



January 2016

SORNA Substantial Implementation Review State of California

The U.S. Department of Justice, Office of Justice Program, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the State of California 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 review of California's SORNA substantial implementation packet and has found the State of California has not substantially implemented SORNA.

In January 2015, the California Department of Justice (CA DOJ) requested that the SMART Office conduct a substantial implementation review. In the course of this review we have accessed or been provided with relevant California statutes, policies, and public registry website information.¹

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 California meets or does not meet the SORNA requirements of that section, or deviates from the SORNA requirements in a way that does not substantially disserve SORNA's requirements. California is encouraged to focus on the sections where the jurisdiction *has not* met SORNA's requirements, and to work toward rectifying the issues identified in those sections in order to achieve substantial implementation of SORNA.

California is also encouraged to work toward rectifying the deviations which do not substantially disserve the purposes of SORNA in order to achieve full implementation of SORNA, but this is not necessary for substantial implementation purposes.

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 the registration information or 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.

¹ The SMART Office had email and phone correspondence with Linda Schweig, Assistant Bureau Chief, Bureau of the Criminal Identification and Investigative Services, Identification and Registration Branch which includes the California Sex Offender Registry, and Janet Neeley, Deputy Attorney General, during the course of this review.

In California, offenders initially register with local law enforcement agencies or preregister with the California Department of Corrections and Rehabilitation, Department of State Hospitals or local county jails (if incarcerated). Additionally, a person who is preregistered at the beginning of custody will be re-notified prior to release of the duty to register. If the person does not receive notification of the duty to register while in custody because they were not sentenced to time in custody, the probation department is required to notify them of the duty to register. Preregistering agencies directly enter information in to the California Sex and Arson Registry (CSAR). Probation departments submit the notification information to the California Sex Offender Registry (CSOR), which enters that information into the CSAR. Via the NSOR/CSAR interface that information is submitted in real-time to NSOR.

California validates all convictions prior to public disclosure on the public registry website. This is accomplished primarily through an interface with its Automated Criminal History System (ACHS). If the conviction cannot be validated via ACHS, the CSOR will secure source documents to confirm if the offender is required to register as a sex offender (*e.g.*, when the offender was convicted in another state). Upon validating the conviction, if the registrant's conviction offense qualifies under California law, the public registry website will be programmatically updated on the next business day.

Because of the constraints of California's privacy laws, California can only send registration information to other law enforcement agencies, which excludes some, but not all, SORNA tribal registration jurisdictions from being a direct recipient of California registration information.

Because California does not send registration information to certain tribal registration jurisdictions who are operating registration and notification systems under SORNA, California does not meet the SORNA requirements of 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.

California appropriately includes attempted, conspired, and completed state, federal, territory, tribal and military convictions which, based on elements or facts, would have been punishable as a registerable offense in California. The reliance on statutory equivalence alone, however, causes some problems in the registry scheme, as detailed in sections (B) and (C) below.

California also requires registration if the sentencing court determined an offense was committed as a result of sexual compulsion or for the purposes of sexual gratification, or if the offender would be required to register in the state where they were convicted.²

² There are a few offenses which are excepted from reliance on an out of state duty to register and which require an equivalency finding under California law: any person required to register in the state where they were convicted of an

A. California Convictions

The following offenses are not included in California's scheme and are required by SORNA to be included in the state's registration scheme:³

Cal. Penal Code § 207	Kidnapping (victim under 18) ⁴
Cal. Penal Code § 209	Kidnapping for Gain or to Commit Robbery or Rape (victim under 18)
Cal. Penal Code § 236	False Imprisonment
Cal. Penal Code § 261(5) & (7)	(5) Rape where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practice by the accused, with the intent to induce the belief: (7) Rape where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official.
Cal. Penal Code § 261.5	Unlawful Sexual Intercourse with a Minor
Cal. Penal Code § 265	Abduction for marriage (victim under 18 compelled to marry defendant)
Cal. Penal Code § 288.2(a)(1)	Sending Harmful Matter to a Minor (Misdemeanor)
Cal. Penal Code § 311.2(a)	Production or Distribution of Obscene Matter

