



November 2010

SORNA Substantial Implementation Review State of Nebraska

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 Nebraska 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 Nebraska's SORNA substantial implementation packet and has found the State of Nebraska to have not yet substantially implemented SORNA.

In May 2010, the Nebraska State Patrol's Office of Law Enforcement and Public Safety submitted a substantial implementation submission package that included a Substantial Implementation Checklist, a Response to the Checklist, relevant state statutes, a Tiering Criteria Table, and screen shots of the state's sex offender website. In addition, email and telephone correspondence with the Nebraska State Patrol filled in gaps in information and procedure, which informed our review.¹

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 and areas where correspondence augmented materials submitted. 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

Meets SORNA requirements.

II. Terminology

Meets SORNA requirements.

III. Offenses that Must Be Included in the Registry

Nebraska registers all of the offenses based on adult convictions that SORNA requires it to register.

¹ Email and telephone correspondence with Nebraska State Patrol officials from July 14, 2010 through September 27, 2010.

Juvenile Adjudications

Nebraska does not meet SORNA requirements in this area. Nebraska does not register offenders based on juvenile adjudications, unless that offender was already required to register in another jurisdiction on the basis of that adjudication.

IV. Tiering of Offenses

The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Nebraska's placement of these statutes within the SORNA three tier levels (see attached "Nebraska Offense Tiering Review" for a detailed analysis regarding this subsection of the review). Nebraska correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions (see "Nebraska State Statutes" beginning on page 8 for information about Nebraska's classification of its offenders and associated registration requirements):

- § 28-313 (Non-parental Kidnapping, where the victim is under 18) and § 28-313 with § 28-201 (Non-parental Attempted Kidnapping) listed as a Nebraska 25-year offense. This does not meet SORNA's requirements, involves non-parental kidnapping, which is a Tier III offense under SORNA.
- § 28-311/28-201 (Attempted Criminal Child Enticement through 5/20/2009 with prior conviction of §28-308/309/310) listed as a Nebraska 15-year offense. This does not meet SORNA's requirements, because the underlying offense is a Tier II offense under SORNA.
- § 28-311/28-201 (Attempted Criminal Child Enticement as of 5/21/2009) listed as a Nebraska 15-year offense. This does not meet SORNA's requirements, because the underlying offense is a Tier II offense under SORNA.
- § 28-319(1)(c) (First Degree Sexual Assault, where the victim is between 13 and 15, *unless* the act is consensual *and* the offender is less than four years older than the victim) listed as a Nebraska 25-year offense. This does not meet SORNA's requirements, involves a sexual act with a victim between 13 and 18, which is a Tier III offense under SORNA.
- § 28-319(1)(c)/28-201 (Attempted First Degree Sexual Assault, where the victim is between 13 and 15, *unless* the act is consensual *and* the offender is less than four years older than the victim) listed as a Nebraska 25-year offense. This does not meet SORNA's requirements, involves a sexual act with a victim between 13 and 18, which is a Tier III offense under SORNA.
- § 28-319.01(1)(b) (First Degree Sexual Assault of a Child, where the victim is between 13 and 15,) listed as a Nebraska 25-year offense. This does not meet SORNA's requirements, involves a sexual act with a victim between 13 and 18, which is a Tier III offense under SORNA.
- § 28-319.01(1)(b)/28-201 (Attempted First Degree Sexual Assault of a Child, where the victim is between 13 and 15) listed as a Nebraska 25-year offense. This does not meet SORNA's requirements, involves a sexual act with a victim between 13 and 18, which is a Tier III offense under SORNA.

