



## SORNA Implementation Documents

The SMART Office has developed a series of documents related to Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA). These documents provide further definition, guidance, and direction on a number of topics to assist jurisdictions with the implementation of SORNA. Jurisdictions should use these documents, along with the statute (P.L. 109-248) and any guidelines and regulations issued by the Attorney General, when developing legislation and policies to substantially implement SORNA.

SORNA implementation documents address the following topics:

1. Substantial Implementation
2. Byrne JAG Reductions
3. In-Person Verification
4. Community Notification
5. Risk Assessment
6. Homeless and Transient Offenders
7. Text of the Registration Offense
8. Military Offense Registration
9. Fingerprints and Palm Prints
10. Tribal Convictions
11. State and Tribal Information Sharing
12. Tribal Jurisdiction
13. Tribal Election, Delegation to the State, and Right of Access
14. Notice of International Travel
15. Juvenile Offenders



## Substantial Implementation of SORNA

The term “substantial implementation” is not defined in Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA). However, Congress did delegate to the Attorney General the authority to determine whether a jurisdiction has failed to substantially implement SORNA (*see* 42 U.S.C. §16925). The SORNA National Guidelines interpret and define “substantial implementation” and further clarify it to mean that the SMART Office is responsible for determining whether a jurisdiction has substantially implemented SORNA requirements (*see* The National Guidelines for Sex Offender Registration and Notification: Final Guidelines, June 2008, pp. 10-11).

When making a substantial implementation determination, the SMART Office is required to follow the standards set forth in SORNA and the National Guidelines, which indicate that jurisdictions’ programs cannot be approved if they substitute some basically different approach to sex offender registration and notification that does not incorporate SORNA’s baseline requirements. Likewise, implementation programs cannot be approved if they dispense wholesale with categorical requirements set forth in SORNA. The substantial implementation standard *does* contemplate that there is some latitude to approve a jurisdiction’s implementation efforts, even if they do not exactly follow in all respects the specifications of SORNA or the National Guidelines.

The National Guidelines require the SMART Office to consider, on a case-by-case basis, whether jurisdictions’ rules or procedures implement SORNA. Accordingly, for each jurisdiction, the SMART Office must assess whether a departure from a SORNA requirement will or will not substantially disserve the objectives of the requirement. This approach necessitates an individualized review of each jurisdiction’s SORNA implementation program. After assessing whether a jurisdiction has sufficiently addressed each SORNA requirement, the SMART Office will make a final determination as to whether a jurisdiction has substantially implemented SORNA by taking all of the jurisdiction’s efforts into account.

In order to provide the best possible advice, individual jurisdictions are encouraged to contact SMART Office personnel as early as possible in the development of their SORNA implementation programs to discuss any issues that may arise. The SMART Office will be as flexible as possible within the framework established by SORNA and the National Guidelines, and will provide technical assistance to each jurisdiction on what is required for it to achieve substantial implementation.



## Byrne JAG Grant Reductions under SORNA

42 U.S.C. § 16925(a) sets forth a penalty for jurisdictions that fail to substantially implement Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA):

*For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this title shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).*

Thus, a registration jurisdiction that fails to substantially implement SORNA will realize a 10% reduction in its Byrne JAG formula funds.

Each of the 50 states, 5 principal territories, the District of Columbia, and some federally-recognized Indian tribes currently qualify for annual awards under the Byrne JAG formula and therefore will be subject to the reduction if they fail to substantially implement the requirements of SORNA.

Calculating award amounts under the Byrne JAG formula is a multi-step process. First, initial allocations to the states, territories, and the District of Columbia are calculated based on population and violent crime statistics, and certain adjustments are made to ensure a minimum amount of funds for each state, territory, and the District of Columbia. These initial allocations determine the amount that goes into each state, but not the amount that goes to the state government itself. Rather, of this initial allocation 60% goes directly to the state, whereas 40% goes to qualifying units of local government and tribes. If a state fails to substantially implement SORNA, the 10% reduction in their Byrne JAG formula funds will be applied only to the 60% in direct grants to states, and not the 40% in grants to local governments and tribes within the state.

