



January 2016

## **SORNA Substantial Implementation Review State of Rhode Island**

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

In January 2015, the Rhode Island Department of Attorney General, Legislation and Policy Unit submitted to the SMART Office for review a SORNA substantial implementation package, consisting of a completed SORNA Substantial Implementation Checklist, relevant Rhode Island State statutes and codes, and Sexual Offender Community Notification Guidelines.

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 Rhode Island 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. Rhode Island 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, Rhode Island 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 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.

While Rhode Island updates its registration information within three days of receipt and notifies law enforcement agencies within the state, and updates the FBI databases, Rhode Island does not notify US territories or tribal jurisdictions of any updates to registration information.

Rhode Island 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. Rhode Island Offenses**

Rhode Island captures many of the offenses for which SORNA requires registration, with exceptions. Rhode Island does not include attempts or conspiracies to commit sex offenses.

### **B. Offenses of Other SORNA Registration Jurisdictions**

In Rhode Island, registration is required for any offender if the offense committed in another jurisdiction is substantially similar to a Rhode Island registerable offense. Additionally, if a person is registered in another state for an offense, which if committed within Rhode Island would require registration, then that person must register in Rhode Island.

### **C. Federal Offenses**

Rhode Island requires registration for any offender who would be required to register under 42 U.S.C. §14071 or 18 U.S.C. §4042(e). Rhode Island does not capture the following federal offenses in its registration scheme:

- 18 U.S.C. §1591 (Sex Trafficking by Force, Fraud, or Coercion)
- 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. §2421 (Transportation of a Minor for Illegal Sexual Activity)
- 18 U.S.C. §2423 (Transportation of Minors for Illegal Sexual Activity, Travel With the Intent to Engage in Illicit Sexual Conduct with a Minor, Engaging in Illicit Sexual Conduct in Foreign Places)
- 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**

Rhode Island does not require offenders to register if they committed offenses requiring registration under military law, unless the offense committed is substantially similar to a Rhode Island registerable offense.

#### E. Foreign Offenses

Rhode Island does not require registration for offenses committed in foreign countries.

#### F. Juvenile Adjudications

In Rhode Island, individuals adjudicated delinquent in juvenile court for an aggravated offense,<sup>1</sup> a second sex offense, or has been determined to be a sexually violent predator are required to register. Juveniles adjudicated delinquent for a criminal offense against a victim who is a minor or a sexually violent offense are required to register if the court determines it appropriate to protect the community and to rehabilitate the juvenile offender.

Because Rhode Island does not include attempts or conspiracies to commit sex offenses, Rhode Island does not meet 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. Rhode Island's registration and notification scheme deviates from SORNA requirements in that it requires all sex offenders to register for either 10 years or life (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 Rhode Island's registration and notification scheme and has placed these statutes within the SORNA three tier levels (see Appendix: Rhode Island Offense Tiering Review for a detailed analysis regarding this subsection of the review).

The following Rhode Island offenses require 10 year registration and annual verification; these offenses are equivalent to SORNA Tier I offenses requiring registration for 15 years with yearly appearances to law enforcement for verification purposes:

- § 11-9-1.3(4). Child pornography (possession)
- § 11-64-2. Video voyeurism (where the victim is under the age of 18)
- § 11-37-4. Second degree sexual assault (if victim over the age of 18)

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<sup>1</sup> Aggravated offenses includes offenses involving sexual penetration of victims of any age through the use of force, or the threat of use of force, or offenses involving sexual penetration of victims who are 14 years of age or under. These offenses include § 11-37-2 first degree sexual assault, § 11-37-6 third degree sexual assault (if the victim was at least 13 years of age and the offender was not more than 4 years older than the victim), and § 11-37-8.1 first degree child molestation sexual assault.

