



July 21, 2011

SORNA Substantial Implementation Review State of Hawaii

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 Hawaii 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 Hawaii's SORNA substantial implementation packet and has found the State of Hawaii has not substantially implemented SORNA.

To conduct this substantial implementation review we have accessed or been provided with the relevant Hawaii statutes, Sex Offender Registration Standard Operating Procedures, the Report of the Adam Walsh Act Compliance Working Group, Notification Form, Registration Record Form, Periodic Verification Form, and have reviewed Hawaii's Public Sex Offender Registry Website. Additional information has been received via phone calls and email correspondence.

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 Hawaii meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify whether the departure(s) from a particular requirement does not meet SORNA requirements or whether the departure does not substantially disserve the purpose of that requirement.

Hawaii 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. To achieve full implementation of SORNA, Hawaii should also work toward rectifying the deviations that do not substantially disserve the purposes of SORNA.

This report is an exhaustive review and is intended to detail every area in which the state 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.

In Hawaii, the local police departments register sex offenders. All police departments in Hawaii, with the exception of the Honolulu Police Department (HPD), normally enter the offender's registration information into the Statewide Registry at the same time the offender registers. They then immediately forward the original registration form to the Hawaii Criminal Justice Data Center (HCJDC). Due to the high volume of registered offenders in Honolulu and the limited resources at HPD, HPD generally sends the hardcopy registration forms to the HCJDC twice a week (Tuesday and Thursdays). HCJDC will enter the data into the Statewide Registry immediately upon receipt. On average, the HCJDC will receive and enter the information within three working days from the date the offender reported to HPD.

Hawaii is also an active user of the SORNA Exchange Portal and NSOR.

Hawaii 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 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.

Hawaii appropriately includes completed, conspired and attempted state, federal, and military convictions which are comparable to Hawaii-registration offenses. The use of the word "comparable" raises some issues regarding offenses which SORNA requires to be registered, as detailed in sections (B) and (C), below.

A. Hawaii Convictions

The following offenses are not included in Hawaii's scheme and are required by SORNA to be included when the victim is a minor:

§707-733(1)(c)	Sexual Assault in the Fourth Degree (video voyeurism)
§707-741	Incest (when v=16 or 17, tier II; when v<13, tier III)

B. Federal Offenses

The following offenses are ones which do not appear to have 'comparable' offense in Hawaii such that registration would be required. 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. §2245 (Offenses resulting in death)
3. 18 U.S.C. §2252B (Misleading domain names on the internet)

4. 18 U.S.C. §2252C (Misleading words or digital images on the internet)
5. 18 U.S.C. §2423 (Travel with the Intent to Engage in Illicit Sexual Conduct with a Minor; Engaging in Illicit Sexual Conduct in Foreign Places)
6. 18 U.S.C. §2424 (Filing factual statement about alien individual)
7. 18 U.S.C. §2425 (Use of interstate facilities to transmit information about a minor)

C. Military Convictions

Hawaii will register most of the military convictions required by SORNA. Nevertheless, there are some UCMJ Offenses (such as Conduct Unbecoming) which will not have an equivalent under Hawaii law and, therefore, would not be registered under Hawaii's existing scheme.

D. Tribal and Foreign Convictions

Hawaii does not include foreign or tribal convictions in its registration scheme.

E. Juvenile Adjudications

Hawaii does not register any juveniles adjudicated delinquent of a sex offense.

Because Hawaii fails to register any tribal, foreign, or juvenile offenders, Hawaii does not meet the SORNA requirements of this section. 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. The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Hawaii's placement of these statutes within the SORNA three tier levels.

Hawaii classifies its offenses in three tiers which parallel SORNA's tiering structure.

