



January 2024

SORNA Substantial Implementation Review Commonwealth of Massachusetts — Revised

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) recognizes the Commonwealth of Massachusetts' 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 Massachusetts' SORNA substantial implementation materials and has determined Massachusetts has not substantially implemented SORNA.

In November 2012, the SMART Office issued a SORNA Substantial Implementation Review to Massachusetts that found the state had not substantially implemented SORNA. In November 2019, the Sex Offender Registry Board (SORB) requested a new substantial implementation review. In preparing this review, the SMART Office examined state statutes, policies, procedures and forms, including registration forms provided by SORB. In addition, email and phone correspondence with SORB informed our review.

This review is exhaustive and details each area in which Massachusetts 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 Massachusetts 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 other jurisdictions 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.

Massachusetts deviates from SORNA requirements in that it does not notify each jurisdiction where the offender resides, is an employee, or is a student of updated registration information if the change does not occur in that jurisdiction.

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

II. Offenses That Must Be Included in the Registry

SORNA requires that 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. Massachusetts Offenses

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

- Ch. 265, § 13H½ Commission of indecent assault and battery by a law enforcement officer
- Ch. 265, § 26A Custodial interference by relatives (where perpetrator is not the child's parent or guardian)
- Ch. 265, § 26B Drug-induced kidnapping
- Ch. 272, § 1 Abduction of an unmarried person under age 16 for the purpose of marriage
- Ch. 272, § 4 Enticing to unlawful intercourse
- Ch. 272, § 6 Maintaining a house of prostitution (where victim is under 18)
- Ch. 272, § 13 Detaining a person in a house of prostitution (where victim is under 18)
- Ch. 272, § 16 Open and gross lewdness and lascivious behavior (first conviction)

In addition, with the exception of certain delineated offenses,¹ Massachusetts' registerable offenses are eligible for a continuance without a finding, in which the defendant's case is dismissed upon successful completion of a pre-adjudication probation period.

¹ A prosecution for any of the following registerable offenses is not eligible to be continued without a finding:

- Ch. 265, § 13B Indecent assault and battery on a child under 14
- Ch. 265, § 13B½ Indecent assault and battery on a child under 14 during commission of certain offenses or by mandated reporters
- Ch. 265, § 13B¾ Indecent assault and battery on a child under 14 by certain previously convicted offenders
- Ch. 265, § 13H Indecent assault and battery on a person 14 and over
- Ch. 265, § 22A Rape of a child
- Ch. 265, § 22B Rape of a child during commission of certain offenses or by use of force
- Ch. 265, § 22C Rape of a child through use of force by certain previously convicted offenders
- Ch. 265, § 50 Trafficking of persons for sexual servitude
- Ch. 265, § 52 Second or subsequent violation of trafficking of persons for sexual servitude
- Ch. 272, § 4A Inducing a minor into prostitution
- Ch. 272, § 4B Living off or sharing earnings of minor prostitute
- Ch. 272, § 28 Matter harmful to minors; dissemination; possession

Massachusetts does not register conspiracies to commit sex offenses, but does register attempts to commit a sex offense.

B. Offenses of Other SORNA Registration Jurisdictions

Massachusetts deviates from SORNA requirements in that it requires registration only for any offense that is equivalent to a registerable Massachusetts offense.

C. Federal Offenses

The following offenses require registration under SORNA but do not appear to have equivalent Massachusetts offenses.

- 18 U.S.C. § 1801 Video voyeurism of a minor
- 18 U.S.C. § 2245 Offenses resulting in death
- 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. § 2424 Filing factual statement about alien individual
- 18 U.S.C. § 2425 Use of interstate facilities to transmit information about a minor

D. Military Offenses

Massachusetts deviates from SORNA requirements in that it only includes military offense convictions in its registration scheme if the offense is equivalent to a registerable Massachusetts offense. Therefore, there are some military offenses (such as conduct unbecoming) that do not appear to have an equivalent offense under Massachusetts law and thus do not require registration.

E. Foreign Offenses

Massachusetts deviates from SORNA requirements in that Massachusetts does not include foreign convictions in its registration scheme.

F. Juveniles

Massachusetts handles juveniles charged with sex offenses in multiple ways.