For practical purposes, the reduction will be applied in the fiscal year following the deadline for implementation. For example, if a jurisdiction has not substantially implemented SORNA and does not request an extension in 2010, the deadline is July 27, 2010. If it is determined that the jurisdiction did not substantially implement SORNA by July 27, 2010, the reduction will be 10% of the FY 2011 award, imposed when the FY 2011 awards are made.

For funds withheld, SORNA provides reallocation:

*REALLOCATION. Amounts not allocated under a program referred to in this section to a jurisdiction for failure to substantially implement this title shall be reallocated under that program to jurisdictions that have not failed to substantially implement this title or may be reallocated to a jurisdiction from which they were withheld to be used solely for the purpose of implementing this*

*title. See 42 U.S.C. § 16925 (c).*

For any jurisdiction that has been penalized and wishes to have funds reallocated back to its jurisdiction to be used solely for implementation of SORNA, that jurisdiction must make such a request in writing to the SMART Office. Requests must include a plan and timeline for substantial implementation. The final decision on such requests will be made by the Assistant Attorney General for the Office of Justice Programs, U.S. Department of Justice.

Jurisdictions that implement SORNA have an ongoing obligation for compliance and thus, the Byrne JAG reduction penalty may be applied each year a jurisdiction is deemed non-compliant. This means that a jurisdiction's substantial implementation status will be determined annually. This process need not be onerous, particularly if the jurisdiction has made no significant changes to its relevant legislation or sex offender registration and notification system.

### **Tribal Jurisdictions**

A number of Indian tribes qualify for direct awards under the Byrne JAG formula. The eligibility for Byrne JAG awards to tribes is determined by reference to the share of the average violent crime within the state in which the tribe is located. If a tribe that elects to implement SORNA is also the recipient of a Byrne JAG formula award for any given year, that tribe does potentially face the 10% reduction of that award.

However, there is a separate and significant penalty for non-compliance by tribes; that is, a tribe's registration and notification obligations could be delegated to the state if the tribe has been found to have not substantially implemented SORNA. As a result, there are two separate penalties that tribes could face; however, non-compliant tribes will not be doubly-penalized. The SMART Office will work with tribes that have been deemed non-compliant to determine whether implementation is likely to occur within a reasonable amount of time, or whether delegation to the state is appropriate. If it is determined that delegation to the state is appropriate, no Byrne JAG penalty will be imposed on the tribe.

Further, if a tribe has either voluntarily or involuntarily delegated its registration and notification obligation to the state, it no longer functions as a SORNA jurisdiction and is no longer subjected to these penalties.



## SORNA “In-Person” Registration Requirements

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), requires that a registered sex offender appear in-person to update certain registration information according to the following criteria (*see* 42 U.S.C. § 16916):

- I. Tier I Offenders must appear once per year for 15 years;
- II. Tier II Offenders must appear twice per year for 25 years; and
- III. Tier III Offenders must appear quarterly per year for life.

Sex offenders must initially register with officials in-person, regardless of whether the offender is registering where he lives, works or goes to school. Further, SORNA clearly requires an in-person appearance by the offender at least annually for updating of any photograph, physical description, or other listed information. However, the SMART Office will consider alternatives to interim in-person appearances for Tier II and Tier III offenders. The following examples illustrate permissible alternative strategies:

- (1) A jurisdiction may consider an alternative reporting location if an offender is located in a remote location and the designated sex offender registry office is not accessible. In these instances, the offender may be able to complete his periodic in-person appearance by appearing at the local police station. These arrangements must be formalized and acceptable to the extent that the registry official has agreed to this arrangement and local police are capable of taking the required information from the offender.
- (2) A jurisdiction might consider an alternative where the offender is able to call in via video conferencing where his location, including the time and date, can be verified and a set of security validation protocols are established.
- (3) A jurisdiction might also consider having local law enforcement visit the offender’s residence and utilize portable devices for updating and confirming information with the offender.
- (4) Similarly, a jurisdiction could utilize probation officers engaged in community supervision to effectuate an interim appearance with an offender.

The SMART Office encourages jurisdictions that face challenges with in-person requirements to consider alternative methods in which these requirements may be met and to work closely with SMART Office personnel in submitting acceptable alternatives for review.