- § 28-320.01/28-201 (Attempted Sexual Assault of a Child, 1997-2006, where the victim is under 13) listed as a Nebraska 15-year offense. This does not meet SORNA's requirements, because the underlying offense is a Tier III offense under SORNA.
- § 28-320.01/28-201 (Attempted Sexual Assault of a Child, 1997-2006, where the victim is 13-14) listed as a Nebraska 15-year offense. This does not meet SORNA's requirements, because the underlying offense is a Tier II offense under SORNA.
- § 28-320.01(3)/28-201 (Attempted Sexual Assault of a Child in the Third Degree) listed as a Nebraska 15-year offense. This does not meet SORNA's requirements, because the underlying offense is a Tier II or Tier III offense under SORNA (depending on the age of the victim).
- § 28-386(1)(c)/28-201 (Attempted Sexual Abuse of a Vulnerable Adult) listed as a Nebraska 15-year offense. This does not meet SORNA's requirements, because the underlying offense is a Tier III offense under SORNA.
- § 28-802/28-201 (Attempted Pandering of a Minor under 18) listed as a Nebraska 15-year offense. This does not meet SORNA's requirements, because the underlying offense is a Tier II offense under SORNA.
- § 28-802/28-201 (Attempted Pandering of a Minor under 18) listed as a Nebraska 15-year offense. This does not meet SORNA's requirements, because the underlying offense is a Tier II offense under SORNA.
- § 28-1463.05/28-201 (Attempted Visual Depiction of Sexually Explicit Acts Related to Possession [w/intent to sell, etc] through 5/20/2009) listed as a Nebraska 15-year offense. This does not meet SORNA's requirements, because the underlying offense is a Tier II offense under SORNA.

The SMART Office has considered these deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

Nebraska does meet SORNA's re-offense requirements.

For more guidance on SORNA classes of offenders, see 42 USC § 16911 and Section V (pages 21-25) of the National Guidelines.

V. Required Registration Information

SORNA requires sex offender registration information in 20 primary categories. Nebraska correctly captures information under all of these categories.

For more guidance on specific items of required registration information, see 42 USC §16914 and Section VI (pages 26-33) of the National Guidelines.

VI. Where Registration Is Required

Meets SORNA requirements.

VII. Initial Registration: Generally

Meets SORNA requirements.

VIII. Initial Registration: Retroactive Classes of Offenders

SORNA's requirements took effect when the law was enacted on July 27, 2006, and they have applied since that time to all sex offenders, including those whose convictions predate SORNA's enactment. The National Guidelines (pages 7-8) further clarify the retroactive provision of SORNA to apply to sex offenders who are in (or reenter) the system because they are incarcerated or under supervision, either for the predicate sex offense or for some other crime; they are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; or they reenter the jurisdiction's justice system because of conviction for some other crime (whether or not a sex offense).²

Nebraska meets SORNA requirements with respect to the retroactive registration of offenders, with one exception: Nebraska does not re-capture offenders who simply re-enter the system with a new non-sex offense.

For more guidance on the registration of the retroactive class of offenders, see Part IX (pages 45-47) of the National Guidelines.

IX. 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, instant message addresses, any other designations used in internet communications, postings, or telephone communications, vehicle information, and temporary lodging information.

Finally SORNA requires that when an offender resides in a jurisdiction, and that offender informs the jurisdiction that he intends to begin residence, school, or employment outside of the United States, that that jurisdiction must, in addition to the aforementioned requirements, immediately provide this updated information to the U.S. Marshals Service, NSOR, and any other jurisdiction where the offender is registered or required to register.

Nebraska does meet most of the SORNA requirements in the Checklist Section "Keeping the Registration Current." However, Nebraska law doesn't specifically include motor vehicles in

² Under SORNA's proposed Supplemental Guidelines, a jurisdiction need only re-capture offenders who re-enter the jurisdiction's justice system for a felony.

the section of law that lists the registration information that must be updated within a certain time frame.

Upon a temporary change in address or location, Nebraska does immediately notify the jurisdiction where the offender will be temporarily staying.

X. Verification/Appearance Requirements

Meets SORNA requirements.

XI. Registry Website Requirements

Nebraska does meet most of SORNA's requirements with regard to its public registry website. Nebraska does not currently provide a mechanism for website users to search for an offender by geographic radius, nor does it have the offender's employment or school address on its website; however, Nebraska is in the process of implementing the Sex Offender Registry Tool (SORT.) SORT will be up and running by March 2011. It will allow for the public registry website to be searchable by geographic radius, and will allow for the website to include any employment and school address of the offender.

