



February 2017

## **SORNA Substantial Implementation Review State of Oklahoma - Updated**

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 Oklahoma 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 updated review of Oklahoma's SORNA substantial implementation packet and has found the State of Oklahoma has substantially implemented SORNA.

On April 22, 2010, the Oklahoma Department of Corrections submitted a completed Substantial Implementation Checklist, along with supporting statutes, codes, DOC policies and procedures, and a sex offender registration level assignment chart. In October 2011, the SMART Office issued a SORNA Substantial Implementation Report to Oklahoma, in which Oklahoma was found to not have substantially implemented SORNA. Since that time, Oklahoma has addressed most of the shortcomings identified in the October 2011 report. In October and December 2016, Oklahoma submitted additional information regarding its SORNA substantial implementation status, which informed this updated review.

Our review of the submitted 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 Oklahoma meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify that the departure(s) from a particular requirement does not substantially disserve the purpose of that requirement. In other words, Oklahoma is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, but this is not necessary for substantial implementation purposes.

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 or her information in a jurisdiction, that the 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.

Oklahoma 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 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. Oklahoma Offenses

Oklahoma captures the offenses for which SORNA requires registration.

### B. Offenses of Other SORNA Registration Jurisdictions

Oklahoma requires registration when any person is convicted, receives a suspended sentence or deferred judgment for a listed sex offense, or is convicted for an offense of the law of another state, the District of Columbia, United States territory, federal court, tribal court, military court, or a court of a foreign country substantially equivalent to a registerable offense if committed in Oklahoma.

### C. Federal Offenses

The following offenses do not appear to have substantially equivalent offenses in Oklahoma that require registration. Convictions for these offenses require registration under SORNA.

- 18 U.S.C. §2245 (Offenses resulting in death)
- 18 U.S.C. §2424 (Filing factual statement about alien individual)

### D. Military Offenses

Oklahoma requires offenders to register if they committed offenses requiring registration under military law, if the offense committed is substantially equivalent to an Oklahoma sex offense. Nevertheless, there are some UCMJ Offenses (such as Conduct Unbecoming) that are not substantially equivalent to those registerable under Oklahoma law and, therefore, would not be registered under Oklahoma's existing scheme.

### E. Juveniles

Oklahoma handles juveniles who commit sex offenses in several ways. If the youth is 14 years of age and commits Forcible Sodomy, Rape in the First Degree, Rape in the Second Degree or Rape by Instrumentation (or under 15 years of age and charged with Second Degree Rape), they may be handled through the juvenile system or the prosecutor may seek to have them certified as an adult. If certified as an adult and convicted of the offense, they would be sentenced as if they were an adult and would be ordered to register as a sex offender on the adult registry. If the youth is 15, 16 or 17 years of age and is charged with Forcible Sodomy, Rape in

the First Degree or an attempt thereof, or Rape by Instrumentation or an attempt thereof, the offender may be handled through the juvenile court system or as a Youthful Offender. If adjudicated as a Youthful Offender, they may be sentenced through the Juvenile court system or the court may impose an adult sentence, meaning they would be treated as an adult for the purposes of registration. If the offender is 16 or 17 years of age and is charged with Forcible Sodomy, Rape in the First Degree or an attempt thereof, Rape by Instrumentation or an attempt thereof, or Rape in the Second Degree, the offender may be handled through the juvenile court system or as a Youthful Offender with the same possibility of imposing an adult sentence. If the court determines that the person is a Youthful Offender and the individual reaches the age of majority, the court may consider transferring the individual to the adult system, where the conviction would be deemed an adult conviction and they would be ordered to register as a sex offender on the adult registry.

Oklahoma's Juvenile Sex Offender Registry<sup>1</sup> consists of individuals 14 years of age or older but less than 18 years of age who have been adjudicated delinquent or a Youthful Offender, handled by the juvenile court system, for the offenses of Forcible Sodomy, Rape in the First Degree, Rape in the Second Degree or Rape by Instrumentation. Registration also applies to juveniles from another state that may be required to register as a sex offender in the other state.

For those youth adjudicated in juvenile court or sentenced in juvenile court as a Youthful Offender for one of the above-listed offenses, the District Attorney may make application for inclusion in the juvenile sex offender registry. Pursuant to statute, an evaluation of the juvenile is conducted by two qualified sex offender treatment professionals who report to the court on the treatment prognosis and likelihood that the juvenile offender represents an ongoing threat to the public or children under 16 years of age.