B. Other Jurisdiction Offenses

California includes in its registry scheme any person who has been convicted of an offense which based on elements or facts, would have been punishable as a registerable offense in California, and, therefore, will not capture any offense from another jurisdiction which is comparable to those offenses listed in subsection (A) or (C) unless the person is required to register based on the out of state duty.⁵

offense comparable to Cal. Penal Code § 261.5 (Unlawful Sexual Intercourse with a Minor), § 266h (Pimping Involving a Minor), §266i (Pandering Involving a Minor), §285 (Incest), or § 314 (Indecent Exposure), are excluded from California's registration requirements *based on the fact of the out-of-state registration requirement*. However, if any out-of-state conviction for a similar offense contains all of the elements of a registerable California offense, it will be registerable in California.

³ Even for offenses not subject to mandatory registration, courts have the discretion to order registration for any "sexually motivated offense". Cal. Penal Code § 290.006.

⁴ Convictions under Cal. Penal Code §§ 207 and 209 are registerable in any case where the kidnapping occurred with the intent to commit Rape, Sodomy, Lewd Acts on a Child, Oral Copulation, or Penetration by a Foreign Object.

⁵ See fn. 2, *supra*.

C. Federal Offenses

California will register a federally-convicted offender for the duration of their time on probation if that offender is court-ordered to register, even if the offender was not convicted of a California-comparable offense.

The following offenses are ones which are not similar to any offense in California which requires registration. These offenses are required to be registered under SORNA.

1. 18 U.S.C. §1801 (Video Voyeurism of a Minor)
2. 18 U.S.C. §2252C (Misleading words or digital images on the internet)
3. 18 U.S.C. §2424 (Filing factual statement about alien individual)

D. Military Convictions

California will register a military offender, who has been court-martialed for a sexual offense for the duration of their time on probation if that offender is court-ordered to register, even if the offender was not convicted of a California-comparable offense.

California will register most of the military offenses required by SORNA. Nevertheless, there are some UCMJ Offenses (such as Conduct Unbecoming) which are not similar to those registerable under California law and, therefore, would not be registered under California's existing scheme.

E. Foreign Convictions

California includes in its registry scheme any person who has been convicted of an offense which is similar to any registerable California offense in a foreign country with a similarly reliable judicial system to the United States, such as Canada, the United Kingdom, or Australia. California also registers any person currently required to register in the country of conviction.

F. Juvenile Adjudications

California registers any juvenile adjudicated delinquent of certain completed or attempted registerable sex offenses⁶ who are thereafter committed to the State Department of Corrections and Rehabilitation on the basis of that adjudication. Any juvenile registration is under the same terms and conditions as adult registrants.

⁶ Juvenile offenders must register if they are adjudicated delinquent of the following offenses for which they serve a term at CDCR/Division of Juvenile Justice: Cal. Penal Code § 207 (Kidnapping with the intent to violate specified sexual offenses), §209 (Kidnapping for Gain or to commit Robbery or Rape with the intent to violate specified sexual offenses), §220 (Assault with Intent to Commit Specified Sex Offense), §261(a)(1)-(4) or (6) (Rape), §264.1 (Aiding or Abetting Rape), §266c (Inducing Consent to Sexual Act by Fraud or Fear), §267 (Abduction of Minor for Prostitution), §286(b)(1), (c), or (d) (Sodomy), §289(a) (Penetration by Foreign Object), or §647.6 (Annoying or Molesting Children).

G. Conclusion

Because California does not register juveniles adjudicated delinquent as a sex offender as required by SORNA, California does not meet the SORNA requirements of this section; however, the remaining deviations do not substantially disserve the purposes of the requirements in this section.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction. The SMART Office has reviewed all statutes identified in California's materials and has identified California's placement of these statutes within the SORNA three tier levels.