A. Tier 1 Offenses

The following offenses are appropriately classified as "tier 1" by Hawaii:

§707-721	Unlawful Imprisonment in the First Degree
§707-722	Unlawful Imprisonment in the Second Degree

§707-732(1)(e)	Sexual Assault in the Third Degree (v=18+)
§707-733(1)(a)	Sexual Assault in the Fourth Degree
§707-752	Promoting Child Abuse in the Third Degree
§707-759	Indecent Electronic Display to a Child

The following 'Tier 1' Hawaii offenses would need to be increased to 'Tier 2' to meet SORNA's requirements:

§707-732(1)(d)(e)(f)	Sexual Assault in the Third Degree (v=13-17)
§707-757	Promoting Child Abuse in the Second Degree

The following 'Tier 1' Hawaii offense would need to be increased to 'Tier 3' to meet SORNA's requirements:

§707-732(d)(e)(f)	Sexual Assault in the Third Degree (v<13)
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B. Tier 2 Offenses

The following offenses are appropriately classified as "tier 2" by Hawaii:

§707-720	Kidnapping with intent to commit sexual offense
§707-731(1)(c)	Sexual Assault in the Second Degree (v=16 or 17)
§707-732(1)(c)	Sexual Assault in the Third Degree
§707-750	Promoting Child Abuse in the First Degree
§707-751	Promoting Child Abuse in the Second Degree
§707-756	Electronic Enticement of a Child in the First Degree
§707-1202(1)(b)	Promoting Prostitution in the First Degree
§707-1203(1)(b)	Promoting Prostitution in the Second Degree

The following 'Tier 2' Hawaii offenses would need to be increased to 'Tier 3' to meet SORNA's requirements:

§707-730(1)(c)	Sexual Assault in the First Degree
§707-731(1)(c)	Sexual Assault in the Second Degree (v<16)

C. Tier 3 Offenses

The following offenses are appropriately classified as "tier 3" by Hawaii:

§707-720	Non-parental kidnapping of a minor
§707-730 (a), (b), (d), (e)	Sexual Assault in the First Degree
§707-731(1)(a) or (b)	Sexual Assault in the Second Degree
§707-732(1)(a), (b) or (f)	Sexual Assault in the Third Degree

The SMART Office has considered the above deviations from SORNA's tiering 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.

Except for the new requirements which originated in the January 2011 Supplemental Guidelines, Hawaii registers all of the information required by SORNA, in the manner which SORNA requires.

In addition, Hawaii requires the registration of information beyond the scope of SORNA's requirements, as follows:

1. Thumbprint on the notice form
2. Citizenship information
3. Treatment History
4. Judgment documents for registration offenses

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

V. Where Registration is Required

Hawaii meets all of the SORNA requirements in this section.

VI. Initial Registration: Generally

Hawaii 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).

The procedure for retroactive application of Hawaii's registration scheme is spelled out in its policies and procedures:

[Hawaii's sex offender registration scheme] went into effect on July 1, 1997 and required all persons (1) convicted, at any time, or (2) charged with and found unfit to proceed, at any time, of a covered offense[,] to register for life with the Department of the Attorney General. In 1997 and again in 2005, the Hawaii Criminal Justice Data Center (HCJDC) [and the] Department of the Attorney General undertook a massive project to locate unregistered sex offenders. Notifications were sent to the most recent address found for each person required to register. However, a number of persons still remain unregistered. Should these persons re-enter the criminal justice system they are required to be registered upon release back into the community.

This will, in large part, meet SORNA's retroactive application requirement. To fully implement this section of SORNA, Hawaii would also need to have a policy or practice of registering sex offenders with out-of-state convictions when and if they re-enter the criminal justice system. These are offenders that *should have* registered upon their arrival in Hawaii, given Hawaii's other provisions regarding initial registration.

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 an offender resides in a jurisdiction, that sex offender must 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 sex offender must immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging 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/NSORSORNA requires that all changes to residence address, school information, employment information, name, and intention to terminate residency be made immediately and in-person. In addition, SORNA requires that certain other registration information be updated immediately, though an in-person appearance is not required.

Hawaii requires an offender to inform the registration authorities of any changes to registration information within three working days of the change, but does not require these updates to be made in person.

