



April 2024

## **SORNA Substantial Implementation Review Commonwealth of Pennsylvania — 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 Pennsylvania's efforts to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its revised review of Pennsylvania's SORNA substantial implementation materials and has determined Pennsylvania has not substantially implemented SORNA.

In September 2012, the SMART Office issued a SORNA Substantial Implementation Review to Pennsylvania that found the state had substantially implemented SORNA. In October 2018, after the state legislature changed the state's registration scheme,<sup>1</sup> the SMART Office determined that Pennsylvania was no longer substantially implementing SORNA.

In 2022, the SMART Office initiated a new substantial implementation review. In preparing this review, the SMART Office examined state statutes, state high court decisions, policies, procedures and forms. In addition, email and phone correspondence with the Pennsylvania State Police informed our review.

This review is exhaustive and details each area in which Pennsylvania 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 Pennsylvania 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

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<sup>1</sup> In 2018, Pennsylvania revised its sex offender registration and notification laws, dividing them into two sections: 42 Pa. Cons. Stat. §§ 9799.10-9799.42 (Subchapter H), which applies to offenders who committed their offense of registration on or after December 20, 2012, and 42 Pa. Cons. Stat. §§ 9799.51-9799.75 (Subchapter I), which applies to offenders who committed their offense of registration before December 20, 2012. The registration and notification requirements in Subchapter I, which are identical to the requirements that existed immediately before the Pennsylvania Sex Offender Registration and Notification Act (PA SORNA) was enacted in 2012, are narrower than the requirements and application in Subchapter H. The distinctions between requirements for Subchapter H registrants and Subchapter I registrants are noted below in sections II, III, VI, VII, VIII and IX.

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.

Pennsylvania meets all 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 that 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. Pennsylvania Offenses

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

- 18 Pa. Cons. Stat. § 2902(b) Unlawful Restraint (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 2903(b)(2) False Imprisonment (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 2904 Interference with Custody of Children (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 3011(a)(1) Sex Trafficking (if victim is 18 or older)
- 18 Pa. Cons. Stat. § 3122.1(a)(1) Statutory Sexual Assault
- 18 Pa. Cons. Stat. § 3122.1(a)(2) Statutory Sexual Assault (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 3122.1(b) Statutory Sexual Assault (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 3124.1 Institutional Sexual Assault (if committed before Jan. 26, 2005)<sup>2</sup>
- 18 Pa. Cons. Stat. § 3124.2(a.6) Institutional Sexual Assault
- 18 Pa. Cons. Stat. § 3124.3 Sexual Assault by Sports Official, Volunteer or Employee of Nonprofit Association
- 18 Pa. Cons. Stat. § 3126(a)(1), (a)(8) Indecent Assault (if committed before Dec. 20, 2012)

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<sup>2</sup> This offense was impacted by a legislative change that was separate from the enactment of PA SORNA in 2012.

- 18 Pa. Cons. Stat. § 7507.1      Invasion of Privacy (if committed before Dec. 20, 2012)

B. Offenses of Other SORNA Registration Jurisdictions

Pennsylvania requires registration for any offense that is equivalent to a Pennsylvania offense.<sup>3</sup> However, because Pennsylvania does not register all offenses that require registration under SORNA (see section A above), there are some offenses from other jurisdictions that are not registerable in Pennsylvania.

C. Federal Offenses

Pennsylvania deviates from SORNA requirements in that the following offenses are not included in Pennsylvania’s registration scheme if they were committed on or after December 20, 2012, unless it is determined, based on a review of the facts of the offense, that the offense is equivalent to a registerable Pennsylvania offense:

- 18 U.S.C. § 1201      Kidnapping (non-parental, if victim is under 18)
- 18 U.S.C. § 1466A(a)-(b)      Obscene Visual Representations of the Sexual Abuse of Children
- 18 U.S.C. § 1470      Transfer of Obscene Material to Minors
- 18 U.S.C. § 2245      Offenses Resulting in Death
- 18 U.S.C. § 2421A      Promotion or Facilitation of Prostitution and Reckless Disregard of Sex Trafficking
- 18 U.S.C. § 2423(d)      Transportation of Minors: Ancillary Offenses (if victim is under 18)
- 18 U.S.C. § 2423(e)      Attempt/Conspiracy: Transportation with Intent to Engage in Criminal Sexual Activity (if victim is under 18)
- 18 U.S.C. § 2423(e)      Attempt/Conspiracy: Travel with Intent to Engage in Illicit Sexual Conduct (if victim is under 13)

Pennsylvania also deviates from SORNA requirements in that offenders who committed a registerable federal offense before December 20, 2012, only have to register if the federal offense is equivalent to a Pennsylvania offense that was registerable at the time that the offender committed the offense. Therefore, there are several federal offenses that do not appear to have an equivalent offense under Pennsylvania law and thus do not require registration.