California does not specifically 'tier' its offenses. As discussed later in sections IX and X, all California offenders are required to register for life, and depending on the offense of conviction will be subjected to differing levels of public disclosure of registration information.⁷

California meets all 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.

California has not met SORNA's full standard in five categories.⁸

1. Driver's License: California does record an offender's driver's license number, but does not require that a photocopy of the license be captured. As part of the registration process, however, an individual must provide proof of residence; one of the authorized methods of proving residence is for an offender to provide a copy of their California driver's license or California identification card.
2. Passport and Immigration Documents: Digitized copies of passports and any other immigration documents are not captured.
3. Professional Licensing Information: California does not capture any professional licensing information.⁹

⁷ Offenders designated as Sexually Violent Predators (SVP) must register every 90 days, and Transient Offenders must register every 30 days, which is discussed in section IV, below. These requirements are based on whether a person poses a threat to the community (SVPs) or a registered sex offender's housing status (for Transient Offenders), rather than on their offense of conviction.

⁸ California properly requires registration and immediate updating of all internet identifiers. However, there is a stay in place prohibiting the collection of that information from any registered sex offender who is on neither probation nor parole. *Doe, et. al. vs. Harris, et. al.*, 772 F.3d 563 (9th Cir. 2014) (decided on First Amendment grounds).

⁹ To the extent employment information indicates professional licensing, California already captures that.

4. Temporary Lodging Information: California does not capture any temporary lodging information from its offenders leaving the jurisdiction for 7 days or more.¹⁰
5. Vehicle Information: California does not capture information about aircraft, watercraft, or the permanent or frequent location where all vehicles are kept.

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 or she is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

All offenders convicted on the basis of a state sex offense in California (whether or not they are incarcerated) are pre-registered either prior to their release from incarceration or prior to leaving their encounter with the court or probation (if not incarcerated). All resident sex offenders are required to register pursuant to California's requirements. Non-resident sex offenders who are employed or attend school¹¹ in California are only required to register if they are required to register in their state of residence.

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

VI. Initial Registration: Timing and Notice

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.

As described in section V above, every offender convicted in California is pre-registered either prior to their release from incarceration or prior to leaving their encounter with the court of probation (if not incarcerated). Every offender released on probation or parole must provide proof

¹⁰ Some agencies currently capture this with the consent of the registrant. California requires this information for an extended leave from the state, which would be construed as a change of residence.

¹¹ Any person required to register who is enrolled as a student or employed at an institution of higher learning must also register with the campus police department of that institution within five days of commencing enrollment or employment. Such offenders who are not otherwise subject to public website posting as described in section X(c) are subject to certain registration information being released to members of the campus community.

of registration to their probation officer or parole agent within six working days of release on probation or parole. Non-resident offenders are required to register in California if they are employed within the state for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year. Any non-resident offender enrolled in an educational institution in California is also required to register.

These deviations do not substantially disserve the purposes 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).

California has had its registration system in place since 1947, and its provisions are fully retroactive.

California meets all of the SORNA requirements in this section.

VIII. Keeping the Registration Current

SORNA requires that when a sex offender resides in a jurisdiction, he or she 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, he or she 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 and intends to travel outside the United States, he or she must 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 or her intent to relocate to another country to live, work or attend school, that the jurisdiction 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.

California requires offenders to provide, in-person, any updated information about their name, residence address, or termination of residence within five working days and uses the same in-person notification requirement when an offender is moving out of the country. Sex offenders enrolled in or employed with an institution of higher education must provide notice within five days of ceasing to be enrolled or employed with said institution.

Subject to the limitations discussed in section IV, above, offenders must provide written notice within 24 hours of any new or updated internet identifiers. California does not require immediate updating of vehicle information, and does not collect temporary lodging information, except as indicated in section IV, above.

California shares its registry information with the Department of Homeland Security for the purposes of its Angel Watch program, which facilitates the notification of foreign countries when certain sex offenders travel internationally. California does not require 21-day advance notice of International Travel and does not provide proactive notification of intended international travel to the United States Marshals Service.

