



October 2015

SORNA Substantial Implementation Review State of Georgia

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to acknowledge the State of Georgia for the 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 Georgia's SORNA substantial implementation package and has found the State of Georgia has not substantially implemented SORNA.

In November 2014, the Georgia Criminal Justice Coordinating Council submitted to the SMART Office for review a SORNA substantial implementation package, consisting of a completed SORNA Substantial Implementation Checklist, relevant Georgia State statutes and codes, Georgia Crime Information Center Procedures, and examples of registration forms used by law enforcement throughout the state.

Our review of the submitted 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 Georgia 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. Georgia 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. Georgia is also encouraged to work toward rectifying the deviations that do not substantially disserve the purposes of SORNA in order to achieve full implementation of SORNA.

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.

Georgia 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 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 be included in a jurisdiction's registration scheme.

A. Georgia Offenses

Georgia captures the offenses for which SORNA requires registration.

B. Offenses of Other SORNA Registration Jurisdictions

Georgia requires offenders to register if they committed offenses requiring registration in another state or territory, or are required to register under federal, military, or tribal law.

C. Federal Offenses

Georgia requires offenders to register if they are required to register under federal law.

D. Military Offenses

Georgia requires offenders to register if they are required to register under the Uniform Code of Military Justice.

E. Foreign Offenses

In Georgia, sex offenses committed in other countries do not require registration.

F. Juvenile Adjudications

In Georgia, youth adjudicated in juvenile court for sex offenses that if committed by an adult would require registration are not required to register.

Because Georgia does not register juveniles adjudicated of certain sex offenses, Georgia does not meet the requirements in this section; however, the remaining deviations do not substantially disserve the purposes of the requirement(s) in this section.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction. Georgia's registration and notification scheme deviates from SORNA requirements in that it does not involve a conviction-based tiering structure for sex offenses. Rather, Georgia requires all sex offenders to register for life and bases frequency of reporting 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 Georgia's registration and notification scheme and has placed these statutes within the SORNA three tier levels (see Appendix: Georgia 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.

Georgia captures nearly all of the required information, with one exception: photocopies of driver's licenses or ID cards.

This deviation does 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.

Georgia 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.

Georgia 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).

In Georgia, offenders who were on parole or probation or incarcerated for a sex offense on July 1, 1996, must register as a sex offender. Additionally, offenders who were convicted in another state, federal, military, or tribal court of a sexually violent offense or a criminal offense against a victim who is a minor on or after July 1, 1999, or a dangerous sexual offense on or after July 1, 1996, must register as a sex offender. Georgia added to the list of registerable offenses in 2001 (criminal offenses against a victim who is a minor), and again in 2006 (dangerous sexual offenses), which are not retroactively applied.

Added 2001 criminal offenses against a victim who is a minor:

- Use of a minor to engage in any sexually explicit conduct to produce any visual medium depicting such conduct.
- Creating, publishing, selling, distributing, or possessing any material depicting a minor or a portion of a minor's body engaged in sexually explicit conduct.
- Transmitting, making, selling, buying, or disseminating by means of a computer any descriptive or identifying information regarding a child for the purpose of offering or soliciting sexual conduct of or with a child or the visual depicting of such conduct.
- Conspiracy to transport, ship, receive, or distribute visual depictions of minors engaged in sexually explicit conduct.

Added 2006 dangerous sexual offenses:

- Kidnapping of a victim who is less than 14 years of age, except by a parent.
- False imprisonment of a victim who is less than 14 years of age, except by a parent.
- Statutory rape, if offender is 21 years of age or older.
- Enticing a child for indecent purposes.
- Sexual assault against persons in custody.
- Incest.
- Sexual exploitation of children.
- Electronically furnishing obscene material to minors.
- Computer pornography and child exploitation.
- Obscene telephone contact.

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

VIII. Keeping the Registration Current

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

In Georgia, sex offenders are required to report to their county sheriff in-person within 72 hours of any change to their registration information. The county sheriff is charged with communicating the whereabouts of the sex offender and any changes in required registration information to the sheriff's office of the county or counties where the sexual offender is employed, volunteers, attends an institution of higher education, or moves. However, Georgia does not require offenders to report 21 days in advance of travel outside the United States.

Because Georgia does not require offenders to provide advanced notice of travel outside the United States, Georgia does not meet the SORNA requirements in this section.

IX. Verification/Appearance Requirements

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.

In Georgia, all offenders register for life.

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.

In Georgia, the Sexual Offender Registration Review Board is required to assess each offender convicted (or released from prison or placed on parole, supervised release, or probation) on or after July 1, 2006 of a dangerous sexual offense or a criminal offense against a minor, and any offenders who move to Georgia who are required to register as a sex offender under federal law, military law, tribal law, or the laws of another state or territory (regardless of when the conviction occurred) as one of the following risk categories: Level I, Level II, or Sexually Dangerous Predator. Any individual who was classified as a sexually violent predator prior to July 1, 2006, is classified as a sexually dangerous predator on and after July 1, 2006.

The frequency of registration for a sex offender who has been designated risk Level I or Level II (or not assigned a risk level) is annually from the offender's birthday. The frequency of registration for a sex offender who is designated a Sexually Dangerous Predator is twice per year; on the offender's birthday and six months thereafter.

C. Reduction of Registration Periods

SORNA creates certain requirements under which a jurisdiction can allow an offender to have a reduced registration period. Georgia allows offenders required to register based upon delinquency adjudications for sexually violent offenses to petition to terminate registration requirements in accordance with SORNA requirements after 25 years.

