

## **SORNA Substantial Implementation Review State of South Dakota**

The U.S. Department of Justice, Office of Justice Program, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the State of South Dakota 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 South Dakota's SORNA substantial implementation packet and has determined that the State of South Dakota has substantially implemented SORNA.

In April 2010, the South Dakota Office of Attorney General submitted a substantial implementation submission package that included a Substantial Implementation Checklist, an Explanation Sheet to accompany the answers in the checklist, relevant state statutes, various legislative bills that were to go into effect July 1, 2010, a letter from South Dakota Division of Criminal Investigation Lab Director Craig Price regarding information sharing capabilities, and a draft Joint Powers Agreement with the Standing Rock Sioux Tribe. In addition, email and telephone correspondence with the South Dakota Office of Attorney General filled in gaps in information and procedure, which informed our review.<sup>1</sup>

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist—Revised. We have highlighted those areas that are not in conformity with the SORNA guidelines. 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 registration/updated information is immediately sent to other jurisdictions where the offender has to register, as well as to NSOR and the jurisdiction's public sex offender registry website. South Dakota meets these requirements. South Dakota Codified Laws § 22-24B-21 allows for five days for the jurisdiction's public registry website to be updated with changes to an offender's information; however, South Dakota registry officials have indicated that this update actually only takes up to three days.

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.

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<sup>1</sup>Email and telephone correspondence with Attorney General officials from June 7, 2010 to July 23, 2010.

## **II. Terminology**

SORNA provides a definition of “Jurisdiction” that refers to the 50 States, the District of Columbia, the five principal U.S. territories (i.e., the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the United States Virgin Islands) and Indian tribes that elect to function as registration jurisdictions under 42 U.S.C. §16927.

South Dakota does not define “jurisdiction” for purposes of sex offender registration and notification; however, South Dakota recognizes convictions (for purposes of registration in South Dakota) from federal courts, military courts, the courts of other states, and the courts of the five principal U.S. territories.

For more guidance on SORNA’s definition of “Jurisdiction”, see Section III (pages 11-12) of the National Guidelines for Sex Offender Registration and Notification (June 2008).

South Dakota does not define “sex offense” for purposes of sex offender registration and notification; however, the term “sex crime” utilized in South Dakota’s registration statute concerns the crimes that are enumerated and specified in 22-22-1; § 22-22-7; § 22-22-7.2; § 22-22A-2 (if the offender is an adult); § 22-22A-3 (if the offender is an adult); § 22-22A-3.1 (if the offender is an adult); § 22-24A-3; § 22-24A-1; § 22-22-24.3; § 22-19-1 (if the victim of the criminal act is a minor); 22-23-2(2); § 22-22-30.1; § 22-24-1 § 22-24-1.2; § 22-24A-5; § 22-24-1.3; § 22-22-42; § 22-22-7.6 (if the victim of the criminal act is a minor); § 22-22-28 (if the victim of the criminal act is a minor); § 22-22-29 (if the victim of the criminal act is a minor); subdivision (1) of § 22-18-31(1) (if the victim of the criminal act is a minor). Those statutes specify the South Dakota sex offenses for which registration is required.

The SMART Office has considered the above deviations from SORNA’s requirement, and has determined that they do not substantially disserve the purposes of this requirement.

## **III. Offenses that Must Be Included in the Registry**

South Dakota registers all of the offenses that SORNA requires South Dakota to register. In § 22-24B-1, South Dakota lists the three categories of non-South Dakota offenses that it captures:

- (16) Any crime committed in a place other than this state which would constitute a sex crime under this section if committed in this state;
- (17) Any federal crime or court martial offense that would constitute a sex crime under federal law;
- (18) Any crime committed in another state if that state also requires that anyone convicted of that crime register as a sex offender in that state.

In addition, § 22-24B-31 requires that South Dakota register “[a]ny person with a foreign criminal conviction, which requires the person to register either as a sex offender pursuant to

§ 22-24B-2, pursuant to the laws of the state where the conviction took place, or pursuant to any court order.” In this instance, a “foreign” criminal conviction includes a conviction issued by a court of competent jurisdiction of any other jurisdiction, including a foreign country or Indian tribe (per § 22-24B-29). This meets SORNA requirements.

#### Juvenile Adjudications

Meets SORNA requirements.

