

U.S. Department of Justice

Office of Justice Programs

Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking



MODEL CODE

Tribal Sex Offender Registration Code

2017 REVISED VERSION

SMART
Office of Sex Offender Sentencing, Monitoring,
Apprehending, Registering, and Tracking

SMART

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Apprehending, Registering, and Tracking

The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) is pleased to provide this Revised Model Tribal Sex Offender Registry Code/Ordinance for use by tribes in complying with the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248)(42 USC § 16901, *et seq.*).

This document is intended to serve as a guide to full implementation of SORNA, and to provide information that each tribe should consider as it determines how to substantially implement SORNA. Tribes should use this Revised Model Tribal Sex Offender Registry Code/Ordinance only as a starting point. SORNA implementation is unique to each jurisdiction and adoption of a sex offender code should reflect the unique laws, processes, population, land, and traditions of each tribe.

This document also includes drafting tips intended to encourage tribal leaders to consider other relevant issues as they meet to discuss any potential code/ordinance development. Further, submission of a code to the SMART Office is only part of the necessary submission for substantial implementation review. Please contact the SMART Office for additional materials to assist with your work toward implementation of SORNA.

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GENERAL MATTERS

SECTION 1.01 TITLE

This Code/Ordinance shall be known as the **Name of Tribe** Sex Offender Registration and Notification Code [*hereafter* "Code"].

SECTION 1.02 PURPOSE

The intent of this Code is to implement the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) (42 U.S.C. § 16901, et seq.) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.

SECTION 1.03 CREATION OF REGISTRIES

- A. **Sex Offender Registry.** There is hereby established a sex offender registry, the "**Name of Tribe Sex Offender Registry**" which the **Responsible Agency Name** shall maintain and operate pursuant to the provisions of this Code, as amended.
- B. **Public Sex Offender Registry Website.** There is hereby established a public sex offender registry website, the "**Name of Tribe Public Sex Offender Registry Website**" which the **Responsible Agency Name** shall maintain and operate pursuant to the provisions of this Code, as amended.

SECTION 1.04 APPLICABILITY

Sex offenders who:

- A. Reside on lands under **Name of Tribe's** jurisdiction, including reservation lands or property owned by the tribe in fee or trust regardless of location,
 - B. Are employed on lands under **Name of Tribe's** jurisdiction, including on reservation lands or on property owned by the tribe in fee or trust regardless of location,
 - C. Attend school on lands under **Name of Tribe's** jurisdiction, including on reservation lands or on property owned by the tribe in fee or trust regardless of location,
 - D. Are convicted by **Name of Tribe** for a sex offense, or
 - E. Are incarcerated by **Name of Tribe** for a sex offense,
- are subject to the requirements of this Code.

Replace "Name of Tribe" with your Tribe/Nation's name wherever the term is found in this Code/Ordinance.

Which agency will be responsible for sex offender registration? Use the name of that agency in this Code/Ordinance wherever "Responsible Agency Name" is found.

On which lands will this Code be applicable to? Trust, Fee, Lease, or any lands within the tribe's boundaries? Designate this specifically, and make sure consistent in § 5.01, 5.02, and 5.04.

Are the registration requirements applicable to all sex offenders, just tribal members, or just members of your tribe? If limited in any way, make sure to limit the definition of "sex offender" accordingly in 2.01(K), and to review the remainder of the Code for consistency. Note: SORNA requires jurisdictions to register all sex offenders.

TERMINOLOGY AND REGISTERABLE OFFENSES

SECTION 2.01 DEFINITIONS

The Definitions below apply only to this Code and any accompanying administrative policies or procedures which are adopted to carry out its terms.

- A. **Convicted.** An adult sex offender is “convicted” for the purposes of this Code if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.

A juvenile offender is “convicted” for purposes of this Code if the juvenile offender is either:

1. Prosecuted and found guilty as an adult for a sex offense; or
2. Is adjudicated delinquent as a juvenile for a sex offense (including adjudications of delinquency under the Federal Juvenile Delinquency Act), but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

- B. **Dru Sjodin National Sex Offender Public Website (NSOPW).** The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16920.

- C. **Employee.** The term “employee” as used in this Code includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.

- D. **Foreign Offense.** A conviction obtained outside of the United States.

- E. **Immediate.** “Immediate” and “immediately” mean within 3 business days.

- F. **Imprisonment.** The term “imprisonment” refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state prison as well as in a federal, military, foreign, Bureau of Indian Affairs (BIA), private or contract facility, or a local or tribal jail. Persons under house arrest following conviction of a sex offense are required to register pursuant to the provisions of this Code during their period of house arrest.

◀ Most juvenile adjudications in federal court (under the Federal Juvenile Delinquency Act) are for violations of 18 U.S.C. § 2241(c). Juveniles adjudicated delinquent of 18 U.S.C. § 2241(c) are not specifically required by SORNA to register as sex offenders. Under what circumstances might your tribe want to register juveniles who have been adjudicated delinquent for 18 U.S.C. § 2241(c)?

Some states occasionally resolve criminal cases with “deferred adjudications” or other similar procedures. Does the tribe want to specifically include deferred adjudications as registerable? SORNA requires registration when penal consequences are imposed (incarceration, probation, fines, etc.), regardless of the terminology used.

