



December 2016

SORNA Substantial Implementation Review State of Arkansas – Updated and Revised

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the State of Arkansas for the extensive work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its revised review of Arkansas' SORNA substantial implementation packet and has found the State of Arkansas to have not substantially implemented SORNA.

In August 2011, the SMART Office determined that Arkansas did not substantially implement SORNA. In March 2013, Act 508 passed the Arkansas 89th General Assembly. This Act addressed some of the deviations from SORNA requirements highlighted in our August 2011 report to Arkansas, and were reflected in the November 2013 updated report. Further, upon publication of the 2016 SORNA Supplemental Guideline, the SMART Office revised its conclusion in Section II of this report.

The following review updates the August 2011 and November 2013 reports issued to Arkansas. Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, and contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether or not Arkansas meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify that the departure(s) from a particular requirement does not substantially disserve the purpose of that requirement. In other words, Arkansas is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, but this is not necessary for substantial implementation purposes.

This is an exhaustive review and meant to detail every area in which the state has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the state, and get back in touch with us to develop a strategy to address these remaining issues.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers and/or updates his information in a jurisdiction, that that initial registration information/updated information be immediately sent to other jurisdictions where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website.

Arkansas meets all of the SORNA requirements in this section.

II. Offenses that Must Be Included in the Registry

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

A. Arkansas Offenses

Arkansas captures the offenses for which SORNA requires registration.

B. Offenses of Other SORNA Registration Jurisdictions

Arkansas captures the offenses of other SORNA registration jurisdictions for which SORNA requires registration, if the offense is similar to an offense requiring registration in Arkansas or if the offense requires registration under the laws of another jurisdiction.

C. Federal Offenses

Arkansas captures all of the federal offenses for which SORNA requires registration.

D. Military Offenses

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

E. Foreign Offenses

Arkansas captures the foreign offenses for which SORNA requires registration.

F. Juvenile Adjudications

Arkansas has a statutory process that allows for the prosecution of juveniles as adults in certain circumstances. Arkansas Code §9-27-318(c)(1) allows for the prosecution of a person who is at least sixteen (16) years of age for conduct that if committed by an adult would be any felony. Arkansas Code §9-27-318(c)(2) allows for the prosecution of persons who are either 14 or 15 years of age for conduct that if committed by an adult would be one of certain listed offenses, including rape. Any juvenile prosecuted as an adult is subject to mandatory registration just as all other adult offenders.

Arkansas Code §9-27-356 governs the registration and assessment of juveniles who commit sex offenses in Arkansas. Juveniles who are adjudicated delinquent of sex offenses are assessed and placed on the sex offender registry upon order of the court.

If a juvenile is an adjudicated delinquent for any of the following offenses, the court shall order a sex offender screening and risk assessment:

- (1) Rape, 5-14-103;
- (2) Sexual assault in the first degree, 5-14-124;
- (3) Sexual assault in the second degree, 5-14-125;
- (4) Incest, 5-26-202; or
- (5) Engaging children in sexually explicit conduct for use in visual or print medium, 5-27-303.

The court may order a sex offender screening and risk assessment if a juvenile is adjudicated delinquent for any offense with an underlying sexually motivated component. The court may require that a juvenile register as a sex offender upon recommendation of the Sex Offender Assessment Committee and following a hearing. Following a sex offender screening and risk assessment, the prosecutor may file a motion to request that a juvenile register as a sex offender at any time while the court has jurisdiction of the delinquency case if a juvenile is found delinquent for any of the above offenses.

The juvenile defendant shall be represented by counsel, and the court shall consider the following factors in making its decision to require the juvenile to register as a delinquent sex offender:

- (i) The seriousness of the offense;
- (ii) The protection of society;
- (iii) The level of planning and participation in the alleged offense;
- (iv) The previous sex offender history of the juvenile, including whether the juvenile has been adjudicated delinquent for prior sex offenses;
- (v) Whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;
- (vi) The sex offender assessment and any other relevant written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and
- (vii) Any other factors deemed relevant by the court.

Once placed on the sex offender registry juvenile offenders are subject to all of the registration and verification requirements that adult offenders must adhere to.

