



July 19, 2011

SORNA Substantial Implementation Review State of Kansas

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

On July 1, 2011, the Kansas Bureau of Investigation (KBI) submitted a substantial implementation package that included a completed Substantial Implementation Checklist-Revised, the Kansas Offender Registration Act, the State v Myers Supreme Court case and letter from the SMART office referencing retroactivity, the Kansas Offender Registration Handbook and KBI Policies, the Sex Offender Registry Tool database and public website documentation, SORNA Exchange Portal Information, Child Placement Agency Information including Kansas's policies and procedures on how to release criminal history information, as well as two sample tribal Memorandum's of Agreement and information concerning Kansas' working relationship with tribes in the state and the tribal contact information.

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 that Kansas meets SORNA requirements of that section.

We encourage you to review the information below, share it with relevant stakeholders in the state, and get back in touch with us with any questions.

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.

Kansas 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. Kansas includes in its registration and notification scheme juveniles 14 or more years of age adjudicated of K.S.A. 21-3502 (a)(1), (a)(2) Rape and K.S.A. 21-3506 Aggravated Criminal Sodomy. This conforms to SORNA requirement of inclusion of juveniles, 14 or older, adjudicated delinquent of a sexual act with another by force, by the threat of serious violence, or by rendering unconscious or drugging the victim.

Kansas 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 Kansas' registration and notification scheme and has placed these statutes within the SORNA three tier levels (see attached "Kansas Offense Tiering Review" for a detailed analysis regarding this subsection of the review).

Kansas 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.

Kansas 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.

Kansas 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.

Kansas 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). Kansas' Sex Offender Registration Act (KSORA) applies to sex offenders convicted on or after April 14, 1994.

A Kansas Supreme Court ruling presents a constitutional conflict with SORNA's retroactive application to convictions in the state that occurred prior to the enactment of KSORA (April 14, 1994). In *State v Myers*, 260 Kan. 669 (1996), *cert. denied*, 521 U.S. 1118 (1997), the Supreme Court of Kansas held that retroactive application of the public notification provisions of KSORA (Kan. Stat. Ann. § 22-4901 et. seq.) is a violation of the Ex Post Facto Clause of the United States Constitution.

Under 42 USC §16925(b)(1), a jurisdiction may be able to substantially implement SORNA when the jurisdiction has shown "a demonstrated inability to implement certain provisions that would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction's highest court." *State v Myers*, 260 Kan. 669 (1996), is controlling case law that makes it illegal to impose registration requirements retroactively in Kansas. Given this impediment, the SMART Office has determined that Kansas has substantially implemented these provisions of SORNA without applying registration and public notification to those individuals whose sex offenses were committed prior to April 14, 1994.¹

Kansas meets all of the SORNA requirements in this section.

¹ See: SMART Office letter to the Kansas Bureau of Investigations, October 23, 2009.

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.

Kansas 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. Kansas has three categories of registrants for purposes of its duration of registration and frequency of registration requirements: Tier I registrants, required to register for 15 years and quarterly verify registration information; Tier II registrants, required to register for 25 years and quarterly verify registration information; and Tier III registrants, required to register for life and quarterly verify registration information. Kansas does not allow reduction of registration periods for any registered sex offender.

Kansas 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.

Kansas' statutes and the KBI Offender Registration Handbook clearly delineate the information that must be made available on the Kansas' public sex offender registry, as well as the types of information that cannot be posted. The SMART Office has been working closely with Kansas to implement a customized version of the Sex Offender Registry Tool (KsSORT), which will ensure full participation in the National Sex Offender Public Website (NSOPW) and include the necessary field search capabilities.

We request that Kansas keep the SMART Office informed on the progress of these enhancements to its public sex offender registry website and notify us upon completion.

Kansas 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.

Kansas' statutes, KBI Offender Registration Handbook, and KBI Offender Registration Policies #10 and #11 clearly indicate the information that must be made available to law enforcement agencies, usage of the SORNA Exchange Portal, and general community notification through KsSORT. The SMART Office has been working closely with Kansas to implement the Sex Offender Registry Tool, and the state has contracted with a vendor to begin customization.

We request that Kansas keep the SMART Office informed on the progress of the customization of the Sex Offender Registry Tool and notify us upon completion of KsSORT.

Kansas 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.

Kansas 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.

Kansas 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.

Kansas meets all of the SORNA requirements in this section.

XV. Tribal Considerations

The state of Kansas has four federally recognized Indian tribes located within its boundaries: the Iowa Tribe of Kansas and Nebraska, the Kickapoo Tribe of Indians, the Prairie Band Potawatomi Nation and the Sac and Fox Nation of Missouri. KBI has corresponded with each tribe to discuss the Adam Walsh Child Protection and Safety Act of 2006 as well as to offer assistance in meeting the requirements set forth in SORNA. KBI understands that Iowa Tribe of Kansas and Nebraska, Kickapoo Tribe of Indians, and the Prairie Band Potawatomi Nation tribe wish to be registration and notification jurisdictions. The Sac and Fox Nation of Missouri has delegated to the State of Kansas to maintain and register all sex offenders within the reservation. The Sac and Fox Nation wish to maintain the authority to arrest violators within their territory. Therefore, offenders who reside, are employed, or attend school on tribal land will register with the state of Kansas through the local sheriff's offices. KBI and the Sac and Fox Nation have entered into a Memorandum of Agreement (MOA) that defines offender registration and notification on the Sac and Fox Nation of Missouri reservation.

KBI notified every registered offender in the state on June 15th of the changes to the Kansas Offender Registration Act and how tribal law will affect them. In the letter, offenders were informed that, in addition to state registration requirements, sex offenders who reside, work or attend school on tribal land shall register pursuant to tribal law.

