



January 2018

## **SORNA Substantial Implementation Review Nez Perce Tribe**

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the Nez Perce Tribe for the work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of the Nez Perce Tribe's SORNA substantial implementation materials and has found that the Nez Perce Tribe has not substantially implemented SORNA.

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

The Nez Perce Tribe has a full memorandum of agreement (MOA) with the State of Idaho wherein the tribe assigns its responsibilities in regards to sex offender registration and notification to Idaho. Idaho has not substantially implemented SORNA. Therefore, at this time, the SMART Office finds that delegation would not lead to greater SORNA implementation.

On June 27, 2011, the Nez Perce Tribe submitted a substantial implementation package that included background information on the tribe and its criminal justice system, courts and police department, its sex offender registration ordinance and an MOA with Idaho. In addition, email and phone correspondence informed our review.

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, which contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether the Nez Perce Tribe meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify whether the departure(s) from a particular requirement does not meet SORNA requirements or whether the departure(s) does not substantially disserve the purpose of that requirement.

Based on our review of materials submitted by the Nez Perce Tribe, our understanding is that the tribe has entered into a full MOA with Idaho wherein the tribe assigns its law enforcement responsibilities in regards to sex offender registration and notification to Idaho. Therefore, the Nez Perce Tribe deviates from SORNA requirements where Idaho deviates.

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

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

### **I. Immediate Transfer of Information**

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

Because the Nez Perce Tribe has chosen to meet its SORNA obligations through an MOA with Idaho, and Idaho has deviations that have been determined do not substantially disserve the purposes of SORNA, the Nez Perce Tribe's deviations do not substantially disserve the purposes of 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.

Because the Nez Perce Tribe has chosen to meet its SORNA obligations through an MOA with Idaho, and Idaho has deviations that have been determined do not substantially disserve the purposes of SORNA, the Nez Perce Tribe's deviations do not substantially disserve the purposes of 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. Idaho has some deviations to SORNA's requirements, but it was determined that these deviations do not substantially disserve the purposes of this section.

Because the Nez Perce Tribe has chosen to meet its SORNA obligations through an MOA with Idaho, and Idaho has deviations that have been determined do not substantially

disserve the purposes of SORNA, the Nez Perce Tribe's deviations do not substantially disserve the purposes of the SORNA requirements in this section.

#### **IV. Required Registration Information**

SORNA requires that the jurisdiction collect certain pieces of information from and for each offender that it registers, and requires that the jurisdiction keep that registration information, in a digitized form, in its registry.

Because the Nez Perce Tribe has chosen to meet its SORNA obligations through an MOA with Idaho, and Idaho has deviations that have been determined do not substantially disserve the purposes of SORNA, the Nez Perce Tribe's 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.

The Nez Perce Tribe meets the SORNA requirements in this section.

#### **VI. Initial Registration: Timing and Notice**

SORNA requires that when an offender is incarcerated within the jurisdiction, registration must occur before release from imprisonment for the registration offense. Similarly, when an offender is sentenced within the jurisdiction, but not incarcerated, SORNA requires that registration occur within three business days of sentencing. Finally, when an offender has been convicted, sentenced or incarcerated in another jurisdiction (including federal or military court), the jurisdiction must register the offender within three business days of the offender establishing residence, employment or school attendance within the jurisdiction. SORNA also requires that, during the initial registration process, the jurisdiction inform the offender of his or her registration duties and require the offender to acknowledge in writing that he or she understands those duties.

Because the Nez Perce Tribe has chosen to meet its SORNA obligations through an MOA with Idaho, and Idaho has deviations that have been determined do not substantially disserve the purposes of SORNA, the Nez Perce Tribe's deviations do not substantially disserve the purposes of 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).

Idaho's statute specifies that it applies to all offenders convicted on or after July 1, 1993. All of Idaho's remaining procedures concerning the retroactive application of its registration law meet SORNA's standards.

Because the Nez Perce Tribe has chosen to meet its SORNA obligations through an MOA with Idaho, and Idaho has deviations that have been determined do not substantially disserve the purposes of SORNA, the Nez Perce Tribe's deviations do not substantially disserve the purposes of the SORNA requirements in this section.

### **VIII. Keeping the Registration Current**

SORNA requires that when a sex offender resides in a jurisdiction, he or she must immediately appear in person to update his or her name, residence, employment, school attendance and termination of residence. SORNA also requires that when an offender resides in a jurisdiction, he or she must immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information and temporary lodging information.

When an offender works in a jurisdiction, but does not reside or attend school there, SORNA requires that the offender immediately appear in person to update employment-related information. When an offender attends school in a jurisdiction, but does not reside or work there, SORNA requires that the offender immediately appear in person to update school-related information.

SORNA also requires that when an offender resides in a jurisdiction and intends to travel outside the United States, he or she must notify the residence jurisdiction at least 21 days in advance of such travel.

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

Because the Nez Perce Tribe has chosen to meet its SORNA obligations through an MOA with Idaho, and Idaho has deviations that have been determined do not substantially disserve the purposes of SORNA, the Nez Perce Tribe's deviations do not substantially disserve the purposes of the SORNA requirements in this section.

### **IX. Verification/Appearance Requirements**

SORNA requires that offenders register for a duration of time, and make in-person appearances at the registering agency, based on the tier of the offense of conviction. SORNA

requires that offenders register for a duration of time based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA tier I offenders register for 15 years, SORNA tier II offenders register for 25 years and SORNA tier III offenders register for life.