- G. **Jurisdiction.** The term “jurisdiction” refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian Tribe that has elected to function as a SORNA registration and notification jurisdiction pursuant to 42 U.S.C. § 16927.
- H. **Minor.** The term “minor” means an individual who has not attained the age of 18 years.
- I. **National Sex Offender Registry (NSOR).** The national database contained in the National Crime Information Center (NCIC) maintained by the Federal Bureau of Investigation pursuant to 42 U.S.C. § 16919.
- J. **Resides.** The term “reside” or “resides” means, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives or sleeps. An individual is deemed to “reside” on the lands of Name of Tribe for the purposes of this Code if he or she is present on the lands of Name of Tribe for more than 72 consecutive hours, sleeps on the lands of Name of Tribe more than 3 nights in a 7-day period, or sleeps on the lands of Name of Tribe more than 7 nights in a 30-day period.
- K. **Sex Offense.** The term “sex offense” includes those offenses contained in 42 U.S.C. § 16911(5) (as amended), those offenses enumerated in Section 2.02 of this Code, and any other registerable offense under tribal law, subject to the following exception: An offense involving consensual sexual conduct is not a sex offense for the purposes of this Code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.
- L. **Sex Offender.** A person convicted of a sex offense is a “sex offender.” “Sex offender” includes enrolled members of Name of Tribe who have been convicted of a sex offense, as well as any other individual who has been convicted of a sex offense.
- M. **Sexual Act.** The term “sexual act” means:
1. Contact between the penis and the vulva or the penis and the anus; for purposes of this definition, contact involving the penis occurs upon penetration, however slight;
 2. Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
 3. The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
 4. The intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

◀ Does your tribe have annual or periodic gatherings (powwows, etc.) where a large number of non-tribal members are present on tribal lands? Are there non-tribal members working as vendors at these gatherings? If so, what provisions do you want to govern any registered sex offenders who might be on tribal lands during such events? Are there any special rules that you want to enact in addition to the general requirements of this section?

- N. **Sexual Contact.** The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- O. **SORNA.** The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248), 42 U.S.C. § 16901, *et seq.*, as amended.
- P. **Student.** A “student” is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.
- Q. **Tier I Sex Offender.** A “Tier I sex offender,” or a “sex offender” designated as Tier I, is one who has been convicted of a Tier I sex offense as defined in section 3.01.
- R. **Tier II Sex Offender.** A “Tier II sex offender,” or a “sex offender” designated as Tier II, is one who has been either convicted of a Tier II sex offense as defined in section 3.02, or who is subject to the recidivist provisions of 3.02(A).
- S. **Tier III Sex Offender.** A “Tier III sex offender,” or a “sex offender” designated as Tier III, is one who has been either convicted of a Tier III sex offense as defined in section 3.03, or who is subject to the recidivist provisions of 3.03(A).

SECTION 2.02 REGISTERABLE OFFENSES

- A. **Name of Tribe Offenses.** A conviction for, or a conviction for an attempt or conspiracy to commit, any of the following:
 - 1. Section Number Name of Offense
 - 2. Section Number Name of Offense
 - 3. Any other Name of Tribe Offense that meets the definition of “sex offense” under 42 U.S.C. § 16911(5).
 - B. **Name of State(s) Offenses.** A conviction for, or a conviction for an attempt or conspiracy to commit, any of the following:
 - 1. Section Number Name of Offense
 - 2. Section Number Name of Offense
 - 3. Any other Name of State(s) offense that meets the definition of “sex offense” under 42 U.S.C. § 16911(5).
 - C. **Federal Offenses.** A conviction for, or a conviction for an attempt or conspiracy to commit, any of the following, including any offenses prosecuted under the Assimilative Crimes Act (18 U.S.C. § 1152 or § 1153):
 - 1. 18 U.S.C. § 1591 (sex trafficking of children or by force, fraud, or coercion),
 - 2. 18 U.S.C. § 1801 (video voyeurism of a minor),
- ◀ The SMART Office recommends specifically listing the tribal offenses that trigger a registration requirement.

◀ Replace "Name of State" with the state(s) in which your tribal lands are located wherever the term is found in this Code/Ordinance.

◀ The SMART Office recommends specifically listing the state offenses (where tribal lands are located) that trigger a registration requirement. Contact the SMART Office for assistance in determining which state offenses are required to be registered under SORNA.

3. 18 U.S.C. § 2241 (aggravated sexual abuse),
4. 18 U.S.C. § 2242 (sexual abuse),
5. 18 U.S.C. § 2243 (sexual abuse of a minor or ward),
6. 18 U.S.C. § 2244 (abusive sexual contact),
7. 18 U.S.C. § 2245 (offenses resulting in death),
8. 18 U.S.C. § 2251 (sexual exploitation of children),
9. 18 U.S.C. § 2251A (selling or buying of children),
10. 18 U.S.C. § 2252 (material involving the sexual exploitation of minors),
11. 18 U.S.C. § 2252A (material constituting or containing child pornography),
12. 18 U.S.C. § 2252B (misleading domain names on the internet),
13. 18 U.S.C. § 2252C (misleading words or digital images on the internet),
14. 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States),
15. 18 U.S.C. § 2421 (transportation for illegal sexual activity),
16. 18 U.S.C. § 2422 (coercion and enticement for illegal sexual activity),
17. 18 U.S.C. § 2423 (transportation of minors for illegal sexual activity),
18. 18 U.S.C. § 2424 (filing factual statement about an alien individual),
19. 18 U.S.C. § 2425 (use of interstate facilities to transmit information about a minor), or
20. Any other offense that meets the definition of “sex offense” under 42 U.S.C. § 16911(5).

