



July 2011

SORNA Substantial Implementation Review State of New Hampshire

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 New Hampshire 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 New Hampshire's SORNA substantial implementation packet and has determined that the State of New Hampshire has not substantially implemented SORNA.

In June 2011, the Division of State Police, which runs the state's registry, submitted a substantial implementation package that included filled-in copy of the Substantial Implementation Checklist, a tiering reference document, relevant state statutes, relevant state administrative rules, and relevant state policies and procedures. In addition, email and phone correspondence with the Division of State Police 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, and contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether New Hampshire meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify where the departure(s) from a particular requirement does not substantially disserve the purposes of that requirement.

New Hampshire 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. To achieve full implementation of SORNA, New Hampshire should also work toward rectifying the deviations that do not substantially disserve the purposes of SORNA.

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.

¹The SMART Office had email and phone correspondence with Sergeant Cheryl Nedeau of the Division of State Police, and Associate Attorney General Ann Rice of the New Hampshire Office of the Attorney General, in June and July 2011.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers and/or updates his information in a jurisdiction, that the 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.

While New Hampshire does send initial and updated registration information to the appropriate jurisdictions as described above, and does update its public sex offender registry website and NCIC/NSOR with that information, New Hampshire generally does so within five business days of receiving the initial or updated registration information, not three.²

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

II. Offenses that Must Be Included in the Registry

SORNA requires that certain federal, military, and foreign offenses be 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.

A New Hampshire court can order any juvenile adjudicated delinquent to register as a sex offender if the court finds that the juvenile presents a risk to public safety. If a court so orders, the juvenile's requirement to register will end when the juvenile turns 17 years old, the age at which the court's jurisdiction generally ends. Certain circumstances, however, can trigger an extension of the court's jurisdiction:

§ 169-B:4,V allows for a court to extend jurisdiction over a juvenile by the court's own initiative. It states the following: "[W]hen the court finds by clear and convincing evidence that closing the case would endanger the safety of the minor, any other person, or the community, or the court finds that there is a high probability that continued provision of treatment services is necessary to rehabilitate the minor, the court may retain jurisdiction over any minor: (a) Who has been found to have committed a violent crime as defined under RSA 169-B:35-a, I(c)³; (b) Who has been petitioned to the court on 4 or more occasions and adjudicated delinquent in 4 separate

² According to Sergeant Cheryl Nedeau of the Division of State Police, New Hampshire often completes these tasks within less than five business days, particularly if an emergency arises that necessitates a faster transmission of information. However, according to Officer Nedeau, these tasks are completed in more than five days on rare occasion due to a relatively high amount of information to be transmitted.

³ 169-B:35-a, I(c) defines "violent crime" as "capital, first-degree or second-degree murder, attempted murder, manslaughter, aggravated felonious sexual assault, felonious sexual assault, first-degree assault, or negligent homicide committed in consequence of being under the influence of intoxicating liquor or controlled drugs, as these crimes are defined by statute."

adjudicatory hearings which alleged misdemeanor or felony offenses; or (c) Who is subject to the jurisdiction of the court prior to the minor's seventeenth birthday and for whom the department has filed a motion with the court requesting that the court retain jurisdiction under this subparagraph; provided that the department's motion is filed within the 90 days prior to the minor's seventeenth birthday and provided further that the court's jurisdiction pursuant to this subparagraph shall continue until the minor's eighteenth birthday.”

§ 169-B:19, III-a(a) allows for the prosecutor of the case or the Department of Health and Human Services to petition the court to extend its jurisdiction over the juvenile, if certain circumstances exist. It states the following: “Prior to the seventeenth birthday of a minor who had been adjudicated delinquent for committing a violent crime as defined in RSA 169-B:35-a, I(c), or who had been petitioned to court on 4 or more occasions and adjudicated delinquent in 4 separate adjudicatory hearings which alleged misdemeanor or felony offenses, the prosecutor or the department of health and human services may file a motion with the court to extend jurisdiction pursuant to RSA 169-B:4, V.” Under this avenue for an extension of jurisdiction, the court may extend jurisdiction under the same standards as articulated in § 169-B:4(V); that is, the court may extend jurisdiction “when the court finds by clear and convincing evidence that closing the case would endanger the safety of the minor, any other person, or the community, or the court finds that there is a high probability that continued provision of treatment services is necessary to rehabilitate the minor.”