1. Policies and Practices to Prosecute as Adults Juveniles Who Commit Serious Sex Offenses

To be prosecuted in adult court in Massachusetts, a juvenile charged with a serious sex offense must be indicted as a youthful offender, as defined by Mass. G.L. ch. 119, § 52.

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- Ch. 272, § 29C Knowing purchase or possession of visual material of a child depicted in sexual conduct

All of the sex offenses for which SORNA requires an adjudicated juvenile to register are offenses that make a juvenile eligible for categorization as a youthful offender under Massachusetts law; however, to be categorized as a youthful offender, the individual must also have either: committed an offense in which they threatened or inflicted serious bodily harm, had a prior offense which resulted in commitment to the Department of Youth Services, or have committed one or more certain firearm offenses.

If a prosecutor chooses to indict a youthful offender in adult court and the individual is convicted of a serious sex offense, they are then subject to the same sentencing possibilities and registration requirements as adult offenders. If a prosecutor chooses not to indict a youthful offender in adult court, then a youthful offender will be prosecuted in juvenile court.

2. Policies and Practices to Register Juveniles Adjudicated Delinquent for Serious Sex Offenses

If a juvenile who commits a sex offense remains in juvenile court and is adjudicated delinquent but not sentenced to immediate confinement, the prosecutor can move at the time of sentencing for the juvenile court to determine whether they should be required to register. The juvenile court shall not require the juvenile to register if it determines that the juvenile does not pose a risk of reoffense or a danger to the public.

For a juvenile who is sentenced to probation and is required to register at sentencing, or for a juvenile who is sentenced to confinement and scheduled to be released, a SORB member uses a risk assessment process to determine the juvenile's classification level, and the corresponding registration and notification requirements. The SORB member is a licensed psychologist or psychiatrist with special expertise in evaluating juvenile sex offenders. At that time, the SORB member may determine that there is no risk of reoffense or danger to the public and relieve the juvenile of their registration requirement.

If SORB does require the juvenile to register, the juvenile may request a hearing, at which SORB must prove by clear and convincing evidence that the individual currently poses a risk of reoffense and is a danger to the community. If SORB fails to do so, then the hearing examiner will relieve the juvenile of their registration requirement. The hearing examiner may also change the individual's classification level to a higher or lower level after the hearing.

A juvenile who is classified as a Level 2 or 3 offender can petition for reclassification at any time after their final classification. In addition, all juvenile registrants, regardless of classification level, can petition for relief from their registration requirements 10 years after their final classification.²

² Information about the classification types and levels, as well as the procedures by which juvenile registrants can petition for reclassification and relief from registration, and the standards of proof involved, are outlined in Section VIII.

If a juvenile is not relieved of their registration requirements, then they will remain on the registry for 20 years from the end of their sentence.

3. Policies and Practices to Identify, Track, Monitor or Manage Juveniles Adjudicated Delinquent for Serious Sex Offenses Who Are in the Community

While it is not required by statute, juvenile courts will generally require juveniles who are adjudicated for a serious sex offense and placed on probation to be evaluated by a licensed sex offender-specific therapist and participate in treatment as a condition of probation. Additional conditions of probation may include age limitations on persons with whom adjudicated juveniles can have unsupervised contact, as well as GPS monitoring.

Information about juvenile registrants is made available to law enforcement and Level 2 and 3 juveniles are subject to distribution on Massachusetts' public registry website and through community notification methods to the same extent as adult registrants.

Massachusetts does not meet the SORNA requirements in this section because the state 1) allows offenders who are convicted of certain SORNA tier III sex offenses to avoid registration by successfully completing pre-adjudication probation, 2) does not register several serious Massachusetts offenses or their out-of-jurisdiction equivalents, 3) has overly narrow mechanisms by which a juvenile who commits a serious sex offense can be prosecuted in adult court, and 4) provides juveniles who commit serious sex offenses with too broad an opportunity for immediate relief from registration.

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.

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

- Photographs of Level 1 offenders³; however, in the case of offenders who are arrested in Massachusetts, this information is collected by law enforcement during the offender's arrest and processing, and SORB can access it
- Palm prints
- Secondary school information, if the offender resides in Massachusetts
- Aircraft information
- Vehicle location information, unless the vehicle is a boat on which the offender resides (in which case the facility and slip number are collected)

³ While SORB does sometimes include photos of Level 1 offenders in the Massachusetts registry database if it has ready access to them, there is no state requirement for SORB to do so.