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<sup>3</sup> Pennsylvania requires individuals who committed an out-of-state non-federal, non-military offense that is not equivalent to a registerable Pennsylvania offense to register in Pennsylvania if they are required to register in the jurisdiction (or foreign country) of conviction at the time that they have to initially register in Pennsylvania. Subchapter I offenders who meet these qualifications will only be required to register in Pennsylvania if their information is publicly available in the jurisdiction of conviction. Individuals who commit an out-of-state non-federal, non-military offense must register for the length of time required by the jurisdiction of conviction.

#### D. Military Offenses

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

#### E. Foreign Offenses

Pennsylvania deviates from SORNA requirements in that it only includes foreign offense convictions in its registration scheme if the offense is equivalent to a Pennsylvania offense that was registerable at the time that the foreign offense was committed. Therefore, there are some foreign offenses that do not appear to have an equivalent offense under Pennsylvania law and, if not, may not require registration.

#### F. Juveniles

Pennsylvania deviates from SORNA requirements in that it only registers juveniles who meet the following three criteria: 1) were adjudicated delinquent for an offense that they committed on or after December 20, 2012,<sup>4</sup> 2) were classified by the court as a Sexually Violent Delinquent Child,<sup>5</sup> and 3) were civilly committed.

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.<sup>6</sup>

The Pennsylvania Supreme Court has decided two cases interpreting rights under the state constitution that impact SORNA implementation: one related to lifetime juvenile registration and one related to retroactive application of registration requirements. In 2014, in *In re J.B.*, the Pennsylvania Supreme Court held that Pennsylvania's sex offender registration requirements for juveniles adjudicated delinquent, which mirrored SORNA's juvenile registration requirements,<sup>7</sup>

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<sup>4</sup> Before the Pennsylvania Supreme Court decided *In re J.B.*, 107 A.3d 1 (Pa. 2014) (see below), juveniles who were adjudicated delinquent in another jurisdiction for an offense that they committed before December 20, 2012, and who were required to register in the jurisdiction of conviction had to register in Pennsylvania.

<sup>5</sup> A Sexually Violent Delinquent Child is one who has been adjudicated delinquent for an "act of sexual violence" that, if committed by an adult, would constitute a violation of 18 Pa. Cons. Stat. § 3121 (rape), 3123 (involuntary deviate sexual intercourse), 3124.1 (sexual assault), 3125 (aggravated indecent assault), 3126 (indecent assault) or 4302 (incest), and who the trial court has determined needs to be committed for involuntary treatment. 42 Pa. Cons. Stat. § 9799.12.

<sup>6</sup> 34 U.S.C. § 20927(b)(1), (3).

<sup>7</sup> *In re J.B.*, 107 A.3d 1, 14 (Pa. 2014). At the time that *In re J.B.* was decided, Pennsylvania's statute allowed for a juvenile's lifetime registration requirement to be terminated after 25 years, provided certain clean record conditions were met.

violated procedural due process because they utilized an irrebuttable presumption that the juveniles who were required to register posed a high risk of recidivating.<sup>8</sup>

After the *In re J.B.* decision, Pennsylvania stopped using the offense of adjudication as the sole basis for registering juveniles adjudicated delinquent. However, the state continues to register certain adjudicated delinquent juveniles, as described above. In so doing, the state has implemented a reasonable alternative to registration of all SORNA-required juveniles.

In 2017, in *Commonwealth v. Muniz*, the Pennsylvania Supreme Court held that retroactive application of Pennsylvania's sex offender registration law (PA SORNA) to offenders who committed their offenses in Pennsylvania prior to the law's enactment on December 20, 2012, constitutes an ex post facto violation and violates the state and federal constitutions.<sup>9</sup> Subsequently, the Pennsylvania legislature enacted legislation in 2018 bifurcating the state's registration scheme into two groups of registrants: those who committed offenses prior to December 20, 2012 (Subchapter I), and those who committed offenses on or after that date (Subchapter H).<sup>10</sup> The two subchapters have different laws, policies and procedures regarding the offenses that require registration. The laws, policies and procedures that govern sex offender registration and notification for Subchapter I offenders are identical to those that were in place at the time immediately before PA SORNA was enacted in 2012. In terms of the offenses that require registration, Subchapter I has fewer registerable offenses than Subchapter H. However, Subchapter I still captures many of the offenses that are captured by Subchapter H, including equivalent offenses from other jurisdictions. This bifurcated registration scheme is a reasonable alternative that is not inconsistent with the purposes of SORNA.

