



October 3, 2011

## **SORNA Substantial Implementation Review State of Kentucky**

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

On July 27, 2011, the Kentucky Justice and Public Safety Cabinet submitted a completed Substantial Implementation Checklist-Revised, with links to online relevant statutes and codes, Kentucky State Police and Department of Corrections sex offender registration, notification and supervision policies.

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 Kentucky meets or does not meet SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify that the departure(s) from a particular requirement does not substantially disserve the purpose of that requirement. In other words, Kentucky is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, but this is not necessary for substantial implementation purposes.

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 the 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. Kentucky's methods of transferring information deviate from SORNA requirements.

Kentucky sends updated information to required out-of-state jurisdictions only if an offender is moving residency out of state, but not upon notice of change in employment or school. Furthermore, Kentucky defines immediate as five days—SORNA requires three days.

Because Kentucky does not update the required out-of-state registering agencies, Kentucky does not meet the SORNA requirements of 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 are included in a jurisdiction's registration scheme.

Kentucky's registration scheme captures most offenses required by SORNA, with exceptions. Kentucky requires registration for:

- Any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country.
- Any person required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student.

While these provisions will capture most of the offenses required to be registered by SORNA, this scheme deviates from SORNA requirements. It appears that offenses committed in the District of Columbia or any tribe operating as a SORNA registration jurisdiction will not be captured in this scheme, unless it is an offense substantially similar to a Kentucky State sex offense.

In Kentucky, juveniles adjudicated delinquent for sex offenses are not required to register as sex offenders. However, juveniles are subject to registration under limited circumstances, including if they are convicted as an adult of a sex crime, if they move to Kentucky from another jurisdiction where they were required to register, or if they meet the definition of a sexually violent predator.

Because Kentucky does not register juveniles adjudicated delinquent for serious sex offenses in its registration scheme, Kentucky 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, established through a baseline three-tier classification system. For clarification purposes, the SMART Office has reviewed all of the statutes identified in Kentucky's registration and notification scheme and has placed these statutes within the SORNA three tier levels (see attached "Kentucky Offense Tiering Review" for a detailed analysis regarding this subsection of the review).

Kentucky uses a two-category system (20 year and lifetime) for registration purposes;<sup>1</sup> this structure does not meet the minimum requirements identified in SORNA. While many offenses listed in Kentucky's 20-year registration category exceed SORNA's requirements (i.e., SORNA Tier I offenses require 15 year registration), this 20-year category is not sufficient for many offenses (i.e., SORNA Tier II offenses require 25-year registration). Additionally, the following offenses listed in Kentucky's 20-year registration category require lifetime registration (Tier III) under SORNA:

- §510.050. Rape 2nd Degree
- §510.060. Rape 3rd Degree
- §510.080. Sodomy 2nd Degree
- §510.090. Sodomy 3rd Degree
- §510.110. Sexual Abuse 1st Degree
- §530.020(2)(b)(c). Incest

Kentucky categorizes as 20-year registrants those offenders convicted of felony attempted sex crimes and attempts of any criminal offense against a victim who is a minor. To meet SORNA provisions in this section, Kentucky must ensure that attempts or conspiracies mirror the commission of an offense and therefore require the same registration requirements.

Finally, Kentucky categorizes as 20-year registrants those offenders convicted of any registerable sex offenses in federal court, other states/territories, and sex offense felonies subject to court-martial of the U.S. Armed Forces. To meet SORNA provisions in this section, Kentucky must ensure that these offenses are categorized in accordance with SORNA requirements.

Because Kentucky does not correctly classify many of its offenses, as well as out-of-state offenses, in the minimum SORNA tiering structure, Kentucky does not meet the SORNA requirements of this section.

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<sup>1</sup> See Section IX of this report for more information about Kentucky's duration and frequency of appearance structure as it compares to SORNA.

#### **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. Kentucky does not collect and keep the following information required by SORNA in its registry:

- Driver's license
- Employment information
- Palm prints
- Passports and immigration documents
- Phone numbers
- Professional licensing information
- Temporary lodging information
- Vehicle information

Because Kentucky does not capture and maintain the necessary information from registered sex offenders in its sex offender registry, Kentucky does not meet the SORNA requirements of 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.

Kentucky meets all of the SORNA requirements in this section.

#### **VI. Initial Registration: Generally**

SORNA requires that when an offender is incarcerated within the jurisdiction, that registration 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.

