



January 2011<sup>1</sup>

## **SORNA Substantial Implementation Review (Revised) Territory of Guam**

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 Territory of Guam (Guam) 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 Guam's SORNA substantial implementation packet and has found that Guam has substantially implemented SORNA.

Guam has previously submitted materials for a substantial implementation review and the SMART Office issued reports on those materials in September of 2009. Since that time, Guam has passed additional legislation, and Guam's current submission consists of all of the previously-submitted materials plus Guam Public Law 428-30, which was effective as of midnight of the date of its signing, December 30, 2010. In addition, email and phone correspondence with the Guam Attorney General's Office 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 Guam 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 substantially dissuade the purposes of that requirement.

While Guam is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, this is not required for substantial implementation purposes. This report is an exhaustive review and is intended to detail every area in which the territory has not met SORNA standards.

We encourage you to review the information below, share it with relevant stakeholders in the state, and get back in touch with us to develop a strategy to address these remaining issues.

### **I. Immediate Transfer of Information**

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

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<sup>1</sup> This report has been revised to reflect the status of Guam's SORNA Implementation efforts as of January, 2011, the period when Guam was initially notified of the SMART Office's determination of substantial implementation.

Guam meets all of the SORNA requirements in this section.

## **II. Offenses the 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.

Guam meets all of the SORNA requirements in this section.

## **III. Tiering of Offenses**

SORNA requires that offenses be classified based on the nature of the offense of conviction. The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Guam's placement of these statutes within the SORNA three tier levels. Guam correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions (see the Appendix, "Guam State Statutes" for information about Guam's classification of its offenders and associated registration requirements):

- **9 GSA § 25.15(a)(2) First Degree Criminal Sexual Conduct, Victim 14-16**

Placement of this statute in Level Three (Tier I) does not meet SORNA's requirements.

This statute will encompass acts which would require a tier III classification, namely, "sexual acts" with minors as defined by 18 U.S.C. §2246. It should be noted that a factual scenario supporting a conviction under this statute would likely also support a conviction for Incest under 9 GSA § 31.15, which is classified as a Level One (SORNA Tier III) Offense.

- **9 GSA § 25.20(a)(2) Second Degree Criminal Sexual Conduct, Victim 14-16**

Placement of this statute in Level Three (Tier I) does not meet SORNA's requirements.

This statute will encompass acts which would require a tier II classification, namely, "sexual conduct" with minors as defined by 18 U.S.C. §2246. It should be noted that a factual scenario supporting a conviction under this statute would likely also support a conviction for Incest under 9 GSA § 31.15, which is classified as a Level One (SORNA Tier III) Offense.

The SMART Office has considered these 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.

Guam meets all 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.

Guam 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.

Guam 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).

Guam 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, that the offender immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. 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, that the sex offender immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

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.

Guam meets all of the SORNA requirements in this section.

## **IX. Verification/Appearance Requirements**

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

### **A. Frequency 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 that SORNA Tier III offenders register for life.

Guam meets all of the SORNA requirements in this section.

### **B. Duration 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.

Guam meets all of the SORNA requirements in 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.

Guam meets all of 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.

Guam meets all of the SORNA requirements in this section.

**XII. Failure to Register as a Sex Offender: Territory 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.

Guam 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.

Guam 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.

Guam meets all of the SORNA requirements in this section.

**Conclusion**

Guam put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system.

## **Appendix: Guam Statutes**

The SMART Office has reviewed all of Guam's statutes identified in its substantial implementation submission package and has identified Guam'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 Guam.

In reviewing Guam's statutes, the SMART Office understands that Guam has three categories of registrants for purposes of its duration of registration and frequency of registration requirements.

Guam utilizes an inverted numbering system to that used in SORNA; Guam's "Level One" is its highest classification, followed by Levels Two and Three:

- A level one offender is required to register for life, with quarterly verification appearances;
- A level two offender is required to register for 25 years with semi-annual verification appearances; and
- A level three offender is required to register for 15 years with annual verification appearances.

### **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 Guam's statutes would require, at a minimum, Tier I registration requirements under SORNA.

9 GCA § 22.35	Unlawful Restraint
9 GSA § 25.30	Fourth Degree Criminal Sexual Conduct
9 GSA § 25.35	Assault with Intent to Commit Criminal Sexual Conduct
9 GSA § 28.49	Obscenity: Distribution or Possession

SORNA requires registration under this statute if the offense relates to child pornography.

9 GCA § 28.50	Participation in Obscenity
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SORNA requires registration under this statute if the offense relates to child pornography.

9 GSA § 70.35 Invasion of Privacy

### **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 Guam's statutes would require, at a minimum, Tier II registration requirements under SORNA.

9 GSA § 25.20 Second Degree Criminal Sexual Conduct

Every subsection of this offense except for (a)(1) will be classified as a tier II offense under SORNA.

9 GCA § 28.20 Promoting Prostitution (minor victim)

9 GCA § 28.25 Abetting Prostitution (minor victim)

9 GCA § 28.30 Compelling Prostitution (minor victim)

9 GSA § 28.51 Obscenity: Employment of a Minor

SORNA only requires registration under this statute if the offense relates to child pornography.

9 GCA § 28.52 Use of One's Own Child in Obscene Acts (minor victim)

SORNA only requires registration under this statute if the offense relates to child pornography.

9 GCA § 28.80 Photography of Minors' Sexual Acts (minor victim)

9 GSA § 31.15 Incest

SORNA only requires registration under this statute if the offense relates to sexual intercourse.

### **SORNA Tier III Offenses**

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

9 GSA § 22.30 Felonious Restraint

9 GSA § 22.40 Child Stealing (minor victim)

9 GSA § 25.15            First Degree Criminal Sexual Conduct

9 GSA § 25.20(a)(1)   Second Degree Criminal Sexual Conduct

9 GSA § 25.25            Third Degree Criminal Sexual Conduct

### **Further Review**

The SMART Office notes that Guam also registers the following offenses; however, those offenses, without the commission of (or the attempt or conspiracy to commit) a sexual offense, do not require registration under SORNA:

9 GSA § 16.30            Aggravated Murder

9 GSA § 22.50            Custodial Interference (minor victim)

9 GCA § 28.65            Indecent Exposure