California does not meet the SORNA requirements of 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. 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.

SORNA also 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.

In addition, SORNA creates certain requirements under which a jurisdiction can allow an offender to have a reduced registration period.

A. Frequency of Registration

The vast majority of offenders in California are required to appear in person on an annual basis. Offenders who are designated as Sexually Violent Predators (see section III, above) are required to appear in person every 90 days. Transient offenders are required to appear in person every 30 days.

B. Duration of Registration

All offenders in California register for life, subject to the possible reduction provisions contained in sections (C) and (D), below.

C. Reduction in Registration Period

All sex offenders in California are initially required to register for life, regardless of their offense of conviction. A person who is required to register in California will be relieved of any further duty to register, however, if they obtain a *Certificate of Rehabilitation* and are no longer in custody, on parole, or on probation. For eligible offenders, depending on the offense of conviction, they may petition for a certificate of rehabilitation after either seven or 10 years after their release from incarceration or placement on parole or probation.¹²

The California Penal Code details the California offenses which are eligible for a certificate of rehabilitation, subject to the specific requirements of receiving such a certificate, which are described in section (D), below.¹³

D. Clean Record Requirement

In order to receive the above-referenced *Certificate of Rehabilitation*, offenders must prove the following:

1. That they have resided in the state of California for five consecutive years since the time of their release from custody or placement on parole or probation, whichever is sooner;
2. They have successfully petitioned to have their guilty plea withdrawn or verdict of guilty set aside under Cal. Penal Code § 1203.4 (there are no specific requirements for having this motion granted);¹⁴
3. That they have not (since the date of the grant of their motion under § 1203.4) been incarcerated and are not on probation for the commission of any other felony.

¹² Cal. Penal Code, § 4852.03(a)(2)

¹³ “Any person convicted of a felony or any person who is convicted of a misdemeanor violation of any sex offense specified in Section 290, the accusatory pleading of which has been dismissed pursuant to Section 1203.4, may file a petition for certificate of rehabilitation and pardon pursuant to the provisions of this chapter if the petitioner has not been incarcerated in any prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading and is not on probation for the commission of any other felony, and the petitioner presents satisfactory evidence of five years residence in this state prior to the filing of the petition.” Cal. Penal Code, § 4852.01(c). “This chapter shall not apply to persons serving a mandatory life parole, persons committed under death sentences, persons convicted of a violation of Section 269, subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, Section 288.7, or subdivision (j) of Section 289, or persons in military service.” (Cal. Penal Code, § 4852.01(d).)

¹⁴ Offenders receiving such a withdrawal of a guilty plea or set aside of their guilty verdict will no longer meet the definition of “convicted” under SORNA and, as such, are no longer required by SORNA to register.

Because persons granted a Because California bases its 90-day frequency of registration requirement in part on a risk determination, rather than solely on the offense of conviction, California does not meet the SORNA requirements of this section.

X. 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.

Depending on the offense of conviction,¹⁵ California either (1) displays different amounts of information about an offender or (2) does not display the offender on the public registry website.

A. Highest Level of Disclosure

Offenders convicted of the offenses listed in this subsection have the following registration information posted on the public registry website:

1. Name and known aliases
2. Photograph
3. Physical Description
4. Date of Birth
5. All convictions for which they are required to register
6. Year of last conviction and last release, when available
7. A notation regarding subsequent felony incarceration, when available
8. Designation if they have been adjudicated a sexually violent predator
9. Residence address and concurrent residence address if any
10. Risk Assessment Score
11. Violation Status
12. Scars, marks, and tattoos

The preceding information is posted on California's public sex offender registry website regarding offenders convicted of the following offenses:¹⁶

Cal. Penal Code § 187	Murder in the Perpetration of specified sexual offenses
Cal. Penal Code § 207	Kidnapping with intent to violate specified sexual offenses
Cal. Penal Code § 209	Kidnapping for Gain or to Commit Robbery or Rape with intent to violate specified sexual offenses

¹⁵ Non-California convictions are also posted on the public registry website, if the offense would have been punishable in California, at the level of disclosure applicable to the comparable California offense. If the person is required to register in California based on his or her out-of-state duty to register, the person's residence address is not posted on the public web site.