As detailed above, Pennsylvania's highest court has produced rulings that have rendered the jurisdiction unable to implement this provision of SORNA without violating the rights guaranteed in its constitution. However, Pennsylvania's reasonable alternative procedures and other deviations noted in this section do not substantially disserve the purposes of the SORNA requirements.

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

SORNA requires the jurisdiction to 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.

In Pennsylvania, Subchapter H and Subchapter I registrants have different requirements for what information must be collected.

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<sup>8</sup> *In re J.B.*, 107 A.3d 1, 14 (Pa. 2014).

<sup>9</sup> *Commonwealth v. Muniz*, 164 A.3d 1189, 1193 (Pa. 2017).

<sup>10</sup> In *Commonwealth v. Santana*, 266 A.3d 528 (Pa. 2021), the Pennsylvania Supreme Court applied *Muniz* to hold that retroactive application of PA SORNA to offenders who were convicted in other jurisdictions violates the ex post facto clause of both the federal and state constitutions.

Pennsylvania deviates from SORNA requirements in that it only captures employment information for Subchapter H registrants who are employed for four out of seven consecutive days, or who are employed 14 or more days in one year. Pennsylvania also deviates from SORNA requirements in that it only captures employment information for Subchapter I registrants who are employed for more than 14 days, or are employed 30 days in one year.

For Subchapter I registrants, Pennsylvania deviates from SORNA requirements in that offenders do not have to update their driver's licenses, vehicle registrations, professional licenses or passports when they appear for regular in-person verifications.

In addition, the state does not collect DNA from Subchapter I registrants on the basis of registration. Because of Pennsylvania's state constitution, as interpreted by the *Muniz* decision, Pennsylvania has different laws with regard to capturing registration information depending on the date that the registerable offense was committed. However, DNA is collected from every Subchapter I registrant who is convicted in Pennsylvania for a felony that is included in 18 Pa. Cons. Stat. § 31 (sexual offenses), 18 Pa. Cons. Stat. § 4302 (incest), 18 Pa. Cons. Stat. § 5902(c)(1)(iv) (promoting prostitution [of one's spouse, child, ward or any person for whose care, protection or support he is responsible]) and 18 Pa. Cons. Stat. § 5903(a) (obscene or other sexual materials and performances). This will encompass most Subchapter I registrants who were convicted in Pennsylvania, and is a reasonable alternative that is not inconsistent with the purposes of SORNA.

As detailed above, Pennsylvania's highest court has produced rulings that have rendered the jurisdiction unable to implement this provision of SORNA without violating the rights guaranteed in its constitution. However, Pennsylvania's reasonable alternative procedures and other deviations noted in this section do not substantially disserve the purposes of the SORNA requirements.

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

SORNA requires that 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.

Pennsylvania 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 to acknowledge in writing that they understand those duties.

Pennsylvania meets all of the SORNA requirements in this section.

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

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

Pennsylvania's sex offender registration system has been in place since 1996. Because of the state's constitution, as interpreted by the *Muniz* decision, Pennsylvania does not apply its registration and notification laws retroactively. One set of laws applies to offenders who committed their offense of registration on or after December 20, 2012 (Subchapter H), while offenders who committed their offense of registration before December 20, 2012 are governed by a different set of laws (Subchapter I). The laws that govern sex offender registration and notification for Subchapter I offenders are identical to those that were in place at the time immediately before PA SORNA was enacted in 2012. This bifurcated registration scheme is a reasonable alternative that is not inconsistent with the purposes of SORNA.

As detailed above, Pennsylvania's highest court has produced rulings that have rendered the jurisdiction unable to implement this provision of SORNA without violating the rights guaranteed in its constitution. However, Pennsylvania's reasonable alternative procedures do not substantially disserve the purposes of the SORNA requirements in this section.

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

SORNA requires that 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 to 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 that the offender immediately appear in person to update employment-related information. When an offender attends school in a jurisdiction, but does not reside or work there, SORNA requires the offender to 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.

Because of Pennsylvania's state constitution, as interpreted by the *Muniz* decision, Pennsylvania has different laws for Subchapter H and Subchapter I offenders with regard to updating registration information. Pennsylvania deviates from SORNA requirements in that, although Subchapter I offenders are required to immediately report changes to residence information, employer information or school information, they are not required to do so in person. In addition, Subchapter I offenders do not have to immediately report any other registration information changes. Finally, Subchapter I offenders do not have to report international travel information. However, when Pennsylvania receives international travel information from a Subchapter I offender, it provides that information to the United States Marshals Service. This is a reasonable alternative procedure that is not inconsistent with the purposes of SORNA.