Kentucky's registration scheme deviates from SORNA requirements in this section. Kentucky requires offenders convicted and/or sentenced in another jurisdiction who move to Kentucky for residential, employment, or school purposes to register within five working days of their arrival in the state. Furthermore, registration officials in Kentucky are not required to

inform the offender of his/her registration requirements; rather, offenders are “presumed to know of the duty to register” because of their pre-existing registration requirements in other jurisdictions.

These deviations do not substantially disserve the purposes of the 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). Kentucky’s retroactive provisions deviate from SORNA requirements.

Kentucky’s registration scheme applies to individuals:<sup>2</sup>

- Convicted after July 15, 1994 of a sex crime
- Incarcerated or sentenced after July 15, 1998 for a sex crime (even if convicted prior to July 16, 1994)
- Convicted or released from incarceration (even if convicted prior to July 16, 1994) after April 11, 2000 for a criminal offense against a victim who is a minor

To meet SORNA’s requirements in this section, Kentucky will also need to capture those individuals who committed qualifying registerable sex offenses prior to July 15, 1994, and who reenter the criminal justice system because of a conviction based on another felony crime.

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

## **VIII. Keeping the Registration Current**

SORNA requires that when an offender resides in a jurisdiction, that the sex offender 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 the sex offender immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

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<sup>2</sup> See: <http://kentuckystatepolice.org/sor.htm>

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, 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.

Kentucky's statutes and policies deviate from the SORNA requirements in this section. Registered sex offenders in Kentucky are not required to report immediately to the registering agency changes in name, employment, or school attendance, and they are not required to update changes in vehicle information, or temporary lodging information (in-person or otherwise). Additionally, Kentucky does not require offenders who are employed or attending school in the state to update employment or school related information.

Kentucky does not notify other jurisdictions where an offender is either registered or required to register if the offender intends to relocate to another country, nor does the state notify the U.S. Marshals Service of such intent. Likewise, Kentucky does not require registered sex offenders to provide 21 day advance notice of international travel as required by the SORNA Supplemental Guidelines, published on January 11, 2011. Given that the SORNA Supplemental Guidelines were published recently, we expect Kentucky to adopt this requirement in the near future and notify the SMART Office once the requirement is met.

Because Kentucky does not require offenders to update much of the required registration information and inform appropriate entities of foreign relocation, Kentucky does not meet the SORNA requirements of 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: Tier I offenders register for a minimum of 15 years and annually verify registration information, Tier II offenders register for a minimum of 25 years and semi-annually verify registration information, and Tier III offenders register for life and quarterly verify registration information.

Kentucky deviates from SORNA requirements in its application of registration duration and in its method of determining how often registered sex offenders must report in-person to

verify registration information (see Appendix: Kentucky State Offense Tiering Review). Kentucky has two categories of registrants, in which duration and frequency of reporting are based:

- 20-year registrants, required to verify information yearly
- Lifetime registrants, required to verify information quarterly

Registrants in Kentucky are not required to report in-person to verify registration information, as required by SORNA. Rather, address verification forms are mailed to registrants by the Department of Kentucky State Police for completion and return by mail. Additionally, registrants are required to report every two years to have new photographs taken (SORNA requires an allowance for photographs to be taken at each in-person verification visit).

Because Kentucky does not meet the minimum in-person verification requirements, Kentucky 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.

Kentucky's public registry website does not display the following information required by SORNA:

- Instructions on how to seek correction of information (however, sex offender registry contact information is provided)
- Employer address
- Vehicle(s) information, including license plate number(s) and vehicle description(s)

Because Kentucky does not make available on its public registry website information regarding an offender's employment address and vehicle information,<sup>3</sup> Kentucky does not meet the SORNA requirements of 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. Kentucky's law enforcement and public community notification schemes deviate from SORNA requirements.

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<sup>3</sup> Kentucky does not collect this information from registrants (see Section IV).

Kentucky does not notify each jurisdiction where an offender resides, is an employee, or is a student about a change in residence, employment, or student status. Furthermore, Kentucky does not notify all appropriate law enforcement agencies, including police departments, sheriff's offices, prosecutor's offices, or any other criminal justice agencies of any changes to a registrant's information.

Additionally, Kentucky does not provide notification, as required by SORNA, to the general public whenever a sex offender commences employment or school attendance in a jurisdiction.

Because Kentucky does not notify the required law enforcement entities of changes in registration status, Kentucky does not meet the SORNA requirements of 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.

