



July 2011

SORNA Substantial Implementation Review Tohono O'odham Nation

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 Tohono O'odham Nation 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 the Tohono O'odham Nation's SORNA substantial implementation packet and has found that the Tohono O'odham Nation has substantially implemented SORNA.

On April 14, 2011, the Tohono O'odham Nation submitted a substantial implementation package that included eleven exhibits, including background information on the tribe and its criminal justice system, courts, and police department, policies and procedures regarding sex offender registration, the tribe's sex offender registration law and relevant additional laws, as well as forms and memoranda of agreement with other law enforcement agencies. In addition, email and phone correspondence with Detective Karin Ashby 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, which contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether the Tohono O'odham Nation 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 the Tohono O'odham Nation 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 tribe has not met SORNA standards.

We encourage you to review the information below, share it with relevant stakeholders in the tribe, 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 Detective Karin Ashby and Chief of Police Joseph Delgado in 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.

Despite the Nation's efforts to submit this data to NCIC/NSOR, the State of Arizona Access Integrity Division does not authorize tribal agencies to submit data into NCIC through its system unless the tribe requires sex offenders to register concurrently with the state. This is not consistent with SORNA requirements. Additionally, FBI/CJIS does not have an alternative for tribes to submit this necessary data to NCIC/NSOR. This obstacle prevents the Tohono O'odham Nation from entering information into NCIC/NSOR when initially registering a sex offender, when a sex offender indicates a change of residence, when a sex offender updates any information, when a sex offender is going to travel internationally, and/or if an offender absconds. The Tohono O'odham Nation does update its own website, however, and provides community notifications when an offender's information changes. The Tohono O'odham Nation has indicated that when it can do so, it will enter all new, updated and recaptured sex offender information into the NCIC/NSOR, as required by SORNA.

At this time, the Tohono O'odham Nation is one of a number of tribes in Arizona that currently does not have a means to submit sex offender information to NCIC/NSOR. The SMART Office is aware that this obstacle is shared by other tribes in Arizona, and is involved in efforts to find short- and long-term solutions and alternatives for tribes in Arizona to input sex offender information into NCIC/NSOR.

Due to structural obstacles, the Tohono O'odham Nation cannot meet the SORNA requirements in this section. However, the SMART Office finds that the tribe has currently sufficiently addressed the requirements of this section because no workable solution exists that would permit the Tohono O'odham Nation to submit data to NCIC/NSOR at this time and because the tribe has indicated that it will submit this data to NCIC/NSOR when a future solution is developed.

Jurisdictions that have substantially implemented SORNA have a continuing obligation to maintain their system's consistency with SORNA standards. The Tohono O'odham Nation will be required to demonstrate that its registration systems, policies, procedures and necessary laws or codes are updated to reflect submissions to NCIC/NSOR when a solution is available or as directed by the SMART Office to ensure continuing implementation of SORNA.

II. Offenses that Must Be Included in the Registry

The Tohono O'odham Nation meets all of the SORNA requirements in this section.

III. Tiering of Offenses

The Tohono O’odham Nation meets all of the SORNA requirements in this section.

IV. Required Registration Information

The Tohono O’odham Nation meets all of the SORNA requirements in this section.

V. Where Registration is Required

The Tohono O’odham Nation meets all of the SORNA requirements in this section.

VI. Initial Registration: Timing and Notice

The Tohono O’odham Nation meets all of the SORNA requirements in this section.

VII. Initial Registration: Retroactive Classes of Offenders

The Tohono O’odham Nation meets all of the SORNA requirements in this section.

VIII. Keeping the Registration Current

The Tohono O’odham Nation meets all of the SORNA requirements in this section.

IX. Verification/Appearance Requirements

The Tohono O’odham Nation 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.

SORNA also requires that a jurisdiction’s web site be listed on the Dru Sjodin National Sex Offender Public Web site (NSOPW). At this time, the Tohono O’odham Nation has a public web site (<http://tonation.nsopw.gov>), but it is not yet listed on NSOPW. The Tohono O’odham

Nation has indicated that they are in the process of being listed on NSOPW and will do so before August 15, 2011.

The Tohono O’odham Nation does not meet all of the SORNA requirements in this section at this time. The tribe understands that listing with NSOPW is an obligation they must meet, and the SMART Office will follow up on August 15, 2011 and any point necessary thereafter.

XI. Community Notification

The Tohono O’odham Nation meets all of the SORNA requirements in this section.

XII. When a Sex Offender Fails to Appear for Registration

The Tohono O’odham Nation meets all of the SORNA requirements in this section.

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

The Tohono O’odham Nation meets all of the SORNA requirements in this section.

XIV. Other Considerations

The SMART Office acknowledges the limitations with respect to NCIC for the Tohono O’odham Nation in Arizona. Efforts are continuing to be made to find short- and long-term solutions. The current lack of access to NCIC, however, will not be a barrier for a determination of substantial implementation for the Tohono O’odham Nation.

Conclusion

The Tohono O’odham Nation 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 the Tohono O’odham Nation 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.