As detailed above, Pennsylvania's highest court has produced rulings that have rendered the jurisdiction unable to implement this provision of SORNA without violating the rights guaranteed in its constitution. However, Pennsylvania's reasonable alternative procedures do not substantially disserve the purposes of 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.

Pennsylvania has different classification requirements based on the date that the offender committed the offense. Subchapter H registrants are classified into three tiers based on the offense of conviction. Tier III offenders must register for life and verify registration information quarterly; Tier II offenders must register for 25 years and verify registration information biannually, and Tier I offenders must register for 15 years and verify registration information annually. Subchapter I registrants are classified into two tiers based on the offense of conviction. Lifetime offenders must register for life and verify registration information annually; and ten-year offenders must register for 10 years and verify registration information annually.

### **A. Offense Tiering**



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

Pennsylvania classifies the following offenses as requiring registration for 10 years. These offenses require Tier I registration (15 years) under SORNA.

- 18 Pa. Cons. Stat. § 3124.2(a), (a.1), (a.4)(1)-(2)  
Institutional Sexual Assault (if committed between Jan. 26, 2005, and Dec. 19, 2012; and if offense involves sexual intercourse and victim is 18 or older; or offense involves indecent assault, as defined by § 3126(a)(1)-(6), and victim is 18 or older)
- 18 Pa. Cons. Stat. § 3124.2(a.2), (a.3)  
Institutional Sexual Assault in Schools, in Child Care (if committed between Jan. 26, 2005, and Dec. 19, 2012, and if offense involves indecent assault, as defined by § 3126(a)(1)-(6), and victim is 18 or older)
- 18 Pa. Cons. Stat. § 3126(a)(2)-(6)  
Indecent Assault (if committed before Dec. 20, 2012, and victim is 18 or older)
- 18 Pa. Cons. Stat. § 6312(d)  
Sexual Abuse of Children (if committed before Dec. 20, 2012)

Pennsylvania classifies the following offenses as requiring registration for 10 years. These offenses require Tier II registration (25 years) under SORNA.

- 18 Pa. Cons. Stat. § 3124.2(a.2), (a.3)  
Institutional Sexual Assault in Schools, in Child Care (if committed between Jan. 26, 2005, and Dec. 19, 2012, and if offense involves sexual intercourse, as defined by § 3123(a)(7), and victim is 13-15; offense involves sexual intercourse and victim is 13-17; offense involves indecent assault, as defined by § 3126(a)(1)-(6), and victim is 13-17; or offense involves indecent assault, as defined by § 3126(a)(8), and victim is 13-15)
- 18 Pa. Cons. Stat. § 3124.2(a.4)(1)-(2)  
Institutional Sexual Assault of a Minor, by Peace Officers (if committed between Jan. 26, 2005, and Dec. 19, 2012, and if offense involves sexual intercourse and victim is 13-17; offense involves indecent assault, as defined by § 3126(a)(1)-(6), and victim is 13-15; or offense involves indecent assault, as defined by § 3126(a)(8), and victim is 13-15)
- 18 Pa. Cons. Stat. § 3126(a)(2)-(6)  
Indecent Assault (if committed before Dec. 20, 2012, and victim is 13-17)
- 18 Pa. Cons. Stat. § 4302(b)  
Incest (if committed before Dec. 20, 2012, and victim is 13-17)
- 18 Pa. Cons. Stat. § 5902(b)  
Promoting Prostitution (if committed before Dec. 20, 2012, and victim is under 18)
- 18 Pa. Cons. Stat. § 5902(b.1)

- Promoting Prostitution of Minor (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 5903(a)(3)(ii), (4)(ii), (5)(ii), (6)  
Relating to Obscene or Other Sexual Materials and Performances (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 6312(b), (c)  
Sexual Abuse of Children (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 6318  
Unlawful Contact with Minor (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 6320  
Sexual Exploitation of Children (if committed before Dec. 20, 2012)

Pennsylvania classifies the following offenses as requiring registration for 10 years. These offenses require Tier III registration (lifetime) under SORNA.

