



September 2012

## **SORNA Substantial Implementation Review Commonwealth of Pennsylvania**

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

In July 2012, Pennsylvania submitted to the SMART Office for review a SORNA substantial implementation package, consisting of a completed SORNA Substantial Implementation Checklist, current statutes, State Police Administrative Regulations, as well as examples of registration forms, investigation forms, and notification fliers.

Our review of the submitted 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 Pennsylvania meets or does not meet SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify that the departure(s) from a particular requirement does not substantially disserve the purpose of that requirement. In other words, Pennsylvania 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.

Pennsylvania 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 be 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 be included in a jurisdiction's registration scheme.

### **A. Pennsylvania Offenses**

Pennsylvania captures the offenses for which SORNA requires registration, with some exceptions. Pennsylvania does not have a specific equivalent state offense for the SORNA requirement of a non-forcible sex act with a minor 16 or 17 years old. However, such sex acts are prohibited under Pennsylvania statutes.

This deviation does not substantially disserve the purposes of the SORNA requirements in this subsection.

### **B. Offenses of Other SORNA Registration Jurisdictions**

Pennsylvania captures the offenses of other SORNA registration jurisdictions for which SORNA requires registration, if the offense is comparable to a Pennsylvania sexually violent offense. Given the lack of an equivalent Pennsylvania offense to a non-forcible sex act with a minor 16 or 17 years old, some offenders from other jurisdictions may not be captured under Pennsylvania's current registration scheme.

This deviation does not substantially disserve the purposes of the SORNA requirements in this subsection.

### **C. Federal Offenses**

Pennsylvania captures all of the federal offenses for which SORNA requires registration with the exception of Title 18 U.S.C., Section 2245 (Offenses Resulting in Death).

This deviation does not substantially disserve the purposes of the SORNA requirements in this subsection.

### **D. Military Offenses**

Pennsylvania captures all of the military offenses for which SORNA requires registration.

### **E. Foreign Offenses**

Pennsylvania captures the foreign offenses for which SORNA requires registration.

### **F. Juvenile Adjudications**

Pennsylvania registers juveniles in accordance with SORNA requirements.

The deviations found in the above subsections do not substantially disserve the purposes of the SORNA requirements in this section.

### **III. Tiering of Offenses**

SORNA requires that offenses be classified based on the nature of the offense of conviction established through a baseline three-tier classification system. Pennsylvania's registration scheme includes a three-tier classification system, in which all of its offenders are classified as Tier I, Tier II, or Tier III (see attached "Pennsylvania Offense Tiering Review" for a detailed analysis regarding this subsection of the review). Pennsylvania correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions:

- 18 Pa. C.S. § 3122.1(a)(2) – Statutory sexual assault. This offense involves sexual intercourse with a complainant under the age of 16 years where the perpetrator is at least 4 years older than the victim. Pennsylvania classifies this offense as Tier II. Sexual acts with minors under 16 years of age are considered Tier III offenses under SORNA.
- 18 Pa. C.S. § 3124.2(a.2)(a.3) – Institutional sexual assault. This offense may involve sexual intercourse with a complainant under the age of 16 years. Pennsylvania classifies this offense as Tier II. Sexual acts with minors under 16 years of age are considered Tier III offenses under SORNA.

These deviations do not substantially disserve the purposes 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. Pennsylvania captures all of the required information, with the exception of transient/day labor employment information.

This deviation does not substantially disserve the purposes 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.

Pennsylvania 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.

Pennsylvania 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).

Pennsylvania's registration scheme applies to individuals convicted of a registerable sex offense on or after April 21, 1996, and to individuals who were serving a sentence of incarceration, probation, parole, or other form of community supervision as a result of a conviction for a registerable sex offense on or after April 21, 1996. This includes all sex offenders subject to prior registration and notification laws in Pennsylvania who have not completed their registration terms, those offenders currently incarcerated or under correctional supervision for an applicable sex offense, and those convicted after the statute's effective date of December 20, 2012. However, Pennsylvania does not capture those offenders who either are currently incarcerated (or on parole or probation) or who reenter the criminal justice system for a non-sex felony offense that have a prior qualifying sex offense (predating April 21, 1996) or have completed their registration requirements related to a prior sex offense.

Under Pennsylvania's 2012 statute, juveniles adjudicated delinquent for an applicable sex offense are subject to registration and notification for the first time. This applies only to those youth either: (1) adjudicated delinquent for a predicate offense on or after December 20, 2012; (2) adjudicated delinquent for a predicate offense previously but who remain under the supervision of the court for that offense at the time of the statute's effective date; (3) adjudicated delinquent in another jurisdiction for a comparable offense and enter the state; or (4) are required

to register in another jurisdiction or foreign country based on a juvenile delinquency adjudication (regardless of when that adjudication occurred) and enter the state.

These deviations do not substantially disserve the purposes of the SORNA requirements in this section.

### **VIII. Keeping the Registration Current**

SORNA requires that when a registered sex offender resides in a jurisdiction, the 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, the 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 notifies 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.

Pennsylvania meets all of the SORNA requirements in this section.