The following Rhode Island offenses require 10 year registration and annual verification; these offenses are equivalent to SORNA Tier II offenses requiring registration for 25 years with twice-yearly appearances:

- § 11-1-10. Soliciting an incompetent person (where the underlying offense is a violation of Rhode Island General Laws, Chapter 11-34 Prostitution and Lewdness, and the victim, or person solicited to commit the offense, is under the age of 18)
- § 11-9-1(b) or (c). Exploitation for commercial or immoral purposes
- § 11-9-1.3(1-3). Child pornography (production and distribution)
- § 11-26-1.5. Enticement of children
- § 11-37-8.3. Second degree child molestation sexual assault (if victim 13-18 years of age)
- § 11-37-8.8. Indecent solicitation of a child
- § 11-37-4. Second degree sexual assault (if victim age 13-18)

The following Rhode Island offenses require 10 year registration and annual verification; these offenses are equivalent to SORNA Tier III offenses requiring lifetime registration with quarterly appearances:

- § 11-5-1. Assault with intent to commit felony sexual assault
- § 11-23-1. Murder (where the murder was committed in the perpetration of, or attempted perpetration of, kidnapping and where the victim of the offense is under 18, rape or any degree of sexual assault or child molestation, or any offense in another jurisdiction that is substantially the equivalent of any offense listed in this subsection or for which the person is or would be required to register under 42 U.S.C. § 14071 or 18 U.S.C. § 4042(c).)
- § 11-26-1. Kidnapping (where the victim of the offense is 16 years of age or older and under the age of 18)
- § 11-26-1.4. Kidnapping or false imprisonment of a minor (where the victim of the offense is 16 years of age or older and under the age of 18)
- § 11-26-2. Kidnapping with intent to extort (where the victim of the offense is 16 years of age or older and under the age of 18)
- § 11-37-4. Second degree sexual assault (if victim under the age of 13)
- § 11-37-8.3. Second degree child molestation sexual assault (if victim under 13 years of age)

Rhode Island 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. Rhode Island captures some of the required information, with the following exceptions:

- Criminal History information, including:
  - Outstanding arrest warrants
  - Registration status
- Photocopies of driver's licenses or ID cards
- Employment information, including:
  - Employer name
  - Transient/day labor employment information
- Internet identifiers
- Palm prints
- Digitized copies of passports and immigration documents
- Phone numbers
- Professional licensing information
- If no permanent residence, location or description of where the offender habitually lives
- Social security number
- Temporary lodging information
- Vehicle information

Rhode Island 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 Rhode Island requires registration for sex offender residing, working or attending school in the state in accordance with SORNA, Rhode Island has no written policy for handling situations in which offenders move directly out of the state after being convicted or released from incarceration. However, the Rhode Island State Police receive documentation from the Department of Corrections or state courts and enter the information into the state sex offender registry and NSOR/NCIC databases. The State Police utilize the SORNA Exchange Portal to notify jurisdictions of an offender's relocation from Rhode Island to that jurisdiction.<sup>2</sup>

This deviation does not substantially disserve the purposes of the SORNA requirements in this section.

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<sup>2</sup> Per correspondence with Detective Kyle Shibley, Rhode Island State Police, on November 4, 2015, while there is no state legislation or policy to reflect this process, the Rhode Island State Police follow these procedures.

## **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.

While Rhode Island meets most of the requirements in this section, the state does not require sex offenders to register prior to release from incarceration. Rather, when sex offenders are released from imprisonment, they are required to register with law enforcement within 24 hours of release.

This deviation does not substantially disserve the purposes of the SORNA requirements in this section.

## **VII. Initial Registration: Retroactive Classes of Offenders**

SORNA requires that each registration jurisdiction have a procedure in place to recapture three categories of sex offenders: those who are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime; those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; and those who reenter the jurisdiction's criminal justice system because of a conviction for some other felony crime (whether or not it is a sex offense).

In Rhode Island, those convicted of a sex offense on or after July 24, 1996, must register. Rhode Island does not require the registration of sex offenders who reenter the criminal justice system because of a conviction for some other felony crime (whether or not it is a 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.

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 notifies the residence jurisdiction at least 21 days in advance of such travel.

In addition, SORNA requires that when an offender notifies the jurisdiction of his 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, and immediately update NCIC/NSOR.