- 18 Pa. Cons. Stat. § 2901  
Kidnapping (if committed before Dec. 20, 2012, and victim is under 18)
- 18 Pa. Cons. Stat. § 3124.2(a.4)(1)-(2)  
Institutional Sexual Assault of a Minor, by Peace Officers (if committed between Jan. 26, 2005, and Dec. 19, 2012, and if offense involves deviate sexual intercourse, as defined by § 3123(a)(1)-(5); offense involves deviate sexual intercourse, as defined by § 3123(a)(7), and victim is under 16; or offense involves sexual intercourse and victim is under 13)
- 18 Pa. Cons. Stat. § 3124.2(a.2), (a.3)  
Institutional Sexual Assault in Schools, in Child Care (if committed between Jan. 26, 2005, and Dec. 19, 2012, and if offense involves deviate sexual intercourse, as defined by § 3123(a)(1)-(5); offense involves indecent assault, as defined by § 3126(a)(7); offense involves indecent assault, as defined by § 3126(a)(1)-(6), (a)(8), and victim is 13-17; offense involves indecent assault, as defined by § 3126(a)(8), and victim is under 13; or offense involves sexual intercourse or deviate sexual intercourse, as defined in §3123(a)(7), and victim is under 13)
- 18 Pa. Cons. Stat. § 3126(a)(7)  
Indecent Assault (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 4302(b)  
Incest (if committed before Dec. 20, 2012, and victim is under 13)

Pennsylvania classifies the following offenses as requiring registration for 15 years. These offenses require Tier II registration (25 years) under SORNA.

- 18 Pa. Cons. Stat. § 3124.2(a.4)(1)  
Institutional Sexual Assault (if offense involves sexual intercourse and victim is 13-17 or offense involves indecent assault, as defined by § 3126(a)(1)-(6), (a)(8), and victim is 13-15)
- 18 Pa. Cons. Stat. § 3126(a)(1)  
Indecent Assault (if victim is 13-17)
- 18 U.S.C. § 2422(a)  
Coercion and Enticement (if victim is under 18)

- 18 U.S.C. § 2423(b)  
Travel with Intent to Engage in Illicit Sexual Conduct (if illicit sexual conduct involves the production of child pornography and victim is 13-17)
- 18 U.S.C. § 2423(c)  
Engaging in Illicit Sexual Conduct in Foreign Places (if illicit sexual conduct involves the production of child pornography and victim is 13-17)
- 18 U.S.C. § 2425  
Use of Interstate Facilities to Transmit Information About a Minor

Pennsylvania classifies the following offenses as requiring registration for 15 years. These offenses require Tier III registration (lifetime) under SORNA.

- 18 U.S.C. § 2423(b)  
Transportation of Minors: Travel with Intent to Engage in Illicit Sexual Conduct (if illicit sexual conduct involves sex trafficking by force, fraud or coercion, and victim is 13-17)
- 18 U.S.C. § 2423(c)  
Engaging in Illicit Sexual Conduct in Foreign Places (if illicit sexual conduct involves sex trafficking by force, fraud or coercion, and victim is 13-17)
- 18 Pa. Cons. Stat. § 3124.2(a.4)(1)  
Institutional Sexual Assault by Peace Officers (if offense involves deviate sexual intercourse, as defined by § 3123(a)(1)-(5); offense involves deviate sexual intercourse, as defined by § 3123(a)(7), and victim is under 16; offense involves indecent assault, as defined by § 3126(a)(1)-(6), (a)(8), and victim is under 13; or offense involves sexual intercourse and victim is under 13)

Pennsylvania classifies the following offenses as requiring registration for 25 years. These offenses require Tier III registration (lifetime) under SORNA.

- 18 Pa. Cons. Stat. § 3012  
Involuntary Servitude (if victim is subjected to sexual servitude)
- 18 Pa. Cons. Stat. § 3122.1(a)(2)  
Statutory Sexual Assault (if victim is under 13)
- 18 Pa. Cons. Stat. § 3124.2(a.2), (a.3)  
Institutional Sexual Assault in Schools, in Child Care (if offense involves deviate sexual intercourse, as defined by § 3123(a)(1)-(5); offense involves indecent assault, as defined by § 3126(a)(7); offense involves indecent assault, as defined by § 3126(a)(1)-(6), (a)(8), and victim is 13-17; offense involves indecent assault, as defined by § 3126(a)(8), and victim is under 13; or offense involves sexual intercourse or deviate sexual intercourse, as defined by § 3123(a)(7), and victim is under 13)
- 18 U.S.C. § 1591  
Sex Trafficking by Force, Fraud or Coercion
- 18 U.S.C. § 2243(a)  
Sexual Abuse of a Minor (if victim is 12)
- 18 U.S.C. § 2243(b)

- Sexual Abuse of a Ward (if victim is under 13)
- 18 U.S.C. § 2243(c)
- Sexual Abuse of an Individual in Federal Custody (if victim is under 13)

#### B. Duration of Registration

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

Pennsylvania deviates from SORNA requirements in that it requires one class of Subchapter I registrants to register for only 10 years.

