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SORNA Substantial Implementation Review Cheyenne River Sioux Tribe

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 Cheyenne River Sioux Tribe 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 the Cheyenne River Sioux Tribe's SORNA substantial implementation packet and has found that the Cheyenne River Sioux Tribe has substantially implemented SORNA.

On July 25, 2013, the Cheyenne River Sioux Tribe submitted a substantial implementation package including background information on the tribe and its criminal justice system, courts, and police department, policies and procedures regarding sex offender registration, its sex offender registration law and other laws, as well as forms and memoranda of agreement with other law enforcement agencies. In addition, an on-site visit in 2014, along with email and phone correspondence with Bonnie La Claire, filled in gaps in information and procedure, which informed our review.

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, which contains 13 sections addressing the SORNA requirements. Under each section, we indicate whether the Cheyenne River Sioux Tribe meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify where the departure(s) from a particular requirement does not meet SORNA requirements or whether the departure(s) does or does not substantially disserve the purpose of that requirement.

The Cheyenne River Sioux Tribe is encouraged to focus on the deviations that substantially disserve SORNA's requirements and to work toward rectifying those deviations in order to achieve substantial implementation of SORNA.

The Cheyenne River Sioux Tribe 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, however this is not necessary for substantial implementation purposes.

This report is a comprehensive review and is intended to detail significant areas in which the tribe has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the tribe, and get back in touch with us to develop a strategy to address these remaining issues. The SMART Office remains dedicated to working with the

Cheyenne River Sioux Tribe to continue its excellent work while modifying those parts of its registration and notification program that do not comply with SORNA.

Based on our review of materials submitted by the Cheyenne River Sioux Tribe, our understanding is that the Cheyenne River Sioux Tribe has entered a Joint Powers Agreement with the State of South Dakota wherein the registration and notification responsibilities for non-Indian offenders living, working, and attending school on the lands of the Cheyenne River Sioux Tribe will be handled by the State or surrounding counties. In addition, the State has agreed to maintain and transmit certain data about Indian offenders living, working, and attending school on lands of the Cheyenne River Sioux Tribe, as detailed below.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers or updates his or her information in a jurisdiction, that this registration 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.

Pursuant to the Joint Powers Agreement, the Cheyenne River Sioux Tribe's sex offender registration information is provided to the South Dakota Division of Criminal Investigation, which includes the offender's registration information in the South Dakota sex offender registry, posts the offender's information on South Dakota's public sex offender registry website, and submits the offender's registration information to NCIC/NSOR.

The Cheyenne River Sioux Tribe meets all of 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.

The Cheyenne River Sioux Tribe meets all of the SORNA requirements of this section.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction.

Although the Cheyenne River Sioux Tribe's sex offender registration code correctly places federal, state and tribal statutes at least within the minimum appropriate SORNA tiers, the State of South Dakota's classification of non-Indian offenders and associated registration requirements deviates from SORNA's requirements. (See attached "SORNA Substantial Implementation Review: State of South Dakota" for a detailed analysis regarding this subsection).

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

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.

Although the Cheyenne River Sioux Tribe's sex offender registration code and policies and procedures manual mandates that all SORNA required information is collected, the state of South Dakota will not collect information from non-Indian offenders that is not captured in the State's own registration scheme. South Dakota deviates from this section's SORNA requirements. (See attached "SORNA Substantial Implementation Review: State of South Dakota" for a detailed analysis regarding this subsection.)

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

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.

The Cheyenne River Sioux Tribe meets 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.

The Cheyenne River Sioux Tribe meets the SORNA requirements of 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).

Although the Cheyenne River Sioux Tribe's sex offender registration code and policies and procedures manual mandates that all SORNA required offenders are recaptured, the state of South Dakota will not recapture certain non-Indian offenders who re-enter the criminal justice system with a new non-sex offense. South Dakota deviates from this section's SORNA requirements. (See attached "SORNA Substantial Implementation Review: State of South Dakota" for a detailed analysis regarding this subsection.)

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

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.¹

Although the Cheyenne River Sioux Tribe's sex offender registration code and policies and procedures manual mandates that all required information is kept current as SORNA requires, the state of South Dakota will not keep current certain information from non-Indian offenders per

¹ The Cheyenne River Sioux Tribe does not have a specific code provision requiring notice to the U.S. Marshals Service when an offender relocates overseas; however, any such circumstance would be covered by the 21-day advance notice of international travel requirement.

SORNA's standards. South Dakota deviates from this section's SORNA requirements. (See attached "SORNA Substantial Implementation Review: State of South Dakota" for a detailed analysis regarding this subsection.)

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

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.

Although the Cheyenne River Sioux Tribe's sex offender registration code and policies and procedures meets all SORNA requirements regarding duration of registration, the state of South Dakota deviates from this section's SORNA requirements regarding non-Indian offenders. (See attached "SORNA Substantial Implementation Review: State of South Dakota" for a detailed analysis regarding this subsection.)

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

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.

Although the Cheyenne River Sioux Tribe's sex offender registration code and policies and procedures meets all SORNA requirements regarding frequency of registration, the state of South Dakota deviates from this section's SORNA requirements regarding non-Indian offenders. (See attached "SORNA Substantial Implementation Review: State of South Dakota" for a detailed analysis regarding this subsection.)

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

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.

Although the Cheyenne River Sioux Tribe's sex offender registration code and policies and procedures meets all SORNA requirements regarding the public registry website, the state of South Dakota deviates from this section's SORNA requirements regarding non-Indian offenders. (See attached "SORNA Substantial Implementation Review: State of South Dakota" for a detailed analysis regarding this subsection.)

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

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.

Although the Cheyenne River Sioux Tribe's sex offender registration code and policies and procedures meets all SORNA requirements regarding community notification, the state of South Dakota deviates from this section's SORNA requirements regarding non-Indian offenders. (See attached "SORNA Substantial Implementation Review: State of South Dakota" for a detailed analysis regarding this subsection.)

The SMART Office has considered the above deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

XII. 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.

The Cheyenne River Sioux Tribe meets all of the SORNA requirements in this section.

XIII. 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.

The Cheyenne River Sioux Tribe meets all of the SORNA requirements in this section.

Conclusion

The Cheyenne River Sioux Tribe has put forth exceptional work and effort in adopting SORNA and establishing a sex offender registration program.