



July 2013

SORNA Substantial Implementation Review Confederated Tribes of the Chehalis Reservation

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 Confederated Tribes of the Chehalis Reservation (Confederated Tribes of the Chehalis) 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 Confederated Tribes of the Chehalis's SORNA substantial implementation packet and has found that The Confederated Tribes of the Chehalis has not substantially implemented SORNA at this time.

On July 22, 2011, the Confederated Tribes of the Chehalis 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, email and phone correspondence with law enforcement 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 14 sections addressing the SORNA requirements. Under each section, we indicate whether the Confederated Tribes of the Chehalis 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 or does not substantially disserve the purpose of that requirement. In other words, the Confederated Tribes of the Chehalis is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, but it may not be 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 Confederated Tribes of the Chehalis to continue its excellent work while modifying those parts of its registration and notification program that do not comply with SORNA.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers and/or updates his information in a jurisdiction, that the 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.

The Confederated Tribes of the Chehalis meets all of the SORNA requirements in this section by using a private vendor and an intra-state solution developed by the Washington State Patrol for NCIC/NSOR submissions.

II. Offenses that Must Be Included in the Registry

SORNA requires that certain federal, military, and foreign offenses be 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 Confederated Tribes of the Chehalis meets all of the requirements of this section.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction, established through a baseline three-tier classification system. The Confederated Tribes of the Chehalis, while primarily following the Washington State system for local area consistency, has opted to adopt SORNA compliant tiers for registration (Tier I-15-year, Tier II-25-year and Tier III- lifetime registration offenses).

However, because the tribe follows Washington's registration and notification scheme, it does not place many of its statutes within SORNA's three tiers. Because the tribe, in following Washington State, does not correctly classify the majority of its offenses in the minimum SORNA tier, the Confederated Tribes of the Chehalis does not meet the SORNA requirements of this section. (See attached "SORNA Substantial Implementation Review: State of Washington" for a detailed analysis regarding this subsection).

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. The Confederated Tribes of the Chehalis does not require the collection of the following information required by SORNA in its registry:

- Date of all arrests
- Driver's license information
- *Email addresses*

- Internet identifiers, including email addresses, instant message addresses, or other designations used by sex offenders for self-identification in Internet communications or postings
- Nicknames including ethnic or tribal names by which they are commonly known
- Outstanding arrest warrants
- Palm prints
- Passports and immigration documents
- Phone numbers
- Professional licensing information
- School name and address
- *Telephone number and any other designation used for the purposes of routing or self-identification in telephonic communications, including land line and cell phone numbers.*
- Temporary lodging information and dates of travel
- Text of registration offense
- *Vehicle information*
- Collection of information regarding all land vehicles, aircraft, watercraft, and the permanent or frequent locations where all vehicles are kept.

The italicized items are requested on the registration form, but the collection of these items is not required in the code or policy and procedures. Since the italicized items are requested, this deviation that does not substantially disserve the purposes of SORNA. However, the SMART Office encourages the Confederated Tribes of the Chehalis to require the capture of this information in the code or policy and procedures to provide legal guidance to offenders of their registration responsibilities, to inform the community, and to set procedures that future registry officials can follow to effectuate registration and enforce violations.

All of the items that are not italicized are required by SORNA and are not included in the code, policy and procedures, or forms. Because the Confederated Tribes of the Chehalis does not capture and maintain the necessary information from registered sex offenders in its sex offender registry, the Confederated Tribes of the Chehalis does not meet the SORNA requirements of 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.

The Confederated Tribes of the Chehalis meets all of the SORNA requirements in this section.

VI. Initial Registration:

SORNA requires that when an offender is incarcerated within the jurisdiction, that registration 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 Confederated Tribes of the Chehalis requires that all sex offenders register with Tribal police if they are coming to the reservation for any reason. The Confederated Tribes of the Chehalis excludes non-tribal member sex offenders who are a Level II or Level III ¹ from visiting or living within the boundaries of the reservation. If the non-tribal member is a Level I offender, the offender must register, and tribal police must notify the Business Committee to make a determination about what actions should be taken to protect the community. If the adjudicated offender is a member of the Confederated Tribes of the Chehalis and is a Level I, Level II or Level III sex offender and is seeking to visit or live on the reservations, the offender must register, and tribal police must immediately notify the Business Committee to determine the actions to be taken to protect the safety of the community.

