



January 2018

## **SORNA Substantial Implementation Review Muckleshoot Indian 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 Muckleshoot Indian Tribe for the 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 the Muckleshoot Indian Tribe's SORNA substantial implementation materials and has found that the Muckleshoot Indian Tribe has not substantially implemented SORNA.

If the SMART Office determines a tribal jurisdiction has not substantially implemented SORNA, the duties and responsibilities of registration and notification are delegated to the state in which the tribe is located. However, although the Muckleshoot Indian Tribe has not substantially implemented the SORNA requirements, the SMART Office will not be delegating the Muckleshoot Indian Tribe's sex offender responsibilities at this time.

The Muckleshoot Indian Tribe has entered into a full memorandum of agreement (MOA) with King County Sheriff's Office wherein the tribe assigns its responsibilities in regards to sex offender registration and notification to the State of Washington. The State of Washington has not substantially implemented SORNA. Therefore, at this time, the SMART Office finds that delegation would not lead to greater SORNA implementation.

On July 21, 2017, the Muckleshoot Indian Tribe submitted the following substantial implementation documents to the SMART Office: a memorandum of agreement with the King County Sheriff's Office, the complete substantial implementation package submitted by the State of Washington and various written resources, including a guide to tribal services. In addition, email and phone correspondence and a site visit in May 2017 with the Muckleshoot Indian Tribe informed this review.

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 the Muckleshoot Indian Tribe meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify whether the departure(s) from a particular requirement does not meet SORNA requirements or whether the departure(s) does not substantially disserve the purpose of that requirement.

Based on our review of materials submitted by the Muckleshoot Indian Tribe, our understanding is that the Muckleshoot Indian Tribe has entered into a full memorandum of agreement (MOA) with the King County Sheriff's Office wherein the tribe delegates its law

enforcement responsibilities in regards to sex offender notification to the State of Washington. Therefore, the Muckleshoot Indian Tribe deviates where the State of Washington deviates.

The Muckleshoot Indian Tribe is encouraged to focus on the deviations that substantially disserve SORNA's requirements and to work toward rectifying those deviations in order to achieve substantial implementation of SORNA. While not necessary for substantial implementation purposes, the SMART Office encourages the Muckleshoot Indian Tribe to work toward rectifying the deviations that do not substantially disserve the purposes of SORNA in order to achieve full implementation of SORNA.

This report is a comprehensive review and is intended to detail significant areas in which the tribe has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the tribe and get back in touch with us to develop a strategy to address these issues.

### **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 National Crime Information Center (NCIC) National Sex Offender Registry (NSOR) and the jurisdiction's public sex offender registry website.

The Muckleshoot Indian Tribe meets 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 Muckleshoot Indian Tribe meets 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 Muckleshoot Indian Tribe follows the State of Washington's three-category system for registration (10-year, 15-year and lifetime registration offenses). This structure, however, does not meet the minimum requirements identified in SORNA.

Furthermore, because the Muckleshoot Indian Tribe uses the State of Washington's registration and notification scheme, it does not place many of its statutes within SORNA's three tiers. (See attached "SORNA Substantial Implementation Review State of Washington" for a detailed analysis regarding this subsection.)

Because the Muckleshoot Indian Tribe has chosen to meet its SORNA obligations through an MOA with the King County Sheriff's Office, and the State of Washington does not meet the SORNA requirements of this section, the Muckleshoot Indian Tribe does not meet 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 Muckleshoot Indian Tribe's MOA with the King County Sheriff's Office only enables collection of the information required to be gathered under the state's laws and policies. The State of Washington does not collect and keep certain pieces of information required by SORNA in its registry. (See attached "SORNA Substantial Implementation Review State of Washington" for a detailed analysis regarding this subsection.)

Because the Muckleshoot Indian Tribe has chosen to meet its SORNA obligations through an MOA with the King County Sheriff's Office, and the State of Washington does not meet the SORNA requirements of this section, the Muckleshoot Indian Tribe does not meet 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 or she is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work or attend school in the jurisdiction.

The Muckleshoot Indian Tribe meets 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 or her registration duties and require the offender to acknowledge in writing that he or she understands those duties.

The Muckleshoot Indian Tribe meets 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).

Because the Muckleshoot Indian Tribe has chosen to meet its SORNA obligations through an MOA with King County Sheriff's Office and because the State of Washington's retroactive provisions deviate from SORNA requirements, but have been determined to not substantially disserve the SORNA requirements in this section, the Muckleshoot Indian Tribe's deviations do not substantially disserve 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 Muckleshoot Indian Tribe's MOA with the King County Sheriff's Office only enables updates to registration information as required under the state's laws and policies. The State of Washington does not require sex offenders to immediately report changes in the following to the registering agency: email addresses, instant message addresses or other internet identifiers and/or vehicle information. The State of Washington also does not require registered

sex offenders to provide 21-day advance notice of international travel. (See attached “SORNA Substantial Implementation Review State of Washington” for a detailed analysis regarding this subsection.)