Pursuant to § 169-B:4, under either avenue of extension, the court can retain jurisdiction until the offender turns 21 years old.

New Hampshire does not meet 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 SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified New Hampshire’s placement of these statutes within the SORNA three tier levels. New Hampshire correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions (see the Appendix, “New Hampshire State Statutes” for information about New Hampshire’s classification of its offenders and associated registration requirements):

- **§ 632-A:4 Sexual Assault:** Placement of this statute in the NH Tier I⁴ category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.
- **§ 644:9, I (a) Violation of Privacy (where the victim is a minor):** Placement of this statute in the NH Tier I category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.

⁴ New Hampshire Tier I offenders are required to register for 10 years and appear semi-annually to verify registration information.

- **§ 18 U.S.C. 1801 Video Voyeurism of a Minor:** Placement of this statute in the NH Tier I category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.⁵
- **§ 18 U.S.C. 2252B Misleading Domain Names on the Internet:** Placement of this statute in the NH Tier I category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.
- **§ 18 U.S.C. 2252C Misleading Words or Digital Images on the Internet:** Placement of this statute in the NH Tier I category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.
- **§ 18 U.S.C. 2423(b) Travel with Intent to Engage in Illicit Sexual Conduct:** Placement of this statute in the NH Tier I category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.
- **§ 18 U.S.C. 2423(c) Engaging in Illicit Sexual Conduct in Foreign Places:** Placement of this statute in the NH Tier I category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.
- **§ 18 U.S.C. 2424 Failure to File a Factual Statement About an Alien Individual:** Placement of this statute in the NH Tier I category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.
- **§ 18 U.S.C. 2425 Transmitting Information About a Minor to Further Criminal Sexual Conduct:** Placement of this statute in the NH Tier I category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.

⁵ The Division of State Police has indicated that, if a federal offense has an equivalent offense to a New Hampshire offense, then New Hampshire will tier the federal offense as it would tier the equivalent state offense (New Hampshire has not provided a list of federal offenses that have an equivalent offense to a New Hampshire offense for this purpose). The Division of State Police has further indicated that, if the federal offense does not have an equivalent offense to a New Hampshire offense, then New Hampshire will tier federal offenses as SORNA requires; that is, it will tier federal offenses as SORNA tiers them. New Hampshire’s Tier I is not equivalent to SORNA’s Tier I for duration of registration; however, the Division of State Police has indicated that it can use the procedure laid out in § 651-B:10 to place offenders who have committed a federal offense in a higher tier. The relevant part of § 651-B:10 states:

“I. Any offender required to register for an offense committed in another state, country, territory, or tribal territory, or under federal law that is determined to be a reasonably equivalent offense to an offense listed RSA 651-B:1, V(a) or RSA 651-B:1, VII(a) or (b) may appeal that determination to the commissioner. The offender shall, within 10 days of notification, request a hearing on the matter before the commissioner. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules adopted under RSA 541-A. The offender shall have the right to appeal the commissioner's decision in superior court.

II. Any offender required to register for an offense in the state of conviction pursuant to RSA 651-B:1, V(c), RSA 651-B:1, VII(d), or RSA 651-B:1, XI(a)(4) may petition the superior court for a hearing to review the registration requirement. In determining whether the offender should be required to register, the court may consider the facts of underlying the out-of-state conviction, the offender's prior criminal history, the extent to which public safety would be furthered by requiring the offender to register, and any other relevant information. If the court determines that the offender is required to register, the court shall determine whether the offender is required to register as a tier I, tier II, or tier III offender. In determining the appropriate tier, the court shall consider the nature of other offenses that are currently listed in each tier, the seriousness of the offender's offense, the extent to which public safety would be furthered, whether the victim was a minor when the offense occurred, and any other relevant factors. The hearing at which such a determination is made shall comply with due process requirements, including a right to appeal the findings. The court shall provide the defendant an opportunity to be heard on the issue and shall state on the record the reasons for its findings and the reasons for requiring registration.”

