



April 2024

## **SORNA Substantial Implementation Review State of California – Revised**

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) recognizes the State of California's efforts to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its revised review of California's SORNA substantial implementation materials and has determined California has not substantially implemented SORNA.

In January 2016, the SMART Office issued a SORNA Substantial Implementation Review to California that found the state had not substantially implemented SORNA. In October 2017, the California Legislature passed SB 384, legislation that amended California's sex offender registration laws. It went into effect on January 1, 2021, and, among the many revisions made by the legislation, it changed California's lifetime sex offender registration scheme to a tier-based scheme. In preparing this review, the SMART Office examined revised statutes, policies, public registry website information, and a revised substantial implementation checklist. In addition, email and phone correspondence with the California Department of Justice informed our review.

This review is exhaustive and details each area in which California has not met SORNA standards. This review follows the outline of the SMART Office Substantial Implementation Checklist-Revised, and contains 11 sections addressing the SORNA requirements. Each section indicates whether California meets or does not meet the SORNA requirements of that section, or deviates from the SORNA requirements in a way that does not substantially disserve SORNA's requirements.

### **I. Immediate Notification and Exchange of Information**

SORNA requires that when an offender initially registers and/or updates their information in a jurisdiction, that the initial registration information or updated information be immediately sent to each jurisdiction where the offender has to register—where the offender lives, works, or goes to school—through the SORNA Exchange Portal or other means, as well as sent to the National Crime Information Center's National Sex Offender Registry (NCIC/NSOR). Notification must also be provided to appropriate law enforcement agencies, supervision agencies and any agency responsible for conducting employment-related background checks under 34 U.S.C. § 40102(a) in each jurisdiction where the offender is registered.

California deviates from SORNA requirements in that California only shares initial registration information and/or updated information with required out-of-state registration jurisdictions if the offender is moving residency out of state. Additionally, California only sends criminal history information to law enforcement agencies, which generally excludes tribes located within the state. Therefore, tribal law enforcement agencies are prohibited from receiving sex offender registration information unless the tribal law enforcement agency has officers who have obtained their Bureau

of Indian Affairs Special Law Enforcement Commissions (SLEC). Then, only the specific SLEC officers are entitled to access.<sup>1</sup>

California does not meet the SORNA requirements in this section.

## II. Offenses that Must Be Included in the Registry

SORNA requires that a jurisdiction capture certain sex offenses, both from the jurisdiction itself and from other SORNA registration jurisdictions, in its registration scheme. In addition, SORNA requires certain federal, military, and foreign offenses be included in a jurisdiction’s registration scheme. SORNA also requires that certain adjudications of delinquency be included in a jurisdiction’s registration scheme.

### A. California Offenses

California includes most of the California offenses for which SORNA requires registration in its registration scheme. However, the following California offenses are not included in California’s registration law as required by SORNA:

- Cal. Penal Code § 207 Kidnapping by force, fear, or to commit lewd and lascivious acts (if non-parental and victim under 18)<sup>2</sup>
- Cal. Penal Code § 209 Kidnapping for ransom or to commit robbery or rape (if non-parental and victim under 18)<sup>3</sup>
- Cal. Penal Code § 209.5 Kidnapping during carjacking (if non-parental and victim under 18)
- Cal. Penal Code § 236 False imprisonment (if non-parental and victim under 18)
- Cal. Penal Code § 237(a) False imprisonment (if non-parental and victim under 18)
- Cal. Penal Code § 261.5 Unlawful sexual intercourse with a minor\*<sup>4</sup>
- Cal. Penal Code § 265 Kidnapping for marriage (if victim under 18)
- Cal. Penal Code § 266a Kidnapping for prostitution (if non-parental and victim under 18)

---

<sup>1</sup> In October 2023, the California Legislature passed AB 44, legislation that allows certain tribal law enforcement agencies to request access to the California Law Enforcement Telecommunications System (CLETS), a computer network that provides law enforcement with access to criminal justice information. At this time, it is unclear what, if any, impact the legislation will have on California’s ability to share registration information with tribal law enforcement agencies.

<sup>2</sup> Registration for a conviction of Cal. Penal Code § 207 will only be required if the offender is convicted of kidnapping with intent to violate Cal. Penal Code § 261 (rape), Cal. Penal Code § 286 (sodomy), Cal. Penal Code § 287 (oral copulation), Cal. Penal Code § 288 (lewd and lascivious acts), Cal. Penal Code § 289 (sexual penetration by foreign object), or Cal. Penal Code § 288a (oral copulation).

<sup>3</sup> Registration for a conviction of Cal. Penal Code § 209 will only be required if the offender is convicted of kidnapping with intent to violate Cal. Penal Code § 261 (rape), Cal. Penal Code § 286 (sodomy), Cal. Penal Code § 287 (oral copulation), Cal. Penal Code § 288 (lewd and lascivious acts), Cal. Penal Code § 289 (sexual penetration by foreign object), or Cal. Penal Code § 288a (oral copulation).

<sup>4</sup> This is a “wobbler” offense, an offense that can be charged or punished as either a felony or a misdemeanor. California has many wobbler offenses, all of which are denoted in this report with an asterisk (\*).

- Cal. Penal Code § 266e Purchasing person for prostitution (if victim under 18)
- Cal. Penal Code § 266f Selling person for immoral purposes (if victim under 18)
- Cal. Penal Code § 266g Forcing wife into prostitution (if victim under 18)
- Cal. Penal Code § 266h(a) Pimping; living or deriving support from prostitution (if victim under 18)<sup>5</sup>
- Cal. Penal Code § 266i(a) Pandering (if victim under 18)<sup>6</sup>
- Cal. Penal Code § 288.2(a)(1) Distribution of harmful material depicting minors (if misdemeanor)\*<sup>7</sup>
- Cal. Penal Code § 311.2(a) Possession, production, and distribution of obscene matter (if offense involves child pornography)

Additionally, the following California offenses are not registerable if the offender is not more than 10 years older than the victim and the conviction is the only one requiring the offender to register:

- Cal. Penal Code § 286(b)(1) Sodomy with a minor\*<sup>+8</sup>
- Cal. Penal Code § 286(b)(2) Sodomy with a victim under 16<sup>+</sup>
- Cal. Penal Code § 287(b)(1) Oral copulation with a minor\*<sup>+</sup>
- Cal. Penal Code § 287(b)(2) Oral copulation with a victim under 16<sup>+</sup>
- Cal. Penal Code § 289(h) Sexual penetration by foreign object with a minor
- Cal. Penal Code § 289(i) Sexual penetration by foreign object with a victim under 16

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

California deviates from SORNA in that California requires registration for any offense that, based on elements or facts, would have been punishable as a registerable California offense if committed or attempted in California. California also requires registration if a person has been convicted and ordered by any other state, federal, or military court to register as a sex offender if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification and if a person would be required to register while residing in the state of conviction for a sex offense committed in that state, with the exception of certain offenses.<sup>9</sup>

#### C. Federal Offenses

California deviates from SORNA requirements in that California includes federal offense convictions in its registration scheme only if the offense, based on elements or facts, would

<sup>5</sup> California statutorily requires registration for pimping a minor (Cal. Penal Code § 266h(b)), which covers the same conduct addressed by this offense, but specifies the victim is a minor.

<sup>6</sup> California statutorily requires registration for pandering a minor (Cal. Penal Code § 266i(b)), which covers the same conduct addressed by this offense, but specifies the victim is a minor.

<sup>7</sup> California only requires registration if an offender is convicted with a felony violation of Cal. Penal Code § 288.2(a)(1).

<sup>8</sup> This is an offense that, if subject to the Romeo and Juliet exception under SORNA, will not be registerable. Additional California offenses that may be subject to this exception are denoted in this report with a plus sign (+).

<sup>9</sup> See Cal. Penal Code § 290.005(d).

have been punishable as a registerable California offense if committed or attempted in California. The following offenses require registration under SORNA but do not appear to have equivalent California offenses.