Massachusetts law does not allow for the collection and submission of DNA on the basis of registration; however, a conviction as an adult or a youthful offender for any of the registerable Massachusetts offenses triggers the collection of the offender's DNA, and that DNA is stored in a state database and submitted to CODIS. When a sex offender relocates to Massachusetts and is required to register, Massachusetts does not collect the offender's DNA.

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

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.

Massachusetts meets all of 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.

Massachusetts deviates from SORNA requirements in that, while all offenders convicted of a registerable offense in Massachusetts have to immediately submit certain registration information to SORB, offenders who are sentenced to probation for that offense are not yet classified when they begin probation, and will not verify registration information in person or appear on the public registry website until classification occurs.⁴

Because of the above deviations, Massachusetts does not meet the SORNA requirements in this section.

⁴ Offenders who are incarcerated immediately after conviction for a registerable offense are classified before they are released from incarceration.

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. Massachusetts' sex offender registration system has been in place since 1996, and all offenders who were convicted of an eligible offense on or after August 1, 1981 (or who were released from confinement, parole or probation supervision on or after that date after a conviction for an eligible offense) are required to register. With the exception of excluding the posting of some Level 2 offenders on the state's public registry website, all revisions to the registration system apply retroactively.⁵

These deviations do not substantially disserve the purposes 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 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.

Massachusetts deviates from SORNA requirements in that unclassified and Level 1 offenders do not have to update any registration information in person. In addition, offenders do not have to immediately update internet identifiers or vehicle information. Massachusetts also deviates from SORNA requirements because sex offenders who reside in Massachusetts and who intend to

⁵ The posting of Level 2 sex offenders on the public registry website is discussed in Section IX.

travel outside the United States are not statutorily required to notify Massachusetts registry officials at least 21 days in advance of such travel. Massachusetts does require sex offenders to acknowledge in writing that SORNA binds them to this requirement, and does collect and transmit to the U.S. Marshals Service the requisite international travel information.

Because unclassified and Level 1 offenders are not required to update any registration information in person, Massachusetts 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.

Massachusetts classifies offenders in different ways for different purposes. The state classifies offenders based on the nature of the offense for purposes of duration of registration. An offender who is convicted of two offenses in the category of sex offense involving a child, who is convicted of one sexually violent offense, or who is a sexually violent predator (see Ch. 6, § 178C), has a lifetime registration requirement. For purposes of this review, these offenders are known as lifetime offenders. An offender who has no prior sex offense convictions and is convicted of one sex offense that is not also a sexually violent offense, or who has no prior sex offense convictions and has been convicted of one sex offense involving a child, must register for 20 years from the date of adjudication or release from all custody or supervision, whichever occurs later.

In contrast, Massachusetts uses a risk assessment process to determine sex offenders' verification and notification requirements.⁶ SORB conducts an initial risk assessment and classifies each offender. In a series of decisions, the Massachusetts Supreme Judicial Court has held that in order to uphold a sex offender's procedural due process rights, the offender is entitled to an administrative hearing by SORB before being classified and subjected to registration and notification requirements.⁷ At this hearing, SORB must prove by clear and convincing evidence that an offender currently poses a certain risk of reoffense and degree of danger to the community.⁸ Depending on the level of risk and degree of danger proven, an offender may be classified as Level 1, 2 or 3. At the time of the hearing, if no risk of reoffense and degree of danger has been proven, an offender must be relieved of their registration requirements. For an

⁶ The exception to this is sexually violent predators, who, pursuant to Ch. 6, § 178K (c)(vii), are automatically Level 3 offenders. In addition, sexually violent predators must appear in person every 45 days to verify their registration information.

⁷ *Doe v. Attorney General*, 686 N.E.2d 1007, 1012-14 (Mass. 1997) (“*Doe 3*”); *Doe v. Sex Offender Registry Bd.*, 697 N.E.2d 512, 517-18 (Mass. 1998) (“*Doe 4*”).