XII. Community Notification

Law Enforcement Community Notification

SORNA requires that jurisdictions immediately notify specific agencies of the initial registration or the changes to an offender's registration information, and make the updated information available to these agencies.

Nebraska does not currently actively notify police departments, sheriffs' offices, prosecutors' offices, probation agencies, other agencies with such functions, or National Child Protection Act agencies of initial or updated registration information. However, the implementation of SORT will allow for the state's registry to have all the required e-mail notification capabilities for law enforcement.

For more guidance on these notification requirements, please refer to Part VII (pages 38-40) of the National Guidelines.

General Community Notification

Nebraska does not currently have a system in place that allows the general public to receive an email notification when a sex offender begins residence, employment, or school attendance within a certain geographic radius. However, the implementation of SORT will allow for the state's registry to have all the required e-mail notification capabilities for law enforcement.

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

Meets SORNA requirements.

XIV. When a Sex Offender Fails to Appear for Registration

Meets SORNA requirements.

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

Meets SORNA requirements.

Nebraska Indian Tribes

State contact with SORNA tribes

Nebraska has three Indian tribes, all of which have elected to function as SORNA registration jurisdictions: the Omaha Tribal Council, Santee Sioux Nation (NE), and the Winnebago Tribal Council (NE). Nebraska has had contact with all three tribes regarding registration and notification. Specifically, on August 18, 2010 and September 21, 2010 the Nebraska State Patrol met with representatives from all three tribes to discuss how the tribes can achieve substantial implementation.

Point of Contact for the State

Nebraska has indicated in writing that the Nebraska State Patrol is the official Point of Contact for the Nebraska Indian tribes with regards to SORNA implementation. Specifically, the Sex Offender Registry Attorney for the Nebraska State Patrol will be the designated Point of Contact. Currently, that attorney is Shawn Edwards.

Information Sharing arrangements, to include: DNA, Fingerprints, Criminal History, and Corrections Information

Nebraska already has in place verbal agreements with all three aforementioned tribes under which the state collects DNA, fingerprint, criminal history, and corrections information for the tribes. The Sex Offender Registry Attorney for the Nebraska State Patrol is in the process of compiling a list of all the registry functions. This list will be sent to the tribes so that each tribe may elect which functions they want to perform and which functions they would like the state to continue to perform. The hope is that the tribes and state will then execute Memoranda of Understanding for each function based on those agreements.

Memoranda of Understanding and Cooperative Agreements

Nebraska plans to articulate all of the aforementioned verbal agreements with the three tribes into written Memoranda of Understanding.

Conclusion

Nebraska 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 will need to be addressed in order for Nebraska 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.

Nebraska State Statutes

The SMART Office has reviewed all Nebraska statutes identified in its substantial implementation submission package and has identified Nebraska'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 Nebraska. Therefore, other offenses might need to be included in Nebraska's sex offender registry for Nebraska to fully 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 Nebraska Code, the SMART Office understands that Nebraska has three categories of registrants.

1. Tier III offenders who are required to register for life and quarterly verify registration information;
2. Tier II offenders, who are eligible for removal from the registry after 25 years and who must biannually verify registration information.
3. Tier I offenders, who are eligible for removal from the registry after 10 years and who must annually verify registration information.

SORNA Tier I Offenses

SORNA requires that Tier I offenders register for a minimum of 15 years and annually verify registration information. Nebraska currently uses this tier in its registration scheme.

The following offenses listed in the Nebraska Revised Statutes would require, at a minimum, Tier I registration under SORNA.

§ 28-315 False Imprisonment in the Second Degree (of a Minor)
Nebraska's placement of this statute in Tier I meets SORNA's requirements.

§ 28-315/28-201 Attempted False Imprisonment in the Second Degree (of a Minor)
Nebraska's placement of this statute in Tier I meets SORNA's requirements.

§ 28-311 Criminal Child Enticement through 5/20/2009
Nebraska's placement of this statute in Tier I meets SORNA's requirements.

§ 28-311/28-201 Attempted Criminal Child Enticement through 5/20/2009
Nebraska's placement of this statute in Tier I meets SORNA's requirements.

§ 28-320(3) Third Degree Sexual Assault
Nebraska's placement of this statute in Tier I meets SORNA's requirements.

