



June 2016

SORNA Substantial Implementation Review State of Indiana

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

In December 2015, the Indiana Department of Correction submitted a substantial implementation package that included a completed Substantial Implementation Checklist-Revised, current Indiana statutes and all Indiana criminal offenses which require registration. Additional materials were submitted for SMART's review, including relevant case law, registration policy and procedure, registration forms, and other supporting documentation.

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 Indiana 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 disserve the purposes of that requirement. Indiana 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, Indiana should also work toward rectifying the deviations that do not substantially disserve the purposes of SORNA.

This is an exhaustive review and meant 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 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.

Indiana notifies law enforcement agencies within the state and in other states, as appropriate, updates its public sex offender registry website, and updates the FBI databases when an offender initially registers and/or updates information within three business days. However, Indiana does not notify US territories, the District of Columbia, or tribal jurisdictions of any updates to registration information.

Indiana does not meet 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.

Indiana requires registration when any person is convicted of a listed sex offense, or a conviction for an offense of the law of another jurisdiction, including a military court, which is a "substantially equivalent" offense.¹

A. Indiana Offenses

While Indiana captures most of the offenses required by SORNA, there is no substantially equivalent crime to Transporting a Minor to Engage in Illicit Conduct in the Indiana Code.

B. Federal Offenses

In Indiana, registration is required for any offender if the offense committed in another jurisdiction, including those resulting in convictions in federal court, is substantially equivalent to an Indiana registerable offense. However, while this scheme will include many of the federal offenses requiring registration, Indiana does not require registration for the following federal offenses:

- 18 U.S.C. §2252B (Misleading Domain Names on the Internet)
- 18 U.S.C. §2252C (Misleading Words or Digital Images on the Internet)
- 18 U.S.C. §2260 (Production of Sexually Explicit Depictions of a Minor for Import in to the United States)
- 18 U.S.C. §2423 (Transportation of Minors for Illegal Sexual Activity, Travel With the Intent to Engage in Illicit Sexual Conduct with a Minor, Engaging in Illicit Sexual Conduct in Foreign Places)
- 18 U.S.C. §2424 (Failure to File Factual Statement about an Alien Individual)

¹ Though not specified in Indiana's Code, "jurisdiction" also includes foreign convictions.

- 18 U.S.C. §2425 (Transmitting Information about a Minor to further Criminal Sexual Conduct)

C. Military Offenses

Indiana requires offenders to register if they committed offenses requiring registration under military law, if the offense committed is comparable to an Indiana sex offense. Indiana will register most of the military offenses required by SORNA. Nevertheless, there are some UCMJ Offenses (such as Conduct Unbecoming) that are not comparable to those registerable under Indiana law and, therefore, would not be registered under Indiana's existing scheme.

D. Juveniles

In Indiana, a juvenile who is at least 14 years old adjudicated delinquent for an act that would be a registerable sex offense if committed by an adult and is found by a court by clear and convincing evidence to be likely to recidivate are required to register.

Because Indiana does not register juveniles in accordance with SORNA requirements, Indiana does not meet the SORNA requirements of 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 Indiana's materials and has identified Indiana's placement of these statutes within the SORNA three tier levels (see attached "Indiana Offense Tiering Review" for a detailed analysis regarding this subsection of the review).

Indiana's current registration and notification scheme includes two categories of registrants: 1) Lifetime registrants, who are required to report to local law enforcement every 90 days to verify registration information;² and 2) 10-year registrants (sex or violent offenders), who are required to report to local law enforcement each year to verify registration information.

The following Indiana offenses presently require 10 year registration with annual in-person verification (unless they meet the lifetime registrant criteria, as detailed in Section IX of this report); to meet SORNA requirements these offenses would, at minimum, require 15 year registration with annual in-person verification:

- IC 35-42-4-4(c) Possession of child pornography

The following Indiana offenses also presently require 10 year registration with annual in-person verification (unless they meet the lifetime registrant criteria, as detailed in Section IX of this report); to meet SORNA requirements these offenses would, at minimum, require 25 year registration with twice-annual in-person verification:

² See Section IX for further information about sexually violent predators and lifetime registrants.

- IC 35-42-4-4(b) Child exploitation: Production/distribution of pornography
- IC 35-42-4-5 Vicarious sexual gratification
- IC 35-42-4-7 Child seduction (sexual contact with victim age 13 – 17)
- IC 35-42-4-9 Sexual misconduct with a minor (sexual contact with victim age 13 – 17) (five years older than victim)
- IC 35-42-4-8 Sexual battery (sexual contact with victim age 13 – 17)
- IC 35-45-4-4 Promoting prostitution (victim less than 18 years of age)
- IC 35-42-3.5-1(a)(2) Promotion of human trafficking if the victim is less than 18 years of age
- IC 35-42-3.5-1(b) Sexual trafficking of a minor
- IC 35-42-3.5-1(c)(3) Human trafficking if the victim is less than 18 years of age