- 18 U.S.C. § 1801 Video voyeurism (if victim is 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. § 2260 Production of sexually explicit depictions of a minor for import into the United States
- 18 U.S.C. § 2424 Failure to file factual statement about alien individual
- 18 U.S.C. § 2425 Use of interstate facilities to transmit information about a minor

California also requires registration of offenders who have been convicted of a federal offense and who are ordered to register as a term or condition of their supervised release.

#### D. Military Offenses

California deviates from SORNA requirements in that California includes military offense convictions in its registration scheme only if the offense, based on elements or facts, would have been punishable as a registerable California offense if committed or attempted in California. Therefore, there are some military offenses (such as conduct unbecoming) that do not appear to have an equivalent offense under California law and, if not, may not require registration under California's existing scheme.

#### E. Foreign Offenses

California deviates from SORNA requirements in that California includes foreign convictions in its registration scheme only if the offense, based on elements or facts, would have been punishable as a registerable California offense if committed or attempted in California. Therefore, there are some foreign offenses that do not appear to have an equivalent offense under California law and, if not, may not require registration under California's existing scheme.

#### F. Juveniles

California handles juveniles charged with sex offenses in multiple ways.

##### 1. Policies and practices to prosecute as adults juveniles who commit serious sex offenses

California does not automatically require juveniles who commit serious sex offenses to be prosecuted as adults. However, juveniles who are 14 or 15 years old at the time they commit or attempt to commit kidnapping, rape, aiding or abetting rape, sodomy, oral copulation, lewd or lascivious acts, continuous sexual abuse of a child, or sexual penetration by foreign object, or who commit assault with intent to commit certain sex offenses, but who were not apprehended prior to the end of juvenile court jurisdiction, may be transferred from juvenile court to adult

court.<sup>10</sup> Juveniles who are at least 16 years old at the time they commit one of the aforementioned offenses or any other felony statute may also be transferred from juvenile court to adult court.<sup>11</sup>

The prosecutor may make a motion to transfer the juvenile. If a motion is filed, the juvenile court must order the probation officer to submit a report on the behavioral patterns and social history of the juvenile. The report must include any statement from the victim. Both parties may also submit any other relevant evidence for the court's consideration. Before the juvenile court can grant the motion transferring the juvenile to adult court, it must find by clear and convincing evidence that the juvenile is not amenable to rehabilitation while under the juvenile court's jurisdiction. In making its determination, the juvenile court must consider several factors, including the degree of criminal sophistication exhibited by the juvenile (e.g., the juvenile's age, maturity, intellectual capacity, etc.), whether the juvenile can be rehabilitated prior to the expiration of the juvenile court's jurisdiction, the juvenile's previous delinquent history, success of previous attempts by the juvenile court to rehabilitate the juvenile, and the circumstances and gravity of the offense alleged to have been committed by the juvenile.

A juvenile prosecuted as an adult of a registerable sex offense is subject to the same registration requirements as an adult.

## 2. Policies and practices to register juveniles adjudicated delinquent for serious sex offenses

California only registers juveniles who are adjudicated delinquent if they have been discharged or paroled from the California Department of Corrections and Rehabilitation, Division of Juvenile Justice<sup>12</sup> after having been committed for secure confinement as a result of the commission or attempted commission of certain completed or attempted registerable sex offenses, including kidnapping with intent to commit certain sex offenses, assault with intent to commit certain sex offenses, rape, aiding or abetting rape, inducing consent to sexual act by fraud or fear, kidnapping a minor for prostitution, sodomy, penetration by foreign object by force or threat, or annoying or molesting children.<sup>13</sup> Out-of-state juveniles adjudicated

---

<sup>10</sup> Cal. Welf. & Inst. Code § 707(a)(2).

<sup>11</sup> *Id.* § 707(a)(1).

<sup>12</sup> The Division of Juvenile Justice (DJJ) was a division of the California Department of Corrections and Rehabilitation that housed and treated juveniles who committed serious crimes. Pursuant to legislation passed in September 2020 (SB 823) and May 2021 (SB 92), DJJ underwent a phased closure of its facilities and the responsibility for managing all committed juveniles housed at DJJ was transferred to local jurisdictions. All DJJ facilities closed by June 30, 2023.

<sup>13</sup> Juveniles adjudicated delinquent of a registerable sex offense who were discharged or paroled from DJJ before June 30, 2021, after having been committed for secure confinement, and juveniles adjudicated delinquent of a registerable sex offense who were sent to DJJ on or before June 30, 2021, and who were discharged or paroled from DJJ before July 1, 2022, are required to register as sex offenders pursuant to Cal. Penal Code § 290.008. Discharged juveniles include juveniles who are in the custody of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice on or after July 1, 2022, who, prior to discharge, are returned to the court of jurisdiction for alternative disposition, specifically due to the statutorily required closure of DJJ; individuals who are 18 years of age or older and in the custody of the California Department of Corrections and Rehabilitation for committing a felony while in custody when DJJ closes (as described in Cal. Welf. & Inst. Code § 1732.9); and juveniles who are under the care of the State Department of State Hospitals (as described in Cal. Welf. & Inst. Code § 1732.10). Cal. Penal Code § 290.008. Discharged juveniles adjudicated delinquent of a registerable sex offense who were sent to DJJ on or before June 30, 2021, but who were not discharged or paroled from DJJ until on or after July 1, 2022, will only be required to register if the court orders registration. *See* Cal. Penal Code § 290.008(i).

delinquent are required to register in California if they have been discharged or paroled from a facility in another state that is equivalent to the Division of Juvenile Justice after having been committed for secure confinement as a result of the commission or attempted commission of an offense which, if committed or attempted in California, would have been punishable as one of the aforementioned California registerable offenses.

3. Policies and practices to identify, track, monitor or manage juveniles adjudicated delinquent for serious sex offenses who are in the community

California requires that all sex offenders, including juveniles adjudicated delinquent, participate in an approved sex offender management program while on parole or formal probation. Because of the closure of the Division of Juvenile Justice, all juveniles adjudicated delinquent after July 1, 2021, will ultimately be committed and supervised at the county level.

Because California does not include a significant number of state offenses, including several tier III offenses in its registration scheme, and does not register juveniles in accordance with SORNA requirements, California does not meet the SORNA requirements in this section.

### **III. Required Registration Information**

SORNA requires the jurisdiction collect certain information from, and, for each offender that it registers, and requires that the jurisdiction keep that registration information in its registry, in a digitized form.

California deviates from SORNA requirements in that the following information is not included in its registry:

- Driver's license<sup>14</sup>
- Internet identifiers<sup>15</sup>
- Passport and immigration documents
- Professional licensing information
- Temporary lodging information<sup>16</sup>
- Vehicle Information<sup>17</sup>

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

---

<sup>14</sup> Offenders are required to provide their driver's license number. As part of their registration obligations, they are also required to provide adequate proof of residence, which may be accomplished by providing a copy of their California driver's license or identification card. *See* Cal. Penal Code § 290.015(a)(7).

<sup>15</sup> California only requires sex offenders who are convicted on or after January 1, 2017, to register their internet identifiers if the court determines at the time of sentencing that certain conditions have been met. *See* Cal. Penal Code § 290.024.

<sup>16</sup> To the extent that an offender's temporary lodging is identified as a change in residence, this information is captured. *See* Cal. Penal Code §§ 290(b), 290.010.

<sup>17</sup> California does not collect information about aircraft, watercraft, or the permanent or frequent location where all vehicles are kept.

#### **IV. Where Registration Is Required**

SORNA requires the jurisdiction register an offender if the offender was convicted or incarcerated in that jurisdiction. In addition, SORNA requires that the jurisdiction register offenders who live, work, or go to school in the jurisdiction.

California requires all offenders who live in California to register. Non-resident sex offenders who attend school or are employed in California for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, are only required to register if they are required to register in their state of residence.

Because California does not require all sex offenders who are employed in California to register in accordance with SORNA standards, California does not meet the SORNA requirements in this section.

#### **V. Initial Registration: Generally**

SORNA requires registration of an offender who is incarcerated within the jurisdiction before release from imprisonment for the registration offense. Similarly, when an offender is sentenced in the jurisdiction, but not incarcerated, SORNA requires registration within three business days of sentencing. Additionally, 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. Finally, SORNA requires that, during the initial registration process, the jurisdiction inform the offender of their registration duties and require the offender acknowledge in writing that they understand those duties.

