



July 27, 2011

SORNA Substantial Implementation Review State of Mississippi

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 Mississippi 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 Mississippi's SORNA substantial implementation packet and has found the State of Mississippi to have substantially implemented SORNA.

On July 1, 2011, the Mississippi Department of Public Safety submitted a substantial implementation package that included a completed Substantial Implementation Checklist-Revised, documentation of cooperation with the Mississippi Band of Choctaw Indians, Mississippi statutes relevant to the sex offender registry, Criminal Information Center Policy, sex offender registration forms, documentation of SORNA Exchange Portal usage, screenshots of the state's public sex offender registry website, and Sex Offender Registry Tool (SORT) documentation.

Our review of these 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 Mississippi 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, Mississippi 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.

Mississippi 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.

Mississippi meets all of the SORNA requirements in this section.

III. Tiering of Offenses

For clarification purposes, the SMART Office has reviewed all statutes identified in Mississippi's registration and notification scheme and has placed these statutes within the SORNA three tier levels (see appendix "Mississippi Offense Tiering Review" for a detailed analysis regarding this subsection of the review).

Mississippi meets all of the SORNA 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. Mississippi captures nearly all required information, with the following exceptions. Mississippi does not appear to collect "dates of travel" under the Temporary Lodging Information category. Additionally, SORNA requires registration information for all vehicles owned by the offender; Mississippi captures this information only for those vehicles that the offender might reside in.

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

Mississippi 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.

Mississippi 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).

Mississippi 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.

Mississippi 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. Mississippi has three categories of registrants for purposes of its duration of registration and frequency of registration requirements, which meet SORNA requirements: Tier I registrants, required to register for a minimum of 15 years and quarterly verify registration information; Tier II registrants, required to register for a minimum of 25 years and quarterly verify registration information; and Tier III registrants, required to register for life and quarterly verify registration information.

SORNA allows two classes of sex offenders to have a reduced registration period, provided certain requirements are met. The first is any Tier I offender and the second is a Tier III offender who is required to register because of a juvenile adjudication. While Mississippi does not allow reduced registration for Tier I offenders, their allowance of Tier III offenders to have a reduced registration period deviates from SORNA requirements. In Mississippi, a first time offender 14 years of age or older adjudicated delinquent in youth court for rape or sexual battery (SORNA equivalents to “aggravated sexual abuse”) is subject to lifetime registration and is eligible to petition to be relieved of the duty to register after 25 years of registration. However, the “clean record” provisions identified in SORNA do not have to be met; rather Mississippi only requires that the offender not have been incarcerated for any offense during his/her registration period.

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

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.

Mississippi meets all of the SORNA 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.

Mississippi is actively implementing the SORT program and is utilizing the SORNA Exchange Portal to initiate and receive tasks. Additionally, Mississippi is providing all necessary information to NSOPW.

Mississippi 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. Mississippi's penalty for violating registration provisions deviates from SORNA's requirement. A registration violation in Mississippi is considered a felony that is punishable by a fine of not more than \$5,000 or imprisonment for not more than five years, or both fine and imprisonment. To meet the provisions of this section, Mississippi must not allow a monetary penalty to supplant a term of imprisonment for failure to comply with registration requirements.

This deviation does not substantially disserve the purposes of this requirement 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.

Mississippi 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 to investigate the absconder and notify various law enforcement agencies.

Mississippi meets all of the SORNA requirements in this section.

XV. Tribal Considerations

Prior to August 16, 2010 the Mississippi Department of Public Safety (MSDPS) was charged with the oversight of all sex offenders, within Mississippi, convicted of a registerable sex offense. This included the members of the Mississippi Band of Choctaw Indian (MBCI). As of July 21, 2010 there were 47 MBCI members that were registered with MSDPS. The MBCI, as a matter of self governance, elected to be a SORNA registration jurisdiction and establish a sex offender registry. The registry includes members of their tribe which live and work upon MBCI land.

MBCI and MSDPS worked together to implement MBCI's Sex Offender Registry. Memoranda of Understanding (MOU) were developed between MSDPS and MBCI. These MOUs included the receipt of DNA from MBCI and the storage of DNA and entry of the DNA unto the Combined DNA Index System (CODIS) by the MDPS Crime Lab. Also the MDPS Crime Lab authorized connectivity for MBCI to submit fingerprints and palm prints to be maintained in the Automated Fingerprint Identification System (AFIS). MBCI already had access to NCIC through MSDPS. MSDPS also assisted MBCI in obtaining the permissions needed to transmit data directly from Choctaw Sex Offender Registry (CSOR) to the FBI's National Sex Offender Registry.

Regarding the sharing of correctional information between MSDPS and MBCI, MSDPS does not have control over correctional information. Rather, the Mississippi Department of Corrections (MDOC) maintains and controls this information. However, MSDPS can share any correctional information available in the sex offenders' files with MBCI or request additional informational from MDOC to share. MBCI may also request information directly from MDOC. Additionally, MSDPS can request correctional information from MBCI and from the Federal Bureau of Prisons for information sharing purposes.