Additionally, Arkansas has numerous treatment facilities for youth and youth who commit sexual offenses are often ordered to receive treatment and are supervised by the court until the expiration of their sentence.

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

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction. Arkansas' registration and notification scheme deviates from SORNA requirements in that it does not involve a conviction-based tiering structure for sex offenses. Rather, Arkansas requires all sex offenders to register for life and bases frequency of reporting based upon risk assessment classification (see section IX of this report for further information about reporting requirements). For clarification purposes, the SMART Office has reviewed all statutes identified in Arkansas' registration and notification scheme and has placed these statutes within the SORNA three tier levels (see attached "Arkansas Offense Tiering Review" for a detailed analysis regarding this subsection of the review).

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

IV. Required Registration Information

SORNA requires that the jurisdiction collect certain pieces of information from and for each offender that it registers, and requires that the jurisdiction keep that registration information, in a digitized form, in its registry. Arkansas does not collect the following information from registered sex offenders:

- Status of parole, probation, or supervised release
- Temporary lodging information: Dates of travel
- Text of Registration Offense

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

V. Where Registration is Required

SORNA requires that the jurisdiction register an offender if the jurisdiction is the one in which he is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

Arkansas meets all of the SORNA requirements in this section.

VI. Initial Registration: Generally

SORNA requires that when an offender is incarcerated within the jurisdiction, registration must occur before release from imprisonment for the registration offense. Similarly, when an offender is sentenced within the jurisdiction, but not incarcerated, SORNA requires that registration occur within three business days of sentencing. Finally, when an offender has been

convicted, sentenced, or incarcerated in another jurisdiction (including federal or military court), the jurisdiction must register the offender within three business days of the offender establishing residence, employment, or school attendance within the jurisdiction. SORNA also requires that, during the initial registration process, the jurisdiction inform the offender of his registration duties and require the offender to acknowledge in writing that he understands those duties.

Arkansas meets all of the SORNA requirements in this section.

VII. Initial Registration: Retroactive Classes of Offenders

SORNA requires that each registration jurisdiction have a procedure in place to recapture three categories of sex offenders: those who are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime; those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; and those who reenter the jurisdiction's criminal justice system because of a conviction for some other felony crime (whether or not it is a sex offense). Arkansas' retroactive provisions deviate from SORNA requirements.

Arkansas' registration scheme applies to individuals convicted on or after August 1, 1997, of a registerable sex offense and to individuals who were serving a sentence of incarceration, probation, parole, or other form of community supervision as a result of an adjudication of guilt on or after August 1, 1997, for a registerable sex offense. To meet SORNA's requirements in this section, Arkansas will also need to capture those individuals who committed qualifying registerable sex offenses prior to August 1, 1997, and, not under some form of correctional supervision, reenter the criminal justice system because of a conviction for some other felony crime.

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

VIII. Keeping the Registration Current

SORNA requires that when an offender resides in a jurisdiction, that sex offender must immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. SORNA also requires that when an offender resides in a jurisdiction, that sex offender must immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

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

SORNA also requires that when an offender resides in a jurisdiction but indicates to the state that he/she intends to travel outside the United States, that the offender notify the residence jurisdiction at least 21 days in advance of such travel.

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

Arkansas' statutes and policies meet many of the SORNA requirements in this section, with notable exceptions. Arkansas requires registered sex offenders to report immediately and in-person changes to resident address. Although Arkansas requires registrants to immediately report changes to temporary domicile, employment, and school attendance, they are not required to do so in-person. Furthermore, Arkansas allows name changes to be reported within 10 days after the change and also does not require this update to be made in-person. Arkansas also does not require immediate updates of changes to sex offenders' email addresses, internet identifiers, telephone communications, or vehicle information; however, this information is updated at all verification appearances (see Section IX).

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

IX. Verification/Appearance Requirements

SORNA requires that offenders register for a duration of time and make in-person appearances at the registering agency, based on the tier of the offense of conviction.

A. Duration of Registration

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

Because Arkansas initially requires all sex offenders to register for life, Arkansas meets all of the SORNA requirements in this subsection.