Because the Muckleshoot Indian Tribe has chosen to meet its SORNA obligations through an MOA with the King County Sheriff’s Office, and because the State of Washington does not meet SORNA requirements in this section, the Muckleshoot Indian Tribe does not meet 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.

The Muckleshoot Indian Tribe’s MOA with the King County Sheriff’s Office only allows for verification and appearance requirements similar to the State of Washington.

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

The State of Washington requires that offenders register for the following duration of time after their release from incarceration or sentencing: tier I offenders register for 10 years, tier II offenders register for 15 years and tier III offenders register for life. (See attached “SORNA Substantial Implementation Review State of Washington” for a detailed analysis regarding this subsection.)

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

The State of Washington’s frequency of registration is determined through a risk assessment process. (See attached “SORNA Substantial Implementation Review State of Washington” for a detailed analysis regarding this subsection.)

### **C. Reduction of Registration Period**

The State of Washington permits offenders to petition to have their period of registration reduced to 10 years for in-state registerable offenses and 15 years for out-of-state, federal

and tribal registerable offenses. Sexually violent predators and certain tier III offenders are barred from reduction. Offenders required to register because of a tier III juvenile adjudication may petition to have their period of registration reduced to two or five years, depending on the class of offense and age of offender at the time the offense was committed. (See attached “SORNA Substantial Implementation Review: State of Washington” for a detailed analysis regarding this subsection.)

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

The State of Washington’s requirements deviate from SORNA clean record requirements.

Because the Muckleshoot Indian Tribe has chosen to meet its SORNA obligations through an MOA with the King County Sheriff’s Office, and because the State of Washington does not meet SORNA requirements in this section, the Muckleshoot Indian Tribe does not meet 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 King County Sheriff’s Office posts registered sex offender data for the Muckleshoot Indian Tribe. However, the State of Washington does not meet the SORNA requirements of this section because public notification is determined through a risk-assessment process. In addition, the State of Washington’s public registry website does not display all of the information required by SORNA. (See attached “SORNA Substantial Implementation Review State of Washington” for a detailed analysis regarding this subsection.)

Because the Muckleshoot Indian Tribe has chosen to meet its SORNA obligations through an MOU with the King County Sheriff’s Office, and because the State of Washington does not meet SORNA requirements in this section, the Muckleshoot Indian Tribe does not meet 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 King County Sheriff’s Office conducts community notification for the Muckleshoot Indian Tribe. The State of Washington’s community notification scheme deviates from SORNA’s requirements. Although the State of Washington does provide email and direct notification to the public about risk level II and III sex offender residences, the state does not

provide notification whenever a sex offender begins employment or attends school in a jurisdiction. (See attached “SORNA Substantial Implementation Review State of Washington” for a detailed analysis regarding this subsection.)

Because the Muckleshoot Indian Tribe has chosen to meet its SORNA obligations through an MOA with King County Sheriff’s Office and because the State of Washington’s community notification provisions deviate from SORNA requirements, but have been determined to not substantially disserve the SORNA requirements in this section, the Muckleshoot Indian Tribe’s deviations do not substantially disserve the SORNA requirements in this section. (See “SORNA Substantial Implementation Review State of Washington” for a detailed analysis regarding this subsection.)

## **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 Muckleshoot Indian Tribe meets 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 Muckleshoot Indian Tribe meets the SORNA requirements in this section.

## **XIV. Other Considerations**

There are no additional considerations.

## **Conclusion**

The Muckleshoot Indian Tribe has chosen to implement its program through an MOA with the King County Sheriff’s Office, delegating all of its SORNA responsibilities, for the time being, to the State of Washington. Thus, consistent with the State of Washington finding, the Muckleshoot Indian Tribe has been found to have not substantially implemented SORNA for reasons cited throughout this review.

Although the Muckleshoot Indian Tribe has not substantially implemented the SORNA requirements, the SMART Office is not delegating the tribe’s sex offender responsibilities. The tribe has a functioning system through an MOA and, at this time, the SMART Office finds that

delegation would not lead to greater SORNA implementation. However, the SMART Office findings regarding substantial implementation are ongoing. Thus, any changes by either the State of Washington or the Muckleshoot Indian Tribe to the sex offender registration and notification program will require a subsequent review by the SMART Office.

We encourage the Muckleshoot Indian Tribe to contact the SMART Office with any questions or concerns regarding this finding, and to work toward meeting the provisions detailed in the report that do not meet the SORNA requirements in order to achieve substantial implementation of SORNA in the future.