D. **Foreign Offenses.** Any conviction for a sex offense involving any conduct listed in this Section that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States Department of State in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

E. **Military Offenses.** Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note), as amended, including but not limited to any offense designated in Department of Defense Instruction 1325.07, Appendix 4 to Enclosure 2 (2013), as it may be amended.

F. **Jurisdiction Offenses.** Any sex offense committed in any jurisdiction, including Name of Tribe, that involves:

1. Any conduct that by its nature is a sex offense against a minor,
2. Any type or degree of genital, oral, or anal penetration,
3. Any sexual touching of or sexual contact with a person's body, either directly or through the clothing,
4. Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases in which the victim was a minor at the time of the offense,
5. False imprisonment of a minor,
6. Kidnapping of a minor,
7. Possession, production, or distribution of child pornography,
8. Solicitation of a minor to practice prostitution,
9. Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,
10. Use of a minor in a sexual performance,
11. Any offense similar to those outlined in:
 - a. 18 U.S.C. § 1591 (sex trafficking of children or by force, fraud, or coercion),
 - b. 18 U.S.C. § 1801 (video voyeurism of a minor),
 - c. 18 U.S.C. § 2241 (aggravated sexual abuse),
 - d. 18 U.S.C. § 2242 (sexual abuse),
 - e. 18 U.S.C. § 2244 (abusive sexual contact),
 - f. 18 U.S.C. § 2422(b) (coercion of a minor to engage in prostitution), or
 - g. 18 U.S.C. § 2423(a) (transportation of a minor with intent to engage in criminal sexual activity).

TIERING OF OFFENSES

SECTION 3.01 TIER I OFFENSES

- A. **Generally.** A Tier I offense includes any sex offense, for which a person has been convicted, or an attempt or conspiracy to commit such an offense that is not a Tier II or Tier III offense.
- B. **Offenses Involving Minors.** A Tier I offense also includes any offense for which a person has been convicted that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.
- C. **Other Offenses.** Unless otherwise specified in this Code, any sex offense where punishment was limited to 1 year in jail shall be considered a Tier I sex offense.
- D. **Certain Name of Tribe Offenses.** Conviction for any of the following Name of Tribe offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a Tier I offense:
1. Section Number Name of Offense
 2. Section Number Name of Offense
- E. **Certain Name of State(s) Offenses.** Conviction for any of the following Name of State(s) offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a Tier I offense:
1. Section Number Name of Offense
 2. Section Number Name of Offense
- F. **Certain Federal Offenses.** Conviction for any of the following federal offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a Tier I offense:
1. 18 U.S.C. § 1801 (video voyeurism of a minor),
 2. 18 U.S.C. § 2252 (receipt or possession of child pornography),
 3. 18 U.S.C. § 2252A (receipt or possession of child pornography),
 4. 18 U.S.C. § 2252B (misleading domain names on the internet),
 5. 18 U.S.C. § 2252C (misleading words or digital images on the internet),

◀ Is the tribe implementing (or considering implementation of) the enhanced sentencing provisions of the Tribal Law and Order Act (TLOA)? If so, tier tribal offenses accordingly.

Even if the tribe is not implementing the enhanced sentencing provisions of TLOA, the SMART Office recommends specifically tiering the tribe's criminal sex offenses so that serious offenses (e.g., rape) are treated differently than less serious offenses.

◀ The SMART Office recommends specifically listing the tribal offenses that trigger a registration requirement.

◀ The SMART Office recommends specifically listing the state offenses (where tribal lands are located) that trigger a registration requirement. Contact the SMART Office for assistance in determining which state offenses are required to be registered under SORNA.

6. 18 U.S.C. § 2422(a) (coercion and enticement of an adult to engage in prostitution),
 7. 18 U.S.C. § 2423(b) (travel with intent to engage in illicit sexual conduct),
 8. 18 U.S.C. § 2423(c) (engaging in illicit sexual conduct in foreign places),
 9. 18 U.S.C. § 2423(d) (ancillary offenses where the victim is 18 or older),
 10. 18 U.S.C. § 2424 (failure to file factual statement about an alien individual),
 11. 18 U.S.C. § 2425 (use of interstate facilities to transmit information about a minor), or
 12. Any other offense defined as a Tier I offense under 42 U.S.C. § 16911(2), as it may be amended.
- G. **Certain Military Offenses.** Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note), as amended, that is similar to those offenses outlined in Section 3.01(B), (D), (E), or (F) shall be considered a Tier I offense.

◀ SORNA does not require an enhanced tiering status unless the person has previously been convicted of a sex offense that was punishable by more than 1 year in jail. However, as most tribal sex offenses have (until TLOA) been limited to no more than 1 year in jail, the technical requirements of SORNA could frustrate the intent of the provision. Tribes are encouraged to consider this model language in order to ensure that repeat offenders are classified in a higher tier than if they were being convicted of a first offense.

