



May 9, 2011

SORNA Substantial Implementation Review State of Michigan

The U.S. Department of Justice, Office of Justice Program, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the State of Michigan 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 Michigan's SORNA substantial implementation packet and has found the State of Michigan to have substantially implemented SORNA.

On April 19, 2011, the Michigan Department of State Police submitted a substantial implementation package that included a completed Substantial Implementation Checklist, relevant state statutes, Criminal Justice Information Center Sex Offender Registry and Enforcement Unit policy, current and planned sex offender registry system documentation, current and planned public sex offender registry website documentation, and Michigan State Police memorandum of agreements with Indian tribes located within the state.

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist—Revised. We have highlighted those areas that are not in conformity with the SORNA guidelines. 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

Michigan is presently enhancing its Criminal Justice Information Network to ensure that initial sex offender registration records and updated registration information is immediately (within 24 hours) transmitted to the appropriate entities identified in SORNA. Additionally, these enhancements will ensure participation with the SORNA Exchange Portal and timely record submission to NSOR. These enhancements are reflected in Sex Offender Registry and Enforcement Unit (SORE) Policies 301 to 305, which were revised in March 2011. With these enhancements, Michigan meets the SORNA requirements of this section.

II. Offenses that Must Be Included in the Registry

With the exception of youth sentenced under the Holmes Youthful Trainee Act, Michigan includes in its registration scheme juveniles, 14 years of age or older, who are adjudicated for Tier III offenses. This provision meets SORNA requirements.

The Holmes Youthful Trainee Act allows the court to place a youth between 17 and 20 who is alleged to have committed a crime and who has pleaded guilty to that crime to be placed in prison or on probation without a conviction to avoid a criminal record. Excluded from this program are youth who are charged with a felony for which the maximum punishment is life imprisonment, a major controlled substance offense or a traffic offense. This action protects the privacy of the offender while on trainee status. If the youth successfully completes the program, there is no criminal record. Imprisonment or probation cannot exceed three years. Michigan does not require registration for individuals sentenced under the Act for a sex offense unless the individual is convicted of another felony, was previously convicted of or adjudicated for a sex offense, or fails to carry the burden of proving by clear and convincing evidence that he/she is not likely to engage in further sex offenses. Because this statute applies to a narrow class of offenders and requires judicial determination to waive the registration requirement, the SMART Office has determined that this exception does not substantially disserve SORNA requirements.

Regarding federal offenses, Michigan uses “catch all” language to capture individuals convicted of offenses substantially similar to an offense described in M.C.L. 28.722 under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law. This language meets SORNA requirements.

Michigan meets all other SORNA offense requirements under this section.

III. Tiering of Offenses

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

Michigan incorrectly lists M.C.L. 750.158, Crime against nature or sodomy, with a victim under the age of 18 as a Tier II offense. This offense includes sexual acts with minors and is considered Tier III under SORNA.

The SMART Office has considered this deviation from SORNA’s requirement, and has determined that it does not substantially disserve the purposes of this requirement.

IV. Required Registration Information

SORNA requires sex offender registration information in 20 primary categories. With the enhancements to the Criminal Justice Information Network Sex Offender Registry System, reflected in SORE-P-301 to 305, targeted for completion June 30, 2011, Michigan will correctly capture information under all of these categories.

V. Where Registration is Required

Meets SORNA requirements.

VI. Initial Registration: Generally

Meets SORNA requirements.

VII. Initial Registration: Retroactive Classes of Offenders

M.C.L. 28.723 applies to any individual convicted of a listed offense, was on probation or parole, committed to jail, committed to the DOC, or under the jurisdiction of the juvenile division of the probate court or DHS on or after October 1, 1995. Under Michigan's prior registration scheme, sex offenders were required to register for either 25 years or life, with no possibility for removal.

Michigan SORE-P-306 addresses retroactive application to three classes of sex offenders, effective July 1, 2011:

1. Those individuals currently incarcerated or under supervision, either for a predicate sex offense or for some other crime and had a prior sex offense conviction;
2. Those individuals already registered or subject to a pre-existing sex offender registration requirement under Michigan law; and
3. Those individuals who have a prior sex offense conviction and after July 1, 2011 were convicted of any new felony.

Further, SORE-P-306 addresses timing of recapture in accordance with SORNA. Michigan's statute and policy meets SORNA's retroactive requirements.