This deviation does not substantially disserve the purposes of the 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, 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). The Confederated Tribes of the Chehalis's retroactive provisions deviate from SORNA requirements.

The Confederated Tribes of the Chehalis generally follows Washington State's registration scheme which applies to: (1) individuals convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990; (2) kidnapping offenders who were convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997; and (3) offenders who were under some form of criminal

¹ The Confederated Tribes of the Chehalis uses the term "Level" when classifying sex offenders, as opposed to "Tier" as used in SORNA. While the severity of level and tiers correspond (*i.e.* Tier 1/Level 1 is the least severe, Tier 3/Level 3 is the most severe), the method for determining tiers according to SORNA and levels according to Washington State is not consistent and therefore the terms cannot be used interchangeably. See section IX for more detail on the differences between tiers and levels.

or juvenile justice supervision or custody for sex offenses committed before, on, or after February 28, 1990. This application captures most of the offenders intended by SORNA, with the exception of capturing those offenders who reenter the criminal justice system for some other non-sex offense.

To fully meet SORNA's requirements in this section, Confederated Tribes of the Chehalis would also need to capture those individuals who committed qualifying registerable sex offenses prior to February 28, 1990, and who are not under some form of correctional supervision, that reenter the criminal justice system because of another felony criminal conviction.

This deviation does not substantially disserve the purposes of the requirement in this section.

VIII. Keeping the Registration Current

SORNA requires that when an offender resides in a jurisdiction, that the sex offender 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 the sex offender 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 notifies 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, 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.

SORNA also requires that when an offender is going to leave the jurisdiction for more than 7 days that he/she notify the residence jurisdiction. In addition SORNA requires that when the residence jurisdiction receives this information from the offender that they notify the receiving jurisdiction that the offender will be visiting their jurisdiction.

The Confederated Tribes of the Chehalis meets most of the SORNA requirements in this section, with the exception that registered sex offenders are not required to report immediately to the registering agency any changes in email, instant message addresses, or other internet

identifiers. The tribe also has no provisions for receiving information from the offender regarding temporary lodging, or regarding the sharing of that information with the receiving jurisdiction.

This deviation does 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: Tier I offenders register for a minimum of 15 years and annually verify registration information, Tier II offenders register for a minimum of 25 years and semi-annually verify registration information, and Tier III offenders register for life and quarterly verify registration information.

The Confederated Tribes of the Chehalis deviates from SORNA requirements in that it adopted Washington State's method of determining how often registered sex offenders must report in-person to verify registration information. The frequency of verification is determined through a risk assessment process, conducted by the End of Sentence Review Committee (if the offender is released from the Department of Corrections or Department Social and Health Services). Otherwise, the local sheriff's department completes the risk assessment tool. Once completed, the offender is assigned to one of three levels of risk and its corresponding verification requirement:

- Level I: Law Enforcement is required to conduct face-to-face address verifications once a year.
- Level II: Law Enforcement is required to conduct face-to-face address verifications twice a year.
- Level III: Law Enforcement is required to conduct face-to-face address verifications quarterly.

The Confederated Tribes of the Chehalis does not base the number of in-person verifications upon offense of conviction and therefore does not meet the SORNA requirements of this section.

Reduction of Registration Periods

SORNA provides for two classes of offenders to have a reduced registration period, provided specific requirements are met: Tier I offenders may petition after 10 years with a "clean record" and Tier III required to register because of a juvenile adjudication may petition after 25 years with a "clean record".

The Confederated Tribes of the Chehalis' process for reduction of juveniles' registration periods deviates from SORNA requirements. Chehalis allows for offenders required to register because of a juvenile adjudication to apply for relief of duty to register 24 months following the

adjudication. The petitioning juvenile must demonstrate that he or she is sufficiently rehabilitated before such a request is granted.

