



July 19, 2011

## **SORNA Substantial Implementation Review State of Maryland - Revised**

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 Maryland 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 Maryland's revised and updated SORNA substantial implementation packet, and has found the State of Maryland to have substantially implemented SORNA.

In February 2011, the SMART Office determined that the Maryland Department of Public Safety and Correctional Services' (DPSCS) earlier submission did not meet substantial implementation of SORNA. On July 13, 2011, DPSCS submitted supplemental information about Maryland's registration scheme for juveniles adjudicated delinquent for sex offenses. Based upon this supplemental information, the SMART Office reconsidered its earlier determination.

The following review updates the February 2011 report issued to Maryland. 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 Maryland meets 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, Maryland 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 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.

In the February 2011 SMART Office report to Maryland, it was noted that Maryland's definition of "Jurisdiction" included only States and Native American tribes and that in order to meet SORNA requirements "jurisdiction" must also include the five principal U.S. territories and the District of Columbia. However, upon subsequent review of the Code of Maryland Regulations 12.06.01.00, it is evident that Maryland's definition of "Jurisdiction" includes the following as determined under 42 U.S.C. §16911(10):

- (i) A state;
- (ii) The District of Columbia;
- (iii) The Commonwealth of Puerto Rico;
- (iv) Guam;
- (v) American Samoa;
- (vi) The Northern Mariana Islands;
- (vii) The United States Virgin Islands; and
- (viii) A federally recognized Indian Tribe

Maryland 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.

While Maryland meets most of the requirements of this section, Maryland's term "convicted" includes the provision "probation before judgment," which allows the court, upon fulfillment of the conditions of probation, to discharge the defendant from probation. Discharge in this instance means that the defendant shall be without judgment of conviction. A number of Maryland's registerable offenses qualify for this provision and, thus, would be excused from the registration requirements upon discharge. This allowance deviates from the SORNA requirement. To meet this SORNA requirement, Maryland will need to include all registerable sex offenses in Criminal Procedure Article §6-220(d)(3).

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

## **III. Tiering of Offenses**

The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Maryland's placement of these statutes within the SORNA three tier levels. Maryland correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions:

CL § 3-307(A)(4) Sex Offense 3<sup>rd</sup> Degree: engaging in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old.

CL § 3-307(A)(5) Sex Offense 3<sup>rd</sup> Degree: engaging in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

Maryland classifies these offenses as Tier II (25 year registration). These offenses involve sexual acts with minors under the age of 16, thereby requiring Tier III registration (lifetime) under SORNA.

These deviations do not substantially disserve the purposes of these 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.

Maryland 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.

Maryland meets all 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.

Maryland 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).

Maryland meets all 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 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.

Maryland 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. Maryland meets most of the requirements of this section, with notable exceptions. Adult sex offenders in Maryland are required to register based upon Tier designation in accordance to SORNA requirements: Tier I offenders are required to register annually for 15 years; Tier II offenders are required to register twice-annually for 25 years; and Tier III offenders are required to register quarterly for life. However, Maryland's registration scheme for juveniles, 14 years of age or older, adjudicated delinquent for "aggravated" sex offenses deviates from SORNA requirements.

Based on information submitted to the SMART Office, in Maryland, juveniles adjudicated delinquent for "aggravated" sex offenses are required to report in-person for registration every three months.<sup>1</sup> This meets SORNA requirements. However, Maryland deviates from SORNA requirements in that juveniles are not required to register for life, but rather for the term of their juvenile probation. State Juvenile Courts may extend the duration of registration beyond a juvenile's probation term. The Court may, under a clear and convincing standard, find that a juvenile is at "significant risk for committing a sexually violent offense" and require a juvenile to continue registration and have their registration information posted on the State's public sex offender website for 5 years beyond the age of 21.

Maryland's procedure for updating offenders' photographs also deviates from SORNA requirements. SORNA requires that an updated photograph be collected unless appearance has not significantly changed once per year for Tier I offenders, once every six months for Tier II offenders, and once every 90 days for Tier III offenders. Maryland provides for an updated photograph at six month intervals only (regardless of offenders' Tier designation).

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

## **X. Registry Website Requirements**

SORNA requires that each jurisdiction maintain a public sex offender registry website and publish certain registration information on that website. SORNA also requires that certain information not be displayed on a jurisdiction's public registry website.

Maryland meets all of the SORNA requirements in this section.

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<sup>1</sup> Juveniles adjudicated delinquent for "aggravated" sex offenses are required to submit DNA to the Maryland Crime Laboratory, fingerprints to the Criminal Justice Information System. Juvenile's DNA and fingerprints are shared with the National Criminal Justice Information System for incorporation into the national databases (meeting the requirements of section IV). These juveniles are also required to update all of their registration information within the same timeframes as Maryland's adult registrants (meeting the requirements of section VIII). Juvenile registration information is included in Maryland's CJIS database and is therefore subject to the automatic notifications to agencies responsible for employment related, and fingerprint supported, background investigations. Additionally, all law enforcement agencies and the Maryland Department of Juvenile Services have access to the non-public juvenile registration database for law enforcement purposes (meeting the requirements of section XI).

## **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.

In the February 2011 SMART Office report to Maryland, it was noted that Maryland did not provide notification to any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a). Upon subsequent review, it is evident that these entities can request the information from the Maryland Criminal Justice Information System Central Repository (administered by DPSCS) for the purposes of employment-related background checks.

Maryland meets all 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.

Maryland meets all of the 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.

Maryland meets all of the SORNA requirements in this section.

## **XIV. When a Jurisdiction has Information that a Sex Offender may have Absconded**

SORNA requires that when a jurisdiction has information that a sex offender may have absconded, that the jurisdiction take certain actions in terms of investigating the absconder and notifying various law enforcement agencies.

Maryland meets all of the SORNA requirements in this section.

## **Conclusion**

Maryland has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. However, there are several provisions identified in this report that should be addressed in order for Maryland to fully implement SORNA. Namely, the allowance of offenders who receive probation before judgment to be excused from the registration requirements and the short duration of registration requirements for juveniles adjudicated for aggravated sex offenses.

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 fully adopting the remaining provisions of SORNA.