## Community Notification Requirements of SORNA

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), requires that registration jurisdictions immediately provide any initial or updated information about a sex offender to numerous agencies that fall under specific categories (*see* 42 U.S.C. §16921(b)). Each category is addressed in turn below, with direction as to how jurisdictions may substantially implement its terms.

The SORNA National Guidelines require that immediately after a sex offender registers or updates a registration, a jurisdiction shall provide the information in the registry about that offender to:

1. *The Attorney General, who shall include that information in the National Sex Offender Registry or other appropriate databases.*

To meet this requirement, jurisdictions must immediately forward any information to the National Sex Offender Registry (NSOR), which is a subfolder of the National Crime Information Center (NCIC), which is operated by the Federal Bureau of Investigation. At the direction of the SMART Office, jurisdictions may also be required to immediately forward registration information to additional databases.

2. *Appropriate law enforcement agencies, schools, and public housing agencies.*

Jurisdictions may sufficiently notify these agencies by:

- (1) ensuring that their police departments, sheriffs' offices, prosecution offices, and probation/parole offices have access to the law-enforcement portion of their sex offender registry; and
- (2) utilizing an email notification system, as discussed in (5) below.

In conjunction with the SMART Office, jurisdictions may develop alternative methods for complying with this section.

3. *Each jurisdiction where the sex offender is required to register.*

To meet this requirement, jurisdictions must ensure that there is a mechanism in place through which they can transmit registration information to any other jurisdiction where an offender is required to register. This capacity must include not only states, territories, and the District of Columbia, but also every federally-recognized Indian tribe that has elected to operate as a SORNA registration jurisdiction.

4. *Any agency responsible for conducting employment-related background checks under 42 U.S.C. §5119a.*

Each individual jurisdiction makes its own determination as to which agencies conduct employment-related background checks under 42 U.S.C. §5119a. To meet this requirement, jurisdictions must check within their own governmental structure to determine:

- (1) which agencies conduct such background checks; and
- (2) how to ensure that those background checks will capture the registration information submitted by the sex offender to the registering agency.

5. *Social service entities responsible for protecting minors; volunteer organizations in which contact with minors or other vulnerable individuals might occur; and any organization, company, or individual who requests such notification.*

In order to meet the requirements of this category of community notification, a jurisdiction must do the following:

- (1) immediately update the jurisdiction's sex offender public website when a sex offender either registers or updates his or her registration information;
- (2) establish an email notification system for the jurisdiction's sex offender public website, which initiates a notification when an offender relocates (to include residence, work, and/or school address) in or out of a particular zip code or geographic radius; and
- (3) automatically email an individual who properly registers for the notification system the identity of the sex offender when such a relocation occurs, and reflect the relocation on the jurisdiction's sex offender public website.



## Using Risk Assessment under SORNA

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), prescribes a conviction-based structure for sex offenders' registration and notification requirements. SORNA does not address the use of risk assessment tools for registration or notification purposes. Many jurisdictions currently use risk assessment processes for a variety of purposes. These include aiding in making release decisions, filing civil commitment proceedings, structuring treatment programming, and establishing supervision intensity. Additionally, many states use a risk assessment process to determine the level of community notification for registered sex offenders. In fact, prior federal legislation highlighted these approaches (*see* Section III of the Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended, concerning the release of registration information).

SORNA does not preclude the use of risk assessment tools for community notification purposes, particularly for the more active forms of notification (*e.g.*, community meetings, fliers, door-to-door canvassing). However, to substantially implement SORNA, some jurisdictions that currently use risk assessment to determine community notification levels and methods might need to include a broader class of sex offenders on their public registry websites. In all instances, jurisdictions may use risk assessment tools as a justification for increasing SORNA's minimum notification requirements.

The SMART Office encourages jurisdictions that use an assessment process for community notification purposes to present SORNA implementation programs that preserve the use of these processes whenever the jurisdiction can continue to do so without undermining substantially the purposes of SORNA's conviction-based tiering or other requirements.

Jurisdictions that use a risk assessment process to determine the duration and reporting frequency of sex offenders' registration requirements will need to modify their systems to match SORNA's tier requirements, which are dependent on the crime of conviction. Jurisdictions may use risk assessment methods to increase these requirements as they see fit.