⁸ *Doe (No. 380316) v. Sex Offender Registry Bd.*, 41 N.E.3d 1058, 1061-62 (Mass. 2015). Before this decision, the standard of proof SORB needed to show was a preponderance of the evidence.

offender to be classified a Level 2 or 3 offender, SORB must also prove by clear and convincing evidence that internet dissemination is warranted.⁹

Because of these Supreme Judicial Court decisions, Massachusetts cannot register and classify convicted sex offenders solely on the basis of the offense of conviction. However, all offenders who are convicted of a registerable offense must initially register and are only relieved of registration if their risk level warrants it. For all offenders, the initial classification process works as follows: offenders have 30 days to submit information for the board's consideration, and SORB obtains records related to past and current offenses, as well as victim impact statements. At this point, a single SORB member makes a preliminary classification regarding the offender's level of dangerousness and risk to re-offend. An offender has 20 days to request a hearing with SORB to challenge the preliminary classification; if the offender does not request a hearing, the preliminary classification becomes the offender's final classification. If the offender requests a hearing, then the burden is on SORB to prove by clear and convincing evidence that the offender currently poses a certain risk of reoffense and degree of danger to the community, as described above. During the hearing, both parties are represented by attorneys who can call and cross-examine witnesses and present evidence. After the hearing process has concluded and the hearing examiner makes a classification decision, a sex offender can seek judicial review of their final classification in Superior Court; however, the burden shifts to the offender to show that the SORB hearing examiner's decision is based on an error of law or fact, is made upon unlawful procedure, is arbitrary or capricious, is an abuse of discretion, or is otherwise not in accordance with the law.

In addition, if at any time, SORB receives new information that is relevant to an offender's risk of reoffense or degree of dangerousness, SORB may seek to reclassify the offender to a higher risk level. In those instances, SORB follows the same procedures as with initial classifications, which includes a hearing if the offender requests it.

A. Offense Tiering

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

Massachusetts classifies the following offenses as requiring registration for 20 years. These offenses require tier II registration (25 years) under SORNA.

- Ch. 265, § 23 Rape and abuse of a child (where victim is 13-15)
- Ch. 265, § 23A Rape and abuse of a child aggravated by age difference between defendant and victim or by when committed by mandated reporters (where victim is 13-15)

⁹ *Doe (No. 496501) v. Sex Offender Registry Bd.*, 126 N.E. 3d 939, 952 (Mass. 2019).

- Ch. 265, § 26D Enticing a child under 18 via electronic communication to engage in prostitution, human trafficking, or commercial sexual activity
- Ch. 265, § 26C Definition of “entice” of child under age of 16
- Ch. 265, § 13H Indecent assault and battery on a person age 14 or older (where the victim is 14-15)
- Ch. 272, § 4A Inducing minor into prostitution
- Ch. 272, § 4B Living off or sharing earnings of minor prostitute
- Ch. 272, § 17 Incestuous marriage or sexual activities (where victim is 16-17 years old and the offense involves a sexual act, as defined by 18 U.S.C. § 2246(2))
- Ch. 272, § 28 Matter harmful to minors; dissemination; possession
- Ch. 272, § 29A Posing or exhibiting child in state of nudity or sexual conduct
- Ch. 272, § 29B Dissemination of visual material of a child in a state of nudity or sexual conduct

Massachusetts classifies the following offenses as requiring registration for 20 years. These offenses require tier III registration (lifetime) under SORNA.

- Ch. 265, § 23 Rape and abuse of a child (where victim is under 13)
- Ch. 265, § 23A Rape and abuse of a child aggravated by age difference between defendant and victim or by when committed by mandated reporters (where victim is under 13)
- Ch. 265, § 26 Kidnapping; weapons; children under age 16

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.

Massachusetts requires offenders to register for life or for 20 years from the date of adjudication or release from all custody or supervision, whichever occurs later.

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 tier I offenders appear once a year, tier II offenders appear every six months and tier III offenders appear every three months.

Massachusetts requires Level 1 offenders to verify their registration information once a year, but they need only do so in writing. Level 2 and 3 offenders have to verify their registration information once a year in person. All sexually violent predators must appear in person every 45 days. Level 2 and 3 offenders who are homeless are required to verify their registration information every 30 days (Level 1 homeless offenders must verify their information every 30 days, but in writing).

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.

Massachusetts deviates from SORNA requirements in that all offenders are eligible to apply for a reduction of their registration period.

