



September 2016

SORNA Substantial Implementation Review State of Minnesota

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to acknowledge the State of Minnesota for the 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 Minnesota's SORNA substantial implementation packet and has found the State of Minnesota to have not substantially implemented SORNA.

In November 2015, the Minnesota Bureau of Criminal Apprehension, Department of Public Safety, submitted to the SMART Office for review a SORNA substantial implementation package, consisting of a completed SORNA Substantial Implementation Checklist, all relevant state statutes and codes, and a series of memos detailing the state's tribal agreements and points of contact.

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 whether Minnesota 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. Minnesota is encouraged to focus on the deviations that substantially disserve SORNA's requirements and to work toward rectifying those deviations in order to achieve substantial implementation of SORNA. To achieve full implementation of SORNA, Minnesota should also work toward rectifying the deviations that do not substantially disserve the purposes of SORNA.

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 (within 3 business days) 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.

Minnesota notifies other state law enforcement agencies, including Indian Tribes located within the state (U.S. territories and the District of Columbia are not included in the definition of “state”), and updates the FBI databases when an offender initially registers and/or updates information. However, Minnesota only updates its public sex offender registry website when an offender is deemed non-compliant or upon changes to photographs or through the annual verification process (see Section X for further information). Further, Minnesota defines “immediate” as three to seven days.

These deviations do not substantially disserve the purposes 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. Minnesota Offenses

Minnesota captures most of the offenses for which SORNA requires registration, with the exception of video voyeurism involving a minor.

B. Offenses of Other SORNA Registration Jurisdictions

In Minnesota, registration is required for any offender if the offense committed in another state is comparable to a Minnesota registerable offense.

C. Federal Offenses

In Minnesota, registration is required for any offender if the offense committed in another jurisdiction is comparable to a Minnesota registerable offense. Additionally, if a person is registered in another state for an offense, then that person must register in Minnesota. While this scheme will include many of the federal offenses requiring registration, Minnesota does not require registration for the following federal offenses:

- 18 U.S.C. §1801 (Video Voyeurism of a Minor)
- 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. §2423 (Transportation of Minors for Illegal Sexual Activity, Travel With the Intent to Engage in Illicit Sexual Conduct with a Minor, Engaging in Illicit Sexual Conduct in Foreign Places)
- 18 U.S.C. §2424 (Failure to File Factual Statement about an Alien Individual)

- 18 U.S.C. §2425 (Transmitting Information about a Minor to further Criminal Sexual Conduct)

D. Military Offenses

Minnesota requires offenders to register if they committed offenses requiring registration under military law, if the offense committed is comparable to a Minnesota sex offense. Minnesota will register most of the military offenses required by SORNA. Nevertheless, there are some UCMJ Offenses (such as Conduct Unbecoming) that are not comparable to those registerable under Minnesota law and, therefore, would not be registered under Minnesota's existing scheme.

E. Foreign Offenses

Minnesota does not require registration for offenses committed in foreign countries.

F. Juvenile Adjudications

Minnesota requires all juveniles adjudicated delinquent for sex offenses to register.

These deviations 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. Minnesota's registration and notification scheme deviates from SORNA requirements in that it requires all sex offenders to register for either 10 years or life (see Section IX for information about frequency of reporting and duration of registration requirements). For clarification purposes, the SMART Office has reviewed all statutes identified in Minnesota's registration and notification scheme and has placed these statutes within the SORNA three tier levels (see Appendix: Minnesota Offense Tiering Review for a detailed analysis regarding this subsection of the review).

The following Minnesota offenses require 10 year registration and annual verification; these offenses are equivalent to SORNA Tier II offenses requiring registration for 15 years with annual appearances:

- 609.3451 (Subdivision 3) Criminal Sexual Conduct in the Fifth Degree
- 609.255 (Subdivision 2) False Imprisonment
- 617.247 Possession of pictorial representations of minors
- 609.2325 (Subdivision 1) Criminal Abuse (committed on or after 8/1/2011)

The following Minnesota offenses require 10 year registration and annual verification; these offenses are equivalent to SORNA Tier II offenses requiring registration for 25 years with twice-yearly appearances:

