



July 14, 2011

SORNA Substantial Implementation Review State of Alabama

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

On June 20, 2011, the Alabama Department of Public Safety and the Office of Prosecution Services submitted a substantial implementation package that included a completed Substantial Implementation Checklist-Revised, Alabama's sex offender registration and notification act, sex offender registry system documentation, Alabama's public sex offender registry website documentation, relevant sex offense statutes, and an explanation of the State's working relationship with the Indian tribe located within the state.

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 Alabama 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 dissuade the purpose of that requirement. In other words, Alabama 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.

Alabama 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.

While Alabama meets most of the requirements of this section, Alabama may adjudicate a sex offender pursuant to the Youthful Offender Act, Alabama Code §§ 15-19-1 to 15-19-7, as a youthful offender sex offender. To be eligible for youthful offender status the offender must be under the age of 21 at the time of commission of the offense. For the purposes of registration and notification, a youthful offender sex offender is considered a juvenile sex offender. As such, a youthful offender sex offender must register for a period of 10 years. Youthful offender sex offenders must undergo sex offender treatment and a risk assessment. Community notification is based on the youthful offender's risk assessment. However, if the youthful offender is adjudicated delinquent of Rape in the second degree pursuant to § 13A-6-62(a)(1) (*i.e.*, based on the ages of the victim and the offender), the sentencing court may exempt the offender from community notification.

Based upon correspondence received in February 2011 from the Alabama Office of Prosecution Services,¹ it appears that many sex offenders who qualify for youthful offender status are granted such status when the sex offense is determined to be "consensual," there is no evidence of force against the victim, and a finding of rape is based solely upon the ages of the victim and offender.

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

III. Tiering of Offenses

Alabama's registration and notification scheme does not involve a tiering structure for sex offenses. Rather, all adult sex offenders are subject to the same registration requirements: lifetime duration and quarterly in-person verification. For clarification purposes, the SMART Office has reviewed all statutes identified in Alabama's registration and notification scheme and has placed these statutes within the SORNA three tier levels (see attached "Alabama Offense Tiering Review" for a detailed analysis regarding this subsection of the review).

Alabama meets all of the SORNA requirements in this section.

¹ Memo from Barry Matson, Office of Prosecution Services, to the SMART Office dated February 16, 2011.

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.

Alabama meets all of the SORNA 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.

Alabama 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.

Alabama 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).

Alabama has required lifetime registration for most adult sex offenders since 1999 (some were subject to a 25 year registration period). In 2001, lifetime registration was applied to all offenses. While Alabama correctly applies its current registration and notification act to every adult sex offender convicted of a registerable sex offense without regard to when the offense was

committed, the act's application to youthful offender sex offenders and juveniles adjudicated delinquent for sex offenses deviate from SORNA's retroactive requirements. Youthful offender sex offenders and juveniles adjudicated delinquent for registerable sex offenses prior to the enactment of Alabama's sex offender registration and notification act are subject to registration for 10 years from the last date of release for the offense requiring registration. Youthful offender sex offenders and juveniles adjudicated delinquent for registerable sex offenses after July 1, 2011 are subject to registration provisions that meet SORNA's requirements.

These deviations do not substantially disserve the purposes of these 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.

Alabama 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. Alabama's registration and notification scheme does not involve a tiering structure for sex offenses. Rather, all adult sex offenders are subject to the same registration requirements: lifetime duration and

quarterly in-person verification. In Alabama, juveniles adjudicated for committing, or attempting or conspiring to commit, “aggravated sexual assault” offenses (comparable to or more severe than 18 U.S.C. § 2241(a) or (b)) are subject to lifetime registration and quarterly in-person verification.

Alabama 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.

Alabama’s Act No. 2011-640, effective July 1, 2011, describes the necessary requirements for Alabama’s public sex offender registry website, which meet SORNA requirements; however, these requirements have yet to be implemented. Specifically, Alabama’s website does not include links to sex offender safety and education resources or to criminal history information, and does not appear to note absconder status. Alabama’s website also allows users to search registered sex offenders’ Internet identifiers, which is not permitted by SORNA. We request that Alabama keep the SMART Office informed on the progress of these enhancements to its public sex offender registry website and notify us upon completion.

Alabama 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.

For law enforcement notification purposes, Alabama appropriately notifies the law enforcement agencies required by SORNA and monitors the SORNA Exchange Portal (state officials have only recently begun utilizing the Exchange Portal). For general community notification purposes, SORNA requires that whenever a sex offender initially registers in a jurisdiction, or updates their registration information in a jurisdiction, a jurisdiction must allow for a notification (through an automated system, such as email) to be made available to the general public whenever a sex offender commences residence, employment, and school attendance within a certain zip code or geographic radius. Alabama has established a procedure for general community notification that deviates from SORNA’s requirements in this section.

In Alabama, the chiefs of police or sheriffs of the counties notify via mailed flyer, or other means, residents, schools, and childcare facilities within a prescribed distance (depending on population density of municipality) from an offender’s declared residence of the offender’s

established (or intent to establish) residence. Alabama does not provide for notification whenever a sex offender establishes employment or school attendance in a jurisdiction. In speaking with Alabama officials about this deviation, they agreed to begin working to adopt a notification system that will meet this SORNA requirement.² We request that Alabama keep the SMART Office informed on the progress of this enhancement to its notification system and notify us upon completion.

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

Alabama 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.

Alabama 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.

Alabama meets all of the SORNA requirements in this section.

