



May 2015

SORNA Substantial Implementation Review State of New York

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to acknowledge the State of New York 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 New York's SORNA substantial implementation packet and has found the State of New York has not substantially implemented SORNA.

In October 2014, New York State Division of Criminal Justice Services (DCJS) submitted to the SMART Office for review a SORNA substantial implementation package, consisting of a partially completed SORNA Substantial Implementation Checklist and a copy of the most recent New York State registration statute. In addition, email correspondence with DCJS personnel 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 15 sections addressing the SORNA requirements. Under each section, we indicate whether New York 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 York 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 York should also work toward rectifying the deviations that do not substantially disserve the purposes of SORNA.

This is an exhaustive review and meant to detail every area in which the state has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the state, and get back in touch with us to develop a strategy to address these remaining issues.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers and/or updates his information in a jurisdiction, that that initial registration information/updated information be immediately sent to other jurisdictions where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website.

¹ Email correspondence with Wendy Maher, Office of Sex Offender Management, NYS Division of Criminal Justice Services, dated March 2, 2015.

In New York, when an offender initially registers address information, the information is sent to the arresting and resident localities. When an offender notifies the registry of a change of address, the information is sent to both the prior residence and the new residence law enforcement agencies. Registration information, including updates and/or any changes, is only shared with law enforcement agencies within New York State, and typically done within 10 days.²

When an out of state offender moves to New York, the offender must notify DCJS no later than 10 days of establishing residency, and then the NYS Board of Examiners of Sex Offenders reviews their cases to determine if they have to register in NYS. If they are registerable, then a court where the offender resides will hold a hearing to determine his/her risk level. New York does not provide registration information to the originating State, territory or tribe located outside New York State.

Anytime an offender's registration is updated, that information is transmitted to NCIC/NSOR and the New York State public sex offender registry web site, and any new, updates or changes in information received by the registry is typically updated within two days of receipt.

Because New York does not provide notification about registration updates to law enforcement agencies outside of the state and does not notify NYS agencies within the timeframe prescribed by SORNA, New York does not meet the SORNA 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 be included in a jurisdiction's registration scheme.

A. New York Offenses

New York captures the offenses for which SORNA requires registration, with some exceptions. In New York, some offenses require registration depending upon victim age and whether the offender has prior sex convictions (i.e., Sexual Abuse in the Third Degree and Forcible Touching); if a court finds that registration would be unduly harsh and inappropriate, then registration is not required for some offenses (i.e., Unlawful Surveillance in the Second Degree). Additionally, New York does not include conspiracy to commit offenses, unless the offense is a sexually motivated felony.

² "Qualified" state law enforcement agencies are notified through the eJusticeNY Exchange Portal. Per NY Executive Law § 835(9), "qualified agencies" does not include tribal entities. At present, the St. Regis Mohawk Tribe receives access to the Portal due to their status as the only state-recognized tribal police force.

B. Offenses of Other SORNA Registration Jurisdictions

New York captures the offenses of other registration jurisdictions for which SORNA requires registration, if the offense includes all of the essential elements of a registerable offense in New York, or if the offense is a felony in any other jurisdiction for which the offender is required to register as a sex offender. Additionally, the New York Board of Examiners of Sex Offenders determines whether those individuals convicted outside of New York must register in the state.

C. Federal Offenses

While New York captures many of the federal offenses requiring registration under SORNA, if the offense includes all of the essential elements of a registerable offense in New York, or if the offense is a felony in any other jurisdiction for which the offender is required to register as a sex offender. The following offenses do not appear to have substantially equivalent offenses in New York that require registration:

- 18 U.S.C. §2252B (Misleading Domain Names on the Internet)
- 18 U.S.C. §2252C (Misleading Words or Digital Images on the Internet)
- 18 U.S.C. §2424 (Failure to File Factual Statement about an Alien Individual)

D. Military Offenses

In New York, military offenses do not necessarily require registration. Rather, New York requires registration if an offense includes all of the essential elements of a registerable offense in New York, or if the offense is a felony in any other jurisdiction for which the offender is required to register as a sex offender. Nevertheless, there are some UCMJ Offenses (such as Conduct Unbecoming) which are not similar to those registerable under New York law and, therefore, would not be registered under New York's existing scheme.

