.S.C. §2424 (Filing factual statement about alien individual)
6. 18 U.S.C. §2425 (Use of interstate facilities to transmit information about a minor)

B. Military Convictions

Nevada will register most of the military convictions required by SORNA. Nevertheless, there are some UCMJ Offenses (such as Conduct Unbecoming) which will not have an equivalent under Nevada law and, therefore, would not be registered under Nevada's existing 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 Nevada's placement of these statutes within the SORNA three tier levels.

Nevada specifically tiers certain offenses, and the remainder are tiered via cross-reference to SORNA's tiering provisions.⁵ Therefore, only the offenses which are specifically tiered in a way that *does not* conform to SORNA's requirements will fail to meet SORNA's standards.

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

- **200.508 Abuse of a Child (certain ages)**

Nevada classifies this as a tier II offense when the abuse involves sexual abuse or sexual exploitation when the child is over 13. SORNA requires that this be classified as a tier III offense if the abuse involves a sexual act with a child under 16.⁶

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.

⁵ 42 U.S.C. §16911(3) & (4).

⁶ "Sexual Act" and "Sexual Conduct" in this report, unless otherwise indicated, refer to the definitions in 18 U.S.C. §2246.

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.

SORNA requires sex offender registration information under 20 primary categories. Of these 20 required items, Nevada has made provisions to capture 16 of them.

The SMART Office has considered these deviations from SORNA's requirement, and has determined that it does 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.

Nevada 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.

Nevada 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).

§179D.460(1) of the Nevada Code requires all sex offenders convicted after July 1, 1956, to register in accordance with the code. Because of the court-ordered injunction, there are no particular provisions regarding the 'recapture' of offenders in the three categories detailed by the

final SORNA guidelines, as the issue at hand in the case is retroactive application of the new sex offender registration and notification requirements.

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.

If Nevada is notified that the offender intends to commence residence, school, or employment outside of the United States, it does not immediately notify the U.S. Marshals' Service.

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.

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 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.

Nevada meets all of the SORNA requirements in this section.

B. Duration 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.

Nevada meets all of the SORNA requirements in this section.

C. Reduction of Registration Periods

SORNA permits jurisdictions to reduce the duration of registration for certain Tier I and Tier III offenders.

Nevada meets all of the SORNA 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.

Nevada displays all required offenders on its registry website except for Tier I offenders who have not been convicted of a sexual offense against a child or a crime against a child. Upon review, the SMART Office has not discovered any such offenses.

Nevada has failed to specifically provide for two of the required website items: absconder status and criminal history.

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.

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.

Nevada 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.

Nevada 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.

Nevada 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.

Nevada meets all of the SORNA requirements in this section.

XV. Indian Tribes

There are fourteen federally-recognized tribes with lands in Nevada which have opted to become SORNA registration jurisdictions:

- Confederated Tribes of the Goshute Reservation
- Duckwater Shoshone Tribe
- Duck Valley Shoshone-Paiute Tribes
- Ely Shoshone Tribe
- Fallon Paiute Shoshone Tribe
- Lovelock Paiute Tribe
- Pyramid Lake Paiute Tribe
- Reno-Sparks Indian Colony
- Summit Lake Paiute Tribe
- Te-Moak Tribe of Western Shoshone
- Walker River Paiute Tribe
- Washoe Tribe of Nevada & California
- Yerington Paiute Tribe
- Yomba Shoshone Tribe

The SMART Office is working closely with the tribes and the State to facilitate SORNA implementation for the tribes.

The contact office for these tribes regarding SORNA implementation is the Nevada Department of Public Safety, Records and Technology Division. The contact information for that office is:

Patrick J. Conmay
Division Chief
333 West Nye Ln.
Ste. 100
Carson City, NV 89706
(775) 684-6262

Conclusion

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

Appendix: Nevada State Statutes

The SMART Office has reviewed all of Nevada's statutes identified in its substantial implementation submission package and has identified Nevada'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 Nevada.

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

- A tier one offender is required to register for 15 years with annual verification appearances;
- A tier two offender is required to register for 25 years with semi-annual verification appearances; and
- A tier three offender is required to register for life, with quarterly verification appearances.