- **§ 632-A:3, I Felonious Sexual Assault (where the victim is 13-15 and the assault is sexual contact that involves the naked touching of the victim’s genitalia):** Placement of this statute in the NH Tier II category does not meet SORNA’s requirements for frequency of registration: this offense involves a sexual act, as defined by § 18 U.S.C. 2246, against a victim 15 and under, which is a Tier III offense under SORNA.
- **§ 632-A:3, II Felonious Sexual Assault:** Placement of this statute in the NH Tier II category does not meet SORNA’s requirements for frequency of registration: this offense involves a sexual act, as defined by § 18 U.S.C. 2246, against a victim 15 and under, which is a Tier III offense under SORNA.
- **§ 632-A:3, IV Felonious Sexual Assault (where the victim is 13-15 and the assault is sexual contact that involves the naked touching of the victim’s genitalia):** Placement of this statute in the NH Tier II category does not meet SORNA’s requirements for frequency of registration: this offense involves a sexual act, as defined by § 18 U.S.C. 2246, against a victim 15 and under, which is a Tier III offense under SORNA.

These deviations do not substantially disserve the purposes of the 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.

While the state’s registry is an electronic database, not all of the documents in that database are in digitized form. If the state receives a request for a piece of information in a digitized form, the state can make it available in digitized form; however, the information in the database is not digitized as a matter of course. In addition, § 651-B:4, IV leaves it to the discretion of the New Hampshire Department of Public Safety (DOS, which runs the Division of State Police, the registering agency in the state) to require the collection of driver’s licenses/ID cards, fingerprints, palm prints and photographs, which means that not all of the individual registry offices are automatically collecting this information on all offenders.⁶ Also, while the individual registering offices often collect the dates of travel when they collect temporary lodging information, they do not do so as a matter of course, and it is not required to by statute. In addition, New Hampshire statutes only require an offender to report temporary lodging information when the offender will be at the same temporary lodging address for five or more days. This means that an offender can stay up to four days in a temporary lodging location, and then immediately stay up to four more days in another temporary lodging location, and so forth, without ever reporting to New Hampshire any temporary lodging information.

In terms of criminal history information, while New Hampshire does not *automatically* collect information regarding the offender’s status on parole/probation/supervised release, the state will input that information into its database any time that it has access to the court

⁶ According to Sergeant Nedeau, New Hampshire registry officials are collecting photographs, fingerprints, and palm prints for the majority of registered offenders in the state.

documents for the offender, or any time that that information is already in NCIC (the state's probation and parole agencies have access to NCIC). In addition, any time that a registry office is investigating one of the state's registered offenders on information from law enforcement, registry officials will check the offender's file in the registry database, and if parole or probation has expired, the registry will call probation/parole to verify that expiration. New Hampshire is also working on a project, entitled the J1 project, which will tie several systems together, such that all of law enforcement, probation, parole, and registry officials can go into one system and see all of an offender's criminal information. This project is due to be completed within the next few years.

In terms of DNA, New Hampshire does not collect DNA for registered offenders who are made to register solely on the basis of a delinquency adjudication. Finally, to the extent that the offender's registration number is different from the plate number(s) that he has, New Hampshire does not collect this information.

Because of New Hampshire's failure to automatically digitize registration information; and because of its failure to automatically collect driver's licenses/ID cards, fingerprints, and photographs, New Hampshire does not meet the SORNA requirements in this section. The remaining deviations, however, do not substantially disserve the purposes of the 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.

New Hampshire meets all of the SORNA requirements in this section.

VI. Initial Registration: Timing and Notice

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.

New Hampshire initially registers all of the offenders that it is required to register; however, New Hampshire does so within five business days, and not three, as SORNA requires.

These deviations do not substantially disserve the purposes of the 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: (1) those who are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime; (2) those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; and (3) 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).

New Hampshire does not recapture offenders who re-enter the jurisdiction's criminal justice system for another non-sex offense felony crime.

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

XIII. Keeping the Registration Current

SORNA requires that when a sex offender resides in a jurisdiction, that the offender immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. 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, that the sex offender immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging 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 sex offender notify the residence jurisdiction at least 21 days in advance of such travel.

In addition, SORNA requires that when a sex 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, 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.

