



December 19, 2011

Revised and Updated SORNA Substantial Implementation Review State of Missouri

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

In March 2010, the SMART Office determined that the Missouri State Highway Patrol's (MSHP) earlier submission did not meet substantial implementation of SORNA. On July 1, 2011, MSHP submitted supplemental information about Missouri's registration scheme that addressed many of the outstanding issues identified in the March 2010 report. Based upon this supplemental information, the SMART Office reconsidered its earlier determination.

The following review updates the March 2010 report issued to Missouri. 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 Missouri 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, Missouri 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 March 2010 SMART Office report to Missouri, it was noted that Missouri's definition of "Jurisdiction" in 400.1(7) includes state, foreign country, federal, tribal, or military, but does not include 'the District of Columbia' or 'territory'.

MSHP has since updated its policies and procedures to reflect the definition of "Jurisdiction" 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

Missouri 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.

In the March 2010 SMART Office report to Missouri, it was noted that Missouri Revised Statute 589.400(5) too narrowly includes juveniles prosecuted as adults: "Any juvenile certified as an adult and transferred to a court of general jurisdiction who has been convicted of, found guilty of, or has pleaded guilty or nolo contendere to committing, attempting to commit, or conspiring to commit a felony under chapter 566, RSMo, which is equal to or more severe than aggravated sexual abuse under 18 U.S.C. Section 2241, which shall include any attempt or conspiracy to commit such offense." Based upon supplemental information submitted to the SMART Office and correspondence with state officials,¹ it is evident that Missouri applies registration requirements to juveniles certified as adults, as long as their offense falls in 589.400(1) or 589.400(2) or any federal offenses requiring registration under SORNA. In such cases, they are required to register as if they were adults.

Additionally, SMART's prior report to Missouri indicated that Missouri has no state, local, or tribal offense equivalent to 18 U.S.C. §1801, Video Voyeurism of a Minor. A Missouri Supreme Court Ruling (*Doe v. Keathley*, 2009 WL 1674925 [June 16, 2009]), found that SORNA imposes an independent obligation requiring respondents to register as sex offenders in Missouri. Missouri has interpreted this finding to mean that individuals convicted of any

¹ Email correspondence with Tammy Byrd, Sex Offender Registry Supervisor, Missouri State Highway Patrol, on July 20, 2011.

registerable sex offense under SORNA are required to register in Missouri in accordance to SORNA requirements. Therefore, Missouri requires individuals convicted of 18 U.S.C. §1801, Video Voyeurism of a Minor, to register in accordance with its registration scheme.

Missouri meets all of the SORNA requirements in this section.

III. Tiering of Offenses

In reviewing Missouri Revised Statutes, the SMART Office understands that Missouri has essentially two categories of registrants:

- 1) Lifetime registrants, who are required to report to local law enforcement every six months to verify registration information; and
- 2) Lifetime registrants, who are required to report to local law enforcement every 90 days to verify registration information and are (1) deemed “predatory” or “persistent” sexual offenders, (2) offenders who are registered for a crime where the victim is less than 18 years of age at the time of offense, or (3) offenders who have failed to register or submitted false information when registering.

The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Missouri’s placement of these statutes within the SORNA three tier levels (see attached “Missouri Offense Tiering Review” for a detailed analysis regarding this subsection of the review). Missouri correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions:

- 566.030 – Forcible rape (adult victim)²
- 566.040 – Sexual assault
- 566.060 – Forcible sodomy (adult victim)³
- 566.070 – Deviate sexual assault

These offenses presently require lifetime registration with twice-annual in-person verification; to meet SORNA requirements, these would need to require lifetime registration with quarterly in-person verification.

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

² In the SMART Office review dated July 19, 2011, this offense was not included in the group of offenses that require lifetime registration with quarterly in-person verification.

³ In the SMART Office review dated July 19, 2011, this offense was not included in the group of offenses that require lifetime registration with quarterly in-person verification.

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. In the March 2010 SMART Office report to Missouri, it was noted that Missouri does not collect and keep the following information in its registry:

- Criminal history: status of parole, probation, or supervised release is not captured in required registration information.
- DNA sample: no provision for the collection of a DNA sample for misdemeanants.
- Photograph: updated photograph is collected annually only; SORNA requires quarterly, twice yearly, and yearly (depending upon tier classification) unless offender's appearance has not changed significantly.
- Professional licensing information: not collected, not digitized.
- Temporary lodging: dates of temporary lodging are not collected.
- Vehicle information: no collection of information on vehicles for work or personal use, do not capture aircraft or watercraft, do not include permanent or frequent location where vehicle is kept (use address of owner).

MSHP has since updated its registration forms and policies and procedures to capture all of the information required by SORNA. However, Missouri has not amended its code to allow for an offender's photograph to be updated more than once per year.