In addition, Confederated Tribes of the Chehalis allows for all offenders to petition after 10 years regardless of offense, unless they have been classified as a violent sexual predator. There is also a provision that allows offenders to petition for removal from community notification after 15 years.

Confederated Tribes of the Chehalis does not meet the SORNA requirements of this section.

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.

The Confederated Tribe of the Chehalis does not list information that is prohibited from being put on the website, including: criminal history that did not result in a conviction, social security numbers, travel and immigration documents, and internet identifiers. It also specifies in detail not to publish victim information.

However, the Confederated Tribes of the Chehalis' public registry website requirements deviate from SORNA requirements in several ways. In the Confederated Tribes of the Chehalis's system, public notification is determined through a risk assessment process. Sex offenders are assigned to one of three levels of risk; all Level II and III sex offenders and the Level I offenders who are out of compliance with registration requirements are posted on the tribe's public sex offender registry website. To meet this provision of SORNA, the Confederated Tribes of the Chehalis must post information about all registered sex offenders, excluding SORNA Tier I offenders whose offenses did not involve minors, on its public registry website.

In addition, the Confederated Tribes of the Chehalis' public registry website does not display the following information required by SORNA:

- Resident address (the website only lists address information to the "hundred block," not the exact address)
- Employer address
- School address
- Vehicle(s) information, including license plate number(s) and vehicle description(s)

Because the Confederated Tribes of the Chehalis bases its decision regarding which offenders are subject to posting on the public registry website based on their risk level, rather than offense of conviction, and because the Confederated Tribes of the Chehalis does not make available required information, it 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.

The Confederated Tribes of the Chehalis requires that all sex offenders register with Tribal police if they are coming to the reservation for any reason. The Confederated Tribes of the Chehalis excludes non-tribal members who are a Level II or Level III sex offender from visiting or living within the boundaries of the reservation. If the non-tribal member is a Level I offender, tribal police must immediately notify the Business Committee to make a determination about what actions should be taken to protect the community. If the adjudicated offender is a member of the Confederated Tribes of the Chehalis and is a Level I, Level II or Level III sex offender and is seeking to visit or live on the reservations, tribal police must immediately notify the Business Committee to determine the actions to be taken to protect the safety of the community.

Though the Confederated Tribes of the Chehalis does provide email and direct notification to the public about risk Level II and III sex offender residences, the tribe does not provide notification, as required by SORNA, to the general public whenever a sex offender adjudicated of a Tier I, Tier II or Tier III offense commences living, working or going to school in the jurisdiction. Rather it excludes from the reservation non-tribal members that are a Level II or Level III, and relies on risk assessment and a final sign-off from the Business Committee regarding non-tribal Level I offenders and all tribal offenders.

Because the determination of public notification is done by risk assessment and at the discretion of the Business Committee, the Confederated Tribes of the Chehalis does not meet the requirements in this section.

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 Confederated Tribes of the Chehalis 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 Confederated Tribes of the Chehalis meets all of the SORNA requirements in this section.

XIV. Other Considerations

There are no other considerations.

Conclusion

The Confederated Tribes of the Chehalis Indian Reservation has established a sex offender registration program consistent with Washington State, within which the Confederated Tribes of the Chehalis' Reservation lies. Consistent with the Washington State finding, the Confederated Tribes of the Chehalis has been found to have not substantially implemented SORNA for reasons cited throughout the report.

Although the Confederated Tribes of the Chehalis Indian Reservation has not substantially implemented the SORNA requirements, the SMART Office will not be delegating the tribe's sex offender responsibilities. The tribe is operating a functioning system on par with that of Washington State and, at this time, SMART finds that delegation would not lead to greater SORNA implementation. However, the SMART Office findings regarding substantial implementation are on-going. Thus, any changes by either Washington State or the Confederated Tribes of the Chehalis to the sex offender registration and notification programs will require a subsequent review by the SMART Office.

We encourage the Confederated Tribes of the Chehalis to contact the SMART Office with any questions or concerns regarding this finding, and to work towards meeting the provisions detailed in the report that do not meet the SORNA requirements in order to achieve substantial implementation of SORNA in the future. Thank you for the work and effort towards adopting SORNA and enhancing the sex offender registration and notification system.