



July 7, 2011

SORNA Substantial Implementation Review State of Louisiana

The U.S. Department of Justice, Office of Justice Program, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the State of Louisiana 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 Louisiana's SORNA substantial implementation packet and has found the State of Louisiana to have substantially implemented SORNA.

On April 19, 2011, the Louisiana Department of State Police submitted a substantial implementation package that included a completed Substantial Implementation Checklist-Revised, relevant state statutes, sex offender registration police/sheriff policy, sex offender registry system manual, and Louisiana State Police public sex offender registry website, and a sample memorandum of agreement with Indian tribes located within the state.

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, which contains 15 sections addressing the SORNA requirements. Under each section, we indicate whether Louisiana 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 disserve the purpose of that requirement. In other words, Louisiana 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.

Louisiana 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 Louisiana meets most SORNA offense requirements under this section, Louisiana does not capture the following federal offenses in its registration scheme, nor does Louisiana have equivalent state statutes:

- 18 U.S.C. §2245, Offenses Resulting in Death
- 18 U.S.C. §2251A, Selling or Buying of Children
- 18 U.S.C. §2252B, Misleading Domain Names on the Internet
- 18 U.S.C. §2252C, Misleading Words or Digital Images on the Internet
- 18 U.S.C. §2260, Production of Sexually Explicit Depictions of a Minor for Import in to the United States

Additionally, Louisiana has no statute that requires an offender to register in the state if required to register in another jurisdiction (if there is no comparable law in Louisiana, registration is not required). Louisiana may wish to consider "catch all" language to capture individuals convicted of offenses substantially similar to an offense described in LSA-R.S. 15:541, under a law of the United States that is specifically enumerated in 42 U.S.C. §16911, under a law of any state, the District of Columbia, U.S. Territory, or any country, or under tribal or military law.

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

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction. The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Louisiana's placement of these statutes within the SORNA three tier levels. Louisiana correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions (see the Appendix, "Louisiana State Statutes" for information about Louisiana's classification of its offenders and associated registration requirements).

Louisiana places the following offenses in Tier I of their registration scheme; SORNA requires placement in a higher Tier for each:

- R.S. 14.80. Felony carnal knowledge of a juvenile.
This offense may involve sexual acts with minors under the age of 16, thereby requiring Tier III registration (lifetime) under SORNA.

- R.S. 14.81. Indecent behavior with a juvenile.
This offense may involve sexual contact with minors, thereby requiring Tier II registration (25 year) under SORNA.
- R.S. 14.92(A)(7). Contributing to the delinquency of a juvenile.
This offense may involve sexual contact with minors, thereby requiring Tier II registration (25 year) under SORNA.

Louisiana places the following offenses in Tier II of their registration scheme; SORNA requires placement in Tier III for each:

- R.S. 14.43.3. Oral sexual battery.
This offense involves sexual acts with minors, thereby requiring Tier III registration (lifetime) under SORNA.
- R.S. 14.78.1. Aggravated incest.
This offense involves sexual acts with minors, thereby requiring Tier III registration (lifetime) under SORNA.
- R.S. 14.82.1. Prostitution with person under 17.
This offense involves sexual acts with minors, thereby requiring Tier III registration (lifetime) under SORNA, unless the exception contained in 18 U.S.C. §16911(5)(c) applies.

Additionally, Louisiana's tiering structure does not take into account registrants' history of recidivism. Specifically, any sex offender who is registered as Tier I or Tier II and commits a subsequent sex offense is required to register in at least the next highest Tier.

These deviations do not substantially disserve the purposes of the 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. Louisiana correctly captures all information within these categories, with the exception of descriptions of all identified vehicles and locations where they are kept.

These deviations do not substantially disserve the purposes of the 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.

Louisiana meets all of the SORNA requirements in this section.

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.

Louisiana 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).

Louisiana's sex offender registration and notification statute applies to all offenders convicted or under the Department of Corrections custody on or after June 18, 1992. Section 6 of Act 460 of the 2007 Regular Session of the Louisiana Legislature allows for an exception of applicability to those offenders required to register under prior law whose obligations to register had been fulfilled.

These deviations do not substantially disserve the purposes of the 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. 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.

Louisiana's statutes and policies meet most SORNA requirements in this section, with a few exceptions. Louisiana does not require offenders to report immediately (either in person or through other means) changes of email addresses, IM addresses, other Internet identifiers, or vehicle information.

Additionally, Louisiana does not require registered sex offenders to provide 21 day advance notice of international travel as required by the SORNA Supplemental Guidelines, published on January 11, 2011. Given that the SORNA Supplemental Guidelines were published recently, we expect Louisiana to adopt this requirement in the near future and notify the SMART Office once the requirement is met.

These deviations do not substantially disserve the purposes of the 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.

Louisiana 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.

Louisiana 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.

Louisiana 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.

Louisiana 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.

Louisiana 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.

Louisiana meets all of the SORNA requirements in this section.