#### **IV. Tiering of Offenses**

The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified South Dakota’s placement of these statutes within the three SORNA tier levels (see attached “South Dakota Offense Tiering Review” for a detailed analysis regarding this subsection of the review). South Dakota correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions (see “South Dakota State Statutes” beginning on page 8 for information about South Dakota’s classification of its offenders and associated registration requirements):

- § 22-22-1(5) (statutory rape [where the offender is 21 or younger] [if the victim is between 16 and 17 years of age and the offender is more than four years older than the victim]) listed as a South Dakota Tier I offense. This does not meet SORNA’s requirements; involves a consensual sexual act with a minor between 16 and 17, which is a Tier II offense under SORNA.
- 22-22-7 (sexual contact with child under 16 [victim between ages of 13 and 16] [where the offender is 21 or younger] [offender more than four years older than the victim]) listed as a Tier I offense. This does not meet SORNA’s requirements; involves sexual contact with a minor who is 13-16, which is a Tier II offense under SORNA.

South Dakota does meet SORNA’s re-offense requirements, with a few exceptions. To fully meet SORNA’s requirements, both versions of §22-22-1(5) noted just above must be re-tiered as described above, and the second version of § 22-22-1(5) (where the victim is between 16 and 17 years of age) as well as the version of 22-22-7 above are both offenses for which, if there is any later felony conviction, the offender must be classified as a Tier III offender under SORNA.

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.

For more guidance on SORNA classes of offenders, see 42 USC § 16911 and Section V (pages 21-25) of the National Guidelines.

## **V. Required Registration Information**

SORNA requires sex offender registration information in 20 primary categories. South Dakota correctly captures information under all of these categories, with some exceptions.

In terms of vehicle information, South Dakota only collects information on motor vehicles, not other kinds of vehicles. South Dakota also does not collect information on permanent or frequent locations where vehicles are kept.

South Dakota does not currently meet the SORNA requirements for including the text of the registration offense on its registry. The state does include a link to all of its sex offender registry statutes on its public website; currently, however, there is no such link on each individual offender's page. The state has completed an upgrade whereby it will have, for each offender, an active link to the text of the registration offense(s) for which the offender was convicted on its public website, if the offense is a South Dakota offense. The registry does not include the language of or contain a link to non-South Dakota offenses, nor does the public website include a link to or citation of such offenses.

South Dakota does not collect in the registry the dates of an offender's arrests, information on any outstanding arrest warrants for an offender, and convictions that do not constitute felony adult offenses or registerable sex offenses. All of this information is contained in NCIC. South Dakota also does not collect any passport or immigration documents, or any professional licensing information. Finally, South Dakota does not collect any registration number or identifier for vehicles, nor does it collect a copy of an offender's driver's license or identification card; however, the registry contains license plate numbers, as well as driver's license and identification card numbers.

South Dakota's failure to collect any passport or immigration documents is of particular concern to the SMART Office, because this information is crucial to effectively tracking sex offenders who enter and leave the country. In addition, South Dakota's failure to collect professional licensing information troubles the SMART Office, because this information is crucial to effectively monitoring sex offenders in the context of the offenders' employment. Nevertheless, 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. The SMART Office encourages South Dakota to work to expand the registration information it collects to include the information listed above.

For more guidance on specific items of required registration information, see 42 USC §16914 and Section VI (pages 26-33) of the National Guidelines.

## **VI. Where Registration is Required**

Meets SORNA requirements, with one exception. South Dakota does not register offenders who are convicted in South Dakota if the offender will not be incarcerated or residing, working, or attending school there.

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.

## **VII. Initial Registration: Generally**

Meets SORNA requirements.