New Hampshire allows offenders five days to update registration information, and not three days, as SORNA requires. In addition, while New Hampshire does update its public sex

offender registry website and NCIC/NSOR with updated registration information, and does notify another jurisdiction when an offender will be temporarily lodging in that jurisdiction, New Hampshire generally does so within five business days of receiving the initial or updated registration information, and not three days, as SORNA requires.

New Hampshire does not require an offender to appear in person to change his name, as SORNA requires.

With respect to international travel, while an offender must notify New Hampshire, as his residence jurisdiction, of his intent to travel to another country, the offender is not required to do so by any certain period of time. In addition, New Hampshire statutes only require an offender to report international travel when the offender will be at the same international temporary lodging address for five or more days. This means that an offender can stay up to four days in an international temporary lodging location, and then immediately stay up to four more days in another international temporary lodging location, and so forth, without ever reporting to New Hampshire any international travel.

When an offender notifies New Hampshire of his intent to either travel or relocate internationally, New Hampshire notifies the United States Marshals Service⁷ and INTERPOL, and updates NCIC/NSOR; however, New Hampshire does so within five business days, and not three, as SORNA requires. In addition, New Hampshire does not notify other jurisdictions in which the offender is required to register.

SORNA and its Supplemental Guidelines require offenders to notify their registering agency 21 days in advance of travel to a foreign country, regardless of the length of stay in that country. Given that SORNA Supplemental Guidelines were published on January 11, 2011, we expect New Hampshire to adopt this requirement in the near future and notify the SMART Office once the requirement is met. However, this and other deviations do not substantially disserve the purposes of the 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.

A. Duration of Registration

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, that SORNA Tier II offenders register for 25 years, and that SORNA Tier III offenders register for life.

⁷ New Hampshire is notifying its local United States Marshals Service office. Per the United States Marshals Service National Sex Offender Targeting Center, all local United States Marshals Service offices have been instructed to send information regarding a sex offender's international travel to the National Sex Offender Targeting Center.

Under New Hampshire's system, registrants either register for ten years or for life.⁸ However, this deviation does not substantially disserve the purposes of this requirement.

B. Frequency of Registration

SORNA 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.

New Hampshire meets the SORNA requirements related to frequency of appearances for all of its offenders; however, as mentioned in Section IV, "Required Registration Information," registry offices are not automatically taking photographs of offenders. This deviation does not substantially disserve the purposes of this requirement.

In addition, SORNA creates certain requirements under which a jurisdiction can allow an offender to have a reduced registration period.

New Hampshire does not allow offenders to have their registration on the state's registry database removed. However, an offender who has been classified as a New Hampshire Tier I or Tier II offender can petition to be removed from the public registry website. Per § 651-B:6, a New Hampshire Tier I offender can so petition as early as five years after the date of the termination of any incarceration or probation, and a New Hampshire Tier II offender can so petition as early as fifteen years after the date of the termination of any incarceration or probation. This does not meet SORNA's requirements: under SORNA, a SORNA Tier I offender can only petition after ten years with a clean record, and a SORNA Tier II offender cannot petition at all. In addition, while removal from the public website does require all of the other conditions that SORNA requires, including the successful completion of any period of probation, parole, or supervised release, removal does not necessarily require the offender to not have had any revocations during those periods, as SORNA requires.⁹

⁸ It should be noted that New Hampshire allows for an increase in the length of registration for any offender who is convicted for a knowing failure to register. Per § 651-B:9:

"II. A sexual offender or offender against children who is required to register under this chapter and who knowingly fails to comply with the requirements of this chapter shall be guilty of a class B felony. An offender who is required to register for a period of 10 years following his or her release, pursuant to RSA 651-B:6, II, shall be required to register for an additional 10 years from the date of conviction for violating this paragraph. The obligation to register for an additional 10 years from the date of conviction for violating this paragraph shall be consecutive to the registration period imposed pursuant to RSA 651-B:6 and shall be imposed even if the original registration period has elapsed.

III. A sexual offender or offender against children previously convicted pursuant to paragraph II who is required to register under this chapter and who knowingly fails to comply with the requirements of this chapter shall be guilty of a class A felony. An offender who is required to register for a period of 10 years following his or her release, pursuant to RSA 651-B:6, II, who is convicted for violating this paragraph shall be required to register for life."

