



July 2016

SORNA Substantial Implementation Review State of New Jersey

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

In December 2015, the New Jersey Division of Criminal Justice submitted a substantial implementation package that included a completed Substantial Implementation Checklist-Revised, current New Jersey statutes and all New Jersey criminal offenses which require registration. Additional materials were submitted for SMART's review, including policy and procedures for law enforcement registration and community notification via email correspondence.

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 Jersey 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 Jersey 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 Jersey 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.

New Jersey notifies law enforcement agencies within the state and in other states, as appropriate, updates its public sex offender registry website, and updates the FBI databases when an offender initially registers and/or updates information within three business days. However, New Jersey does not notify US territories, the District of Columbia, or tribal jurisdictions of any updates to registration information.

New Jersey 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 are included in a jurisdiction's registration scheme. In addition, SORNA requires that the jurisdiction capture certain sex offenses, both offenses from its jurisdiction and from other SORNA registration jurisdictions, in its registration scheme. SORNA also requires that certain adjudications of delinquency are included in a jurisdiction's registration scheme.

New Jersey applies registration requirements to offenses committed under federal or state law that are similar to enumerated New Jersey offenses.¹

A. New Jersey Offenses

While New Jersey captures most of the offenses SORNA requires in its state registration scheme, Video Voyeurism of a Minor and Possession of Child Pornography are not registerable offenses in the state.

B. Federal Offenses

In New Jersey, registration is required for any offender if the offense committed in another jurisdiction, including federal, is substantially equivalent to a New Jersey registerable offense. However, while this scheme will include many of the federal offenses requiring registration, New Jersey does not require registration for the following federal offenses:

- 18 U.S.C. §1801 (Video Voyeurism of a Minor)
- 18 U.S.C. §2245 (Offenses Resulting in Death)
- 18 U.S.C. §2252 (Possession of Child Pornography)
- 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. §2260 (Production of Sexually Explicit Depictions of a Minor for Import in to the United States)
- 18 U.S.C. §2424 (Failure to File Factual Statement about an Alien Individual)

¹ Though not specifically spelled out in New Jersey statute, "offenses under federal or state law" is interpreted by the New Jersey Attorney General's office as any U.S. jurisdiction.

- 18 U.S.C. §2425 (Transmitting Information about a Minor to further Criminal Sexual Conduct)

C. Foreign Offenses

New Jersey law does not require registration of individuals convicted of sex offenses in other countries. The statute only requires registration of individuals convicted of sex offenses in New Jersey, other states or in federal court.

D. Military Offenses

New Jersey requires offenders to register if they committed offenses requiring registration under federal law, if the offense committed is similar to a New Jersey sex offense. New Jersey will register most of the military offenses required by SORNA. Nevertheless, there are some UCMJ Offenses (such as Conduct Unbecoming) that are not comparable to those registerable under New Jersey law and, therefore, would not be registered under New Jersey's existing scheme.

E. Juveniles

In New Jersey, all juveniles adjudicated delinquent of a sex offense must register as a sex offender regardless of his/her age.

Because New Jersey does not capture in its registration scheme many of the offenses for which SORNA requires registration, New Jersey does not meet the SORNA requirements of 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 New Jersey's materials and has identified New Jersey's placement of these statutes within the SORNA three tier levels (see attached "New Jersey Offense Tiering Review" for a detailed analysis regarding this subsection of the review).

New Jersey's current registration and notification scheme includes two categories of registrants: 1) offenders determined by a court to be repetitive and compulsive, who are deemed lifetime registrants required to report to local law enforcement every 90-days to verify registration information; and 2) lifetime registrants who are required to report to local law enforcement each year to verify registration information.

Because New Jersey initially requires all sex offenders to register for life,² New Jersey meets the SORNA requirements of this section.

² See Section IX for further information about duration and frequency of registration.