- § 28-320(3)/28-201 Attempted Third Degree Sexual Assault**
Nebraska's placement of this statute in Tier I meets SORNA's requirements.
- § 28-320.02 Criminal Child Enticement by Computer through 5/20/2009**
Nebraska's placement of this statute in Tier II exceeds SORNA's requirements.
- § 28-320.02/28-201 Attempted Criminal Child Enticement by Computer through 5/20/2009**
Nebraska's placement of this statute in Tier I meets SORNA's requirements.
- § 28-320.02 Criminal Child Enticement by Computer through 5/20/2009 with prior conviction 28-308/309/310**
Nebraska's placement of this statute in Tier I exceeds SORNA's requirements.
- § 28-320.02/28-201 Attempted Criminal Child Enticement by Computer through 5/20/2009 with prior conviction 28-308/309/310**
Nebraska's placement of this statute in Tier I exceeds SORNA's requirements.
- § 28-320.02 Criminal Child Enticement by Electronic Device as of 5/21/2009**
Nebraska's placement of this statute in Tier II exceeds SORNA's requirements.
- § 28-320.02/28-201 Attempted Criminal Child Enticement by Electronic Device as of 5/21/2009 with prior conviction 28-308/309/310**
Nebraska's placement of this statute in Tier II exceeds SORNA's requirements.
- § 28-805 Debauching a Minor**
Nebraska's placement of this statute in Tier I meets SORNA's requirements.
- § 28-805/28-201 Attempted Debauching a Minor**
Nebraska's placement of this statute in Tier I meets SORNA's requirements.
- § 28-813.01 Possession of Visual Depiction of Sexually Explicit Conduct through 4/16/03**
Nebraska's placement of this statute in Tier I meets SORNA's requirements.
- § 28-813.01/28-201 Attempted Possession of Visual Depiction of Sexually Explicit Conduct through 4/16/03**
Nebraska's placement of this statute in Tier I meets SORNA's requirements.
- § 28-813.01 Possession of Visual Depiction of Sexually Explicit Conduct through 5/20/09**
Nebraska's placement of this statute in Tier II exceeds SORNA's requirements.
- § 28-813.01/28-201 Attempted Possession of Visual Depiction of Sexually Explicit Conduct through 5/20/09**

Nebraska's placement of this statute in Tier I meets SORNA's requirements.

§ 28-813.01 Possession of Visual Depiction of Sexually Explicit Conduct as of 5/21/09

Nebraska's placement of this statute in Tier II exceeds SORNA's requirements.

§ 28-813.01/28-201 Attempted Possession of Visual Depiction of Sexually Explicit Conduct as of 5/21/09

Nebraska's placement of this statute in Tier II exceeds SORNA's requirements.

§ 28-813.01 Possession of Visual Depiction of Sexually Explicit Conduct as of 5/21/09 with prior conviction of 28-308/309/310

Nebraska's placement of this statute in Tier II exceeds SORNA's requirements.

§ 28-333 Enticement by Electronic Communication Device

Nebraska's placement of this statute in Tier II exceeds SORNA's requirements.

§ 28-333/28-201 Attempted Enticement by Electronic Communication Device

Nebraska's placement of this statute in Tier I meets SORNA's requirements.

Tier II Offenses

SORNA requires that Tier II offenders register for a minimum of 25 years and biannually verify registration information. Nebraska currently uses this tier in its registration scheme.

The following offenses listed in the Nebraska Revised Statutes would require, at a minimum, Tier II registration requirements under SORNA.

§ 28-311 Criminal Child Enticement through 5/20/2009 with prior conviction of §28-308/309/310

Nebraska's placement of this statute in Tier II meets SORNA's requirements.

§ 28-311/28-201 Attempted Criminal Child Enticement through 5/20/2009 with prior conviction of §28-308/309/310

Nebraska's placement of this statute in Tier I does not meet SORNA's requirements. The underlying offense is a Tier II offense under SORNA, which means that an attempt to commit that offense is a Tier II offense under SORNA.