⁹ Per § 651-B:6, for an offender to be removed, the offender also must present to the court a risk assessment prepared by a qualified psychiatrist or psychologist at the offender's expense. In addition, § 651-B:6 states the following: "Prior to granting any petition to remove an offender from the public list, the court shall provide notice to the county attorney who prosecuted the case, the victim advocate, and the victim or victim's family, and permit those

These deviations do not substantially disserve the purposes of the 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.

Pursuant to § 651-B:7, III(A), the offenders who appear on the state's public registry website are the following:

- offenders who are required to register as a result of an offense against a child;¹⁰
- pursuant to § 651-B:4, V, offenders who have committed an offense against a child, who are incarcerated in some way and are going to be in contact with the public by

parties to be heard on the petition. Prior to any decision granting the application, the court shall provide the victim with the opportunity to address the court. The victim may appear personally, or by counsel, or may provide a written statement to reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the registration requirement. The judge shall consider the statements of the victim pursuant to this section when making a decision regarding the application. The judge shall grant the application, after a hearing, only where, in the opinion of the court, removal from the registration requirements will assist the individual in the individual's rehabilitation and will be consistent with the public welfare.”

§651-B:6 provides that the granting of a petition for removal from the public list is contingent upon, among others, the offender having “successfully completed” any period of supervised release. According to Associate Attorney General Ann Rice, it is not clear from the statute whether an offender whose probation or parole had been revoked could meet the requirement of successful completion or if the revocation would serve as a bar to removal. According to Associate Attorney General Ann Rice, that is a matter of statutory interpretation for the individual court at issue.

¹⁰ § 651-B:1, VII states the following: “‘Offense against a child’” means the following offenses, including an accomplice to, or an attempt, conspiracy, or solicitation to commit, any of the following offenses:

(a) Any of the following offenses, where the victim was under the age of 18 at the time of the offense: capital murder, RSA 630:1, I(e); first degree murder, RSA 630:1-a, 1(b)(1); aggravated felonious sexual assault, RSA 632-A:2; felonious sexual assault, RSA 632-A:3; sexual assault, RSA 632-A:4, I(a) or RSA 632-A:4, III; kidnapping, RSA 633:1; criminal restraint, RSA 633:2; false imprisonment, RSA 633:3; incest, RSA 639:2; violation of privacy, RSA 644:9, I(a) or RSA 644:9, III-a; a second or subsequent offense within a 5-year period for indecent exposure and lewdness, RSA 645:1, I; indecent exposure and lewdness, RSA 645:1, II and RSA 645:1, III; or prostitution, RSA 645:2.

(b) Intentional contribution to the delinquency of a minor, RSA 169-B:41, II; sexual assault, RSA 632-A:4, I(b) if the actor was 18 years of age or older at the time of the offense; endangering the welfare of a child, RSA 639:3, III; possession of child sexual abuse images, RSA 649-A:3; distribution of child sexual abuse images, RSA 649-A:3-a; manufacture of child sexual abuse images, RSA 649-A:3-b; computer pornography, RSA 649-B:3; certain uses of computer services prohibited, RSA 649-B:4; or obscene matters, RSA 650:2, II.

(c) A law of another state, country, territory, tribal territory, or the federal government reasonably equivalent to a violation listed in subparagraph (a) or (b). For purposes of this section, the term ‘country’ refers to Canada, Great Britain, Australia, and New Zealand, as well as any other country that the United States State Department has determined has an independent judiciary that generally enforces the right to a fair trial.”

- means of a work release, release into the community after psychiatric care, or other assignment; and
- offenders who commit more than one sex offense (regardless of whether that offense was committed in New Hampshire).

As a result, offenders who have committed the following offenses, who are required by SORNA to appear on the jurisdiction's public website, will not appear:

- § 632-A:2, Aggravated Felonious Sexual Assault, where the victim is adult and the offender has no prior sex offense conviction from any jurisdiction;
- § 18 U.S.C. 2241, Aggravated Sexual Abuse, where the victim is adult and the offender has no prior sex offense conviction from any jurisdiction; and
- § 18 U.S.C. 2242, Sexual Abuse, where the victim is adult and the offender has no prior sex offense conviction from any jurisdiction.