- 609.322 or 609.324 Soliciting a minor to engage in prostitution
- 609.344(e), (f) Criminal Sexual Conduct in the Third Degree
- 609.344 (h), (i), (l), (n), (o) Criminal Sexual Conduct in the Third Degree (victim age 16-17)
- 609.345 (b),¹ (e), (f), (g) Criminal Sexual Conduct in the Fourth Degree
- 609.345(c), (d), (h), (i), (j), (k), (l), (m), (n), (o) Criminal Sexual Conduct in the Fourth Degree (victim age 13-17)
- 609.352 Soliciting a minor to engage in sexual conduct
- 617.246 Using a minor in a sexual performance
- 617.247 (Subdivision 3) Possession of pornographic work involving minors

The following Minnesota offenses require 10 year registration and annual verification; these offenses are equivalent to SORNA Tier III offenses requiring lifetime registration with quarterly appearances:

- 609.25 Kidnapping
- 609.342 (b) Criminal Sexual Conduct in the First Degree
- 609.344 (d), (j), (k), (m) Criminal Sexual Conduct in the Third Degree
- 609.344 (h), (i), (l), (n), (o) Criminal Sexual Conduct in the Third Degree (victim age less than 16)
- 609.345 (d) Criminal Sexual Conduct in the Fourth Degree (victim under age 13)

Minnesota does not meet 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. Minnesota captures some of the required information, with the following exceptions:

- Driver's license number or ID card
- Employer: transient day labor employment information
- Internet identifiers
- Passports and immigration documents
- Photographs: updated as needed
- Professional licenses
- Purported social security numbers

¹ Under 42 U.S.C. §16911(5)(c), SORNA does not require registration for any sexual contact or sexual act where the victim is at least 13, the offender is no more than 4 years older than the victim, and the act/contact is consensual.

- Temporary lodging information
- Vehicle information: registration number for aircraft and watercraft, including permanent or frequent location where all vehicles are kept

Minnesota does not meet 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.

Minnesota 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.

While Minnesota meets most of the requirements in this section, the state requires individuals released without a period of incarceration to register with a corrections agent as soon as the agent is assigned to the person; if the person does not have an assigned corrections agent, the person shall register with the law enforcement authority that has jurisdiction in the area of the person's primary address. This timeframe is not prescribed by the state, but typically assignation is done at sentencing. Additionally, if the person is registered as a sex offender in another state, Minnesota requires that they report for registration within five days after the person enters the state to take up residence or begin school, employment or his or her vocation.

These deviations do not substantially disserve the purposes 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).

Minnesota first passed its registration law in 1991, which was prospective. Minnesota does require registration for those applicable individuals who reenter the jurisdiction's criminal justice system because of a conviction for a crimes against person offense.

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 (USMS), and immediately update NCIC/NSOR.

In Minnesota, registered sex offenders must immediately (within three to seven days) report changes in name, address, employment and school information, and vehicle information to law enforcement; sex offenders are not required to update law enforcement of any other changes in registration information. While Minnesota does not directly notify the USMS of international travel or relocation, USMS does have access to the state's registry. Furthermore, Minnesota does not require offenders to report 21 days in advance of travel outside the United States.

Because Minnesota does not require offenders to report 21 days in advance of international travel, Minnesota does not meet the SORNA requirements of 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.

In Minnesota, all individuals convicted or adjudicated delinquent for sex offenses are required to register for 10 years. Any registrant that fails to comply with the statute is required to register for an additional five years.² Minnesota requires lifetime registration in the following instances:

- If an individual is convicted or adjudicated delinquent for committing First Degree Murder or a second registerable offense, committed after August 1, 2000.
- If the person is required to register pursuant to a court commitment under the state's sexual psychopathic personalities and sexually dangerous persons law³ or a similar law of another state or federal law.
- Adult offenders convicted for any of the following offenses after August 1, 2000:
 - 609.342 (a), (c), (d), (e), (f), or (h) Criminal Sexual Conduct in the First Degree
 - 609.343 (a), (c), (d), (e), (f), or (h) Criminal Sexual Conduct in the Second Degree
 - 609.344 (a), (c), or (g) Criminal Sexual Conduct in the Third Degree
 - 609.345 (a), (c), or (g) Criminal Sexual Conduct in the Fourth Degree
 - Or a comparable federal offense or a comparable offense in another state.
- If the person is required to register for life in another jurisdiction, then he/she will also be required to register for life in Minnesota.