Massachusetts' clean record provisions also deviate from SORNA requirements in that sex offenders have multiple opportunities to be relieved of their registration requirements, earlier than what is allowed under SORNA. At the time of sentencing, the prosecutor can move for the court to determine whether a sex offender should be required to register. In addition, if a sex offender is not sentenced to incarceration, the court can relieve the sex offender of their registration requirements within 14 days of sentencing. Finally, at the time of the initial classification by a SORB member, a sex offender can submit a written motion seeking relief from registration. If the court (at the time of sentencing) or the SORB member (at the time of the initial classification) determines that the offender presents neither a risk of reoffense nor a danger to the public, then the offender shall be relieved from sex offender registration. Sexually violent predators, offenders who have been convicted of two or more registerable offenses, offenders who have been convicted of a sex offense involving a child, and offenders who have been convicted of a sexually violent offense (see Ch. 6, § 178C) are eligible for removal based on a prosecutor's motion as described above, but are not eligible for removal by the court within 14 days of sentencing, or during the initial classification process.

All registerable sex offenders can apply for relief from their registration requirements three years after final classification. The offender must apply with SORB, and must produce evidence to show that circumstances have changed such that they are not likely to pose a danger to others or a risk to reoffend. The offender must also not have committed a sex offense since final classification. The Supreme Judicial Court of Massachusetts has determined that, to protect the offender's procedural due process rights, once the other preconditions are met, and the offender satisfies his or her initial burden of production, SORB must demonstrate by clear and convincing evidence that continued registration is appropriate.¹⁰

While Massachusetts is prevented from adopting all of SORNA's clean record prerequisites because of its state constitution, the state has adopted reasonable alternative procedures: it has a process for removal, and that process includes preconditions that overlap with those of SORNA. Unless the court relieves an offender of the requirement to register within 14 days of sentencing, the offender must petition for relief. The offender must not have been convicted of a new sex offense, and the offender must produce evidence to show that circumstances have changed such that they are not likely to pose a danger to the safety of others or a risk to reoffend.

¹⁰ *Doe (No. 76819) v. Sex Offender Registry Bd.*, 102 N.E.3d 950, 955-57 (Mass. 2018); *Noe (No. 5340) v. Sex Offender Registry Bd.*, 102 N.E.3d 409, 419-21 (Mass. 2018).

In reviewing a jurisdiction's SORNA implementation status, the SMART Office must consider whether any rulings of the jurisdiction's highest court have rendered the jurisdiction unable to implement a provision of SORNA without violating the rights guaranteed in its jurisdiction's constitution. If such a ruling exists, the SMART Office must examine whether the jurisdiction has implemented reasonable alternative procedures that are consistent with the purposes of SORNA.¹¹

Massachusetts is unable to register and classify its offenders solely on the basis of the offense, as well as adopt all of SORNA's clean record requirements, without violating its state constitution. However, Massachusetts has implemented reasonable alternative procedures consistent with the purposes of SORNA and therefore, these deviations do not substantially disserve the purposes of SORNA.

Nevertheless, because Massachusetts does not require offenders to register for the duration and appear with the frequency that SORNA requires, and a much larger class of offenders are eligible to apply for removal from the registry earlier in the registration period than SORNA requires, Massachusetts 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 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.

Massachusetts' public sex offender registry website deviates from SORNA in that information about unclassified and Level 1 offenders does not appear on the public website. Information about Level 2 offenders only appears on the public website if the offender was classified after July 12, 2013; however, a Massachusetts Supreme Judicial Court decision prevents SORB from publishing information about Level 2 offenders classified before that date (*Moe v. Sex Offender Registry Bd.*, 6 N.E.3d 530, 544 (Mass. 2014)). In addition, Massachusetts does not publish vehicle information on the public website.

¹¹ 34 U.S.C. § 20927(b)(1), (3).

Information about Level 1 offenders does not appear on the public website; however, the Massachusetts Department of Children and Families and the Department of Early Education and Care have access to all offenders' registration information. In addition, the Massachusetts Department of Mental Health and the Department of Developmental Services have access to information about Level 1 sex offenders.

Although information about Level 2 sex offenders who were classified before July 12, 2013, is not on the public registry website, members of the public can obtain information about those offenders from SORB or their local police department, including the offender's residence, employment, and school addresses; photographs of the offender; the offender's identifying information; and information about the offender's sex offense convictions.