E. Foreign Offenses

In New York, sex offenses committed in other countries do not necessarily require registration. Rather, the Board of Examiners of Sex Offenders determines whether those individuals convicted outside of New York must register in the state.

F. Juvenile Adjudications

In New York, juveniles who have been adjudicated delinquent for committing a sex offense are not included in the registry.

Because New York does not register juveniles adjudicated of certain sex offenses, New York does not meet the requirements in this section; however, the remaining deviations do not substantially disserve the purposes of the requirement(s) in this section.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction established through a baseline three-tier classification system. New York's sex offender registration scheme includes a risk assessment/classification system, in which its offenders are assessed as risk level 1, 2 or 3, or designated a sexual predator,³ sexually violent offender,⁴ or predicate sex offender⁵ by the Board of Examiners of Sex Offenders. Those offenders assessed as risk level 1 (or who have not received a risk level assignment) and have not been designated are required to register annually for a period of twenty years from the initial date of registration. Those offenders assessed as risk level 2 or 3, or are designated a sexual predator, sexually violent offender, or predicate sex offender are required to register annually for life. Additionally, any sex offender assessed as risk level 3 or designated a sexual predator shall also verify his or her address with law enforcement every 90 days.

New York's classification scheme does not meet SORNA requirements. To meet SORNA requirements, New York would need to base the duration of registration and frequency of reporting upon offense of conviction in accordance with SORNA's tiering structure (see Appendix for a SORNA tiering review of New York statutes).

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. New York captures much of the required information, with the following exceptions:

- Employment information (only required for level 2 and 3 offenders)
- Watercraft/aircraft information
- Location where vehicles are kept
- Text of the law defining the registerable offense
- Criminal history of the sex offender
- Palm prints
- Phone numbers
- Passport and immigration documents
- Professional licensing information
- Temporary residence/lodging
- DNA sample (only for offenses committed after July 6, 2004)

³ "Sexual predator" means a sex offender who has been convicted of a sexually violent offense defined Correction Law §168-a(3) and who suffers from a mental abnormality or personality disorder that makes him or her likely to engage in predatory sexually violent offenses.

⁴ "Sexually violent offender" means a sex offender who has been convicted of a sexually violent offense defined in Correction Law §168-a (3): 130.35, 130.50, 130.65, 130.66, 130.67, 130.70, 130.75, 130.80, 130.95 and 130 (see Appendix: New York Offense Tiering Review for further information).

⁵ "Predicate sex offender" means a sex offender who has been convicted of an offense set forth in Correction Law §§168-a(2);(3) when the offender has been previously convicted of an offense set forth in Correction Law §§168-a(2);(3).

- Photocopies of driver's licenses or ID cards

Because New York does not capture much of the information about registered sex offenders that SORNA requires, New York 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 is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

New York does not require individuals who are employees in the jurisdiction (and not residents) to register. Sex offenders who are students in New York are required to register if the Board of Examiners of Sex Offenders makes that determination.

Because New York does not automatically register sex offenders residing in other jurisdictions but employed or attending school within the state, New York does not meet the SORNA requirements in this section.

VI. Initial Registration: Generally

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 registration duties and require the offender to acknowledge in writing that he understands those duties.

In New York, sex offenders are required to register with the releasing authority at least ten calendar days prior to release from incarceration or at the time the sentence is imposed for any sex offender released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge. A sex offender from another jurisdiction who moves to New York is required to report his/her address to DCJS within ten calendar days and the Board of Examiners of Sex Offenders then determines whether the sex offender is required to register in the State.

