



November 2016

SORNA Substantial Implementation Review State of North Carolina

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

In April 2016, the North Carolina Bureau of Investigation, Department of Public Safety, submitted to the SMART Office for review a SORNA substantial implementation package, consisting of a completed SORNA Substantial Implementation Checklist and all relevant state statutes and codes.

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 North Carolina 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. North Carolina 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, North Carolina 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 (within 3 business days) 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.

North Carolina notifies the appropriate law enforcement agencies and updates the FBI databases when an offender initially registers and/or updates information within the timeframe prescribed by SORNA. However, North Carolina does not notify tribal law enforcement of any registration changes. Additionally, North Carolina's statute does not include US Territories or the District of Columbia in its definition of jurisdiction.

North Carolina 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. North Carolina Offenses

North Carolina captures the offenses for which SORNA requires registration.

B. Offenses of Other SORNA Registration Jurisdictions

In North Carolina, registration is required for any offender if the offense committed in another jurisdiction is comparable to a North Carolina registerable offense.

C. Federal Offenses

In North Carolina, registration is required for any offender if the offense committed in another jurisdiction is comparable to a North Carolina registerable offense. Additionally, if a person is registered in another state for an offense, then that person must register in North Carolina. While this scheme will include many of the federal offenses requiring registration, North Carolina does not require registration for the following federal offenses:

- 18 U.S.C. §2245 (Offenses Resulting in Death)
- 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)
- 18 U.S.C. §2425 (Transmitting Information about a Minor to further Criminal Sexual Conduct)

D. Military Offenses

North Carolina requires offenders to register if they committed offenses requiring registration under military law, if the offense committed is comparable to a North Carolina sex offense. North Carolina 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 North Carolina law and, therefore, would not be registered under North Carolina's existing scheme.

E. Foreign Offenses

North Carolina does not require registration for offenses committed in foreign countries.

F. Juvenile Adjudications

In North Carolina, the age of adult criminal responsibility is 16; therefore, many youth who are charged with committing a serious sex offense will generally be subjected to adult sex offender registration and notification requirements upon conviction.

When a juvenile is adjudicated delinquent for certain serious sex offenses¹ and was at least eleven years old at the time of the offense, the court exercises its discretion in determining whether the youth should be required to register. Before deciding whether the delinquent juvenile must register, the judge who is presiding over the dispositional hearing must first make a finding that the juvenile is a danger to the community. The registration requirement terminates automatically upon the individual's eighteenth birthday or when the jurisdiction of the juvenile court over the individual ends, whichever occurs first.

North Carolina has numerous treatment facilities throughout the state for youth. Youth who commit sexual offenses are often ordered to receive treatment and are supervised by the court until the expiration of their sentence.

These 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. North Carolina's registration and notification scheme requires all sex offenders to register for either 30 years, with twice-yearly verification requirements, or life, with quarterly verification requirements (see Section IX for information about frequency of reporting and duration of registration requirements). For clarification purposes, the SMART Office has reviewed all statutes identified in North Carolina's registration and notification scheme and has

¹ G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), or former G.S. 14-27.6 (attempted rape or sexual offense).

placed these statutes within the SORNA three tier levels (see Appendix: North Carolina Offense Tiering Review for a detailed analysis regarding this subsection of the review).

The following North Carolina offenses require 30 year registration and twice-yearly verification; these offenses are equivalent to SORNA Tier III offenses requiring lifetime registration with quarterly appearances:

- 14-27.23 Statutory rape of child by an adult
- 14-27.24 First degree statutory rape (perpetrator 18 or older)
- 14-27.25 Statutory rape of a person who is 15 years of age or younger
- 14-27.28 Statutory sexual offense with a child by an adult
- 14-27.29 First degree statutory sexual offense (perpetrator 18 or older)
- 14-27.30 Statutory sexual offense with a person who is 15 years of age or younger
- 14-27.31 Sexual activity by a substitute parent or custodian
- 14-27.32 Sexual activity with a student (if the victim is at least 13 and the act/contact is consensual and the offender is not more than 4 years older than the victim, then the act is not required to be registered under SORNA)
- 14-27.33 Sexual battery (victim less than 13 years old)
- 14-39 Kidnapping
- 14-41 Abduction of Children
- 14-178 Incest between near relatives (victim less than 16 years old)
- 14-202.1 Taking indecent liberties with children (victim less than 13 years old)
- 14-202.4(a) Taking indecent liberties with a student (victim less than 13 years old)

North Carolina does not meet 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. North Carolina captures some of the required information, with the following exceptions:

- Criminal history information: outstanding arrest warrants
- Photocopy of driver's license number or ID card
- Employment information (only captured if offender is employed in different county than residence)
- Palm prints
- Passports and immigration documents
- Resident address: if no permanent residence, location where the sexual offender "habitually lives"
- Telephone numbers where the person may be reached or which offender regularly uses, including landline and cellular phones

- Photographs: collected at initial registration and as deemed necessary by registration officials
- Professional licenses
- Social security numbers
- Temporary lodging information: dates of travel
- Vehicle information

North Carolina 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.