In Georgia, registered sex offenders may petition a superior court for release from registration requirements under certain circumstances, including:

- If they are confined to a hospice facility, skilled nursing home, residential care facility for the elderly, or nursing home, are totally and permanently disabled, or are otherwise seriously physically incapacitated due to illness or injury.
- If they are required to register solely because of a conviction for kidnapping or false imprisonment involving a minor and such offense did not involve a sexual offense against a minor;
- If they have completed all prison, parole, supervised release, and probation for the offense which required registration and ten years have elapsed, or the individual has been classified by the Sexual Offender Registration Review Board as Level I risk.

Because Georgia allows for a broader class of offenders to petition for relief of registration than SORNA considers, and because Georgia only requires annual or twice annual reporting and uses an assessment process to determine frequency of reporting, Georgia 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.

While Georgia displays much of the SORNA required information about registered sex offender, several important items of information are not relayed to the public, including:

- Criminal history
- Employer address
- School address
- Vehicle information

Because Georgia does not post the required information about registered sex offenders, Georgia does not meet the SORNA requirements in 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.

Georgia meets most of the SORNA requirements of this section, except for provisions of general community notification. Georgia allows individuals to sign up to receive email alerts whenever a sex offender listed on the public sex offender registry website moves into or out of a chosen community or location, but no information about employment or school address is shared.

These deviations do not substantially disserve the purposes 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.

Georgia 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.

While Georgia meets most of these requirements in practice, Georgia's registration statute and law enforcement policy and practice manuals do not contain guidance on notifying the originating jurisdiction of an offender's failure to appear for registration; nor do they contemplate a timeframe for doing so. In order to meet the SORNA requirements of this section, Georgia will need to add these practices to the sex offender registration procedures and inform the SMART Office of the change.

These deviations do not substantially disserve the purposes 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.

While Georgia's policies meet many of the requirements of this section, some of the requirements are left to local law enforcement discretion, such as investigating non-compliant offenders and issuing a warrant for an absconder. Furthermore, though Georgia indicates that it communicates with the U.S. Marshals Service, it is unclear how and when the U.S. Marshals Service are notified of the absconder.

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

Conclusion

We encourage Georgia to continue to work towards meeting the provisions of SORNA. However, there are many provisions identified in this report that should be addressed in order for Georgia to substantially implement SORNA. Please contact the SMART Office with any questions or concerns once you have had the opportunity to review and discuss our findings.

Appendix: Georgia Offense Tiering Review

The SMART Office has reviewed all Georgia statutes identified in its substantial implementation package and has identified Georgia'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). Unless indicated in the notes herein, the SMART office has not reviewed any statutes (or subsections) that were not included in the legislation provided by Georgia.

In reviewing Georgia Revised Statutes, the SMART Office understands that Georgia has two categories of registrants, both of which are required to register for life; however, frequency of reporting to law enforcement for verification is dependent on category:

1. Sexual offender: An individual who has been convicted of a criminal offense against a victim who is a minor or any dangerous sexual offense and determined to be by the Sexual Offender Registration Review Board to be Level I or Level II risk; required to report to law enforcement every year.
2. Sexually dangerous predator: A sexual offender who was designated as a sexually violent predator between July 1, 1996 and June 30, 2006, or who is determined by the Sexual Offender Registration Review Board to be at risk of perpetrating any future dangerous sexual offense; required to report to law enforcement every six months.

SORNA 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 Georgia Statutes would require, at a minimum, Tier I registration requirements under SORNA.

- § 16-5-41. False imprisonment (victim who is less than 14 years of age, except by a parent)
- § 16-6-22.1. Sexual battery (victim over the age of 18)
- § 16-12-100.(b)(8) Sexual exploitation of children (possession)

SORNA 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 Georgia Statutes would require, at a minimum, Tier II registration requirements under SORNA.

- § 16-6-2.(a)(1) Sodomy (if victim age 16-17)
- § 16-6-4.(a)(1) Child molestation (if victim age 13-18)
- § 16-6-5. Enticing a child for indecent purposes (unless misdemeanor offense)
- § 16-6-22. Incest (victim age 16-17)
- § 16-6-22.1. Sexual battery (victim age 13-18)
- § 16-12-100.(b)(1-7) Sexual exploitation of children
- § 16-12-100.2. Computer or electronic pornography and child exploitation prevention

SORNA Tier III Offenses

SORNA requires that Tier I offenders register for life and quarterly verify registration information. The following offenses listed in Georgia Statutes would require, at a minimum, Tier III registration requirements under SORNA.

- § 16-5-21. Aggravated assault (with the intent to rape)
- § 16-5-40. Kidnapping (victim who is less than 14 years of age, except by a parent)
- § 16-6-1. Rape
- § 16-6-2.(a)(1) Sodomy (if victim under the age of 16)
- § 16-6-2.(a)(2) Aggravated sodomy
- § 16-6-3. Statutory rape (if the individual convicted of the offense is 21 years of age or older)
- § 16-6-4.(a)(1) Child molestation (if victim under the age of 13)
- § 16-6-4.(c) Aggravated child molestation (unless misdemeanor offense)
- § 16-6-5.1. Sexual assault by persons with supervisory or disciplinary authority; sexual assault by practitioner of psychotherapy against patient
- § 16-6-22. Incest (victim under the age of 16)
- § 16-6-22.1. Sexual battery (victim under age of 13)
- § 16-6-22.2. Aggravated sexual battery

Additional Comments

The remainder of Georgia's offenses requiring sex offender registration do not fit squarely in to SORNA's definition of a 'sex offense', and by requiring registration for the following offenses, Georgia likely exceeds SORNA's requirements:

- § 16-12-100.1. Electronically furnishing obscene material to minors
- § 16-12-100.3. Obscene telephone contact