## **SORNA: Determination of Residence, Homeless Offenders and Transient Workers**

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), is silent as to how a jurisdiction must handle homeless and transient sex offenders; however, the SORNA National Guidelines do provide direction. The National Guidelines also provide direction about how to determine when an offender “resides” in a jurisdiction for the purpose of triggering his registration requirement. This document is intended to clarify and supplement, but not modify, the directions given by the National Guidelines about determining offender residence, registering homeless sex offenders, and registering work information for offenders without fixed employment locations.

The National Guidelines indicate that for the purposes of registration under SORNA, a sex offender resides in a jurisdiction when he:

- (1) has his home in a jurisdiction; or
- (2) habitually lives in a jurisdiction.

A sex offender “habitually lives” in a jurisdiction when that offender actually lives in a jurisdiction for more than 30 days (whether those days are consecutive or aggregated over a period of time, as the jurisdiction determines). Jurisdictions are free to decide how to make the determination regarding who resides in their jurisdiction so as to trigger a registration requirement, so long as the minimum SORNA standards are met, such as registering within three days after entering the jurisdiction.

The National Guidelines indicate that jurisdictions must register homeless sex offenders, requiring an offender to provide “some more or less specific description” of where that offender habitually lives.

The SORNA definition of employee includes individuals who are self-employed or working for any entity, whether or not they are compensated. For those sex offenders who do not have a fixed employment location, jurisdictions are expected to register the normal travel routes or general area(s) in which an offender works, to the extent that it is possible to do so.

The SMART Office encourages jurisdictions to discuss specific situations and how to handle them in conformance with the intent of SORNA. Some situations that might require such a discussion are those posed by long-haul truckers, day laborers, temporary workers, contractors, and similarly-situated offenders.



## SORNA: Text of Registration Offense

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), requires that each jurisdiction's registry include "[t]he text of the provision of law defining a criminal offense for which the sex offender is registered" (*see* 42 U.S.C. § 16914 (b)(2)). The SORNA National Guidelines have since clarified this requirement, indicating that the text of the registration offense need not be included in the jurisdiction's registry, or on the jurisdiction's sex offender public website. A jurisdiction may meet this SORNA requirement by ensuring that its central registry database includes a link or citation to the statute defining the registration offense, so long as:

- (1) such a link or citation provides online access to the linked or cited provision; and
- (2) the link or citation will continue to provide access to the full text of the registration offense as formulated at the time that the registrant was convicted of it, even if the defining statute is subsequently amended.

On its sex offender public website, a jurisdiction needs only to include a citation to the statute under which the offender was convicted, along with the heading of that statute (*e.g.*, SL § 22-22-1, Rape). Wherever possible, jurisdictions are encouraged to provide the text of the registration offense as well.



## **Inclusion of Military Convictions under SORNA**

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), specifically includes certain Uniform Code of Military Justice (UCMJ) convictions in its definition of “sex offense”.

This statutory definition points, by a series of cross-references, to the actual governing document for sex offender registration by those convicted of UCMJ offenses, which is Department of Defense (DoD) Instruction 1325.7 (*see* [www.dtic.mil/whs/directives/corres/pdf/132507p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/132507p.pdf)). Jurisdictions must ensure that all of the UCMJ convictions listed in DoD Instruction 1325.7 are included in their sex offender registration schemes.

The most recent version of DoD Instruction 1325.7 was published in 2003. Since that time there has been a significant overhaul of how sex offenses are codified and defined under the UCMJ. These changes went into effect in 2007 and the current relevant statute is 10 U.S.C. §920. In addition to the offenses outlined in the 2003 version of DoD Instruction 1325.7, jurisdictions must also include in their registration scheme any offense found in 10 U.S.C. §920 that meets SORNA’s definition of a “sex offense”.

The Department of Defense is in the process of updating DoD Instruction 1325.7 to conform with the changes in the UCMJ. The SMART Office can assist jurisdictions in securing a copy of this instruction as soon as it is final.



## SORNA: Fingerprints and Palm Prints

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), requires that jurisdictions include in their registries a set of fingerprints and palm prints from each sex offender (*see* 42 U.S.C. § 16914(b)(5)). The SORNA National Guidelines require that jurisdictions maintain fingerprints and palm prints in digital format in order to facilitate immediate access and transmittal of information to various entities.