If, after consideration of the evaluation reports, the court finds the juvenile represents such a threat, the court shall order the juvenile to register as a juvenile sex offender. The court may order the information in the juvenile sex offender registry released to any person or to the public. Additionally, the court may review the treatment prognosis of the offender at any time and may order release of additional information as deemed appropriate for the protection of the public. If the court orders the youth placed on the juvenile sex offender registry, the court gives the youth written notice of the duty to register and the information that must be provided to the registry. Registration and change of name and address notification is annual.

The current rehabilitation/probation plans ordered by a county juvenile court typically consists of the following:

1. Outpatient sex offender treatment
2. School attendance
3. Community service
4. Random drug tests

If the juvenile is a youthful offender or more serious delinquent the Office of Juvenile Affairs takes custody, which usually results in an out of home placement for treatment.

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<sup>1</sup> Oklahoma Statutes §10A-2-8-101

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

### **III. Tiering of Offenses**

Oklahoma has three categories of registrants for purposes of its duration of registration and frequency of registration requirements, which align with SORNA requirements. For clarification purposes, the SMART Office has reviewed all statutes identified in Oklahoma's registration and notification scheme and has placed these statutes within the SORNA three tier levels (see attached "Oklahoma Offense Tiering Review" for a detailed analysis regarding this subsection of the review). Oklahoma correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions:

- 21 O.S. § 681 – Assault with intent to commit a felony (if the offense involved sexual contact with a victim 13 -17 years of age).
- 21 O.S. § 1040.8 – Publication, distribution, or participation of child pornography.
- 21 O.S. § 1040.13 – Importing or distributing obscene material or child pornography.

Oklahoma classifies these offenses as Tier I (15 year registration). These offenses require Tier II registration (25 year) under SORNA.

These deviations do not substantially disserve the purposes of these 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. Oklahoma captures all required registration information, with the following exception: Temporary lodging information.

This deviation does not substantially disserve the purposes of these 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 or she is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

Oklahoma 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 or her registration duties and require the offender to acknowledge in writing that he or she understands those duties.

Oklahoma 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). Oklahoma's retroactive provisions deviate from SORNA requirements.

Oklahoma's registration scheme applies to individuals convicted on or after November 1, 1989 of a registerable sex offense and to individuals who were serving a sentence of incarceration, probation, parole, or other form of community supervision as a result of an adjudication of guilt on or after November 1, 1989 for a registerable sex offense. For those offenders convicted in Oklahoma from November 1, 1989 until April 25, 2004, the duty to register continues for ten years from original registration date. For those offenders convicted from April 26, 2004 until October 31, 2007, the duty to register continues for ten years from completion of sentence. Offenders convicted on or after November 1, 2007, are subject to registration terms in accordance with SORNA requirements.

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

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

SORNA requires that when a registered sex offender resides in a jurisdiction, the sex offender must immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. SORNA also requires that when an offender resides in a jurisdiction, the sex offender must immediately update any changes to his or her

email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

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

SORNA also requires that when an offender resides in a jurisdiction but indicates to the state that he/she intends to travel outside the United States, that the offender 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 intent to relocate to another country to live, work or attend school, or 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.

Oklahoma's statutes and policies meet most of the SORNA requirements in this section, with an exception. While registered sex offenders in Oklahoma are required to report immediately in-person changes in residence, temporary domicile, employment, and school attendance, they do not require immediate in-person reporting of name changes.

These deviations do not substantially disserve the purposes of the 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.

### **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.

Oklahoma meets these SORNA requirements.

### **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.

Oklahoma meets these SORNA requirements.

### C. Reduction of Registration Periods

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

In Oklahoma, when a registered juvenile sex offender reaches 21 years of age or is otherwise released from the custody of the Office of Juvenile Affairs, the district attorney may petition the court to transfer the person's registration to the adult sex offender registry maintained by the Department of Corrections. If the court determines at a hearing that the person who is registered on the juvenile sex offender registry is likely to or does pose an ongoing serious or aggressive threat to the public or youth less than 16 years of age, the court shall order that the delinquent act be deemed an adult criminal conviction for the purpose of registration, notification, and public information access (i.e., subject to in-person verification frequency and duration requirements corresponding to the conviction).

These deviations do not substantially disserve the purposes of the 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.

Oklahoma's public registry website does not display the following information required by SORNA: Vehicle(s) information, including license plate number(s) and vehicle description(s).

This deviation does not substantially disserve the purposes of the 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.

Oklahoma 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.

Oklahoma 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 of a sex offender's intent to reside, be employed, or attend school in its jurisdiction, and that offender fails to appear for registration as required, that the jurisdiction receiving the notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

Oklahoma 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.

Oklahoma meets all of the SORNA requirements in this section.