New Hampshire has not enabled users of NSOPW, or users of New Hampshire's public registry website, to search by geographic radius; however, New Hampshire is currently working on developing this search field. Also, while New Hampshire posts school addresses on its own website, a user of NSOPW will not get a "hit" on an offender by searching through NSOPW if the only address that the offender has in New Hampshire is a school address. New Hampshire also does not post employer addresses on its public website. New Hampshire statute prohibits registry officials from disseminating offenders' employment address information to the public; as such, there is no alternative means for members of the public to access this information. Finally, New Hampshire does not post any vehicle information on its public website, and only includes the offender's criminal history *in New Hampshire* on its public registry website.

Because New Hampshire does not disseminate or otherwise provide employment address information to the public, New Hampshire does not meet the SORNA requirements in this section. The remaining deviations do not substantially disserve the purposes of the 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.

As discussed in Section I, "Immediate Transfer of Information," when New Hampshire receives initial and/or updated registration information from an offender, New Hampshire will notify the required SORNA registration jurisdiction(s) of that information, but only if the information represents a change for that jurisdiction that is being notified. In addition, New Hampshire so notifies other jurisdictions, and updates NCIC/NSOR, within five days, and not three, as SORNA requires.

In terms of community notification, New Hampshire does not yet have an automated email notification system; according to the Division of State Police, that system is in production, although the expected date of completion is yet unknown. In addition, at this point, the system will only provide notifications for changes to residence and school information, and will only allow for notifications by zip code as opposed to geographic radius.

These deviations do not substantially disserve SORNA's requirements; however, New Hampshire is strongly encouraged continue to develop its email notification system, which should include notifications for changes to employment information.

XIII. 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.

Pursuant to § 651-B:9, an offender who negligently (as opposed to knowingly) fails to comply with his registration requirements is guilty of a misdemeanor.¹¹ In addition, according to § 651-B:9, a juvenile who is adjudicated delinquent who fails to comply with his registration requirements is subject to whatever disposition the juvenile court deems appropriate, which does not necessarily include a maximum term of imprisonment that is greater than one year.

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

XIV. 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.

New Hampshire meets all SORNA requirements in this section.

XV. 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 abscondence and notifying various law enforcement agencies.

¹¹ If the offender is a New Hampshire Tier I offender, upon conviction for a negligent or knowing failure to register he or she will be required to register for an additional 10-year period, per § 651-B:9.

New Hampshire leaves it to the discretion of the law enforcement agency that is investigating the abscondence to determine on a case-by-case basis whether to seek a warrant for the offender's arrest. In addition, while the state may notify the United States Marshals Service if the absconded offender cannot be located though state and local law enforcement investigation, New Hampshire does not always so notify the United States Marshals Service. However, the state does send out quarterly a non-complaint report, which lists every New Hampshire offender who is non-compliant. This report is distributed the local United States Marshals Service, along with all of the jails, and law enforcement agencies, jails, and prisons in the state. Finally, both in its own registry and in NCIC/NSOR, New Hampshire lists all absconded offenders as "non-compliant."

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

Conclusion

New Hampshire has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. However, there are provisions identified in this report that should be addressed in order for New Hampshire to substantially 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 adopting the remaining provisions of SORNA.

Appendix: New Hampshire State Statutes

The SMART Office has reviewed all New Hampshire statutes identified in its substantial implementation submission package and has identified New Hampshire'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). 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 New Hampshire.

In reviewing New Hampshire's Statutes, the SMART Office understands that New Hampshire has categories of registrants for purposes of its duration of registration and frequency of registration requirements:

Tier I offenders, who will be required to register for 10 years and appear semi-annually to verify registration information (the "NH Tier I category").

Tier II offenders, who will be required to register for life and appear semi-annually to verify registration information (the "NH Tier II category").

Tier III offenders, who will be required to register for life and appear quarterly to verify registration information (the "NH Tier III category").

SORNA Tier I Offenses

SORNA requires that Tier I offenders register for a minimum of 15 years and annually verify registration information. The following offenses listed in New Hampshire statutes would require, at a minimum, Tier I registration requirements under SORNA.

§ 630:1, I (e) Capitol Murder (where the underlying offense is a Tier I offense)

Placement of this statute in the NH Tier III category exceeds SORNA's requirements.