This deviation does not substantially disserve the purposes of this requirement 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. Missouri appropriately requires registration in any jurisdiction where a sex offender is a resident, employed, or a student. However, in the March 2010 SMART Office report to Missouri, it was noted that Missouri does not require initial registration to take place if Missouri is the jurisdiction of conviction or incarceration and the offender does not plan on being a resident, employed, or in school in Missouri. Additionally, we noted that Missouri's definition of "employee" did not specifically include volunteers. MSHP has since updated its policies and procedures to register sex offenders in the jurisdictions required by SORNA and amend its definition of "employee" to include volunteers.

Missouri 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 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 the March 2010 SMART Office report to Missouri, we noted that Missouri must register offenders before release from “imprisonment” for the registration offense. MSHP has since updated its policies and procedures to register sex offenders prior to release from incarceration.

Missouri 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).

Missouri 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 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.

In the March 2010 SMART Office report to Missouri, we noted that Missouri's foreign relocation procedure was unclear. Since that time, MSHP has adopted policies and procedures that conform to SORNA requirements for notifying appropriate entities when an offender intends to relocate to another country. Additionally, Missouri has updated its registration forms and MSHP policies and procedures to conform to the SORNA Supplemental Guidelines, published on January 11, 2011, requiring registered sex offenders to provide 21 day advance notice of international travel and for MSHP to notify the U.S. Marshals service and update NSOR.

Missouri 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. Missouri meets most of the requirements of this section, with exceptions. As noted in section III of this report, Missouri requires all registrants to report twice-annually in person in the month of their birth and six months thereafter to verify their registration information. Quarterly in-person verification is required for any offender who is registered for a crime where a the victim was less than 18 at the time of offense, failing to register or submitting false information, and those offenders registered as predatory or persistent sexual offenders. To meet this SORNA requirement, offenders in Missouri convicted of the following offenses also require quarterly in-person verification:

- 566.030 – Forcible rape (adult victim)
- 566.040 – Sexual assault
- 566.060 – Forcible sodomy (adult victim)
- 566.070 – Deviate sexual assault

As noted in section IV of this report, Missouri'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. Missouri updates photographs on an annual basis only.

In the March 2010 SMART Office report to Missouri, we noted that Missouri's allowance of offenders to have a reduced registration period deviates from SORNA requirements. In Missouri, any person on the sex offender registry for promoting prostitution in the second degree, promoting prostitution in the third degree, public display of explicit sexual material, statutory rape in the second degree, and no physical force or threat of physical force was used in the commission of the crime may petition the court for the removal of his or her name from the sexual offender registry after ten years have passed from the date he or she was required to register. While this allowance is acceptable under SORNA generally, inclusion of offenders who are on the registry for statutory rape in the second degree specifically are not eligible for this reduction under SORNA.

Additionally, our prior report noted that Missouri allows certain registered sex offenders to petition for relief of registration duties after a period of two years. This provision applies to offenders who were 19 years of age or younger and the victim was 13 years of age or older at the time of the offense and no physical force or threat was used in the commission of the offense. Based on the supplemental materials submitted to the SMART Office, Missouri indicates that this provision applies primarily to those offenders who would qualify for the "Romeo and Juliet" exception in 42 U.S.C. §16911(5)(c).

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.

Missouri 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.

In the March 2010 SMART Office report to Missouri, we noted that Missouri does not fully address the law enforcement community notification provisions of SORNA. Since the issuance of our report, MSHP has adopted policies and procedures that conform to SORNA requirements for notifying appropriate law enforcement entities and clarified the functions of the Missouri Uniform Law Enforcement System as they relate to criminal justice information sharing system in the state.

Additionally, our prior report indicated that Missouri deviates from the general community notification provisions of SORNA. Missouri has since implemented an e-mail community notification program that provides members of the public automatic e-mail notifications when offenders move into or out of a specified radius around an address. Users also have the option to track a specific offender, regardless of how close they live to a specific address.

Missouri 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.

Missouri 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.

In the March 2010 SMART Office report to Missouri, we noted that Missouri's procedures in these instances are unclear; that is, whether residence, employment, or school jurisdictions are informed and how. Since the issuance of our report, MSHP has adopted policies and procedures (e-mail notification/SORNA Exchange Portal) that conform to SORNA requirements for notifying appropriate law enforcement entities in these jurisdictions when an offender fails to appear for registration.

Missouri 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.

In the March 2010 SMART Office report to Missouri, we noted that Missouri's procedures in these instances are unclear; that is, how and whether authorities from other jurisdictions or federal authorities are informed. Since the issuance of our report, MSHP has

adopted policies and procedures (e-mail notification/SORNA Exchange Portal) that conform to SORNA requirements for notifying the U.S. Marshals Service and procedures for updating NCIC/NSOR of the sex offender's status as an absconder.