However, the requirement to maintain fingerprints and palm prints in digital format does not mean that jurisdictions must use digital print-taking devices to obtain registered sex offenders' prints. Rather, to meet this requirement, jurisdictions may either:

- (1) use digital print-taking devices to obtain registered sex offenders' fingerprints and palm prints; or
- (2) take rolled, inked prints, which the jurisdiction then scans and uploads.

While digital prints will generate an immediate alert to the user that the prints will be accepted by the Integrated Automated Fingerprint Identification System (IAFIS or AFIS), rolled, inked prints that are scanned will not. The submission of finger prints to IAFIS and of palm prints to the Federal Bureau of Investigation (FBI) Central Database, both of which are run by the Criminal Justice Information Services (CJIS) of the FBI, is required by SORNA. *See* [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/guidelines-for-capturing-palmprints-and-supplementals](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/guidelines-for-capturing-palmprints-and-supplementals) for information on palm prints.

The SMART Office encourages jurisdictions to consider issues of quality when purchasing a scanner or digital print-taking equipment for uploading and transferring prints. For more information on quality standards, please see <https://www.fbibiospecs.org/>.

Additionally, tribal SORNA jurisdictions utilizing digital print taking devices (LiveScan) should be sure that they select a device that interfaces with the state system through which they are submitting their prints for upload to IAFIS or AFIS. For tribes that will scan or roll prints for mailing to FBI (CJIS) *See* [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/ordering-fingerprint-cards](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/ordering-fingerprint-cards).



## Registering Tribal Convictions under SORNA

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), requires registration for anyone convicted of a sex offense, which is defined as “a criminal offense that has an element involving a sexual act or sexual contact with another...” (*see* 42 USC § 16911(5)). Under SORNA, a “criminal offense” is defined as “a State, local, tribal, foreign, or military offense... or other criminal offense” (*see* 42 USC § 16911(6)).

Many federally recognized Indian tribes have court systems. Furthermore, The Bureau of Indian Affairs operates Courts of Indian Offenses on certain Indian reservations. (Because these courts operate under federal regulations contained within the Code of Federal Regulations (CFR), they are often known as CFR courts.) Convictions that otherwise meet the definitions of “sex offense” under SORNA (*see* 42 U.S.C. §16911(5)), which are obtained in tribal courts or CFR courts are convictions for purposes of SORNA registration (*see* 25 CFR § 11.100 *et seq.*) and must be included in all SORNA registration jurisdictions’ codes or enactments.



## **SORNA: State and Tribal Information Sharing**

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), requires that jurisdictions share information within their jurisdictions as well as with other registration jurisdictions in order to ensure effective investigation of sex offenses, and appropriate registration and notification of sex offenders (*see* 42 U.S.C. § 16913(c) and 42 U.S.C. § 16921(b) (3)). States and tribes are encouraged to collaborate in order to facilitate this information sharing.

To meet the requirements of SORNA, many tribes will need to enter into Memoranda of Understanding (MOUs) and other forms of cooperative agreements with localities and states in order to interface with federal criminal history, fingerprint, and DNA databases. These MOUs and/or cooperative agreements will also facilitate the exchange of other necessary information required by SORNA, such as sex offender registration data, registration updates, custody release notices, and other offender notifications.

For states that have federally-recognized Indian tribes located within their boundaries, a detailed analysis of their efforts and collaboration with such tribes must be an integral part of the state's substantial implementation submission.



## **SORNA: Clarification of Registration Jurisdictional Issues**

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), requires that sex offenders register in any jurisdiction where they live, work, or go to school (*see* 42 USC § 16913 (a)).

There are a number of Indian tribes that are SORNA registration jurisdictions and, in some instances, the geographical apportionment of tribal lands has raised questions about where an offender must register. For example, some tribal lands are arranged in a patchwork around state or county land. In such instances, tribes are responsible for registration functions on land subject to their law enforcement jurisdiction, and a state is responsible for registration functions on land subject to its law enforcement jurisdiction.

