



September 2009

SORNA Implementation Review State of Ohio

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 State of Ohio (Ohio) for the extensive work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of Ohio's SORNA substantial implementation packet and has found that Ohio has substantially implemented SORNA.

On June of 2008, the Ohio Attorney General's Office submitted a substantial implementation package that included legislation, a compliance summary, and other materials. In addition, email and phone correspondence with the Ohio Attorney General's Office filled in gaps in information and procedure, which 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 Ohio 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.

While Ohio is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, this is not required for substantial implementation purposes. This report is an exhaustive review and is intended 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 or updates his information in a jurisdiction, that that registration 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.

Ohio meets all 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.

Ohio requires registration when a person is convicted of any offense from another jurisdiction (including a federal, military or foreign conviction) which is "substantially equivalent" to a registerable offense in Ohio.

A. Ohio Offenses

Ohio fails to register one offense for which SORNA would require registration:

- § 2905.03 Unlawful Restraint (victim <18)

B. Federal Offenses

The following offenses are ones which do not have an equivalent offense in Ohio which requires registration. These offenses are required to be registered under SORNA.

1. 18 U.S.C. §2252B (Misleading domain names on the internet)
2. 18 U.S.C. §2252C (Misleading words or digital images on the internet)
3. 18 U.S.C. §2423 (Travel with the Intent to Engage in Illicit Sexual Conduct with a Minor; Engaging in Illicit Sexual Conduct in Foreign Places)
4. 18 U.S.C. §2424 (Filing factual statement about alien individual)
5. 18 U.S.C. §2425 (Use of interstate facilities to transmit information about a minor)

C. Military Convictions

Ohio will register most of the military convictions required by SORNA. Nevertheless, there are some UCMJ Offenses (such as Conduct Unbecoming) which will not have an equivalent under Ohio law and, therefore, would not be registered under Ohio's existing scheme.

D. Juvenile Adjudications

SORNA requires that certain state, local, and tribal adjudications of delinquency are included in a jurisdiction's registration scheme. All juveniles adjudicated delinquent of any sex

offense in Ohio are potentially subject to registration. There is a complicated process for determining which adjudicated juveniles will have to register, and for how long. All SORNA-required juveniles who are 16 or 17 years old at the time of the offense will be subject to mandatory registration in accordance with SORNA's terms. Juveniles convicted of a SORNA-registerable offense who are 14 or 15 years old at the time of the offense are also subject to the possibility of registration in accordance with SORNA's requirements.

The SMART Office has considered these deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction. The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Ohio's placement of these statutes within the SORNA three tier levels. Ohio correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions (see the Appendix, "Ohio State Statutes" for information about Ohio's classification of its offenders and associated registration requirements):

- **§ 2905.02 Abduction**

This offense will include circumstances similar to Kidnapping of a Minor. Ohio classifies a violation §2905.02(A) as a tier I offense (forcible removal) and §2905.02(B) as a tier II offense (forcible abduction with sexual motivation) as a tier II offense. SORNA requires a tier III designation for this offense.

- **§ 2905.05(B) Criminal Child Enticement**

This offense involves the luring of children for sexual conduct and, as such, requires a tier II designation under SORNA. Ohio classifies it as a tier I offense.

- **§ 2907.05(A) Gross Sexual Imposition**

Because this offense will involve sexual conduct, SORNA requires that it be classified as a tier III offense when the victim is under 13, a tier II offense when the victim is between 13 and 18, and a tier I offense if the victim is 18 years of age or older. Ohio classifies this offense as a tier I offense if the victim is 13 years of age or older, and as a tier II offense if the victim is under 13.

- **§ 2907.07 Importuning**

This offense involves the solicitation of children for sexual conduct and, as such, requires a tier II designation under SORNA. Ohio classifies it as a tier I offense.

The SMART Office has considered these deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

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.

SORNA requires that the information maintained in Ohio's sex offender registry be digitized (available in digital format) and maintained in an electronic database. Ohio has met this requirement.

SORNA requires sex offender registration information under 20 primary categories. Ohio properly collects all of this information except for the following items:

1. Criminal History: §2950.13(A)(1)(e) provides that there be an offense and delinquency history provided for purposes of registration. Ohio will need to ensure that this includes the following information in addition to that already required:
 - i. Date of all arrests; and
 - ii. Date of all convictions; and
2. Name: §2950.04(c)(4) will meet SORNA's requirements with regards to names, so long as ethnic and tribal names are also included.

The SMART Office has considered these deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

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.

Ohio meets all 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.

Ohio 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).

Ohio has endeavored to capture (or reclassify) a large number of sex offenders who were either not originally required to register, or required reclassification under the provisions of SB10. Ohio's initial recapture procedures were as follows:

- The Attorney General's office reviewed the records of inmates currently incarcerated by the Department of Rehabilitation and Corrections. If they had a sex offense, they were assigned a tier and the duty to register.
- Any new offenders sentenced to prison go through this same review process.

There is no mandate that an offender on probation or other kind of supervision be subject to the same review. however, Ohio indicates that probation officers, community control officers, and local jails are authorized to

- Run a criminal background check on any offender; and
- If that background check reveals a prior sex offense, contact the Attorney General's office for an official review to determine an offender's duty to register and tier.

For new felony convictions where a presentence investigation is ordered, the Judge in the case can order registration when a prior sex offense is reflected in the criminal history.