Because New York does not immediately (i.e., within 3 days) register sex offenders who move to New York from other jurisdictions outside the state, New York does not meet 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).

In New York, anyone who was on parole or probation or incarcerated for a sex offense on January 21, 1996, must register as a sex offender. In addition, offenders convicted of a sex offense on or after that date, or sentenced to probation, local jail, or state prison after that date, must register upon returning to the community. Those who were convicted of a sex offense prior to January 21, 1996, and reenter the criminal justice system for some felony crime are not subject to registration in New York.

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

VIII. Keeping the Registration Current

SORNA requires that when a registered sex offender resides in a jurisdiction, the 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, the sex offender 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 but indicates to the state that he/she intends to travel outside the United States, that the offender notifies the residence jurisdiction at least 21 days in advance of such travel.

In addition, SORNA requires that when an offender notifies the jurisdiction of his intent to relocate to another country to live, work or attend school, or of his intent to travel to another country, the jurisdiction must do three things: immediately notify any other jurisdiction where the offender is either registered, or is required to register, of that updated information; immediately notify the United States Marshals Service, and immediately update NCIC/NSOR.

In New York, sex offenders are required to notify DCJS in writing no later than ten calendar days after any change of address, internet accounts with internet access providers, internet identifiers, or status of enrollment, attendance, employment or residence at any institution of higher education. Any nonresident worker or nonresident student is required to notify DCJS in writing of any change of residence, employment or educational institution address no later than ten days after such change. Employment information is only required for level 2 and 3 sex offenders. A level 2 or 3 sex offender is only required to report changes in employment, other than employment at an institution of higher education, when he/she annually verifies.

In New York, sex offenders must notify DCJS 10 days prior to international travel; if an offender relocates to another country, they must notify DCJS of their new address no later than 10 days after the move. However, DCJS does not notify the United States Marshals Service or NCIC/NSOR of an offender's international travel.

New York does not meet the SORNA requirements in this section.

IX. Verification/Appearance Requirements

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

In New York, the Board of Examiners of Sex Offenders or District Attorney provides a recommendation to the Court regarding risk level and designation; duration of registration is based on risk level and designation. The Court assigns a risk level (1, 2, or 3) and, if appropriate, a designation. The three designations are as follows:

- “Sexual predator” means a sex offender who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes him or her likely to engage in predatory sexually violent offenses.
- “Sexually violent offender” means a sex offender who has been convicted of a sexually violent offense.⁶
- “Predicate sex offender” means a sex offender who has been convicted of a registerable offense when the offender has been previously convicted of a registerable offense.

The duration of registration for a sex offender who has not been designated a sexual predator, sexually violent offender, or predicate sex offender, and who is classified as a level one risk, or who has not yet received a risk level classification, is 20 years from the initial date of registration. The duration of registration for a sex offender who is designated a sexual predator,

⁶ “Sexually violent offense” is defined in Correction Law §168-a (3): 130.35, 130.50, 130.65, 130.66, 130.67, 130.70, 130.75, 130.80, 130.95 and 130 (see Appendix: New York Offense Tiering Review for further information).

or a sexually violent offender, or a predicate sex offender, or who is classified as risk level 2 or 3, is lifetime.

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.

The frequency of registration for a sex offender who has not been designated a sexual predator, or a sexually violent offender, or a predicate sex offender, and who is classified as risk level 1, or who has not yet received a risk level classification, is annually from the initial date of registration. The frequency of registration for a sex offender who is designated a sexual predator, or a sexually violent offender, or a predicate sex offender, or who is classified as risk level 2 or 3, is annually. Annual registration is completed via mailed Annual Verification Form. Any sex offender having been designated a level three risk or a sexual predator is also required to personally verify his/her address every ninety calendar days.