B. Frequency of Registration

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

Arkansas does not tier its offenders based upon crime of conviction; rather, an appointed committee assesses each offender for their likelihood to reoffend and then assigns them an assessment level (1 – 4). Sex offenders assigned to Levels 1, 2 and 3 are required to report every 6 months and those assigned to Level 4 report every 3 months.

Because Arkansas' risk assessment procedure does not ensure that SORNA Tier III equivalent offenders report quarterly, Arkansas does not meet the SORNA requirements of this subsection.

C. Reduction of Registration Periods

SORNA creates certain requirements under which a jurisdiction can allow an offender to have a reduced registration period. Subsection (b) of section 115 of SORNA allows for Tier I offenders' registration and notification requirements to be terminated if multiple conditions are met. Arkansas' reduction of registration periods deviates from SORNA requirements. In Arkansas, all registered sex offenders are eligible to petition the sentencing court for termination of the duty to register after 15 years, with the exception of those sex offenders found to have committed an aggravated sex offense (as defined in 18 U.S.C. §2241); determined by the court to be a sexually violent predator; or found to have been adjudicated guilty of a second or subsequent sex offense.

Furthermore, Arkansas deviates from SORNA in its application of registration duration to adjudicated juveniles ordered by the court to register as sex offenders. In Arkansas, a juvenile ordered to register may petition the court to have his or her name removed from the sex offender registry at any time while the court has jurisdiction over the juvenile, or when the juvenile turns 21 years of age, whichever is later. If such a petition is made, the circuit court judge of the juvenile division shall order the juvenile's name removed from the sex offender registry upon proof by a preponderance of the evidence that the juvenile does not pose a threat to the safety of others. If the court does not order the juvenile's name removed from the sex offender registry, the juvenile shall be required to remain on the registry for an additional 10 years.

Because Arkansas allows many adult registered sex offenders to petition for termination of their registration requirements after 15 years, Arkansas does not meet the SORNA requirements of this subsection.

X. Public Registry Website Requirements

SORNA requires that each jurisdiction maintain a public sex offender registry website and publish certain registration information on that website. SORNA also requires that certain information not be displayed on a jurisdiction's public registry website. Arkansas' public registry website requirements deviate from SORNA requirements in several ways. Regarding classes of offenders listed on the public registry website, Arkansas limits the information provided to those registered sex offenders determined by risk assessment to pose the highest level of risk to the public (Level 3 and Level 4) and to those Level 2 offenders who were 18 or

older at the time of the offense and in which the victim was 14 or younger. To meet this provision of SORNA, however, Arkansas must post information about all registered sex offenders, excluding SORNA Tier I offenders whose offenses did not involve minors, on its public registry website.

Additionally, Arkansas' public registry website does not display the following information required by SORNA:

- Criminal History
- Physical Description

Because Arkansas does not make available information about all registered sex offenders (excluding SORNA Tier I offenders whose offenses did not involve minors), Arkansas does not meet the SORNA requirements of this section.

XI. Community Notification

SORNA requires that each jurisdiction disseminate certain initial and updated registration information to particular agencies within the jurisdiction. In addition, SORNA requires that each jurisdiction also disseminate certain initial and updated registration information to the community.

Arkansas meets all of the SORNA requirements in this section.

XII. Failure to Register as a Sex Offender: State Penalty

SORNA requires that each jurisdiction, other than a federally recognized Indian tribe, provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure of a sex offender to comply with their registration requirements.

Arkansas meets all of the SORNA requirements in this section.

XIII. When a Sex Offender Fails to Appear for Registration

SORNA requires that when a jurisdiction is notified that a sex offender intends to reside, be employed, or attend school in its jurisdiction, and that offender fails to appear for registration as required, that the jurisdiction receiving that notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

Arkansas meets all of the SORNA requirements in this section.

XIV. When a Jurisdiction has Information that a Sex Offender may have Absconded

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

Arkansas meets all of the SORNA requirements in this section.

Conclusion

Arkansas has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. However, there are provisions identified in this report that should be addressed in order for Arkansas to substantially implement SORNA.