B. Community Notification

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

Massachusetts' community notification provisions deviate from SORNA in that Massachusetts does not have an email notification system.

Massachusetts is constitutionally prevented from including Level 2 offenders who were classified before July 12, 2013, on its public registry website. However, because Massachusetts has implemented reasonable alternatives to compensate for this deviation from SORNA, this deviation does not substantially disserve the purposes of SORNA.

Because Massachusetts does not post information on all unclassified and Level 1 SORNA-required offenders on its public website, and because it does not have an email notification system, Massachusetts 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.

Massachusetts' penalty for failure to register conforms with SORNA requirements.

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.

Massachusetts' 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.

Massachusetts' investigation and notification procedures conform with SORNA's requirements.

Massachusetts meets all of the SORNA requirements in this section.

XI. Tribal Considerations

Of the two tribes located in Massachusetts, one tribe — Mashpee Tribe of Wampanoag — has elected not to implement SORNA. For that tribe, Massachusetts is responsible for carrying out sex offender registration and notification processes. The second tribe — Wampanoag Tribe of Gay Head/Aquinnah — is presently working toward SORNA implementation.

The primary contact for tribal SORNA issues in Massachusetts is:

Chris Ciccio, SORNA Coordinator
Sex Offender Registry Board
P.O. Box 392
North Billerica, MA 01862
978-740-6400

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

Conclusion

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

SMART recommends Massachusetts focuses 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, SMART recommends Massachusetts 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 Massachusetts' ability to achieve substantial implementation.

Appendix

Massachusetts Offense Tiering Policy Review

The SMART Office has reviewed all relevant Massachusetts statutes and has identified Massachusetts' placement of these statutes within the tiering policy 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 the General Laws of Massachusetts, the SMART Office understands that, with exceptions for homeless offenders and sexually violent predators, the state has two categories of registrants for purposes of its frequency of registration requirements. Those registrants will be required to verify their registration information annually either in person or in writing, depending on the risk level SORB assigns them.

An offender who is convicted of any two offenses in the category of "sex offense involving a child," who is convicted of one "sexually violent offense," or who is a sexually violent predator, has a lifetime registration requirement.

An offender who has no prior "sex offense" convictions and is convicted of one "sex offense" that is not also a "sexually violent offense," or who has no prior "sex offense" convictions and has been convicted of one "sex offense involving a child," must register for 20 years from the date of adjudication or release from all custody or supervision, whichever occurs later.

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 the General Laws of Massachusetts would require, at a minimum, tier I registration requirements under SORNA.

- Mass. Gen. Laws ch. 272, § 16 Open and gross lewdness and lascivious behavior
- Mass. Gen. Laws ch. 272, § 17 Incestuous marriage or sexual activities (where victim is 16-17 years old and the offense involves sexual contact, as defined by 18 U.S.C. § 2246(3), or where victim is an adult)
- Mass. Gen. Laws ch. 272, § 29C Knowing purchase or possession of visual material of child depicted in sexual conduct

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 the General Laws of Massachusetts would require, at a minimum, tier II registration requirements under SORNA.

- Mass. Gen. Laws ch. 265, § 13H Indecent assault and battery on a person age 14 or older (where the victim is 16 or over)
- Mass. Gen. Laws ch. 265, § 23 Rape and abuse of a child (where victim is 13-15)
- Mass. Gen. Laws ch. 265, § 23A Rape and abuse of a child aggravated by age difference between defendant and victim or by when committed by mandated reporters (where victim is 13-15)
- Mass. Gen. Laws ch. 265, § 26 Enticing a child under 18 via electronic communication to engage in prostitution, human trafficking, or commercial sexual activity
- Mass. Gen. Laws ch. 265, § 26C Definition of “entice” of child under the age of 16
- Mass. Gen. Laws ch. 265, § 26D Enticement of children to engage in prostitution or commercial sexual activity
- Mass. Gen. Laws ch. 265, § 50 Trafficking of persons for sexual servitude (where victim is 13-17 and where there is no force, fraud or coercion)
- Mass. Gen. Laws ch. 272, § 4A Inducing minor into prostitution
- Mass. Gen. Laws ch. 272, § 4B Living off or sharing earnings of minor prostitute
- Mass. Gen. Laws ch. 272, § 17 Incestuous marriage or sexual activities (where victim is 16-17 years old and the offense involves a sexual act, as defined by 18 U.S.C. § 2246(2))
- Mass. Gen. Laws ch. 272, § 28 Matter harmful to minors; dissemination; possession
- Mass. Gen. Laws ch. 272, § 29A Posing or exhibiting child in state of nudity or sexual conduct
- Mass. Gen. Laws ch. 272, § 29B Dissemination of visual material of a child in a state of nudity or sexual conduct