## **VIII. Initial Registration: Retroactive Classes of Offenders**

SORNA's requirements took effect when the law was enacted on July 27, 2006, and they have applied since that time to all sex offenders, including those whose convictions predate SORNA's enactment. The National Guidelines (pages 7-8) further clarify the retroactive provision of SORNA to apply to sex offenders who are in (or reenter) the system because they are incarcerated or under supervision, either for the predicate sex offense or for some other crime; they are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; or they reenter the jurisdiction's justice system because of conviction for some other crime (whether or not a sex offense).<sup>2</sup>

South Dakota meets SORNA requirements with respect to the retroactive registration of offenders, with one exception: South Dakota does not re-capture offenders who simply re-enter the system with a new non-sex offense. South Dakota has had lifetime registration for most registered offenders since 1994. Until passage of a recent bill that amended § 22-24B-19, only offenders who had been adjudicated delinquent and offenders who had been convicted of statutory rape who were 21 years old or younger at the time of the offense were eligible for removal from the registry (after ten years). Per the revised version of § 22-24B-19, which went into effect on July 1, 2010, offenders who had committed sexual contact under § 22-22-7 (if the victim was between the ages of thirteen and sixteen and the petitioner was at least three years older than the victim, but only if the petitioner was twenty-one years of age or younger at the time the offense was committed) are now eligible for removal from the registry.<sup>3</sup> However, because of the additional eligibility requirements for removal, the number of offenders who would evade re-capture because of these removal provisions is not great and therefore this deviation does not substantially disserve the purposes of this SORNA requirement.

For more guidance on the registration of the retroactive class of offenders, see Part IX (pages 45-47) of the National Guidelines.

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<sup>2</sup> Under SORNA's proposed Supplemental Guidelines, a jurisdiction need only re-capture offenders who re-enter the jurisdiction's justice system for a felony.

<sup>3</sup> Under South Dakota Legislature Senate Bill 8, which went into effect July 1, 2010, an offender who has committed a registerable offense in another state is ineligible to petition for removal from the South Dakota sex offender registry unless he is also eligible to petition, under substantially equivalent provisions, for removal from the registry in the state where the registerable offense occurred.

## **IX. 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, instant message addresses, any other designations used in internet communications, postings, or telephone communications, vehicle information, and temporary lodging information.

Finally SORNA requires that when an offender resides in a jurisdiction, and that offender informs the jurisdiction that he intends to begin residence, school, or employment outside of the United States, that that jurisdiction must, in addition to the aforementioned requirements, immediately provide this updated information to the U.S. Marshals Service, NSOR, and any other jurisdiction where the offender is registered or required to register.

South Dakota meets many of the SORNA requirements in the Checklist Section “Keeping the Registration Current.” For one, South Dakota meets the SORNA requirements that pertain to an offender who notifies South Dakota that he/she intends to move out of the United States.<sup>4</sup> In addition, per 22-24B-6, all offenders must appear in-person within three days of a change in school or employment information to update that information.

According to 22-24B-12, while an offender does have to update the registry within five days of a change in residence or location (including a temporary location), the offender does not have to appear in person to provide this information, as SORNA requires. However, according to South Dakota registry officials, in practice, an offender does generally appear in person within three days to update his residence or location.<sup>5</sup>

South Dakota does not require an offender to immediately update changes to his email addresses; Instant Message addresses; any other designations used in internet communications, postings, or telephone communications; or vehicle information. However, when an offender appears in person to update his residence, location, school, or employment information, he will have to

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<sup>4</sup> According to Peggy Nickerson, Sex Offender Compliance Coordinator for the South Dakota Division of Criminal Investigation (DCI), the agency that runs the registry, the DCI has not to this date been informed by a registered offender that he/she intends to leave the United States. However, Ms. Nickerson has indicated that, if DCI was so notified, the agency would follow the procedures outlined by SORNA for notifying the appropriate jurisdictions and agencies of this information.

<sup>5</sup> According to Peggy Nickerson, when the DCI created its online registry in 2009, it was determined that, to retain the integrity of the registry, an offender must be present for any changes made to his/her registry. In addition, according to Jon Strohman, Assistant Attorney General from the South Dakota Office of the Attorney General, it was South Dakota’s intent to encompass this statute in Senate Bill 10, which was recently enacted and which changed many of South Dakota’s registration-related timeframes from five days to three days. According to Mr. Strohman, South Dakota’s failure to include this statute was simply an oversight.

confirm that *all* of his registration information, including vehicle information and information regarding his internet or telephone designations, is up-to-date.

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.

Upon a temporary change in address or location, South Dakota does immediately notify the jurisdiction where the offender will be temporarily staying.