C. Reduction of Registration Periods

SORNA creates certain requirements under which a jurisdiction can allow an offender to have a reduced registration period. New York allows offenders required to register based upon delinquency adjudications for sexually violent offenses to petition to terminate registration requirements in accordance with SORNA requirements after 25 years.

Any sex offender who is classified as risk level 2, and who has not been designated a sexual predator, a sexually violent offender, or a predicate sex offender, who has been registered for at least 30 years may petition the sentencing court for relief of duty to register. Offenders with designations (sexual predator, sexually violent offender, or predicate sex offender) remain lifetime registrants regardless of risk level.

New York does not meet any of 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.

In New York, only Level 2 and Level 3 offenders are posted on the sex offender registry website and are searchable by name, county and zip code. The registry is not searchable by geographic radius. New York displays on its public registry website the information required by SORNA.

Because New York uses a risk assessment process to determine which offenders are posted on its website and only includes Level 2 and 3 offenders, New York 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, including any Indian tribes/nations/pueblos. In addition, SORNA requires that each jurisdiction also disseminate certain initial and updated registration information to the community.

In New York, notification to local law enforcement agencies is dependent on the releasing and/or registering agency: the sentencing court, local jail, Department of Corrections and Community Supervision, or DCJS. When offenders register at releasing facilities, they are not required to immediately provide a residence address. Rather, the offender is allowed to notify DCJS of their address within ten days of their release. Additionally, upon receipt of a change of address or change in the status of the enrollment, attendance, employment or residence at an institution of higher education by a sex offender (offenders are allowed to notify DCJS within ten days), DCJS notifies the local law enforcement agency having jurisdiction of the new place of residence and the local law enforcement agency where the sex offender last resided of the new place of residence. Because of this process and the ten-day timeframe allowed offenders to report address information, NYS does not notify tribes at the point when offenders are released and plan to live on tribal lands. Since tribes are not the “qualified” law enforcement agency with jurisdiction over the offender, notification is impermissible.⁷

The local law enforcement agency having jurisdiction of the new place of residence may perform community notification if it chooses to do so. That agency may notify schools and other “entities with vulnerable populations” about the presence of a level 1, 2 or 3 offender if the offender poses a threat to public safety. New York does not notify jurisdictions about changes in sex offenders’ changes in employment. New York DCJS allows individuals to sign up to receive alerts whenever a Level 2 or Level 3 sex offender listed on the public sex offender registry website moves into or out of a chosen community or location.

New York is monitoring the SORNA Exchange Portal and receiving relocation tasks; however, DCJS is not sending offender relocation information over the portal.

Because New York allows offenders to report address information ten days after establishing residence and does not notify tribes, New York does not meet the SORNA requirements in this section.

⁷ Per correspondence with DCJS on August 21, 2012, “DCJS is exceedingly hesitant in acceptance of any responsibility for permissive information dissemination. Additionally, as both the NYS Office of Court Administration and local jails fall outside the DCJS’s responsibilities, we cannot require they undertake SORNA notification requirements.”

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

SORNA requires that each jurisdiction, other than a federally recognized Indian tribe, provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure of a sex offender to comply with their registration requirements.

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

XIII. When a Sex Offender Fails to Appear for Registration

SORNA requires that when a jurisdiction is notified that a sex offender intends to reside, be employed, or attend school in its jurisdiction, and that offender fails to appear for registration as required, that the jurisdiction receiving that notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

New York does not notify the originating jurisdiction of the appearance (or non-appearance) of an offender for registration in New York. If the registry is informed by another state that an offender is moving to New York but the offender never reports for registration, then the US Marshals are contacted.

New York does not meet the SORNA requirements in this section.

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

SORNA requires that when a jurisdiction has information that a sex offender may have absconded, that the jurisdiction take certain actions to investigate the absconder and notify various law enforcement agencies.