California deviates from SORNA requirements in that California requires transient offenders register within five working days from release from incarceration, placement or commitment, or release on probation, or, within five days of entering California.

Non-resident sex offenders who move to California are required to register within five working days of entering California. Non-resident sex offenders who are required to register in their state of residence and who are employed in California for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, are required to register within five days (after reaching 14 consecutive days of employment or an aggregate period of employment exceeding 30 days) with law enforcement where their employment is located.

Offenders who are enrolled, or employed, at a university, college, community college, or other institution of higher learning, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, in California, are required to register with the campus police department within five days of commencing enrollment or employment.

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

## **VI. Initial Registration: Retroactive Classes of Offenders**

SORNA applies to sex offenders convicted prior to the enactment of SORNA or its implementation in the jurisdiction, if they are prisoners, supervisees, or registrants at the time of implementation, or if they reenter the system because of subsequent criminal convictions.

California meets all of the SORNA requirements in this section.

## **VII. Keeping the Registration Current**

SORNA requires registered sex offenders immediately appear in person to the registering agency in their jurisdiction of residence to update their name, residence, employment, school attendance, and termination of residence. SORNA also requires sex offenders immediately update the registering agency in their jurisdiction of residence about any changes to their 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 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 the offender immediately appear in person to update school-related information.

SORNA also requires that, when an offender intends to travel outside the United States, the offender notify the registering agency in their jurisdiction of residence at least 21 days in advance of such travel.

In addition, SORNA requires that, when an offender notifies the jurisdiction of intent to relocate to another country to live, work or attend school, or of intent to travel to another country, the jurisdiction must do three things: 1) immediately notify any other jurisdiction where the offender is either registered, or is required to register, of that updated information; 2) immediately notify the United States Marshals Service; and 3) immediately update NCIC/NSOR.

California deviates from SORNA requirements in that California requires offenders to appear in person within five working days to provide notice of any changes to their name or residence address. Additionally, offenders who are released on probation or parole must provide proof of any update or change in registration information to their probation officer or parole agent within five working days.

California does not require school or employment-related information to be updated between in-person appearances, unless the offender is enrolled or employed at an institution of higher learning or the offender is a non-resident who is changing his location of employment within California. If an offender is enrolled or employed at an institution of higher learning, they are required to provide notice in person to the campus police department within five days of commencing enrollment or employment and within five days of ceasing enrollment or employment. Non-resident offenders who are required to register in their state of residence and who are employed in California for more than 14 consecutive days, or for an aggregate period exceeding 30 days in a calendar year, and who change their location of employment, must register within five days with law enforcement where their new employment is located.



Offenders who are required to register their internet identifiers must provide written notice within 30 working days of any new or updated internet identifiers.<sup>18</sup> California does not require immediate updating of vehicle information or temporary lodging information.

California shares its registry information with the Department of Homeland Security for the purposes of its Angel Watch program, which facilitates the notification of foreign countries when certain sex offenders travel internationally. California does not statutorily require offenders to provide notice of international travel, however, the California Department of Justice updated its sex offender registration forms to require 21-day advance notice of international travel and provided registering law enforcement agencies with the United States Marshals Service international travel notice form. If an offender provides notice of international travel, the registering law enforcement agency may notify the United States Marshals Service.

Because California does not require school or employment-related information to be updated between in-person appearances, unless the offender is enrolled or employed at an institution of higher learning, California does not meet the SORNA requirements in this section.

### **VIII. Offense Tiering/Verification/Appearance Requirements**

SORNA requires offenses be classified into three tiers based on the nature and seriousness of the offense, the age of the victim, and the extent of the offender's recidivism and that the tier of the conviction offense determines the duration of registration and frequency of in-person appearances.

California's current registration and notification scheme establishes four tiers of offenses for adult offenders (tier I, tier II, tier III – lifetime, and tier III – risk assessment level)<sup>19</sup> and two tiers of offenses for juveniles adjudicated delinquent (tier I and tier II) based on the nature of the offense of conviction.<sup>20</sup> All sex offenders are required to register for life and an offender's eligibility for a reduction in registration period and level of public disclosure of registration information depends on the offender's tier. All sex offenders, except offenders designated as sexually violent predators (SVPs)<sup>21</sup> and transient offenders, are required to verify registration information in-person annually.

---

<sup>18</sup> Prior to January 1, 2017, California required all sex offenders to register their internet identifiers and internet service providers and to send written notice to law enforcement within 24 hours of adding or changing an internet identifier or an account with an internet service provider. Cal. Penal Code §§ 290.014(b), 290.015(a)(4)-(5). However, the California Legislature amended this requirement after the Ninth Circuit Court of Appeals held that the law violated the First Amendment. *See Doe v. Harris*, 772 F.3d 563 (9th Cir. 2014).

<sup>19</sup> "Tier III – risk assessment level" offenders include offenders who, based on their registerable offense(s), are tier I or tier II offenders, but who have a risk level that is well above average at the time of release. This also includes out-of-state offenders who are required to register based solely on the requirement of registration in another jurisdiction, where the offense is not equivalent to a California registerable offense, and where they have a risk level that is well above average at the time of release.

<sup>20</sup> There is also a fifth tier-to-be-determined category. Offenders are placed in the tier-to-be-determined category if the appropriate tier designation cannot be immediately ascertained by the California Department of Justice. Offenders placed in the tier-to-be-determined category are still required to register and their information is still displayed on the public sex offender registry website. *See* Cal. Penal Code § 290.46. The California Department of Justice must ascertain the offender's appropriate tier designation within 24 months of being placed in the tier-to-be-determined category. Cal. Penal Code § 290(d)(5)(A).

<sup>21</sup> A "sexually violent predator" is a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior. Cal. Welf. & Inst. Code § 6600(a)(1).

Additionally, all offenders are required to register regardless of whether the offender's conviction has been dismissed pursuant to Cal. Penal Code § 1203.4, unless the offender is entitled to relief from registration pursuant to Cal. Penal Code § 290.5, or is exonerated, pursuant to Cal. Penal Code § 3007.05(e) of the conviction requiring registration and the offender is not otherwise required to register.

#### A. Offense Tiering

The SMART Office has reviewed all relevant California statutes and has identified California's classification of these statutes within the tiering policy structure created by SORNA (see the appendix for information about California's classification of its offenders and associated registration requirements). California tiers its statutes in accordance with SORNA, with the following exceptions.

California classifies the following offenses as tier I offenses requiring lifetime registration with annual in-person verification and the opportunity to petition for a reduction in registration period after 10 years. These offenses require tier II registration (25 years) with twice-annual in-person verification under SORNA.

- Cal. Penal Code § 243.4(b) Sexual battery where victim is seriously disabled or medically incapacitated (if felony and victim 13-17)\*
- Cal. Penal Code § 266 Enticement of minor for purpose of prostitution (if felony)\*
- Cal. Penal Code § 286(b)(1) Sodomy with a minor (if felony and victim 13-17)\*+
- Cal. Penal Code § 286(b)(2) Sodomy with a victim under 16 (if victim 13-15)<sup>+</sup>
- Cal. Penal Code § 286(e) Sodomy while confined in state prison (if felony and victim 13-17)\*<sup>+</sup>
- Cal. Penal Code § 287(b)(1) Oral copulation with a minor (if felony and victim 13-17)\*<sup>+</sup>
- Cal. Penal Code § 287(b)(2) Oral copulation with a victim under 16 (if victim 13-15)<sup>+</sup>
- Cal. Penal Code § 287(e) Oral copulation while confined in state prison (if felony and victim 13-17)\*<sup>+</sup>
- Cal. Penal Code § 288a(b)(1) Oral copulation with a minor (if felony and victim 13-17) (repealed)\*<sup>+</sup>
- Cal. Penal Code § 288a(b)(2) Oral copulation with a victim under 16 (if victim 13-15) (repealed)<sup>+</sup>
- Cal. Penal Code § 288a(e) Oral copulation while confined in state prison (if felony and victim 13-17) (repealed)\*<sup>+</sup>
- Cal. Penal Code § 288.3 Contacting a minor with intent to commit certain sex offenses (if felony)\*<sup>22</sup>

---

<sup>22</sup> An offender convicted of contacting a minor with intent to commit sodomy with a minor (Cal. Penal Code § 286(b)), oral copulation with a minor (Cal. Penal Code §§ 287(b), 288a(b)), misdemeanor sexual penetration by foreign object with a minor (Cal. Penal Code § 289(h)), or sexual penetration by foreign object with a victim under 16 (Cal. Penal Code § 289(i)), will be required to register as a tier I adult offender.