## **X. Verification/Appearance Requirements**

Meets SORNA requirements, with a few exceptions. Under SORNA, Tier III offenders must appear once every three months; however, South Dakota only requires such offenders to appear once every six months. In addition to requiring the biannual appearance, South Dakota takes two additional steps to verify the location and registration information of each offender on an annual basis, as follows:

Pursuant to § 22-24B-5, the Division of Criminal Investigation mails a nonforwardable verification form at least once annually to the last reported address of each offender. The offender must sign and return the form and shall state that he/she still resides at the address last reported to DCI. If the offender fails to return the form to DCI within 15 days of receiving the form, DCI and the Office of the Attorney General are informed, the local sheriff is notified, and local law enforcement will attempt to locate the offender. As the offender is subject to prosecution for a violation of this section, DCI advises local law enforcement to involve the local state's attorney's office. A violation of 22-24B-5 is a strict liability felony offense for which nonreceipt of the verification form is not a defense.

In addition, pursuant to 22-24B-8.1, the chief of police in the municipality or the sheriff of the county in which the sex offender resides annually confirms that the residence address that the offender has listed on the registry is the offender's actual address. This information is submitted to DCI.

### Reduction of Registration Periods<sup>6</sup>

South Dakota does not fully meet the SORNA requirements related to reduction of registration periods. South Dakota has made eligible for removal after ten years of registration a handful of offenses. However, under SORNA, a few of the enumerated offenses are not eligible for such a removal. The offenses not eligible include:

- § 22-22-1(5), statutory rape (where the offender is 21 or younger) (unless the victim is 13 or older and the offender is not more than four years older than the victim); and
- § 22-22-7, sexual contact with child under 16 (victim between ages of 13 and 16) (where the offender is 21 or younger) (where the offender is more than four years older than the victim).

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<sup>6</sup> See footnote 2, *infra*, for additional guidance as to the eligibility of certain out-of-state offenses for removal.

In addition, South Dakota does not meet the SORNA requirements related to reduction of registration periods for offenders who are registered based on a juvenile adjudication. South Dakota makes such offenders eligible for removal after ten years with a “clean record;” however, under SORNA, offenders who are required to register based on a delinquency adjudication are only eligible for removal after 25 years with a “clean record.” In addition, South Dakota’s criterion for eligibility for registry removal is missing two pieces that are a part of SORNA’s “clean record” definition: successful completion of any supervised release, probation, or parole; and successful completion of an appropriate sex offender treatment program certified by the jurisdiction or by the Attorney General.

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.

For more guidance on the reduction of the registration period, see Part XII (pages 56-58) of the National Guidelines.

## **XI. Registry Website Requirements**

SORNA mandates that jurisdictions publish various sex offender-related information on the individual jurisdiction’s public registry website. Jurisdictions must participate fully in the Dru Sjodin National Sex Offender Public Website (NSOPW), and the individual jurisdiction’s public website must include all of the field search capabilities that NSOPW has. In addition, the jurisdiction’s website must include links to sex offender safety and education resources, instructions on how to seek a correction of allegedly erroneous information, a warning that the website should not be used to harass or harm individuals named on the website, absconder information on the offender, information on any other sex offense for which the sex offender has been convicted, the sex offense for which the offender is registered, employer address, the offender’s name, a current photograph of the offender, a physical description of the offender, the offender’s resident address, the offender’s school address, and the offender’s vehicle information.

South Dakota does meet most of SORNA’s requirements with regard to its public registry website. However, South Dakota does not include employer address, school address, or vehicle information of the offender on its public registry website. South Dakota also does not currently include a citation to the statute under which the offender was convicted; however, the state has completed an upgrade that will allow it to have, for each offender, an active link to the text of the registration offense(s) for which the offender has been convicted.

Although South Dakota does not include employer address, school address, or vehicle information of the offender on its public registry website, the state does provide a notice on its public registry website informing the public that such information is available and providing instructions on how to access it. This notice is near the top of the home page of the state’s public



registry website, and is a portion of the disclaimer that an individual must acknowledge before being able to run a search on the site.<sup>7</sup>

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. Although South Dakota does ensure that members of the public have access to key information regarding registered sex offenders, if all of this required information were available on the public website, members of the public would be able to conduct geographic searches to determine if there are any sex offenders working or attending school within the vicinity of a particular address, as Congress intended. The SMART Office encourages South Dakota to plan to make this information available directly from its public website.