In New York, the law enforcement agency with last known jurisdiction over the offender is notified automatically if the Annual Verification Form is returned as undeliverable. If the law enforcement agency informs the registry that that offender is no longer at that last known address, the registry posts the address as “Unknown”, NCIC/NSOR is updated that day to post the address as “Unknown”, and the law enforcement agency issues the warrant for the offender’s arrest (if the offender is on Probation or Parole, that agency will issue a warrant). The registry notifies the US Marshals Service. The New York Registry does not have access to the NCIC Wanted Person File.

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

XV. Tribal Considerations

There are six Indian Nations that have chosen to adopt SORNA that are located within the boundaries of New York State: Oneida Indian Nation, Onondaga Indian Nation, Saint Regis

Mohawk Tribe, Shinnecock Indian Tribe, Tonawanda Band of Seneca, and Tuscarora Nation. While Saint Regis has its own police force and is less reliant on the State for assistance, the remainder of the Nations have concerns about New York's compliance with SORNA and their ability to participate in the nationwide registry system (and associated databases) that SORNA has created without necessarily setting up their own registries. The Nations are aware of the public safety issues related to having unknown sex offenders on their lands and want to make sure offenders are not able to abscond to the Nations' territories without any notice of relocation (or requirement thereof). The Nations also need assurance that offenders are being properly notified of their obligation to register anywhere they live, work or go to school, which requires close communication and collaboration with officials in New York.

While the SMART Office has been in contact with the Nations, the Nations have repeatedly expressed concern about the lack of communication, support and assistance provided by New York State officials in the registration and notification of sex offenders.

As the SMART Office works through substantial implementation packages submitted by the Nations located in New York, we will be in contact with state officials to facilitate, where possible, information sharing systems and arrangements between the Nations and New York State. While the SMART Office is not aware of any tribal liaison in New York State government, we do maintain the points of contact for the Nations and encourage the State to engage in conversations with the Nations to establish systems to better coordinate, communicate and track sex offenders. The points of contact in the Nations are as follows:

Oneida Indian Nation

Ray Halbritter
SOR Registrar
Nation Representative
5218 Patrick Road
Turning Stone Resort & Casino
Verona, NY 13478
(315) 361-7633
(315) 361-7619 (fax)
sbarbano@oneida-nation.org

Onondaga Indian Nation

Legal Contact
Alex Page
Berkely Williams LLP
616 Whittier St NW
Washington, DC 20012
202-302-2811
Alex.c.page@gmail.com

Saint Regis Mohawk Tribe

Decota Thomas
Investigator
545 State Route 37
Hogansburg, NY 13655
(518) 358-9200
(518) 358-9334 (fax)
decota.thompson@srmt-nsn.gov

Shinnecock Indian Tribe

Bradden Smith
Vice Chairman
P.O. Box 5006
Southampton, NY 11969
631-283-6143
631-283-0751 (fax)
BradSmith@shinnecock.org

Tonawanda Band of Seneca

Legal Contact
Alex Page
Berkely Williams LLP
616 Whittier St NW
Washington, DC 20012
202-302-2811
Alex.c.page@gmail.com
tonseneca@aol.com

Tuscarora Nation

Legal Contact
Alex Page
Berkely Williams LLP
616 Whittier St NW
Washington, DC 20012
202-302-2811
Alex.c.page@gmail.com

Conclusion

We encourage New York to continue to work towards meeting the provisions of SORNA. However, there are many provisions identified in this report that should be addressed in order for New York to substantially implement SORNA. Please contact the SMART Office with any questions or concerns once you have had the opportunity to review and discuss our findings.

Appendix: New York Offense Tiering Review

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

In reviewing New York Revised Statutes, the SMART Office understands that, New York has three categories of registrants for purposes of duration of registration requirements and frequency of reporting to law enforcement for verification:

1. The duration of registration and verification for a sex offender who has not been designated a sexual predator, or a sexually violent offender, or a predicate sex offender, and who is classified as a level one risk, or who has not yet received a risk level classification, shall be annually for a period of twenty years from the initial date of registration.
2. The duration of registration and verification for a sex offender who, on or after March 11, 2002, is designated a sexual predator, or a sexually violent offender, or a predicate sex offender, or who is classified as a level two or level three risk, shall be annually for life.
3. Any sex offender having been designated a level three risk or a sexual predator shall also personally verify his or her address every ninety calendar days with the local law enforcement agency having jurisdiction where the offender resides.