SECTION 3.02 TIER II OFFENSES

- A. **Recidivism.** Unless otherwise covered by Section 3.03, if an offender has previously been convicted of a sex offense, and the current conviction is for a sex offense, or an attempt or conspiracy to commit such a sex offense, the current conviction is considered a Tier II offense.
- B. **Certain Name of Tribe Offenses.** Conviction for any of the following Name of Tribe offenses, or an attempt or conspiracy to commit such an offense, shall be considered a conviction for a Tier II offense:
1. Section Number Name of Offense
 2. Section Number Name of Offense
- C. **Certain Name of State(s) Offenses.** Conviction for any of the following Name of State(s) offenses, or an attempt or conspiracy to commit such an offense, shall be considered a conviction for a Tier II offense:
1. Section Number Name of Offense
 2. Section Number Name of Offense
- D. **Offenses Involving Minors.** A Tier II offense includes any sex offense against a minor for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:
1. The use of minors in prostitution, including solicitations,
 2. Enticing a minor to engage in criminal sexual activity,
 3. A non-forcible sexual act with a minor 16 or 17 years old,

◀ The SMART Office recommends specifically listing the tribal offenses that trigger a registration requirement.

◀ The SMART Office recommends specifically listing the state offenses (where tribal lands are located) that trigger a registration requirement. Contact the SMART Office for assistance in determining which state offenses are required to be registered under SORNA.

4. Sexual contact with a minor 13 years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body,
5. The use of a minor in a sexual performance,
6. The production or distribution of child pornography, or
7. Any other offense defined as a Tier II offense under 42 U.S.C. § 16911(3), as it may be amended.

E. **Certain Federal Offenses.** Conviction for any of the following federal offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a Tier II offense:

1. 18 U.S.C. § 1591 (sex trafficking of children or by force, fraud, or coercion),
2. 18 U.S.C. § 2244 (abusive sexual contact, where the victim is 13 years of age or older),
3. 18 U.S.C. § 2251 (sexual exploitation of children),
4. 18 U.S.C. § 2251A (selling or buying of children),
5. 18 U.S.C. § 2252 (production or distribution of child pornography),
6. 18 U.S.C. § 2252A (production or distribution of material constituting or containing child pornography),
7. 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States),
8. 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity),
9. 18 U.S.C. § 2422(b) (coercion and enticement of a minor to engage in prostitution),
10. 18 U.S.C. § 2423(a) (transportation of a minor with intent to engage in criminal sexual activity),
11. 18 U.S.C. § 2423(d) (ancillary offenses where the victim is under 18), or
12. Any other offense defined as a Tier II offense under 42 U.S.C. § 16911(3), as it may be amended.

F. **Certain Military Offenses.** Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note), as amended, that is similar to those offenses outlined in Section 3.02(B), (C), (D), or (E) shall be considered a Tier II offense.

SECTION 3.03 TIER III OFFENSES

A. **Recidivism.** If an offender has previously been convicted of a Tier II sex offense, and the current conviction is for any sex offense, or an attempt or conspiracy to commit any sex offense, the current conviction is considered a Tier III offense.

SORNA does not require an enhanced tiering status unless the person has previously been convicted of a sex offense that was punishable by more than 1 year in jail. However, as most tribal sex offenses have (until TLOA) been limited to no more than 1 year in jail, the technical requirements of SORNA could frustrate the intent of the provision. Tribes are encouraged to consider this model language in order to ensure that repeat offenders are classified in a higher tier than if they were being convicted of a first offense.

B. **Certain Name of Tribe Offenses.** Conviction for any of the following Name of Tribe offenses, or an attempt or conspiracy to commit such an offense, shall be considered a conviction for a Tier III offense:

1. Section Number Name of Offense
2. Section Number Name of Offense

◀ The SMART Office recommends specifically listing the tribal offenses that trigger a registration requirement.

C. **Certain Name of State(s) Offenses.** Conviction for any of the following Name of State(s) offenses, or an attempt or conspiracy to commit such an offense, shall be considered a conviction for a Tier III offense:

1. Section Number Name of Offense
2. Section Number Name of Offense

◀ The SMART Office recommends specifically listing the state offenses (where tribal lands are located) that trigger a registration requirement.

D. **Other Offenses.** A Tier III offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:

1. Non-parental kidnapping of a minor,
2. A sexual act with another by force or threat,
3. A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate, or
4. Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing, or
5. Any other offense defined as a Tier III offense under 42 U.S.C. § 16911(4), as it may be amended.

E. **Certain Federal Offenses.** Conviction for any of the following federal offenses, or an attempt or conspiracy to commit such an offense, shall be considered a conviction for a Tier III offense:

1. 18 U.S.C. § 2241 (aggravated sexual abuse),
2. 18 U.S.C. § 2242 (sexual abuse),
3. 18 U.S.C. § 2243 (sexual abuse of a minor or ward),
4. Where the victim is 12 years of age or younger, 18 U.S.C. § 2244 (abusive sexual contact), or
5. Any other offense defined as a Tier III offense under 42 U.S.C. § 16911(4), as it may be amended.

F. **Certain Military Offenses.** Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note), as amended, that is similar to those offenses outlined in Section 3.03(B), (C), (D), or (E) shall be considered a Tier III offense.