SORNA also requires that offenders make in-person appearances at the registering agency based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA tier I offenders appear once a year, that SORNA tier II offenders appear every six months and that SORNA tier III offenders appear every three months.

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

Idaho's offenders are either required to register in person quarterly or annually, depending on how they are classified. In addition, all offenders are required to register for life, unless they successfully petition for removal from the registry, as described below. (See attached "SORNA Substantial Implementation Review State of Idaho" for a detailed analysis regarding this subsection.)

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

In Idaho, all offenders are required to register for life.

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

In Idaho, all persons designated as a violent sexual predator with a high risk of reoffense are required to register in person on a quarterly basis, and are sent a nonforwardable address verification card every 30 days between registrations.

All other sex offenders are required to register in person on an annual basis. Every offender is sent a nonforwardable address verification form every four months between annual registrations. If the form is not returned in a timely manner, the local sheriff is required to visit the offender's address to verify that it is accurate.

Juveniles are required to register annually, and must keep their registration information current pursuant to the requirements that govern adult offenders.

Because Idaho only requires one in-person appearance for offenders who would be classified as tier III under SORNA, Idaho does not meet the SORNA requirements of this section.

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

In Idaho, all offenders registering based on a conviction of an "aggravated offense" are not eligible to have that duration of registration reduced. In addition, violent sexual predators and recidivists are also subject to mandatory lifetime registration. All other

offenders are eligible to petition for relief from their registration requirements 10 years after they are released from incarceration or placed on parole or probation.

All juvenile offenders are required to register until age 21. When a juvenile sex offender turns 21, the prosecutor may petition the court to transfer the offender to the adult registry, where the offender would be subject to the same requirements as an adult offender. The court must determine that the juvenile sex offender is likely to pose a threat to the safety of others before a transfer to the adult registry. If a petition is not filed, or if the petition is denied, the juvenile is removed from the registry.

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

A sex offender registered in Idaho has a clean record if he or she has satisfied the following requirements: 1) he or she has not been convicted of any offense, for which imprisonment for more than one year may be imposed; 2) he or she has not been convicted of any sex offense; 3) he or she has successfully completed, without revocation, any period of supervised release, probation or parole; and 4) he or she has successfully completed an appropriate sex offender treatment program certified by the tribe, another jurisdiction or by the Attorney General of the United States.

In Idaho, the standard of proof for removal from the registry is extremely high. In addition to finding that an offender has met the “clean record” requirements of SORNA, the court must find that it is “highly probably or reasonably certain that the petitioner is not a risk to commit a new violation for any violent crime or crime” that would require registration as a sex offense.

Because the Nez Perce Tribe has chosen to meet its SORNA obligations through an MOA with Idaho, and Idaho does not meet the SORNA requirements of this section, the Nez Perce Tribe does not meet the SORNA requirements in this section.

#### **X. Public Registry Website Requirements**

SORNA requires that each jurisdiction maintain a public sex offender registry website and publish certain registration information on that website. SORNA also requires that certain information not be displayed on a jurisdiction’s public registry website.

All of Nez Perce Tribe’s offenders are displayed on Idaho’s public registry website.

Because Idaho does not post employer address information on its public registry website and does not otherwise make available any information regarding an offender’s employment, Idaho does not meet the SORNA requirements of this section.

Because the Nez Perce Tribe has chosen to meet its SORNA obligations through an MOA with Idaho, and Idaho does not meet the SORNA requirements of this section, the Nez Perce Tribe does not meet the SORNA requirements in this section.

## **XI. Community Notification**

SORNA requires that each jurisdiction disseminate certain initial and updated registration information to particular agencies within the jurisdiction. In addition, SORNA requires that each jurisdiction also disseminate certain initial and updated registration information to the community.

Because the Nez Perce Tribe has chosen to meet its SORNA obligations through an MOA with Idaho, and Idaho has deviations that have been determined do not substantially disserve the purposes of SORNA, the Nez Perce Tribe's deviations do not substantially disserve the purposes of the SORNA requirements in this section.

## **XII. When a Sex Offender Fails to Appear for Registration**

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

Because the Nez Perce Tribe has chosen to meet its SORNA obligations through an MOA with Idaho, and Idaho has deviations that have been determined do not substantially disserve the purposes of SORNA, the Nez Perce Tribe's deviations do not substantially disserve the purposes of the SORNA requirements in this section.

## **XIII. When a Jurisdiction Has Information That a Sex Offender May Have Absconded**

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

The Nez Perce Tribe meets the SORNA requirements in this section.

## **XIV. Other Considerations**

There are no additional considerations.

## **Conclusion**

The Nez Perce Tribe has chosen to implement its program via an MOA with Idaho, assigning all of its SORNA responsibilities, for the time being, to Idaho. Thus, consistent with the Idaho finding, the Nez Perce Tribe has been found to have not substantially implemented SORNA for reasons cited throughout this review.

Although the Nez Perce Tribe has not substantially implemented the SORNA requirements, the SMART Office is not delegating the tribe's sex offender registration and

notification responsibilities. The tribe has a functioning system through an MOA and, at this time, the SMART Office finds that delegation would not lead to greater SORNA implementation. However, the SMART Office findings regarding substantial implementation are ongoing. Thus, any changes by either Idaho or the Nez Perce Tribe to their sex offender registration and notification program will require a subsequent review by the SMART Office.

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