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 York Statutes would require, at a minimum, Tier I registration requirements under SORNA.

- § 130.20 Sexual misconduct
- § 130.52 Forcible touching
- § 130.55 Sexual abuse in the third degree
- § 130.60 Sexual abuse in the second degree
- § 130.91 Sexually motivated felony
- § 135.05 Unlawful imprisonment in the second degree
- § 135.10 Unlawful imprisonment in the first degree (when the victim is under 18)
- § 230.04 Patronizing a prostitute in the third degree (when the victim is under 18)
- § 250.45 Unlawful surveillance in the second degree
- § 263.11 Possessing an obscene sexual performance by a child
- § 263.16 Possessing a sexual performance by a child

§ 130.85 Female genital mutilation. (New York does not currently require registration; it is possible that this might qualify under SORNA, but would require further conversations with the SMART Office)

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 York Statutes would require, at a minimum, Tier II registration requirements under SORNA.

- § 120.70 Luring a child
- § 130.65 Sexual abuse in the first degree (when the victim is 13 or older)
- § 230.05 Patronizing a prostitute in the second degree
- § 230.06 Patronizing a prostitute in the first degree
- § 230.30 Promoting prostitution in the second degree (when the victim is under 18)
- § 230.32 Promoting prostitution in the first degree
- § 230.33 Compelling prostitution
- § 230.34 Sex trafficking (when the victim is under 18)
- § 235.22 Disseminating indecent material to minors in the first degree
- § 250.50 Unlawful surveillance in the first degree
- § 263.05 Use of a child in a sexual performance
- § 263.10 Promoting an obscene sexual performance by a child
- § 263.15 Promoting a sexual performance by a child
- § 263.30 Facilitating a sexual performance by a child with a controlled substance or alcohol
- § 260.32 Endangering the welfare of a vulnerable elderly person in the second degree (subsection 4 only)

SORNA Tier III Offenses

SORNA requires that Tier I offenders register for life and quarterly verify registration information. The following offenses listed in New York Statutes would require, at a minimum, Tier III registration requirements under SORNA.

- § 130.25 Rape in the third degree
- § 130.30 Rape in the second degree
- § 130.35 Rape in the first degree
- § 130.40 Criminal sexual act in the third degree
- § 130.45 Criminal sexual act in the second degree
- § 130.50 Criminal sexual act in the first degree
- § 130.53 Persistent sexual abuse
- § 130.65-a Aggravated sexual abuse in the fourth degree
- § 130.66 Aggravated sexual abuse in the third degree
- § 130.67 Aggravated sexual abuse in the second degree
- § 130.70 Aggravated sexual abuse in the first degree
- § 130.75 Course of sexual conduct against a child in the first degree
- § 130.80 Course of sexual conduct against a child in the second degree

- § 130.95 Predatory sexual assault
- § 130.96 Predatory sexual assault against a child
- § 135.20 Kidnapping in the second degree
- § 135.25 Kidnapping in the first degree
- § 255.25 Incest in the third degree (when the victim is under 18, unless the ‘Romeo and Juliet’ exception applies)
- § 255.26 Incest in the second degree
- § 255.27 Incest in the first degree

Additional Comments

The remainder of New York’s offenses requiring sex offender registration do not fit squarely in to SORNA’s definition of a ‘sex offense’, and by requiring registration for the following offenses, New York likely exceeds SORNA’s requirements:

- § 130.90 Facilitating a sex offense with a controlled substance
- § 230.04 Patronizing a prostitute in the third degree (when the victim is over 18)