#### C. Frequency of Registration

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

Pennsylvania deviates from SORNA requirements in that, after three years of registration, Subchapter H Tier II and Tier III offenders can reduce their in-person verification requirements to once a year. The preconditions for the reduction include successfully completing their registration requirements for a year and not being convicted of an offense punishable by imprisonment for more than a year. The state is in the process of identifying Tier II and Tier III offenders who qualify for this reduced in-person verification schedule: offenders who qualify will conduct their other scheduled verifications over the phone.<sup>11</sup>

Pennsylvania also deviates from SORNA requirements in that Subchapter I registrants are only required to appear annually to verify their registration information.<sup>12</sup>

#### 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.

Pennsylvania deviates from SORNA requirements in that Subchapter H Tier III offenders and Subchapter I lifetime offenders are allowed to petition for removal from the registry after 25 years of registration. To qualify for removal, the offender must not have been convicted of any subsequent additional offense punishable by more than a year in prison. The petition process involves a risk assessment of the offender, as well as a hearing with notice to the prosecutor and the opportunity for both sides to call witnesses. The burden of proof is on the

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<sup>11</sup> The state has not yet determined what processes will be implemented to validate an offender's identity when conducting the offender's verification appearances over the phone.

<sup>12</sup> Transient offenders, regardless of date of conviction, are required to appear monthly to verify registration information.

offender to show by clear and convincing evidence that removal is not likely to pose a threat to the safety of any other person. Offenders who meet all of the aforementioned qualifications can use this same process to petition for relief from their verification requirements, the requirement to appear on the public registry website and any other registration requirements. If the petition is unsuccessful, the offender may not petition for another five years from the date of the determination.

Because of Pennsylvania's state constitution, as interpreted by the *Muniz* decision, Pennsylvania is unable to implement the tiering provisions of SORNA without violating the rights guaranteed in its constitution; specifically, Pennsylvania has different laws regarding tiering Subchapter I offenses for purposes of the duration and frequency of registration. However, there are only a small number of Subchapter I offenses that are under-tiered by more than 15 years, and the state requires all offenders to appear in person. This is a reasonable alternative that is not inconsistent with the purposes of SORNA.

Nonetheless, because Pennsylvania does not require Subchapter H offenders who have committed some of the most serious offenses to register for the duration and appear with the frequency that SORNA requires, allows Subchapter H SORNA Tier III offenders to be relieved from most of their in-person verification requirements after three years, and allows Subchapter H SORNA Tier III offenders to petition for removal from the registry or relief from registration requirements after 25 years, Pennsylvania does not meet the SORNA requirements in this section.

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

SORNA requires each jurisdiction to 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 to 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 that 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.

Pennsylvania deviates from SORNA requirements in that, for Subchapter I offenders, only the city or town of the employer will be displayed, and not the street address. In addition, for Subchapter I offenders, information about vehicles owned or registered to offenders will only be displayed when the information is available, and a description of the vehicles operated (but not owned) by the offender will not be displayed.

Because of Pennsylvania's state constitution, as interpreted by the *Muniz* decision, Pennsylvania laws regarding Subchapter I registrants differ from Subchapter H registrants in terms of the information that appears on the public website. However, most of the required registration information appears on the public website, including most address information. This is a reasonable alternative procedure that is not inconsistent with the purposes of SORNA.

#### B. Community Notification

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

Pennsylvania provides community notification in a manner that conforms with SORNA requirements.

As detailed above, Pennsylvania's highest court has produced rulings that have rendered the jurisdiction unable to implement this provision of SORNA without violating the rights guaranteed in its constitution. However, Pennsylvania's reasonable alternative procedures do not substantially disserve the purposes of 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 to 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.

Pennsylvania's 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.

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

#### C. Absconders

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

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

Pennsylvania meets all of the SORNA requirements in this section.

## **X. Tribal Considerations**

There are no federally recognized tribes in Pennsylvania.

