



July 2011

SORNA Substantial Implementation Review

Kootenai Tribe of Idaho

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 Kootenai Tribe of Idaho (Kootenai Tribe) 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 Kootenai Tribe's SORNA substantial implementation packet and has found that the Kootenai Tribe has substantially implemented SORNA.

On April 8, 2011, the Kootenai Tribe submitted a substantial implementation package that included a detailed letter to SMART Office Director Linda Baldwin, a Memorandum of Agreement between the Kootenai Tribe and the State of Idaho, the Law and Order Code of the Kootenai Tribe (including Chapter 4A, regarding SORNA implementation), and copies of contracts with the City of Bonners Ferry and Boundary County for Law Enforcement services on Kootenai tribal lands. In addition, email and phone correspondence with the Kootenai Tribe's Legal Department filled in gaps in information and procedure, which informed our review.¹

The review of these materials covers the outline of the SMART Office Substantial Implementation Checklist-Revised, which contains 14 sections for tribal jurisdictions addressing the SORNA requirements. Under each section, we indicate whether the Kootenai Tribe 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.

The Kootenai Tribe's submission relies heavily on a Memorandum of Agreement (Kootenai-Idaho MOA) between the Tribe and the State of Idaho, as well as contracts with the City of Bonners Ferry and Boundary County for Law Enforcement services on Kootenai tribal lands. The Kootenai Tribe expects that all registration, notification and submission of data will be done through Bonners Ferry Police Department and Boundary County Sheriff's Office. Because the Kootenai Tribe's implementation of SORNA is heavily dependent, through the Kootenai-Idaho MOA, on the State of Idaho's SORNA implementation, we coordinated our review with the SMART Office review of Idaho's substantial implementation package.

¹The SMART Office had email and phone correspondence with William Barquin: Legal Department, Kootenai Tribe (Portland Office), 1000 SW Broadway, Ste. 1060, Portland, OR 97205. (503) 719-4496 \ (503) 719-4493, wbarquin@kootenai.org

We encourage you to review the information below, share it with relevant stakeholders in the Kootenai Tribe and the state, and get back in touch with us to develop a strategy to address any 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.

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including immediate transfer of information. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction. Deviations, if any, in Idaho's approach to immediate information transfer have not been found to substantially disserve the purpose of this requirement.

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.

The Kootenai Tribe meets all 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.

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including tiering of offenses. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction. Deviations, if any, in Idaho's approach to tiering of offenses have not been found to substantially disserve the purpose of this requirement.

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.

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including required registration information. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction.² Deviations, if any, in Idaho's required registration information have not been found to substantially disserve the purpose of this requirement.

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.

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including where registration is required. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction. Deviations, if any, in Idaho's approach to where registration is required have not been found to substantially disserve the purpose of this requirement.

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.

² The Kootenai-Idaho MOA indicates that the Idaho State Police will perform required functions related to fingerprints and palmprints (SORNA § 114(b)(5)), DNA (SORNA § 114(b)(6)), and National Databases (SORNA § 121(b)(1)). We note that separately because of our understanding that these requirements have proven particularly challenging for many tribes.

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including timing and notice of initial registration. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction. Deviations, if any, in Idaho's approach to timing and notice of initial registration have not been found to substantially disserve the purpose of this requirement.

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).

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including initial registration of retroactive classes of offenders. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction. Deviations, if any, in Idaho's approach to initial registration of retroactive classes of offenders have not been found to substantially disserve the purpose of this requirement.

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.

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including requirements for keeping the registration current. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction. Deviations, if any, in Idaho's approach to keeping the registration current have not been found to substantially disserve the purpose of this requirement.

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.

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including verification and appearance requirements. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction. Deviations, if any, in Idaho's approach to verification and appearance requirements have not been found to substantially disserve the purpose of this requirement.

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.

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including maintaining a public registry website. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction, with one exception. In addition to the registration and notification actions completed through the state system, the Tribe intends to collect employer information for any sex offenders working for the Tribe or on tribal lands³ and keep it in a place where it is readily available to the public. This procedure will compensate for the failure of Idaho to publically disclose employer information, as required by SORNA. The Tribe will memorialize this policy in the policies and procedures document currently being created.

Other deviations, if any, in Idaho's approach to public registry website requirements have not been found to substantially disserve the purpose of this requirement.

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.

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including community notification. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction. Deviations, if any, in Idaho's approach to community notification have not been found to substantially disserve the purpose of this requirement.

XII. 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

³ As explained to the SMART Office, the Tribe does not allow sex offenders to work for the tribe or on tribal land. In the event that an exception is made to that policy, however, the procedure described above will be implemented.

jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including responses to when a sex offender fails to appear for registration. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction. Deviations, if any, in Idaho's response to when sex offenders fail to appear for registration have not been found to substantially disserve the purpose of this requirement.

XIII. 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.

The Kootenai Tribe has adopted Idaho law concerning sex offender registration and notification, including response to sex offenders who may have absconded. Through its law enforcement contracts with Bonners Ferry Police Department and Boundary County Sheriff's Office and through the Kootenai-Idaho MOA, all registration within the Kootenai Tribe's jurisdiction will occur in the same manner as would occur if the offender was within Idaho jurisdiction. Deviations, if any, in Idaho's response to sex offenders who may have absconded have not been found to substantially disserve the purpose of this requirement.

XIV. Other Considerations

Because the Kootenai Tribe is on the international boundary with Canada, they have particular concern regarding sex offenders entering the United States from Canada. They have indicated plans to work with the Federal Bureau of Investigation, Idaho State Police, US Drug Enforcement Administration, and US Customs and Border Protection to address issues related to their location on an international boundary.

Conclusion

The Kootenai Tribe has worked diligently and comprehensively to implement SORNA in a way that makes sense for their community. It is the conclusion of the SMART Office that the Kootenai Tribe of Idaho has substantially implemented SORNA.