XV. Tribal Considerations

Louisiana has provided Memoranda of Understanding for Indian tribes located within the state and the Louisiana Department of State Police in order to facilitate satisfying the tribes' responsibilities under SORNA. The Chitimacha Tribe is working on an MOU with the Louisiana State Police and the Tunica-Biloxi Tribe has reached out to the state police for information about MOUs and is requesting more time for implementation. The SMART Office received notice in July 2011 from the Jena Band of Choctaw Indians and the Coushatta Indian Tribe that they are rescinding their participation as a SORNA registration jurisdiction. Louisiana

will now be responsible for registration and notification of sex offenders on these Indian Tribes' lands.

The SMART Office is working closely with remaining tribes and the State to navigate this portion of SORNA implementation (and any possible MOU's or MOA's) through the primary State contact for tribes:

Captain Leland Falcon
Louisiana State Police
7919 Independence Blvd.
Baton Rouge, LA 70806
(225) 925-4935
Leland.Falcon@dps.la.gov

As the SMART Office continues to work with the Louisiana on SORNA implementation, we will notify tribes within the state of any processes, policies, or procedures that facilitate the sharing of criminal justice information with these tribes.

Conclusion

Louisiana 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 exclusion of some required federal offenses and several incorrectly tiered state offenses, which should be addressed in order for Louisiana 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: Louisiana State Statutes

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

In reviewing Louisiana Statutes, the SMART Office understands that Louisiana 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 annually verify registration information;
2. Tier II registrants, required to register for 25 years and twice-annually 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 Louisiana Code would require, at a minimum, Tier I registration requirements under SORNA:

- R.S. 14:43(A)(3) Simple Rape under subsection (3)
- R.S. 14:43.1 Sexual Battery of Victim 18 and over
- R.S. 14:43.5 Intentional Exposure to Aids
- R.S. 14:46 False Imprisonment of child under 18 - other than by parent
- R.S. 14:46.1 False Imprisonment of child under 18 with weapon
- R.S. 14:78 Incest
- R.S. 14:81 Indecent Behavior with Juveniles (involving lewd and lascivious behavior in the presence of a juvenile)
- R.S. 14:81.1 Possession, Production and/or Distribution of Child Pornography
 - Placement of this offense in Louisiana's Tier II category partially exceeds SORNA requirements. Possession of child pornography is a Tier I offense under SORNA.
- R.S. 14:89 Crime Against Nature
- R.S. 14:283 Video Voyeurism
- R.S. 14:283.1 Voyeurism
- R.S. 23:251 Minors under 16: prohibited employments or occupations

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 Louisiana Statutes 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.
 - Louisiana's omission of recidivists does not meet SORNA's requirements.
- R.S. 14:43.1 Sexual Battery of Minor under 18 years of age
- R.S. 14:46.2(B)(2) Human Trafficking
- R.S. 14:46.3 Trafficking of Children for Sexual Purposes
- R.S. 14:81.1 Possession, Production and/or Distribution of Child Pornography
 - Production and/or Distribution (not possession) are Tier II offenses under SORNA.
- R.S. 14:81.2 Molestation of a Juvenile
- R.S. 14:81.3 Computer Aided Solicitation
- R.S. 14:84 (1),(3),(5), and (6) Pandering when victim is under 18 years of age
- R.S. 14:86 Enticing of minor into Prostitution
- R.S. 14:92(A)(7) Contributing to the Delinquency of Juveniles
 - Placement of this statute in Louisiana's Tier I category does not meet SORNA's requirements. This offense involves sexual contact with minors, which is a Tier II offense under SORNA.

Tier III Offenses

SORNA requires that Tier III offenders register for life and quarterly verify registration information. The following offenses listed in Louisiana Statutes would require, at a minimum, 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.
 - Louisiana's omission of recidivists does not meet SORNA's requirements.
- R.S. 14:42 Aggravated Rape
- R.S. 14:42.1 Forcible Rape
- R.S. 14:43 Simple Rape under subsection A(1) and (2)
- R.S. 14:43.1(c)(2) Sexual Battery of a child under the age of 13
- R.S. 14:43.2 Second Degree Sexual Battery
- R.S. 14:43.3 Oral Sexual Battery

- Placement of this statute in Louisiana’s Tier II category does not meet SORNA’s requirements. This offense involves sexual acts with minors, which is a Tier III offense under SORNA.
- R.S. 14:44 Aggravated Kidnapping of a minor
- R.S. 14:44.1 Second Degree Kidnapping of a minor under 18
- R.S. 14:44.2 Aggravated Kidnapping of a child
- R.S. 14:45 Simple Kidnapping of a minor under 18
- R.S. 14:78.1 Aggravated Incest
 - Placement of this statute in Louisiana’s Tier II category does not meet SORNA’s requirements. This offense involves sexual acts with minors, which is a Tier III offense under SORNA.
- R.S. 14:80 Felony Carnal Knowledge of a juvenile
 - Placement of this statute in Louisiana’s Tier I category does not meet SORNA’s requirements. This offense may involve sexual acts with minors under the age of 16, which is a Tier III offense under SORNA.
- R.S. 14:81.2(E)(1) Molestation of a juvenile under the age of 13
- R.S. 14:82.1 Prostitution: Persons Under Seventeen
- R.S. 14:89.1 Aggravated Crime Against Nature
- R.S. 14:93.5 Sexual Battery of the Infirm