The following Indiana offenses also presently require 10 year or lifetime registration, with annual in-person verification (unless they meet the lifetime registrant criteria, as detailed in Section IX of this report); to meet SORNA requirements, these offenses would, at minimum, require lifetime registration with quarterly in-person verification:

- IC 35-42-4-1 Rape
- IC 35-42-4-2 Criminal deviate conduct
- IC 35-42-4-3 Child molesting
- IC 35-42-4-7 Child seduction (sexual act or sexual contact with victim under 13 years of age)
- IC 35-42-4-9 Sexual misconduct with a minor (sexual act) (five years older than victim)
- IC 35-46-1-3 Incest
- IC 35-42-4-8 Sexual battery (victim under 13 years of age)
- IC 35-42-3-2 Kidnapping
- IC 35-42-3-3 Criminal confinement

Indiana does not meet the SORNA requirements of 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. Indiana deviates from SORNA requirements in that law enforcement does not collect and keep the following information in its registry:

- Date of birth: purported date of birth
- Palm prints
- Passports and immigration documents
- Telephone numbers (land line and cell phone)
- Professional licensing information

- Social security number: purported social security number
- Vehicle information:
 - Aircraft
 - Watercraft
 - Permanent or frequent location where all vehicles are kept

These deviations do 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.

Indiana does not require that a sex offender initially register in the jurisdiction of conviction, nor does it require that a sex offender register in the jurisdiction in which they completed their term of incarceration. Instead, sex offenders are required to initially register in the jurisdiction they intend to reside, are employed, or are students.

These deviations do not substantially disserve the purposes 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.

In Indiana, within seven days of an offender's release from incarceration the offender is informed of the duty to register and must sign a form in acknowledgment. However, offenders are not required to register prior to release from incarceration. Indiana requires that an offender who is not a lifetime registrant must register in the jurisdiction they intend to reside, are employed, or are students within seven days of release or sentencing; lifetime registrants must register within three days of release or sentencing.

Indiana does not meet 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).

Indiana enacted its first registration and notification law in 1994, which was not retroactive at the time. The law was since amended in 2001 to make it retroactive to persons who had committed their qualifying offense prior to the initial law was enacted. However, in 2009, the Indiana Supreme Court determined that the Indiana Sex Offender Registration Act presented an ex post facto violation of the Indiana Constitution.³

To the extent that the effect of this decision has caused Indiana to fall short of SORNA's minimum standards in this section, we find that under 42 U.S.C. §16925(b), Indiana is entitled to an exception. Therefore, these deviations do not substantially disserve the purposes of the SORNA requirements in this section.

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. 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.

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 notify 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

³ See: *Wallace v. State*, 905 N.E.2d 371 (Ind.2009).

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.

Indiana's statutes and policies meet most of the SORNA requirements in this section, with exceptions. When an offender notifies law enforcement that he/she intends to relocate to another country Indiana does not notify the United States Marshals Service. In addition, Indiana does not require registered sex offenders to provide 21 day advance notice of international travel and does not immediately notify the United States Marshals Service, other jurisdictions where the sex offender may be registered, or update NCIC/NSOR as required by the SORNA Supplemental Guidelines, published on January 11, 2011.

Because Indiana does not require offenders to provide 21 day advance notice of international travel, Indiana does not meet the SORNA requirements of 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.

Indiana's registration and notification scheme deviates from SORNA requirements in that sex offenders are required to either register for 10 years or for life. All sex or violent offenders are expected to register for a minimum of ten years.

Indiana requires lifetime registration under four different scenarios:

1. If the sex or violent offender has been determined to be a sexually violent predator, a status indicated by a court or following a hearing.⁴
2. If the individual committed a registerable offense and the victim was under the age of 12 and the perpetrator was at least 18 years old.
3. If the individual committed a registerable offense, and:
 - a. Proximately caused serious bodily injury or death to the victim;
 - b. Used force or the threat of force against the victim or a member of the victim's family; or
 - c. Rendered the victim unconscious or otherwise incapable of giving voluntary consent.
4. If the individual was convicted of at least two unrelated registerable offenses.

⁴ "Sexually violent predator" means a person, at least 18 years old, who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense.

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.

Indiana requires that all registered sex offenders must annually update information with law enforcement; quarterly registration is required if the offender is determined to be a lifetime registrant.

C. Reduction of Registration Periods

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

Indiana deviates from SORNA in its allowance of reduced registration periods for individuals found to be sexually violent predators. Ten years after being determined a sexually violent predator or ten years after release from incarceration, an offender who is a sexually violent predator who has not reoffended for a new sex offense, may petition the court annually to reconsider his/her status as a sexually violent predator. If granted relief, the duty to register may be terminated.