REQUIRED INFORMATION

SECTION 4.01 GENERAL REQUIREMENTS

- A. **Duties.** A sex offender covered by this Code who is required to register with the Name of Tribe pursuant to this Code shall provide all of the information detailed in this chapter to the Responsible Agency Name. The Responsible Agency Name or its designee shall obtain all of the information detailed in this chapter from sex offenders who are required to register with the tribe. Responsible Agency Name shall implement any policies and procedures necessary to implement its terms.
- B. **Digitization.** All information obtained under this Code shall be, at a minimum, maintained by the Responsible Agency Name in a digitized format.
- C. **Electronic Database.** The Name of Tribe Sex Offender Registry shall be maintained in an electronic database by the Responsible Agency Name or its designee, and shall be in a form capable of electronic transmission.
- D. **Biometrics.** The Responsible Agency Name or its designee shall obtain, and a sex offender shall provide, the following biometric and biologic information:
1. **Finger and Palm Prints.** Both fingerprints and palm prints. Fingerprints and palm prints shall be immediately submitted to the appropriate Federal Bureau of Investigation (FBI) databases by the Responsible Agency Name.
 2. **DNA.** If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Responsible Agency Name or its designee a sample of their DNA.
 - a. Any DNA sample obtained from the sex offender shall be immediately submitted to the FBI for inclusion in CODIS.
- E. **Registration Information.** The Responsible Agency Name or its designee shall obtain, and a sex offender shall provide, the following biographic and documentary information:
1. **Name.** The following information related to the sex offender's name:
 - a. The sex offender's full primary given name,
 - b. Any and all nicknames, aliases, and pseudonyms regardless of the context in which they are used, and
 - c. Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

2. **Date of Birth.**
 - a. The sex offender's actual date of birth, and
 - b. Any other date of birth used by the sex offender.
3. **Photograph.** A sex offender shall permit their photograph to be taken by the **Responsible Agency Name** or its designee:
 - a. Every 90 days for Tier III sex offenders,
 - b. Every 180 days for Tier II sex offenders, and
 - c. Every year for Tier I sex offenders.
4. **Physical Description.** An accurate description of the sex offender as follows:
 - a. A physical description,
 - b. A general description of the sex offender's physical appearance or characteristics, and
 - c. Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos. If possible, photographs of any tattoos or significant marks shall also be taken.
5. **Offense Information.** The text of each provision of law defining the criminal offense(s) for which the sex offender is registered.
6. **Criminal History.**
 - a. The date of all arrests,
 - b. The date of all convictions,
 - c. The sex offender's status of parole, probation, or supervised release,
 - d. The sex offender's registration status, and
 - e. Any outstanding arrest warrants.
7. **Social Security Number.** The following information:
 - a. A valid Social Security number for the sex offender, and
 - b. Any Social Security number the sex offender has used in the past, valid or otherwise.
8. **Driver's License.** The sex offender's valid driver's license(s), issued by any jurisdiction, and the **Responsible Agency Name** or its designee shall make a photocopy of any such licenses.
9. **Identification Cards.** The sex offender's government-issued identification card(s), including the sex offender's tribal enrollment card (issued by any jurisdiction). The **Responsible Agency Name** or its designee shall make a photocopy of any such identification cards.

10. **Passports.** Any passports held or used by the sex offender, and the Responsible Agency Name or its designee shall make a photocopy of any such passports.
11. **Immigration Documents.** Any and all immigration documents held or used by the sex offender, and the Responsible Agency Name or its designee shall make a photocopy of any such documents.
12. **Phone Numbers.** Any and all telephone numbers and any other designations used by sex offenders for purposes of routing or self-identification in telephonic communications including but not limited to:
 - a. Any and all cellular telephone numbers,
 - b. Any and all land line telephone numbers, and
 - c. Any and all Voice over Internet Protocol (VOIP) telephone numbers.
13. **Residence Address.** The following information related to the sex offender's residence:
 - a. The address of each residence at which the sex offender resides or will reside, and
 - b. Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.
14. **Employment.** The following information related to the sex offender's employment, to include any and all places where the sex offender is employed in any capacity, including volunteer and unpaid positions:
 - a. The name of the sex offender's employer,
 - b. The address of the sex offender's employer, and
 - c. Similar information related to any transient or day labor employment.
15. **School Location.** The following information related to the sex offender's school:
 - a. The address of each school where the sex offender is or will be a student, and
 - b. The name of each school where the sex offender is or will be a student.
16. **Vehicle Information.** The following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:
 - a. License plate numbers,
 - b. Registration numbers or identifiers,
 - c. General description of the vehicle to include color, make, model, and year, and
 - d. Any permanent or frequent location where any vehicle is kept.

17. **Internet Identifiers.** The following information related to the sex offender's internet-related activity:
- a. Any and all email addresses used by the sex offender,
 - b. Any and all instant message addresses and identifiers,
 - c. Any and all other designations or monikers used for self-identification in internet communications or postings, and
 - d. Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications, postings, or social media accounts.
18. **Professional Licenses.** Licensing number, licensing agency, and any other identifying information about a professional license issued to the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.
19. **Temporary Lodging/Travel Information.** The following information when the sex offender will be absent from **Name of Tribe** jurisdiction for 7 days or more:
- a. Identifying information for the location where the offender will be lodging while absent from **Name of Tribe** jurisdiction, including addresses and names (such as hotel, campground, or home owner), and
 - b. The dates the sex offender will be staying at each temporary lodging location.
 - c. The registered sex offender shall provide the information in Section 4.01 (E) (17) (a) and (b) no later than 3 days before their scheduled travel. The information shall be provided in person.
 - d. The **Responsible Agency Name** shall immediately notify any jurisdiction where the offender will be lodging that the offender will be traveling to that jurisdiction. Notification shall be made via the SORNA Exchange Portal, or any additional method(s) of communication, as appropriate.
20. **International Travel.** The following information when the sex offender will be traveling to a foreign country:
- a. Any information required to be provided by 42 U.S.C. § 16914(a)(7), or any other information necessary to complete the *International Travel Form* utilized by the United States Marshals Service.
 - b. The registered sex offender shall provide such information no later than 21 days prior to their scheduled travel. The information shall be provided in person.
 - c. The **Responsible Agency Name** shall submit the completed *International Travel Form* to the United States Marshals Service via the SORNA Exchange Portal within 24 hours.