Sex offenders must initially register in the jurisdiction of conviction. Thereafter, they must register where they live, work, and go to school. It is possible that a sex offender will have to register in multiple registration jurisdictions. For example, if a sex offender lives in Washington, D.C., works in Virginia and goes to school in Maryland, he would have to register with officials in each of these jurisdictions and keep his registration current in each. Similarly, a sex offender may work in Tulsa, Oklahoma and live in Osage Nation. He would thus have to register with officials in both Oklahoma and Osage Nation. In this instance, if the offender stops working in Tulsa and takes up employment in Osage Nation, he would have to notify the Oklahoma authorities of the termination of his employment in Tulsa and notify Osage that he now works in Osage Nation.

A sex offender may also reside, be employed or go to school exclusively in a tribal jurisdiction. If so, the offender must register only with the tribal jurisdiction. However, there is no requirement that a state where the offender previously was registered must remove this offender from the registry. This circumstance applies to all jurisdictions; thus, a tribal jurisdiction could keep on its tribal registry an offender who was originally registered with the tribe, but now exclusively resides, works, or goes to school in a state jurisdiction.

Jurisdictions should contact the SMART Office with any questions as they arise about where an offender should be registered.



## **SORNA: Tribal Election, Delegation to the State, and Right of Access**

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), created the first opportunity for federally recognized Indian tribes to be included in a nationwide sex offender registration and notification system. SORNA specifies, with some restrictions, that a federally recognized Indian tribe may, by resolution or other enactment of the tribal council or comparable governmental body, elect to function as a SORNA registration jurisdiction (*see* 42 U.S.C. § 16927(a)(1)(A)).

Of the 212 federally recognized Indian tribes eligible under SORNA's provisions, 197 elected to become SORNA registration jurisdictions. As with any registration jurisdiction, tribes may use a variety of approaches to meet SORNA's requirements. Tribes may set up their own registration and notification systems, or they may enter into Memoranda of Understanding (MOUs) and other forms of cooperative agreements with state or local agencies. These MOUs and/or cooperative agreements may be comprehensive and far reaching or they may be tailored to handle specific functionality (*e.g.*, fingerprint or DNA collection). A tribe may also enter into a consortium with other tribal SORNA registration jurisdictions (*see* 42 U.S.C. § 16927 (b)). States are encouraged to work with tribes to ensure a seamless system of registration is established across the country.

In a number of situations, SORNA dictates that the registration functions for tribal areas be delegated to the state. A few tribes eligible to function as registration jurisdictions opted not to be a SORNA registration jurisdiction, either by formal resolution or by simply not making the election, thus delegating the responsibility for registration, notification, and enforcement to the state in which they are located (*see* 42 U.S.C. § 16927(a)(1)(B) and 42 U.S.C. § 16927 (a)(2)(B)). A tribe may also "opt-out" of its previous election to become a SORNA registration jurisdiction, thus delegating the responsibility to the state (*see* 42 U.S.C. § 16927 (a)(1)(B)). Further, SORNA provides that states are responsible for sex offender registration and notification for tribe(s) subject to the law enforcement jurisdiction of a state under 18 USC § 1162, which, generally and with some exceptions, includes tribes within the mandatory "PL-280" states of Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin (*see* 42 U.S.C. § 16927 (a)(2)(A)). Finally, if a tribe that elected to be a SORNA registration jurisdiction is found to have not substantially implemented SORNA within the time allotted, the responsibility for sex offender registration, notification, and enforcement may be delegated to the state(s) in which the tribe is located (*see* 42 USC § 16927 (a)(2)(C)). This delegation is made only if the "Attorney General determines that the tribe has not substantially implemented the requirements of this subtitle and is not likely to become capable of doing so within a reasonable amount of time" (*see* 42 U.S.C. § 16927 (a)(2)(C)).

Under situations where the responsibility for sex offender registration and notification is delegated to the state, the state has responsibility to include these tribes in their sex offender registration and notification scheme. SORNA requires that tribes whose functions have been delegated to the state "provide access to its territory and such other cooperation and assistance as may be needed to enable such other jurisdiction or jurisdictions to carry out and enforce the requirements of this subtitle" (*see* 42 USC § 16927). States and tribes are encouraged to work

collaboratively to ensure registration of sex offenders, monitor and track absconders, and notify communities of sex offender registrants.



