



July 2011

SORNA Substantial Implementation Review State of South Carolina

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 South Carolina 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 Carolina's SORNA substantial implementation packet and has determined that the State of South Carolina has substantially implemented SORNA.

In January and April 2011, the South Carolina Law Enforcement Division (SLED) submitted a substantial implementation submission package that included a filled-in copy of the Substantial Implementation Checklist, a tiering reference document, relevant state statutes, relevant state administrative rules, and relevant state policies and procedures. In addition, email and phone correspondence with the South Carolina Law Enforcement Division filled in gaps in information and procedure, which informed our review.¹

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, and contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether South Carolina meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify where the departure(s) from a particular requirement does not substantially disserve the purposes of that requirement.

While South Carolina is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, this is not required for substantial implementation purposes. This report is an exhaustive review and is intended 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.

¹The SMART Office had email and phone correspondence with Natalie Spires, Sex Offender Registry Program Coordinator for SLED; Susan Porter, General Counsel to SLED; Paul Flondarina, Assistant Director and Chief Information Officer of SLED; and Major Richard Hunton, Deputy Director of SLED, between January and July 2011.

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.

South Carolina 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.

South Carolina meets all of the SORNA requirements in this section.

III. Tiering of Offenses

The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified South Carolina's placement of these statutes within the SORNA three tier levels. South Carolina correctly places its statutes within at least the minimum appropriate SORNA tiers.

South Carolina 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.

South Carolina meets SORNA's requirements with respect to the registration information that SORNA requires South Carolina to capture, with some exceptions. South Carolina only requires the collection of temporary lodging information when the sex offender is going to be away from his residence for ten or more days. In addition, South Carolina did not begin to capture DNA from all of its registered sex offenders until 1998; therefore, South Carolina may

not have the DNA of an offender who committed a registerable offense before 1998, unless the circumstances of the crime triggered the collection of DNA under prior law.²

These deviations do not substantially disserve the purposes of the requirements 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.

South Carolina meets all of the SORNA requirements in this section.

VI. Initial Registration: Timing and Notice

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.

South Carolina 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).

All South Carolina registrants have been lifetime, with no possibility for early removal, since South Carolina's registration system was first implemented; therefore, any retroactive application will only affect offenders' requirements with regard to appearances and notification. On July 1, 2010, changes to South Carolina's statutes with respect to those requirements went

² If the offender commits a new registerable offense, South Carolina will collect DNA from him.

into effect. By the end of January 2011, a letter had been sent to all offenders who, as best as the state's sheriffs' offices could determine at that point, were affected by these changes, informing them of any revised registration requirements. Currently, all of the state's sheriffs' offices are reviewing the records of all of their offenders to determine which offenders are SORNA Tier III offenders and required to register quarterly, in an attempt to notify those offenders within the next three months. It is anticipated that *all* offenders whose requirements are affected by SORNA implementation will be notified within the next six months. Therefore, while South Carolina cannot guarantee that all offenders who are SORNA Tier III offenders will be notified of any new appearance and notification requirements within the next three months, the state expects to notify all offenders of any new appearance and notification requirements within the next six months.

This deviation does not substantially disserve the purposes of the 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. 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, that sex offender must immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging 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.

While it is largely being done in practice, South Carolina will add into its protocol a requirement that an offender appear in person to inform registry officials of *termination* of school/employment, if South Carolina is just his school and/or employment jurisdiction.

This deviation does not substantially disserve the purposes of the requirements of 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.

A. Duration of Registration

SORNA requires that offenders register for a duration of time based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA Tier I offenders register for 15 years, that SORNA Tier II offenders register for 25 years, and that SORNA Tier III offenders register for life.

B. Frequency of Registration

SORNA requires that offenders make in-person appearances at the registering agency based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA Tier I offenders appear once a year, that SORNA Tier II offenders appear every six months, and that SORNA Tier III offenders appear every three months.

In addition, SORNA creates certain requirements under which a jurisdiction can allow an offender to have a reduced registration period.

South Carolina meets all of the SORNA requirements 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.

South Carolina 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.

In terms of law enforcement notification, the only set of agencies that does not currently have direct access to the registry are the solicitors' offices in the state, and SLED is in the

process of notifying each solicitors' office that it can have read-only access to the registry if it so desires.

South Carolina 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.

South Carolina meets all of the SORNA requirements 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.

South Carolina 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 in terms of investigating the abscondence and notifying various law enforcement agencies.