¹⁶ Any person who has ever been adjudicated a sexually violent predator is also subject to this level of public website disclosure.

Cal. Penal Code § 261(a)(2) or (6)	Rape
Cal. Penal Code § 264.1	Aiding or Abetting Rape
Cal. Penal Code § 269	Aggravated Sexual Assault of Child
Cal. Penal Code § 286(c) or (d)	Sodomy
Cal. Penal Code § 288(a)-(c)	Lewd or Lascivious Acts Involving Children (Felony)
Cal. Penal Code § 288a(c) or (d)	Oral Copulation
Cal. Penal Code § 288.3	Contacting a Minor for Lewd Behavior (Felony)
Cal. Penal Code § 288.4	Arrangement of Meeting with a Minor for Lewd and Lascivious Behavior (Felony)
Cal. Penal Code § 288.5	Continuous Sexual Abuse of a Child
Cal. Penal Code § 288.7	Sexual Acts with Child 10 years old or younger
Cal. Penal Code § 289(a) or (j)	Penetration by Foreign Object
Cal. Penal Code § 311.1	Sale or Distribution of Obscene Matter (Felony)
Cal. Penal Code § 311.2(b)-(d)	Production or Distribution of Obscene Matter (Felony)
Cal. Penal Code § 311.3	Sexual Exploitation of a Child (Felony)
Cal. Penal Code § 311.4(a)-(c)	Employment of Minor in Production of Pornography (Felony)
Cal. Penal Code § 311.10	Advertisement of Obscene matters
Cal. Penal Code § 311.11	Possession of Child Pornography (Felony)
Cal. Welf. & Inst. Code, § 6600	Adjudicated a sexually violent predator (SVP), denoting civil commitment

B. Low Level of Disclosure

Offenders convicted of the offenses listed in this subsection have the following registration information posted on the public registry website:

1. Name and known aliases
2. Photograph
3. Physical Description
4. Date of Birth
5. All convictions for which they are required to register
6. Year of last conviction and last release, when available
7. A notation regarding subsequent felony incarceration, when available
8. Designation if they have been adjudicated a sexually violent predator
9. Risk Assessment Score
10. Violation Status
11. Scars, marks, and tattoos
12. County of Residence¹⁷
13. Residence Zip Code¹⁸

¹⁷ Transient offenders have their county of residence listed.

¹⁸ A person convicted of certain moderate-level disclosure offenses who has previously been convicted of a registerable sex offense will also have their residence address listed.

The preceding information is posted on California's public sex offender registry website regarding offenders convicted of the following offenses:

Cal. Penal Code § 220	Assault with Intent to Commit Sex Offense
Cal. Penal Code § 243.4(a)	Sexual Battery (Felony)
Cal. Penal Code § 261(a)(1), (3) or (4)	Rape
Cal. Penal Code § 266	Entice minor to engage in prostitution or illicit sexual acts (Felony)
Cal. Penal Code § 266c	Inducing Consent to Sexual Act by Fraud or Fear (Felony)
Cal. Penal Code § 266j	Procurement of Child for Lewd and Lascivious Acts
Cal. Penal Code § 267	Abduction of Minor for Prostitution
Cal. Penal Code § 286(b)(2), (f), (g), or (i)	Sodomy
Cal. Penal Code § 288(c)	Lewd or Lascivious Acts Involving Children (Misdemeanor)
Cal. Penal Code § 288.3	Contacting a Minor for Lewd Behavior (Misdemeanor)
Cal. Penal Code § 288.4	Arrangement of Meeting with a Minor for Lewd and Lascivious Behavior (Misdemeanor)
Cal. Penal Code § 288a(b)(2), (f), (g), or (i)	Oral Copulation
Cal. Penal Code § 289(b), (d), (e), or (i)	Penetration by Foreign Object
Cal. Penal Code § 626.81	Registered Sex Offender entering School Grounds
Cal. Penal Code § 647.6	Annoying or Molesting Children
Cal. Penal Code § 653c	Registered Sex Offender entering Care Facility