The primary State contact for MBCI is:

Eric Amundson
Director, Special Processing Unit
Department of Public Safety
Bureau of Investigations
Hwy 468w
Pearl, MS 39208
601-933-2646
EAmundson@dps.ms.gov

The MBCI CSOR point of contact is:

Captain Robert York, Sr.
125 River Ridge Circle
Choctaw, MS 39350
601-663-7920
ryork@choctaw.org

As the SMART Office continues to work with Mississippi on SORNA implementation, we will notify the tribe within the state of any processes, policies, or procedures that facilitate the sharing of criminal justice information with the tribe.

Conclusion

Mississippi has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. We encourage Mississippi to continue to work towards meeting all the provisions of SORNA and to work with SMART office personnel to maintain Mississippi's status as having substantially implemented SORNA. Mississippi is expected to keep the SMART Office apprised 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: Mississippi Offense Tiering Review

The SMART Office has reviewed all Mississippi statutes identified in its substantial implementation submission package and has identified Mississippi'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). It should be noted that SORNA requires all attempts, conspiracies, and solicitations to mirror requirements of the actual offense. 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 Mississippi. It is possible that other offenses will need to be included in Mississippi's sex offender registry to substantially implement SORNA. For more guidance on SORNA classes of offenders, see 42 USC § 16911 and Section V (pages 21-25) of the National Guidelines for Sex Offender Registration and Notification (June 2008).

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

1. Tier I registrants, required to register for 15 years and quarterly verify registration information;
2. Tier II registrants, required to register for 25 years and quarterly verify registration information; and
3. Tier III registrants, required to register for life and quarterly verify registration information.

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 Mississippi Code would require, at a minimum, Tier I registration requirements under SORNA.

- § 97-29-3. Adultery and fornication; between teacher and pupil.
 - Tier II registration exceeds SORNA requirements (misdemeanor offenses are Tier I under SORNA).
- § 97-29-63. Photographing, taping, or filming person in violation of expectation of privacy.
 - Tier II registration exceeds SORNA requirements (video voyeurism of minor is a Tier I offense under SORNA).
- § 97-3-104. Crime of sexual activity between law enforcement personnel and prisoners.
 - Tier II registration exceeds SORNA requirements (non-forcible sexual acts with victim 18 years of age or older are Tier I under SORNA).
- § 43-47-18(2). Fondling vulnerable adult by health care employees or persons in position of trust or authority.

- Tier II registration exceeds SORNA requirements (offenses involving sexual contact with victim 18 years of age or older are Tier I under SORNA).
- § 97-5-33(5). Exploitation of children.
 - Tier II registration exceeds SORNA requirements (possession of child pornography is a Tier I offense under 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 Mississippi Code would require, at a minimum, Tier II registration requirements under SORNA.

- § 97-3-54.1(1)(c). Anti-Human Trafficking Act.
 - Tier III registration exceeds SORNA requirements (offenses involving enticing or transporting minor for any criminal sexual act are Tier II under SORNA).
- § 97-3-54.3. Anti-Human Trafficking Act; aiding, abetting, or conspiring to violate anti-human trafficking provisions.
 - Tier III registration exceeds SORNA requirements (offenses involving conspiring to entice or transport a minor for any criminal sexual act are Tier II under SORNA).
- § 97-5-23. Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person.
 - If victim 13 – 18 years of age this is a Tier II offense under SORNA, otherwise Tier III under SORNA.
- § 97-5-33(1-4, 6-8). Exploitation of children.
 - Tier III registration exceeds SORNA requirements (offenses involving use of a minor in sexual performance, distribution of child pornography, and enticing a minor for any criminal sexual act are Tier II under SORNA).

Tier III Offenses

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

- § 97-3-65. Rape; carnal knowledge of child under fourteen years of age.
- § 97-3-71. Rape; assault with intent to ravish.
- § 97-3-95. Sexual battery.

- § 97-5-41. Carnal knowledge of step or adopted child; carnal knowledge of child by cohabitating partner.
- § 97-3-53. Kidnapping.
- § 97-5-23. Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person.
 - If victim under 13 years of age, otherwise Tier II under SORNA.
- § 43-47-18(1)(a, b, c). Sexual battery of vulnerable adult by health care employees or persons in position of trust or authority.
- § 97-5-39(1)(c). Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child, if the victim was sexually abused.

Further Review

In reviewing the statutes that Mississippi cited as those that are registerable offenses under Mississippi's registration scheme, the SMART office did notice offenses that do not require registration under SORNA:

- § 97-29-59. Unnatural intercourse.
- § 97-29-45. Profane and indecent language over telephone.
- § 97-5-27. Dissemination of sexually oriented material to persons under 18 years of age.