South Carolina meets all of the SORNA requirements in this section.

Conclusion

South Carolina has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. However, there are provisions identified in this report that should be addressed in order for South Carolina to fully implement SORNA.

We encourage you to contact the SMART Office once you have had the opportunity to review and discuss our findings and have developed a strategy for addressing and adopting the remaining provisions of SORNA.

Appendix: South Carolina State Statutes

The SMART Office has reviewed all South Carolina statutes identified in its substantial implementation submission package and has identified South Carolina'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). 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 Carolina.

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

Offenders who are required to register for life and appear semi-annually to verify registration information (hereinafter called "the semi-annual offender category").

Offenders who are required to register for life and appear quarterly to verify registration information (hereinafter called "the quarterly offender category").

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

§ 16-3-600(C) **Assault and Battery, First Degree (specifically §16-3-600(C)(1)(a)(i), where the offender unlawfully injures another person and that injury involves nonconsensual touching of the private parts of an adult, and the touching is with the intent to abuse, humiliate, harass, degrade, or gratify the sexual desire of any person)**

Placement of this statute in the quarterly offender category exceeds SORNA's requirements.

§ 16-3-600(D) **Assault and Battery, Second Degree (specifically §16-3-600(D)(1)(b), where the offender unlawfully injures or offers or attempts to injure another person with the present ability to do so, and that injury involves nonconsensual touching of the private parts of an adult, and the touching is with the intent to abuse, humiliate, harass, degrade, or gratify the sexual desire of any person)**

Placement of this statute in the quarterly offender category exceeds SORNA's requirements.

§ 16-3-910 Kidnapping (where the offender is forcibly confining the victim, such that the elements are equivalent to those of the federal offense of false imprisonment)

Placement of this statute in the quarterly offender category exceeds SORNA's requirements.

§ 16-15-305 Disseminating, procuring or promoting obscenity (where the elements of the offense constitute possession or receipt of child pornography)

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

§ 16-17-470(a)(b)(1) Eavesdropping, peeping, voyeurism (where the elements are equivalent to those of the federal offense of video voyeurism, § 18 U.S.C. 1801)

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

§ 16-15-410 Third Degree Sexual Exploitation of a Minor

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

§ 44-23-1150 Sexual Misconduct with a Inmate, Patient or Offender (where the misconduct involves sexual contact, as defined by § 18 U.S.C. 2246, and the victim is an adult)

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

§ 18 U.S.C. 1801 Video Voyeurism of a Minor

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

§ 18 U.S.C. 2252 (Receipt/Possession of child pornography)

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

§ 18 U.S.C. 2252B Misleading Domain Names on the Internet

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

§ 18 U.S.C. 2252C Misleading Words or Digital Images on the Internet

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

§ 18 U.S.C. 2423(b) Travel with Intent to Engage in Illicit Sexual Conduct

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

§ 18 U.S.C. 2423(c) Engaging in Illicit Sexual Conduct in Foreign Places

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

§ 18 U.S.C. 2424 Failure to File a Factual Statement About an Alien Individual

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

§ 18 U.S.C. 2425 Transmitting Information About a Minor to Further Criminal Sexual Conduct

Placement of this statute in the semi-annual offender category exceeds SORNA's requirements.

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 South Carolina Code would require, at a minimum, Tier II registration requirements under SORNA.

§ 16-3-810 Engaging child for sexual performance

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 16-3-820 Producing, Directing or Promoting Sexual Performance by Child

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 16-15-140 Committing or attempting lewd act upon child under sixteen (where the victim is over 13, and the act does not consist of the touching of the victim's naked genitalia)

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 16-15-335 Permitting Minor to Engage in any Act Constituting Violation of this Article

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 16-15-342 Criminal Solicitation of a Minor (to engage in sexual activity)

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 16-15-387 Employment of Person Under Eighteen to Appear in Public in State of Sexually Explicit Nudity

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 16-15-395 First Degree Sexual Exploitation of a Minor

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 16-15-405 Second Degree Sexual Exploitation of a Minor

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 16-15-415 Promoting prostitution of a minor

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 16-15-425 Participating in prostitution of a minor

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 44-23-1150 Sexual Misconduct with a Inmate, Patient or Offender (where the misconduct involves sexual contact, as defined by § 18 U.S.C. 2246, and the victim is 13-17)

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 18 U.S.C. 1591 Sex Trafficking of Children