C. Petition for Non-Disclosure

Offenders convicted of the following offenses are able to petition the California Department of Justice for exclusion from public registry website posting:

Cal. Penal Code § 243.4(a)	Sexual Battery (Felony)
Cal. Penal Code § 311.1 ¹⁹	Sale or Distribution of Obscene Matter (Felony)
Cal. Penal Code § 311.2(b)-(d)	Production or Distribution of Obscene Matter (Felony)
Cal. Penal Code § 311.3	Sexual Exploitation of a Child (Felony)
Cal. Penal Code § 311.4	Employment of Minor in Production of Pornography (Felony)
Cal. Penal Code § 311.10	Advertisement of Obscene Matters (Felony)
Cal. Penal Code § 311.11	Possession of Child Pornography (Felony)
Cal. Penal Code § 647.6	Annoying or Molesting Children (Misdemeanor)

¹⁹ To be eligible for exclusion from the public registry website for a violation of Cal. Penal Code § 311.1, § 311.2(b)-(d), §311.3, §311.4, §311.10, or §311.11, the offender must submit to the California Department of Justice a certified copy of a probation report that clearly states that all of the victims involved in the commission of the offense were at least 16 years of age or older at the time of the commission of the offense.

In addition, persons convicted of non-penetration offenses where they are the victim's parent, stepparent, sibling, or grandparent, are also eligible to petition for exclusion from public registry website posting.

In order to qualify for exclusion, the offender must prove they were convicted of one of the offenses listed above, and also that they have either a risk assessment level of low or moderate-low.

D. Information Never Displayed on Public Registry Website

The following information is not displayed on California's public sex offender registry website:

1. Criminal History; California does post information about every conviction for which an offender is required to register. California also posts subsequent felony incarceration status when the information is available and verified.
2. Employer Address
3. School Address
4. Vehicle Information

California 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.

California does immediately update its public registry website upon receipt of any new or updated registration information. California does not have any email notification system or other method of systematic proactive community notification when an offender initially registers or updates their registration.

Whenever necessary to ensure public safety, a law enforcement agency may provide information to the public about any person required to register as a sex offender. Information so disclosed may exceed that authorized to be displayed on the public sex offender registry website.

California does not meet the SORNA requirements of 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.

Failure to register by any person convicted or adjudicated delinquent of a felony offense subjects the offender to a maximum term of imprisonment that is greater than one year. Any person convicted or adjudicated delinquent of a misdemeanor sex offense will only be eligible for less than one year of incarceration on the first failure to register conviction, although subsequent violations carry a felony penalty of more than one year. In addition, a failure to periodically verify an address every 90 days (for Sexually Violent Predators) subjects the offender to a prison sentence of up to three years or longer if the offense is a second or third strike under California law. Transient Offenders are subject to a sliding scale of misdemeanors to felonies depending on the original sex offense conviction and the number of transient violations.²⁰

These deviations do not substantially disserve the purposes 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.

California 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 in terms of investigating the absconder and notifying various law enforcement agencies.

The California Department of Justice provides local registry officials with best practices and recommendations regarding enforcement of registration responsibilities; however, California does not have one standard policy to investigate noncompliance with sex offender registration. Each local registry agency implements its own standard practices.

California does not meet the SORNA requirements of this section.

²⁰ A third or subsequent violation by a transient offender will be punishable by a maximum term of imprisonment of more than one year (if the underlying conviction was a felony) or less than one year (if the underlying conviction was a misdemeanor). If the underlying conviction was a misdemeanor, a fourth or subsequent violation by a transient offender will be punishable by a felony penalty of more than one year incarceration.