### **Conclusion**

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

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

## Appendix

### Pennsylvania Offense Tiering Policy Review

The SMART Office has reviewed all relevant Pennsylvania statutes and has identified Pennsylvania's 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. The SMART Office understands that Pennsylvania has five categories of registrants for the purposes of its duration of registration and frequency of registration requirements. Offenders who committed their registration offenses before December 20, 2012, must register for either 10 years or for life, and they must verify their registration information annually. Offenders who committed their registration offenses on or after December 20, 2012, fall into one of three categories:

- Tier I offenders must register for 15 years and verify their registration information annually.
- Tier II offenders must register for 25 years and verify their registration information semiannually.
- Tier III offenders must register for life and verify their registration information quarterly.

#### SORNA Tier I Offenses

SORNA requires Tier I offenders to register for a minimum of 15 years and annually verify their registration information. The following offenses listed in Pennsylvania's General Laws would require, at a minimum, Tier I registration requirements under SORNA.

- |   |   |
|---|---|
| • 18 Pa. Cons. Stat. § 2902(b)                        | Unlawful Restraint  |
| • 18 Pa. Cons. Stat. § 2903(b)                        | False Imprisonment  |
| • 18 Pa. Cons. Stat. § 3011(a)(1)-(2)                 | Trafficking in Individuals (if victim is 18 or older)   |
| • 18 Pa. Cons. Stat. § 3012                           | Involuntary Servitude (if victim is 18 or older)  |
| • 18 Pa. Cons. Stat. § 3124.2(a), (a.1), (a.4)(1)-(2) | Institutional Sexual Assault (if offense involves sexual intercourse and victim is 18 or older or offense involves indecent assault, as defined by § 3126(a)(1)-(6), and victim is 18 or older) |
| • 18 Pa. Cons. Stat. § 3124.2(a.2), (a.3)             | Institutional Sexual Assault in Schools, in Child Care (if offense involves indecent assault, as defined by § 3126(a)(1)-(6), and victim is 18 or older)  |
| • 18 Pa. Cons. Stat. § 3126(a)(1)-(6)                 | Indecent Assault (if victim is 18 or older)   |
| • 18 Pa. Cons. Stat. § 6312(d)                        | Sexual Abuse of Children  |
| • 18 Pa. Cons. Stat. § 7507.1                         | Invasion of Privacy   |



## SORNA Tier II Offenses

SORNA requires Tier II offenders to register for a minimum of 25 years and verify their registration information every six months. The following offenses listed in Pennsylvania's Consolidated Statutes would require, at a minimum, Tier II registration requirements under SORNA.

- 18 Pa. Cons. Stat. § 3011(b) Trafficking in Individuals (if victim is 13-17)
- 18 Pa. Cons. Stat. § 3122.1(a)(2), (b) Statutory Sexual Assault (if victim is 13-15)
- 18 Pa. Cons. Stat. § 3123.1(a)(7) Involuntary Deviate Sexual Intercourse (if victim is 13-15)
- 18 Pa. Cons. Stat. § 3124.2(a.2), (a.3) Institutional Sexual Assault in Schools, in Child Care (if offense involves sexual intercourse, as defined by § 3123(a)(7), and victim is 13-15; offense involves sexual intercourse and victim is 13-17; offense involves indecent assault, as defined by § 3126(a)(1)-(6), and victim is 13-17; or offense involves indecent assault, as defined by § 3126(a)(8), and victim is 13-15)
- 18 Pa. Cons. Stat. § 3124.2(a.4)(1)-(2) Institutional Sexual Assault of a Minor, by Peace Officers (if offense involves sexual intercourse and victim is 13-17; offense involves indecent assault, as defined by § 3126(a)(1)-(6), and victim is 13-15; or offense involves indecent assault, as defined by § 3126(a)(8), and victim is 13-15)
- 18 Pa. Cons. Stat. § 3125(a)(8) Aggravated Indecent Assault (if victim is 13-15)
- 18 Pa. Cons. Stat. § 3126(a)(1)-(6), (8) Indecent Assault (if victim is 13-17)<sup>13</sup>
- 18 Pa. Cons. Stat. § 4302(b) Incest (if victim is 13-17)
- 18 Pa. Cons. Stat. § 5902(b) Promoting Prostitution (if victim is under 18)
- 18 Pa. Cons. Stat. § 5902(b.1) Promoting Prostitution of Minor
- 18 Pa. Cons. Stat. § 5903(a)(3)(ii), (4)(ii), (5)(ii), (6) Obscene or Other Sexual Materials and Performances
- 18 Pa. Cons. Stat. § 6312(b), (c) Sexual Abuse of Children
- 18 Pa. Cons. Stat. § 6318 Unlawful Contact with Minor
- 18 Pa. Cons. Stat. § 6320 Sexual Exploitation of Children

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<sup>13</sup> 18 Pa. Cons. Stat § 3126(a)(8) applies only if the victim is 13-15.

