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SORNA Substantial Implementation Review Pueblo of Tesuque — Revised

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 Pueblo of Tesuque for its efforts 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 Pueblo of Tesuque's SORNA substantial implementation materials and has found that the Pueblo 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 Pueblo of Tesuque has not substantially implemented the SORNA requirements, the SMART Office is not delegating the Pueblo's sex offender responsibilities at this time.

Pueblo of Tesuque has entered into a full memorandum of agreement (MOA) with New Mexico and Santa Fe County Sheriff's Office, wherein the Pueblo assigns all of its law enforcement responsibilities regarding sex offender registration and notification to New Mexico according to state law.¹ Because New Mexico has not substantially implemented SORNA, the SMART Office finds that delegation would not lead to greater SORNA implementation at this time.

In October 2011, the SMART Office provided an initial substantial implementation review to New Mexico. The SMART Office completed Pueblo of Tesuque's initial substantial implementation review in 2018. The SMART Office subsequently revised its substantial implementation review for the state in 2020 and now revises the Pueblo's 2018 report accordingly. For this review, the SMART Office reviewed relevant New Mexico statutes, policies, public registry website information, sex offender registration forms and other related materials, as well as the MOA with New Mexico and Santa Fe County Sheriff's Office. In addition, email and phone correspondence with the Pueblo's attorneys and Santa Fe County Sheriff's Office informed this review.

Based on our review of these materials, it is our determination that because New Mexico and Santa Fe County Sheriff's Office register offenders according to New Mexico law, Pueblo of Tesuque deviates from SORNA requirements where New Mexico deviates.²

This review is exhaustive and details each area in which Pueblo of Tesuque has or has not met SORNA standards. This review follows the outline of the SMART Office Substantial

¹ In 2013, Pueblo of Tesuque passed a sex offender registration code consistent with SORNA's requirements. However, Pueblo of Tesuque has chosen to enter into a MOA with New Mexico and Santa Fe County Sheriff's Office, which registers Pueblo of Tesuque's sex offenders pursuant to New Mexico state law.

² See [SORNA Substantial Implementation Review, New Mexico — Revised](#).

Implementation Checklist — Revised (2020), and contains 11 sections addressing the SORNA requirements. Each section indicates whether Pueblo of Tesuque meets or does not meet the SORNA requirements of that section, or deviates from the SORNA requirements in a way that does not substantially disserve SORNA’s requirements.

I. Immediate Notification and Exchange of Information

SORNA requires that when an offender initially registers and/or updates their information in a jurisdiction, that the initial registration information or updated information be immediately sent to each jurisdiction(s) where the offender is required to register — i.e., where the offender lives, works and/or goes to school — through the SORNA Exchange Portal or other means, as well as sent to the National Crime Information Center’s National Sex Offender Registry (NCIC/NSOR) and the jurisdiction’s public sex offender registry website. Notification must also be provided to appropriate law enforcement agencies, supervision agencies and any agency responsible for conducting employment-related background checks under 34 U.S.C. § 40102(a) in each jurisdiction where the offender is registered.

New Mexico’s procedures deviate from SORNA requirements in that, per state law, county sheriffs must submit sex offender registration information to the New Mexico State Department of Public Safety no later than 10 working days after collecting it. In practice, New Mexico sheriffs use a state-provided sex offender registry system that instantaneously transfers information to NCIC/NSOR.

New Mexico’s deviations in this section do not substantially disserve the purposes of SORNA requirements and therefore, because of the Pueblo’s reliance on the MOA with New Mexico and Santa Fe County Sheriff’s Office, Pueblo of Tesuque’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 a jurisdiction capture certain sex offenses, both from the jurisdiction itself and from other SORNA registration jurisdictions, in its registration scheme. In addition, SORNA requires certain federal, military and foreign offenses be included in a jurisdiction’s registration scheme. SORNA also requires that certain adjudications of delinquency be included in a jurisdiction’s registration scheme.

New Mexico deviates from SORNA requirements in that it does not require registration for all offenses for which SORNA requires registration. Further, New Mexico’s registration laws covering certain juvenile adjudications of delinquency for sex offenses substantially deviate from SORNA requirements.

New Mexico does not meet the SORNA requirements in this section and therefore, because of the Pueblo’s reliance on the MOA with New Mexico and Santa Fe County Sheriff’s Office, Pueblo of Tesuque does not meet SORNA requirements.

III. Required Registration Information

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

New Mexico deviates from SORNA requirements in that state law does not expressly require the collection of all of the information required by SORNA from out-of-state offenders who work or attend school in the state. However, New Mexico county sheriffs use the same forms to register resident sex offenders and out-of-state offenders who work or attend school in the state, thereby collecting the same registration information from all registering sex offenders.

New Mexico's deviations in this section do not substantially disserve the purposes of SORNA requirements and therefore, because of the Pueblo's reliance on the MOA with New Mexico and Santa Fe County Sheriff's Office, Pueblo of Tesuque's deviations do not substantially disserve the purposes of the SORNA requirements in this section.