21. **Amendments.** Any information which hereafter may be required to be collected by the Attorney General of the United States of America.
22. **Regulations.** Any information which hereafter may be required to be collected by the duly enacted administrative policies of the Responsible Agency Name.

SECTION 4.02 FREQUENCY, DURATION, AND REDUCTION

- A. **Frequency and Duration.** A sex offender who is required to register shall, at a minimum, appear in person at the Responsible Agency Name for purposes of verification and keeping their registration current in accordance with the following time frames:
 1. For Tier I offenders, once every year for 15 years from the time of release from custody for a sex offender who is incarcerated for the registration offense, or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
 2. For Tier II offenders, once every 180 days for 25 years from the time of release from custody for a sex offender who is incarcerated for the registration offense, or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
 3. For Tier III offenders, once every 90 days for the rest of their lives.
- B. **Tolling.** The duration of an offender's registration requirement will be tolled for any period of time during which they are incarcerated for any offense.
- C. **Reduction of Registration Periods.** A sex offender may have their period of registration reduced as follows:
 1. A Tier I offender may have their period of registration reduced to 10 years if the individual has maintained a clean record for 10 consecutive years;
 2. A Tier III offender may have their period of registration reduced to 25 years if the individual was adjudicated delinquent of an offense as a juvenile that required Tier III registration and the individual has maintained a clean record for 25 consecutive years.
- D. **Clean Record.** For purposes of Chapter 4.02(C), a person has a clean record if, during the period of time which the person was required to register as a sex offender:
 1. He or she has not been convicted of any felony offense,
 2. He or she has not been convicted of any sex offense,
 3. He or she has successfully completed, without revocation, any period of supervised release, probation, or parole, and
 4. He or she has successfully completed an appropriate sex offender treatment program certified by the tribe, another jurisdiction, or by the Attorney General of the United States.

- ◀ Time incarcerated does not count toward an offender's required registration duration.
- ◀ Allowing the reduction of registration periods is optional.
If your tribe is going to allow the reduction of registration periods, what procedural mechanism will be used to authorize those reductions? The SMART Office recommends specifying the procedure within the Code/Ordinance.

SECTION 4.03 REQUIREMENTS FOR IN-PERSON APPEARANCES

- A. **Review of Information.** At each in-person verification, the sex offender shall review existing information for accuracy.
- B. **Notification.** If any new information or change in information is obtained at an in-person verification, the Responsible Agency Name shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information.
- C. **New or Changed Information.** If any new information or change in information is obtained at an in-person verification, the Responsible Agency Name shall immediately update the Name of Tribe Public Sex Offender Registry Website, if applicable, and immediately update the sex offender's information in NSOR.

SECTION 4.04 SEX OFFENDER ACKNOWLEDGEMENT FORM

The sex offender shall read, or have read to them, and sign a form stating that the duty to register has been explained to them by Responsible Agency Name and that the sex offender understands the registration requirement.

- A. The form shall be signed and dated by the Responsible Agency Name personnel registering the sex offender.
- B. The Responsible Agency Name shall immediately upload the acknowledgement form into the Name of Tribe Sex Offender Registry.

REGISTRATION

SECTION 5.01 WHERE REGISTRATION IS REQUIRED

- A. **Jurisdiction of Conviction.** A sex offender must initially register with the Responsible Agency Name if the sex offender was convicted by the Name of Tribe Tribal Court of a sex offense, regardless of the sex offender’s actual or intended jurisdiction of residence.
- B. **Jurisdiction of Incarceration.** A sex offender must register with the Responsible Agency Name if the sex offender is released from incarceration by the Name of Tribe while completing any sentence for a sex offense, regardless of whether the offender was convicted in the Name of Tribe Tribal Court, and regardless of whether the offender intends to live, work, or attend school within lands subject to the jurisdiction of the Name of Tribe.
- C. **Jurisdiction of Residence.** A sex offender must register with Responsible Agency Name if the sex offender resides within lands subject to the jurisdiction of the Name of Tribe.
- D. **Jurisdiction of Employment.** A sex offender must register with the Responsible Agency Name if he or she is employed by the Name of Tribe in any capacity or otherwise is employed within lands subject to the jurisdiction of the Name of Tribe.
- E. **Jurisdiction of School Attendance.** A sex offender must register with the Responsible Agency Name if the sex offender is a student in any capacity within lands subject to the jurisdiction of the Name of Tribe.

SECTION 5.02 TIMING OF REGISTRATION

- A. **Timing.** A sex offender required to register with the Responsible Agency Name under this Code shall do so in the following timeframe:
 - 1. If convicted by Name of Tribe for a sex offense and incarcerated, the sex offender must register before being released from incarceration;
 - 2. If convicted by Name of Tribe but not incarcerated, within 3 business days of sentencing for the registration offense, the sex offender must appear in person to register with Responsible Agency Name and
 - 3. Within 3 business days of establishing a residence, commencing employment, or becoming a student on lands subject to the jurisdiction of the Name of Tribe, the sex offender must appear in person to register with Responsible Agency Name.

◀ Your tribe will need to implement a procedure for the registering agency to ensure offenders are registered prior to their release.