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 Jersey deviates from SORNA requirements in that law enforcement does not collect and keep the following information in its registry:

- Date of birth: purported date of birth
- Internet identifiers
- Name: nicknames, aliases, ethnic or tribal names
- Passports and immigration documents
- Social security number: purported social security number
- Temporary lodging information
- Vehicle information: permanent or frequent location where all vehicles are kept

These deviations do not substantially disserve the purposes of 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 Jersey meets 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 Jersey, incarcerated offenders are required to register prior to their release and must register with local law enforcement within 48 hours of release. Additionally, offenders not sentenced to a term of incarceration are required to register within 48 hours of sentencing. Offenders moving to the state from another jurisdictions are required to register with local law enforcement within 10 days.

Because New Jersey does not require offenders moving to the state to register immediately (within 3 days), New Jersey does not meet the SORNA requirements of 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).

New Jersey enacted its first registration and notification law in 1994, which was not retroactive. Therefore, sex offenders who have been convicted since the law went into effect on October 31, 1994, or who were serving a sentence on the effective date of the law are required to register. Sex offenders who have been found to be repetitive and compulsive by experts and the courts, regardless of the date of conviction, are required to register. New Jersey does not require offenders 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) to register.

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

VIII. Keeping the Registration Current

SORNA requires that when an offender resides in a jurisdiction, that sex offender must immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. SORNA also requires that when an offender resides in a jurisdiction, that sex offender 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 notify the residence jurisdiction at least 21 days in advance of such travel.

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

New Jersey's statutes and policies meet most of the SORNA requirements in this section, with exceptions. New Jersey requires out-of-state registrants to report to the registering agency within ten days of moving to new residence, attending new school, commencing employment, or commencing attendance or employment at institution of higher learning. Upon change of address, offenders must notify the jurisdiction in which the offender is registered at least ten days prior to moving to the new address, and then re-register in new municipality within ten days. Upon a registrant's change of school or employment, law enforcement must be notified within five days.

New Jersey does not require registered sex offenders to provide 21 day advance notice of international travel and does not immediately notify the United States Marshals Service, other jurisdictions where the sex offender may be registered, or update NCIC/NSOR as required by the SORNA Supplemental Guidelines, published on January 11, 2011.

Because New Jersey does not require offenders to provide 21 day advance notice of international travel, New Jersey does not meet the SORNA requirements of 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.

All sex offenders registered in New Jersey must register for life.

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 Jersey requires that offenders who have committed aggravated sexual assault, sexual assault, aggravated criminal sexual contact, or kidnapping and the court found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior are required to report to their registering agency every 90 days. All other offenders are required to report annually.

C. Reduction of Registration Periods

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

New Jersey deviates from SORNA in its allowance of reduced registration periods. Sex offenders may apply to the court to be removed from the sex offender registry if they committed only one offense, have not committed another offense for 15 years, and prove that they are not likely to pose a threat to the safety of others. Juveniles may also apply to the court to be removed from the sex offender registry if they were under the age of 14 at the time of their offense but are now over the age of 18.

Because New Jersey uses a discretionary process to determine higher frequency of registration reporting and allows a broader class of registrants than SORNA prescribes to petition for removal, New Jersey does not meet the SORNA requirements of 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. New Jersey's public registry website requirements deviate from SORNA requirements in that the public registry website does not display all registered sex offenders.

In New Jersey, public release of registration information is dependent upon an assessment process. This process involves county prosecutors determining the likelihood that a sex offender will commit another crime. Offenders are classified in one of three levels based on the degree of risk they pose to the public: low risk, moderate risk, or high risk. Risk classification determines notification level.

New Jersey limits the information available on the public registry website to all offenders assessed as high risk and some moderate or low risk offenders who have been determined by a court to exhibit repetitive and compulsive behavior. Information about juvenile registrants assessed as high risk is also available on the public website.

Additionally, New Jersey does not make the following information available to the public:

- Absconder status
- Employer Address
- School Address

New Jersey does not meet the SORNA requirements of 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.