§ 630:1-a, I(b) (1) First Degree Murder (where the underlying offense is a Tier I offense)

Placement of this statute in the NH Tier III category exceeds SORNA's requirements.

§ 632-A:3, I Felonious Sexual Assault (where the victim is an adult)

Placement of this statute in the NH Tier II category exceeds SORNA's requirements.

§ 632-A:3, IV Felonious Sexual Assault (where the victim is an adult)

Placement of this statute in the NH Tier II category exceeds SORNA's requirements.

Placement of this statute in the NH Tier I category exceeds SORNA’s requirements for frequency of registration. Placement of this statute in the NH Tier I category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.

§ 18 U.S.C. 2423(c) Engaging in Illicit Sexual Conduct in Foreign Places

Placement of this statute in the NH Tier I category exceeds SORNA’s requirements for frequency of registration. Placement of this statute in the NH Tier II category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.

§ 18 U.S.C. 2424 Failure to File a Factual Statement About an Alien Individual

Placement of this statute in the NH Tier I category exceeds SORNA’s requirements for frequency of registration. Placement of this statute in the NH Tier I category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.

§ 18 U.S.C. 2425 Transmitting Information About a Minor to Further Criminal Sexual Conduct

Placement of this statute in the NH Tier I category exceeds SORNA’s requirements for frequency of registration. Placement of this statute in the NH Tier I category does not meet SORNA’s requirements for duration of registration. This is a Tier I offense under SORNA.

SORNA Tier II Offenses

SORNA requires that Tier II offenders register for a minimum of 25 years and semi-annually verify registration information. The following offenses listed in New Hampshire Statutes would require, at a minimum, Tier II registration requirements under SORNA.

§ 169-B:41, II Intentional Contribution to Delinquency

Placement of this statute in the NH Tier II category meets SORNA’s requirements for frequency of registration, and exceeds SORNA’s requirements for duration of registration.

§ 632-A:3, I Felonious Sexual Assault (where the victim 13-15 and the assault is sexual contact that does not involve the naked touching of the victim’s genitalia; or where the victim 15-17 and the assault is sexual contact¹²)

¹² The term “sexual contact” in this Appendix is defined by New Hampshire Statutes § 632-A:1, IV, which states: “ ‘Sexual contact’ means the intentional touching whether directly, through clothing, or otherwise, of the victim’s or actor’s sexual or intimate parts, including emissions, tongue, anus, breasts, and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.” Compare this to “sexual contact” as defined by §18 U.S.C. 2246, which states in part “(3) the term ‘sexual contact’ means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify

Placement of this statute in the NH Tier II category exceeds SORNA's requirements.

§ 632-A:3, IV **Felonious Sexual Assault (where the victim 13-15 and the assault is sexual contact that does not involve the naked touching of the victim's genitalia; or where the victim 15-17 and the assault is sexual contact)**

Placement of this statute in the NH Tier II category exceeds SORNA's requirements.

§ 639:2 **Incest (where the victim 13-15 and the assault is sexual contact that does not involve the naked touching of the victim's genitalia; or where the victim 15-17 and the assault is sexual contact)**

Placement of this statute in the NH Tier III category exceeds SORNA's requirements.

§ 639:3, III **Endangering Welfare of a Child**

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 645:2, II **Prostitution and Related Offenses (where the victim is a minor)**

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 649-A:3-a **Distribution of Child Sexual Abuse Images**

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 649-A:3-b **Manufacture of Child Sexual Abuse Images**

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 649-B:3 **Computer Pornography Prohibited**

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

the sexual desire of any person.” For purposes of this section, the only difference between the New Hampshire and federal definition of sexual contact is that the federal definition excludes the naked touching of the genitalia of a victim under 16: under federal law, as articulated in § 18 U.S.C. 2246, such conduct constitutes a “sexual act.”