Indiana 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. Indiana's public registry website requirements deviate from SORNA requirements in that the public registry website does not display the following information required by SORNA:

- Criminal History
- Vehicle(s) information, including license plate number(s) and vehicle description(s)

These deviations do not substantially disserve the purposes 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.

While Indiana does monitor the SORNA Exchange Portal to receive inter-jurisdictional changes of residence, employment or student status from other jurisdictions, Indiana does not send notice of these changes to other jurisdictions through the SORNA Exchange Portal. In addition, Indiana does not provide notification to prosecutor's offices, probation agencies, or other agencies involved with criminal investigation, prosecution, or other supervision functions, nor are agencies responsible for conducting background checks.

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.

In Indiana, when a sex or violent offender fails to register, the first offense has an advisory sentence of one year, and a range of six to thirty months. A subsequent offense has an advisory sentence of three years, and a range of one to six years

Indiana meets the SORNA requirements of 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.

Indiana does not notify an out-of-state jurisdiction that provided a notification that a sex offender failed to appear for registration and, therefore, does not meet 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.

In Indiana, if a local law enforcement authority has reason to believe that a registrant is in violation of his/her registration requirements, then the authority pursues a criminal investigation. If a registered offender appears not to reside at the listed address, the local law enforcement authority shall immediately notify the department of correction and the local prosecuting attorney so a criminal investigation can commence. Indiana does not mandate entry of absconder information into NCIC's Wanted Person File; however, if Indiana issues a felony or misdemeanor warrant then that information is entered into the NCIC Wanted Person file. Additionally, when a warrant is issued, the U.S. Marshals are not proactively notified. However, there is a feature in Offender Watch that allows a local sheriff to notify the U.S. Marshals about an offender who is in violation of registration requirements.

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

Conclusion

We encourage Indiana 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 Indiana 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: Indiana Offense Tiering Review

The SMART Office has reviewed all Indiana statutes identified in its substantial implementation submission package and has identified Indiana'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). It should be noted that SORNA requires all attempts, conspiracies, and solicitations to mirror requirements of the actual offense. 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 Indiana. It is possible that other offenses will need to be included in Indiana's sex offender registry to substantially implement SORNA. For more guidance on SORNA classes of offenders, see 42 USC § 16911 and Section V (pages 21-25) of the National Guidelines for Sex Offender Registration and Notification (June 2008).

In reviewing Indiana Code of Criminal Procedure, the SMART Office understands that Indiana has essentially two categories of registrants:

1. Lifetime registrants (sexually violent predators), who are required to report to local law enforcement every 90-days to verify registration information; and
2. 10-year registrants (sex or violent offenders), who are required to report to local law enforcement each year to verify registration information.

Tier I Offenses

SORNA requires a minimum duration of 15 years for all Tier I offenses and a one-year interval for in-person registration verification. In order to meet these minimum requirements, Indiana must ensure that the registration duration is 15 years for State offenses equivalent to Tier I offense under SORNA, as well as continue to require annual in-person verification of registration information. The following offense listed in Indiana Code would require, at minimum, Tier I registration requirement:

- IC 35-42-4-4(c) Possession of child pornography

Tier II Offenses

SORNA requires a minimum duration of 25 years for all Tier II offenses and a 6-month interval for in-person registration verification. Indiana currently does not utilize this tier in their registration scheme. However, the following offenses listed in Indiana Code would require, at minimum, Tier II registration requirements:

- IC 35-42-4-4(b) Child exploitation: Production/distribution of pornography
- IC 35-42-4-5 Vicarious sexual gratification
- IC 35-42-4-7 Child seduction (sexual contact with victim age 13 – 17)

- IC 35-42-4-9 Sexual misconduct with a minor (sexual contact with victim age 13 – 17) (five years older than victim)
- IC 35-42-4-8 Sexual battery (sexual contact with victim age 13 – 17)
- IC 35-45-4-4 Promoting prostitution (victim less than 18 years of age)
- IC 35-42-3.5-1(a)(2) Promotion of human trafficking if the victim is less than 18 years of age
- IC 35-42-3.5-1(b) Sexual trafficking of a minor
- IC 35-42-3.5-1(c)(3) Human trafficking if the victim is less than 18 years of age

Tier III Offenses

SORNA requires lifetime registration for all Tier III offenses and a 90-day interval for in-person registration verification. The following offenses listed in Indiana Code would require Tier III registration requirements:

- IC 35-42-4-1 Rape
- IC 35-42-4-2 Criminal deviate conduct
- IC 35-42-4-3 Child molesting
- IC 35-42-4-7 Child seduction (sexual act or sexual contact with victim under 13 years of age)
- IC 35-42-4-9 Sexual misconduct with a minor (sexual act) (five years older than victim)
- IC 35-46-1-3 Incest
- IC 35-42-4-8 Sexual battery (victim under 13 years of age)
- IC 35-42-3-2 Kidnapping
- IC 35-42-3-3 Criminal confinement