- B. **Duties of Responsible Agency Name.** The Responsible Agency Name shall have policies and procedures in place to ensure the following:
1. That any sex offender incarcerated or sentenced by the Name of Tribe for a sex offense completes their initial registration with the Responsible Agency Name;
 2. That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement;
 3. That the sex offender is registered, and added to the Name of Tribe Public Sex Offender Registry Website, if applicable;
 4. That upon entry of the sex offender's information into the Name of Tribe Sex Offender Registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status; and
 5. That all registration information is immediately entered and updated in NSOR.

SECTION 5.03 RETROACTIVE REGISTRATION

- A. **Retroactive Registration.** The Responsible Agency Name shall have in place policies and procedures to ensure the following three categories of sex offenders are subject to the registration and updating requirements of this Code:
1. Sex offenders incarcerated or under the supervision of the Name of Tribe, whether for a sex offense or other crime,
 2. Sex offenders already registered or subject to a pre-existing sex offender registration requirement, and
 3. Sex offenders reentering the justice system due to conviction for any crime.
- B. **Timing of Recapture.** The Responsible Agency Name shall ensure recapture of the sex offenders mentioned in Section 5.03(A) within the following timeframe to be calculated from the date of passage of this Code:
1. For Tier I sex offenders, 1 year,
 2. For Tier II sex offenders, 180 days, and
 3. For Tier III sex offenders, 90 days.

SECTION 5.04 KEEPING REGISTRATION CURRENT

- A. **Jurisdiction of Residency.** All sex offenders who reside in lands subject to the jurisdiction of the Name of Tribe who are required to register pursuant to this Code shall

1. Immediately appear in person at the **Responsible Agency Name** to update any changes to their name, residence (including termination of residency), employment, or school attendance.
 2. Immediately update any changes to their vehicle information, internet identifiers, or telephone numbers. Such updates are not required to be made in person at the **Responsible Agency Name**.
 3. Appear in person at the **Responsible Agency Name** at least 3 days in advance of any intended travel away from **Name of Tribe** which will last 7 days or more, as required by Section 4.01(E)(17).
 4. Appear in person at the **Responsible Agency Name** at least 21 days in advance of any intended international travel to provide the information required by Section 4.01(E)(18).
- B. **Jurisdiction of School Attendance.** Any sex offender who is a student in any capacity within lands subject to the jurisdiction of the **Name of Tribe**, regardless of location, that changes their school, or otherwise terminates their schooling, shall immediately appear in person at the **Responsible Agency Name** to update that information.
- C. **Jurisdiction of Employment.** Any sex offender who is employed by the **Name of Tribe** in any capacity or otherwise is employed within lands subject to the jurisdiction of the **Name of Tribe**, regardless of location, that changes their employment, or otherwise terminates their employment, shall immediately appear in person at the **Responsible Agency Name** to update that information.

SECTION 5.05 FAILURE TO APPEAR FOR REGISTRATION AND ABSCONDING

- A. **Failure to Appear.** In the event a jurisdiction notifies the **Name of Tribe** that a sex offender is relocating to **Name of Tribe**, and the sex offender thereafter fails to register with the **Name of Tribe** as required by this Code, the **Responsible Agency Name** or its designee shall immediately inform the jurisdiction that provided notification that the sex offender who was to commence residency, employment, or school attendance with the **Name of Tribe** failed to appear for registration.
- B. **Absconded Sex Offenders.** If the **Responsible Agency Name** or its designee receives information that a sex offender has absconded, the **Responsible Agency Name** shall take the following actions:
1. The **Responsible Agency Name** shall make an effort to determine if the sex offender has actually absconded. In the event no determination can be made, the **Responsible Agency Name** or its designee shall ensure all other appropriate law enforcement agencies are notified.
 2. If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.

3. If an absconded sex offender cannot be located then the Responsible Agency Name shall take the following steps:
 - a. Update the Name of Tribe Sex Offender Registry and Name of Tribe Public Sex Offender Registry Website to reflect the sex offender has absconded or is otherwise unable to be located,
 - b. Notify the U.S. Marshals Service,
 - c. Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,
 - d. Update NSOR to reflect the sex offender's status as an absconder, or is otherwise unable to be located, and
 - e. Enter the sex offender into the NCIC Wanted Person File.
- C. **Failure to Register.** In the event a sex offender who is required to register pursuant to this Code fails to do so, or otherwise violates a registration requirement of this Code, the Responsible Agency Name shall take all appropriate follow-up measures, including those outlined in Section 5.05(B). The Responsible Agency Name shall first make an effort to determine if the sex offender actually resides, is employed, or is attending school on lands subject to the jurisdiction of the Name of Tribe.

PUBLIC SEX OFFENDER REGISTRY WEBSITE

SECTION 6.01 WEBSITE

- A. **Website.** The Responsible Agency Name shall use and maintain the Name of Tribe Public Sex Offender Registry Website.
- B. **Links.** The Name of Tribe Public Sex Offender Registry Website shall include links to sex offender safety and education resources.
- C. **Instructions.** The Name of Tribe Public Sex Offender Registry Website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.
- D. **Warnings.** The Name of Tribe Public Sex Offender Registry Website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.
- E. **Search Capabilities.** The Name of Tribe Public Sex Offender Registry Website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and (3) ZIP code and/or geographic radius.
- F. **Dru Sjodin National Sex Offender Public Website.** The Name of Tribe shall include in the design of the Name of Tribe Public Sex Offender Registry Website all the field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website, and shall participate in that website as provided by the Attorney General of the United States.