In Rhode Island, registered sex offenders must report changes in address to law enforcement, but not in person; sex offenders are not required to update law enforcement of any other changes in registration information. Furthermore, Rhode Island does not require offenders to report 21 days in advance of travel outside the United States and does not notify the U.S. Marshals Service of an offender's intent to travel.

Rhode Island 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 Rhode Island, most offenders are required to register for 10 years. Any person who has been determined to be a sexually violent predator,<sup>3</sup> or is a recidivist or aggravated crime offender<sup>4</sup> is required to register for life.

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<sup>3</sup> A "sexually violent predator" is a person who has been convicted of a sexually violent offense and has been found by the Rhode Island Sex Offender Board of Review to suffer from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. Sexually violent offenses include: § 11-37-2 first degree sexual assault, § 11-37-4 second degree sexual assault, § 11-37-6 third degree sexual assault, § 11-37-8.1 first degree child molestation sexual assault, § 11-37-8.3 second degree child molestation sexual assault, § 11-5-1 assault with intent to commit felony sexual assault, and § 11-23-1 where the murder was committed in the perpetration of, or attempted perpetration of, rape or any degree of sexual assault or child molestation.

<sup>4</sup> A recidivist is any person required to register under § 11-37.1-3 and who has one or more prior convictions for any offense described in § 11-37.1-2; an aggravated crime offender, defined in § 11-37.1-2, is an offender adjudicated

Juveniles adjudicated delinquent for aggravated crimes, or who are recidivists or designated sexually violent predators are required to register for 15 years.

#### 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 Rhode Island, all offenders are required to report in person to law enforcement on a yearly basis. All registrants must also verify their address information on a quarterly basis, for at least the first two years of registration; sexually violent predators and recidivists and aggravated offenders must verify their information quarterly for life. However, individuals are not required to appear in person for these verifications; verifications are conducted via mail.

Juveniles adjudicated delinquent for aggravated crimes, or who are recidivists or designated sexually violent predators are required to annually register in person with the local law enforcement and to verify his or her address on a quarterly basis via mail.

#### C. Reduction of Registration Periods

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

In Rhode Island, sex offenders are not allowed reductions in their registration periods.

Because Rhode Island does not register offenders for the appropriate durations and does not require in-person verification, Rhode Island 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.

On Rhode Island's public sex offender registry website information about a sex offender is available to the public only if the Sex Offender Board of Review has classified the offender as

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delinquent or convicted of offenses involving sexual penetration of victims of any age through the use of force, or the threat of use of force, or offenses involving sexual penetration of victims who are 14 years of age or under. These offenses include § 11-37-2 first degree sexual assault, § 11-37-6 third degree sexual assault (if the victim was at least 13 years of age and the offender was not more than 4 years older than the victim), and § 11-37-8.1 first degree child molestation sexual assault.



a Level 2 or Level 3. The website also provides complete lists of Level 2 and Level 3 sex offenders. Information pertaining to Level 1 sex offenders cannot be posted on the website.

While Rhode Island displays much of the SORNA required information about registered sex offender, several important items of information are not relayed to the public, including:

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

Additionally, Rhode Island's public sex offender registry website is searchable only by city/town or by zip code, not by name or geographic radius. The website does not provide links to safety and education resources, nor does it provide instructions to users on how to correct inaccurate information.

Because Rhode Island does not post information for all of its registered sex offenders and does not post important identifying information about sex offenders, Rhode Island 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.

While Rhode Island meets the SORNA law enforcement community notification requirements of this section, the state does not have an automated system that updates the public registry website of changes in sex offender's registration information, and does not provide an automated community notification system to the public.

Rhode Island does not meet 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.

Rhode Island 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.

While Rhode Island is utilizing the SORNA Exchange Portal to send and receive relocation tasks, Rhode Island does not provide jurisdictions notice that an offender failed to appear for registration.

Rhode Island does not meet 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.

Rhode Island has no law or written policy for handling sex offenders who have absconded.