IV. Where Registration Is Required

SORNA requires the jurisdiction register an offender if the offender was convicted or incarcerated in that jurisdiction. In addition, SORNA requires that the jurisdiction register offenders who live, work or go to school in the jurisdiction.

New Mexico deviates from SORNA requirements in that the state does not initially register offenders who are convicted in New Mexico but intend to live elsewhere. When an offender is incarcerated with the New Mexico Department of Corrections based on a conviction for a sex offense but does not intend to reside in New Mexico upon release from incarceration, New Mexico notifies the destination jurisdiction of the offender's pending arrival. In addition, the court provides sex offenders who are convicted but not incarcerated with a notice to register form, which is also forwarded to the destination jurisdiction.

New Mexico's deviations in this section do not substantially disserve the purposes of SORNA requirements and therefore, because of the Pueblo's reliance on the MOA with New Mexico and Santa Fe County Sheriff's Office, Pueblo of Tesuque's deviations do not substantially disserve the purposes of the SORNA requirements in this section.

V. Initial Registration: Generally

SORNA requires registration of an offender who is incarcerated within the jurisdiction before release from imprisonment for the registration offense. Similarly, when an offender is sentenced in the jurisdiction, but not incarcerated, SORNA requires registration within three business days of sentencing. Additionally, 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. Finally, SORNA requires that, during the initial registration

process, the jurisdiction inform the offender of their registration duties and require the offender acknowledge in writing that they understand those duties.

New Mexico's timing for registering sex offenders convicted after July 1, 2013, deviates from, but does not substantially disserve, the purposes of the SORNA requirements in this section. However, the state's timing for registering sex offenders convicted before July 1, 2013 — ranging from 10 to 45 days depending on circumstances — does not meet the SORNA requirements in this section.

New Mexico does not meet the SORNA requirements in this section and therefore, because of the Pueblo's reliance on the MOA with New Mexico and Santa Fe County Sheriff's Office, Pueblo of Tesuque does not meet SORNA requirements.

VI. Initial Registration: Retroactive Classes of Offenders

SORNA applies to sex offenders convicted prior to the enactment of SORNA or its implementation in the jurisdiction; if they are prisoners, supervisees or registrants at the time of implementation; or if they reenter the criminal justice system because of subsequent convictions.

New Mexico's sex offender registration system has been in place since 1995, and all offenders who have been sentenced since July 1, 1995, or who were incarcerated, on parole or on probation for a sex offense on that date, are required to register. New Mexico revised its sex offender registration laws in 2005 and 2013, both only applying prospectively, which effectively created three groups of sex offenders with distinct registration requirements. Because the revisions only applied prospectively, New Mexico deviates from SORNA requirements.

New Mexico does not meet the SORNA requirements in this section and therefore, because of the Pueblo's reliance on the MOA with New Mexico and Santa Fe County Sheriff's Office, Pueblo of Tesuque does not meet SORNA requirements.

VII. Keeping the Registration Current

SORNA requires registered sex offenders immediately appear in person to the registering agency in their jurisdiction of residence to update their name, residence, employment, school attendance and termination of residence. SORNA also requires sex offenders immediately update the registering agency in their jurisdiction of residence about any changes to their 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 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 the offender immediately appear in person to update school-related information.

SORNA also requires that, when an offender intends to travel outside the United States, the offender notify the registering agency in their jurisdiction of residence 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: 1) immediately notify any other jurisdiction where the offender is either registered or is required to register of that updated information; 2) immediately notify the United States Marshals Service; and 3) immediately update NCIC/NSOR.

New Mexico does not require all sex offenders to immediately inform registry officials of updates to their registration information and does not require sex offenders to appear in person at their registering agency to provide updates to registration information as required by SORNA.

New Mexico does not meet the SORNA requirements in this section and therefore, because of the Pueblo's reliance on the MOA with New Mexico and Santa Fe County Sheriff's Office, Pueblo of Tesuque does not meet SORNA requirements.

VIII. Offense Tiering and Verification/Appearance Requirements

SORNA requires offenses be classified into three tiers based on the nature and seriousness of the offense, the age of the victim and the extent of the offender's recidivism and that the tier of the conviction offense determines the duration of registration and frequency of in-person appearances.

A. Offense Tiering

The SMART Office has reviewed all relevant New Mexico statutes and has identified New Mexico's classification of these statutes within the tiering policy structure created by SORNA. New Mexico tiers its statutes in accordance with SORNA, with the following exceptions:

- § 30-4-3 False imprisonment
- § 30-6A-3(A) Sexual exploitation of children
- § 30-9-11(E)(2), (5) Criminal sexual penetration in the second degree, if victim 18 or over (non-forcible)
- § 30-9-12 Criminal sexual contact in the fourth degree

New Mexico requires registration for these offenses for 10 years. These offenses require tier I classification (15 years) under SORNA.