## **XII. Community Notification**

### Law Enforcement Community Notification

SORNA requires that jurisdictions immediately notify specific agencies of the initial registration or the changes to an offender's registration information, and make the updated information available to these agencies.

South Dakota does notify law enforcement agencies when an offender who is incarcerated or about to be released on probation indicates what his residence address will be upon release, per § 22-24B-13. In addition, as indicated in § 22-24B, sections 9-11, South Dakota does make all registration information, including updated information, available to NSOR, other SORNA jurisdictions, and state, county, and local law enforcement agencies.

However, South Dakota does not always actively notify prosecutors' offices, probation agencies, and National Child Protection Act agencies of initial or updated registration information.

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.

For more guidance on these notification requirements, please refer to Part VII (pages 38-40) of the National Guidelines.

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<sup>7</sup> The language of this notice reads as follows: "The Division of Criminal Investigation does its best to assure that the information presented here is accurate and current. This site is updated on a regular basis; however the information can change quickly. It is possible that information accessed or obtained through this Web site may not reflect current residences, employment, school attendance, or other information regarding such individuals. This current registration information is available to you. Pursuant to SDCL 22-24B-10 'An offender's registration compliance status and registration information, other than the registrant's social security number, victim name, DNA sample, and the names, addresses, and phone numbers for local contacts and next of kin are public information.' This additional public registration information can be viewed at the police station of the municipality in which the sex offender resides, temporarily domiciles, attends school, attends postsecondary education classes, or works. If no chief of police exists for that location, then the information will be with the sheriff of that county."

General Community Notification

Meets SORNA requirements.

**XIII. Failure to Register**

Meets SORNA requirements.

**XIV. When a Sex Offender Fails to Appear for Registration**

Meets SORNA requirements.

**XV. When a Jurisdiction has Information that a Sex Offender may have Absconded**

Meets SORNA requirements.

**South Dakota Indian Tribes**

State contact with SORNA tribes

South Dakota has eight Indian tribes, all of which have elected to function as SORNA registration jurisdictions: the Cheyenne River Sioux Tribe, the Crow Creek Sioux Tribal Council, the Flandreau Santee Sioux Executive Committee, the Lower Brule Sioux Tribal Council, the Oglala Sioux Tribal Council, the Rosebud Sioux Tribal Council, the Sisseton - Wahpeton Oyate of the Lake Traverse Reservation, the Yankton Sioux Tribal Business and Claims Committee, and the Standing Rock Sioux Tribal Council. It is uncertain how many of the tribes South Dakota has had contact with regarding registration and notification.

Point of Contact for the State

South Dakota has indicated in writing that the Office of the Attorney General is the official Point of Contact for the South Dakota Indian tribes with regards to SORNA implementation. Specifically, the Assistant Attorney General who is legal counsel for the sex offender registry will be the designated Point of Contact. Currently, that Assistant Attorney General is John Strohman.

Information Sharing arrangements, to include: DNA, Fingerprints, Criminal History, and Corrections Information

South Dakota has indicated that the state's Forensic Laboratory is working on an agreement with tribal agencies to provide DNA swab kits, analysis and DNA database entry to and for tribal agencies at no cost to the tribes. The database entry would include entry into CODIS.

## Memoranda of Understanding and Cooperative Agreements

South Dakota has worked closely with the Standing Rock Sioux Tribal Council to develop a draft Joint Powers Agreement. As currently written, the Joint Powers Agreement requires South Dakota to electronically submit to the tribe all required sex offender registration information when an Indian offender is convicted in a South Dakota state court or has registered with South Dakota, and has indicated an intent to live, work, or attend school on the tribal lands. In addition, under the Joint Powers Agreement, when either the tribe or the state has declared one of its offenders to be an absconder, that jurisdiction will notify the other by electronic communication within three business days.

South Dakota's willingness to collect, analyze, and submit DNA samples to CODIS of offenders under tribal jurisdiction will assist these tribes with implementing SORNA. In addition, South Dakota has made significant efforts to engage in information sharing with the Standing Rock Sioux. The SMART Office encourages South Dakota to modify its drafted Joint Powers Agreement with the Standing Rock Sioux to also allow for the state to send registration information on *non*-Indian offenders who have indicated an intent to live, work, or attend school on tribal lands. The SMART Office also encourages South Dakota to develop additional Joint Powers Agreements with other South Dakota tribes.