Conclusion

California 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 California to substantially implement SORNA.

We encourage you to contact the SMART Office once you have had the opportunity to review and discuss our findings and have developed a strategy for addressing and adopting the remaining provisions of SORNA.

Appendix: California State Statutes

The SMART Office has reviewed all California statutes identified in its substantial implementation submission package and has identified California's placement of these statutes within the tiering structure created in Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA).

In reviewing the California Code, the SMART Office understands that California has one category of offenders based on the offense of conviction: all offenders are required to register for life, subject to the clean record reductions described in section IX(c) and (d), above.

For offenses designated below as "not subject to mandatory registration", the court has the discretion to order registration.²¹ Courts also have the discretion to order registration for any "sexually motivated offense".

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 California Code would require, at a minimum, Tier I registration requirements under SORNA:

Cal. Penal Code § 236 False Imprisonment

This offense is not subject to mandatory registration in California.

Cal. Penal Code § 243.4(a)-(d) Sexual Battery (victim 18 or older)

Cal. Penal Code § 243.4(e)(1) Sexual Battery

Cal. Penal Code § 261.5(c) & (d) Unlawful Sexual Intercourse with a Minor (Misdemeanor)

This offense is not subject to mandatory registration in California.

Cal. Penal Code § 285 Incest²² (victim 18 or older)

Cal. Penal Code § 288.2(a)(1) Sending Harmful Matter to a Minor (Misdemeanor)

This offense is not subject to mandatory registration in California.

Cal. Penal Code § 288.4 Arrangement of Meeting with a Minor for Lewd and Lascivious Behavior

²¹ Cal. Penal Code, § 290.006.

²² SORNA only requires registration for convictions for Incest (Cal. Penal Code § 285), regardless of SORNA tier, when the offense involves fornication or adultery.

Cal. Penal Code § 288a(h)	Oral Copulation where the victim is at the time, incapable, because of mental disorder or developmental or physical disability, of giving legal consent
Cal. Penal Code § 289(h)	Penetration by Foreign Object with a person under 18 years of age
Cal. Penal Code § 311.1	Advertise for Sale or Distribution of Obscene Matter Depicting Minor
Cal. Penal Code § 311.2	Production or Distribution of Obscene Matter Depicting Minor Engage in Sexual Conduct (Possession or Misdemeanor Offense)
Cal. Penal Code § 311.3	Sexual Exploitation of a Child
Cal. Penal Code § 311.11	Possession of Child Pornography

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 California Statutes would require, at a minimum, Tier II registration requirements under SORNA:

Cal. Penal Code § 236.1(b)-(c)	Human Trafficking of a Minor
Cal. Penal Code § 243.4(a)-(d)	Sexual Battery (victim 13-17) ²³
Cal. Penal Code § 261.5(c) & (d)	Unlawful Sexual Intercourse with a Minor (Felony, victim 16 or 17)

This offense is not subject to mandatory registration in California.

Cal. Penal Code § 266	Entice minor to engage in prostitution or illicit sexual acts
Cal. Penal Code § 266h	Pimping (victim < 18)
Cal. Penal Code § 266i	Pandering (victim < 18)
Cal. Penal Code § 266j	Procurement of Child for Lewd and Lascivious Acts
Cal. Penal Code § 285	Incest (victim 16 or 17)
Cal. Penal Code § 286(b)(1), (e)	Sodomy (victim 16 or 17)

²³ Sexual battery of a minor would be charged under Penal Code section 647.6 and it is registerable.

Cal. Penal Code § 288a(b)(1), (e) Oral Copulation (victim 16 or 17)

Cal. Penal Code § 288.2(a)(1) Sending Harmful Matter to a Minor

California only registers this offense if it is a felony conviction.