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 Minnesota, registrants must update and verify their registry information at least once per year. Individuals required to register pursuant to a court commitment under the state's sexual psychopathic personalities and sexually dangerous persons law or a similar law of another state or a similar federal law must update and verify their registry information every 90 days.

² Fails to report for registration, fails to update registration information, or fails to return registration verification form.

³ Minnesota Statutes 2015, Chapter 253D. Civil Commitment and Treatment of Sex Offenders.

C. Reduction of Registration Periods

SORNA creates certain requirements under which a jurisdiction can allow an offender to have a reduced registration period.

In Minnesota, sex offenders are not allowed reductions in their registration periods.

Because Minnesota does not register offenders for the appropriate durations or frequency of reporting, Minnesota does not meet the SORNA requirements of 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.

Minnesota's public registry website displays information about only risk assessed Level 3 offenders and non-compliant (for more than 30 days) offenders. Minnesota's website is only updated when an offender is found to be non-compliant or information (i.e., photograph, address) has changed; this is done in accordance with annual verification procedures. Furthermore, Minnesota's website is not searchable by geographic radius. While Minnesota displays some of the SORNA required information about registered sex offender, several important items of information are not relayed to the public, including:

- Criminal history
- Employer address
- School address
- Vehicle information

Because Minnesota only posts information about a narrow class of registered offenders, only updates the website under certain circumstances, and does not post the necessary address information, Minnesota does not meet the SORNA requirements of 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.

Minnesota monitors and responds to relocation notices on the SORNA Exchange Portal; however, law enforcement does not send relocation notices to other jurisdictions. The State is

currently developing a database solution that will allow for both sending and receiving tasks through the Exchange Portal. Minnesota appropriately notifies (or allows access to State law enforcement databases) other law enforcement agencies and federal databases of changes to offenders' registration information.

In Minnesota, only those registrants assigned a risk level 3 by the End of Confinement Review Committee (ECRC), Department of Corrections, are subject to general community notification. Only certain sex offenders are subject to ECRC review, including those:

- Released from a state prison in Minnesota;
- Released from a state prison in another state who move to Minnesota under supervision;
- Released from a federal prison and intending to reside in Minnesota
- Released from confinement who were committed as sexually dangerous persons, sexually psychopathic personalities or mentally ill and dangerous; or
- Designated (and upon request) by local law enforcement, if released from a federal prison or another state's prison and not under supervision.

Thus, only a portion of registered offenders in Minnesota are subject to assessment by the ECRC and then only those assigned a level 3 are subject to community notification.

Furthermore, Minnesota does not provide the public with any direct notification of registered offenders who live, work or attend school in proximity to their address. Access to information about level 3 offenders is only available through the public registry website and upon request to law enforcement, via community meetings.

Because Minnesota only notifies the public of assessed level 3 sex offenders and does not provide a method of direct notification to the public, Minnesota does not meet the SORNA requirements of 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.

Minnesota meets 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.

Minnesota 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.

In Minnesota, each local law enforcement agency handles the monitoring and tracking of the registrants in differently. When an agency discovers that an offender is no longer living, working or attending school at the registered address, they contact the central registry at the State Bureau of Criminal Apprehension (BCA) to pursue failure to register charges. Local law enforcement agencies are encouraged to seek warrants for non-compliant registrants; however, this is not required. Furthermore, the United States Marshals Service is not directly notified of registration violations, but they do have access to the BCA database (registry), which lists all non-compliant registrants.

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

XV. Tribal Considerations

There are two Indian Tribes that have chosen to adopt SORNA located within the boundaries of Minnesota: the Bois Forte Reservation Business Committee and the Red Lake Band of Chippewa Indians of Minnesota. The Bois Forte Tribe has been found to have substantially implemented SORNA and has a strong working relationship with the State of Minnesota, including a formalized Memorandum of Agreement (MOA) for access to the BCA and NCIC databases and submission of DNA samples for entry into NDIS. The Red Lake Band has entered into a MOA for access to the BCA and NCIC databases and has submitted a substantial implementation package to the SMART Office for review.

Additionally, the state has entered into MOAs with several other Indian tribes located within the state that allow access to the BCA and NCIC databases.