SORNA also requires that Hawaii notify the U.S. Marshals Service when they are notified that an offender intends to relocate to another country. Hawaii does not have this procedure in place at the present time.

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.

All sex offenders in Hawaii are initially required to register for life, with in-person annual verifications, except as noted below. However, Hawaii has a procedure through which certain sex offenders may petition for removal from the public registry website or for relief from their registration requirements altogether. Each 'tier' of offender in Hawaii is eligible to make that petition at the following times:

Tier 1 Offenders:	After 10 years with a clean record
Tier 2 Offenders:	After 25 years with a clean record
Tier 3 Offenders:	After 40 years with a clean record.

Hawaii defines 'clean record' the same way that SORNA does, except that it does permit one violation of probation or parole, instead of the 'none' required by SORNA.

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, that SORNA Tier II offenders register for 25 years, and that SORNA Tier III offenders register for life.

All sex offenders required to register in Hawaii are only required to update their information in-person on an annual basis. In addition, all offenders are mailed a non-forwardable verification form every 90 days to the last reported address of the offender. The offender is required to review the verification form, make any corrections to the registration information which it contains, sign, and mail the form to the HCJDC within ten days of receipt.

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.

As indicated above, any Hawaii offender may petition for removal from the registry or the public registry website after a certain period of time, which varies depending on the assigned tier. In the case of offenders who would be classified under SORNA as tier I and tier II offenders, the rules regarding duration of registration meet SORNA's requirements. In the case of offenders who would be classified as tier III under SORNA, the ability to petition for removal after 40 years does not meet SORNA's requirements.

Because there is not a rigorous follow-up process in place when an offender fails to return their regular verification form (see section XIV, below), Hawaii does not meet the SORNA requirements of this section. The remaining deviations do not substantially disserve the purposes of the requirement(s) 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.

Hawaii does not display any offenders convicted of misdemeanor offenses on its public registry website. The following Hawaii offenses would need to be included in the list of those offenses requiring public registry website disclosure to fully implement this portion of SORNA:

- §707-722 Unlawful Imprisonment in the Second Degree (v<18)
- §707-733(1) Sexual Assault in the Fourth Degree (v<18)
(a) or (c)
- §707-759 Indecent Electronic Display to a Child

Hawaii's public registry website displays all of the information required by SORNA, except that Hawaii limits employer information to the name of the street where the employer is located and its zip code, and school information to the name of the school; in contrast, SORNA requires that specific street addresses be listed for both schools and employers. A review of Hawaii's website did reveal, however, that upon entering a specific street name and then searching a specific geographic radius around it, members of the public are able to determine the location of any offenders who are employed within that radius of the street. The search results are displayed with the offenders' location designated as either *Residence* or *Employment*. If the name of an offender is clicked, the public can then retrieve a map which provides a precise location of the offender's place of employment, based on the geocode generated by the specific

street address of an offender's place of employment. Hawaii's website has all of the search functionality, links, and disclaimers required by SORNA. Hawaii fully participates in NSOPW as required by SORNA.

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.

Hawaii has implemented an email notification system as part of its public sex offender registry website. This will meet SORNA's community notification requirements except for those offenders whose specific school information changes as well as those offenders convicted of the three misdemeanor convictions outlined above in section XI.

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. Failure to Register as a Sex Offender: State Penalty

Hawaii meets all of the SORNA requirements in this section.

XIII. When a Sex Offender Fails to Appear for Registration

Hawaii 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.

Hawaii has a procedure where each month a report is run which detects every sex offender who is non compliant, which would include those who have failed to appear for an in-person registration appearance, or have failed to return the verification form described in section IX, above. The information about those non-compliant offenders is then forwarded to the Investigations Division of the Hawaii Attorney General and the U.S. Marshals Service. There are no additional set procedures in place regarding the investigation or prosecution of these non-compliant offenders.

Hawaii does not meet the SORNA requirements of this section.

Conclusion

Hawaii 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 Hawaii 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.