While North Carolina meets most of the SORNA requirements in this section, the state does not require offenders who are employees in the jurisdiction to immediately register. Rather, a person required to register must notify the sheriff of the county where employed only if he/she is employed and maintains a temporary residence in that county for more than 10 days within a 30-day period, or in aggregate exceeding 30 days in a calendar year.

This deviation does not substantially disserve the purposes of 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.

North Carolina meets all 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).

North Carolina's first registration law was effective January 1, 1996, and was prospective. Subsequently, the state added a number of provisions and offenses to the law (effective 1998, 1999, 2006, 2008, 2009, and 2013). None of these provisions were retroactive. Further, North Carolina does not require registration for those applicable individuals who reenter the jurisdiction's criminal justice system because of a conviction for a crime against person offense (only a subsequent registerable sex offense).

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.

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 (USMS), and immediately update NCIC/NSOR. SORNA also requires that when an offender intends to travel outside the United States, that the offender notifies the residence jurisdiction at least 21 days in advance of such travel.

In North Carolina, registered sex offenders must report in person immediately to law enforcement (within three days) changes in name, address, and school information (including employment at an educational institution); sex offenders are required to report to law enforcement within 10 days changes in Internet identifiers. Sex offenders are only required to notify law enforcement about changes in employment if they will be commencing employment and temporary residence in a county other than the county in which they are registered. Further, North Carolina does not notify other jurisdictions where an offender may be registered of

changes in temporary lodging, temporary employment, terminating employment at an institution of higher education, or intent to relocate to another country.

North Carolina does not require offenders to report 21 days in advance of travel outside the United States, and does directly notify the USMS of international travel or relocation.

Because North Carolina does not require offenders to report all changes in employment and does not require 21 days in advance of international travel, North Carolina 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.

In North Carolina, registration is generally for 30 years. If person is convicted of an aggravated offense,² is convicted of a repeat offense, or is determined by the sentencing court to be a sexually violent predator³ then registration 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.

In North Carolina, registration verification is required twice yearly except for aggravated offenders, recidivists, and sexually violent predators who must verify every 90 days.

C. Reduction of Registration Periods

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

² GS § 14-208.6 defines “aggravated offense” as a criminal offense which includes either: (1) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence, or (2) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

³ GS § 14-208.6 defines "Sexually violent predator" as a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization. A court order during criminal sentencing is required before an offender can be classified as a “sexually violent predator.”

In North Carolina, individuals required to register for 30 years can petition the superior court to terminate registration after 10 years. The court may grant the relief if the petitioner has not been arrested for another sex offense, the requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety.

Because North Carolina does not register offenders for the appropriate durations or frequency of reporting and allows for reduction of registration periods to a broader group of registrants than SORNA envisions, North Carolina 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.

While North Carolina displays some of the SORNA required information about registered sex offender, several important items of information are not relayed to the public, including:

- Criminal history
- Employer address
- School address
- Vehicle information

North Carolina 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.

North Carolina monitors and responds to relocation notices on the SORNA Exchange Portal. North Carolina appropriately notifies (or allows access to State law enforcement databases) other law enforcement agencies and federal databases of changes to offenders' registration information.

Furthermore, while North Carolina provides the public with direct notification of registered offenders who live in proximity to their address, the public is not notified about offender work or school address information.

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

North Carolina meets 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.

North Carolina meets all of 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 North Carolina, the Sex Offender Coordinating Unit (SOCU), within the State Bureau of Investigation, produces bi-monthly reports with the names of all offenders that are classified as registered “unknown”. SOCU contacts local sheriffs to determine the status of any unknown offender and ensure that the classification is correct. SOCU attempts to locate the offender via US Bureau of Prisons, NC DOC/Probation, NCIC, CJLEADS, NSOR, USMS custody, ICE custody, DMV, VINE, and various online searches (google, white pages, Facebook, obituaries, etc.).

If the offender is found to be registered in another jurisdiction, deported, or in federal, state, or local custody in another jurisdiction, the SOCU will follow up with the jurisdiction or agency to document the offender’s location. That information is shared with the local sheriffs’ offices and the registry is updated with the information. If the SOCU does not locate any

information on the offender, an internal absconder file is then created and a copy of the file is forwarded to the local USMS agency for assignment. The local sheriff notifies SOCU when an offender is located. SOCU encourages the local sheriffs to enter warrants into NCIC for absconded offenders even if the extradition radius is local.

Additionally, SOCU generates e-mail notifications with the name of every offender that registers in the state and send the information to local ICE and USMS agents daily.

North Carolina meets all of the SORNA requirements in this section.