New Jersey utilizes the SORNA Exchange Portal to send and receive inter-jurisdictional changes of residence, employment or student status from other jurisdictions. However, New Jersey does not provide notification to tribal jurisdictions, prosecutor's offices, probation agencies, or other agencies involved with criminal investigation, prosecution, or other supervision functions, nor are agencies responsible for conducting background checks.

If the risk level is low, law enforcement agencies are notified. If the risk level is moderate, in addition to law enforcement agencies, schools, licensed day care centers, summer camps, and registered community organizations are notified of sex offenders that they are likely to encounter because of the possibility that pedophiles and sexual predators will be drawn to these places. If the risk level is high, in addition to law enforcement agencies, schools, licensed day care centers, summer camps, registered community organizations, and members of the public are notified.

New Jersey does not meet the SORNA requirements of this section.

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

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

New Jersey meets the SORNA requirements of 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 Jersey meets 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 Jersey, though not specified in state code, if a sex offender fails to report for registration, then the registering law enforcement agency will attempt to locate the sex offender. If unsuccessful, the registering agency will apply under to the Superior Court for an arrest summons for failing to register. Once the arrest summons is issued, the information is entered into the NCIC system, notifying all law enforcement about the outstanding warrant. In the event of out of state absconders, the U.S. Marshalls are also notified. In addition, the New Jersey's sex offender registry is also flagged that the sex offender has failed to register.³

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

Conclusion

We encourage New Jersey 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 Jersey 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.

³ Information provided by the New Jersey Division of Criminal Justice on June 9, 2016.

Appendix: New Jersey Offense Tiering Review

The SMART Office has reviewed all New Jersey statutes identified in its substantial implementation submission package and has identified New Jersey'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 New Jersey. It is possible that other offenses will need to be included in New Jersey's sex offender registry to substantially implement SORNA. For more guidance on SORNA classes of offenders, see 42 USC § 16911 and Section V (pages 21-25) of the National Guidelines for Sex Offender Registration and Notification (June 2008).

In reviewing New Jersey Code of Criminal Procedure, the SMART Office understands that New Jersey has essentially two categories of registrants:

1. Lifetime registrants determined to be "repetitive and compulsive", who are required to report to local law enforcement every 90-days to verify registration information; and
2. Lifetime registrants, who are required to report to local law enforcement each year to verify registration information.

Tier I Offenses

SORNA requires a minimum duration of 15 years for all Tier I offenses and a one-year interval for in-person registration verification. In order to meet these minimum requirements, New Jersey must ensure that the registration duration is 15 years for State offenses equivalent to Tier I offense under SORNA, as well as continue to require annual in-person verification of registration information. The following offense listed in New Jersey Code would require, at minimum, Tier I registration requirement:

- §2C:13-2 Criminal restraint
- §2C:13-3 False imprisonment (minor victim, non-parental)

Tier II Offenses

SORNA requires a minimum duration of 25 years for all Tier II offenses and a 6-month interval for in-person registration verification. New Jersey currently does not utilize this tier in their registration scheme. However, the following offenses listed in New Jersey Code would require, at minimum, Tier II registration requirements:

- §2C:13-6 Luring, enticing child by various mean, attempts
- §2C:24-4(a), (3), (4) or (5)(a) Endangering welfare of children

- §2C:34-1(b)(3) or (4) Prostitution and related offenses (knowingly promoting prostitution of a child)

Tier III Offenses

SORNA requires lifetime registration for all Tier III offenses and a 90-day interval for in-person registration verification. The following offenses listed in New Jersey Code would require Tier III registration requirements:

- §2C:13-1(c)(2) Kidnapping
- §2C:14-2(a) (Aggravated Sexual Assault)
- §2C:14-2(b) or (c) (Sexual Assault)
- §2C:14-3(a) Aggravated criminal sexual contact
- §2C:14-3(b) Criminal sexual contact (minor victim)