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 Nevada's statutes would require, at a minimum, Tier I registration requirements under SORNA.

- § 200.368 **Statutory Sexual Seduction (misdemeanor)**
- § 200.460 **False Imprisonment of a Child**
- § 200.508 **Abuse of a Child (misdemeanor—sexual exploitation)**
- § 200.730 **Possession of Child Pornography**
- § 201.320 **Living from the Earnings of a Prostitute (victim <18) (misdemeanor)**
- § 201.340 **Transporting for Prostitution (victim <18) (misdemeanor)**

There are also a number of registerable offenses which, when prosecuted as a conspiracy to commit the underlying offense, are punishable only as misdemeanors and, as such, only require a tier I classification:

- § 200.710 **Use of a Minor in Child Pornography (conspiracy)**

- § 200.720 **Promotion of Sexual Performance of a Minor (conspiracy)**
- § 201.180 **Incest (conspiracy)**
- § 201.230 **Lewdness with a child under 14 years (conspiracy)**
- § 201.195 **Solicit Child to Commit Sodomy (conspiracy)**
- § 201.560 **Luring a Child (conspiracy)**

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 Nevada's statutes would require, at a minimum, Tier II registration requirements under SORNA.

§ 200.508 Abuse of a Child

If the abuse involves a sexual act with a child who is 16 or 17, or sexual conduct with a child aged 13-17, this will be a tier II offense.

- § 200.710 **Use of a Minor in Child Pornography**
- § 200.720 **Promotion of Sexual Performance of Minor**
- § 200.725 **Distribution of Child Pornography**
- § 200.727 **Use of Internet to Control Depiction of Sexual Conduct**
- § 201.180 **Incest (Sexual Act, victim 16 or 17)**
- § 201.195 **Solicit Child to Commit Sodomy**
- § 201.300 **Pandering (victim <18)**
- § 201.310 **Placing Spouse in Brothel (victim <18)**
- § 201.320 **Living from the Earnings of a Prostitute (victim <18) (felony)**
- § 201.330 **Detaining in a Brothel (victim <18)**
- § 201.340 **Transporting for Prostitution (victim <18) (felony)**
- § 201.540(1) **Sexual Conduct between Employee and Student**
- § 201.550 **Sexual Conduct between Employee and Student**

§ 201.560 Luring a Child

SORNA Tier III Offenses

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

- § 201.180 Incest (Sexual Act, victim <16)
- § 201.230 Lewdness with a child under 14 years
- § 200.310 Kidnapping (victim <18)
- § 200.320 Kidnapping in the First Degree (victim <18)
- § 200.330 Kidnapping in the Second Degree (victim <18)
- § 200.366 Sexual Assault
- § 200.368(1) Statutory Sexual Seduction (Defendant >21)
- § 200.508 Abuse of a Child
- § 201.540(2) Sexual Conduct between Employee and Student

Further Review

The SMART Office notes that Nevada 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:

- § 200.180 Incest, Victim > 18
- § 200.030 Murder in the First Degree (with sexual motivation)
- § 200.030(b) Murder in the First Degree (in the perpetration of sexual assault, sexual abuse, or sexual molestation of a child < 14)
- § 200.040 Murder in the Second Degree (with sexual motivation)
- § 200.340 Kidnapping: Aiding and Abetting
- § 200.400(4) Battery with the Intent to Commit Sexual Assault

- § 200.405 **Administer Drug to Aid in a Violent Felony**
- § 200.408 **Administer Drug to Aid in a Violent Felony**
- § 201.210 **Open Lewdness⁷**
- § 201.220 **Indecent Exposure**
- § 201.450 **Sexual Abuse of a Dead Body**
- § 205.060 **Burglary (with sexual motivation)**
- § 205.067 **Invasion of the Home (with sexual motivation)**
- § 207.190 **Coercion (with sexual motivation)**

⁷ Because the terms "lewd and lascivious" are not defined in Nevada's code, the classification of this statute will depend on Nevada's common-law definition of those terms.