- Cal. Penal Code § 289(i) Sexual penetration by foreign object with a victim under 16 (if victim 13-15)

California classifies the following offenses as tier I offenses requiring lifetime registration with annual in-person verification and the opportunity to petition for a reduction in registration period after 10 years. These offenses require tier III registration (lifetime) with quarterly in-person verification under SORNA.

- Cal. Penal Code § 243.4(b) Sexual battery where victim is seriously disabled or medically incapacitated (if felony and victim under 13)\*
- Cal. Penal Code § 266c Sexual act procured by fraud or fear (if felony)\*
- Cal. Penal Code § 286(b)(1) Sodomy with a minor (if felony and victim under 13)\*
- Cal. Penal Code § 286(b)(2) Sodomy with a victim under 16 (if victim under 13)
- Cal. Penal Code § 286(e) Sodomy while confined in state prison (if felony and victim under 13)\*
- Cal. Penal Code § 286(j) Sodomy by fraud
- Cal. Penal Code § 287(b)(1) Oral copulation with a minor (if felony and victim under 13)\*
- Cal. Penal Code § 287(b)(2) Oral copulation with a victim under 16 (if victim under 13)
- Cal. Penal Code § 287(e) Oral copulation while confined in state prison (if felony and victim under 13)\*
- Cal. Penal Code § 287(j) Oral copulation by fraud
- Cal. Penal Code § 288a(b)(1) Oral copulation with a minor (if felony and victim under 13) (repealed)\*
- Cal. Penal Code § 288a(b)(2) Oral copulation with a victim under 16 (if victim under 13) (repealed)
- Cal. Penal Code § 288a(e) Oral copulation while confined in state prison (if felony and victim under 13) (repealed)\*
- Cal. Penal Code § 289(c) Sexual penetration by foreign object where victim is incapable of giving consent because of mental disorder or developmental or physical disability
- Cal. Penal Code § 289(f)-(g) Sexual penetration by foreign object by fraud or threat
- Cal. Penal Code § 289(i) Sexual penetration by foreign object with a victim under 16 (if victim under 13)

California classifies the following offenses as tier II offenses requiring lifetime registration with annual in-person verification and the opportunity to petition for a reduction in registration period after 20 years. These offenses require tier III registration (lifetime) with quarterly in-person verification under SORNA.

- Cal. Penal Code § 261(a)(1) Rape where victim is incapable of giving consent because of mental disorder or developmental or physical disability
- Cal. Penal Code § 261(a)(5)-(7) Rape by fraud or threat

- Cal. Penal Code § 285 Incest (if offense involves a sexual act, as defined by 18 U.S.C. § 2246(2), and victim under 13)
- Cal. Penal Code § 286(c)(1) Sodomy with a victim under 14 (if victim under 13)
- Cal. Penal Code § 286(g)-(h) Sodomy where victim is incapable of giving consent because of mental disorder or developmental or physical disability
- Cal. Penal Code § 286(k) Sodomy by threat
- Cal. Penal Code § 287(c)(1) Oral copulation with a victim under 14 (if victim under 13)
- Cal. Penal Code § 287(c)(3) Oral copulation by threat
- Cal. Penal Code § 287(g)-(h) Oral copulation where victim is incapable of giving consent because of mental disorder or developmental or physical disability
- Cal. Penal Code § 287(k) Oral copulation by threat
- Cal. Penal Code § 288a(c)(1) Oral copulation with a victim under 14 (if victim under 13) (repealed)
- Cal. Penal Code § 288a(c)(3) Oral copulation by threat (repealed)
- Cal. Penal Code § 288a(g)-(h) Oral copulation where victim is incapable of giving consent because of mental disorder or developmental or physical disability (repealed)
- Cal. Penal Code § 289(b) Sexual penetration by foreign object
- Cal. Penal Code § 647.6(b) Annoying or molesting children (if felony, offense involves a sexual act or sexual contact, as defined by 18 U.S.C. § 2246(2)-(3), and victim under 13)\*<sup>23</sup>
- Cal. Penal Code § 647.6(c)(1) Annoying or molesting children (if offense involves a sexual act or sexual contact, as defined by 18 U.S.C. § 2246(2)-(3), and victim under 13)
- Cal. Penal Code § 647.6(c)(2) Annoying or molesting children (if offense involves a sexual act or sexual contact, as defined by 18 U.S.C. § 2246(2)-(3), and victim under 13)

## B. Duration of Registration

SORNA requires offenders register for a duration of time based on the tier of the offense of conviction. Specifically, SORNA requires tier I offenders register for 15 years, tier II offenders register for 25 years, and tier III offenders register for life.

California requires all offenders who are convicted of a registerable California offense to register for life, regardless of their offense of conviction. However, tier I, tier II, and tier III – risk assessment level adult offenders and tier I and tier II juvenile offenders may petition to reduce their registration periods. California requires offenders who are convicted of a sexually motivated offense and ordered to register as sex offenders (Cal. Penal Code § 290.005(b)) and offenders who would be required to register while residing in the state of conviction for a sex

---

<sup>23</sup> Offenders who have multiple convictions for annoying or molesting children under Cal. Penal Code § 647.6 are classified as tier II adult offenders. If an offender only has one conviction under Cal. Penal Code § 647.6, the offender is classified as a tier I adult offender.

offense committed in that state (Cal. Penal Code § 290.005(c)) to register for the duration set forth by court order or by the jurisdiction of conviction, unless the duration of registration is greater than what is required by California law. Tier II and tier III – risk assessment level adult offenders who are convicted of a sexually motivated offense and ordered to register as sex offenders and tier II and tier III – risk assessment level adult offenders who would be required to register while residing in the state of conviction for a sex offense committed in that state who have a registration duration that is greater than what is required under California law may petition to reduce their registration periods in accordance with California law.

### C. Frequency of Registration

SORNA requires offenders make in-person appearances at the registering agency based on the tier of the offense of conviction. Specifically, SORNA requires that tier I offenders appear once a year, tier II offenders appear every six months, and tier III offenders appear every three months.

California requires that resident sex offenders verify their registration information in-person annually, irrespective of the tier of the offense of conviction. Offenders designated as SVPs are required to verify their registration information in-person every 90 days and transient offenders are required to verify registration information in-person every 30 days.

### D. Reduction of Registration Periods

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

California allows tier I, tier II, and tier III – risk assessment level adult offenders and tier I and tier II juvenile offenders to apply for a reduction of their registration period if certain conditions are met. Tier III – lifetime adult offenders are ineligible to petition for a reduction in their registration period.

Tier I adult offenders and certain tier II adult offenders may petition for a reduction of their registration period after 10 years.<sup>24</sup> All other tier II adult offenders may petition for a reduction of their registration period after twenty years. Tier I juvenile offenders may petition for a reduction of their registration period after five years and tier II juvenile offenders may petition for a reduction of their registration period after 10 years. However, offenders convicted of failing to register will be required to wait an additional year (for each misdemeanor conviction) or an additional three years (for each felony conviction) before they can file their petition.