§ 28-311 Criminal Child Enticement as of 5/21/2009

Nebraska's placement of this statute in Tier II meets SORNA's requirements.

§ 28-311/28-201 Attempted Criminal Child Enticement as of 5/21/2009

Nebraska's placement of this statute in Tier I does not meet SORNA's requirements. The underlying offense is a Tier II offense under SORNA, which means that an attempt to commit that offense is a Tier II offense under SORNA.

§ 28-311 Criminal Child Enticement as of 5/21/2009 with prior conviction of §28-308/309/310

Nebraska's placement of this statute in Tier II meets SORNA's requirements.

§ 28-311/28-201 Attempted Criminal Child Enticement as of 5/21/2009 with prior conviction of §28-308/309/310

Nebraska's placement of this statute in Tier I does not meet SORNA's requirements. The underlying offense is a Tier II offense under SORNA, which means that an attempt to commit that offense is a Tier II offense under SORNA.

§ 28-320.01 Sexual Assault of a Child, Victim 13-14 (1991-1996)

Nebraska's placement of this statute in Tier II meets SORNA's requirements.

§ 28-320.01/28-201 Sexual Assault of a Child, Victim 13-14 (1991-1996)

Nebraska's placement of this statute in Tier I does not meet SORNA's requirements. The underlying offense is a Tier II offense under SORNA, which means that an attempt to commit that offense is a Tier II offense under SORNA.

§ 28-320.01 Sexual Assault of a Child, Victim 13-14 (1997-2006)

Nebraska's placement of this statute in Tier II meets SORNA's requirements.

§ 28-320.01/28-201 Sexual Assault of a Child, Victim 13-14 (1997-2006)

Nebraska's placement of this statute in Tier I does not meet SORNA's requirements. The underlying offense is a Tier II offense under SORNA, which means that an attempt to commit that offense is a Tier II offense under SORNA.

Tier III Offenses

SORNA requires that Tier III offenders register for life and quarterly verify registration information. Nebraska currently uses this tier in its registration scheme.

The following offenses listed in the Nebraska Revised Statutes would require Tier III registration requirements under SORNA.

§ 28-311 Criminal Child Enticement through 5/20/2009 with prior conviction §28-311/313/314/315/319.01/320.01

Nebraska's placement of this statute in Tier III meets SORNA's requirements.

§ 28-311/28-201 Attempted Criminal Child Enticement through 5/20/2009 with prior conviction §28-311/313/314/315/319.01/320.01

Nebraska's placement of this statute in Tier III meets SORNA's requirements.

§ 28-311 Criminal Child Enticement as of 5/21/2009 with prior conviction §28-311/313/314/315/319.01/320.01

Nebraska's placement of this statute in Tier III meets SORNA's requirements.

§ 28-311/28-201 Attempted Criminal Child Enticement as of 5/21/2009 with prior conviction §28-311/313/314/315/319.01/320.01

Nebraska's placement of this statute in Tier III meets SORNA's requirements.

Further Review

The SMART Office has not further reviewed the Nebraska Code for additional statutes that might also require registration and are not currently included in Nebraska's sex offender registry scheme. Nonetheless, Nebraska is encouraged to find any and all of the following categories of violations of the criminal law as contained in Nebraska criminal code so as to determine the propriety of requiring registration (to the extent that they are not already included). The following offenses will require registration under SORNA:

1. Any criminal offense that has an element involving a sexual act or sexual contact with another, regardless of the age of the victim;
2. Any offense involving the non-parental kidnapping of a minor;
3. Any offense involving the non-parental false imprisonment of a minor;
4. Any offense involving solicitation to engage a minor in sexual conduct;
5. Any offense involving use of a minor in a sexual performance;
6. Any offense involving solicitation of a minor to practice prostitution;
7. Any offense involving video voyeurism of a minor;
8. Any offense involving possession, production, or distribution of child pornography;
9. Any offense involving criminal sexual conduct involving a minor; or
10. Any offense involving the use of the internet to engage a minor in criminal sexual conduct.

Nebraska is in a better position than the SMART Office to review its criminal laws for any additional offenses which might warrant inclusion. The SMART Office is happy to review any proposed additional tiering decisions.