We encourage you to contact the SMART Office with any questions or concerns once you have had the opportunity to review and discuss our findings.

Appendix: Arkansas Offense Tiering Review

The SMART Office has reviewed all Arkansas statutes identified in its substantial implementation submission package and has identified Arkansas' placement of these statutes within the tiering structure created in Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA). It should be noted that SORNA requires all attempts, conspiracies, and solicitations to mirror requirements of the actual offense. Unless indicated in the notes herein, the SMART office has not reviewed any statutes (or subsections) that were not identified in the submission provided by Arkansas. It is possible that other offenses will need to be included in Arkansas' sex offender registry to substantially implement SORNA. For more guidance on SORNA classes of offenders, see 42 USC § 16911 and Section V (pages 21-25) of the National Guidelines for Sex Offender Registration and Notification (June 2008).

In reviewing Arkansas Code, the SMART Office understands that Arkansas requires all sex offenders to register for life. Arkansas does not tier its offenders based upon crime of conviction; rather, an appointed committee assesses each offender for their likelihood to reoffend and then assigns them an assessment level (1 – 4). Sex offenders assigned to Levels 1, 2 and 3 are required to report every 6 months and those assigned to Level 4 report every 3 months.

Tier I Offenses

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

- A.C.A. 5-11-103 False imprisonment of a minor 1st, not by a parent
- A.C.A. 5-11-104 False imprisonment of a minor 2nd, not by a parent
- A.C.A. 5-11-106 Permanent detention or restraint of a minor, not by a parent
- A.C.A. 5-14-126 Sexual Assault 3rd degree, if victim 18 years of age or older
- A.C.A. 5-14-127 Sexual Assault 4th degree
- A.C.A. 5-16-101 Video Voyeurism, if a felony offense
- A.C.A. 5-16-102 Voyeurism, if a felony offense

Tier II Offenses

SORNA requires that Tier II offenders register for a minimum of 25 years and semi-annually verify registration information. The following offenses listed in Arkansas Code would require, at a minimum, Tier II registration requirements under SORNA.

- A.C.A. 5-14-110 Sexual indecency with a child
- A.C.A. 5-14-125 Sexual Assault 2nd degree
- A.C.A. 5-14-126 Sexual Assault 3rd degree, if victim 16-17 years of age
- A.C.A. 5-14-127 Sexual Assault 4th degree, if victim under 18 years of age

- A.C.A. 5-27-221 Permitting abuse of a minor
- A.C.A. 5-27-303 Engaging children in sexually explicit conduct for use in visual or print medium
- A.C.A. 5-27-304 Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child
- A.C.A. 5-27-305 Transportation of minors for prohibited sexual conduct
- A.C.A. 5-27-402 Employing or consenting to the use of a child in a sexual performance
- A.C.A. 5-27-403 Producing, directing or promoting a sexual performance
- A.C.A. 5-27-602 Distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child
- A.C.A. 5-27-603 Computer child pornography
- A.C.A. 5-27-605 Computer exploitation of a child
- A.C.A. 5-27-306 Internet Stalking of Child

Tier III Offenses

SORNA requires that Tier III offenders register for life and quarterly verify registration information. The following offenses listed in Arkansas Code would require Tier III registration requirements under SORNA.

- A.C.A. 5-11-102(a)4 Kidnapping of a minor, not by a parent
- A.C.A. 5-14-103 Rape
- A.C.A. 5-14-124 Sexual Assault 1st degree
- A.C.A. 5-14-125 Sexual Assault 2nd degree, if victim under 13 years of age
- A.C.A. 5-14-126 Sexual Assault 3rd degree, if victim under 16 years of age
- A.C.A. 5-26-202 Incest

Further Review

In reviewing the statutes that Arkansas cited as those that are registerable offenses under Arkansas' registration scheme, the SMART office did notice offenses that do not require registration under SORNA:

- A.C.A. 5-14-112 Indecent exposure, if a felony offense
- A.C.A. 5-14-123 Exposing another person to HIV, when ordered by the Court to register
- A.C.A. 5-70-104 Promoting prostitution in the first degree
- A.C.A. 5-71-229 Stalking when ordered by the court to register