If the offender has not met the mandatory minimum registration period or, if community safety would be significantly enhanced by the person's continued registration, the prosecutor may request a hearing on the petition. If a hearing is requested, the court must consider several factors in determining whether community safety would be significantly enhanced by requiring

---

<sup>24</sup> Tier II adult offenders whose registerable offense involved only one victim 14 to 17 years of age, who were under 21 years of age at the time of the offense, and whose registerable offense is not specified in Cal. Penal Code § 667.5(c) (excluding Cal. Penal Code § 288(a)) or Cal. Penal Code § 236.1 (human trafficking), may petition for a reduction of their registration period after 10 years. *See* Cal. Penal Code § 290.5(b)(1)-(2).

continued registration, including the nature and acts of the registerable offense, the age and number of victims, whether any victim was a stranger at the time of the offense, criminal and relevant noncriminal behavior before and after the conviction for the registerable offense, the time period during which the offender has not reoffended, whether the offender has successfully completed a Sex Offender Management Board-certified sex offender treatment program, and the offender's current risk of sexual or violent reoffense (including the offender's risk levels, if known). If a hearing is not requested, the court must grant the petition if it finds the required proof of current registration is presented in the petition; there are no pending charges against the offender which could extend the time to complete the registration requirements of the tier or change the offender's tier status; and the offender is not in custody or on parole, probation, or supervised release. However, the court may summarily deny the petition if it determines that the offender does not meet the statutory requirements or if the offender has not fulfilled the filing and service requirements for filing a petition.

Tier III – risk assessment level adult offenders may petition for a reduction of their registration period after 20 years from release from custody on the registerable offense. To be eligible, they must not have been convicted of a new offense requiring sex offender registration or an offense described in Cal. Penal Code § 667.5(c) (violent felonies) since they were released from custody on the offense requiring registration.<sup>25</sup> The court must determine whether community safety would be significantly enhanced by requiring registration, and it may consider several factors in making its determination, including whether the victim was a stranger at the time of the offense, the nature of the registerable offense, criminal and relevant noncriminal behavior before and after the conviction for the registerable offense, whether the offender has successfully completed a Sex Offender Management Board-certified sex offender treatment program, whether the offender initiated a relationship for the purpose of facilitating the offense, and the offender's current risk of sexual or violent reoffense (including the offender's risk levels, if known).

Because California does not correctly classify many of its offenses in the minimum SORNA tiering structure, does not require offenders to verify registration information in-person in accordance with SORNA's minimum standards, does not require non-resident sex offenders to verify registration information, proactively terminates the registration period for certain offenders, and allows a broader class of offenders to petition for a reduction in registration period than SORNA considers, California does not meet the SORNA requirements in this section.

## **IX. Public Registry Website and Community Notification Requirements**

SORNA requires 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 published on a jurisdiction's public registry website. Additionally, SORNA requires each jurisdiction disseminate certain initial and updated registration information to schools, public

---

<sup>25</sup> However, tier III – risk assessment level offenders who are required to register for a conviction pursuant to Cal. Penal Code § 288 (lewd and lascivious acts) or for an offense listed in Cal. Penal Code § 1192.7(c) (serious felonies) are prohibited from filing a petition.

housing agencies, and social service entities responsible for protecting minors, and the community through an automated notification system.

#### A. Public Registry Website

SORNA requires offender information be published on the jurisdiction's public registry website within three business days. In addition to being able to search for a specific offender by name, the jurisdiction's sex offender website must also be searchable by ZIP code or geographic radius.

California's public sex offender registry website deviates from SORNA in that California only displays limited information about offenders convicted of certain offenses, including offenders with only one conviction of annoying or molesting children, tier II adult offenders, and tier III adult offenders. California does not include information on its public sex offender registry website about tier I adult offenders (except as noted above) or juveniles adjudicated delinquent. However, designated law enforcement entities may provide information to the public about juveniles adjudicated delinquent when necessary to ensure the public safety based on the person's current risk of sexual or violent reoffending.

California does not display the following information on its public sex offender registry website:

- Criminal history<sup>26</sup>
- Employer address
- Residence address<sup>27</sup>
- School address
- Vehicle information<sup>28</sup>

California also allows certain offenders to petition to have their information excluded from the public sex offender registry website. To qualify for exclusion, the offender must prove that they were convicted of an offense that did not involve oral copulation or penetration; that they are currently on, or successfully completed, probation for the offense; that they were the victim's parent, stepparent, sibling, or grandparent; that it is the offender's only registerable offense; and

---

<sup>26</sup> California prohibits the posting of an offender's criminal history other than the specific crimes for which the offender is required to register. However, California does include the year of conviction of the most recent offense requiring registration and the year of release from incarceration, when available, as well as a notation if the offender has a subsequent felony incarceration.

<sup>27</sup> California displays the offender's full residence address on its public registry website for tier III adult offenders and adult offenders convicted of rape (Cal. Penal Code § 261(a)(6)), sodomy (Cal. Penal Code § 286(c)(1)), lewd and lascivious acts with a victim under 14 (Cal. Penal Code § 288(a)), oral copulation with a minor and oral copulation by force (Cal. Penal Code §§ 287(c), 288a(c)), and sexual penetration by foreign object by force or threat (Cal. Penal Code § 289(a)). For tier II adult offenders and adult offenders convicted of annoying or molesting children (Cal. Penal Code § 647.6), California displays the community of residence and ZIP Code in which the offender resides or the county in which the offender is registered as a transient. California also permits any designated law enforcement entity to provide an offender's full address to the public when necessary to ensure the public safety.

<sup>28</sup> Although California does not display vehicle information on its public sex offender registry website, Cal. Penal Code § 290.45 permits any designated law enforcement entity to provide such information (including a description and license plate number of the offender's vehicle(s)) to the public about a person required to register as a sex offender when necessary to ensure the public safety.

that they have a risk assessment level of average, below average, or very low. However, an offender's exclusion or application for exclusion will be terminated if, subsequent to the offender's application, the offender commits a violation of probation resulting in the offender's incarceration in county jail or state prison.

## B. Community Notification

The jurisdiction's public sex offender registry website must include a function to allow members of the public and organizations to request email notification when sex offenders move into, or start employment or school within, a ZIP code or geographic radius specified by the requester.

California's community notification provisions deviate from SORNA in that California does not have any email notification system or other method of systematic proactive community notification when an offender initially registers or updates their registration or when an offender relocates in or out of a particular ZIP code or geographic radius.

However, any designated law enforcement agency may provide information to the public about any person required to register as a sex offender when necessary to ensure public safety. Additionally, registration information about sex offenders who are enrolled or employed at an institution of higher learning may be released by the campus police department to members of the campus community.

Because California's public registry website does not display the entire residence address for tier II adult offenders and adult offenders convicted of annoying or molesting children, does not display employer or school address, and California does not have an email notification system for its sex offender public registry website, California does not meet the SORNA requirements in this section.

## X. **Enforcement of Registration Requirements**

SORNA requires that jurisdictions take measures to enforce registration requirements, including penalties for registration violations, and engage in practical procedures for investigating and dealing with such violations.

### A. State Penalty

SORNA requires jurisdictions provide a criminal penalty for a sex offender's failure to comply with their registration requirements that includes a maximum imprisonment term that is longer than one year.

California deviates from SORNA requirements in that California provides for different penalties depending on the failure to register offense and the offender's underlying conviction. An offender who is required to register based on a misdemeanor conviction or misdemeanor juvenile adjudication and who willfully fails to register is guilty of a misdemeanor punishable by imprisonment not to exceed one year. An offender who is required to register based on a felony conviction or felony juvenile adjudication or an offender who has a prior conviction or juvenile adjudication for the offense of failing to register and who willfully fails to register is guilty of a felony and punishable by imprisonment for more than one year.



Offenders who are enrolled or employed at an institution of higher learning and who fail to register with the campus police department are guilty of a misdemeanor punishable by a fine not to exceed \$1,000. A second violation is a misdemeanor punishable by imprisonment for not more than six months, by a fine not to exceed \$1,000, or both. A third or subsequent violation is a misdemeanor punishable by imprisonment for not more than one year, by a fine not exceeding \$1,000, or both.

Mentally disordered sex offenders or sex offenders found not guilty by reason of insanity who willfully fail to register are guilty of a misdemeanor punishable by imprisonment not to exceed one year, whereas any subsequent violations are felonies punishable by imprisonment for more than one year.

SVPs who fail to verify their registration information every 90 days are guilty of a misdemeanor punishable by imprisonment not to exceed one year.