### **IX. Verification/Appearance Requirements**

#### **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, SORNA Tier II offenders register for 25 years, and SORNA Tier III offenders register for life.

Pennsylvania meets all of the SORNA requirements in this subsection.

## 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.

Pennsylvania meets all of the SORNA requirements in this subsection

## C. Reduction of Registration Periods

SORNA creates certain requirements under which a jurisdiction can allow an offender to have a reduced registration period. Pennsylvania allows offenders required to register based upon delinquency adjudications for sexually violent offenses to petition to terminate registration requirements in accordance with SORNA requirements after 25 years.

Pennsylvania meets all of the SORNA requirements of this subsection

## **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.

Pennsylvania 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.

Pennsylvania meets all of the SORNA requirements in this section.<sup>1</sup>

## **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.

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<sup>1</sup> It should be noted that Sheriff's Offices are not included in Pennsylvania's law enforcement notification provisions. Pennsylvania sheriffs are not police departments and have limited powers of arrest.

Pennsylvania 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.

Pennsylvania 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.

Pennsylvania meets all of the SORNA requirements in this section.

## **Conclusion**

Pennsylvania has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. We encourage Pennsylvania to continue to work towards meeting all the provisions of SORNA, particularly the retroactive application of the statute, and to work with SMART office personnel to maintain Pennsylvania's status as having substantially implemented SORNA. Pennsylvania is expected to keep the SMART Office informed of its progress towards the continuing implementation of SORNA and the SMART Office will continue to provide any necessary technical assistance towards that end.

We encourage you to contact the SMART Office with any questions or concerns once you have had the opportunity to review and discuss our findings.

## **Appendix: Pennsylvania Offense Tiering Review**

The SMART Office has reviewed all Pennsylvania statutes identified in its substantial implementation package and has identified Pennsylvania'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 Pennsylvania.

In reviewing Pennsylvania Revised Statutes, the SMART Office understands that, Pennsylvania has three categories of registrants for purposes of duration of registration requirements and frequency of reporting to law enforcement for verification:

- Tier I offenders, who are required to appear annually to verify registration information and register for a period of 15 years.
- Tier II offenders, who are required to appear every 180 days to verify registration information and register for a period of 25 years.
- Tier III offenders, who are required to appear every 90 days to verify registration information and register for life.

### **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 Pennsylvania Statutes would require, at a minimum, Tier I registration requirements under SORNA.

- 18 Pa. C.S. § 2902 – Unlawful restraint (non-parental, victim under 18)
- 18 Pa. C.S. § 2903 – False imprisonment (non-parental, victim under 18)
- 18 Pa. C.S. § 2904 – Interference with custody of children (non-parental, victim under 18)
- 18 Pa. C.S. § 2910 – Luring a child into a motor vehicle or structure
- 18 Pa. C.S. § 3124.2 – Institutional sexual assault (adult victim)
- 18 Pa. C.S. § 3126 – Indecent assault where the offense is graded as a misdemeanor of the first degree or higher (if punishment less than one year)
- 18 Pa. C.S. § 6312[d] – Sexual abuse of children (possession of child pornography)
- 18 Pa. C.S. § 7507.1 – Invasion of privacy

### **SORNA Tier II Offenses**

SORNA requires that Tier II offenders register for a minimum of 25 years and semi-annually verify registration information. The following offenses listed in Pennsylvania Statutes would require, at a minimum, Tier II registration requirements under SORNA.



- 18 Pa. C.S. § 3124.2 – Institutional sexual assault (victim age 16-17)
- 18 Pa. C.S. § 3126 – Indecent assault where the offense is graded as a misdemeanor of the first degree or higher (if recidivist or punishment greater than one year)
- 18 Pa. C.S. § 5902[b] – Prostitution and related offenses, where the actor promotes the prostitution of a minor
- 18 Pa. C.S. § 5903[a] [3], [4], [5], or [6] – Obscene and other sexual materials and performances, where the victim is a minor
- 18 Pa. C.S. § 6312[b], [c] – Sexual abuse of children (production/distribution of child pornography)
- 18 Pa. C.S. § 6318 – Unlawful contact with minor
- 18 Pa. C.S. § 6320 – Sexual exploitation of children

### **SORNA Tier III Offenses**

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

- 18 Pa. C.S. § 2901 – Kidnapping, where the victim is a minor (non-parental)
- 18 Pa. C.S. § 3121 – Rape
- 18 Pa. C.S. § 3122.1 – Statutory sexual assault
- 18 Pa. C.S. § 3123 – Involuntary deviate sexual intercourse
- 18 Pa. C.S. § 3124.1 – Sexual assault
- 18 Pa. C.S. § 3124.2 – Institutional sexual assault (victim under 16)
- 18 Pa. C.S. § 3125 – Aggravated indecent assault
- 18 Pa. C.S. § 3126 – Indecent assault where the offense is graded as a misdemeanor of the first degree or higher (if victim under 13 and punishment greater than one year)
- 18 Pa. C.S. § 4302 – Incest (victim under 13, or victim 13-18 years old, and offender more than 4 years older)