SORNA Tier III Offenses

SORNA requires tier III offenders register for life and verify registration information every three months. The following offenses listed in the General Laws of Massachusetts would require, at a minimum, tier III registration requirements under SORNA.

- Mass. Gen. Laws ch. 265, § 13B Indecent assault and battery on a child under 14
- Mass. Gen. Laws ch. 265, § 13B1/2 Commission of indecent assault and battery on child under the age of 14 during commission of certain offenses or by mandated reporters
- Mass. Gen. Laws ch. 265, § 13B3/4 Commission of indecent assault and battery on a child under the age of 14 by certain previously convicted offenders
- Mass. Gen. Laws ch. 265, § 13F Indecent assault and battery on a person with an intellectual disability; assault and battery

- Mass. Gen. Laws ch. 265, § 13H Indecent assault and battery on a person age 14 or older (where the victim is 14-15)
- Mass. Gen. Laws ch. 265, § 22 Rape
- Mass. Gen. Laws ch. 265, § 22A Rape of a child
- Mass. Gen. Laws ch. 265, § 22B Rape of a child during commission of certain offenses or by use of force
- Mass. Gen. Laws ch. 265, § 22C Rape of a child through use of force by certain previously convicted offenders
- Mass. Gen. Laws ch. 265, § 23 Rape and abuse of a child (where victim is under 13)
- Mass. Gen. Laws ch. 265, § 23A Rape and abuse of child aggravated by age difference between defendant and victim or by when committed by mandated reporters (where victim is under 13)
- Mass. Gen. Laws ch. 265, § 23B Rape and abuse of child by certain previously convicted offenders
- Mass. Gen. Laws ch. 265, § 24 Assault with intent to commit rape
- Mass. Gen. Laws ch. 265, § 24B Assault of a child; intent to commit rape
- Mass. Gen. Laws ch. 265, § 26 Kidnapping; weapons; children under age 16
- Mass. Gen. Laws ch. 265, § 50 Trafficking of persons for sexual servitude (where victim is under 13, or where victim is any age and there is force, fraud or coercion)
- Mass. Gen. Laws ch. 265, § 52 Second or subsequent violation of human trafficking for sexual servitude
- Mass. Gen. Laws ch. 272, § 3 Drugging persons for sexual intercourse
- Mass. Gen. Laws ch. 272, § 35A Unnatural and lascivious acts with a child under 16
- Mass. Gen. Laws ch. 272, § 17 Incestuous marriage or sexual activities (where the victim is under 16 years old)
- Mass. Gen. Laws ch. 277, § 39 Aggravated rape

Further Review

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

- Mass. Gen. Laws ch. 265, § 13H ½ Commission of indecent assault and battery by a law enforcement officer
- Mass. Gen. Laws ch. 265, § 26A Custodial interference by relatives (where the perpetrator is not the child's parent or guardian)
- Mass. Gen. Laws ch. 265, § 26B Drug-induced kidnapping
- Mass. Gen. Laws ch. 272, § 1 Abduction of an unmarried person under age 16 for the purpose of marriage
- Mass. Gen. Laws ch. 272, § 4 Enticing to unlawful intercourse

- Mass. Gen. Laws ch. 272, § 6 Maintaining a house of prostitution (where there is a victim under 18)
- Mass. Gen. Laws ch. 272, § 13 Detaining a person in a house of prostitution (where there is a victim under 18)

In addition, Massachusetts registers the following offense, which SORNA does not require registration for and registration thereof exceeds SORNA's minimum standards. However, registration of this offense in no way disserves the purposes of SORNA's requirements.

- Mass. Gen. Laws ch. 272, § 77C Prohibiting sexual contact with animals