Transient sex offenders who willfully fail to register every 30 days are guilty of a misdemeanor punishable by imprisonment for at least 30 days. Transient offenders who commit a third or subsequent violation will be guilty of a felony punishable by imprisonment for more than one year (if the underlying conviction was a felony) or less than one year (if the underlying conviction was a misdemeanor). If the underlying conviction was a misdemeanor, a fourth or subsequent violation by a transient offender will be punishable by a felony penalty of more than one year of incarceration.

Offenders who fail to provide proof of residence or who fail to provide internet identifiers are guilty of a misdemeanor punishable by imprisonment not to exceed six months.

#### B. Failure to Appear for Registration

SORNA requires that, when a jurisdiction is notified of a sex offender's intent to live, work, or go to school in its jurisdiction, and that offender fails to appear for registration as required, the receiving jurisdiction must inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

California's failure to appear procedures conform with SORNA requirements.

#### C. Absconders

SORNA requires that, when a jurisdiction has information that a sex offender may have absconded, the jurisdiction take certain actions to investigate the absconder and notify various law enforcement agencies.

California deviates from SORNA requirements in that California delegates the responsibility for investigating absconders and obtaining arrest warrants to local law enforcement agencies. If it is determined that an offender has absconded, the local law enforcement agency is required to request an arrest warrant and update California's public sex offender registry website and NCIC/NSOR to reflect the sex offender's status as an absconder. California does not regularly update the NCIC Wanted Person File nor does it regularly notify the U.S. Marshals Service when an offender absconds.

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

## **XI. Tribal Considerations**

There are 105 federally recognized Indian Tribes in California whose lands are located entirely within California. These tribes are subject to the criminal jurisdiction of California under 18 U.S.C § 1162 and are not SORNA-eligible. As a result, California is responsible for sex offender registration, notification, and enforcement on these tribal lands. However, there are four federally recognized Indian Tribes whose lands are partially located in California, three of which are currently operating as SORNA registration jurisdictions:

1. Colorado River Indian Tribes
2. Fort Mojave Indian Tribe
3. Washoe Tribe of Nevada and California

The fourth tribe, Fort Yuma Quechan Tribe, had its sex offender registration and notification responsibilities delegated to Arizona and California pursuant to 34 U.S.C. § 20929(2).

All offenders who are living on tribal lands located within California are required to register with California, even if the tribe is operating as a SORNA registration jurisdiction.

## **Conclusion**

The SMART Office concludes that California has not yet substantially implemented SORNA. There are a number of requirements identified in this review that must be addressed for California to substantially implement SORNA.

The SMART Office recommends California focus on the sections where the jurisdiction has not met SORNA's requirements, and to resolve the issues identified in those sections to achieve substantial implementation. Additionally, the SMART Office recommends California resolve the deviations that do not substantially disserve SORNA's requirements in order to achieve full implementation of SORNA; however, failing to resolve deviations that do not substantially disserve will not impact California's ability to achieve substantial implementation.

## Appendix

### California Offense Tiering Policy Review

The SMART Office has reviewed all relevant California statutes and has identified California'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.

In reviewing California's Penal Code, the SMART Office understands that California has one broad category of registrants for purposes of its duration of registration and frequency of registration requirements: offenders are generally required to register for life and verify registration information in-person annually. Offenders designated as SVPs are required to verify registration information in-person every 90 days and transient offenders are required to verify registration information in-person every 30 days. However, California establishes four tiers of offenses for adult offenders (tier I, tier II, tier III – lifetime, and tier III – risk assessment level) and two tiers of offenses for juveniles adjudicated delinquent (tier I and tier II) for purposes of determining an offender's eligibility for a reduction in registration period and the level of public disclosure of registration information.

#### SORNA Tier I Offenses

SORNA requires tier I offenders register for a minimum of 15 years and annually verify registration information. The following offenses listed in California's Code would require, at a minimum, tier I registration requirements under SORNA.

- Cal. Penal Code § 236 False imprisonment (if non-parental and victim under 18)
- Cal. Penal Code § 237(a) False imprisonment (if non-parental and victim under 18)
- Cal. Penal Code § 243.4(a) Sexual battery where victim is unlawfully restrained (if misdemeanor)\*
- Cal. Penal Code § 243.4(b) Sexual battery where victim is seriously disabled or medically incapacitated (if misdemeanor or if felony and victim 18 or older)\*
- Cal. Penal Code § 243.4(c) Sexual battery accomplished by fraud (if misdemeanor or if felony and victim 18 or older)\*
- Cal. Penal Code § 243.4(d) Sexual battery where victim is unlawfully restrained (if misdemeanor or if felony and victim 18 or older)\*
- Cal. Penal Code § 243.4(e)(1) Sexual battery
- Cal. Penal Code § 261.5(b) Unlawful sexual intercourse with a minor<sup>+</sup>
- Cal. Penal Code § 261.5(c) Unlawful sexual intercourse with a minor (if misdemeanor)\*<sup>+</sup>
- Cal. Penal Code § 261.5(d) Unlawful sexual intercourse with a victim under 16 (if misdemeanor)\*

- Cal. Penal Code § 266 Enticement of minor for purpose of prostitution (if misdemeanor)\*
- Cal. Penal Code § 266c Sexual act procured by fraud or fear (if misdemeanor)\*
- Cal. Penal Code § 286(b)(1) Sodomy with a minor (if misdemeanor)\*
- Cal. Penal Code § 286(e) Sodomy while confined in state prison (if misdemeanor and victim under 18)\*+
- Cal. Penal Code § 287(b)(1) Oral copulation with a minor (if misdemeanor)\*+
- Cal. Penal Code § 287(e) Oral copulation while confined in state prison (if misdemeanor and victim under 18)\*+
- Cal. Penal Code § 288(c)(1) Lewd and lascivious acts with a victim who is 14 or 15 (if misdemeanor)\*
- Cal. Penal Code § 288(c)(2) Lewd and lascivious acts by caretaker (if misdemeanor)\*
- Cal. Penal Code § 288a(b)(1) Oral copulation with a minor (if misdemeanor) (repealed)\*+
- Cal. Penal Code § 288a(e) Oral copulation while confined in state prison (if misdemeanor and victim under 18) (repealed)\*+
- Cal. Penal Code § 288.2(a)(1) Distribution of harmful material (if misdemeanor)\*
- Cal. Penal Code § 288.3 Contacting a minor with intent to commit certain sex offenses (if misdemeanor)\*
- Cal. Penal Code § 288.4 Arranging meeting with a minor for lewd and lascivious behavior (if misdemeanor)\*
- Cal. Penal Code § 289(h) Sexual penetration by foreign object with a minor
- Cal. Penal Code § 311.1(a) Possession, production, and distribution of child pornography (if misdemeanor or if felony and offense involves possession)\*
- Cal. Penal Code § 311.2(a) Possession, production, and distribution of obscene matter (if offense involves child pornography)
- Cal. Penal Code § 311.2(b)-(d) Possession, production, and distribution of child pornography (if offense involves possession)
- Cal. Penal Code § 311.3 Sexual exploitation of a child (if misdemeanor)\*
- Cal. Penal Code § 311.4(a) Coercion or enticement of a minor to engage in child pornography (if misdemeanor)\*
- Cal. Penal Code § 311.11 Possession of child pornography
- Cal. Penal Code § 647.6(a)(1)-(2) Annoying or molesting children (if offense involves a sexual act or sexual contact, as defined by 18 U.S.C. § 2246(2)-(3))
- Cal. Penal Code § 647.6(b) Annoying or molesting children (if misdemeanor and offense involves a sexual act or sexual contact, as defined by 18 U.S.C. § 2246(2)-(3))\*
- Cal. Penal Code § 647.6(c)(1)-(2) Annoying or molesting children (if offense involves a sexual act or sexual contact, as defined by 18 U.S.C. § 2246(2)-(3), and victim 18 or older)

- Cal. Penal Code § 647a Annoying or molesting a child under 18 (if offense involves a sexual act or sexual contact, as defined by 18 U.S.C. § 2246(2)-(3)) (repealed)

### SORNA Tier II Offenses

SORNA requires tier II offenders register for a minimum of 25 years and verify registration information every six months. The following offenses listed in California’s Code would require, at a minimum, tier II registration requirements under SORNA.