The SMART Office has considered these deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

VIII. Keeping the Registration Current

SORNA requires that when a sex offender resides in a jurisdiction, that the offender immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. When an offender works in a jurisdiction, but does not reside or attend school there, SORNA requires that the offender immediately appear in-person to update employment-related information. When an offender attends school in a jurisdiction, but does not reside or work there, SORNA requires that the offender immediately appear in-person to update school-related information.

SORNA also requires that when an offender resides in a jurisdiction, that the sex offender immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

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, 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.

Ohio properly requires in-person updating of a sex offender's residence, employment school, or termination of residence. Ohio does not require that any changes to an offender's name are immediately reported in person. In addition, Ohio does not require that any temporary lodging information be updated immediately upon any changes. Ohio will need to ensure that the sex offender reviews all of the current registration information for accuracy at every regular in-person appearance, and allow for a photograph to be taken at those in-person visits.

The SMART Office has considered these deviations from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

IX. Verification/Appearance Requirements

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

A. Frequency of Registration

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

Ohio meets all of the SORNA requirements in this section.

B. Duration 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.

Ohio meets all of the SORNA requirements in this section.

C. Reduction of Registration Periods

In some circumstances, SORNA permits the reduction of registration duration for certain classes of offenders. Ohio provides for the permitted reduction of registration periods in accordance with SORNA's standards, except that Ohio does not require that a sex offender successfully complete, *without revocation*, any period of supervised release, probation, or parole in order to qualify for a registration period reduction.

The SMART Office has considered this deviation from SORNA's requirement, and has determined that they do not substantially disserve the purposes of this requirement.

X. Registry Website Requirements

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

Ohio meets all of 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.

Ohio meets all 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.

Ohio 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.

Ohio 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 in terms of investigating the absconder and notifying various law enforcement agencies.

Ohio meets all of the SORNA requirements in this section.

Conclusion

Ohio put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system.

Appendix: Ohio State Statutes

The SMART Office has reviewed all of Ohio's statutes identified in its substantial implementation submission package and has identified Ohio'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 Ohio.

In reviewing Ohio's statutes, the SMART Office understands that Ohio has three categories of registrants for purposes of its duration of registration and frequency of registration requirements.

- A tier one offender is required to register for 15 years with annual verification appearances;
- A tier two offender is required to register for 25 years with semi-annual verification appearances; and
- A tier three offender is required to register for life, with quarterly verification appearances.

SORNA Tier I Offenders

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

§2903.11(B) Felonious Assault with Sexual Motivation (victim >18)

§ 2905.03 Unlawful Restraint (non-parental, victim <18)

§ 2907.04 Unlawful Sexual Conduct with a Minor

This will be a tier I offense for a conviction punishable under subdivision (B)(2).

§ 2907.05(A) Gross Sexual Imposition (victim >18)

§ 2907.06 Sexual Imposition

§ 2907.08 Voyeurism

§ 2907.322 Pandering Sexually Oriented Material Involving a Minor

A conviction under subdivision (A)(5) involving possession and/or receipt will be classified as a tier I offense.

SORNA Tier II Offenders

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

§ 2903.11(B) Felonious Assault with Sexual Motivation (victim 16 or 17)

§ 2905.05(B) Criminal Child Enticement

§ 2907.03 Sexual Battery

This will be a tier II offense for a conviction under subdivisions (5) through (13) when the victim is either 16 or 17 years old.

§ 2907.04 Unlawful Sexual Conduct with a Minor

This will be a tier II offense for a conviction punishable under subdivisions (B)(1) and (3).

§ 2907.05(A) Gross Sexual Imposition (victim 13-18)

§ 2907.05(B) Gross Sexual Imposition

This will be a tier II offense when the victim is 13 to 17 years of age.

§ 2907.07 Importuning

§ 2907.21(A)(2) Compelling Prostitution

§ 2907.321 Pandering Obscenity Involving a Minor

§ 2907.322 Pandering Sexually Oriented Material Involving a Minor

All convictions under this offense will be classified as tier II except for any possession or receipt conviction under subsection (A)(5).

§ 2907.323 Illegal Use of a Minor in Nudity-Oriented Material

§ 2919.22(B)(5) Child Endangering

SORNA Tier III Offenders

SORNA requires that Tier III offenders register for life and quarterly verify registration information. The following offenses listed in Ohio's statutes would require, at a minimum, Tier III registration requirements under SORNA.

- § 2903.11(B) Felonious Assault with Sexual Motivation (victim <16)**
- § 2905.01 Kidnapping (Non-Parental, victim <18)**
- § 2905.02 Abduction (Non-Parental, victim <18)**
- § 2907.02 Rape**
- § 2907.03 Sexual Battery**

This will be a tier III offense for subdivisions (1) through (4). It will also be a tier III offense for subdivisions (5) through (13) when the victim is under 16 years of age.

- § 2907.05(A) Gross Sexual Imposition (victim <13)**
- § 2907.05(B) Gross Sexual Imposition**

This will be a tier III offense when the victim is under 13 years of age.

Further Review

The SMART Office notes that Ohio also 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:

- § 2907.32 Pandering Obscenity**
- § 2907.323(A)(3) Illegal Use of a Minor in Nudity-Oriented Material or Performance**
- § 2905.01 Kidnapping, Victim > 18**
- § 2903.211 Menacing by Stalking with Sexual Motivation**
- §2903.01 Aggravated Murder with Sexual Motivation**
- §2903.02 Murder with Sexual Motivation**
- §2903.04 Involuntary Manslaughter as a Result of an Attempt to Commit a Felony with Sexual Motivation**