## Information Required for Notice of International Travel

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), as augmented by the National Guidelines for Sex Offender Registration and Notification (June 2008) and the Supplemental Guidelines for Sex Offender Registration and Notification (January 2011), requires that a registrant inform his or her residence jurisdiction of any intended travel outside of the United States at least 21 days prior to that travel. Pursuant to the SORNA Guidelines, information about such intended travel is specifically required to be transmitted to the U.S. Marshals Service. The other information-sharing requirements of SORNA apply to this information as well.

Accordingly, in order to provide the most helpful information to the U.S. Marshals Service and other law enforcement agencies, jurisdictions must now collect the following information regarding a registered sex offender's intended international travel:

### Identifying Information:

- Full name
- Aliases
- DOB
- Sex
- FBI number (for Domestic Law Enforcement use only)
- Citizenship
- Passport number and country

### Travel information:

- Destination(s):
  - Dates/places of departure, arrival and return (if applicable), including the name of the city/town that is the point of departure from each country
  - Means of travel (air, train, ship)
  - Itinerary details (when available) including the name of the airport/train station/port, the flight/train/ship number, the time of departure, the time of arrival, and information about any intermediate stops
- Purpose(s) of Travel
  - Business
  - Deportation
  - Military
  - Relocation
  - Other (specify)

- Criminal Record
  - Date and City, State or Jurisdiction of Conviction
  - Offense(s) of conviction requiring registration
  - Victim information: Age/gender/relationship
  - Registration jurisdiction(s) (State, Tribe or Territory)
  
- Other
  - Contact information within destination country
  - Notifying Agency and contact information

Please note that digital copies or photocopies of all pertinent travel documents should be made at the time such information is collected. If such documents are not available, the jurisdiction should collect identifying information on those documents (for example, for a passport, the passport number and country of issuance). Jurisdictions should note that any information provided might be communicated to foreign law enforcement officials, as is deemed necessary.

To substantially implement SORNA, jurisdictions must notify the U.S. Marshals Service National Sex Offender Targeting Center (USMS -NSOTC) with the above information. Jurisdictions are strongly encouraged to make this notification by way of the “Notification of International Travel Form” on the SORNA Exchange Portal, which is available free of charge to all registration jurisdictions. As an alternative, jurisdictions may directly submit the “Notification of International Travel Form” to the USMS-NSOTC at [IOD.NSOTC@usdoj.gov](mailto:IOD.NSOTC@usdoj.gov), with a subject line of “Sex Offender Travel Notification.” Questions about this process may be directed to the USMS-NSOTC at (202) 616-1600. Once a notification is made, USMS-NSOTC will provide the information to INTERPOL Washington, who will communicate the information to law enforcement partners at the intended foreign destinations of travel.

In addition, jurisdictions are free to directly notify other appropriate law enforcement agencies of an offender’s intended international travel when and if circumstances necessitate, by whatever means the jurisdiction determines is appropriate.



## Juvenile Offenders and SORNA

This Implementation Document will cover the specific offenses for which a juvenile would be required to register under SORNA, as well as the discretion that jurisdictions may exercise to exempt juveniles from the jurisdiction's public sex offender website and other community notification requirements.

### Juvenile Registration

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), requires that jurisdictions include juveniles adjudicated delinquent of certain sex offenses in their registries (see 42 U.S.C. § 16911(8)). The SORNA National Guidelines further defined and narrowed the specific types of offenses that would require registration under SORNA.

A common misconception is that SORNA requires jurisdictions to register all juveniles who are adjudicated delinquent for sex offenses. In fact, SORNA requires juvenile registration only if the juvenile was at least 14 years old at the time of the offense and was adjudicated delinquent for committing (or attempting or conspiring to commit) a sexual act with another by force, by the threat of serious violence, or by rendering unconscious or drugging the victim.<sup>1</sup> However, juveniles prosecuted and convicted as adults (which is a decision left to the jurisdictions under SORNA) are subject to registration for any of those offenses as if they were adults.

Because of the severity of these offenses, these juvenile sex offenders are categorized as Tier III offenders under SORNA and are subject to applicable duration and in-person verification requirements. (See page 16 of the SORNA National Guidelines for additional guidance.)

While jurisdictions are free to adopt stricter requirements regarding the registration of juveniles adjudicated delinquent of sex offenses, and in doing so would need to refer to the remainder of the National Guidelines for guidance, they need not do anything more than what the National Guidelines require.