- § 30-6A-4 Sexual exploitation of children by prostitution
- § 30-9-1 Enticement of child
- § 30-9-11(G) Criminal sexual penetration in the fourth degree, if victim 16 or 17
- § 30-10-3 Incest, if victim 16 or 17
- § 30-28-3 Solicitation to commit criminal sexual contact of a minor
- § 30-37-3.2 Child solicitation by electronic communication

New Mexico requires registration for these offenses for 10 years. These offenses require tier II classification (25 years) under SORNA.

- § 30-9-11(G) Criminal sexual penetration in the fourth degree, if victim under 16
- § 30-10-3 Incest, if victim under 16

New Mexico requires registration for these offenses for 10 years. These offenses require tier III classification (lifetime) under SORNA.

B. Duration of Registration

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

New Mexico's duration of registration requirements deviate from SORNA's requirements. New Mexico requires offenders to register as follows:

- Offenders convicted on or after July 1, 2013, must register for life or 10 years, depending on the severity of the registration offense.
- Offenders convicted between July 1, 2005, and July 1, 2013, must register for life or 10 years, depending on the severity of the registration offense.
- Offenders convicted between July 1, 1995, and July 1, 2005, must register for 10 or 20 years, depending on the severity of the registration offense. The duration is counted from the offender's date of sentencing, or release from incarceration, parole or probation, whichever is later.

C. Frequency of Registration

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

New Mexico's frequency of registration requirements deviate from SORNA's requirements. New Mexico requires offenders to update their registration information as follows:

- Offenders convicted on or after July 1, 2013, must verify registration every 90 days for life or every six months for 10 years, depending on the severity of the offense requiring registration.
- Offenders convicted between July 1, 2005, and July 1, 2013, must verify registration every 90 days for life or once per year for 10 years, depending on the severity of the offense requiring registration.

- Offenders convicted between July 1, 1995, and July 1, 2005, who were not incarcerated, on probation or on parole for commission of that sex offense as of July 1, 2005, are not required to verify registration.

D. Reduction of Registration Periods

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

New Mexico does not allow for reduction of registration periods.

New Mexico does not meet the SORNA requirements in this section and therefore, because of the Pueblo's reliance on the MOA with New Mexico and Santa Fe County Sheriff's Office, Pueblo of Tesuque does not meet SORNA requirements.

IX. Public Registry Website and Community Notification Requirements

SORNA requires 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 published on a jurisdiction's public registry website. Additionally, SORNA requires each jurisdiction disseminate certain initial and updated registration information to schools, public housing agencies and social service entities responsible for protecting minors, and the community through an automated notification system.

A. Public Registry Website

SORNA requires offender information be published on the jurisdiction's public registry website within three business days. In addition to being able to search for a specific offender by name, the jurisdiction's sex offender website must also be searchable by ZIP code or geographic radius.

New Mexico's public sex offender registry website deviates from SORNA in that it does not display offenders convicted of all offenses that SORNA requires. Further, New Mexico does not share all of the information required by SORNA on its public sex offender registry website.

B. Community Notification

The jurisdiction's public sex offender registry website must include a function to allow members of the public and organizations to request email notification when sex offenders move into, or start employment or school within, a ZIP code or geographic radius specified by the requester.

New Mexico's email notification system does not disseminate information for offenders who are registered but not displayed on the public registry website as required by SORNA, and does not share all of the registrant information required by SORNA.

New Mexico does not meet the SORNA requirements in this section and therefore, because of the Pueblo's reliance on the MOA with New Mexico and Santa Fe County Sheriff's Office, Pueblo of Tesuque does not meet SORNA requirements.

X. Enforcement of Registration Requirements

SORNA requires that jurisdictions take measures to enforce registration requirements and engage in practical procedures for investigating and dealing with absconders.

A. Failure to Appear for Registration

SORNA requires that when a jurisdiction is notified of a sex offender's intent to live, work or go to school in its jurisdiction, and that offender fails to appear for registration as required, the receiving jurisdiction must inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

New Mexico's failure-to-appear procedures conform with SORNA requirements.

B. Absconders

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

New Mexico's investigation and notification procedures conform with SORNA requirements.

Through the MOA with New Mexico and Santa Fe County Sheriff's Office, Pueblo of Tesuque meets all of the SORNA requirements in this section.

XI. Other Considerations

There are no additional considerations.

Conclusion

Pueblo of Tesuque has currently chosen to implement its program through an MOA with New Mexico and Santa Fe County Sheriff's Office, assigning all of its SORNA responsibilities to New Mexico, whereby the county sheriff's office registers sex offenders pursuant to New Mexico sex offender registration laws. Thus, consistent with New Mexico's finding, Pueblo of Tesuque has been found to have not substantially implemented SORNA.

Although Pueblo of Tesuque has not substantially implemented SORNA, the SMART Office will not delegate the Pueblo's sex offender registration and notification responsibilities at this time. The Pueblo has a functioning system through an MOA, and 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 New Mexico or Pueblo of Tesuque to its respective sex offender registration and notification program will require a subsequent review by the SMART Office.

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