Kentucky meets 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.

Kentucky does not inform the originating jurisdiction of a registrant's failure to appear; therefore, Kentucky does not meet the SORNA requirements of 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.

Kentucky deviates from SORNA requirements in this section, in that the state does not notify the U.S. Marshals Service for investigation of registration violations.

Kentucky does not meet the SORNA requirements of this section.



## **Conclusion**

We appreciate the efforts that Kentucky 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. However, there many are provisions identified in this report that should be addressed in order for Kentucky to substantially implement SORNA.

We encourage you to contact the SMART Office with any questions or concerns once you have had the opportunity to review and discuss our findings.

## **Appendix: Kentucky State Offense Tiering Review**

The SMART Office has reviewed all Kentucky statutes identified in its substantial implementation submission package and has identified Kentucky'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 Kentucky. It is possible that other offenses will need to be included in Kentucky'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 the Revised Code of Kentucky, the SMART Office understands that Kentucky has essentially two categories of registrants:

1. Lifetime registration is required for:
  - Any person who has been convicted of kidnapping, as set forth in KRS 509.040, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
  - Any person who has been convicted of unlawful confinement, as set forth in KRS 509.020, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
  - Any person convicted of a sex crime:
    - Who has one (1) or more prior convictions of a felony criminal offense against a victim who is a minor; or
    - Who has one (1) or more prior sex crime convictions;
  - Any person who has been convicted of two (2) or more felony criminal offenses against a victim who is a minor;
  - Any person who has been convicted of:
    - Rape in the first degree under KRS 510.040; or
    - Sodomy in the first degree under KRS 510.070; and
  - Any sexually violent predator.
2. All other registrants are required to register for 20 years following discharge from confinement or release from probation.

The following sections describe how Kentucky State's sex offenses fit within SORNA's offense-based tiering structure.

### **SORNA TIER I**

The following Kentucky State offenses fall under SORNA Tier I, thereby requiring registration for a minimum of 15 years with yearly in-person verification:

- §510.120. Sexual Abuse 2nd Degree (misd.)
- §510.130. Sexual Abuse 3rd Degree (misd.)
- §531.335. Possession of Matter Portraying a Sexual Performance by Minor
- §531.090. Voyeurism (minor)
- §531.100. Video Voyeurism (minor)
- §509.020. Unlawful Imprisonment 1st Degree

### **SORNA TIER II**

The following Kentucky State offenses fall under SORNA Tier II, thereby requiring registration for a minimum of 25 years with in-person verification required every 6 months:

- §510.155. Unlawful Use of Electronic Means to Induce Minor
- §530.064(1)(a). Unlawful Transaction with a Minor 1st Degree
- §531.320. Promoting a Sexual Performance of a Minor
- §531.340. Distribution of Matter Portraying a Sexual Performance by a Minor
- §531.350. Promoting Sale of Material Portraying a Sexual Performance by Minor
- §531.360. Advertising Material Portraying a Sexual Performance by Minor
- §529.040. Promoting Prostitution (minor)
- §531.310. Use of a Minor in a Sexual Performance
- §531.370. Use of Minors to Distribute Material Portraying Sexual Performance Minor
- §529.100. Human Trafficking
- §510.110. Sexual Abuse 1st Degree (victim 13 years of age or older)
- §530.020(2)(a). Incest

### **SORNA TIER III**

The following Kentucky State offenses fall under SORNA Tier III, thereby requiring registration for life with in-person verification required every 3 months:

- §510.050. Rape 2nd Degree
- §510.060. Rape 3rd Degree
- §510.080. Sodomy 2nd Degree
- §510.090. Sodomy 3rd Degree
- §510.110. Sexual Abuse 1st Degree (sexual contact with victim under 13 years of age)
- §530.020(2)(b)(c). Incest
- §509.040. Kidnapping (non-parental)
- §510.040. Rape 1st Degree

- §510.070. Sodomy 1st Degree

### **Further Review**

In reviewing the statutes that Kentucky cited as those that are registerable offenses under Kentucky's registration scheme, the SMART office did notice offenses that do not require registration under SORNA:

- §531.020. Distribution of Obscene Matter
- §531.030. Distribution of Obscene Matter to Minors
- §531.040. Using Minors to Distribute Obscene Material
- §510.148. Indecent Exposure First Degree (3rd offense)
- §531.050. Advertising Obscene Material (minor)
- §531.060. Promoting Sale of Obscenity (minor)