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 18 U.S.C. 2244 Abusive Sexual Contact (victim 13-17)

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 18 U.S.C. 2251 Sexual Exploitation of Children

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 18 U.S.C. 2251A Selling or Buying of Children

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 18 U.S.C. 2252A Certain Activities Relating to Material Constituting or Containing Child Pornography (not possession or receipt of child pornography)

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 18 U.S.C. 2260 Production of Sexually Explicit Depictions of a Minor for Importation into the United States

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 18 U.S.C. 2421 Transportation of a Minor for Illegal Sexual Activity

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 18 U.S.C. 2422 Coercion and Enticement of a Minor for Illegal Sexual Activity

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

§ 18 U.S.C. 2423(A) Transportation of Minors for Illegal Sexual Activity

Placement of this statute in the semi-annual offender category meets SORNA's requirements with respect to frequency of registration, and exceeds SORNA's requirements with respect to duration of registration.

Tier III Offenses

SORNA requires that Tier III offenders register for life and quarterly verify registration information. The following offenses listed in South Carolina Code would require, at a minimum, Tier III registration requirements under SORNA.

§ 16-3-615(A) Spousal Sexual Battery

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 16-3-658 Criminal Sexual Conduct: Where Victim is Spouse (where the conduct is forcible)

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 16-3-910 Kidnapping (where the elements are equivalent to those of the federal offense of kidnapping, which is § 18 U.S.C. 1201)

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 16-15-20 Incest (where victim is under 16)

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 16-15-120 Buggery

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 16-15-140 Committing or attempting lewd act upon child under sixteen (where the act consists of the touching of the victim's naked genitalia, or where the victim is under 13)

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 16-3-652 Criminal Sexual Conduct in the First Degree

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 16-3-653 Criminal Sexual Conduct in the Second Degree

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 16-3-654 Criminal Sexual Conduct in the Third Degree

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 16-3-655 Criminal Sexual Conduct with Minor

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 16-3-656 Assault with Intent to Commit Criminal Sexual Conduct

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 44-23-1150 Sexual Misconduct with a Inmate, Patient or Offender (where the misconduct involves a sexual act, as defined by § 18 U.S.C. 2246)

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 44-23-1150 Sexual Misconduct with a Inmate, Patient or Offender (where the misconduct involves sexual contact, as defined by § 18 U.S.C. 2246, and the victim is less than 13)

Placement of this statute in the semi-annual offender category does not meet SORNA's requirements with respect to frequency of registration. This offense involves sexual contact against a victim under 13, which is a Tier III offense.

§ 44-53-370 Administering/Distributing a Controlled Substance with the Intent to Commit a Crime

Placement of this statute in the quarterly offender category meets or exceeds SORNA's requirements, because the required tier matches the tier of the underlying offense.

§ 18 U.S.C. 2241 Aggravated Sexual Abuse

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 18 U.S.C. 2242 Sexual Abuse

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 18 U.S.C. 2243 Sexual Abuse of a Minor or Ward

Placement of this statute in the quarterly offender category meets SORNA's requirements.

§ 18 U.S.C. 2244 Abusive Sexual Contact (victim under 13)

Placement of this statute in the quarterly offender category meets SORNA's requirements.

Further Review

South Carolina registers the following offenses; however, those offenses, without the commission of (or the attempt or conspiracy to commit) a sexual offense, do not require registration under SORNA:

- **§ 16-3-600(E)(1) Assault and Battery, Third Degree**
- **§ 16-15-20 Incest (where the victim is an adult)**
- **§ 16-15-130 Indecent Exposure (if the court makes a specific finding to register the offender)**
- **§ 16-15-305(H) Disseminating, Procuring or Promoting Obscenity**
- **§ 16-15-315 Requiring Receipt of Obscene Material**
- **§ 16-15-325 Participation in Preparation of Obscene Material**
- **§ 16-15-345 Disseminating Obscene Material to Person Under Age 18**
- **§ 16-15-355 Disseminating Obscene Material to Minor Twelve Years of Age or Younger**
- **§ 16-15-365 Exposure of Private Parts in Lewd and Lascivious Manner, Aiding or Procuring Person to Perform Such Act, or Permitting Use of Premises for Such Act**
- **§ 16-15-385 Disseminating Harmful Material to Minors and Exhibiting Harmful Performance to Minor**
- **§ 16-17-490 Contributing to [the] Delinquency of a Minor (if the court makes a specific finding to register the offender)**