XV. Tribal Considerations

There is one Indian Tribe that has chosen to adopt SORNA located within the boundaries of North Carolina: the Eastern Band of Cherokee Indians. The Eastern Band of Cherokee Indians has been found to have substantially implemented SORNA (in March 2015).

The State of North Carolina does not authorize the Eastern Band of Cherokee Indians to submit data into the FBI's Criminal Justice Information Service (NCIC/NSOR) through its system unless the tribe requires sex offenders to register concurrently with the state. The Eastern Band of Cherokee Indians does update its own website, however, and provides community notifications when an offender's information changes. The SMART Office is aware of this obstacle and is supporting the Eastern Band of Cherokee Indians' participation in the Tribal Access Program for National Crime Information (TAP). TAP will support the tribe in analyzing their needs for national crime information and help provide appropriate solutions, including providing a biometric/biographic computer workstation with capabilities to process finger and palm prints, taking mug shots and submitting records to national databases, as well as accessing CJIS systems for criminal and civil purposes through the US Department of Justice.

The primary contact for the Eastern Band of Cherokee Indians is:

Justin "Skip" Eason
Tribal Prosecutor
P.O. Box 455
Cherokee, NC 28719
(828) 554-6219
justeaso@nc-chokeee.com

The SMART Office strongly encourages North Carolina officials to improve communication, support and assistance to the Eastern Band of Cherokee Indians in the registration and notification of sex offenders.

Conclusion

We encourage North Carolina 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 North Carolina 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: North Carolina Offense Tiering Review

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

In reviewing North Carolina Revised Statutes, the SMART Office understands that North Carolina essentially has two categories of registrants:

- 30 years registration term with twice-yearly verification appearances.
- Lifetime registration term with quarterly verification appearances, if:
 - Convicted of an aggravated offense⁴
 - Convicted of a repeat offense
 - Determined by the sentencing court to be a sexually violent predator⁵

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

- 14-190.17A Third degree sexual exploitation of a minor
- 14-43.3 Felonious Restraint
- 14-27.33 Sexual battery (adult victim)
- 14-190.17 Second degree sexual exploitation of a minor (possession of child pornography)

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

⁴ GS § 14-208.6 defines "aggravated offense" as a criminal offense which includes either: (1) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence, or (2) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

⁵ GS § 14-208.6 defines "Sexually violent predator" as a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization. A court order during criminal sentencing is required before an offender can be classified as a "sexually violent predator."

- 14-178 Incest between near relatives (victim 16-17 years old)
- 14-27.33 Sexual battery (victim 13-17 years old)
- 14-43.11 Human trafficking (victim less than 18 years old)
- 14-43.13 Sexual servitude (victim less than 18 years old)
- 14-43.14 Unlawful sale, surrender or purchase of a minor
- 14-190.6 Employing or permitting minor to assist in offenses against public morality and decency
- 14-190.16 First degree sexual exploitation of a minor
- 14-190.17 Second degree sexual exploitation of a minor (production or distribution of child pornography)
- 14-202.1 Taking indecent liberties with children (victim 13-17 years old)
- 14-202.3 Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act
- 14-202.4(a) Taking indecent liberties with a student (victim 13-17 years old)
- 14-205.3(b) Promoting prostitution
- 14-318.4(a1) Parent or caretaker commit or permit act of prostitution with or by a juvenile
- 14-318.4(a2) Commission or allowing of sexual act upon a juvenile by parent or guardian

SORNA Tier III Offenses

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

- 14-27.21 First degree forcible rape
- 14-27.22 Second degree forcible rape
- 14-27.23 Statutory rape of child by an adult
- 14-27.24 First degree statutory rape (perpetrator 18 or older)
- 14-27.25 Statutory rape of a person who is 15 years of age or younger
- 14-27.26 First degree forcible sexual offense
- 14-27.27 Second degree forcible sexual offense
- 14-27.28 Statutory sexual offense with a child by an adult
- 14-27.29 First degree statutory sexual offense (perpetrator 18 or older)
- 14-27.30 Statutory sexual offense with a person who is 15 years of age or younger
- 14-27.31 Sexual activity by a substitute parent or custodian
- 14-27.32 Sexual activity with a student (if the victim is at least 13 and the act/contact is consensual and the offender is not more than 4 years older than the victim, then the act is not required to be registered under SORNA)
- 14-27.33 Sexual battery (victim less than 13 years old)

- 14-39 Kidnapping
- 14-41 Abduction of Children
- 14-178 Incest between near relatives (victim less than 16 years old)
- 14-202.1 Taking indecent liberties with children (victim less than 13 years old)
- 14-202.4(a) Taking indecent liberties with a student (victim less than 13 years old)

Further Review

North Carolina 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:

- 14-178 Incest between near relatives (victim over 17 years old)
- 14-190.9(a1) Felonious indecent exposure