## **XV. Tribal Considerations**

Twenty-eight tribes located in Oklahoma have elected to be SORNA registration jurisdictions. The Choctaw Nation of Oklahoma, Ponca Tribe of Indians of Oklahoma, and Thlopthlocco Tribal Town opted not to implement SORNA and four tribes' registration and notification responsibilities have been delegated to the State of Oklahoma:

1. Alabama-Quassarte Tribal Town
2. Apache Tribe of Oklahoma
3. Kialegee Tribal Town
4. Wichita and Affiliated Tribes

In these instances, the State of Oklahoma is responsible for ensuring that sex offender registration and notification processes are carried out for these tribes.



Twenty-three tribes located within the boundaries of Oklahoma have substantially implemented SORNA:

1. Absentee-Shawnee Tribe of Oklahoma
2. Cherokee Nation
3. Chickasaw Nation
4. Citizen Potawatomi Nation
5. Comanche Nation
6. Iowa Tribe of Oklahoma
7. Kaw Nation
8. Kickapoo Tribe of Oklahoma
9. Kiowa Indian Tribe of Oklahoma
10. Miami Tribe of Oklahoma
11. Modoc Tribe of Oklahoma
12. Muscogee (Creek) Nation
13. Osage Nation
14. Otoe-Missouria Tribe of Indians
15. Ottawa Tribe of Oklahoma
16. Pawnee Nation of Oklahoma
17. Peoria Tribe of Indians of Oklahoma
18. Quapaw Tribal Business Committee
19. Sac and Fox Nation of Oklahoma
20. Seminole Nation of Oklahoma
21. Seneca-Cayuga Tribe of Oklahoma
22. United Keetoowah Band of Cherokee Indians
23. Wyandotte Nation

An additional five tribes are presently working towards SORNA implementation or have been granted additional time to implement SORNA:

1. Caddo Nation of Oklahoma
2. Cheyenne-Arapaho Tribes of Oklahoma
3. Delaware Nation
4. Eastern Shawnee Tribe of Oklahoma
5. Tonkawa Tribe of Indians of Oklahoma

In correspondence with Oklahoma state officials, it appears that the state is willing to provide the assistance necessary for the tribes to substantially implement the data sharing provisions of SORNA and state and local law enforcement have entered into agreements with tribes to facilitate these processes. As the SMART Office works through substantial implementation packages submitted by the remaining tribes in Oklahoma, we will be in contact with state officials to facilitate, where possible, information sharing systems and arrangements.

The primary State contact for tribal issues is:

Lisa Sunday  
Coordinator  
Sex & Violent Offender Registration Unit  
PO Box 11400  
Oklahoma City, OK 73136  
(405) 425-7601

The points of contact for the Tribes are:

Absentee - Shawnee Tribe of Indians of OK  
Joseph Abbiss  
SORNA Officer  
2025 S Gordon Cooper Dr.  
Shawnee, OK 74801  
(405) 275-3200

Cheyenne-Arapaho Tribes of OK  
Paul A. Fuentes  
Probation Officer  
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Concho, OK 73022  
(405) 422-7760

Alabama-Quassarte Tribal Town  
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Chickasaw Nation  
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Apache Tribe of OK  
Teresa J. Taylor  
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Citizen Potawatomi Nation  
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Cherokee Nation  
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Delaware Nation  
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Director of Security  
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Eastern Shawnee Tribe of OK  
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Iowa Tribe of OK  
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Court Clerk  
Iowa Tribe of Oklahoma  
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Perkins, OK 74059  
(405) 547-2402

Kaw Nation  
Chief of Police  
3251 River Road  
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Kialegee Tribal Town  
No POC

Kickapoo Tribe of OK  
Gregg Sciortino  
Investigator  
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(405) 964-5941

Kiowa Tribe of OK  
Acting SORNA Director and  
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Carnegie, OK 73015  
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Miami Tribe of OK  
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Pawnee Nation of OK  
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Peoria Tribe of Indians of OK  
Doug Journeycake  
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Seneca-Cayuga Tribe of OK  
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SORNA Coordinator  
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Grove, OK 74344  
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Ponca Tribe of Indians of OK  
Earl Howe, III  
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Tonkawa Tribe of Indians of OK  
John Cooper  
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Quapaw Tribal Business Committee  
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United Keetoowah Band of Cherokee Indians  
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As the SMART Office continues to work with Oklahoma on SORNA implementation, we will notify the tribes within the state of any processes, policies, or procedures that facilitate the sharing of criminal justice information with the tribes.

## **Conclusion**

Oklahoma has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. We encourage Oklahoma to continue to work towards meeting all the provisions of SORNA and to work with SMART office personnel

to maintain Oklahoma's status as having substantially implemented SORNA. Oklahoma is expected to keep the SMART Office informed of its progress towards the continuing implementation of SORNA and the SMART Office will continue to provide any necessary technical assistance towards that end.