Cal. Penal Code § 288.3 Contacting a Minor for Lewd Behavior

Cal. Penal Code § 311.2 Production or Distribution of Obscene Matter depicting minor (distribution or felony offense)

Cal. Penal Code § 311.4 Employment of Minor in Production of Pornography

Cal. Penal Code § 311.10 Advertisement of Obscene matters depicting minors

Cal. Penal Code § 647.6 (a)(1), (b) Annoying or Molesting Children

Tier III Offenses

SORNA requires that Tier III offenders register for life and quarterly verify registration information. The following offenses listed in California Statutes would require, at a minimum, Tier III registration requirements under SORNA and, except as otherwise noted California classifies them all as “lifetime” offenses (as described in sections III and IX, above):

Cal. Penal Code § 207 Kidnapping

California requires registration of persons convicted of this offense with the intent to commit Rape, Sodomy, Lewd Acts on a Child, Oral Copulation, or Penetration by a Foreign Object.

Cal. Penal Code § 209 Kidnapping for Gain or to Commit Robbery or Rape

California requires registration of persons convicted of this offense with the intent to commit Rape, Sodomy, Lewd Acts on a Child, Oral Copulation, or Penetration by a Foreign Object.

Cal. Penal Code § 220 Assault with Intent to Commit Sex Offense

This offense will be tiered the same as the offense which the offender intended to commit. If the assault is with the intent to commit Rape, Aiding or abetting Rape, Sodomy, or Oral Copulation, this will be a tier III offense

Cal. Penal Code § 243.4(a)-(d) Sexual Battery (v<13)

Cal. Penal Code § 261(a)(1)-(4), (6) Rape

Cal. Penal Code § 261(5) & (7) (5) Rape where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practice by the accused, with the intent to induce the belief; (7) Rape where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official.

This offense is not subject to mandatory registration in California.

Cal. Penal Code § 261.5(c) & (d) Unlawful Sexual Intercourse with a Minor
(Felony, victim under 16)

This offense is not subject to mandatory registration in California.

Cal. Penal Code § 262 Spousal Rape

Cal. Penal Code § 264.1 Aiding or Abetting Rape

Cal. Penal Code § 265 Abduction for marriage (victim under 18 compelled to marry defendant)

This offense is not subject to mandatory registration in California.

Cal. Penal Code § 266c Inducing Consent to Sexual Act by Fraud or Fear

Cal. Penal Code § 267 Abduction of Minor for Prostitution

Cal. Penal Code § 269 Aggravated Sexual Assault of Child

Cal. Penal Code § 285 Incest (victim under 16)

Cal. Penal Code § 286 Sodomy (victim under 16)
(b)(1), (e)

Cal. Penal Code § 286(c), Sodomy
(d), (f), (g), (i), (j), (k)

Cal. Penal Code § 288 Lewd or Lascivious Acts Involving Children

Cal. Penal Code § 288.5 Continuous Sexual Abuse of a Child

Cal. Penal Code § 288.7 Sexual Acts with Child 10 years old or younger

Cal. Penal Code § 288a (b)(1), (e)	Oral Copulation (victim under 16)
Cal. Penal Code § 288a (c), (d), (f), (g), (i), (j), (k)	Oral Copulation
Cal. Penal Code § 289 (all except (h))	Penetration by Foreign Object

Additional Offenses

California also requires registration for the following state offenses, which are not required to be registered under SORNA:

Cal. Penal Code § 187	Murder in Perpetration of Specified Sex Offense(s)
Cal. Penal Code § 272	Contributing to the Delinquency of Minor involving Lewd or Lascivious Conduct
Cal. Penal Code § 286(e)	Sodomy (victim 18 or older)
Cal. Penal Code § 288.2(a)(2)	Sending Harmful Matter to a Minor
Cal. Penal Code § 288a(e)	Oral Copulation (victim 18 or older)
Cal. Penal Code § 314(1) or (2)	Indecent Exposure
Cal. Penal Code § 647.6(a)(1)	Annoying or Molesting Children
Cal. Penal Code § 653f(c)	Solicitation of Sex Offense