### SORNA Tier III Offenses

SORNA requires Tier III offenders to register for life and verify their registration information every three months. The following offenses listed in Pennsylvania's Consolidated Statutes would require, at a minimum, Tier III registration requirements under SORNA.

- 18 Pa. Cons. Stat. § 2901 Kidnapping (if committed before Dec. 20, 2012, and victim is under 18)
- 18 Pa. Cons. Stat. § 2901(a.1) Kidnapping of a Minor
- 18 Pa. Cons. Stat. § 3011(b) Trafficking in Individuals (if victim is under 13)
- 18 Pa. Cons. Stat. § 3012 Involuntary Servitude (if victim is subjected to sexual servitude)
- 18 Pa. Cons. Stat. § 3121 Rape
- 18 Pa. Cons. Stat. § 3122.1(a)(2), (b) Statutory Sexual Assault (if victim is under 13)
- 18 Pa. Cons. Stat. § 3123(a)(1)-(5), (b), (c) Involuntary Deviate Sexual Intercourse
- 18 Pa. Cons. Stat. § 3124.1 Sexual Assault
- 18 Pa. Cons. Stat. § 3124.2(a.2), (a.3) Institutional Sexual Assault in Schools, in Child Care (if offense involves deviate sexual intercourse, as defined by § 3123(a)(1)-(5); offense involves indecent assault, as defined by § 3126(a)(7); offense involves indecent assault, as defined by § 3126(a)(1)-(6), (a)(8), and victim is 13-17; offense involves indecent assault, as defined by § 3126(a)(8), and victim is under 13; or offense involves sexual intercourse or deviate sexual intercourse, as defined by § 3123(a)(7), and victim is under 13)
- 18 Pa. Cons. Stat. § 3124.2(a.4)(1)-(2) Institutional Sexual Assault of a Minor, by Peace Officers (if offense involves deviate sexual intercourse, as defined by § 3123(a)(1)-(5); offense involves deviate sexual intercourse, as defined by § 3123(a)(7), and victim is under 16; or offense involves sexual intercourse and victim is under 13)
- 18 Pa. Cons. Stat. § 3125(a)(1)-(7), (b) Aggravated Indecent Assault
- 18 Pa. Cons. Stat. § 3126(a)(1)-(6), (a)(8) Indecent Assault (if victim is under 13)
- 18 Pa. Cons. Stat. § 3126(a)(7) Indecent Assault
- 18 Pa. Cons. Stat. § 4302(b) Incest (if victim is under 13)

## Further Review

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

- 18 Pa. Cons. Stat. § 2902(b) Unlawful Restraint (if committed before Dec. 20, 2012)<sup>14</sup>
- 18 Pa. Cons. Stat. § 2903(b) False Imprisonment (if committed before Dec. 20, 2012)<sup>15</sup>
- 18 Pa. Cons. Stat. § 2904 Interference with Custody of Children (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 3011(a)(1) Sex Trafficking (if victim is 18 or older)
- 18 Pa. Cons. Stat. § 3122.1(a)(1) Statutory Sexual Assault
- 18 Pa. Cons. Stat. § 3122.1(a)(2) Statutory Sexual Assault (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 3122.1(b) Statutory Sexual Assault (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 3124.1 Institutional Sexual Assault (if committed before Jan. 26, 2005)
- 18 Pa. Cons. Stat. § 3124.2(a.6) Institutional Sexual Assault
- 18 Pa. Cons. Stat. § 3124.3 Sexual Assault by Sports Official, Volunteer or Employee of Nonprofit Association
- 18 Pa. Cons. Stat. § 3126(a)(1), (a)(8) Indecent Assault (if committed before Dec. 20, 2012)
- 18 Pa. Cons. Stat. § 7507.1 Invasion of Privacy (if committed before Dec. 20, 2012)

In addition, Pennsylvania registers the following offense, which—without the commission of (or the attempt or conspiracy to commit) a sexual offense—SORNA does not require registration for, and registration thereof exceeds SORNA’s minimum standards.

- 18 Pa. Cons. Stat. § 6301(a)(1)(ii) Corruption of Minors

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<sup>14</sup> The offense of Unlawful Restraint, as codified in 18 Pa. Cons. Stat. § 2902(b), was enacted on February 18, 2012.

<sup>15</sup> The offense of False Imprisonment, as codified in 18 Pa. Cons. Stat. § 2903(b), was codified in 18 Pa. Cons. Stat. § 2903(b)(2) before February 18, 2012.