### **Conclusion**

South Dakota has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. The SMART Office has found that South Dakota has substantially implemented SORNA. However, as noted in this report, there are several provisions that South Dakota would have to address in order to fully implement SORNA.

We encourage you to contact the SMART Office once you have had the opportunity to review and discuss our findings. The SMART Office is available to assist the state to develop a strategy for addressing and fully adopting the remaining provisions of SORNA.

## South Dakota State Statutes

The SMART Office has reviewed all South Dakota statutes identified in its substantial implementation submission package and has identified South Dakota'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 South Dakota. Therefore, other offenses might need to be included in South Dakota's sex offender registry for South Dakota to fully 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 South Dakota Code, the SMART Office understands that South Dakota has three categories of registrants.

1. Tier III offenders who are required to register for life and bi-annually verify registration information;
2. Tier II offenders, who are eligible for removal from the registry after 25 years and who must bi-annually verify registration information.
3. Tier I offenders, who are eligible for removal from the registry after 10 years and who must bi-annually verify registration information.

Almost all of South Dakota's offenders are Tier III offenders, who are required to register for life and bi-annually verify registration information.

A few of South Dakota's offenders are "Tier I offenders," who must register for 10 years and bi-annually verify registration information. This category does not meet SORNA's Tier I offender category for duration of registration (SORNA Tier I offenders must register for 15 years); however, it exceeds SORNA's Tier I category for frequency of registration (SORNA Tier I offenders must annually verify registration information). A few of the offenses that South Dakota has placed in its Tier I category are not SORNA Tier I offenses. Statutory rape under § 22-22-1(5) (where the offender is 21 or younger) is not a SORNA Tier I offense. Rather, if the victim is under 13 or if the offender is more than four years older than the victim, this is a SORNA Tier III offense. If the victim is between 16 and 17 years old, this is a SORNA Tier II offense. In addition, sexual contact with a child under 16 under § 22-22-7 (where the victim is between the ages of 13 and 16, and where the offender is 21 or younger but more than four years older than the victim) is not a SORNA Tier I offense. Because this offense involves sexual contact with a minor who is 13-16, it is a Tier II offense under SORNA.

A few of South Dakota's offenders are "Tier II offenders," who must register for 25 years and bi-annually verify registration information. This category meets SORNA's Tier II offender category for both duration of registration and frequency of registration. The offenses that South Dakota has placed in its Tier II category – Incest under § 22-22A-2 and Bestiality under 22-22-42 – are not registerable offenses under SORNA. Therefore, South Dakota's placement of these offenses in its Tier II category exceeds SORNA's requirements.

The remainder of South Dakota' offenders are "Tier III offenders," who must register for life and bi-annually verify registration information. This category meets SORNA's Tier III offender category for duration of registration; however, it does not meet SORNA's Tier III offender category for frequency of registration. Therefore, the rest of the offenders that South Dakota registers either meet or exceed SORNA's requirements for duration of registration; however, they may not meet SORNA's requirements for frequency of registration.

### **Further Review**

The SMART office has not further reviewed the South Dakota Code for additional statutes that might also require registration and are not currently included in South Dakota's sex offender registry scheme. Nonetheless, South Dakota is encouraged to find any and all of the following categories of violations of the criminal law as contained in South Dakota criminal code so as to determine the propriety of requiring registration (to the extent that they are not already included). The following offenses will require registration under SORNA:

1. Any criminal offense that has an element involving a sexual act or sexual contact with another, regardless of the age of the victim;
2. Any offense involving the non-parental kidnapping of a minor;
3. Any offense involving the non-parental false imprisonment of a minor;
4. Any offense involving solicitation to engage a minor in sexual conduct;
5. Any offense involving use of a minor in a sexual performance;
6. Any offense involving solicitation of a minor to practice prostitution;
7. Any offense involving video voyeurism of a minor;
8. Any offense involving possession, production, or distribution of child pornography;
9. Any offense involving criminal sexual conduct involving a minor; or
10. Any offense involving the use of the internet to engage a minor in criminal sexual conduct.

South Dakota is in a better position than the SMART office to review its criminal laws for any additional offenses which might warrant inclusion. The SMART office is happy to review any proposed additional tiering decisions.