

Juvenile Sex Offender Registration and SORNA

SORNA STANDARDS

SORNA requires that jurisdictions include in their registries certain juveniles who have been adjudicated delinquent of a sex offense.¹ More specifically, SORNA requires the registration of juveniles who (1) were 14 years of age or older at the time of the offense, and (2) were adjudicated delinquent of an offense equivalent to or more severe than aggravated sexual abuse (as described in 18 U.S.C. §2241).

SORNA's Final Guidelines specified that the offenses requiring registration are limited to those equivalent to 18 U.S.C. §2241(a) or (b), which generally are sex offenses which involve forcible penetration.² 'Touching' offenses of young children, without more, are generally not included in the Final Guidelines' definition.

In 2011, Supplemental Guidelines were issued that specifically granted jurisdictions discretion in whether to post persons adjudicated delinquent of a sex offense on the jurisdiction's public sex offender registry website.³ In other words, jurisdictions are no longer *required* to post such information publicly in order to substantially implement SORNA, but *may* do so, if they so choose.

A third set of guidelines, the Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act (Juvenile Supplemental Guidelines), was finalized in August, 2016. Those Guidelines are discussed in more detail below.

¹ 42 U.S.C. §16911(8).

² National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,030, 38,040 (July 2, 2008).

³ Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed. Reg. 1,630, 1,636-37 (Jan. 11, 2011).

JUVENILE REGISTRATION IN PRACTICE

According to a recent analysis of registration data, there are fewer than 2,000 offenders who are under the age of 18 and who have records listed in the FBI's National Sex Offender Registry (NSOR).⁴ NSOR is the law enforcement-only database that houses official registration information from the jurisdictions.

In practice, the registration of juveniles adjudicated delinquent of serious sex offenses varies widely from jurisdiction to jurisdiction. Prior to SORNA's passage in 2006, there were 36 states that had passed legislation requiring certain adjudicated juveniles to register as a sex offender. Since the passage of SORNA, five states who previously did not register adjudicated juveniles have passed legislation to register certain juvenile sex offenders. There are 11 states that do not register any juvenile adjudicated delinquent of a sex offense.

For the most serious juvenile sex offenders (*i.e.*, juveniles who would be required to register under SORNA's standards), 26 states mandate registration, 11 make such registration discretionary, and three operate a kind of hybrid registration determination (nature of offense combined with certain other objective criteria).⁵ Among those states that register juvenile sex offenders, 16 mandate public registry website posting, 9 make such posting discretionary, and 15 prohibit such posting.

⁴ David L. Harlow, Deputy Dir., U.S. Marshals' Serv., Remarks on the 10-Year Commemoration of the Adam Walsh Act (July 27, 2016), <http://www.smart.gov/pdfs/USMS-Deputy-Director-Harlow-Remarks-forthe-SMART-Symposium.pdf>.

⁵ SMART SUMMARY: PROSECUTION, TRANSFER, AND REGISTRATION OF SERIOUS JUVENILE SEX OFFENDERS (2015), <http://www.smart.gov/pdfs/SMARTSummary.pdf>.

BEYOND REGISTRATION: IN THE JURISDICTIONS

Juveniles who have committed serious sex offenses are a unique population of concern for local, tribal, state, and federal courts. In response to this reality, systems have been developed that seek to effectively prosecute, sentence, treat, manage, and supervise such juveniles.

In addition to registration and notification procedures, such efforts include, but are not limited to:

- Sentencing procedures tailored to serious juvenile sex offenders;
- Waiver provisions for juveniles who have committed serious sex offenses;
- Specialized juvenile sex offender probation officers;
- Detention facilities specifically designed for juvenile sex offenders;
- Ongoing dynamic assessments of risk;
- Dedicated efforts to respond to a juvenile's particular risk factors;
- Long-term community supervision of juvenile sex offenders;
- Restrictions on employment for serious juvenile sex offenders (*e.g.*, prohibitions on working with young children or other vulnerable populations);
- Effective and ongoing information sharing about serious juvenile sex offenders with relevant community entities, such as the school at which the juvenile is enrolled; or
- Submission of information about the adjudication of a serious sex offense to the relevant FBI databases, such as III and NSOR.

JUVENILE SUPPLEMENTAL GUIDELINES

On August 1, 2016, the Juvenile Supplemental Guidelines were published in the Federal Register.⁶

In the event that a jurisdiction does not exactly conform with the juvenile registration requirements under SORNA, the Juvenile Supplemental Guidelines permit the SMART Office to expand its inquiry in the process of making a determination as

to whether a jurisdiction has substantially implemented SORNA's juvenile registration provisions. Specifically, the Juvenile Supplemental Guidelines allow the SMART Office to review the following:

- (i) Policies and practices to prosecute as adults juveniles who commit serious sex offenses;
- (ii) Policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and
- (iii) Other policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are available as needed for public safety purposes.

The SMART Office will determine that a jurisdiction relying on these factors has substantially implemented SORNA's juvenile registration requirement only if it concludes that these factors, in conjunction with that jurisdiction's other policies and practices, have resulted or will result in the registration, identification, tracking, monitoring, or management of juveniles who commit serious sex offenses, and in the availability of the identities and sex offenses of such juveniles as needed for public safety purposes, in a manner that does not substantially disserve SORNA's objectives.

GUIDANCE FOR JURISDICTIONS

Jurisdictions whose provisions do not strictly meet SORNA's standards and who wish to submit information to the SMART Office under the provisions of the Juvenile Supplemental Guidelines should contact the Senior Policy Advisor assigned to their jurisdiction for additional guidance. General inquiries regarding the Juvenile Supplemental Guidelines may be directed to AskSmart@usdoj.gov.

⁶ 81 Fed. Reg. 50,552 (Aug. 1, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-08-01/pdf/2016-18106.pdf>.