Missouri meets all of the SORNA requirements in this section.

Conclusion

Missouri 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 Missouri 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 fully adopting the remaining provisions of SORNA.

Appendix: Missouri Offense Tiering Review

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

- 1) Lifetime registrants, who are required to report to local law enforcement every six months to verify registration information; and
- 2) Lifetime registrants, who are required to report to local law enforcement every 90 days to verify registration information and are deemed:
 - A "persistent sexual offender"; an individual who has previously pleaded guilty to or has been found guilty of the felony of forcible rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first degree or an attempt to commit any of the crimes (RSMo 558.018.2).
 - A "predatory sexual offender"; an individual who has previously pleaded guilty to or has been found guilty of the felony of forcible rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first degree, or an attempt to commit any of the preceding crimes or child molestation in the first degree when classified as a class B felony or sexual abuse when classified as a class B felony (RSMo 558.018.5).
 - Any offender who is registered for a crime where the victim was less than 18 years of age at the time of the offense.
 - Any offender who has plead guilty or been found guilty pursuant to RSMo section 589.425 of failing to register or submitting false information when registering.

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. The following offenses listed in Missouri Revised Statutes would require, at minimum, Tier I registration requirements under SORNA:

- 566.100 – Sexual abuse (victim 18 years old or older)
- 566.083 – Sexual misconduct involving a child (if punishment less than one year)
- 566.068 – Child molestation, second degree (victim age 13-17)

- 566.090 – Sexual misconduct
- 565.120 – Felonious restraint (with sexual motivation)
- 565.200 – Skilled nursing facility residents, sexual contact or intercourse
- 566.145 – Sexual contact with prisoner or offender
- 573.037 – Possession of child pornography
- 566.153 – Age misrepresentation
- 566.209 – Trafficking for the purpose of sexual exploitation (victim 18 years old or older)

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. In reviewing Missouri's statutes, the following offenses listed would require, at minimum, Tier II registration requirements under SORNA:

- 566.034 – Statutory rape, second degree
- 566.064 – Statutory sodomy, second degree
- 566.067 – Child molestation (victim age 13-17)
- 566.100 – Sexual abuse (victim age 13-17)
- 566.086 – Sexual contact with a student while on public school property (victim age 13-17)
- 568.045 – Endangering the welfare of a child, first degree (sexual conduct [sexual contact], victim age 13-17)
- 566.151 – Enticement of a child
- 568.080 – Child used in sexual performance
- 568.090 – Promoting sexual performance of a child
- 567.050 – Promoting prostitution in the first degree (victim under age 18)
- 567.060 – Promoting prostitution in the second degree (victim under age 18)
- 567.070 – Promoting prostitution in the third degree (victim under age 18)
- 568.060(2) – Abuse of a child
- 573.023 – Sexual exploitation of a minor
- 573.025 – Promoting child pornography in the first degree
- 573.035 – Promoting child pornography in the second degree
- 566.209 – Trafficking for the purpose of sexual exploitation (victim under age 18)
- 566.212 – Sexual trafficking of a child
- 566.213 – Sexual trafficking of a child under age 12

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 Missouri's statutes would require Tier III registration requirements under SORNA.

- 566.030 – Forcible rape

- 566.032 – Statutory rape, first degree
- 566.040 – Sexual assault
- 568.045 – Endangering the welfare of a child, first degree (sexual conduct [sexual contact], victim under 13)
- 566.060 – Forcible sodomy
- 566.062 – Statutory sodomy, first degree
- 566.067 – Child molestation (victim under 13)
- 566.070 – Deviate sexual assault
- 566.100 – Sexual abuse (victim under 13)
- 565.110 – Kidnapping (victim under 18, excluding kidnapping by parent/guardian)
- 565.115 – Child kidnapping
- 568.020 – Incest (sexual intercourse, deviate sexual intercourse, victim under 18)
- 568.045 – Endangering the welfare of a child, first degree (sexual conduct [sexual intercourse, deviate sexual intercourse], victim under 18)

Further Review

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

- 566.093 – Sexual misconduct, second degree
- 566.095 – Sexual misconduct, third degree
- 568.065 – Genital mutilation of a female child
- 573.020 – Promoting obscenity in the first degree
- 573.030 – Promoting obscenity in the second degree
- 573.040 – Furnishing pornographic materials to minors
- 573.060 – Public display of explicit sexual material
- 573.065 – Coercing acceptance of obscene material
- 566.111 – Unlawful sex with an animal
- 566.203 – Abusing an individual through forced labor
- 566.206 – Trafficking for the purpose of slavery, involuntary servitude, peonage, or forced labor
- 566.215 – Contributing to human trafficking
- 566.221 – International marriage brokers, notice to recruits