Kansas has indicated that tribes may submit DNA information directly to the FBI. Kansas has also informed tribes that they can access corrections information through the Kansas Department of Corrections website <http://www.dc.state.ks.us/kasper> (Kansas Adult Supervised Population Electronic Repository) and can access NCIC and Kansas Criminal History through

the Kansas Criminal Justice Information System (KCJIS) webportal. Finally, Kansas specifies that tribes submit their fingerprint cards through their own ORI. Kansas has also indicated that they have yet to be approached by any of the tribes asking for assistance in submitting fingerprints or DNA, or in facilitating NCIC access. The state is open to providing this assistance to the tribes, if needed and will keep the SMART Office informed of any information sharing arrangements made in the future.

The primary State contact for tribes is:

Nicole Dekat
Supervisor/Public Service Administrator II
Offender Registration & PI Licensing Unit
Kansas Bureau of Investigation
1620 SW Tyler
Topeka, KS 66612
Phone: (785) 296-8277
Nicole.Dekat@kbi.state.ks.us

The points of contact for the tribes are:

Vivien Olson
Tribal Attorney
Prairie Band Potawatomi Nation
16281 Q Rd.
Mayetta, KS 66509
Phone: (785) 966-3940
VOlsen@pbpnation.org

Ilse Smith
Tribal Attorney
Kickapoo Tribe in Kansas
1107 Goldfinch Rd
PO Box 110
Horton, KS 66439
Phone: (785) 486-2131
ilse.smith@ktik-nsn.gov

Scott Elrod
Chief of Police
Iowa Tribe of Kansas and Nebraska
3313 Thrasher Rd
White Cloud, KS 66094
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selrod@iowatribepd.org

Michael Dougherty
Chief of Police
Sac and Fox Nation of Missouri
401 North Arch
Reserve, KS 66434
Phone: (785) 742-7190
MDougherty@sacandfoxd.org

As the SMART Office continues to work with the Kansas 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 tribes.

Conclusion

Kansas has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. We request that Kansas keep the SMART Office informed on the progress of enhancements to its public sex offender registry website and notify us upon completion. We also request that Kansas keep the SMART Office informed on the progress of the customization of the Sex Offender Registry Tool and notify us upon completion of KsSORT.

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: Kansas Offense Tiering Review

The SMART Office has reviewed all Kansas statutes identified in its substantial implementation submission package and has identified Kansas' 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 Kansas. It is possible that other offenses will need to be included in Kansas' 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 Kansas Code, the SMART Office understands that Kansas 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 Kansas Code would require, at a minimum, Tier I registration requirements under SORNA.

- K.S.A. 21-3517. Sexual Battery
- K.S.A. 21-3439. Capital Murder
- K.S.A. 21-3401. Murder in the first degree
- K.S.A. 21-3402. Murder in the second degree
- K.S.A. 21-3403. Voluntary Manslaughter
- K.S.A. 21-3404. Involuntary Manslaughter
- K.S.A. 21-3424. Criminal Restraint
- K.S.A. 21-3516 (2) Sexual Exploitation of a Child – victim is between the ages of 14 and 18 years old.
 - Tier II registration exceeds SORNA requirements. Offenses involving possession of child pornography require Tier I registration under SORNA.
- K.S.A. 22-4902 (c)(15). Sexually Motivated Acts
- K.S.A. 22-4902 (e)(2). Person Felony with Deadly Weapon by Court Finding

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

- K.S.A. 21-3447. Aggravated Human Trafficking – victim is less than 18 years old
 - Tier III registration exceeds SORNA requirements. Offenses involving trafficking and transportation for any criminal sexual act require Tier II registration under SORNA.
- K.S.A. 21-3505 (a)(1). Criminal Sodomy
- K.S.A. 21-3510. Indecent Solicitation of a Child
- K.S.A. 21-3523. Electronic Solicitation
- K.S.A. 21-3603. Aggravated Incest
- K.S.A. 21-3503. Indecent Liberties with a Child
- K.S.A. 21-3504 (2) Aggravated Indecent Liberties with a Child
 - Tier III registration exceeds SORNA requirements. Offenses involving sexual contact with a victim between the ages of 14 and 16 years old require Tier II registration under SORNA.
- K.S.A. 21-3520. Unlawful Sexual Relations
- K.S.A. 21-3516 (1), (3), (4), (5), and (6). Sexual Exploitation of a Child.
 - Tier III registration exceeds SORNA requirements. Offenses involving the use of a minor in a sexual performance, enticing a minor into any criminal sexual act, or solicitation to practice prostitution require Tier II registration under SORNA.
- K.S.A. 21-3518. Aggravated Sexual Battery
- K.S.A. 21-3513. Promoting Prostitution.
 - Tier III registration exceeds SORNA requirements. Offenses involving the use of a minor in a sexual performance or solicitation to practice prostitution require Tier II registration under SORNA.

Tier III Offenses

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

- K.S.A. 22-4906 (c). Recidivist – Upon a second or subsequent conviction of an offense requiring registration, an offender’s duration of registration shall be for such offender’s lifetime.
- K.S.A. 21-3502. Rape
- K.S.A. 21-3511. Aggravated Indecent Solicitation of a child
- K.S.A. 21-3504 (1) and (3). Aggravated Indecent Liberties with a Child
- K.S.A. 21-3505 (a)(2),(a)(3). Criminal Sodomy

- K.S.A. 21-3506. Aggravated Criminal Sodomy
- K.S.A. 21-3420. Kidnapping
- K.S.A. 21-3421. Aggravated Kidnapping
- K.S.A. 59-29a01. Sexually Violent Predators

Further Review

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

- K.S.A. 21-3507. Adultery
- K.S.A. 21-3515. Patronizing a Prostitute
- K.S.A. 21-3508. Lewd and Lascivious behavior