



July 2019

SORNA Substantial Implementation Review State of Idaho — Revised

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) thanks the State of Idaho and recognizes 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 revised review of Idaho's SORNA substantial implementation materials and has determined that Idaho has not substantially implemented SORNA.

In August 2018, the Idaho State Police submitted updated materials to supplement the state's previous substantial implementation package, which was reviewed in 2012. The SMART Office has reviewed current laws and regulations governing sex offender registration and notification in Idaho, as well as forms and other documents. In addition, email, phone correspondence and in-person conversations with the Idaho State Police informed our review.

Our review 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 Idaho 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. Idaho is encouraged to focus on the sections in which the jurisdiction has not met SORNA's requirements, and to work toward rectifying the issues identified in those sections to achieve substantial implementation of SORNA. Idaho is also encouraged to work toward rectifying the deviations that do not substantially disserve the purposes of SORNA to achieve full implementation of SORNA. However failing to rectify this final category will not impact Idaho's ability to achieve substantial implementation.

This report is an exhaustive review and is intended to detail every area in which Idaho has not met SORNA standards. We encourage Idaho to review the information below, share it with relevant stakeholders and contact the SMART Office 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 or her information in a jurisdiction, that the initial registration information or updated information be immediately sent to other jurisdictions where the offender has to register, as well as to the National Crime Information Center's National Sex Offender Registry (NCIC/NSOR) and the jurisdiction's public sex offender registry website.

Idaho meets all of the SORNA requirements in this section.

II. Offenses That Must Be Included in the Registry

SORNA requires 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.

A. Idaho Offenses

Idaho includes most of the Idaho offenses for which SORNA requires registration in its registration scheme. The following Idaho offenses are not included in Idaho's registration law:

- § 18-5606 Accepting earnings of a prostitute (when prostitute is a minor)
- § 18-5608 Harboring prostitutes (when prostitute is a minor)

B. Offenses of Other SORNA Registration Jurisdictions

Idaho requires registration for any offense equivalent to a registerable Idaho offense. Therefore, Idaho may not require registration for offenses from other jurisdictions that are comparable to those offenses listed above.

C. Federal Offenses

Idaho requires registration for any federal offense that is equivalent to any registerable Idaho offense. The following offenses require registration under SORNA but do not appear to have equivalent Idaho offenses.¹

- 18 U.S.C. § 2245 Offenses resulting in death²
- 18 U.S.C. § 2252B Misleading domain names on the internet³
- 18 U.S.C. § 2252C Misleading words or digital images on the internet⁴
- 18 U.S.C. § 2423 Transportation of minors⁵
- 18 U.S.C. § 2424 Filing factual statement about alien individual
- 18 U.S.C. § 2425 Use of interstate facilities to transmit information about a minor

¹ Idaho tries to correlate several of the following federal offenses to the footnoted Idaho offenses, if possible.

² § 18-4003(d)

³ § 18-1509A

⁴ § 18-1509A

⁵ Depending on details of the crime, can be equated to § 18-1508A, § 18-1509A or § 18-5609.

D. Military Offenses

Idaho requires registration for any offense equivalent to a registerable Idaho offense. Therefore, Idaho may not require registration for offenses from other jurisdictions that are comparable to those Idaho offenses listed above.

E. Foreign Offenses

Idaho requires registration for any offense equivalent to a registerable Idaho offense. Therefore, Idaho may not require registration for offenses from other jurisdictions that are comparable to those Idaho offenses listed above.

F. Juveniles

Idaho registers juveniles adjudicated delinquent for sex offenses on or after July 1, 1998, who were at least 14 years old at the time of the offense and —

1. were adjudicated delinquent for any offense that would require an adult to register,
2. have their supervision transferred to Idaho via the interstate compact on juveniles and were adjudicated delinquent in another state for an offense that is substantially equivalent to an offense that would require registration in Idaho, or
3. required to register in another state for having committed a sex offense in that state (regardless of the date of the offense or its adjudication).