SECTION 6.02 REQUIRED AND PROHIBITED INFORMATION

- A. **Required Information.** The following information shall be made available to the public on the Name of Tribe Public Sex Offender Registry Website:
 1. The name of the sex offender including all aliases,
 2. A current photograph of the sex offender,
 3. A physical description of the sex offender,
 4. The sex offense(s) for which the offender is currently registered,
 5. All sex offense(s) for which the sex offender has been convicted,
 6. The residential address and, if relevant, a description of a habitual residence of the sex offender,

7. The address of the sex offender’s employer(s),
8. All addresses of schools attended by the sex offender,
9. The sex offender’s vehicle license plate number, along with a description of the vehicle, and
10. Notice that a sex offender is in violation of their registration requirements or cannot be located if the sex offender has absconded.

B. **Prohibited Information.** The following information shall not be available to the public on the Name of Tribe Public Sex Offender Registry Website:

1. Any arrest that did not result in conviction,
2. The sex offender’s Social Security number,
3. Any travel and immigration documents,
4. The identity of the victim, and
5. Internet identifiers.

C. **Witness Protection.** For sex offenders who are under a witness protection program, the Responsible Agency Name may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

Juveniles adjudicated delinquent of a sex offense are permitted to be excluded from public registry website posting. Does your tribe wish to exclude some, or all, of these offenders?

Tier I offenders convicted of offenses against adult victims are permitted to be excluded from public registry website posting. Does your tribe wish to exclude some, or all, of these offenders? Take into consideration how many offenders would be excluded from posting, particularly if most tribal sex offenses are classified as Tier I offenses.

SECTION 6.03 COMMUNITY NOTIFICATIONS

A. **Law Enforcement Notification.** Whenever a sex offender registers or updates their information with the tribe, the Responsible Agency Name shall:

1. Monitor and utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment, or student status, and immediately notify any relevant jurisdiction of an offender’s intended change of residence, employment, or student status.
2. Immediately update NCIC/NSOR.
3. Immediately notify any agency, department, or program within the Name of Tribe that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including but not limited to police, whether BIA, tribal, or FBI; Name of Tribe prosecutors; and Name of Tribe probation.
4. Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender’s residency, school attendance, or employment.
5. Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under Section 3 of the National Child Protection Act of 1993 (42 U.S.C. § 5119a) when a sex offender registers or updates registration.

- B. **Community Notification.** The Responsible Agency Name shall ensure there is a community notification process in place that ensures the following:
1. Upon a sex offender's registration or update of information with the Name of Tribe, the Name of Tribe's Public Sex Offender Registry Website is immediately updated with the information required by Section 6.02(A) of this Code.
 2. The Name of Tribe's Public Sex Offender Registry Website has an automated function that enables the general public to request an email notice that will notify them when a sex offender commences residence, employment, or school attendance with the Name of Tribe, within a specified ZIP code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the Name of Tribe Public Sex Offender Registry Website for the new information.
 3. Except as specified at Section 6.02(B), the Responsible Agency Name is also permitted to provide the community information about any registered sex offender as might be necessary to protect public safety.

IMMUNITY

- A. **No Waiver of Immunity.** Nothing under this chapter shall be construed as a waiver of sovereign immunity for the **Name of Tribe**, its departments, agencies, employees, or agents.
- B. **Good Faith.** Any person acting in good faith under the terms of this Code shall be immune from any civil liability arising out of such actions.

◀ This section is not specifically required by SORNA, but is recommended for inclusion by the original drafters of the Model Tribal Code/Ordinance.

CRIMES AND CIVIL SANCTIONS

SECTION 8.01 FAILURE TO REGISTER AS A SEX OFFENDER AND OTHER OFFENSES

- A. **Criminal Penalty.** Each violation of a provision of this Code by a sex offender shall be considered a crime and subject to a period of incarceration of [insert maximum possible term of incarceration here] and a fine of [insert maximum possible fine amount here].
- B. **Civil Penalty.** Each violation of a provision of this Code by a sex offender shall also be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, and civil contempt. [Insert specific civil penalties.]
- C. **Customs, Traditions, and Banishment/Exclusion.** Nothing in this Code shall limit the ability of the Name of Tribe to impose additional customary or traditional sanctions on an individual, up to and including banishment and/or exclusion.
- D. **Hindrance of Sex Offender Registration.** A person is guilty of the offense of *Hindrance of Sex Offender Registration* and subject to the penalties described in § 8.01(A) and (B), as applicable, if they:
 1. Knowingly harbor or knowingly attempt to harbor, or knowingly assist another person in harboring or attempting to harbor a sex offender who is in violation of this Code;
 2. Knowingly assist a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Code; or
 3. Provide information regarding a sex offender to the Responsible Agency Name, or other law enforcement agency, which the person knows to be false.

◀ Section 8.01(A) is drafted to apply to all sex offenders. Because of the limitations of tribal criminal jurisdiction, the tribe may limit criminal penalties to Indian offenders, if they wish.

◀ Section 8.01(B) is written as applying to all sex offenders. If the tribe wishes to limit civil penalties to non-Indian offenders, or exclude them altogether, they may do so, although the tribe should consider how violations of registration requirements by non-Indians would be punished.

Sections 8.01(B), (C), and (D) are not specifically required by SORNA, but are recommended for inclusion by the original drafters of the Model Tribal Code/ Ordinance.