Rhode Island does not meet 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 Rhode Island: the Narragansett Indian Tribe. The Narragansett Indian Tribe has requested from the SMART Office more time to implement SORNA. Communications with the tribe indicate that the tribe's police chief is in contact and established a 'liaison relationship' with his state counterpart and is receiving assistance in understanding how the state works with its municipalities to carry out registration. The SMART Office expects the state to assist the tribe with its SORNA implementation efforts and help facilitate information sharing between the states, federal government and other Indian Nations.

The Narragansett Indian Tribe Leader is:

Matthew Thomas  
Chief Sachem  
4375B South County Trail  
P.O. Box 268  
Charlestown, RI 02813  
(401) 364-1100 x. 214

SMART's primary points of contact in the Tribe are:

Antone Monroe  
Chief of Police  
4375B South County Trail  
P.O. Box 268  
Charlestown, RI 02813  
(401) 364-1107  
amonroe@nitribe.org

Samuel Fry  
Patrolman  
4375B South County Trail  
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## **Conclusion**

We encourage Rhode Island 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 Rhode Island 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: Rhode Island Offense Tiering Review**

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

In reviewing Rhode Island Revised Statutes, the SMART Office understands that Rhode Island has two categories of registrants:

1. Ten year registration with annual in-person updates with law enforcement and quarterly address verification for the first two years of the period: individuals who commit criminal offenses against a victim who is a minor and sexually violent offenses.
2. Lifetime registration with annual in person updates with law enforcement and quarterly address verification: Sexually violent predators (a person who has been convicted of a sexually violent offense and who has a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses, as determined by the Sex Offender Board of Review), recidivists, and aggravated crime offenders (a person convicted of offenses involving sexual penetration of victims of any age through the use of force, or the threat of use of force, or offenses involving sexual penetration of victims who are 14 years of age or under).

### **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 Rhode Island Statutes would require, at a minimum, Tier I registration requirements under SORNA.

- § 11-9-1.3(4). Child pornography (possession)
- § 11-37-4. Second degree sexual assault (if victim over the age of 18)
- § 11-64-2. Video voyeurism (where the victim is under the age of 18)

### **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 Rhode Island Statutes would require, at a minimum, Tier II registration requirements under SORNA.

- § 11-1-10. Soliciting an incompetent person (where the underlying offense is a violation of Rhode Island General Laws, Chapter 11-34 Prostitution and Lewdness, and the victim, or person solicited to commit the offense, is under the age of 18)
- § 11-9-1(b) or (c). Exploitation for commercial or immoral purposes
- § 11-9-1.3(1-3). Child pornography (production and distribution)

- § 11-26-1.5. Enticement of children
- § 11-37-4. Second degree sexual assault (if victim age 13-18)
- § 11-37-8.3. Second degree child molestation sexual assault (if victim 13-18 years of age)
- § 11-37-8.8. Indecent solicitation of a child

### **SORNA Tier III Offenses**

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

- § 11-5-1. Assault with intent to commit felony sexual assault
- § 11-23-1. Murder (where the murder was committed in the perpetration of, or attempted perpetration of, kidnapping and where the victim of the offense is under 18, rape or any degree of sexual assault or child molestation, or any offense in another jurisdiction that is substantially the equivalent of any offense listed in this subsection or for which the person is or would be required to register under 42 U.S.C. § 14071 or 18 U.S.C. § 4042(c).)
- § 11-26-1. Kidnapping (where the victim of the offense is 16 years of age or older and under the age of 18)
- § 11-26-1.4. Kidnapping or false imprisonment of a minor (where the victim of the offense is 16 years of age or older and under the age of 18)
- § 11-26-2. Kidnapping with intent to extort (where the victim of the offense is 16 years of age or older and under the age of 18)
- § 11-37-2. First degree sexual assault
- § 11-37-4. Second degree sexual assault (if victim under the age of 13)
- § 11-37-6. Third degree sexual assault (if the victim was at least 13 years of age and the offender was not more than 4 years older than the victim)
- § 11-37-8.1. First degree child molestation sexual assault
- § 11-37-8.3. Second degree child molestation sexual assault (if victim under 13 years of age)

The following Rhode Island offense is not registerable under SORNA: § 11-9-1.5. Electronically disseminating indecent material to minors.