These provisions will require registration for juveniles who are required to register under SORNA. Idaho maintains a separate registry for juvenile sex offenders and all juvenile offenders are posted on Idaho's public registry website. When a juvenile sex offender turns 21, the offender is automatically removed from the juvenile registry. The prosecutor may petition the court to transfer the offender to the adult registry, where the offender would be subject to the same requirements as an adult offender. The court must determine that the sex offender is likely to pose a threat to the safety of others to be transferred to the adult registry. If no petition is filed, or if the petition is denied, the juvenile offender is not transferred to the adult registry and is removed from the juvenile registry.

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

III. Required Registration Information

SORNA requires 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.

Idaho deviates from SORNA requirements in that law enforcement does not collect the following information in its registry: permanent or frequent location where all vehicles are kept.

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

IV. Where Registration Is Required

SORNA requires the jurisdiction register an offender if the jurisdiction is the one in which he or she is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work or attend school in the jurisdiction.

Idaho meets all of the SORNA requirements in this section.

V. Initial Registration: Generally

SORNA requires 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 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 or her registration duties and require the offender to acknowledge in writing that he or she understands those duties.

Idaho meets all of the SORNA requirements in this section.

VI. Initial Registration: Retroactive Classes of Offenders

SORNA requires 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 re-enter the jurisdiction's criminal justice system because of some other felony conviction (whether or not it is a sex offense).

Idaho requires registration for adult offenders convicted on or after July 1, 1993, and for juveniles adjudicated on or after July 1, 1998, who have been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another jurisdiction (including a military court), that is substantially equivalent to the offenses listed in Idaho's registration scheme. Idaho also requires any offender who was required to register in any other jurisdiction to register with Idaho when the offender establishes residency in the state. Idaho also requires registration if the offender pleads guilty to or has been found guilty of a crime covered in the registration chapter prior to July 1, 1993, and the person, as a result of the offense, is incarcerated in a county jail or a penal facility or is under probation or parole supervision on or after that date.

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

VII. Keeping the Registration Current

SORNA requires 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 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 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 the offender immediately appear in person to update school-related information.

SORNA also requires when an offender intends to travel outside the United States, the offender notify the residence jurisdiction at least 21 days in advance of such travel.

In addition, SORNA requires when an offender notifies the jurisdiction of intent to relocate to another country to live, work or attend school, or intent to travel to another country, the jurisdiction must do three things: 1) immediately notify any other jurisdiction where the offender is either registered or is required to register of that updated information; 2) immediately notify the United States Marshals Service; and 3) immediately update NCIC/NSOR.

Idaho meets all the requirements of this subsection.

VIII. Offense Tiering and Verification/Appearance Requirements

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

Idaho's offenders are required to register in person on at least an annual basis and must verify their information every four months from initial registration. All adult offenders are required to register for life, unless they successfully petition for removal from the registry, as described below.

A. Offense Tiering

Idaho does not have a tier based system. Adult offenders are required to register for life. Juvenile offenders are required to register until the age 21.

B. Duration of Registration

SORNA requires offenders register for a duration of time based on the tier of the offense of conviction. Specifically, SORNA requires tier I offenders register for 15 years, tier II offenders register for 25 years and tier III offenders register for life.

All adult offenders in Idaho are required to register for life. All juvenile offenders are required to register until age 21.

C. Frequency of Registration

SORNA requires offenders make in-person appearances at the registering agency based on the tier of the offense of conviction. Specifically, SORNA requires Tier I offenders appear once a year, Tier II offenders appear every six months and Tier III offenders appear every three months.

As of July 1, 2011, adult sex offenders, including new registrants, are required to register in person on an annual basis. Every offender is sent a nonforwardable address verification form every four months between annual registrations. If the form is not returned within seven (7) days, the offender is placed in noncompliant status on the registry and the local sheriff is required to visit the offender's address to verify accuracy.

Prior to July 1, 2011, Idaho designated certain offenders convicted in Idaho as violent sexual predators. These offenders are required to register in person on a quarterly basis, and are sent a nonforwardable address verification card every 30 days between registrations. Idaho no longer designates offenders entering the registration system as violent sexual predators, but any offenders who were previously designated as violent sexual predators continue to report in person on a quarterly basis.

D. Reduction of Registration Periods

SORNA creates certain requirements under which a jurisdiction can allow an offender to have a reduced registration period.