We encourage you to contact the SMART Office with any questions or concerns once you have had the opportunity to review and discuss our findings.

## **Appendix: Oklahoma Offense Tiering Review**

The SMART Office has reviewed all Oklahoma statutes identified in its substantial implementation submission package and has identified Oklahoma'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 Oklahoma. 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 Oklahoma Code, the SMART Office understands that Oklahoma has three categories of registrants for purposes of its duration of registration and frequency of registration requirements:

1. Tier I registrants, required to register for 15 years and annually verify registration information;
2. Tier II registrants, required to register for 25 years and twice-annually verify registration information; and
3. Tier III registrants, required to register for life and quarterly verify registration information.

### **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 Oklahoma Code would require, at a minimum, Tier I registration requirements under SORNA.

- 21 O.S. § 681 – Assault with intent to commit a felony (if the offense involved sexual contact with a victim 18 years of age or older).
- 21 O.S. § 843.1 – Caretaker abuse or neglect (when sexual contact or sexual exploitation is involved).
- 21 O.S. § 852.1 – Child endangerment (if the offense involved sexual abuse of a child).
- 21 O.S. § 1024.2 – Purchase, procurement, or possession of child pornography.
- 21 O.S. § 1040.12a – Aggravated possession of child pornography.

### **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 Oklahoma Code would require, at a minimum, Tier II registration requirements under SORNA.

- 21 O.S. § 681 – Assault with intent to commit a felony (if the offense involved sexual contact with a victim 13 -17 years of age).
  - Placement of this statute in Tier I does not meet SORNA requirements.
- 21 O.S. § 1021 – Obscene or indecent writings, pictures, etc. or solicitation of minors.
- 21 O.S. § 1021.2 – To procure or cause minors to participate in obscene or indecent writings.
- 21 O.S. § 1021.3 – Guardians-parents-custodians consent to participation of minor in obscene writings, pictures.
- 21 O.S. § 1040.8 – Publication, distribution, or participation of child pornography.
  - Placement of this statute in Tier I does not meet SORNA requirements.
- 21 O.S. § 1040.13 – Importing or distributing obscene material or child pornography.
  - Placement of this statute in Tier I does not meet SORNA requirements.
- 21 O.S. § 1040.13a – Soliciting sexual conduct or communication with a minor by use of technology.
- 21 O.S. § 1087 – Procuring a child under 18 years of age for prostitution, lewdness, or other indecent acts.
- 21 O.S. § 1088 – Inducing, keeping, detaining, or restraining for prostitution a child under 18 years of age.
- 21 O.S. § 1123(B) – Sexual battery to a person over 16 years of age.
  - Placement in Tier III exceeds SORNA requirements.
- 21 O.S. § 1123(A) – Lewd or indecent proposals or acts to a child under 16 years of age.
  - If victim 13-16 years of age, otherwise Tier III under SORNA.

### **Tier III Offenses**

SORNA requires that Tier III offenders register for life and quarterly verify registration information. The following offenses listed in Oklahoma Code would require Tier III registration requirements under SORNA.

- Second and subsequent sex offense conviction.
- 21 O.S. § 681 – Assault with intent to commit a felony (if the offense involved a sexual act or sexual contact with a victim under 13 years of age).
- 21 O.S. § 741 – Kidnapping.
- 21 O.S. § 843.1 – Caretaker abuse or neglect (when a sexual act is involved).
- 21 O.S. § 865 – Trafficking in children (if offense involved sexual abuse or sexual exploitation).
- 21 O.S. § 885 – Incest.
  - If offense involved victim under 18 years of age, otherwise exceeds SORNA requirements.
- 21 O.S. § 888 – Forcible sodomy.
- 21 O.S. § 891 – Child stealing (if offense involved sexual abuse or sexual exploitation).

- 21 O.S. § 1123(A) – Lewd or indecent proposals or acts to a child under 16 years of age.
  - If offense involved victim under 13 years of age, otherwise Tier II under SORNA.
- 21 O.S. § 1114 – Rape in the first degree
- 21 O.S. § 1116 – Rape in the second degree
- 21 O.S. § 7115 – Abuse or neglect of child/child beating (when sexual abuse or sexual exploitation is involved).

### **Further Review**

In reviewing the statutes that Oklahoma cited as those that are registerable offenses under Oklahoma’s registration scheme, the SMART office did notice offenses that do not require registration under SORNA:

- 21 O.S. § 885 – Incest (victim 18 years of age or older).
- 21 O.S. § 886 – Crime against nature/sodomy.
- 21 O.S. § 1021(A)(1)(2) – Indecent exposure/indecent exhibitions.