



March 18, 2013

## **SORNA Substantial Implementation Review Lower Elwha Klallam Tribe**

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 Lower Elwha Klallam Tribe 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 Lower Elwha Klallam Tribe's SORNA substantial implementation packet and has found that the Lower Elwha Klallam Tribe has substantially implemented SORNA.

On July 25, 2011, the Lower Elwha Klallam Tribe submitted a substantial implementation package that included several exhibits, including background information on the tribe and its criminal justice system, courts, and police department; policies and procedures regarding sex offender registration; the tribe's sex offender registration law; and other relevant additional documents. In addition, email and phone correspondence with tribal representatives filled in gaps in laws and procedure.

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, which contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether Lower Elwha Klallam Tribe 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.

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

### **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 NCIC/NSOR and the jurisdiction's public sex offender registry website.

The Lower Elwha Klallam Tribe 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.

The Lower Elwha Klallam Tribe meets all of the SORNA requirements in this section.

## **III. Tiering of Offenses**

SORNA requires that offenses be classified based on the nature of the offense of conviction. The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Lower Elwha Klallam Tribe's placement of these statutes within the SORNA three tier levels. Lower Elwha Klallam Tribe correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions:

1. The tiering for Military Convictions should cross reference to the respective tiering section, not the general definition of "sex offense". In other words, military offenses similar to those listed in §8.01 should be Tier 1 Offenses, those similar to §8.02 should be tier 2, and those similar to §8.03 should be tier 3.
2. 18 U.S.C. §2423(d) (when the victim is under 18) should be specifically tiered as a tier 2 offense.

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

The Lower Elwha Klallam Tribe meets all of the SORNA requirements in this section.

## **V. Where Registration is Required**

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

The Lower Elwha Klallam Tribe meets all of the SORNA requirements in this section.

## **VI. Initial Registration: Timing and Notice**

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.

The Lower Elwha Klallam Tribe 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 Lower Elwha Klallam Tribe meets all of the SORNA requirements in this section.

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

SORNA requires that when a sex offender resides in a jurisdiction, he or she 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, he or she 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 and intends to travel outside the United States, he or she must 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 or her intent to relocate to another country to live, work or attend school, 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.

The Lower Elwha Klallam Tribe meets all of the SORNA requirements in this section.

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

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

SORNA also 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.

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

### **A. Duration of Registration**

The Lower Elwha Klallam Tribe requires a duration of registration in accordance with SORNA's requirements. Tier 1 offenders are required to register for 15 years, Tier 2 offenders register for 25 years, and Tier 3 offenders register for life.

### **B. Frequency of Registration**

The Lower Elwha Klallam Tribe requires a frequency of registration in accordance with SORNA's requirements. Tier 1 offenders are required to make a verification appearance annually, Tier 2 offenders make a verification appearance every 180 days, and Tier 3 offenders make a verification appearance every 90 days.

### **C. Reduction in Registration Period**

The Lower Elwha Klallam Tribe requires a frequency of registration in accordance with SORNA's requirements. Tier 1 offenders may have their duration of registration reduced to ten years if they have maintained a 'clean record' for ten consecutive years. Tier 3 offenders may have their period of registration reduced to 25 years if they are registered on the basis of a juvenile delinquency adjudication and have maintained a clean record for 25 consecutive years.

### **D. Clean Record Requirement**

The Lower Elwha Klallam Tribe requires the following for a 'clean record': no further convictions for any criminal offense (including a sex offense), successful completion (without revocation) any period of supervised release, parole or probation, and completion of a sex offender treatment program.

The Lower Elwha Klallam Tribe meets all of the SORNA requirements in 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.

The Lower Elwha Klallam Tribe meets all of the SORNA requirements in this section.

### **XI. Community Notification**

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

The Lower Elwha Klallam Tribe meets all of the SORNA requirements in this section.

### **XII. 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.

The Lower Elwha Klallam Tribe 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.

The Lower Elwha Klallam Tribe meets all of the SORNA requirements in this section.

### **XIV. Other Considerations**

The Lower Elwha Klallam Tribe is in the process of implementing an MOU with the State of Washington regarding the entry of data into NSOR. In order to maintain its status in future years as having substantially implemented SORNA, the Lower Elwha Klallam Tribe is expected to diligently pursue the finalization of this process. The SMART Office will specifically review the status of this process in the course of its ongoing implementation assurance process.

In addition, there are a number of technical corrections which should be made to the code as soon as possible by Lower Elwha Klallam Tribe:

1. The duration and frequency requirements of Chapter 9 conflict with those contained in §3.21 and should be reconciled.
2. §3.01(A)(1) should cross-reference Chapter 4, not Chapter 5.
3. §4.02(B)(4) indicates that Lower Elwha Klallam Tribe will forward registration information to *all* 50 States and the Territories (regardless of whether the offender is required to register in those jurisdictions); SORNA only requires that information be forwarded to any jurisdiction where an offender is required to register.
4. §4.05(C) should cross-reference §4.05(B), not §5.03(B).
5. §5.01 references “TTSORS” in multiple locations, and should reference the “Lower Elwha Klallam Tribe Public Sex Offender Registration Website”, instead.

As part of its ongoing implementation review process, the SMART Office will seek to confirm that Lower Elwha Klallam Tribe has rectified these listed issues, as well as those contained in Section III, above.

### **Conclusion**

Lower Elwha Klallam Tribe has put forth exceptional work and effort in substantially implementing 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 Lower Elwha Klallam Tribe to fully 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.