Although SORNA requires registration for juveniles adjudicated of certain sex offenses, SORNA does not require lifetime registration without qualification, but rather, allows registration to be terminated after 25 years for those maintaining a clean record.

SORNA does not require that registry officials treat their juvenile sex offenders as they would adult registrants. Jurisdictions have discretion to establish different procedures for juveniles that recognizes different needs of juvenile offenders. For example, a jurisdiction may adopt different locations or protocols for their in-person appearances, which are required for periodic verification and to report import changes in registration information.



## Notification to the Public and Community

SORNA requires that jurisdictions make available “all information about each offender in the registry” (42 U.S.C. § 16918(a)). However, SORNA also permits jurisdictions the option to exempt from disclosure “any other information exempted from disclosure by the Attorney General” (42 U.S.C. § 16918(a)).

In January 2011, the Department of Justice published the Supplemental Guidelines for Sex Offender Registration and Notification, which specifically granted jurisdictions discretion in choosing whether to post persons adjudicated delinquent of a sex offense requiring registration under SORNA on the jurisdiction’s public sex offender registry website. (See SORNA Supplemental Guidelines, 76 FR 1636-37) The Supplemental Guidelines also granted jurisdictions discretion in deciding whether such juveniles should be subjected to the full range of general community notification requirements as required by SORNA.

With the issuance of the Supplemental Guidelines, jurisdictions are no longer *required* to provide registration information concerning sex offenders who are registered on the basis of juvenile delinquency adjudications to schools, social service entities, child care agencies, or other organizations or members of the general public who request notification. However, jurisdictions may want to consider some form of notification to community agencies or individuals when a person adjudicated delinquent of a sex offense is in a community as a resident, student, or employee.

For example, a jurisdiction may consider establishing or preserving a notification process whereby registering agencies will notify secondary school officials when a juvenile sex offender enrolls in their school. In like manner, a jurisdiction may want to develop a policy so that the responsible law enforcement agency, student services department, or other appropriate office at an institution of higher education in the community is notified when a juvenile sex offender commences coursework or changes his or her registration information. In addition, protection of the public might necessitate a limited community notification process, whereby authorized child care agencies or concerned parents may proactively request or petition for disclosure of information about registered juvenile sex offenders.

The SMART Office will work with all jurisdictions to ensure that the public safety goals of SORNA are met. Jurisdictions are encouraged to develop effective and responsive policies and procedures tailored to meet the public’s need to know about sex offenders who are present in their communities.

For complete information regarding the application of SORNA to juveniles adjudicated delinquent of sex offenses, please review Section IV.A of the SORNA National Guidelines.

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<sup>i</sup> 42 U.S.C. §16911(8) provides that:

The term "convicted" or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more



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severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code [18 USCS § 2241]), or was an attempt or conspiracy to commit such an offense.

Generally speaking, 18 USC §2241 prohibits:

- (a) knowingly caus[ing] another person to engage in a sexual act--
  - (1) by using force against that other person; or
  - (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; [or
- (b) engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim; or
- (c) engaging in a sexual act with a person under the age of 12]

Under the National Guidelines, the definition of “sexual act” that jurisdictions are minimally required to use to determine whether a criminal offense is “comparable to” 18 U.S.C. §2241 is as follows:

- engaging in a sexual act with another by force or the threat of serious violence (see 18 U.S.C. 2241(a)); or
- engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim (see 18 U.S.C. 2241(b)).

“Sexual act” for this purpose should be understood to include any degree of genital or anal penetration, and any oral-genital or oral-anal contact.

By definition, an adjudication of delinquency for an offense “comparable to” 18 U.S.C. §2241 will result in a tier III registration classification. 42 U.S.C. §16911(4). The National Guidelines make clear the criteria to be used in determining whether an offense for which a juvenile has been adjudicated delinquent qualifies for a tier III registration:

[J]urisdictions generally may premise the determination on the elements of the offense, and are not required to look to underlying conduct that is not reflected in the offense of conviction. There is an exception to this general rule when the age of the victim might affect the tier of an offense. Jurisdictions should review Section V of the National Guidelines for additional information.