Conclusion

We encourage Minnesota to continue to work towards meeting the provisions of SORNA. However, there are many provisions identified in this report that should be addressed in order for Minnesota to substantially implement SORNA. Please contact the SMART Office with any questions or concerns once you have had the opportunity to review and discuss our findings.

Appendix: Minnesota Offense Tiering Review

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

In reviewing Minnesota Revised Statutes, the SMART Office understands that Minnesota essentially has two categories of registrants:

1. Individuals convicted or adjudicated delinquent for most sex offenses are required to register for 10 years. Any registrant in violation of the statute is required to register for an additional five years.
2. Lifetime registration in the following instances:
 - If an individual is convicted or adjudicated delinquent for committing First Degree Murder or a second registerable offense, committed after August 1, 2000.
 - If the person is required to register pursuant to a court commitment under the state's sexual psychopathic personalities and sexually dangerous persons law or a similar law of another state or federal law.
 - Adult offenders convicted for any of the following offenses after August 1, 2000:
 - 609.342 (a), (c), (d), (e), (f), or (h) Criminal Sexual Conduct in the First Degree
 - 609.343 (a), (c), (d), (e), (f), or (h) Criminal Sexual Conduct in the Second Degree
 - 609.344 (a), (c), or (g) Criminal Sexual Conduct in the Third Degree
 - 609.345 (a), (c), or (g) Criminal Sexual Conduct in the Fourth Degree
 - Or a comparable federal offense or a comparable offense in another state.
 - If the person is required to register for life in another jurisdiction, then he/she will also be required to register for life in Minnesota.

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 Minnesota Statutes would require, at a minimum, Tier I registration requirements under SORNA.

- 609.345(c), (d), (h), (i), (j), (k), (l), (m), (n), (o) Criminal Sexual Conduct in the Fourth Degree (adult victim)
- 609.3451 (Subdivision 3) Criminal Sexual Conduct in the Fifth Degree
- 609.255 (Subdivision 2) False Imprisonment
- 617.247 Possession of pictorial representations of minors
- 609.2325 (Subdivision 1) Criminal Abuse (committed on or after 8/1/2011)

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 Minnesota Statutes would require, at a minimum, Tier II registration requirements under SORNA.

- 609.322 or 609.324 Soliciting a minor to engage in prostitution
- 609.343 Criminal Sexual Conduct in the Second Degree (victim age 13-18)
- 609.344(e), (f) Criminal Sexual Conduct in the Third Degree
- 609.344(h), (i), (l), (n), (o) Criminal Sexual Conduct in the Third Degree (victim age 16-17)
- 609.345(b)*, (e), (f), (g) Criminal Sexual Conduct in the Fourth Degree
 - 609.345(c), (d), (h), (i), (j), (k), (l), (m), (n), (o) Criminal Sexual Conduct in the Fourth Degree (victim age 13-17)
- 609.352 Soliciting a minor to engage in sexual conduct
- 617.246 Using a minor in a sexual performance
- 617.247 (Subdivision 3) Possession of pornographic work involving minors

SORNA Tier III Offenses

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

- 609.185(a)(2) First Degree Murder
- 609.25 Kidnapping
- 609.342 Criminal Sexual Conduct in the First Degree
- 609.343 Criminal Sexual Conduct in the Second Degree (victim under age 13)
- 609.344(c), (d), (g), (j), (k), (m) Criminal Sexual Conduct in the Third Degree
- 609.344(h), (i), (l), (n), (o) Criminal Sexual Conduct in the Third Degree (victim age less than 16)
- 609.345(c), (d) Criminal Sexual Conduct in the Fourth Degree (victim under age 13)

Further Review

Minnesota registers the following offenses; however, those offenses, without the commission of (or the attempt or conspiracy to commit) a sexual offense, do not require registration under SORNA:

- 609.344(a), (b)* Criminal Sexual Conduct in the Third Degree

* Under 42 U.S.C. §16911(5)(c), SORNA does not require registration for any sexual contact or sexual act where the victim is at least 13, the offender is no more than 4 years older than the victim, and the act/contact is consensual.

- 609.344(h), (i), (l), (n), (o) Criminal Sexual Conduct in the Third Degree (adult victim)
- 609.345(a) Criminal Sexual Conduct in the Fourth Degree
- 617.23 Indecent Exposure