Idaho's reduction of registration period substantially disserves the purposes of SORNA by allowing reductions for what are equivalent to SORNA tier III convictions. Idaho's reduction of registration scheme further deviates from SORNA by allowing all classes of offenders to apply to have the duration of registration reduced to 10 years after they are released from incarceration or placed on parole or probation. Offenders convicted of aggravated offenses, those designated as sexually violent predators or those determined to be recidivists are not eligible for any reduction.

Juvenile offenders must register until the age 21. At that time, the juvenile offender is automatically removed from the juvenile registry. The prosecutor may petition the court to transfer the offender to the adult registry, where the offender would be subject to the same requirements as an adult offender. The court must determine that the juvenile offender is likely to pose a threat to the safety of others to be transferred to the adult registry. If no petition is filed, or if the petition is denied, the juvenile offender is not transferred to the adult registry and is removed from the juvenile registry.

E. Clean Record Requirements

Under SORNA, a registered sex offender has a clean record if he or she has satisfied certain requirements.

To be removed, the offender must do the following:

- (a) Provide clear and convincing evidence that the petitioner has completed any periods of supervised release, probation or parole without revocation;
- (b) Provide an affidavit indicating that the petitioner does not have a criminal charge pending nor is the petitioner knowingly under criminal investigation for any violent crime or crime identified in section 18-8304, Idaho Code;
- (c) Provide proof of service of such petition and supporting documents upon the county prosecuting attorney for the county in which the application is made and upon the central registry;
- (d) Provide a certified copy of the judgment of conviction which caused the petitioner to report as a sexual offender;
- (e) Provide clear and convincing evidence that the petitioner has successfully completed a sexual offender treatment program;
- (f) Provide an affidavit demonstrating that the petitioner has no felony convictions during the period for which the petitioner has been registered; and
- (g) Provide an affidavit demonstrating that the petitioner has committed no sex offenses during the period for which the petitioner has been registered.

Additionally, the court must find that it is “highly probable or reasonably certain that the petitioner is not a risk to commit a new violation for any violent crime or crime” that would require registration as a sex offense.

Because Idaho only requires one annual in-person appearance for offenders who would be classified as tier II and tier III under SORNA, and because Idaho provides for reduction of registration periods for SORNA tier III convictions, Idaho does not meet the SORNA requirements of this section.

IX. Public Registry Website Requirements

SORNA requires 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.

All offenders are displayed on Idaho's public registry website.

However, Idaho does not post employer addresses and does not use an alternative method to make this information available to the public, as there is a state statute that prohibits the sharing of employer address information.

Idaho does not meet the SORNA requirements of this section.

X. Community Notification

SORNA requires each jurisdiction disseminate certain initial and updated registration information to particular agencies within the jurisdiction. In addition, SORNA requires each jurisdiction also disseminate certain initial and updated registration information to the community.

Idaho meets most of the SORNA requirements of this section, except for provisions of general community notification. Idaho 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 does not share employer address information.

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

XI. Failure to Register as a Sex Offender: State Penalty

SORNA requires 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.

Idaho meets the SORNA requirements of this section regarding adult offenders. Juvenile sex offenders who fail to register or provide updated registration information as required are subject to a misdemeanor offense.

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

XII. When a Sex Offender Fails to Appear for Registration

SORNA requires when a jurisdiction is notified of a sex offender's intent to reside, be employed or attend school in its jurisdiction, and that offender fails to appear for registration as required, the jurisdiction receiving the notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

Idaho 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.

Idaho meets all of the SORNA requirements in this section.

XIV. Tribal Considerations

There are five SORNA tribes in Idaho: Coeur d'Alene Tribe, Kootenai Tribe of Idaho, Nez Perce Tribe, Shoshone-Bannock Tribes of the Fort Hall Reservation and Shoshone-Paiute Tribes of the Duck Valley Reservation. Idaho has signed memoranda of agreement (MOAs) with all five tribes. Four tribes use the state's system to register their offenders, while the tribes maintain some compliance/enforcement duties, including implementing the provisions of SORNA that Idaho has not implemented. The Shoshone-Bannock Tribes has a modified version of the MOA because it maintains its own public website, but works with Idaho to input information into NCIC/NSOR. In addition, Shoshone-Paiute Tribes is located in two states and Nevada hosts its public website. All five tribes have access to criminal history and corrections information throughout the state. Idaho has also offered to be a conduit for inputting arrest fingerprints into federal databases.

