

Summary of Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act (SORNA)

How SORNA Implicates Juveniles

Section 111(8) provides that delinquency adjudications count as convictions if the youth is 14 year old or older at the time of the offense and the offense was comparable to or more severe than aggravated sexual abuse as defined by Section 2241 of Title 18 of the United States Code, or was an attempt or conspiracy to commit such an offense.

Section 2241 of Title 18 of the United States Code defines “aggravated sexual abuse as follows:

- 1) knowingly causes another person to engage in a sexual act by using force against that other person; or
- 2) knowingly causes another person to engage in a sexual act by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or
- 3) attempts to do so; or
- 4) knowingly renders another person unconscious and thereby engages in a sexual act with that other person; or
- 5) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct; and engages in a sexual act with that other person; or
- 6) attempts to do so; or
- 7) crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years; or
- 8) knowingly engages in a sexual act with another person who has not attained the age of 12 years; or
- 9) knowingly engages in a sexual act under the circumstances described above with another person who has attained the age of 12 years but has not attained the age of 16 years and is at least 4 years younger than the person so engaging; or
- 10) attempts to do so.

Juveniles implicated by SORNA are all Tier III offenders, which means they must initially register for life and may be eligible for removal after 25 years if they have maintained a “clean record” for that period of time, i.e., (1) the registrant must not have been subsequently convicted for any sex offense, (2) must have successfully completed any periods of supervised release, probation and parole and (3) must have successfully completed an appropriate sex offender treatment program certified by a state or the Attorney General. Tier III offenses are limited to offenses punishable by imprisonment of more than one year.

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Required Registration Information

SORNA mandates minimum informational content for offender registries, which includes:

- Names and aliases, including nicknames;
- E-mail addresses
- Telephone numbers
- Social Security number
- Residential addresses
- Travel and immigration documents
- Employer name and address
- Professional licenses
- School information and address
- Vehicle information, including license plate number and description of vehicle
- Date of Birth
- Physical description of offender
- Information related to victim's identity
- Text of Registration offense
- Delinquent or criminal history, including arrests that did not result in a conviction
- Current photograph
- Fingerprints and palm prints
- DNA
- Driver' license or I.D. card

Homeless youth are not exempt. Youth who lack a fixed abode must provide information related to the part of the City the youth habitually frequents, park or spot on the street where the youth stations him or herself during the day or sleeps at night, shelter among where s/he circulates, or public buildings, restaurants, libraries or other establishments the youth frequents. In addition, SORNA provides that jurisdictions must require offenders to provide information about any place in which the offender is staying for seven or more days, i.e., youth are required to supply the location and period of time the youth may be staying when on extended vacation, or at a camp, etc.

Items in red are required exemptions under SORNA, which means this information cannot be posted to a public registry to which the general public has access. Items in blue are required inclusions under SORNA, which means this information must be posted a public registry to which the general public has access. Items in black are discretionary, meaning the state is free to choose whether the information is posted to the public registry or not.

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Community Notification Requirements

The aforementioned required information, other than the information exempted from disclosure, is to be provided to:

- the Attorney General for inclusion in the National Sex Offender Registry;
- law enforcement agencies where the youth resides or is an employee and/or a student;
- jurisdictions where the youth resides or is an employee and/or student and each jurisdiction to or from which a change of residence, employment or student status occurs; and
- national Child Protection Act agencies, including—
 - any agency responsible for conducting employment-related background checks,
 - schools,
 - public housing agencies,
 - social services entities,
 - volunteer organizations where contact with minors or other vulnerable individuals may occur and
 - any organization, company or individual who requests such notification.

Methods of Implementation

SORNA does not require that its standards be implemented by statute. When assessing compliance, the totality of the jurisdiction's rules will be considered, including administrative policies and procedures, as well as statutes.

In addition, jurisdictions are free to contract out to individuals and entities who may not be governmental agencies or employees, e.g., contractors, volunteers and community-based organizations that are capable of discharging the registration and notification functions.

Threshold for Compliance

Generally, the SMART Office will determine whether a jurisdiction has “substantially implemented” SORNA, and will consider on a state-by-state basis whether a jurisdiction's rules or procedures that do not exactly follows the provisions of SORNA do or do not satisfy substantial implementation.

Exception: SORNA includes a special provision for cases in which the highest court of a jurisdiction has held that the jurisdiction's constitution is in some respect in conflict with the SORNA requirement

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Sanctions for Non-Compliance

Generally, each state must achieve substantial compliance with SORNA by July 27, 2009. The Attorney General is authorized to provide up to two one-year extensions. Failure to comply within the applicable time frame will result in a 10% reduction in the state's Byrne grant funding.

The mandatory 10% reduction in federal justice assistance funding for jurisdictions that fail to substantially comply with the Act is specifically affected by a jurisdiction's compliance or non-compliance with the Act's registration and notification standards. Compliance or non-compliance with other provisions of the Act does not affect funding.

The Scope of Retroactivity

The proposed guidelines provide that the mandates of SORNA are retroactive for the following three classes of individuals:

- Those who are currently confined, incarcerated or under state supervision for the predicate sex offense or some other offense;
- Those who are already registered or subject to a pre-existing registration requirement under state law; and
- Those who reenter the systems because of an adjudication or conviction for some other offense, whether or not a sex offense.

A jurisdiction will be deemed to have substantially implemented the SORNA standards if it registers these offenders whose predicate convictions predate the enactment of the Act.

Implications for Native American Tribes

SORNA generally affords tribes a choice between electing to carry out the registration and notification requirements of SORNA in relation to offenders subject to their jurisdiction, or delegate those functions to the State(s) in which they are located. This choice must be made by July 27, 2007, or if that is not feasible, as soon thereafter as possible. If a tribe fails to make a determination, jurisdiction is automatically conferred upon the State(s). In addition, if a tribe elects to carry out the functions itself, but the Attorney General determines that the tribe has not substantially implemented the requirements, the Attorney General may delegate these functions to the state(s).