§ 649-B:4 Certain Use of Computer Services Prohibited

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 18 U.S.C. 1591 Sex Trafficking of Children

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 18 U.S.C. 2244 Abusive Sexual Contact (victim 13-17)

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 18 U.S.C. 2251 Sexual Exploitation of Children

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 18 U.S.C. 2251A Selling or Buying of Children

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 18 U.S.C. 2252 (Receipt/Possession of Child Pornography)

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 18 U.S.C. 2252A Certain Activities Relating to Material Constituting or Containing Child Pornography (not possession or receipt of child pornography)

Placement of this statute in the Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 18 U.S.C. 2260 Production of Sexually Explicit Depictions of a Minor for Importation into the United States

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 18 U.S.C. 2421 Transportation of a Minor for Illegal Sexual Activity

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 18 U.S.C. 2422 Coercion and Enticement of a Minor for Illegal Sexual Activity

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

§ 18 U.S.C. 2423(A) Transportation of Minors for Illegal Sexual Activity

Placement of this statute in the NH Tier II category meets SORNA's requirements for frequency of registration, and exceeds SORNA's requirements for duration of registration.

SORNA Tier III Offenses

SORNA requires that Tier III offenders register for life and quarterly verify registration information. New Hampshire does utilize this tier in its registration scheme, as its sexually violent offenders must register for life and quarterly verify registration information.

The following offenses listed in New Hampshire Statutes would require, at a minimum, Tier III registration requirements under SORNA.

§ 632-A:2 Aggravated Felonious Sexual Assault

Placement of this statute in the NH Tier III category meets SORNA's requirements.

§ 632-A:3, I Felonious Sexual Assault (where the victim is under 13; or where the victim is 13-15 and the assault is sexual contact that involves the naked touching of the victim's genitalia)

Placement of this statute in the NH Tier II category does not meet SORNA's requirements for frequency of registration: this offense involves a sexual act, as defined by § 18 U.S.C. 2246¹³, against a victim 15 and under, which is a Tier III offense under SORNA. Placement of this statute in the NH Tier II category meets SORNA's requirements for duration of registration.

§ 632-A:3, II Felonious Sexual Assault

¹³ § 18 U.S.C. 2246 states as follows: "(2) the term 'sexual act' means—
(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person."

Placement of this statute in the NH Tier II category does not meet SORNA’s requirements for frequency of registration: this offense involves a sexual act, as defined by § 18 U.S.C. 2246, against a victim 15 and under, which is a Tier III offense under SORNA. Placement of this statute in the NH Tier II category meets SORNA’s requirements for duration of registration.

§ 632-A:3, III Felonious Sexual Assault

Placement of this statute in the NH Tier III category meets SORNA’s requirements.

§ 632-A:3, IV Felonious Sexual Assault (where the victim is under 13; or where the victim is 13-15 and the assault is sexual contact that involves the naked touching of the victim’s genitalia)

Placement of this statute in the NH Tier II category does not meet SORNA’s requirements for frequency of registration: this offense involves a sexual act, as defined by § 18 U.S.C. 2246, against a victim 15 and under, which is a Tier III offense under SORNA. Placement of this statute in the NH Tier II category meets SORNA’s requirements for duration of registration.

§ 633:1 Kidnapping (where the victim is a minor)

Placement of this statute in the NH Tier III category meets SORNA’s requirements.

§ 639:2 Incest (where the victim is under 13; or where the victim is 13-15 and the conduct involves any sexual act, as defined in § 18 U.S.C. 2246, including the naked touching of the victim’s genitalia; or where the victim is 15-17 and the offense involves a sexual act)

Placement of this statute in the NH Tier III category meets SORNA’s requirements.

§ 18 U.S.C. 2241 Aggravated Sexual Abuse

Placement of this statute in the NH Tier III category meets SORNA’s requirements.

§ 18 U.S.C. 2242 Sexual Abuse

Placement of this statute in the NH Tier III category meets SORNA’s requirements.

§ 18 U.S.C. 2243 Sexual Abuse of a Minor or Ward

Placement of this statute in the NH Tier III category meets SORNA’s requirements.

§ 18 U.S.C. 2244 Abusive Sexual Contact (victim under 13)

Placement of this statute in the NH Tier III category meets SORNA's requirements.

Further Review

New Hampshire registers the following offenses; however, those offenses, without the commission of (or the attempt or conspiracy to commit) a sexual offense, do not require registration under SORNA:

- § 644:9, I (a) Violation of Privacy (victim is an adult)
- § 644:9, III-a Violation of Privacy
- § 645:1,I Indecent Exposure and Lewdness (if second or subsequent offense in a five-year period)
- § 645:1, II & III Indecent Exposure and Lewdness
- 650:2, II Obscene Matter