The state contact for SORNA tribes in Idaho is —

Leila McNeill, CPM
Criminal Identification Bureau Chief
Idaho State Police
700 S. Stratford Drive, Suite 120
Meridian, ID 83642-6251

As the SMART Office continues to work with Idaho on SORNA implementation, we will notify the SORNA tribes within the state of any processes, policies or procedures that facilitate sharing criminal justice information.

Conclusion

We appreciate the effort Idaho has put forth in submitting this substantial implementation package and in enhancing its sex offender registration and notification system to better conform to SORNA requirements. The SMART Office concludes that Idaho has not yet substantially implemented SORNA. There are two main provisions identified in this review that should be addressed for Idaho to substantially implement SORNA.

Appendix Idaho Offense Tiering Policy Review

The SMART Office has reviewed Idaho's publically available state laws and practices related to sex offender registration and placed these statutes within the tiering policy structure created in Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA).

In reviewing Idaho's statutes, the SMART Office understands that all adult offenders in Idaho are initially required to register for life.

SORNA Tier I Offenses

SORNA requires Tier I offenders register for a minimum of 15 years and annually verify registration information. The following offenses listed in Idaho's statutes would require, at a minimum, Tier I registration requirements under SORNA.

§ 18-919	Sexual exploitation of medical care provider in the third degree
§ 18-924	Sexual battery
§ 18-1507	Sexual exploitation of a child (possession)
§ 18-1509	Enticing of children (false imprisonment)
§ 18-1505B	Sexual abuse and exploitation of a vulnerable adult (sexual contact)
§ 18-6609	video voyeurism

SORNA Tier II Offenses

SORNA requires Tier II offenders register for a minimum of 25 years and semiannually verify registration information. The following offenses listed in Idaho's statutes would require, at a minimum, Tier II registration requirements under SORNA.

§ 18-1506	Sexual abuse of a child (under the age of 16)
§ 18-1507	Sexual exploitation of a child (child pornography)
§ 18-1508	Lewd conduct with minor (13 or older, sexual contact)
§ 18-1508A	Sexual battery of a minor 16 or 17
§ 18-1509A	Enticing a child through use of the internet or other communication device
§ 18-5605	Detention for prostitution (minor)
§ 18-5609	Inducing person into prostitution (under the age of 18)
§ 18-5610	Utilizing person for prostitution (under the age of 18)
§ 18-5611	Inducing person to patronize a prostitute (under the age of 18)
§ 18-8602	Sex trafficking (minor)

SORNA Tier III Offenses

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

- § 18-909 Assault with intent (assault with intent to commit rape, crimes against nature or lewd and lascivious conduct with a minor)
- § 18-911 Battery with intent (battery with intent to commit rape, crimes against nature or lewd and lascivious conduct with a minor)
- § 18-925 Aggravated sexual battery
- § 18-1505B Sexual abuse and exploitation of a vulnerable adult (sexual act)
- § 18-1506 Sexual abuse of a child (under the age of 13)
- § 18-1506A Ritualized abuse of a child
- § 18-1508 Lewd conduct with minor (under the age of 16, sexual act, the "Romeo and Juliet" exception in 34 U.S.C. §16911(5) (c) will apply, when appropriate)
- § 18-1508A Sexual battery of a minor 16 or 17 (forcible act with a minor)
- § 18-4003(d) Felony murder
- § 18-4502 First degree kidnapping
- § 18-4503 Second degree kidnapping (minor)
- § 18-6101 Rape
- § 18-6110 Sexual contact with a prisoner
- § 18-6602 Incest (minor)
- § 18-6605 Crimes against nature
- § 18-6608 Forcible penetration by foreign object
- § 18-7804 Racketeering (kidnapping of a minor)

In addition, Idaho registers the following offenses: however, without the commission of (or the attempt or conspiracy to commit) a sexual offense, registration of these offenses exceeds the minimum standards of SORNA and they do not require registration under SORNA. Registration for these offenses does not disserve the purposes of the SORNA requirements.

- § 18-4116 Indecent exposure (excluding misdemeanor conviction)
- § 18-5605 Detention for prostitution (adult)
- § 18-8602 Sex trafficking (adult)