XV. Tribal Considerations

Alabama has provided a memo outlining the State's obligations and commitment to assist the Poarch Band of Creek Indians in meeting the requirements of SORNA. The Alabama Department of Public Safety agrees to assist and/or provide conviction information, sentencing

² Email correspondence with Lindsey Clements, Alabama Department of Public Safety, July 13, 2011.

orders, case action summaries, or other necessary court documentation to the Poarch Band of Creek Indians for the purpose of registering and tracking sex offenders within their jurisdiction. Additionally, the County Sheriffs will share information with the Poarch Band of Creek Indians as they would any law enforcement agency as sex offenders transfer from jurisdiction to jurisdiction. The Poarch Band of Creek Indians has agreed to provide registration information, per the requirements of SORNA, to the State of Alabama, Department of Public Safety, Sex Offender Registry.

The primary State contact for tribes is:

Lesia Baldwin
Criminal Intelligence Analyst
Alabama Bureau of Investigation
Sex Offender Registry
P.O. Box 1511
Montgomery, AL 36102
Phone: (334) 353-1172

The point of contact for the Poarch Band of Creek Indians is:

Keesha O'Barr
Tribal Court Administrator
Poarch Band of Creek Indians
5811 Jack Springs Road
Atmore, AL 36502
Phone: (251) 368-9136 ext. 2653

As the SMART Office continues to work with Alabama 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

Alabama has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. However, there are a few provisions identified in this report, namely the allowance of 18-21 year olds to attain youthful offender sex offender status and the lack of community notification updates to members of the community who may wish to receive it, which should be addressed in order for Alabama 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 fully adopting the remaining provisions of SORNA.

Appendix: Alabama Offense Tiering Review

The SMART Office has reviewed all Alabama statutes identified in its substantial implementation submission package and has identified Alabama'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 Alabama. It is possible that other offenses will need to be included in Alabama'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 the Alabama Code, the SMART Office understands that Alabama has one category of adult registrants: all sex offenders are required to register quarterly for life. Alabama requires juveniles adjudicated for committing, or attempting or conspiring to commit, "aggravated sexual assault" offenses (comparable to or more severe than 18 U.S.C. § 2241(a) or (b)) to also register quarterly for life. Juveniles and youthful offenders adjudicated for committing any sex offense, other than those described above, are subject to a 10 year registration period. These juvenile and youthful offender sex offenders fall outside the scope of SORNA requirements and are excluded in the following tiering review.

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

- 13A-6-65. Sexual misconduct.
- 13A-6-66. Sexual abuse in the first degree. If victim 18 or older.
- 13A-6-67. Sexual abuse in the second degree. First offense.
- 13A-12-192. Possession and possession with intent to disseminate obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts. Possession only.
- 13A-6-41. Unlawful imprisonment in the first degree, if the victim of the offense is a minor.
- 13A-6-42. Unlawful imprisonment in the second degree, if the victim of the offense is a minor.

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

- Recidivist: any sex offender who is registered as Tier I and commits a subsequent Tier I sex offense is required to register as Tier II.
- 13A-6-66. Sexual abuse in the first degree. If victim 16-18 years old.
- 13A-6-67. Sexual abuse in the second degree. Second or subsequent offense.
- 13A-6-69. Enticing a child to enter a vehicle, room, house, office, or other place for immoral purposes.
- 13A-12-111. Promoting prostitution in the first degree. If victim under 18 years of age.
- 13A-12-112. Promoting prostitution in the second degree. If victim under 18 years of age.
- 13A-12-191. Dissemination or public display of obscene matter containing visual depictions of persons under 17 years of age involved in obscene acts.
- 13A-12-192. Possession and possession with intent to disseminate obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts. Possession with intent to disseminate only.
- 13A-12-196. Parents or guardians permitting children to engage in production of obscene matter.
- 13A-12-197. Production of obscene matter containing visual depiction of person under 17 years of age involved in obscene acts.
- 13A-13-3. Incest. If victim over 18 years of age.
- 13A-6-111. Transmitting obscene material to a child by computer.
- 13A-6-81. School employee engaging in a sex act or deviant sexual intercourse with a student. If victim 16-18 years of age.
- 13A-6-82. School employee having sexual contact with a student. If victim 13-18 years of age.
- 13A-6-121. Facilitating solicitation of unlawful sexual conduct with a child.
- 13A-6-122. Electronic solicitation of a child
- 13A-6-123. Facilitating the on-line solicitation of a child.
- 13A-6-124. Traveling to meet a child for an unlawful sex act.
- 13A-6-125. Facilitating the travel of a child for an unlawful sex act.
- 13A-6-152. Human trafficking in the first degree, provided that the offense involves sexual servitude.
- 13A-6-153. Human trafficking in the second degree, provided that the offense involves sexual servitude.

Tier III Offenses

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

- Recidivist: any sex offender who is registered as Tier II and commits a subsequent sex offense is required to register as Tier III.
- 13A-6-61. Rape in the first degree.
- 13A-6-62. Rape in the second degree.
- 13A-6-63. Sodomy in the first degree.
- 13A-6-64. Sodomy in the second degree.
- 13A-6-65.1. Sexual torture.
- 13A-6-66. Sexual abuse in the first degree. If victim under the age of 13.
- 13A-6-69.1. Sexual abuse of a child less than 12 years old
- 13A-6-43. Kidnapping in the first degree, if the intent of the abduction is to violate or abuse the victim sexually.
- 13A-6-43 or 13A-6-44. Kidnapping of a minor, except by a parent, guardian, or custodian.
- 13A-13-3. Incest. If victim under 18 years of age.
- 13A-6-81. School employee engaging in a sex act or deviant sexual intercourse with a student. If victim under 16 years of age.
- 13A-6-82. School employee having sexual contact with a student. If victim under 13 years of age.
- 14-11-31. Custodial sexual misconduct.

Further Review

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

- 13A-6-68. Indecent exposure.