- Cal. Penal Code § 236.1(c) Child sex trafficking (if victim 13-17)
- Cal. Penal Code § 243.4(b) Sexual battery where victim is seriously disabled or medically incapacitated (if felony and victim 13-17)\*
- Cal. Penal Code § 243.4(c) Sexual battery accomplished by fraud (if felony and victim 13-17)\*
- Cal. Penal Code § 243.4(d) Sexual battery where victim is unlawfully restrained (if felony and victim 13-17)\*
- Cal. Penal Code § 261.5(c) Unlawful sexual intercourse with a minor (if felony and victim 13-17)\*+
- Cal. Penal Code § 261.5(d) Unlawful sexual intercourse with a victim under 16 (if felony and victim 13-15)\*
- Cal. Penal Code § 266 Enticement of minor for purpose of prostitution (if felony)\*
- Cal. Penal Code § 266e Purchasing person for prostitution (if victim 13-17)
- Cal. Penal Code § 266f Selling person for immoral purposes (if victim 13-17)
- Cal. Penal Code § 266g Forcing wife into prostitution (if no force, fraud, or coercion and victim 13-17)
- Cal. Penal Code § 266h(a) Pimping; living or deriving support from prostitution (if victim 13-17)
- Cal. Penal Code § 266h(b)(1) Pimping a minor where victim is 16+ (if victim 16-17)
- Cal. Penal Code § 266h(b)(2) Pimping a minor where victim is under 16 (if victim 13-15)
- Cal. Penal Code § 266i(a)(1) Pandering (if victim 13-17)
- Cal. Penal Code § 266i(a)(2) Pandering (if no force, fraud, or coercion and victim 13-17)
- Cal. Penal Code § 266i(a)(3) Procuring another person for prostitution (if victim 13-17)
- Cal. Penal Code § 266i(a)(6) Receiving money for procuring another person for prostitution (if victim 13-17)
- Cal. Penal Code § 266i(b)(1) Pandering a minor (if no force, fraud, or coercion and victim 13-15)
- Cal. Penal Code § 266i(b)(2) Pandering a minor (if no force, fraud, or coercion and victim 16-17)
- Cal. Penal Code § 266j Transportation of a minor for lewd and lascivious act

- Cal. Penal Code § 285 Incest (if offense involves a sexual act, as defined by 18 U.S.C. § 2246(2), and victim 13-17)
- Cal. Penal Code § 286(b)(1) Sodomy with a minor (if felony and victim 13-17)\*
- Cal. Penal Code § 286(b)(2) Sodomy with a victim under 16 (if victim 13-15)
- Cal. Penal Code § 286(c)(1) Sodomy with a minor (if victim 13)
- Cal. Penal Code § 286(e) Sodomy while confined in state prison (if felony and victim 13-17)\*+
- Cal. Penal Code § 287(b)(1) Oral copulation with a minor (if felony and victim 13-17)\*+
- Cal. Penal Code § 287(b)(2) Oral copulation with a victim under 16 (if victim 13-15)
- Cal. Penal Code § 287(c)(1) Oral copulation with a victim under 14 (if victim 13)
- Cal. Penal Code § 287(e) Oral copulation while confined in state prison (if felony and victim 13-17)\*+
- Cal. Penal Code § 288(a) Lewd and lascivious acts with a victim under 14 (if victim 13)
- Cal. Penal Code § 288(c)(1) Lewd and lascivious acts with a victim who is 14 or 15 (if felony and victim 14-15)\*
- Cal. Penal Code § 288(c)(2) Lewd and lascivious acts by caretaker (if felony and victim 13-17)\*
- Cal. Penal Code § 288a(b)(1) Oral copulation with a minor (if felony and victim 13-17) (repealed)\*+
- Cal. Penal Code § 288a(b)(2) Oral copulation with a victim under 16 (if victim 13-15) (repealed)
- Cal. Penal Code § 288a(c)(1) Oral copulation with a victim under 14 (if victim 13) (repealed)
- Cal. Penal Code § 288a(e) Oral copulation while confined in state prison (if felony and victim 13-17) (repealed)\*+
- Cal. Penal Code § 288.2(a)(1) Distribution of harmful material (if felony and offense involves distribution)\*
- Cal. Penal Code § 288.3 Contacting a minor with intent to commit certain sex offenses (if felony)\*
- Cal. Penal Code § 288.4 Arranging meeting with a minor for lewd and lascivious behavior (if felony)\*
- Cal. Penal Code § 288.5 Continuous sexual abuse of a child under 14 (if victim 13)
- Cal. Penal Code § 289(i) Sexual penetration by foreign object with a victim under 16 (if victim 13-15)
- Cal. Penal Code § 289(j) Sexual penetration by foreign object with a victim under 14 (if victim 13)
- Cal. Penal Code § 311.1(a) Possession, production, and distribution of child pornography (if felony and offense involves production / distribution)\*

- Cal. Penal Code § 311.2(b) Possession, production, and distribution of child pornography (if offense involves production / distribution)
- Cal. Penal Code § 311.2(c) Possession, production, and distribution of child pornography (if offense involves production / distribution)
- Cal. Penal Code § 311.2(d) Possession, production, and distribution of child pornography (if offense involves production / distribution)
- Cal. Penal Code § 311.3 Sexual exploitation of a child (if felony)\*
- Cal. Penal Code § 311.4(a) Coercion or enticement of a minor to engage in child pornography (if felony)\*
- Cal. Penal Code § 311.4(b)-(c) Coercion or enticement of a minor to engage in child pornography
- Cal. Penal Code § 311.10 Advertising obscene matter depicting minors
- Cal. Penal Code § 647.6(b) Annoying or molesting children (if felony, offense involves a sexual act or sexual contact, as defined by 18 U.S.C. § 2246(2)-(3), and victim 13-17)\*
- Cal. Penal Code § 647.6(c)(1)-(2) Annoying or molesting children (if offense involves a sexual act or sexual contact, as defined by 18 U.S.C. § 2246(2)-(3), and victim 13-17)

### **SORNA Tier III Offenses**

SORNA requires tier III offenders register for life and verify registration information every three months. The following offenses listed in California’s Code would require, at a minimum, tier III registration requirements under SORNA.

- Cal. Penal Code § 207 Kidnapping (if non-parental and victim under 18)
- Cal. Penal Code § 209 Kidnapping for ransom or to commit robbery or rape (if non-parental and victim under 18)
- Cal. Penal Code § 209.5 Kidnapping during carjacking (if non-parental and victim under 18)
- Cal. Penal Code § 236.1(b) Human trafficking by force, fraud, or coercion
- Cal. Penal Code § 236.1(c) Child sex trafficking (if victim under 13)
- Cal. Penal Code § 243.4(a) Sexual battery where victim is unlawfully restrained (if felony)\*
- Cal. Penal Code § 243.4(b) Sexual battery where victim is seriously disabled or medically incapacitated (if felony and victim under 13)\*
- Cal. Penal Code § 243.4(c) Sexual battery accomplished by fraud (if felony and victim under 13)\*
- Cal. Penal Code § 243.4(d) Sexual battery where victim is unlawfully restrained (if felony and victim under 13)\*
- Cal. Penal Code § 261(a)(1)-(7) Rape