VIII. Keeping the Registration Current

Michigan's statutes and policies meet SORNA requirements in this section, including usage of the SORNA Exchange Portal and 21 day advance notice of international travel.

IX. Verification/Appearance Requirements

Michigan's frequency of reporting and registration duration provisions meet SORNA requirements. Michigan allows for Tier I offenders and Tier III offenders who were adjudicated delinquent to petition the court for an order allowing discontinuance of registration. This reduction in registration period process is in accordance with SORNA requirements.

Additionally, under M.C.L. 28.728c subsection (14) and (15) Michigan allows a registered sex offender to petition for discontinuance of registration if the court determines that a conviction (or disposition) for a specified listed offense was the result of a consensual sexual act between the petitioner and the victim. These allowances correspond to the exception in 42 U.S.C. 16911(5)(c) and therefore to not disserve the purposes of SORNA.

X. Public Registry Website Requirements

Michigan's public sex offender registry meets most of the provisions required by SORNA at present. Michigan is currently implementing the necessary changes to the website needed to meet all of SORNA's requirements, including:

- Creating geographic radius search capacity
- Displaying employer address
- Displaying vehicle description and license plate number
- Updating automated email notification system

Michigan has ensured the SMART Office that these changes will be made by July 2011, and will notify the office upon completion. This delay in implementation does not disserve the purposes of SORNA.

SORNA provides for discretionary exemptions from public sex offender registry posting, including certain Tier I sex offenders that did not commit a specified offense against a minor. Michigan exempts all Tier I sex offenders from its public registry, including offenders convicted of offenses against minors. This includes M.C.L. 750.145c(4) (possession of child sexually abusive material), M.C.L. 750.349b (unlawful imprisonment of a minor), and M.C.L. 750.539j (surveillance of or distribution, dissemination, or transmission of recording, photograph, or visual image of a minor). The SMART Office has considered these deviations from SORNA's requirements, and has determined that they do not substantially disserve the purposes of this requirement.

XI. Community Notification

As noted previously, Michigan is presently enhancing its Criminal Justice Information Network to ensure that initial sex offender registration records and updated registration information is immediately (within 24 hours) transmitted to the appropriate entities identified in SORNA. Additionally, these enhancements will ensure participation with the SORNA Exchange Portal and timely record submission to NSOR. These enhancements are reflected in Sex Offender Registry and Enforcement Unit (SORE) Policies 301 to 305, which were revised in March 2011.

Further, Michigan is presently implementing the necessary changes to its automated email notification system to meet SORNA's general community notification requirements. With these enhancements, Michigan meets the SORNA requirements of this section.

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

Meets SORNA requirements.

XIII. When a Sex Offender Fails to Appear for Registration

Meets SORNA requirements.

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

Meets SORNA requirements.

XV. Tribal Considerations

Michigan has provided Memoranda of Agreement for Indian tribes located within the state and the Michigan Department of State Police in order to facilitate satisfying the tribes' responsibilities under SORNA. MOAs have been submitted to the SMART Office for the following Indian tribes:

- Grand Traverse Band of Ottawa and Chippewa Indians
- Hannahville Indian Community
- Little River Band of Ottawa Indians
- Little Traverse Bay Bands of Odawa Indians
- Saginaw Chippewa Indian Tribe of Michigan
- Sault Ste Marie Tribe Chippewa Indians

The SMART Office is working closely with remaining tribes and the State to navigate this portion of SORNA implementation (and any possible MOU's or MOA's) through the existing primary State contact, Karen Johnson, who is the Manager of the Michigan Sex Offender Registry and Enforcement Unit.

The contact office for these tribes regarding SORNA implementation is the Michigan State Police. The contact information is:

Director, Statistical Records Division
106 West Allegan Street
Lansing, Michigan 48933

As we continue to work towards implementation with the State we will find out what, if any, resources Michigan can bring to bear to facilitate the sharing of criminal justice information by the tribes.

Conclusion

Michigan has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. However, there are a few provisions identified in this report, namely the exclusion of Tier I registrants convicted of offenses involving minors from the public sex offender registry, that should be addressed in order for Michigan to fully implement SORNA. Additionally, Michigan is presently enhancing its

Criminal Justice Information Network and public sex offender registry to meet all of SORNA's information sharing requirements. We request that Michigan keep the SMART Office informed on the progress of these enhancements and notify us upon completion.

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.