- Cal. Penal Code § 261.5(c) Unlawful sexual intercourse with a minor (if felony and victim under 13)\*
- Cal. Penal Code § 261.5(d) Unlawful sexual intercourse with a victim under 16 (if felony and victim under 13)\*
- Cal. Penal Code § 262(a) Spousal rape (repealed)
- Cal. Penal Code § 264.1 Aiding and abetting rape
- Cal. Penal Code § 265 Kidnapping for marriage (if victim under 18)
- Cal. Penal Code § 266a Kidnapping for prostitution (if non-parental and victim under 18)
- Cal. Penal Code § 266c Sexual act procured by fraud or fear (if felony)\*
- Cal. Penal Code § 266e Purchasing person for prostitution (if victim under 13)
- Cal. Penal Code § 266f Selling person for immoral purposes (if victim under 13)
- Cal. Penal Code § 266g Forcing wife into prostitution (if by force, fraud, or coercion or if no force, fraud, or coercion and victim under 13)
- Cal. Penal Code § 266h(a) Pimping; living or deriving support from prostitution (if victim under 13)
- Cal. Penal Code § 266h(b) Pimping a minor (if victim under 13)
- Cal. Penal Code § 266i(a)(1) Pandering (if victim under 13)
- Cal. Penal Code § 266i(a)(2) Pandering (if by force, fraud, or coercion or if no force, fraud, or coercion and victim under 13)
- Cal. Penal Code § 266i(a)(3) Procuring another person for prostitution (if victim under 13)
- Cal. Penal Code § 266i(a)(4)-(5) Pandering (if by force, fraud, or coercion)
- Cal. Penal Code § 266i(b)(1) Pandering a minor (if by force, fraud, or coercion or if no force, fraud, or coercion and victim under 13)
- Cal. Penal Code § 266i(b)(2) Pandering a minor (if by force, fraud, or coercion)
- Cal. Penal Code § 267 Kidnapping a minor for prostitution
- Cal. Penal Code § 269(a)(1)-(5) Aggravated sexual assault of a child
- Cal. Penal Code § 285 Incest (if offense involves a sexual act, as defined by 18 U.S.C. § 2246(2), and victim under 13)
- Cal. Penal Code § 286(b)(1) Sodomy with a minor (if felony and victim under 13)\*
- Cal. Penal Code § 286(b)(2) Sodomy with a victim under 16 (if victim under 13)
- Cal. Penal Code § 286(c)(1) Sodomy (if victim under 13)
- Cal. Penal Code § 286(c)(2) Sodomy by force
- Cal. Penal Code § 286(d) Sodomy; acting in concert
- Cal. Penal Code § 286(e) Sodomy while confined in state prison (if felony and victim under 13)\*
- Cal. Penal Code § 286(f)-(k) Sodomy where victim is unconscious, asleep, otherwise unable to give consent, or by fraud
- Cal. Penal Code § 287(b)(1) Oral copulation with a minor (if felony and victim under 13)\*
- Cal. Penal Code § 287(b)(2) Oral copulation with a victim under 16 (if victim under 13)



- Cal. Penal Code § 287(c)(1) Oral copulation with a victim under 14 (if victim under 13)
- Cal. Penal Code § 287(c)(2)-(3) Oral copulation by force or threat
- Cal. Penal Code § 287(d) Oral copulation; acting in concert
- Cal. Penal Code § 287(e) Oral copulation while confined in state prison (if felony and victim under 13)\*
- Cal. Penal Code § 287(f)-(k) Oral copulation where victim is unconscious, asleep, otherwise unable to give consent, or by fraud
- Cal. Penal Code § 288(a) Lewd and lascivious acts with a victim under 14 (if victim under 13)
- Cal. Penal Code § 288(b) Lewd and lascivious acts by force or fear
- Cal. Penal Code § 288(c)(2) Lewd and lascivious acts by caretaker (if felony and victim under 13)\*
- Cal. Penal Code § 288a(b)(1) Oral copulation with a minor (if felony and victim under 13) (repealed)\*
- Cal. Penal Code § 288a(b)(2) Oral copulation with a victim under 16 (if victim under 13) (repealed)
- Cal. Penal Code § 288a(c)(1) Oral copulation with a victim under 14 (if victim under 13) (repealed)
- Cal. Penal Code § 288a(c)(2)-(3) Oral copulation by force or threat (repealed)
- Cal. Penal Code § 288a(d) Oral copulation; acting in concert (repealed)
- Cal. Penal Code § 288a(e) Oral copulation while confined in state prison (if felony and victim under 13) (repealed)\*
- Cal. Penal Code § 288a(f)-(k) Oral copulation where victim is unconscious, asleep, otherwise unable to give consent, or by fraud (repealed)
- Cal. Penal Code § 288.5 Continuous sexual abuse of a child under 14 (if victim under 13)
- Cal. Penal Code § 288.7 Sexual intercourse, sodomy, oral copulation, or sexual penetration with a child 10 years old or younger
- Cal. Penal Code § 289(a) Sexual penetration by foreign object by force or threat
- Cal. Penal Code § 289(b)-(g) Sexual penetration by foreign object where victim is unconscious, asleep, otherwise unable to give consent, or by fraud
- Cal. Penal Code § 289(i) Sexual penetration by foreign object with a victim under 16 (if victim under 13)
- Cal. Penal Code § 289(j) Sexual penetration by foreign object with a victim under 14 (if victim under 13)
- Cal. Penal Code § 647.6(b) Annoying or molesting children (if felony, offense involves a sexual act or contact, as defined by 18 U.S.C. § 2246(2)-(3), and victim under 13)\*
- Cal. Penal Code § 647.6(c)(1)-(2) Annoying or molesting children (if offense involves a sexual act or contact, as defined by 18 U.S.C. § 2246(2)-(3), and victim under 13)

- Cal. Penal Code § 667.61 Certain sex offenses committed under aggravating circumstances (“One-strike” law)<sup>29</sup>
- Cal. Penal Code § 667.71 Habitual sex offender

### Further Review

In reviewing the statutes California cited as registerable offenses under its registration scheme, the SMART Office noted the following SORNA-required offenses are missing from those statutes.

- Cal. Penal Code § 207 Kidnapping by force, fear, or to commit lewd and lascivious acts (if non-parental and victim under 18)
- Cal. Penal Code § 209 Kidnapping for ransom or to commit robbery or rape (if non-parental and victim under 18)
- Cal. Penal Code § 209.5 Kidnapping during carjacking (if non-parental and victim under 18)
- Cal. Penal Code § 236 False Imprisonment (if non-parental and victim under 18)
- Cal. Penal Code § 237(a) False Imprisonment (if non-parental and victim under 18)
- Cal. Penal Code § 261.5 Unlawful sexual intercourse with a minor
- Cal. Penal Code § 265 Kidnapping for marriage (if victim under 18)
- Cal. Penal Code § 266a Kidnapping for prostitution (if non-parental and victim under 18)
- Cal. Penal Code § 266e Purchasing person for prostitution (if victim under 18)
- Cal. Penal Code § 266f Selling person for immoral purposes (if victim under 18)
- Cal. Penal Code § 266g Forcing wife into prostitution (if victim under 18)
- Cal. Penal Code § 266h(a) Pimping; living or deriving support from prostitution (if victim under 18)
- Cal. Penal Code § 266i Pandering (if victim under 18)
- Cal. Penal Code § 288.2(a)(1) Distribution of harmful material depicting minors (if misdemeanor)\*<sup>30</sup>
- Cal. Penal Code § 311.2(a) Possession, production, and distribution of obscene matter (if offense involves child pornography)

---

<sup>29</sup> Under California’s “one-strike” law, offenders who commit certain sex crimes (e.g., rape and sodomy) under specific aggravating circumstances (e.g., the offender has a previous conviction for one of the enumerated sex crimes) are subject to enhanced sentences. Offenders convicted of violating California’s one-strike law are classified as tier III – lifetime adult offenders.

<sup>30</sup> California only requires registration if an offender is convicted with a felony violation of Cal. Penal Code § 288.2(a)(1).

In addition, California registers the following offenses, for which—without the commission of (or the attempt or conspiracy to commit) a sexual offense—SORNA does not require registration. However, registration of these offenses in no way disserves the purposes of SORNA’s requirements.

- Cal. Penal Code § 187 Murder while committing or attempting to commit certain sex offenses
- Cal. Penal Code § 220 Assault with intent to commit certain sex offenses
- Cal. Penal Code § 272 Contributing to delinquency of minors (where offense involves lewd or lascivious conduct)
- Cal. Penal Code § 288.2(a)(2) Distributing harmful material (where there are no depictions of minors engaged in sexual conduct)\*
- Cal. Penal Code § 314 Indecent exposure
- Cal. Penal Code § 653f(c) Solicitation to commit certain sex offenses